Capital Punishment Reforms

Two-thirds of the world’s population live in countries that practice capital punishment. But there is no other country on Earth that makes such excessive use of the death penalty as China. Legal scientists working with Hans-Jörg Albrecht, Director at the Max Planck Institute for Foreign and International Criminal Law, are focusing on two projects relating to this issue. The goal is to encourage Chinese society to take a long, hard look at the death penalty, and to pave the way for its abolition.

There will be a time in China when the death penalty is consigned to history – of that Hans-Jörg Albrecht is certain. But that time has not yet come: the country is too preoccupied with the radical development of its economy and with the crime these changes have engendered. Drug dealing is one problem, and economic crimes such as corruption and fraud are another. The phenomenon of migrant workers who have abandoned their rural homes to seek work in the cities is also a new aspect. There they live crammed together in miserable conditions, often waiting for months to be paid – creating an ideal breeding ground for crimes of violence and murder.

China’s central government is meeting these challenges with stricter laws. In 1997, the number of crimes potentially punishable by death rose from 28 to 68 – many of them offenses of an economic nature. Contrary to what one might expect in Europe, the use of the death penalty is subject to open political discussion in China. As an expert on China, Albrecht believes it is not so much a dogma linked with moral principles as an instrument of law: “I don’t get the impression that Chinese politicians had some particular desire to preserve, let alone initiate, the death penalty.”

As yet, however, the numbers tell a different story: In 2006, there were 1,040 officially confirmed executions. In other words, three people were killed at the behest of the state almost every day. In its annual report for 2007, Amnesty International states that: “A minimum of 1,252 people were executed in 24 countries.” China is once again likely to have accounted for more than 1,000 of those, giving it the dubious honor of heading the list of countries with the most executions. However, one American human rights organization, the Dui Hua Foundation, estimates that the unofficial figure is much higher, at around 5,000 executions. Human Rights Watch even puts the number at 10,000.

In political and judicial circles, as well as among the population, there is wide acceptance of the death penalty. To call this acceptance into question, the researchers in Freiburg have begun a project entitled “Moving the Debate Forward – China’s Use of the Death Penalty.” They aim to expand and intensify the debate about the death penalty in all areas of Chinese society. By 2010, they and their English, Irish and Chinese colleagues engaged in the project hope to reduce the number of proponents.

RESEARCH AIMED AT PUBLIC UNDERSTANDING

In workshops and seminars, the researchers aim primarily to engage politicians and legal professionals in discussion. They will also be holding public lectures on the death penalty at universities, and will lend their support to efforts to restrict the death penalty to only the most serious crimes, such as murder. They even plan to set up a Web site in China that provides access to scientific research into the death penalty.
Important arguments in the process of changing the attitudes of decision makers include the results of surveys carried out among the population and in the judicial system. These are derived from a study of the “Death Penalty and Public Opinion” that is being directed from Freiburg by Chinese Ph.D. student Shengui Qi and lecturer Dietrich Oberwittler. Since 2004, they have been questioning what value China’s population attaches to the death penalty, and how public opinion impacts on policies on crime. The findings that emerge from the two projects will find their way into a proposal for the reform of the death penalty, which the researchers then plan to present to the National People’s Congress.

Political and social attitudes toward the death penalty are closely linked with the development of criminal law since the end of the 1970s. Under Mao’s death in 1976 that a ground-up renewal of the judicial system began. The first universities re-established the faculties of law, and the first Chinese Penal Code came into force in 1979. In response to rapid social change and a rising crime rate, the Penal Code was subsequently reformed and extended in 1997, and a Code of Criminal Procedure was introduced.

Rapid Development of the Professional Sector

“What has happened to Chinese criminal law over the past 25 years is unique,” says Hans-Jörg Albrecht. “I know of no other region that has made such progress in such a short time. Laws have been put in place and judicial institutions such as public prosecutors and law firms have been built up. We are now back to a situation in which the majority of legal professionals have been trained in their profession.” In Europe, a similar development took place several hundred years. That is worth bearing in mind when considering the attitude of the state toward the death penalty.

However, the laws associated with the death penalty continue to develop. In recent years, there has been some minor improvement in the situation of those potentially facing execution. For example, an accused individual now has the right to be represented by an experienced criminal defense counsel. Previously, even inexperienced civil attorneys were eligible for the job. It is true that, in Chinese criminal trials, a defense counsel has few opportunities to influence the proceedings. An experienced attorney, however, is better placed to avoid miscarriages of justice than one who lacks experience.

Another achievement is Article 48 of the Chinese Penal Code, which requires that all death sentences be confirmed by the Supreme Court. In the past, death sentences could be imposed with binding effect by the court of second instance, the counterpart to Germany’s regional courts. Today, the decision by a lower court must be reviewed by the Supreme Court in Beijing. “This decision was made with the declared political intent of raising the inhibition threshold to be crossed before implementing the death penalty,” Albrecht explains.

