

DEATH PENALTY IN CHINA



Is there any better use for this chair?



TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

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“Criminals, people who commit crimes, usually society rejects these people. They are also part of society. Give them some form of punishment to say they were wrong, but show them they are part of society and can change. Show them compassion”

The Dalai Lama on abolition of death penalty,
13 April 2005, Tokyo, Japan

I N T R O D U C T I O N

The actual number of people who are sentenced to death each year in China is not known. Amnesty International states that in any three months, China will have executed three times more persons than all the other countries of the world put together will have done in an entire year. According to the figures that Amnesty International has monitored over a period of several years, between 1990 and the end of 2000, over 29,536 people were sentenced to death and over 19,520 death sentences¹ were carried out. These numbers are believed to be far below the actual number of death sentences and executions as they are gathered from public reports which Amnesty International has monitored. Only some of the death sentences and executions in China are publicly reported as different state authorities selectively release information. In more recent years, over 4,000 people were believed to have been executed in 2003 and more than 3,000 in 2004². Some observers believe that as many as 10,000 people a year are executed every year. The reasons for this startling figure of executions are explained in the main body text of the report.

The death penalty is employed by the Chinese government to reduce crime but surprising fact remains that the number of crimes committed in China is far fewer than crimes committed in the United States of America. How can China have this staggering number of executions within these circumstances? In that very fashion death sentence was carried out in China for the last two decades but with little positive outcome. The crimes loom back from time to time and with no deterrence it was supposed to reflect.

The Death Penalty in China is a very controversial issue and has been subjected to widespread international criticism over the last two decades. In 2003, Lobsang Dhondup who was accused of being responsible for a bomb blast in Sichuan Province was executed just hours after the Higher People's Court rejected his appeal. Trulku Tenzin Delek, the co-accused in this case, was also sentenced to death but his sentence included the condition of a two-year stay or suspension in his execution. These sentences attracted

much attention worldwide bringing China's use of death penalty under international scrutiny again and, in particular, with legal scholars and experts inside and outside China. The death sentences in China are carried out in a very dubious and ambiguous manner deprived of standardized procedures required to follow. Also the factor of administrative functioning of the local government has huge influences on the death penalty proceedings. In the same way the Criminal Procedure Law (CPL) of China malfunctions although it was revised and amended several times since its introduction. Speculation is rife amongst legal scholars and officials that China is yet again on the verge of embarking on a major revision of some of its key controversial clauses concerning the implementation and enforcement of the death penalty during the coming annual session of the National People's Congress (NPC) in March 2006 in early 2006.

One of the key factors behind China having such an appalling high number of executions is traced to controversial domestic campaigns called the "Strike Hard" campaign. The campaign was first launched in 1983 to combat what was viewed as a rise in crime and has been re-launched many times since then to severely crackdown the social disorder. The campaign was intended to crackdown severely on crime. It is under this campaign that the majority of China's staggering numbers of executions have been carried out.

In 1983, the Organic Law was promulgated in which China's Supreme Court relinquished the right to review and approve death sentence in order to facilitate provincial and local governments' ability to deal with crime more efficiently by diminishing legal rights and safeguards. Another purpose was to solve as many cases as possible before they were brought to Supreme Court in order to ease the burden on Supreme Court. Unfortunately, the promulgation of the Organic Law only brought more complications and shortcomings. It empowered the police and other law-enforcement agencies to exercise wider ranging powers that resulted in widespread official intervention in deciding the course of cases in the forms of denying fair and open trials, custodial torture and mistreatment, and deprived individuals of their legal rights as guaranteed in the Chinese Constitution.

More than 90% of executions in China are decided by and carried out by provincial courts. Very few important cases are sent to the Supreme Court for their review. The judiciary in China is a major concern as it is not an independent institution and officials are widely perceived and considered as instruments of the state than organ defending citizens' rights.

This report reflects that there are many ways by which China can reduce the number of executions if it reforms the existing punishment system, respects the civil and political rights of citizens, and allows fair and open legal proceedings in case involving the death penalty. Guaranteeing these rights to citizens will drastically alter the legal system as well as the execution figures. The report also focuses on much needed areas of reform and the replacement of certain clauses of the Xifang system³. The report seeks a clear elaboration and definition regarding the types of crimes that defined as endangering national security. The elaboration on this law will have a great deal of impact on how China sees peaceful and non-violent expressions of freedom and protest in Tibet and Xinjiang which have been branded as acts endangering the national security. The hundreds of innocent people are wrongly charged and executed every year for allegedly endangering state security and harming the national stability.

Further changes are certain to take place in China in the next few years both socially and economically. In 2008, China will host the Olympics and will naturally draw international attention on social, economic and political conditions and these issues likely to be discussed and scrutinized by the world body. China is currently a member of World Trade Organization (WTO) and has already agreed to make significant changes to its economic and social policies as a member state. Also, it is rumoured that at the next annual session of the National People's Congress (NPC) the death penalty is to be put on the table for debate and reform. Will reform with respect to the use of the death penalty or even abolition of the death penalty be discussed? These are some of the areas to be discussed in this report.

CHINESE CRIMINAL PROCEDURE LAW

On November 8, 2005 the Chinese President Hu Jintao visited the United Kingdom to discuss bilateral and trade issues but his visit sparked international attention on the situation of human rights in China with a particular focus on Tibet. One of the key areas of the criticism by human rights groups was the death penalty system in China. The groups called for reform and abolition. In the media, legal experts pointed out serious problems in China's domestic and Criminal Procedure Law.

The People's Republic of China (PRC) was established as a socialist country in 1949. Just after the ten-year period of the Cultural Revolution (1966-1977), in 1979 the first comprehensive Criminal Procedural Law was enacted. Since then, legislation and criminal sanctions have often been used as an instrument to suppress perceived antisocial or counter-revolutionary behaviour that endangers public security, including political, labour and religious activities.

In 1996, revisions on the original 1979 Criminal Procedure Law initially appeared to promise considerable improvements to the criminal process. However, in practice, ambiguity of terminology, numerous exceptional cases and failure in provision for certain issues have disillusioned those hopeful of significant change for the better. The Ministry of State Security and the Ministry of Public Security largely control the criminal justice system and there exists no legal mechanism for challenging the authority of these two organs although litigation laws were enacted and drafted on paper.

Section 4 of part III of the Law of Criminal Procedure (CPL) provides the framework for the endorsement and review of death sentences, establishing that final approval of all death sentences rests solely with the Supreme People's Court. However, in June 1981, the Standing Committee of National People's Congress (NPC) waived this directive, delegating power back down to the higher people's courts to grant approval of the death penalty in the case of

certain crimes such as robbery, rape and murder. As this nullifies an additional safeguard for defendants set out in national law, legal analysts in China have described this action as unconstitutional.

There are many serious problems with current legal procedures in China as different local governments have different legal proceedings. There is no standard legal procedure commonly practiced across China. Although Article 12 of Chinese Criminal Law states that every citizen is “**Innocent Until Proven to be Guilty**”, which is much in accord with international standards. But when it comes to implementation of the law on actual grounds, the local governments often tend to overlook the procedural law. As a result China has wide scale detention, arrest and torture. There is a gap between what laws stipulate and how it is practice on the grounds. The violation of human rights in China occurs because of the gap between stipulation and implementation. Denial of access to information on legal proceedings and the exclusion of observers are commonplace in the context of capital crimes involving politically sensitive issues. The courts and law enforcement agencies justify this under the pretext that a case involves “state secrets”. Additionally, the gravity of the sentence passed is often incommensurate with that of the alleged offence. Other concerns include the wide powers held by the police to impose periods of detention lasting up to several years without any judicial review.

The state’s right to exercise exceptional and unlimited power was granted by the Article 28 of Constitution, which stipulates that;

“The State maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes acts that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms”.

While, theoretically, the Chinese Administrative Procedure Act grants the right to appeal, it is generally not possible for prisoners to appeal their sentences. Besides, there is no provision to allow sufficient time to prepare for a defense. Defense arguments or statements are usually restricted to use

when appealing for mitigation of punishment, rather than for proof of innocence. Even the right to trial in an open court is denied. Often the person who has been charged with a criminal act is not permitted to present any defense, is not represented by legal counsel, and appears in Court only long enough to hear the charge against him and his conviction and sentence.

The CPL provides for the use of the death penalty in two categories. The death penalty is only to be applied to those offenders who commit the most heinous crimes. The CPL categorizes the execution of death penalty i.e. the two-year suspension of execution and the death penalty without suspension of execution. The law stipulates that in the case of a criminal who is sentenced to death, but for whom immediate execution is not essential, a two-year suspension of execution may be pronounced at the time the death sentence is imposed. The convicted person will be imprisoned and will be subjected to reform through labour and officials will observe the results. If the person is considered to have repented and reformed during the period of suspension, his sentence will be reduced to life imprisonment. If the prisoner is considered not only have repented but also to have demonstrated meritorious service, he may have his sentence reduced to not less than fifteen years and not more than twenty years of fixed-term imprisonment. Those who are considered to have resisted reform “in an odious manner”, provided the evidence of such behaviour is verified, are to be executed upon a ruling or approval the Supreme Court”.⁴ It is also the case if the convicted person is deemed to have truly repented of his crime during that period, his sentence may be mitigated to a sentence of imprisonment, of not less than 15 years.

In the Criminal Procedure Law, there is a code or procedure with respect to arrest, detention, trial and conviction. This procedure is supposed to be followed as stipulated by this law. Chinese Law given below⁵

Prosecution

The people's procuratorates (public prosecutors) are responsible for initiating public prosecution. The people's procuratorates have the power to investigate criminal cases as well as the power to make decisions of prosecution, non-prosecution or exemption from prosecution in each criminal case considering the evidence of the case and nature and circumstances of the crime.

Judiciary

The people's courts are responsible for adjudication, and no other bodies are given the power to adjudicate criminal cases. The number of professional judges as of 31 December 1986 was 137,066, out of which 19,897 were female judges. More than 144,000 employees are working in the judicial system.

Prisons

In Chinese prison services, there have been various new ways of mobilizing public participation in helping re-mould prisoners. For example, famous scholars, writers, educators, artists, musicians and sportspeople are invited to call on prisoners, and encourage them to make more efforts to reform themselves; former prisoners who have been already integrated into the society after release are organized to persuade current inmates to re-mould themselves; family members, relatives and friends of the prisoners are encouraged and provided with every facility to admonish and educate them.

Non-institutional services

In China, supervision of offenders both during the suspension of execution of sentence and after release on parole is carried out by the public security organ (police). Probationers and parolees are turned over by the public security organ to a work unit or a basic level organization. The policeman in charge of the community shall supervise their daily life, their work and ideological trend and encourage their

consciousness to become law-abiding citizens. Meanwhile the policeman shall keep in touch with their neighbours if they conduct any law-breaking activities.

Pre-trial detention

The Criminal Procedure Law stipulates that, in hearing a case of public prosecution, the people's court shall announce judgement within one month after accepting the case, and it may extend one month and one-half at the latest. Accordingly, pre-trial detention is not considered to pose any serious problem.

Diversion

There are several diversion schemes to imprisonment.

Police are empowered to give warnings or to impose a certain limited amount of fines (not more than 200 yuan) to the criminals who have committed minor offences (Security Control and Enforcement Law). This warning and fine are regarded as a final sanction imposed by the police and they need not send the case to either the public prosecutor nor the court. This system is applicable to various types of minor offences including theft, embezzlement, fraud, assault, gambling, violations of traffic regulations and various types of public disturbances. If the person who receives this summary sanction is dissatisfied with the disposition, he/she can appeal to the higher police organ and finally to the courts. This scheme is fully utilized as an alternative and diversion to the formal criminal justice procedure and imprisonment.

At prosecution stage, public prosecutors are empowered to grant exemption from prosecution, considering the gravity of the crime and other circumstantial factors, even if there is enough evidence to convict the suspect. According to the Criminal Law, suspension of sentence may be pronounced for an offender who has been sentenced to criminal detention or to fixed-term imprisonment for not more than three years according to the circumstances of his/her crime and his/her demonstration of repentance, and where it is considered that applying a suspended sentence will not result in further harm to society.

An offender sentenced to fixed term imprisonment of which not less than half has been executed, or an offender sentenced to life imprisonment of which not less than ten years have been actually executed, may be granted parole if he/she demonstrates true repentance and will not cause further harm to society. If special circumstances exist, the above restrictions relating to the term executed need not be imposed. During the period of suspension of sentence and parole, the offender is placed under the supervision of the public security organ (police), and the public security organ utilizes the mass organization of the community to help watch the offender's daily behaviour and lead him/her to become a law-abiding citizen.

It is said that the number of the revocation of suspension of sentence and parole because of the committal of new crime is very small, and that this type of community based treatment has been proving very successful, although clear statistics are not available in this regard.

Reform through Labour

Offenders, who have been sentenced to detention, fixed-term imprisonment, life imprisonment or the death penalty with suspension of execution, provided that they can work, are obligated to work. Under the basic policy of "reform through labour", emphasis is placed on educating and redeeming prisoners to law-abiding citizens through daily labour in the institutions. The purpose of this policy is considered to re-mould their ideology, freeing them from bad influence and habits, and to resocialize them into someone who can live on their own labour and are useful to society. Labour is considered to be a principal measure of reforming criminals, though it is not the only one.

The system of reform-through labour has been said to be effective and successful over the past forty years. It is reported that, according to some sample statistics, among those who have served a term of imprisonment, 4-6% of them committed a crime again after release".

child and juvenile criminals

The age when a person is considered to bear criminal responsibility for their actions is sixteen. However, the person is not subject to death penalty if he or she has committed the most serious crimes of manslaughter and murder one that undermine social order and threatens national security. As a State Party to the Convention on the Rights of the Child (CRC), (Article 37(a)) the Chinese government has undertaken that:

“Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below 18 years of age”.

However, until the revisions of 1997, while Article 44 of Chinese Criminal Law stipulated that the death penalty *“is not to be applied to persons who have not reached the age of 18 at the time the crime is committed”*, the same article did allow for those aged 16-18 to be sentenced to death with a two-year suspension of execution *“if the crime committed is particularly grave.”*

Capital offenses include crimes such as tax fraud, producing counterfeit currency and taking bribes, in addition to violent crimes such as rape and murder. Mobile execution chambers, which are often converted buses, allow prisoners to be executed immediately after a sentence is passed, thus denying the right to appeal a death sentence to any person charged and convicted of a capital offense.

THE RULE OF LAW IN CHINA

The rule of law is not a specific law but the enactment of laws which govern society and safeguard the rights of the citizenry. When the laws of the country are not respected by state agencies and not applied equally to the citizenry and to all sectors of the state, then it can argue that there is no rule of law. Because the chief purpose and function of ‘rule of law’ is to put everyone including the invincible communist echelons under the very law and that no one is higher or more omnipotent than the established law. The rule of law is an enactment of laws on a daily basis and on an equal basis for all its citizenry.

The countries in the world, which have concrete legal systems both in stipulation and implementation, are characterized as having an established rule of law. This rule of law subjects all state agencies, including law enforcement authorities demonstrating the supremacy of law. In the case of PRC, it is different. In the past five decades of the existence of PRC, it has been the Communist Party and its socialist ideologies that have governed the people and the State as they were effectively above the law. Until Cultural Revolution, there was no ‘rule of law’ in China as a solid legal mechanism that had been drafted, amended and put in place to control the unruly Party members and officials unlike ‘rule of law’ existing the western hemisphere. The laws of the pre Cultural Revolution era were more of controlling and regulating Chinese citizens than otherwise. In the place it was the Chinese constitution along with Marxist Leninist thoughts that governed the State and Party.

