

Introduction

Roger Hood¹

As in many other countries that retain the death penalty, one of the prime reasons for not abolishing it put forward by governmental, judicial and academic authorities in China is the belief that it has such strong support among the general population and criminal justice professionals that to reduce its scope and application too quickly, let alone to abolish it altogether, would be an affront to public opinion and Chinese cultural values and likely to undermine public feelings of security.

Unfortunately there had been a great paucity of research in China to test to what extent public and professional opinion actually supports capital punishment and for which crimes. Nor was there any information which would help to gauge what the response might be if the use of the death penalty were to be greatly reduced as a step towards its eventual abolition *de jure*. Therefore it appeared imperative to those who designed the project entitled 'Moving the Debate Forward: China's Use of the Death Penalty' to mount an empirical research study to enlighten the Chinese authorities as to the real state of public and professional opinion on this subject.

The overall project, of which this publication is a part, was a collaborative venture initiated by the Great Britain-China Centre in London and the College of Criminal Law Science of Beijing Normal University, in collaboration with the Max-Planck Institute for Foreign and International Criminal Law (Freiburg, Germany), Wuhan University Criminal Law Research Centre; the Irish Centre for Human Rights (University of Ireland, Galway), and the Death Penalty Project (London). The author of this Introduction was appointed Consultant to the project. The programme of work as a whole was generously funded by the European Commission through the European Initiative for Democracy and Human Rights.

Two separate surveys were conducted: one concerned with views gathered from a scientifically drawn sample of the Chinese general population, and the other from a selected sample drawn from various professionals in the criminal justice system with knowledge of and responsibility for the imposition of the death penalty in China. The design and analysis of the survey of general public opinion was the responsibility of Dr Dietrich Oberwittler and Mr Qi Shenghui of the Max-Planck Institute (under the general direction of Professor Hans-Jörg Albrecht) and it was administered by the prestigious and highly experienced Research Centre for Contemporary China (RCCC) at Peking University. The survey of criminal justice professionals was carried out by a trained team of doctoral and masters degree candidates at Wuhan University Criminal Law Research Centre, under the direction of Professor Mo Hongxian. At the planning stage the two organisations collaborated to try to ensure that wherever appropriate the questions were worded in the same way, so as make possible comparison between the knowledge, opinions and attitudes of these two sectors of Chinese society.

¹ CBE, QC, PhD, DCL, FBA, Professor Emeritus of Criminology, University of Oxford and Emeritus Fellow of All Souls College Oxford, Visiting Professor University of Virginia Law School and Law Faculty, City University of Hong Kong; Guest Professor Wuhan University and Beijing Normal University.

An outstanding feature of this project was the immense care taken to try to ensure that the surveys were as representative as possible of the populations studied. The public opinion survey was carried out using the latest scientific methods of sampling nearly 6,500 citizens in Hubei and Guangdong provinces and in Beijing. It achieved a very satisfactory response rate of 69 per cent. The survey of professional opinion was based on a carefully selected quota sample of 455 criminal justice professionals: namely judges, prosecutors, policemen, legislative and judicial administrative staff and defence counsel in Hubei and Beijing. The authors of both surveys are to be congratulated on producing the first scientifically reliable and valid evidence of the state of opinion on the death penalty in China.

Thus, this publication has three sections. Section one reports on the findings from the public opinion survey; section two on the outcome of the survey of criminal justice professionals; and section three makes comparisons between the two, leading to a number of conclusions which will undoubtedly provide a much needed basis for taking the debate forward on the future of capital punishment in China.

To a considerable extent, the findings from these surveys tend to dispel the myth that members of the public as well as those professionally engaged in the administration of the death penalty have a deep and inflexible commitment to the current use of capital punishment in China. It was surprising that only 58 per cent of the public said that they were in favour of the death penalty in general and that so many (over a quarter) were undecided about their attitude. And when asked whether they thought that China should 'speed up' towards abolition of the death penalty, only 53 per cent opposed this view. Again a large minority (one third) said they were not sure. Although only one fifth thought that China should now follow other countries in abolishing the death penalty (a majority believing that China should go at its own pace in relation to its own circumstances) the fact that so many were unsure what they thought about the subject of the death penalty indicates that they may well be prepared to follow political leadership on this issue. In any case, the finding that only three per cent of the public respondents said that they were very interested in the death penalty and only a quarter interested at all and less than a third said they had some or much (1.3%) knowledge about the death penalty in China, and that hardly any (roughly one in seven) knew anything about the international norms and treaties on the subject, suggests that most members of the public would be open to enlightenment on the issue. In contrast a majority of the professionals, as expected, were better informed and many were concerned to ensure that the death penalty is enforced in line with the demands for due process and the proper protection of the rights of defendants. They were in favour of further reforms to bring this about but a majority of them too were unaware of the relevant international instruments and a surprisingly large minority of them were in favour of the death penalty for those who had committed a capital crime when under the age of 18, which is banned under international covenants and standards as well as in Chinese law. There is evidence therefore that further training in human rights principles and law would benefit criminal justice professionals in China as they come to implement the reforms being put into effect by the Supreme People's Court to limit the scope of capital punishment.

