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# CHINA'S DEATH PENALTY REFORMS

## An HRIC Issues Brief<sup>1</sup>

The Chinese authorities have introduced reforms to the death penalty system aimed at “killing fewer, and killing carefully.” Key systemic challenges remain, however, in ensuring that the criminally accused are not arbitrarily deprived of their inherent right to life.

In 1996, Hugejileitu, a 18-year-old Inner Mongolian man, was executed on hooliganism and murder charges 62 days after a young woman was raped and murdered in the midst of a national “Strike Hard” (*yanda*) campaign against crime. Hugejileitu’s family had accused the police of torture during his interrogation and was also reportedly denied visitation prior to his execution.

Yan Feng, a friend of Hugejileitu who was also detained around that time, recalled hearing his friend’s screams during the interrogation. The next morning, Yan saw Hugejileitu squatting with his hands shackled behind his back. In 2005, almost 10 years after Hugejileitu’s execution, the official Xinhua News Agency reported that a serial killer had confessed to having committed the crime and gave a detailed account of the murder.<sup>2</sup>

China has long been criticized for its high number of executions. Exact figures on the number of executions carried out annually cannot be obtained because they are classified as state secrets, but various estimates have already ranked the number of executions in China as the highest in the world (see Wang Guangze’s article elsewhere in this issue of *CRF*). Amnesty International estimated that in 2006, between 7,500 and 8,000 people were executed in China, and that even the much smaller number of 1,010 executions indicated in publicly available documents made up more than 60 percent of the 1,591 executions reliably confirmed worldwide that year.<sup>3</sup> There are also concerns over the fact that the death penalty can be applied to as many as 68 wide-ranging offences, including economic or other non-violent crimes such as smuggling, counterfeiting currency, embezzlement and bribery.

In 1980, the power to review some capital punishment cases, such as murder, rape and robbery, was delegated from the Supreme People’s Court (SPC) to Higher People’s Courts (HPCs).<sup>4</sup> In a key reform move on the application of the death penalty in

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China, beginning January 1, 2007, the SPC reassumed power to review all death sentences handed down for immediate execution (*sixing liji zhixing*)—a move that Chinese officials claimed will help the government to “kill fewer and kill carefully.”<sup>5</sup>

The SPC review does not extend to death sentences handed down with a two-year reprieve (*sixing huanqi liangnian zhixing*), in which the death penalty is automatically commuted to life imprisonment if the convicted person does not willfully commit an additional crime during the two-year period.<sup>6</sup>

This Issues Brief provides an overview of the series of reforms that culminated in the SPC reassuming judicial review of immediate execution cases in January 2007, and examines the structural challenges of China’s judicial system that have serious implications for cases involving the death penalty. These include the lack of transparency in China’s death penalty figures, the prevalence of confession extracted through torture, the lack of procedural protections for a fair trial, and the lack of judicial independence.

The term “death penalty” will be used to refer to both types of death sentences, but the specific term *death penalty (immediate execution)* will be used if the scope of review only covered such cases.



**Delegates from Shanghai meet with central government officials during the 2007 session of the National People’s Congress, during which measures to discourage torture in possible death penalty cases were discussed. Photo: Associated Press**

## Overview of death penalty reforms

The SPC stated its intention to reform the death penalty system in its Second Five-Year Reform Plan (2006–2010).<sup>7</sup> Since 2006, several legal documents governing procedural aspects of death penalty cases have been issued. Box 1 highlights some of these major changes.

### BOX 1: KEY REFORMS TO THE DEATH PENALTY SINCE 2006

DOCUMENT ISSUED	ISSUING DATE	ISSUING BODY	SUBJECT MATTER
Supreme People's Court, Notice on Improving Work on Open Trial for Second Instance Cases with Death Sentences <sup>8</sup>	December 7, 2005	Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP)	Open trials for second instance courts in cases that may result in the death penalty and for which important facts and evidence were in dispute
Provision on Some Issues Concerning the Court Trial Procedures for the Second Instance of Cases Involving the Death Penalty (for Trial Implementation) <sup>9</sup>	September 21, 2006	SPC and SPP	Open trials in second instance courts in all death penalty (immediate execution) cases
Amendment to the Organic Law of the People's Court <sup>10</sup>	October 31, 2006	Standing Committee of the National People's Congress (NPCSC)	SPC to review <i>all</i> lower court decisions ordering a death sentence (immediate execution)
Provision of the Supreme People's Court on Several Issues Concerning the Review of Death Penalty Cases <sup>11</sup>	February 27, 2007	SPC	Details of circumstances in which the SPC would uphold a death sentence and when it would order a retrial in lower courts
Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases	March 9, 2007 <sup>12</sup>	SPC, SPP, Ministry of Public Security and Ministry of Justice	Elaboration of procedure to reduce wrongful death sentences, including the presence of witnesses at trial, and reaffirms that confessions extracted under torture cannot be used as the basis of conviction.

