

The Communist Party of China's Outlook on Human Rights and Death Penalty

Abstract: The issues of human rights and death penalty are always drawing attentions from international scholars, critics and observers, activities and Chinese scholars, and most of them looking at these problems are just doing with such legal or political as a single perspective, but the real relationship between Chinese political regime and legislation is often ignored. In accordance with the Constitution of P.R.C., CPC doesn't merely play a key role in political field, but in legislation and law enforcement as well. And so the legislation has to implement the Party's theory and outlook, and realize the Party's policies. So is the death penalty system, though it is only concrete punishment system. Considering this point, basic upon the introducing the relationship between CPC and legislation, this paper would like to explore the shifting of CPC's outlook on human rights and the death penalty system changes in different eras. In Maoist era, the issue of human rights was rejected and deemed as an exclusion zone, and the death penalty was unjustifiably imposed; Human rights were politically recognized and accepted in Deng era, but CPC has its own viewpoints on it. CPC emphasized on national security and stability in that era, and the individual human rights weren't taken correspondingly and reasonably account of. The death penalty was abused and deemed as an important measure to control crime. In post-Deng, human rights were gradually developed and recognized. The term of 'State respect and protect human rights' is contained into Constitution of P.R.C., and the individual human rights are gradually valued, but the CPC still focus on state security, development and stability, the individual right to life hasn't been enough valued like the right to substance. Although the steps of reforming death penalty are taking, there are still 46crimes punishable by death. CPC should change its outlook and pay more attention to the right to life, and try to abolish death penalty de facto and de jure.

Keywords: Human rights; Death penalty; Criminal Law; Communist Party of China; China;

1. Introduction: the relationship between CPC's viewpoint and legislation

Due to two following factors, it seems to be a false dichotomy that there are certain relationships between the Communist Party of China's (CPC) view on Human rights and death penalty. Firstly, the concept and standards of human rights should be the same throughout the word, and so the CPC should not have its own view on it; secondly, if the former is valid, the relationships between that view on human rights and death penalty is met with much skepticism because of judicial independence, in other words, it seems to be impossible to explain the relationship between the Party's view and specific system, in particular the specific punishment measure. As for these two possible problems, we have to completely understand the human rights development in China and its political regime.

As for the first question, human rights should have no frontier, but it looks like being changed when it comes to China. This can be attributed to the history of China and the CPC's attitudes on human rights and its practice. In China, with a long history of feudal dictatorship, the feudal culture developed extremely, and in contrast, there is no opportunity and condition for the democratic forces and even its concept to breed and develop due to the destroying and oppressing from feudal influence and despotism. In modern times, along with foreign intervention in China, the Western civilization was introduced into China, including the political thought and human rights concept. Guo Songtao(郭嵩焘), the first Chinese diplomat and statesman during the Qing dynasty(清朝), introduced Jean-Jacques Rousseau into China¹ and firstly proposed the concept of civil rights (Min quan, 民权)², and then such Kang Youwei(康有为), Liang Qichao(梁启超) etc. as Chinese scholars and revolutionist continue researching on this topic. Mr. Sun Yat-sen(孙中山), first president and founding father of the Republic of China, in his lifetimes, tried to establish a rich and powerful state with the Western way of freedom, equality and charity. From 1908 to 1946, there were a dozen of documents involving human rights and civil rights protection³. Human rights concept, however, can't be developed amount Chinese people. One of the chief reasons is that, the human rights concept, same like the constitution, was shaped and developed in the Western culture soil and is exotic, which is challenged and excluded by the feudalistic culture in China. So it had been proved that there was no condition for developing human rights in modern China, and let alone to the issue of constitutionally protecting human rights, and the human rights theory can't be developed in China due to lacking of cultural environment of human rights and its practice.

The development of human rights in China is only in a short term, not more than three decades. Comparing with the West, "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"⁴, in China, for quite a long time, the issues of human rights was considered as bourgeois' slogan and the exclusion zone of jurisprudence studies after the founding of New China; and it was thawed out on November 10, 1989, when the Propaganda Department of the CPC Central Committee

¹ Wu Yaling, Chinese Translation of the Social Contract by Jean-Jacques Rousseau and its influences (Lusuo"shehui qiyue lun"de hanyi jiqi yingxiang, 卢梭《社会契约论》的汉译及其影响), Modern Philosophy, vol.104, no.3, 2009,p.86.

² Zhao Xiaobo, On the History Evolution of Concept of Civil Rights (Minquan, 民权) in Modern China: the Discussion Conversion from Restoration to Revolution(Jindai Zhongguo "Minquan"Neihan Yanbian Kaolun: Cong Weixin Dao Geming de Huayu Zhuanhuan, 近代中国“民权”内涵演变考论: 从维新到革命的话语转换), The Jurist, no.2, 2015, pp.140-141.

³ These documents chiefly include the 'Outline of Constitution by Imperial Order(Qinding Xianfa Dagang, 钦定宪法大纲) adopted on August 27, 1908, the Provisional Constitution of the Republic of China (Zhonghua Minguo Linshi Yuefa, 中华民国临时约法) adopted on March 11, 1912, the 'Temple of Heaven' Draft Constitution (Tiantan Xianfa, 天坛宪法草案) adopted on October 31, 1913, the Constitution of Republic of China (Zhonghua Minguo Xianfa, 中华民国宪法) adopted on October 10, 1923, the Constitution of Republic of China (Zhonghua Minguo Xianfa, 中华民国宪法) adopted on December 25, 1946, and so on.

⁴ Nicolae Pavel, 'Defining the Concept of Human Rights in the Light of Juridical Values Theory', Contemporary Readings in Law and Social Justice, vol. 4, no.1,2012, p.508.

hold a small expert panel on the issues of human rights.⁵ After that, due to deficient concept of human rights in native resources, Chinese scholars began to pay attention again to the West where is the theory source of human rights. The Western human rights theory became a significant and key resource for the Chinese academic circles, for example, a majority of Western human rights works have been translated and introduced into China. And Chinese scholars have long been researching the Western human rights theory from all kinds of perspectives and aspects, and exploring causes of shaping human rights and its implementation conditions, and introducing the system of human rights safeguarding, and also researching its considerable experience and practice of human rights in the West. In addition, some Chinese scholars do research on the issues of human rights in China with the perspective of the West or under the international standards set by some international treaties or conventions. All of them promote the development of human rights in China. To a great extent, the influence of this approach is, in fact, only a little and mostly remained in academic research⁶. This approach will easily give people a false picture it seems that the issues of human rights in China can completely and certainly be answered and solved by simply learning from and even completely copying or following the Western or international standards. So that's on the one hand.

On the other hand, for the international critics and observers, activities and relevant organizations, they always focus on the issues of human rights in China with their own aspect, and criticize China with the standards set by the Western or relevant international treaties or conventions or with the so-called 'double standard'⁷. This approach gives a lot of international stress to China and, to a great extent, propels human rights in China forward. However, it also seems having already entered an erroneous zone that the human rights process in China can be quickly put forward by international criticism and stress.

Surely, China has to draw lessons from the Western successful experience of human rights protection and needs to fulfill the obligations and commitments under relevant international treaties. We, truly, can't deny that the development of human rights in China would benefit from academic research and international criticism, however, to research on the issue of human rights in China and to find the rights facts and their causes and to give a appropriate academic

⁵ Guo Daohui and Taowei, 'How could the Exclusion Zone for Human Rights be Made through? On the Significant Cases Happened in the Jurisprudence Circle after the Funding of PRC (Renquan Jinqu Shi Zenyang Tupo de: Jianguo Yilai Faxuejie Zhongda Shijian Yanjiu, 人权禁区是怎样突破的——建国以来法学界重大事件研究)', Law Science, vol.5, 1999, p. 2.

⁶ For this, the CPC's political documents has already stated that, 'draw from the quintessence of Chinese legal culture, learn from beneficial experiences in rule of law abroad, but we can absolutely not indiscriminately copy foreign rule of law concepts and models. See CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward (Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti De Jueding, 中共中央关于全面推进依法治国若干重大问题的决定),[website],2014, http://www.cssn.cn/fx/fx_ttxw/201410/t20141030_1381703.shtml, (accessed February 10, 2016).

⁷ Randall Peerenhoom, 'Assessing Human Rights in China: Why the Double Standard?', Cornell International Law Journal, vol.38, 2005,p. 71.

expectation or viewpoints has to understand brief development of human rights and the China's actual condition.

As for the China's actual condition, a significant and key point is the Chinese special political regime. In accordance with the Constitution of China, China is a one-party state, and the system is multiparty cooperation and political consultation led by the Communist Party of China (CPC).⁸ The Party does not only play a role of political leadership, but also leads the legislation and law enforcement, and the Party's view or standpoint, to a great extent, are considered as the national will and then become law.⁹ The Party leading legislation is a system with Chinese characters. In accordance with Constitution of Party, 'leadership by the Party means mainly political, ideological and organizational leadership'¹⁰ Political leadership by the Party is referred to the leadership over the political principle, political orientation and major policy decision. The political leadership, normally, can be carried out by legalization of policies. Organization leadership is referred to formulating and implementing the correct line, principles and policies; do its organizational, publicity and educational work well. Ideological leadership means the Party's guide thought. 'CPC takes Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important thought of Three Represents and the Scientific Outlook on Development as its guide to action.'¹¹ For the human rights, basic on the Party's theoretical guidance and the China's reality and history, CPC has its own outlooks on human rights. Beyond all doubt, the CPC's outlook on human rights must be implemented into the relevant human rights legislation and judicial practice. However, an element has to be made clearly in this paper that the difference of the CPC's outlook on human rights and the West's is not basic on the different literal definition of notion and terminology of human rights, in other words, examining the CPC's outlook on human rights in this paper does not focus on the didactic conceptual explanation for the human rights but rather pay attention to the CPC's understanding attitude toward and practice of human rights in different times.

⁸ Constitution of the People's Republic of China (Zhonghua Renmin Gongheguo Xianfa, 中华人民共和国宪法).

⁹ CPC Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward made at the 4th Plenary Session of the 18th Central Committee of the CPC provides that letting Party leadership penetrate into the entire process and all aspects of ruling the country to the law is a basic experience of the construction of our country's Socialist rule of law. Persisting in Party leadership is a basic need for Socialist rule of law; it is where the foundations and the life-line of the Party and the State lie..... Party leadership and Socialist rule of law are identical, Socialist rule of law must persist in Party leadership; Party leadership must rely on Socialist rule of law..... We must persist in the Party leading legislation, guaranteeing law enforcement, supporting the judiciary..... be good at making the Party's standpoints become the national will through statutory procedures. See CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward. For this, One of Chinese scholars said that the role of political guarantee for the Party leadership lies in the Party's guiding thought should also be the guide of the rule of law. See Liu Jiazheng, On the High Unity of the Party's Leadership and Rule by Law (Danglingdao He Yifa Zhiguo Gaodu Tongyi, 党的领导和依法治国的高度统一), 2015, http://www.qstheory.cn/laigao/2015-02/10/c_1114315500.htm, (accessed February 10, 2016).

¹⁰ Constitution of Communist Party of China (Zhongguo Gongchandang Dangzhang, 中国共产党党章).

¹¹ Constitution of Communist Party of China.

