



The Rights Practice submits this response to the Special Rapporteur on extrajudicial, summary, or arbitrary executions, to inform his forthcoming report on the death penalty, to be presented at the 77th session of the General Assembly. This submission focuses on the death penalty and its impact in China.

The Rights Practice works to promote human rights (as set out in the Universal Declaration of Human Rights and subsequent UN conventions and declarations). Our mission is to build the capacity of those working for human rights. We have built a programme of work that addresses three strategic themes within China: access to justice, human rights and criminal justice, and public participation.

For many years we have engaged with Chinese lawyers, legal scholars and NGO workers to help prevent the use of torture, reduce the application of the death penalty and support civil society. This submission is informed by stakeholder consultations and review of Chinese law and recent cases.

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## Imposition of the Death Penalty and its Impact in the People's Republic of China

1. In China, the death penalty is veiled in secrecy. Death penalty statistics are a state secret. Accurate and disaggregated data on the numbers of individuals sentenced to death is unavailable. There is a lack of transparency around the conditions in detention for individuals sentenced to death, a lack of information provided to families, as well as the treatment of bodies of the executed. This lack of information limits both Chinese domestic and international understanding of the full impact of the death penalty. The Chinese government cannot guarantee that the rights of those facing death are protected.
2. However, information provided by individuals facing death sentences, their family members and lawyers reveals that China falls far short of guaranteeing the minimum standards as set out in international law.
3. Detainees facing the death penalty are kept in cells with other prisoners and are normally shackled. This routine use of restraints violates international law.
4. Family members and lawyers face obstacles meeting individuals in detention. Indigent prisoners are discriminated against on the grounds of economic status as they are less likely to be provided with adequate legal assistance.
5. Without reliable information on the treatment of bodies of executed individuals there are valid concerns that the practice of organ harvesting without consent is ongoing. There is evidence to suggest that the procurement of organs in China can happen before a prisoner would be considered medically dead by international standards. This goes against the right to be treated with human dignity.

### **1) Treatment of individuals sentenced to death, including conditions on death row and access to family members and legal representatives.**

6. There is lack of transparency surrounding conditions for individuals facing the death penalty in China.<sup>1</sup> There is no official data or information on conditions for detainees of lesser crimes or those specifically facing the death penalty. There is no independent monitoring of detention centres and little access from outsiders. However, experience from detainees, lawyers and family members reveal that conditions do not meet international standards and that the suffering of prisoners is not minimised.
7. There is no specific “death row” in China.<sup>2</sup> Prisoners are held in detention centres (*kanshuosuo*) between sentencing and execution. Individuals sentenced to death are kept in large cells with other inmates in pre-trial detention and those with short-term prison sentences. However, individuals sentenced to death are normally shackled. The extensive use of handcuffs and shackles violates international standards. Other inmates are expected to help shackled prisoners with eating and other functions.
8. China's 1990 Detention Centre Regulations set out conditions in detention.<sup>3</sup> A new Detention Centre Law has been drafted and was made open for public consultation in 2017. This would replace the existing 1990 Detention Centre Regulations but the law has not yet been finalised.<sup>4</sup> The 1990 Regulations do not provide the necessary guarantees for the protection of detainees when using methods of restraint. There are no specific provisions that require detainees to be visited by a doctor when deciding to adopt these methods. The UN Committee Against

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<sup>1</sup> The Rights Practice. “Lack of Transparency on the Death Penalty Impacts Human Rights”. March 2021. <https://www.rights-practice.org/news/lack-of-transparency-on-the-death-penalty-in-china-impacts-human-rights>

<sup>2</sup> The Rights Practice, “Respect for Minimum Standards? Report on the Death Penalty in China”. 10 October, 2020. <https://www.rights-practice.org/news/respect-for-minimum-standards-report-on-the-death-penalty-in-china>

<sup>3</sup> State Council Regulations of Criminal Detention Centres of the People's Republic of China. 1990.

<sup>4</sup> Detention Centre Law of the People's Republic of China. Draft. <https://npcobserver.com/legislation/detention-center-law/>

Torture, in its concluding observations of China in 2015 stated that it “regrets the lack of information with regard to the regulation and due process rights concerning the use of restraints”.<sup>5</sup>

