

**CHINA'S DEADLY**

**SECRETS**

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# I. EXECUTIVE SUMMARY

**“Only when the death penalty figures are published can a rational discussion about retaining or abolishing the death penalty in China finally begin”**

Zhang Qianfan, Constitutional Law Professor at Peking University,  
Southern Metropolis Daily, 9 September 2011

The Chinese government continues to conceal the extent to which capital punishment is being used in China, despite more than four decades of requests from UN bodies and the international community and despite the Chinese authorities' own pledges to bring about increased openness in the country's criminal justice system. This deliberate and elaborate secrecy system, which runs counter to China's obligations under international law, conceals the number of people sentenced to death and executed every year, both of which Amnesty International estimates run into the thousands.

All statistics on the use of the death penalty in China remain classified in law as state secrets and authorities continue to evade answering questions about this systematic concealing of the death penalty system. The government has claimed that such statistics are not available or, contradictorily, that they are actually available in government work reports. The latter claim is misleading, since death sentences were deliberately lumped together with data on other sentences, with no breakdown by type of sentence, thus making it impossible to know how many death sentences were handed out each year.

Amnesty International opposes the death penalty unconditionally, in all cases without exception, regardless of the nature or circumstances of the crime, the guilt, innocence or other characteristics of the individual, or the method used by the state to carry out the execution. The organization has long held that the death penalty violates the right to life, as recognized in the Universal Declaration of Human Rights, and is the ultimate cruel, inhuman and degrading punishment.

The Chinese Communist Party (CCP) has implied for years that it is progressively working towards abolition of the death penalty – at an unspecified date sometime in the distant future. The government's current position is to “...retain the death penalty, but strictly and prudently limit its application according to law”.

Amnesty International has long published annual reports on the global use of the death penalty. Before 2009, these reports featured figures for recorded cases in China (compiled mostly through open sources, such as newspapers and published court verdicts) while always stressing that the figures were well below what Amnesty believed to be the actual total number of death sentences and executions. To complement these recorded figures and to increase accuracy of total estimated numbers, Amnesty International developed and used in parallel different methodologies to extrapolate estimates, results of which still depicted a very partial picture.

In 2009, Amnesty International found that the Chinese authorities had used the organization's recorded figures to demonstrate that the government's policies to reduce the use of the death penalty in the country had been successful. Subsequently, in view of the risk that the Chinese government could manipulate the figures to claim "progress" and further obscure the real scale and trend of its use of the death penalty, Amnesty International decided to stop publishing the recorded figures for the year, referencing only its overall total estimate.

Irrespective of the number of recorded cases, Amnesty's research and analysis continues to show that China consistently carries out more executions each year than any other country in the world – killing thousands of people annually. These executions take place within the context of a judicial system that is not independent from the authority of the CCP, and therefore subject to direct political interference, and in which the rights of defendants are so inconsistently respected as to taint legal proceedings with the suspicion that they fall short of fair trial standards.

In recent years, the Chinese government has been actively seeking to allay international and domestic concerns about the number of executions in China by hinting about a substantial decrease and pointing to legal and institutional reforms that could, on their face, contribute to reductions in the use of the death penalty. These reforms were in part due to intense international condemnation of China's heavy use of the death penalty and in part due to domestic pressure arising from widespread outcry over cases of wrongful executions – which raised concerns about the government's campaigns to "strike hard" against crime and the quality of the procedural safeguards afforded to people accused of capital crimes.

For over a decade, the Chinese government has now been following a policy of "killing fewer, killing cautiously" (少杀慎杀). In 2007, as part of this effort and in a powerful symbolic and substantive move to strengthen the status and authority of judicial institutions, the Supreme People's Court (SPC) took back the authority to approve all death sentences handed out by lower courts. This reform, along with others to strengthen procedural safeguards, has been cited by experts – and sometimes the government itself – as significant factors that may have indeed led to reducing the number of death sentences and executions. Yet the true extent of the use of the death penalty in China remains almost entirely unknown.

Put simply, the government's claims to have reduced its use of the death penalty have not yet been supported by any concrete evidence. Furthermore, there are no guarantees that the reforms adopted so far, even if they had led to a decrease in the number of executions, will prove effective in the long term or that they could not be reversed at some point in the future.

Amnesty International therefore renews its challenge to the Chinese authorities to prove that they are achieving their goal of reducing the application of the death penalty by publishing annual figures to document the number of death sentences handed down and executions carried out.

## MAIN FINDINGS

This report focuses on the extent to which the authorities maintain near absolute secrecy over the death penalty system, while using partial and generally unverifiable disclosures to claim progress and reject demands for greater transparency. A key finding of the report is that the national public database of court verdicts that the government has hailed as a major advance in judicial transparency, China Judgements Online, does little to lift the veil of state-enforced secrecy over the application of the death penalty in the country. While it does provide new data and foster greater transparency in some areas of the justice system, cases of judicial executions remain vastly under-reported or are altogether missing.

Amnesty International found only 701 individuals whose death sentences had been approved by the SPC — which reviews all death penalty sentences in the country — between 2011 and 2016, while the organization estimates that yearly the actual number runs into the thousands.

Using the news aggregation service of Baidu, China's largest search engine, to collect reports about the death penalty largely published by Chinese state-run media outlets, Amnesty International found several hundred of publicly reported cases that were absent from the China Judgements Online database. The report also found that the database omitted all cases of foreigners involved in drug-related crimes, despite evidence that foreigners are executed or placed on death row.

While the database doesn't claim to be fully comprehensive yet, the fact that provisions governing the inclusion of verdicts in the database allow courts to invoke the need to protect "state secrets" or simply decree the verdicts "unsuitable" for online publication supports the contention that a vast majority of death penalty cases remain deliberately concealed by the government.

Even within the limitations of a partial dataset, Amnesty International identified patterns within the 701 cases analysed that are deeply troubling, and should trigger a renewed urgency into calling China to lift the veil of secrecy over its use of capital punishment.

The first pattern regards death penalty cases involving drugs and "terrorism". Drug cases seem to be missing on an even larger scale than other types of crimes from the database, and there seem to be deliberate omissions from the database in cases that state media outlets describe as being related to terrorism. These are two areas in which China is increasingly seeking international co-operation, and should therefore be of high concern to any party engaged in co-operating with China on these matters.

The second troubling pattern Amnesty's analysis reveals is that — in line with what research on death penalty worldwide has identified — the death penalty in China seems to be meted out disproportionately to individuals who are poor, those with lower levels of education and members of racial, ethnic or religious minorities. Whether this is the case or not, only a full disclosure of all cases of judicial executions could provide a definitive answer.

## METHODOLOGY

Amnesty International has consistently monitored the use of the death penalty in China since the 1980s. The organization has been publishing annual reports on the global use of the death penalty since 1980. Every year, while preparing the global report, Amnesty International also wrote to the Chinese government to ask them to provide their own figures on the use of the death penalty. For this report, we again wrote to the authorities to ask for information concerning the use of the death penalty in China. Like our other attempts to solicit this information from the government, this request also went unanswered.

For this report, Amnesty International analysed documents involving death sentences from the SPC's database, China Judgements Online, which, since July 2013, has been collecting and publishing decisions and other documents from courts around the country. The identified documents were dated between 2011 and 2016. Through the news aggregation service of Baidu, China's largest search engine, Amnesty International also systematically compiled reports about the death penalty published largely by Chinese state-run media outlets for the same period.

The report also reviewed court documents, Chinese-language media reports, published research by Chinese and foreign academics, UN reports, as well as interviews Amnesty International carried out with individuals and NGOs concerned with the application of the death penalty inside and outside of China.

The report first gives an overview of the death penalty system in China. It then examines how China uses a stringent state secrecy and legal framework with respect to data on the use of the death penalty, with heavy criminal penalties — up to capital punishment — for anyone found in violation of these requirements.

Next, the report reviews a series of reforms Chinese authorities have introduced over a period of more than a decade — including the creation of China Judgements Online — to increase the amount of publicly available information concerning individual legal cases, including death penalty cases. The government claims that China Judgements Online is now the world's largest database of its kind, with over 20 million court documents made public through the website. Then the findings of Amnesty's analysis of the database information is presented.

Finally, the report looks at the international law and relevant standards on the use of the death penalty and transparency, and reviews how China has engaged with, or avoided, both UN efforts to quantify its use of the death penalty and global efforts to abolish capital punishment. Detailed recommendations appear at the end.

The report concludes that the authorities appear to be engaged in an elaborate policy of systematic evasion, occasionally making partial disclosures or hinting at positive developments in order to stimulate reforms, overcome internal resistance or respond to international criticism, while, as a rule, continuing to enforce an extensive system of secrecy and refusing to comply with international legal requirements in terms of transparency and disclosure of the number of death sentences and executions.

### **AMNESTY INTERNATIONAL URGES THE CHINESE GOVERNMENT TO:**

- Immediately establish a moratorium on all executions and commute existing death sentences with a view to full abolition of the death penalty in national legislation;
- Pending full abolition of the death penalty, as per United Nations General Assembly Resolution A/RES/71/187, make publicly available relevant information regarding:
  - the number of persons sentenced to death,
  - the number of persons on death row,
  - the number of executions carried out,
  - the number of death sentences reversed or commuted on appeal, and
  - information on any scheduled execution;



- Ensure that documents pertaining to all death penalty cases handled by the SPC are uploaded to the China Judgements Online website in a timely fashion;
- Reduce the scope of crimes subject to the death penalty, including elimination of all crimes that are not the “most serious crimes” to which the use of this punishment must be restricted under international law.

# II. THE DEATH PENALTY IN CHINA

**“The kind of informed public debate about capital punishment that is contemplated by human rights law is undermined if Governments choose not to inform the public. It is for this reason that a full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis”**

Philip Alston, then Special Rapporteur on extrajudicial, summary or arbitrary executions, 2006

By all estimates, the number of executions and death sentences carried out and imposed in China remains in the thousands each year, making it the country with the largest annual number of executions in the world.

The Chinese authorities continue to impose death sentences and carry out executions for a wide range of offences that do not meet the threshold of the “most serious crimes”, to which the death penalty must be restricted under the International Covenant on Civil and Political Rights (ICCPR), which China has signed and repeatedly stated its intention to ratify.<sup>1</sup> These offences include drug-related crimes, rape and arson. People convicted of economic crimes, such as embezzlement and taking bribes, can also be given death sentences, although the government has taken measures to vastly limit the use of the death penalty for economic crimes in the last three years. Foreign nationals, largely from other Asian countries but also from others, continue to be sentenced to death and executed, mainly in cases relating to drug trafficking.

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<sup>1</sup> Article 6 (2) of the ICCPR; Dui Hua, “China’s human rights plan downplays UN, Western cooperation”, 10 July 2012, <http://www.duihuahrjournal.org/2012/07/chinas-human-rights-plan-downplays-un.html>

According to China's Criminal Law, there are currently 46 crimes that can be punished by death. In 2011, the National People's Congress (NPC) adopted amendments to the Criminal Law that removed 13 crimes from the list of offences punishable by death, going from 68 to 55 capital crimes. In 2015, the Criminal Law was amended again, with another nine capital crimes removed. State media indicated at the time that although these nine crimes were rarely used and would have little impact in reducing the number of executions, their deletion was in line with the government's policy of "killing fewer, killing cautiously".<sup>2</sup> However, the revised provisions still failed to bring the Criminal Law in line with requirements under international law and standards on the use of the death penalty.

Amnesty International remains concerned that violations of the right to a fair trial in China continue to taint cases in which the death penalty is imposed. In recent years, a number of exonerations or evidence of unlawful executions have been revealed, including several like the cases of Huguilitu and Nie Shubin that have gained widespread media attention inside China. While international law guarantees those facing the death penalty the right to seek pardon or commutation of their death sentences, the laws of China do not currently have any provisions to allow those sentenced to death to apply for these clemency measures.