In the light of above analyzing, it has already proved that the first question is valid, the CPC's outlook on human rights deeply influences and even leads the legislation of human rights guarantee; the second question hence is very easy to be answered and demonstrated. On the one hand, in terms of the international aspect, as a basic standards and safeguards, the international human rights is an essential element of the strategy for abolition of the death penalty, and has enabled abolition and saved live.¹² In other words, protecting human rights by abolishing capital punishment or limiting its use, which has already been prescribed by some international treaties or conventions, has already and long been recognized and accepted by the international community. On the other hand, as for China itself, China is still in an authoritarian regime¹³. Under this regime, two important elements decide whether a policy will be implemented or not, namely, the determination made by the highest level of government and the demand of time.¹⁴ So do the death penalty reform. With the perspective of human rights to explore China's death penalty reform, it should be to understand the CPC's human rights outlooks and relevant policies rather than the Western standards of human rights, because the China's political and legal regimes are completely different with the West's. In China, the CPC's policies play a guidance role in the process of enacting and implementation of law through the main ways of codifying the Party's policies into law, and then carrying out by the ways of implementation of laws; conversely, the process of rule of law also restricts the Party's policies; however, where there is a conflict between rule of law and policies, the influence of the former on the latter will always show that the former effectively promote and ensure the implementation of the latter.¹⁵ Therefore, this paper will explore them by examining the CPC's understanding and practice of human rights by analyzing key leaders' relevant speeches and documents and the death penalty legislation in different eras, namely, Mao Zedong era, Deng Xiaoping era, and post Deng era. We can't show the human rights protects by analyzing the amount of execute in practice due to it is a top secret, and just research it in the way of literature analysis.

2. The CPC's human rights and death penalty in Maoist era (from 1949 to 1979): exclusion zone of human rights and abuse of execution.

¹² Salil Shetty, 'The Value of International Standards in the Campaign for Abolition of the Death Penalty', *The Brown Journal of World Affairs*, vol.XXI., Issue 1, 2014, p.42.

¹³ Yu Jianrong, 'Condominium Authoritarian Regime and Authoritarian Regime of Rule of Law: the Problems and Outlooks of Political Development in China(Gongzhi Weiquan Yu Fazhi Weiquan: Zhongguo Zhengzhi Fazhan De Wenti Yu Chulu, 共治威权与法治威权——中国政治发展的问题与出路)', *Issues of Contemporary World Socialism*, vol.98, no.4, 2008. The author points out in this paper that, China has already been changed from 'paternalistic authoritarian regime (Jiazhangshi De Weiquan Tizhi, 家长式的威权体制)' in the period of Mao Zedong and Deng Xiaoping era to 'condominium authoritarian regime (Gongzhishi De Weiquan Tizhi, 共治式的威权体制)' in the period of post-Deng', and now is trying to forward the 'authoritarian regime of rule of law (Fazhishi De Weiquan Tizhi, 法治式的威权体制)'.

¹⁴ Nue Huihua, 'Mr.Zheng Yongnian Spoke Irresponsibly and Sarcastically (Zheng Yongnian Xiansheng Zhanzhe Shuohua Bu Yaoteng, 郑永年先生站着说话不腰疼)', 21ccom.net, [website],2016, para.1, http://www.21ccom.net/html/2016/gqmq_0129/1317.html, (accessed February 11,2016).

¹⁵ Shen Zongling, *Jurisprudence(Falixue, 法理学)*, Beijing, Beijing University Press, 2000, pp. 272-3.

2.1. The CPC's human rights in Maoist era: exclusion zone of human rights

In Mao Zedong era, a completely negative attitude was taken towards the human rights theory. 'A very long time after founding New China, human rights were seen as the bourgeoisie' slogan that had long been criticized and rejected and the issue of human rights was a exclusion zone of theory research due to the influence of 'left' thought'¹⁶, and the term of 'human rights' can never be used in the policy and legal documents made by the Party and relevant legislature. Therefore, the human rights theory in that era was at a standstill under the domination of 'left' thought and the situation of taking class struggle as the key link. Practically, in this era, social movement was hold frequently, including Land Reform, Anti-rightist, the Great Leap Forward, and the Cultural Revolution, in which tons of cases of violating human rights without legal basis took place frequently. In Maoist era, obviously, China was in a 'paternalistic authoritarian regime'¹⁷, in which Mao thought is deem as 'the guiding thought of Communist Party of China and Chinese people's spiritual treasure'¹⁸. In other words, Mao's human rights thought can be considered as CPC's outlooks. Chinese scholars do the research on Mao thought and explain and comment Mao's human rights concept from different aspects, but they mainly have two different attitudes, namely, negativism and positivism. The negativism think that Mao denies and ignored human rights at all due to the facts that Mao never used the notion of human rights or rarely explained human rights thought; and some scholars pointed out that before the foundation of New China, Mao explained his some thoughts about human rights, but after that, he and all the whole country were trapped in nihilism of human rights.¹⁹ However, most of Chinese scholars would like to agree with the positivism, which insist that, in Mao's thinking about the rights, even he rarely use the concept of 'human rights' but most of time the term of 'citizen's rights'. This detail is always ignored by the academic circle. Mao thought of the citizen's rights was an experiment that critically developing the Western human rights theory. Chinese traditional culture, Marxism, and the experiences of to salvage China from subjugation in modern China have deeply influenced on Mao thought of citizen's rights, and made him to know the other aspect of human rights, and proposed another citizen's rights thought differ from the Western human rights theory. The citizen's rights thought emphasize the class attribution, collectivism and non-elitism. And the citizen's rights come from the people rather than god; in the class society, citizen's rights can only be got by struggle, and collective citizen's rights should be protected firstly, and right to subsistence is one of the basic citizen's

¹⁶ Wang Mi, 'How the ExclusionZone of Human Rights Theory was Broke through (Renquan Lilun Jinqu Shi Zenyang Tupo de, 人权理论禁区是怎样突破的)', Hundred Year Tide(Bai Nian Cao, 百年潮), no.5, 2004, p.13.

¹⁷ Yu Jianrong, Issues of Contemporary World Socialism, p.18.

¹⁸ Zheng Derong, 'The Historical Status and Contemporary Values of Mao Zedong' s Thought(Mao Zedong Sixiang De Lishi Diwei Yu Dangdai Jiazhi, 毛泽东思想的历史地位与当代价值)', [website], 2010, <http://theory.people.com.cn/GB/13619948.html>, (accessed January 14, 2016).

¹⁹ Du Gangjian, 'On Overcoming the Nihilism of Human Rights(Lun Kefu Renquan Xuwu Zhuyi, 论克服人权虚无主义)', Law Study and Research, no.1,1992,pp.3-4.

rights.²⁰ These citizens' rights thoughts were completely implemented into constitutional legislation.

In the Maoist period, four constitutions were passed since 1949 to 1979, namely, the Common Program of the Chinese People's Political Consultative Conference, which was passed by the first plenary session of the Chinese People's Political Consultative Conference on September 29, 1949, 1954 Constitution, and then to 1975 Constitution, and 1978 Constitution. In these constitutions, although there was not any provision states 'protect human rights' or some other like this meaning, they even explicitly entitled citizens broadly basic rights, including the rights to elect and to be elected according law, freedom of thought, speech, publication, assembly, association, correspondence, domicile, change of domicile, religious belief and the freedom of holding processions and demonstrations', 'women enjoy equal rights with men in political, economic, cultural, education and social life', 'all nationalities have equal rights and duties', 'freedom of reporting truthful news shall be safeguarded', and so on.²¹

But for these constitutions, as Ann Kent pointed out that, 'emphasized on collective social and economic rights preference to individual civil and political rights were most fully realized'²². Undeniably, even citizens were entitled the above basic rights, but they were laid aside and neglected in these several decades under Mao's rule, and the state did not take its responsibility to put the rights guaranteed in the constitution into action due to the constitutions were not judicially actionable; and even the whole legal system was weakened, especially, during the period of the 'Cultural Revolution' launched by Mao Zedong from 1966 to 1977, 'it (Cultural Revolution) made the legal construction of China nearly suffer from extinction.'²³ And even the CPC publicly denied the importance and necessity of legislation. In 1958, Mao Zedong said that 'we are not to rely on law to manage a majority of persons, who should develop a habit; who

²⁰ See Lin Yuchuan, 'Citizen's Rights: An Alternative to the Human Rights----With the Perspective of Mao Zedong's Thinking on rights (Renmin Quanli: Renquan De Yizhong Tidai Fangan----Cong Mao Zedong De Quanli Siwei Kan, 人民权利: 人权的一种替代方案——从毛泽东的权利思维看)', *Modern Philosophy*, no.1, 2007, pp.37-45; Dai Xingli, 'On Mao Zedong' Thought of Human Rights (Lun Mao Zedong De Renquan Sixiang, 论毛泽东的人权思想), *Studies on Marxism*, no. 2, 2014; Fu Zitang and Cui Yan, 'The Human Rights Concept in Mao Zedong's Early Manuscripts ('Mao Zedong Zaoqi Wengao' Zhong De Renquan Guannian, 《毛泽东早期文稿》中的人权观念)', *Mao Zedong Thought Study*, no.3, 2012; Shen Xiaoyang, 'On Mao Zedong' s Thought on Human Rights(Lun Mao Zedong De Renquan Sixiang, 论毛泽东的人权思想)', *Guansu Theory Research*, no.3,1995; Xian Kailin, ' On the Unique Contribution of Mao Zedong's Thought of Human Rights (Lun Mao Zedong Renquan Sixiang De Dute Gongxian, 论毛泽东人权思想的独特贡献)', *Human Rights*, no.6, 2013.

²¹ See The Common Program of the Chinese People's Political Consultative Conference(*Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Gangling*, 中国人民政治协商会议共同纲领) (Beijing) ,1949; The Constitution of P.R.C. (*Zhongguo Renmin Gongheguo Xianfa*, 中华人民共和国宪法) , 1954; The Constitution of P.R.C (*Zhongguo Renmin Gongheguo Xianfa*, 中华人民共和国宪法) , 1975; The Constitution of P.R.C (*Zhongguo Renmin Gongheguo Xianfa*, 中华人民共和国宪法) , 1984.

²² Ann Kent, 'Waiting for Rights: China's Human Rights and China's Constitution, 1949—1989', *Human Rights Quarterly*, vol.13, no.2, 1991, p.183.

²³ Gao Mingxuan and Zhao Bingzhi (ed), *The Evolution of Chinese Criminal Legislation (Zhongguo Xingfa Lifa Zhi Yanjin*, 中国刑法立法之演进), Beijing, Law Press, 2007. p.69

can remember so many provisions contained by Laws?’²⁴, at the same time, the Report to Chairman and Central Government on Some Issues of Political and Law’s affairs since Organization of People’s Communes through the Country (Guanyu Renmin Gongshehua Hou Zhengfugongzuo Yixiewenti Xiang Zhuxi, Zhongyang De Baogao, 关于人民公社化后政法工作一些问题向主席、中央的报告), made by the Central Group of Political Science and Law (Zhongyang Zhengfa Xiaozu, 中央政法小组), pointed out that, in according to China’s reality, it is not necessary to make and pass Criminal law, Civil Law, Procedure Law.’²⁵ And then the legislation was shut down and legal nihilism was in vogue. Both of these two led to that the legal construction was shut down and the ideology of rule of man was widespread, and in addition, the issues of mixed functions of the political party and laws and even the political party in the place of law, made the people at that time emphasizes on policies instead of law. All of these made the cases of human rights violation happen frequently at that time. So in the period under Mao’s rule, ‘the development of human rights in China was in fact at a standstill and regression.’²⁶

2.2. The death penalty in Maoist era: abuse of execution and unjustifiably.

In the paternalistic authoritarian regime (Jiazhengshi De Weiquan Tizhi, 家长式的威权体制) under Mao’s rule, the CPC’s important policies, like death penalty policy, were normally promulgated through the ways Party’s or national leaders’, especial Mao’s speech or reports. So from some Mao’s speeches or documents relating to capital punishments, we can trace the death penalty policy at that period out.