Further reforms may yet be issued. In late January 2007, SPC judge Lu Guanglun said that the SPC was considering sentencing guidelines for four types of cases that make up more than 90 percent of all death penalty sentences in China (murder, aggravated assault, robbery and drug trafficking).<sup>13</sup> These guidelines, however, have yet to be published as of June 1.

Box 2 provides a comparison of policy and procedure before and after the death penalty reforms began in 2006.

The flowchart at the end of this Brief illustrates the simplified process of the SPC review for cases involving one suspect on one criminal charge.<sup>22</sup>

## Remaining challenges to death penalty reforms

### LACK OF JUDICIAL INDEPENDENCE

The effectiveness of all legal reforms must be viewed in light of the fundamental lack of judicial independence.<sup>23</sup> The highly politicized nature of China’s judicial system under-

### BOX 2: KEY CHANGES PROMULGATED BY DEATH PENALTY REFORMS BEGUN IN 2006

SUBJECT MATTER	BEFORE REFORMS IN 2006	AFTER REFORMS
1) Exercise of the death penalty in general	No official position on the frequency of imposing the death penalty	Officially stated intent to “kill fewer, (and) kill carefully” <sup>14</sup>
2) Death penalty (immediate execution) cases review body	Higher People’s Courts (HPCs) reviewed certain kinds of death penalty (immediate execution) cases <sup>15</sup>	SPC reassumes power to review all death penalty (immediate execution) cases <sup>16</sup>
3) Decision on a wrongful conviction/sentence	Review court empowered to replace death sentence (immediate execution) with more lenient sentence when ruling that application of law was wrong or sentence inappropriate <sup>17</sup>	SPC will order a lower court to retry a case in most cases, except in very limited scenarios <sup>18</sup>
4) Questioning of convicted person during review	Review judges not required to question convicted person	SPC judges should question the convicted person “in principle” <sup>19</sup>
5) Open trial in second instance court	Open trial not required when certain procedures carried out and when facts are clear <sup>20</sup>	Open trial for all cases that may result in death penalty (immediate execution) <sup>21</sup>

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mines the ability of the courts to provide “a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>24</sup>

In practice, the work of the four levels of courts—the Supreme People’s Court, higher people’s courts, intermediate people’s courts and local courts—is guided by the Political-Legal Committee of the Communist Party of China (CPC), which consists of the heads of the public security organ, the state security organ, the procuratorate, the court, the judicial administrative organ and the administrative organ for civil affairs on the same level.<sup>25</sup> This Political Legal Committee also selects senior judges, including members of the court’s adjudication committee, which has the authority to decide important cases.<sup>26</sup> Chinese courts are also financially dependent on their equivalent governments for salaries, housing and other benefits, which may make it difficult for the court to rule against the government in particularly sensitive cases.<sup>27</sup> These factors allow opportunities for the CPC to exert significant influence, including the cloaking of the judiciary in a secrecy similar to that of the CPC. A prime example is the notorious secrecy surrounding China’s death penalty statistics, and the related lack of transparency in judicial application of capital punishment.

### **ABSENCE OF TRANSPARENCY**

Transparency is “a key component of the concept of accountability which underpins the international human rights system,” and “among the fundamental due process safeguards that prevent the arbitrary deprivation of life.”<sup>28</sup> China’s state secrets laws include no less than eight separate provisions for classifying death penalty-related information, maximizing government control over the nature and tenor of facts and statistics that are actually released.<sup>29</sup> The broadest classification places figures on the ratification and execution of death sentences nationwide at the top-secret level, and others cover the number of new prisoner executions, intermediate court ratification of death sentences, military statistics and information on the uses of executed criminals’ corpses and organs. Because current death penalty reforms do not include moves to declassify statistics on executions, it remains difficult to verify estimates on the number of executions in the past, or to gain a sense of how far the reform process might go in reducing executions in the future.<sup>30</sup>

International standards on the right to a fair trial include the provision that judgments rendered in a criminal case or in a lawsuit shall be made public except in circumstances where it is contrary to the interest of juvenile persons.<sup>31</sup> Currently, judgments in China’s death penalty cases are not routinely made public. There is no institutional avenue for legal professionals, scholars and the public in general to consistently examine the arguments that the courts have used to reach their decisions on death penalty cases, or to follow the development of domestic jurisprudence in this regard.<sup>32</sup>

### **THE PREVALENCE OF CONFESSION EXTRACTED THROUGH TORTURE**

The right of individuals to be free from torture or other cruel, inhuman or degrading treatment is one of the most basic human rights,<sup>33</sup> and no derogations may be made

