

# THE INFLUENCE OF THE CONCEPT OF HUMAN RIGHTS UPON THE POLICY OF DEATH PENALTY IN CHINA

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The issues of human rights and death penalty in China had always drawn the international human rights groups, critics' attentions. From the international level, "international protections of human rights have increased dramatically in the last century, due in part to the increased recognition that a number of nations share many fundamental legal values and expectations."<sup>1</sup> And due to the human rights movements and international efforts, many countries have already abolished death penalty *de facto* as well as *de jure*. According to the Amnesty International report, 'more than two-thirds of countries in the world have now abolished the death penalty in law or practice (as of December 31), 98 countries have already abolished death penalty for all crimes, and 58 countries are still the retentionist in terms of death penalty).<sup>2</sup>

For the Chinese own level, with the international trend, the Chinese government, combining the universal principles of human rights and the concrete realities of China, has made unremitting efforts to promote and safeguard human rights. The realization of human rights in the broadest sense has been a long-cherished ideal of mankind and also a long-pursued goal of the Chinese government and people.<sup>3</sup> For the past over three decades, China has participated in the international human rights system by signing and partly ratifying a range of human rights treaties or covenants. In 2004, the Constitution of the People's Republic of China (PRC) amended to include the guarantees for human rights, which is stipulated by the Article 33 (3), "the State respects and protects human rights."<sup>4</sup> Chinese government is argued by this amendment to be a progress for the democracy and protection of human rights in China, and it also marked that the human rights has become the constitutional rights,

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<sup>1</sup> Bassiouni, M. Cherif: Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions. *Duke Journal of Comparative & International Law*, Vol. 3 (1993), No. 2, p. 235.

<sup>2</sup> Amnesty International: Death Sentences and Executions 2014, April 1 2015, Index number: ACT 50/0001/2015, p.64.

<sup>3</sup> See Information Office of the State Council of PRC: 国家人权行动计划 (2009-2010年) [National Human rights Action Plan of China (2009-2010)], [http://www.humanrights.cn/html/2014/3\\_0605/26.html](http://www.humanrights.cn/html/2014/3_0605/26.html) (8 November, 2015).]

<sup>4</sup> 中华人民共和国宪法 [The Constitution of PRC], Article 33.



and protecting human rights has already become one of great significant tasks of the Chinese government.

In terms of death penalty, Chinese legislators are also driven by the influence of human rights to reform execution system. “The criminal legislation regarding death penalty and its implementation is one of important marks that the level of human rights protected by a state.”<sup>5</sup> Just as *Jeremy T. Monthly* pointed out, “abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights.”<sup>6</sup>

However, China is still a retentionist state in terms of death penalty, but it is developing domestic criminal law toward the international trend that “there can be little doubt that our world is inexorably moving towards being execution-free.”<sup>7</sup> In this case, the death penalty policy plays a significant role in controlling the legislation and use of death penalty in practice, and it is greatly influenced by the human rights. In other words, the death policy can implement the human rights protection through controlling the legislation and the use of death penalty. Basic on this point, this paper would like to explore the death penalty policy under the influence of human rights in China since the human rights concepts were introduced into China in the 1980s.

### *The Development of Human Rights in China and its Requirements*

#### *The Brief Development of Human Rights in China*

“Human rights as value are rooted in the historical development of human society, being theorized by both natural law doctrine and the doctrine of positivism”<sup>8</sup>, but in China, “for several decades in the People’s Republic of China’s history, human rights were regarded as a concept of the West.”<sup>9</sup> Under the influence of the Maoist and ideology, “it used to be an exclusion zone for the human rights in China. In a quite long time after the founding of China, it was not only for the concept of human rights cannot be found in the constitution law and other laws, but the issues of the human

<sup>5</sup> Zhao Bingzhi: 论中国刑事司法中的人权保障 [Human Rights Guarantee in Chinese Criminal Justice]. *Journal of Beijing Normal University (Social Sciences)*, Vol.195 (2006), No. 3, p.102.

