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PEOPLE'S REPUBLIC OF CHINA

Gross Human Rights Violations Continue

1. INTRODUCTION

The Chinese Government has sought to evade accountability for its human rights record, both externally and internally. Despite its acknowledgement that international dialogue on human rights issues is part of "normal" international relations, it continues to deny the legitimacy of international scrutiny of its human rights record, viewing this as unwarranted interference in China's internal affairs. It has also failed to account fully to UN human rights bodies and monitoring mechanisms, despite its ratification of UN human rights treaties.

For four consecutive years from 1991, the Chinese Government has successfully used a procedural motion to block any resolution critical of its human rights record being debated by the UN Commission on Human Rights (CHR). In March 1995, however, the procedural motion failed and China narrowly escaped censure when a draft resolution on its human rights record was defeated by just one vote.

No government should be allowed to choose the extent to which it will abide by international human rights law. No government should be allowed to manipulate human rights issues to further its political aims. To work within the UN means accepting the universality of the fundamental human rights spelled out in the Universal Declaration of Human Rights (UDHR) as well as the application in all countries of the laws, bodies and mechanisms which aim to protect those rights.

Grave human rights violations have continued in China in 1995. They range from the arbitrary detention of people who peacefully express their views, to gross violations of the physical integrity of the person and the right to life.

Dissent and any activity perceived as a threat to the established political order continue to be repressed. Thousands of political prisoners, including members of religious and ethnic groups, are in jail, many simply for expressing their views. Often they face grossly unfair trials, with the guilty verdict decided long before they reach court. Countless numbers of other people are held in administrative detention for long periods without ever being charged. Despite increased official tolerance of debate about legal reforms, human rights defenders are persecuted. Arbitrary arrests have continued during the past year and hundreds of people were detained for peacefully expressing their views or beliefs.

Torture and ill-treatment are common during arrest and in police stations, detention centres, labour camps and prisons, sometimes resulting in the death of the victims. Chinese law prohibits only some forms of torture and ill-treatment. The authorities have failed to introduce the most basic safeguards to prevent torture or to bring many torturers to justice.

The death penalty is widely used to instil fear into the population, particularly during crackdowns on crime. Thousands of people are sentenced to death each year and many of them executed. In many cases, the death penalty is imposed after summary trials, without any safeguards against miscarriages of justice. Increasing numbers are being put to death for non-violent offences.

2. AMNESTY INTERNATIONAL CONCERNS

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2.1. Torture and ill-treatment

Torture of detainees and prisoners is widespread in China, despite the government's declared opposition to its use. China ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1988, but the government has done little to curb the practice of torture.

The provisions against torture in Chinese law are inadequate, and have not been reviewed since the Criminal Law came into force in 1980. The law prohibits only "torture to extract confessions", which excludes the use of torture to intimidate, punish or coerce a person for any reason. It also prohibits "corporal punishment and abuse of prisoners" when this is inflicted by "judicial personnel" and "in violation of laws and regulations on prison management". This excludes ill-treatment inflicted by police and forms of ill-treatment that are permitted by prison regulations, notably the use of leg-shackles and handcuffs for prolonged periods. Furthermore, penalties provided by the law do not reflect the severity of the crime of torture.

Reports from many sources show that anyone arrested or detained is vulnerable to torture and ill-treatment. These reports indicate that the government's approach to investigating and prosecuting cases of reported torture is arbitrary and inconsistent, offering impunity to many torturers. They show that torture occurs not just as an incidental breach of the law, as the Chinese authorities claim, but as a result of institutionalized practices and official policies, including the widespread reliance on "confessions" in the judicial process and the authorities' periodic calls to "crack down hard" on particular categories of offenders.

Torture is inflicted on political and common criminal prisoners alike. It affects people who are not suspected of crimes at all, but who get involved in disputes with police and other officials, or who attempt to defend their rights. The victims come from all walks of life, but those most vulnerable are the less educated or less privileged, such as workers, peasants, the unemployed and vagrants, including children and old people.

While it is difficult to assess the extent of torture quantitatively, there is evidence to show that its incidence is widespread, systemic and far higher than suggested by official statistics. In the past six years, Amnesty International has received allegations of torture and ill-treatment of prisoners in penal institutions and detention centres in practically all regions of China, including in Beijing, Shanghai and Tianjin municipalities, in the Tibet, Xinjiang and Inner Mongolia autonomous regions, and in Liaoning, Shaanxi, Shanxi, Hebei, Henan, Anhui, Hubei, Hunan, Jiangsu, Fujian, Guangdong and Gansu provinces.

Many incidents of torture or ill-treatment have continued to be reported during the past year. In February 1995, Li Dexian, an evangelist from Guangzhou, was about to address a house-church meeting in Beixing township, near Huadu city in Guangdong, when police officers arrived. According to reports, they kicked him in the groin in front of the congregation, then took him to the police station where he was beaten with a heavy pole, jumped on and kicked by police officers until he started to vomit blood. When he asked why he was being beaten, the police officers reportedly said that they had been given instructions from "higher

up" to take action against "this form of religion".¹ One month later, police launched another raid on the monthly house-church meeting in Beixing township and again beat Li Dexian. The incident was witnessed by a visiting Australian missionary.