Chinese authorities often claim that statistics on the death penalty and executions are not available. At other times, they have reported that:

"China collects consolidated statistics of cases involving the death penalty, death penalty with a two-year reprieve, life imprisonment and imprisonment of over five years. The President of the Supreme People's Court (SPC) reports these statistics to the National People's Congress in March every year, making them public to the whole world."<sup>3</sup>

At the Universal Periodic Review in 2014, China reiterated the position that it could only provide statistics related to the number of death sentences, death penalty with a two-year reprieve, life imprisonment and imprisonment over five years as a combined figure. However, the SPC's annual work reports have not presented combined statistics in this manner since 2009.

At a conference in late 2016, marking the 10th anniversary of the SPC re-gaining the authority to review all death penalty cases, Chen Guangzhong, a professor emeritus at China University of Political Science and Law, was quoted in Caixin, a mainland financial media outlet, as saying: "From what I understand, in the last 10 years, the overall number of death sentences (with immediate execution) has gone from a figure above 10,000 to a four-digit number".<sup>4</sup> While this statement is obviously not official and impossible to verify independently, it is nonetheless quite significant since it could be seen as a relatively authoritative unofficial disclosure. Caixin, like all Chinese news outlets, is subjected to censorship and has been forced to take down articles that displeased the authorities in the past, yet

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<sup>2</sup> 京华时报 (Beijing Times), "集资诈骗等9罪拟取消死刑 专家:惩罚和恶性应成正比" ("The nine death penalty crimes eliminated; experts: there should be a proportionality in punishment and severity of crimes"), 28 October 2014, [http://news.xinhuanet.com/politics/2014-10/28/c\\_127147430.htm](http://news.xinhuanet.com/politics/2014-10/28/c_127147430.htm); 法制日报 (Legal Daily), "刑法修正案(九)再减少9个死刑罪名 专家:非暴力犯罪死刑应逐步废除" ("Criminal law amendment nine reduced the number of capital crimes by nine: Experts: Non-violent crimes should gradually be abolished"), 14 September 2015, <http://npc.people.com.cn/n/2015/0914/c14576-27580702.html>

<sup>3</sup> Committee against Torture, Comments by the Government of the People's Republic of China concerning the concluding observations and recommendations of the Committee against Torture (CAT/C/CHN/4), UN Doc. CAT/C/CHN/CO/4/Add.2, 18 December 2009.

<sup>4</sup> 单玉晓 (Shan Yuxiao), 财新网 (Caixin), "陈光中: 死刑立即执行案件总数从万字号变成千字号" ("Chen Guangzhong: The overall number of death sentences with immediate execution has gone from a five-digit number to a four-digit number"), 12 September 2016, <http://china.caixin.com/2016-09-12/100987794.html>; 单玉晓 (Shan Yuxiao), 财新网 (Caixin), "特稿: 死刑改革十年录" ("Special report: reforms to the death penalty over the past ten years"), 18 December 2016, <http://china.caixin.com/2016-12-18/101028169.html>

this article is still available, perhaps reflecting some degree of official endorsement.<sup>5</sup>

In 2006, Chen Guangzhong was one of the Chinese legal experts given the role of explaining the importance of the SPC's reforms in state media. He told the People's Daily that the move would help carry out the policies of "balancing leniency and severity" and "killing fewer, killing cautiously" and he had "reason to believe that China's death penalty figures will gradually be reduced".<sup>6</sup> Ten years later, his comments indicated that the reform had indeed achieved some success.

This general figure confirms a 2014 article published in the Guangzhou weekly newspaper, Southern Weekend, which reported legal scholars and judges as saying that the number of death sentences had been reduced by a third since 2007 and that, in some places, they had been cut by more than half.<sup>7</sup> The article, citing an unnamed former SPC official, said that the number of death sentences was now only a tenth of what it had been at the highest peak since the adoption of the 1979 Criminal Law. While exact figures for this peak remain unavailable, official sources stated that 24,000 people were sentenced to death in a one-year period after the launch of the first "strike hard" campaign against serious crime in 1983.<sup>8</sup>

One possible contributing factor to China's continuing lack of transparency on the death penalty could be related to its continued use of organs sourced from executed prisoners, which has long been a major cause of concern from the international community. In 2006, China admitted to sourcing most of its organs from prisoners on death row, after their execution.<sup>9</sup> In 2014, former Vice-Minister of Health Huang Jiefu announced that the government would stop using organs from executed prisoners by 1 January 2015.<sup>10</sup> As of 2017, it appears that China is still sourcing organs from prisoners on death row. At an international summit on organ trafficking at the Vatican, Huang Jiefu was unable to refute allegations that China had ended the practice although he claimed that China was "mending its ways and constantly improving its national organ donation and transplantation systems".<sup>11</sup> Although China agreed in 2007 with standards laid out by the World Medical Association, which clearly stipulate that "in jurisdictions where the death penalty is practised, executed prisoners must not be considered as organ and/or tissue donors", critics noted that without transparency, it was impossible to assess whether and to what extent the reforms had been successful, if at all.<sup>12</sup>

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<sup>5</sup> BBC, "China magazine Caixin defiant on censorship of article", 9 March 2016, <http://www.bbc.com/news/world-asia-china-35761277>

<sup>6</sup> 人民日报 (People's Daily), "收回死刑核准權：我國死刑數量必會逐步減少" ("As the [Supreme People's Court] gets back the authority to review death penalty cases: our country's death penalty figures will certainly come down gradually"), 1 November 2006, <http://npc.people.com.cn/BIG5/14957/53049/4982508.html>

<sup>7</sup> 任重远 (Ren Zhongyuan), 南方周末 (Southern Weekend), "死刑复核权上收八年：最高法院如何刀下留人" ("The Death penalty review power has been with the Supreme People's Court for eight years: How the court manages to spare lives"), 16 October 2014, <http://www.infzm.com/content/104788>

<sup>8</sup> Wang Guangze, "The mystery of China's death penalty statistics", Human Rights in China, 2007, [http://www.hrichina.org/sites/default/files/PDFs/CRF.2.2007/CRF-2007-2\\_Mystery.pdf](http://www.hrichina.org/sites/default/files/PDFs/CRF.2.2007/CRF-2007-2_Mystery.pdf)

<sup>9</sup> Magnier, Mark and Zarembo, Alan. "Death row is organ source, China admits", Los Angeles Times, 18 November 2016, <http://articles.latimes.com/2006/nov/18/world/fg-organs18>

<sup>10</sup> Ramsey, Austin. "China sets Jan. 1 deadline for ending transplants from executed prisoners", The New York Times, 4 December 2014, <https://sinosphere.blogs.nytimes.com/2014/12/04/china-sets-jan-1-deadline-for-ending-transplants-from-executed-prisoners/>

<sup>11</sup> Pullella, Philip. "China 'mending its ways' on unethical organ transplants, official says", Reuters, 7 February 2017, <http://www.reuters.com/article/us-vatican-transplants-china-idUSKBN15M2AN>

<sup>12</sup> Medical News Today (MNT), "Chinese Medical Association reaches agreement with World Medical Association against transplantation of prisoners organs", 7 October 2007, <http://www.medicalnewstoday.com/articles/84754.php>; Tatlow, Didi Kristen. "Debate flares over China's inclusion at Vatican organ trafficking meeting", The New York Times, 8 February 2017, <https://www.nytimes.com/2017/02/07/world/asia/china-vatican-organ-transplants.html>

## **THE DEATH PENALTY IN CHINA BY NUMBERS:**

**2** – years of imprisonment without committing a serious crime, after which a sentence of “execution with a two-year reprieve” is usually commuted to a term of imprisonment in China. Increasingly used to reduce the number of executions.

**4** – levels of courts in China: basic people’s courts, intermediate people’s courts, higher people’s courts and the Supreme People’s Court. Any level of court can be the court of first instance, depending on the perceived importance of the case. In criminal cases that may involve the death penalty, the court of first instance is not lower than an intermediate people’s court.

**46** – the current number of crimes that can receive a death sentence in China, including economic and non-violent crimes.

**1922** – The year the CCP first pledged to abolish the death penalty.<sup>13</sup>

**2007** – the year the SPC re-gained the authority to review and approve all death sentences in China.

**Thousands** – the number of people executed each year in China.

The Chinese government classifies statistics on the use of the death penalty as state secrets. China maintains a vast system of state secrets, codified through an array of laws, regulations and judicial interpretations.

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<sup>13</sup> 中国共产党对于时局的主张 (The Chinese Communist Party’s positions regarding the current political situation), 15 June 1922, <http://marxists.anu.edu.au/chinese/reference-books/ccp-1921-1949/01/007.htm>

# III. THE STATE SECRECY SYSTEM AND ITS APPLICATION TO THE DEATH PENALTY

**“We [the Chinese Communist Party] are currently striving to reach the following goals....improve the judicial system, abolish the death penalty, abolish corporal punishment”**

The Chinese Communist Party's positions regarding the current political situation, 15 June 1922

The Chinese government classifies statistics on the use of the death penalty as state secrets. China maintains a vast system of state secrets, codified through an array of laws, regulations and judicial interpretations.

## **3.1 THE LAW ON THE PROTECTION OF STATE SECRETS**

Though the CCP has made the protection of state secrets a priority for decades, the current main law concerning state secrets is the Law on the Protection of State Secrets, introduced in 1988 and revised in 2010. Article 2 of the law gives a general definition of state secrets as “matters that affect the security and interests of the state”. These include matters of national security, such as those relating to national defence and diplomatic affairs, but also other issues, including “secrets concerning important policy decisions on state affairs”, “national economy and social development secrets” and “other state secrets that the state departments on protecting state secrets have determined should be safeguarded”.

This already broad definition is made even broader by another provision in the law, which states that “secrets of political parties” can also be treated as state secrets. In China, where the affairs of the CCP are intricately linked to that of the state, this effectively bans public reporting or debate of any political issue that the CCP authorities decide should not be disclosed.<sup>14</sup>

### 3.2 REGULATIONS ON STATE SECRETS

Most directly relevant to the death penalty, there are two sets of regulations that build on the Law on the Protection of State Secrets and give further guidance to prosecutors and the courts in classification of state secrets. In 1995, the National Administration for the Protection of State Secrets (NAPSS), the body that oversees state secrets, and the SPC jointly issued the “Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People’s Courts”. This regulation states that “national-level annual or monthly statistics on cases involving the sentencing, ratification or implementation of the death penalty” is treated as a matter classified as “top secret” (绝密级事项).<sup>15</sup> Also, the regulation states that “annual or monthly statistics on cases tried by intermediate people’s courts involving the sentencing or implementation of the death penalty” and “plans to carry out the executions of prisoners of relatively high significance who have received the death penalty” should be treated as secret (秘密级事项).<sup>16</sup>

Besides these specific aspects of the death penalty, the regulation also classifies cases as state secrets if they are “sensitive” (敏感); if, when disclosed, they “could provoke social unrest and intensify ethnic conflicts”; or if they involve “criminal cases involving Party or state leaders”. The level of secrecy in each instance would correspond to whether the case was perceived to have an impact at the national, provincial, or county level.<sup>17</sup> In the Chinese context, the term “sensitive” can be arbitrarily applied to almost any matter that the government finds to be embarrassing or politically inconvenient.

Similarly, in 1996 the NAPSS and the SPP jointly promulgated a regulation entitled “Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People’s Procuratorates”, which stated that “statistics and compiled information on death sentences nationwide” are to be treated as “top secret” (绝密级事项).<sup>18</sup> These regulations also stated that “statistics and compiled information on death sentences within provinces, autonomous regions or directly administered municipalities” are to be treated as “secret” (秘密级事项).<sup>19</sup>

By using arbitrary and broad criteria to determine what constitutes a “sensitive” matter, and thus a state secret, the government can withhold information regarding individual criminal cases, including death penalty cases. Indeed, a prominent Chinese scholar, Liu Renwen, has argued that local state

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<sup>14</sup> Amnesty International, China: State secrets – a pretext for repression, (Index: ASA/17/37/96).