<sup>6</sup> Monthly, Jeremy T.: Internal Perspectives on Chinese Human Rights Reform: The Death Penalty in the PRC. *Texas International Law Journal*, Vol. 33 (1998), Issue 1, p.192.

<sup>7</sup> Bannister, Piers: The Death Penalty: UN Victory Puts Total Abolition within Our Grasp. *International Review of Law Computers & Technology*, Vol. 22 (2008), No.1-2, p.165.

<sup>8</sup> Pavel, Nicolae: Defining the Concept of Human Rights in the Light of Juridical Values Theory. *Contemporary Readings in Law and Social Justice*, Volume 4 (2012) p.508.

<sup>9</sup> Men, Jing: Between Human Rights and Sovereignty: An Examination of EU—China Political Relations. *European Law Journal*, Vol.17 (2011), No. 4, p. 542.

rights were also deemed as the exclusion zone in the research areas of the ideology and theories as well.<sup>10</sup>

The concepts of human rights was introduced into China and wildly discoursed by the Chinese scholars was in late of 1980s and 1990s, and after that, the provision of protecting human rights was included in the Constitution of PRC in 2004. Meanwhile, “China has actively participated in the international human rights regime”<sup>11</sup>, and until the end of 2012, has already signed 26 international human rights treaties, including the three important closely related to criminal punishment in international treaties, namely, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: CTOCIDTP, signed on December 12, 1986 and ratified on October 4, 1988); the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR, signed in 1997 and ratified in 2003) and the International Covenant on Civil and Political Rights (hereinafter: ICCPR, signed in 1998)<sup>12</sup>, in fact, “China is a party to most of the core international human rights treaties.”<sup>13</sup>; and up to the end of 2012, China had drawn up a Constitution and many other laws, of which a total of 243 are currently in effect; in this way, the framework of human rights law under socialism with Chinese characteristics has been continuously enriched and perfected.<sup>14</sup> Meanwhile, ‘human rights groups regularly issue scathing reports condemning China for widespread human rights violations’<sup>15</sup>, which give international stress to China government and make it to shift outlook on human rights and improve the human rights situation. All these, on the one hand, require Chinese government to carry out corresponding international responsibility; on the other hand, the government gradually notices the importance and value of individual human rights.

In addition, the Communist Party of China’s<sup>16</sup> annual political documents also emphasize on human rights protection. In the 16<sup>th</sup> National Congress of Communist

<sup>10</sup> See Tian Xingchun, 从废除“收容遣送”到“人权入宪”[From the Abolitions of “Housing and Repatriation” to “Human Rights Written into the Constitution Law”], <http://legal.people.com.cn/n/2012/0913/c42510-19001375-2.html>, ( 8 November, 2015).

<sup>11</sup> Peerenboom, Randall: Assessing Human Rights in China: Why the Double Standard? *Cornell International Law Journal*, Vol. 38 (2005) p.78.

<sup>12</sup> See National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/17/CHN/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/159/47/PDF/G1315947.pdf?OpenElement> ( 09 November, 2015).

<sup>13</sup> Sonya Sceats with Shaun Breslin: China and the International Human Rights System, Programme Report, Chatham House, <https://www.chathamhouse.org/publications/papers/view/186781> ( 09 November, 2015).

<sup>14</sup> See National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, ( 09 November, 2015).

<sup>15</sup> See Peerenboom: *op. cit.* 72.

<sup>16</sup> The Communist Party of China (CPC) is the founding and ruling political party of the People’s Republic of China. Under the Constitution of China, the CPC is the governing party of China, although it coexists alongside eight other legal parties that comprise the United