In January 1995, 20-year-old Pasang and 22-year-old Ngodrup, two monks from the Jokhang temple in Lhasa, were reportedly severely beaten while held in police custody for three days. Pasang was said to have been beaten so badly that he could not stand up and had severe back pain after his release. The monks were apparently not told why they had been detained and were threatened with further punishment if they reported what had happened. In another case in a Tibetan area in Xiahe county, Gansu province, Jigme Gyatso was allegedly severely tortured by police in May 1995 on suspicion of supporting the Tibetan independence movement. He was reportedly beaten until he was unable to move his hands and feet, possibly suffering brain damage, and his family had to pay the police as a condition for his release.

These incidents, which involve people held for political reasons, are just a few of those which have come to Amnesty International's attention. Some cases of torture are also reported in the Chinese press, usually when the authorities have taken action against the perpetrators of torture. These cases exclusively concern common criminal suspects who were tortured shortly after detention, usually in police stations or detention centres. The press has hardly ever reported cases of torture or ill-treatment in penal institutions and remains silent about the treatment of political prisoners. Nevertheless, press reports also show that torture is common. A few are cited below.

In early 1995, four girls aged under 16 and two young men were tortured by a Public Security section chief intent on making them "confess" to "hooligan and promiscuous behaviour", according to a press report.² Detained in Fuxin, Liaoning province, in early 1995, they were repeatedly hit, kicked and given shocks with an electric baton until they "confessed". They were only released after their family had paid 5000 yuan (about US\$ 580) to the police section chief. In another case in Taoyuan county, Hunan province, three women working for a private restaurant were tortured in March 1995 by a police sub-station chief to make them confess to prostitution. Their hands were tied behind their back, they were made to squat, and repeatedly beaten and lashed with a stick for several hours. Their boss and another man were later detained, beaten and fined over 10,000 yuan.³ In another case in Changzhi city, Shanxi province, Shen Fengqi, a school teacher, was tortured to death in July 1994 by five police officers, including the city' police chief. He died after 17 days in detention, having been illegally detained on a false accusation that he had prompted another man to make crank telephone calls to the city police chief. His wife, brother and a fellow teacher were also illegally detained and beaten by police.⁴

Many other cases in which torture or ill-treatment are reported to have caused the victim's death have come to Amnesty International's attention. Few appear to have been the object of a judicial investigation. For example, Zheng Musheng, a farmer and house-church Christian from Dongkou county in Hunan province, died in detention in January 1994, within 24 hours of being taken into police custody. Zheng Musheng's family was only notified of his death eight days after he died. Local police officials claimed

¹ *China News and Church Report*, 24 March 1995; see also *News Network International - News Service*, 24 March 1995.

² *Liaoning Daily*, 21 May 1995.

³ *Legal Daily*, 15 June 1995.

⁴ *Shanxi Ribao*, 28 December 1994, and *Nongmin Ribao*, 22 February 1995.

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that he had been beaten and seriously injured by 13 prison inmates, as a result of which he died. There was no inquest. Zheng Musheng's widow, Yin Dongxiu, was reportedly offered a large sum of money by the Shanmen and Dongkou police for signing a document authorizing cremation of her husband's body, but she refused. Despite that, his body was cremated on 19 January 1994.

Four young Tibetan nuns who had allegedly been ill-treated died in custody or shortly after release from prison between 1992 and 1995.⁵ One of them, Phuntsog Yangkyi, aged 20, was serving a five-year prison sentence in Drapchi prison for taking part in a pro-independence demonstration in Lhasa. According to unofficial sources, she was beaten by prison guards after she and other nuns sang nationalist songs in prison on 11 February 1994. She was transferred in late May or early June 1994 to the police hospital in Lhasa, where she died on 4 June. No independent medical investigation into the cause of her death was reported to have taken place before her burial. In July 1994 her case was submitted by the UN Special Rapporteur on torture to the Chinese Government. The government replied that the prison administration had discovered in May 1994 that Phuntsok Yangkyi had a tuberculoma and had sent her to hospital for treatment. They said that after her death the prison arranged for her remains to be buried in accordance with Tibetan custom. Amnesty International subsequently called on the Chinese authorities to launch an inquiry into the circumstances of her death; no reply had been received at the time of writing.

Torture continues in China because of inadequate legislation, the lack of legal guarantees and other safeguards for prisoners' rights, and the impunity extended to many torturers.

The Chinese authorities do not publish statistics about the number of perpetrators of torture that are prosecuted or their punishment. They only record the number of cases that are "placed on file for investigation". These moreover only concern cases of "torture to extract confessions". In 1994, 409 such cases were "placed on file for investigation" by the procuracies, according to an official report.⁶ Similar official figures were published in previous years.

While these official figures indicate that some cases are investigated, there is evidence that many are not. Indeed, few of the official reports have ever recorded investigations into cases of "corporal punishment and abuse" of prisoners -- even though this is also prohibited by law and there are numerous reports of such abuses. Moreover, since the law clearly limits the scope of official action, they never record cases of "torture" for reasons others than to "extract confessions".

According to both official and unofficial sources, few cases are investigated and even fewer are prosecuted. There are frequent cover-ups by authorities at various levels. Loyalty to colleagues, the importance of local connections, corruption, political pressure and other factors usually determine whether investigations are carried out and, when they are, their outcome. Often, no action is taken to punish perpetrators or else disciplinary sanctions are imposed without a judicial investigation. Chinese procurators, who are responsible for judicial investigations of torture allegations, are often unwilling or powerless to prosecute perpetrators.

⁵See Amnesty International, *Medical concern: People's Republic of China (Tibet): Deaths of female ex-prisoners* (AI Index: ASA 17/38/95), June 1995.

⁶ Annual Work Report of the Supreme People's Procuratorate to the National People's Congress (NPC), published in March 1995.

