

<b>Institution: University of Oxford</b>
<b>Unit of Assessment: 20 - Law</b>
<b>Title of case study: Reforming and restricting the use of the death penalty in China</b>
<p><b>1. Summary of the impact</b></p> <p>Professors Carolyn Hoyle and Roger Hood have, since 1988, carried out wide-ranging comparative research in Oxford on the death penalty. Their work has had impact in several countries, including Trinidad, India, Uganda, Malaysia, and the Philippines. Most recently, it is acknowledged as having contributed to reforms of the death penalty in China, the main case discussed here. In February 2011, China abolished the death penalty for 13 non-violent crimes, thereby reducing the number of crimes punishable by death from 68 to 55. Various influences shaped these changes, and in a society where access to academic work is highly restricted, the influence of most foreign research inevitably has been minimal. The comparative studies undertaken by Hood and Hoyle, however, are a remarkable exception. The only work of its kind to have been translated, published, and widely disseminated in China, it provided a unique resource and body of evidence, and was used not only by emergent civil society groups, but also in official Chinese circles, including the judiciary. The impact of their research in China extends the existing worldwide influence of their research.</p>
<p><b>2. Underpinning research</b></p> <p>Roger Hood, formerly Professor of Criminology at Oxford, retired from that chair in December 1993 and then continued at Oxford as Research Associate at the Centre for Criminology and as Emeritus Professor. Carolyn Hoyle (Oxford 1991-present) is Professor of Criminology. Together they have undertaken the only sustained, cross-national study of factors that influence changes in the scope and application of capital punishment. Their books, reports and articles (often in translation) are leading academic works, and are also relied on by NGOs, lawyers and governments around the world.</p> <p>Each edition of <i>The Death Penalty</i>, originally funded by the United Nations, (1<sup>st</sup> ed. 1996; 4<sup>th</sup> ed. 2008) studies worldwide movements to reform, restrict and abolish the death penalty [R1]. Hood and Hoyle draw on primary research and secondary sources as well as on their own experiences of participating in debates and seminars in retentionist jurisdictions, including China, Taiwan, Trinidad, India, Uganda, Malaysia, the US, and until abolition was achieved, the Philippines. The fourth edition provides new compelling evidence that human rights abuses – particularly, failures to meet safeguards in international human rights treaties – are associated with continued use of the death penalty. This edition engages the latest debates on deterrence, whether capital punishment can ever be used without discrimination or error, the weight that should be placed on public opinion, including that of the relatives of victims, and the problem of devising alternatives to capital punishment [R1].</p> <p>Hood and Hoyle argue in that work that the extraordinary changes over the past twenty-five years can be understood in terms of a new human rights dynamic. That complex process includes: democratization in Europe; freedom from colonial and post-colonial repression in Africa and elsewhere; the emergence of democratically inspired Constitutions in many countries; and, especially, the insertion into international human rights covenants and treaties distinct protocols aiming at worldwide abolition of the death penalty. This ‘new human rights dynamic’ is not only an analytical framework for their research, but a normative position that emphasizes the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment.</p> <p>Much of the recent research by Hood and Hoyle [R2, R3] further argues that the human rights approach is inconsistent with even the most persistent of justifications for capital punishment: retribution and the need to denounce and expiate through execution those whose crimes shock society by their brutality [R2]. Their research also refutes the utilitarian claim that nothing less severe can act as a sufficient deterrent to those who contemplate committing capital crimes [R1].</p>

## Impact case study (REF3b)

Hood and Hoyle demonstrate that, however it is administered, a system of capital punishment invariably fails to meet the standards of equal, effective, procedurally correct, error-free and humane justice that are required by international human rights norms [R1]. Drawing on Hood's reform work in China (conducted under the auspices of the EU), it explores in detail the ways that China may restrict and control the number of executions [R5, R4]. Though empirically grounded, the research is at the same time a route-map for reform, and one aimed at promoting the restriction and, ultimately, abolition of the death penalty. [R4, R6].

### 3. References to the research

[R1] R. Hood & C. Hoyle (2008), *The Death Penalty: A worldwide perspective* (Oxford University Press), 2<sup>nd</sup> edition (4<sup>th</sup> edition, 2014). First edition 1996. Translations: 3<sup>rd</sup> & 4<sup>th</sup> editions – Chinese; 2<sup>nd</sup> edition - Japanese; 4<sup>th</sup> edition - Persian. Particular chapters have been translated and distributed to delegates at EU fora around the world, most recently in South Korea.

[R2] R. Hood and C. Hoyle (2009) 'Abolishing the Death Penalty Worldwide: The Impact of a New Dynamic?' 38 *Crime and Justice: A Review of Research* 1

[R3] R. Hood (2011) 'Capital Punishment in Global Perspective' 3, No 3 *Punishment and Society* 331.