In 1951, Mao in his paper, ‘the Party’s Mass Line must be followed in Suppressing Counter-revolutionaries (Zhenya Fangeming Bixu Shixing Dangde Qunzhong Luxian, 镇压反革命必须实行党的群众路线)’, said that

‘The number of counter-revolutionaries to be killed must be kept within certain proportions. The principle to follow here is that those who owe blood debts or are guilty of other extremely serious crimes and have to be executed to assuage the people’s

²⁴ Research Office of General Office of the NPC Standing Committee (Quanguo Renda Changweihui Bangongshi Yanjiushi, 全国人大常委会办公厅研究室), 40years Construction of System of National People’s Congress(Renmin Daibiaodahui Zhidu Jianshe 40nian, 人民代表大会制度建设 40 年), Beijing, China Democracy and Law Press, 1991, p. 102, cited in ²⁴ Zhang Jiliang, On the Chinese Communist’s Thesis of Human Rights and Its Legislation in China (Zhonggong Renquan Lilun Yu Zhongguo Renquan Lifa Yanjiu, 中共人权理论与中国人权立法研究), PhD Thesis, Northeast Normal University, 2004, pp. 30.

²⁵ Zhang Jiliang, pp. 30-31.

²⁶ Yan Dong, ‘A Diachronic Study on the Influence of International Human Rights Law on the Chinese Legal System Construction (Guoji Renquanfa Zhiyu Zhongguo Renquan Fazhi Jianshe De Lishixing Yanjiu, 国际人权法之于中国人权法制建设的历时性研究)’, Hebei Law Science, vol.32, no.2, 2014, p.172.

anger and those who have caused extremely serious harm to the national interest must be unhesitatingly sentenced to death and executed without delay.’²⁷

This is deemed as the application policy of death penalty for counter-revolutionaries. As for the anti-corruption movement, on December 8, 1951 Mao said that the struggle against corruption, waste and bureaucracy should be stressed as much as the struggle to suppress counter-revolutionaries..... in major ones the guilty should be dismissed from office, punished, or sentenced to prison terms (to be reformed through labor), and the worst among them should be shot. The problem can only be solved in these ways.²⁸ In 1956, Mao in his Paper, On the Ten Major Relationships (Lun Shida Guanxi, 论十大关系), said that ‘from now on there should be fewer arrests and executions in the suppression of counter-revolutionaries in society at large ... All the same, we cannot announce that there will be no more executions, and we must not abolish the death penalty.’²⁹ Mao’s statements about the capital punishment are considered as the death penalty’s policy at that time³⁰.

As to the death law, in the 30years period of from 1949 to 1979, there was no criminal code and then lacked of relevant regulation on capital punishment, but some death provisions could be found in some special criminal laws, including the Instruction on Suppression of Counter-revolution on Suppression of Counter-revolutionary Activities, July 23, 1950³¹, which was the legal basis of dealing with counter-revolutionary cases in the early days of the foundation of PRC, the Regulations for Suppression of Counterrevolution of PRC, February 20,1951³², the Interim Regulations on Punishment for Impairment of State Currency of PRC, April 19, 1951³³, and the

²⁷ Mao Zedong, ‘The Party’s Mass line must be followed in Suppressing Counter-revolutionaries(Zhenya Fangeming Bixu Shixing Dangde Qunzhong Luxian, 镇压反革命必须实行党的群众路线)’, in Selected Works of Mao Zedong, vol.5, [website] <https://www.marxists.org/reference/archive/mao/selected-works/index.htm> , (accessed January 15, 2016).

²⁸ Mao Zedong, Selected Works of Mao Zedong.

²⁹ Mao Zedong, Selected Works of Mao Zedong.

³⁰ Gao Mingxuan, The Birth and Development of the Criminal Law of PRC (Zhonghua Renmin Gongheguo Xingfa De Yunyu Dansheng He Fazhan Wanshan, 中华人民共和国刑法的孕育诞生和发展完善), Beijing, Beijing University Press, 2012, cited in Zhang Shouwen and Mi Chuanyong, ‘The Past, Now and Future of Death Policy in China(Zhongguo Sixing Zhengce De Guoqu, Xianzai Ji Weilai, 中国死刑政策的过去、现在及未来)’, the Law Review, Vol.2,2006, P.40. Also can see Chen Xingliang, ‘Death Penalty Policies: A Jurisprudential Perception(Sixing Zhengce Zhi Fali Jiedu, 死刑政策之法理解读)’, Journal of Renmin University of China, No.6,2013,P.3.

³¹ The Instruction on Suppression of Counter-revolution on Suppression of Counter-revolutionary Activities (Zhonggong Zhongyang Guanyu Zhenya Fangeming Huodong De Zhishi, 中共中央关于镇压反革命活动的指示), [website], 2011, http://www.china.com.cn/cpc/2011-04/15/content_22369115.htm, (accessed January 14, 2016).

³² The Regulations for Suppression of Counterrevolution of PRC (Zhonghua Renmin Gongheguo Chengzhi Fangeming Tiaoli, 中华人民共和国惩治反革命条例), [website], http://www.npc.gov.cn/wxzl/wxzl/2008-12/15/content_1462048.htm , (accessed January 15, 2016)

³³ Interim Regulations on Punishment for Impairment of State Currency(Fanghai Guojia Huobi Zhizui Zanshi Tiaoli, 妨害国家货币治罪暂行条例), [website], <http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053846.html> ,(accessed January, 2016).

Regulations for Suppression of Corruption of PRC, April 21,1952³⁴. February, 1956, the Supreme People's Court of the PRC systematically summarized the crimes, penalties and sentence extent which were applied in the judicial practice, and then made a summary report. In this report, the crimes punishable by death , were not only the crimes which were stipulated in the above special criminal laws, but also included the offences of intentional killing, crime of intentional injuring (caused death), and so on.³⁵ 'After 1958, the criminal legislative work was weakened, except several amnesty decrees, no special criminal law had been issued, even non-criminal laws issued had seldom included criminal law norms too.'³⁶All of these comprised the main criminal system at that time and, to great extent, the death penalty system was begun to be established by them. Actually, in this period, capital punishment was deemed as an important measure in fighting enemy, and was widely applied. Under this case, 'the death penalty was applied on a ground of political legitimacy and reasonable, and this period is considered as the process of politicization of capital punishment, but lack of attention on the legal character of capital.'³⁷

Even though Mao Zedong died in 1976, his thought still had a deep influence on death legislation in 1979, when the new China passed its first Criminal Law. However, the 1979 Criminal Law, in fact, was made on the basis of 'the 33rd draft and also considering the new conditions, new experiences and new problems'³⁸. The 33rd draft was drawn up on October 9, 1963, about which Mao Zedong said that 'not only Criminal Law but also Civil Law is needed. It is lawless nowadays and very difficult without laws. Criminal Law and Civil Law have got to be established. Law need to be instituted, so do case.'³⁹ Here, we can see that the attitude of Mao toward the law differed from the speeches in 1958 and was changed. Hence, the 1979 Criminal Law, in particular the death penalty legislation, still had some characters and traces of Maoist era, which can be proved by 'explanatory note to the Seven Draft Laws' made by Peng Zhen, who is the former Vice- Chairman of the Fifth National People's Congress, in the Second Session of China's National Fifth National People's Congress (NPC). In this explanatory, he explained that,

China can't and shouldn't abolish death penalty, and yet try to reduce its use. In 1959, The Central Committee of CPC and Comrade Mao Zedong have already and repeatedly made similar demands of reducing the use of death penalty. Now, in almost three

³⁴ The Regulations for Suppression of Corruption of PRC (Zhonghua Renmin Gongheguo Chengzhi Tanwu Tiaoli, 中华人民共和国惩治贪污条例), April 21,1952, [website], <http://fanfu.people.com.cn/GB/143349/165093/165095/165108/9892735.html> , (accessed January, 15,2016).

³⁵ Gao Mingxuan, 60years of Death Penalty: the Evolution and Prospect of Capital Legislation of New China (Sixing 60nian: Xinzhongguo Sixing Lifa De Bianqian Yu Zhanwang, 死刑 60 年: 新中国死刑立法的变迁与展望), [website], 2014, <http://history.people.com.cn/n/2014/1030/c372326-25936904.html> , (accessed January 15, 2016).

³⁶ Gao, Zhao, The Revolution of Chinese Criminal Legislation, p. 69.

³⁷ Chen Xingliang , 'Death Penalty Policies: A Jurisprudential Perception(Sixing Zhengce Zhi Fali Jiedu, 死刑政策之法理解读)', Journal of Renmin University of China, No.6,2013,p.3.

³⁸ Gao and Zhao, The Evolution of Chinese Criminal Legislation, p.77.

³⁹ People's Daily (Renmin Ribao, 人民日报) , October29, 1978, Cited in Gao and Zhao, p.74.

decades since the foundation of New China, particularly, after the crushing the ‘Gang of Four’, the nationwide situation of public safety and public order become increasingly stable and better day by day, the Criminal Law hence decreases the number of the crimes punishable by death.....it also remains the provisions of death with a suspension of execution.⁴⁰

In addition, Article 1 of 1979 Criminal Law provided explicitly party-minded reference to ‘takes Marxism-Leninism-Mao Zedong Thought as its guide’⁴¹. Obviously, even the 1979 Criminal Law was issued in the post-Mao era; it still retained Maoist legislation. Obviously, basic on the above analysis, 1979 Criminal Law was influenced by Mao thought at some level.

Without exception, the legislation about the death penalty in 1979 Criminal Law also implemented Mao and the so called Central Committee of CPC’s death policy. In accordance to the 1979 Criminal Law, the death penalty ‘shall only be applied to criminals who have committed the most heinous crimes (zui da e ji, 罪大恶极)’⁴², and ‘not imposed on persons who had not reached the age of 18 at the time the crime was committed or to women who are pregnant at the time of trial.’⁴³ And the death sentence review system was firstly established explicitly by 1979 Criminal Law, but this review system was adapted by the NPC Standing Committee and the Supreme People’s Court in the following several years.⁴⁴ There were only

⁴⁰ Peng Zhen, An Introduction to the Seven Draft Laws(Guanyu Qige Caoan De Shuoming, 关于七个草案的说明), [website], <http://cpc.people.com.cn/GB/69112/99985/100003/9739230.html>, (accessed January 29, 2016).

⁴¹ Criminal Law of P.R.C 1979, Article 1.

⁴² Criminal Law 1979, Article 43.

⁴³ Criminal Law 1979, Article 44.

