



China
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Human rights violations associated with China's anti-drug laws

Executive Summary

Human rights violations committed in the name of drug control are common in China, including the unlawful application of the death penalty, freedom from cruel inhuman and degrading treatment, the denial of the highest attainable standard of health and numerous concerns with respect to compulsory treatment.

The Death Penalty and the Right to Life

China remains the leading global executor for drug offences todayⁱ despite the fact that the drug penalty legislation remains 'a temporary emergency measure' in the country. Death penalty figures are a state secret. However, its use of capital punishment is widely thought to dwarf the combined total of the rest of the world. Reports cite 'informed sources' or other officials estimate as many as 7,500 executions in 2006.ⁱⁱ Estimates of executions in 2007 vary enormously, some being as low as 2,000 total executions and others as high as 15,000.ⁱⁱⁱ

Amnesty International reported that China executed at least 1,718 people in 2008.^{iv} In the same year as many as 7,000 death sentences were handed down most of which were for drug offences.^v However, these figures are generally considered conservative.^{vi} In the following year the number of overall executions remained in 'the thousands'.^{vii} The Dui Hua Foundation suggests that approximately 5,000 people were executed in 2009.^{viii} Other organisations use different formulas to arrive at rough estimates of death sentences. For example, Hands Off Cain reports that the Supreme People's Court (SPC), which is empowered with final judicial review of all death sentences, handled 13,318 cases of various types and concluded 11,749 cases in 2009.^{ix}

It is also estimated that death penalty cases make up as much as 90 per cent of the court's work in China.^x

While the proportion of executions for drug offences is unknown. According to Xinhua, the official press agency of the Chinese government, Zhang Jun, Vice-President of the Supreme People's Court, claimed that the courts handled 14,282 drug-related cases between January and May 2009, registering 6,379 convictions with 'severe' penalties ranging from imprisonment to capital punishment.^{xi}

Data on death sentences for foreign citizens are also available from foreign embassies and sources. For example, the Philippines' foreign ministry reports that there are at least sixty-six Philippine nationals on death row for drug offences in China.^{xii} Similarly, the Korea Times quoted officials stating that there

are fifteen South Koreans on death row in China, most of them for drug offences.^{xiii} The Hong Kong-based Joint Committee for the Abolition of the Death Penalty claimed that more than eighty Hong Kong citizens have been executed for drugs offences.^{xiv}

China continues to use 26 June - the UN International Day against Drug Abuse and Illicit Trafficking, as an occasion to stage mass public trials and executions of drug offenders.^{xv} For example in 2001 over fifty people were convicted and publicly executed for drug crimes at mass rallies, at least one of which was broadcast on state television.^{xvi} The following year, 26 June was marked by sixty-four public executions in rallies across the country. The largest public execution took place in the south-western city of Chongqing, where twenty-four people were shot.^{xvii} Commenting on the reason for staging such group convictions and executions, a deputy chief judge in Hefei noted that 'The mass sentence aims at increasing public awareness.'^{xviii}

Several UN agencies including Special Procedure mechanisms have expressed their concerns about the arbitrary application of death penalty in number of countries. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also strongly stated that drug offences do not meet the threshold of 'most serious crimes': ...'the death penalty should be eliminated for crimes such as economic crimes and drug related offences. In this regard, the Special Rapporteur expressed his concern that certain countries, including China... maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences'.^{xix}

In May 2011, China reduced its list of crimes that are punishable by the death sentence from 68 to 55.^{xx} While this is a positive development, the thirteen crimes that are no longer on the list are mainly financial and non-violent crimes, and do not include drug trafficking.^{xxi}

The government of China must abolish its capital drug laws and commute the sentences of those on death row to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights; Also, China shall ratify the International Covenant on Civil and Political Rights

Injecting Drug Use and the Right to health

An estimated 2,350,000 people inject drugs in China and of these, 6.4% are living with HIV.^{xxii} People who inject drugs (PWID) in the provinces of Yunnan, Xinjiang, Sichuan, Guangxi, Guizhou, and Guangdong have the highest prevalence rates in the country, in some areas exceeding 50%.^{xxiii} Each of these provinces reports over 10,000 PWID living with HIV.^{xxiv} The majority of people who inject drugs in China are co-infected with hepatitis C (67%).^{xxv} China is home to more than half (1.6 million) of all people who inject drugs with hepatitis C worldwide.^{xxvi} Co-infection with HIV and viral hepatitis (hepatitis C and/or hepatitis B) is particularly prevalent among people who inject drugs in border areas with Myanmar, Bangladesh and Laos.^{xxvii}

