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PEOPLE'S REPUBLIC OF CHINA

Torture - A Growing Scourge in China -Time for Action

1. INTRODUCTION

Zhou Jianxiong, a 30 year-old agricultural worker from Chunhua township in Hunan province, died under torture on 15 May 1998. Detained on 13 May, he was tortured by officials from the township birth control office to make him reveal the whereabouts of his wife, suspected of being pregnant without permission. Zhou was hung upside down, repeatedly whipped and beaten with wooden clubs, burned with cigarette butts, branded with soldering irons, and had his genitals ripped off.¹

This horrific case of abuse is not an isolated case. Every year many people die due to torture in China. Others survive the torture but continue to suffer the long-term effects of the physical and mental traumas they have endured.

Torture and ill-treatment of detainees and prisoners is widespread and systemic in China. Such abuses have been reported in the full range of state institutions, from police stations, detention centres, prisons, to administrative “re-education through labour” camps, internal migrant “custody and repatriation centres”, and enforced drug rehabilitation centres. Torture is also frequently reported as an integral part of the abuse of “non-custodial” control measures such as “residential supervision” and during “special isolation” of officials during investigations into allegations of corruption.

These abuses do not only occur behind closed doors. They have often been perpetrated by officials in the course of their normal duties in full public view, and sometimes as a deliberate public humiliation and warning to others. They are perpetrated by a growing range of officials outside the criminal justice system, including family planning officials and tax collectors.

Chinese law punishes torture and ill-treatment as a crime in some specific circumstances only. Many perpetrators acting in an official capacity, such as part-time, contracted or seconded security staff, are specifically excluded from prosecution for crimes of torture. In practice, even those who can be pursued for criminal responsibility under the law often escape prosecution or receive only light punishments.

¹ See below, section 2.7 for further details on this case.

In recent years, victims of torture have included many people who simply became involved in disputes with officials, questioning their authority or attempting to uphold their rights. Officials have resorted to torture in the collection of fines and taxes. Torture as part of blackmail and extortion by corrupt officials is also frequently reported. Migrant workers, particularly young women, are easy prey and frequent victims.

Reports of torture increase during periodic “strike hard” campaigns against specific crimes when police are clearly given the green light to use “every means” to achieve “quick results”.

Torture and ill-treatment are prevalent during high profile political campaigns such as the crackdown on the banned Falun Gong organization. On the few occasions when officials have responded to the detailed testimonies provided by victims and their families, they have issued contradictory statements or absolute denials of wrongdoing. There is little indication that allegations have been thoroughly investigated. Such indifference may be interpreted as official acquiescence in torture and ill-treatment when it is undertaken during national priority campaigns. It calls into question the government’s sincerity in the fight against torture. All citizens deserve and must be provided with protection against torture.

Torture during interrogation is perpetrated against all types of detainees, including high profile cases. Torture and ill-treatment is also common in prisons and labour camps where prisoners are serving criminal or “administrative” sentences. Forced labour and “acknowledgment of guilt” are central to penal policy, generating an environment where prisoners are often abused. Particularly harsh treatment is inflicted on common criminal prisoners and political prisoners who are deemed to be “resisting reform”. Prison guards often delegate disciplinary duties to selected prisoners or “cell bosses” who are routinely responsible for abusing other prisoners, often at the direction of the guards.

In recent years, the Chinese media has played an increasingly important role in exposing cases of torture and ill-treatment. Some key newspapers no longer wait for an official investigation before reporting a story, and cases where victims and their families have been battling for years for justice against official obstruction and indifference have been resolved following media reporting. There is growing debate on the abuse of power by police, loopholes in citizens’ legal protection, and the horrors of certain types of detention.

This report presents a representative cross section of the many hundreds of cases of torture in China monitored by Amnesty International in the last few years. It examines the reasons why torture continues in China, analysing the legal framework for the prosecution of crimes of torture and the protection of detainees, and describing inadequacies in law and practice. The report presents detailed recommendations about the reforms needed to eradicate torture, based on international standards.

2. PATTERNS OF TORTURE: PERPETRATORS, LOCATIONS AND VICTIMS

2.1) Torture “To Coerce Confessions” During Interrogation

“Torture to coerce confessions” has reportedly been “prohibited” in China since 1958 and has been a criminal offence in some circumstances since 1979 (See Section 4.1 below).² Despite this, it remains commonplace. Torture to extract testimony from alleged witnesses or accomplices, is also frequently reported. The persistent use of torture to extract confessions or testimony has been the subject of commentaries in the Chinese legal press since the mid-1980s. Recent articles have condemned current official attitudes and institutionalized work practices which foster the use of torture.

On 4 June 2000, for example, following the sentencing to death of a policeman for torturing a suspect to death, the *Legal Daily* condemned the prevalence of torture and ill-treatment by officials in China, blaming existing systems for rewarding and promoting police and judicial officials, including the exclusive focus on ‘cracking cases’ at all costs. The article suggested that, in an era of rule by law, more appropriate indicators of official performance might: be how many injustices had been redressed or innocents released in a year. Extracts from this article are cited below [some parts are underlined by us in bold].

“Why have the phenomena of extracting confessions by torture and other illegal handling of cases repeatedly occurred during our country's initial phase of developing socialism ? This is more than just a chronic illness of history or the influence of legal culture, the real problem is that ‘solving cases wins prizes, cracking cases earns merit, no matter what methods are used’. Some of our judicial and enforcement departments are permeated from top to bottom with this ‘concept of perverting the law to gain reward’... For several years, the judicial and enforcement departments’ systems for appraisal and conferring merits, promotion based on meritorious service, fixing targets solely on the cracking of cases, and the traditional methods of finding somebody to fit the crime (*geiren zhizui*) have undoubtedly been the greatest causes of abuse of the law and illegal administration of the law. **When using cruel punishments, threats and bribes is the most effective way to extract confessions, and solving cases and gaining merits is the most effective shortcut to promotion and higher position. Then the key becomes simply to master the limits: to torture without killing, and to extract confessions without maiming the victims... Torture to extract confessions has not been limited to public security police enforcing the law but has sometimes spread to**

² “No extracting confessions through torture” is currently no. 6 of 8 Major Disciplines (*da jilu*) for the police. The others are: 1. Obey leaders and instructions; 2. Abide by policies and law; 3. No leaking state secrets ; 4. No harming the masses interests; 5. No corruption and bribe-taking; 7. No shielding bad elements; 8. No framing good elements.

personnel in the state legal supervisory organs responsible for guaranteeing the lawful rights and interests of citizens. Not only do they use torture to fabricate false evidence and generate miscarriages of justice in their quest to distinguish themselves and receive merits, they do not overlook opportunities to make money from parties to cases either.

Every year, certain law enforcement organs use ‘the number of cases resolved’, ‘the number of people detained’ and ‘the amount of property confiscated’ to gain political advance through praise and commendation from their superiors, and the leaders of many units gain promotion this way. Therefore, what is required is the filing of a case, and whether during investigation or trial, all most probably veer towards pursuing a person’s guilt at all costs. In recent years, in particular areas this has developed to a point where ‘a case is filed first in the absence of a crime, and where there is no crime, one is still established’. Targeting this tendency, could we not turn things around and advocate using ‘the number of unjust cases redressed’, and ‘the number of innocent people rescued’ as the means of gaining political merit? Today, where it seems that perverting the law demonstrates more ability and secures more rewards, this unfortunately is another way of gaining awards - through defending the law.

Guogeli said: "Partiality in the execution of the law is the greatest misfortune in the world" When will those law enforcers who violate the law whilst enforcing it finally respect human life and the masses and not wantonly deprive people of the reputation and dignity that makes them human? This is a problem that everyone involved in law enforcement should consider. Resorting to establishing false cases and fabricating false evidence to entrap people and gain personal merit is the greatest tragedy of the era of rule by law. Those people who are clearly aware of injustices and deliberately, wantonly and perversely commit them, utterly devoid of conscience, are the greatest criminals of a society ruled by law, and if the people do not punish them, the gods certainly will."

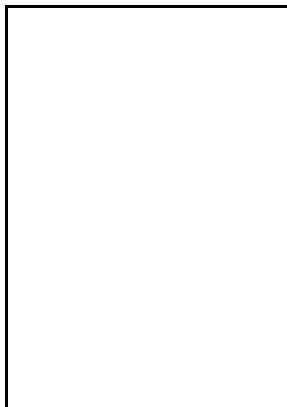
In December 2000, Hou Zongbin, chairman of the NPC Committee for Internal and Judicial Affairs, reported on the findings of National People’s Congress (NPC) teams inspecting the implementation of the Criminal Procedure Law in 12 provinces, autonomous regions and municipalities. He acknowledged the extent and severity of the problems of torture to extract confessions, extended detention, and illegal interference by judges prosecutors and police undermining the work of defence lawyers. Torture to extract confessions “is rather serious in certain places, causing terrible social consequences” and must be “conscientiously dealt with rather than tolerated” he said. Lawyers “have difficulties meeting their clients, accessing court files relating to their cases, and their reasonable petitions have more often than not been rejected”. He blamed the problems on “erroneous understanding of the new law” with many leading officials regarding it as “too advanced” for China. He insisted the problems could not be neglected and that internal supervision and restraint mechanisms must be established and

improved “conscientiously working towards a point where there is a law it is obeyed, enforcement is strict, and lawbreakers are prosecuted”.³

Cases of ‘torture to extract confessions’ reported in China in the last few years include a high proportion of victims were killed or fatally wounded by torture during interrogation within the first 24 hours of detention. Some of these killings have resulted in high profile prosecutions, but punishment is inconsistent and often lenient – it frequently consists of a suspended sentence or simple disciplinary sanction, even when the law provides for heavy punishment. In many other cases there has been no investigation. Where the procuratorate does initiate an investigation, it is often blocked by police and other officials (See section 7.2 below).

In recent months, the Chinese media has highlighted a series of miscarriages of justice which have resulted from tortured confessions and testimony. These have included several cases where the accused were sentenced to death on the basis of false evidence extracted through torture.

In an article entitled “Incomprehensible detention for eight years”, *Southern Weekend (Nanfang Zhoumo)* described a case in Quyang county, Hebei province. By the time the article was published on 23 April 1999, Yang Zhijie had been detained for eight years without a judgement because there was insufficient evidence to prove his guilt. On 27 April 1999, however, the Baoding city Intermediate People’s Court sentenced him to death, suspended for two years. The main evidence against him was his “confession”, which Yang Zhijie testified in court had been extracted from him under torture. The court, however, rejected the allegation of torture solely on the basis of a simple written denial by the Quyang county police that they had forced Yang to confess under torture. The newspaper article, however, cited one police officer as more or less admitting that Yang had been tortured. It also pointed at the lack of evidence and inconsistencies in the case against Yang.



Zhuo Xiaojun (c. private)

While the Chinese media is playing an increasingly important role in reporting miscarriages of justice, it is still highly selective and never reports allegations of torture in ‘political’ cases, despite the high incidence of torture in these cases too.

In one case examined by Amnesty International but never reported in mainland China, a man who has been detained for more than ten years and sentenced to death twice on the basis of contradictory confessions extracted through torture.

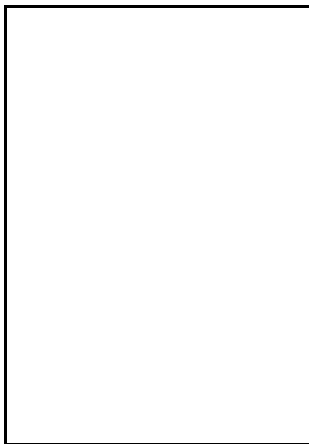
Zhuo Xiaojun, a 34 year-old Hong Kong citizen detained since 1989, was sentenced to death for the second time

³ Xinhua News Agency and AFP, 28 December 2000.

on 14 January 2000 after a blatantly unfair trial. He was convicted of “intentional killing” by the Fuzhou city Intermediate People’s Court, Fujian province, in relation to a fight outside his family home in Changle county, Fujian Province in 1989. During the fight, three people were wounded, two fatally. Although nearly 30 people were present, Zhuo was the only one to be pursued. None of the witnesses to the fight testified at the time to seeing Zhuo stabbing anyone or even carrying a knife, but a relative of one of the initiators of the fight later testified that Zhou had committed the stabbing.

Court documents show that the main evidence against Zhuo was his “confession” - which Zhou testified had been extracted under torture. According to his testimony, for the first 33 hours in police custody, Zhuo was suspended from handcuffs attached to the bars of a door with his feet locked in 50kg shackles, and was kicked, beaten and attacked with electric batons whenever he failed to follow the script of the “confession” prepared by his interrogators. Zhuo later retracted his “confession” when he met procurators for the first time, but they reportedly failed to record his allegations of torture, even though procuratorate staff had seen him suspended from the door, and he showed them his wounds, the scars of which reportedly remain visible 10 years later. According to his lawyers and relatives, his alleged “confession” is contradicted both by forensic evidence and witnesses’ testimony, but neither this nor the allegations of torture were taken into account by the court during the trial.

Zhuo was tried for the first time and sentenced to death by the same court in September 1990. On appeal in 1992, Fujian provincial High People’s Court overturned the conviction stating the “facts were not clear”, but instead of ordering Zhuo’s release, it returned the case to the original court for a retrial. The new trial began in January 1993, but was adjourned without a judgement for seven years, apparently for “supplementary investigation”. No new evidence was presented at the second trial in January 2000. Fujian Province High People’s Court heard Zhuo Xiaojun’s appeal on 28 November 2000 but did not announce their decision. In the two years between his first conviction and successful appeal, Zhuo was reportedly held with his hands and feet shackled together at all times. He is believed to have been shackled in a similar way since his second conviction. His family has never been permitted to visit him in detention, but since 1992 has been instructed to pay for medication for his hepatitis, bleeding stomach and ulcerating skin.



Zulikar Memet (c. private)

In another case reported to Amnesty International which is similar to those cited above, Zulikar Memet, an ethnic Uighur from Gulja (*Yining*) city in the Xinjiang Uighur Autonomous Region (XUAR), was sentenced to death in July 1999 after telling the court his “confession” had been extracted under torture.

Tried before the Ili Prefecture Intermediate People’s Court together with other Uighurs accused of involvement in “separatist” activities, Zulikar Memet reportedly denied all the accusations against him,

stating he had been tortured to force him to “confess”. He showed the court signs of torture, including missing finger nails which had been pulled out during the torture sessions. The court, ignored the allegations and sentenced him to death. As far as is known, the allegations of torture were never investigated despite international appeals to the authorities calling for an impartial enquiry. Zulikar Memet was reportedly executed on 14 June 2000. His parents were denied access to him throughout his detention since April 1998 and learnt about his execution after it had taken place.

In the XUAR, as in Tibet, few political prisoners escape ill-treatment and torture, which is particularly harsh during the early stages of custody and interrogation. Many report being beaten with whatever implement a guard or interrogator can find to hand including gun-butts. Prisoners are often beaten around the head, or kicked in the stomach, lower back and genitals. Some, wearing metal helmets, have had their heads beaten against walls. Kidney and liver ailments are common among prisoners as a result of kicking and beatings by prison guards aimed specifically at these sensitive organs.

2.2) Torture During “Strike Hard” And Other Campaigns

During periodic “strike hard” anti-crime campaigns, police are encouraged to use “every means possible” to show results in cracking down on specific crimes. This frequently leads to increased use of torture and an upsurge in violence. For example, several recent incidents where members of the public were shot at and killed by the police have been linked to provincial and local campaigns against car theft.

A young couple driving through Yonghan township, in Guangdong province were shot at by police in the early hours of 15 January 2000 after passing a makeshift barrier erected by plain-clothed police who later claimed that they were acting on an internal public security directive to shoot anyone who did not stop. (*Urumqi Wanbao* 1.2.2000). In Henan province, a businessman from Shandong province, and his bodyguard were killed when police reportedly opened fire with machine guns on their car when it stopped at a tollgate. They had earlier been flagged down by a policeman accompanied by two casual employees, none of whom wore uniform or presented identification. When arrested, the police claimed they were a provincial anti-car theft group on a “heightened state of alert”. (*South China Morning Post*, 21.6.99, and other sources).

Many reports of illegal detention and torture have been linked to periodic Strike Hard Campaigns against the “three evils” (pornography, gambling and drugs). Some police implicated in such cases have asserted that they were acting under orders from their superiors to use the opportunities for profit (see below, section 2.5).

Recent detailed reports of miscarriages of justice overturned after several years of campaigning reveal the extent of political intervention and disregard for normal procedures during Strike Hard campaigns.

In November 1998, burglary charges against six juvenile suspects were withdrawn by Shuangliao City Public Security Bureau, Jilin Province. The juveniles had been “investigated” for three years and detained for over 440 days. Five were pupils at a local middle school where four burglars armed with knives had stolen 1,092 Yuan and a watch from pupils on 2 September 1995. The burglary coincided with a county Strike Hard anti-crime campaign, and county leaders ordered the police to mobilize their best force to crack the case fast.

Police detained 17 year old Wang Hongtao on 16 October 1995. They stripped him, whipped him repeatedly and threatened to light a firecracker on his penis. He was denied food water and sleep for three days. The police then told him he would be treated leniently if he repeated a “voluntary confession” they rehearsed with him. On the basis of this “confession” the police detained six other juveniles, several who had not been in the city on the night of the crime. When one was escorted to the police by his parents to explain the error, he too was detained and beaten until he repeated elements of Wang’s confession.

The officers who “cracked” the case received merit awards for their speedy results. When the suspects retracted their confessions, the officers blamed a conspiracy between the families and other police officers. When the procuratorate returned the case several times for further investigation, local leaders intervened, insisting that the policy of “quick handling and serious punishment” be followed.

Defence lawyers argued at the trial in June 1996 that there was no direct evidence linking any of the suspects to the crime, only the confessions which were contradictory and full of loopholes. They sought the approval of the provincial lawyers association, the management division of the department of justice and the provincial politics and law committee before presenting a not guilty plea and requesting the defendants’ immediate release. Instead the case was returned to the police, via the city procuratorate for further investigation. In April 1998 after investigations by the city People’s Congress and Party, the case was finally overturned.