⁴⁴ Article 44(2) of Criminal Law 1979 provided that ‘all death sentences except for those that according to law should decided by the Supreme People’s Court, shall be submitted to the Supreme People’s Court for approval’. However, on June 10th,1981, the NPC Standing Committee formulated an adaptation on reviewing death sentence by issuing a Decision, which provided that, within the period of from 1981 to 1983, if a person, who commits homicide, crime of robbery, offense of rape, arson, explosion, poisoning, breaches a dike, or sabotages any means of transport, transportation facility, electric power facility, is sentenced to death by High People’s Courts in the provinces, autonomous regions and special municipalities, or by the Intermediate People’s Court in the first instance, and the defendant doesn’t appeal, and the sentence is verified and approved by the High People’s Court, or the death sentence is imposed by High People’s Court in the first instance, and the defendant doesn’t appeal, all of these sentences don’t have to be submitted to the Supreme People’s Court for verification and approval. (See the Decisions of the NPC Standing Committee on the Issues of Verifying and Approving Death Sentences (Quan Guo RenMin Dai Biao da Hui Chang Wu Wei Yuan Hui Guan Yu Si Xing He Zhun Wen Ti De Jue Ding, 全国人民代表大会常务委员会关于死刑核准问题的决定), adopted by the 19th Session of Standing Committee of China’s National Fifth National People’s Congress (NPC), on June 10th, 1981.). In addition, on September 7, 1983, the Supreme People’s Court made a notification to authorize the High People’s Courts in the provinces, autonomous regions and special municipalities, and the Military Court to verify and approve death sentence in accordance with the laws imposed on the criminals who commit homicide, crime of robbery, offense of rape, explosion and other crimes which cause serious damage to public safety. (See Supreme People’s Court’s Notification on the Authorization the High People’s Courts to Verify and Approve some Death Sentence Cases, on September 7, 1983,(Zui Gao Ren Min Fa Yuan Guan Yu Shou

28crimes⁴⁵ punishable by death in the 1979 Criminal Law of which number of the crimes applicable by death is the nadir until now. And for the circumstances of crimes punishable by death, most of them are that 'causing particularly grave harm to the State and the people or if the circumstances are especially serious', or 'inflicting serious injury or death on people or causing heavy losses of public or private property' etc.⁴⁶, which limited partly the use of death penalty. Some of scholars comment that 'the provisions on crime and its corresponding punishment, in particular the provisions on the punishment for general crimes, are very close to the legislation level of developed states.'⁴⁷

Even though 1979 Criminal Law provided the least number of crimes punishable by death, it was still full of political utilitarian, appearing with very heavy political complexion. These features can be found in some Chinese criminal scholars' research papers. Some temporal scholars maintained that 'retaining or abolishing death penalty by a state, is decided by the state's specific situation of political history, and is to meet the objective requirements of combating crimes. As for death penalty limitedly retained in Criminal Law of China, it is up to the situation of class struggle (jieji douzheng, 阶级斗争) now in China and crime situation. Imposing death sentence in accordance with the law on the counterrevolutionary and other criminal is an actual demand of the state economic construction, and is necessary for consolidating the dictatorship of the proletariat, and also responds the Mass's requirements.'⁴⁸ For the relationship between human rights and the abolition of death penalty, the scholars insisted that what they call humanism and human rights, in the class society, all have class character; there are supra-class and abstract humanism and human rights. With the perspective of the proletariat views of humanism and human rights, the crime committed by rare counterrevolutionaries or very few other criminals is deemed as infringing the interest of the other majority people, and it is by far

Quan Gao Ji Ren Min Fa Yuan He Zhun Si Xing An Jian De Tong Zhi, 最高人民法院关于授权高级人民法院核准部分死刑案件的通知) .

⁴⁵ In accordance with 1979 Criminal Law, there were 10 articles, which were Article 90,91,92,93,94,95,96,97,100,and 101, providing 15crimes punishable by death in the Chapter 1 (crimes of counter-revolution, 反革命罪, fan geming zui), 2 articles (Article 106 and Article 110) providing 8crimes punishable by death in Chapter 2 (crimes of endangering public security, 危害公共安全罪, weihai gonggong anquan zui), 2 articles (Article 132 and Article 139) providing 3crimes punishable by death in Chapter 4 (crimes of infringing upon citizens' rights of the person and democratic rights, 侵犯公民人身民主权利罪, qinfan gongmin renshen minzhu quanli zui), and 2 articles (Article 150 and Article 155) providing 2 crimes punishable by death in Chapter 5 (crimes of property violation, 侵犯财产罪, qinfan caichan zui). (See Criminal Law 1979).

⁴⁶ See the Article 103, 106,110, 132, and so on of 1979 Criminal Law.

⁴⁷ Li Jie, 'On the Modifying Cautiously Criminal Law(Shenzhong Xiugai Xingfa Lun,慎重修改刑法论), in Chen Xingliang (ed.), Criminal Law Review, Beijing, China University of Political Science and Law Press, vol.11,2002,p.314.

⁴⁸ Ge Ping and Wang Honggu, 'On Death Penalty(Lu Sixing,谈死刑)', Chinese Journal of Law (Fa Xue Yanjiu, 法学研究) , no.1,1980, p.29. See also Li Kangtai, Understanding and Applying Correctly the Death Penalty(Zhengque Renshi he Shiyong Sixing, 正确认识 and 适用死刑)', Tribune of Political Science and Law (Zhengfa Luntan, 政法论坛),no.2,1983,p.17.(In China, at the present stage, the death penalty still can't and shall not be abolished due to the existence of remnants of exploiting class and the existence of internal class struggle and international reactionary.)

the most inhuman and it seriously violates human rights, and imposing the deserve punishment on these counterrevolutionaries and criminals are, including sentencing the rare counterrevolutionaries to death, is a way to protect the Mass' human rights, and also fully embodies revolutionary humanitarian spirit.⁴⁹ As for the issue of abolition of death penalty, the scholars at that time also insist that it will be completely abolished de facto and de jure due to the socialism development and the consolidation of dictatorship of the proletariat.⁵⁰

3. The CPC's human rights and death penalty in Deng Xiaoping era (from 1980 to 1997): exclusion zone was made through and abuse of execution.

3.1. The CPC's human rights outlooks in Deng Xiaoping era: exclusion zone was made through.

After Mao, came Deng Xiaoping. The 3rd Plenary Session of the 11th Central of the Communist Party of China, which held in Beijing in December, 1978, resumed the ideological guideline of emancipate the mind and seek truth from facts, and commenced to put wrongs to rights in the whole country. And the concepts of human rights was introduced into China and widely discussed by Chinese scholars after this meeting.

That the human rights was introduced into China was firstly by the way of controversy on issues of human rights pertaining to socialism or capitalism. These controversies were full of ideology in the early of 1980s. The people who thought human rights pertain to capitalism, considered that human rights is only the slogan of capitalism, and it can't be applied to the proletariat⁵¹, but for the people thought human rights pertain also to socialism said that it doesn't only the bourgeoisie can have their own concepts of human rights, but for the proletariat, it can also have our human rights slogan⁵². In May and June, 1985, Deng Xiaoping pointed out that, 'what are human rights? Above all, how many people are they meant for? Do those rights belong to the minority, to the majority or to all the people in a country? Our concept of human rights is, in

⁴⁹ Ge Ping and Wang Honggu, Chinese Journal of Law, p.29.

⁵⁰ Ge Ping and Wang Honggu, Chinese Journal of Law, p.29. Socialist country does not always remain the death penalty; as the development of socialism economic and more consolidation of dictatorship of the proletariat, and when the conditions of abolishing death penalty is right, it will disappear completely from the socialist criminal punishment system. See also Li Kangtai, , Understanding and Applying Correctly the Death Penalty, p.18. (China is a socialist state under the people's democratic dictatorship, it is necessary to retain death penalty in a certain period.)

⁵¹ For example, March 22, 1979, 'human rights isn't the slogan of proletariat ('Renquan' Bushi Wuchan Jieji De Kouhao, '人权'不是无产阶级的口号)' was published in Beijing Daily (Beijing Ribao, 北京日报), and considered that human rights is the slogan of bourgeoisie, not the banner of proletariat fighting. And some of scholars thought that human rights were only the slogan and ideology of bourgeoisie, and it would be deemed as making demonstration against Communist and government if the slogans of 'respect human rights' and 'fight for human rights' were proposed. Chen Youwu, Li Buyun, 'The Historical Development of the Relationship between Rule of Law and Human Rights since the Reform and Opening-up (Gaige Kaifang Yilai Fazhi Yu Renquan Guanxi De Lishi Fazhan, 改革开放以来法治与人权关系的历史发展)', Modern Law Science, vol.37, no.2, 2015, p. 4.

⁵² Lan Ying, 'Is the 'Human Rights always the Slogan of Bourgeoisie? Discussing with Comrade Xiao Weiyun etc.('Renquan Conglai Jilishi Zichan Jieji De Kouhao Ma?----Tong Xiao Weiyun Deng Tongzhi Shangque, "人权"从来就是资产阶级的口号吗?——同肖薇云等同志商榷), Social Sciences, no.3,1979, pp. 71-5.

essence, different from that of the Western world, because we see the question from a different point of view.⁵³ Basic on this, Deng pointed out that individual human rights shouldn't be set against the Mass' human rights; in order to protect the majority' right and security, we must exercise dictatorship over a small number of criminals, including severely cracking down crimes, 'Since the current situation is unusual, we have to strike hard, fast and according to law.....This is what we mean by strengthening the people's democratic dictatorship. So far as humanitarianism is concerned, since we are protecting the safety of the overwhelming majority of the people, we are humanitarian in the true sense of the word.'⁵⁴Deng thought the individual human rights consistent with collective human rights, and emphasized the extreme importance of state sovereignty to human rights protection in the developing country. In other words, he thought that the state sovereignty is more important than human rights. As for this, during Deng visiting USA in 1989, he had explicitly pointed out that 'People who value human rights should not forget the rights of the state. When they talk about human dignity, they should not forget national dignity.'⁵⁵ Basic on the rights of the state view, he insisted that 'Stability is of overriding importance' and 'first priority should always be given to national sovereignty and security'⁵⁶.

As for Deng's outlook on human rights, most of Chinese scholars give positive comments, they are unanimous that Deng's thought about human rights is the newest development of Marxist human rights theory in China, and it has not only scientificity but epochal character and reality as well, and it always guides the human rights protection and construction in China; Deng's human rights thought is critical to China, and it illuminates the Party's basic position and outlook on human rights, and it is also the guidance of respecting and developing human rights in China.⁵⁷

⁵³ Deng Xiaoping, The Selected Work of Deng Xiaoping(Deng Xiaoping Wenxuan,邓小平文选), vol.3, [website] <https://dengxiaopingworks.wordpress.com/2013/03/18/bourgeois-liberalization-means-taking-the-capitalist-road/>, (accessed February 15, 2016).

⁵⁴ Deng Xiaoping, The Selected Work of Deng Xiaoping.

⁵⁵ Deng Xiaoping, The Selected Work of Deng Xiaoping.