In the past, imperial Chinese history, law refers to the concept of punishment and a criminal law. China was under this rule or code for centuries beginning from the Tang code of punishment laws. Under this scenario emperor was the supreme ruler and therefore code of law was a rule of one man. Dr. Zhenmin Wang, a prominent Chinese legal scholar, argues that an understanding of the rule of law is multifaceted. He considers that first,

the rule of law is a means to regulate human activities. Secondly, when society progresses and become more advanced, there is a greater need for the rule of law, the chief purpose of the 'rule of law' is then to regulate and restrain the behaviour of government officials. Thirdly, the rule of law necessarily assumes the existence of rights, the many rights that modern day citizens enjoy. Citizens must have the right to seek legal remedies against any government's abuse of power. It also underlines that no one should be above the law and that both the citizenry and the state are held accountable to the same laws.

It was in the aftermath of Cultural Revolution, that the leaders of the Communist Party for the first time felt the need and importance of rule of law. Dr. Wang argues that the key to preventing socio-political disasters like the Cultural Revolution lies in the respect and practicing of the rule of law. He stated,

“The 3rd Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) convened in 1978. The Session analyzed the causes of the Cultural Revolution and proposed measures to prevent similar tragedies from ever repeating themselves again. The Session conducted a serious deliberation on the issue of developing democracy and the legal system and concluded, “There has to be sufficient democracy before correct centralization can be conducted. ... We had been striving for centralization in the absence of democracy ... over the past period. There is too little democracy.” Furthermore, the Session concluded, “To guarantee the people’s democracy, it is necessary to strengthen the socialist legal system, and institutionalize and legalize the democratic system so as to ensure the stability, continuity, and maximum authority of this system as well as the laws.” Such a system and laws should not be affected by the changing of leadership. These are the painful historical lessons China learnt as a nation. We have been working on our “legal construction project” for the past two decades, and the Chinese people have realized that the legal system is perhaps the most important institution for a modern nation”.⁶

It was only the return of Deng Xiaoping to power that he emphasized the “two hands policy” and the “four modernizations”. The true theoretical ‘rule of law’ as existing in draft and documentation was born from Deng’s “two hands policy”. The “two hands policy” proposed that on one hand economy must be strengthened and on the other hand legal system must be strengthened. Surprisingly the initial support of the ‘rule of law’ came from Party leaders who suffered during the searing fires of the Cultural Revolution under Mao’s Gang of Four. During the era of Mao’s ‘rule of man’, many of them were persecuted, tortured and sent to hinterlands to undergo forced labour reforms. The lessons learnt by the Party leaders about the nature of unlimited authority and power rested in the hand of single man led to the proposal of the ‘rule of law’ under which everyone is governed and that no one is above the law. More surprisingly none of the legal scholars, intellectuals and public initiated the debate over the ‘rule of law’ during the initial stages.

The numerous reforms were made to the Criminal Procedure Law (CPL) and the judiciary system. But so far, little result has been yielded partially because of the lack of democracy, the will and the maturity of legal system in China. The ‘rule of law’ discussed by the Chinese leadership is embryonic and conceptual and not a true ‘rule of law’ which only exist in practice and implementation.

China has the world’s highest number of executions and most of the executions were carried out with official instructions and directives according to Amnesty International and Human Rights Watch. Almost 100 percent of those executed under the endangering state security category were dissidents, people who asked for more freedom, individual rights and democracy. In the case of politically sensitive regions like Tibet, Xinjiang and Inner Mongolia, peaceful protest and the mere expression of dissidence or differing political noise is labeled as separatist tendencies. The person is then tried and convicted under the crime of endangering national security without making any elaboration of the term, the precise manner and background under what part of activities or behaviour constitutes activities endangering and harm ‘national security and stability’. Most of the trials

under this category were closed-door trials with no transparency and the accused were often denied legal representation. Once the trial is over, the convicted person is swiftly put to death. The execution of Lobsang Dhondup in 2004 was a classic example to cite. In such a scenario there is an immense scope for excess by law enforcement bodies and miscarriage of justice. There is little accountability in the current Chinese legal system. Although there are adequate provisions in Chinese law to protect the basic civil, political and human rights of an individual, state officials often do not demonstrate respect for legal procedures.

In 1980s there was a nation wide consensus among China's academics on whether to adopt the rule of man or rule of law after the disastrous Cultural Revolution. Most intellectuals and legal scholars advocated the rule of law, considered it as the only choice left for China. The debate captured the attention of central authorities. Since then the rule of law made its way into Chinese legal history. China's commitment to the introduction, or according to their claim of the implementation of rule of law was demonstrated in the Second Session of the 9th National People's Congress to endorse the fundamental principle of the rule of law. Since then the rule of law has been acknowledged as a constitutional principle. Particular attention was given to the regulation of the practices of the administrative and law enforcement agencies to prevent human rights abuse of the citizens and protect their legal rights. The Administrative Litigation Law became effective on 1 October 1990. Another leap forward came in May 1994 where China enacted the State Indemnity Law. The Law stipulates that,

“Where a government agency or its personnel invades the legitimate rights and interests of a citizen, legal person or other organization, resulting in injury while performing its functions, the sufferer shall be entitled to obtain state indemnity according to this Law”.

In order to curb abuse of power by government agencies and law enforcing agencies, China enacted the Law on Administrative Punishments in may 1996. The people's procuratorates look into the criminal cases that take places in the leadership organs of the Party and the State.

Still there are many loop holes and much needs to be done in terms of legal progress in China as well as making citizens aware of their legal rights. The Chinese scholar Dr. Wang argues,

*“Development of higher education must be accelerated and legal education must be significantly improved. Most law schools in China do not have libraries, and professors do not even have their own offices. The gap between legal education and the legal profession must be bridged. Salaries for judges need to be raised in order to prevent corruption. Well-trained lawyers with a strong sense of professional responsibility and high ethical standard are needed to develop the rule of law. Moreover, the legal profession in China is fragmented. Lawyers are regarded as private practitioners whereas judges and government attorneys are categorized as civil servants. They have different qualification and admission requirements. To facilitate development of the legal system, the current three legal professions must be standardized and brought under the same umbrella of one unified legal profession. All three groups should have the same admission criteria”.*⁷

There is some hope that alleged criminals and convicts could receive more lenient punishments in future looking at the socio political trends and changes taking place inside China. China has been through two stages of development of legal system. China has been through the harsh penal code and punishment of the feudal era China as well as through the growth of civil and commercial law. As it has seen in the many developed western countries, the third stage i.e. the development of the legal structure, which is centered on constitutional law. That constitutional law can regulate political activities and place itself as a law of orderly society and not a will of an individual. The third stage of development of law could provide and establish an open, just and a fair political order that China needed most. Another factor that indicates a positive change is China's entry into World Trade Organization (WTO). Any country, which wants to enter into this organization, must fulfill certain credentials. In that way it will influence the China's legal development. As WTO had brought changes to legal sys-

tem of the existing member countries, so too will bring on China's legal system. Dr. Wang categorically points out,

“China’s imminent entry into the WTO will be likely to usher in another period of radical change in the Chinese legal system. Many laws will be revised to meet international standards. As China commits itself to open its legal services market internationally, much pressure will be put on China’s fledging legal profession. This will indubitably have a significant impact on most aspects of the legal and judicial systems, and will represent both a challenge and an opportunity for the legal profession in China... Moreover, as China enters the WTO, the new legal system will have to adhere to international standards, especially in the area of civil and commercial laws. It is expected that the new legal infrastructure be complete by the year 2010”⁸

Though China is still in the early stage of the development of rule of law, it will definitely change the face of legal system and its proceedings in Chinese courts. It will empower convicts and people with more power to fight for their legal rights and constitutional rights. In that way the manner in which world sees the staggering number of executions will change. Under these circumstances the leadership in Beijing can no longer command one-man rule or a mandate of the Party to decide the court cases and their proceedings. It will change the atmosphere of the legal proceedings in China from arrest, trial, conviction and sentencing of suspects. In more optimistic sense, the new rule of law can create a space and role for the emerging civil society in China that may question government regarding the death penalty and ultimately its abolition in long run.

CIVIL SOCIETY IN CHINA

The concept of civil society expresses the idea that the good order of society comes not only from the state, but from the people. If the state is the formal organization of power from above, civil society is the organic realm in which people associate freely and equally with each other, and in which they organize their relations with each other and the state. The gradual emergence of an active civil society in 18th-century Europe played a big part in forcing European states to accept democratic institutions in the 19th century. In the mid-20th century, civil society became the arena in which citizens lobbied for their civil rights, such as in the American civil rights movement of the 1950s. It also provided a space to agitate for international recognition of human rights as belonging to all people, regardless of their citizenship. In recent decades, the term civil society has come into general use around the world, especially in Third World countries where states have been strong and societies weak.

The civil society ideal expresses the aspiration of people to participate in the open discussion of public issues and to shape state policies and procedures in a way that benefits society as a whole. Chinese intellectuals earlier in the 20th century were not immune to these ideas. But when the Communist Party came to power in 1949, it chose to establish a dictatorship of the proletariat, in which the state was recognized as the incarnation of the will of the masses or source of social order and political legitimacy unquestionable under the leadership of Communist Party, which was supposed to be quintessential representative of peasants and workers. In 1979, however, Deng Xiaoping introduced a gradual process of economic reforms that moved China away from the dictatorship model favoured by Mao Zedong. Rapid economic growth has produced significant social changes since the 1990s, among which are an increasing desire by wealthier Chinese to have a say in public affairs and a greater willingness to pressure the government to change policies that go against the wishes of its citizens. The Communist Party continues to maintain that it should have the leading role in organiz-

ing society and directing public opinion, yet there are signs that Chinese are acting more openly and autonomously to advance their own interests for furthering protecting and promoting their hold on the power.

Civil society is yet to fully emerge in China, but there is reason to believe that it will. China is in a period of dynamic change, and the future shape of society cannot be predicted. The traditional Chinese deference to the state as the source of public moral authority can be expected to influence the kind of civil society that Chinese create, one that operates less in opposition to the state than in partnership with it. But as Chinese act to improve the quality of governance, law, and social justice in their country, they may pave a path toward the formation of a healthy civil society that refuses to leave all decisions to the state. However, considering the two most important roles of 'confrontation' and 'co-operation' played by civil societies towards the government in power. In this respect it can be said that the civil society is yet to emerge in China, but there are increasing sign of people's involvement and participation in the government affairs.

In China today many private citizens are forming voluntary organizations, which take up issues and needs ignored by the state. These private or non-governmental organizations complement the role of civil societies and articulate civil society aspirations. However, until this time their role has not been confrontational but one of cordial co-operation with the government. Some of the issues advocated by these voluntary organizations are caring for the disabled, environmental protection, women's rights, and the eradication of illiteracy.

The Communist Party tolerates the existence of these active private organizations provided they do not threaten the Party's authority and legitimacy. In recent years, a number of government-sponsored organizations (GSO) have been established with government funds. However, in the case of government-sponsored organizations, they are more the instruments of the state than a representation of the populace. As of now, the private organizations in China have not emulated such organizations in the west which can act in critical, confrontational and assertive ways in their dealings with the

state. Thus the present status of the private organizations in China can be best described as an element playing more of instrumental role a bridge between Government and a people and thus, giving people a more active role in social and economic decision-making process.

Both the government sponsored organizations as well as the private organizations in China have a limited scope in the role they can play and are usually active in delivering assistance, raising funds, coordinating government agencies, private donors and volunteers. The Party is already aware of the potential power of the private organizations and keeps them under tight control with regular monitoring and regulations. However, the private organizations, which are perceived by the Communist Party as least dangerous, and threatening, enjoy the greatest autonomy in carrying out their activities. Many scholars on China believe that these small private organizations are a harbinger of the emergence of civil society in China. It has been seen that, in many western countries, the movement toward civil society has led to the abolishment of the death penalty and furthering the cause of human rights. From the Mao era till to the present day, any organization that stands separate or outside the Communist Party is illegal. This has been a chief factor that has contributed to the non-existence of civil society in China in the past and is likely to continue until the Communist Party changes its attitude and perception about private organizations in future.

Further more, the stark contrast between the Non-governmental organizations in United States and in western countries and those of government sponsored organizations and other private organizations in China remains in the areas where they work. NGOs in the western countries play relatively more important and bigger role such as environmental protection. Where as, in China the role of Gongos, NGOs and private organizations are limited only to research, training, environment and Aids awareness programs and advocacy. It is well-understood wisdom among NGOs and private organizations in China that they are not suppose to rub their shoulder with Government. They are restricted to playing instrumental role to State rather than confronting government on behalf of common citizens.

Many legal scholars view that the lack of civil society is hampering the development of an independent judiciary in China. Another obvious obstacle is the interference by the government administrative agencies and polices from initial court proceedings to the final sentencing of criminals, only later phases the role of court comes into the scene. Even then their roles are very limited and ceremonial handing over of sentences to the suspected criminals. The current narrow political space available to the Chinese public and social activists is insufficient to facilitate the emergence and growth of civil society in China in the true sense of the word. The alternative voice that attempts to confront the Party system publicly from the outside is not tolerated such as Falun Gong. However, there are different more subtle forms and shapes that exist to let the Party know about the public mood and opinions of different sectors of the populace. There is also a media revolution currently taking place in China where the print and visual media discuss many issues particularly the death penalty and freedom of expression. The media has its own functional landscape and zones where the independence and openness of coverage differs from region to region. For instance in Guangdong and coastal regions of China, the freedom of expression is more and challenges from public are tolerated. Where as in central and western regions like Tibet even keeping a picture of the Dalai Lama is forbidden. The airing of public opinions and discussion of hitherto taboo and sensitive issues is more common in the developed and modernized coastal cities and Guaondong province. The Party tolerates media criticism more in these regions than any other part of China. It seems that the first germination of a civil society is making its journey from coastal China. With respect to the death penalty, there is an absence of official coverage of both trials and executions. This absence does not facilitate the emergence and growth of civil society in China. This also shows Chinese leadership's tight control over the lives of ordinary citizenry in China.

The private organizations, which were considered by government as least threatening, have taken on some of the roles of civil society in China because they speak about and raise issues about human rights and the death penalty system by utilizing the 'space' they enjoy. If the demand for democratic changes and freedom wanted by the Chinese people failed in the past, will then the change and reform come within the Communist Party?

