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WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

China

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GENERAL OVERVIEW

1. Political System.

China is a unitary, multi-national socialist country with 31 provinces, autonomous regions and municipalities directly under authority of the central government. There are also cities and autonomous prefectures operating directly under these provincial and autonomous regional governments, which totaled 458 in 1991. Under these cities and autonomous prefectures are county and city districts, which totaled 1,904 in 1991.

China's criminal justice system consists of police, procurates, courts and correctional institutions. At the central level, the Ministry of Public Security and the Ministry of Justice

administer China's police and correctional institutions, respectively. The Supreme People's Court is the highest judicial branch in the country. The Supreme People's Procurate is the highest state branch of legal supervision, with prosecution as its main function. The police departments or bureaus, the justice departments or bureaus, procurates and courts at various levels are established to fulfill their respective duties in their own jurisdictions.

2. Legal System.

The legal system of the People's Republic of China is typically Marxist. As declared under the first article of the Criminal Law, Marxist - Leninist - Mao Zedong Thought are the guiding principles of the present law. The legislators in the People's Republic of China view laws, especially criminal laws, as the tool of the ruling class (synonymous with the state), to be used as a coercive force to repress the ruled. The criminal law represents the interests of the ruling class, which defines certain acts as crime.

In judicial activities, public security branches, people's procurates and people's courts have a division of labor with separate responsibilities and checks and balances to guarantee the accurate and effective enforcement of the law. The public security branches are responsible for the investigation, detention, and preparatory examination of criminal cases. The people's procurates are responsible for approving arrest, conducting procuratorial work (including investigation) and initiating public prosecution. The people's courts are responsible for adjudication. The prison or other places of reform through labor are responsible for sentence execution. No other branch, organization, or individual has the right to exercise their powers.

An informal justice system, the People's Mediation of Disputes, does play a significant part in the justice system. However, only criminal cases of private prosecution can be settled through mediation in the court.

3. History of Criminal Justice System.

Historically, each dynasty in China had their own written statutes and customary laws comprising their criminal law. Famous ancient criminal statutes include the Yuxing criminal laws of the Xia Dynasty, the Tandxing criminal laws of the Shang Dynasty, the Jiuxing criminal laws of the Zhou Dynasty, the Qinlu laws of the Qing Dynasty, the Hanlu laws of the Han Dynasty, the Tanglu laws of the Tang Dynasty, the Daminglu criminal code of

the Ming Dynasty, and the Daqing luli criminal code of the Qing Dynasty. The common characteristic among these dynasties was that their criminal justice systems were operated by administrative officials.

With the establishment of the People's Republic of China in 1949, a new political era was born in China's 5,000 year history. When the Communist Party came into power for the first time in China, one of its first priorities was to abolish the laws enacted by the old government and replace them with new ones. Upon invalidating the 6 laws of the Kuomintang regime in February, 1949 (e.g. Constitution, Civil Law, Commercial Law, Criminal Law, Civil Procedure Law, and Criminal Procedure Law), the new government began to construct a socialist legal system.

In 1954, the Constitution of the People's Republic of China was adopted at the National People's Congress, the highest legislative body of the country. That same year, legislation on Reform Through Labor of the People's Republic of China was adopted and in 1957, legislation on Police of the People's Republic of China was adopted. Meanwhile, drafts of new laws such as Criminal Law, Civil Law, Criminal Procedure Law, and Civil Procedure Law were prepared and continually revised.

The "Cultural Revolution" initiated in 1966 broke off the course of legal construction in China. Twelve years later, the Third Plenary Session of the 11th Central Committee of the Chinese Communist Party held in December, 1978, decided to end the "Cultural Revolution" campaign and put great emphasis on the institutionalization and legislation of the socialist democracy and on the stability, continuity and authority of law. Thereafter, legal reconstruction began in China. After the draft was revised more than 30 times, the Criminal Law of the People's Republic of China was finally adopted at the 2nd session of the 5th National People's Congress in July, 1979. The Criminal Procedure Law of the People's Republic of China was also adopted at the same session in 1979.

It took 30 years for the People's Republic of China to enact its first laws. Until 1979 there were no legal standards to guide judges to try criminals. As a supplement to the Criminal Law, a special law called The Interim Regulations of the People's Republic of China Concerning the Punishment of Servicemen in Violation of their Duty, and 12 other amendments to the Criminal Law have been adopted by National People's Congress. In 1982, amendments to the Constitution of the People's Republic of China were adopted and in 1990, the Decision of the Standing Committee of

the National People's Congress Regarding the Prohibition of Drugs was established.

