

**CHINA'S DEATH PENALTY:
REFORMS ON CAPITAL PUNISHMENT**

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Executive Summary

1. China topped the world in the imposition of the death penalty. According to Amnesty International, China's death sentences and executions have consistently contributed 60-80% to the total death sentences and executions in the world.
2. This is compounded by the problem of wrongful convictions and erroneous executions, particularly as a result of coerced confessions and strike-hard campaigns in recent decades.
3. China's official policy on the death penalty is to prevent excessive executions and to execute with caution (少杀慎杀).
4. The current Criminal Law stipulates 68 criminal offenses eligible for capital punishment. These offenses include not only violent crimes, but also economic offenses, offenses concerning public safety, public order, and corruption, making the scope of capital offenses one of the most expansive in the world.
5. Moreover, some offenses which meet certain aggravating conditions carry a mandatory death sentence (i.e., drug trafficking).
6. In general, China's death penalty has several unique characteristics: 1) it exempts minors (those less than 18 years of age at the time the crime was committed) and pregnant women (at the time of adjudication) from the death penalty; 2) it makes legal representation mandatory for all capital cases; and 3) it has the suspended death sentence, which may be used when an offender "should be sentenced to death" but "immediate execution is not essential." This is in line with China's policy of "preventing excessive executions and executing with caution."
7. Given these developments of the death penalty in China, the current reform has focused on several areas: 1) setting up long term prison sentences; 2)

restricting the scope of capital offenses; 3) curbing police torture and coerced confession; and 3) making death sentence decisions more uniform and fairer by going through the central authority for the final review and approval of capital cases.

8. With all indications, China is unlikely to abolish the death penalty in the near future. It will eventually abolish the death penalty when social and economic conditions permit.

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LU Hong*

Estimating Death Sentences and Executions

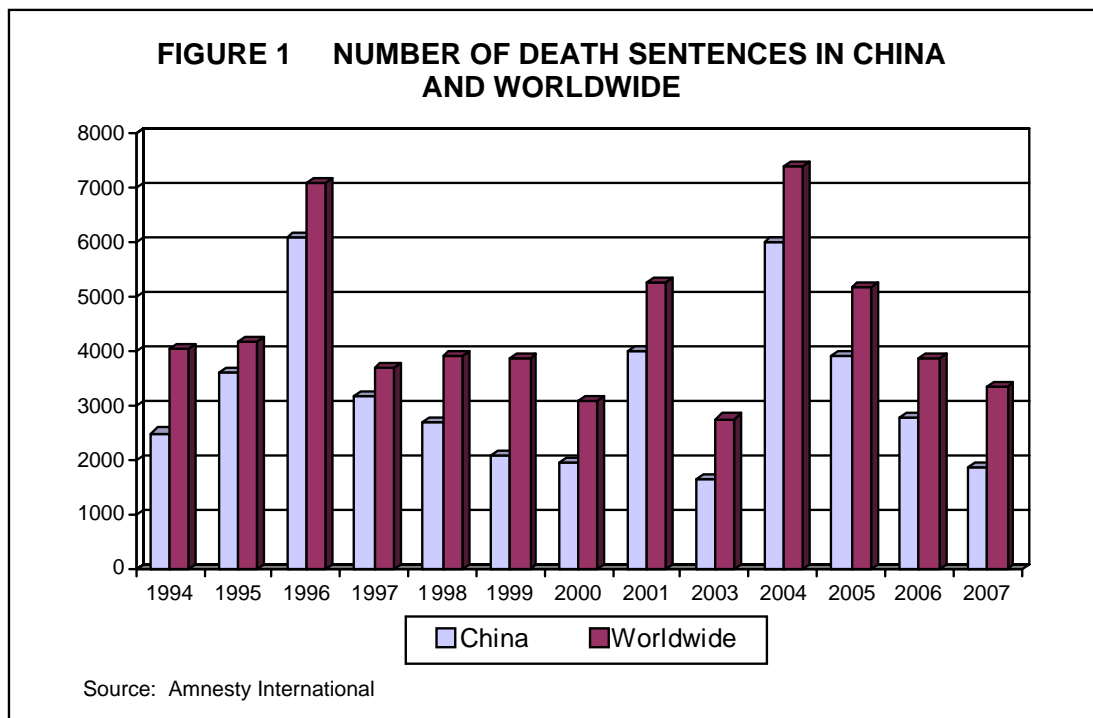
- 1.1 China does not publish official statistics on the number of death sentences and executions. It was widely speculated that the actual number of death sentences and executions might be very high and its release may cause embarrassment and further international pressure. It is thus believed that once the Supreme Court is satisfied with its progress of limiting the number and scope of death sentences and executions, it will release the data.
- 1.2 The assessment of the prevalence of death sentences and executions in China came from two sources: 1) Amnesty International annual reports, and 2) anecdotal reports.
- 1.3 Data compiled by Amnesty International (AI) are the most cited because every case reported can be traced to its original source. It also represents the most conservative estimate of death sentences and executions in China due to the following accounting rules: 1) when there is doubt of accuracy, figures were excluded; 2) where two conflicting reports existed, the lower figure was used; 3) when a combined figure of death sentences and prison sentences was given, only one death sentence was recorded; and 4) when a group was sentenced to death, only one sentence was entered.¹