Torture and ill-treatment is prevalent during high profile political campaigns such as ongoing crackdown on the banned Falun Gong organization. Reports continue of deaths of detained practitioners following torture and extreme ill-treatment (see below, section 3, Death in Custody). Whereas officials responsible for deaths in custody during normal police operations may be investigated and prosecuted, in all cases where the victims were Falun Gong practitioners, the government has denied any wrongdoing, even in the face of multiple eye witness testimonies. On 7 October 1999 in reply to an urgent action by the UN Special Rapporteur on Torture, the Government reported that “no beatings or ill-treatment had occurred as a result of the coercive measures taken” against the Falun Gong and that allegations of beatings, ill-treatment, torture and house arrests were “sheer fabrications unrelated to the facts”⁴. In May 2000 Chinese

⁴ E/CN.4/2000/9 para.231, 2 February 2000.

government representatives told the UN Committee against Torture that: “In the course of dealing with Falun Gong practitioners engaged in illegal activities, the people’s police and judicial officers have acted in strict accordance with law. There is no such question as extensive arrests and torture”. Such blanket denials of wrongdoing, with no indication that allegations have been thoroughly investigated, are unconvincing, particularly when practitioners who have sought to publicize cases of torture have suffered severe reprisals, including detention for “re-education through labour” (see below, Section 7.4).

2.3) Torture By A Growing Range Of Part-time Police “Defence” And “Security” Teams

A growing range of officials are being cited as perpetrators of torture, including administrative police, judges, court clerks and court police; village and party leaders, members of Mutual Defense Teams (*lianfang dui*), and many types of security official (*bao'an*) outside the regular police force but seconded, contracted or working part time for them. These have included Factory Administrative Management Forces (*xingzheng guanli zhifu*), and Municipal Supervision Brigades (*chengguan jiancha zhongdui*).

In June 1997 members of a public park environmental team in Wu City, Xinjiang XUAR, were ordered to pay medical costs and compensation for damaged clothing totalling 400 Yuan to a man they had detained and beaten with an electric baton for ignoring a sign not to walk on the grass and refusing to hand over his camera in lieu of a fine. The officers clearly did not believe their actions were inappropriate as they launched an unsuccessful counter claim for the fine and compensation for damage to their uniforms. (*Xinjiang Fazhibao*, 6.6.97).

On 7 November 1998, an 18 year old migrant worker from Jiangxi province who had been working in a Shenzhen handicrafts factory for only 3 days, argued with the factory security guards over being reassigned to an overcrowded bedspace. The security guards dragged him to the roof of the five storey building, beat him up and reportedly pushed him off, killing him. Reports claimed this was the fourth such killing in Shenzhen in 1998. (*Xinmin Evening News*, 15.1.99).

In March 1999 the authorities in Guangzhou, Guangdong Province, admitted that less than 1/6 of 220,000 security officials employed in the city were considered qualified or trained. Against regulations, they had frequently assumed the law enforcement functions of the regular police, and had engaged in violence. There was an urgent need for local legislation to regulate them (*South China Morning Post*, 31.3.99).

In 2000, Shenzhen media exposed a series of cases where security officials working in local businesses had beaten, tortured and even killed customers who complained about prices or were suspected of theft. One police station revealed that in its district in one year alone it had dealt with over 100 such cases. On 2 August 2000, Shenzhen City National People’s Congress member and employee of the city consumers association, Yang Jianchang, appealed to the authorities to take decisive action and resolve cases

including the killing of Du Yongfu on 30 June 2000. Du and five others were attacked by hotel security guards wielding police batons and iron bars after a dispute over a bill. (*Ming Bao*, 3.8.00).

Mutual Defence Teams are often implicated in torture cases. Designated as “Mass organizations for the protection of public order” they operate under the leadership of government and Communist Party organs. Their function is to assist the regular police in “education” and crime prevention work through patrols. In theory they have no independent power to implement the law, and should not carry out administrative punishments for the police. Relevant regulations reportedly forbid them from engaging in corporal punishment. A judicial interpretation has excluded them from the remit of the crime of torture by deciding that they do not constitute “judicial or state personnel” (see Section 4 below). Commentaries from several provinces during 1998-99 admitted that locally they were out of control. (*Hubei Nongminbao* 17.10.98, *Fazhi Wencunbao* 28.1.99). Below are some examples of abuses perpetrated by such teams.

On 30 October 1998 a migrant worker Quan Longyang who mistakenly entered the woman’s cubicle in a private shower facility in Chaoyang district, Beijing, was beaten up by the local mutual Defense team who called him a hooligan and demanded a fine of 5,000 yuan. Their leader reportedly told the team to do what they liked with him, and he was taken to their compound, beaten severely about the head, kicked repeatedly and left handcuffed to a bicycle overnight in freezing temperatures until his girlfriend was able to raise the money to secure his release. Quan later required emergency surgery to his head, and was hospitalized for 35 days. He initiated an action under the administrative litigation law for compensation. The major culprit, when challenged responded: “Yes I beat people, what of it?” (*Fazhi Wencunbao*, 28.1.99).

In November 1999 three migrant girls aged 17 and 18 were illegally detained, falsely accused of prostitution and tortured in a sub-police station in Yueyang City. The City People’s Congress investigation into what they termed a “typical case of police illegality and bad discipline - using non-police personnel to carry out the law, harming the innocent” revealed that the City Public Security Bureau had issued numerous directives ordering the disbanding of Mutual Defence Teams, and forbidding the detention of suspected prostitutes and gamblers from other jurisdictions. The sub-police station appeared to have complied with the directives within the specified period, but instead had continued as before, simply changing the name of the Mutual Defence Team to “household registration joint management personnel (*huji xieguan yuan*). The culprits were punished with 15 days administrative detention, and the police officer in charge was given an administrative demerit. (*Minzhu yu Fazhi* 17,2000).

Mutual Defense Teams were frequently reported to be the perpetrators of torture and ill-treatment against members of the Falun Gong (FLG), in the immediate aftermath of the ban on the spiritual group in July 1999. For example, in Hunan Province on 25 July in Anhua county, Ms. Li Juhua, a FLG practitioner at the Meicheng Town practice site, was allegedly apprehended by the local Mutual Defence Team and raped by members of the team, suffering severe mental trauma as a result. On 26 July in Xiangtan city, Mr. Yang Junhua, the contact person of the FLG Shaoshan practice site in Xiangtan City,

was allegedly beaten and injured by members of the No. 7 Joint Defence Team of Xiangtan City. There is no indication that these serious allegations have been properly investigated.

2.4) Torture To Extract Taxes, Fines And Defaulted Loans

Torture and ill-treatment are often perpetrated as part of efforts to extract taxes or fines levied for administrative offences. This is particularly reported during periodic crackdowns on lucrative “illegal” but frequently tolerated activities such as gambling.

In February 1998, in one of a number of violent raids on local businesses, members of Shenzhen Municipal Management team stormed into an office to collect local taxes brandishing steel bars. They beat office workers over the head until one lost consciousness. Responding to local press enquiries, their supervisor shrugged off the incident as a bit of “over heated impetuosity”. (*Yangcheng Wanbao*, 26.3.98).

In March 2000, the party secretary of Yanglin Guanli District, Xiaogang Township, Hubei Province, was sentenced by Xiaonan District Court to two years “control” for illegal detention and was ordered to pay medical expenses and direct economic losses of 1,560 Yuan to his victims. On 23 June 1999 Party Secretary “Li” had reportedly organized 10 other cadres to join him in a “summer rectification” to collect state taxes from defaulters. They detained several villagers, ordered them to prostrate themselves and ferociously beat and kicked them to extract payment. (*Hubei Fazhibao*, 27.3.00)

On 13 April 1998, three men including a security worker (*zhian duiyuan*) contracted to Yongfeng Township Police Station, Hunan Province, beat up security guards at the gate of a joint venture factory and burst into the dormitory, demanding that workers playing cards hand over their “illegal gambling” earnings. The manager asked for their identification documents, and called the police station. An hour later, the vice director of Yongfeng Township Police Station arrived with two jeeps full of security workers. He fired his gun in the air, warning workers against “interfering with official duty”. The group, brandishing iron bars, reportedly smashed windows and products in the warehouse. They reportedly beat up the workers before detaining them at the police station and threatening them with electric batons to force confessions of gambling. It is not known what action if any was taken after this incident. One month later, the *Legal Daily* reported that no one was taking responsibility. (*Legal Daily*, 18 .5.98).

Several legal interpretations and internal documents have been issued by the courts and procuratorate in an attempt to regulate the activities of court officials who become involved in the lucrative sideline of enforcing defaulted loans. All relevant officials are required by law to withdraw from cases in which they have a personal interest. However court officials persistently collect debts for friends, resorting to torture and ill-treatment when resisted. Many victims have been prominent citizens, including members of local People’s Congresses, who as “democratic supervisors” of law enforcement are supposed to be additionally protected against arbitrary detention.

Sun Haibing, the former vice president of Guanyun County People's Court, Jiangsu Province was sentenced to 18 months imprisonment in July 2000 for illegally detaining, beating and corporally punishing parties in several civil cases since 1997. Sun either detained them in the absence of any legal procedures, or used the court's power of summons before handcuffing and assaulting his victims in the courtroom. (*Chongqing Fazhibao*, 28.7.00)

2.5) Torture And Ill-treatment Of Alleged Prostitutes And Their Alleged Clients

Many women have been tortured, including through rape, sexual abuse and humiliation, by police who accuse them of prostitution. Police have the power to levy an instant fine on suspected prostitutes, they may also send alleged prostitutes and their clients for up to two years' administrative detention for "Custody and Education" (*Shourong Jiaoyu*). The police choose to detain, ill-treat and torture the women in order to extract lists of alleged 'clients' to blackmail. Alleged 'clients' who maintain their innocence or refuse to pay fines have also been tortured. Many alleged prostitutes and clients have died in custody as a result of torture. Others have committed suicide shortly after release believing their lives have been ruined by the stigma of these allegations and the degradation of the abuse they have suffered.

Such practices have become so common that in recent years they have been revealed as the major source of income for many police stations in different areas. Cases have been consistently reported over the last three years in almost every province in China, from Inner Mongolia to the Xinjiang UAR, Shaanxi province to Shanghai. Many of the worst examples have been reported during periodic "Strike Hards" against the "six evils" or "three evils" with superior officers advocating whatever methods get "quick results".

Many victims in these cases have waited years for investigations and restitution. Several women have reportedly been required to undergo repeated "virginity tests" in order to disprove the police case. Whilst the male victims are frequently those the police believe are wealthy, the women most vulnerable to such abuse are migrant workers. Marginalised in their host community, they are far from relatives who might risk challenging the police to defend them. They are easy prey, as simple allegations of prostitution or "loose behaviour" may easily lead to dishonour and ostracization in their home villages and possible loss of employment and with it the entitlement to remain in the big cities.

In September 1999 the director and deputy director of Qinja Township Police Station, Xinhua County, Hunan Province were convicted of illegal detention and sentenced to one year imprisonment and six months imprisonment respectively. Both sentences were suspended for one year. Between March 1997 and June 1998 they had illegally detained 42 young women who worked in other provinces, handcuffing, kicking beating, humiliating and threatening them in order to extract confessions that they had engaged in prostitution whilst working away from home. Several of the women were disowned by their family as a result. The director had stated to his colleagues that this was the

best way to earn money for the station. Contesting the charges, the officers had claimed that procuratorate guidelines stated that illegal detention cases should only be filed when they involved innocent victims. They claimed they had the administrative authority to undertake such punishment. (*Minzhu yu Fazhi Huobao*, 10.8.99).

In a similar incident in Xinmi City, Henan Province, on 17 May 1999, the head of the Public Security Bureau Communication Department, a police colleague and a security guard apprehended a young woman at her salon and detained her at their office. They demanded she admit to prostitution and beat her with police batons, opened her blouse and shocked her with an electric baton on the chest and thigh, threatening to do the same to her vagina. When she pleaded with them, they stuffed a sock in her mouth, sexually assaulted her, kicked and beat her. Before they released her on bail, they reportedly forced her to sign a guarantee, threatening that if she revealed what had happened, they would send her to Re-education through Labour. They reportedly told her they had been lenient to her, that with women from other towns, they would apply electric shocks to their vaginas until they confessed. The victim later revealed that, if she had been able to hide the wounds on her body from her family, she would never have reported the attack to the authorities. (*Jiangxi Fazhibao*, 16.3.2000).

On 3 July 2000, in Chengxiang Township, Fuquan City, Guizhou Province, a 25 year old hairdresser from Sichuan, Naxi Minority, was apprehended in her salon by two policemen who failed to produce any documents but forced her into their jeep. They drove her 40 km to Shanqiao Village Police Station where they identified themselves as the police chief and an officer of the station. They then interrogated her for several hours, accusing her of being a prostitute for several named clients. When she vehemently denied the charges, her hands were cuffed behind her back and she was forced to kneel whilst they beat her legs and arms with wooden boards. She was then suspended by a rope until she agreed to sign a pre-prepared statement. She testified that late that night, one of the officers raped her at gunpoint in his office. The next day, alerted by her family, Fuquan City officials arrived to demand she be transferred to the city, but the police chief refused to comply. Only when the police, procuratorate, courts and others sent representatives on the third day was she finally released, having been illegally detained for nearly 50 hours. (*Xinkuai Bao*, 2.8.00).

2.6) Torture And Ill-treatment Of Alleged “Vagrants” (*Mangliu*) Or The “3 Withouts”(*Sanwu renyuan*)⁵

Every year, millions of people, including children and the mentally ill, are detained within the “Custody and Repatriation” (*shourong qiansong*) system, ostensibly awaiting repatriation to the locality where they are registered as residents. The system, controlled by the police and the Civil Affairs departments with no effective external supervision, is considered a welfare rather than a judicial or punitive measure. A 1982 State Council statute, supplemented by provincial and local regulations, provides for almost indefinite detention. Detainees may appeal

⁵ The “three withouts” refers to people who have no registration papers, no job or no fixed abode.

administratively, but generally only to the departments managing the facilities. Recent exposes have revealed that detainees are held in extremely overcrowded, insanitary conditions with insufficient food, and may be required to labour for many hours. Facilities are poorly managed. Beating and other torture perpetrated by guards, cell bosses and other detainees is reportedly common. There have also been growing reports of the abuse of the system to detain a wide range of people who are only released after large cash payments.⁶

In July 1999 a university graduate described how he had been caught up in the “custody and repatriation” (C&R) nightmare on 4 May whilst visiting Houjia Township, Chongming County, Shanghai. He could not find his guesthouse, and fell asleep in the local police station whilst waiting for their assistance. He was detained, labeled a “vagrant” and transferred to the county C&R Station, even though he was carrying all his identity papers and staff had contacted his employer in Beijing. Staff refused to process his appeal against detention, saying they were too busy repatriating 500,000 people out of Shanghai city. Before his friends could arrive to secure his release, he was transported to Shanghai City C&R station where he was required to sign a form freeing the C&R stations from responsibility for whatever happened to him in detention. From there he was forced onto a train out of Shanghai to Xuzhou C&R Station, and was beaten around the head with a baton for moving too slowly with his luggage. In Xuzhou he not permitted to contact his friends and was detained in a cell with around 40 men sharing one 10m wooden bed board, with no toilet or washing facilities. At the station, management functions were reportedly mainly delegated to fellow detainees or “cell bosses” who beat, kicked and robbed him and forced him to crouch with his hands on his head for many hours. Station officials reportedly only intervened to conduct periodic searches, demanding money and confiscating any remaining property. When he fell sick ill, he was simply transferred to a ward littered with mounds of excrement. After 12 days, he was released into Xuzhou, sick, with no money and no way to contact his family. (*China Youth Daily*, 24.6.99).

The case of a woman, gang raped in July 1999 whilst wrongly detained as a ‘vagrant’ in a psychiatric hospital, further illustrates some of the dangers of the current Custody and Repatriation system, including the extensive and largely unsupervised powers of the police, and the difficulties for victims seeking redress. The woman has so far failed in her attempt to file a civil suit for damages against the police and the hospital.

The woman from Shaoyang, Hunan Province had her luggage stolen on arrival in Guangzhou on business on 11 July 1999. The police who detained her claimed her distressed behaviour convinced them she was a mentally-ill vagrant. Although she protested and reportedly produced all necessary identity documents, they forcibly sent her to Zengcheng Kangning Hospital. This facility is used by provincial Public Security, Civil Affairs and Health Bureaus to supplement C&R centres, holding all sick, disabled or mentally ill “vagrants” for “cure” before repatriation.

⁶ For a detailed description of the system see “Not Welcome at the Party: Behind the Clean-up of China's Cities-a Report on Administrative Detention Under “Custody and Repatriation,” Human Rights in China, September 1999.

The woman alleged she was detained in a room shared with dozens of men and was raped and threatened with death in front of many witnesses. The first official to speak to her, the next morning, later told reporters he informed her family of her whereabouts only out of sympathy when he realized she came from his home district. Her family was informed to come to the hospital to pay "treatment fees". Before her husband arrived the next morning, the woman was raped again. She had to pay hospital officials a 500 Yuan fee and 200 Yuan bribe before she was permitted to leave. The couple immediately reported the rape to the local police in Zhenlong township, who they claim took no record of their complaint, but accompanied them to the hospital where the woman identified 8-9 suspects. The police reportedly failed to collect material evidence identified by the couple and disregarded their objections to forensic medical tests being performed by the hospital itself. The woman alerted the police again when she noticed several of the suspects leaving the hospital immediately after she had identified them.

On 27 July 1999, the couple made a complaint to Zhuhai City procuratorate, who passed the case to Zengcheng City procuratorate. Zengcheng City Public Security Bureau (PSB) then claimed its investigations revealed that the incident had not occurred. Fearing inaction, the couple immediately made complaints to Guangzhou City and Guangdong province procuratorate and police. When they contacted the local media a year later, the couple had still had no feedback from any of these departments.