CRIME

1. Classification of Crimes.

* Legal classification. In the Criminal Law, crimes are classified into eight categories according to the object of the crime: 1) crimes of counterrevolution, which are crimes endangering the People's Republic of China such as treason, espionage, and mass rebellion; 2) crimes of endangering public security, which are crimes endangering the life and wealth of many people, as well as the security of public and private property, such as arson, breach dikes, explosions, spreading poison, causing traffic accidents, illegal manufacturing, trading in or transporting guns or ammunition, and causing major productive accidents; 3) crimes of undermining the socialist economic order, which includes smuggling, speculation, falsely passing off trade marks, and illegally chopping down trees; 4) crimes of infringing upon the right of the person and the democratic rights of citizens, such as homicide, bodily injury, rape, forcing women into prostitution, abducting and selling people, unlawful detention of another person, unlawful intrusion into another person's residence, falsely accusing and framing, defamation, insult and humiliation, giving false evidence or testimony, and using torture to coerce a statement; 5) crimes of property violation, such as robbery, stealing, swindling, corruption, and extortion by blackmail; 6) crimes of disrupting social order, such as disrupting public affairs, official documents, certificates or seals, harboring criminals, concealing stolen goods, hooligan activities, and gambling; 7) crimes of disrupting marriage and the family, such as bigamy, abuse of a family member, abandonment, and abducting a child; and 8) crimes of dereliction of duty, such as bribery and subjecting imprisoned persons to corporal punishment and abuse.

In addition, Criminal Procedure Law categorizes crimes into Crimes of Public Prosecution and Crimes of Private Prosecution.

* Age of criminal responsibility. The age of criminal responsibility is 16. However, a person between the ages of 14 and 16 who commits homicide, infliction of serious bodily injury, robbery, arson, habitual theft, or any other crime which seriously undermines the social order bears full criminal responsibility. Under this

circumstance, the severity of the punishment is lighter or mitigated. The death penalty is not allowed to be imposed on a person under the age of 18. When a person is not punished because he or she is under 16 years-old, the head of the family or guardian is ordered to subject the person to discipline. When necessary, the person may also be given shelter and rehabilitation by the government.

* Drug offenses. Drug offenses as defined in the Criminal Law include the manufacturing, selling and transportation of drugs. Heroin and opium are the most prevalent drugs that are sold. Using drugs is not a criminal offense. As an amendment to the Criminal Law, the Decision of the Standing Committee of the National People's Congress on the Strict Prohibition Against Narcotic Drugs includes holding drugs (possession) or taking actions to lure, instigate, deceive and/or force others to use drugs as among drug-related crimes.

2. Crime Statistics.

Until 1986, crime statistics had not been disclosed to the public. In 1987, the Ministry of Public Security presented the first group of crime statistics data in the China Law Yearbook of 1987. The data included statistics from 1981 to 1986 and was compiled by the China Law Society, which has thereafter published updates of criminal justice data every year. The data presented by the Ministry included the number of crimes recorded by the police, the rates of recorded crime and the number of arrests made by the police.

The following data are from the Chinese Law yearbook (1991, 1992). The offenses are based on administrative definitions used by the public security branches.

* Murder. There were 23,199 murders recorded by the police in 1991 (The number of murders recorded by police in previous years are as follows: 21,214 (1990); 19,590 (1989); 15,959 (1988); 13,154 (1987); 11,510 (1986); 10,440 (1985); 9,021 (1984); 10,353 (1983); 9,324 (1982); and 9,576 (1981)). Attempts are included.

* Rape. There were 50,331 cases of rape recorded by the police in 1991 (The number of rape cases reported by police in previous years are as follows: 47,782 (1990); 40,909 (1989); 34,120 (1988); 37,225 (1987); 39,121 (1986); 37,712 (1985); 44,630 (1984); 57,914 (1983); 35,361 (1982); and 30,808 (1981)). Attempts are included.

* Theft. There were 1,922,506 cases of larceny

recorded by police in 1991 (The number of larceny cases recorded by police in previous years are as follows: 1,860,793 (1990); 1,673,222 (1989); 658,683 (1988); 435,235 (1987); 425,845 (1986); 431,323 (1985); 395,319 (1984); 571,255 (1983); 609,481 (1982); and 744,376 (1981)).

Attempts are included.