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¹ The number of death sentences and executions reported by AI mainly came from publications and broadcasts from foreign and Chinese state news agencies such as Agence France Presse, the Associated Press, Agencia EFE, Foreign Broadcast Information Service, People's Broadcasting Station, BBC, South China Morning Post, and New China News Agency. See Amnesty International website at <http://web.amnesty.org/library/Index/ENGASA170351997?open&of=ENG-2S2>.

1.4 Reports containing speculations and estimates from Chinese public officials, legal practitioners, and scholars also provide an additional source of estimates of death sentences and executions in China. As an insider and a decision maker, these officials and practitioners may have inside information about the death penalty practice in China. However, as these estimates cannot be documented, the credibility of these estimates is often questioned.

1.5 Figure 1 presents the number of death sentences in China and worldwide. AI's estimate of the number of death sentences in China ranged from 1,000 to 6,000 per year. Even though there was no clear increasing or decreasing trend over a time period (between 1994 and 2008), it is evident that China has consistently contributed 60-80% to the death sentences worldwide.



1.6 Figure 2 shows that the annual number of executions fluctuated over the years both for China and the world. While the lowest recorded number of executions in China was 470 in 2008, the highest was 3,400 in 2004. The number of executions in China consistently accounted for a large proportion of that in the world. In addition, these estimates from AI were far less compared to

estimates from Chinese public officials, practitioners and scholars. It was reported that China executed between 6,000 and 10,000 people each year.



- 1.7 China has 68 types of criminal offense that are eligible for capital punishment. These capital offenses encompass a wide variety of offense types including drug trafficking, terrorism, producing or distributing poisonous, harmful or shoddy goods or medicines, forcing others into prostitution, and financial instrument and/or credit card frauds. These new capital offenses indicate a shift in the Chinese government's concerns from political interests in the past to economic and social issues in the present. Table 1 presents capital offenses stipulated in the 1997 Criminal Law.

TABLE 1 OFFENSES LIABLE FOR CAPITAL PUNISHMENT AS STIPULATED IN THE 1997 CRIMINAL LAW

Crimes Endangering National Security (7 capital offenses)

- Plotting to jeopardize the sovereignty, territorial integrity and security of the country
- Instigating to split the country
- Organizing, plotting, or carrying out armed rebellions, or armed riots
- Organizing, plotting or acting to subvert the political power of the state
- Espionage
- Stealing, secretly gathering, purchasing by bribery or illegally providing national secrets or intelligence to foreign institutions
- Providing the enemy with armed equipment or military materials

Crimes Endangering Public Security (14 capital offenses)