<sup>15</sup> Human Rights in China, State secrets: China’s legal labyrinth, p. 146 [http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf)

<sup>16</sup> Human Rights in China, State secrets: China’s legal labyrinth, p. 149 [http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf)

<sup>17</sup> Human Rights in China, State secrets: China’s legal labyrinth, pp. 145-148 [http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf)

<sup>18</sup> Human Rights in China, State secrets: China’s legal labyrinth, p. 140 [http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf)

<sup>19</sup> Human Rights in China, State secrets: China’s legal labyrinth, p. 140 [http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf)

secrets bureaus often apply too broad and too arbitrary criteria in determining which cases classify as state secrets.<sup>20</sup>

Chinese government bodies where the state secrets originate can also declassify and release information that is deemed to be classified.<sup>21</sup> In other words, although a matter can technically be classified as a state secret, it does not mean that authorities will necessarily choose to treat it as a state secret in practice, especially if the authorities think that disclosure of certain information would be beneficial to society.

On the other hand, disclosing state secrets without official authorization is a serious offence. Those who disclose state secrets abroad can be punished from a minimum of five years to a maximum of the death penalty.<sup>22</sup> State functionaries who violate the provisions of the Law on the Protection of State Secrets can be punished from a minimum of three years to a maximum of seven years.<sup>23</sup> In April 2016, as part of China's inaugural "National Security Education Day" (全民国家安全教育日), Chinese state television produced a television segment profiling a man named Huang Yu who was interviewed on death row and had been sentenced to death for espionage.<sup>24</sup> The report noted that Huang Yu – who had been a computer specialist at a technology institute – had provided over 150,000 documents to a foreign organization, including 90 documents classified as "top secret".<sup>25</sup>

Nonetheless, from a legal point of view, China's blanket categorization of death penalty figures and other relevant information as state secrets, without a specific explanation, is contrary to international laws and standards, which require disclosure of statistical data and case information as the norm, any exception to which requires justification.

In 2011, the Human Rights Committee ruled that Kyrgyzstan, in refusing on state secrecy grounds a request from a member of a civil society organization for information about the number of individuals sentenced to death there, had violated the man's right to seek and receive information under Article 19 of the ICCPR because it had failed to provide adequate justification for the denial.<sup>26</sup> The Committee stated that information on the use of the death penalty was of public interest and that a right to access that information therefore existed in principle. It stated further that any denial of information must therefore be justified by the State Party, which Kyrgyzstan had failed to do.

Under international law, states can impose certain restrictions on the right to freedom of expression and information on specific grounds, including national security. However, international standards hold that a restriction on this ground is "not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its

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<sup>20</sup> 刘仁文 (Liu Renwen), 死刑的宪法维度 ("The constitutional dimension of the death penalty"), Journal of the National Prosecutors Academy, found in Aisixiang, <http://www.aisixiang.com/data/65450.html>

<sup>21</sup> Article 16 of the Implementing Regulations for the People's Republic of China Law on Protection of State Secrets, China Law Translate and Jamie Horsley, <http://chinalawtranslate.com/state-secrets-law-implementation-regulation/?lang=en>

<sup>22</sup> Articles 111 and 113 of the Criminal Law.

<sup>23</sup> Article 398 of the Criminal Law.

<sup>24</sup> Hernández, Javier C. "China sentences man to death for espionage, saying he sold secrets", The New York Times, 19 April 2016, [https://www.nytimes.com/2016/04/20/world/asia/china-spy-death-sentence.html?\\_r=0](https://www.nytimes.com/2016/04/20/world/asia/china-spy-death-sentence.html?_r=0)

<sup>25</sup> 《焦点访谈》“致命的密码 身边的“暗战” (一) ” (“Deadly secrets: The ‘secret war’ right beside you, part one”), 18 April 2016, <http://tv.cctv.com/2016/04/18/VIDE36J37NoOySPeCa0iL2NM160418.shtml>

<sup>26</sup> Communication No. 1470/2006, Toktakunov v. Kyrgyzstan, Views adopted on 28 March 2011, UN Doc. CCPR/C/101/D/1470/2006, paras 7.6-8.



capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.”<sup>27</sup>

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<sup>27</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Principle 2, 22 March 1996, UN Doc. E/CN.4/1996/39, <http://www1.umn.edu/humanrts/instreet/johannesburg.html>

# IV. THE CHINESE GOVERNMENT'S NON-CO-OPERATION WITH UN BODIES

**“....the Committee regrets that such data is not disaggregated according to the type of sentence and that specific data on death sentences is not publicly available....”**

Committee against Torture, Concluding Observations, 12 December 2008

A multiplicity of UN bodies and mechanisms have, on numerous occasions, asked China to provide specific information about the number of death sentences and executions, and other information relating to the use of this punishment. As of March 2017, China has not co-operated with any UN bodies or procedures in providing this requested information.

In 1973, the Economic and Social Council (ECOSOC) adopted Resolution 1745 (LIV), which invited the UN Secretary-General to submit reports about capital punishment to ECOSOC in five-year increments.<sup>28</sup> To compile these reports, the UN Secretary-General requests all UN member states to submit information on their use of the death penalty. The most recent report compiling this information, the ninth quinquennial report, was produced in 2015. As in past years, China failed to reply to the questionnaire about its death penalty statistics and practices.<sup>29</sup>

In 1989, the ECOSOC adopted a resolution recommending states that maintained the death penalty to:

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<sup>28</sup> ECOSOC Resolution 1754 (LIV) of 16 May 1973

<sup>29</sup> ECOSOC, “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty”, UN Doc. E/2015/49, 13 April 2015, para 29 Table 2 footnote.

“...publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted...”<sup>30</sup>

The UN Committee against Torture, the body of experts tasked with reviewing countries’ implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, beginning with its first review of China in 1990 asked the Chinese government to provide information relating to the number of executions carried out, and the offences that gave rise to those executions.<sup>31</sup> The Committee continued to repeat requests for information on the use of the death penalty over subsequent reviews. In 2008, they noted that the absence of this data hampered the identification of possible patterns of abuse requiring attention and, at the most recent review in 2015, they again expressed their concern at the lack of specific data on the application of the death penalty.<sup>32</sup>

In 2008, commenting on the National People’s Congress Work Report mentioned above and with a degree of frustration the Committee stated:

“While noting that the State party has provided data on the large numbers of detainees serving death sentences, death sentences with a two-year reprieve, sentences for life imprisonment and imprisonment above five years, the Committee regrets that such data is not disaggregated according to the type of sentence and that specific data on death sentences is not publicly available according to article 3 of the Regulation on State Secrets and the specific scope of each level of secrets in the work of the People’s Procuratorates issued by the Supreme People’s Procuratorate.”<sup>33</sup>

In 2005, the UN Commission on Human Rights urged states to “make available to the public information with regard to the imposition of the death penalty and to any scheduled execution”.<sup>34</sup>

During the Universal Periodic Review (UPR) at the UN Human Rights Council, a process in which the human rights record of all UN member states is reviewed every five years and where all states can question and comment on other states’ human rights progress, the death penalty has frequently been raised as a major topic of discussion for China. In China’s second UPR in 2013, the death penalty was raised by 15 states making observations and suggestions. Italy, Switzerland, France and Belgium

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<sup>30</sup> ECOSOC Resolution 1989/64 of 24 May 1989.

<sup>31</sup> Committee against Torture, Summary Records, UN Doc. CAT/C/SR.51, 4 May 1990, para 46; Committee against Torture, Concluding Observations, UN Doc. A/48/44(SUPP) para 405 24 June 1993, para 405; Committee against Torture, Summary Records, UN Doc. CAT/C/SR.251, 5 June 1996, para 20; and Committee against Torture, List of Issues, UN Doc. CAT/C/CHN/Q/4, 9 September 2008, para 13.

<sup>32</sup> Committee against Torture, Concluding Observations, UN Doc. CAT/C/CHN/CO/4, 12 December 2008, para 17 and Committee against Torture, Concluding Observations, UN Doc. CAT/C/CHN/CO/5, 3 February 2016, para 49.

<sup>33</sup> Committee against Torture, Concluding Observations, UN Doc. CAT/C/CHN/CO/4, 12 December 2008, para 34.

<sup>34</sup> UN Commission on Human Rights, Resolution 2005/59 of 20 April 2005.

recommended that China publish figures on the death penalty.<sup>35</sup> China, however, did not accept this recommendation, and indicated that it was unable to separate out death penalty sentences from other forms of sentences and there were no separate statistics on the death penalty”.<sup>36</sup>

Since 2007, the UN General Assembly has passed numerous resolutions on a moratorium on the use of the death penalty, urging states to engage with the Secretary-General and UN bodies with respect to making publicly available information about the death penalty. Most recently in the sixth such UN General Assembly resolution, the language regarding transparency was further strengthened. The resolution called on retentionist states to:

“[...]make available relevant information, disaggregated by sex, age, and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty”.<sup>37</sup>

Making a clear argument for transparency of death penalty data, the then Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, emphatically observed, “(i)t is impossible to oversee compliance with the human rights law on capital punishment without this information”.<sup>38</sup>

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<sup>35</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/25/5, 4 December 2013, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CNSession17.aspx>

<sup>36</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/25/5/Add.1, 27 February 2014, para 186.108.

<sup>37</sup> General Assembly of the United Nations, Resolution 71/187 of 19 December 2016, UN Doc. A/RES/71/187.

<sup>38</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para 12, <http://www2.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm>

# V. REFORM EFFORTS

**“...publish...legal documents according to the law; and put an end to secretive work...”**

Chinese Communist Party Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward, 29 October 2014

Despite China’s legal framework, which labels death penalty statistics as state secrets, in practice the lack of transparency with respect to the death penalty in China has not been absolute. As noted earlier, individual cases can be covered in mainland media outlets providing anecdotal information on death penalty cases.

The authorities – especially the SPC – have also gradually introduced reforms over the past 15 years to make judgments issued by the courts public, including those issued by the SPC in death penalty cases. Transparency is also identified by Chinese authorities as an essential component of the justice system. The CCP Central Committee issued a major policy document in 2014 that urged actors in the country’s criminal justice system to build “an open, dynamic, transparent, and convenient sunshine judicial mechanism” as a goal and to “end secretive work”.<sup>39</sup>

The government has also put in other reforms that attempt to improve the rights of people accused of capital crimes. These reforms, which have been implemented to varying degrees of success, include: ensuring that illegally obtained evidence is not admitted in court; ensuring that interrogation sessions of people accused of capital crimes are videotaped; guaranteeing lawyer’s rights and visitation of family members before execution; and increasing the use of “death sentence with a two-year reprieve” as an alternative to death sentence with immediate execution, since such suspended death sentences are usually commuted to a term of imprisonment after two years’ imprisonment without committing another crime.

These efforts towards greater openness have been part of a broader objective of judicial reform which has been prompted, at least in part, by rising expectations for greater fairness, and increasing calls for

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<sup>39</sup> China Copyright and Media, “Chinese Communist Party Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward”, 29 October 2014, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>; “sunshine judicial mechanism” is direct translation of Chinese implying an open or transparent judicial mechanism.

accountability from the public and the need to gain greater legitimacy for the justice system on the part of the government.

In one of the few instances in which a senior Chinese government official has discussed the issue of transparency on China's use of the death penalty, former Foreign Ministry spokesperson Jiang Yu said at a press conference in 2009: "It is not true that [death penalty] figures of the executed have never been disclosed. It may be that you have not found the right channel for such information. Local courts have been releasing such information to the public through regular means based on relevant regulations".<sup>40</sup> As noted earlier, the occasional disclosure of death penalty cases in no way amounts to genuine and comprehensive transparency, including the most basic requirement of reporting the number of executions and sentencing on a yearly basis.