[R4] R. Hood (2008) 'Capital Punishment: the Commonwealth in World Perspective', *The Commonwealth Lawyer*, vol. 17(3), 30-35.

[R5] R. Hood (2009) 'Abolition of the Death Penalty: China in World Perspective' 1 (1) *City University of Hong Kong Law Review* 1-20.

[R6] C. Hoyle (2011) 'Global Restrictions on the Use of the Death Penalty: The New Dynamic of Human Rights', 28 *Criminal Law Review* 1 (published in Chinese)

Much of Hoyle and Hood's research on China has been funded and commissioned by the United Nations and the European Commission as part of their pressure against the death penalty in China.

In 2011, Hood received the Cesare Beccaria Medal from the International Society for Social Defence and a Humane Criminal Policy for his contributions towards the abolition of the death penalty.

### 4. Details of the impact

Research on the death penalty carried out over the past two decades by Professor Hood, and, latterly, also by Professor Hoyle, has generated debates on reform and influenced the thinking and practices of criminal justice professionals and policy makers worldwide, including in Taiwan, Malaysia, Japan, India, Ghana, Uganda, and Trinidad and Tobago. Their most recent, and perhaps most important, influence has been in China. As one Chinese reformer puts it, 'their research has had a significant impact on the debate on the death penalty in China and ... is one of the contributing factors to changing policy;' and 'We use [their research] to help us to present our views when lobbying policy makers or working with other pressure groups to influence policy makers in China.' [C1]

China is cautiously becoming more receptive to research and international influence, but it remains a fairly closed and secretive jurisdiction. Among various drivers for reform, research has proved influential where it is able to reach academics enjoying close relationships with the Party. Several Western academics joined in articulating the international human rights message, but Hood and Hoyle's research is the only international academic work to be widely disseminated among Chinese academics, policy makers and practitioners in both closed and open fora. *The Death Penalty* [R1] has been translated into Chinese (by Liu Renwen and Zhou Renjie) and published by the China People's Policy Study University Press (3<sup>rd</sup> ed. 2005, 4<sup>th</sup> ed. 2010). In a society where the press is closely regulated, this is indicative of official endorsement by the Chinese Government. Another Chinese academic and party member writes,

'Due to the imperfections of the criminal justice statistics and judicial transparency in China,

Chinese academic circles are mainly making the theoretical or normative analyses regarding the death penalty, and there are few empirical researches on the death penalty. To a certain extent, the researches [sic] conducted by Professors Hood and Hoyle can make up that gap in the study of death penalty. Given the excellent research and the international/comparative perspective, many Chinese scholars or institutions, including me and my organization ... have found it useful to cite this research in order to better understand or further illuminate some problems.’ [C2].

Likewise, many international reform groups have come to rely on Hood and Hoyle, especially when working in the Asian context. The Director of the charity Reprieve, reports ‘I am certainly familiar with the research conducted by Professors Hood and Hoyle at Oxford University. (...) we use this to help us develop our approach to various cases. For example we have had two capital cases in China in the last four years...and it has been useful to us in assessing how to proceed in a very tricky legal environment.’ [C3]. The UK All Party Parliamentary Group on Abolition of the Death Penalty likewise notes “Their work has informed [our] visits to these countries and facilitated a dialogue within those governments on adherence to UN treaties, the issues of deterrence and public opinion, and a focus on death row cases.” [C4]. The directors of the Death Penalty Project similarly attest to its value and influence on the ground in the making of the case to Chinese policy makers [C5].

Hood’s work has been reaching China for some time. He was responsible for the UN Secretary General’s reports on the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Quinquennial Surveys of Capital Punishment from 1995 to 2005; a member of the Foreign Secretary’s Death Penalty Advisory Panel in 2000; an active participant in the highly successful UK/China Human Rights Dialogues and the EU/China Human Rights Seminars; a consultant to the Great Britain – China Centre (GBCC) on various projects, including ‘Strengthening the Defence in Death Penalty Cases’ and ‘Moving the Debate Forward’ on the death penalty in China. The research basis of these works drew on various editions of *The Death Penalty*; his engagement with Chinese policy makers later fed into subsequent research, solely, and with Hoyle [C2]. Building on that engagement with Chinese policy makers, Hood was one of just three external experts invited by the Chinese Ministry of Foreign Affairs to take part in the first ground breaking seminar on the death penalty to be held with the Office of the UN High Commissioner for Human Rights, in 2011. This work involved visiting China regularly and presenting his research and engaging in dialogue, arguing for reform, with Supreme Court and high court judges, prosecutors, defence lawyers, government advisors, and leading academics across China. Most recently, he prepared a Report for the European Union, drawing on *The Death Penalty* [R1], examining how further reforms to the death penalty in Asia might be encouraged. The Report was published by the Directorate-General of the European Parliament [C6], was circulated among European policy makers, and commented on in Asia.[C7]