9. Food in detention centres in China is of low quality and low nutritional value. Family members and friends can deposit funds for detainees to purchase better food and sanitary products but this is often denied prisoners in politically sensitive cases. It is not known if this is also the case for those facing the death penalty. Centres also do not accommodate the specific needs of detainees such as those with physical, learning and mental disabilities, healthcare and religious observance.
10. In the 1990 Regulations there is no reference to the particular needs of individuals facing execution to be in regular contact with lawyers and family members. The role of lawyers is also restricted and the lack of adequate funding for legal aid in death penalty cases discriminates against defendants of lower economic status. China cannot guarantee that an individual sentenced to death is provided with an effective defence, as set out in international law.
11. The Criminal Procedure Law of the PRC (2018), Article 39, sets out the rights to access a lawyer within 48 hours of being detained.<sup>6</sup> Defence lawyers have the right to meet and communicate with criminal suspects and defendants in custody, following the first police interrogation, in the initial investigation stage. A new Legal Aid Law, which came into effect on 1 January 2022, provides the right to a legal aid lawyer for suspects in criminal cases at the Supreme People’s Court (SPC) Review Stage of a death penalty case.<sup>7</sup> In practice, government-appointed legal aid lawyers work ‘within the system’ and in line with Chinese Communist Party (CCP) priorities, rather than the defendant and legal aid is poorly funded. Defence lawyers who work ‘outside of the system’ and more independently often face obstacles meeting their clients and accessing their case files.

## **2) Impact of the death penalty on family members, including children of parents sentenced to death.**

12. Relatives of individuals sentenced to death and executed have spoken about their suffering and the impact on their mental health. They have spent time and resources campaigning for lesser sentences and exoneration. In October 2021, Wu Chi-man, a Hong Kong man, with a history of mental health problems, was executed in mainland China having been sentenced to death in 2017 for drug trafficking. His parents had not been able to see their son for years until Chinese authorities informed them that they could meet, shortly before he was due to be executed. The family had appealed to both Hong Kong and Chinese authorities to give Wu Chi-man a lesser sentence, they felt he was a “good son” and deserved a “way out” and chance to “correct himself.”<sup>8</sup>
13. The mother of a man executed in 2008 continues to appeal to the courts on behalf of her child and believes he was wrongfully killed. She said she was not notified about her son’s execution before it happened, and neither were other family members or his lawyer. They were not allowed to meet with him shortly before he was executed. This lack of information increases the suffering of family members of those sentenced to death. In 2019, new provisions were introduced in China to ensure that individuals sentenced to death, their family members and lawyers are informed of the imminent execution but it is not known the extent to which courts are following these guidelines in practice (see section 4 below for more details).

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<sup>5</sup> United Nations Committee Against Torture. “Concluding observations on the fifth periodic report of China.” December 2015. <https://bit.ly/3xTS22X>

<sup>6</sup> Criminal Procedure Law of the People’s Republic of China, 2018. Chinese official: [http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content\\_2065631.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm) Unofficial English translation, China Law Translate: <https://www.chinalawtranslate.com/en/criminal-procedure-law-2018/>

<sup>7</sup> Legal Aid Law of the People’s Republic of China, 20 August 2021. Official Chinese: [http://www.gov.cn/xinwen/2021-08/20/content\\_5632494.htm](http://www.gov.cn/xinwen/2021-08/20/content_5632494.htm); NPC Observer, “NPCSC Codifies Three-Child Policy, Expands Legal Aid & Updates Military Service Law and Physicians Law”, 24 August 2021. <https://npcobserver.com/2021/08/24/npcsc-codifies-three-child-policy-expands-legal-aid-updates-military-service-law-and-physicians-law/>

<sup>8</sup> Ho, Kelly. “China executes Hongkonger with history of mental illness over drug trafficking.” Hong Kong Free Press. 29 October 2021. <https://hongkongfp.com/2021/10/29/china-executes-hongkonger-with-history-of-mental-illness-over-drug-trafficking/>

14. The death penalty not only has an impact on the mental health of family members but poor families are also disproportionately impacted if the breadwinner of the family is executed.<sup>9</sup> Many families of defendants struggle to pay lawyers' fees and rely on substandard legal representation. Indigent defendants' family members are also less able to pay compensation to a victim's family as a method to reduce sentencing.
15. There is little available data on the relationship between poverty and the death penalty in China but Amnesty International has found that in analysis of available incomplete data that poor, less educated and ethnic minorities were disproportionately represented among death penalty cases.<sup>10</sup>
16. China does not publish disaggregated data on gender and the use of the death penalty. However, in a small study of 300 cases involving "drug offenses, death sentences and women", the women sentenced to death, including two-year suspended death penalty, for drug crimes were predominantly poor, uneducated and from rural backgrounds.<sup>11</sup> They were also more likely to be the primary caregivers of children, under the age of 18 years, which can significantly impact on the child's life.