Moves towards greater transparency in the administration of justice are not only confined to initiatives of the SPC, but have also been endorsed at the highest levels of the CCP. In October 2014, the CCP held its Fourth Plenum to discuss "ruling the country according to the law", and issued an authoritative document that serves as a blueprint for legal reforms – the Chinese Communist Party Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward (Decision).<sup>41</sup> The Decision emphasizes the need for greater transparency, by laying out the following goal:

"Build an open, dynamic, transparent, and convenient sunshine judicial mechanism; move forward with open trials, open prosecutorial work, open police work, and open prison work; promptly publish law enforcement and judicial basis, procedures, processes, results, and effective legal documents according to the law; and put an end to secretive work. Strengthen the explanation and interpretation of legal documents, and create an online integrated open inquiry system for effective legal documents".

The CCP has acknowledged the need to boost transparency and improve the publishing of legal documents online as an important component of its legal reforms.

In June 2000, the SPC issued measures, which serve as official directives or low-level regulations, that said the SPC would "selectively" (选择地) make some judgments available to the public in order to "maintain judicial fairness" (维护司法公正). However, it specifically categorized seven types of cases as "not suitable" (不宜) for making public:

"1) judgments involving national political life, in which publication of judgments could cause harmful influences; 2) cases involving state secrets, commercial secrets, juvenile criminals and situation of personal privacy; 3) judgments that are relatively concentrated on reflecting death penalty statistics; 4) cases that overly emphasize on others' and their affairs, since perhaps [publishing them] may give other people mental pressure or bring

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<sup>40</sup> Ministry of Foreign Affairs, "Foreign Ministry spokesperson Jiang Yu's regular press conference on December 29, 2009", 30 December 2009, <http://www.fmcofprc.gov.hk/eng//zgwjsw/t648898.htm>

<sup>41</sup> China Copyright and Media, "Chinese Communist Party Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward", 29 October 2014, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>

unfavourable influences upon the work of courts; 5) judgments in which the rationale section's (理由部分) persuasiveness is not penetrating enough, and is insufficient in corroborating the main body of the text; 6) the judgment's text is expressed with deficiencies, or errors; 7) other judgments that are unsuitable for publishing".<sup>42</sup>

Although these measures were only applicable to the SPC, and although there were obviously numerous and vaguely defined areas that were deemed unsuitable for publishing, the measures nonetheless started to spur on a greater degree of openness, and provinces soon began to adopt similar policies, and began publishing their own verdicts online.<sup>43</sup>

In 2009, the SPC issued a new set of regulations "Regarding Six Items of Judicial Openness" that states that courts at all levels in the country "may" (可以) publish verdicts online, except in cases involving state secrets, cases involving juvenile criminals, personal privacy (个人隐私), other cases unsuitable for making public, and cases resolved through mediation.<sup>44</sup> In other words, the 2009 regulations narrowed the range of cases that should not be published, while also significantly shifting

from allowing only selective judgments to be public to assuming all judgments should be public, with only certain exceptions.

In 2013, this operating framework was improved once again when the SPC issued "Regulations Regarding People's Courts Publishing Judgments on the Internet", which stated that courts "should" (应当) publish verdicts online, while specifically limiting the cases that should not be published to four categories: 1) cases involving state secrets and personal privacy; 2) cases relating to juveniles; 3) cases resolved through mediation or resolved through people's court's reconciliation; 4) other judgments not suitable for publishing on the internet.<sup>45</sup>

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<sup>42</sup> SPC, issued 15 June 2000, "最高人民法院裁判文书公布管理办法" ("Measure for management of judgements issued by the Supreme People's Court"), [http://www.law-lib.com/law/law\\_view.asp?id=15137](http://www.law-lib.com/law/law_view.asp?id=15137)

<sup>43</sup> Yu, Zhigang, "中国犯罪记录制度的体系化构建: 当前司法改革中裁判文书网络公开的忧思" ("Systematic construction regarding the Chinese crime record regime: Some thoughts about publishing judgment documents online in current judicial reform"), 现代法学 Xiandai Faxue, 2014: [http://xueshu.baidu.com/s?wd=paperuri%3A%2820d168658a7702dbc84df90c01dcd654%29&filter=sc\\_long\\_sign&tn=SE\\_xueshusource\\_2kduw22v&sc\\_vurl=http%3A%2F%2Fjournal.chinalawinfo.com%2FArticle\\_Info.asp%3Fid%3D195108&ie=utf-8&sc\\_us=14245574289778869605](http://xueshu.baidu.com/s?wd=paperuri%3A%2820d168658a7702dbc84df90c01dcd654%29&filter=sc_long_sign&tn=SE_xueshusource_2kduw22v&sc_vurl=http%3A%2F%2Fjournal.chinalawinfo.com%2FArticle_Info.asp%3Fid%3D195108&ie=utf-8&sc_us=14245574289778869605) accessed 17 February 2017.

<sup>44</sup> Zhongguo Xinwen-wang, "最高法出台《关于司法公开的六项规定》(全文)" ("The Supreme People's Court issues 'Regarding Six Items of Judicial Openness'"), 23 December 2009, <http://www.chinanews.com/gn/news/2009/12-23/2034717.shtml>

<sup>45</sup> SPC, "Regulations Regarding People's Courts Publishing Judgements on the Internet", [http://www.law-lib.com/law/law\\_view.asp?id=437237](http://www.law-lib.com/law/law_view.asp?id=437237).

# VI. CHINA JUDGEMENTS ONLINE DATABASE: ADVANCES AND SHORTCOMINGS

**“The revision to the ‘Regulations Regarding People’s Courts Publishing Judgements on the Internet’ are targeted at improving main problems that have existed in the work of pushing forward with making verdicts public...we want to further strengthen adhering and implementing the principle of complete openness”**

Supreme People’s Court Official Li Liang, 30 August 2016

Along with recent regulations, the SPC launched China Judgements Online (中国裁判文书网) – a website dedicated to the publishing of court documents from around the country, including from the SPC. The government hailed the digital platform as a “crucial step towards openness”, which was an attempt to “proactively accept supervision from society” and that would “...increase judicial transparency, strengthen supervision, and prevent against abuse of judicial power”.<sup>46</sup>

In August 2016, as a way to further realize the pledges of the Fourth Plenum of the 18th Party Congress to guarantee judicial fairness, improve judicial credibility, and implement President Xi Jinping’s speeches that emphasized improving judicial openness, the SPC further revised the 2013

<sup>46</sup> 张蔚然 (Zhang Weiran), “中国最高法院一批裁判文书首次网上集中公布” (“China’s Supreme People’s Court announces that the first batch of court judgments will be concentrated together for the first time”), 中新社 (China News Service), 2 July 2013, <http://www.chinanews.com/fz/2013/07-02/4994926.shtml>



“Regulations Regarding People’s Courts Publishing Judgements on the Internet”, and an SPC spokesperson said the revision attempted to strengthen “the principle of complete openness” (全面公开原则) in light of the problem that some local courts were only selectively uploading judgments.<sup>47</sup> The revised regulation expanded the scope of cases to be published to include more types and all judgments issued at the first instance courts, while also taking measures to further protect individual’s privacy by ensuring that things like health details, home addresses, and personal contact information would be deleted from court documents before uploading to the website.<sup>48</sup> It also improved privacy protections by adding specific mention of divorce lawsuits or cases that involve guardianship or minors as one of the types of cases that should not be published.

A spokesperson from the SPC announced on 30 August 2016 that the website had made over 20 million documents public, and had a total to date of 2.2 billion page views, with over 20 million page views per day on average and with visitors from over 190 countries and regions.<sup>49</sup> This statement and statistics helped underscore the mission slogan that adorns the top of the website: “open, dynamic, transparent, convenient” (开放, 动态, 透明, 便民).

Some Chinese legal system analysts, such as Susan Finder, a scholar at Peking University School of Transnational Law, are of the view that the launching of the SPC database may be having subtle but far-reaching effects on the judicial system in China. According to Finder, lawyers often search the database to understand how judges have decided in similar cases, and sometimes submit relevant judgments to judges as reference in litigation, although they are not binding, and do not have legal authority as precedents.<sup>50</sup> Similarly, a judge from Shanghai who was interviewed by CCTV noted:

“The judicial system being available online is not just about making verdicts public, a litigant can look through past cases that are similar. It also gives people in the judicial system some pressure, because whatever logic has been used in a verdict, and however the law has been used, this will all become public and given to the defendant. And in comparison, one can look at your verdict and see if it is written well or not, whether there are mistakes, and this all gives pressure to judges, and pushes forward the progress of unifying [the practices] of the judicial system”.<sup>51</sup>

## 6.1 DEATH PENALTY INFORMATION IN CHINA JUDGEMENTS ONLINE

Amnesty International reviewed documents published on the China Judgments Online database with a view to determining what data has been made public and if this could provide some information on the possible limits of the overall disclosure of the information to the public. Amnesty International analysed this website content because it is currently the primary, consolidated national platform for

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<sup>47</sup> SPC, press conference, 30 August 2016, <http://www.chinacourt.org/article/subjectdetail/id/MzAwNEgrNIABAA==.shtml>

<sup>48</sup> China Law Translate, “The Supreme People’s Court provisions on people’s courts release of judgments on the internet”, August 2016, <http://www.chinalawtranslate.com/internet-disclosure/?lang=en>

<sup>49</sup> 法制日报 (Legal Daily), “2000余万裁判文书上网 “晒” 出公平正义” (“20+ million judgements uploaded shining light on “fairness and righteousness”), 30 August 2013, [http://www.legaldaily.com.cn/index/content/2016-08/30/content\\_6785546.htm?node=20908](http://www.legaldaily.com.cn/index/content/2016-08/30/content_6785546.htm?node=20908)

<sup>50</sup> Finder, Susan. “How China’s non-guiding cases guide”, Supreme People’s Court Monitor, 1 August 2016, <https://supremepeoplescourtmonitor.com/2016/08/01/how-chinas-non-guiding-cases-guide/>

<sup>51</sup> 焦点访谈 (Focal Point), “公开裁判文书 推进阳光司法” (“Making judgements public: bringing forth sunshine on the judicial system”), 30 August 2016, <http://www.cctv1zhibo.com/jiaodianfangtan/7434.html>

court judgments noting, however, that the information published on this database still does not meet the requirements set out under international standards sharing information on the use of the death penalty. For example, the database intends to have comprehensive content, but it is not yet exhaustive. Additionally, the documents that are uploaded are not complete records of the cases and can omit the full extent of defence arguments, witness testimony and even comprehensive details of the crime.

Since its launch in 2013, the website China Judgments Online has gone through a series of improvements, which included a more user-friendly design, making it relatively easier to search, and is constantly adding court documents, even retroactively.

Since all criminal cases receiving a death penalty must finally be reviewed by the SPC, before executions can be carried out, Amnesty International searched the China Judgments Online database with the keyword 死刑 “death penalty” but only for documents at the SPC level to avoid occurrences of the same case at different court levels.

Amnesty International retrieved and reviewed all documents available on the database dated prior to 1 January 2017 at the SPC level and pertaining to death penalty cases. It is important to note that there is often a lag time between when the SPC issues review documents on a case and when these documents are uploaded to the database. Amnesty International did the last search for such documents on 10 February 2017; however, because documents are continuously being added, there can be additions of documents dated earlier than 1 January 2017 at any time hereafter. Also, even though the database did not come into existence until 2013, there are documents now on the database dated much earlier than that.

In total, Amnesty International found 674 SPC level documents pertaining to death penalty cases dated between 2011 and 2016, available on the database. There were three document types: rulings (裁定书), decisions (决定书), and judgments (判决书). All of these document types have legal force, but refer to different legal procedures.