Progress of this nature is also in part the product of the debate that scientists have initiated. Criminal lawyers at Chinese universities are maintaining the momentum of discussion. The quality of their training reinforces the self-assurance of judges, public prosecutors and defense counsel, with the result that they increasingly take a stand on critical issues. Albrecht remarks: “This is leading to debates that are capable of triggering changes even in such sensitive areas as the criminal justice system. But the process takes time.”

According to Article 48 of the Penal Code, the death penalty is “applied only to criminals who commit the most heinous crimes.” Most death sentences today are passed on murderers. Capital punishment is also imposed for other offenses, but drug dealing, corruption and fraud account for only a small proportion of executions. In the view of the Max Planck researchers in Freiburg, these are individual cases that are intended to have a deterrent effect. And it is these cases in particular that are now in the spotlight. Discussions at a political level revolve around the question of whether crimes against property and economic offenses should be made punishable by imprisonment, and the death penalty restricted to serious crimes of violence.

Capital Punishment – Yes, but Only in Serious Cases

The courts are now also following this trend. Some 90 percent of judges and public prosecutors and two-thirds of attorneys still profess to support the death penalty. But as researchers at the Max Planck Institute have discovered in their surveys, this support is mostly limited to the most serious of crimes. The researchers are not surprised at the broad general endorsement of the death penalty within the justice system. Executions are regarded as a tool with which to uphold the law, and it is to be expected that judges and public prosecutors will share this perception of the death penalty among the Chinese population.

As a result of the Max Planck researchers’ work, the perception of the death penalty has not yet acquired any great significance. But this situation will change – the researchers in Freiburg are certain of that. China will not be able to escape the influence of the international community forever, not even in its political and judicial affairs. If China wishes to cooperate on legal issues with other countries, its criminal law must be internationally acceptable. Particularly in Europe, attitudes toward the death penalty will play a decisive role. As yet, the two regions occupy divergent positions: whereas the EU fundamentally rejects the death penalty, most Chinese politicians regard it as an acceptable punishment. It is likely to take some time before opinions begin to converge. This also applies to the implementation of international conventions. In 1998, China signed the International Covenant on Civil and Political Rights, an UN treaty that guarantees basic human rights, such as the right to life. The death penalty is accepted under the Convention, but only for the most serious of crimes. China will thus not be able to ratify the treaty until it has substantially reduced the number of offenses for which the death penalty can be imposed.

Similarly, the extent to which the death penalty is endorsed by the Chinese population is limited to only the most serious crimes. Some 58 percent are still in favor of state executions – but only for murder, drug dealing, willful assault resulting in death, and the rape of a girl under the age of 14. This was confirmed by a survey conducted by the Chinese colleagues at Peking University. In a survey on the issue of the “Death Penalty and Public Opinion,” they asked almost 4,500 Chinese between the ages of 18 and 70 for their views. As a result, the researchers asked whether the perception of the death penalty among the Chinese population is now available for the first time.
The researchers discovered that more than 75 percent of those surveyed were not interested in the death penalty. Some 60 percent feel they are not well informed and want politicians to provide better explanations. “The annual number of executions in China is still treated as a state secret,” Qi laments. “That has to change.” The survey does, however, indicate that, even among the population, the potential exists to abolish the death penalty. Although only 14 percent of those surveyed were explicitly opposed to capital punishment, the number of those who are undecided is high – nearly 30 percent. Half of all respondents state that they would be against the death penalty if there were an alternative – namely life imprisonment with no opportunity for early release. Currently, a death sentence in China can be commuted to imprisonment with the possibility of parole for good conduct.

Public attitudes toward the death penalty are an important political factor, as seen, for example, in countries such as the US, where a candidate who comes out against capital punishment has little chance of making it to the White House. In China, too, the government relies on the people. “China may have an authoritarian regime, but the central government is well aware that its actions must be politically legitimate. And such legitimacy depends on public acceptance,” says Max Planck researcher Hans-Jörg Albrecht.

Punishment is a requisite element in the relationship between a government and its people: the state acquires power through sanctions, and the death penalty plays a central role. Particularly in China, attitudes toward the death penalty are linked with the expectation that it is the task of the government to guarantee public safety.

The researchers in Freiburg are confident that public opinion will have a fundamental influence on the fate of capital punishment – and could even delay its abolition. An interesting trend to emerge from the survey conducted by Shengui Qi indicates that, while only 6.5 percent of 60- to 70-year-olds were opposed to the death penalty, the figure was just under 20 percent among subjects between the ages of 18 and 29. That is little consolation to those presently sentenced to death, but it sparks the hope that future generations may be able to look forward to a life in which the death penalty is unknown.