- Arson
- Breaching dikes
- Causing explosions
- Poisoning
- Threatening public security with dangerous methods
- Sabotaging transportation instruments
- Sabotaging transportation infrastructures
- Sabotaging electric power
- Sabotaging inflammable or explosive facilities
- Hijacking an aircraft
- Illegally manufacturing, trading, transporting, and mailing guns, ammunition or explosives
- Illegally trading or transporting nuclear materials
- Stealing guns, ammunition or explosive materials
- Forcibly seizing guns, ammunition or explosive materials

Crimes Undermining the Socialist Market Economic Order (15 capital offenses)

- Producing or distributing bogus medicines
- Producing or distributing poisonous or harmful foods
- Smuggling weapons and ammunitions
- Smuggling nuclear materials
- Smuggling counterfeit currencies
- Smuggling cultural relics
- Smuggling precious metals
- Smuggling rare plants and their products
- Counterfeiting currency
- Fund-raising frauds
- Financial instrument frauds
- Letter of credit frauds
- Credit-card frauds
- Illegally issuing value-added tax invoices
- Counterfeiting or selling counterfeit value-added tax invoices

Crimes Infringing upon the Rights of the Person and his Democratic Rights (5 capital offenses)

- Murder
- Rape
- Statutory rape
- Kidnapping
- Abducting women and children

Crimes Encroaching on Property (2 capital offenses)

- Robbery
- Theft

Crimes Disrupting the Order of Social Administration (8 capital offenses)

- Imparting criminal methods
- Organizing a jail break
- Prison riots using weapons
- Illegally digging and robbing ancient remains or tombs
- Illegally digging or robbing fossils of ancient human beings or fossils of ancient vertebrate animals
- Smuggling, trafficking, transporting or manufacturing narcotics
- Organizing another person to engage in prostitution
- Forcing another person into prostitution

Crimes Endangering the National Defense Interest (2 capital offenses)

- Sabotaging military weapons, military installations or military communications
- Knowingly providing unqualified weapons or military installations to the armed forces

Crimes of Graft and Bribery (2 capital offenses)

- Graft
- Bribe-taking

Crimes of Violating Duties of Military Servicemen (13 capital offenses)

- Refusing to carry out an order in wartime
- Deliberately concealing military intelligence, furnishing falsified intelligence
- Refusing to disseminate military orders, or falsely disseminating military orders
- Surrendering to the enemy
- Deserting on the eve of a battle
- Obstructing commanding officers or on-duty servicemen from carrying out their duties
- Defecting to a foreign country
- Illegally obtaining military secrets
- Illegally providing military secrets to foreign organs
- Fabricating rumors to mislead people during wartime
- Stealing or robbing weapons or military materials
- Unlawfully selling or transferring military weaponry
- Injuring or killing innocent residents or looting property from innocent residents during wartime

Source: Luo, Wei. *The 1997 Criminal Code of the People's Republic of China* (Buffalo, NY: William S. Hein & Co., Inc., 1998).

1.8 The average age of capital offenders who received a death sentence was 32 years (ranging from 17-67 years of age). The majority of these offenders were male (93%),² with a low occupational status (67%) and a migrant status (42%). A substantial number of capital offenders had a criminal record (14%), which was two times more than non-capital offenders (7%). In addition, only 15% of

² 7% of capital offenders were female in China compared to only 0.6% in the U.S. If restricting the type of offenses to violent crimes, there were even more female offenders receiving a death sentence in China than those in the U.S (see Lu and Miethe, 2007, pp.78-79; Streib, Victor, *Death Penalty for Female Offenders: January 1, 1973 through June 30, 2007*, 2007, available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>).

capital offenders confessed to the crime, which was significantly lower than non-capital offenders who confessed to their crimes (40%).³