These 674 documents pertained to reviews of death sentences as well as complaints and compensation claims related to death penalty cases. The vast majority in fact dealt with reviews of death sentences and, in total, between 2011 and 2016, the SPC approved 701 death sentences first imposed by lower courts.

In addition to the 701 death sentences there were also two commutations, nine retrial requests, and at least five compensation claims. These break down specifically as:

- two were judgments to revoke (撤销) the lower court’s death penalty and commute the sentence from the death penalty to the death penalty with a two-year reprieve;
- two were decisions instructing (指令) the higher people’s court to conduct a retrial (再审) in cases involving a death sentence with a two-year reprieve;
- seven were rulings to overturn (不核准) lower level court’s death penalty rulings by revoking (撤销) the death penalty and sending the case back to the higher people’s court for retrial (发挥高级人民法院重新审判);
- two were decisions to conduct a retrial by the SPC in response to a complaint filed by defendants (再审决定书) – in one of these cases the person had originally been sentenced to death but then changed to a term of imprisonment;
- three were decisions on state compensation claims for legal rights damaged by state institutions

related to death penalty cases (国家赔偿决定书); one was a civil ruling (民事裁定书) to end a compensation claim related to a death penalty case; and

- one was a decision to request the lower court to conduct a retrial on a civil compensation claim related to a death penalty case.

As of the end of 2016, of the nine retrials requested, Amnesty International was able to confirm that five of the individuals were given life sentences, and one person was given a death sentence with a two-year reprieve, which is almost always commuted to a prison term after two years in which no serious crimes have been committed. The outcome of the other cases could not be determined.

## **6.2 EXECUTIONS REPORTED IN MEDIA REPORTS MISSING FROM THE DATABASE**

Media coverage of death penalty proceedings within China is sporadic, and while as noted previously some cases receive wide attention either because of public interest or government intentions, these reports can occur at various points in the death penalty process. Media reports or social media interest can occur at any stage of the proceedings including at the Intermediate court, the Higher court, at the SPC approval stage, at execution or even after at the point of exoneration or acknowledgement of an unlawful execution. While in some high-profile cases there may be media coverage for every stage, in other instances there is nothing in the public domain at all. However, it is difficult to find any media reports noting that the SPC has approved a death sentence.

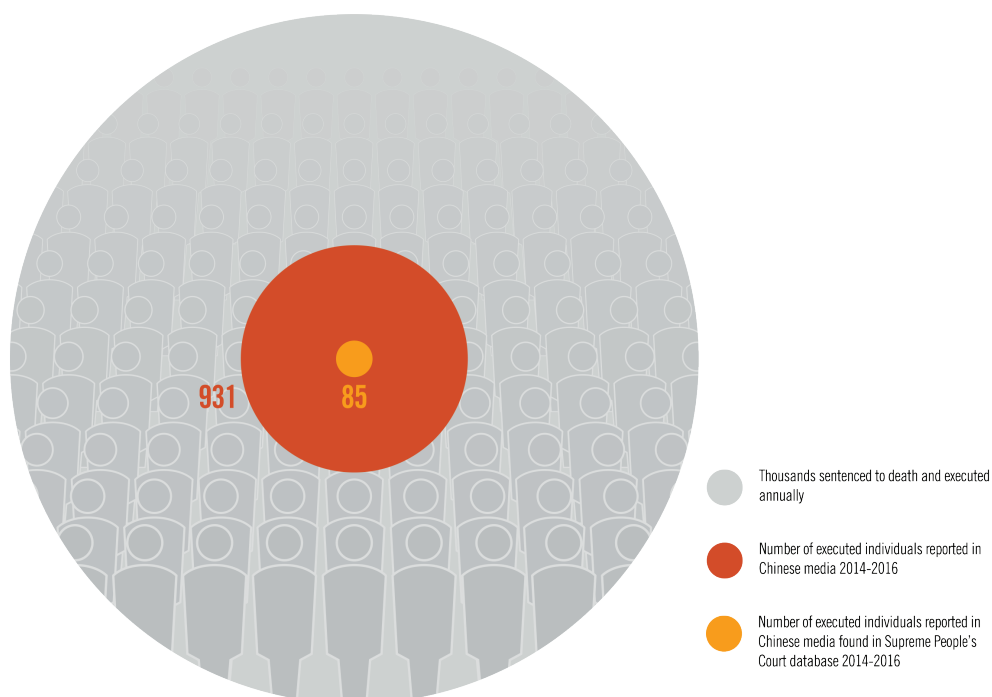
To compare data available in the database on death penalty cases with other information publicly available in the media, Amnesty International used the largest Chinese language search engine, Baidu, whose news articles are comprehensively sourced from numerous mainland Chinese news outlets, largely state-run media outlets, at various levels including local, provincial and national. Amnesty International carried out a search of Baidu using the search term 执行死刑 (carried out the execution). This search term was chosen because, unlike searching in the China Judgements Online database, using 死刑 “death penalty” in a media search turns up a wide variety of “false positive” reports including reports discussing death penalty trends and death penalty news from foreign countries. Therefore, searching for “carried out the execution” provides for better results dealing with individual cases involving judicial executions.

Since the regulations to publish court documents online came into effect on 1 January 2014, the time frame for this Baidu search was 1 January 2014 to 31 December 2016. For the year 2014, Amnesty International was able to find in Baidu coverage of 291 executions. Of these 291 individuals, only 41 of their cases were recorded in the China Judgements Online database. In 2015, 335 executions were reported in Baidu, but Amnesty International was only able to find 18 of these individuals in the database and for the year 2016, 305 individual executions were found in Baidu but only 26 of these individuals could be located in the database.

In other words, there are clearly many executions publicly reported in the media that are not correspondingly recorded in the SPC database which is highly problematic and is inconsistent with the claim that the database is an avenue for demonstrating “transparency” and “openness”. The lack of transparency with respect to uploading death penalty approval documents makes it impossible for outside observers to verify whether all the procedural safeguards that protect the defendant in accordance with Chinese laws and regulations have been followed. Furthermore, since state-run media have reported on these cases, it is safe to assume that the cases have not been treated as state secrets, or at least not consistently.

The total of 701 approved death sentences found in the China Judgements Online database over

nearly a six-year period - between 2011 to 2016 - cannot possibly represent the true scope of the use of the death penalty in China during this time frame. As noted above, credible estimates by international NGOs and domestic scholars have consistently stated that the number of death sentences and executions in China each year are both in the thousands – meaning that 701 death sentences over a five-year period is far too small.<sup>52</sup>



### 6.3 OMISSIONS OF PARTICULAR CRIMES AND CASES

Two areas in which the lack of transparency may be particularly problematic is in crimes related to terrorism and drugs. China has sought greater diplomatic, military, and law enforcement co-operation on combatting terrorism through numerous multilateral and bilateral arrangements.<sup>53</sup> It has also sought international co-operation to stem the drug trade.<sup>54</sup> As other countries assess their co-operation with China in these areas, understanding how the death penalty is applied in cases that are described by the government as being terrorist-related and in drug trafficking cases is crucial.

#### DATA ON TERRORISM AND THE DEATH PENALTY

The new Anti-Terrorism law passed in December 2015 by the NPC has virtually no safeguards to

<sup>52</sup> Amnesty International, Death sentences and executions in 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015 (Index: ACT 50/003/2009, 50/001/2010, 50/001/2011, 50/001/2012, 50/001/2013, 50/001/2014, 50/001/2015 and 50/3487/2016); Dui Hua, “China executed 2,400 people in 2013, Dui Hua”, 20 October 2014, [http://duihua.org/wp/?page\\_id=9270](http://duihua.org/wp/?page_id=9270)

<sup>53</sup> Tezzi, Shannon. “After Paris attacks, China seeks more international help fighting Xinjiang separatists”, The Diplomat, 17 November 2015, <http://thediplomat.com/2015/11/after-paris-attacks-china-seeks-more-international-help-fighting-xinjiang-separatists/>; Tanner, Murray Scott and Bellacqua, James. “China’s response to terrorism”, CNA, June 2016, [https://www.cna.org/cna\\_files/pdf/IRM-2016-U-013542-Final.pdf](https://www.cna.org/cna_files/pdf/IRM-2016-U-013542-Final.pdf)

<sup>54</sup> Zhang Yan, “Grim fight on drug smuggling for nation”, China Daily, 21 May 2013, [http://usa.chinadaily.com.cn/china/2013-05/21/content\\_16513600.htm](http://usa.chinadaily.com.cn/china/2013-05/21/content_16513600.htm)

prevent those who peacefully practise their religion or simply criticize government policies from being persecuted on broad charges related to “terrorism” or “extremism”. While recognizing that the Chinese government has a duty to protect people from violent attacks, the Anti-Terrorism law and other criminal law measures such as the vaguely worded charges of “separatism” have been used in particular against Tibetan Buddhists and Uighurs, a 10 million-strong, predominantly Muslim, Turkish-speaking ethnic group in the Xinjiang Uighur Autonomous Region (XUAR) where they currently make up 45% of the population.

The XUAR government announced a year-long “strike hard” campaign to carry out an “anti-terrorism social stability People’s War” on 25 May 2014, after 31 people were killed and over 90 injured on 22 May in a bomb attack at a vegetable market in the region’s capital, Urumqi. In China, so-called “strike hard” campaigns have historically been periods in which the criminal justice system metes out “swift and severe” punishments to tackle a certain crime problem by creating a degree of fear among the target population.

According to Amnesty International research as well as scholars specializing on the death penalty in China, death penalty sentences and executions tend to increase dramatically during “strike hard” campaigns.<sup>55</sup> “Strike hard” campaigns have been widely criticized for the lack of due process, fair trials, and the likelihood of “wrongful executions”.<sup>56</sup> Indeed, Chinese commentators widely noted that the “strike hard” campaigns of the 1990s played a role in the well-known wrongful execution cases of Huguiltu and Nie Shubin.<sup>57</sup> In other words, transparency in the use of the death penalty is a crucial requirement to critically assess how the death penalty is being applied in the XUAR.

Chinese media reports found in Baidu contain at least 27 individuals who had, according to state media, been executed for terrorism-related incidents in the years 2014 and 2015, but none in 2016. In some instances, the specific crime or crimes are listed, such as “organizing and leading a terrorist organization”, but in other instances, the name of individuals and/or the specific alleged crime is not mentioned in the reports. Of the cases relating to these 27 individuals, the China Judgements Online database only included the SPC death penalty approvals for 10, and all in the year 2014, clearly showing the discrepancy in the database and demonstrating that this does not even include all the death penalty cases available in Chinese state media depicted as involving “terrorism”.

In total, the China Judgments Online database contains 27 death penalty cases involving Uighur individuals charged with various crimes, including terrorism-related crimes. One death sentence was approved by the SPC in 2012, four in 2013, 19 in 2014 (when the “strike hard” campaign began), one in 2015 and two in 2016. Sixteen of these cases involve the crimes of either “joining a terrorist organization” or “leading a terrorist organization”. Of these 16 cases, one is from 2011, and 15 are from 2014.

Despite the year-long “strike hard” campaign launched in May 2014 that was subsequently extended throughout 2015 and 2016, there were no death penalty cases involving “terrorism” included in the China Judgments Online database during 2015 and 2016.

