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PUNISHMENT WITHOUT CRIME

@ADMINISTRATIVE DETENTION IN £CHINA

This report examines the various forms of administrative detention under which hundreds of thousands of people are incarcerated each year in China. It describes the cases of prisoners of conscience held without charge or trial under administrative regulations, the legal texts and the official documents which provide for such detention and the wide discretionary powers exercised by the police.

Administrative detention is imposed by police or local authorities without supervision by independent judicial bodies. It increases the likelihood of arbitrary arrest and detention contrary to the standards set out in a number of international human rights instruments, such as the International Covenant on Civil and Political Rights. The torture of detainees and grossly inadequate conditions of detention are reportedly common in administrative detention centres. The potential for torture or ill-treatment is increased by the total lack of judicial supervision and safeguards for detainees' rights which characterizes this form of detention.

This report includes a detailed analysis of those Chinese legal texts on administrative detention which are publicly available. It is also based on information available to Amnesty International from the Chinese press, former detainees and other unofficial sources. Very little of the relevant legislation has been published and access to other official sources of information is extremely limited. The Chinese authorities impose restrictions on the publication and circulation of information related to human rights issues. This control has tightened since the 1989 suppression of pro-democracy protests.

The human rights violations which result from the widespread use of administrative detention are only one issue of concern to Amnesty International in China. Other concerns include the arbitrary detention and imprisonment of prisoners of conscience under the Criminal Law, unfair trials of political prisoners, torture and ill-treatment of detainees, the use of the death penalty and the large number of executions carried out after summary trials.

These issues are examined in other reports and documents published by Amnesty International.

I. PUNISHMENT WITHOUT CRIME

In China, administrative detention is used both for preventive purposes and to punish. The relevant legislation confers wide powers on the Public Security officers [police], who have the authority to impose periods of administrative detention varying from a few days to several years, without any judicial review. In contrast with crime, which addresses specific prohibited acts, administrative detention punishes vaguely defined forms of "anti-social" and "anti-socialist" behaviour or activities. Those held administratively are not legally considered "criminals". They are not charged with crimes and are held without benefit of any judicial hearing.

Administrative detention has been widely used in China since the 1950s both to deter dissent and to imprison critics and opponents of the government for seeking to exercise non-violently their fundamental human rights -- mostly the rights to freedom of expression and belief. During the late 1950s, hundreds of thousands of people were labelled "rightists" and sent to labour camps under a law on re-education through labour which provides for prolonged detention without charge or trial. Many of them remained in such camps for over 20 years.

Currently the number of people held under the various forms of administrative detention is believed to run into millions. Some of them are political or religious dissidents, but the overwhelming majority are people of low social status - vagrants, the unemployed, rural migrants and people regarded as "hooligans" or social deviants - who do not have the status or social connections to protect them from wrongful arrest or other abuses which may occur in police custody.

Until 1989, such abuses were reported and openly criticized in the Chinese official press. Press reports denounced the frequent ill-treatment of detainees in some administrative detention centres and the illegal use of administrative detention by the police. Very few such criticisms have been voiced publicly since the June 1989 crackdown on pro-democracy protesters, and advocates of fundamental legal reforms appear to have been temporarily silenced.

Nevertheless, the intense level of debate within the Chinese legal profession before the 1989 crackdown indicates that both the legitimacy and practice of administrative detention

have been questioned in China. This led in 1989 to the adoption of the Administrative Procedure Law, which came into force in October 1990. This law provides for a right of appeal to the courts against a range of sanctions imposed by administrative orders, including administrative detention. Official commentaries on the new law, however, indicate that there are still unresolved problems regarding its application. Some secrecy appears to surround many of the official regulations, decisions, orders and instructions dealing with administrative sanctions, which are largely unpublished. They are thus difficult to challenge in a court of law. Furthermore, the new law introduces only a review of the legality of detention on the basis of existing administrative regulations. It does not challenge the principles on which administrative detention is based. It does not provide any remedy against the arbitrary imprisonment of dissenters.

This report focuses on the two best documented forms of administrative detention which result in human rights violations: shelter and investigation and re-education through labour. The other existing forms of administrative detention are described briefly below and referred to in various places in the report.

II. THE VARIOUS FORMS OF ADMINISTRATIVE DETENTION

A system of administrative punishments, including detention, was introduced in China during the late 1950s. This system has remained basically unchanged for 30 years, though the legislation on which it is based has been revised and extended.

Various forms of administrative detention can be imposed without judicial supervision, mainly or entirely on the authority of public security [police] officers. Some are imposed as punishments, while others appear to be used mainly as a form of preventive detention. Some of the regulations on which these forms of detention are based have not been published, though they have been examined and sometimes described at some length in Chinese legal journals. The forms of administrative detention are:

1. - "**Administrative detention**" (*xingzheng juliu*), is imposed by the police for maximum of 15 days as a punishment for minor public order offences; it is provided for by a published law adopted in 1957 which was substantially amended and reissued in 1986: the Security Administration Punishment Act.

2. - "**Shelter and investigation**" (*shourong shencha*)[1] is imposed by police to detain suspects without charge for periods which should not exceed three months. It applies in principle to people whose identity or address are not clear and who are suspected of having committed crimes. In practice, it is used indiscriminately and its legitimacy has been questioned by Chinese jurists as it bypasses the normal procedures for arrest and detention provided for in China's constitution and Criminal Procedure Law. It appears to have been introduced during the early 1960s and is based on government regulations, most of which have not been published.

3. - "**Re-education through labour**" (*laodong jiaoyang*) allows detention without charge or trial for periods of up to four years. It affects alleged offenders - including people deemed to be "anti-socialist elements" - whose "crimes" are considered "too minor" for them to go through the normal judicial process under the Criminal Law. Re-education through labour is based on a published law adopted in 1957 which has since been updated with new regulations.

4. - "**Retention for in-camp employment**" (*liuchang jiuye*, which has also been translated as "forced job placement"), affects both convicted prisoners and those subjected to re-education through labour who, after completing their sentence, are forced to remain as "employees" within the labour camps where they served their sentences. Though not strictly a form of detention, it involves restriction to a particular area, comparable to internal exile, and is imposed by administrative authority.

These administrative measures or punishments exist alongside criminal sanctions prescribed under China's Criminal Law and Criminal Procedure Law. The criminal legislation provides, for instance, for "detention" (*juliu*), which is used for the preliminary investigation of criminal suspects in order to determine whether they should be formally arrested; "arrest" (*daibu*), which is used to bring charges against a detained suspect or a person who is apprehended; "control" (*guanzhi*), a criminal penalty for minor offences which is imposed for a maximum of two years but does not involve imprisonment; "criminal detention" (*juyi*), a criminal penalty for minor offences which is carried out in a detention house for a maximum of six months; and "reform through labour" (*laodong gaizao*), which is the system under which most prisoners sentenced to a prison term by a court carry out their

[1] This measure should not be confused with "shelter and reeducation" (*shourong jiaoyang*), which involves the detention of criminal suspects under 16 years of age. It should not be confused either with "shelter and deportation" (*shourong qiansong*), which is aimed at urban beggars and itinerants who have made their way into the cities from the countryside: they are held in special centres pending their resettlement elsewhere or their return to their area of origin. Though this is not in principle a form of administrative detention, the police reportedly use "shelter and deportation" against anyone deemed to exert an adverse influence on social order. It is apparently provided for under a government regulation adopted in 1982.

sentence (not to be confused with re-education through labour - one of the administrative punishments described above.)

The Criminal Law and Criminal Procedure Law of the People's Republic of China were adopted in 1979 and came into force in 1980. They were the first fundamental laws to codify criminal punishments and procedures since the People's Republic of China was founded in 1949, and were aimed at reintroducing a formal judicial process after the chaos of the Cultural Revolution (1966-1976). Although criminal procedure is now established, the practice of administrative detention has continued. The availability since 1979 of a wide range of codified criminal sanctions raises questions about the continued necessity of a system of administrative detention, which was introduced on the basis of a political-legal philosophy which prevailed during the 1950s.

III. "SHELTER AND INVESTIGATION"

Amnesty International has long been concerned that the practice of shelter and investigation in China is a major source of human rights violations. People detained for shelter and investigation are held without charge, on the sole authority of the police, for periods which often last several months or even over a year. In 1987 Amnesty International published a report on torture and ill-treatment of prisoners in China in which it described the frequent abuse of prisoners which reportedly occurs in shelter and investigation centres. This concern still stands.

Since 1989, Amnesty International has received reports indicating that many people detained for their alleged involvement in the 1989 pro-democracy movement have been held for months for shelter and investigation. Such detention not only violates international human rights standards, but also appears to contradict the specifications in the Chinese regulations regarding who should be subjected to shelter and investigation.

Shelter and investigation is often used to detain people before assigning them to re-education through labour - a form of administrative detention described later in this report. Thus, detainees are "transferred" from one form of administrative detention to another without benefit of any judicial process.

Unlike other forms of administrative detention, shelter and investigation is not imposed as a punishment, but rather as a form of preventive detention. It is often used to detain for investigation potential offenders or criminal suspects whose identity or "background" is not clear. It bypasses the procedures for arrest and detention provided for in the Chinese constitution and law. Each large and medium-sized city in China reportedly has

several shelter and investigation centres, and the number of people taken to such centres each year is believed to be in the hundreds of thousands.

Shelter and investigation appears to be the most controversial form of administrative detention in China. In 1989, a Chinese criminologist wrote in the journal of the China University of Politics and Law:

"In the last few years, there has been a heated debate in the world of jurisprudence and within the Public Security [police] and judicial departments about the existence, nature, objectives and management of the system of shelter and investigation that is used by the Public Security organs. [...]