In July 2000 the vice director of the hospital admitted to reporters that conditions there for the detention of migrants were very poor. With three departments sharing responsibility, running costs were "difficult to resolve". Men and women were being held in one crowded area with no locks on rooms, a shared bathroom, no overnight staff, and no security guards. Another vice director claimed that during investigations, without following any procedures, police had apprehended many who had arrived at the hospital after the incident, whose whereabouts were still unknown.

In November 1999 Zengcheng City procuratorate informed the woman of her right to appoint a representative to pursue a civil suit connected with the prosecution of one rape suspect, Li Wenming. She was immediately approached by Guangzhou City PSB petitioning department and Liuhua PSB Sub-bureau with 2,000 Yuan in apology. She initiated a suit against the hospital, Liuhua PSB and the defendant Li Wenming for 20,104 Yuan compensation for direct economic loss and 1,000,000 for mental harm.

On 6 Jan 2000 Zengcheng City court determined that it was not appropriate to seek compensation from the police or the hospital. An appeal was rejected. On 17 May, Li Wenming was sentenced to four years imprisonment but the woman had not been informed of the trial so could not present her case for compensation. To date none of the other suspects has been prosecuted, even though the case file reportedly includes testimonies admitting to rape or endorsing the woman's version of events.

After details of the woman's struggle for justice were reported by *China Youth Daily* on 26 July 2000 there was a public outcry, and provincial authorities appeared to take the case more seriously. The authorities have since announced that one policeman has

been fired and arrested on charges of dereliction of duty, and another demoted. Guangzhou City deputy party secretary was appointed to head an investigation and two hospital workers and a forensic doctor who provided false reports are being investigated. (*Zhongguo Xinwenshe* 22.9.00, *China Youth Daily* 28.7.00).

2.7) Torture During The Implementation Of The Birth Control Policy

Amnesty International has long-standing concerns about human rights violations, including torture and ill-treatment, committed during the implementation of China's family planning policy.⁷ Responding to questions from the UN Committee against Torture in May 2000, Chinese diplomats stated: "China has all along adhered to the principle of combining state guidance with people's voluntarism and is firmly opposed to any forcible order, coercive measure in any form. It is true however that some family planning functionaries in the grass-roots have adopted a simple and rude approach...Any case of rude and rough approach by family planning functionary, once discovered will be resolutely checked and rectified".

Numerous public reports from China indicate that local annual birth quotas still play a prominent part in the policy, upheld by stiff penalties as well as rewards. Whilst exceptions have recently been made in some municipalities, pregnancy without permission and so "outside the plan" may still be punished by heavy fines and dismissal. Officials may also be demoted, fired or fined for failing to uphold the plan and quotas. With pressure to perform, and popular opposition to enforcement, officials continue to resort to violence, torture and ill-treatment including physically coerced abortions and sterilizations. In recently publicized cases, some officials who have engaged in extreme violence have received only suspended sentences.

In April 1999, a justice office (*sifasuo*) director in Guyi township, Hubei province, was given a suspended two year prison sentence for illegal detention. He had made an agreement with the township birth control official to collect outstanding fines for violation of birth control regulations in return for 20 percent of the proceeds. The birth control official reportedly encouraged him to collect the fines however he pleased. He reportedly illegally detained defaulters in the justice office for up to five days, and led the department's contracted workers (*yaoyong ren yuan*) in beating and physically abusing the victims until they handed over "deposits". (*Xizang Ribao* 16.4.99). It is not clear whether the birth control official was punished in any way.

On 26 May 1999 the director of family planning and the vice mayor of Dong Lin township, in Eastern Sichuan province, reportedly arranged for the illegal detention of several people who they believed had humiliated them by evading or resisting family planning measures. Already fined 8,000 Yuan for having a second child, Gou Tiezhong, Gou Zhongyin and Li Bin were detained in the town hall and beaten up by around 10

⁷ See Amnesty International, "PRC - Women in China: Detained, Victimized but Mobilized", July 1996, AI Index: ASA 17/80/96 p.26-28; "PRC - Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region", 21 April 1999, AI Index: ASA 17/18/99, p 51-53.

members of the Family Planning office and the Township Comprehensive Security Office (*zongzhiban*). The two officials reportedly forced Gou Tiezhong to kneel, beat and kicked him ferociously and whipped him across the back with electric cable. They then forced Li Bin to beat another detainee, threatening him when he did not beat hard enough. When Gou Zhongyin refused to kneel, protested his innocence and threatened to report them, seven of the officials forced him to the floor and beat him on the head, chest, back and genitals until he collapsed. He needed several weeks hospital treatment. The three were not released until their families paid their attackers at least 300 Yuan each in “payment for lost work” and “expenses”. The officials attempted to cover up the incident, but two were eventually sentenced to one year suspended for 18 months and to six months suspended for one year. A third defendant was exempted from criminal punishment for confessing. (*Sichuan Fazhibao*, 25.3.00).

Such cases most frequently come to public attention when large crowds of enraged villagers petition or besiege government offices demanding an end to excessive measures by birth control officials and justice for victims.

A series of large scale confrontations between family planning officials and villagers took place in several locations in Guangdong Province in 1997 and 1998, including Gaozhou and Yunkai districts, and Fengkai County. Several became violent and were quelled by the People’s Armed Police. Subsequently the provincial birth control committee insisted that abuse of authority by birth control staff which led to injury or damage to property would not be tolerated, and all allegations would be investigated. However, whilst several demonstrators were sentenced to prison terms, it is not clear if any officials were sanctioned in any way. On 8 July 2000, a Hong Kong TV station revealed that birth control officials in Nanhai County, Guangdong Province, were still operating illegal custody facilities with impunity, detaining women pregnant outside the plan and relatives of fine defaulters for long periods in poor conditions to enforce compliance with their directives.

A similar demonstration in Changsha, Hunan province, in 1998 reportedly followed the death of a peasant brutally tortured and mutilated whilst detained by local birth control officials.⁸

Zhou Jianxiong, 30, from Jiumu village, Chunhua township, and his wife Jiang Lianhui, 28, had a nine year old son. In January 1998, Jiang moved to Guangdong to find work, and Zhou to Changsha, leaving their son with his mother. Rumours developed that Jiang had left because she was pregnant outside the plan. Jiang had a tubal ligation in November 1997, but the township birth control office still sent officials to compel Zhou to return from Changsha and produce his wife for examination. They refused to believe he had no way to contact her, and, in early April, detained him for 10 days of beating torture and interrogation. When his mother arrived with her grandson to plead for his release she was detained for six days and was reportedly made to stand still, listening to her son scream as he was tortured in the room above.

8 See Human Rights in China publication - China Rights Forum, Spring 2000, pp. 46-48 for full account.

On May 12 the officials released Zhou, asking him to complete an application for permission to have a second child, claiming he was entitled to this concession as the last surviving male of his lineage. The next day Zhou reportedly returned to plead with the officials that he really had no way of contacting his wife. He was detained again, denied food, hung upside down, whipped and beaten with wooden clubs and burned with cigarette butts. He reportedly became doubly incontinent, his body covered in excrement. The officials reportedly then branded his lower body with soldering irons, tied wire around his genitals and ripped off his penis. Zhou died on 15 May 1998. Superior officers were informed of the death and a public statement was released claiming Zhou had been sent to hospital. When his relatives could not find him, they demanded answers. Party cadres, then visited the family, proposing 20,000 Yuan in settlement. Many citizens had experienced torture, detention and extortion at the hands of the birth control office, and by 20 May many thousands had reportedly gathered in Chunhua township to demand punishment and justice, faced by police and army units. In the afternoon, the mayor's announcement of 20,000 Yuan compensation and administrative detention for 15 days for the culprits reportedly enraged the crowd, who proceeded to break through the police lines in an attempt to march to Changsha and petition the provincial government. Dozens were arrested in the melee, but those who arrived in Changsha, shouting for justice for Zhou attracted attention. The settlement was revised to 160,000 Yuan compensation and prosecution of the suspects. The principal offender was eventually sentenced to death, suspended for two years, but after a year he was reportedly permitted to serve his sentence at home.

Public outrage and reports to local newspapers disclosed the brutal battering and killing of a new born "out of plan" baby by birth control officials in Caidian village, Hubei Province on 15 August 2000.

Liu Juyu, a former medical practitioner, reportedly rescued the baby boy from the cess pit of a men's public toilet behind the village government offices. Liu took the baby to the local clinic to remove his umbilical cord and administer vaccinations. Liu was reportedly feeding the baby on her doorstep when 5 birth control officials approached, grabbed the baby and threw him on the ground. In front of several witnesses, they reportedly kicked the baby repeatedly as he convulsed on the ground, then took him away to a paddy field where they drowned him, witnessed by other villagers. Birth control officials had reportedly brought the impoverished mother, nine months pregnant with her fourth child, to their office early that morning and had injected her to kill the baby. When the baby was born alive, they had reportedly instructed the father, Huang Qiusheng, to get rid of him. (*Nanchang Wanbao* 19.8.00, *Huabao Wang* 19.8.00, *Ming Bao*, 20.8.00). Responding to reports of the case, Chen Shengli, Director of the State Family Planning Commission's Information and Education Department said: "Clearly the educational level of these officials was quite poor. They didn't understand the law...But unfortunately they killed the infant, and there isn't much we can do now to change the outcome." (*South China Morning Post*, 8.11.00).

2.8) Torture of the Mentally Ill and Misuse of Psychiatric Hospitals

In spite of regulations prohibiting the detention of the mentally ill in penal institutions, former prisoners have testified to being detained with mentally-ill prisoners. Such prisoners are among the most vulnerable to attack and bullying by “cell bosses” and other prisoners. Several recent reports have revealed gross ill-treatment of the mentally ill within the public security system.

On 28-29 March 1998, the *Yangcheng Evening News* exposed the case of Deng Qilu, a 43 year old man who had been imprisoned without charge for nearly ten years, and kept in a steel cage 2m in length and little more than 1m in height and width since June 1995. Deng Qilu had reportedly been imprisoned for 3 years in 1984 for assault. On his release he had been diagnosed as suffering from “periodic mental illness”, and had been involved in several violent incidents. In May 1989 he was arrested, accused of stabbing a public security official, but never charged. Two months later Zhanjiang City Psychiatric Hospital and judicial psychiatric evaluation organs reportedly determined that Deng had “suffered from schizophrenia for 16 years which had not been effectively treated, becoming chronic, especially as he has been violent many times, seriously threatening the public’s life and safety, long-term forcible detention (*jiaqiangjianguan*) is recommended to avoid future violence and injury”. Deng had since been detained at the Xuwen County Detention Centre. Reportedly, after assaulting fellow prisoners he was held in solitary confinement where he continued to attack those bringing him food. In June 1995, when the detention centre was being repaired, the cage was constructed and thereafter Deng was confined in it, outside the gates. In August 1997, during a visit to the county to resolve other cases, higher level government representatives reportedly instructed staff to resolve the case and send Deng home. Public security officials simply moved the cage to a yard in Beitian, Deng’s home village. They reportedly returned later to put Deng in shackles, warning his 82 year-old father not to release him. Once the newspaper exposed the case, local officials moved swiftly to release Deng into a local hospital. Subsequent reports claimed that the police had few options faced with the villagers’ opposition to his release.

Article 2 of the UN Principles for the Protection of Persons with Mental Illness states that all persons with a mental illness “shall be treated with humanity and respect for the inherent dignity of the human person”. Like many countries, China has an acute shortage of provision for such care.⁹ In this context, the misuse of psychiatric hospitals to detain prisoners on political grounds is all the more disturbing.

Several cases have been reported in which political activists have been detained involuntarily in psychiatric hospitals without medical grounds. On 23 November 1999, veteran human rights activist Wang Wanxing was forcibly removed from his home by eight public security officers and taken to Ankang Psychiatric hospital in Beijing. He was first detained in Ankang Public Security Hospital, managed by Beijing Public Security Bureau, on 3 June 1992 after trying to unfurl a banner in Tiananmen Square

⁹ In June 1999 the director of the Ministry of Public Security supervisory department warned that “social stability” was being threatened by lack of funds directed at the problems of mental illness and drug addiction. According to the report, nationwide there were only 22 mental hospitals, capable of serving 7,500 patients. Fourteen provinces and municipalities had no such facilities.

commemorating the events of 4 June 1989. His wife was told he was suffering from a condition called "political monomania". This does not appear in medical literature nor is defined by the World Health Organization as an illness. "Monomania" means "obsession to an insane degree with one subject". According to Amnesty International's information, there is no evidence that Wang Wanxing has any form of mental illness.

On 19 August 1999 Wang Wanxing was released for a three-month trial period. Conditions imposed during this period included being prohibited from contacting domestic and international media and dissidents. On 18 November 1999, Wang asked the authorities if he would be allowed to hold a press conference on expiry of the period, to discuss his confinement. On 23 November, in response to this request, he was forcibly returned to the psychiatric hospital.

From the evidence available to Amnesty International, it appears that the Chinese government is using psychiatric hospitalization in order to suppress political dissent. Medical ethics have allegedly been breached severely in the case of Wang Wanxing by his involuntary detention in a psychiatric hospital in order to curtail his freedom of expression¹⁰

Xue Jifeng, a labour activist from Zhengzhou, Henan Province, received similar treatment, being forcibly confined in Xinxiang City Psychiatric Hospital from 17 December 1999 to 20 June 2000.¹¹ Whilst confined Xue alleged he was force fed drugs which gave him serious side effects. He told AFP from the hospital: "People who know me and the staff in the hospital do not think that I have a mental illness...I was put here by the Zhengzhou Public Security Bureau on orders from the government". Xue's wife resisted pressure from the police to write a statement that he was "cured". He was released only after agreeing to conditions which prohibit him from participating in politics or "caring about other people's affairs". Xue Jifeng was confined shortly after attempting to register the Zhengzhou Workers' Association, founded with 20 other activists to safeguard workers legal rights to pension and redundancy payments, wage arrears and compensation for occupational injury. In January 1999 he had also issued an open letter calling for a demonstration to commemorate those who had died in the last decade of struggle for "democracy, legality and subsistence".

10 See Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. Adopted by the UN General Assembly in 1991: Principle 4: [all italics added].

para. 1: "a determination that a person has a mental illness shall be made in accordance with *internationally accepted medical standards*". Wang Wanxing's diagnosis of 'political monomania' is not in accordance with internationally accepted medical standards.

para. 2: "a determination of mental illness shall never be made on the basis of *political*, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status".

para. 3: "family or professional conflict, or non-conformity with moral, social, cultural or *political values* or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness".

11 See China Labour Bulletin, Issue 54, May- June 2000, Issue 55, July-August 2000 and China Rights Forum, Summer/Fall 2000

Xue had been detained in the same hospital in November 1998 for one week after his election to a delegation suing Henan Province Communist Party for its role in the winding up of the Three Stars investment company. Bankruptcy proceedings had reportedly allowed officials to withdraw their assets in advance, leaving employees who had invested in the company to shoulder most losses. Xue was released on that occasion after the employees staged a large demonstration demanding his release.

On 15 December 2000, Cao Maobing, 47 an electrician at the Funing County Silk Mill in Jiangsu province was forcibly detained in a psychiatric hospital shortly after he spoke to Western reporters about attempts to establish a union elected and run by workers at the mill. He was escorted to Yancheng No. 4 Psychiatric Hospital by police and factory officials. Throughout a year long industrial dispute over unpaid redundancy and pension payments, including state subsidies, Cao had reportedly been warned several times that he risked such detention if he continued his advocacy and organizing for fellow workers. At the hospital, Cao was forced to take medication until his family complained in person. Then, on 29 December, police officers were stationed outside his room, preventing any family visits.¹² These restrictions were lifted after some days during which time Cao reportedly went on hunger strike.

Many cases have also been reported in which Falun Gong practitioners, alone or in groups, were taken by police to mental hospitals where they were detained for periods varying from a few days to many months. Reports indicate that they did not have a psychiatric examination before being detained and were often forced to take drugs against their will. On 20 January 2000, Yang Yong, a spokesman for the Changguang police station in Fangshan district in Beijing, confirmed to a foreign journalist that around 50 practitioners, mainly women, were being held at the Zhoukoudian psychiatric hospital near Beijing. He said they "are not patients, they are there to be re-educated ... Most of them are Falun Gong extremists who have been to Beijing to protest at least 10 times".¹³

2.9) Torture of Detainees as "Education" and Punishment in Criminal and Administrative Detention

China's latest report to the Committee against Torture covered detention only within the criminal justice system. Many more citizens are subjected to deprivation of liberty by the State through expanding forms of administrative detention. These allow the police and other government agencies wide powers to detain people on their own authority, without charge, trial or any type of judicial review, and generally without the oversight of existing supervisory bodies. Administrative detention includes: Re-education through Labour (*laodong jiaoyang*), Custody and Education (*shourong jiaoyu*), Custody and Repatriation (*shourong qiansong*), Enforced Drug Rehabilitation (*qianzhi jiedu*), Administrative Detention (*xingzheng juliu*), and Work Study Schools (*gongdu xuexiao*). The limited safeguards for criminal suspects and defendants introduced in the revised Criminal Procedure Law and outlined below do not apply to people

12 AFP 17 December 2000, South China Morning Post 19 December 2000, Human Rights in China 31 December 2000

13 Agence France Presse 20.1.99.

detained administratively. As testimony and reports monitored by Amnesty International show, they are just as vulnerable to torture and ill-treatment by or at the instigation of state officials. In May 2000, the Committee Against Torture recommended the Chinese government consider abolishing, “in accordance with relevant international standards, all forms of administrative detention”.¹⁴

Forced labour and “acknowledgment of guilt” are central to penal policy, generating an environment where prisoners are often abused. Particularly brutal treatment is frequently reported against prisoners who are deemed to be “resisting reform” (*kangju gaizao*), through failure to meet production targets, complaining, staging hunger strikes or attempting to escape.