From 2006 to 2009, Hood and Hoyle’s research also reached senior members of the Chinese judiciary, including judges of the Supreme People’s Court in Beijing. [C5] Hoyle was consulted as an expert for the GBCC and as the expert consultant to the 2012-15 EU Initiative for Democracy and Human Rights programme “Use Less’ – Judicial Restraints on the Use of the Death Penalty in China’. There she participated in seminars with senior criminal justice practitioners, academics and policy makers, drawing on the scholarship in *The Death Penalty* [R1] to inform her audiences and promote its human rights message, including, for example, influence on judicial education in China in seminars organised by the Great Britain China Centre. In 2010, Hoyle was invited to lecture to hundreds of judges in training from across China. The lecture was reproduced within the course materials and used regularly in the training of further cohorts of judges, enhancing judicial awareness of the case for reform and progressive restriction of the death penalty.

At a 2009 EU workshop held in Guangdong and Beijing, many delegates accepted that the human rights movement for worldwide abolition amounts to an ‘irreversible trend’. At the meeting, Chinese lawyers, who are not only academics but also members of the Communist Party, including Professor Zhao Bingzhi, from Beijing Normal University, and Professor Mo Hongxian of Wuhan University endorsed Hood and Hoyle’s claim (in *The Death Penalty*) that the international tide and trend towards abolition was ‘exciting’, inevitable and signalled the broad-mindedness of civilised

countries. They argued that abolition had become an international obligation and echoed Hood and Hoyle's calls for restriction, reform and greater openness. These players and others have made clear that their own proposals are greatly influenced by Hood and Hoyle's research [R1, R5] that is now available throughout China [C1, C2].

Reform, aimed at limiting the scope and practice of capital punishment in China, eventually resulted in dramatic changes. The Chinese delegate at the United Nations Human Rights Council declared, in 2007, that 'The death penalty's scope of application was to be reviewed shortly ... with the final aim of abolishment'. Soon after, in 2007, the Supreme People's Court (SPC) of China assumed the power to review every capital sentence handed down by an inferior court. These early declarations gave rise to more dramatic moves in recent years. SPC members confirmed that the number of executions per year has more than halved since this reform; that the SPC had overturned about 10-15% of all death sentences since then, and provisional high courts overturned more death sentences at appeal (also widely reported in *China Daily*, gaining further popular attention). At a 2012 conference a representative of the SPC's Research Department said that the Oxford research had been important in leading to these changes and that the SPC wanted continued academic support for their efforts to further restrict the use of the death penalty. Delegates at the conference, including members of the Chinese judiciary, legal profession, and policy makers, acknowledged the role of the Foreign and Commonwealth Office and the European Union (particularly Hood's research) in promoting these reforms. Further restriction of the use of capital punishment came in February 2011 when China abolished the death penalty for 13 non-violent crimes, thereby reducing the number of crimes punishable by death from 68 to 55. The revised Criminal Law also banned capital punishment for offenders over the age of 75. Important in themselves, these are also emblematic of China's emerging commitment to reform.

According to the Executive Directors of The Death Penalty Project, the research of Roger Hood and Carolyn Hoyle has proved to be 'an essential resource' for the work of organisations attempting to reform the use of capital punishment in China and elsewhere [C5]. Through the translation and dissemination of their careful studies, their direct engagement with policy makers, and their involvement in judicial education, it has proved an important factor contributing to the reform of the death penalty throughout China [C1, C2].

##### 5. Sources to corroborate the impact

[C1] Letter on file from a prominent Chinese academic and reformer confirms that Hood and Hoyle's research is relied on by Chinese groups seeking criminal justice reforms.

[C2] Letter on file from a prominent Chinese academic, institute director and reformer confirms that Hood and Hoyle's research is widely disseminated in China and used by reformers.

[C3] Letter on file from the Director of Reprieve (UK) confirms that Hood and Hoyle's research is valuable to the organisation and specifically informed their strategy in Chinese capital cases.

[C4] Letter on file from an official of the UK All Party Parliamentary Group on the Abolition of the Death Penalty confirms that the group frequently refers to Hood and Hoyle's publications, and uses their research in forming lobbying strategies with policy makers in Asia.

[C5] Letter on file from The Executive Directors of The Death Penalty Project (London) confirms that workshops coordinated by the Great Britain China Centre used research by Hood and Hoyle and were attended by senior members of the Chinese judiciary. Their research had a 'direct impact' on the reduction in use of the death penalty in China.

[C6] European Parliament, Directorate-General for External Policies, *Enhancing EU Action on the Death Penalty in Asia* (Belgium, 2012).

[C7] Taiwan News Online (21 December 2012), 'Taiwan's plan for State Executions regrettable: British criminologist'.