### **3) Impact of the death penalty on other individuals, including prison officers, executioners, and medical practitioners involved in the execution.**

17. Secrecy surrounds the application of the death penalty in China including exactly how executions are carried out and the impact on those involved. However, from interviews with individuals involved in executions in China it is clear that their mental health had been impacted and they had experienced trauma.
18. For example, one armed guard involved in two executions by shooting said that afterwards he suffered from nightmares in which the face of the executed man appeared. He said he had been a young man at the time and had not dared to refuse to carry out the task assigned by his superiors. He said in the years following the executions he felt tortured by fear, guilt and nightmares.<sup>12</sup>
19. Procurators (prosecutors) and judges must witness executions and eyewitnesses have said that they have been distressed by what they have seen in the use of the lethal injection, including the belief that the person was not dead at the time it was declared.
20. One judge in Chinese criminal cases, who has sentenced many individuals to death, said she regrets becoming a criminal judge. She used to believe that heavy sentences punish criminals and act as a deterrence as well as alleviating some of the suffering of the victims' families. However, after many years she now feels that she has seen much more family separation, fear and confusion and wants to leave this kind of work.<sup>13</sup>

### **4) Information provided to individuals on death row, their families, and legal representatives in the lead-up to executions (e.g., date of execution, visits prior to the execution date, etc.)**

21. In China, individuals sentenced to death have the right to be informed of their imminent execution and are allowed to meet close relatives. The Supreme People's Court (SPC) of the PRC issued the Several Provisions of the SPC

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<sup>9</sup> The Rights Practice. "Life and Death: Access to Justice for the Poor in Death Penalty Cases". December 2017. <https://www.rights-practice.org/Handlers/Download.ashx?IDMF=4c39c7ea-7761-4744-a6ad-cee845bfd81a>

<sup>10</sup> Amnesty International. China's Deadly Secrets. (2017) ASA 17/5849/2017. p.7  
<https://www.amnesty.org/en/documents/asa17/5849/2017/en/>

<sup>11</sup> Cornell Center on the Death Penalty Worldwide. "No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses". 5 October 2021. <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>

<sup>12</sup> Interview record, 2019, please contact The Rights Practice for more information.

<sup>13</sup> Interview record, 2019, please contact The Rights Practice for more information.

on Safeguarding the Lawful Rights and Interests of the Parties in the Procedures of Death Sentence Review and Execution, effective from 1 September 2019.<sup>14</sup> These provisions require that the courts of first instance, after receiving the final judgement from the SPC, to inform the prisoner as well as their close relatives of the imminent execution and allow them to meet. The court may also allow the person facing execution to meet their extended family and friends for the last time but this is only if there is a “valid reason” for such a meeting. The guidelines state that the prisoner has the right to record any last words, including through video and audio recording.

22. Under these provisions the defence lawyer should be notified by the relevant court of the SPC final verdict within five days after its announcement. Prior to these guidelines, after the SPC Review stage the lawyer of the defendant was not directly informed of the verdict and whether or not the death sentence had been approved. It is not known the extent to which courts are following these guidelines in practice. Prior to their release it was common for family members to hear of the execution before the lawyer.
23. The Criminal Procedure Law (2018), Article 263 states that “after the death penalty has been carried out, the enforcing court shall notify the criminal's family” but there have been cases of family members only finding out through public reports rather than directly through the courts.<sup>15</sup> It is unknown whether or not these new provisions have made a difference in practice.

##### **5) Methods of execution, including existing safeguards to prevent physical pain and suffering.**

24. There is a lack of safeguards in China to guarantee that methods of execution prevent pain and suffering. The Chinese Criminal Procedure Law (2018), Article 263 states that “death sentences are carried out by methods such as shooting or lethal injection.”<sup>16</sup> Lethal injection was introduced as an alternative method of execution to shooting in the 1997 amendment of the Criminal Procedure Law. This came as a result of both domestic and international concern and campaigning over the use of firing squad as inhumane and cruel.
25. Statistics about the use of the lethal injection, and the types of drugs and dosages, are a state secret. However, it is believed that its use expanded across China since the mid-2000s. The application is likely to be uneven across different provinces. There is very little published about the lethal injection in China but it is known that death is induced pharmacologically by using anaesthetics and lethal drugs. These are likely the same combination of drugs that is used in the United States (sodium thiopental, pancuronium bromide, and potassium chloride).<sup>17</sup> This combination of drugs as the lethal injection has been criticised internationally, and in the U.S., over concerns that it could inflict serious pain once administered.
26. There are also concerns over the determination of death in China which does not conform to international standards of medical ethics. In practice in China, declaring death by lethal injection happens within “tens of seconds” and this is not sufficient time.<sup>18</sup>
27. Mobile vans can be used in China to carry out the lethal injection, as they are thought to be a cost-effective method. However, there have also been concerns raised about these vans being an easy way to harvest organs.

