

# URGENT ACTION



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15 January 2010

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Death penalty

CHINA

Gan Jinhua (m)

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A Chinese man, Gan Jinhua, has lost an appeal against a death sentence which he claims is a result of a confession extracted through torture. The Supreme People's Court (SPC) in Beijing is now reviewing his sentence. If the SPC approves the death sentence, he could be executed within a week.

Gan Jinhua was originally sentenced to death in 2005 for robbery which resulted in the death of two nuns. His death sentence was upheld on 28 December 2005 by the Guangdong Provincial Higher People's Court in southeastern China. Gan Jinhua has repeatedly claimed that he was tortured by police and forced to confess. In November 2007, the Guangdong Provincial Higher People's Court returned the case for retrial after new DNA evidence was uncovered. However, a death sentence was also returned at the retrial, and was later confirmed.



Gan Jinhua's lawyer says that the trials were unfair and full of procedural irregularities. The lawyer reports that the police forced Gan Jinhua to confess, resulting in inconsistencies between his testimony and the evidence. Important exhibits including the alleged murder weapon were not presented during either trial. Forensic experts and relatives of Gan Jinhua who say he was with them at the time of the crime were not allowed to testify in the courts. More than 100 lawyers, academics and other individuals have appealed to the Supreme People's Court against Gan Jinhua's death sentence, and have asked for the case to be retried.

China provides no clemency procedures for condemned prisoners after they have exhausted their appeals through the courts.

## BACKGROUND INFORMATION

In China, the Criminal Procedure Law (CPL) does not explicitly prohibit the use of confessions obtained through torture or other ill-treatment as evidence before the courts. This is required by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988. Despite this, torture and other ill-treatment are endemic in all places of detention in China. Amnesty International also receives regular reports of deaths in custody, many of them caused by torture, in a variety of state institutions, including prisons and police detention centers.

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*Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.*

The death penalty is applicable to approximately 68 offenses in China, including non-violent ones. China executes more people every year than any other country in the world. Amnesty International estimated that China carried out at least 1,718 executions and sentenced 7,003 people to death in 2008. These figures represent a minimum – the real figures are undoubtedly much higher. A US-based NGO, the Dui Hua Foundation, estimates that between 5,000 and 6,000 people were executed in 2008, based on figures obtained from local Chinese officials. Statistics on death sentences and executions in China are classified as state secrets.

In January 2007, the practice of having the Supreme People's Court (SPC) review all death sentences was restored; it had been suspended in 1982. All death sentences must now be reviewed by the SPC, which has the power to approve or revise death sentences. The Chinese authorities have reported a drop in executions since the SPC resumed this review. Nevertheless, the application of the death penalty remains shrouded in secrecy in China. Without access to such information it is impossible to make a full and informed analysis of death penalty developments in China, or to say if there has been a reduction in its use.

No one who is sentenced to death in China receives a fair trial in accordance with international human rights standards. Many have had confessions accepted despite saying in court that these were extracted under torture; have had to prove themselves innocent, rather than be proven guilty; and have had limited access to legal counsel.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible:**

- calling on authorities not to execute Gan Jinhua;
- urging the Supreme People's Court to remand the case for a retrial that meets international fair trial standards;
- calling on authorities to carry out an immediate and impartial investigation into Gan Jinhua's allegation that he was tortured, and bring those responsible to justice; and to guarantee that he will not be tortured or otherwise ill-treated;
- urging the National People's Congress to introduce a legal procedure for clemency;
- calling for an immediate moratorium on executions with a view to abolishing the death penalty, as provided by UN General Assembly resolution 62/149, of 18 December 2007.

**APPEALS TO:**

**Supreme People's Court President**

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**National People's Congress Standing Committee**

**Chairman**

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**PLEASE SEND APPEALS IMMEDIATELY.**

**Check with the AIUSA Urgent Action office if sending appeals after 26 February 2010.**