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While few cases overall are investigated and prosecuted, official inaction or cover-ups appear to be systematic in political cases. Amnesty International knows of no report of an official being prosecuted for torturing or ill-treating a political prisoner.

The Convention against Torture requires State Parties to investigate whenever there are reasonable grounds to believe torture has taken place (Article 12) and to prosecute those responsible (Article 7). It also requires State Parties to take effective measures to prevent torture, not simply to forbid it.

As a State Party to the Convention against Torture, China is accountable to the UN Committee against Torture (CAT) which monitors implementation of the Convention against Torture. When China submitted its first report to the CAT in December 1989, the experts found it inadequate and asked for an additional report, which was submitted in late 1992. In it, the government stated that over the years, particularly since China had ratified the Convention in 1988, it had adopted "effective" legislative, judicial, administrative and other measures to "rigorously forbid all acts of torture and guarantee that the rights of the person and the democratic rights of citizens are not violated". The reality, however, is that no fundamental preventive measures have been taken to protect prisoners against torture since the 1980 Criminal Law outlawed some forms of torture. The most basic safeguards to prevent torture and ill-treatment, such as early access to lawyers, are still lacking and the ineffectiveness of the measures taken by the government is demonstrated by the continuing high incidence of torture in China.

2.2. Arbitrary detention and imprisonment

Thousands of people are arbitrarily detained or imprisoned in China under provisions of the criminal legislation or regulations which provide for administrative detention. The arbitrary implementation of the law also leads to arbitrary detention and imprisonment.

Arbitrary imprisonment under criminal legislation

China's Criminal Law (1980) contains a section on "crimes of counter-revolution", which provides punishments ranging from "deprivation of political rights" to the death penalty for 12 such offences. Several of these provisions are frequently used to imprison people because of their political views or beliefs, in violation of the rights to freedom of expression, thought, conscience and religion and peaceful assembly and association. They include "organising, leading or taking part in a counter-revolutionary group" -- which effectively applies to any group which is critical of official policy -- and "counter-revolutionary propaganda and incitement" -- which effectively bans the expression of any dissenting views.

Prisoners of conscience are also jailed under various other provisions of the Criminal Law, such as on charges of "disturbing public order" or "hooliganism". For example, Zheng Yunsu, the leader of a Protestant community jailed since 1992 in Shandong province, is serving 12 years' in prison on charges of "disturbing public order" and "swindling" because of his peaceful religious activities. Others have been jailed on charges of "leaking" or "stealing state secrets", as the provisions of legislation on "state secrets" have increasingly been used in recent years to arbitrarily imprison people, including journalists, for the peaceful exercise of their right to freedom of expression.

Among those imprisoned on charges of "counter-revolution" is Jigme Sangpo, a former primary school teacher jailed in Lhasa, the capital of the Tibet Autonomous Region. By the time he is due to be released in 2011, Jigme Sangpo will have spent a total of 41 years in prison in successive sentences, including 28 unbroken years since his last arrest in 1983. Aged 57 at the time, he was sentenced to 15 years' imprisonment on charges of "counter-revolutionary propaganda and agitation" for making statements in favour of Tibet's independence. While serving this term, he received additional prison sentences of five years and eight years in 1988 and 1991 for expressing nationalist views in prison. He had already spent 13 years in prison on similar charges between 1963 and 1980.

Others detained on such charges include Tang Yuanjuan, an assistant engineer at a car factory in Changchun, Jilin province, who is serving 20 years in prison for organizing a small discussion group with some friends and a protest march in Changchun in 1989. Chen Lantao, a marine biologist in Qingdao, Shandong province, was sentenced in 1989 to 18 years' imprisonment for criticising the government's suppression of the 1989 pro-democracy protests in a speech. Ren Wanding, a former accountant in Beijing, is serving seven years' imprisonment for calling for respect for human rights and the rule of law in speeches he made in 1989. Liu Jingsheng, a worker in Beijing, was sentenced in 1994 to 15 years in prison for attempting to form an independent trade union and printing pro-democracy leaflets. Ngawang Phulchung, a Tibetan monk, is serving a 19 years' prison sentence in Lhasa for printing and circulating human rights and political pamphlets in 1989. Ngawang Choekyi, a 25 year-old Tibetan nun, was sentenced to five years' imprisonment for joining a small peaceful demonstration in Lhasa in 1992, and to an additional eight years in 1993 for composing and recording pro-independence songs in prison.

These are just a few of the thousands of people who are arbitrarily imprisoned across China for peacefully expressing their views, advocating political reforms, forming or taking part in unapproved social, religious or political groups, raising human rights issues, and, in the case of members of ethnic groups, for peacefully expressing their aspiration for national, religious or cultural independence.

Arbitrary detention under administrative regulations

In addition to those imprisoned under criminal legislation, countless numbers of people are also arbitrarily detained without charge or trial under administrative regulations, including many political prisoners. Amnesty International has described in detail in the past the executive decrees and regulations which provide for administrative detention⁷.

The two main forms of administrative detention which cause widespread human rights violations in China are "**shelter and investigation**" (*shourong shencha*) and "**re-education through labour**" (*laodong jiaoyang*). Shelter and investigation is used by police, on their own authority, to detain people without charge for up to three months merely on suspicion that they may be involved in crime. It by-passes the procedures for arrest and detention provided for in the Criminal Procedure Law (CPL) and is imposed without any judicial supervision. Re-education through labour is

⁷ See in particular Amnesty International report, *China: Punishment without Crime - Administrative Detention* (AI Index: ASA 17/27/91), published in 1991.
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imposed by local government committees for up to three years, as a punishment, for people considered to have "anti-socialist" views and others whose "crimes" are "too minor" to be prosecuted under the criminal law. Thus, they are not charged with a crime, they do not have a trial, they have no access to a lawyer and no chance of defending themselves against the accusations.