⁵⁶ Deng Xiaoping, The Selected Work of Deng Xiaoping

⁵⁷ See Huang Weiqin, Insistence on Deng Xiaoping's Outlook on Human Rights, Maintain the Human Rights Development Road with Chinese Characteristics (Jianchi Deng Xiaoping Renquanguan, Zou Zhongguo Tese De Renquan Fazhan Daolu, 坚持邓小平人权观 走中国特色的人权发展道路),[website],2012, <http://theory.people.com.cn/GB/148980/16810107.html>, (accessed January 8, 2016); Li Yanqi, Leaning Deng Xiaoping's Thought about the Issues of Human Rights (Xuexi Deng Xiaoping Guanyu Renquan Wenti De Sixiang, 学习邓小平关于人权问题的思想),[website],2009, http://www.hprc.org.cn/gsyj/zzs/zsxs/200909/t20090912_30910.html, (accessed January 8, 2016); Wang Fuchun, 'Primary Studying on Deng Xiaoping's Thought on Human Rights (Deng Xiaoping Renquan Sixiang ChuTan, 邓小平人权思想初探)', Journal of Beijing Administrative College, no.1, 2001,pp.53-7; Yuan Xuchuan, 'Theoretically Analysing Deng Xiaoping's Human Rights Though (Deng Xiaoping Renquan Lilu Tanxi, 邓小平人权理论探析)', Mao Zedong Thought Study, no.6, 2005, pp.88-90; Sun Li, 'Deng Xiaoping's Human Rights Thought Pioneering and Innovating Marxism (Deng Xiaoping Renquan Sixiang Dui Makesi Zhuyi de Kaituo Chuangxin, 邓小平人权思想对马克思主义的开拓创新)', Social Sciences, no.5, 2005,pp. 40-45; Zhao Xiaoguang, 'Theoretically Analysing Deng Xiaoping's Human Rights Though (Deng Xiaoping Renquan Lilu Tanxi, 邓小平人权理论探析)', Theoretical Investigation, no.1, 2001, pp17-8

Obviously, Deng Xiaoping's human right thought respects the CPC's human rights outlook and has a deep influence on China's human rights development in Deng era and post-Deng era. On the one hand, Deng's human rights thought, not only the general ideas of human rights but the specific viewpoints as well, were completely embodied in White Papers on Human Rights in China launched by Information of Office of the State Council of the PRC (P.R.C. Guowuyuan Xinwen Bangongshi, 中国国务院新闻办公室), in November, 1991. In this Papers, it emphasizes that 'for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question', 'without national independence, there would be no guarantee for the people's lives', 'the Chinese people had to win national independence before they could gain the right to subsistence'⁵⁸; on the other hands, in 1997, the Report on Holding High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century delivered by former Chairman Jiang Zemin in the 15th National Congress of Communist Party of China stated that we must hold high the great banner of Deng Xiaoping Theory and apply it to our entire cause and all our undertakings. This is an unshakable conclusion the Party has drawn from the history and realities.⁵⁹ Although Chinese government launched its first White Papers on Human Rights to show China's basic position on and practice of human rights, but, to a great extent, the issue of human rights, at that time, served as a theme of foreign declaration until the 15th National Congress of Communist Party of China. In this Congress, 'respect and safeguard human rights'⁶⁰ was firstly written into the Party's political report.

3.2. The death penalty in Deng era: execution abuse.

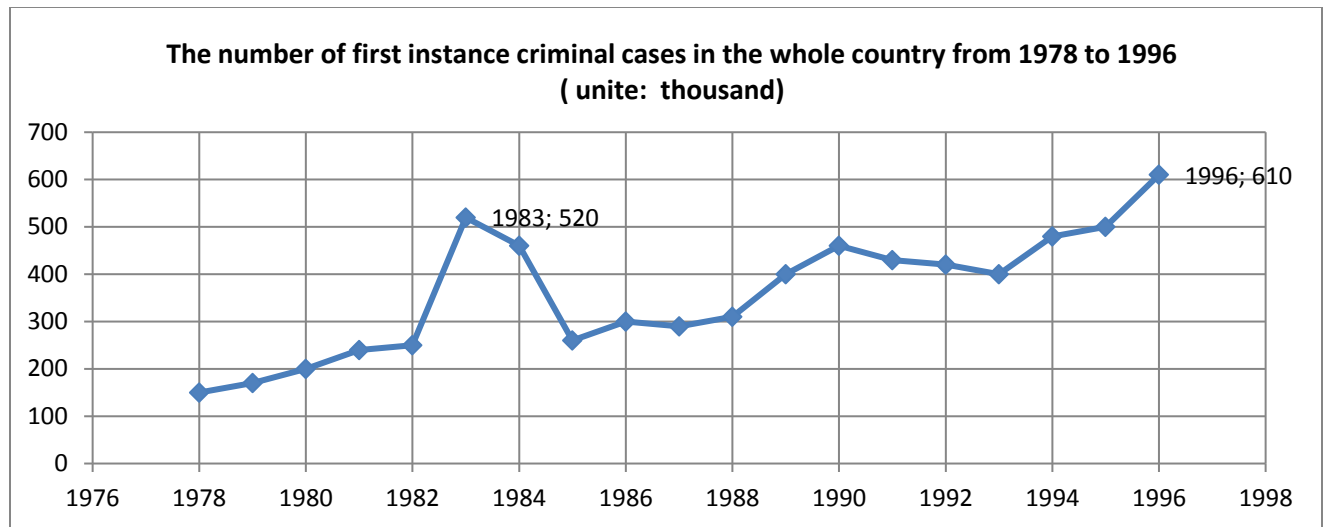
Deng's human rights thought were also implemented in the CPC's death penalty policies. After the implementation of reform and opening-up in 1978, although all kinds of the political control imposing on the individual were released and the Chinese society was also changed from repressiveness to opening, the society system was brought into a state of anomie and the public security and crime situation were aggravated. All these changes can be found from the increasing number of criminal cases as the below figure⁶¹ shows, which were dealt with by the People's Courts in the period from 1979 to 1997.

⁵⁸ Information of Office of the State Council of the PRC, White Papers on Human Rights in China, [website], 2014, http://www.chinahumanrights.org/html/2014/WP_0724/36.html, (accessed January 9, 2016).

⁵⁹ Report on Hold High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century (Gaoju Deng Xiaoping Lilun Weida Qizhi, Baojianshe You Zhongguo Tese Shehuizhuyi Shiye Quanmian Tuixiang Ershiye Shiji, 高举邓小平理论伟大旗帜, 把建设有中国特色社会主义事业全面推向二十一世纪), [website], September, 12, 1997, http://www.gov.cn/test/2008-07/11/content_1042080.htm, (accessed January 9, 2016)

⁶⁰ Report on Hold High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century.

⁶¹ The Supreme People's Court of P.R.C, Showing the People's Courts' Trail Works by Statistics within 60years (Shushuo Renmin Fayuan Shenpan Gongzuo 60nian, 数说人民法院审判工作 60 年), [website], 2010, <http://www.court.gov.cn/fabu-xiangqing-119.html>, (accessed February 5, 2016.)



(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, 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.’⁶² In the regard of the social situation in 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.’⁶³

Basic on Deng’s above speech on July 19, 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 area⁶⁴. Hence, the criminal was deemed as people’s enemy’.

As to death penalty, in 1986, Deng Xiaoping pointed out that:

⁶² Zhang Shouwen and Mi Chuanyong, ‘the Past, Now and Future of Death Policy in China(Zhongguo Sixing Zhengce de Guoqu, Xianzai he Jianglai, 中国死刑政策的过去、现在和将来)’, the Law Review (Faxue Pinglun, 法学评论), vol.2, 2006. p.40.

⁶³ Deng Xiaoping, the Selected Works of Deng Xiaoping.

⁶⁴ CPC’s Decision on Cracking Severely down Crimes,[website], <http://cpc.people.com.cn/GB/64162/64165/68640/68665/4739396.html>, (accessed February 19, 2016)

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."⁶⁵

From the above Deng's speeches, it is obviously found 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.'⁶⁶

Since 1981, NPC Standing Committee had successively adopted 25 Special Criminal Laws until the present Criminal Law passed in 1997⁶⁷, 18 of which provided for the crime punishable by death. All of these Special Criminal Laws, to a great extent, brought great changes as bellowing 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 death⁶⁸, 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 Visiting⁶⁹, the Article 1 of Decision on Punishing Criminal Elements Committing Abduction and Selling or Kidnapping of Women or Children⁷⁰,

⁶⁵ Deng Xiaoping, the Selected Works of Deng Xiaoping.

⁶⁶ Chen Xingliang, Death Penalty Policies, p.4.

⁶⁷ These Special Criminal Laws include Decision on Severely Punishing Criminal Elements Seriously Endangering Public Security (Guangyu Yancheng Yanzhong Weihai Shehui Zhian de Fanzui Fenzi de Jueding, 关于严惩严重危害社会治安的犯罪分子的决定), September 2, 1983; Supplementary Provisions on Cracking Down on the Crime of Smuggling (Guanyu Chengzhi Zousizui de Buchong Guiding, 关于惩治走私罪的补充规定), January 21, 1988; ; Supplementary Provisions on Cracking Down on the Crime of Corruption and Bribery (Guanyu Chengzhi Tanwuzui huiluzui de Buchong Guiding, 关于惩治贪污罪贿赂罪的补充规定), January 21, 1988; Decision on Prohibiting Drugs (Guanyu Jindu de Jueding, 关于禁毒的决定), December 28, 1990, and so on.

⁶⁸ Gao Mingxuan, 60 years of Capital Punishment: the Evolution and Prospect of Capital Legislation of New China.

⁶⁹ NPC's Decision on Strictly Prohibiting Prostitution and Whorehouse Visiting (Quanguo Renda Changwu weiyuanhui Guanyu Jinzhi Maiyin Piaochang De Jueding, 全国人大常委会关于禁止卖淫嫖娼的决定), no.51, 1991.

⁷⁰ NPC's Decision on Punishing Criminal Elements Committing Abduction and Selling or Kidnapping of Women or Children ((Quanguo Renda Changwu weiyuanhui Guanyu Ynacheng Guaimai, Bangjia Funv,

Decision on Punishing Criminal Elements Hijacking Aviation Vehicles⁷¹. The death penalty for these crimes were mostly absolutely prescribed penalty; 3) another 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 can't 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 Economy⁷².

China adopted its second Criminal Law at the 2nd Session of the Fifth National People's Congress on July 1, in 1997⁷³. Actually, 1997 Criminal Law was basic upon 1979 Criminal Law and a series of Special Criminal Laws passed successively from 1981 to 1996. Basic on 1979 Criminal Law, the execution legislation in 1997 Criminal Law continued the death policies in the Special Criminal Laws with somewhat modification and adjustment. In 1997 Criminal Law, there were 68 crimes punishable by death, which were distributed in different 9 chapters except the Chapter IX (Crimes of Dereliction of Duty), and the percentage of the number of crimes punishable by death in the total of crimes (414 crimes) was 16.4%.⁷⁴ It seems that the number of crimes punishable by death is less than the total of 1979 Criminal Law and 25 Special Criminal Laws (around 80 crimes), but actually, 'it neither increase nor decrease in principle; there wasn't any condition for us to decrease the number of crime punishable by death due to the current severe situation of social order and economic crimes '⁷⁵. But for the applicable condition of death

Ertong De Fanzui Fenzi De Jueding, 全国人大常委会关于严惩拐卖、绑架妇女、儿童的犯罪分子的决定), no.52, 1991.

⁷¹ NPC' Decision on Punishing Criminal Elements Hijacking Aviation Vehicles ((Quanguo Renda Changwu weiyuanhui Guanyu Chengzhi Jiechi Hangkongqi Fanzui Fenzi De Jueding, 全国人大常委会关于惩治劫持航空器犯罪分子的决定), no.67, 1992.