* Drug offenses. There were 8,344 drug offense cases recorded by the police in 1991, at a rate of .70 per 100,000 population. Attempts are not included.

* Crime regions. The crime rate is much higher in the South East Coastal provinces which is a more open, economically prosperous and densely populated area. Most drug offenders are from the Yunnan Province and Guangxi Autonomous Region in South West China. Both areas are close to the Golden Triangle Area, one of the most notable drug sources in the world.

Generally, the overall crime rate in cities is much higher than the rural areas. The crimes of abducting women and children are higher in the rural areas of Sichuan Province, Henan Province, Shandong Province than other rural provinces. Also coastal areas, such as the Guangdong Province, Fujian Province, Zhejiang Province and Shenzhen Special District, have higher crime rates than landlocked areas.

VICTIMS

1. Groups Most Victimized by Crime.

The first victimization survey is presently being planned with technical and financial assistance from the United Nations Interregional Crime and Justice Research Institute.

2. Victims' Assistance Agencies.

China has not established victims' assistance agencies, but some organizations for youth and women have provided economic and legal aid and psychological counseling. Also, some mental health departments as well as psychologists, psychiatrists, and sociologists have established mental clinics or hot-line telephones for psychological counseling.

In addition, criminal law stipulates, "Where the victim has suffered economic loss as a result of a criminal act, the criminal element, in addition to receiving criminal sanction according to law, shall in accordance with the circumstances

be sentenced to make compensation for the criminal loss."

3. Role of Victim in Prosecution and Sentencing.

Victims of crime have the right to bring a complaint and the right to give evidence. They also have the right to claim economic compensation, through a supplementary civil action. A victim can bring a charge against a criminal in private prosecution cases and intervene in the court as a third party in public prosecution cases. If the victim does not agree with judgments or orders of the court, he or she has the right to appeal to a higher court in private prosecution cases or may petition the court or the procurate in the public prosecution cases.

4. Victims' Rights Legislation.

China has not passed any special victim's comprehensive legislation.

POLICE

1. Administration.

In the People's Republic of China, the police agencies include the Ministry of Public Security at the central level, the local public security bureaus at various levels and public security forces for railways, highways, navigation, air transport, forests and other fields. The organizational structure from top to bottom is: Ministry of Public Security, Provincial Public Security Departments/Bureaus, Prefectural Public Security Departments/Bureaus, County Public Security Bureaus, Local Police Stations. In addition, the Public Security Offices of Ministry of Railways and Public Security Offices of Ministry of Communications also fall under the authority of the Ministry of Public Security.

The Ministry of Public Security, which operates under the State Council, is the highest police agency in the country. Local public security agencies are responsible for the public security in their respective localities under the dual leadership of local government and higher public agencies. The public security forces for railways, highways, navigation, air transport, forests and other special fields are under the administrative leadership of their respective ministries or departments and the professional leadership of higher public security agencies. They cooperate closely with the local public security agencies.

The Chinese People's Armed Police is a part of the armed forces in the country, a component of the public security force and a branch of the People's police under the leadership of The Central Military Commission and the Ministry of Public Security. The local armed police are under the leadership of the local public security agencies and higher organizations of the armed police. Their principal duties include inner guard, frontier control and inspection, exit and entry control, as well as fire-fighting.

2. Resources.

* Expenditures. Information not available.

* Number of police. In 1991, there were a total of 1,484,000 police officers, of which 825,000 were people's policemen and 659,000 were armed policemen.

3. Technology.

* Availability of police automobiles. On the average, every police station with at least 7 or 8 policemen has one car. The higher the number of policemen in the agency, the higher the number of cars. Most police automobiles are made in China.

* Electronic equipment. The Science and Technology Bureau, operating under the Ministry of Public Security, is in charge of national scientific and technical administration that is related to the public security. Computers are extensively used in criminal investigation, traffic control and communication. A fingerprint search system was computerized in 1986. In 1987, a special police communication network linking all the police agencies at the county level and above was established. A radio communication network at provincial level was also established in the 1980s.

* Weapons. Police weapons include the baton, police rope, handcuffs, tear-gas, grenades, pistols, and semi-automatic rifles. Although bulletproof vests are available to police, information on the police to vest ratio is unavailable.

4. Training and Qualifications.

Most police officers graduate from the police universities of the country or the police academies of provinces. Under special circumstances, police agencies can also recruit new staff from individuals who do not have a

diploma of police universities or schools. It is required, however, for an applicant to be a graduate of senior high school or university, be under the age of 25, and have a strong physique.