The accountability of the Communist Party is a soft and unspoken doctrine in China today. Recently the fight against corruption has taken place within the Party apparatus and senior leaders are zealously serious about addressing this issue. The National People's Congress (NPC) has instituted a committee to investigate the government's draft budgets, and in recent times, the senior leaders have launched the anti-corruption campaign. It seems now that the changes are coming from within the Party, demonstrating that these are the first sure signs of internal opening up and transparency in China today. Catharin E. Dalpino fellow at Brookings Institution writes in her essay "*Is Civil Society Emerging?*"

"Signs of positive change in the formal system are seen in both the legislative and legal sectors. The NPC is becoming more professional and more vocal, although it is not yet a counterweight to executive power. NPC deputies have never overturned a government bill outright, but their voting records indicate increasing independence. In 1992, after legislators who voted against the Three Gorges Dam project were silenced by the chair, they resorted to handing out pamphlets in the corridor. In 1995, more than a third of the deputies voted against the government's banking law. Changes in criminal procedure law have strengthened the rights of defendants. New administrative laws permit citizens to sue the state for abuse of authority, and from 1996 to 1997 citizen-state lawsuits rose by 48 percent. Two-thirds of the judgments in those cases were decided in favor of citizen-plaintiffs".⁹

Yiyi Lu is senior research fellow on China at Chatham House, The Royal Institute of International Affairs, London-based think-tank believes that China's private organizations such as "China Association of STD and Aids Prevention and Control (CASAPC)" and "State Environmental Protection Agency (SEPA)" describes their status as China's version of civil society and the kind of role they play in contemporary China. The description clearly projects the status of private organizations in China and other social and political meanings behind them. The private organizations have a dependent relationship with the State rather than an autonomous entity existing in other countries.

*“Chinese NGOs have good reasons for thinking this way. Although the state has substantially reduced its control over the economy and society after more than 20 years of reform, it remains the dominant force in Chinese economic and social life. NGOs cannot operate without receiving various forms of crucial support from the state or its agents. For example, because a system of “rule of law” has yet to be fully established in China, NGOs cannot rely on the legal system for protection if subjected to obstruction or arbitrary sanctions by government agencies or officials. Therefore, it is important for NGOs to cultivate powerful patrons or friends in the government who can provide them with the necessary protection should the need arise”.*¹⁰

In recent years the influence and importance of the NGOs and private organizations are growing and gaining their strength in influencing and pressuring on the government policy makers. This highlights the healthy growth and bright future prospects of the civil societies’ roles in China in a long run. As Yiyi Lu asserts in his essay *“The growing power of NGOs”*

*“In recent years, Chinese NGOs have increasingly made their voices heard on public policy issues. A high-profile case is the campaign by environmental NGOs against a hydropower station on Nujiang River in southwest China. The campaign eventually led to a written instruction from Premier Wen Jiabao, urging a more cautious approach toward the construction of controversial hydroelectric power stations. As a result, the project was put on hold pending environmental impact assessments.”*¹¹

So far the functional status of the private organizations in China is to assist the government in carrying out relief work, launching national Aids campaigns and response to natural disasters, but not be active in the human rights and political spheres. According to one scholar who has described the features and elements of civil society in China today, his assessment is that of a proactive role by civil society in the spheres of human rights and politics is limited and remote.

China scholar Wang states that, “*Civil society organisations in China have their own Chinese characteristics in that they are half official and half non-official.*” As Wang describes it, “*The government sometimes uses these organizations as a sort of channel [for] social control, and the organizations often become powerful through the support of the state. There are views that consider this situation as not necessarily negative. The argument is that an independent civil society never existed in China’s history, and civil associations that have played an important role in society have maintained a special, intimate relationship with the government*”.¹²

Under such circumstances in China today, civil society has no tangible and visible role to play in the areas of human rights and death penalty. The suspected criminals have to wage a lone battle such as petitioning the Government for retrial and hiring their own legal defendants. Interestingly, in China today, like the barefoot doctors of the Cultural Revolution era, there are growing numbers of private lawyers and activists fighting cases in court for those people who received a death sentence. In most cases, it is the state that decides the course of trial rather than the constitution or judiciary. Owing to some bold commentary in newspapers and the media, the government is giving serious attention for the first time to the issue of the death penalty and hinting at possible reforms. The government has also vowed to bring continuous reforms to Criminal Procedure Law (CPL). Since the 1990s, and in the aftermath of the rapid economic transformation of China, the private organizations are a new phenomenon but they still have a long way to go in taking up human rights and death penalty issues as it has been the case in western countries.

CHINA'S JUDICIAL SYSTEM

In the Chinese legal system Judicial, Procuratorial and Administrative are the three bodies that are concerned with the interpretation and implementation of law. It is not judicial system alone that decides the proceedings and sentencing of a case. In the Chinese legal institutions, the Procuratorial and Administrative bodies have unusual power and authority in deciding the course of cases. It is in this context, that the judiciary is more of a state instrument than a separate and independent body as it is the cases in all democratic countries in the world.

Amnesty International UK Director Kate Allen sums up about the criminal justice in China.

“The Chinese criminal justice system is in no condition to offer fair trials, impartiality, or justice. This means that thousands more people will be executed this year by a dysfunctional criminal justice system... Secrecy surrounding the justice systems and executions in China mean that the miscarriages of justice cited in our report are certain to be just the tip of the iceberg. Given the potential for executing the innocent revealed by this report, it is incumbent upon the Chinese government to impose a moratorium on executions as a matter of urgency.”¹³

The Chinese constitution has not given any interpretation of laws; the interpretation of laws is left to the courts, judiciary police and administrative bodies and to interpret and make their own decisions. In this background all the three bodies can have their own interpretation of a law and one which may vary from each other. The judiciary, for instance, has to look into four different types of cases, criminal cases, administrative cases, civil cases and commercial cases that arise out of disputes. In all of these four types of cases, the judges and lawyers in China are not independent as they are civil servants with a requirement to display total conformity and pliancy to the State. Besides they lack professional expertise and legal training. It was only recently that the government has indicated of its plans and

wishes to recruit a new generation of professional lawyers through a national level competitive exam. Even senior government leaders have also indicated the need for an improvement in legal expertise within the judiciary system. Most of the miscarriage of justice in the past sprang from a lack of professional expertise and also the heavy presence of government interferences. Since lawyers in China are underpaid and neglected, there has been a heavy practice of corruption and bribery within the judiciary system.

In the book titled “*The journal of contemporary legal issues*”, published spring 2001 where article ‘*A Legislative System in Disarray*’ mentioned that,

“Administrative agencies are not the only ones who knowingly pass inconsistent legislation to promote their own interests. Local governments regularly do so as well. Economics reform has resulted in greater autonomy and fiscal responsibility for local governments. (231) As a consequence, local governments often pass regulations that conflict with national legislation in an effort to attract investors and promote the growth of the local economy. For instance, although for a numbers of years PRC laws only permitted the establishment of 22 retail joints ventures, all of which needed central level approval, local authorities approved more than 340. (232) Similarly, local governments have routinely ignored repeated warnings from central government that they do not have the authority to issue tax breaks to investors. (233)”

Police enjoy wide range legal and administrative detention powers in prosecuting criminals, the proceeding of cases and much other law enforcement. They need not have to be accountable to court as courts are under the direct control and influence of local governments. At most they have to be accountable to the central authority which the Communist Party of China. The most noticeable abuse of power is their heavy hand in criminal proceedings such as detaining suspects for up to thirty-seven days in custody and denying access to lawyers. Police often resort to maltreatment such as torture and psychological punishment to extort confessions from the suspect. In many cases the suspect is put in custodial detention without informing relatives or colleagues.

The police in China enjoy unlimited powers to impose varying periods of administrative detention from several days to several years without any judicial review. Often in the case of politically sensitive matters, the detained suspect is kept in incommunicado detention for many months. The case of the 15-years-old Gendun Choekyi Nyima who was recognized by the Dalai Lama and regarded by majority of Tibetan people as the true reincarnation of the 10th Panchen Lama. Gendun Choekyi Nyima was not seen for over fifteen years ever since his sudden disappearance along with his parents. In many ways, administrative detention is inconsistent with rules of law pertaining to manner in which law is implemented. Both the criminal law system and Administrative detention differs in many aspects.

The punishments imposed on political prisoners are very severe and harsh compared to the other alleged offence supposedly committed by the suspect. The persons charged with political differences are arrested, interrogated, detained and handled by police in the premises of local authorities. Only in the later stages the role of courts surfaces when the suspect is largely deemed 'guilty' and therefore the role of courts is thus reduced to ceremonial trial and sentencing. In reality the suspects would have already plead guilty and convicted by the law enforcing agencies and police personnel through extortion and extracting confessions. The best example was the case of Trulku Tenzin Delek where he remained in detention for six months without any knowledge of his near and dear ones. His relatives and concerned people came to know about his whereabouts only on the day he was brought to court for a trial. Prior to his appearance he was kept in police custody. The closed trial was brief and quick followed by handing over of death sentence on him. Actual legal proceedings should have been in the opposite direction, allowing lawyers and courts to handle the case and polices' role being only to give assistance to courts. In the western democratic countries, it takes many months and years to convict and sentence suspects to death, while in China death sentences are passed in matter of days with few court hearing. Therefore, citizens often refer judiciary system in China as organ that sentences the people. Although China's Administrative Procedure Act provides for a right to appeal, however these rights are inaccessible and not feasible for ordinary citizens. This legal deficiency stems from 'non-

existence in practice' the most basic safeguard of the Chinese legal system that is the right to be presumed innocent until proven guilty. This clearly reflects a total absence of due process in law enforcement.

The Tibetan Government in Exile's (TGIE) response to the White Paper expressed their doubt and concern for the criminal proceedings currently practices in China today. TGIE responses,

*“There is no right to have adequate time and facilities to prepare a defence, or the right to be tried in an open court. Defence argument, when permitted, is restricted to appeal for mitigation of punishment, not for pleading innocence. The role of the judges are restricted to passing sentences determined by the political authorities. It is not surprising, therefore, that Tibetans refer to the judges only as sentencing officers”.*¹⁴

At present Chinese legal scholars, officials and general public are deeply divided on the issue of administrative detention, whether it should be eliminated or to institute other alternative in its place or to bring partial reforms to it. Apparently there are three schools of thoughts over this issue.

The first school of thought consists mainly of liberal academics and rights activist who advocate that administrative detention should be eliminated. Few legal scholars belonging to this school of thought are in favour of granting non-custodial sanctions such as fines and community service and probation.

The second school of thought consists of government officials from the Ministry of Justice and the Ministry of Public Security Bureau who favour the continuation of public administrative detention with minor reforms. They argue that administrative detention is a necessary evil in order to maintain law and order citing the general trend of the rise in crime in the fast changing socio-economic scene of China.

The third school of thought consists of the largest section of legal scholars within judiciary and outside advocating that administrative detention be

retained but subjected to major reforms such as passing legislation on a national level to clarify the scope of offenses which can be dealt with in this manner, clarifying the role of law enforcing agencies regarding to what extent they can stretch their power and to provide additional safeguards and a provision of litigation. Other proposals include the provision of habeas corpus in order to provide detainees with the right to seek prompt judicial review during the period of their custodial detention.

The main defect of judiciary in China is inconsistencies between the stipulations in the Constitution and that of actual implementation on the ground. This inconsistencies have actually contributed to the dependence of judiciary on the State, for instance the Procurator in China is the equivalent of tribunal in the western hemisphere but then their roles and natures contradicted each other on the actual ground. Tribunal in west is independent while Procuratorate in China is under administrative control.

Many legal scholars argue that the lack of an independent judiciary and professionally trained lawyers contributes to unfair trials and false conviction of suspected criminals. The biggest obstacle towards the development of an independent judicial system and establishment of the rule of law in China stems from a judiciary working within the government system and the expectation that the judiciary must meet up and confirm to the directives and views of government. No institutions survive and thrive outside the government system in China. This is the first and a much-needed reform for achieving an open, free and transparent judiciary exercising total independence to decide legal cases. Only the existence of an independent judiciary will empower judiciary or judicial system in China to handle cases and citizens far more independently and give more power to the defense of the human rights of Chinese citizens as guaranteed in the Chinese Constitution.

Owing to the lack of independence for judiciary and nominal authority enjoyed by courts prevents them from regulating the wayward and unruly administrative and law enforcing agencies. Irregularities in drafting laws add to the problem where laws are inconsistent to each other. For instance,

Article 126 of the Chinese Constitution provides independent status to Judiciary and it further states that the courts are not subject to interference by any administrative organ, public organization or individual. But on the ground reality judiciary do not enjoy independent status as stipulated in Constitution.

One of the major shortcomings that affect the development of legal system in China today is the omnipotence of State power in China. The tremendous social and economic landscapes of China in the two decades have also influenced the growth and development of legal system, particularly those of the legal practices and litigations, for instance, commercial laws and criminal laws. In the last two decades, the number of legal professionals practicing property and commercial laws rose in immense number while the numbers of legal professionals in administrative and criminal laws remained stagnant. Chinese legal scholars Yongshun Cai and Songcai Yang put forward their views on the prevailing trend in their article “*State power and Unbalanced Legal Development in China*”. The article points out,

“Based on a survey of about 290 lawyers in Changsha, capital city of Hunan province, and on secondary sources, this study explores the implications of state power for the legal progress in China. It examines how the power of state agencies, together with economic calculations, has shaped lawyers’ selective legal representation. As administration litigations and criminals cases involve government or legal organs and possibly greater risks, lawyers are reluctant to accept such cases. In contrast, as cases concerning economic affairs often bring more financial benefit and involve less risk, lawyers are more inclined to represent parties in these cases. As a result, there is an under-representation of litigants involved in criminal and administrative cases. Lawyers’ selective involvement may undermine the people’s confidence in legal institutions, leading to an unbalanced development of the legal system in China.”¹⁵

The presence of state power and interference is more alarming in the case of administrative litigations although in early 1990, the National people’s Congress has enacted a number of laws such as Administrative Litigation

Law, the PRC Compensation Law and Administrative Review Law. Despite the existence such laws, little has achieved on the ground. It is often the case that these laws meant little in actual implementation. Yongshun Cai and Songcai Yang argued,

*“From 1990 to 2000, the number of administrative litigations increased from 13,006 to 85,760, and the total number of administrative litigation cases during the ten years was over 586,000. Yet, there is still a significant gap between the making of a law and its implementation. Thus far, the most important mode of settlement of these cases has been the withdrawal of lawsuits. In each year between 1995 and 1999, about 45-53% of administrative litigations were withdrawn. The power of state agencies and the resulting pressure on litigants is an important reason for the withdrawal of lawsuits against these agencies.”*¹⁶

Often the authorities and law enforcing agencies are the direct challenge and hindrance to the Chinese lawyers from practicing law. Most of the suspects are held by polices in detention custody and many of them are alleged of crimes based on confession extorted through torture and maltreatments in the prison. Proving the innocence of the suspects is an up hill task for legal defenders such as in getting access to information as well as meeting the suspects in the detention. In actual practice, it is not law versus crimes committed but lawyers versus polices and administrative agencies. Yongshun Cai and Songcai Yang explains the challenges of Chinese legal practitioners and lawyers,

*“Another factor that undermines lawyer’s willingness to take on criminal cases is intervention from higher-level authorities. This hinders a lawyer’s work for two reasons. First, lawyers may unwittingly offend public prosecutors or government officials when taking on such cases. For example, a lawyer successfully defended a suspect in a criminal litigation. Yet some government officials were annoyed, as they believed that the lawyer’s success had made them ‘lose face’.”*¹⁷

One organ that undermines the autonomy of courts is their dependence on the local governments. It is under the administration of the local govern-

ment the salaries; promotion and career of lawyers and judge are depended upon. Often in major campaigns like “Strike Hard” the polices has unusual and overriding exercise of power that they put lawyers and courts under tremendous pressure on achieving speedy trials and conviction of suspects citing the legitimacy of call and directive coming the top leaders of country. Elsewhere in free and democratic countries in the west, judiciary is completely an independent body; it is not in any sense depended upon the government or the state. They run their own affairs, make decisions and base law as the touchstone. The tribunal in the west is the classic example of judicial independence. However, in China courts function within the establishment, within the system of government under the leadership of Communist Party of China.