⁷² NPC's Decision on Severely Punishing Criminals Who Seriously Undermine the Economy (Quanguo Renda Changwu weiyuanhui Guanyu Yancheng Yanzhong Puhuai Jingji Fanzui De Jueding, 全国人大常委会关于严惩严重破坏经济的罪犯的决定), March 8, 1982.

⁷³ Even though Deng Xiaoping retired from political scene in 1992, officially, he still remained the most influential of the CPC cadre, and China was still in Deng Xiaoping era for a long time, and even Deng's successor Jiang Zemin was in firm control, but government policies maintained Deng's political and economic philosophies. For this, we can know from the Report on Holding High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century, delivered by Jiang Zemin in the 15th National Congress of Communist Party of China (Jiang Zemin, Hold High the Great Banner of Deng Xiaoping Theory for an All-round Advancement of the Cause of Building Socialism With Chinese Characteristics' Into the 21st Century, [website], 2011, http://www.bjreview.com.cn/document/txt/2011-03/25/content_363499.htm, accessed February 20, 2016) . So, 1997 Criminal Law, to a great extent, still implemented Deng's thought about death penalty.

⁷⁴ Criminal Law of P.R.C. no.83, 1997.

⁷⁵ Wang Hanbin, Introduction on the Draft to the Criminal Law of P.R.C.(Guanyu 'Zhonghua Renmin Gongheguo Xingfa (Xiuding Cao An) De Shuoming, 关于《中华人民共和国刑法(修订草案)的说明),[website], 1997, <http://www.law-lib.com/fzdt/newshtml/20/20050812041456.htm>, (accessed February 20, 2016). However, apparently, the number of crimes punishable by death, became less than ever due to two important aspects, namely, some of crimes punishable by death provided by Special

penalty, it was changed from 'the most heinous crimes (Zuida E Ji, 罪大恶极)' in 1979 Criminal Law to 'extremely serious crimes (Zuixing Jiqi Yanzhong, 罪行极其严重)'⁷⁶, which mean that the applicable condition of execution was eased and increase the possible of execution⁷⁷. Although 1997 Criminal Law doesn't reduce the number of death penalty, it somewhat limits the scope of applicable object and reduces the condition of commuting death penalty with suspension to life imprisonment or fixed-term imprisonment, i.e. 1) for the limitation, it deleted the provision, 'Persons who had reached the age of 16 but not the age of 18 may be sentenced to death with a two-year suspension of execution if the crime committed was particularly serious'⁷⁸, so the person who had not reached the age of 18 at the time the crime was committed would not be imposed on death punishment, including the death punishment with suspension; 2) for reducing the condition, it changed the provision in 1979 Criminal Law, 'shows true repentance' or 'shows true repentance and performs meritorious service'⁷⁹, to 'does not intentionally commit a crime'⁸⁰, so the commutation can be happen if the person doesn't intentionally commit a crime without true repentance.

In all, the abuse of death penalty in China wasn't changed legislatively by 1997 Criminal Law, and even we can say that the death penalty was somewhat strengthen. However, we should note that 1997 Criminal Law remain, to a great extent, the scope of crimes punishable by death, but it didn't completely same with the legislative pattern of death penalty after 1979, due to it

Criminal Laws were deleted, or abolishing death penalty for a few crimes; and some crimes punishable by death were merged or some provisions or articles were merged by legislative technique.

⁷⁶ The Article 43 of 1979 Criminal Law provided that 'the death penalty shall only be applied to criminals who have committed the most heinous crimes' but the Article 48 OF 1997 Criminal Law provided that 'the death penalty shall only be applied to criminals who have committed extremely serious crimes'. See Criminal Law of P.R.C. no.5, 1979 and Criminal Law of P.R.C. no.83, 1997

⁷⁷ Scholar pointed out that, 'the most heinous crimes (Zuida E Ji, 罪大恶极)' emphasized on both of two facts, objectivity and subjectivity, specifically, namely, the objective harmful consequence of the crime is extremely serious, another is the subjective culpability of offender's mind is extremely serious, but the 'extremely serious crimes (Zuixing Jiqi Yanzhong, 罪行极其严重)' just emphasizes on the objective consequents of harm to society. So the change of 'the most heinous crimes (Zuida E Ji, 罪大恶极)' to the 'extremely serious crimes (Zuixing Jiqi Yanzhong, 罪行极其严重)' has already lower the applicable standards of death penalty. And some scholars said that, comparing with 'extremely serious crimes (Zuixing Jiqi Yanzhong, 罪行极其严重)', 'the most heinous crimes (Zuida E Ji, 罪大恶极)' had stricter demand with the number of crimes punishable by death and the concrete applicable condition of death penalty, and imposes more stringent restrictions on stipulation of crimes punishable by death in Specific Provisions of Criminal Law and the death sentence in judicial practice. See Zhang Yuanhuang, 'On the Defects of applicable Standards of Death Penalty in China and their Solution (Woguo Sixing Shiyong Biao zhun De Quexian Jiqi Mibu Fangfa, 我国死刑适用标准的缺陷及其弥补方法)', Studies in Law and Business, no.6, 2006, p. 40-6; Chu Huaizhi, 'Judicial Control of Death Penalty: A Comprehensive Understanding of Article 48 of Penal Code (Sixing Sifa Kongzhi: Wanzheng Jiedu Xingfa Di 48 tiao, 死刑司法控制: 完整解读第 48 条)', Peking University law Journal, 2012, Vol.5. Pp.1014-20; Zhao Bingzhi, (Exploring the Issues of Punishments in the General Provisions of Criminal Law (Xingfa Zonglun Wenti Tansuo, 刑罚总论问题探索), Beijing, Law Press, 2002, pp. 152-153.

⁷⁸ Criminal Law 1979, Article 44.

⁷⁹ Criminal Law 1979, Article 46.

⁸⁰ Criminal Law 1979, Article 50.

decreased the number of crimes punishable by death. This change seems to be nothing, but it, to a great extent, shows that the death penalty needs to be limited and even abolished.

4. The CPC's human rights and death penalty in the era of post-Deng Xiaoping (from 1998 to present): graduate development of human rights and restricting the use of execution.

4.1. The CPC's human rights outlooks in the era of post-Deng: graduate development of human rights

In the era of post-Deng Xiaoping, 'lacking a unifying figure like Deng or Mao, China's leadership today is a mostly faceless group of longtime party engineers'⁸¹, and was transitioned from a structure that dominated by a one man to by a collective leadership⁸², in other words, the paternalistic authoritarian regime in the eras of Mao and Deng was over, and China then came to condominium authoritarian regime in the era of Jiang Zeming (from 1989 to 2002) and Hu Jintao (from 2002 to 2012), and now is trying to become the authoritarian regime of rule of law in the era of Xi Jinping(from 2012 to present).

More than 30years after the reform and opening up implemented in 1979, particularly over the last 20years, historic changes have taken place in the visages of the Chinese people, society and the CPC. Firstly, the situation that the social and political lives were completely controlled by the ideological state apparatus and ideology has already been changing dramatically. Since 1980s, the Chinese totalitarianism regime was inevitably changed forward to limited diversification and the ideology was became secularization because of the economic diversification and development; as in the following, at the end of 1990s, China, actually, had already finished the historical transformation of from totalitarianism to post- totalitarianism. ⁸³ In the transformation process, the freedom of personnel fluidity is realized and protected, and which makes the previous mandatory political identity and interpersonal relationship which was basic on personal reliability weaken, and then the citizens don't believe in the empty political and ideological indoctrination. Secondly, demotic political trust and political identity are severely losing, and

⁸¹ Joshua Kurlantzick, After Deng: On China's Transformation-----Is Deng Xiaoping's legacy of modernization without political reform one that no contemporary Chinese official can control,[website], 2011, <http://www.thenation.com/article/after-deng-chinas-transformation/>, (accessed February 20, 2016)

⁸² For this aspect, the Report on Holding High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in all delivered by Hu Jintao at the 17th National Congress of the Communist Party of China on Oct. 15, 2007 had stated that 'we will strictly implement democratic centralism, improve the system that combines collective leadership with division of responsibilities among individuals, and oppose and prevent arbitrary decision-making by an individual or a minority of people.' See 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, (accessed February 20, 2016)

⁸³ Xiao Gongqin, 'On the Chinese Transformation Regime with Perspective of Politics of Development (Cong Fazhan Zhengzhixue Kan Zhongguo Zhuanxing Tizhi, 从发展政治学看中国转型体制)', Zhejiang Academic Journal, no.5,2005, p.107.

civil disorders or mass incidents (Qunti Xing shijian, 群体性事件)⁸⁴ are always taken place in these several decades with a character of anti-institution. In accordance with some researches, the number of civil disorder(Qunti Xing shijian, 群体性事件) cases in 1993 is 8700, in 1994 around 10 000, but in 2003, it is around 60 000, and in 2005, it increases 87000, and it reaches 90000 in 2006; and according to other researches, in the pass 15years, the annual rate of the number of civil disorder(Qunti Xing shijian, 群体性事件) case is approximate 17%; in all, the civil disorder(Qunti Xing shijian, 群体性事件) case has a rising tendency.⁸⁵This kind of civil disorder, which is called the mass incident or mass frustration in China, is normally caused by dissatisfaction with some leader and then gradually changes to dissatisfaction with wholly state regime and community of democracy.

Above two main and important reasons make CPC, on the one hand, to consider implementing political reform; on the other hand, to consider changing their human rights outlook. For the political reform, Jiang Zemin in the 15th National Congress of Communist Party of China stated that ‘we should continue to press ahead with the reform of the political structure, further extend the scope of socialist democracy and improve the socialist legal system, governing the country according to law and making it a socialist country ruled by law’⁸⁶; for the changing

⁸⁴ Civil disorder or mass incidents (Qunti Xing shijian, 群体性事件), is referred to collectivity violent confrontations occurred in the public place, including the substantial space and such internet as virtual collaborative space, and normally caused by dissatisfaction with enforcement of government policies, crime and corruption, and environmental issues and seizures of land by local governments and so on. The formation, explosion and die down of this incidence have a intimate and direct relativity with important structure characteristics of the Chinese transformation, and also with the special manage and control pattern of Chinese government, and the political culture and political psychology. See Liu Neng: Liu Neng, ‘Mass Incidents in Modern China: Change of Image and Reconstruction of Classification Framework (Dangdai Zhongguo de Quntixing Shijian: Xingxiang Diwei Bianqian he Fenlei Kuangjia Zaigou, 当代中国的群体性事件: 形象地位变迁和分类框架再构)’, Journal of Jiangsu Administration Institute, vol.56, no.2, 2011.pp. 53-9; Jiang Yongfu, ‘The Institutional Source and Mechanism of the Freenquent Contemporary Chinese Mass Incidents----- An Interpretation of the Relationship between State and Society Framework (Dangdai Zhongguo Quntixing Shijian Pinfa De Tizhixing Genyuan Yu Fasheng Jili---Yige Guojia Yu Shehui guanxi De Jieshi Kuangjia, 当代中国群体性事件频发的体制性根源与发生机理——一个国家与社会关系的解释框架)’, Journal of Hubei Administration Institute, no.6, 2012, pp.86-91; Chen Tan, Huang Jin, ‘Theoretical Explanation on Various Reasons of Group Events (Quntixing Shijian Duozhong Yuanyin De Lilun Changshi, 群体性事件多种原因的理论阐释)’, Cass Journal of Political Science, no.6, 2009, pp. 54-61.