Party of China (dated back to 2002), the former President of China, *Jiang Zemin* in his report stated ‘human rights are respected and guaranteed’ and he also stated that ‘we should uphold and improve the system of people's congresses and ensure (...) their legislation and policy decisions better embody the people's will.’<sup>17</sup> In the 17<sup>th</sup> CPC’s National Congress (in 2007), the former President of China, *Hu Jintao* also emphasized that ‘we must respect and safeguard human rights, and ensure the equal right to participation and development for all members of society in accordance with the law.’<sup>18</sup> In the 18<sup>th</sup> CPC’s National Congress (in 2012) *Hu Jintao* stated that, ‘the rule of law should be fully implemented as a basic strategy, a law-based government should be basically in function, judicial credibility should be steadily enhanced, and human rights should be fully respected and protected.’<sup>19</sup> In 2013, the 4<sup>th</sup> Plenary Session of the 18<sup>th</sup> Central Committee of CPC launched its Decision on Some Major Issues Concerning Comprehensively Deepening the Reform, and it states that ‘promoting rule of law’ and emphasizes on that ‘improving the judicial system to protect human rights’.<sup>20</sup> In 2014, the 4<sup>th</sup> Plenary Session of the 18<sup>th</sup> Central Committee of CPC passed Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward, and it states again that, ‘Strengthen the judicial protection of human rights; Strengthen the consciousness on respecting and protecting human rights in all of society, complete channels and methods to obtain relief for citizen’s rights.’<sup>21</sup> All of these, to a great extent, show the shifting of the Chinese government’s attitude toward human rights and judicial protecting all members’ human rights is attached gradually importance to in the post Deng-era.

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<sup>17</sup> Jiang, Zemin: ‘Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics 2002, Section V, <http://en.people.cn/features/16thpartyreport/16thpartyreport5.html> (19 March, 2016.)

<sup>18</sup> Hu, Jintao, ‘Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in all Respects, Scientific Outlook on Development, [website], 2007, p.12. [http://news.xinhuanet.com/english/2007-10/24/content\\_6938749\\_11.htm](http://news.xinhuanet.com/english/2007-10/24/content_6938749_11.htm), ( 19 March, 2016).

<sup>19</sup> Hu Jintao, ‘Firmly March on the Path of Socialism with Chinese Characters and Strive to Complete the Building of A Moderately Prosperous Society in All Respects’, 18<sup>th</sup> CPC National [http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c\\_131981259\\_4.htm](http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_4.htm), (19 March, 2016).

<sup>20</sup> Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, [http://www.china.org.cn/china/third\\_plenary\\_session/2014-01/16/content\\_31212602.htm](http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm), (20 March, 2016).

<sup>21</sup> **中共中央关于全面推进依法治国若干重大问题的决定**[CPC’s Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward], [http://www.gov.cn/zhengce/2014-10/28/content\\_2771946.htm](http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm), (20 March, 2016).

*The Requests of Human Rights for the Death Penalty*

“The death penalty is a human rights issue may seem obvious.”<sup>22</sup> In the human rights regime, the final goal of it is to eliminate the death penalty because it was considered as the ultimate cruel, inhuman, and degrading punishment. The application of death penalty does not only deprive the criminal’s right to life, but also “impinge on the rights of the third parties, such as family members of persons sentenced to death.”<sup>23</sup> The Article 6 of ICCPR states that the right to life, which cannot be arbitrarily deprived, is of a great import fundament right for every person, and if the right to life has to be deprived in accordant with the party’s national laws, “sentence of death may be imposed only for the most serious crimes.”<sup>24</sup> Thereby implying that, the death penalty can only be imposed on the criminals who have committed a type of the most serious crimes, which “should not go beyond intentional crimes with lethal or other extremely grave consequences”<sup>25</sup> pursuant to Economic and Social Council Resolution 1984/50. Article 1 (2) of Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty (1989) states that “each state party shall take all necessary measures to abolish the death penalty within its jurisdiction”<sup>26</sup> However, China, now is still one of the retentionist states and the number of crime punishable by death should be the largest in the world. So it should progressively restrict the number of use of death penalty.

The death penalty policy is a policy and guideline that concern to the death penalty legislation and its administration. In other words, the death penalty legislation and its execution have to conform to the death penalty policy. Therefore, the death policy plays an important role in controlling and limiting the use of death penalty *de facto* and *de jure*, as well.