Various sources indicate that hundreds of thousands of people have been detained every year for "shelter and investigation" since the late 1980s, and, according to Chinese official sources, well over a 100,000 people are held in "re-education through labour" camps at any one time. Since 1989, both forms of administrative detention have been used by the authorities to arbitrarily detain thousands of dissidents and members of religious or ethnic groups.

Prisoners of conscience who were sentenced to terms of "re-education through labour" in the past two years include members of unapproved religious groups, people who had attempted to raise labour rights issues or to form human rights groups, and others jailed for the peaceful exercise of basic human rights. Most were held on vague accusations of "disturbing public order". Tong Yi, assistant to prominent dissident Wei Jingsheng, was detained in Beijing in April 1994 shortly after Wei Jingsheng's arrest, because of her association with him. In December 1994, she was sentenced without charge or trial to two and a half years of "re-education through labour" and sent to carry out the sentence in a forced labour camp in Hubei province where she was reportedly ill-treated.

2.3. Unfair trials

There is no presumption of innocence as guaranteed in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) in China's CPL. The right to defence is severely limited and in many cases, trials are a mere formality, with the verdict decided before the trial.

Gao Yu, a well-known journalist in China, was sentenced in November 1994 to six and a half years in prison by a court in Beijing. She was convicted of "leaking important state secrets" in articles she had written for two Hong Kong magazines. In violation of Chinese law, the hearing at which the verdict was announced was held in secret. Gao Yu's husband and lawyers were not informed of the hearing. They only heard about it after it was over and were not given any details of the proceedings. Gao Yu was brought to trial three times in 1994.

The court's verdict gives no indication that the alleged "state secrets" leaked by Gao Yu concerned matters of national security and Amnesty International believes that Gao Yu is a prisoner of conscience imprisoned solely for the peaceful exercise of her right to freedom of expression.

Gao Yu's case is not unusual. In many cases the verdict is decided before the trial, according to a practice widely known in China as "verdict first, trial second", which violates the fundamental principles of international law, notably the right to be presumed innocent until proved guilty.

In China, the determination of guilt and sentence is usually decided outside the trial court by committees

subject to political interference. Under the CPL "all major and difficult cases" are submitted for discussion and decision to the court's "adjudication committee" (*shenpan weiyuanhui*), when the court president deems it "necessary" (Article 107). These committees make decisions on the basis of files and without the presence of the defendant or defence lawyers. Other authorities, including the Chinese Communist Party (CCP) political and law committees, may also issue opinions to the courts. Whereas only important criminal cases are handled in this way, such interference is systematic in political cases. In recent years, Chinese officials have reaffirmed on several occasions the leading role of the political authorities in judicial work.⁸

Even if there is no political interference, the trials are often a mere formality. In the overwhelming majority of political cases known to Amnesty International, court verdicts are almost verbatim reproductions of the indictments presented by prosecutors and take virtually no account of the defence.

In all cases, the right to defence is severely limited. According to the law, defendants have no right of access to a lawyer until a few days before the trial starts, usually months after their arrest. Furthermore, under 1983 legislation, defendants charged with offences that "seriously endanger public security", which are liable to the death penalty, are not notified of the trial in advance and may have no access to a lawyer at all.

Defence witnesses are rarely allowed to give evidence in court, although they can in theory be called. There is no presumption of innocence and the burden of proof is on the defence. Defendants who are brought to trial have usually spent months detained incommunicado, subjected to pressure by the investigating authorities and without access to a lawyer. The right of lawyers to meet detainees and the power to challenge the findings of the prosecution are themselves limited.

In practice, lawyers have access only to a part of the file concerning a defendant. They usually cannot confront prosecution witnesses and are effectively barred from challenging the validity of the charges. In many cases, therefore, they merely call for mitigation of the sentence. This is particularly so with lawyers appointed by the courts, which happens when the defendants have no means of appointing their own counsel. Furthermore, not all defendants have a lawyer. They may not know of their right to have one or may believe it is futile.

2.4. The death penalty

The death penalty is applied extensively and arbitrarily in China, often as a result of political interference or government policies, with hardly any safeguards against miscarriages of justice.

Thousands of people are sentenced to death every year and many executed shortly after sentencing. In 1994, Amnesty International recorded more than 2,780 death sentences and 2,050 executions. During the first half of 1995, the organization recorded some 1,800 death sentences and 1,147 executions in China. These figures, which are based on a limited number of published reports, are far below the actual totals. The Chinese authorities do not publish statistics about the death penalty as they treat these as a "state

⁸See Work Report of the Supreme People's Procuratorate to the NPC, 13 March 1995, in *SWB FE/2269 S2/1*, 4 April 1995

secret".

While UN bodies have called for the worldwide and progressive reduction of crimes carrying the death penalty, in China the scope of the death penalty has considerably been expanded in the past 15 years. From an original list of 21 offences under the 1980 Criminal Law, the death penalty now applies to an estimated 68 offences, including many non-violent offences, such as theft and economic crimes. According to international standards, the death penalty should be used only for the "most serious crimes"⁹. The UN Human Rights Committee, has declared that the death penalty "should be quite an exceptional measure". Many in China have been sentenced to death for non-violent offences, such as theft and economic crimes, as well as for drug-trafficking. Some people have been executed for relatively minor offences. In 1994, for instance, two peasants were executed in Henan province for stealing 36 cows and small items of agricultural machinery worth US\$ 9,300.