Pro-democracy and labour rights advocate Zhang Lin has been arbitrarily detained in a Re-education through Labour Camp since November 1998. His mother was allowed to visit him for the first time nearly 10 months later. She reported that Zhang Lin had been required to work 14 hours a day while in poor health, and had been beaten whenever he resisted or argued with guards about it. He had reportedly been tortured six times, as a result of which he twice attempted suicide. He was beaten by other inmates who, acting on orders from the guards, had stripped and dragged him on the ground for long distances, and forced his head under water until he submitted to the guards. There has been no indication that his complaints have been investigated or that measures have been taken to protect him against further ill-treatment during the remainder of his 3-year term.

A Re-education through Labour farm at Mush, 30km from Kashgar, Xinjiang Uighur Autonomous Region (XUAR), reportedly held some 380 Uighur political prisoners in 1998 working an average 10 hours per day making and carrying bricks, quarrying stones and farming. Prisoners were punished severely for not finishing their allotted tasks, for talking, singing, secretly taking water to wash before prayer, or for answering back to the guards. Punishments included being hit on the head, stomach and crotch with electric batons, stamping on hands, being made to stand in the “flying aeroplane” position, and being strapped to a pole or hung from a ceiling to be beaten. According to one report “on several occasions, police officers inserted an electric baton into a prisoner’s anus, laughing among themselves as they did so... Many prisoners lost their teeth, have bleeding ears, broken arms, infected and useless testicles due to torture”.¹⁵

Yu Dongyue, a fine arts editor for Liuyang News in Hunan province, was sentenced to 20 years imprisonment in August 1989 on charges of Counter Revolutionary sabotage, propaganda and incitement for throwing paint at Mao Zedong’s portrait in Tiananmen Square on 23 May 1989. He was initially held in a “strict regime” unit with his co-accused in Lingling number 3 Prison, Hunan province, being subjected to prolonged solitary confinement on several occasions, once reportedly for over two years, and a

14 CAT/C/24/Concl.3, 9.5.00, para 22.

15 See Amnesty International “Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region” April 1999, AI Index ASA 17/18/99.

second time for six months after being beaten savagely for writing “down with Deng Xiaoping” on a prison blackboard. Yu has reportedly developed mental illness, but has been denied medical parole.

In Tibet, prisoners who stage protests in prison are particularly harshly treated. On 1 and 4 May 1998 peaceful protests took place during flag raising ceremonies at Drapchi Prison. Unofficial sources maintain that at least 10 prisoners died (See Section 3. Death in Custody) and many others were severely injured following harsh reprisals.¹⁶

The People’s Armed Police guarding the perimeter of the prison reportedly carried out systematic beatings of prisoners using electric batons and rubber pipes. Monks Lobsang Wangchug (28) and Khedrub (26) from Ganden monastery died that month. Ngawang Sangdrol, a nun serving an 18 year prison sentence for peaceful pro-independence activities, was among 17 prisoners who were severely beaten and put in solitary confinement for seven months. Thubten Kalsang, a 25 year old monk from Lo Monastery was reportedly left crippled after being beaten unconscious twice by up to 12 soldiers using electric batons and iron rods. Prisoners were reportedly denied visitors and confined to their cells for up to 14 months. Six monks had their sentences extended by up to four years. Five nuns reportedly had their sentences increased by up to six years. They included Chogdrup Dolma, Che Che and Jangchup Dolma who were also confined for three months in a small unlit cell barely long enough to stretch out their legs.

The Chinese government has provided several conflicting accounts of the incident and the repercussions. Having denied to three UN special rapporteurs that the protests even occurred,¹⁷ in May 2000 they stated to the UN Committee against Torture that a "handful of criminals went so far as flagrantly shouting separatist slogans, insult, besiege and assault prison police officers". They denied that any deaths had been caused by beating but acknowledged that some prisoner’s sentences had been extended. Similar brutal reprisals were reportedly carried out against prisoners who demonstrated during the visit of the UN Working Group on Arbitrary Detention to Drapchi Prison in October 1997.

Former prisoners regularly testify that extreme brutality, often resulting in death, is common against any prisoner caught attempting to escape from detention.

In March 1998, the leader of the 7th brigade (*dadui*) of Hefei City Re-education through Labour Camp, Anhui province, was sentenced to 10 years imprisonment for the intentional killing of a prisoner. Two co-defendants were sentenced to 3 years

16 See Tibet Information Network News Update 15 December 1999 and Tibetan Centre for Human Rights and Democracy, Human Rights Update, April 2000 and Half Yearly Report January to June 2000.

17 Answer to urgent appeal of 10.12.98 sent by the Special Rapporteurs on Torture, Freedom of Opinion and Expression, and on Violence against Women, 24.2.99: “In relation to alleged violent demonstrations inside Drapchi prison in May 1998, the Government replied that no such incidents had taken place. The Government stated that there had not been a demonstration by offenders since the Tibet Autonomous Region Prison was founded.” (E/CN.4/2000/9 para.237, 2.2.2000).

imprisonment suspended for four years. Intentional killing outside prisons normally attracts a much harsher penalty. On 21 October 1997 prisoner Chen Chungui was returned to the camp having escaped two weeks before. The brigade leader reportedly convened a meeting of all staff and prisoners to “punish” Chen. There, on his orders, the two colleagues and others reportedly beat Chen with rubber batons and bamboo sticks until they broke. Later the same day the brigade leader ordered another beating session after which Chen was left bleeding heavily from wounds all over his body. He died the following morning. (*Huadong Xinwen*, 7 Oct 98).

In February 1999 many newspapers in China reported that two senior prison officials, an area chief and his deputy at the Qingtaizi Prison in Fushun City, Liaoning Province, had been sentenced to 3 years imprisonment suspended for three years under the new crime of mistreating prisoners. They were both graduates of the Police Reform through Labour School in Dalian city, and had been promoted from the ranks of ordinary judicial police for their “outstanding work record”. On 20 May 1996 they had reportedly convened a meeting of all prisoners to “severely and harshly punish” two prisoners who they considered had “seriously resisted reform”, Li Xiaoming by attempting to escape and Qi Wei-quan by self mutilation and injury. At the meeting the officials and three other policemen beat the two prisoners repeatedly with electric and rubber batons and specially prepared plastic coated piping. They also kicked the victims repeatedly in the face, seriously injuring Qi Wei-quan’s eye. The victims’ civil compensation suit was also accepted. It is not clear whether the other policemen who participated in the attacks were punished.

Former prisoners, held in all forms of criminal and administrative detention, report that guards routinely use “cell bosses” (“cell monitors” or the “second government”) to discipline, beat and torture their fellow prisoners. Reflecting persistent official denial and indifference, China’s representatives asserted to the UN Committee against Torture during their 1996 hearing that “cell bosses” did not exist in China. During the Committee’s May 2000 hearing China’s representatives stated: “we do not exclude the possibility that some individual police officers use inmates to control inmates in their daily work”. Since 1997, Amnesty International has monitored few prosecutions for torture in these circumstances. The victims were all killed.

On 24 November 1998 a prison guard in a *Guanjiaosuo* in Jilin Province was sentenced to seven years imprisonment for mistreating a prisoner, causing his death. In September 1996, the guard had ordered a cell monitor (*fanren* “*banzhang*”) to beat any fellow prisoners who could not finish their work quotas. The cell monitor reportedly attacked the victim in the prison garage, beating him with plastic piping and kicking him in the chest. The guard then continued the attack himself, kicking the victim and beating his neck. Later, the victim’s request for rest to recover from his injuries was rejected, and he was forced to continue excessive labour mending roads until he collapsed. Three days later he died from his injuries. It was not until October 1998 that the guard was prosecuted. Reports do not mention whether the cell monitor was also punished. (*Xi’an Wanbao* 12.1.98).

On 5 February 1999, 17 year-old Xi Zhaofu died after being beaten in the chest by an adult cellmate in Huaihua City Detention Centre No. 2, Hunan Province. Regulations on

the detention of juveniles stipulate that they should be separated from adult prisoners. On transfer into a new cell, Xi and four other prisoners had been beaten by the cell boss whilst he stood them against a wall to read the "cell rules". This practice is commonly reported by former prisoners. Xi's attacker was a prisoner serving a suspended death sentence for intentional injury, he was executed as a result. (*Politics and Law Today*, 28.8.99).

3. DEATH IN CUSTODY - THE ULTIMATE FAILURE TO PROTECT

In many of the published examples cited above the victims of torture died in custody or shortly after release. Amnesty International believes that prevention of death in custody should be a priority concern of the Chinese authorities. Preventive measures, including ending incommunicado detention and establishing robust and trusted supervisory mechanisms will be as important as consistent investigation of allegations and prosecution of offenders. The organization knows of many more cases where officials have simply denied responsibility with no further explanation for the death, and where no full investigation has taken place. This inadequate response is the norm in cases involving political prisoners or where the deaths have occurred during a national priority campaign against perceived enemies of the government. Below is a representative selection of cases known to Amnesty International. In all cases the organization is calling on the government to launch an impartial enquiry into the circumstances of the deaths and make the results public, to prosecute those found responsible for acts of torture and to compensate victims' families.

Zhou Guiyi, Xiao Beizhou and Yu Li, were reportedly tortured to death by police in separate incidents in Xinzhou county, Wuhan City, Hubei province between April 1997 and February 1998. Their families appealed to the UN High Commissioner for Human Rights for assistance in their efforts to seek redress when she visited China in September 1998. 25-year-old Zhou Guiyi was detained by Xinzhou police on 24 April 1997. The following day police told his family that he had committed suicide and immediately cremated the body. When the family started making complaints, police offered them 18,000 yuan and warned them to keep quiet. According to a relative, Zhou had been so badly beaten that "the skin and flesh of his head, neck, face, back, wrists, arms, thighs and both kneecaps were left torn and gaping; his muscles were torn and he was badly mangled"¹⁸. Xiao Beizhou, 30, was detained by Xinzhou police on suspicion of giving bribes, on 8 January 1998. He died five days later from head wounds inflicted during interrogation. His family was subsequently offered 50,000 yuan by the police. Yu Li, 44, was detained by police over a business dispute on 26 February 1998. Two policemen beat him unconscious and he fell into a coma. Police offered the family 28,000 yuan when he died after 80 days in a coma.¹⁹ Although the police offered such money to the families as compensation, by the time these cases were publicly reported in September 1998, none of the officers responsible had been punished. Police authorities in Wuhan, contacted by foreign journalists at the time, refused to comment on the cases.

18 Reuters, Beijing, 14.9.98, citing Qin Yongmin who was citing Zhou's father.

19 Agence France Presse 14.9.98.

On 16 October 2000, 19 year old **Liu Haitao** died whilst detained by police in Xiaoyi County Detention Centre, Henan Province. Liu was one of 30 members of a protestant house church, the Chinese Evangelical Fellowship (*Zhonghua fuyin tuanqi*) arrested on 14 September 2000 in Jiaozuo City. The group were reportedly abused and ill-treated in many different ways. Liu had reportedly been severely beaten in the detention centre. Food and hygiene conditions were poor and he reportedly developed a high fever, with vomiting and shortness of breath in early October but was denied access to medical treatment. Responding to foreign press enquiries, officials at the detention centre revealed only that an inmate named Liu Tao had died at a local hospital that day.²⁰ The Chinese Evangelical Fellowship is one of several house church movements classified by the government as “heretical organizations”. For several years, members have been subjected to periodic harassment, detention and ill-treatment. Several alleged leaders are currently detained for Re-education through Labour”.²¹

3.1) Xinjiang Uighur Autonomous Region (XUAR) Examples

Amnesty International has received allegations from various sources about deaths in custody due to torture or a combination of ill-treatment and neglect in the XUAR, but in most cases the names and details of the prisoners were not known.²² These include, for example, allegations that four unidentified Uighur political prisoners died of starvation at Chapchal prison in Ili Prefecture in March 1998. In sharp contrast with other parts of China, there is a striking absence of official reports about prosecutions for torture in the XUAR. This suggests that the authorities are either ignoring or covering up widespread torture in the region, and may even have sanctioned its use in the context of repression.

Particularly disturbing allegations have been made about the brutal treatment of people held in Gulja after protests there in February 1997 calling for an end to discrimination against ethnic Uighurs. Various sources have alleged that up to 14 people died in detention due to torture within a few days of their arrest in Gulja. In some cases, the bodies of the dead were reportedly given back to the families, while others were just dumped on the streets. Below are three cases where the victims names are known.

Abdulhelil Abdumijit,²³ a 31 year-old street trader from Gulja city (Yining), Ili prefecture, died in detention on 17 October 2000 reportedly as a result of torture. He had been detained immediately after taking part in the demonstration in Gulja on 5 February 1997 and was later accused of leading it. From the outset it was reported that he was being

20 See Agence France Presse, 19.10.00, Human Rights in China Press release 19/10/00, quoting Zhang Dawei; and Information Center for Human Rights and Democracy 19.10.00.

21 See Amnesty International, “P.R.C: The Crackdown on Falun Gong and other so-called “heretical organizations”, ASA 17/11/00, 23.3.00, Section 2.2.

22 For further details see: Amnesty International: “P.R.C: Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region”, AI Index ASA 17/18/99, 21 April 1999.

23 For further details see *ibid* and Torture Campaign Appeal Leaflet - Abdulhelil Abdumijit, AI Index: ACT 40/08/00.

brutally tortured in detention to make him “confess” and denounce his friends. Police reportedly forced him to face a wall with his arms raised whilst they beat his back. A fellow prisoner also witnessed a prison guard setting a dog on him. Although local officials in Gulja confirmed Abdulhelil Abdumijit’s arrest shortly after February 1997 thereafter his detention was marked by secrecy. His family was reportedly denied access to him or to information about his situation.



Abdulhelil Abdumijit

Unconfirmed reports from Uighur exile sources claimed that Abdulhelil Abdumijit was tried at the end of 1999 or early 2000, and sentenced to death together with two other defendants. One report also claimed that at a public sentencing rally held to announce the sentences, Abdulhelil had been severely beaten in front of the assembled crowd.

His death in prison on 17 October was reported a few days later by Uighur exile sources²⁴ who said he had been tortured to death in Chapchal prison, near Gulja (Yining). They also reported that his body was not returned to his family but was taken to a cemetery in Chapchal under heavy police guard and buried in a shallow grave.

Official sources subsequently confirmed his death but denied it was due to torture. On 24 October 2000 an official at Chapchal detention centre was cited by the news agency Associated Press as saying that Abdulhelil Abdumijit had died of pneumonia at Yining's central prison, not the Chapchal detention centre. A different explanation was given later by the Chinese Embassy in the USA. In a statement issued on 7 November 2000 in answer to protests about Abdulhelil's death, the Embassy cited information received from "relevant authorities in China", stating that Abdulhelil has died "suddenly" on 17 October 2000 of a "massive heart failure", having recently suffered from "acute respiratory inflammation coupled with myocarditis". It also claimed that Abdulhelil "had been treated humanely during his entire incarceration". It indicated that he had died while "serving his sentence" and stated that he had been charged and convicted "for his role in organising the riot in Yining on 5 February 1997", but it failed to specify when he had been tried or to give any indication of the sentence he had received, which to date remains unknown.

Amnesty International continues to be concerned by the reports that Abdulhelil Abdumijit was repeatedly tortured in detention. It calls on the Chinese government to make a full and impartial investigation into the reports of torture and explain why he was held incommunicado throughout his detention.

²⁴ Statement by the East Turkestan Information Centre, a Uighur exile organisation based in Germany, on 22 October 2000.

Salam Kari, a young Uighur from Gulja (*Yining*) who had formed a Uighur football team in the city in the mid-1990s, was reportedly arrested in May 1997 in connection with the February 97 protests in Gulja. According to unofficial sources, a few days after his arrest, he was dead. His body, which was given back to his family, reportedly showed marks of torture. The police reportedly claimed that he had committed suicide in prison. As far as Amnesty International is aware, there has been no independent enquiry into his death.

Nizamudin Yusayin, a scholar from Urumqi aged about 70 and former journalist for the official newspaper *Xinjiang Daily*, reportedly died in police custody due to ill-treatment on 7 April 1998. According to unofficial sources, he was held in the custody of the Urumqi city Public Security Bureau and was beaten by police to force him to "confess" to the accusations against him. He had reportedly been arrested on suspicion that he had sheltered people wanted in connection with the February 1997 protests in Gulja (*Yining*). The exact date of his arrest is not known, but is believed to have been in or after September 1997. His relatives were reportedly denied permission to see him in prison. The authorities have not published any information about his detention or the circumstances of his death. During the mid-1980s, Nizamudin Yusayin had published a series of articles in a magazine on the theme of religion in Central Asia. In the articles, he reportedly referred to politically sensitive topics, such as the reasons why the Uighurs had become dominated by the Chinese in recent history.

3.2) Tibetan Examples

Unofficial sources report that since 1998 at least 13 Tibetans have died in prison or shortly after release following reports of torture and ill-treatment.²⁵ Amnesty International knows of no substantial response to any of these cases from the Chinese authorities.

Legshe Tsoglam, a monk from Nanlanda Monastery was detained in Gusta Detention Centre in early April 1999 after refusing to cooperate with a "patriotic education" campaign in progress at the monastery. He was reportedly severely beaten, and died on 12 April 1999, days after his release.

Lobsang Choephel, a monk from Khangmar Monastery, Damshung County, had been detained in April 1995 when in his early 20s and was sentenced to five years' imprisonment. He died on 12 May 1998, reportedly committing suicide after the Drapchi prison protests (described at section 2.9 above).

Tsultrim Sangmo, 25, a nun from Chukar Chang Village, Jhangkar Township, Lhundrup Phenpo reportedly died in hospital on 15 May 1998 shortly after transfer from Drapchi prison. She had reportedly been severely beaten following participation in the Drapchi prison protests on 1 and 4 May 1998.

²⁵ See Tibet Information Network News Updates, in particular , 23.3.2000, 27.12.99, 15.12.99, 13.10.99, 26.9.99, 31.8.99; Tibet Centre for Human Rights and Democracy, News 22.1.2000, 1.11.99, 26.10.99, 20.9.99, Human Rights Update April 2000, Half Yearly report January to June 2000.

Initial reports indicated that the following nuns all died on 7 June 1998 in what prison officials termed “suicide” following beatings and torture inflicted for their participation in the Drapchi prison protests in May 1998. Subsequent reports undermined these accounts.