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<sup>55</sup> Amnesty International, People’s Republic of China: The death penalty in China – breaking records, breaking rules, (Index: ASA 17/38/97); “Strike less hard”, *The Economist*, 3 August 2013, <http://www.economist.com/news/china/21582557-most-worlds-sharp-decline-executions-can-be-credited-china-strike-less-hard>;

<sup>56</sup> 贺卫方 He Weifang, 时代周报 (Shidai Zhoubao) . “严打”会导致更多犯罪 (“Strike hard” campaigns can result in even more crimes”), 1 July 2010, [http://blog.caijing.com.cn/expert\\_article-151302-8109.shtml](http://blog.caijing.com.cn/expert_article-151302-8109.shtml)

<sup>57</sup> 新京报 (Beijing News), “呼格吉勒图死刑之后：一起命案的“快”与“慢” (“After the Huguiltu death penalty case: on ‘quick’ and ‘slow’ in one case involving the loss of life”), 20 November 2014, <http://www.bjnews.com.cn/inside/2014/11/20/342454.html> accessed 17 February 2017; 新京报 (Beijing News), “接力长跑12年 “聂树斌” 案背后的那些律师、学者” (“Carrying the relay race forward for 12 years: the lawyers and scholars behind the Nie Shubin case”) 22 December 2016, <http://news.sohu.com/20161222/n476583805.shtml>

Due to the fact that under the Law on the Protection of State Secrets, issues related to “national security” should be considered a state secret, cases involving “terrorism” may be considered to be state secrets and therefore not uploaded to the database. The relatively large number of cases published in 2014 could indicate that the government selectively chose to make a greater number of death sentences and executions public that year, in response to some criticism that it was not adequately tackling what some in society perceived to be a growing threat posed by terrorism but treated these cases differently in subsequent years.

## DATA ON DRUG-RELATED CRIMES AND THE DEATH PENALTY

Similar to combatting terrorism, China is a party to international co-operation programs to stop drug trafficking.<sup>58</sup> Other countries are also keen to work with China to stem the flow of illegal drugs manufactured in China that are coming into their countries.<sup>59</sup> Over the years, many organizations and states promoting abolition of the death penalty have raised concerns about international co-operation tackling drug trafficking when countries involved in these efforts maintain the death penalty for some of these crimes. Drug-related offences do not meet the threshold of the “most serious crimes”, to which the use of the death penalty must be restricted under international law.<sup>60</sup>

Out of the total 701 individuals whose death penalty approvals were found in the China Judgments Online database, 94 individuals’ cases are related to charges involving drug offences, or 13% of the total. This would roughly correspond with previous research published in Susan Trevaskes’s *The death penalty in contemporary China* suggesting that drug cases are one of the major categories of crimes that receive death sentences in the country.<sup>61</sup> However, it is impossible to ascertain whether executions for drug-related crimes have been under-reported in the database.

It is notable that of all the publicly reported executions for drug-related crimes found in Baidu from 1 January 2014 to 2016 (a total of 185 cases), Amnesty International was only able to find six, or 3% of this total, in the China Judgments Online database. By comparison, of the number of cases of execution found in Baidu for all crimes combined during this same time frame, 9.1% of them were in the database (intentional homicide, 9.1%; robbery 5.3%). It is unclear why there is such a large gap between the reporting of drug cases in the media and contents in the database. In any case, the lack of transparency with respect to the application of the death penalty in drug-related crimes is significant because it is widely recognized by domestic and international scholars that the police, prosecuting authorities and courts in different provinces and regions have different understandings and even standards for how to applying the death penalty in drug-related offences – a fact that has prompted many to call for reforms, whether through abolition of the death penalty for drug-related offences, or through greater clarity and standardization of judicial practice.<sup>62</sup> At a minimum, being able to conduct a

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<sup>58</sup> Drug Enforcement Administration, “U.S. and Chinese drug enforcement agencies meet on synthetic opioid efforts”, 29 September 2016, <https://www.dea.gov/divisions/hq/2016/hq092916.shtml>

<sup>59</sup> Smith, Jamie. “Australia poised to sign extradition treaty with China”, *Financial Times*, 22 December 2016, <https://www.ft.com/content/1758ee48-c803-11e6-8f29-9445cac8966f>

<sup>60</sup> There are several drug related crimes that are included in Article 347 of the Criminal Law: smuggling, trafficking, transporting, or manufacturing of drugs. Courts sometimes list these as one mixed crime, or sometimes list them as separate crimes. Since they all refer to the same article of the Criminal Law, we have combined them into one category - drug-related crimes - in this report.

<sup>61</sup> Trevaskes, Susan. *The death penalty in contemporary China*, Palgrave MacMillan, 2012, p. 46.

<sup>62</sup> Trevaskes, Susan. *The death penalty in contemporary China*, Palgrave MacMillan, 2012, pp. 102-103; 赵秉志 (Zhao Bingzhi), 阴建峰 (Yin Jianfeng), “论中国毒品犯罪死刑的逐步废止” (“Discussing the gradual abolition of drug-related crimes in China”), 15 January 2014, <http://www.scxsls.com/a/20140115/100094.html> accessed 17 February 2017; 任惠华 (Ren Huihua), 甘肃政法学院学报 (*Gansu Zhengfa Xueyuan xuebao*), “毒品犯罪死刑适用问题的调查与思考” (“A survey and reflections on the use of the death penalty in drug-related crimes”), 14 December 2015, <http://article.chinalawinfo.com/ArticleFullText.aspx?ArticleId=94108>

thorough empirical investigation into current sentencing practices would seem to be a prerequisite for any discussions about reform.

Another notable problem relating to transparency with regards to drug-related crimes is that the China Judgments Online database did not contain any SPC death penalty approvals involving foreign nationals, while for the same time period 11 such cases were in media reports found in Baidu.

The reason for these omissions is unknown. It could be that cases involving foreigners are considered by authorities to affect national security, thus considered a “state secret” and omitted from the database.

#### **6.4 WHO IS EXECUTED AND FOR WHAT CRIMES**

As noted above, the 701 individual death sentences approved by the SPC between 2011 and 2016 is far from being a comprehensive figure. Given that Amnesty International, other organizations, and prominent legal scholars have put the number of annual death sentences in the thousands, it is clear that the database does not include the total number of cases that the SPC must have reviewed during this six-year time frame, nor does it reflect the numerous death sentences that were handed out by intermediate and higher courts that have not yet reached the Supreme People’s Court for Review. But it does provide a data set that can be looked at to see if some patterns can be found by disaggregating data, something the Chinese government continues to refuse to do itself. As the China Judgements Online database continues to expand, it may increasingly be a source of data that can provide researchers, both domestic and international, with additional information that can be analysed to monitor the use of the death penalty in China. But this will never be a complete tool unless the Chinese authorities commit to making the database comprehensive and stop omitting cases based on overly broad definitions of state secrets.

Research carried out on the use of the death penalty in different countries shows that those from disadvantaged socio-economic backgrounds are disproportionately affected in their experience of the criminal justice system and often carry the burden of the death penalty. This is not only because of their financial means, which directly affects the defendants’ ability to engage and retain effective legal counsel, but because the literacy level and their social networks can also be an influencing factor in their engagement with the state institutions.

In its 2016 comprehensive report, for example, the National Law University, Delhi, found that:

“the burden of the death penalty falls disproportionately on different marginalised groups considered along axes of class, gender, caste, religion and levels of educational attainment.[...] These structural concerns [with the criminal justice system] seem to not just have disparate impact, they also seem to further disempower and marginalise certain sections.”<sup>63</sup>

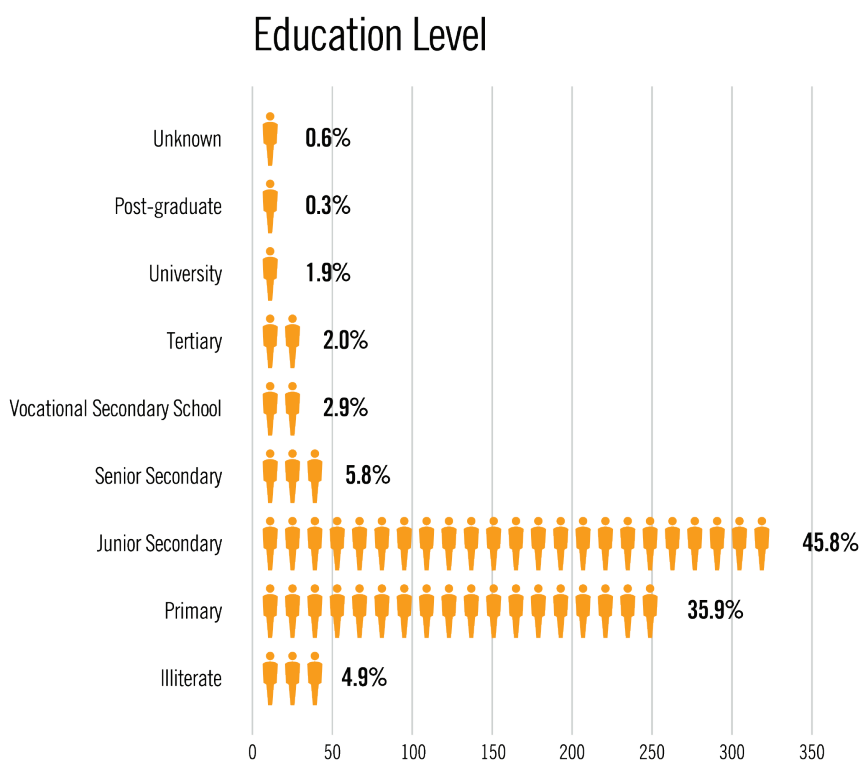
In the United States, the Equal Justice Initiative (EJI) and the National Association for the Advancement of Colored People (NAACP), among other organizations, have utilized disaggregated data to demonstrate racial disparities in the criminal justice system, and show that people of colour and

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<sup>63</sup> National Law University, “Death Penalty India Report”, Delhi Press, February 2016, vol.I, available at <http://www.deathpenaltyindia.com/> accessed 17 February 2017.

poor people are more likely to be sentenced to death and executed.<sup>64</sup>

Amnesty International's analysis of the SPC judgments points to a similar pattern, highlighting how the majority of the people who were sentenced to death had relatively low levels of education. Only 15 of the 701 people who were sentenced to death, or 2%, had received a university or postgraduate education. Another 61 people, or 8.7%, had received a senior secondary (高中) or a vocational secondary school level (中专) of education, corresponding to ages 15-18. In contrast, 321 (45%) had received a junior secondary (初中) level of education, corresponding to ages 12-15, 252 (36%) had only received a primary school level of education, corresponding to ages 6-12, and 34 (5%) were classified as illiterate. In comparison, according to data from the 2010 Chinese census in an article by Donald Treiman, for men aged 20 and older, 0.4% had received postgraduate education, 3.7% had received some university education or had completed university, 5.9% had received some tertiary education, 15.5% had received either some senior secondary or had completed senior secondary, 46.5% had received some junior secondary or had completed junior secondary, 24.7% had received some primary or had completed primary, and 3.5% had received no schooling.<sup>65</sup> In China, nine years of education is compulsory: six years at primary level and three years of junior secondary school.