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<sup>14</sup> Several Provisions of the Supreme People’s Court of the People’s Republic of China on Safeguarding the Lawful Rights and Interests of the Parties in the Procedures of Death Sentence Review and Execution. 1 September 2019. Unofficial English translation, Law Info China: <https://www.lawinfochina.com/display.aspx?id=30975&lib=law>

<sup>15</sup> Criminal Procedure Law of the People’s Republic of China, 2018. Chinese official: [http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content\\_2065631.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm) Unofficial English translation, China Law Translate: <https://www.chinalawtranslate.com/en/criminal-procedure-law-2018/>

<sup>16</sup> Ibid

<sup>17</sup> Paul, Norbert, Caplan, Arthur, Shapiro, Michael, Els, Charls, Allison, Kirk, Li, Huige. (2018) ‘Determination of Death in Execution by lethal Injection in China.’ Cambridge Quarterly of Healthcare Ethics, 27, 459-466. 2018.

<sup>18</sup> Ibid

28. In 2014, Huang Jiefu, China's most senior official responsible for organ transplantation, stated that China would end the procurement of organs from prisoners by 1 January 2015. However, there are no laws or regulations banning its practice and Chinese law allows prisoners to "consent to donating organs". Consent by prisoner and individuals sentenced to death is not free from coercion or always fully informed. The World Medical Association states that "in jurisdictions where the death penalty is practised, executed prisoners must not be considered as organ and/or tissue donors."<sup>19</sup> In 2017 Chinese officials stated that it was not possible to guarantee that the use of organs from prisoners had ceased and it is thought that the practice remains widespread.<sup>20</sup>
29. There is evidence to suggest that organs, including hearts, have been removed from prisoners before they would be considered medically dead by international standards. Thus, in these cases the medical professionals carrying out the organ procurement would have participated in the executions. This practice goes against the "Dead Donor Rule" which states that organ donors must not be killed by and for organ donation.<sup>21</sup> Individuals in these cases may experience asphyxiation and pain.<sup>22</sup>

## **6) Treatment of bodies of the executed, including the place of burial and the return of bodies.**

30. The lack of open information on the treatment of bodies of the executed means that China cannot guarantee that executed individuals' right to human dignity is respected.
31. The SPC Interpretation on the Application of the Criminal Procedure Law (2013), Article 428, states that after an execution the court responsible will notify the prisoner's family to retrieve their ashes. It also states that where there is no capacity for cremation or that cremation has not been carried out due to religious, ethnic or other reasons then the family will be notified to retrieve the corpse.<sup>23</sup>
32. Family members of executed prisoners have spoken about their discontent at not being able to see their bodies after they have been executed and not knowing what has happened to them. Families have also expressed fears that they may have been subjected to forced organ harvesting due to this lack of information.<sup>24</sup>
33. There have also been concerns raised that bodies from executed prisoners have been used for medical purposes and in exhibitions without consent. In 2018, the International Coalition to End Transplant Abuse in China raised concerns that an exhibition of real bodies in Australia included bodies of executed Chinese prisoners<sup>25</sup>. They argued that the organisers' claims that 20 cadavers were legally provided by a medical university in China were "unclaimed corpses" could not be correct. Chinese hospitals keep bodies for 30 days until declaring them unclaimed but the plasticisation process needed for the exhibition must commence within 48 hours of death.

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<sup>19</sup> World Medical Association. "WMA Statement on Organ and Tissue Donation." October 2017. <https://www.wma.net/policies-post/wma-statement-on-organ-and-tissue-donation/>

<sup>20</sup> Robertson, Matthew P., et al. 'Analysis of Official Deceased Organ Donation Data Casts Doubt on the Credibility of China's Organ Transplant Reform.' *BMC Medical Ethics*, vol. 20, no. 1, p. 79. November. 2019, doi:10.1186/s12910-019-0406-6

<sup>21</sup> Robertson, Matthew, Lavee, Jacob. "Execution by organ procurement: Breaching the dead donor rule in China." *American Journal of Transplantation* published by Wiley Periodicals LLC. 19 January 2022. <https://onlinelibrary.wiley.com/doi/epdf/10.1111/ajt.16969>

<sup>22</sup> Paul, Norbert, Caplan, Arthur, Shapiro, Michael, Els, Charls, Allison, Kirk, Li, Huige. (2018) 'Determination of Death in Execution by Lethal Injection in China.' *Cambridge Quarterly of Healthcare Ethics*, 27, 459-466. 2018.

<sup>23</sup> The Supreme People's Court Interpretation on the Application of the Criminal Procedure Law of the People's Republic of China. Unofficial English translation, China Law Translate: <https://www.chinalawtranslate.com/en/The-Supreme-People%5C%27s-Court-interpretation-on-the-application-of-the-Criminal-Procedure-Law/?edit=1>

<sup>24</sup> Interview record, 2008 case, please contact The Rights Practice for more information.

<sup>25</sup> Smee, Ben. "Call to shut Real Bodies exhibition over fears it uses executed prisoners." *The Guardian*. 24 April 2018. <https://www.theguardian.com/australia-news/2018/apr/25/call-to-shut-real-bodies-exhibition-over-fears-it-uses-executed-prisoners>