“There can be little doubt that our world is inexorably moving towards being execution-free”<sup>27</sup>, in the case where the death penalty still plays a significant role in the criminal sanction system, China’s death penalty policy should comply with this international trend and try to balance the relationship between punishing criminal and protecting human rights. In the context of controlling and limiting the use of death penalty, protecting human rights should be considered to be more important than punishing criminal.

<sup>22</sup> Shetty, Salil: The Value of International Standards in the Campaign for Abolition of the Death Penalty. *The Brown Journal of World Affairs*, Vol. XXI (2014), Issue 1, p.42.

<sup>23</sup> *Ibid.* 42.

<sup>24</sup> See Article 6 (2), ICCPR.

<sup>25</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council Resolution 1984/50, Article 1.

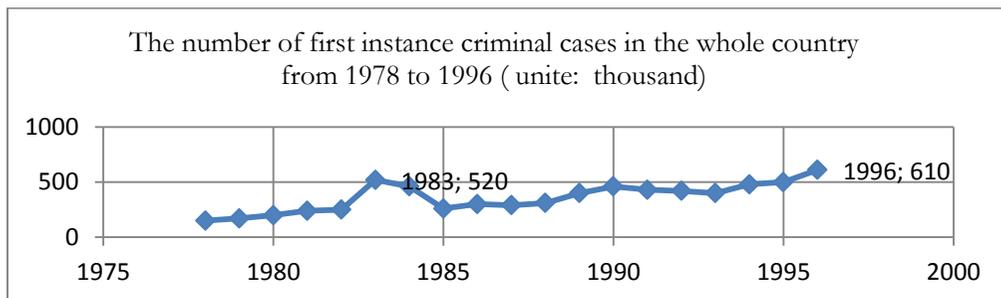
<sup>26</sup> See Article 1 (2), Second Optional Protocol to the International Covenant on Civil and Political Rights, Resolution 44/128, December 15, 1989.

<sup>27</sup> Bannister: *op. cit.* 165.

### *The Evolution of Death Penalty Policy Post-1979*

In 1979, “China has its first Penal Code nearly 30 years after the founding of the country, which indicates the severe lag of legal system.”<sup>28</sup> To a great extent, the 1979 Penal Code marked that the construction of rule of criminal law was entering a new phase of there are laws to abide by. In accordance with the Article 43 of 1979 Penal Code, the application condition of death penalty was that “the death penalty shall only be applied to criminals who have committed the most heinous crimes”,<sup>29</sup> which was the basic standard of and the principle of application of death penalty. To a great extent, even though the concept of human rights in China was considered as the “exclusion zone” before 1979 Penal Code was adopted; death penalty legislation raised much more attention on protection human rights than afterwards. During that time, the death policy was that “death penalty has to be retained and be applied as little as possible and needs to prevent the execution from be done wrongly and unjustly.”<sup>30</sup>

Shortly after the first Penal Code adopted in 1979, with implement of the reform and opening-up and economic development in China, the crime situation became very severe and public security situation faced serious challenges. From the below table, we can see the crime situation trend within the period from 1979 to 1997.



(This figure shows that the crime rate increased generally in curve style since 1978, even though it shows a decrease in a short time after the anti-crime campaign in 1983.)

For the deteriorating social environment, the Central Government of China had to apply such death penalty as the severe punishment to control over the increasing crime rate. At that time, ‘the view of *Deng Xiaoping* on the death penalty could in principle represent the attitude of central government.’<sup>31</sup> In the regard of the social situation in

<sup>28</sup> Co-authored by Gao Mingxuan & Zhao Binzhi: *中国刑法立法之演进* [The Evolution of Chinese Criminal Legislation]. Law Press (Beijing), 2007, p.78.

<sup>29</sup> Article 43, 1979 Penal Code.

<sup>30</sup> Chen, Xingliang: *死刑政策之法理解读* [Death Penalty Policies: A Jurisprudential Perception]. *Journal of Renmin University of China*, 2013. No. 6, p.3.