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even in times of a public emergency.<sup>34</sup> In China, the prohibition on confessions extracted by torture has been in the Criminal Procedure Law (hereinafter “CPL”) since 1979,<sup>35</sup> but in practice, torture remains a serious problem within the Chinese criminal justice system. In December 2005, after concluding a two-week visit to China, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, concluded that the practice of torture, though on the decline particularly in urban areas, remains widespread in China.<sup>36</sup>

The significant gap between Chinese law and international standards is particularly evident in the stipulation that evidence procured through torture, coercion, intimidation, entrapment or deceptive practice can be introduced as long as it does not form the basis for conviction.<sup>37</sup> The lack of any law or regulation that absolutely excludes evidence obtained through torture from making its way through Chinese courts should raise serious questions regarding the nationwide conviction rate of nearly 99.8 percent for most of 2006.<sup>38</sup>

The serious problem of coercive confessions being used to convict defendants in criminal cases has been acknowledged by a deputy procurator-general of the Supreme People’s Procuratorate, Wang Zhenchuan, who admitted “nearly every wrongful verdict in recent years relates to illegal interrogation,” and that there were at least 30 cases every year of wrongful convictions attributable to confessions extracted through torture.<sup>39</sup> The reported torture of Hujijileitu related above may well have been the key factor in his wrongful conviction and execution. Although death penalty reform reaffirms the prohibition against basing a conviction on confessions extracted under torture,<sup>40</sup> it does not explicitly exclude such a confession from evidence that can be used against the defendant.

**“Nearly every wrongful verdict in recent years relates to illegal interrogation,”**

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**Deputy Procurator-General  
Wang Zhenchuan**

## **LACK OF PROCEDURAL GUARANTEES TO A FAIR TRIAL**

The right to a fair trial is a fundamental human right and essential component of the administration of criminal justice. In 1948, the Universal Declaration of Human Rights, the cornerstone of human rights law, proclaimed that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”<sup>41</sup> In 1966, this right was codified and further elaborated in Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Committee, which is the treaty monitoring body for the ICCPR, has explicitly stated that for cases involving the death penalty, “[t]he procedural guarantees therein prescribed [in the ICCPR] must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defense, and the right to review by a higher tribunal.”<sup>42</sup> Given the irreversible nature of execution, the risk of executing innocent individuals remains an unresolved tension in jurisdictions where the death penalty remains a legally sanctioned form of punishment, and most particularly in countries such as China where international standards of fair trial are not consistently met. Although China has yet to

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ratify the ICCPR, it signed this key human rights treaty in 1998 and is bound by the spirit of the treaty to refrain from acts that would defeat its object and purpose.<sup>43</sup>

Procedural justice remains an area of serious concern in China. Four years after the revised CPL came into force in 1997, a report by HRIC, *Empty Promises: human rights protections and China's criminal procedure law in practice*, found that the CPL fell short of international standards in a range of areas relating to criminal justice, such as the right to a fair trial. Due process protections continue to be key issues in China's legal reform process. Procedural justice is particularly at risk during China's nationwide "strike hard" campaigns, when police, public prosecutors and courts collaborate to investigate, try and punish crime severely and swiftly.<sup>44</sup> The "Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases" affirmed that the national "strike-hard" strategy will continue to be a key component in the country's "difficult and complex task of protecting social harmony."<sup>45</sup> Given this continued emphasis on "strike-hard" strategy, the following procedural justice concerns are likely to remain particularly relevant in the context of China's death penalty reforms.

### **Presumption of innocence**

The CPL does not include a presumption of innocence. There has been discussion for several years of possible revisions to the Criminal Law and CPL to ensure that a person charged with a criminal offense is presumed innocent until proven guilty, in accordance with the recommendation made by the UN Working Group on Arbitrary Detention in 1997, but no such revision has yet been enacted.<sup>46</sup> Apart from the question of judicial principle, the absence of a presumption of innocence has a direct bearing on the prevalence of confessions extracted through torture.

### **Intimidation of criminal defense lawyers**

Another consequence of the absence of a presumption of innocence is constraints on the efforts of criminal defense lawyers to zealously defend their clients. Article 306 of the Criminal Law holds criminal defense lawyers personally liable if they destroy or forge evidence, help any of the parties destroy or forge evidence, or coerce or entice their client or a witness into giving false testimony or changing testimony in defiance of the facts.<sup>47</sup> The main threat lawyers face under this law is when they counsel their clients to repudiate a forced confession, persuade a witness to retract false testimony obtained by police through coercive means, or turn up evidence disadvantageous to the prosecution. Some 500 lawyers were detained under this law between 1997 and 2002,<sup>48</sup> and more than 100 have been accused specifically of violating Article 306 by fabricating evidence. Ultimately, the accused lawyers have been cleared in more than 90 percent of these Article 306 cases,<sup>49</sup> indicating that the statute is often abused or invoked improperly by officials attempting to constrain defense lawyers.