Dekyi Yangzom, a nun from Ranjung Nunnery Lhundrub County. She was detained in January 1995 for participating in a demonstration and was sentenced to four years’ imprisonment. A fellow prisoner testified that Dekyi Yangzom was tortured following the Drapchi prison protests and told her cellmates that prison guards had hit her with an electric baton on her breasts and cheeks and had inserted the baton into her vagina. The next day she had been forced to join other nuns standing for 13 hours in the sun holding newspaper between their legs and armpits, balancing bowls of water on their head, beaten if they fell over.

Khedron or Kundol Yonten, a nun from Nyemo County, serving 5 years imprisonment following her participation in a December 1994 pro-independence demonstration. She reportedly died in May 1998.

Lobsang Wangmo, 31, a nun at Nekor Do Nunnery, from Dokde County. Sentenced to five years imprisonment following participation in a peaceful demonstration in February 1995.

Tashi Lhamo, 24, a nun from Jewo Thekchog-ling Nunnery, Nyemo County. She had been detained in January 1995 when in her early 20s and was sentenced to four years’ imprisonment.

Several other Tibetan monks have died in hospital or at home shortly after being released for medical reasons after reports of torture and ill-treatment and, in some cases, delay in accessing medical treatment.

Pasang Dawa, a monk from Sang-ngag Khar Monastery, Tagtse County who had been detained in 1994 when aged 18 reportedly fell seriously ill after torture including severe beating. He died in hospital. Fellow prisoners claim that his medical treatment was seriously delayed and he was only transferred to a hospital outside Drapchi prison when guards began to fear he would die in prison.

Similarly, **Yeshe Samten**, a monk from Ganden Monastery serving a two year sentence at Trisam Re-education through Labour Centre, died at home on 12 May 1998, six days after his release on medical grounds. He had reportedly suffered severe beatings and other abuse whilst in detention.

Several lay people have also died in prison or police custody in circumstances that remain unclear or contested.

“Shol” Dawa, 64, a veteran political activist, died on 19 November 2000. He was serving a nine year sentence imposed in 1995 on charges of “espionage” for collecting details of political prisoners. It was his third prison sentence. The circumstances of his death are unclear, but he had reportedly been suffering from a kidney ailment.

Sonam Rinchen, 29, a farmer, was serving a 15 year sentence in Drapchi prison for unfurling a Tibetan national flag and shouting slogans at a political education meeting

in June 1992. He had reportedly been regarded as a ringleader and subjected to especially harsh treatment, and died before April 2000 having undergone medical treatment since 1997.²⁶

Tashi Tsering, a carpenter from Lokha Prefecture was apprehended on 26 August 1999 on the Potala Square in Lhasa after lowering the Chinese flag and attempting to hoist the banned Tibetan flag in its place. Witnesses reported that he had been severely beaten by the People's Armed Police who arrested him in the square. Tashi Tsering reportedly attempted to commit suicide at the scene by detonating explosives, but they did not ignite. During his detention there were several unconfirmed reports that he had been hospitalized late in 1999 for treatment including for injuries to his head. He reportedly committed suicide by slashing his neck with a razor blade, and died on 10 February 2000.

3.3) Falun Gong Examples²⁷

By mid January 2001, at least 120 Falun Gong practitioners (62 women) were reported to have died since the beginning of the crackdown on the group in July 1999.²⁸ In Shandong province alone, 24 practitioners died, nearly half in Weifang city, and 15 people died in Heilongjiang province. All had died in official custody, or shortly after release, in circumstances that remain unclear and most following reports of torture and ill-treatment. Active attempts by officials to coverup or destroy evidence were alleged in over one third of the cases.

Of these practitioners, 17 (4 women) according to a official reports "jumped" to their deaths whilst being transported or interrogated by police; and 15 (8 women) "fell" whilst in detention, the majority in provincial representative offices in Beijing.

Twenty six (16 women) of those who died had reportedly engaged in hunger strikes during their detention, with 10 (9 women) allegedly dying after attempts to force-feed them. Many reports indicate that force feeding was carried out by people with no medical training or experience, resulting in damage to the windpipe and other reportedly fatal complications.

An additional 8 practitioners (5 women) are confirmed to have committed suicide whilst at liberty, although several were reportedly still under police surveillance.

Official sources have confirmed many of these deaths, rejecting outright all allegations of torture and ill-treatment. Amnesty International is not able independently to verify these reports of

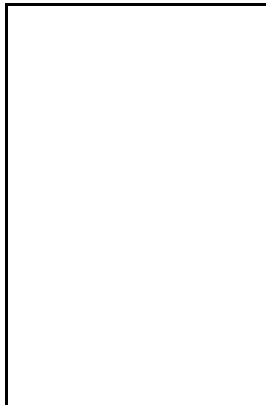
²⁶ See Tibet Information Network 12 April 2000.

²⁷ See Amnesty International: People's Republic of China: "The Crackdown on Falun Gong and other so-called "heretical-organizations", 23.3 2000, AI Index: ASA 17/11/00; "Reports of Torture and Ill-treatment of Followers of the Falun Gong", 22 10.99, AI Index: ASA 17/54/99.

²⁸ Information from numerous press, public, individual and unofficial sources including Falun Gong sources: <http://www.minghui.cc>; <http://www.faluninfo.net>; and the Information Center for Human Rights and Democracy: <http://www.89-64.com>.

torture resulting in death. It is however extremely concerned at the inadequate, contradictory response of the authorities to mounting credible evidence. In the face of numerous corroborating testimonies, blanket denial of official wrongdoing will not be convincing, especially when accompanied by evidence of official cover up, including reports of hasty cremation before autopsies can be performed, and the continuing detention of those who seek to publicize their experience of ill-treatment (see Section 7.4). The organization calls on the Chinese government to ensure all allegations are thoroughly and independently investigated and the results publicized.

On 8 November 1999, Li Bing, deputy head of the information office of the State Council, citing police reports, confirmed that three female Falun Gong practitioners had died after being detained for their Falun Gong activities. He denied they had been tortured. His statement that two had died of a “previous heart condition” has been used in numerous cases since. Such assertions also call into question the functioning of Detention Centre regulations which bar the detention of those with potentially life threatening medical conditions.



Chen Zixiu

Chen Zixiu (f), a 59 year-old practitioner from Weifang in Shandong province, reportedly died under torture on 21 February 2000. She had been detained for four days in a “Falun Gong transformation centre” (*Falun Gong Zhuanhua Kanguan Zhongxin*) organized in a residential building by the local police and Chengguan Street Committee. Practitioners held with her testified in detail about the torture she was subjected to, and her final hours as she lost consciousness. Chen’s family viewed her body on 21 February and found it covered with bruises, with her teeth broken and her ears bloody and swollen. They also found her clothing, covered in faeces. Chen Zixiu had reportedly been detained on 17 February on suspicion she was planning a second visit to Beijing to petition the central authorities against the ban on Falun Gong.

Several times, on 18 February officials reportedly demanded Chen’s family pay a fine of 1,000 Yuan for her release, but they refused on the grounds it was an illegal levy, and threatened legal action. On 19 February, warned that Falun Gong practitioners were being beaten in the building, and telephoned by a fearful Chen, the family attempted to reach her to pay the fine, but were not successful.

Local police reportedly later claimed that she had “died of a heart attack”. On 28 February 2000, the Information Office of the State Council denied there had been any fine or mistreatment. It stated that Chen had not been detained but taken to an office for “helpful education”, and when her health worsened she had been sent to hospital where she died of a heart attack. In May 2000 Chinese diplomats appeared to contradict the State Council account, telling the UN Committee against Torture that Chen had “never been held in custody in a detention house”. They stated she had not been “beaten, subjected to corporal punishment” but on 21 February had been “sent to hospital directly from her home because she didn’t feel well” and died of a heart attack. This

account is undermined by the testimony of Chen's daughter, Zhang Xueling. (See 7.4). At the end of 2000, after many months of petitioning, Zhang had still not obtained a copy of her mother's death certificate.

In the following cases, Amnesty is not aware of any official response or thorough investigation. In most cases there does not appear to have been any autopsy to establish the cause of death, with police acting swiftly to have bodies cremated before full external investigation was possible.

Liu Jiankun (m), 31, from Liaoyuan city, Jilin Province was assigned to one year Re-education through Labour in February 2000 in Baiquan labour camp. Reports allege that, when Liu continued practicing Falun gong exercises in prison, his fellow prisoners, instigated by the guards, beat him ferociously many times. In May 2000 he reportedly complained of pains in his chest, and by July 2 he was unable to eat. He was required to continue with heavy labour until 5 July officials notified his family to collect him for medical treatment at home. City and district hospitals confirmed that his ribs were fractured and fluid had accumulated in his chest. He reportedly died in hospital on 27 August 2000.

Wang Xingtian (m) 44, from Dayang Ningjin County, Hebei Province. On 21 February 2000, Wang was reportedly detained with other practitioners in the "legal education centre" of his village to prevent him travelling to Beijing to appeal against the Falun Gong crackdown. They were transferred to government offices in Beiquanli Village around 23 March, where they were denied food and were each required to pay 1000 Yuan fine and 1000 Yuan deposit and to write a pledge to recant. Wang refused to do this. At noon on 25 March his friends visited him suggesting he comply. Later that day Wang was reportedly beaten by hired workers using batons and iron rods. Wang's family reportedly had to pay the money and sign the pledge before they could take him, unconscious, home. He died that day. Subsequent reports alleged that local government officials had paid money to the family, to "resolve the matter in private".

Mei Yulan (f) 44, was arrested on 13 May 2000 while practicing Falun Gong exercises outside her house. She was detained in Chaoyang District Detention Centre, Beijing. She joined cellmates in a hunger strike, and on May 17 was force-fed saltwater and soya bean milk through her nose. Cellmates allege this was performed by a fellow inmate with no medical skills who guards claimed was a nurse. They heard Mei Yulan screaming in pain during the procedure, and shortly after returning to the cell she began spitting blood. Guards who were alerted did not send her for treatment until the next day. She was then returned to the cell with an unbearable headache and had difficulty breathing. Cellmates reported "her hands and feet became-cold and her eyeballs stopped moving" at which point she was transferred to the Minghang hospital, where she reportedly never regained consciousness. Hospital authorities confirmed she died on 23 May, citing "hunger strike" as the reason.²⁹

²⁹ See: http://www.clearwisdom.net/eng/2000/Jun/16/POI061600_4.html, AFP 26 May 2000.

Dong Buyun (f), 36, a Falun Gong practitioner and school teacher from Lanshan district, Linyi city, Shandong province, reportedly died on 21 September 1999 while being held in custody in her school. She had been arrested earlier in Beijing and sent back to Lanshan under police escort. According to Falun Gong sources, following her death, local officials in Langshan claimed that Dong Buyun was killed when she jumped out of a building at night, but gave no further details. Her body was reportedly cremated the same day. There has been no official report on her case.

Zhang Zhenggang (m), a 36-year old from Huai'an city, Jiangsu Province, was detained on 2 March 2000 for interrogation and was transferred to the Huai'an City Detention Centre. He was reportedly brutally beaten on or around the 25 March, suffering severe head injuries. He was sent to the First Hospital of Huai'an city for emergency treatment including an operation to his head, but never regained consciousness. His relatives were brought to the hospital to look after him but the police monitored the ward and refused to give them detailed information about his condition and treatment. Zhang's family testified that on the evening of 30 March, after doctors found Zhang's pulse very weak, about 40 police officers arrived to cordon off the ward and corridor. The relatives were forced into a waiting room and claim that police intervened with the doctor to shut off Zhang's oxygen supply and blood transfusion. Police officers immediately removed Zhang's body to the City crematorium. The next day, onlookers reportedly intervened forcing the police to abandon their attempt to bar the family from the crematorium. Instead they reportedly controlled the whole funeral process, setting condition that no floral tributes be sent or appeals made to higher authorities.

4. LEGISLATION TO CRIMINALIZE TORTURE

INTERNATIONAL OBLIGATIONS: Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 1 of the Convention defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

As a State Party to the Convention, China is obliged to ensure that "all acts of torture are offences in its criminal law" including any "attempt to commit torture" or "act by any person which constitutes complicity or participation in torture". China must also ensure that all punishments for these crimes reflect their "grave nature".(Article 4).

The Convention also requires State Parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment" when committed "by or at the instigation of" or "with the consent or acquiescence of a public official or other person acting in an official capacity". (Article 16).

KEY CONCERNS: Inadequate Definitions, Exclusions, and Restrictive Interpretations by Prosecutors

Amnesty International has long been concerned that China's Criminal Law fails to outlaw all acts of torture as defined in the CAT. Welcome revisions to the Criminal Law (CL) in 1997 and subsequent interpretations of the law issued by the Supreme Peoples' Court and Supreme Peoples' Procuratorate, expanded the range of acts of torture which are now considered crimes in China. The newly defined crimes still contain loopholes, contradictions and ambiguities which undermine their effectiveness. At the same time, with questionable rationale, other crucial provisions have been further restricted. In May 2000 the Committee Against Torture once again recommended that the Chinese authorities incorporate into domestic law a definition of torture that fully complies with the definition contained in the Convention against Torture.³⁰

The 1997 revised Criminal Law prohibits three specific offences involving torture or ill-treatment: **Torture to Coerce a Confession** (*xingxun bigong*), **Extorting Testimony by Violence** (*baoli quzheng*), and **Ill-treating Prisoners** (*nuedai beijianguanren*) As detailed below, these crimes are only applicable to a limited range of officials in limited circumstances or locations.³¹

In addition the procuratorate, which directly investigates and prosecutes torture and other offences committed by officials, continues to set criteria for taking up cases which further limit the application of these offences. In May 2000 the Committee Against Torture expressed concern that the rules and practices of some procurators limit the prosecution of torture suspects to certain serious cases.³²

DETAILS:

4.1) ARTICLE 247: Torture to Coerce Confessions & Extorting Testimony by Violence

Article 247 criminalizes "**Torture to Coerce a Confession**" (*xingxun bigong*)³³. This crime is applicable to "judicial officers" who inflict such torture on a "criminal suspect" or "defendant". Punishment ranges from detention in a criminal detention centre for one to six months, to three years' imprisonment. Where such torture causes injury, disability or death to the victim, it shall

30 Committee Against Torture, 24th Session, 1-19 May, CAT/C/24/Concl.3, 9 May 2000, para. 18.

31 See Appendix 1 for full texts. Other acts constituting torture or ill-treatment may be prosecuted under other general criminal offences such as: Article 232 Intentional injury; Article 234 Intentional homicide; Article 238 Unlawful detention; Article 246 Public humiliation.

32 Committee Against Torture, 24th Session, 1-19 May, CAT/C/24/Concl. 3, 9 May 2000, para. 14.

33 Also translated as: "torture to coerce a statement".

be given “heavier” punishment according to the provisions of Articles 234 (intentional injury) and 232 (intentional homicide). Under the 1979 CL (article 136) the minimum punishment was 15 days. The revisions add clarity, stipulating which other articles of the law should be used for “heavier punishment”.

Article 247 also criminalizes “**Extorting Testimony by Violence**” (*baoli quzheng*). This crime is applicable to “judicial officers” extorting testimony from “witnesses” (*zhengren*). It is an addition to the 1979 CL, and is subject to the same range of punishments as torture to coerce a confession. “Violence” (*baoli*) is generally limited to direct physical violence, and does not cover all forms of torture that could be used to extract testimony. It is unclear whether “witnesses” cover all remaining relevant parties to an investigation and trial, including victims and experts.

4.1.a) Limited Definitions and Exclusions to Article 247

“Judicial officers” are defined in Article 94 of the Criminal Law as “persons who exercise the functions of investigation, prosecution, adjudication and supervision or control”. Prior to the revisions, a wider range of officials could be prosecuted for “torture to coerce a confession”. It applied to “state personnel” defined as “all personnel of state organs, enterprises and institutions and other personnel engaged in public service according to law” (1979 CL, articles 136 and 83).

Little explanation is given in any official legal interpretations or commentaries for the move towards a more restricted definition, other than “state personnel” caused confusion. The term “judicial officers” also causes confusion. For example, there is controversy over whether those hired temporarily, or seconded from non-judicial departments to assist in criminal investigations can now be prosecuted for these offences. The use of such “contracted staff” has become common as the workload of judicial department increases, and many have been implicated in reports of torture.

Numerous textbooks explaining the new law published by the procuratorate and the courts also stress that only “judicial officers” with specific responsibilities for interrogation can be prosecuted for these crimes.

Previous judicial interpretations had also given defacto powers of interrogation to security divisions (*baowei chu, baoweike*) in non-judicial government departments, enterprises and organizations. It is also debatable whether such staff may be prosecuted for these crimes. Reports of torture perpetrated by these staff continue at levels which suggest that this is a recognized loophole in the law which is being exploited to facilitate impunity.

The use of “criminal suspect” or “defendant” in article 247 would appear to mean that these offences do not apply when the victim of torture is being detained outside the criminal process.

In practice, the procuratorate have also restricted the application of CL Article 247 even further in their rules governing prosecutions. Under their latest (1999, Trial) rules, such cases should be filed for investigation only when the offences have involved one of the following:³⁴

1. Cruel methods, evil impact.
2. Resulting in suicide or mental disorder
3. Causing unjust, false or erroneous cases (*zaocheng yuan, jia, cuo an de*)
4. Coercing confessions/extorting testimony by violence more than 3 times or against more than 3 people
5. Instigating, instructing or forcing others to coerce confessions/extract testimony by violence

This reflects the rationale, expressed in many legal commentaries, that torture is “understandable”, that it is not always sufficiently serious to merit criminal or other punishment, and that absolute prohibition is unworkable. One typical example states:

“any act must reach a point of considerable harm to society that requires punishment by criminal penalty before it is considered a crime. Torture to coerce a confession is no exception, where the circumstances are minor and the harm not great, for example some kicks, some punches, some boxes around the ears, this cannot be treated as a crime”... “The motive is usually noble - to crack a case quickly. So only when there are clear material consequences, such as disability, death, suicide, or mental disorder should it be a crime... We must distinguish between crime and errors in interrogation... There are exceptions... “continuous battles by turn” (*chelunzhan*) for example. Deprivation of sleep, continuous questioning so that through exhaustion the suspect is forced to confess, this is a kind of torture to extract a confession, but if it is a suspect in a major case, in order to arrest other criminals in a joint crime quickly before they destroy evidence for the whole case, where the motive is not just getting a confession but clearing the case, this [torture] is necessary.”³⁵

Disciplinary provisions for the police and procuratorate confirm that, even when torture to extract a confession has been exposed and verified, the perpetrators will not necessarily be seriously disciplined.