"There are quite a lot of legal scholars who think that the system of shelter and investigation should be abolished. The main reasons for this are: (1) the Criminal Procedure Law has not given the Public Security organs the authority to exercise this power; (2) the range of targets to which this measure is applied by the Public Security organs is too wide; (3) during investigation, there is frequent use of torture to extract confessions, which is a violation of the citizens' individual rights."[2]

1. THE LEGAL BASIS AND OBJECTIVES OF SHELTER AND INVESTIGATION

Shelter and investigation was formally introduced in 1961. A short document issued in 1980 by the State Council (government) appears to be the only legal text concerning shelter and investigation which has been made public, although Chinese legal journals indicate that other regulations have been issued but not made public. The 1980 document, *Notice of the State Council on the Unification of the Two Measures of Forced Labour and Shelter and Investigation Together With Re-education Through Labour* (29 February 1980), states:

"Since 1961, with the approval of the Central Committee of the Chinese Communist Party and the State Council, the Public Security organs in all areas have adopted the measures of forced labour and shelter and investigation to deal with people who commit minor acts of law-infringement or crime and

[2] "Research into the question of whether shelter and investigation should continue", *Zhengfa Luntan* (Politics and Law Tribune), No 1, 1989.

elements suspected of having roamed around committing crimes. These two measures have proved positively useful in safeguarding social order and forcibly educating and reforming criminal elements who infringe the law."

The *Notice* does not set out procedures for the application of either measure. It is essentially a set of new instructions aimed at changing the structure under which forced labour and shelter and investigation are carried out: it provides that people held under either measure shall from then on be sent to re-education through labour camps and that all forced labour centres and shelter and investigation centres must change themselves into re-education through labour centres in "a planned and step-by-step way". The reason for this, according to the *Notice*, is that "the targets of forced labour and of shelter and investigation are basically similar to the targets of re-education through labour, with no essential difference between them".

As will be seen later, however, the law on re-education through labour provides specifically that political dissidents are among those who can be detained for re-education through labour, whereas the 1980 *Notice* defines the targets of shelter and investigation as follows:

"People who commit minor acts of law-infringement or crime and who, in addition, do not give their true names and addresses, or whose general background is unclear, or else who are suspected of having roamed from place to place committing crimes, or forming gangs to commit crimes, and who therefore need to be taken in for shelter so that their offences be clarified through investigation."

This vague definition is open to broad interpretation by the police. The 1980 *Notice* further specifies that those subjected to shelter and investigation shall be organized into "special teams" within the labour re-education camps so that they can be investigated, but that those who are not considered "a great danger to society" can "be placed under surveillance at home" or "obtain a guarantor during investigation" (that is, be released on bail), in accordance with the provisions of the Criminal Procedure Law.

According to the Chinese criminologist cited earlier (see page 6), this *Notice* forms the legal basis empowering the police to subject people to shelter and investigation. The criminologist states that in June 1980, the Legislative Affairs Committee of the National People's Congress Standing Committee pointed out in another document that the 1980 *Notice*, referred to as *Document No.56 (1980) of the State Council* "may be regarded as an

administrative regulation which, while there is no formal legislation, can be the legal basis for shelter and investigation."[3]

The main instruction of the 1980 *Notice*, however, was essentially that shelter and investigation centres should be abolished and replaced by "special teams" within labour-re-education camps. This instruction appears to have been ignored, and shelter and investigation centres have continued to exist on their own.

Furthermore, other articles in the Chinese legal press indicate that some documents issued by the government after 1980 now form the legal basis for shelter and investigation. One 1987 article in a leading academic law journal cited two documents which have apparently not been made public: *Document No 56 (1982) of the State Council* and *Document No 50 (1985) of the Ministry of Public Security*.[4] One 1989 article also cited a document issued by the Ministry of Public Security on 31 July 1985, entitled *Notice on the Strict Control of the Use of Shelter and Investigation*, which may be the another name for *Document 50 (1985)* referred to above. Various sources indicate that this document may currently serve as the basis for shelter and investigation. An article in the Hong Kong review, *Dangdai*, on 2 February 1991 noted that the 1985 *Notice* had been issued internally (not made public) by the Public Security Ministry.

Since these regulations have not been made public, the Chinese legal press provides the only source of information about the legal definition and nature of shelter and investigation. These legal commentaries however, reflect the confusion and divergence of views which prevail on the subject.

2. A LEGAL QUAGMIRE

"What is shelter and investigation? In Chinese legal circles, there are three main viewpoints on this: some believe that it is an administrative measure taken by the public security organs to clarify the criminal acts of certain persons, which concerns criminals who roam around and elements suspected of having roamed around committing crimes; some believe that it is a measure of administrative investigation of a coercive nature used for cases of suspects where it is not possible to clarify the criminal acts and obtain the necessary evidence within the time-limits laid down for criminal detention [in the

[3] *Zhengfa Luntan*, No 1, 1989.

[4] *Faxue Yanjiu* (Studies in Law), March 1987, p.46

> Criminal Procedure Law]; some believe that it is a public order administrative coercive measure of investigation used in the cases of people who commit acts of law-breaking and crime and do not give their true names and addresses or whose background is unclear, or people who are suspected of having roamed around committing crimes...
>
> "What is the nature of shelter and investigation? There are many different opinions on this in the world of jurisprudence and within the public security organs; in summary, they are of five kinds: (1) it is an administrative measure; (2) it is a public order administrative measure of a coercive nature; (3) it is a measure of public order administrative coercive investigation; (4) it is a criminal coercive measure; (5) it is a coercive punishment. This author believes that it is a measure of public order coercive investigation which ... lies between a public order punishment and a criminal coercive measure."[5]

The author of this rather confusing summary cited authoritative legal journals and the official newspaper of the Ministry of Public Security as the sources for the different views described above. The diversity of views represented shows that there is no single authoritative definition of shelter and investigation. It also suggests that the various government regulations and documents concerning shelter and investigation either give contradictory instructions, or are sufficiently vague to be interpreted in many different ways.

Although the legal status of shelter and investigation remains unclear, there is much evidence to show that it is abused by the police to hold people illegally: some of those held do not fall within the scope of the official regulations and others are held for longer than permitted by these regulations. It also appears to be used by the police instead of other forms of detention or restriction provided for under the Criminal Procedure Law. A wealth of documents confirm that shelter and investigation is a major source of human rights violations.

3. THE USE OF SHELTER AND INVESTIGATION BEYOND THE PERMITTED TIME LIMIT

[5] *Zhengfa Luntan*, No 1, 1989.

A 1986 article in *China Legal News* provided a detailed description of the procedure police officers should follow before detaining an individual for shelter and investigation[6]. It also specified that the maximum permissable length of shelter and investigation is three months.

"In general, the time-limit for shelter and investigation may not exceed one month. In cases where the circumstances are complex and it is necessary to extend the period of shelter, the reasons for this must be clearly written down, discussed collectively by the leadership of the shelter and investigation centre and then reported to the district or municipal Public Security Bureau for its approval. However, the maximum period allowable is three months." [7]

Other legal journals have confirmed that the maximum legally permitted length of shelter and investigation is three months. In practice, however, the police frequently disregard this time-limit and people have been held without charge under this form of detention for as long as two years[8]. A Chinese legal expert explained this phenomenon as follows:

"Some public security organs think that once the people taken in for shelter and investigation are locked up they cannot escape anyhow, and it does not really matter when they [the police] get around to investigating. Some [public security organs] forget about carrying out the investigation in time because they are too busy. Some are too short of staff to assign anyone to the task within the time-limits. Then there are a few police officers who deliberately lengthen the period of shelter and investigation in order to punish those held. Others again think that seeing as the people in shelter and investigation are fed and watered and have something to do, then it does not matter much if one keeps them in for a while longer. Another situation is where there have been a number of people involved in a crime together and some officers keep

[6] According to the article, basic-level public security or "local defence" departments in rural areas or urban neighbourhoods should submit requests to impose shelter and investigation to a higher public security office and these should in turn seek the approval of the Public Security Bureaus established in large cities, before shelter and investigation can be carried out. Other articles in the legal press have, however, indicated that there is no strict procedure for authorizing shelter and investigation.

[7] *Zhongguo Fazhi Bao* (China Legal News), 30 August 1986.

[8] *Faxue Yanjiu* , March 1987, pp.43-48; *Fazhi Ribao* (Legal Daily), "Bu de lanyong jianshi juzhu cuoshi", 18 January 1988.

> them all in until the whole case is resolved, even though some of them should have been either released or dealt with by other methods much earlier. For all sorts of reasons, there is a lengthening of the period of shelter and investigation even to the extent of surpassing the maximum of three months."[9]

Examples of cases where shelter and investigation was illegally applied for longer than permitted have been given in the legal press. The *Legal Daily* reported in 1989, for example, on the case of a businessman who was arrested in April 1988 and was still being held for shelter and investigation over six months later. The report also revealed, that the businessman, Yang Lihua, had been placed in fetters. According to the report, Yang Lihua had been arrested by the Cangzhou municipal Public Security Bureau, in Hebei province, on suspicion of fraud. His wife wrote to the *Legal Daily* in late 1988, pointing out that her husband was being held illegally on several counts: he did not fit the definition of people who can be subjected to shelter and investigation, since his true name and address were known and he was not held on suspicion that he had "roamed around committing crimes"; he had by then been held for over six months, far beyond the maximum permitted time-limit of three months. Furthermore, she said, he had not committed any crime. The *Legal Daily* subsequently sent two reporters to the area, who interviewed the police official in charge of the case within the Cangzhou Public Security Bureau. According to the reporters, the official admitted that Yang Lihua had already been detained beyond the time-limit laid down in the relevant Ministry of Public Security regulations, but he "strongly" pointed out:

> "Economic cases are complex, and it is [thus] unavoidable that the time-limit for shelter and investigation is exceeded; furthermore, the relevant regulations of the Ministry of Public Security are already old and must be modified according to the developments of the situation."

The police official apparently did not respond when the reporters pointed out that until the ministry's regulations had been amended they should be enforced as they were. The official said that they had handled this case "according to the instructions of the city's leaders". The intention of the Public Security Bureau, he said, was to transfer Yang Lihua's case to the Public Security Bureau of Shenzhen (his city of origin), but that they still needed the approval of Cangzhou's leadership for this. He also told the reporters that Yang Lihua had not been "honest" while in detention and had therefore been put in foot-irons[10].

[9] *Zhengfa Luntan*, No 1, 1989.

[10] *Legal Daily*, 4 January 1989.

Thus, after being illegally detained for well over six months on the basis of suspicions which had obviously not yet been confirmed (since he was still held for shelter and investigation), and after being put in irons for not being "honest" (which usually means refusing to "confess"), Yang Lihua only faced the prospect of being detained further in another city where he might receive the same treatment. What happened to him subsequently is not known.