There are different levels of training institutions. The colleges or academies which are run by the Ministry of Public Security train the directors of public security (or bureaus) of provinces, autonomous regions and municipalities. The colleges and schools at the level of province, autonomous region and municipality, train the directors of county public security bureaus, the leaders of the public security branch bureaus in the municipalities and the leader's subordinates, such as section chiefs and squad heads. Schools attached to the prefectures and municipalities under the provincial government train section chiefs, station leaders, squad heads and other police officers.

Training periods last for an average of six months and vary for different trainees.

5. Discretion.

* Use of force. The criminal police carry pistols, batons, and handcuffs when performing their duties. They are permitted to use guns to stop a crime or defend themselves. Specifically, they can use deadly force as a last resort to stop situations where 1) the offender tries to resist or escape apprehension, steals weapons carried by police, or attacks police officers while being arrested or detained; (2) the offender is in the process of committing a violent crime and putting citizens' lives in danger; (3) the offender is attacking an object under guard by the police; (4) a group of offenders raid a prison and/or prisoners are escaping, rioting, murdering, or stealing guns from security officers; or (5) the offender physically threatens the life of a police officer. Before using their pistols, they must issue an oral warning or fire a warning shot. Only when these warnings do not affect the criminal behavior, can police fire the pistol.

* Stop/apprehend a suspect. Under the following circumstances, the police can detain an individual who, depending on the nature of the crime, has become a major suspect and/or should be arrested: (1) the person is preparing to commit a crime, is committing a crime or is discovered immediately after committing a crime; (2) the person is identified as having committed a crime by a victim or eyewitness; (3) the person is discovered to have criminal evidence on his person or at his residence; (4) the person attempts to commit suicide, to escape or becomes a fugitive after

committing the crime; (5) the person has the opportunity to destroy or falsify evidence or collude with others to devise a false account of events; (6) the person's true identity is unknown and is suspected of committing crimes in several geographic areas; or (7) the person is "beating, smashing and looting" and undermining work, production or the social order.

* Decision to arrest. The police can arrest a suspect with a warrant issued by the Chief Prosecutor.

* Search and seizure. The police may conduct searches of the persons, articles, residences and other relevant places of defendants for the purpose of gathering criminal evidence and apprehending criminals. They may also search people believed to be hiding criminals or criminal evidence. Before conducting such a search, officers must show a search warrant to the person to be searched.

A search may be conducted without a search warrant if an emergency arises during the arrest or detention process. The suspect, family members, neighbors or other eyewitness are usually present during the search. If articles or documents are discovered that can be used to prove guilt or innocence, they are usually examined by eyewitnesses and/or the person being searched. After the search, an inventory of the seized items is made in duplicate with one copy given to the person who was searched.

* Confessions. According to the Criminal Procedure Law, it is prohibited to use torture to coerce confessions or gather evidence through threats, enticement, deceit or other unlawful methods.

Interrogation of the defendant must be conducted by the investigation personnel of the people's procuratorates or the public security branches. No fewer than 2 investigation personnel may be present during interrogation. When interrogating a defendant, investigation personnel shall first ask the defendant whether he or she engaged in a criminal act and then let the defendant state the circumstances of guilt or innocence. The defendant must answer the investigation personnel's questions according to the facts, but has the right to refuse to answer questions that have no relation to the case. A person who is proficient in sign language must participate in the interrogation of a deaf or mute defendant, and a clear transcript is to be made of such circumstances.

6. Accountability.

Complaints against police misbehavior are handled by the supervisory bureau or sections within the Ministry of Public Security or lower public security branches. Any citizen may prosecute the illegal behavior of police officers and bring the case to a people's procurate or a people's court, and can initiate petition to the higher public security branch. The criminal law stipulates, "...the use of torture to coerce a statement is strictly prohibited. State personnel who inflict torture on an offender to coerce a statement are to be sentenced to not more than 3 years of fixed-term imprisonment or criminal detention. Whoever causes a person's injury or disability through corporal punishment is to be handled under the crime of injury and given a heavier punishment." (Article 136).