Provisions for the procuratorate (25.5.98) stipulate that the minimum sanction, if applied, is a “demerit point”. Even when the “circumstances are serious or cause serious consequences” the disciplinary sanction may simply be demotion.

Under the Police Law (1995) the minimum administrative sanction is a warning and the most severe is expulsion. Later regulations state that responsibility for “errors” (including (6.2) forcing

34 Supreme People’s Procuratorate, “Decision on the Criteria for Filing Cases in those Cases where Filing and Investigation is Directly Handled by the Procuratorate” *Guanyu renmin jianchayuan zhijie shouli lian zhencha anjian lian biao zhun de guiding (shixing)*. Effective 16 September 1999.

35 Sun Qian “Guojia gongzuo renyuan zhiwu fanzui yanjiu”, Law Press, June 1998, p 362, 365.

confessions (*bigong*) or testimony) will not be pursued where the law is unclear or judicial interpretations inconsistent; where the errors are made as a result of unforeseen or irresistible reasons; where the policeman was carrying out an order from a superior; or where the policeman was handling a case according to regulations on cooperation with other units.³⁶

Chinese newspapers also revealed this year that it was a common “administrative punishment” for other government workers to be “demoted” into the police force. They cited the example of a government driver who had been disciplined for his participation in acts of violence by being demoted to the police force.

4.2) ARTICLE 248: Ill-treating Prisoners (*Nuedai beijianguanren*)

Article 248 makes it a criminal offence for any “custody or supervisory personnel” (*jianguan ren yuan*) in a custody or supervision institution like a prison, a detention house or a custody house” to “beat a detainee or subject him to corporal punishment or abuse, if the circumstances are serious”. Punishment ranges from detention in a criminal detention centre for one to six months, to three years’ imprisonment. Punishment of three to 10 years imprisonment is set “where the circumstances are particularly serious”. If injury, disability or death are caused to the victim, “heavier punishment” shall be given following Articles 234 (intentional injury) and 232 (intentional homicide).

In a welcome addition to the 1979 Criminal Law, “Any custody or supervisory personnel” who instigate a detainee to beat another detainee or subject him to corporal punishment or abuse”, shall be punished in the same way.

4.2.a) Limited Definitions and Exclusions to Article 248

Prior to revisions, this offence was applicable to “judicial personnel” who “violated law and regulations on prison management” (Article 189). Punishments ranged from “under three years” to 3-10 years “where the circumstances are particularly serious” with no specific reference made to actions causing injury or death.

The 1979 Criminal Law stated explicitly that punishment would only be for those who acted “in violation of prison regulations”. Whilst this no longer appears in the law, it is restated in interpretations and commentaries. Prison regulations in China still allow punishments which are prohibited as ill-treatment under international standards. For example, prisoners who have been sentenced to death are explicitly excluded from any time limits on the use of handcuffs, shackles or solitary confinement.

36 Ministry of Public Security: “Public Security Organs Regulations on Pursuing Responsibility for Policemen’s Errors in Implementing the Law, 11 June 1999.

“Custody and supervisory personnel” are not defined in the law. There is ongoing debate in China over whether this wording covers all personnel employed in the specified institutions. Many commentators assert, for example, that armed police who guard detention facilities are not included.

There is also debate over the definition of “custody and supervision institutions”. Most commentators restrict the definition to those used in the criminal justice process. The procuratorate’s interpretation of the law adds certain staff working in re-education camps for one of the types of administrative detention - Re-education through Labour. None of the interpretations include the whole range of State detention facilities, which would include the numerous forms of administrative detention.

What constitutes “serious circumstances” is not set out in the law or subsequent interpretations. The procuratorate’s latest rules (effective 16 September 1999) set further restrictions on the prosecution of this crime:

3.5 ...Cases should be filed when any one of the following is involved:

1. causing injury (*qingshang*) to the detained person
2. instigating the suicide of the detained person or mental disorder or other serious consequences
3. beating or corporally punishing and maltreating more than 3 times or more than 3 detainees.
4. using cruel methods (*canren shouduan*), having an evil impact (*yinxiang elie*).
5. instigating detainees to beat, corporally punish or maltreat other detainees involving the above.

5. MEASURES TO PREVENT TORTURE IN THE CRIMINAL JUSTICE SYSTEM

5.1) Incomplete Exclusion of Evidence Obtained Through Torture

The 1996 revised Criminal Procedure Law (CPL) repeats provisions in the 1979 law prohibiting the use of torture to extract statements:

Article 43 (32 in 1979 CPL)... “The use of torture to coerce confessions and the gathering of evidence by threats, enticement, deceit or other unlawful methods are strictly prohibited.

Article 46 (35 in 1979 CPL)...In cases where there is only the statement of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to criminal punishment.

The revised CPL still does not specifically exclude the use as evidence in court of confessions or statements extracted through torture as required under the Convention (article 15). In recent years, interpretations of the law and procedural regulations have progressed and then retreated

on this issue. Stipulations currently in effect are inconsistent and confusing. None of them exclude all types of statements extracted through all types of torture. Nor do they comprehensively bar the use of all evidence derived from such statements.

Before revisions to the CPL, on March 21 1994, the Supreme People's Court (SPC) adopted "Specific Regulations on Criminal Adjudication Procedures", which stipulated:

45...Any witness testimony, victim's statement, defendant's confessions verified to have really been (*ying chazheng qushi*) obtained through torture to extract a confession, threats, luring, deceit, or other illegal methods, cannot be used as evidence (*buneng zuowei zhengju shiyong*).

This has been superceded³⁷ by what appears to be a weaker conditional provision in the SPC "Decision on Specific Issues in the Implementation of the CPL" (effective 8 September 1998) which stipulates only that such statements: "61:... cannot become the basis for determining a case (*buneng zuowei ding'an de genju*)."

Several legal sources in China maintain that this does not even amount to full exclusion of the types of coerced statements listed. They may be still be used to "supplement" the major evidence used to determine a case. Moreover, material evidence derived from such coerced statements would not be excluded either.

The Supreme Peoples' Procuratorate followed the same language as the SPC in their "Rules on Implementing the CPL" (effective 18 January 1999):

265: Criminal suspects' confessions, victims' statements, and witness testimonies collected through torture to extract a confession (*yingxun bigong*), or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge (*buneng zuowei zhikong fanzui de genzhu*).³⁸

³⁷ The 1998 Decision establishes (article 367) that it should be taken as the standard wherever there is duplication or conflict with pre-existing judicial interpretation of criminal procedure.

³⁸ The trial version of these rules, issued on 30 January 1997, had also excluded more types of statements extracted under a wider definition of torture, but was less absolute about the use of evidence obtained by "threats" and other illegal means, some of which could amount to mental torture: "Article 233: Criminal suspects' confessions, victims' statements, witness testimonies and experts conclusions collected through methods of torture (*xingxun*) cannot become the basis for a criminal charge (*buneng zuowei zhikong fanzui de yiju*). When threats, enticement, cheating and other illegal methods are used to collect the above evidence, seriously harming the lawful rights of criminal suspects, defendants, witnesses or experts and could influence the objective truth of the evidence, such evidence also cannot become the basis for a criminal charge..."

Additional exclusions of material evidence were dropped entirely from the final version: 233.3 "...Material and written evidence collected by illegal means, which after investigation is verified sufficient to prove facts in a case, can be used as evidence for a criminal charge, except where the means used to illegally collect the evidence seriously harmed the lawful interests of the criminal suspect and other citizens involved".

In practice there are also numerous practical obstacles to such verification (see section 7.2 below). Sources also highlight that, however significant this SPC interpretation may be, it only binds judicial organs and does not directly bind administrative organs like the public security apparatus.³⁹ Significantly, numerous regulations from the Ministry of Public Security, which is responsible for the majority of state officials involved in interrogation, do no more than repeat the general prohibitions against torture in CPL article 43.

Other experts maintain that, a confession or statement extracted through torture may also be legally "recollected" for use as evidence at trial. That is, if a suspect agrees to repeat statements which were initially extracted through torture, these may be admissible.⁴⁰

There are growing calls in China for full and firm exclusion of evidence extracted by torture and other illegal means. Commentators argue that without its efforts to eradicate torture have little hope of lasting success.⁴¹

Amnesty International believes China's Criminal Procedure Law should be revised as a matter of urgency to explicitly exclude the use of all evidence extracted through torture of any kind. The same exclusions should also apply in any determination of administrative punishment.

5.2) No Right to Silence or to Avoid Self-Incrimination

Amnesty International believes the right of an accused to remain silent during the investigation phase and at trial is inherent to the presumption of innocence and an important safeguard of the right not to be compelled to confess guilt or testify against oneself. Currently the CPL states:

Article 93: When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

39 See for example: Li Lin, "Organization and Power of the Police in China" in Human Rights and the Administration of Justice, Liu Hainian, Li Lin, Morten Kjaerum Eds, China Legal System Publishing House, 1999.

40 Chen Guoqing, Application and Interpretation of the Rules of the Peoples' Procuratorates on Criminal Procedure (Renmin jianchayuan xingshi susong guize shiyi yu shiyong), Police Officer Education Press, Beijing, 1999, at 278, quoted in Human Rights in China "Report on Implementation of the Convention Against Torture in the PR China" April 2000.

41 See for example: Liang Tianning, "Several Major Problems in the New CPL" in Research on Rule by Law Issues (*Fazhi Wenti Yanjiu*), Ma Changsheng ed., Falu Chubanshe, 1998: "If the new CPL continues to have no regulations on the exclusion of evidence, then there will not be any breakthroughs in prohibiting torture to extract confessions, inducing confessions and other illegal collection of evidence... Many years of judicial practice and foreign experiences demonstrate: if we want root and branch prohibition of the violation of legally prescribed procedures, or the use of illegal methods to collect evidence, first we need to establish regulations on the exclusion of evidence".

Legal analysts in China argue that the duty to answer fully and truthfully puts the suspect at great disadvantage: it legitimizes the investigator's use of ill-treatment and demonstrates that the presumption of guilt is still the reality.⁴² The established practice of exercising "leniency to those who confess, severity to those who resist" (*tanbai congkuan, kangju congyan*) has a similar effect.

In the past year, the issue of the right to silence has become a more regular subject of debate in Chinese legal journals. In September 2000, the procuratorate in Fushun City, Liaoning Province publicized experimental regulations they had been implementing in some districts which aimed to diminish the importance of confession evidence and introduced the right to silence in some types of criminal case. The news followed numerous reports in Chinese national newspapers of cases of torture and miscarriages of justice in Fushun City.

6. KEY WEAKNESSES IN THE PROTECTION OF DETAINEES

6.1) Lengthy Detention without Charge, Trial or Challenge

Under international law, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release".⁴³ This is one of the basic safeguards against arbitrary arrest or detention and the word "promptly" is taken to mean "a few days". There is no such safeguard in Chinese law.

The Human Rights Committee has stated that "[p]re-trial detention should be an exception and as short as possible"⁴⁴ and must be lawful, necessary and reasonable in the circumstances. The Committee has also held that suspicion that a person has committed a crime is not sufficient to justify detention pending investigation and indictment.

Three years of implementation of the 1996 revisions to the CPL have validated Amnesty International's initial concern that the revisions had increased the potential for incommunicado, lengthy and arbitrary detention and related abuses.

42 See "An Analysis of The Roots of Torture to Extract Confessions" Procurators Daily, 15/12/99. "Although the law sets down the principle that evidence must be legal, however there is no corresponding system for appraising the credibility of evidence, or rules on the exclusion of illegal evidence or other principles on the use of evidence to guarantee the legality of evidence in practice". "Why Torture to Extract Confessions is Not Prevented by Numerous Prohibitions" (*Xingxun bigong weihe lujin buzhi*), Renmin Gonggan, 99:10 no 544, p 58-59.

43 Article 9 (3) International Covenant on Civil and Political Rights, Article 9 (3). China signed in October 1998.

44 Human Rights Committee General Comment 8, para. 3.

CPL revisions increased the maximum permitted length of detention (*juliu*) without charge for ordinary criminal suspects, from 10 days to 14 days (article 69) for some categories of suspect up to 37 days, and potentially indefinitely for others. CPL revisions also extend the period of detention for investigation by the procuratorate after charge from 3 months to 7 months. This may be extended to nine months if the procuratorate orders the police to carry out “supplementary investigation” or, as in the 1979 CPL, indefinitely in “especially major and complex” cases, with the approval of the National Peoples Congress Standing Committee.

Categories of people who previously fell within the scope of Custody and Investigation (*shourong shencha*).⁴⁵ have been introduced into the revised CPL in a number of ways:

- a) As special categories of suspects who may be detained without charge for up to 37 days (Article 69).
- b) For those “who do not tell their true name or address, whose status is unclear” the “time limits on detention start from when their status is clarified”.(Article 128 para. 2).⁴⁶
- c) Meanwhile, outside the criminal justice system, Custody and Repatriation (*shourong qiansong*) provisions still provide as much or more scope for administrative detention as Custody and Investigation.(See section 2.6 for examples).⁴⁷

In addition to detention (*juliu*), the CPL sets out two forms of pre-trial restriction which the police may impose on their own authority, without charge or judicial review. These are: Supervised Residence (*jianshi juzhu*), comparable to detention, and Taking a Guarantee and Awaiting Trial (*qubao houshen*).⁴⁸ These may be imposed on any “criminal suspect” (article 51) including those against whom there is insufficient evidence to justify arrest (article 65). They may also be imposed when pre-trial investigation by the police, procuratorate or the courts cannot be concluded within the legal time limits (article 74). Whereas the CPL stipulates time limits for Supervised Residence and Taking a Guarantee and Awaiting Trial of 6 and 12 months respectively, subsequent interpretations have extended the limits to 18 months and 3 years respectively.⁴⁹ On paper, Supervised Residence may appear preferable to detention, but in

45 Also translated as “Shelter and Investigation”. This allowed police to detain certain categories of people for up to three months, without charge or judicial review, resulting in grave human rights violations including torture. For more details of its inclusion in the revised CPL see Amnesty International, People’s Republic of China: Law Reform and Human Rights, ASA 17/14/97 p 5-6. 21-23.

46 Police regulations on implementing the CPL add only that such calculations only need the approval of “public security organs above county level”. Article 112, Public Security Organs Procedural Regulations on handling Criminal Cases”, effective 14.5.1998.

47 For a detailed analysis see: Human Rights in China, “Not Welcome at the Party: Behind the ‘clean-up’ of China’s cities - a Report on Administrative Detention under ‘Custody and Repatriation’ ”, September 1999.

48 Under CPL article 57 those subjected to supervised residence are forbidden to leave their home or “designated place of residence” or to meet other persons without permission, and they can be summoned for interrogation at any time. The Chinese government reportedly does not consider these amount to detention. However the UN Body of Principles for the Protection of any Form or Detention or Imprisonment, article 2(b) states that a “detained person” is “any person deprived of personal liberty except as a result of conviction for an offence”. International minimum standards of protection for detainees therefore apply.

49 CPL judicial interpretations and procuratorate regulations state that the time limits for both measures can be recalculated when a case is transferred from the police to the procuratorate for investigation, and again on transfer to the courts for investigation. Supreme People’s Procuratorate “Procuratorate Regulations on Criminal Procedures”(renmin jianchayuan xingshi susong guize) Effective 18.1.99. Articles 56 & 70. Supreme People’s Court “Interpretation of specific problems in the implementation of the People

practice it is being widely used as a means of detaining “suspects” incommunicado outside regular detention centres away from the oversight of existing supervisory mechanisms. Torture is frequently the result.

Taking a Guarantee and Awaiting Trial, a form of bail, is the least restrictive of all pre-trial control measures.⁵⁰ However, certain categories of suspect are excluded, including those suspected of crimes “endangering national security”. This includes the majority of prisoners of conscience and political prisoners known to Amnesty International. Detainees, their near relatives or legal representatives now have the right to apply for it. There is no appeal process if their request is rejected.

Under the revised CPL, the police, procuratorate or the courts must rescind or alter “coercive measures” if they discover they have been “inappropriately” taken (article 73). However detainees or their representatives may contest their detention or restriction only on the basis that it has exceeded the stipulated time limits (article 75). Even then, the remedy may simply be a transfer to another type of restriction or detention rather than release.

6.2) Access to Medical Examination and Care - Failings in Practice

The right of detainees to be examined by a doctor and, when necessary, to receive medical treatment is a safeguard against torture or ill-treatment and an integral part of the authorities duty to ensure respect for human dignity. Rule 24 of the UN Body of Principles⁵¹ states that a proper medical examination shall be offered to detainees or prisoners as promptly as possible after admission to a place of detention, and thereafter medical care and treatment shall be provided whenever necessary, free of charge.

Chinese law and prison and detention centre regulations appear to cover medical attention for detainees and prisoners quite comprehensively. However none of the provisions establish prisoners’ rights and concrete entitlements to medical attention. Reports also indicate that the provisions on paper are far from watertight in practice.

In several cases known to Amnesty International, medical staff called into interrogations by police officers have assessed that badly beaten victims are fit enough for the interrogation to continue. Several of the victims subsequently died of their injuries. In cases where the interrogators were finally prosecuted, there is no indication that the medical staff complicit in the torture were investigated or punished in any way. “It is a gross contravention of medical ethics,

Republic of China Criminal Procedure Law” (*zhonghua renmin gongheguo xingshi susongfa ruogan wenti de jieshi*) Effective 8.9.98. Article 58.