4. THE USE OF SHELTER AND INVESTIGATION BEYOND ITS STATED SCOPE

The case described above illustrates the illegal use of shelter and investigation both beyond its maximum permitted length and beyond its stated scope. Indeed, the "targets" of shelter and investigation are supposed to be suspected offenders whose true names and addresses or "general background" are not known, or who are suspected of having "roamed from place to place committing crimes". This definition could not have applied to Yang Lihua: he was not a vagrant and his true name, address and occupation were known to the police. Examples of prisoners of conscience who have been illegally detained for shelter and investigation, both beyond its scope and beyond its permitted length, are described later in this report.

The illegal use of shelter and investigation beyond its stated scope by the police has been widely reported. It was frequently criticized in the Chinese legal press before the June 1989 crackdown, in the context of calls for legal reform which have now become rare. One 1988 report on irregular law enforcement practices in a northern province stated:

> **"The phenomenon of law-enforcers breaking the law still exists. For example, certain public security personnel make indiscriminate use of the method of shelter and investigation, flagrantly enlarging its scope of application, and sometimes prolonging custody of the offenders beyond the proper time-limit."**[11]

The national newspaper *China Legal News* reported in 1986 on a particularly note-worthy case in which a lawyer had been subjected to 11 days' shelter and investigation at the initiative not only of a local police chief, but also of the local county procurator and court president. The case occurred in July 1986 in the Miao-Dong ethnic minority prefecture of

[11] *Legal Daily*, 25 February 1988.

Qiandongnan, in Guizhou province. According to the newspaper, the case concerned a defence lawyer named Zhou Lin, who had accepted a brief to defend a client from a remote village. Zhou Lin visited the village and interviewed some witnesses for the purpose of preparing the defence. One of the witnesses committed suicide that same evening. The day after Zhou Lin returned, he was summoned to the office of the county court in which he himself normally worked and interrogated there by the court president, the local police chief and the county procurator. Without any evidence, they accused him of having "illegally summonsed a witness for detention" and of having caused the man's death. The county procurator, Jian Wenfu, then produced a shelter and investigation order against Zhou Lin, and had him led away in handcuffs to serve 11 days in a shelter and investigation centre. In his subsequent letter of complaint to *China Legal News*, Zhou Lin called for the county procurator to be charged with the crime of illegal detention.[12]

A provincial-level judicial investigation was carried out following the lawyer's complaint. It found that Zhou Lin could not have been defined as "a suspect who roams around from place to place, gives a false name and address..." since he was actually a colleague of those who had ordered his detention. The investigation publicly cleared Zhou Lin of all the allegations against him and strongly condemned the actions of the police chief, the procurator and the court president. One month later, the police chief in question was given the right to reply by the *China Legal Daily*, to which he submitted the following comments:

"Strictly speaking, it was not quite appropriate for us to take Zhou Lin in for shelter and investigation, since it was not really a matter for us here in the Public Security Bureau. But the county leadership suggested that we should do it, so we did it.

"The responsibility was ours - but it was certainly not a question of illegal detention or anything like that. The taking in of Zhou Lin for shelter and investigation formed the inevitable outcome of a large number of different factors; in no way was it only we who wanted it.

"The main point was that we were under pressure from the masses at the time, and the higher judicial organs had paid no attention. If we had failed to take Zhou Lin in for shelter and investigation, and instead simply let him go free, the consequences would have been simply unimaginable..."[13]

[12] *China Legal News*, 16 October 1986.

[13] *China Legal News*, 27 November 1986.

Official sources have occasionally in the past acknowledged that many cases of detention for shelter and investigation were unjustified. According to the Hong Kong review, *Dangdai*, internal circular No 60 from the Public Security Ministry, dated 31 July 1986, acknowledged this, and statistics for April and May of that year revealed that only 36.2 per cent of shelter and investigation cases were justified. The percentage was even as low as 10 per cent in some provinces.[14]

IV. PRISONERS OF CONSCIENCE DETAINED FOR SHELTER AND INVESTIGATION

Many people detained in connection with the 1989 pro-democracy protests have reportedly been held for months without charge under the provisions of shelter and investigation. Many were arrested as a result of denunciations or on mere suspicion that they had supported or taken part in demonstrations. Some examples of the cases which have come to Amnesty International's attention are described below. One of them is that of a retired cadre who was detained for over 10 months in a provincial city. The suspicions which led to his detention were apparently totally unfounded. In order to protect his identity, his real name is not mentioned and some details have been omitted.

Mr Li, a retired cadre in a provincial city, was arrested by police in September 1989 and held for shelter and investigation on suspicion that he had written some anonymous "counter-revolutionary" letters in support of the student protests during the 1989 pro-democracy movement. At the time of his arrest, his home was searched and police took away several of his manuscripts and notebooks.

According to police, the anonymous letters had been addressed to the leadership of the Chinese Communist Party and to some universities in Beijing and student leaders in Tiananmen Square. Police said that the letters contained "serious political errors". After his arrest, Mr Li was subjected to three months of interrogation during which he was put under pressure to admit that he was the author of the letters. Mr Li protested that he was innocent and maintained this throughout his detention. The assumption by the police that he had written the letters was apparently based on three grounds: the letters had been mailed in the area where Mr Li lived; the style in which they were written indicated that the author was

[14] *Dangdai* (Contemporary), 2 February 1991.

probably an educated "old cadre" - as was Mr Li; and the police said that the handwriting was identified as being that of Mr Li. However, he suspected that the police were not certain of this as they never permitted him to look closely at the letters.

After three months of interrogation, Mr Li still had not admitted to authoring the letters. Interrogation then stopped for several months, but started again in July 1990. This time, Mr Li was told by police that he would be released if he admitted to authorship of the letters and to the "general errors" in them. He was warned that he would deserve to be punished if he refused the offer and he was even told that he would get a written promise that he would be released if he wanted one. However, Mr Li maintained that he was innocent and refused to accept the proposal. The police then informed his wife and other relatives that they could come and see him - for the first time since his arrest. The police asked Mr Li's relatives to advise him to accept the offer that the police had made. Mr Li's relatives were permitted to see him and tried to convince him to accept the police proposal, but without success. Despite this, they were told by police that Mr Li would be released after all, though this might take a week or ten days, as permission had first to be sought from the higher authorities who had apparently initiated the investigation into his case. Nine days later, in August 1990, Mr Li was released. He received no apologies for his ten and a half months of arbitrary detention. Instead, he was given a release paper which stated that he still had some "counter-revolutionary words and deeds" but that his "crime" was not so serious as to warrant criminal punishment.

In another case, a university lecturer was held for eight months without charge for shelter and investigation in southern China for taking part in pro-democracy demonstrations in May and June 1989. The lecturer, Mr Wang, was arrested at his university in late September 1989. At the time of his arrest, police confiscated letters, magazines and other objects. He was given a written notice, issued by the city's Public Security Bureau, which ordered his detention for shelter and investigation for "taking part in the turmoil". The notice gave no other details about the reasons for his arrest or the length of his detention. It simply stated that the order was issued in accordance with the State Council regulations entitled *Decision Concerning the Question of Shelter and Investigation*. The order was apparently renewed twice during Mr Wang's detention.

Mr Wang had taken part in demonstrations and made public speeches during the 1989 pro-democracy movement but had not played a prominent role in the protests and the demonstrations in his city were peaceful. During his detention, he was held in a cell measuring about 10 square metres together with about 10 other people - all of whom were held for ordinary criminal offences. The window was permanently blocked. The prisoners were only allowed out of the cell for a few minutes each day for exercise in a small walled space adjacent to the cell. Food and water were insufficient. A few weeks after his arrest, Mr Wang started suffering from scabies, serious intestinal pains and kidney trouble. Though these pains continued for months, he did not receive adequate medical treatment.

After being held for eight months for shelter and investigation, Mr Wang was formally "arrested" in late April 1990 and charged with "counter-revolutionary propaganda and agitation". Two months later, due to the efforts of his wife, he was released. An official statement on his case at the time of his release said that his "behaviour" during the students' protests constituted the crime of "disturbing social order" and that he had therefore been arrested by police "in accordance with the law". However, the statement explained, he had made "a clean confession of his actions" and his attitude was "pretty good", thus he was being released and allowed to join his wife abroad.

But according to Chinese law Mr Wang had, in fact, been illegally detained for eight months before he was charged. Furthermore, his health seriously deteriorated as a result of his detention.

Another academic who was detained for shelter and investigation in Beijing for over two months after the June 1989 crackdown has given Amnesty International a detailed account of his detention. Extracts of his testimony are cited below.

"I was arrested at the beginning of September 1989. Some police officers searched my home with a search warrant, but they did not show me any documents when they took me into the detention centre. Neither did they tell me the reasons for my arrest. When I was taken into the detention centre, the police officer who received me asked the officer who had arrested me what crime I was accused of. The latter said suspicion of holding firearms - that is, I was suspected of holding or hiding guns ... People had reported that I had hit soldiers with rifles on 3 June 1989 and hidden the rifles ... At 11pm on the night of 3 June 1989 a friend of mine drove me to Beijing railway station. When we passed Chongwenmen, we were driving very slowly and a youth stuffed a soldier's helmet into the car. My friend's wife [later] told the police about this ...

"On the third day after my arrest, the police wrote to my family, telling them that I had violated State Council Document No.56 of 1980[15] and that they were holding me for shelter and investigation according to this document. On the envelope was the address of the place where I was being held ... I was only interrogated twice. The first time was the day after my arrest. The second time, one month later.

[15] See above, page 8, about this document.

"The day before I was released [around mid-November 1989], the police told me that the Public Security Bureau Chief had approved the report for my release and had also notified my work unit. Before my release, I was handed over a piece of paper that recounted the mistakes I had committed during the students' movement: violating martial law ... This referred to my having stayed on the streets during the night of 3 to 4 June. My so-called "crimes" included going on to the streets, collecting leaflets and taking pictures ...