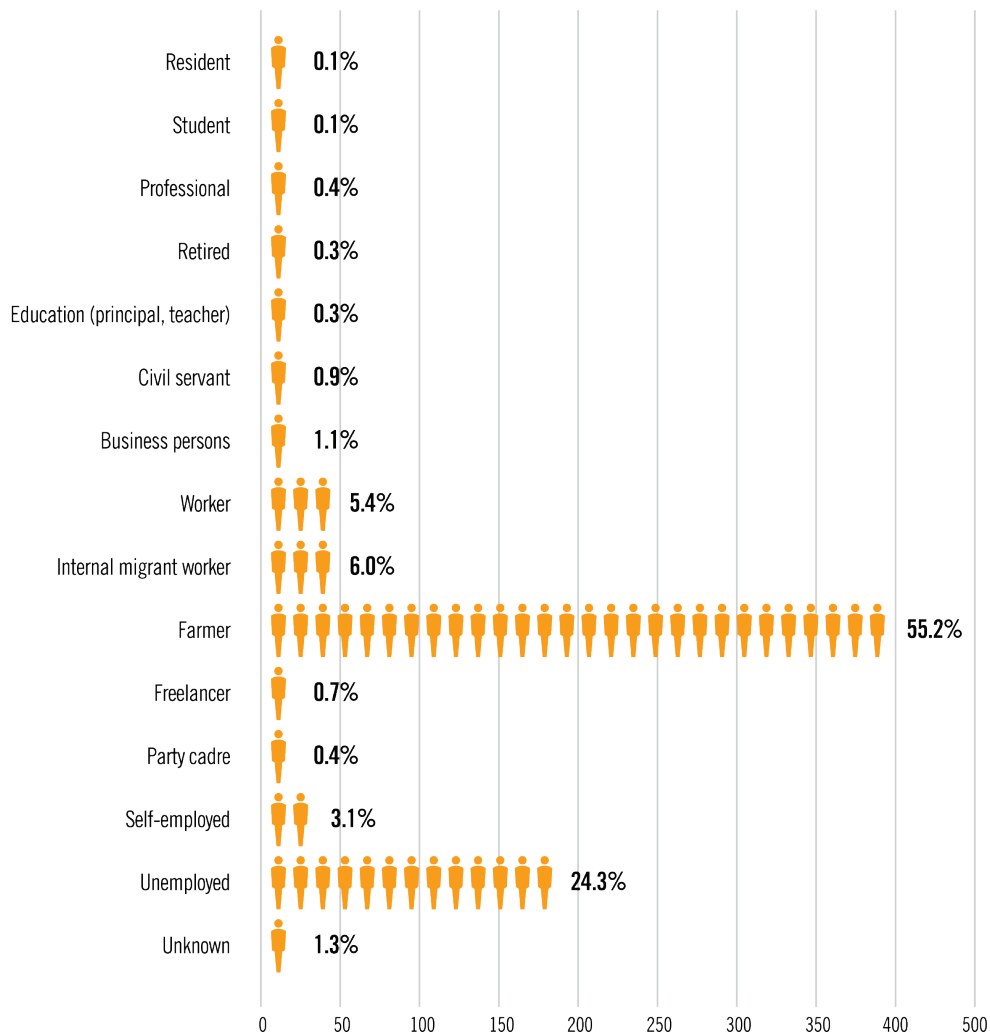
<sup>64</sup> Equal Justice Initiative, "Race and poverty", <http://eji.org/death-penalty/race-and-poverty> ; NAACP, "NAACP death penalty fact sheet", 17 January 2017, <http://www.naacp.org/latest/naacp-death-penalty-fact-sheet/>

<sup>65</sup> Treiman, Donald J. "Trends in educational attainment in China", Chinese Sociological review, 2013, <http://web3.apu.edu/researchfile/Research%20Materials/Current%20Trends%20in%20Education/Trends%20in%20educational%20attainment%20in%20China.pdf>



Most of the people whose death sentences were approved by the SPC were either unemployed (170 people, 24%), internal migrant workers (42, 6%), workers (38, 5%) or classified as “rural people/farmers” (农民) (387, 55%). According to the 2016 China Statistical Yearbook, a government publication providing comprehensive economic and social development data, currently 56% of people reside in urban areas, while 43% reside in rural areas.<sup>66</sup> According to a report in Xinhua, the state run media organization, the official urban unemployment rate has been near 4% in recent years.<sup>67</sup>

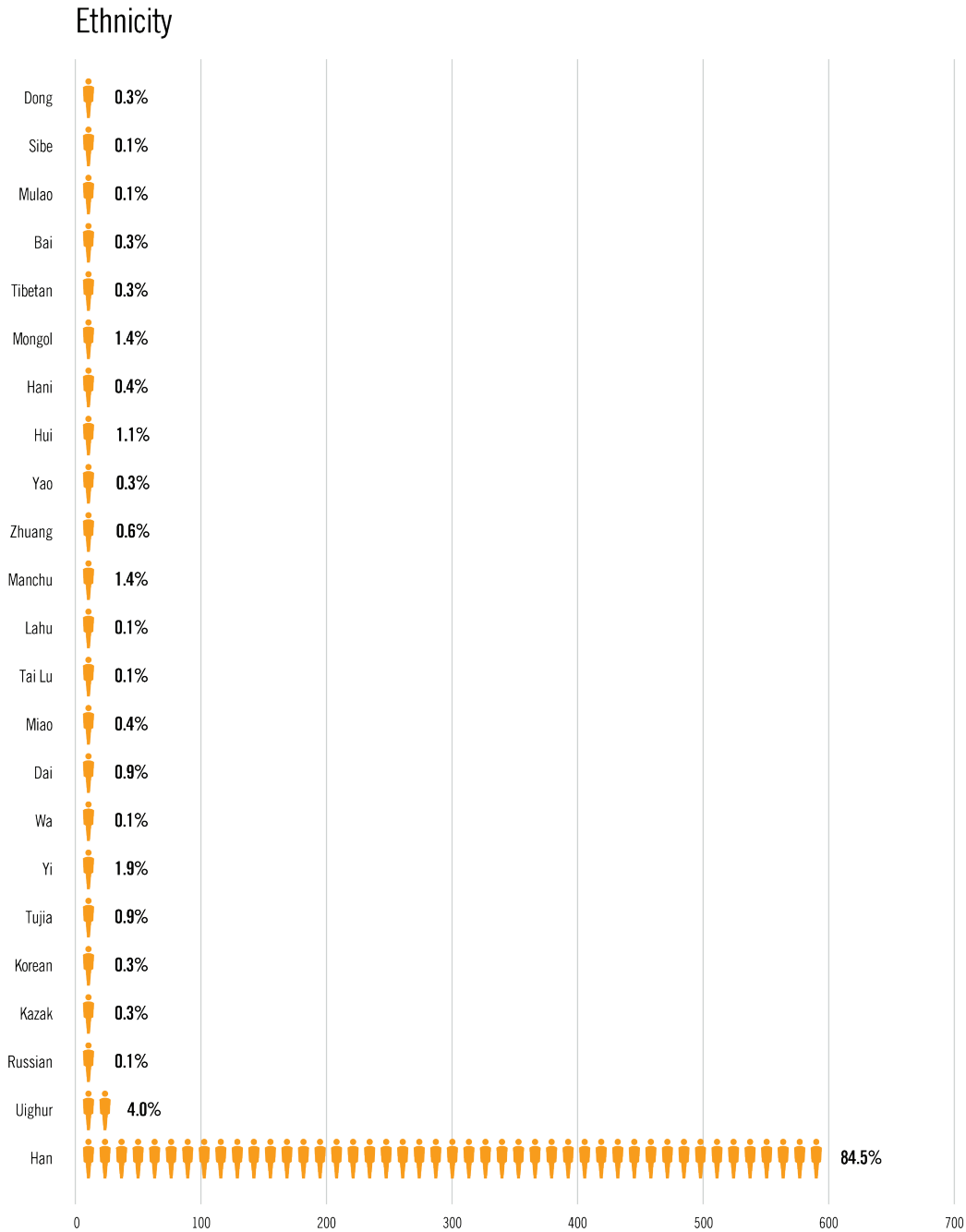
## Occupation



<sup>66</sup> China Statistical Yearbook 2016, “1-3 Composition Indicators on National and economic Social Developments”, [http://www.stats.gov.cn/tjsj/ndsj/2016/indexeh.htm?\\_sm\\_au\\_=#iVvtB0f7N5BHPTBj](http://www.stats.gov.cn/tjsj/ndsj/2016/indexeh.htm?_sm_au_=#iVvtB0f7N5BHPTBj)

<sup>67</sup> China Daily, “China’s urban unemployment rate at 4.02%”, Xinhua, 23 January 2017, [http://www.chinadaily.com.cn/business/2017-01/23/content\\_28032614.htm](http://www.chinadaily.com.cn/business/2017-01/23/content_28032614.htm)

In total, 592 people of the Han ethnicity were sentenced to death, representing 84% of the death penalty cases in the database whereas the Han make up 91.6% of the total Chinese population. In China, there are 56 officially recognized ethnicities and the next largest groups after Han are Zhuang making up 1.2%, Hui, Manchu, Uighurs and Miao each making up 0.7%. There were 28 death penalty cases of Uighurs, making up 4% of the cases in the database, compared with the overall percentage of Uighurs in the population – 0.7%.<sup>68</sup>

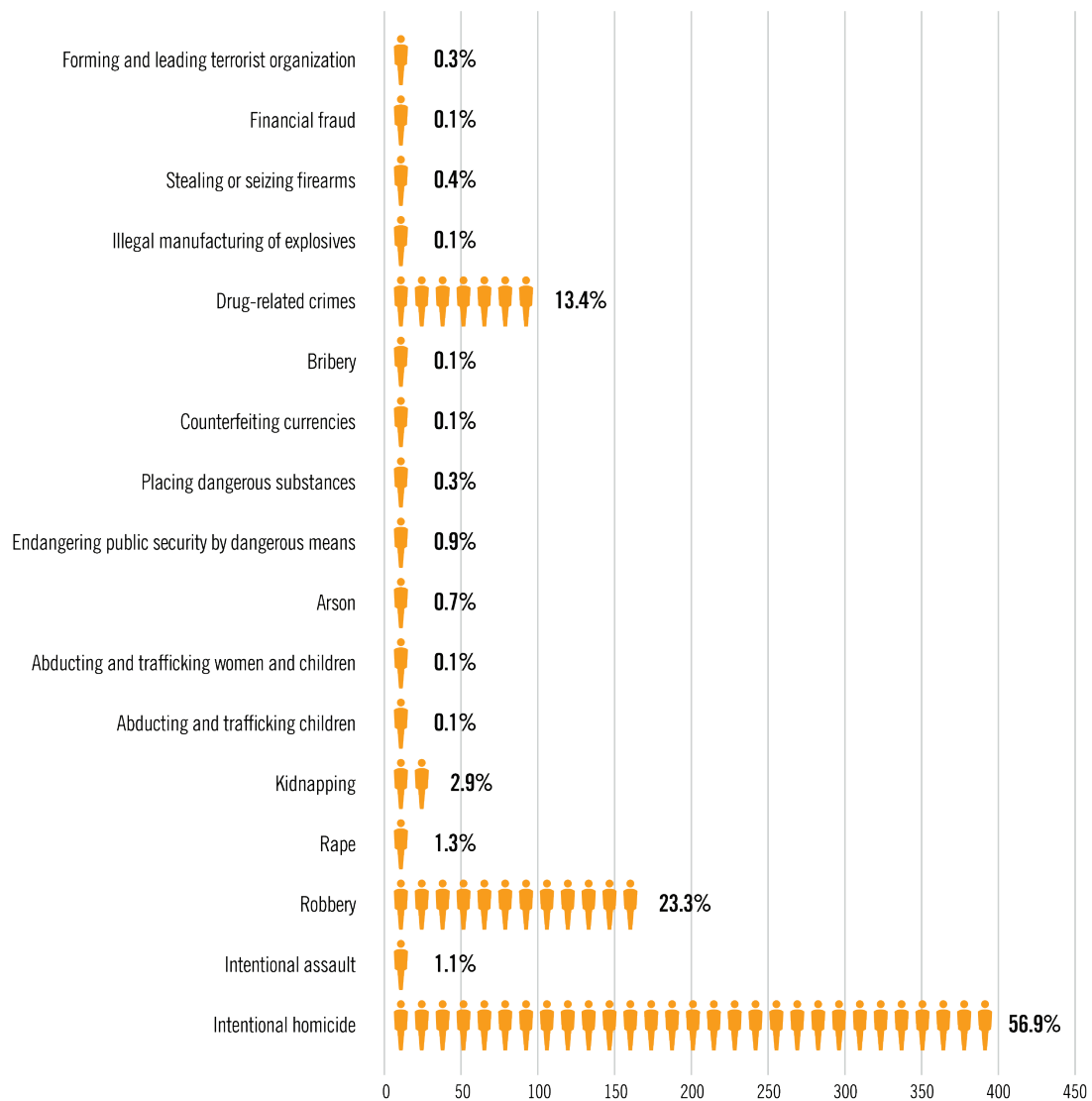


<sup>68</sup> 中国2010年人口普查资料 (Tabulation on the Population Census of the People's Republic of China). 全国各民族分年龄, 性别的人口 (Population of each ethnicity, divided by sex and age), <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>

Of the 701 death penalty approvals, only 10 were women.