Basic legal defense of the criminally accused is further undermined by three difficulties

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that Chinese criminal defense lawyers routinely face in performing their duties: restrictions on meeting with their clients, gathering evidence and accessing all case documents.<sup>50</sup> These restrictions and their overall chilling effect on criminal defense efforts adversely affect the implementation of two key international standards guaranteeing a person's right to a fair trial: to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; and to defend himself in person or through legal assistance of his own choosing.<sup>51</sup>

### **Examination of witnesses**

Under the ICCPR, the opportunity for an individual “to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”<sup>52</sup> is a minimum requirement for a fair trial. At present, less than 10 percent of witnesses testify at various levels of the Chinese courts, according to Hu Yunteng, Deputy Director of the SPC Research Office.<sup>53</sup> This low rate of witness participation deprives defendants of the opportunity to challenge prosecution witnesses, or take advantage of testimony that could exculpate them, a potentially fatal disadvantage in cases where the death penalty might apply. While the Second Five-Year Reform Plan of the People's Courts (2006–2010) and a Notice of the reform package encouraged increased witness attendance by stipulating that important witnesses “must attend the trial” (*yingdang chuting*),<sup>54</sup> the SPC diluted this requirement in its latest Opinion by stipulating only that the court “must inform” (*yingdang tongzhi*) key witnesses to attend the trial.<sup>55</sup>

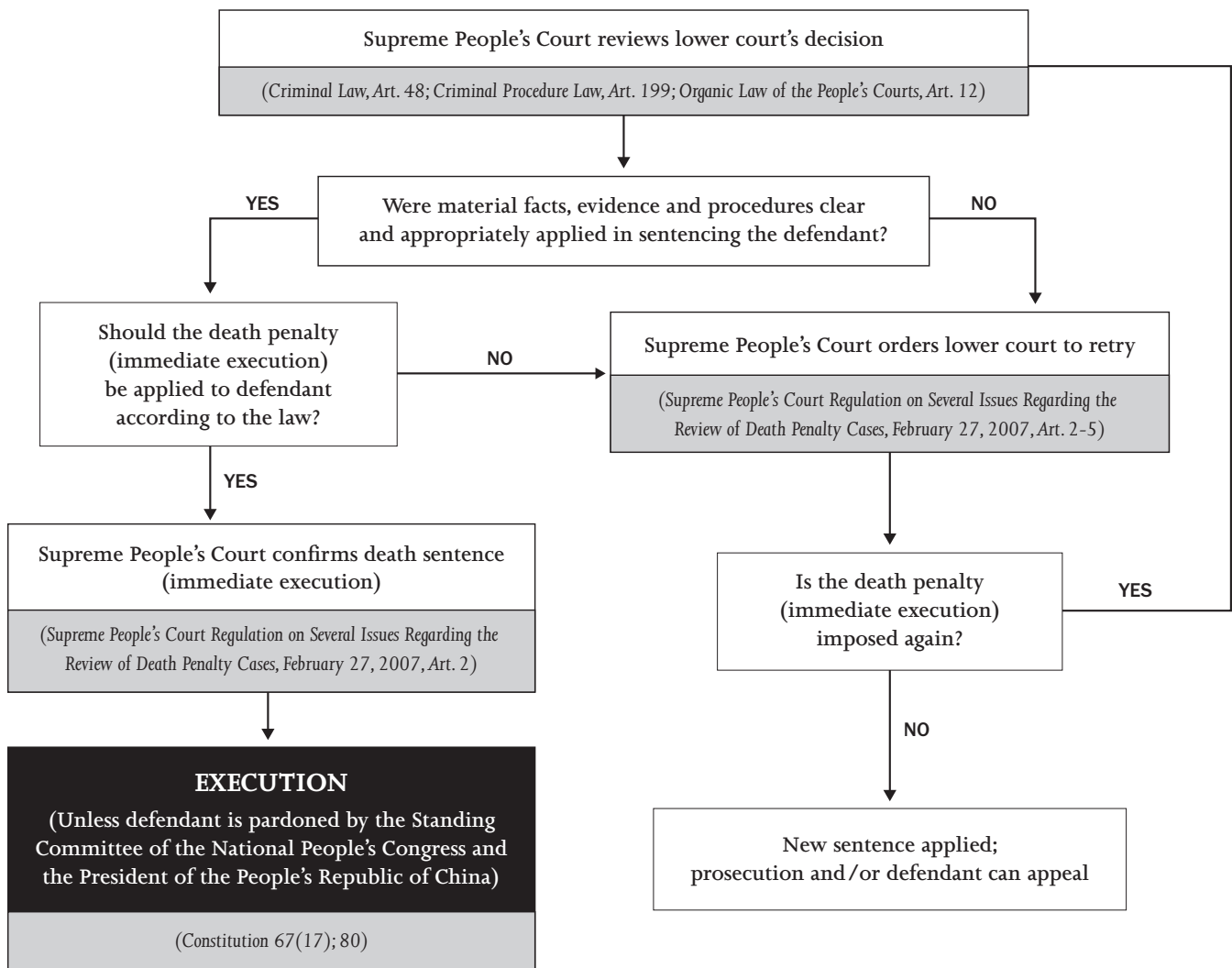
Professor He Jiahong of Renmin University believes a major reason for witnesses' reluctance to testify in court is the fear of revenge,<sup>56</sup> given the well-known phenomenon of witness intimidation in sensitive criminal cases. For instance, one day before the retrial of blind rights defense lawyer Chen Guangcheng, one of his key witnesses, Chen Guanghe, was abducted by individuals allegedly linked to the local public security bureau (PSB). Days later, police notified Chen Guanghe's family that he had been formally arrested and placed under criminal detention on charges of forging evidence.<sup>57</sup>