<sup>31</sup> Zhang, Shouwen – Mi, Chuanyong, *中国死刑政策的过去、现在及未来* [The Past, Now

1983, Deng Xiaoping said: ‘the number of crimes, including serious ones, has increased substantially, and the people are very disturbed about it. Over the past few years, far from being checked, the tendency has grown. Why is that? Chiefly because we have hesitated to take prompt and stern actions to combat criminals and have given them very light sentences. (...). Serious offenders (...) should be severely punished according to law. A number of criminals should be executed according to law, and some others should be put behind bars for a long time (...). The only way to stop crime is to be tough about it. If we go easy, we’ll lose the support of the people. This is what we mean by strengthening the people’s democratic dictatorship.’<sup>32</sup>

Based on Deng’s abovementioned speech on 19 July 1983, CPC launched the Decision on Cracking severely down Crimes on August 25, 1983, which provided that ‘cracking severely down crimes is a serious struggle of opposites as between us and the enemy in the political area.’<sup>33</sup> Hence, the criminal was deemed as people’s enemy.

As to death penalty, in 1986, Deng Xiaoping pointed out that the “death penalty cannot be abolished, and some criminals must be sentenced to death (...). Some of criminals must be executed, but of course we have to be very careful in such matters. Some of the perpetrators of serious economic or other crimes must be executed as required by law. As a matter of fact, execution is one of the indispensable means of education. [At this point Comrade Chen Yun remarked: executing some of them can help save many cadres. As the saying goes, execute one as a warning to a hundred.]”<sup>34</sup>

From Deng’s speeches, it is obviously that Deng tended to emphasize on such death penalty as severe punishment to control crime, which differs totally from *Mao’s* attitudes toward death penalty. And the execution policy was correspondingly changed from restrictive in Maoist era to extensive application in Deng’s era. For this change of death policy, one of Chinese scholars criticizes that ‘the ruler expects to contain crimes and restore social order by death penalty, which has come to somewhat depend on death penalty during the process of social governments.’<sup>35</sup>

Chinese central government laid down the policy of “tough on crime” (*yan da*, 严打). And the death policy was changed to severe punishment. One important change was in the term of legislation. Since 1981, NPC Standing Committee had successively adopted 25 Special Criminal Laws until the present Criminal Law passed in 1997,<sup>36</sup> 18

and Future of Death Policy in China]. *The Law Review*, Vol. 2 (2006), p.40.

<sup>32</sup> Deng Xiaoping, *The Selected Work of Deng Xiaoping*, Vol.3, <https://dengxiaopingworks.wordpress.com/2013/03/18/bourgeois-liberalization-means-taking-the-capitalist-road/>, (20 March, 2016).

<sup>33</sup> CPC’s Decision on Cracking Severely down Crimes, <http://cpc.people.com.cn/GB/64162/64165/68640/68665/4739396.html>, (20 March, 2016)

<sup>34</sup> Deng Xiaoping, *The Selected Works of Deng Xiaoping*.

<sup>35</sup> Chen: *op. cit.* p.4.

<sup>36</sup> These Special Criminal Laws include Decision on Severely Punishing Criminal Elements Seriously Endangering Public Security (September 2, 1983); Supplementary Provisions on

of which provided for the crime punishable by death. All of these Special Criminal Laws, to a great extent, brought great changes as below in term of the number of crimes punishable by death and its applicable conditions:

(1) *The number of crimes punishable by death was dramatically increased.* According to these Special Criminal Laws, 33 crimes in all can be punishable by death<sup>37</sup>, and together with 1979 Criminal Law, the total number of crimes punishable by death is increased to around 80 before 1997 Criminal Law was passed with a staggering increment rate;

(2) *The death penalty was stipulated as an absolutely prescribed penalty by some Special Criminal Laws.* Such as the Article 2 of Decision on Strictly Prohibiting Prostitution and Whorehouse Visiting<sup>38</sup>, the Article 1 of Decision on Punishing Criminal Elements Committing Abduction and Selling or Kidnapping of Women or Children<sup>39</sup>, Decision on Punishing Criminal Elements Hijacking Aviation Vehicle.<sup>40</sup> The death penalty for these crimes was overwhelmingly prescribed;