"After I was released, the Public Security Bureau did not give my work unit [place of work] any written document, nor explanation for my arrest, nor for my release. So I was arrested without being told why and released without being told why ... After my release, I found the Document No.56 of the State Council. Reading it, I still cannot understand the reasons for my arrest, because Document No.56 does not mention anything involving me or relevant to me. I can't understand why they should treat people so irresponsibly. Do they only listen to untrue allegations? I must say objectively that I had a better deal than all the others in the jail. When the warders found out who I was, they were very polite with me and did me some favours, so I was comforted slightly. The interrogators eventually cleared up my case and the suspicions of hiding guns, so that I was released after two months. But they were not interested in finding the person who made the false allegations, not interested in maintaining a human being's dignity. This is both frustrating and sad."

The author of this testimony, who has requested anonymity, contracted scabies and lost three and a half kilograms in weight during his two months in detention. He was also made to sit constantly on the floor without moving while in detention and, as a result, suffered from pains in his legs which continued long after his release.

Many other political suspects were reportedly detained for weeks or months without charge for shelter and investigation after the June 1989 crackdown on pro-democracy protesters. While some were eventually released without being charged, many of those who have been tried and sentenced or sent to labour camps without trial are believed to have been initially held for shelter and investigation.

According to various reports, members of religious groups who refuse to register with the government-controlled official religious organizations and who carry out religious activities independently are also frequently subjected to short-term detention for shelter and investigation. In most cases, they are released after a few days or weeks and either fined or warned to stop taking part in "illegal" religious activities, although religious leaders may be treated more severely. Such arrests often take place in rural areas and many go unreported or

are only reported after those concerned have been released. One of the cases reported in 1990 was that of a Protestant evangelist in her 60s, Song Tianying, who is believed to have been held under the provisions for shelter and investigation from late July until September 1990. She was arrested by Public Security officers on 27 July 1990 while she was addressing a religious meeting in Zhangzhou, Fujian province. At the same time the homes of prominent house-church leaders in Zhangzhou were raided and several hundred bibles were confiscated by police. Two other Christian leaders were detained for 24 hours by police for interrogation and some 20 house-churches are reported to have been closed down by the authorities of Zhangzhou.

After her arrest, Song Tianying was accused of vagrancy because of her itinerant preaching ministry. A resident of Baoding City, in Hebei province, she had left the city in July 1990 to train house-church leaders in several places in East China. She had held such training meetings in Xiamen before reaching Zhangzhou. Although she was not a vagrant, the accusation of vagrancy made her liable to be detained for shelter and investigation. She was eventually released after being held for 44 days without charge. Song Tianying is the daughter of a renowned evangelist who was active in China during the 1940s. She had previously been imprisoned for over 20 years because of her religious beliefs.

Many other independent Christian leaders and lay people were reportedly detained during the past two years. Some of them were first held for shelter and investigation, then sentenced without trial to a term of re-education through labour. Among them are Xu Guoxing, a protestant preacher from Shanghai, and Yang Libo, a Roman Catholic bishop in north China, who were assigned to re-education through labour in 1989 and 1990 after spending a period in detention for shelter and investigation (see pages 44 and 42 for further information on their cases).

V. TORTURE AND OTHER VIOLATIONS OF DETAINEES' RIGHTS

Widespread abuses of detainees in shelter and investigation centres, including the use of torture to extract confessions, have also been widely reported. A 1987 article in a legal journal described in detail the broad range of violations of detainees' rights which occur in shelter and investigation centres. It listed among these the "glaring" use of torture, corporal punishment and other abuses:

"At present, there still exists no formal legislation concerning shelter and investigation work; nor does such work fall within the orbit of supervision by the state's supervisory organs. Since no laws exist which can be adhered to, many problems exist in this area of work.

1) It is unclear who precisely are the targets of shelter and investigation; for example, some localities regard those who infringe administrative or civil laws and regulations as being suitable targets for shelter and investigation.

2) Shelter and investigation is used as a substitute means of carrying out criminal investigation, whereby those who ought to be subjected to criminal detention (*xingshi juliu*), or whose criminal offence merits arrest, are instead taken in for shelter and investigation.

3) Fines are substituted for criminal punishment. People who have committed actual crimes are taken in for shelter and investigation, but once the facts of their crimes have been fully brought to light, no application for prosecution is made to the procuracy. Instead, the matter is concluded by the imposition of a fine, which amounts to conniving at the actions of criminal elements.

4) The time limits for shelter and investigation are exceeded.

5) People are taken in for shelter, but no investigations are carried out; or else they are conducted but not concluded.

6) There exists no strict and rigorous approvals procedure.

7) The principle of separate custody and separate administration is not implemented; instead, people taken in for shelter and investigation are kept in custody alongside those under criminal detention and those whom it has already been decided to arrest.

8) Those under shelter and investigation frequently escape, commit suicide, behave violently, etc.

9) Administrators and those in charge of handling cases inflict in a glaring way corporal punishment and abuse, and also torture aimed at extorting confessions upon those under shelter and investigation.

10) It is not clear which are the appropriate organs for conducting shelter and investigation; some procuratorial organs carry out these activities.

11) Some shelter and investigation centres are extremely deficient in terms of health and sanitation conditions, so that illnesses and disease frequently break out in them.

As we can see from all this, the formulation of laws and regulations governing shelter and investigation work is now of the utmost importance, in order to ensure that citizens' rights of the person are not violated and in order to curb the illegal and gratuitous detention of a minority of citizens."[16]

A case in which three demobilized soldiers had been tortured while being held for shelter and investigation was cited in the national newspaper *Legal Daily* on 24 November 1988. The newspaper reprinted the virtually complete text of the statement presented by their defence lawyers at the soldiers' trial in July 1988. The lawyers showed that the police had absolutely no evidence to prove that the three soldiers had committed any crime when they were arrested in 1987 on suspicion of involvement in a robbery. According to the lawyers, although the three soldiers had reliable alibis, they were taken in for shelter and investigation, one after the other, due to a chain of confessions extracted under torture. Instead of being formally detained or arrested under the normal procedures for criminal investigations, they were initially held for three months for shelter and investigation. During that period, they were tortured and, as a result, confessed to involvement in the robbery. On the basis of these confessions, they were then formally arrested (charged) and later brought to trial.

According to a 1989 article, escapes, suicides and torture of detainees were frequent occurrences in shelter and investigation centres:

"In some places, people taken in for shelter and investigation are held together with people who have been formally detained or arrested. Some places do not follow regulations and give insufficient food to those detained. Some places have inadequate conditions to protect those held against weather conditions, and the environment is dirty and squalid. In some places, the supervision is insufficiently strict, so that people escape, commit suicide and so forth.

"There are also investigations which infringe the law. There are guards who will beat, insult or truss up those held for shelter and investigation who do not make a clean breast of their problems; some guards extract confessions through

[16] *Faxue* (Jurisprudence), March 1987, p.52.

torture, cheating or enticement. Some guards also subject those held for shelter and investigation to indignities and so forth."[17]

The article cited various reasons for these illegal practices and conditions, including the general lack of supervision over the practice of shelter and investigation, the lack of awareness of the law on the part of some guards, and poor conditions in shelter and investigation centres. The author then discussed the reforms needed to correct these problems. He noted that some of his colleagues in the legal profession had suggested that shelter and investigation should be upgraded to the level of a "criminal coercive measure" covered in the Criminal Procedure Law. However, he rejected this view:

"I believe that we cannot upgrade shelter and investigation to the level of a criminal coercive measure. The reasons for this are:

1) that it would inevitably mean a lengthening of the period of the coercive measure and this would create a bad impression internationally. There is no other country in the world that lays down a period as long as from one to three months for a criminal coercive measure in its criminal procedure law. Indeed, the period of up to ten days laid down in the Chinese Criminal Procedure Law for criminal detention is already one of the longest in the world. If shelter and investigation was established as a [criminal] coercive measure, this would then by far exceed the longest period for a criminal coercive measure that exists in any other country and this would have a bad effect abroad.

2) If it became a criminal coercive measure, then in practice it would replace criminal detention. Since its length far exceeds that of criminal detention, the public security officers would prefer to use it instead of criminal detention for the sake of convenience.

3) When the period [of detention] is relatively long, it is easy for the individual rights and economic interests of innocent citizens to be infringed. If shelter and investigation became a criminal coercive measure, then it would, like criminal detention, involve a considerable limitation on the freedom of the person for one to three months. For those who are innocent (and after investigation there are bound to be some such cases) this will mean they have been deprived of their freedom and of their ability to gain economically for a

[17] *Zhengfa Luntan*, No 1, 1989.

period of one to three months, which for them can only be a considerable loss.

4) This could not gain the support of the masses of the people. This is because there are already now quite a lot of people and of cadres all over the country who criticize shelter and investigation, for example with regard to its length and scope, and there are even people who have called for the abolition of shelter and investigation. In such a situation it could cause an adverse effect in society to disregard the views of public opinion and of the masses and to upgrade shelter and investigation to the level of a criminal coercive measure."

The author of this article did not explain why he considered it more justifiable to infringe on the rights of "innocent citizens" under the present system of shelter and investigation than under the Criminal Procedure Law, which at least includes some safeguards against totally arbitrary detention.

An intellectual who was held in a shelter and investigation centre in Beijing after the June 1989 crackdown on pro-democracy protesters has given Amnesty International a detailed description of the conditions in the centre. According to him, about 500 political prisoners arrested in connection with the protests were held in the centre while he was detained there from September to November 1989. The centre, located at Paoju Hutong, in the east of Beijing, had then a total of about 1,000 prisoners, over one-third more than its normal capacity. This former prisoner said that he was not physically ill-treated, but that the treatment of prisoners often depended on their social status and on the whims of the wardens. Beatings of detainees were common during the two months which followed the 4 June 1989 crackdown, but such incidents were less frequent by the time he was held there and the victims of the earlier ill-treatment were reluctant to talk about it. The prisoner's knowledge of what happened to other detainees was limited by his continuous confinement in the same cell. Nevertheless, he described punishments and conditions of detention which in themselves constitute cruel, inhuman and degrading treatment of prisoners. Extracts from his testimony follow:

"The wardens and interrogators were on the whole not nice to the detainees, especially the wardens. If they were in a bad mood or if you said something wrong, you would very likely be reprimanded, beaten, or sworn at. Their behaviour was related to their level of education. The less-educated, the more likely they would be to beat, swear, and reprimand people. On the other hand, whether they beat and swore at people would also depend on the victim. Usually they would refrain from beating and swearing at people they respected, sometimes even granting them favours.