All the four courts in China are responsible to the National People’s Congress (NPC) at the equivalent level which supervise the courts work, appointing and removing judges. Another technical aspect is that courts are financially dependent on government such as for salaries, housing and benefits. The nexus between the courts and local governments are well known and owing to that local protectionism are rampant and vivid in Chinese courts. In many cases courts refuse to enforce legal actions against local officials who has strong government support and impunity. In many ways the central government and local government run the affairs as if they are different entities. For example, some strong and unruly local governments overlook directives from central government such as taxation, making commercial decisions such as encouraging and inviting foreign direct investment without informing the central government. Other drawbacks such as lawyers and judges in courts are low paid, the cases of corruption within the judiciary and their collaboration with local governments are well known.

Since 2003, attempts by the government to effect reform in the criminal justice system have increased noticeably. In May 2005, the Political and Legislative Affairs Committee of the Central Committee of the Communist Party, the highest body that oversees the affairs of the judiciary within the government, appointed a body of experts to lead and oversee judicial reform. Further, at the end of July 2005, the Chinese authorities announced

that tougher procedural standards for trials involving the death penalty would be enforced. At a seminar for senior justice officials in Dalian in Northeast China's Liaoning Province, the vice-president of the Supreme People's Court, Cao Jianming, said:

*“Every procedure of the first trial, second trial and retrial, as well as the reviewing of the death penalty, must be rigidly executed.”*¹⁸

In addition, the People's Republic of China proposes to increase the use of long-term sentencing, as an alternative to the death penalty. Vice-Minister of Justice, Zhang Jun explained in Beijing Today, 27 January 2005:

*“The focus of reforming the punishment system is not to abolish the death penalty, but to set up more long-term prison sentences – for example, 20- or 30-year sentences – to reduce the use of the death penalty... When the long-term imprisonment system is set up, judges will be less likely to resort to capital punishment”*¹⁹

At the same time, however, the Chinese policy of quickly and severely punishing criminals, carried out through campaigns such as ‘Strike Hard’ re-launched in 2001, runs in direct contradiction to the spirit of proposed reforms designed to enhance regularized adjudication and guard against incorrect judgments. A number of other concerns, such as the extortion of confessions through torture, are not being addressed. While the People's Republic of China has signed and ratified the Convention Against Torture, and there is direct prohibition of such actions by the authorities in the Chinese Constitution, there have been numerous reports that torture is still in widespread use. **Too often there is a stark disparity between the letter of Chinese law and its implementation in practice.**

It is widely accepted that criminal justice is the weakest part of the People's Republic of China's legal framework, and that genuine improvement to the criminal justice system requires a fundamental reform to the structure of the Chinese political and legal structure. Without such fundamental change, any reform measures will be of a technical rather than essential nature. On

the other hand, more recently, there have been some encouraging efforts to implement existing constitutional provisions via the courts or the Standing Committee of the National People's Congress. In theory, this latter body may be applied for constitutional interpretation, but in practice, it requires the courage of scholars, lawyers and other progressive activists to invoke its powers.

Despite the gap between officially professed objectives of the legal system and management and implementation in practice, the mere fact of *the existence* of a sound basis and set of commendable principles is a positive one, and offers genuine hope for incremental reform in future. China's entry into the WTO further facilitates a period of radical improvement to the current legal system, with a revision of laws to meet international standards, particularly within the civil and commercial law arena. According to the Chinese officials by the year 2010, it is expected that a revised legal infrastructure will be complete. It remains to be seen whether significant and genuine improvement with respect to the death penalty in particular, and the criminal procedure law in general, will comprise part of this reform.

flaws in china's legal system

The Chief Justice of China, Mr. Xiao Yang, indicated that the Supreme Court submitted a report to the National People's Congress during their annual session meeting in March 2005, about issues ranging from corruption to social order and where possible reforms may take place. The day before sending the report to the Congress, the Chief Justice told China Daily on 10 March 2005 that "*The Supreme People's Court will ... further perfect second-instance judgments for criminal cases and death penalty review procedures*".²⁰ The Chief Justice states that he sees two major areas of needed reform in the Chinese judiciary. According to him²¹ "*the most prominent defects in the current judicial system lie in administrative interference in court trials, the low competence requirements for judges and, in particular, localization of judicial power*". This can be understood from China's judicial sys-

tem where judicial organs are established according to administrative divisions. The judicial organs are under the leadership of local government particularly in personnel and financial matters. For example, high profile or important cases should be handled under the directive of local Party committees and criminal investigation of officials of certain ranks could only be pursued and done by procuring approval from local authorities. The local government justifies this practice arguing that it helps in maintaining stability and boosting local economy. However critics point out that the practice of local protectionism does more harm in delivering a fair and transparent judgment. Chief Justice Xiao Yang advocated that the administrative interference arising out of local protectionism be reformed or abolished.

The area of reform pointed by the Chief Justice is that all cases of the death penalty should be handled by the Supreme People's Court and the death penalty procedures be subjected to review as he commented in the newspaper, China Daily on 10 March 2005, "*The Supreme People's Court will ... further perfect second-instance judgments for criminal cases and death penalty review procedures*".²² In the 1980s when China launched its first "Strike Hard" campaign against crimes, the Supreme People's Court relinquished its power of final review of death penalty cases. This was wanted in order to launch a severe crackdown on criminals committing crimes and to speed up the process of carrying out of sentencing. As per the spirit of the campaign, the execution of criminals was swift and severe. The local courts were empowered to decide the cases and to carry out the death penalty against the criminals. This resulted in China having the most horrendous statistic regarding executions in the world. The concern now for the Chief Justice Xiao Yang and the leadership is to restore the power to the Supreme Court to review and hear the appeals of the death penalty cases and to regulate the use of death penalty.

An unidentified Supreme Court official commented in the Beijing News a week before the submitting of the report to the Congress that the Supreme Court is likely to take back the right to review death penalty sentence in 2006. Officials and experts regarding the death penalty say that the move

will simplify the irregular process and court proceedings. They even say the move will quickly reduce the number of executions by 30 percent. This change in perspective came after much criticism of the lower courts for their lack of professionalism and inconsistency in meting out death penalty sentences in recent years. However, it seems that few lower courts have been reluctant to relinquish the power of imposing death penalty. The government has suggested that the Supreme Court consider setting up a special death penalty review tribunal to oversee death penalty proceedings and take on this extra workload as a remedy. An unidentified senior official was quoted as saying²³ *“Currently, the suggestion that has formed is hoping that there can be branches set up in areas around the country, and the branches would be responsible for death penalty review in large administrative regions”*.

On 9 March 2005, the China's highest law making body, the National People's Congress (NPC), during the annual session welcomed the suggested judicial reform that the Chief Justice referred to in his report. At present there are **68 crimes** that carry death penalty in China and most of them are non-violent crimes. Contrary to the slogan of 'severest executions, swiftest execution' during the "Strike Hard" campaigns, in recent times the mood has been 'kill fewer, kill carefully' policy towards suspects of non-violent crimes.

A decade before this historic reform report submitted by Xiao Yang before the National People Congress annual meeting in March 2005, China has been pursuing minor but technical reforms to their weak judicial system. The legal scholar Jian Fa in his 'Reforming The Judiciary' writes²⁴, *“China established the “rule of law” as a basic national policy in 1997, specifically put forward to promote judicial reform. In the ensuing four years, a series of measures were implemented in this regard. These included the launch of national judicial examinations designed to assess the professional competence of candidates for judicial workers and attorneys, establishment of systems for selection of presiding judges and investigation of wrong judgments, and changing the military-style uniforms of judges to the robes generally used internationally. However, most of the changes are simply remedies for specific problems, which had no unified and clear program to follow”*.²⁵

In response to view presented by Jian Fa, He Weifang, Professor at the Law School of Peking University argued that reform should be an important part of political maturity and restructuring. A judicial reform void of political restructuring will only end up being without results. Professor He said,

*“...judicial reform must taken (sic) into account in the country’s overall political restructuring. Otherwise, all reform measures will be technical rather than substantial, which will not lead to expected results and breakthroughs”.*²⁶

The Chief Justice, after his presentation of the report in the annual session of National People’s Congress (NPC), answered the queries asked by Human Rights magazine *“China strictly controls the application for death sentence and strictly follows the procedures of passing death sentence. China has implemented the policy of combining punishment with leniency and oppose advocacy of heavy penalty and severe punishment”*.²⁷ He addressed the National People’s Congress annual meeting and spelt out from his report that, *“To those convicted guilty of serious crimes, we approved the capital punishment according to law...to those convicted of felony crimes but there were circumstances for leniency, we would change the capital punishment to death penalty on probation or life imprisonment according to law”*.²⁸ Mr. Xiao Yang emphasized on the phrase ‘according to law’ signaled that criminal will be dealt according to law and law be supreme of all. With these words he ruled out administrative and law enforcing bodies from interfering in the court proceedings and seeks to emphasize in creating an independent judiciary in China. However, much will depend on how top leaders respond to his call and how Chinese leaders give serious attention to the political restructuring needed in China today.

The most encouraging announcement on death penalty came on Thursday, 27 October 2005 from the [Jurist] The Supreme Court of China, in their official website in Chinese where it was confirmed for the first time that the plan of Supreme Court of China was to remove and take back the authority from lower courts to review death sentences. The press release from the Supreme Court of China read:

“Taking back authority for death penalty approval will undoubtedly be of great service in ensuring strict control of its use, setting a unified standard and fulfilling constitutional human rights protections.”²⁹

This positive news came after months of speculation and rumours regarding the withdrawal of authority from the lower courts. For years China Jurist news archive has been under tremendous international pressure from rights groups and activist regarding staggering executions of suspects and bizarre nature of legal proceedings. Amnesty International, however criticized the press release and expressed their concern stating that it is difficult to ascertain the actual impacts of reforms since statistics of executions are closely guarded state secret.

Two months after the announcement of the review of all death sentences and taking back the authority from lower courts, the Chinese government said on Thursday 8 December 2005 that court proceedings on death penalty appeals open to the public to what they described as “improve human rights protection”. The press release by Supreme Court of China (in their official website) claimed that,

“On January 1, the public will have access to death sentence cases involving “major controversy,” and on July 1, the public will be allowed to attend all death sentence appeals. The new regulation is being implemented in an effort to prevent wrongful death sentences, which human rights groups have continually criticized in China”.³⁰

It seems that these ground breaking announcements, reforms and changes are part of larger of picture of reforms that are to be discussed during the forth coming annual meeting of National People's Congress (NPC) in March 2006. These changes are evidence of seriousness attached to the forth-coming NPC annual meeting at Beijing. Secondly it is very likely that the death penalty issue is to gain major attention and focus during the meeting. These bold steps taken by judiciary further add pressure on top leaders to make positive changes on death penalty issue which has been raging for some time now in China, be it in state run media, international pressure groups and as well as the private media and journalism in the country.

VI DEATH SENTENCES UNDER THE “STRIKE HARD” CAMPAIGNS

“Any crime which the law regards as serious should certainly receive serious penalties, and any crime which is punishable by the death penalty according to the law, should certainly receive the death penalty. This will ensure the healthy progress of strike hard.”

Hu Jintao, the then Secretary of the Standing Committee of the CCP Central Political Bureau (Legal Daily 4 May 1996)

The status of the death penalty in Chinese Criminal Procedure underwent a dramatic transformation in 1983, the year when China launched its first domestic “Strike Hard” campaign to fight crime in China. The campaign has a complicated history and that different campaigns are employed in different region depending on local circumstances and social ills and disorders. The campaign can be launched for several months and then put on hold. The campaigns are launched for fighting crime, for fighting official corruption, for maintaining stability and security, and in certain contexts used as a tool to oppress and ethnic minorities in regions like Tibet and Xinjiang. In 1983, the “Strike Hard” campaign was strictly carried out against crime but later re-launches of the campaigns was used against political dissidence in the region as well as crime. In 1996 Tibet was hit hard by the campaign while Xinjiang was the focus in 2001. The last re-launch was in August 2005 in Lhasa during the 40th founding anniversary of “TAR”.

For the last two decades of “Strike Hard” campaigns, most of the executions were carried out. The executions were not only against the spirit of the Chinese Constitution and law but also against the principles of human rights and international law. The “Strike Hard” campaigns have earned a notorious reputation for being inhumane and brutal. Traditionally the top leaders launched nation wide “Strike Hard” campaigns accompanied by slogans. Features of the campaign are prolonged detention, torture, coerced confessions and mistreatment in custody, swift trial and swift executions.

Sometimes summary executions have been carried out and there are numerous cases of extra-judicial killings. In this background, crimes like embezzlement and bribery can also warrant the death penalty. Amnesty International says that the actual figure of executions surpassed the stated official figure. China does not provide actual numbers as it considers the death penalty a State secret.

During such campaigns, it was a dilemma for the judiciary and state attorneys whether to please the higher authorities in delivering swift and hard results or to follow proper judicial procedures. Both the legal system and law enforcement agencies often face the uncomfortable situation where senior leaders exert tremendous pressure on them to take drastic action on the crime situation in China. This extraordinary situation forces the judiciary, the supposed guardian of the people’s justice, to become an instrument of the state by cracking down hard on the people. Not only has this undermined fundamental human rights and legal integrity in China but also unfortunately has contributed to a very large number of executions in China during the campaigns. The report³¹ “*China’s execution frenzy*” highlights,

“Under such circumstances, the possibilities of miscarriages of justice and the execution of innocent people are immense. Police and prosecutors have been urged to cut corners, and not to “get entangled in the detail”, so as to achieve “quick approval, quick arrest, quick trial and quick results”. At meetings to prepare for “Strike Hard”, lawyers were reportedly called on to cooperate with the police and prosecution, and not to hold up the judicial process.”

“Courts also boasted of their speed and “special procedures” during “strike hard”. Courts in Shandong province reportedly held an average of 65 criminal trials every day from 10 April to 25 May 2001. Courts in Suqian city, Jiangsu province, reported new procedures under which they completed full judicial proceedings in an average of 20 days - an example which was widely promoted in the official media.”³²

One of the most serious concerns of these campaigns is that according to national statistics, the conviction rate of crimes between 1998 and 2002 was 99.1%. Such unusually high rates raise serious doubts about the provision of fair trials to those convicted. Overlooking due legal process and denying people access to legal representation or the time to prepare a defense, and the absence of the presumption of innocence can only achieve this exceptionally high conviction rate. It could also be due to the extreme pressure on law enforcement agencies such as the police, the procuratorate and the courts. The UPI medical writer, Kurt Samson, reported the practice of ‘organ harvesting’ from executed prisoners during the “Strike Hard” campaigns. In June 27 2001 a UPI article produced testimony regarding the practice of organ selling business in China. The testimony says,

“Prisoners in China who are convicted of offenses that would barely carry prison sentences in the West are being executed so that their body organs, corneas and skin can be harvested and sold to a lucrative transplant market, lawmakers were told Wednesday. The House Committee of International Relations Subcommittee on International Relations and Human Rights heard gruesome first-person accounts of organs and skin being removed, sometimes while prisoners still showed signs of life, and sold to benefit the military and members of the Chinese elite”

death penalty as exemplary spectacle

The “Strike Hard” campaign also included the bizarre practice of organizing rallies and public gatherings in sports stadium where mass executions were carried out. Some executions were even telecast live on television. The Chinese authorities described it as a means to deter people from committing crimes in the future. In many cases it was compulsory for large numbers of people to gather and watch executions. The executions of prisoners at mass public rallies were referred to as “killing chickens to scare the monkeys” by the authorities. Amnesty International reported one execution rally attended by 1,800,000 spectators.

