

4 December 1998

Further information on EXTRA 78/98 (ASA 17/35/98, 21 October 1998) - Death penalty / Fear of imminent execution

PEOPLE'S REPUBLIC OF CHINA Cheung Tze-keung, aged 45, Hong Kong citizen

**New names: Chan Chi-hou, aged 36, Hong Kong citizen
 Chin Hon-sau, aged 43, Hong Kong citizen
 Ma Shangzhong, aged 33, Chinese citizen
 Liang Hui, aged 32, Chinese citizen**

On 7 December 1998, Guangdong Higher People's Court is expected to rule on the above defendants' appeals against their death sentences. As successful appeals are rare, Amnesty International fears they face imminent execution.

The men were sentenced to death by the Guangzhou Intermediate People's Court on 12 November after a trial involving 29 other people, including 13 Hong Kong citizens.

Cheung Tze-keung and Chin Hon-sau were sentenced to death for illegally trading in explosives. Chan Chi-hou, Ma Shangzhong and Liang Hui were sentenced to death for their roles in a robbery in Shenzhen during which a businessman was abducted and suffocated to death. Two other Hong Kong citizens, Chu Yuk-sing and Li Wan were sentenced to death with a two year reprieve for robbing Hong Kong jewellery stores. All were also sentenced to prison terms for kidnapping in Hong Kong or smuggling, trading or storing weapons.

The Hong Kong authorities have said they did not press for the defendants to be returned to Hong Kong because they have no formal agreement with China on the return of fugitives or prisoners and did not have enough evidence to prosecute in Hong Kong.

The handling of the case has provoked great controversy in Hong Kong and has been criticized for undermining its judicial autonomy under the "one country two systems" principle. The debate hinges on the dubious assertions by the Guangdong court and the Hong Kong government that trial in China under the Chinese Criminal Code is appropriate for all these cases, even though some of the alleged crimes took place in Hong Kong where there is no death penalty. Little reliable evidence has reportedly been presented to prove that all the crimes were 'plotted planned and prepared' on the mainland and therefore can be tried on the mainland.

For example, Cheung Tze-keung is the alleged major culprit who supposedly organized and planned the illegal purchase of explosives, although he did not buy or smuggle them on the mainland. In court, evidence of his leading role was limited to a wish he expressed for explosives during a conversation with a co-defendant in Macau, his participation in off loading the shipment in Hong Kong, and a regular payment to a co-defendant from Hong Kong.

A Hong Kong government official has reportedly acknowledged that much of the evidence presented at the trial would be inadmissible in Hong Kong. Defendants statements were reportedly the major source of the prosecution's evidence. Even though under China's Criminal Procedure Law (article 46) no one can "be found guilty...if there is only his statement but no evidence", key facts, such as where the crimes were planned, reportedly appeared only in defendants contradictory oral statements.

Amnesty International is concerned that some defendants claim to have been forced to make such statements after being ill-treated or tortured, including being beaten on the feet with electric batons. There is no indication that any of these allegations have been investigated, or addressed in the verdict, despite one defendant reportedly trying to show his wounds during the trial.

The organization is concerned that the defendants did not receive a fair trial. The reasons for this include the fact that defence lawyers were not able to question key prosecution witnesses or have access to key evidence. Cheung Tze-keung's Hong Kong lawyer was only allowed to attend the first day of the trial.

Appeals against the death sentence by some of the defendants rest on the following:

- that the facts are unclear and the evidence insufficient for conviction.
- that incorrect jurisdiction has been used because the law and the facts do not support trying all the cases in China under the Chinese criminal code.
- that the law has been mishandled with regard to group crimes because there is insufficient evidence to show the defendants "organized or directed" the crimes. They should therefore only be punished for their individual and limited roles.
- that the punishment is excessive and unequal in that the alleged crimes are not "extremely serious" and do not warrant the death penalty. Other co-defendants have been sentenced to prison terms for equally serious offences.
- that there was undue haste in rushing for convictions before the facts were clear whilst related crimes still await trial in Hong Kong.

Relatives of some defendants have also appealed to President Jiang Zemin, and the National People's Congress for clemency.

RECOMMENDED ACTION: Please send telegrams/faxes/express and airmail letters either in English or Chinese or in your own language:

- urging that the death sentences imposed on Cheung Tze-Keung and the six others be commuted;
- urging that the basis for the charges and full trial proceedings be made public; that the trial is examined to ensure that it was carried out according to International standards on fair trials; that all appeal grounds are fully and impartially investigated; that the sentences are delayed until the results of the examinations are made clear; that allegations of torture are investigated; and pointing out that related crimes still await trial in Hong Kong;
- calling on the Hong Kong authorities to take action to protect their citizens from the death penalty in China and to ensure that the judicial autonomy of Hong Kong remains intact;

- urging that the arbitrary and massive use of the death penalty in China be stopped;
- expressing opposition to the death penalty in all cases as the ultimate form of cruel and inhuman punishment and as a violation of the right to life as guaranteed in the Universal Declaration of Human Rights.

APPEALS TO: (please note that fax machines in China are not always reliable)

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and to diplomatic representatives of the People's Republic of China
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PLEASE SEND APPEALS IMMEDIATELY.