The death penalty is applied arbitrarily and frequently as a result of political interference. Spates of executions regularly take place before major festivals or events, including before the Fourth UN World Conference on Women in September 1995, or shortly after the authorities launch crackdowns on crime. A nationwide anti-corruption campaign begun in 1993, for instance, has led to a large number of executions for corruption over the past two years. This has had no apparent impact on corruption.

Death sentences also appear to be used by the authorities to ensure that sensitive policies are carried out. For example, Yu Jian'an, the vice-president of a hospital in Henan province, was executed for reportedly taking bribes in exchange for issuing false sterilization certificates to women who were seeking to avoid sterilization.¹⁰

Minors between the age of 16 and 18 can be sentenced to death with a two-year reprieve. Chinese law allows the courts to pronounce death sentences in which execution is suspended for two years "if immediate execution is not essential". At the end of the two-year reprieve, the sentence may be either commuted to life or fixed-term imprisonment or carried out. Thus, someone who was a minor at the time of the alleged offence can be executed, in violation of international standards.¹¹ Although Chinese official sources claim that most of those sentenced to death with a two-year reprieve have their sentences commuted, they do not publish information on such cases.

Some law enforcement and judicial practices in China, such as the use of torture to extract confessions, may result in wrong convictions in death penalty cases. Examples of innocent people who were executed have occasionally been cited by the Chinese press.

International law makes it clear that in death penalty cases there is a special obligation to ensure that the sentence is only imposed "after legal process which gives all possible safeguards to ensure a fair trial"¹².

⁹ UN "Safeguards guaranteeing protection of the rights of those facing the death penalty" (ECOSOC death penalty safeguards), approved by the Economic and Social Council, 25 May 1984, Resolution 1984/50. See also Article 6 (2) of the ICCPR.

¹⁰ See Amnesty International, *China: Death penalty figures recorded for 1994* (AI Index: ASA 17/17/95), 5 March 1995.

¹¹ see Article 3 of the ECOSOC death penalty safeguards and Article 6 (5) of the ICCPR.

¹² Article 5 of the ECOSOC death penalty safeguards.
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In China, however, the procedures for trial are grossly inadequate. Chinese law does not include some of the minimum guarantees for fair trial spelled out in international human rights standards (see above).

Moreover, since 1983 some death penalty cases have been tried under legislation which clearly provides for summary trial procedures. The legislation was adopted on 2 September 1983 at the start of a nationwide "anti-crime campaign" which resulted in thousands of executions within a few weeks. This legislation was also used in the trials of scores of people who were summarily executed in the immediate aftermath of the 4 June 1989 crackdown on the pro-democracy protests. It continues to be used today.

This legislation, which applies to people charged with offences which "seriously endanger public security" provides that, in order to speed up trial procedures in such cases, the courts can bring defendants to trial without giving them a copy of the indictment in advance and without giving warning of the trial or serving summonses in advance to all parties involved. This means, among other things, that defendants can be tried without the assistance of a lawyer and without knowing exactly what accusations they face until they arrive in court. The 1983 legislation also reduces the time limit for appeals against a judgment from 10 days to three days.

One appeal against the verdict is possible under Chinese law. Appeals are rarely successful. Like the trials, they are usually a mere formality. If the defendant does not appeal, Chinese law provides for the case to be reviewed by a higher court than that which passed sentence in the first instance. The CPL, as adopted in 1979, also provides that all death sentences should be submitted to the Supreme People's Court for approval after review by a high court. This procedure, however, has been effectively curtailed in many cases since 1983, when a permanent amendment to the law was introduced to speed up the procedure for judicial review and approval in cases of offenders who "seriously endanger public security". It allows the High People's Courts directly to approve some death sentences, instead of the Supreme People's Court. This measure means in practice that the procedure for appeal and that for review and approval of the verdict are amalgamated into one, so that in many cases death sentences are approved by a high court almost immediately after trial and the defendants are executed soon after being sentenced.

Moreover, in violation of UN standards, Chinese law does not allow those sentenced to death to seek pardon or commutation of the sentence.

3. CONCERNS EXPRESSED BY UN BODIES AND MECHANISMS

China is now a State Party to seven UN human rights treaties¹³ and has submitted reports to the UN treaty bodies that monitor implementation of some of these treaties. Yet, violations of fundamental rights remain endemic in China and the Chinese Government has failed to respond properly to the concerns raised by

¹³ These are the Convention against Torture, ratified in 1988; the Convention on the Rights of the Child, ratified in 1992; The Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1980; the International Convention on the Elimination of All Forms of Racial Discrimination, acceded to in 1981; the Convention relating to the Status of Refugees and the Protocol to the Convention relating to the Status of Refugees, both acceded to in 1982; the Convention on the Prevention and Punishment of the Crime of Genocide, ratified in 1983; and the International Convention on the Suppression and Punishment of the Crime of Apartheid, acceded to in 1983.
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bodies such as the UN Committee against Torture. It has also failed to respond to many enquiries raised by the mechanisms set up under the CHR that deal with thematic issues such as torture, arbitrary detention and extrajudicial executions. When it has responded to enquiries, it has generally sought to justify the authorities' actions.