## **Moving forward with reform**

International human rights law stipulates that no one shall be arbitrarily deprived of life. Although not prohibited under international law, application of the death penalty must be seen as an “extreme exception” to the inherent right to life.<sup>58</sup> China's integration into the international human rights system brings with it a large number of concrete obligations to fulfill the fundamental protection of an individual's right to life. Making death penalty reform a reality will depend on key systemic changes, including a mechanism to monitor, assess and ensure effective implementation of the reforms. Effective implementation will further require a series of concrete measures: 1) Declassifying statistics and other information relating to the death penalty to allow monitoring of its application and possible misuse; 2) rendering confessions extracted under torture

strictly inadmissible as evidence in trials; 3) requiring all key witnesses to appear in trials where the death penalty is applicable; 4) improving defendants' access to legal counsel; and 5) curtailing the harassment and intimidation of criminal defense lawyers. Until these concrete steps can be implemented, China will continue to face challenges in its efforts to bring its application of the death penalty in line with international human rights standards, and innocent people such as Hujileitu will continue to suffer the most irreversible consequence of injustice.

**Death Penalty Review Process for Cases in Which a Defendant is Sentenced to Death with Immediate Execution on One Capital Charge**



**Notes**

1. The primary researchers and drafters of this Brief were Cliff Ip, Si-si Liu and Bonny Ling. The authors are grateful to Elisabeth Wickeri for earlier reviews of this draft.
2. “10 Years After Execution of 18-Year-Old in Hohhot, Another Man Says He Is the Real Murderer” [Jiangsha xiongshou bei qiangjue shinianhou zhenxiong xiang changming], Xinhuanet, February 14, 2007, [http://news.xinhuanet.com/legal/2007-02/14/content\\_5738675.htm](http://news.xinhuanet.com/legal/2007-02/14/content_5738675.htm).