- 1.9 The severity of capital offenses has also been assessed. For example, an overwhelming majority of violent offenses receiving a death sentence had resulted in at least one death (81%). For corruption cases, offenses that received the death sentence involved much more money on average than those of a non-death sentence.⁴
- 1.10 The length it took to process capital cases was also assessed using the same dataset. The result indicates that the average days for capital cases to conclude without the final review by the Supreme Court was 273 days (ranging from 7 to 1,960 days), and with the final review and approval by the Supreme Court was 449 days (ranging from 62 to 1,965 days).⁵
- 1.11 The time spent on the death row was relatively short. According to China's Criminal Procedure Law (1996), "after receiving an order to execute the death sentence from the Supreme People's Court, the people's court at lower levels shall, within seven days, deliver the criminal for execution of the sentence."
- 1.12 There are two execution methods in China: execution by shooting or by lethal injection. Lethal injection was introduced in 1997 and in remote western regions first, and then gradually implemented in other jurisdictions.

³ The "non-death sentence" here refers to one of these sentences: a suspended death sentence, life imprisonment, or a fixed prison sentence of more than 10 years (See Lu and Miethe, 2007, pp.77-84).

⁴ For example, the mean value involved in corruption cases was 10 million yuan for those with a death sentence; 400,000 yuan for those with a suspended death sentence or life imprisonment, and 4 million yuan for those with a prison sentence longer than 10 years (See Lu and Miethe, 2007, pp.84-87).

⁵ Lu and Miethe, 2007, pp.104-112.

The Policy of Preventing Excessive Execution and Executing with Caution (少杀慎杀)

- 2.1 China has had a long history of the death penalty with the earliest available record dating back to the Shang Dynasty (1700-1027 BC).⁶ It is a long historical tradition throughout the dynastic rules, the Republic era, and the PRC era that justifies capital punishment on the grounds of retribution, deterrence, and incapacitation. Chinese traditional sayings like “a life for a life,” “killing one to warn a hundred,” “killing a chicken to warn a monkey” are embodiments of these retributive and deterrent beliefs.
- 2.2 Throughout the PRC history, the death penalty has been used as a tool to suppress crime and maintain social order. It was heavily relied upon during the early 1950s to suppress counterrevolutionary activities and corruption. It was again utilized during the strike-hard campaigns (from the 1980s to the present) to swiftly and severely (从快从重) punish offenders.⁷
- 2.3 Nevertheless, a more consistent official policy on the death penalty has been “to prevent excessive execution and execute with caution” (少杀, 慎杀). For example, in the 1950s, Mao stated that offenders who did not have “blood

⁶ Five Punishments (五刑) were codified as the major forms of punishment including permanent branding on the offender’s face (墨), amputation of the offender’s nose (劓), feet (刖), male’s reproductive organ or locking a woman up for life (宫), and the death penalty (大辟). Liu, Yongping, *Origins of Chinese Law – Penal and Administrative Law in its Early Development* (New York: Oxford University Press, 1998).

⁷ For example, during the 1950s, Mao stressed the need to “strike surely, accurately and relentlessly” to suppress counterrevolutionaries and corruption. The number of executed counterrevolutionaries was quite “substantial” in today’s standards. Liu, Renwen, *死刑政策: 全球视野及中国视角* (*Death Penalty Policies: The World View and China’s Perspectives*), 2003. Posted on the website of the University Services Centre of the Chinese University of Hong Kong at http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2623. Accessed on July 31, 2008.

Strike-hard campaigns from 1983 also resulted in an estimated tens of thousands of executions, particularly those involving violent crimes and crimes endangering public security (see Palmer, Michael. “The People’s Republic of China.” In *Capital Punishment Global Issues and Prospects*, eds. Peter Hodgkinson and Andrew Rutherford. UK: Waterside Press, 1996. Trevaskes, Susan. “Courts on the Campaign Path in China: Criminal court Work in the “Yanda 2001” Anti-Crime Campaign.” *Asian Survey* 2002 42(5): 673-693. See also various Amnesty International Reports.

debt” “血债” and those offenses that did not cause grand public indignation, should be given the suspended death sentence (死缓).⁸

2.4 Post-Mao leaders also voiced their views on the death penalty. Deng, who initiated the strike-hard campaigns in light of the rampant crimes, commented that the authorities could not be soft on crime, and the death sentence was “a necessary educative tool” in dealing with a few most serious offenses.⁹ Current leaders, such as President of the PRC Hu Jintao, Premier Wen Jiabao and President of the Supreme Court Xiao Yang, have stated that China cannot abolish the death penalty under the current social conditions, but it will make sure that the death sentence is meted out fairly and cautiously.