The Special Rapporteur on torture has submitted to the government many enquiries about prisoners alleged to have been tortured or ill-treated in detention in China. Some have remained unanswered. When it has responded, the government has usually denied the allegations without providing evidence to show that they were unfounded. In some cases, the government claimed that the allegations had been investigated, but provided no details about the investigations. In 1993, the Special Rapporteur requested explanations as to the nature of the investigations which the government said it had carried out, and material to document the assertions it made, but as of late 1994 the government had not replied.

At the Commission on Human Rights in 1995, the Special Rapporteur on religious intolerance presented a report on his visit to China in November 1994. The report referred to restrictions on freedom of religion in China and made a number of recommendations. These included a call on the government to adopt legislation guaranteeing the right to freedom of religion for everyone, including members of the Chinese Communist Party and other organizations. The Special Rapporteur also reiterated his call for the release of religious clergy and lay people belonging to unofficial religious organizations, who are reported to be restricted, detained or imprisoned. There is no indication that these recommendations have been implemented by the government.

The Special Rapporteur's visit to China in November 1994 was the first official visit to the country by a UN thematic mechanism. During his visit, the Special Rapporteur met several religious leaders, but according to unofficial sources, the Chinese authorities went to considerable lengths to prevent him from speaking freely to people in the places he visited. His meetings were closely controlled and some were prevented by the authorities, notably in Tibet where tight security was in force during his visit. Tibetans who wanted to give him information were reportedly unable to do so because of police surveillance.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has received replies from the government to some of his enquiries about the extensive use of the death penalty in China, but many others have remained unanswered. The government has not responded to enquiries about the use of legislation which provides for summary trial procedures in some death penalty cases, except by stating in a reply in January 1994, that Chinese law provided for "strict controls on the application of the death penalty" and "safeguarded the defendants' right to defence and appeal". In his December 1994 report, the Special Rapporteur stated that he remained concerned at the recurrence of reports of violations of the right to life in China, and noted the persistent contradiction between the numerous allegations received from credible sources and the information provided by the authorities, in view of which he repeated his interest in visiting China. No such visit has yet taken place.

The Working Group on arbitrary detention cited, in its December 1994 report, the cases of 51 political prisoners in China, whose cases had come to its attention. It concluded that the prisoners were arbitrarily detained in violation of international human rights standards. The Working Group's concerns about arbitrary detention in China had been communicated one year earlier to the Chinese Government, which had not responded. In February 1995, a Chinese Government representative at the CHR attacked the Working Group for making "arbitrary attacks against sovereign states".

4. AI'S RELATIONS WITH THE GOVERNMENT

Amnesty International has sought to discuss its concerns with the Chinese Government many times over the years, but it has received no response. The organization continues to be denied official access to China for human rights monitoring and talks with government officials and others. Chinese Government representatives have stated on several occasions that they consider Amnesty International to be "biased" or "prejudiced" against China. Statements to that effect were made by a Chinese Foreign Ministry spokesman twice during the past year, notably while an Amnesty International delegation was present in Beijing in September 1995 to attend the Fourth UN World Conference on Women. The delegation had sought meetings with Chinese Government officials before it arrived in Beijing and made further attempts to seek such meetings during the conference, but without success.

Later in September 1995, the authorities denied or cancelled the visas of three Amnesty International delegates who were due to attend an international anti-corruption conference in Beijing in early October 1995, even though the delegates had been officially invited by a Chinese Government institution co-hosting the conference. No explanation was given for the denial or cancellation of visas.

5. RECOMMENDATIONS TO UN MEMBER STATES

In view of the grave concern about human rights in China which has been expressed in a variety of international fora, Amnesty International calls on:

- the UN Commission on Human Rights to adopt a resolution critical of China's human rights record.

and to:

- urge the Chinese Government to invite the UN Special Rapporteur on torture, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Working Group on arbitrary detention to visit China.

- encourage the Chinese Government to sign and ratify the ICCPR, its Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights.

- encourage the Chinese Government to recognize the competence of the UN Committee against Torture to receive under Article 22, Article 21 and Article 20 of the Convention against Torture respectively individual complaints, inter-state complaints and to be able to investigate the systematic practice of torture.

- urge the Chinese Government to allow independent domestic organizations to operate freely to monitor the human rights situation and to allow relevant international organizations free access to the country.

- ensure that asylum-seekers are not forcibly returned to China if they risk serious human rights violations

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there, and ensure that the rights of all asylum-seekers, including those in detention, are fully and impartially assessed.

Appendix I : Amnesty International documents on China, 1995

Dissidents detained without charge or trial since 1994
(ASA 17/02/95, March 1995)

Fourteen Monks arrested in Tibet
(ASA 17/08/95, February 1995)

Death penalty figures recorded for 1994
(ASA 17/17/95, March 1995)

Trade unionists in China; a ban on pluralism
(ACT 73/03/95, May 1995)

Persistent human rights violations in Tibet
(ASA 17/18/95, May 1995)

Update on 11 Tibetan nuns arrested in 1993
(ASA 17/25/95, April 1995)

Christians arrested during Easter and others serving sentences
(ASA 17/26/95, May 1995)

123 political arrests in Tibet in three months
(ASA 17/27/95, May 1995)

Six years after Tiananmen: increased political repression and human rights violations
(ASA 17/28/95, June 1995)

Women in China: Imprisoned and abused for dissent
(ASA 17/29/95, June 1995)

New Crackdown on dissidents before 4 June anniversary
(ASA 17/31/95, May 1995)

Three detained in Panchen Lama controversy
(ASA 17/40/95, June 1995)