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3. Amnesty International, “Facts and Figures on the Death Penalty (As of January 1, 2007),” Amnesty International Web site, <http://web.amnesty.org/library/Index/ENGACT500022007>.
  4. The Higher People’s Courts (HPCs) were delegated review power for death penalty cases through a number of legal documents since 1979. The list of crimes varied over the years, but these three crimes (murder, rape and robbery) were the common ones throughout these documents. In addition, some provinces had review power on drug cases involving the death penalty since 1991.
  5. Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security and Ministry of Justice, Notice on Printing and Distributing the “Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases” [Yinfa “Guanyu jinyibu yange yifa banan quebao banli sixinganjian zhiliande yijian”] de tongzhi], March 9, 2007. Para. 4.
  6. See National People’s Congress, Criminal Law of the PRC, adopted on July 1, 1979, revised on March 14, 1997, amended on December 25, 1999, August 31, 2001, December 29, 2001, December 28, 2002, February 28, 2005 and June 29, 2006, Article 48. According to the Criminal Procedure Law, where the Intermediate People’s Court orders a death sentence with a two-year reprieve, it is the HPC which will review this sentence. See Criminal Procedure Law of the PRC, adopted on July 1, 1979 and amended on March 17, 1996, Article 201.
  7. Supreme People’s Court, People’s Courts’ Second Five-Year Reform Plan (2006–2010) [Renmin fayuan diege wunian gaige gangyao (2006–2010)], October 26, 2005. Please note that this Brief does not include an earlier SPC Notice on careful application of the death penalty in rural areas, which was not mentioned in the Reform Plan. For the provisions in this Notice, see Supreme People’s Court, Notice on Publishing “The Summary of Workshop on People’s Courts’ Maintaining Stability in Rural Areas Through Criminal Justice Work” [Zuigao renmin fayuan guanyu yinfa “Quanguo fayuan weihu nongcun wending xingshi shenpan gongzuo zuotanhui jiyao” de tongzhi], October 27, 1999, Para. 2(1).
  8. Supreme People’s Court, Notice on Improving Work on Open Trial for Second Instance Cases with Death Sentences [Zuigao renmin fayuan guanyu jingyibu zuohao sixing diershen anjian kaiting shenli gongzuode tongzhi], December 7, 2005.
  9. Supreme People’s Court and Supreme People’s Procuratorate, Provision on Some Issues Concerning the Court Trial Procedures for the Second Instance of the Cases Involving Death Penalty (for Trial Implementation) [Guanyu Sixing Diershen Anjian Kaiting Shenli Ruogan Wentide Guiding (Shixing)], September 21, 2006.
  10. Standing Committee of the National People’s Congress, Amendment to the Organic Law of the People’s Courts, October 31, 2006.
  11. Supreme People’s Court, Provisions of the Supreme People’s Court on Several Issues Concerning the Review of Death Penalty Cases [Guanyu Fuhe sixinganjian ruogan wentide jueding], February 27, 2007.
  12. This is the issuing date of the Notice on Printing and Distributing the “Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases,” which contains a full text of the said Opinions. The issuing date of the Opinions itself is not included in the Notice and could not be found to the best of the authors’ efforts.
  13. “Supreme People’s Court Judges to Meet Lawyers Involved in Death Penalty Cases upon Request” [Sixing fehean lushi kejian zuigaofa faguan], *The Beijing News*, January 29, 2007.
  14. Notice on Printing and Distributing the “Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases,” op. cit., Para. 4.
  15. These cases included murder, robbery and drug trafficking in certain provinces. The major legal documents which allowed for the delegation include: (i) Supreme People’s Court, Notice on Certain Regulations About Reporting Review of Death Penalty Cases [Zuigao renmin fayuan guanyu baosong sixing fuhede jixiang guidingde tongzhi], December 12, 1979; (ii) Standing Committee of the National People’s Congress, Decision About the Review of Death Penalty Cases [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu sixing anjian

