

Shadow Report on Chinese Legislative Restrictions on the Death Penalty

And their Application

For Universal Periodic Review of People's Republic of China by the Human

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1. Abolition of the death penalty is an international trend of the penalty development, but abolition of the death penalty can not be divorced from the local conditions, historical and cultural factors, and, in particular, people's understanding of the death penalty and the basic public attitude upon it. Therefore, to retain the death penalty and to strictly limit the death penalty is China's consistent criminal policy at current stage.

I. China's legislative restrictions on the death penalty

2. While retaining the death penalty provisions in criminal laws, China attaches great importance to the legislative restrictions on the application of the death penalty.

A. Restrictions of the death penalty by criminal substantive law

3. a. Restriction on applicable standards. According to paragraph 1 of Article 48 in Chinese Criminal Law, the death penalty shall only be applied to criminals who have committed extremely serious crimes.

4. b. Restriction on applicable entities. According to article 49 in Chinese Criminal Law, the death penalty shall not be imposed on persons who have not reached the age of 18 at the time the crime is committed or on women who are pregnant at the time of trial.

5. c. Restriction on Enforcement. According to paragraph 1 of Article 48 in Chinese Criminal Law, if the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence. And, if the criminal does

not commit new crime during the next two years period, the death penalty shall be changed to imprison penalty.

B、 Restrictions of the death penalty by criminal procedural law

6. a. Restriction on jurisdiction. According to article 20 in Chinese Criminal Procedure Law, the Intermediate People's Courts and above shall have jurisdiction as courts of first instance over the death penalty cases.

7. b. Procedural guarantee on right to designated defense. According to paragraph 3 of Article 34 of Chinese Criminal Procedure Law, if there is the possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

II. China's judicial restrictions on death penalty

8. Since the founding of People's Republic of China, the government has been stressing and upholding the principle of sentencing and executing the death penalty less and cautiously, and has set it as the guiding principle of the death penalty application in China. The principle restrained the application of the death penalty from the judicial perspective. Based on it, when there is possibility on the law to allow a lighter punishment or mitigated punishment, the defendant shall not be sentenced to the immediate execution of death penalty in general. If the case is caused by the victim's blameworthy deed and the defendant shows repentance and compensates the damage for the victim after crime, the immediate execution shall be very much carefully sentenced. The courts have always been adhering to strict control and careful application of the death penalty for more than a long time, the number of the death penalty cases has continually decreased.¹

¹ Introduced by Jiang xing chang, the then vice president of the supreme People's court, SEE http://www.chinapeace.org.cn/qwfb/2007-09/06/content_28292.htm.

9. Especially in recent years, with inclusion of the human rights protection into the Constitution law, China has been promoting the criminal policy of Combining Punishment with Lenienc. Before the legislative changes of the death penalty, China controls strictly the death penalty mainly from the judicial perspective and obtained remarkable results.

A. Fully implementation of hearing of the death penalty case for second instance

10. In order to strictly limit the application of the death penalty, China's judicial organs began to try all death penalty cases for second instance by hearings as from July 1st, 2006. Rules of Some Issues Concerning the Trial on the Death Penalty Cases for Second Instance by the Supreme People's Court and the Supreme People's Procuratorate provides guideline on judicial work on hearings of death penalty cases for second instance concretely and comprehensively. The previous practice of the death penalty case trial for second instance - basically by written proceedings has been changed, the human rights of the defendants of the death penalty cases have been guaranteed, the application of the death penalty has been restrained dramatically.

B. The approval of death penalty taken back by the Supreme Court

11. Standing Committee of the Chinese National People's Congress revised People's Court Organization Law on October 31, 2006. According to this law, all death sentences, except for those that according to law should be decided by the Supreme People's Court, shall be submitted to the Supreme People's Court for verification and approval. The Supreme Court took back the approval authority of death penalty on January 1, 2007. In support of withdrawing the death penalty approval power, a series of normative documents such as Rules on Some Issues

Concerning Review of Death Sentence Cases and the Interim Rules on Adjudgement Management of Review of the Death Penalty were enacted by the Supreme People's Court. After the approval of death penalty was taken back by the Supreme People's Court in 2007, the proportion of the number of cases for which the death penalty has been denied reached at about 15 percent of the total number of reviewed cases because of the original judgment was found to be based on unclear facts, insufficient evidences, inappropriate sentencing or procedural illegality.² The number of sentence of immediate execution of the death penalty substantially reduced, which the number of criminals sentenced to death with reprieve exceeded for the first time.³ This further manifests the principle of strict restriction on the death penalty.

III. Practice of restraining the death penalty in China needs to be further improved

12. Although China has always been strictly limiting the distribution and application of the death penalty from the legislative and judicial perspectives, there are still many provisions of the death penalty in Chinese criminal law and many cases of application of the death penalty. In the long term, China needs to continuously improve the strict limits on the death penalty.

A. Provisions on the death penalty for economic crimes need to be gradually reduced.

13. Provisions of the death penalty for economic crimes account for a large proportion of all the provisions of the death penalty. Imposing the death penalty on

² Revealed by Huang er mei, the then chief judge of the Criminal Adjudication Tribunal in the Supreme People's Court, SEE http://news.xinhuanet.com/legal/2008-03/08/content_7742933.htm.

³ SEE the Work Report of the Supreme People's Court 2006.

economic crimes not only doesn't conform to the provisions of International Conventions on Civil and Political Rights but also is not conducive to extradition of Chinese corrupt officials who escape to foreign countries. In view of this, the urgent work on the legislation of restraining the death penalty shall be to gradually reduce the provisions of death penalty for economic crimes in China. It is a good signal that China clearly promised to follow the principle of no extradition of criminal suspects who would face death penalty upon repatriation in The Extradition Treaty between China and Spain signed on April 29th, 2006. The ratification of this treaty is a milestone in the development of reduction and abolition of the provisions of death penalty for economic crimes and also fully shows that China's attitude and efforts of restrictions on the application of the death penalty.

B. Applicable standards of the death penalty needs to be more stringently mastered.

14. Although the restrictions on the death penalty in China's legislation are stringent and comprehensive, these restrictions are abstract and general and their operability need to be improved. We advise the guiding opinions on trial of death penalty cases like intentional homicide, kidnapping, drug crimes and intentional injury cases shall be further studied and prepared so as to provide guidelines for the Higher People's Courts and the Intermediate People's Courts over the whole country. This measure will contribute to the restricted application in judicial practices.