⁸⁵ Liu Neng, ‘Mass Incidents in Modern China: Change of Image and Reconstruction of Classification Framework (Dangdai Zhongguo de Quntixing Shijian: Xingxiang Diwei Bianqian he Fenlei Kuangjia Zaigou, 当代中国的群体性事件: 形象地位变迁和分类框架再构)’, Journal of Jiangsu Administration Institute, vol.56, no.2, 2011.p. 54.

⁸⁶ Jiang Zemin, Hold High the Great Banner of Deng Xiaoping Theory for an All-round Advancement of the Cause of Building Socialism With Chinese Characteristics’ Into the 21st Century. We have to notice that in this report, CPC still used the term of ‘rule by law’, which is very different with ‘rule of law’. ‘A system under a rule of law system has a political and social order due to the positive nature of the stated law, whereas a system ruled by law has a political and social order that depends on already political laws or political interpretations of stated laws. The danger in a ‘rule by law’ system is that a domineering state can vindicate any action as long as it alter or interprets the rules accordingly.’(See Jeremy T. Monthly, ‘Internal Perspectives on Chinese Human Rights Reform: The Death Penalty in the PRC’, Texas

human rights outlooks, individual human rights has drawn more and more attention due to above internal factors and international aspects as well.

For the international factors, on the one hand, 'human rights groups regularly issue scathing reports condemning China for widespread human rights violations'⁸⁷, which give international stress to CPC and make it to shift outlook on human rights and improve the human rights situation; on the other hand, Chinese government gradually acknowledged and accepted some international human rights covenants and started to take part in some international human rights affairs, for example, Chinese government signed an important human rights treaty in 1986, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1988), and other international treaties, such as International Convention Against Apartheid in Sports (signed in 1984), Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (ratified in 1987), International Covenant on Civil and Political Rights (ICCPR) (signed in 1998) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (signed in 1997 and ratified in 2001). In addition, China also actively participated in international organizations, for example, China began sending observers to UN Commission on Human Rights and became a full member in 1982. All these, on the one hand, require Chinese government to carry out corresponding international responsibility; on the other hand, CPC gradually notices the importance and value of individual human rights. For these changes, we can know from the CPC's Work Reports, for example, in the 16th National Congress of Communist Party of China, 2002 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.'⁸⁸ A significant milestone of the development of human rights in China is the provision of 'the state respects and preserves human rights'⁸⁹ was contained in the Constitution in 2004, though it is lag behind the West several decades and even several hundred years. Constitution of PRC firstly contains the provision of human rights protection, and makes the human rights to become a legal concept from political notion, and state become the principle part of protecting human rights instead of only Party and government, and become the citizens' and national wills and value of state construction and development and constitutional principle. In the 17th CPC's National Congress, 2007, 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

International Law Journal, vol.33, 1998, p.194.)Until the 17th CPC National Congress, in Hu Jintao' report firstly use the term of 'rule of law'. See 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, p.6.

⁸⁷ Randall Peerenhoom, Cornell International Law Journal, p.72.

⁸⁸ Jiang Zemin, 'Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics (Quanmian Jianshe Xiaokang Shehui, Kaihuang Zhongguo Tese Shehuizhuyi Shiye Xinjumian, 全面建设小康社会, 开创中国特色社会主义事业新局面) , [webiste], 2002,Section V, <http://en.people.cn/features/16thpartyreport/16thpartyreport5.html>, (accessed February 20, 2016.)

⁸⁹ Constitution of PRC, Article 33 (3).

society in accordance with the law.⁹⁰ In the 18th CPC's National Congress, 2012, Hu Jintao state 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.'⁹¹ In 2013, the 4th Plenary Session of the 18th Central Committee of CPC launched its Decision on Some Major Issues Concerning Comprehensively Deepening the Reform (Hereinafter, 2013 Decision), and it states that 'promoting rule of law' and emphasizes on that 'improving the judicial system to protect human rights'⁹². In 2014, the 4th Plenary Session of the 18th Central Committee of CPC passed Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward (Hereinafter, 2014 Decision), 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.'⁹³ All of these, to a great extent, show the shifting of the CPC's attitude to human rights and judicial protecting all members' human rights is attached gradually importance to in the era of post-Deng.

The attitude toward human rights comes along with the outlook change. However, as mentioned above, Deng has a deeply influence on his successors, in particular Jiang Zemin, who propounded The important thought of 'three represents'(Sange Daibiao Zhongyao Sixiang, 三个代表重要思想)⁹⁴. The three represents emphasis on that, 'to satisfy the interests and demands of the overwhelming majority of the people is the most important and should be given top priority'; 'the interests of the overwhelming majority of the people are the vital and most

⁹⁰ 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, p. 6.

⁹¹ 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', 18th CPC National Congress (Jianding Buyi Yanzhe Zhongguo Tese Shehui Zhuyi Daolu Qianjin, Wei Quanmian Jiancheng Xiaokang Shehui Er Fendou, 坚定不移沿着中国特色社会主义道路前进 为全面建成小康社会而奋斗), [website], 2012, p.4, http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_4.htm, (accessed February 20, 2016)

⁹² Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform (Zhonggongzhongyang Guanyu Quanmian Shenhua Gaige Ruogan Zhongda Wenti De Jueding, 中共中央关于全面深化改革若干重大问题的决定), [website], 2013, para.9, http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm, (accessed February 20, 2016)

⁹³ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward (Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti De Jueding, 中共中央关于全面推进依法治国若干重大问题的决定), [website], 2014, http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm, (accessed February 20, 2016). Basing on this Decision, we can say that China is trying to forward the 'authoritarian regime of rule of law'.

⁹⁴ The main contents of the important thought of 'three represents'(Sange Daibiao Zhongyao Sixiang, 三个代表重要思想) are the CPC always represents advanced social productive forces; always represent the progressive course of China's advanced culture and always represents the fundamental interests of the majority. Actually, these three represents stand respectively for economic production, cultural development and political consensus. See Jiang Zemin, 'Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics, Session II.

decisive factor. This has always been vital to the overall interests of keeping the Party in power⁹⁵. And 'these are also the guidebook of Chinese human rights development.'⁹⁶ According to the three represents, protecting the human rights of the overwhelming majority of people is the priority than other. When Jiang Zemin talks with Ugandan President Yoweri Museveni's Speech, on January 30, 1996, he said that,

For China, to insure the people's rights to subsistence and development is the primary and the most vital human rights protection; to insure Chinese social stability, economic development and improvement of people's living standards is the basis conditions and important content of improving human rights in China.⁹⁷

He also pointed out that,

The criminal who committed against the people's interest can't be contained into the scope of human rights protection; all kinds of crime must be punished according to the law and it is for the sake of protecting the human rights of the overwhelming majority of the people.⁹⁸

Therefore, Jiang Zemin emphasized on the majority of people's human rights and didn't recognize the criminal's human rights.

Hu Jintao's outlook on human rights is somewhat different with Jiang. The Scientific Outlook on Development (SOD), which was propounded by Hu, 'takes development as its essence, putting people first as its core' and emphasizes that 'We must respect the principal position of the people in the country's political life..... protect their rights and interests'⁹⁹. Even though the SOD takes development as its essence, it puts the people first as its core which includes two factors, namely, humanism and rights. The individual freedom and dignity should be equally respected and protected, and when the individual interest, therefore, conflicts with the state or the overwhelming majority of people, it should be dealt with in an overall considerable approach, and they should be equally considered and protected.

Since that, the individual human rights were concerned and have received more and more attention. In 2014, the Decisions concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward states that 'strengthen the judicial

⁹⁵ Jiang Zemin, Speech at the Meeting Celebrating the 80th Anniversary of the Founding of the Communist Party of China,[website], <http://www.china.org.cn/e-speech/a.htm>, (accessed February 21, 2016)

⁹⁶ Su Zhe, 'The Important Thought of 'Three Represents' is the Guidebook of Human Rights Development in China ('Sange Daibiao' Zhongyao Sixiang Shi Zhongguo Renquan Shiye Fazhan De Zhinan, '三个代表'重要思想是中国人权事业发展的指南), Human Rights, no.5, 2002, p.47.

⁹⁷ On Human Rights by Jiang Zemin(Jiang Zemin Lun Renquan, 江泽民论人权),[website], 2006, of the overwhelming majority of the people, (accessed February 22,2016)

⁹⁸ On Human Rights by Jiang Zemin(Jiang Zemin Lun Renquan, 江泽民论人权).

⁹⁹ 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.

protection of human rights'¹⁰⁰. It is the first time for CPC in his history to take 'the judicial protection of human rights' as one of their general objective, and 'make the people feel fairness and justice in every judicial case'¹⁰¹, and this will enrich the CPC's political value ideas.

According to the above introduction and analyzing, the CPC's outlook on human rights, particular in the individual human rights has a great change. However, we need to face the fact that, in China, the individual human rights haven't got enough attention and enough respect. The state has enough strong powerful to force the citizens to give way to national interest or a majority of people' interest, in another words, the individual human rights is always the victims of in the terms of state interests or a majority of people's human rights or interests.

4.2. The death penalty in the era of post-Deng: restricting the use of execution.

In a state, where it just emphasizes on a majority of people's interest or human rights or the national interest, a few of people' interest or human rights, who are such criminals as the opposite of a majority of people, in most cases are neglected or not to be taken seriously, and even 'the criminal human rights protection' was denied¹⁰²; in a state, where it just focus on the economic and state development or state stability, the instrumental efficacy of criminal law and its punishment will be highlighted and taken full advantage. For the crime and public security, on the one hand, it is expected to control the crime and protect security by launching national anti-crime campaign¹⁰³; on the other hand, the traditional concept of 'governing the country with severe law during the trouble times (Zhi Luanshi Yong Zhongdian, 治乱世用重典)' still plays an important role in contemporary China. 'Culture is a rather vague concept, but certain legal and religious traditions can influence whether the death penalty is considered a culturally accepted part of the penal system.'¹⁰⁴The death penalty is always considered as the main option of anti-crime campaign due to it is the most effective and direct measure to control crime. It can be somewhat said that death penalty has always received the attention and favorite of the national rulers and the social public. For the social public, they expect the authorities can crack down on and control the crimes by death penalty; and for the ruler, they also wanted to govern and control crimes through applying heavy punishment to protect the social order and security. To a great extent, these terms of expectations of social public and rulers formed the basis reasons to the death penalty and expand the scope of application of death penalty. In the era of post-Deng, the national leaders of China still face serious public security issues and they need to launch different policies. In Jiang era, he still continued the policy of 'stability overwhelming the

¹⁰⁰ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward.

¹⁰¹ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward.

¹⁰² On Human Rights by Jiang Zemin.

¹⁰³ Since the first anti-crime campaign was firstly launched in 1983, China has already launched 4time till now; they are in 1983, 1996, 2004 and 2010, respectively. In addition, in 2014, it launched at-terrorist campaign in Xin Jiang province.

¹⁰⁴Eric Neumayer, 'Death Penalty: The Political Foundations of the Global Trend towards Abolition', Human Right Review, vol.9, no.2, 2008, p. 253.

wholeness', which was proposed by Deng Xiaoping; in Hu era, he still emphasized on the strategy of 'the development is an absolute principle and stability is an absolute task'¹⁰⁵. Therefore, in these two eras, death penalty hasn't yet been changed a lot till the end of Hu era.