"Some prisoners did get beaten up. Torture did happen but not often. The interrogators took a more pleasant attitude towards the detainees than the wardens. A young political prisoner in my cell was caught by the duty-policeman sharpening a needle with a collar-fastener, and he wouldn't admit to it. He was slapped around the face a dozen times by wardens, and was hand-cuffed with his hands tied behind his back for more than ten days, even whilst eating and going to the toilet. His hands became swollen due to the bad circulation. Another person who was a leader in another cell, was said to have violated the detention centre rules by hoarding other cell-mates' food. He was shackled for a shorter term, but still close on ten days.

"*Xiao hao* is a small [punishment] cell, holding only one person. It contained no wash-basin or toilet and even had no window. Night and day one didn't see the sun. The usual size of this type of cell was four to six square metres.

"Han Dongfang[18], the leader of the Beijing Workers Autonomous Federation, was put in a *xiao hao*. At first he was kept in large cells like other political prisoners, but, because he wouldn't admit to any mistakes, and talked provocatively he was kept in isolation. Han had a stomach problem in and around July 1989, due to the summer heat and poor food. The trouble started again later. At first the police thought he was pretending and wouldn't take him to the doctor. He was very down. After other cell-mates begged, the police agreed to take him. He took the opportunity to shout in the corridor ... His shouting was heard by all the prisoners in the second floor cells. Everybody was very agitated, very sympathetic towards Han, for the unjust treatment he received. Many shed tears. The police got scared and the prison governor himself brought a doctor to see Han. But shortly afterwards they put him in a *xiao hao*, separating him from the other prisoners. These small cells were in the same block as the large cells, but located differently. Usually the small cells were close to the police offices ...

"The attitude of the police towards the prisoners could be seen in the way food was kept back, such as giving less staple food, *wotou* [steamed corn bread]. The quality of the food was appalling and the distribution of the food was made by the cooking staff ... Sometimes the prisoners would get so hungry that they would claim for an extra person's portion, like claiming for 24 people when

[18] Han Dongfang was transferred in 1990 to another detention centre in Beijing and then in 1991 to Qincheng prison, north of Beijing. He was reported to be seriously ill again in 1990 and to have been taken several times to a hospital. His condition further deteriorated in 1991: he was critically ill in prison for several months before being taken to a hospital. He was conditionally released in late April 1991.

they were only 23. However, if such an incident were discovered, then they would go without the next meal or were given less to eat. The punishments from the policemen were shown mainly by beatings, swearing and hand-cuffing, etc...

"Before 15 November, there wasn't any heating and the rooms were cold and dark. It was very easy to catch cold ... There was a doctor in the detention centre. If prisoners fell ill, they would be allowed to see a doctor but hygiene conditions were poor, as was medical care. The clinic stored very few types of medicines and only in insufficient quantities. The reason was said to be a lack of funds. Normally when we saw the doctor, we were escorted by a warden. Medication would be given for one day only. If this didn't cure the condition, you had to beg to be taken back the next day.

"The hygiene conditions themselves were appalling. 23 or 24 people crowded into a room of 14 square metres. The air was bad. It stank all day long, and although every cell had an air circulating fan, the duty police did not regularly switch them on to circulate the air. Or the air-circulator was not on for long enough. I would often go under the window to breathe fresh air and often thought that I never realised before how precious fresh air was ...

"We urinated in the cells and sometimes even defecated because at the toilet times [twice a day for five minutes] one couldn't always go. If afterwards we needed to, or had stomach upset or diarrhoea, we just had to defecate in the urinal and then soften the faeces with water and let it flow away in the small hole in the urinal. The stench was quite often unbearable ... Because of the damp floor, (24 people had to wash themselves and their clothes), the floor was always wet. At night we had to sleep on the floor so the quilt and cushions were often damp and thus the prisoners frequently had the skin disease scabies. Hardly anyone escaped this fate.

"With scabies you get red swollen little blisters that itch like hell so you scratch and they become inflamed with pus and the pus touches other people's skin and they too become infected. In the jail they distributed scabies-killing medicine, but this didn't work with everyone, so scabies spread from one person to another. I caught scabies as well ...

"The other thing was lice. In the cracks of the floor, the bedding, clothes, lice everywhere. Once I caught eight on my shirt, they suck blood and spread germs. We tried to catch them everyday, but there were just too many of them. These little things cause great pain ...

"The most difficult time was the evening. 24 people crowded into a room 14 metres square. During the day, sitting up made the room seem a little bigger, but come evening, everybody had to lie down and the space was limited. On average each person has only 0.55 square metres, so everyone had to squeeze in, and be careful how they slept. It was impossible to lie down flat, so everybody had to lie on their sides and keep the same side till dawn. When we got up we were aching all over. Quite often I just couldn't go to sleep because of the crowd, and just stared at the ceiling until dawn.

"The only dream in the detention centre is to have a plate of meat or some other nutritious food since the quality was so appalling ...

"Because of malnutrition most people in the detention centre lost weight ... Some jail-mates who were arrested in June 1989 went down from 83/84 kilograms to 66 kilograms. Most people lost from five to 10 kilograms and everybody became very pale. I gave the *wotous* I couldn't eat to some youngsters who, between 16 and 20 years' old, were still growing and had a good appetite. Two *wotous* weren't enough for them. I asked them how many they could eat for a meal; some said three, some said four. Youngsters didn't get enough to eat so they had to get a little from the older ones like me, or from people who had just come in, and who still had well-kept stomachs. On national day we were all given six steamed breads. I only ate three. Some of these youngsters ate six, eight or even 12 at a go. They had been starving and ate like hell when there was slightly better food but would then have diarrhoea, but they didn't care as long as their appetite was satisfied. Another problem was flatulence from bad stomachs. It really stank.

"I had a really bad physical reaction in jail which was feeling faint through lack of oxygen. The memory deteriorates, and I often felt painful because of this. 24 people, even if everybody talks quietly is still a loud noise. There was a buzzing all day. It was very disturbing. Even now I have this feeling. Because I sat without moving for long periods of time, the day after I was released, I suddenly felt I couldn't walk, I couldn't move my legs, my knees felt unbearably painful and I had to go to the hospital. It took several treatments before they got better.

"The thing I understand least of all is the insult to human dignity. As I walked into the detention centre I realized I wasn't a normal person any more because the police in the detention centre said, on seeing me, `move over there and stand. Don't move'. Very nasty, no courtesy at all. If I moved slightly against their will they would say that I was asking for it and would become furious. As I waited, I had to squat and lower my head. I wasn't allowed to look. In the

cells the other cell-mates were nice to me, but it was still unbearable. Such appalling conditions are themselves an insult to human dignity. It's unbearable."

The torture of detainees and grossly inadequate conditions of detention are still reported to be common in shelter and investigation centres. Though torture and ill-treatment of detainees also occurs in other places of detention, various sources indicate that the incidence of torture may be higher in shelter and investigation centres due to the total lack of judicial supervision and safeguards for detainees' rights which characterize this form of detention.

VI. "RE-EDUCATION THROUGH LABOUR"

Re-education through labour (or labour re-education) was conceived as a method of detaining people who are not legally considered criminal in order to "re-educate" them through forced labour. It should not be confused with "reform through labour" (or "labour-reform"), which is a criminal punishment imposed on convicted offenders who have been sentenced to a prison term after trial in a court of law. The official newspaper *China Legal News* explained in the following way the fine distinction between these two kinds of punishments:

> "*Reform through labour* means reform carried out through the coercion of criminal punishment, that is using the means of criminal punishment to severely restrict the prisoner's freedom of action, and compelling him to reform himself through labour. *Re-education through labour* means reform carried out through administrative coercion, that is using administrative means to suitably restrict the freedom of action of the person subjected to labour re-education, and compelling him to accept education and reform through labour."[19]

An earlier article in the *China Legal News* described re-education through labour as a punishment imposed for acts falling "between crime and error", which fits between the punishment of minor public order offences and that of crimes listed in the criminal law:

> "If we look at the phenomenon of law-infringement (*wei fa*) and crime (*fan zui*), we find that in every country there exist groups of people who have not broken major laws, but whose actions fall somewhere between crime and error, people who threaten public security and whom it is difficult for the courts to deal with. In its handling of those who break the law or commit crimes, China has established a category at a level between the punishment of security administration offences and criminal sentencing by the courts - namely re-education through labour."[20]

[19] *China Legal News*, 14 June 1985.

[20] *China Legal News*, 29 April 1985.

1. POLICY PRINCIPLES

A 1982 government document defines re-education through labour as a "method to handle contradictions among the people."[21] This formulation is based on policy directives given by Mao Zedong in February 1957 in a talk entitled *On the Correct Handling of Contradictions Among the People*[22]. The talk provided the theoretical basis for the introduction of re-education through labour later in 1957. Mao expanded his theory that conflicts of an ideological nature (contradictions) continue to exist "within the ranks of the people" after a socialist revolution. However, Mao said, contradictions among the people are different from the contradictions which exist between the "people" and its "enemies". He described the enemies as the social forces and groups "which resist the socialist revolution and are hostile to or sabotage socialist construction": they should be subjected to the "dictatorship" - for instance, be arrested, tried and sentenced. The people, on the other hand, are the classes and social groups who "support and work for socialist construction". Thus, Mao explained, the ideological conflicts within the people can be resolved by "criticism, persuasion and education", and by "administrative regulations".

The first of these administrative regulations to be adopted as a national law was the *Decision of the State Council of the People's Republic of China on the Question of Re-education Through Labour*. It was adopted in August 1957 at the height of a campaign against "rightists" which followed a few weeks of liberalization in May and June 1957 known as the Hundred Flowers movement. The new law provided the legal basis for the detention of hundreds of thousands of political dissidents who were sent to labour camps during the following months. Most of those labelled as rightists were intellectuals: writers, journalists, teachers, students, judges, lawyers and Communist Party officials, who had voiced outspoken criticisms of the Party's policies during the short-lived Hundred Flowers movement, when they were encouraged by the Party leadership to express their opinions on political affairs. Faced with such criticism, the authorities abruptly ended the Hundred Flowers movement in mid-June 1957 and launched an anti-rightist campaign. Between 300,000 and 400,000 dissidents were arrested during the campaign, and many of them were sent to labour re-education camps.