The death penalty approval cases from the China Judgements Online database shows that there were only a handful of offences that were frequently used in sentencing individuals to death: intentional homicide (399 individuals, 57%), robbery (163 cases, 23%), and drug-related offences (94 cases, 13%).<sup>69</sup> This appears to be in line with findings of previous studies carried out by Chinese scholars that show that only a handful of crimes constitute the majority of death sentences in practice.<sup>70</sup>

## Crime employed in confirming death sentence with immediate execution



<sup>69</sup> It is worth noting that in many instances there were multiple offences in cases where death sentences were approved by the SPC.

<sup>70</sup> Trevaskes, Susan. *The death penalty in contemporary China*, Palgrave MacMillan, 2012, pp. 42-43

Even though this aggregated data comes from only a partial data set and is inconclusive, the patterns raise serious questions concerning the use of the death penalty in China that can only be answered when authorities publish full figures.

# VII. TRANSPARENCY IN CRIMINAL JUSTICE AND THE PUBLIC'S RIGHT TO KNOW

**“Transparency is fundamental to the administration of justice...transparency is the surest safeguard of fairness”**

Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, March 2006

International law recognizes the importance of making public the information on decisions in criminal matters and recognizes the right to seek, receive and impart information.<sup>71</sup> The UN Human Rights Committee has in particular stressed the importance of the right of access to information held by public bodies, including information on public affairs; this includes information on important public policy matters such as the use of the death penalty and associated legislative reforms.<sup>72</sup>

The Universal Declaration of Human Rights, as well as the ICCPR, guarantee a fair and public hearing and Article 14 of the ICCPR requires judgments to be made public, except when the “interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”.

Transparency in the use of the death penalty has long been recognized by domestic, UN and other international bodies as an important requirement for states that still retain the death penalty. The requirement for transparency in the use of the death penalty covers many elements, from providing

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<sup>71</sup> Article 19 of the Universal Declaration of Human Rights; Article 19 of the ICCPR.

<sup>72</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011; and Toktakunov v. Kyrgyzstan, Communication No. 1470/2006, UN Doc. CCPR/C/101/D/1470/2006, 28 March 2011.

adequate information to people accused of capital crimes in their legal proceedings or timely information to people on death row and their families regarding scheduled executions to publishing judgments and figures on death sentences and executions on a regular basis.<sup>73</sup>

Transparency in the administration of justice is a critical safeguard to guarantee human rights and protect against unlawful executions, or “the surest safeguard of fairness”, in the words of the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, and as the only way to guarantee public oversight of a punishment inflicted in the name of the state.<sup>74</sup> It is critical that the Chinese authorities reveal complete and accurate information on their use of the death penalty, so that it is possible to assess their practices against international safeguards.

Philip Alston highlighted the importance of Article 14 of the ICCPR with respect to the death penalty by stating:

“In order for every organ of government and every member of the public to have at least the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner, the administration of justice must be transparent. It defeats the purpose of the publicity element of due process for judgements to be ‘made public’ by filing them away in courthouses where they can, in theory, be paged through by citizens. Obscurity can be as harmful to due process as secrecy. Indeed, some of the questions that must be asked - that citizens must be able to ask - about the application of the death penalty cannot be answered without a comprehensive view of the decisions and the sentences that have been made throughout the country. The kind of informed public debate about capital punishment that is contemplated by human rights law is undermined if Governments choose not to inform the public. It is for this reason that a full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.”<sup>75</sup>

Transparency in turn contributes to building public confidence in the state justice institutions.<sup>76</sup> Publicly available information would also allow for the consideration of important factors – such as the risk of wrongful execution, the unfairness of trials, the extent to which capital punishment disproportionately affects defendants living in poverty or people with mental disabilities – which could contribute towards the development of a fully informed view on capital punishment.

Indeed, transparency is also a crucial element in ensuring that there is an informed public debate about the death penalty to give to every organ of government and every member of the public

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<sup>73</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/67/279, 9 August 2012, para 50. See also Human Rights Committee, Concluding observations of the Human Rights Committee, Japan, UN Doc. CCPR/C/JPN/CO/5, 18 December 2008; Committee against Torture, Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), UN Doc. CAT/C/JPN/CP/2, 28 June 2013; and Report of the SR March 2006, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, paras 7-8.

<sup>74</sup> Report of the SR March 2006, UN Doc. E/CN.4/2006/53/Add.3, paras 7-8.

<sup>75</sup> Report of the SR, Philip Alston, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/120/57/PDF/G0612057.pdf?OpenElement>

<sup>76</sup> Report of the SR, UN Doc. A/67/275, 9 August 2012.

“the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner.”<sup>77</sup>

Scholars and activists – not just internationally but also domestically in China – have also identified the lack of transparency with respect to figures as an impediment to understanding how the death penalty system works. For example, scholar Moulin Xiong conducted an empirical investigation into how eight intermediate courts in different locations in China applied the death penalty. Xiong noted that China’s increasing transparency made this sort of investigation possible, but also looked forward to more reliable national figures.<sup>78</sup>

Liu Renwen Director of Criminal Law at the Chinese Academy of Social Science’s Law Department, wrote in the Journal of the National Prosecutors Academy in 2013:

“...the statistics on the death penalty will be made public sooner or later. However, now under the current circumstances, we certainly are under a lot of pressure with respect to making public death penalty statistics. On the one hand we tell our people internationally and domestically that in recent years we’ ve achieved progress in reducing the numbers of death sentences and strictly controlling the death penalty, but on the other hand it must be seen that with that with an increasing majority of countries already having abolished the death penalty, and with countries that retain the death penalty treating it as a sort of symbolic criminal punishment, our pace of reducing the death penalty needs to be sped up a bit.”<sup>79</sup>

Despite clear international standards that require making information public, it seems that the Chinese authorities deliberately choose to make public figures consolidating crimes with vastly different sentencing to obscure the true figure, and as consequence avoid domestic and international scrutiny.

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<sup>77</sup> Report of the SR, March 2006, UN doc.E/CN.4/2006/53/Add.3, paras 7-8.

<sup>78</sup> Moulin Xiong, “The death penalty after the restoration of centralized review: An empirical study of capital sentencing”, in *The Death Penalty in China: Policy, practice, and reform*, Ed. Bin Liang and Hong Lu.

<sup>79</sup> 刘仁文(Liu Renwen), “死刑的宪法维度” (“The constitutional dimension of the death penalty”), *Journal of the National Prosecutors Academy*, found in Aisixiang, <http://www.aisixiang.com/data/65450.html>.

# VIII. CONCLUSION

China has taken steps to limit the use of the death penalty over the past decade, from decreasing the number of crimes subject to the death penalty, to improving procedural safeguards for people on death row. In the Fourth Plenum of the 18th Party Congress, dedicated to the issue of “ruling the country according to the law”, China pledged to increase transparency and end secrecy.

However, ironically, it is impossible to quantitatively verify any of this progress made in death penalty reforms since China still treats the figures relating to death sentences and executions as a state secret. The lack of transparency thwarts measures to protect human rights and stop unlawful executions, efforts to conduct rigorous empirical analysis and inhibits the understanding of China’s use of the death penalty by scholars, lawyers, the public, and perhaps even among government officials and policy-makers.

In lieu of providing the domestic and international community with comprehensive and disaggregated figures on death penalty sentences and executions, court websites have been the best avenue for obtaining information about the death penalty system, and have been cited by government officials as a way to better understand China’s application of the death penalty. The construction of the China Judgments Online database in 2013 has been a very useful tool for researchers, both domestic and international, and has facilitated a greater understanding of how the Chinese legal system works. However, as a means for demonstrating transparency with respect to the death penalty, the database is insufficient. There are hundreds of cases reported in state-run media of people being executed which are not reflected in the database. The scale of the discrepancy would imply that the lack of uploading the cases to the database cannot simply be ascribed to an administrative oversight but is deliberate and possibly due to over classification of such information as state secrets.

Worryingly, there is evidence that the application of the death penalty is not transparent in specific areas in which the Chinese government co-operates with the international community – such as the struggle to curb terrorism and the illegal drug trade. The lack of uploading of drug-related death penalty cases may hinder the efforts of reformers to understand the problems involved in the application of the death penalty for drug-related offences. The lack of transparency with respect to “terrorism”- related cases has implications for how China carries out its “strike hard” campaigns and the “war on terror”, and should be a concern for countries and international organizations co-operating with China on these efforts.

In order to fulfil its stated goals of increasing transparency and ending secrecy and to guarantee human rights are protected in the application of the death penalty, Chinese authorities should undertake to implement the following recommendations.



## **RECOMMENDATIONS:**

Amnesty International urges the Chinese authorities to immediately establish a moratorium on all executions and commute existing death sentences with a view to full abolition of the death penalty from national legislation.

Pending full abolition of the death penalty, the organization urges the Chinese authorities to:

- Revise relevant laws and regulations to ensure that figures related to death penalty sentences and executions are no longer treated as state secrets;
- As per United Nations General Assembly Resolution A/RES/71/187, make publicly available relevant information, disaggregated by sex, age, ethnicity, crime committed, regarding the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, on a regular basis;
- Ensure that documents pertaining to all death penalty cases handled by the SPC are uploaded to the China Judgments Online website in a timely fashion;
- Reduce the scope of crimes subject to the death penalty, including elimination of all crimes that are not the “most serious crimes” to which the use of this punishment must be restricted under international law;
- Provide more detailed information on the procedures for the SPC review of death penalty cases, including the recommended procedures for the review of evidence, the procedures for training judges to carry out the reviews, and nation-wide statistical data regarding the results of such reviews, including rates at which death sentences are upheld or returned for retrial disaggregated by region, type of crime, and other categories;
- Ensure that the rights of those facing the death penalty are upheld and that proceedings meet international law and standards at all times, including the right to prompt access to a lawyer, to regular family visits, to presumption of innocence, not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the inadmissibility of confessions extracted under torture or other ill-treatment;
- Introduce institutional reforms to ensure that courts are independent and impartial;
- Introduce a legal procedure for requesting clemency in line with China’s obligations under international law;
- Ratify the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols, Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Review legislation on state secrets with a view to ensuring that information, including statistics,


relevant to the assessment of the State party's compliance with the provisions of the ICCPR throughout its territory, including in the Special Administrative Regions, is available to the Human Rights Committee and other UN bodies.


- End all procurement of organs which is not compatible with international standards requiring free and informed consent on the part of the donor, and ensure that the organ donor system is fully transparent.



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# CHINA'S DEADLY SECRETS

The Chinese government continues to conceal the extent to which capital punishment is being used in the country, despite pledges to bring about increased openness in the country's criminal justice system. This deliberate and elaborate secrecy system, which runs counter to China's obligations under international law, conceals the number of people sentenced to death and executed every year, both of which Amnesty International estimates run in the thousands.

This report reveals the extent to which the authorities maintain near absolute secrecy over the death penalty system, while using partial and generally unverifiable disclosures to claim progress and reject demands for greater transparency.

A new national public database of court verdicts that the government has hailed as a major advance in judicial transparency, China Judgements Online, while a positive first step, does little to lift the veil of state-enforced secrecy over the application of the death penalty in the country.

Amnesty International urges the Chinese authorities to immediately establish a moratorium on all executions and commute existing death sentences as a first step towards abolition, and make publicly available all relevant information on the death penalty – including statistics related to the number of death sentences and executions.

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