“Executions were carried out all over the country for crimes as diverse as bribery, pimping, embezzlement, tax and insurance fraud, robbing of petrol, selling harmful foodstuffs, drug offences, as well as violent crimes. Most executions have taken place after mass sentencing rallies in front of massive crowds in sports stadiums and public squares. Rallies in Shaanxi province in April and May were reportedly attended by 1,800,000 spectators. Tens of thousands of arrested suspects and thousands of others assigned without charge or trial to detention in “re-education through labour” camps were also paraded at these rallies. Those sentenced to death were also paraded through the streets past thousands of people on their way to the execution ground.”³³

On 11 March 2000 in Lhasa a public execution was carried out and 30,000 spectators were reported to have attended.

“Usually rallies are held in public areas so that huge crowds can gather to watch the sentencing. For example, Chen Dequ was executed after a mass rally on 7 April 2000 in Sanming city, Fujian province which was reportedly attended by several thousand people. (11) In March, in Lhasa, Tibet Autonomous Region, rallies were held which were reportedly attended by some 30,000 people. After the rallies a total of seven unnamed people were executed”³⁴

The “Strike Hard” campaign demonstrate a total disregard for both domestic law and international norms and practices. An alarming aspect of these campaigns has been the execution of juveniles. Young people under the age of 18 were sentenced to death. This goes against the principle of “*mitigated or lesser punishment, education, rehabilitation and reform of young criminals*”. International norms state that by law many young convicted persons belong to the category of first time offenders and it is not proper to execute such persons. China is a State Party to the Convention on the Rights of the Child (CRC) and hence Chinese Government has undertaken that “*...Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offense committed by persons below 18 years of age*” (Article 37 (a)). Article 44 of China’s own Criminal Law states that the

death penalty “is not to be applied to persons who have not reached the age of 18 at the time the crime is committed”. On the other hand the same article also allows Juveniles aged 16-18 to be sentenced to death with a two-year suspension of execution “if the crime committed is particularly grave”. The China’s Supreme People’s Court gave additional legal interpretation to Article 44 in 1983 where the possibility of death penalty for juveniles was reinforced. The supplemented Article state that for those “who were given a suspended death sentence because they were under 18 when they committed a crime, once they have reached 18, and resist reform in an odious manner, and the facts are verified, the death sentence can be carried out as stipulated by the law”.

According to Amnesty International the most careful and elaborate proceedings have to be followed in the case of the death penalty. Since this practice is not implemented in China, and China has demonstrated little respect for human lives and fundamental rights, it can be argued that this may be the sole reason why China has the highest figures of death sentence in the world. There was a case of juvenile death sentence reported by Amnesty International.

“Amongst those sentenced to a suspended death in 1996 were: Luo Guan (under 18 years of age at the time of the alleged crime in 1995) an unemployed woman from Anshun City, Guizhou Province, sentenced in May 1996 for murder. Her co-defendant Fang Guolan (Female, aged 29) a farmer from Guizhou province, was executed on 14 May 1996. Xu Weichuan (17 years of age at the time of the alleged crime in 1992), sentenced on 28 March 1996 by the Zhuhai Intermediate Court to a suspended death sentence plus deprivation of political rights for life for the robbery of Heng Sheng Bank, Macau during which a security guard was killed. A co-defendant Xu Weizong was executed”³⁵

VIII POLITICAL EXECUTIONS IN TIBET AND XINJIANG

The People's Republic of China throughout its history reflects contradictions and dual approaches in implementing their laws. Since the conception of the People's Republic in 1949, the Communist regime struggled to rein in its two most territories with the strongest nationalist groups, Tibet and Xinjiang. These two regions were subjected to severe crackdowns and iron-fisted rule under the Chinese Communist Party for the last five decades. There have been uprisings and calls for freedom and independence in the form of street protests in these two regions. Any nation wide campaign launched in China, from the anti-rightist campaign, the Cultural Revolution, patriotic re-education campaigns and anti-crime campaigns, all took a decidedly political tone and interpretation in these two regions. While some campaigns were of a social and economic nature in Mainland China, they became political campaigns in these two western regions. Since the outbreak of resurgent activities in 1997, Chinese authorities have carried out numerous executions related to political activism in these regions. In the wake of the September 11 attacks in the United States, the Chinese government branded the pro-independence activities in these regions as 'terrorist activities'. As this report suggest,

“Many executions have been carried out in Xinjiang since April 1996 when the “strike hard” anti-crime campaign began. Those executed have included Muslim nationalists accused of involvement in terrorist activities. The crackdown has also led to the arrest of people who peacefully expressed their views, such as Abduvahit Ahmedi, an ethnic Uighur who was sentenced in May 1996 to three years’ imprisonment by a court in Urumqi for writing “reactionary” material “seeking to split the motherland”. A major crackdown on “illegal” religious activities was also carried out in Xinjiang, leading to the closure of mosques and Koranic schools, the confiscation of “reactionary” or “illegal” religious materials, and arbitrary arrests. According to unofficial sources, 180 Muslim religious leaders, Koranic professors and students were detained in Xinjiang be-

tween May and September 1996 and over 100 Koranic schools closed down. Some arrests were confirmed by official sources, such as that of Aisha Awasy, a local people's representative for Kezhou, who was arrested in June 1996 for "longstanding illegal religious activities". He was held in Akto county, near Kashgar, in western Xinjiang, but his fate since then has remained unknown".³⁶

Comparatively the Xinjiang region has witnessed far greater numbers of political executions than Tibet in recent years. In the case of Tibet, the victims of political executions in the past were local community and religious leaders, carefully selected by the authorities.

Amnesty International reported on the trends of death penalties in 1997, the year that also marked the violent uprisings in the Xinjiang region. Amnesty International produced a report under the subject entitled **Separatism**,

"The growing unrest in Xinjiang province and the targeting of "Strike Hard" towards 'separatism' has resulted in more executions of ethnic Uighurs in 1997 on charges of "separatism" and other activities deemed to undermine state security, than in previous years. The crackdown on suspected Muslim nationalists, religious "extremists" and alleged terrorists intensified in 1997 after anti-Chinese protests by Uighur nationals and several bombing incidents attributed to underground nationalist groups seeking independence from China. On 30 January 1997, 18 ethnic Uighurs were executed. At least two of them were convicted of an alleged bombing that occurred in Urumqi in February 1996. On 3 March, five people were allegedly executed having been charged with offences relating to the riots that occurred in Xinjiang in 1996. One of the five was accused of being a prominent leader during the riots. The Chinese authorities however denied that the five had been executed. On 24 April, at a public rally attended by some 5000 people at a stadium in Yili (5) city, three ethnic Uighurs were executed having been charged with offences relating to riots which occurred in the city on 5 and 6 February 1997. Sentences were imposed on 30 Uighurs. On 29 May, eight Uighurs were executed on charges of involvement in a bombing

that occurred in Urumqi on 25 February 1997. They had all appealed and all the appeals were rejected. Another four received the death penalty with a two year reprieve. On 10 June, a further three unnamed Uighurs were allegedly executed on charges relating to riots in February 1997 in Xinjiang. On 22 July, nine people, mainly Uighurs, were executed on charges relating to the riots in Yining city. The sentencing rally, held at a stadium, was televised and over 4,000 people reportedly attended. The defendants were paraded through the city streets. Other people received varying terms of imprisonment, including a 16 year old Uighur who received an 18 year sentence. At the end of July, a further three were executed on similar charges and on 15 September two people were sentenced to death on charges that included “separatism”.

the case of trulku tenzin delek and lobsang dhondup³⁷

The well-known case of Trulku Tenzin Delek and his close lay disciple Lobsang Dhondup drew widespread international criticism of China and the death penalty system in China. The case also exposed how the legal system in China violated the proper legal procedure from the time of arrest to the final conviction. The case also exposed the inherent contradictions in the implementation of the death sentence as well as the PRC’s practice of misinterpreting law to carry out political crackdown in the regions of Tibet and Xinjiang. There is no doubt that the conviction and death penalty sentence meted out to Trulku Tenzin Delek and Lobsang Dhondup was politically motivated. The entire sequence of arrest, trial and conviction was nothing short of political conspiracy in order to eliminate any individual or religious figure whom Beijing considers a threat to their political legitimacy and authority. The apparent reason for Trulku’s arrest was his open declaration of support and loyalty to the Dalai Lama and



persistent efforts to strengthen the identity and culture of Tibetans. It was the Dalai Lama who recognized him as the reincarnation of a late lama when he had audience with him in early 1982. The Chinese authorities had made numerous attempts to arrest him but all failed owing to the support of local Tibetans.

The much-discussed 1997 revision of the Criminal Procedure Law (CPL) brought little tangible reform. Fortunately the counter-revolutionary crimes category was dropped as it no longer has any relevance in changing China but unfortunately it was replaced by endangering national security crimes that can cover similar types of alleged activities or crimes. The crimes committed under endangering national security were made punishable by death particularly if they were deemed to be serious. The term endangering national security was never defined and interpreted in clear terms with respect to its scope and implementation. The offences mentioned under this law were so broad and vague that it has actually broadened the scope of activities that can be included under this new law. Since 1997, peaceful protest and calls for freedom in Tibet and Xinjiang have been prosecuted under this law. All political prisoners before 1979 were charged under the counter-revolutionary law. Those prisoners charged and punished after 1979 were prosecuted under 'endangering national security' law. The 1996 revised version of the Chinese Criminal Procedure Law offered no positive changes and reform in actual form and interpretation of laws. Trulku Tenzin Delek, Lobsang Dhondup and Lobsang Tenzin were victims of this highly vague and interpretable law.

The TCHRD topical report entitled "*Unjust Sentence: A special Report on Trulku Tenzin Delek*" has it,

Trulku maintained an independent religious stand on the controversial issue of the 10th Panchen Lama's reincarnation which could have provoked another official concern. Trulku had said, "I only recognize the reincarnation of the 10th Panchen recognized by His Holiness the Dalai Lama and no one else." Once in the presence of county officials, Trulku said, "You people issue orders calling for ban on the display of portraits of His Holiness the Dalai Lama in monasteries. For me, it does not make

any difference. Displaying the banned pictures does not deepen my devotion to His Holiness nor the official ban on the portraits lessens my faith. His Holiness the Dalai Lama is my very soul.” Such open display of support for the Dalai Lama becomes cause of concern for the Beijing authorities.

In 1997, the local authorities first attempted to detain Trulku Tenzin Delek and accuse him of six different charges in a special meeting held by Kardze authorities... Trulku Tenzin Delek was accused of “endangering state security” and illegal construction of monasteries under the banner of religion. Therefore, Trulku took retreat for five months in a nearby hill. In the meantime, local Tibetans collected approximately 30,000 signatures and sent an appeal letter to the provincial authorities to call off the arrest warrant. The authorities relented on the condition that Trulku Tenzin Delek would henceforth not indulge in so-called political activities... In 2000, Trulku mediated a dispute over grassland ownership between regions of Lithang and Mola in Kardze region, which had reportedly led to two deaths. The local authorities accused Trulku of interference in the matter and were about to arrest him when Trulku went into retreat for a period of seven months.

bomb blast: a conspiracy?

There had been a series of bombs detonated in the Kardze area in the eastern Tibet in 2001. On 3 April 2002, another bomb was detonated at the city’s main square, Tianfu, in Chengdu, the provincial capital of Sichuan, resulting in 12 injuries and one death. In the aftermath of the bomb blast, Lobsang Dhondup was arrested. He was blamed for the explosion and according to official reports they found a photo of Trulku Tenzin Delek in his house. During interrogation, Lobsang Dhondup allegedly confessed about his alleged involvement and motive behind the bomb blast and his relationship with Trulku. Official government newspapers reported that they found political pamphlets and leaflets allegedly written by Lobsang Dhondup with the cooperation of Trulku. In the following weeks, 80 Tibetans were arbitrarily arrested in connection with Trulku’s case. Amongst them few

detainees such as Luzzi Tashi, Tsering Dhondup, had received varying prison terms in connected to alleged bomb blast incident.

Not a single piece of tangible evidence was found at the bomb blast site that could link Lobsang Dhondup to the bomb blast. According to official reports, Lobsang was arrested with the help of an eyewitness. The name of the witness cannot be verified nor was she or he presented during the trial. Trulku was arrested on 7 April 2002 and until 29 November 2002 his whereabouts remained unknown until he appeared along with Lobsang Dhondup in Kardze Intermediate People's Court for trial. During the trial Lobsang Dhondup was sentenced to immediate death and Trulku was sentenced to death with a two-year suspension.

It can be argued that Trulku has been a Tibetan "dissident" figure identified by the Chinese authorities who had attempted to detain and arrested him previously. Since the previous attempts had failed, it can be surmised that he was wrongly implicated in the bomb blast allegedly carried out by Lobsang Dhondup. The circumstances surrounding the allegations against Lobsang Dhondup's role are not clear and are vague. Serious doubts have been raised with respect to the allegations and confessions which are believed to have been extorted following immense torture and maltreatment meted to Trulku and Lobsang Dhondup. There is good reason to believe that the charges and evidence have been fabricated and were a conspiracy of the authorities.

violations of legal rights

In examining the case of Trulku and Lobsang Dhondup, from their arbitrary arrests, to the ensuing period in custody and their trials and convictions, both of them were completely denied their legal rights. TCHRD's report on Trulku exposes legal abuses by the Chinese authorities.

"Visitation rights denied

During the subsequent months, reports described the coercive interrogation, beatings and torture of both Trulku Tenzin Delek and Lobsang Dhondup. There

was hardly any information on their whereabouts for almost seven months following their arrests. The jail refused to allow access to attorneys or to private visitors, thereby confirming allegations of torture and denying their right to assistance of a privately hired attorney. According to the Tibetan Information Network, Chinese authorities held Trulku Tenzin Delek incommunicado until trial²³. The Chinese legal system has contributed to the conditions in which disappearances are able to occur in Tibet by allowing for prolonged detention and administrative detention without trial. His disciples came to know about Trulku's whereabouts on 29 November 2002 when both Trulku and Lobsang Dhondup were brought to Kardze Intermediate People's Court for trial.²⁴ However, another report revealed that Trulku's family learned his whereabouts after two months of arrest but no one had seen him in person until the court 15 Unjust Sentence: A Special Report on Trulku Tenzin Delek trial.²⁵ With the exception of some ambiguous reports of him being detained in Dartsedo PSB Detention Centre, it is confirmed that no one has seen him in person until the first court trial.

Trulku's case contravenes Rule No. 37 of the United Nations 'Standard Minimum Rules for the Treatment of Prisoners (45) whereby it was guaranteed, "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits". It also contravenes Article 64 of the Basic Law and requires the Public Security Organs of the PRC to inform the family or the work unit of the detained person about the detention within 24 hours.²⁶ The denial of the rights of those detained to be informed, of relatives or friends and for detainees to receive proper legal defense is also a violation of rights to equality before the law as recognised in Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

Trulku's detention became officially confirmed when Dartsedo County PSB officials told the local inhabitants that Trulku had submitted a written petition to hold court trial. The officials demanded an astronomical sum of 1 million RMB (US \$ 1,180,000) to be deposited for any court trial to proceed. It is obvious that the said amount was demanded to deny Trulku the opportunity of litigation and thereby deny him justice. Such a demand clearly shows the cor-

ruption and bribery prevalent in the Chinese legal system.²⁷ A local resident commented on the futility and fairness of Chinese court trial when he said, “Even if we manage to gather the amount, I don’t believe it is going to change the fate of Trulku. It will be double loss.” However, few faithful Tibetans initiated a fund 16 Tibetan Centre for Human Rights and Democracy raising drive in Lithang County and other adjoining counties to gather the amount to begin court trial. When they had collected half the sum, the PSB officials intervened and arrested three Tibetans; Tsering Dhondup, Tsultrim Dhargyal and Dimey Gyatso who were in the fundraising team.