(3) *other significant change was in the terms of judicial practice.* In temporal judicial practice, in order to crack severely down on such larceny as ordinary crimes, the relevant judicial authorities applied death penalty to these kinds of crimes through the way of making interpretation. For example, the death penalty cannot be applied for the larceny in accordance with 1979 Penal Code, but it can be, in the light of the Decision on Severely Punishing Criminals Who Seriously Undermine the Economy.<sup>41</sup>

However, the death policy was changed in 2006. The main reason behind this change is the provision of “state respect and protect human rights” was included by the Constitution of PRC in 2004, and in addition, the Chinese Government has already ratified the ICESCR in 2003, so the Chinese government has to carry out the relevant constitutional and international responsible of protecting human rights. On October 18, 2006, the Sixth Plenary Session of the Sixteenth Central Committee of the CPC decided that the China would implement the criminal policy of severity tempered with gentleness in the future.<sup>42</sup> Compare with the criminal policy of “cracking down on criminal activities which require the authorities to bring to justice as severely and fast as possible, the policy of severity tempered with gentleness requires the unification of

Cracking Down on the Crime of Smuggling (January 21, 1988); Supplementary Provisions on Cracking Down on the Crime of Corruption and Bribery (January 21,1988); Decision on Prohibiting Drugs (December 28, 1990), and so on.

<sup>37</sup> Gao, Mingxuan, 60years of Capital Punishment: the Evolution and Prospect of Capital Legislation of New China.

<sup>38</sup> NPC’s Decision on Strictly Prohibiting Prostitution and Whorehouse Visiting, No. 51, 1991.

<sup>39</sup> NPC’s Decision on Punishing Criminal Elements Committing Abduction and Selling or Kidnapping of Women or Children, No.52, 1991.

<sup>40</sup> NPC’ Decision on Punishing Criminal Elements Hijacking Aviation Vehicles, No.67, 1992.

<sup>41</sup> NPC’s Decision on Severely Punishing Criminals Who Seriously Undermine the Economy, March 8, 1982.

<sup>42</sup> News of the Communist Party of China:

<http://cpc.people.com.cn/GB/64093/64094/4932424.html>, 2015. 1116.

leniency policy and severity policy. And this change also has an influence on the death policy, which is now changed from the “cracking down on criminal activities” to “retaining the death penalty but strictly controlling and applying the death penalty deliberately.”<sup>43</sup> In accordance with this death policy, the judicial authorities have to restrict and control the application of death penalty.

### *The Present Death Policy and the Capital Punishment Reform*

China has to restrict and limit the use of death penalty in the judicial practice in the light of the death penalty policy, i.e. “retaining the death penalty but strictly controlling and applying death penalty deliberately.”<sup>44</sup> And some criminal scholars expressed this death policy as “adhere to rarely apply the death penalty and to prevent the execution wrongly”<sup>45</sup> and some other criminal scholars call it “rarely applying death penal and execute the death with caution.”<sup>46</sup> In accordance with this death policy, it requires the judicial authorities to apply death penalty in two aspects, one is the judge or the court has to strictly comprehend the application conditions of death penalty provided by the Penal Code, and as far as possible to reduce the number of application of death, and make actually this punishment as a measure of last resort. Another aspect is in the terms of criminal procedure, which requires the judge and court to strictly comprehend and improve the evidence standards of death case in the light of Criminal Procedure Law, in order to sentence prudently the criminal to death. This is the present death policy of China.