[21] *Trial Implementation Methods for Reeducation through Labour*, issued by the Ministry of Public Security, transmitted by the State Council, 21 January 1982; see below, pp.34-36, for further information on this document.

[22] Published in *Selected Works of Mao Tsetung, Vol.V.*, People's Publishing House, Peking, 1977, English edition, pp.384-396.

2. FORMAL LEGISLATION

The 1957 *Decision of the State Council of the People's Republic of China on the Question of Re-education Through Labour* today remains the fundamental law authorizing re-education through labour. It was approved by the Standing Committee of the National People's Congress (China's legislative assembly) on 1 August 1957 and promulgated by the State Council (Government) on 3 August 1957. In 1979, some *Supplementary Regulations* to the 1957 law were adopted. The stated aims of the 1957 *Decision* are:

" ... to reform into self-supporting new persons those persons with the capacity to labour who loaf, who violate law and discipline or who do not engage in proper employment and ... further to preserve public order and to benefit socialist construction."

Re-education through labour is further defined in Article 2 of the *Decision* as "a measure of a coercive nature for carrying out the education and reform of persons receiving it. It is also a method of arranging for their getting employment." An official commentary published when the law was adopted explained: "the method of re-education through labour embodies the socialist principle that he who does not labour does not eat."[23]

The aspect of re-education through labour which "benefited" socialist construction was the institutionalization of compulsory labour through long-term detention without trial for people who, according to Chinese legal standards, had either committed no "crime" or whose "crime" was too minor to warrant their prosecution under criminal law. As can be seen from the quotations above, the *Decision* on re-education through labour avoids the terms "arrest", "offender" and "confinement" for those detained under its provisions. In the official terminology, they are "summoned" by the police and not "arrested", they "receive" re-education through labour instead of being "confined" and, unlike convicted offenders, at the end of their term of "re-education" they are not "released" but simply "dismissed".

[23] *Renmin Ribao* (People's Daily), 4 August 1957, translated in Jerome Alan Cohen's *The Criminal Process in the People's Republic of China 1949-1963 - An Introduction*, Harvard University Press, 1968, pp.254-255.

2.1 THE TARGETS OF RE-EDUCATION THROUGH LABOUR

The law was ostensibly drawn up to control minor offenders and "troublemakers" who did not work satisfactorily or who refused to comply with work assignments. However, it was also aimed at political dissidents and people who were unemployed because they had been expelled from their place of work for a breach of discipline or other reasons. They came within the terms of Article 1 of the law, which reads as follows:

"The following kinds of persons shall be provided shelter and their re-education through labour shall be carried out:

1) Those who do not engage in proper employment, those who behave like hooligans, and those who, although they steal, swindle, or engage in other such acts, are not pursued for criminal responsibility, who violate security administration and whom repeated education fails to change.

2) Those counter-revolutionaries and anti-socialist reactionaries who, because their crimes are minor, are not pursued for criminal responsibility, who receive the sanction of expulsion from an organ, organization, enterprise, school or other such unit and who are without a way of earning a livelihood.

3) Those persons who have the capacity to labour but who for a long period refuse to labour or who destroy discipline and interfere with public order, and who [thus] receive the sanction of expulsion from an organ, organization, enterprise, school or other such unit and who have no way of earning a livelihood.

4) Those who do not obey work assignments or arrangements for getting them employment or for transferring them to other employment, or those who do not accept the admonition to engage in labour and production, who ceaselessly and unreasonably make trouble and interfere with public affairs and whom repeated education fails to change."[24]

At the time the *Decision* was adopted in 1957, the official press stressed the positive aspects of the law in reforming and providing employment for people regarded as "bad elements", and treated it as indicative of the state's concern and sense of responsibility for

[24] English translation from Jerome Alan Cohen, *The Criminal Process*, op.cit. pp.249-250.

them. However, the commentators did not speak of those who had been removed from their jobs and who came under the jurisdiction of this law solely for exercising their constitutional right to freedom of speech.

2.2 THE LENGTH OF RE-EDUCATION THROUGH LABOUR

When the law providing for re-education through labour was adopted in 1957 it prescribed no limit in the duration of the punishment. In 1961, however, a regulation fixed the maximum period of re-education at three years. Despite that, many sources have reported that if a detainee failed to "behave well", a further three years of re-education through labour could be imposed at the end of the first period, and such three-year renewals could be continued indefinitely. The usual justification for an extension was "failure to admit guilt", "resisting reform" or "violating camp rules and discipline". An official from a labour re-education "detachment" only had to seek approval from the labour camp management, who would in turn inform the district Public Security Bureau. The extension would then go ahead.

In 1979, some brief *Supplementary Regulations* to the 1957 law were adopted. They fixed the maximum length of labour re-education at four years: normal terms were to be between one and three years, but this could be further extended by a maximum of one year. The reasons for imposing a one-year extension continued to be the same as those described above.

In 1981, a new decree[25] made it possible to impose either an extension of an unspecified length or new terms of re-education through labour to recidivists or people who had escaped while serving a term of re-education through labour. This applies to people who, after escaping or being released from re-education through labour, are again found to have committed "crimes" considered "too minor" to qualify for criminal sanctions. Furthermore, the decree provides that after completion of the extension or the new term of re-education through labour, they are "in general" to remain at the place of detention in order to be employed there, and are not allowed to return "to their large or medium-sized cities of origin". This decree thus makes possible the indefinite restriction in labour camps, without any recourse to the courts, of alleged offenders who have completed their terms of re-education through labour.

[25] "Decision of the Standing Committee of the National People's Congress Regarding the Handling of Offenders Undergoing Reform Through Labour and Persons Undergoing Reeducation Through Labour who Escape or Commit New Crimes", adopted 10 June 1981, translated in *The Criminal Law and the Criminal Procedure Law of China*, Foreign Language Press, Beijing, 1984.

2.3 THE AUTHORITY TO IMPOSE RE-EDUCATION THROUGH LABOUR

The power to impose re-education through labour is vested by law in administrative bodies composed of members of the civil affairs, public security and labour departments of the governments of provinces and large cities. In practice it is often imposed by the police alone. Neither the 1957 *Decision*, nor the 1979 *Supplementary Regulations* require any judicial investigation or review. The 1957 *Decision*, Article 3, provides that civil bodies and individuals may recommend that a particular individual is subjected to re-education through labour by applying to the relevant administrative authorities:

> **"If a person must be rehabilitated through labour, the application for rehabilitation through labour must be made by a civil affairs or a public security department; by the organ, organization, enterprise, school, or other such unit in which he is located; or by the head of his family or his guardian. The application shall be submitted to the people's council of the province, autonomous region, or city directly under the central authority, or to an organ that has been authorized by them, for approval."**

The 1979 *Supplementary Regulations* did not change these provisions, but provided for the creation of special administrative committees to approve re-education through labour:

> **"The people's governments at provincial, municipal and autonomous regional levels, and those of large and medium-sized cities, shall establish Labour Re-education Administrative Committees, comprising responsible members of the departments of civil affairs, public security and labour deployment, in order to lead and administer the work of re-education through labour ... [These committees] shall examine and approve the cases of all persons requiring to undergo re-education through labour."**

As will be seen later, however, this punishment has continued to be imposed mainly by the police. The 1957 *Decision* on re-education through labour and the 1979 *Supplementary Regulations* constitute the formal legislation covering both the targets of re-education through labour and the authority empowered to impose it. However, further

regulations were issued by the Ministry of Public Security in 1982, though they were not made public for several years. They have apparently superseded the 1957 *Decision*.

3. 1982 REGULATIONS

An article published in 1987 in the Shanghai magazine, *Faxue* (Jurisprudence), criticized various defects of the present system of re-education through labour. It queried, in particular, the legal status and contents of an unpublished official document which since 1982 had taken precedence over the published laws on re-education through labour. The document, entitled *Trial Implementation Methods for Re-education Through Labour*, was issued by the Ministry of Public Security in 1982. The author of the article in *Faxue* stated:

> "The organs for examining and approving re-education through labour in all the various localities now no longer base themselves upon the *Decision*, but only upon the relevant stipulations of the *Trial Implementation Methods* ... Neither China's citizens as a whole nor even our legal experts themselves know anything about these stipulations. Clearly, this situation is an extremely abnormal one."[26]

Moreover, the author argued that the 1982 *Trial Implementation Methods* did not have the status of law since they were formulated by the Ministry of Public Security and then merely agreed in principle by the State Council, whereas the 1957 *Decision* was approved by the Standing Committee of the National People's Congress (China's parliamentary assembly):

> "Since the *Trial Implementation Methods for Re-education Through Labour* do not belong to the realm of law, they cannot serve as a legal basis for re-education through labour."

He also referred to the infringement of "citizens' lawful rights" which resulted from the vague definition, in both the 1957 *Decision* and the *Trial Implementation Methods*, of those who can be subjected to re-education through labour:

[26] *Faxue*, No 7, 1987

"Since the stipulations as to the targets of re-education through labour are excessively general and simplistic in nature, they neither assist citizens to observe the law, nor are they conducive to proper law-enforcement by the officers of the law. Moreover, they easily give rise to indiscriminate interpretation by the law-enforcement organs, resulting in the infringement of citizens' lawful rights and interests."

This vagueness, the author said, was rendered more serious by the fact that the *Trial Implementation Methods* had made "fairly large alterations to the stipulations regarding who the targets of re-education through labour should be." He specifically criticized the inclusion of people who are merely deemed to be "anti-socialist" or "anti-Party" among the targets of re-education through labour:

"It is inappropriate to employ terms like `anti-socialist elements' and `anti-Party elements' in laws and other legal documents ... Neither our current Criminal Law nor the Security Administration Punishment Act stipulate that being anti-Party and anti-socialist represents an infringement or violation of the law, or that it should be punished ... The inclusion of such stipulations is most unscientific."