- hezhun wentide jue ding], June 10, 1981; (iii) Supreme People's Court, Notice on Delegating the Power of Approval of Death Sentences in Some Cases to Higher People's Court [Zuigao renmin fayuan guanyu shouquan gaoji renmin fayuan hezhun bufen sixing de tongzhi], September 7, 1983; (iv) Supreme People's Court, Notice on Delegating the Power of Approval of Death Sentences in Drug Crimes to the Yunnan Higher People's Court [Guanyu shouquan yunnansheng gaoji renmin fayuan hezhun bufen dupin fanzui sixing anjiande tongzhi], June 6, 1991; (v) Supreme People's Court, Notice on Delegating the Power of Approval of Death Penalty Cases to Higher People's Courts and People's Liberation Army Courts [Zuigao renmin fayuan guanyu shouquan gaoji renmin fayuan he jiefangjun junshi fayuan hezhun bufen sixing anjiande tongzhi] September 26, 1997; (vi) Supreme People's Court, Interpretation on Certain Issues Relating to the Implementation of the Criminal Procedure Law of the PRC [Zuigaorenmin fayuan guanyu zhixing "Zhonghua renmin gongheguo xingshi susongfa" ruogan wentide jieshi], June 29, 1998, Article 274. An exception was made for cases in which the appeal court overturned the ruling of the court of first instance: Supreme People's Court, Interpretation on Certain Issues Relating to the Implementation of the Criminal Procedure Law of the PRC [Zuigao renmin fayuan guanyu zhixing "zhonghua renmin gongheguo xingshi susongfa" ruogan wentide jieshi], June 29, 1998, Articles 257 and 274.
16. Amendment to the Organic Law of the People's Courts, *op. cit.* Art. 48 of the Criminal Law and Art.199 of the Criminal Procedure Law provide that this review power stays with Supreme People's Court. However, various other legal documents unjustifiably deviated from the two national laws by delegating reviewing powers to the HPC. See "Review of Procedure Laws Raises Hopes for Justice," *China Rights Forum*, 2 (2005): 43–50.
  17. Interpretation on Certain Issues Relating to the Implementation of the Criminal Procedure Law of the PRC, *op. cit.*, Art. 285(3). Moreover, a 1979 SPC Notice (no longer effective; passed before SPC delegated its review power in certain death penalty cases) provided that the SPC could order a lower court to retry the case *or* substitute lower court's sentence with its own. Refer to: Supreme People's Court, Notice on Certain Regulations About Reporting Review of Death Penalty Cases [Zuigao renmin fayuan guanyu baosong sixing fuhede jixiang guidingde tongzhi], December 12, 1979, (Para. 4(3)).
  18. Provisions of the Supreme People's Court on Several Issues Concerning the Review of Death Penalty Cases, *op. cit.*, art. 6 and 7. Art. 6 provides that, if a person is sentenced to death based on two or more charges by lower courts and SPC finds the procedures, material facts and evidence for all charges well-established, but the application of the penalty to some—not all—charges is found inappropriate according to law, then SPC can substitute the application of law concerning these wrong charges, and confirm the death sentence for those charges that are based on correct application of law. If more than one person is sentenced to death by lower courts and SPC find the procedures, material facts and evidence for the conviction well-established, but the application of the penalty to some defendants is found inappropriate according to law, then SPC can substitute the sentence of these defendants while approving the sentence for others (Article 7). No limit on the number of retrials is specified.
  19. Notice on Printing and Distributing the "Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases," *op. cit.*, Para. 42.
  20. Criminal Procedure Law, *op. cit.*, Art. 187. This article has yet to be amended despite the reform.
  21. Open trials are however not conducted for cases involving state secrets, personal privacy or minors in most cases. Refer to Criminal Procedure Law, *op. cit.*, Article 152; Provision on Some Issues concerning the Court Trial Procedures for the Second Instance of the Cases Involving Death Penalty (for Trial Implementation), *op. cit.*
  22. It is important to note here that SPC review powers also extend to the other two types of death penalty cases, one suspect with multiple charges resulting in death sentences and multiple suspects involving in one criminal case, but these more complicated processes are not depicted by this flowchart.
  23. While Article 126 of the PRC Constitution bars interference from administrative departments, social organizations and individuals into the work of the courts, it, however, does not extend