Court trial and sentencing On 2 December 2002, a closed trial was held in Kardze People’s Intermediate People’s Court against Trulku Tenzin Delek and Lobsang Dhondup, resulting in a conviction and sentencing. According to Voice of America, Tibetan language Radio Service, China denied an American request to have a representative present at the trial. Only Longa and Dhedhe, both relatives of Trulku, were allowed to attend the court proceedings. The Court sentenced Trulku Tenzin Delek to death with two years reprieve and deprivation of political rights for life for “committing crimes concerning explosions”. Additionally he was sentenced to 14 years’ imprisonment and deprivation of political right for three years for “inciting the split of the country”. Lobsang Dhondup was sentenced to immediate death penalty and deprived him of political rights for life for “committing crimes concerning explosions”. He was also given 12 years’ imprisonment and deprived of political rights for two years for “inciting the split of the country” as well as an additional three years of imprisonment for “illegally possessing firearms and ammunition”.²⁸

The Special Rapporteur of the United Nations Commission of Human Rights on freedom of religion and belief had communicated with the Chinese Government in May 2002 concerning circumstances relating to Trulku Tenzin Delek and others. The 17 Unjust Sentence: A Special Report on Trulku Tenzin Delek Chinese Government has submitted a response stating that “On 20 August, the procuratorial authorities instituted criminal proceedings against the defendant Tenzin Delek Rinpoche with the Intermediate People’s Court of the Ganzi Tibetan Autonomous Prefecture, for the crimes of fomenting separatism and causing an explosion and against defendant Phondup (Lobsang Dhondup) for

forming separatism, causing an explosion and the unlawful possession of firearms and ammunition.”

Trulku Tenzin Delek maintains that he did not confess to any of the charges against him.²⁹ Contradicting the statements of the Chinese official reports, reports received by TCHRD confirm that Trulku Tenzin Delek opposed the verdict and declared his innocence in the court. He further shouted, “Long Live His Holiness the Dalai Lama”. Lobsang Dhondup also reportedly declared in the court, “Neither Trulku nor I am involved in any way with the bomb explosions. The trial was unfair.”

After two officials from the Central Government visited Rinpoche on 6 January 2003, Trulku began a hunger strike, saying that Chinese authorities had denied him a fair trial. Trulku is reported to have told the two officials that he did not wish to respond to their queries, as they were not interested in finding out the truth.

It is learned from the course of the trial and from a recorded cassette that Trulku had denied any involvement in “splittist” activities and had demanded a fair trial. In a secretly recorded message, smuggled out of Tibet, Trulku said:³¹ Whatever [the authorities] do and say, I am completely innocent. . . Around that time, one of my friends called me and asked if [Lobsang Dhondup] was my relative. Then I became suspicious that something serious was going on. 18 Tibetan Centre for Human Rights and Democracy When I heard about the explosions and arrest of Lobsang Dhondup, I suspected that I might be wrongly accused and arrested — that I might become a scapegoat. I was wrongly accused because I have always been sincere and devoted to the interests and well-being of Tibetans. The Chinese did not like what I did and what I said. That is the only reason why I was arrested. . . I have always said we should raise our hands at others. It is sinful. . . I have neither distributed letters or pamphlets nor planned bombs secretly. I have never even thought of such things and I have no intention to hurt others.

The Chinese police and prosecutors imprisoned and tried Trulku Tenzin Delek solely on the alleged confession of Lobsang Dhondup. The officials also claimed that Trulku Tenzin Delek confessed his involvement during the investigation.

However, according to unofficial reports, including eyewitness accounts and Trulku's testimony, there are solid reasons to believe that Lobsang Dhondup's so-called confession was the result of coercion. The reports have indicated the use of torture and beating on Lobsang Dhondup while he was under detention.

Chinese authorities have not provided any information about the evidence underlying the convictions, the manner in which such evidence was obtained, what if any evidentiary links exist between the explosions and Lobsang Dhondup or Trulku Tenzin Delek, or what evidence would support the existence of any conspiracy between the two men.³⁴ PRC authorities have not provided any evidence of Trulku's engagement in activities that violates PRC laws. Although Trulku does have a well-established history of renovating monasteries 19 Unjust Sentence: A Special report on Trulku Tenzin Delek and supporting the Dalai Lama's religious views, he has no record of encouraging political protest and has denied any involvement in leafleting, both considered as "splittist" activities by China. In their monitoring of political protest and imprisonment since 1988, TIN has not received any report of a political incident or detention at any facility associated with Trulku Tenzin Delek.³⁵ TCHRD's research over the years also supports this view.

Retrial and appeal Chinese Criminal Law grants defendants a right to appeal within ten days of sentence. However, success of such appeals are almost non-existent. Following the conviction, both Trulku Tenzin Delek and Lobsang Dhondup appealed to Sichuan Higher People's Court to revoke the death sentence³⁶. Many western governments, Tibetan Government-in-exile, NGOs, human rights organisation and individuals appealed for reversal of death sentence and appealed for fair re-trial. On 14 December 2003, Wang Lixiong, a prominent Chinese writer, submitted a letter of appeal to National People's Congress, Supreme People's Court, and Sichuan Higher People's Court for reversal of death sentences on Trulku Tenzin Delek and Lobsang Dhondup. Twenty-four Chinese intellectuals and experts joined on the appeal, which was widely distributed within China and abroad.³⁷ On 17 December 2002, Mr. Lorne Craner (U.S. Assistant Secretary of State for democracy, human Rights and Labor), Assistant Attorney-General Ralph Boyd and Ambassador-at-Large for International Religious John Hanford, met in China with their Chinese counterparts. Chinese officials from the Supreme 20 Tibetan Centre for Human

Rights and Democracy People's Court, the Supreme People's Procuratorate, and the Ministry of Justice assured Mr. Craner that if the Higher People's Court affirmed the conviction, the Supreme People's Court would hold a lengthy appeal of the cases, as is required by Chinese law. Similar promises were made to other countries, including the European Union. On 17 December 2002, Tsering Lolo, brother of Trulku Tenzin Delek, hired two prominent attorneys Zhang Sizhi and Li Huigeng from Beijing, to represent Tenzin on appeal and to defend.

The case at Sichuan Higher People's Court.³⁸ Wang Lixiong was instrumental in securing their legal assistance to defend the case. On 18 December 2002, Trulku Tenzin Delek sent a letter through Tsering Lolo to Zhang Sizhi and Li Huigeng, appealing for their representation on his case. Zhang and Li had famously represented other dissidents in 1991 and in 1995. On 25 December 2002, Li telephoned Judge Wang Jinghong of the Sichuan Provincial Court to arrange for their representation and for an interpreter. Judge Wang suggested that they hire a local translator and made travel arrangements. Judge Wang did not mention any problems with their representation. Over inquiries from Li Huigeng over whether re-trial would take place in open, Judge Wang Jinghong had replied, "Nothing is certain".

On 26 December 2002, Judge Wang Jinghong called attorney Li Huigeng and made several inquiries over relations between Trulku Tenzin Delek and Lobsang Dhondup, and other unclear details of the case. Wang told them that he had to go to another region for official purpose and that date of the court trial could be confirmed as per the convenience and schedule of the two attorneys. Li wanted to study the conviction documents at Sichuan Intermedi²¹ Unjust Sentence: A Special Report on Trulku Tenzin Delek at People's Court on 6 January 2003. The next day, Wang Lixiong went to offices of Zhang Sizhi and Li Huigeng and paid their remuneration to handle the case.

On 27 December, attorney Li called Judge Wang and sought permission to meet and talk with Trulku Tenzin Delek. Judge Wang clearly mentioned that Trulku Tenzin Delek was detained in Dartsedo Detention Centre, and even gave him road directions from Chengdu to Dartsedo. The same day, Lithang County PSB officers arrested Tsering Lolo on charges of hiring lawyers for Trulku.³⁹ On 28

December, Zhang Sizhi and Li Huigeng met with Wang Lixiong, to discuss the representation. Mr. Lixiong felt that only lawyers from outside of the Sichuan would work beyond governmental control and be strong advocates.

On 29 December, Judge Wang called the attorneys and refused to allow them to represent Tenzin on appeal. He told them that two court-appointed lawyers from Kardze Region were already representing Trulku Tenzin Delek on appeal and that no further appellate paperwork could be filed. Wang Lixiong believes that the abrupt development may be a result of pressure on Judge Wang from Sichuan provincial authorities to stop the two Beijing lawyers from acting on behalf of Trulku Tenzin Delek. It is uncertain whether Trulku Tenzin Delek had ever been consulted about being refused his choice of lawyers. No official clarification is given on why the judge took such a step. However, the court's decision to prevent Trulku Tenzin Delek from receiving fair and proper legal representation could be interpreted as "politically motivated". Trulku was denied the right to his attorney when the higher court rejected lawyers to represent him. The ICCPR gives the defendant the right to choose an attorney of one's choice. China is a signatory to the covenant though it is yet to ratify it."

implications behind execution of lobsang dhondup



"TCHRD condemns the execution of Lobsang Dhondup and the reconfirmation of Trulku Tenzin Delek's sentence

TCHRD received confirmed information that **Lobsang Dhondup** was executed on Sunday, 26 January 2003, immediately after a secret trial at the Sichuan Provincial Higher People's Court. The same court also reaffirmed Trulku Tenzin Delek's death sentence with a two-year reprieve.

The Tibetan Centre for Human Rights and Democracy express strong condemnation and grief over the shocking and inhumane execution of Lobsang Dhondup. TCHRD also express dismay over the reaffirmation of Trulku Tenzin Delek's suspended death sentence.

TCHRD upholds its distrust of the judicial proceedings involving the deceased and Trulku Tenzin Delek as they were all carried out behind closed doors.

The release of some prominent political prisoners last year raised hopes of improvement in the general human rights situation in Tibet but the recent court verdicts shattered all hopes. The verdicts were unexpected and unjust.

The Karze Intermediate People's Court in Karze "TAP" held a closed trial on 2 December 2002, where the deceased was sentenced to immediate death penalty with life-long deprivation of political rights and Trulku Tenzin Delek to death sentence with a suspension of two years. Both of them were charged with alleged involvement in a bomb blast incident on 3 April in the city's main square (Tianfu) in Chengdu, Sichuan Province. Other charges against them were "illegal possession of arms" and "engaging in splittist activities".

However, due to huge international outcry and intervention, the execution did not take place as planned. Appeals were made and the case was referred to the Sichuan Higher People's Court. TCHRD strongly believes that both the deceased and Trulku Tenzin Delek were falsely accused. The conflicting views in the official Chinese newspapers of the bomb blast incident clearly indicate the contrived nature of the allegations.

According to Huo xin duoshi pao (Hou xin newspaper in Sichuan) of 5 April 2002 stated that following heavy investigation, within ten hours the persons in suspicion were arrested.

Ren min wang (People's internet) of Xinhua (official Chinese newspaper) of 4 April 2002 stated that within ten minutes with help from eyewitnesses, a suspect was arrested within 200 meters at the site. The same paper stated that following investigation at the site of explosion, police found debris of batteries, newspapers and tattered clothes. It was stated that three people were injured in the incident: a young girl, an elderly lady and a boy. There was no mention of any Tibetan political leaflets being discovered at the explosion site

According to a radio interview on 5 December 2002, with Radio Free Asia, Mr Zhao, director of the Karze judiciary mentioned that, "...twelve persons were injured..."

This is crucial in the light that the deceased and Trulku were linked to the entire incident with the sole evidence of so-called political leaflets being thrown and found at the site. According to Xinhua of 5 December 2002, the court verdict stated that the Public Security Bureau officials discovered political leaflets at the site.

The trial was unfair, as both of them were not allowed legal representation. Information received from Tibet indicated that during the court proceedings of 2 December 2002, the late Lobsang Dhondup shouted, "Neither Trulku nor I am involved in any way with the bomb explosions. The trial was unfair."

"While TCHRD conveys deepest condolence on the death of Lobsang Dhondup, it remains concerned about the fate of Trulku Tenzin Delek. And for this we seek immediate intervention by the International Community in this matter", said Tsewang Lhadon, TCHRD Executive Director."³⁸

Lobsang Dhondup was executed on 26 January 2003. His execution was a violation of many domestic and international norms after the Sichuan Provincial Higher People's Court upheld the earlier court verdict. The court also upheld the original death sentence of Trulku Tenzin Delek. The case was not been allowed to forward to the Supreme Court, which is proper legal practice in many democratic western countries. Lobsang was executed amidst intense international criticism and outcry. The evidence regarding the episode of bomb blast was entirely based on a mere allegation since the prosecutors had not produced any 'evidence' in the court. Moreover, there was a great deal of doubts surrounding the official's claims that Lobsang 'confessed' to the crime. No one witnessed his 'confession' and according to court proceeding witnessed by his two relatives said that Lobsang Dhondup denied his involvement right from the start to the end. The camera that recorded the trial proceedings even could not produce the 'confession' Lobsang Dhondup was said to have admitted. Since entire conviction of Trulku and Lobsang Dhondup hinges on the confession, experts believe that Lobsang was hastily put to death so that it leaves no chance thereafter for Trulku to win the court trial. The legal lifeline for Trulku was handicapped forever with the execution of Lobsang Dhondup. The US Congress-

sional Executive Commission on China express the same view, “*the rush to execute Lobsang Dhondup hours after Sichuan Higher People’s Court approved his death sentence may have profound impact on Trulku Tenzin Delek’s ability to receive a fair retrial*”.³⁹ In the case of Trulku and Lobsang Dhondup the ‘access to lawyers’ provided in Article 17, 18, 19 and 20 of the revised Chinese Criminal Law (CPL) which has given defendant the right to access lawyers was totally denied and violated in all kind of forms.

There was a wider context under which Lobsang Dhondup was made a legal scapegoat. The Chinese authorities failed to produce any explosive materials and substance that may have been used in the bomb blast neither he had any expertise in bomb making. Lobsang was accused as a ‘terrorist and separatist’ and has a deeper political connotation in the aftermath of 9/11 terror attacks on Twin Towers. Days after US declared war against ‘terrorism’ China too declared their version of war against ‘terrorism’. In 2001 the former Chinese President Jiang Zemin re-launched the “Strike Hard” campaign for the third time. The “Strike Hard” campaign received a new impetus and thus the tone of campaign has undergone a massive shift in definition and meaning in recent years. Hitherto the campaign was meant to fight the domestic crime and social disorder was then manipulated and given new legitimacy to fight the non-violent protest in Tibet asking for freedom and dissident activities in Uighur Xingjiang region. Since then in Uighur there have been numerous crackdowns in Mosques and individual activists.