The text of the 1982 *Trial Implementation Methods for Re-education Through Labour* was eventually published in 1989 in a collection of laws, decrees and government directives issued by an official provincial publishing house [27], although to Amnesty International's knowledge, the text has not been the subject of official commentaries. The 1982 document is extremely detailed, including 68 articles, whereas the 1957 *Decision* included only five. The title of the 1982 document indicates that it is not formally a law but rather a set of policy directives that are being tested. Although it is supposed to set only "methods of implementation", the 1982 document includes a new definition of the targets of re-education through labour. It reads:

"Article 10. The following categories of persons shall be taken in for re-education through labour:

[27] *Zhonghua Renmin Gongheguo Falü Quanshu* (Collection of Laws of the People's Republic of China), Jilin People's Publishing House, Changchun, Jilin Province, 1989, pp.1583-1589.

1) Those counter-revolutionary elements and anti-party, anti-socialist elements whose acts are too minor to be pursued for criminal responsibility;
2) Those who formed criminal gangs to commit crimes such as murder, robbery, rape, arson etc, but [whose acts] are too minor to be pursued for criminal responsibility;
3) Those who behave like hooligans, or engage in prostitution, or stealing, swindling or other such acts, and who do not change their ways despite repeated education, but [whose acts] are too minor to be pursued for criminal responsibility;
4) Those who fight or beat-up people, or provoke quarrels, stir-up trouble and other acts which disturb public order, whose acts are too minor to be pursued for criminal responsibility.
5) Those who have a job but who for a long time refuse to labour or destroy labour discipline, and who ceaselessly and unreasonably make trouble, who disturb the order of production or work, or the order of teaching or research and the order of life, who hinder public affairs, and who do not listen to advice and instructions to stop;
6) Those who instigate others to break the law or commit crimes, but [whose acts] are too minor to be pursued for criminal responsibility."

This new definition significantly alters the definition given in the 1957 *Decision* and enlarges the scope of re-education through labour. It uses vague language and is open to interpretation. It continues to provide for the detention of political dissidents, adding to the already vague 1957 definition a category of people described as "anti-party elements".

The 1982 *Trial Implementation Methods* also includes provisions for the "retention for in-camp employment" of certain categories of people who have completed their term of re-education through labour. Those to be retained include people who have served a second term of re-education through labour for committing new offences after completing a first term, as well as people whose first sentence was extended because they "continued to break the law" while detained. According to the document, those who have "already truly reformed well" are excluded from this measure, as well as those whose families reside in rural areas. The others are to be retained for "in-camp employment". They may be allowed to return to their area of origin after three years if they "truly reform well" during that period, but those who do not may be kept in the camp indefinitely.

4. A SUPPLEMENTARY PUNISHMENT AFTER SERVING A PRISON SENTENCE

Prisoners convicted under the criminal law who have served a term of imprisonment are particularly likely to be subjected to re-education through labour after release if the police consider that their behaviour fits the vague framework given by the law. Furthermore, they may be forced to stay indefinitely in the labour camp as "employees" after serving the additional term of re-education through labour. This is specifically provided for in a decree adopted in 1981:

> "Where, after release upon completion of a term of reform through labour, there are minor criminal acts not qualifying for criminal sanctions, the offender is to be given the sanction of re-education through labour. Offenders are in general to remain at the place of reform and be employed after the completion of their term and may not return to their large or medium-sized cities of origin."[28]

According to this decree, the additional punishment of re-education through labour should be given to those who commit minor criminal acts after release. In practice, however, some prisoners are sentenced to re-education through labour immediately after completing their term of imprisonment, simply because their behaviour in prison was thought to be unsatisfactory. Thus, they go straight from serving a sentence of reform through labour into serving a period of re-education through labour, then can be forcibly retained for life in a labour camp as "employees", without any further legal process.

One example of this type of practice concerns a Roman Catholic priest who was sentenced in 1982 to eight years' imprisonment because of his religious convictions. In February 1990, on the day he completed his eight-year sentence, he was condemned to an additional three years of re-education through labour because, an official document said, while serving his sentence, "he still refused to repent and accept the government's educational liberation" (see page 43, the case of Francis Wang Yijun, for further details).

VII.PRISONERS OF CONSCIENCE DETAINED FOR RE-EDUCATION THROUGH LABOUR

[28] "Decision on the Handling of Offenders Undergoing Reform Through Labour and Persons Undergoing Reeducation Through Labour Who Escape or Commit New Crimes", adopted by the National People's Congress Standing Committee on 10 June 1981.

Re-education through labour has been widely used since the 1950s to detain political and religious dissidents solely for the peaceful exercise of their rights to freedom of expression or belief. It is also often used to punish people thought to have exhibited "anti-social" behaviour, a vaguely-defined concept which, in practice, has included people accused of having "illicit sexual relations" with foreigners.

Prisoners of conscience currently held without trial under the law on labour re-education include political dissidents, people held for their involvement in unapproved religious activities and Tibetans advocating Tibet's independence from China.

According to Chinese official sources, 97 Tibetans have been sent to labour re-education camps in the Tibet Autonomous Region since September 1987, when a resurgence of demonstrations in favour of Tibet's independence started in Lhasa, the Tibetan capital. They include many young nuns who were arrested for peacefully demonstrating or shouting slogans. Many of them were arrested during the months following the imposition of martial law in Lhasa in early March 1989. Most of them were accused of breaking martial law regulations. These regulations prohibited all political demonstrations or parades. Following the lifting of martial law in Lhasa on 1 May 1990, similar regulations were introduced, prohibiting the use of "religion and other activities" in "demonstrations or parades [which]... endanger national unity or social stability", and arrests have continued.

During the last few years people involved in unapproved religious activities have often been "sentenced" to terms of re-education through labour. They usually belonged to independent religious groups which either refused to join the government-sanctioned churches or have not registered with the official "patriotic" religious organizations. These official organizations include, the Three-Self Patriotic Movement of Protestant Churches of China (TSPM) and the Catholic Patriotic Association. Government regulations set strict limits on religious activities: they prohibit evangelizing as well as religious teaching or worship outside the officially approved places of worship. They also require that all religious activities are carried out under the control of the official "patriotic" religious organizations.

Political dissidents have also been frequently subjected to re-education through labour. During the past two years, hundreds of people detained in connection with the 1989 pro-democracy protests were reportedly sent to labour re-education camps. An official at the Tuanhe labour re-education camp, near Beijing, told foreign journalists in May 1990 that 300 "counter-revolutionaries" from Beijing had been sent to the camp after the 4 June 1989 crackdown[29]. According to unofficial sources, other groups of pro-democracy activists from

[29] See *Reeducation Through Labour in China*, by Denis Hiault, Agence France Press, Beijing, 25 May 1990.

Beijing were sent to labour camps further away from the capital. The number assigned to labour re-education camps throughout the country may have been very large. Six labour re-education camps were reportedly among a number of institutions especially commended by the Minister of Justice in October 1989 for being "outstanding in preventing chaos" after the crackdown on pro-democracy protesters. These labour camps were located in various places in the country[30]. In Liaoning province, the authorities reported in June 1989 that police had imposed "administrative sanctions" on 1,000 people accused of having committed "minor" crimes of "beating, smashing and looting" during the protests -- which may have amounted simply to blocking traffic during demonstrations. Very few individual cases, however, were reported by official sources. Those publicly reported included the case of Tian Suxin, a worker at the Fushun Steel Plant in Liaoning Province who, together with other "scoundrels", was officially accused of "blocking vehicles" during demonstrations in Fushun city in May 1989, "forcing drivers to shout the slogans they provided" and "brutally beating those who refused to shout the slogans." Tian Suxin and the other men detained with him were sentenced on 15 June 1989 to terms of two and three years' of re-education through labour. In neighbouring Jilin province, seven "unlawful elements", including one named Liu Yusheng, were sentenced to unspecified terms of re-education through labour on 10 June 1989 in the provincial capital Changchun. They were officially accused of having "made trouble and done the city harm", by blocking roads to stop all buses and cars and "assaulting public offices" during the student demonstrations.

Following are some of the known cases of prisoners of conscience currently serving terms of re-education through labour:

Zhou Lunyou

Zhou Lunyou, a poet in his late 30s from Sichuan province in Central-South China, was sentenced in late February or March 1990 to three years of re-education through labour for his involvement in unofficial publishing.

Zhou Lunyou belonged to a group of Sichuan poets who for several years had edited *avant-garde* poetry magazines such as *Manhan*, *Hongji*, and *Feifei*. They were members of the Sichuan Youth Poetry Association, which had been founded in mid-1980 and had 800 members. Some among the group were also members of the Sichuan branch of the Chinese Writers' Association. Their work had appeared in the *Anthology of Experimental*

[30] See *Laogai: the Chinese Gulag*, by Wu Hongda, Westview Press, 1991, and *People's Daily*, 17 October 1989.

Contemporary Poetry, published in 1987 by the Liaoning Springwind Publishing House. According to some sources, they were the most important independent literary group since the late 1970s, but their unconventional style upset establishment writers and poets.

Zhou Lunyou and several other members of the Sichuan group came from Xichang, in southern Sichuan province. Zhou Lunyou had attended literary conferences and had acquired a reputation as one of the most articulate young poet-writers in China. He was the founder of the magazine *Feifei*, four issues of which had been published before the repression of the pro-democracy protests in Beijing on 4 June 1989. He was reportedly planning the publication of a fifth issue when he was arrested on 15 August 1989 in his home town of Xichang. Zhou Lunyou had been detained once before. In 1985, he had given a series of talks on literary issues at universities along the Yangzi river between his home province of Sichuan and Wuhan in neighbouring Hubei province. He was arrested on his arrival in Wuhan. The length of his detention on that occasion is not known.

Following his arrest on 15 August 1989, he was held without charge in a detention centre in Xichang, until he was sentenced to three years re-education through labour in February or March 1990. He was then reportedly transferred to the Ebian Chachang labour camp in Sichuan province. The exact accusations against him are not known although he is believed to be detained because of his publishing activities and as part of the nationwide crackdown on pro-democracy protesters which started in June 1989.

In March 1990, at least ten other members of the poets group were arrested in Sichuan. They included Liao Yiwu, who was regarded as the leader of the group and had once worked for the official literary magazine *Xing Xing* (Stars), and Zhou Lunzuo, Zhou Lunyou's brother. Liao Yiwu was reportedly sentenced to seven years' imprisonment in July 1990 on charges of "counter-revolutionary propaganda and incitement". Four others of those detained are reported to have received three-year sentences, but it is not known whether these are sentences of imprisonment or of re-education through labour.