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- the same prohibition against interferences from political parties. Article 126 states: “The people’s courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations or individuals.”
24. United Nations, International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) on December 16, 1966, entered into force on March 23, 1976, Article 14.
  25. Zhao Zhenjiang (ed), *Forty Years of the Chinese Legal System*, (Beijing: Peking University Press, 1990), 115, quoted in Albert Chen, *An Introduction to the Legal System of the People’s Republic of China*, 3rd ed. (Hong Kong: LexisNexis, 2004), 132.
  26. Donald Clark, “Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments,” *Columbia Journal of Asian Law* 10, (1996):8, quoted in Lawyers Committee for Human Rights, *Lawyers in China: Obstacles to Independence and the Defense of Rights*, 1998, 2.
  27. Albert Chen, *op. cit.*, 153–154.
  28. Special Rapporteur on extrajudicial, summary or arbitrary executions, Annual Report 2006, UN Doc. E/CN.4/2006/53, March 8, 2006 (*hereinafter SR Report 2006*), Para. 3.
  29. Statistics about death penalty are protected as “top secrets” at the national level. The same statistics at the level of province, autonomous region and directly-administered municipality are classified as “highly secret” and those at the Intermediate Court level are classified as “secrets.” See Ministry of Justice and the National Administration for the Protection of State Secrets, Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work [Sifa xingzheng gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding], August 31, 1995, Article 2 (2)(1) and Article 2 (3)(3); Supreme People’s Procuratorate and the National Administration for the Protection of State Secrets, Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People’s Procuratorates [Jiancha gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding], January 15, 1996, Article 3 (1)(2); and Supreme People’s Court and the National Administration for the Protection of State Secrets, Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People’s Courts [Renmin fayuan gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding], July 31, 1995, Article 3 (1)(3), Article 3 (2)(3), and Article 3 (3)(3–5). See also: forthcoming Human Rights in China report on China’s state secrets framework, *State Secrets: China’s Legal Labyrinth*, June 2007.
  30. Zhao Lei, “China’s Courts to Order Fewer Death Sentences” [Zhongguo sifa kaiqi shaosha niandai], *Nanfang Weekend*, December 31, 2006.
  31. ICCPR, *op. cit.*, Article 14(1).
  32. See also Liu Nanping, “Legal Precedents’ with Chinese Characteristics: Published Cases in the Gazette of the Supreme People’s Court,” *Journal of Asian Law* 5, no. 1 (1991): 107–140; and Randall Peerenboom, “Assessing Human Rights in China: Why the Double Standard?,” *Cornell International Law Journal* 38, no. 1 (2005): 71–172.
  33. ICCPR, *op. cit.*, Article 7; and the United Nations, Universal Declaration of Human Rights (UDHR), adopted by General Assembly resolution 217A (III) on December 10, 1948, Article 5.
  34. ICCPR, *op. cit.*, Article 4 (2); and United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 on December 10, 1984, entered into force on June 26, 1987, Article 2.
  35. Art. 32 of the 1979 Criminal Procedure Law and Art. 43 in its 1996 Revision, *op. cit.*
  36. “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak—Mission to China,” E/CN.4/2006/6/Add.6, March 10, 2006.
  37. *Empty Promises: Human Rights Protections and China’s Criminal Procedure Law* (New York: Human Rights in China, 2001), 74.
  38. According to a Xinhua news report on supreme court statistics: “More than 759,230 suspects were convicted in China in the January–November period [of 2006], while a relatively small number—1,464 people—were found innocent . . . The convicted number rose 4.3 percent from the same period in 2005.” This means that the conviction rate for January to November 2006 was as high as 99.8 percent. “Chinese Courts Convict over 759,230 People Last Year,”
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- People's Daily*, January 8, 2007, [http://english.peopledaily.com.cn/200701/08/eng20070108\\_339026.html](http://english.peopledaily.com.cn/200701/08/eng20070108_339026.html).
39. Bill Savadove, "Stop Torturing Suspects to Get Confessions, Says Prosecutor," *South China Morning Post*, November 21, 2006.
  40. Notice on Printing and Distributing the "Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases," op. cit., Para. 6.
  41. UDHR, op cit., Article 10.
  42. Human Rights Committee, *General Comment No. 6 on the Right to Life (Article. 6)*, April 30, 1982, Para. 7.
  43. United Nations, Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties on May 22, 1969 and entered into force on January 27, 1980, Article 18.
  44. For more analysis on the role of Chinese courts during Strike Hard campaigns, see Susan Trevaskes, "Severe and Swift Journal in China," *British Journal of Criminology* 47 (2007): 23–41.
  45. Notice on Printing and Distributing the "Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases," op. cit., Para. 3.
  46. Working Group on Arbitrary Detention, "Report: Visit to the People's Republic of China," UN Doc.E/CN.4/1998/44/Add.2, December 22, 1997, Para. 109. Article 14(2) of the ICCPR states, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."
  47. Criminal Law of the PRC, op cit., Article 306.
  48. Bill Savadove, "Justice Remains Shanghaied in City's Law Courts; Intimidation and Physical Violence Against Lawyers Is on the Rise, and Getting a Fair Trial is Still Far from Guaranteed," *South China Morning Post*, February 7, 2006.
  49. "Chinese Article Claims That Research on the Difficulties Faced by Criminal Defense Lawyers Restricted After Revealing "Shocking" Initial Results," Congressional-Executive Commission on China Web site, January 13, 2005, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=5472>.
  50. For more information on these difficulties, see Yi Yanyou, *Criminal Procedure Law* [Xingshi Susong Fa], 2nd ed. (Beijing: Law Press, September 2004), Chapter 9.
  51. ICCPR, op cit, Article 14(3).
  52. Ibid.
  53. Chen Hongwei and Zhao Hongyan, Hu Yunteng: Collaborative Efforts Needed to Make Witnesses Testifying at Courts Reality" [Huyunteng: Jiejuezhengrenchutingzuozhengnan xuyao duofang goongtong nuli], *Legal Daily* via Xinhuanet.com, April 29, 2007, [http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2007-04/29/content\\_6042544.htm](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2007-04/29/content_6042544.htm).
  54. Supreme People's Court, Notice on Improving Work on Open Trial for Second Instance Cases with Death Sentences, op. cit., Para. 4.
  55. Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases, op. cit., Para. 32.
  56. "Criminal Procedure Law Revision Urgently Requires System for Compelling Witnesses" [Xiu-gai susongfa shirang zhengren chuting de dangwu zhiji], *Legal Daily* via Xinhua, April 29, 2007, [http://news.xinhuanet.com/legal/2007-04/29/content\\_6042557.htm](http://news.xinhuanet.com/legal/2007-04/29/content_6042557.htm).
  57. Ding Xiao, Chen Guangcheng's Witness Placed Under Criminal Detention [Chengguangcheng zhengren Chengguanghe bei dangju xingju], *Radio Free Asia*, December 4, 2006, <http://www.rfa.org/mandarin/shenrubao/2006/12/04/chen>; and HRIC press release, "Witnesses Prevented from Appearing at Chen Guangcheng Retrial," November 27, 2006, <http://hrichina.org/public/contents/31723>.
  58. Special Rapporteur on extrajudicial, summary or arbitrary executions, Annual Report 2005, UN Doc. E/Cn.4/2005/7, Dec. 22, 2004, Para. 55.