50 The “guarantee” is a financial deposit (of at least 1,000 Yuan) or a personal guarantor. The suspect requires permission before he may travel outside the city or county where he resides.

51 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment”.⁵²

Detention centre regulations currently stipulate that all potential detainees must have a medical examination, and are not to be detained if they are found to have “1) mental illness or acute contagious disease 2) Other serious illness, which may be life threatening or incapacitating during detention, except for those [criminals whose] crimes are the most heinous who would endanger society if not detained”. However, it is possible and common for decisions to block detention on medical grounds to be overturned by superior public security officials. In several recently reported cases of death in custody, local detention centre directors had initially refused to admit incapacitated victims of torture who showed obvious signs of severe beating. Families of the victims complained that neither the detention centre director, nor the officials who overruled them, were subsequently punished for their part in the victim’s death.

Medical staff should not be immune from punishment in these cases. Detainees might be better protected if medical professions employed to attend to them had a firmly upheld responsibility to report all cruelty and illegality to relevant supervisory organs. The Chinese Medical Association and other national and international professional bodies have an important role to play in providing support for medical staff who try to uphold ethical standards. Doctors must also have the authority in practice to insist that a detainees medical needs are paramount at all times. This is especially important when, under the current legal framework, a doctor may be the only person except for police and prosecutors to have any access to a detainee in the initial months of detention.

Amnesty International also has long-standing concerns about the quality and availability of medical care to prisoners in China.⁵³ Reports indicate that the authorities routinely refuse to provide prisoners with proper medication and access to doctors. They also frequently refuse to supply information to prisoners’ relatives or allow them to pass on food and necessary medication.

For example, Lu Hongze (also referred to as Lu Hongzao) a 40 year old worker imprisoned in 1989 for 13 years for "counter-revolutionary arson" after he blocked a military vehicle during the suppression of pro-democracy demonstrations on the night of 4 June 1989, died apparently of a brain haemorrhage at Beijing Prison No.2 on 23 April 1998. While imprisoned, he was found to have high blood pressure and according

52 Principle 2, Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (Adopted by Un General Assembly Resolution 37/194 of 18 December 1982).

53 For recent examples see Amnesty International Medical Letter Writing Actions: Ngawang Choephel ASA 17/41/2000, 6.10.2000; Zhang Shanguang ASA 17/37/2000, 6.9.2000; Xu Wenli ASA 17/23/2000, 13.7.2000.

to some sources developed a brain tumour. Prison authorities had reportedly rejected his family's repeated appeals that he be released on medical parole. They also reportedly denied his wife permission to bring medication for him in prison, and he eventually died of the untreated illness.

Under the CPL (article 214) medical parole (*baowai jiu yi*) may be given for prisoners who have a "serious illness and need to remain out of custody and obtain medical treatment". However, the authorities often turn down requests. Several recent cases where prisoners of conscience have died very shortly after release on medical bail brings into urgent focus whether the system is providing access to timely care. In Tibet in particular, high numbers of political prisoners, disproportionate to their numbers in the prison system, died after reports of torture and ill-treatment, some shortly after being released on medical bail. (See Section 3, Death in Custody).

6.3) Access to Families and Legal Representatives - Limited, Discretionary and Conditional

Under the CPL the police should inform the family of a detainee about their detention, arrest and place of detention within 24 hours, except where it "would hinder the investigation" (articles 64 and 71). In practice, communication with the family is frequently denied until the detainee is brought to trial or sentenced.

Provisions in the 1996 CPL concerning access to lawyers are an improvement over the 1979 CPL but still fall short of international standards.⁵⁴ Guaranteed access to lawyers and legal representatives is one of the strongest protections against torture for any detainee. Whilst such access during the investigation stage is not a guaranteed right to all suspects and remains so firmly at the discretion of the investigating authorities, there is unlikely to be major progress in the fight against torture in China. In May 2000, the Committee against Torture recommended that the Chinese government consider abolishing the need to apply for permission, for any reason, before a suspect can have access to a lawyer whilst in custody.⁵⁵

Article 96 of the CPL states that a suspect "may appoint a lawyer to provide legal advice or to file petitions and complaints on his behalf" **after** the first session of interrogation by the "investigative organ", or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law ("compulsory measures"). Appointed lawyers have a limited role at this stage they can demand to be told the offence imputed to the suspect, can apply for

⁵⁴ Standards include that: detainees are immediately informed of their right to be assisted by a lawyer upon arrest or detention or when charged; that they be given prompt access to lawyers, not later than 48 hours from the time of arrest or detention, and regular access thereafter; and that a lawyer can "defend them in all stages of criminal proceedings". International standards also stipulate that the right of consulting with a lawyer includes the right to communicate and meet out of hearing of law enforcement officials, without delay or censorship and with adequate time and facilities. (UN Basic Principles of the Role of Lawyers 1990, Principle 1, 5, 7, 8).

⁵⁵ Committee Against Torture, 24th Session, 1-19 May 2000, para. 21.

Taking a Guarantee and Awaiting Trial once the suspect is formally arrested, and “may” meet the suspect in custody “to enquire about the case”. Representatives of the investigative organs may be present at such meetings.

In cases “involving state secrets” prior approval of the investigative organs is required before a lawyer is appointed or any meeting between lawyer and client takes place. The vague and potentially all encompassing definition of “state secrets” has meant that this provision has been heavily used to deny access to legal representation. This has continued even after the term was clarified in a joint communique in January 1998 which also spelt out that no approval was required in any other cases.⁵⁶

At this investigation stage, detainees are not entitled to free legal assistance. This becomes a right much later on “at least 10 days before” the trial, and only for some categories of detainees. In practice therefore, many will not have the means of accessing this earlier outside intervention. Ministry of Public Security regulations stipulate that the police must inform suspects of their rights to appoint a lawyer at this stage, but officials admit this is often disregarded and most suspects are unaware of the law. Incomplete statistics from the Ministry of Justice for 1997 and the first half of 1998 show that lawyers were appointed at this early stage in only 16.9% and 17.7% of cases respectively.⁵⁷ Some areas report less than 10% .

Although an improvement on the 1979 CPL, these regulations still firmly exclude lawyers from access at times that would be the most beneficial to prevent torture and ill-treatment. Legal representatives may only be hired after the first interrogation, where many of the worst examples of torture have occurred. Nor do lawyers have the right to be present while their client is interrogated thereafter.

The CPL appeared to offer greater protection for juvenile detainees in stipulating that “the legal representative of the suspect or the defendant may be notified to be present at the time of the interrogation and adjudication”. However police regulations have given this a restricted interpretation by introducing the catchall caveats: “except when it hinders the investigation or there is no way to inform them”.⁵⁸ Many juvenile suspects have been among those subjected to torture during preliminary detention and interrogation in reports monitored by Amnesty International over the last two years. (See Section 2.1).

56 “Cases involving state secrets are those where the details of the case (*anqing*) or the nature of the case relates to state secrets, the need to preserve secrecy over some materials or opinions on handling [a case] during the course of criminal investigation cannot make a case one involving state secrets”. Article 9 SPC, SPP, Ministry of Public Security, Ministry of State Security, Ministry of Justice, MPC SC Legal System Work Committee, “Regulations on certain problems in implementing the CPL”. 19 January 1998.

57 People’s Police (*Renmin Gongan*) 1999 number 4, page 6. In 43,196 of 254,755 cases in 1997, and 23,298 of 131,891 cases in the first half of 1998.

58 Article 182, Public Security Organs Procedural Regulations on handling Criminal Cases”, effective 14 May 1998.

6.4) Lawyers Intervention - Additional Practical Obstacles

In practice, institutions and investigators themselves have used a wide range of additional expedients to curtail and deny suspects access to lawyers. They have been assisted by ambiguities in Article 96, the lack of definition of “investigative organs”, “first interrogation”, and “compulsory measures”.

State organs authorized to detain suspects have sought to exclude themselves from the remit of the law. The Customs authority, for example, works closely with the Ministry of Public Security investigating drug trafficking cases and smuggling cases which are a major focus of the current nation-wide corruption crackdown. It has the legal power to Detain and Transfer (*kouliu yisong*) suspects in smuggling cases. In a recent notice the authority stated that such detention was not one of the “compulsory measures”⁵⁹ under the CPL, so requests from lawyers to see clients during Detention and Transfer should be denied.

Through local “internal” implementing regulations, limits have been set on the duration and number of meetings allowed between lawyers and clients. The police in several regions reportedly implement a complicated approvals process for all requests, so that Ministry of Public security regulations that a lawyers visit should be approved within 48 hours, or 5 days in “complex cases” are not followed in practice. In several recent cases, lawyers appointed by a suspect’s family have been obstructed with many different excuses before being informed several weeks later that the suspect “does not want to see a lawyer”. They have no power to verify or challenge this response. Lawyers seeking access away from their hometown are particularly susceptible to these blocking tactics. Lawyers have also complained that there is completely inadequate provision of meeting rooms in many detention centres, resulting in costly waiting and delay. When they attempt to exercise their functions to apply for medical bail or to complain at detention beyond legal time limits lawyers frequently complain that they simply receive no reply.⁶⁰ As for pursuing allegations of torture:

“The use of torture to obtain a confession is something defendants often raise, but it puts us in a very delicate situation since we need facts and evidence to back up these claims... but it is very hard to gather evidence because it is almost impossible to get access to clients at these times”.⁶¹

59 Customs Notice on thoroughly implementing the “Decision on several problems in the implementation of the CPL”. 15 April 1998. “Special exceptions” were made for cases involving “foreign affairs”. It also denied lawyer’s access to case files at the trial stage on the basis that regulations implementing the law currently covered only the courts and not administrative bodies.

60 A Discussion of equality of arms and the protection of human rights of the defendant” Feng Chunping, Legal Science (*Falu Kexue*) June 1998; Several Major Problems in the New CPL, Liang Tianning, Research on Legal System Issues (*Fazhi Wenti Yanjiu*), June 1998; People’s Public Security (*Renmin Gongan*) 1999 number 4, pp 4-10; CPL guarantees of the human rights of defendants, Zhao Jinlong, Lawyer World (Lushi Shijie) 1999 number 8; “Lawyer’s duties in criminal procedure - no cause for optimism” (survey) Lawyer World (Lushi Shijie) 1999 number 8.

61 New York Times , 6 January 2000, quoting Sun Guoxiang “a prominent defence lawyer in Nanjing”.

In one high profile case which demonstrates the occupational hazards for defence lawyers, a rural Binhai County Court sentenced a young lawyer to 1 year imprisonment suspended for 2 years for the new crime of “interfering with witnesses”.⁶² Liu Jian, from Nanjing City was prosecuted for his efforts to assist a client who claimed that his confession to bribe taking had been extorted through torture. Liu Jian was denied meaningful access to his client until one week before the trial. Then he found major discrepancies between his client’s account and the details of the crime presented in the indictment. He tracked down many witnesses to prove the prosecution’s distortion, but most failed to appear when the trial began on 13 July 1998. They had reportedly been threatened against interfering in this high profile corruption case. There was no halt in the trial when the defendant retracted his confession. Instead it was reinstated on the basis that he had failed to bring up allegations of torture during his four months of pre-trial detention. (In fact the defendant had raised the allegations the first time he had met his lawyer out of earshot of prosecutors). The court reportedly also passed a heavier sentence as his allegations of torture were considered to be evidence of a “poor attitude in acknowledging guilt” (*renzui taidu buhao*). The prosecutor immediately detained Liu Jian on accusations of “deliberately inducing witnesses to give false evidence” and “knowingly presenting false testimony”. During five months’ pre-trial detention Liu Jian reported he had been denied contact with his family and was worn down by constant interrogation. He was beaten until his mouth filled with blood for refusing to confirm his interrogators version of events. Eventually he read to camera a statement they prepared for him and chose to plead guilty rather than chance justice there.

Since the revised CPL gave an enhanced role to lawyers during the investigation period, there have been numerous reports of illegal detention and torture of lawyers across the country. Defence lawyers seeking to prove the innocence of their clients have also been prosecuted for falsifying evidence, ill-treated and denied due process even in cases attracting considerable public attention in Beijing. There have been calls for the reinstatement of provisions granting trial lawyers immunity from prosecution which were cut from the original draft of the 1997 Lawyer’s Law.

7. INVESTIGATION AND PROSECUTION OF TORTURE IN PRACTICE

7.1) Lack of Judicial Intervention in Allegations of Torture

Lawyers have also been criticized for a lack of professionalism when they fail to take action over allegations of torture, but they cannot be effective in isolation. The courts also have a duty to act, but reports from many regions in the last two years, from Tibet to Shanghai to Xinjiang indicate that indifference is widespread.

62 Yangcheng Wanbao, 7 May 1999, New York Times 6 January 2000.

In the Xinjiang Uighur Autonomous Region (XUAR) reports from many sources indicates that torture and ill-treatment of prisoners are endemic but there is no sign of official moves to bring alleged perpetrators to justice⁶³. One former court official told Amnesty International that 90% of defendants appearing in court in the XUAR tell the judges they have been tortured in police custody to force them to confess to the accusations, but the judges invariably ignore these allegations. In his three years of work in a criminal court in the region the court official had not come across a single case in which a judge had asked the procuratorate to investigate such allegations of torture or had suspended the trial.

A recent example is Zulikar Memet, a Uighur tried on political charges in July 1999 in the Xinjiang Uighur Autonomous Region (XUAR). He reportedly told the court during his trial that his "confession" had been extracted from him under torture and also showed them wounds he had suffered as a result, including fingernails which had been pulled off. The court, however, ignored his complaint and sentenced him to death.⁶⁴

These reports are consistent with numerous recent accounts from other regions of China of the reversal of miscarriages of justice which had resulted from torture to extract confessions. In the majority of these cases, thorough re-examination only began after other detainees confessed to the crimes long after the victims had been sentenced. Re-examination disclosed that the procuratorate had completely ignored the victims consistent allegations of torture. Relatives were told that the numerous corroborated alibis they had collected for the victims were of no value against a confession. On the few occasions when a court of first instance asked for supplementary investigation, they were satisfied by a simple written "reassurance" from the implicated police officers that "no torture had taken place". It is clear therefore that the mechanisms for internal scrutiny, and the procuratorate in particular, are failing to protect victims of torture.

In practice, the courts have neither the authority nor the independence to consistently provide protection to defendants accusing the state of abuse. They are frequently prevented from exercising their authority when powerful individuals are involved in torture. A recent example illustrates their position in the state hierarchy.

On June 30 1999 Chen Haibing, who was suing the Chengtuo township government for illegally detaining his father over an economic dispute was himself kidnapped by the township party officials. During a recess in the court case, the township deputy party secretary and other officials pushed Chen into a van and transported him to a government building where he was savagely beaten. He was released later in the day, unconscious, with severe chest and back injuries. The secretary was reportedly a member of the party disciplinary committee. When the presiding judge tried to stop the

63 See Amnesty International "Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region" April 1999, AI Index ASA 17/18/99.

64 For details, see: Amnesty International Urgent Action - Zulikar Memet, Hemit Memet, Seidakhmet Memet, Kasim Mapir, Ilyas Zordun ASA 17/28/99 12 August 1999.

abduction, he told him it was not the court's business. (*South China Morning Post* 12.7.99 quoting *Legal Daily*).

7.2) Failures of Internal Investigation and Supervision

The majority of cases reported in recent years where investigation has taken place involve severe injury or death in custody as a result of torture to extort a confession. Analysis of these cases indicates that, when the procuratorate are alerted their primary response is to call on the police station in question to investigate itself.

Police within the station with managerial responsibilities, or those from a public security organ at a higher level with supervisory functions may be called in to investigate. Many "investigations" get no further, blocked by connivance and coverup by the "supervisors" themselves.

The procuratorate seldom find it "necessary" to conduct their own investigations as allowed in relevant regulations.⁶⁵ Overall, the procuratorate still lacks the authority to carry out its functions. It is still inferior in status to the Public Security and State Security apparatus. In practice, the procuratorate's dual functions of prosecution and police oversight mean that it is unlikely to aggressively uncover police malpractice, especially if such actions are seen as undermining the police's ability to perform in their joint endeavour to crack down on growing crime. "Internal supervision" predominantly through the Party apparatus has always been the failing norm. Priority is still being placed on developing systems for internal investigation. Complex systems for "allocating responsibility" have been publicized in the police, procuratorate and courts in the last year. It is still unclear what impact these will have in practice. Many commentators in China insist that there is no effective alternative to powerful external supervision. This is supported by the outcome of cases monitored in recent years.

Official responsibility has often been denied in the face of compelling evidence of torture. In other cases, police have taken care to destroy what they know to be increasingly important evidence to substantiate criminal charges. For example, police have cremated bodies in the absence of any consent from families, they have offered compensation to families who sign agreements not to carry out an autopsy, they have put families under extreme pressure to cremate a body before an examination can be carried out by a recognized hospital. In many cases it is that such obstruction is not carried out by individual officers acting alone. Higher level police supervisory organs are involved, and often take such action only after discussion with the

65 Supreme People's Procuratorate: "Rules on Implementing the CPL" (effective 18.1.99): 265...*If the procuratorate indictment department discover during their review that the investigators have used illegal methods to collect criminal suspects confessions, victims statements, witness testimonies, or expert conclusions, they should put forward opinions on correction, at the same time they should require the investigating organs to separately dispatch their own investigators to reinvestigate and collect evidence, where necessary the procuratorate can also carry out its own examination to collect evidence.*

Where the investigating organs do not separately dispatch their own investigators to reinvestigate and collect evidence, they can according to law return it to the investigating organs for additional investigation.

local party committee. There are very few reports of officials being punished for obstructing investigations and covering up allegations of torture in this way.

Medical evaluations and autopsies should be carried out with the least possible delay by competent staff who are clearly independent of the alleged perpetrators of torture. It is not clear what resources are being allocated to building up such conditions and expertise in China. Extreme and traumatizing measures taken by relatives with resources, such as storing bodies of victims for up to four years in private freezers, demonstrate the very low level of confidence in existing systems.