Although the death penalty still plays an important role in the crime control and social governance, 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 P.R.C from the local High Courts in every province and Militarily Courts on January 1st, 2007, so that the SPC 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 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'¹⁰⁶.

Another significant and substantial step was taken by the Eighth Amendment to Criminal Law of P.R.C. (Hereinafter, the Eighth Amendment). In 2011, the Eighth Amendment, which was adopted on February 25th, 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 don't involve any death penalty reform, in other words, the Eighth Amendment started a process in the course of gradually abolishing death penalty in China. The 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."¹⁰⁷

¹⁰⁵ Decision of the CPC Central Committee on Major Issues on Strengthening and Improving Party Building (Zhonggong Zhongyang Jiaqiang Gaijin Xinxingshixia Dangjian Ruogan Zhongda Wenti de Jueding, 中共中央加强改进新形势下党建若干重大问题的决定), [website], 2009, http://www.gov.cn/jrzq/2009-09/27/content_1428158.htm, (accessed February 23, 2016.)

¹⁰⁶ 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. See 'Decision of the CPC Central Committee on Certain Major Issues in the Building of an Harmonious Socialist Society (Zhonggong Zhongyang Guanyu Goujian Shehui Zhuyi Hexie Shehui Ruogan Zhongda Wenti De Jueding, 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), News of the Communist Party of China (Zhongguo Gongchandang Xinwenwang, 中国共产党新闻网) [website], 2006, section 6, <http://cpc.people.com.cn/GB/64093/64094/4932424.html>, (accessed February 24, 2016). In this Decision, it also emphasized to crack seriously down on severe crime by law, and to put forth effort to regulate the areas with seriously poor security problems....., and to firmly curb the upward tendency of crime.

¹⁰⁷ The Death Penalty in China—the road to reform, [website], <https://www.law.ox.ac.uk/research-subject-groups/research-index/impact-index/death-penalty-china-road-reform>, (accessed February 25, 2016).

From above, we can see that in Jiang era, China didn't conduct any reform for death penalty and denied the criminal human rights, but in 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 reform by limiting the use of death penalty in judicial practice in 2007, and in 2011, be substantially 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 55crimes 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 year¹⁰⁸. This White Paper explicitly states that 'China retains the death penalty, but strictly controls and prudently applies it.'¹⁰⁹ 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'¹¹⁰, 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 doesn't state about death penalty, but it states that 'promotes judicial reform', 'comprehensively constructing rule of law' and 'Strengthen the judicial protection of human rights'¹¹¹. In the light of these Party's political documents and White Paper, China adopted the Ninth Amendment to Criminal Law of P.R.C (Hereinafter, the Ninth Amendment) on August 29th, 2015, which also abolished death penalty for 9crimes and reformed the relevant death penalty system.

The Ninth Amendment pushed the death penalty reform further. All these reformations 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 55to 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. So China has taken another solid step towards the final goal of entirely abolishing death penalty de facto and de jure by reducing the number of crimes punishable by death. However, in China, there are still 46crimes punishable by death in

¹⁰⁸ Here we have to notice that the White Papers on Judicial Reform in China was launched on October 9, 2012, and China was still in Hu era, but in fact, it has already come to Xi era, who was elected as General Secretary of the Central Committee of the Communist Party of China (CPC) on Nov. 15, 2012.

¹⁰⁹ The Information Office of the State Council of P.R.C, 'Judicial Reform in China (Zhongguo De Sifa Gaige, 中国的司法改革)', News of the Communist Party of China, [website], 2013, page.22, <http://english.cpc.people.com.cn/206972/206981/8211483.html>, (accessed February 25, 2016).

¹¹⁰ Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform.

¹¹¹ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward.

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 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"¹¹², 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."¹¹³, i.e. the previous terms of "it is verified" is amended to 'circumstances are flagrant'; secondly, it increases the probation period of suspension of execution, in other words, it looks like putting the criminal into a longer 'death row'¹¹⁴ again. Namely, the Ninth Amendment provides that if he or she has committed an intention crime during the probation period of suspension of execution and the circumstances are not flagrant, the death penalty shall not be executed, but terms of suspension of execution of a death penalty shall be recounted again.

Certainly, China is still on the difficulty way to completely abolish death penalty de jure and de facto. In era of post-Deng, according above analyzing, the CPC's outlook on human rights has a great change, especially in the criminal human rights, from denying criminal human rights protection to 'strengthen judicial protection of human rights, but the CPC still emphasizes on the a majority of people' human rights and interest and the nation and economic development, and the individual interests or a few of people are always made way for the former. Even though SOD stated 'putting people first as its core' and the 2013 and 2014 Decisions stated judicial protection of human rights, they also emphasizes on that 'Persisting in starting from China's

¹¹² The Ninth Amendment to Penal Code of P.R.C, Article 2.

¹¹³ Chen Liping, 'Clicking on the 7 highlights of the Draft of Ninth Amendment to Penal Code of P.R.C.(Dianji Zhonghua Renmin Gongheguo Xingfa Xiuzhengan Jiu Cao an De Qida Liangdian, 点击中华人民共和国刑法修正案（九）草案的七大亮点)', Legal Daily News (Fazhi Ribao, 法制日报), October 28, 2014, p.3.

¹¹⁴ 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 David Von Drehle, 'The Death of the Death Penalty: why the Era of Capital Punishment is Ending', Time, [website], 2015, <http://time.com/deathpenalty/>, (accessed February 23, 2016)

reality and strive to make the people feel fairness and justice in every judicial case'¹¹⁵. For the fairness, however, different people have different proposition. Hence it is a pseudo – proposition that to make every person to feel fairness and justice in every judicial case. Particularly, now, in China, judicial authorities have to implement the all kinds of such the Mass Line Campaign as political movements. Under these kinds of political campaigns, the fairness and justice are tendency to belong to a majority of people; the public opinions could always be concerned and responded¹¹⁶.

The White Papers on Judicial Reform in China and 2013 Decision have already stated that improving and abolishing death penalty, but, meanwhile, the process which is emphasized on by them is gradual. Nobody knows the timetable for China completely abolishing death penalty. Under the present situation in China, however, death penalty reform is always decided by the national leaders. On the one hand , the national leaders have to focus on the Mass demands, because they are 'the subjects of and source of strength for ruling the country according to the law'¹¹⁷; on the other hand, the death penalty is still the most effective measure for the rulers to protect national stability and public security¹¹⁸,

¹¹⁵ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward.

¹¹⁶ It is a very common phenomenon, recently, that the public opinions influence the judiciary, particularly in the criminal judicial field, the impact of public opinions grown even more, such as the case of Xu Ting(State Vs. Xuting[2007] Hui Intermediate the Second Criminal Court First Trial.No. 196. [2008] Hui Intermediate the Second Criminal Court Second Trial.No.2.[2008] Hui Criminal Court Retrial.No. 197,(Xuting (许霆) , (2007)HuiZhongFaxing Er Chu Zi Di 196hao, (2007) 穗中法刑二初字第 196 号; (2008)Hui Zhong Faxing Zhong Er Chong Zi Di Er Hao, (2008) 穗中法刑二重字第 2 号), the case of Yao Jiaxin(Yao Jiaxin (药家鑫)[2011] Xi the First Criminal Court First Trial. No.68., (2011) Xi Xing Yi Chu Zi Di 68Hao, 西刑一初字第 68 号), the case of Li Changkui (Li Changkui (李昌奎) [2010] Zhao intermediate Criminal Court First Trial. No.52. ((2010)Zhao Zhong Xing Yi Chu Zi Di 52Hao, 昭中刑一初字第 52 号) [2010] Yun high Court Second Trial No.1314.((2010)Yun Gaofa Zhong Zi Di 1314Hao, 云高法终字第 1314 号) , which reflect the influence of the public opinions to the criminal practice. The most important impact of the public opinion is to influence the Judges to make sentencing decision, for example, in the case of Xu, the changing of punishment from life imprisonment to fixed term of 5years, the case of Yao, the public concerned always on the death penalty in the two trials, in the case of Li, the sentencing result was changed from death penalty with immediate execution to death penalty with suspension, and then became the death penalty with execution at retrial procedure, the public opinion have played an important role in changing sentencing results.

¹¹⁷ CPC's Central Committee Decision Concerning some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward.

¹¹⁸ For this, we can indirectly get evidence from the legislator. The Vice-Chairmen of Law Committee of the National People's Congress of P.R.C., Li Shishi, when he delivered the explanatory note for the Draft of the Ninth Amendment to Criminal Law of P.R.C. said that, since the death penalty for 13 economic and nonviolence crimes was abolished by the Eighth Amendment in 2011, the general security situation of Chinese social is within a controllable range and the number of serious crimes is stable with a slight decline. The practice has already suggested that abolishing the death penalty for 13crimes by the Eighth Amendment didn't bring any negative impact on the society, and sections of the society in China have positively made reaction to and commented on the death penalty abolition. But we have to know that the death penalty for these crimes is never or seldom applied in judicial practice, and if abolished, they would

5. Conclusion

Perhaps, to look at the issues of China with relevant Western or international standards will normally find that it is always difficult to reach a satisfactory conclusion. We need to understand the Chinese political regime and the Party's standpoints so that we can explain the reason and try to make an expectation. So are the human rights. As an international standard, human rights are accepted by all the states and try to improve their national human rights situation to meet this international standard. In China, CPC admits and accepts human rights, on which, however, the point of focus are different. CPC always emphasizes on that the national development and stability is the guarantee of all the citizens' human rights, so protecting a majority of citizens' human rights and the people's right to subsistence and development¹¹⁹ are always the CPC priority. 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 if the CPC continuously prioritizes people's rights to subsistence and development rather than rights to life, it wouldn't be achieved rapidly. 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'¹²⁰, so if the death penalty will not be abolished entirely, Chinese government can't ratify the CCPI, vice-versa.

not bring any negative impact on the social public security. (See Chen Xingliang, 'Reduction of Legislation Road Map to Death Penalty (Jianshao Sixing De Lifa Luxiantu, 减少死刑的立法路线图)', Political science and Law, no.7, 2015, p. 71; Huang Taiyun, 'Unscrambling the Amendment VIII to the Criminal Law of the People's Republic of China (The First Part)(<Zhonghua Renmin Gongheguo Xingfa Xiuzheng Ba Jiedu yi, 《中华人民共和国刑法修正案（八）》解读(一))', People's Procuratorial Semimonthly, no.6, 2011, p. 6.)

¹¹⁹ National Human Rights Action Plan of China states that, 'while respecting the universal principles of human rights, the Chinese government in the light of the basic realities of China gives priority to the protection of the people's rights to subsistence and development, and lawfully guarantees the rights of all members of society to equal participation and development on the basis of facilitating sound and rapid economic and social development. (See, Information Office of the State Council of PRC, 'National Human rights Action Plan of China (2009-2010)', [website],2014, para.2, http://www.chinahumanrights.org/html/2014/NHRAPC_0730/111_2.html, ; Information Office of the State Council of PRC, 'National Human rights Action Plan of China (2012-2015)', [website],2014, para.2,http://www.chinahumanrights.org/html/2014/NHRAPC_0730/112_2.html,(accessed February 26,2016);

¹²⁰ International Covenant on Civil and Political Rights, 2200A (XXI), 1966, Article 6.