Although the death penalty still plays an important role in the crime control and social governance, under the present death penalty policy, China has already amended criminal law towards limiting the execution. In 2007, a significant reform step of death penalty was firstly taken, namely, the power to review the death sentences was assumed by the Supreme People’s Court of PRC from the local High Courts in every province and Military Courts on January 1<sup>st</sup>, 2007, so that the Supreme People’s Court can uniformly exercise the power of reviewing and further improve the standards and conditions of evidences and procedure of sentencing death penalty. This is the first time for China to limit the use of death penalty in the judicial practice since the 1979 Criminal Law have been passed. On the one hand, this change could be due to the provision ‘state respects and protect human rights’ was contained into the Constitution; on the other hand, due to the criminal policy was changed in 2006 from ‘cracking down on crime’ to ‘severity tempered with gentleness’.<sup>47</sup>

<sup>43</sup> [http://www.law-lib.com/law/law\\_view.asp?id=310425](http://www.law-lib.com/law/law_view.asp?id=310425), (11 November, 2015).

<sup>44</sup> Ibid.

<sup>45</sup> Chen: *op. cit.* 2.

<sup>46</sup> Zhao, Bingzhi: *Reform in Death Penalty System*. China Renmin University Press, 2014, 78.

<sup>47</sup> On October 18, 2006, the Sixth Plenary Session of the Sixteenth Central Committee of the CPC decided that the China would implement the criminal policy of severity tempered with

Another significant and substantial step was taken by the Eighth Amendment to Criminal Law of PRC (Hereinafter, the Eighth Amendment). In 2011, the Eighth Amendment had abolished death penalty for 13 economic and nonviolent crimes, reducing the number of crimes punishable by death from 68 to 55, and banned capital punishment for offenders over the age 75. Even though seven amendments were adopted before the Eighth Amendment, they do not involve any death penalty reform, in other words, the Eighth Amendment started a process in the course of gradually abolishing death penalty in China. Professor *Carolyn Hoyle* in UK pointed out that “important in themselves, these reforms are emblematic of China’s emerging commitment to limit the scope and practice of capital punishment in stages, with, as it state to the UN Human Rights Council in 2007, the final aim of abolition.”<sup>48</sup>

From above, we can see that in Jiang-era, China did not conduct any reform for death penalty and denied the criminal human rights, but in the Hu-era, China emphasized on putting people first as its core, and so the provision of ‘state respect and protect human rights’ was contained into the Constitution of China in 2006, and then the death penalty was started to be reformed by limiting the use of death penalty in judicial practice in 2007, and in 2011, by legislatively decreasing the number of crimes punishable by death. This is one of important pictures of shifting of CPC’s outlook on human rights and reforming death penalty system. However, after the Eight Amendment, there were still 55 crimes punishable by death.

China comes into *Xi-era* since November, 2012, and China firstly launched its White Papers on Judicial Reform in China in this year. This White Paper explicitly states that ‘China retains the death penalty, but strictly controls and prudently applies it.’<sup>49</sup> This is also the first time for China to state its opinion on death penalty with White Papers. In 2013, the 2013 Decision also states that ‘we will gradually reduce the number of charges that could lead to the death penalty’,<sup>50</sup> which is also the first time for China to state that abolishing gradually the death penalty by Party’s report. However, in 2014, the 2014 Decision does not state about death penalty, but it states that ‘promotes judicial reform’, ‘comprehensively constructing rule of law’ and ‘Strengthen the judicial protection of human rights’.<sup>51</sup> In the light of these Party’s political documents and

gentleness in the future. See **中共中央关于构建社会主义和谐社会若干重大问题的决定** [Decision of the CPC Central Committee on Certain Major Issues in the Building of a Harmonious Socialist Society], <http://cpc.people.com.cn/GB/64093/64094/4932424.html>, (21 March, 2016).

<sup>48</sup> The Death Penalty in China—the road to reform, <https://www.law.ox.ac.uk/research-subject-groups/research-index/impact-index/death-penalty-china-road-reform>, (21 March, 2016).

<sup>49</sup> The Information Office of the State Council of P.R.C, ‘Judicial Reform in China’, <http://english.cpc.people.com.cn/206972/206981/8211483.html>, (21 March, 2016).

<sup>50</sup> Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform.

<sup>51</sup> CPC’s Central Committee Decision Concerning some Major Questions in Comprehensively

White Paper, China adopted the Ninth Amendment to Criminal Law of PRC (hereinafter: Ninth Amendment) on August 29<sup>th</sup>, 2015, which also abolished death penalty for 9 crimes and reformed the relevant death penalty system.