40 Public Security and Reform-Through-Labour officers take Chen Ziming back to prison
(ASA 17/44/95, June 1995)

Wei Jingsheng held in secret for 16 months
(ASA 17/52/95, August 1995)

Update on dissidents detained around 4 June 1995
(ASA 17/69/95, September 1995)

Crackdown on Tibetan dissent continues
(ASA 17/74/95, September 1995)

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Chen Ziming's health deteriorates

(ASA 17/76/95, October 1995)

Harassment and surveillance of the families of dissidents in China during the World Conference on Women

(ASA 17/84/95, October 1995)

Death Penalty Log: January to June 1995

(ASA 17/94/95, November 1995)

Death Penalty continues to expand in 1995

(ASA 17/104/95, December 1995)

Appendix II : Ratification by China of major international human rights treaties

The following lists reflect information available to Amnesty International as of December 1995

China	Signature X= Unknown	Date	Date of : Rat., Acces., Succes., Decl.	Status
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	12.12.86		4.10.88	ratified
UN Convention on the Rights of the Child	29.08.90		2.03.92	ratified
UN Convention on the Elimination of All Forms of Discrimination Against Women	17.7.80		4.11.80	ratified
UN International Convention on the Elimination of All Forms of Racial Discrimination			29.12.81	acceded

Appendix III: Action by UN human rights bodies on China

UN Commission on Human Rights 48th session (1992)

Draft resolution E/CN.4/1992/L.49/Rev.1 Situation in China/Tibet

The draft resolution was introduced by Portugal (on behalf of the European Union). Pakistan proposed that a no-action motion be taken. By a roll-call vote of 27 to 15, with 10 abstentions, no action was taken on the draft resolution.

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities 45th session (1993)

Draft resolution E/CN.4/Sub.2/1993/L.26 Situation in Tibet

The draft resolution was introduced by the member Claire Palley. A no-action motion was moved and adopted after a secret ballot by 17 votes to 6 with 2 abstentions.

UN Commission on Human Rights 50th session (1994)

Draft resolution E/CN.4/1994/L.83 Situation of human rights in China

The draft resolution was introduced by Greece (on behalf of the European Union). China requested a no-action motion. By a roll-call vote of 20 to 16, with 17 abstentions, no action was taken on the draft resolution.

UN Commission on Human Rights 51st session (1995)

Draft resolution E/CN.4/1995/L.86 Human Rights in China

The draft resolution was introduced by France (on behalf of the European Union). A no-action motion was requested by China. A roll-call vote was requested by China. The no-action motion was defeated by 22 votes to 22 with 9 abstentions. The Resolution was tabled and defeated by 21 votes to 20 with 12 abstentions.

Appendix IV: Relevant extracts from reports of the UN Thematic Mechanisms on China

Observations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions - Mr Bacre Waly N'diaye, submitted pursuant to the Commission on Human Rights Resolution 1994/82 (E/CN.4/1995/61)

“The Special Rapporteur remains concerned at the recurrence of reports of violations of the right to life. In view of the persistent contradiction between the numerous allegations received from credible sources and the information provided by the authorities, the Special Rapporteur would like to reiterate his interest in visiting China to study *in situ* questions relating to capital punishment in China. The Government has not yet replied to the Special Rapporteur’s inquiry, first forwarded to them in November 1992 and repeated in September 1993 and September 1994.” (para 99)

Observations made by Special Rapporteur torture - Mr Nigel S Rodley, submitted pursuant to the Commission on Human Rights Resolution 1992/32 (E/CN.4/1995/34)

“By letter dated 15 July 1994, the Special Rapporteur advised the Government that he had received information according to which the practice of torture and other forms of inhuman and degrading treatment against persons held in detention centres, prisons or labour camps throughout China continued, despite the prohibition of such treatment under Chinese law. The practice was said to be employed as a means to extract confessions or to intimidate or punish prisoners.

To register a complaint during incommunicado detention, police and prison officials must be approached, and this requirement was said to dissuade most detainees and prisoners from making such complaints. While the procuracy is responsible for investigating complaints of torture, it was alleged that the procurators often ignored such complaints because an investigation might pose a conflict of interest with the procurator’s role as State prosecutor in criminal cases. In this regard, it was said that the need for procurators to cooperate with the police, served as a disincentive to investigate torture complaints. Consequently, few investigations or prosecutions of torture complaints were said to have been carried out.

Among the most common methods of torture reported were severe beatings or whippings, the use of cattle prods to induce electrical shock, and shackling with handcuffs or leg-irons, often tightly and with the victim’s body in a painful position. In those prisons which also serve as labour camps, working conditions were reportedly physically gruelling and at times posed a threat to the health and safety of the prisoners. Persons detained for political reasons were reportedly subjected to especially brutal treatment.

Hayang prison in Hubei province was said to hold, in poor conditions, numerous persons detained for political reasons. Prisoners were said to receive inadequate food and medical attention to be subjected to strenuous forced labour and to various forms of physical abuse. Violation of prison regulations allegedly were frequently met with severe punishment, such as the shackling of prisoner’s hands behind the back. Many prisoners were reported to be ill or malnourished.” (paras 89-92)

The Special Rapporteur transmitted individual cases and on 4 November, the Government sent replies in respect of some of those cases, which the Special Rapporteur appreciates. He notes the absence of replies in respect of others and the absence of information on pending investigations. He also finds that where some of the replies contradict the allegations, the Government has not explained the nature of the investigation on the basis of which its position has been reached, nor has it provided material to document the assertions made. Accordingly, the observations he made

in his previous report remain applicable.

Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36)

“During 1994, the Government of China provided information of six cases of disappearance, stating that in five of them the persons had never been detained and in the other, which concerned the alleged disappearance of the group of 19 Tibetans, that further information would be provided when the investigation was completed. The Government of China also provided information on the four cases of disappearance transmitted in 1994 by the Working Group under the urgent action procedure. The Government of China notified the Working Group that two of the persons were being held under legal investigation for disturbing social order, and stated the exact place of detention. It was stressed by the Government that the families had been notified of their detention. In one other case, the Government reported that the person concerned was being detained while under legal investigation for criminal hooliganism, but did not indicate where he was being held. Regarding the fourth case, the Government replied that the person was under residential surveillance by the Public Scrutiny Bureau on suspicion of inciting a mob to cause social disturbance.” (para 125)

Report of the Working Group on Arbitrary Detention (E/CN.4/1995/31)

During the period of January to December 1994, the Working Group transmitted 89 newly reported individual cases of alleged arbitrary detention to the Government of China. The Government of China provided the Working Group with information regarding some of the cases transmitted to them.

During the period of January to December 1994, the Working Group transmitted four urgent appeals to the Government of China, involving seven persons. “In conformity with paragraph 11 (a) of its methods of work, the Working Group without in any way prejudging the final assessment of whether the detention was arbitrary or not, drew the attention of the Government concerned to a specific case as reported and appealed to it to take the necessary measures to ensure that the detained persons’ right to life and to physical integrity were respected. In some cases, in view of the particularly dangerous health condition in which the detained persons were reported to be, or in view of other particular circumstances, such as the existence of a court order to release the person, the Working Group also appealed to the Government to consider releasing the persons without delay.” (para 13)

The Government of China provided the Working Group with information on some of the persons concerned and in some cases informed that the persons concerned were released from detention.

Appendix V: Extracts from relevant reports of the UN Treaty Monitoring Bodies on China

Report of the Committee against Torture¹⁴ General Assembly 45th Session, Supplement No. 44 (A/45/44), 1990

CAT considered the initial report of China (CAT/C/7/Add.5) on 27 April 1990¹⁵

In introducing the report the representative stated that international conventions enter into domestic law on ratification and that it is strictly forbidden to extract confessions through torture or to mistreat a suspect or detainee. Nevertheless, he recognised that it is difficult to eliminate torture and was aware that there is much to be done. The representative declared that in the context of a population of 1.1 billion, cases of torture were not numerous.

The Committee welcomed the detailed information on the constitutional framework in the report but expressed regret that the report was too general and failed to give details about the practical application of provisions in the Convention. The report did not conform to the Committee's general guidelines regarding the form and content of initial reports. In view of the number of questions which remained unanswered the Committee requested the government to submit to the Committee an additional report containing the information requested (Rule 67, para 2).

Report of the Committee against Torture General Assembly 48th Session, Supplement No. 44 (A/48/44), 1993

CAT considered the additional report of China (CAT/C/7/Add.14) on 22 and 23 April 1993

The representative gave an overview of the Chinese legal system. He stressed that the situation in China must be seen in an historical context. The fact that China had 1.16 billion inhabitants made the implementation of legal provisions difficult. Procurators responsible for examining allegations of torture but the number of cases were falling: 472 in 1990, 407 in 1991 and 339 in 1992.

Committee members welcomed the high level delegation and the additional report. In their questions members referred to the report of the Special Rapporteur on torture and information received from NGOs.

The representative said that China was reconsidering its reservation under article 30 of the Convention, and would take into account the Committee's views concerning the reservation under article 20. The representative drew the Committee's attention to the fact that information referred to by members had been supplied by NGOs, some of which were particularly biased against China. The same sources were used by the Special Rapporteur on torture. Violations of the Convention were isolated cases and did not represent the policy of the Government of China.

The Committee expressed its gratitude for the detailed report which was in conformity with the Committee's

¹⁴China ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 04-10-1988

¹⁵The Chinese Government does not recognize the competence of the Committee against Torture as provided in article 22 (individual complaints), article 21 (inter-state complaints) and article 20 (examination of reliable information of systematic practice of torture), nor does the Government consider itself bound by article 30, paragraph 1, (disputes between States Parties concerning the interpretation or application of the Convention) of the Convention. AI Index: ASA 17/17/96 Amnesty International February 1996

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guidelines. The Committee welcomed the many measures adopted by the Government in order to comply with the provisions of the Convention. Although the Committee was aware of the obvious difficulties facing China it expressed concern at the use of administrative detention and cases of alleged torture. It recommended that measures be taken to prevent such cases and punish those responsible. The Committee requested precise statistical data concerning persons in administrative detention and on capital punishment. The Committee called upon the government to consider making declarations under articles 21 and 22 and withdrawing reservation in respect of article 20 of the Convention.

The Committee recommended that arrested or detained persons should have more extensive guarantees immediately following their arrest and access to family, lawyer, doctor. The conduct of interrogations should be monitored and legislation should be considered to enable detainees to lodge complaints. Furthermore, criminal proceedings should be systematically initiated against persons accused of torture. Procedures should be enacted to guarantee the medical examination of persons detained or arrested. The Committee believes that “training for law enforcement personnel, armed forces and medical doctors should be accentuated and extended and should concern, in particular, limitations on the use of instruments, equipment and weapons by the security forces”.¹⁶ The political will by the government and legislative measures would lead to progress in reducing the incidence of torture.

1610th session; A/48/44, para 428
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