After much international pressure and campaigns, Trulku’s death sentence with a two-year suspense was commuted to life sentence on 26 January 2004. He is currently serving his life sentence in Chaungdong Prison in Sichuan Province but reportedly no one has seen him since his detention.

the case of lobsang tenzin⁴⁰

LOBSANG TENZIN was born in Lhasa. At the age of 8 he joined the Bhonshod Elementary School situated in the northern part of Lhasa. Between the age of 14 to 19 he studied at the Lhasa intermediate School. On securing the first grade he joined the Lhasa Tibet University at the age of 20.



At the university, he was regarded as the figure among the Tibetan students who, in gesture of defiance, voted him the “Best Student of the year” in 1988.

On 11 March 1988, Lobsang was arrested for participating in a massive Pro-Independence demonstration against the Chinese rule at Jhorkhang Temple in Lhasa on the 5th March 1988. (Lobsang’s arrest was announced through domestic media only on 16 April 1988). Before his formal detention at the Gutsa prison on 13 March, 1988 he was thoroughly interrogated at the Xing Jing Da Du police station on Dhondhe road in North-eastern Tibet. He was subjected to severe and inhumane beating and torture during this interrogation. Thereafter he was implicated as the “Principal Culprit” in the death of a People’s Armed Police officer during the demonstration in Lhasa.

On 24 April 1988 the Chinese authorities announced through public speakers, newspaper and television that Lobsang Tenzin should be suspended from the University rolls.

On 19 January, 1989 in a trial that took place at the headquarter of Peoples Armed Police, Lobsang Tenzin was charged as the main culprit and was given a death sentence which was to be carried out in two years time.

On 14 February 1989, he was transferred to Drapchi Prison. On 15 June 1989, he was manacled and kept under solitary confinement for a week. He was thereafter taken to New Zhi Tou (known as Trushipa in Tibetan), one of the five prisons under Sangyip prison administration for continuous interrogation. There again he was manacled and kept under solitary confinement for two weeks. He was then transferred back to Drapchi prison cell No. 8 under the Fifth Rughak (section).

Around December 1989, the fear of Lobsang Tenzin and two other Tibetan youths' execution in March 1990 started mounting in Lhasa. After an International appeal launched by Tibetans and their supporters, the Chinese Ambassador in Washington D.C. termed the likely execution of Lobsang Tenzin in March 1990 as "gossip and rumour".

In March 1991, Lobsang Tenzin's sentence was commuted to a life sentence. This reduction in his sentence was surely due to the strong international pressure against the Chinese government.

Lobsang Tenzin's great spirit remained alive even while in prison. He was one of the political prisoners involved in the attempt to pass a petition to James Lilley, the then U.S. Ambassador to China, describing the conditions in prison.

In 1994, Lobsang's sentence was reduced to 18 years imprisonment. It is believed that this reduction in his sentence was due to his good behaviour. Lobsang is currently serving his term in Chushul Prison, "TAR". Reportedly, Lobsang is in very poor health. He has a damaged kidney due to which his body has become numb making it difficult for him to stand.

violations of legal procedures:

Lobsang Tenzin was arrested during the pro-independence protest at Jorkhang Temple, in Lhasa and therefore he was put in a Gutsa detention center for a month. According to the nature of arrest and conviction Lobsang Tenzin was to plead guilty before he was proven by ground evidence. Thus the first major procedural violation in his case was the denial of Article 12 of Chapter One of Chinese Criminal Procedure Law (CCPL) where it states, "**Everyone is innocent until proven to be guilty**". The Chinese Criminal Law prohibits the practice of torture to exhort confession during the period of custodial and pre-trial detention. However, Lobsang Tenzin was systematically tortured while he was detained in the Gutsa Prison.

The nature of conviction and trial violates the right to have a free and fair trial. In Article 42 of Categories of Evidence, a suspect can be convicted if he or she merits seven categories of evidences such as (a) Physical evidence and documentary evidence, (b) Testimonies of witnesses, (c) Statements of victims, (d) Confessions and exculpations by the criminal suspects or the accused, (e) Conclusions of expert evaluators, (f) Transcripts of inspection and examination; and, (g) Audio and video materials.

None of these categories of evidences supports and implicate Lobsang Tenzin in any in the case of the dead of the personnel of People's Armed Police (PAP). In fact judging by the implication, the trial had never reached the court and none of evaluators had ever made any statement of conviction in this case. The case simply reflects arbitrary arrest, detention, and false accusation and fabrication. Lobsang Tenzin was described as principal culprit but on the more bizarre nature of accusation, there was no evidence of confession and statements from other people who were supposed to have worked under him. The case also violated Article 46 of the CCPL- "Evidence Versus Confession" where a suspect can be held and tried if there is enough evidence and confession match. Neither there was evidence nor confession in the case of Lobsang Tenzin. The application of death penalty to Lobsang Tenzin under these prevailing circumstances starkly contradicts the legal proceedings of PRC. There was no report of the case ever gone to Higher People's Court for the final review of death sentence if at all it never went to the Supreme People's Court. In many countries, the application of death sentence to a suspect is a laborious procedure while in the case of Lobsang Tenzin, it seems that death penalty was decided under heavy handed arbitrariness of law enforcing agencies during the administrative detention.

The case violated all the Chapter two of Jurisdiction stipulated in the Chinese Criminal Procedure Law and Chapter Four of Defense and Representation. Thus the entire application of death penalty to Lobsang Tenzin not only violated the domestic and international laws but mere application of death penalty by the Chinese authorities was farce.

VIII REFORM AND ABOLITION

Around the world, October 10th is marked as the day to mark the international campaign against the use of the death penalty. In many democratic countries, the death penalty was abolished long ago. Very few countries make use of the death penalty except in exceptional and extreme cases. For the last ten years, China has been the country with the highest rate of executions in the world. According to many human rights groups, China executes more people than the rest of the world combined. In the year 2000, China executed 4,015 people; in 2001, 4000 were executed according to Amnesty International. According to Human Rights Watch, China executed 3,400 in the year 2004. From December to January 2005, over 650 people were executed and 200 more on 9 February 2005. It is reported that in early 2005, over 650 people were executed between late December and January, and that 200 people were executed on February 9, 2000. This staggering number of executions can only be possible in a country that does not respect fundamental human rights and a country that does not respect the rule of law. When Mao founded People's Republic of China in 1949, China was a Stalinist country, an authoritarian State where world's notorious human rights violations are taking place. But China is changing since it's opening up to the outside world and its economy shifted from Centrally Planned Economy to Market Economy in the last two decades. Next to reforms in economy, reforms have also been introduced in its Criminal Procedure Law (CPL).

In recent years, there have been calls for reform in the Chinese legal system by experts from within and outside China. Among the most noteworthy calls has been the call to bring reform to the death penalty and, if possible, its total abolition. Zhang Jun, the deputy Minister of Justice stated,

*“...the key issue in China regarding the death penalty is to reform the punishment system...”*⁴¹

China has a unique judicial system. The Criminal Procedure Law has been amended many times. The need for revision and reform to the use of the death penalty stems from a law called The Organic Law of the People's Court of China or also called as "Xiafang" System. The law that allows lower courts to exercise the right to approve death penalty. The law was introduced in 1983 with a specific State agenda. The agenda was to fight a rising profile of crimes in China under a notorious campaign after the end of Cultural Revolution the campaign called "Yanda" [Ch:] or "The Strike Hard" campaign. During the "Strike Hard" campaigns the crackdowns on crime was massive and punishment meted out to criminals were severe and extreme. The intensity of crackdowns remained same in later subsequent re-launches since its first introduction in 1983.

The organic law empowered the lower level People's Intermediate Courts to try and execute crimes that involved state secrets and crimes that endanger national security without procuring approval from the Supreme People's Court. Under that law the provision of the death penalty was extensively used for crimes such as robbery, corruption, murder and undermining state secrets. Under the law there are 68 crimes that merit death penalty and most of them are non-violent crimes. Some observers have described China's large numbers of executions as execution frenzy and this increase in numbers began with the Supreme Court relinquishing of the death penalty review or the final approval. Many legal scholars both within and outside China pointed that this practice of empowering lower courts at the provincial level has bred the 'local protectionism' where death sentences are decided by the whims and priorities of local officials. This practice gives rise to a lack of transparency and fair trials in the local courts. It was often the case during the "Strike Hard" campaigns that the local authorities under intense pressure from the higher authorities resorted to passing quick trials and quick death sentences leaving enormous room for possible miscarriages of justice.

The Legal Provisions in Chinese Criminal Procedure law (CCPL)

Chapter one: Review Procedure of Capital Punishment

Article 199. Approval of the Supreme People's Courts

Death sentences shall be verified and approved by the Supreme People's Court.

Article 200. Review of Higher People's Courts

Cases of first instance where an intermediate people's court imposes a death sentence and the accused does not wish to appeal shall be reviewed and verified by the higher people's court first, and then submitted to the Supreme People's Court for verification and approval. If the higher people's court does not agree with the death sentence, it may bring the case up and try it or remand the case back to the intermediate people's court for a new trial.

Cases of the first instance where a higher people's court imposes a death sentence and the accused does not wish to appeal, and cases of the second instance where a sentence is imposed, shall be submitted to the Supreme People's Court for verification and approval.

Article 201. Approval of Higher People's Courts

Cases where an intermediate people's court imposes a death sentence with a two-year suspension of execution shall be verified and approved by the higher people's court.

The major flaws are not in the laws but in the implementation of laws. The cases of death penalty in last decades have witnessed due legal procedures not strictly followed in the Chinese courts. Sources close to the Supreme People's Court disclosed to Xinhua that the Intermediate and higher people's courts passed a large proportion of death sentences in the past. A minor

proportion of important cases of death sentence have been submitted to the Supreme Court. The major reasons of the Provincial courts passing death sentences is directly connected to the Organic Law of 1983 where the right to approve execution or approval right was promulgated to the provincial courts. Another major flaw in China punishment system has been the varying court standards where different provincial governments have different court standards in passing judgment on death sentences. This results in some individuals receiving death sentences while some receiving imprisonment sentences. Another serious shortcoming of the Organic law of 1983 involves the Higher People's Courts in the provincial, municipal and autonomous region do not followed the proper due procedure. It was noticed on numerous occasions that death sentences were passed ahead of the death sentences review procedures. This reflects that the Organic law was used too liberally and extensively where actually the most careful and exhaustive procedures have to be follow before imposing death sentence to the suspect. Yang Qingxiang the president of the Jilin Provincial Higher People's Court from 1992 to 2000 said that, "*if the Supreme court has the last say on executions, miscarriages of justice can be largely prevented.*"⁴²

Dr. Liu Renwen, a researcher in the Chinese Academy of Social Sciences, has pointed out many negative side effects resulting from the use of the death penalty in China. The most serious side effect of the death penalty has been the difficulty in getting legal cooperation from the outside world in areas like the tracking down of criminals and their extradition. Many western countries that have abolished the death penalty will not extradite Chinese criminals taking shelter in their country to China because they would be sentenced to death once they are extradited. The most widely publicized case was that of Chinese smuggler Lai Changxing who fled to Canada when he was facing arrest in China. Due to the existence of death penalty system in China, the Canadian Government, at first, refused to extradite Lai Changxing back to China. Now with the assurance of the Chinese government that he will not be executed, they have agreed that he will be extradited to China.

In recent years the Chinese Government was under pressure to abolish death penalty for non-violent crimes so that it would create more conducive grounds for extraditing corrupt officials who had fled abroad. On numerous occasions, Chinese legal scholars have pressed the Chinese Government to change the law on the death penalty citing that the reform would encourage foreign courts to extradite fugitive criminals back to China. David Lague in his article ‘China pressured on death penalty’ published in the International Herald Tribune, August 15 2005 reported on the growing pressure on China to scrap its use of the death penalty and how the death penalty hampers China in extraditing criminals to China. David Lague writes,

“China’s ruling Communist Party has been embarrassed by the exodus of corrupt officials fleeing the country, often after embezzling large sums of public money. The Commerce Ministry said in a report last year that 4,000 officials suspected of corruption had fled overseas in recent years... In perhaps the biggest case of this type, three managers from the Bank of China branch at Kaiping in Guangdong Province fled to the United States via Canada in October 2001 after stealing more than \$485 million from the bank. One of the managers, Yu Zhendong, has been returned to China but the others remain at large... The United States returned Yu, the former Bank of China manager, to China in April last year after reaching a deal in which the Chinese authorities agreed that he would not be executed, tortured or jailed for more than 12 years.”⁴³

Taking into account the development of ‘rule of law’ in China in last two decades, one can say that there are good reasons to argue that ‘rule of law’ will take its roots deeper in future and that in return impose reasonable regulation on Party and government leaders. The views of the senior leaders are very crucial in bringing legal reforms in China as it was seen in the past. Their views will have tremendous potential influencing the course of the development of the future legal system. Each generation of leadership have brought changes beginning from Mao, the younger generation of leaders came from professional background with legal training and exposure. There has been a new trend in the fourth generation Chinese leadership that they

tend to see law and 'rule of law' as more of autonomous entity than an instrumental tool of the Party. Within the echelons of Communist Party there are differences in their views of laws.

So far the senior Chinese leadership has shown a lukewarm response to the 'rule of law'. Still it didn't stop them from appreciating its advantages although they have been very wary and cautious. During the 15th Party Congress the former President Jiang Zemin made statement describing 'rule of law' as central to economic development, national stability and Party legitimacy. Jiang bluntly paid homage to the virtues of 'rule of law' as an instrument of reining in unruly tendencies of the local governments. There is no doubt the benefits 'rule of law' can bring as China is the dream destination of the Foreign Direct Investment (FDI) that are coming from the western countries. To facilitate the furious growth of Chinese economy needs a solid legal base to support as well as to win the trust and confidences of western investors. In recent years there were numerous cases of local governments that overlook the directives of central government to make their local government richer and more affluent. In this context 'rule of law' can bring rich dividends to the central government. The question now remain is that can the senior party leaders and the central government sees beyond the immediate benefits brought by 'rule of law to make positive reforms judiciary and punishment system.

In July 2001, the International Olympic Committee (IOC) granted Beijing to host the 2008 Olympic Games. The granting of the games to Beijing was decided purely for commercial reasons both for foreign investors and for China herself. Ironically, the condition of human rights in China contradicts the key ideals of the Olympic Charter that stressed the "harmonious development of man" and "human dignity". The organization, Olympic Watch, which is made up by the International Society for Human Rights (ISHR) and Laogai Research Foundation, issued a statement pressing China to achieve 'MINIMUM STANDARDS FOR BEIJING 2008'. They made six demands on China and one was Moratorium on the Death Penalty. It states,

*“Regardless of internationally different moral views of the death penalty, it is clear that in present-day China it is used in an environment short of fair-trial standards. It is part of the oppressive apparatus of the totalitarian regime. Further, there are indications that executions are part of an industry of organ harvesting. The moratorium, matched with freedom of speech, will not only stop these abhorrent practices, but also allow the Chinese people to re-examine whether the institution of the death penalty is morally acceptable at all”.*⁴⁴

Today the issue of the death penalty is discussed beyond the legal profession in China. It is discussed in academies and in the media with newfound courage and intensity. More and more numbers of officials and legal scholars are advocating the need to carry out reform as well as abolishing the death penalty. On 27 January 2005 a debate called ‘International Symposium on the Death Penalty’ was held at Xiangtan in Hunan province. During the debate strong worded arguments were made advocating an end to the death penalty in China. Some legal scholars argued that China must put a limit to the use of death penalty since China had signed and ratified the International Covenant on Civil and Political Rights (ICCPR). They also voiced that the abolition of death penalty was the mark of a civilized society.