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

* Rights of the accused. In addition to exercising the right to defend themselves, defendants may also authorize the following people to defend them: a) lawyers; b) citizens recommended by a people's organization or the defender's unit, or who are authorized by the people's court; or c) close relatives or guardians of the defendant. The accused also has the right of knowing the nature of the accusation, the right to participate in proceedings in his or her native spoken and written language, to apply for new expert evaluation or inspection during the courtroom hearing, the right to request the chief judge to ask certain questions to witnesses or else ask them directly, the right to make a final statement after the chief judge has announced the closing of the debate, the right to raise a counterclaim against the private prosecutor in a case of private prosecution and the right to request that members of the judicial panel, the court clerk, the public prosecutor, expert witness or interpreters withdraw from the case.

The accused also has the right to appeal and the right to petition judgments or orders, which have become legally effective, to the people's courts or the people's procurates

In cases where the public prosecutor appears in court to bring a public prosecution and the defendant has not authorized anyone to be his or her defender, the people's court may designate a defender. If the defendant is deaf, mute, or a minor and has not authorized a defender, the

people's court designates a defender. The defender presents materials and opinions demonstrating the innocence of the defendant. He or she can also argue that the crime was minor or that the defendant should receive mitigated punishment or be exempted from criminal responsibility, safeguarding the lawful rights and interests of the defendant. During the adjudication process, the defendant may refuse to have a defender continue and authorize another defender instead.

* Assistance to the accused. An accused is entitled to call upon the assistance of a defense lawyer of his or her own choice. In public prosecution cases, the court will designate a defense attorney if the defendant has not already authorized an attorney for his or her defense.

2. Procedures.

* Preparatory procedures for bringing the suspect to trial. After a suspect is arrested, family or living partners are notified within 24 hours along with the reasons for his arrest and the place of custody. Notification does not occur in cases where it would hinder the investigation or the parties are not able to be reached.

After the police investigate an offense, they draft an opinion which either recommends prosecution or exemption from prosecution. They then transfer the opinion, case file materials, and evidence to the procurate at the same level for review. The procurate then reviews the case and makes a decision on whether to prosecute the suspect.

If a decision is made to prosecute the suspect, the procurate then initiates a public prosecution in the court at the same level. The court will review the case prosecuted by the procurate. If the facts of the case are clear and the evidence is sufficient, the court can decide to open the court session for adjudication, in which the suspect is formally brought to trial. The procurate can also grant exemption from prosecution for certain minor crimes.

* Official who conducts prosecution. A member of the People's Procurate, an independent branch of the criminal justice system, conducts the prosecution of the accused.

* Alternatives to going to trial. Information not available.

* Proportion of prosecuted cases going to trial. Data indicate that 83% of the prosecuted cases

went to trial in 1991. In that year, the procurate granted exemption to 48,180 cases which were recommended for prosecution by the police.

* Pre-trial incarceration conditions. Police must conduct an interrogation of the detained person within 24 hours of being held in custody. If there are no grounds found for detention, the detained person must be released immediately.

If the police consider it necessary to arrest a detained person, they can request the prosecutor to issue a warrant within three days after detention. The prosecutor must make the decision to approve or disapprove this arrest within three days. If the prosecutor does not approve the arrest, the police are required to release the detained person immediately after receiving notice.

The period for holding an arrestee in custody during investigation may not exceed two months. This period can be extended for one month in cases with complex circumstances, where the case cannot be concluded before the two months is over.

The severity of crime and the dangerousness of the suspect are key considerations when deciding whether a suspect should be incarcerated before or while awaiting trial. If a suspect is considered a threat to the community or the crime carries a prison sentence the suspect is usually put in jail to await trial.

* Bail procedure. Defendants are allowed to obtain a guarantor and await trial out of custody or to live at home under surveillance. Defendants living at home under surveillance are not allowed to leave their home.

Defendants for whom there is a lack of evidence for the case, or who are women and are pregnant or nursing their own baby, or who are suffering from a grave illness, are among those persons allowed to obtain a guarantor.

* Proportion of pre-trial offenders incarcerated. The annual number of prisoners awaiting trial is about 400,000.

JUDICIAL SYSTEM

1. Administration.

There are four levels of courts used to adjudicate criminal cases, from highest to lowest: the Supreme People's Court, the Higher People's Courts, the Intermediate People's Courts and the Primary People's Courts.

Supreme People's Court. At the central level, this court is the highest judicial branch of the state. It handles major criminal cases that have national importance, and appeals or protests brought against the judgments and orders of the Higher People's Court and the People's Military Court. Cases of protest brought by the Supreme People's Procurate in accordance with the procedures of judicial supervision are also heard. In addition, the Court supervises the administration of justice by lower courts at different levels, such as the Higher People's Courts and the several military courts in operation (e.g. Military Courts of Greater Areas and Different Arms and Services; Primary Military Courts).