Even though criminal justice professionals, as to be expected, knew more about the procedures related to the use of the death penalty in China, as many as half of them (compared with two-thirds) of the public felt unable to estimate how many executions are carried out in China each year. It was not surprising therefore that a clear majority of the public and the professionals thought that the government should publish the annual number

of executions, and very few (about one in seven) thought that statistics should definitely not be published. This is a clear indication to the authorities that Chinese citizens feel the need to be better informed of the realities of capital punishment. Given that a majority of members of the public (but not the professionals) believed that the death penalty would be more likely to be applied to a poor than a rich person, or a 'grass-roots' person than an official or his relatives, when convicted of the same serious crime, there is clearly a need for the authorities to promote empirical research (as has been done in other countries, notably the USA) to investigate whether this is the case or not.

As regards the scope and implementation of the death penalty, a majority of members of the public (80%) were definitely in favour of its use for murder and well over half (67%) for intentional injury that resulted in death, but apart from these two crimes the only ones for which there was a slight majority in favour of capital punishment were drug dealing and sexual abuse of a child under 14. Similarly, although 91 per cent of the criminal justice professionals were generally in favour of the death penalty, only in respect of murder, drug dealing, sexual abuse of a female child, terrorism and robbery (probably only where death occurs) did a majority of them favour the death penalty for the worst cases. These findings will reinforce the arguments of academic lawyers who have been seeking the abolition of capital punishment for non-violent offences and reassure policy makers that there will not be a large public or professional backlash if this policy is put into effect.

The surveys also revealed attitudes towards possible alternative punishments. There was a wide gulf between the views of members of the public and those of the professionals. The proportion of the public who supported the death penalty fell to only 41 percent if the alternative were to be life imprisonment with the possibility of early release on parole, whereas still over 80 per cent of the professionals would wish to retain the death penalty under these conditions. However, only a third of professionals (and just over a quarter of the public) would support retention of the death penalty if the alternative were to be life imprisonment without the possibility of parole plus restitution being made to the victim's family by the offender.

This writer would not advocate such a harsh and inflexible alternative,² but this finding throws light on another prevalent myth, namely that Chinese culture demands a 'life for a life'. The findings indicate that although the majority of members of the public endorse this sentiment in the abstract (although not the professionals), in reality they would be in favour of a sufficiently severe alternative that did not demand that the offender's life be extinguished. Further evidence to support this conclusion came from the 'scenarios' used in this research, where respondents were asked to say whether they would favour immediate execution in a variety of four circumstances ranging up to one with fatal consequences and no mitigating – rather aggravating – circumstances. Even in a case where a robber with two previous prison sentences for robbery fatally shot a convenience store owner in the head and fled with 2,000 Yuan in cash, less than half of the members of the general public thought that an immediate death penalty was the appropriate punishment. Similarly when both the public and professionals were shown a case where a woman poisoned her husband so as to be free to live with her lover, and a neighbour reported it to the police, only 30 per cent of the public favoured an immediate death penalty, although in this case 63 per cent of the professionals

² See Roger Hood and Carolyn Hoyle, *The Death Penalty. A Worldwide Perspective*, Oxford University Press, 2008, Chapter 11 'The Challenge of a Suitable replacement'. Chinese Translation published by The People's Security university Press, 2009

did. This interesting finding suggests that in so far as the law enforcement professionals make decisions based on their perception of what the public might demand – a consideration mentioned by the majority of professionals – they may well over-estimate the enthusiasm for immediate execution. No doubt this finding will be of particular interest to the Supreme People’s Court as it moves forward with its policy of restricting and making more uniform throughout China, the use of the death penalty with immediate execution.

It is hoped that these few examples from the wealth of evidence brought to light by these two fascinating surveys will induce readers to study the findings in detail. There can be no doubt that the researchers, the promoters, and the financial supporters of this innovative project are to be applauded for adding such a mine of information to stimulate yet further the ongoing progressive debate on the reform of the death penalty in China.