During the academic conference, Professor Qiu Xinglong⁴⁵ opined, “*as long as the law recognized that criminals were humans, the criminals were entitled to live and the state and the law could not deprive them of their rights to life*”. He is a prominent figure who is advocating reform in China’s death penalty system. Currently he is the dean of the Law Faculty of Xiangtan University, Hunan Province. He proposes setting up long-term prison sentences ranging from 20 to 30 years in the place of the death penalty. This reform, according to him, would effectively reduce and restrict the application of the death penalty in China.

Zhang Jun, deputy Minister of Justice of China also stressed a similar viewpoint that a long-term prison sentence could be an ideal alternative choice to the death penalty. Minister Zhang Jun said,

“The focus of reforming the punishment system is not to abolish the death penalty but to set up more long-term prison sentences, for example, 20 or 30 year sentences in order to reduce the use of the death penalty... My suggestion to make sure they stay in prison for at least 25 years and then release them... A criminal who is released at 55 normally will not commit a new crime. When the long-term imprisonment system is set up, judges will be likely to resort to capital punishment”.⁴⁶

Chen Xingliang, the vice president and a professor at the Law School of Peking University, told China Daily that *“Chinese scholars on the Criminal Law have come to a common understanding that the death penalty in China should be gradually get rid of... To abolish the death sentence is a world trend is a world trend and China should conform to it”*.

Criminal scholar, Zhao Bingzhi from the Renmin University of China, stated with respect to achieving a total abolition of the death penalty in China,

*“as a first step the death penalty should be dropped against non-violent crimes. Afterwards, crimes that do not violate human lives should be exempted... and eventually, the death penalty would disappear from China completely.”*⁴⁷

Hope and optimism are coming from sources within the Standing Committee of the National People's Congress (NPC) that views on reform of the death penalty are being discussed widely but no specific plans to eradicate the death penalty has yet been spelt out or decided. One officials was quoted as saying in the China Daily that, *“It is impossible to say what items in the law will be revised until the relevant Standing Committee conference decides”*. Officials in the Supreme People's Court maintain that death penalty is a legislation issue and the courts in China must simply acted in accordance with current laws. According to one report published by the China News Service, the China's Supreme People's Court may withdraw the right to review death penalty in which the death sentences have been passed from 2006 onwards. If Supreme People's Court withdraws the right

to review cases currently undertaken by the provincial courts, then it is certain that the rates of executions in China will dramatically drop. This reform will greatly enhance the possibility of citizens to have a trial of a longer duration, and guarantee a fair hearing where due procedures will be respected and followed. This system rules out the administrative interference of law enforcement bodies, as was the case in the past. They no longer will be in a position to determine the course of court proceedings. According to Wan E'iang, the deputy director of the Supreme People's Court,

“This will ensure the death penalty review process is truly neutral from administrative departments and prevent the intervention of other powers”.⁴⁸

Still there is a room for concern by some legal experts on China. The article ‘China to review death sentence’ published on 27 September 2005 reported,

*“Ms Francis pointed out that the Supreme Court would have more qualified staff, and would be immune from the local pressures which can sway decision-making in the lower courts. She said she believed the revelation of several miscarriages of justice in the last six months had “humiliated” the authorities.”*⁴⁹

However, the senior leadership in China still feels that the death penalty is the only means to fight domestic crimes. The Chinese Premier Wen Jiabao stated at the press conference in March 2005 after the conclusion of the Annual Session of the National people's Congress (NPC) that, *“More than half the countries in the world still have death penalty”*.⁵⁰ Premier Wen, however, promised to adopt effective systems to ensure a reliable and just use of the capital punishment. Many legal scholars in China think that the China must push for more legal reforms in the punishment system but that the abolition of the death penalty appears to be a long process that will take time. However there is still a room for optimism.

IX CONCLUSION

In many developed countries, studies have indicated that the death penalty does not deter crime. The nature of the death penalty is considered to be cruel, inhumane and against the spirit of human dignity and civilization. It was due to these reasons that the death penalty was abolished in many of the countries in the west. Today more than half of countries in the world have death penalty in their penal code but its use is limited to only in extreme cases after following careful and exhaustive legal proceedings.

Since from the days of drafting the Criminal Law (CL) in 1954 now called Criminal Procedure Law (CPL) the death penalty was placed on 68 different crimes and out of which many of them are non-violent crimes. The Criminal Law was re-amended many times with the omission of Counter-revolutionary crimes and inclusion of new clause “endangering national security” in 1979 reform.

A landmark epoch came in 1983 with the promulgation of Organic Law, when China’s Supreme Court granted provincial courts to pass death sentence in their courts. During the same year China launched their first ever “Strike Hard” campaign against crime. Since China remained a country with the highest execution rate in the world for the two decades, it seems that China readily rushed to crackdown harshly on crimes without addressing the key socio-economic reasons. Why crimes in China exploded during the early 1980s? There were valid reasons for the phenomenon.

In 1979 the reformer Deng Xiaoping made a historic inspection of Guandong region in the southern China and brought a landmark economic reform. His reform was to shift Chinese economy from the Centrally Planned economy to Market economy or in other words from Socialism to Capitalism. The liberalization of economy brought sudden change to socio-economic facet of the millions of Chinese. The Chinese citizens prior to economic reform where everything is State owned and commonly consumed what was being produced. All the basic needs were met out under the welfare State; there was relative socio-economic equity. With the advent of Privatization, health, education and domestic needs have to be met out by

individual initiatives and enterprise. The economic reform no doubts brought wealth and riches to people on the coastal China but it brought poverty in the far flung hinterlands of China where more than 80% Chinese population live. The reform however brought two major adverse consequences. (1) A huge economic divide between 'nouveaux riches' and a large section of poor Chinese citizens. (2) A large influx of migrant workers to cities in search of fortune. On the basis of these elements i.e. huge income disparities between haves and haves not, rural poverty, unemployment, illiteracy and a sudden shift of economic priorities have produced many social ills, and most prominently the explosion of crimes in China.

The second fundamental question is 'does death penalty achieve its stated aims in rooting out crimes in China in the last two decades? Ironically the statistics revealed by the Chinese Government and crimes records in China have shown that death penalty failed to achieve its stated goals or in other words death penalty does not 'deter' people from committing crimes. The experiences have shown it time and over again. Can China's "Strike Hard" campaigns launched since from 1983 be justified? The viable alternative for the Chinese Government in tackling crimes is to address socio-economic issues and solve the pressing social ills. As experience shown in the developed countries, this alternative remedy was far more efficient and successful in tackling crimes.

Taking the above stated facts into consideration, many legal experts within China and abroad have pointed out that China can easily reduce the rates of execution without abolishing the death penalty code. They put forward a three stage plan to reduce death sentences and ultimately abolishing the death penalty system itself in a long run. The first stage is to repeal the Organic Law of 1983 during the next annual session of National people's Congress (NPC). This will enable the Supreme Court to review all death sentences from the provincial and local governments. Officials within the Supreme Court say that this will dramatically reduce the rate of death sentences by 30%. The second stage is to drop down death sentences to crimes of non-violent natures. This will have an obvious impact since most of crimes meriting death sentences are non-violent crimes. The third stage is to put an alternative option to death penalty where instead of sentencing criminals to death, they can impose life imprisonment. Criminologist ar-

gues that a criminal arrested in his early twenties will not commit crimes again when he is released after 30 years behind the bar.

Another area requiring a serious reform is procedural standards practice in China today. During the “Strike Hard” campaigns the proper legal procedures are not seriously followed particularly in crimes related to national security and state secrets. The entire legal provisions are undermined and violated with the suspect has no rights whatever in proving his innocence. The Article 12 of Criminal Procedure Law “**Innocent until Proven to be Guilty**” does not exist in practice. The alleged suspects are deemed guilty, detained, tortured to exhort confession in the custody. This is a widespread practice in China’s law enforcing departments. One of the serious challenges facing in reforming the law enforcing system is the unlimited power enjoyed by the police and other law enforcing agencies. This unrestricted power enjoyed by police need to be restricted or scaled down, passing a legal reform laying boundary and limit in exercising their power. In this way the ‘excess’ carried out by police can be curtailed and reduced them to maintain law and order as it is the case in many countries. The role and powers of Procuratorates also need to be restricted and curtailed as Procuratorates role has been more of eyes and ears of the Government rather an independent body protecting the justice of citizens as well as maintaining law and order in the country. The Judiciary in China is fragmented body and it needs to acquire the independent status without subjecting to Government pressures and obligations, as it is the case in many democratic countries. The status of judiciary functioning within the Government establishment needs to be removed and give it an independent status. This will greatly improve the fairness and transparency of legal practice in China.

As a partial response to regulate the practices of violations of citizens’ legal rights by administrative and law enforcing bodies the Administrative litigation Law was included and became effective on 1 October 1990. Again in May 1994 China enacted the State Indemnity Law which stipulated that, “*where a government agency or its personnel invades the legitimate rights and interest of a citizen, legal person or other organization, resulting in injury while performing its functions, sufferer shall be entitled to obtain state indemnity according to this Law*”. Two years later in March 1996, China promulgated ‘The Law on Administrative Punishments’ that was to

set up mechanisms for regulating the administrative punishment behavior by government agencies.

However, despite such stipulations and promulgation of laws, it has a little impact on the grounds and therefore without any serious effort to implement them, these laws only remained to be documented on paper. In the case of Trulku Tenzin Delek and Lobsang Tenzin, these laws failed to protect and ensure their legal and constitutional rights.

Regarding the implementation of laws, political undercurrents must not hijack the due legal proceedings or the political encroachments must not influence the implementation of law of “endangering national security” and “state secrets”. The ambiguity of this law leaves large room of interpretation and thus increases the scope of punishment. Any expression of self-determination and differing political opinion and raising funds for carrying out social works in Tibet and Xinjiang is interpreted as “leaking state secrets” and “endangering state security”, a crime according to Criminal Procedure is punishable to death and is handled under ‘closed trial’ where worst excess of legal violations take place. It is under this legal misinterpretation that worst excess of human rights violations are taking place inside Tibet and Xinjiang continues to be a matter of serious concern. This is against the spirit of Chinese Constitution where freedom of speech and opinion is drafted and guaranteed to the citizens. Under no circumstances this law be allowed to be misinterpreted and even if charged under this law, the alleged suspects must be entitled to all the legal rights and provision stipulated in the Chinese Constitution where Article 33 stated that, “**The State respects and preserves human rights**”.

The term ‘human rights’ has been adopted last year in the Chinese Constitution. Although the implementation of human rights concepts will take time but a move to include the term in Constitution is a highly significant step forward. Much of violations in China stem from the violations of fundamental human rights and it is a necessary step for bringing any positive change in China and particularly in the issue of death penalty. Where the right to life is a fundamental right that cannot be snatched away by State whatever may be the crimes the convict has committed. Until and unless human rights and democratic principles take their roots in China, it

is a remote possibility for the civil rights organizations to emerge and play a positive role in the Chinese society. China is currently experimenting with the grassroots democracy. This democratization process will significantly change the contours of law enforcement and implementation and China will have fewer death sentences in future.

The subsequent re-launches of “Strike Hard” campaigns in many different provinces of China over the last two decades demonstrates that death penalty failed to ‘deter’ criminals from committing crimes. The first wave of crime surfaced in early 1980s after the economic reforms, then crimes exploded again in mid 1990s when China was experiencing economic boom and then crime loom again in early 2001. Severe crackdowns of “Strike Hard” campaigns were re-launched in 1996, 2001 and 2004 in efforts to fight crime. But all the campaigns have failed to achieve the stated aims and demonstrated categorically that death penalty is not a solution against crimes. A sincere reform to the death penalty would greatly drop down the rate of execution, as demonstrated by a stark contrast between China and India where capital punishment still exist but in India death penalty is carried for ‘rarest of rare cases’. Although this maxim is not framed in Indian constitution but this has been the practice so far since gaining independence from Great Britain. While in China it is used cheaply and extensively carried out. As a result in the last decade there were only dozen death sentences in India while in China 3,400 people sentenced to death in 2004 alone according to the confirmed report by the Chinese government available to human rights watchdogs. Such was the contrast. The Constitution of China still remained to be a policy and manifesto of Communist Party of China than a Constitution and Law of people and defending their rights legal entitlements. This must be changed so long as China is seriously considering the reforms to death penalty and to improve human rights situation in China and Tibet.

Therefore it is a high time for the People’s Republic of China to rethink and reconsider on this hugely controversial punishment code. It is widely believed that the issue of death penalty is to be tabled and discussed during the next annual session of National People’s Congress (NPC) and therefore this report recommend the Government of China to make all the necessary reform to death penalty system mention above if not to abolish it.

Notes

- 1 www.amnesty.com
- 2 Ibid
- 3 Also called ‘Promulgation of 1983’, where the provincial courts were empowered to decide and pass death sentence
- 4 <http://hrw.org/wr2k2/asia4.html>
- 5 *The Lectric Law Library*, see <http://www.lectlaw.com>
- 6 <http://www.fas.harvard.edu>
- 7 Ibid
- 8 Ibid
- 9 <http://web.amnesty.org/library>
- 10 <http://www.atimes.com/atimes/China>
- 11 Yiyi Lu, “*Civil society groups rely on Beijing*” see, <http://www.atimes.com>
- 12 <http://www.cis.org.au/Policy>
- 13 <http://www.amnesty.org.uk>
- 14 <http://www.tibet.com/whitepaper>
- 15 “*Journal of Contemporary China*”, 14(42), February 2005, Carfax Publishing pp.134ff
- 16 Ibid
- 17 “*Journal of Contemporary China*”, 14(42), February 2005, Carfax Publishing pp.134ff
- 18 <http://www.chinaembassy.org/in/eng>
- 19 “China questions death penalty,” <http://www.chinadaily.com>
- 20 “China hints at death penalty reform” see, <http://in.rediff.com/news>
- 21 Ibid
- 22 “China hints at death penalty reform,” see, <http://in.rediff.com/news>
- 23 Ibid
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- 25 “Reforming the Judiciary”, see, <Http://www.bjreview.com.cn/JIAN FA>
- 26 Ibid
- 27 <http://www.iht.com/artcles/2005>
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- 29 “China high court confirms plan to review all death sentences”, Holly Manges Jones, see, <http://jurist.law.pitt.edu>
- 30 “China high court confirms plan to review all death sentences”, Holly Manges Jones, see, <http://jurist.law.pitt.edu>
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- 34 <http://www.webamnesty.org/library>
- 35 Ibid
- 36 <http://web.amnesty.org>
- 37 *Unjust Sentence – Case of Trulku Tenzin Delek*, TCHRD, 2003. p.24
- 38 TCHRD, February Update, press release, see, www.tchrd.org
- 39 *Unjust Sentence – Case of Trulku Tenzin Delek*, TCHRD, 2003. p.24
- 40 http://www.tchrd.org/urgent_action/action.php?lobsang_tenzin
- 41 <http://www.demaction.org>
- 42 <http://www.amnesty.org.uk>
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- 44 <http://www.tibet.com>
- 45 <http://www.demaction.org>
- 46 Ibid
- 47 <http://www.linuxgazette.com>
- 48 <http://news.bbc.co.uk>
- 49 Ibid
- 50 *China Daily* available at www.linuxgazette.com