Higher People's Courts. These courts are set up in the different provinces, autonomous regions and municipalities. As of 1991, there were 31 Higher People's Courts in the country. These courts handle cases of first instance, cases that are transferred from people's courts at lower levels, cases of appeals and protests brought against judgments and orders of the Intermediate People's Courts, and cases of protests brought by people's procurates in accordance with the procedures of judicial supervision. It also supervises the administration of justice by lower courts. The Maritime Courts, Intermediate Railway Transport Courts, and Primary Railway Transport Courts all operate under the authority of the Higher People's Courts.

Intermediate Courts. Intermediate courts are established in the prefectures, cities and autonomous prefectures within the jurisdiction of provinces and municipalities. As of 1991, there were 377 Intermediate People's Courts in the country.

These courts handle cases of first instance, cases that are transferred from the Primary People's Courts, appeals and protests brought against judgments and orders of the Primary People's Courts and cases of protests lodged by the people's procurates in accordance with the procedures of judicial supervision. They also supervise the administration of justice by the Primary People's Courts.

Primary People's Courts. The Primary People's Courts are established in counties, autonomous counties, cities (at country level) and municipal districts. As of 1991, there were 3,057 Primary People's Courts. These courts handle all criminal cases, except those that fall within the jurisdiction of the higher level courts.

2. Special Courts.

The Primary People's Court may set up a certain number of people's tribunals in the area under its jurisdiction, depending on the local conditions, population size and crime rate. A people's tribunal is a component of the Primary People's Court. Its sentences and orders carry the same impact and meaning as those of the Primary People's Courts. As of 1991, there were 3,150 people's tribunals.

3. Judges.

* Number of judges. As of 1991, there were 138,459 judges, among whom 119,966 were male, 18,493 were female; 126,450 were Han (ethnic Chinese) and 12,009 were from various minorities.

In 1991, there were 3,312 presidents of the people's courts at various levels, of which there were 73 female presidents and 545 minority nationality presidents. There were 45,311 presidents of chambers, of which there were 2,572 female and 3,831 minority nationality presidents.

* Appointments and Qualifications. The president of the Supreme People's Court is elected by the National People's Congress. The vice-presidents, presidents and vice-presidents of the chambers, and judges of the Supreme People's Court are appointed or removed by the Standing Committee of the National People's Congress. The presidents of local people's courts are elected by the local people's congress at different levels.

Citizens who have reached the age of 23 and have the right to vote and the right to be elected may be elected as the presidents of the people's courts or appointed as the vice-presidents and presidents of the chambers, or appointed judges of people's courts. Persons who have been deprived of their political rights are excluded.

Judges, at various levels, must be graduates of higher or secondary legal schools, or have received special legal training, mastered professional legal knowledge, or had practical experiences.

China has established the National Sparetime University of Judges and training centers for the training of judges. At the end of 1991, these centers had produced more than 35,000 graduates and had enrollments of more than 50,000 students. In addition, the Supreme People's Court established the Chinese Training Center for Senior judges.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? Except in cases under private prosecution, all cases of first instance are tried by a collegial panel which consists of one judge and two people's representatives, who decide the guilt of the defendant and the sentence to be imposed if the defendant is found guilty.

Adjudication of cases in the first instance in the high people's courts or the Supreme People's Court are conducted by a collegial panel composed of 1 to 3 judges and 2 to 4 people's assessors. In carrying out their duties in the people's courts, people's assessors have equal rights as judges.

Adjudication of appealed and protested cases in the people's courts is conducted by a collegial panel composed of 3 to 5 judges.

* Is there a special sentencing hearing?
Information not available.

* Which persons have input into the sentencing process? When deciding the punishment of a criminal, the collegial panel imposes the sentence based on the facts of the crime, the nature and circumstances of the crime, and the degree of harm done to society, in accordance with the relevant stipulations of the criminal law. All property illegally obtained by the criminal is to be recovered. The criminal is then ordered to make restitution or pay compensation for them. Contraband and the criminal's own articles of property used for committing the crime are confiscated. When the collegial panel is deciding the sentence, if opinions diverge, the minority defers to the majority, although the opinion of the minority is still entered into the transcript.

All major or difficult cases, where the president of the court considers it necessary to submit the matter to the adjudication committee for discussion, are to be submitted by the president of the court to the adjudication committee for discussion and decision. The collegial panel carries out the decisions of the adjudication committee.