2.5 The current policy on the death penalty can be summarized as follows: 1) the death penalty cannot be abolished (不可不杀); 2) the death penalty cannot be used excessively (不可滥杀); and 3) erroneous executions should be avoided (不可误杀).¹⁰ The Supreme Court, which has been entrusted with reviewing cases given a death sentence in 2007, signaled the reaffirmation of this policy of preventing excessive executions and execution with caution.

Unique Characteristics of China’s Death Penalty

3.1 China’s death penalty has several unique characteristics. First, minors are exempted from the death penalty because of their intellectual, mental and psychological development. The current criminal law stipulated that only offenders of eighteen years or older could be sentenced with the death penalty. In addition, women who are pregnant at the time of adjudication are exempted from the death penalty.

⁸ Zhang, Zhengxin, *Theory and Practice of the Suspended Death Penalty System in China* (Wuhan, China: Wuhan University press, 2004), p.13.

⁹ Deng, Xiaoping, *Selected Works of Deng Xiaoping*, Third edition (Beijing: People’s Publishing House, 1983), p. 90 & p.173.

¹⁰ Chen, Xingliang, *The New Horizon of Contemporary Criminal Law in China* (Beijing, China; The Chinese University of Politics and Law Press, 2002), P.544.

- 3.2 Second, legal representation is mandatory for all capital cases. In cases where defendants charged with the death sentence did not wish to hire a private attorney or did not have the financial resources to do so, the court must appoint a defense attorney, unless the defendant declined legal representation.
- 3.3 Third, suspended death sentence is a hallmark of China's death penalty. China's law required that the suspended death sentence may be applied when an offender "should be sentenced to death," but "the immediate execution is not essential." This practice is consistent with China's punishment philosophy of education and deterrence.

Ongoing Reforms and Future Prospects

Setting up long term prison sentences

- 4.1 It was argued that the reason why death penalty was used frequently in China was because there were no other comparable alternatives. Currently by law, the longest prison sentence is 15 years. Even though life imprisonment is available, the average time an offender served behind bars with a life imprisonment sentence is 15 years. Thus it is important to set up longer prison terms (i.e., 20-30 years), or to make life imprisonment without the possibility of parole an option, so as to reduce the need for the death penalty.

Restricting the scope of capital offenses

- 4.2 The current Criminal Law specified 68 criminal offenses punishable by death. Among them, about one third of the capital offenses have rarely been used in practice; another one third consisted of nonviolent, non-lethal offenses (i.e., corruption, economic offenses, and public order offenses). It was proposed to gradually narrow the scope of capital offenses by eliminating the offenses rarely used first, and then the nonviolent and non-lethal offenses. The final step would be the complete abolition of the death penalty.

Curbing police torture and coerced confession

- 4.3 Coerced confessions have been found to be linked to almost all erroneous executions publicized in recent years. The combination of an overemphasis on confession evidence, lack of exclusionary rules, and a rare and lenient disposition on violators of illegal torture, have all contributed to the prevalence of torture and coerced confessions. Several proposals have been made to curtail this problem, including allowing the presence of lawyers, and/or recording or videotaping of the entire process of police interrogation, judiciary oversight of police misconduct, a stricter criminal/administrative penalty for abusing police power, and a more effective implementation of current laws regarding criminal punishment for judiciary misconduct, and the State Compensation Law. It was also proposed that suspects/defendants should enjoy the right not to self-incriminate to serve as an additional safeguard for coerced confession.