The World Health Organization, UNAIDS and UNODC recommend a package of nine core interventions for HIV prevention, treatment and care for people who inject drugs, within which they prioritise opioid substitution treatment (OST) and needle and syringe programmes (NSP).^{xxviii} China's efforts to address HIV among people who inject drugs have been concentrated on the provision and scale up of OST, in the form of methadone maintenance (MMT) programmes. MMT sites have increased from 600–675 in 2010 to 738 across 28 provinces in 2012, providing 140,000 people who inject drugs with treatment.^{xxix} Coverage of needle and syringe programmes reaches medium levels by international targets,^{xxx} with 180 needle-syringes distributed per person injecting drugs per year through approximately 900 sites in 19 provinces.^{xxxi} An estimated 93,005 PWID were reported to be receiving life-saving antiretroviral treatment (ART), which equates to only 3 in every 100 PWID living with HIV in China.

Although China has scaled up provision of essential harm reduction programmes and broadened the range of available services in recent years, significant challenges to service accessibility and quality remain. For example, access to health care in China, including to programmes such as MMT and eligibility tests for ART (e.g. CD4 count) are available only at a cost to the client. This acts as a prohibitive factor for many people who inject drugs. MMT coverage remains low (in 2010, this was reported to be only 3 in every 100 PWID)^{xxxii} and recruitment and retention are ongoing challenges. In addition, drop-out rates are high, particularly where outreach, psychosocial support and community engagement are lacking.^{xxxiii xxxiv xxxv}

Community based organisations (CBOs) that implement harm reduction services in China face serious restrictions to program delivery. In order to receive funding and be granted permission to deliver programmes, CBOs are required to register with the government and are often restricted to operating in certain geographic areas. The current service delivery model severely limits the independence of some CBOs to implement low threshold and effective harm reduction services.

While efforts to investigate the prevalence of overdose related mortality among PWID in China are limited, there are indications that it is a significant cause of death within this population. For example, in a prospective cohort of PWID in Liangshan, Sichuan province in China, 64.3% deaths during a one-year period were attributed to overdose.^{xxxvi} Despite naloxone, an effective treatment for opioid overdose, being included in the World Health Organization's essential medicine list,^{xxxvii} its availability within China is limited to a few small community-based programmes and it remains out of reach for most PWID.^{xxxviii}

Despite a government commitment to expand the provision of evidence-based programmes, those remanded to compulsory treatment in punitive 'drug-free centres' continue to exceed, exponentially, the number accessing evidence-based services.^{xxxix}

Compulsory drug detention centres and freedom from torture and other ill treatment

The Reference Group to the UN on HIV and Injecting Drug Use estimates that China detains 300,000 people in drug detention centres, while UNAIDS has placed the number at half a million.^{xl} There are over 717 compulsory drug treatment centres and 69 indoctrination-through-labour centres; as well as 119 'voluntary' clinically-managed drug treatment centres in the whole country.^{xli}

The UN Special Rapporteur on Torture noted in his recent report to the UN General Assembly that 'Compulsory detention for drug users is common in so-called rehabilitation centres'.^{xlii} These centres are also referred to as drug treatment centres or 're-education through labour' centres or camps, and are institutions commonly run by military or paramilitary, police or security forces, or private companies. Persons who use, or are suspected of using, drugs and who do not voluntarily opt for drug treatment and rehabilitation are confined in such centres and compelled to undergo diverse interventions.^{xliii}

The Law of the People's Republic of China on Narcotics Control (1 June 2008) provides the supportive legal environment for the prevention and punishment of illegal and criminal acts involving narcotic drugs, and for the protection of citizens' physical and mental health while maintaining public order.^{xliv} This Anti-Drug Law is continuing and extending the abuses of re-education through labour, simply under another name. The Chinese government re-named the institutionalisation of drug users under the Anti-Drug Law as moving from "re-education through labour centres" for drug users, towards a system of administrative arrests and longer terms in compulsory drug detention centres, often extending the period of detention.^{xlv} The new amendments to the law made in 2008 increased the incarceration time in compulsory drug detention centres, from the previously mandated six to twelve months, to a minimum of two years.^{xlvi} After two years, individuals in drug detention centres may be forced to stay for a third year, depending on the 'success' of the treatment.^{xlvii}