Relatives who pursue such cases have often been threatened and intimidated. For those who succeed, it is often after appeals over many years to provincial and higher authorities and people's congresses which have attracted considerable media or local public attention. It is often reported, for example, that local authorities including the procuratorate finally took action after a large demonstration was mounted outside their offices. It is significant that recent legislation regulating the constitutional right to petition leaves such persistent relatives liable to detention under Custody and Repatriation.

While there have been increasing reports of compensation awarded to for severe physical injury and to relatives of the dead, either through civil actions or administrative litigation proceedings, there are some anomalies which appear to exclude many victims. For example, there have been several cases reported where victims of torture to extort a confession have been denied compensation under article 17.1 of the State Compensation Law which stipulates that the State will not compensate those detained or sentenced to criminal punishment who "intentionally fabricate confessions or falsify other evidence of guilt". Applications for compensation for psychological or mental damage appear to be rejected in the vast majority of reported cases.

7.3) External Supervision - The Media

As the examples cited in this report show, in the last 2 years the media have played an increasing role in exposing police malpractice, including cases of torture. There is still very little coverage of abuses within the prison or administrative detention systems, and no reporting on politically sensitive cases. Whilst the majority of reports appear only after an outcome which reflects well on the authorities, such as the prosecution or disciplining of the police, there have been very significant exceptions. Reports have regularly covered victim's dissatisfaction with the punishment or compensation in cases of torture. Sichuan TV station has secretly filmed acts of violence by the police against citizens attempting to get redress for fines extracted through torture. Newspapers such as the *China Youth Daily*, *Southern Weekend* and *Yangcheng Wanbao*, have published testimony from victims of torture and ill-treatment who have received no redress, including from people held in Custody and Repatriation Centres. The threat of media reporting has in some cases prompted the resolution of compensation claims after many years of delay. Journalists have faced reprisals for such reporting, and media exposure does not mean that victims are protected from further retaliation. Even in the case exposed by Sichuan TV, for

example, the local police chief felt it necessary to visit the victim who exposed the case to guarantee no reprisals against him, but protection was not extended to the woman who had been forced by threats and ill-treatment to confess to prostitution and provide the “client list” which included the victim’s name. She was reportedly detained in an Enforced Drug Rehabilitation Centre for lengthy interrogation.

7.4) Retaliation Against Those Who Expose Torture

Concerted action, over many years, by victims or their relatives has been key to many of the successful prosecutions of torturers reported in recent years. However, victims, relatives, lawyers, and concerned citizens who become involved in pursuing justice in such cases face significant risks including harassment, economic sanctions, ill-treatment and detention. The continuing arrest and detention of people who expose details of torture and detention is a violation of the right to freedom of expression and association. It cannot be justified. It also calls into question the sincerity of the authorities’ commitment to combat torture.

In March 1999 Guo Shaokun, a former policeman, was reportedly sentenced to two years’ imprisonment by Gulou District People’s Court, Xuzhou City, Jiangsu Province for “disturbing public order” and “fraud”. He had been detained immediately after issuing an open petition to the National People’s Congress about the Feng county police force’s violent suppression of a demonstration mounted by villagers protesting heavy taxes and the mismanagement of elections. Guo had distributed the letter to foreign media based in Beijing.

Liang Qing (f), from Dalian city, Liaoning province, was reportedly sentenced without trial to three years of “re-education through labour” for having sent information about the torture of fellow Falun Gong practitioner Zhang Chunqing (f) to the foreign media.⁶⁶ Liang Qing was reportedly first detained for 26 days from 20 July 1999 at the Yaojia detention centre in Dalian, and detained again on 24 October. Zhang Chunqing (f), who had given an account of her ill-treatment at the Yaojia detention centre in September, was also re-arrested in late October and sentenced to three years of “re-education through labour”. She is held at the Mashanjia labour camp.

Four Falun Gong practitioners from Zhaoyuan county in Shandong province, Li Lanying, Chen Shihuan, Liu Jinling and Chi Yunling, were reportedly detained in November 1999 for disclosing details of the October 1999 death due to torture of Zhao Jinhua (f) (See Section 3 above). In December 1999, Li Lanying and Chen Shihuan were reportedly assigned to three years’ “re-education through labour” to be served in a labour camp in Zibo county, Shandong province. Liu Jinling and Chi Yunling were reportedly still in custody in January 2000. It is not known whether they too have been sentenced.

66 See AI’s report, ASA 17/54/99 of 22.10.99, *op.cit.*

On 17 April 2000, Zhang Xueling, the daughter of Chen Zixiu, a Falun Gong practitioner who died in custody in Shandong in February 2000 (see Section 3.3) was administratively detained, accused of “distorting facts to undermine social order”. Zhang Xueling was not a Falun Gong practitioner but had petitioned the State Council for justice and had publicized to Chinese and foreign media her own testimony and that of eye witnesses to her mother’s detention, ill-treatment and death. In May 2000 Chinese diplomats confirmed to the UN Committee Against Torture that Zhang Xueling had been subjected to 15 days administrative detention. They claimed that she had “distorted the fact of her mother’s death and spread the rumours, disturbing social order”. On her release, Zhang Xueling told foreign reporters she had not changed her attitude. She then published an account of her numerous unsuccessful appeals to police, legislative and government departments for forensic reports, investigation and prosecution stating: “Even now I still don’t know how I distorted the facts or what facts I distorted. What are the facts supposed to be?”.⁶⁷

8. TORTURE AND THE DEATH PENALTY

Amnesty International opposes the death penalty unconditionally on the grounds that it constitutes the ultimate form of cruel, inhuman degrading punishment and that it violates the right to life as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments.

The introduction into the 1996 Criminal Procedure Law of lethal injection as an alternative means of execution to shooting does not diminish Amnesty International’s concerns on the death penalty in China.⁶⁸ The cruelty of the death penalty is inescapable, regardless of the method used. To judge the “humaneness” of an execution by the period from the start of the execution procedure to the prisoner’s death (which can be short in several methods of execution but can last many minutes in other methods including lethal injection), is to ignore other cruel realities of the death penalty. For example the constant threat of death during the period between sentencing and execution, and the conditions under which condemned prisoners are held which in themselves often constitute cruel, inhuman or degrading treatment.

The use of leg irons is prohibited by international standards and the prolonged use of other instruments of restraint is also considered in some circumstances to amount to ill treatment. Prison and detention centre regulations in China specifically exclude those awaiting execution from time limits on the use of shackles and other restraining instruments and solitary

⁶⁷ See Falun Gong website: [Http://www.minghui.ca/gb/0001/Aug/23/chenzixiu_daughter3_1.html](http://www.minghui.ca/gb/0001/Aug/23/chenzixiu_daughter3_1.html).

⁶⁸ Far more people are executed in China every year than in the rest of the world put together. Based on limited published reports, Amnesty International has recorded more than 18,000 executions in China in the 1990s. Prisoners are executed after judicial proceedings which do not conform to international standards for fair trial.

confinement.⁶⁹ It is common practice for condemned prisoners to be kept in shackles (hands and feet) at least from their first trial until execution. They are frequently subjected to a particularly cruel form of shackling hands and feet together (termed *dilao* and “dragon board”) which clearly inflicts severe pain and amounts to torture. Amnesty International has also received reports of condemned prisoners being shackled, arms and legs splayed, to bed boards for many months awaiting execution.

Whilst several regulations “outlaw” the practice, condemned prisoners are also routinely humiliated and degraded in public sentencing rallies and on the way to the execution ground by being paraded in open trucks, their limbs and neck tied up with rope, with placards hanging around their necks listing their names and crimes. In May 2000, Chinese government representatives reported to the Committee Against Torture that: ‘ China prohibits the practice such as parading in the streets the criminals to be executed, hanging big character name posters on criminals or tying them up with ropes. The people’s courts at all levels have done a great deal of work to reduce and eliminate such practice. At the moment such phenomena no longer exist. Should they occur in some individual places, they will be seriously dealt with according to law’.

9. NON-REFOULEMENT OBLIGATIONS

In January 2000, seven North Korean refugees were forcibly returned to North Korea by China. The seven, Lee Dong Myung , Ho Young Il, Bang Young Shil (f), Chang Ho Won, Kim Woon Chul, Kim Kwang Ho and Kim Sung Il (aged between 13 and 30) left their home country for China in November 1999, and from there moved on to Russia. While in the Russian town of Pervomaiskoe, they were discovered and arrested by the Russian Border Patrol. During an interview with Russian television, the refugees said they feared execution if returned to North Korea and they wished to go to the Republic of Korea (South Korea) or a third country. In December 1999, the UNHCR recognised them as Convention refugees. Although the UNHCR informed the Chinese and the Russian governments about its decision to recognise them as Convention refugees, Russia forcibly returned them to China on 31 December 1999. China in turn forcibly returned them to North Korea on 12 January 2000.⁷⁰

The UNHCR's warnings to the Chinese government that the refugees would face "grave consequences" were to no avail. In May 2000 Chinese diplomats told the UN Committee against

⁶⁹ Detention centre regulations published in 1990 state that prisoners sentenced to death are to be shackled. Such prisoners were again excluded from time limits on the use of shackles in an urgent circular issued on 7 June 1991 by the Ministry of Public Security on the problem that: “some districts have made their own shackles or used them indiscriminately resulting in crippling injury or death, creating a very bad impression among prisoners’ relatives and the masses and harming the reputation of Public Security Organs”.

⁷⁰ See Amnesty International “Democratic People’s Republic of Korea: Persecuting the starving: The plight of North Koreans fleeing to China” ASA 24/003/2000, December 2000.

Torture that "after careful investigation and screening" the relevant Chinese authorities determined that the group were economic illegal migrants so handled them according to bilateral agreements.(16) They insisted that "through its handling of the case, China has not violated in a slightest way the principle of non-repatriation of refugees and the alleged violation of the Convention on the Status of Refugees is out of the question".

Amnesty International wrote to all three governments concerned requesting assurances that none of the returnees were at risk of human rights violations. On 8 May, a Chinese Foreign Ministry spokesman, Zhu Bangzao, on a visit to South Korea was quoted saying to reporters in Seoul that the seven refugees were "safe". On 22 June, the South Korean news agency *Yonhap* cited the South Korean Minister of Foreign Affairs and Trade as stating that six of the seven refugees were serving "short-term prison sentences" and that the remaining 13-year-old boy had been released. However, Amnesty International was not able to verify this information.

Although China is party to the 1951 UN Convention relating to the Status of Refugees, NGOs and others attempting to help North Koreans who flee to China say it is virtually impossible for asylum-seekers to access refugee determination procedures in China. The UNHCR undertook regular monitoring missions to the China-North Korea border from October 1997 to June 1999. However, this access was denied after that date by the Chinese authorities. According to several reports received by Amnesty International, China regularly sends North Koreans back to their country without seeking assurances regarding their safety and without giving asylum-seekers an opportunity to lodge a claim for asylum. To Amnesty International's knowledge, no North Koreans have been recognised as Convention refugees in China.

Amnesty International recognises the influx of large numbers of North Koreans may be seen as posing problems for the Chinese authorities but it urges the Chinese government to deal with these issues in a manner which does not violate internationally recognised human rights and refugee law standards. As a State Party to the 1951 Convention relating to the Status of Refugees, China has the obligation to respect the fundamental principle of *non-refoulement* as outlined in Article 33 of the Convention and other human rights treaties, and generally recognised as part of customary international law, which provides that no one shall be returned to a country where his or her life or freedom would be threatened or he or she might be at risk of serious human rights violations, including torture, imprisonment and extrajudicial execution

Amnesty International urges the Chinese government to fully implement the provisions of the UN Refugee Convention, in particular ensure that the rights of all refugees and asylum-seekers in China are respected and that all asylum-seekers have access to a fair and satisfactory asylum procedure and are not subjected to *refoulement*;

10. RECOMMENDATIONS

FIRMLY UPHOLD ZERO TOLERANCE OF TORTURE OF ANY KIND

Revise the Criminal Law, Criminal Procedure Law and prosecution policy to ensure that all acts which constitute torture as defined in Article 1 of the Convention against Torture are fully and effectively outlawed.

To this end also:

Ensure that standards for prosecution reflect the seriousness of this crime. Prosecution should not be limited to cases resulting in death or serious physical injury. Attempts to commit torture, and acts constituting complicity or participation in torture committed by anyone acting in an official capacity should also be punished.

Ensure all persons acting in an official capacity, in whatever circumstances, whether contracted, part time, seconded etc. should be liable for prosecution for acts of torture.

End exemption from prosecution for some crimes of torture for the Mutual Defence Teams (*lianfang dui*) and other bodies acting in an official capacity.

Ensure that obstructing the investigation of allegations of torture, concealing or destroying evidence, obstructing an autopsy etc. are also appropriately sanctioned.

FULLY EXCLUDE ALL EVIDENCE EXTRACTED THROUGH TORTURE FROM ALL PROCEEDINGS, CRIMINAL OR ADMINISTRATIVE

Based on definitions of torture consistent with Article 1 of the Convention, revise the Criminal Procedure Law and other relevant laws and regulations to introduce clear and unambiguous exclusion of all evidence obtained through torture.

To this end also:

Move away from excessive reliance on confession evidence in prosecutions.

Institute for all suspects all necessary guarantees of the presumption of innocence, including the right to avoid self-incrimination, the right to silence, and equality of arms.

END ARBITRARY OR INCOMMUNICADO DETENTION

Abolish all forms of administrative detention which are imposed without charge trial or judicial review.

Introduce procedures to ensure that all detainees are brought before a judicial authority promptly after being taken into custody and regularly thereafter.

Ensure that this judicial authority can effectively continue to supervise the legality and conditions of detention.

To this end also:

Review current permissible length of pre-trial detention and restrictions on bail (termed Taking a Guarantee and Awaiting Trial) in the light of the Human Rights Committee recommendation that pre-trial detention should be as short as possible, lawful, necessary and reasonable.

Effectively outlaw the misuse of “residential surveillance” for detention outside recognized places of custody.

Enable detainees, their relatives and legal representatives to challenge the legality of all aspects of detention, not just on the basis that it has exceeded legal time limits.

Enhance and protect public scrutiny and accountability of official organs holding the power to detain citizens.

ENSURE DETAINEES RIGHTS OF ACCESS TO LAWYERS AND FAMILY

Guarantee all detainees as a matter of right, from the outset of any form of detention by the state, and regularly thereafter, access to legal representatives, relatives and doctors of the detainees' choice.

Access should include the right for the detainee to have a lawyer present during interrogation.

To this end:

End current exclusions to access in cases such as "state secrets cases" and "where it would hinder investigations".

End arbitrary limits in practice to the number and duration of meetings between detainees and their lawyers.

End restrictions on detainees receipt of food, daily necessities and necessary medication from families and friends.

End reservations to the obligation to inform relatives of detainees whereabouts within 24 hours.

Firmly uphold the obligation to inform detainees immediately of their right to legal assistance and access to families.

REGULATE AND IMPROVE CONDITIONS IN DETENTION AND PRISON

Ensure that regulations and practice on the care, discipline and punishment of prisoners and detainees conform with international standards.

To this end:

Ban the use of leg shackles and chains irons and the use of other forms of restraint in ways which amount to torture and ill-treatment.

Strictly limit the use of solitary confinement for all detainees without exception.

Stop the use of electric batons during interrogation and in custody.

End the use of prisoners to discipline or punish other prisoners.

Ensure prisoners receive adequate food and are not held in an environment or forced to labour in ways that constitute ill-treatment.

MEDICAL CARE AND TREATMENT

Ensure all detainees and prisoners have access to timely medical examination and appropriate treatment.

Take effective measures against the high levels of death in custody or shortly after release following reports of torture.

Take effective measures to address high reported levels of serious medical problems among prisoners.

To this end also:

Ensure that doctors have the authority in practice to insist that detainees medical needs are paramount at all times.

Ensure that doctors recommendations for release or medical treatment outside prison cannot be overruled by police or prison authorities.

Review the medical parole system to ensure it facilitates timely access to appropriate health care.

Ensure that doctors are responsible to report all indications of ill-treatment, torture and other illegality to relevant supervisory bodies.

Encourage the role of national medical associations in upholding ethical standards and encourage participation in international fora on this issue

INSTITUTE EFFECTIVE COMPLAINTS AND INVESTIGATION

Introduce effective procedures to enable prisoners, their relatives, lawyers, or concerned citizens to make complaints about prisoners treatment and have them considered without fear of reprisals, and to protect them and witnesses from any coercion or intimidation.

Complaints of torture, ill-treatment and other illegality should always be thoroughly and impartially investigated.

Internal investigation by the bodies against whom the complaints are made is insufficient. To be effective it should be complemented by the work of external supervisory bodies empowered to conduct independent investigations. Such bodies should be enhanced by transparent operations, accountability to the public, and be staffed by people who command wide public respect.

To this end also:

Institute effective external supervision of the response of procurators and judges to allegations of torture.

Support and encourage training in identifying torture and acting upon accusations of torture as part of professional education for lawyers, procurators, judges, guards and the police.

Build up independent, competent forensic medical staff.

INSTITUTE OR STRENGTHEN SYSTEMS FOR REDRESS COMPENSATION AND REHABILITATION FOR VICTIMS OF TORTURE

These systems should complement and not replace investigation of the alleged perpetrators for criminal responsibility.

Review compensation laws to ensure compensation for psychological harm and to ensure victims are not denied compensation for having given false evidence whilst undergoing torture.

Resource and encourage the development of expertise in the rehabilitation of torture victims and encourage participation on international exchanges on this issue.

TRANSPARENCY AND EDUCATION

End restrictions in law, regulations and practice imposed on the free reporting of human rights abuses including torture and ill-treatment.

End retaliation and prosecution of human rights defenders who investigate, report and campaign on these issues.

Encourage participation of the media and other actors in reporting violations, raising awareness of the issues both nationally and internationally, publicizing the rights of the detainee, disseminating national regulations and good practice and disseminating international standards including the Convention against Torture and the concerns and recommendations of the Committee against Torture, including those issued on the report by China.

Prioritize education not only for law enforcement officials and detention centre and prison staff, but also for doctors, psychiatrists, and legal and social organizations in a position to contribute to preventing torture and assisting those most vulnerable to it.