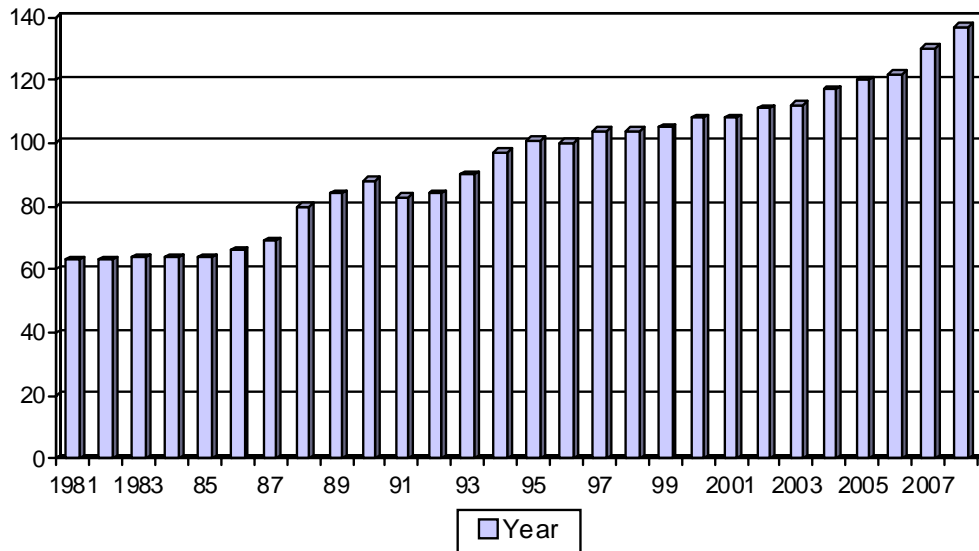
Centralizing the authority for final review and approval of the death sentence

- 4.4 The Supreme Court had been reassigned the task of making a final review and approving all death sentences in 2007, and is recruiting and training a large number of judiciary officers for its expanded criminal division. This has been widely viewed as an effort to implement the death penalty with uniformity, fairness, and caution.
- 4.5 A more drastic measure involved a call for the complete abolition of the death penalty in China. It was reasoned that China's death penalty is justified based on two premises: 1) retribution (primarily based on the public's indignation [民愤]); and 2) deterrence (威慑力). However, historical and cross-national research suggests that public opinion on the death penalty has no correlation with the death penalty status of a nation. Moreover, empirical research found mixed results about the deterrent effects of the death penalty. It was suggested that if life imprisonment without the possibility of parole is made available, and prison sentence is lengthened (currently it is 15 years), abolishing the

death penalty could be realized without compromising public safety and public morale.

- 4.6 In sum, the progressive view on the death penalty seems to dominate the current policy. The reforms on the death penalty also appear to work toward realizing the policy of “preventing excessive executions and executing with caution”. The complete abolition of the death penalty remains only a long-term goal in China.

APPENDIX 1 NUMBER OF COUNTRIES THAT HAVE ABOLISHED THE DEATH PENALTY IN LAW OR IN PRACTICE BY YEAR



Source: Amnesty International

APPENDIX 2 COUNTRIES WITH HIGHEST NUMBER OF EXECUTIONS - 1996-2000 (ANNUAL RATE PER MILLION)

- * Singapore - 6.40 (112 persons)
- * Saudi Arabia - 4.46 (446 persons)
- * Belarus - 2.48 (130 persons)
- * Iran - 1.76 (559 persons)
- * China - 1.65 (10,275 persons)
- * United States - 0.027 (370 persons)

APPENDIX 3 EXECUTION METHODS IN CHINA

- * Execution by Shooting (From 1949 to current)
- * Execution by lethal injection
 - Inaugural use in 1997 by Kunming Intermediate Court, Yunnan province
 - 2002, the Supreme Court issued the Notice on Using Lethal Injection in Executions to ensure standardization