2. Types of Penalties.

* Range of penalties. There are 5 types of principal penalties and 3 kinds of accessory penalties provided in the criminal law. Principal penalties include: 1) Guanzhi (control); 2) Juyi (criminal detention); 3) fixed-term imprisonment;

4) life imprisonment; and 5) the death penalty.

Guanzhi is imposed for minor offenses. The offender usually continues to work in his or her place of employment and continues to receive normal wages, while undergoing the supervision of public security agents. The offender is required to make periodic reports of his or her circumstances. This penalty can be set for a period of 3 months to 2 years.

Juyi is also imposed for minor offenses. The offender is deprived of freedom and confined in a detention house, rather than a prison institution. The offender may go home 1 or 2 days each month and be paid for work. This penalty can be set for a period of 15 days to 6 months.

Fixed-term imprisonment periods can be set between 6 months to 15 years. However, the sentence may reach 20 years when combined with other penalties.

Accessory penalties include: fine, deprivation of political rights and confiscation of property. The supplementary punishments can also be applied independently.

* Death penalty. Under criminal law, the death penalty is reserved for serious crimes such as murder, rape and serious property crimes. However, it cannot be imposed on juveniles under the age of 18 or women who are pregnant at the time of adjudication. Persons between 16 and 18 years-old may be sentenced to death if the crime is particularly heinous. However, they are also given a two-year suspension of execution period.

If a criminal is sentenced to death, but immediate execution is not essential, a two-year suspension of execution may be announced at the same time the sentence is imposed, followed by the carrying out of reform-through-labor activities. If the offender repents and demonstrates meritorious service upon the expiration of the two-year period, his or her sentence may be reduced to fixed imprisonment between 15 and 20 years. If there is evidence that the offender resisted reform in an odious manner, the death penalty is to be executed upon the order or approval of the Supreme People's Court. The method of execution is by shooting.

PRISON

1. Description.

* Number of prisons and type. Prisons are commonly called, reform-through-labor organs or labor reform institutions. There are mainly 5 types of incarcerative institutions: 1)prisons; 2)

reform-through-labor institutions, in which criminals are sentenced to a minimum of 1 year fixed-term imprisonment; 3) reform house of juvenile delinquents; 4) Juyi house (criminal detention house), which houses offenders sentenced to criminal detention; and the 5) Kanshou house (detention house), which houses offenders awaiting trial.

As of 1991, there were 684 prison institutions including Reform-Through-Labor Teams and Juvenile Reformatories.

* Number of prison beds. Information not available

* Average daily population/number of prisoners. In 1991, the daily average correctional institution population was 1,206,975, of whom 97.85% were male and 2.15% were female. In terms of ethnicity, 91.59% were Hans and 8.41% were minorities.

* Number of annual admissions. In 1991, the number of admissions was estimated at 300,000.

* Actual or estimated proportions of inmates incarcerated. The actual percentage of inmates incarcerated for various crimes are the following:

| | |
|-----------------|-------|
| Drug Crimes | .8% |
| Violent Crimes | 34.4% |
| Property Crimes | 60.6% |
| Other | 4.2% |

2. Administration.

* Administration. The prison system is composed of the Reform-Through-Labor Administration (which operates under the authority of the Ministry of Justice), the Reform-Through-Labor Bureau (operating under authority of the Justice Offices (bureau) of provinces, autonomous regions and municipalities), and various prisons. Prison administration generally involves addressing the following activities: vocational guidance of national reform through labor work; controlling the nation-wide implementation of reform through labor policies; inspecting work quality of inmates; facilitating the sharing of work experiences between inmates; studying and drafting the regulations concerning prison administration and other related regulations and supervising their implementation; organizing and guiding the prison bureau of provinces, autonomous regions and municipalities formulating the plans and measures of reforming criminals; organizing the compiling of material for educating criminals; assisting the

departments concerned in arranging for the placement of those released from prisons; and providing vocational training to correctional officers.

Correctional institutions include prisons, Reform Through Labor Teams and Juvenile Reformatories. The Reform Through Labor Bureaus are in charge of reform through labor work and exercise direct leadership over various prisons in their own jurisdictions.

Those incarcerated in prisons are: offenders given death sentences with a two-year suspension, offenders sentenced to life imprisonment, offenders who must serve at least 10 years in prison before release, foreign offenders and female offenders. The rest of the offenders given incarcerative sentences are held in the Reform-Through-Labor Teams. Juvenile Reformatories provide special correctional services to juvenile delinquents.