Those detained in China's centres are often subjected to long hours of military style drills (as well as forced labour), to complement mandatory chants of self-degradation.^{xlviii} Moreover, stigma, discrimination and physical ill treatment of people who use drugs in these centres are widespread. The research shows that HIV testing is compulsory in such centres upon arrival^{xlix} which is contrary to policies that advocate for voluntary testing only. People forced into mandatory HIV treatment also hardly receive their test results back.ⁱ Furthermore, a recent study found reports of sexual abuse of female detainees by guards at a facility in Guangxi province. Detainees received mandatory HIV tests but were not told the results. Guards reportedly used the data to know which detainees they could have sex with without using a condom.ⁱⁱ It has also been reported that a special note is being made in national identity cards about a person's drug useⁱⁱⁱ exacerbating stigma and discrimination of this particular group.

Mandatory drug detention centres effectively serve as incubators for infectious diseases, actively contribute to the poor health of detainees, and violate both Chinese and international law.ⁱⁱⁱ These centres scarcely provide treatment and social support for people who use drugs as well as lacking the health programmes for those injecting drug users who are living with HIV/AIDS. Thus by incarcerating people who inject drugs in these detention centres, people who use drugs are automatically deprived of their rights to access to the highest attainable standard of health, in this case HIV prevention and drug dependency treatment such as methadone programs.

Yet, Chinese law requires that all patients in compulsory rehabilitation centres be provided with 'medical and psychological treatment, legal education, and moral education.' However as seen, this law is blatantly disregarded. Drug users in rehabilitation centres are regularly humiliated and subjected to abusive and inhumane conditions of confinement.^{liv}

Research shows that in China, so-called drug rehabilitation centres are in reality forced labour camps where slavery is enforced by violent punishment or torture.^{lv} Detainees are expected to work long hours without adequate workplace safety provisions, producing goods for private companies.^{lvi} Detainees have production quotas, and report beatings and other harsh punishments if daily quotas are not met.^{lvii} One former detainee in China described the situation: "We work until dinnertime. After downing a few mouthfuls of food, we rush back to the workshop, trying to take advantage of the little time we have left. But no matter how much we hurry, there is still a large majority of 'crooked pears' [people who fail to meet their production quota] suffering physical injury by the end of the workday at 9 p.m."^{lviii} In addition to beatings, lack of medical treatment, and rape, drug detention in China often means being forced to work for up to 16 hours a day without pay. Many centres sign labour contracts with private companies.^{lix}

In 2012 twelve UN agencies signed a joint statement noting the range of human rights violations that abound in compulsory drug detention centres and called upon governments to close those centres operating on their territory without delay.^{lx} The World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC) stated that 'neither detention nor forced labour have been recognized by science as treatment for drug use disorders.'^{lxi}

The UN Special Rapporteur on Torture in his follow up report on China in 2006 also reported that 'methods used in the system of Re-education through Labour', often go beyond legitimate rehabilitation measures provided for in article 10 of the ICCPR. Indeed, some of these measures strike at the very core of the human right to personal integrity, dignity and humanity, as protected by articles 7 and 10 of the ICCPR, as well as articles 1 and 16 of the CAT. Re-education through Labour constitutes not only a serious violation of the human right to personal liberty, but can also be considered as a form of inhuman and degrading treatment or punishment, if not mental torture.^{lxii}

The UN Special Rapporteur on Torture in his latest report presented to the UN General Assembly on applying the torture and ill-treatment protection framework in health-care settings concluded that: 'detention and forced labour programmes therefore violate international human rights law and are illegitimate substitutes for evidence-based measures, such as substitution therapy, psychological interventions and other forms of treatment given with full, informed consent.^{lxiii} The evidence shows that this arbitrary and unjustified detention is frequently accompanied by – and is the setting for – egregious physical and mental abuse.^{lxiv}

The stakeholders submitting this report recommend that treatment should be consensual. Compulsory treatment should be abolished and replaced with community and evidence-based, voluntary drug treatment services that respect human rights standards. Moreover, opioid dependent people in detention should have access to opioid substitution therapy.

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ⁱⁱⁱ *Ibid*

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^{viii} Dui Hua Foundation (Fall 2010) Dialogue: Reducing Death Penalty Crimes in China More Symbol than Substance 41, pp. 1, 6

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