The Ninth Amendment pushed the death penalty reform further. All these reforms can be included as follow:

(1) *It has further reduced the amount of crimes punishable by death stipulated by specific provisions of Criminal Law.* It reduced the number of crimes punishable by death from the 55 to 46, namely, the death penalty for crimes of smuggling weapons, ammunition, crimes of smuggling nuclear materials, crimes of smuggling counterfeit currency, crimes of counterfeiting currency, crimes of raising funds by means of fraud, crimes of organizing for prostitution, crimes of forcing another person to engage in prostitution, crimes of obstructing a commander or a person on duty from performing his duty, crimes of fabricating rumors to mislead others during wartime. Thus, China has taken another solid step towards abolishing death penalty *de facto* and *de jure* by reducing the number of crimes punishable by death. However, in China, there are still 46 crimes punishable by death in the present Criminal Law, of which there are 24 crimes are in terms of nonviolence, occupying 52.2%, 22 violent crimes punishable by death, most of which are stipulated by Chapter II (10 Crimes of endangering public security) and Chapter IV (4 crimes of infringing upon citizens' right of the person) in The Specific Provisions of Criminal Law;

(2) It further improved the executive conditions of that the suspension of execution of death penalty is commuted to the immediate execution, which is of a great significant reformation for the China's present death penalty system. In accordance with the Article 2 of the Ninth Amendment, the term of previous Article 50(1) that "if it is verified that he has committed an intentional crime, the death penalty shall be executed upon verification and approval of the Supreme People's Court" is amended by the Ninth Amendment to "if he has committed an intentional crime, and of which circumstances are flagrant, the death penalty shall be executed upon verification and approval of the Supreme People's Court; if he has committed an intentional crime but the death penalty is not executed, the terms of suspension of execution of a death penalty shall be recounted again, and reported to the Supreme People's Court for the record"<sup>52</sup>, so the system of death penalty with suspension of execution was reformed from two aspects, namely, firstly, "it raises further the thresholds of the suspension of execution of a death penalty commuted to immediate execution."<sup>53</sup>, i.e. the previous terms of "it is verified" is amended to 'circumstances are flagrant'; secondly, it increases

Moving Governing the Country According to the Law Forward, 2014, [http://www.gov.cn/zhengce/2014-10/28/content\\_2771946.htm](http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm), (21 March, 2016)

<sup>52</sup> The Ninth Amendment to Penal Code of P.R.C, Article 2.

<sup>53</sup> Chen, Liping: 点击中华人民共和国刑法修正案（九）草案的七大亮点[Clicking on the 7 Highlights of the Draft of Ninth Amendment to Penal Code of P.R.C.]. *Legal Daily News*, October 28, 2014. 3.

the probation period of suspension of execution, in other words, it looks like putting the criminal into a longer ‘death row’<sup>54</sup> again.

Namely, the Ninth Amendment provides that if s/he has committed an intention crime during the probation period of suspension of execution and the circumstances are not fragrant, the death penalty shall not be executed, but terms of suspension of execution of a death penalty shall be recounted again.

### *Conclusion*

Death penalty is one of great factors for considering human rights development. In accordance with international and Western human rights standards, China should have completely abolished death penalty like South Africa or some such Hungary, France, Germany as European states, but, in fact, unfortunately, it is still on the way. We believe that death penalty will be abolished entirely *de facto* and *de jure*, but we do not have the exact timetable. The Article 6 (1) of ICCPR provides that ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’.

<sup>54</sup> Here, the death row is distinctly different from the “death row” in America where the criminal spend a long time to wait for execution; even some inmates have to spend several decades awaiting execution. But here, this death row is in the probation period, which is not less than two years. See Von Drehle, David: The Death of the Death Penalty: why the Era of Capital Punishment is Ending. *Time*, <http://time.com/deathpenalty/>, (21 March, 2016).