* Prison guards. As of 1991, there were nearly 200,000 uniformed prison officers, whom are called cadres.

* Training and qualifications. Most correctional officers are graduates of correctional academies or are prior military men. There are two levels of training institutions. The Central Administrative Cadres of College for Reform-Through-Labor and Reeducation Through Labor, located in Baoding, Hebei Province, exists at the central level as an advanced training institute for senior officers such as wardens. Correctional schools at the provincial level train the other correctional officers.

* Expenditure on the prison system. Information not available.

3. Prison conditions.

* Remissions. Under law, prisoners can have sentences reduced for good behavior or be released on parole. Parole is granted to prisoners who have served more than half of their sentences and who show improvement in their behavior and/or attitude. In 1990, 16.3% of all offenders serving a sentence had their sentence reduced or were released on parole. This figure increased to 18.35% in 1991.

* Work/education. Prison conditions generally correspond to living conditions in Chinese communities. Under Chinese law, all inmates who are able to work must do so, but inmates who are unable to work because they are old, ill or

otherwise unfit to work do not participate in work. In 1990, about 10% of the prison population did not participate in work activities.

Prisons provide both educational and vocational programs. In fact, prisoners have the right to make reasonable suggestions concerning management, educational programs, production, recreational activities, or sanitary conditions of their institution.

Since 1981, the Chinese government has included education of criminals in its national education program. Where conditions permit, special educational institutions are set up for formal and institutionalized legal, moral, cultural, and technical education of prisoners. By the end of 1991, 72.82% of all prison and reform-through-labor branches had established such special schools. The school has a dean, teachers' office, and a teaching program and curriculum prepared each term, each year. Prisoners study about 2 hours a day. Teaching staff are especially selected for the school; some are chosen from among the prisoners with a higher education level. Prisoners who have attended classes and pass exams given by the local educational department are given educational certificates equivalent to those issued by outside educational institutions.

By the end of 1991, over 12,000 classes of various kinds were being offered in prisons and reform-through-labor branches. Over 518,000 prisoners attended the classes. 92.35% of those eligible to attend were admitted. There were 5,300 prisoners studying through classes offered in publications, correspondence colleges, part-time colleges and television college programs. Four thousand prisoners took higher education exams for self-study.

Vocational education is a major part of the education program. In 1991, over 561,000 prisoners took part in training courses for various skills, representing 83.18% of the total number of eligible prisoners. A total of 546,000 certificates for various levels of technical proficiency were issued to prisoners by societal labor departments.

* Amenities/privileges. The state guarantees material needs such as food, clothing, housing, etc. In addition, prisoners have the right to an appeal, the right to protection against assault on their human dignity or personal safety, the right to believe in a religion, certain civil rights, and the right to vote, unless they have been stripped of their political rights.

Recreational, cultural, and sports activities are offered to create a positive atmosphere for

change among the prisoners. Prisoners have the right to exchange letters with relatives and friends. Family members are encouraged to promote change in the prisoners. Prisoners are allowed regular visits from family members, no more than twice a month. However, special visits can be set up so that family members can advise troubled prisoners who are not progressing steadily toward reform.

Prisoners can obtain medical treatment in prison or in community hospitals. Group therapy and counseling is also available. Prisoners have a general right to maintain good health. They enjoy free medical care and receive a regular medical check up once a year. There is a total of 2,944 medical institutions of various kinds in the prisons and reform-through-labor institutions. For every 1,000 prisoners, there are 3.54 medical doctors and 14.8 hospital beds available.

EXTRADITION AND TREATIES

* Extradition. China has not signed any bilateral or multilateral treaty concerning criminal extradition with any other country. China has acceded to 3 international conventions between 1978 and 1980. Under the Convention on Offenses and Certain Other Acts Committed on Board Aircraft (1963), Convention for the Suppression of Unlawful Seizure of Aircraft (1970), and Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), criminals who make unlawful seizure of aircraft may be extradited to or from the countries or regions that acceded to the three conventions. For example, China extradited criminals who committed aircraft hijacking from Japan.

In 1984, China became a member state of the International Criminal Police Organization (ICPO). Some criminals have been wanted for arrest by the ICPO.

* Exchange and transfer of prisoners. There have been several cases in which suspects were transferred from foreign countries to China through the diplomatic channels.

* Specified Conditions. Information not available

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