Liu Guangdong

Peter Liu Guangdong, the 72-year-old Roman Catholic Bishop of Yixian, in Hebei province, was sentenced on 21 May 1990 to three years of re-education through labour for his involvement in peaceful religious activities. He had been arrested by police on 26 November 1989 in Baoding City.

Liu Guangdong was among a group of over 30 Roman Catholic priests, bishops and lay people who were arrested in north China in late 1989 and early 1990. They belong to the

"underground" church which remains loyal to the Vatican and conducts religious activities independently of the government-recognized church. Most of those detained were arrested for their involvement in the formation of an independent Chinese Bishops' Conference which openly declared its allegiance to the Pope. They thus separated themselves from the officially approved Catholic Patriotic Association and Chinese Bishops' College. The conference took place in a village of Sanyuan county, Shaanxi Province, on 21 November 1989. Liu Guangdong was one of four bishops elected vice-presidents of the conference.

A few days after the conference, Liu Guangdong was summoned to present himself to the Public Security station of Baoding City. He was arrested on the spot. On 21 May 1990, an order to detain Liu Guangdong for three years' re-education through labour was issued by the Labour Re-education Administrative Committee of Baoding City People's Government. It accused Liu Guangdong of "planning, organizing and forming an illegal organization" and "taking part in illegal activities". He was sent to a labour camp near Tangshan city, Hebei province, where he was reportedly assigned to work gathering rubbish.

Su Zhimin

Su Zhimin, the 58-year-old Roman Catholic Vicar-General of Baoding, Hebei province, was arrested on 17 December 1989 in Baoding City during the crackdown on underground Catholics in north China. He is reported to have taken part in the Chinese Bishops' Conference held in Sanyuan in November 1989. Su Zhimin was sentenced on 21 May 1990 to three years of re-education through labour. The notice announcing his sentence, issued by the Baoding City Labour Re-education Administrative Committee, accused him of having "participated in illegal activities". It indicated that Su Zhimin had been jailed twice between 1959 and 1975 and that he had also served a previous term of re-education through labour between 1982 and 1986. Su Zhimin was sent to the same labour camp as Bishop Liu Guangdong, near Tangshan, in Hebei province. He was reportedly assigned to work cleaning the toilets of the camp.

Yang Libo

Yang Libo, the 77-year-old Roman Catholic Bishop of Lanzhou, in Gansu province, was sentenced in mid-1990 to three years of re-education through labour for his involvement in peaceful religious activities. He had been arrested on 25 December 1989 by police in Zhangye, a city in the north of Gansu province, near Inner Mongolia.

Yang Libo had taken part in the Chinese Bishops' Conference held in Shaanxi province in late November 1989. Yang Libo is a native of Gulang in Gansu province. He was ordained in 1949 and secretly consecrated bishop in 1981. From 1952 to 1987, he spent most of his time in prison, having been sentenced four times to terms of imprisonment for "counter-revolutionary" offences because of his religious convictions.

Following his arrest on 25 December 1989, he was held for several months for shelter and investigation by police in Zhangye, then sentenced without trial to three years of re-education through labour by the Labour Re-education Administrative Committee (LRAC) of Gansu provincial People's Government. The exact date on which the detention order was issued is not clear, but it is believed to be during the summer of 1990. The detention order states that on several occasions between 1987 and 1989, Yang Libo gathered large numbers of religious believers and conducted church services at the Ganquanzi church of Shandan County (in Gansu province). He is also accused of "illegally" appointing 12 people as Catholic leaders in the area and of taking part in the Chinese Bishops' Conference in Shaanxi province in November 1989. The order further states: "while he was serving his [previous prison] sentence, Yang Libo openly resisted reform, continued to carry out his illegal activities and to disturb social order. After he was taken in for shelter and investigation, he maintained his attitude and did not show any willingness to reform." The detention order also said that Yang Libo could appeal to the Gansu LRAC within 10 days of receiving the detention order if he did not agree with the decision. According to unconfirmed reports, Yang Libo is serving his sentence in Lanzhou, the capital of Gansu province.

Wang Yijun

Father Francis Wang Yijun, the 75-year-old Vicar-General of Wenzhou diocese in Zhejiang province, was sentenced on 5 February 1990 to three years of re-education through labour immediately after he completed an eight-year prison term because of his religious convictions.

Wang Yijun belonged to the underground Church which refuses to join the Catholic Patriotic Association. He was Vicar General of Wenzhou from 1979 to 1982. In 1982, he was sentenced to eight years' imprisonment for "counter-revolutionary" activities. He had been imprisoned previously, having been sentenced for the first time in 1957 to five years' imprisonment for "counter-revolutionary" offences.

The new term of re-education through labour was imposed on the day on which he completed his eight-year prison sentence. The order to detain him was issued on 5 February

1990 by the Labour Re-education Administrative Committee of Wenzhou City People's Government. The order stated that while serving his eight-year sentence, "he still refused to repent and accept the government's educational liberation; he resisted reform, continued to maintain illegal ties to the underground Catholic Church of Wenzhou, and instigated Christian believers against the religious policy and decrees of our people's government." The order specified that his new sentence would run from 20 March 1990 to 19 March 1993. Wang Yijun will be 77-years' old by that date.

Xu Guoxing

Xu Guoxing, a 36-year-old Protestant preacher from Shanghai, is serving a sentence of three years' re-education through labour in a labour camp in northern Jiangsu province. He was arrested on 6 November 1989 by the Shanghai municipal Public Security Bureau for having "seriously interfered and damaged the regular order of religious activities". He was accused of having founded in 1986 an independent religious group - the Holy Spirit Society - and of travelling to various areas near Shanghai, in Jiangsu, Zhejiang and Anhui provinces, in order to set us branches of the Holy Spirit Society. Such activities are considered to be illegal in China and itinerant preaching is prohibited.

Xu Guoxing is reported to have started organizing prayer meetings in private homes (known as house-churches) in 1982. He had previously worked in a factory in Shanghai, but reportedly resigned from his job there in 1980. During the 1980s he spent two years studying English in the United States of America, where he has relatives, and then returned to China.

Prior to his arrest in November 1989, Xu Guoxing had been detained for shelter and investigation by police in Shanghai from 14 March 1989 to 16 June 1989. He was released without being charged after three months. His re-arrest took place during the crackdown on pro-democracy protesters which followed the massacre in Beijing on 4 June 1989. The order assigning him to three years of re-education through labour was issued by the Shanghai municipal Public Security Bureau on 18 November 1989. The order stated that, after being released from three months of shelter and investigation in June 1989, "he did not observe the relevant government regulations and decisions and continued to carry out his illegal activities". In this way, the order said, "he seriously interfered with and damaged the regular order of religious activities". It was thus decided on 1 November 1989 to assign him to three years of re-education through labour. The order specified that his sentence will run from 6 November 1989 to 5 November 1992. Xu Guoxing was sent to carry out the sentence in a labour camp, known as the Da Fung farm, in northern Jiangsu province.

Liu Qinglin

Liu Qinglin, a 59-year-old Protestant evangelist in Moguqi, a city in the north-east of Inner Mongolia, was arrested in July 1989 and sent to a labour camp for three years of re-education through labour because he carried out religious activities without official approval. He was accused of being an "untrained" evangelist who should not be allowed to preach, and of having "indulged in unbridled witch doctor activities". This latter accusation referred to his reputation as a healer and to allegations that a child had died after receiving treatment from

him. According to Protestant sources in Hong Kong, this allegation has been disproved; the child's parents have testified that their son had left Liu Qinglin's care and had been home for a long time before he died. Liu Qinglin is said to have been a devout Christian who lived in poverty and there are no indications that he requested money from people who sought help from him.

Liu Qinglin is believed to have been arrested because of his growing popularity as an independent preacher in Moguqi. Between 1985 and 1988 he had founded some 20 independent house-churches and the congregation had some 3,000 baptized members by the end of 1988.

Liu Qinglin is from Liaoning province (north-east China). He moved to Moguqi in 1953 and began preaching in 1984. He soon acquired a reputation as a healer after two incidents in 1985 in which he reportedly cured two people suffering from serious pulmonary illnesses. His reputation and his following grew rapidly from then on. As his fame spread, he came under the scrutiny of the local Public Security Bureau and meetings of his followers have since been disrupted by the police. He was himself twice detained in 1987 and 1988, but released after short periods in detention. Following his second arrest in 1988 he reportedly applied to the local authorities for land on which to build a church. The authorities apparently promised to study his request, but continued confiscating bibles and disrupting the prayer meetings of his followers.

Liu Qinglin's arrest is believed to have been part of an attempt to curb the spread of independent house-churches in Inner Mongolia. According to Protestant sources in Hong Kong, the director of the government's Bureau of Religious Affairs of Inner Mongolia, Mr De Le Ge, stated in a speech on 31 December 1988: "The number of Christians in our region has doubled in the past five years and in some districts this increase has been five-fold. This has created confusion in the church and harmful effects in society." A few days later, on 3 January 1989, the TSPM Committee of Inner Mongolia passed a resolution which stipulated that: "The development of believers must be done strictly according to Church regulations. Non-clerical personnel are not allowed to cultivate believers." (Non-clerical personnel refers to house-church leaders and preachers who have not been trained and approved by the TSPM).

Liu Huanwen

Liu Huanwen, a worker in his late 20s and member of an official Protestant church in Beijing, is reported to have been sentenced in November 1990 to two years of re-education through labour for taking part in a demonstration in Tiananmen Square during the 1989 pro-democracy movement. He reportedly carried a cross during the demonstration and was arrested after the 4 June 1989 crackdown. Though little is known about Liu Huanwen, according to sources in Hong Kong he belonged to a government-approved church of the Three-Self Patriotic Movement of Protestant Churches in Beijing. During the 1989 protests, pastoral leaders of his church had reportedly asked the congregation not to take part in the demonstrations, but Liu Huanwen joined in a protest march without their consent, making himself conspicuous by carrying a cross. Groups of Christians and Buddhist monks were seen demonstrating in Beijing during the protests. Following the 4 June 1989 crackdown, religious leaders in the capital - including those in charge of government-sanctioned churches - were reportedly summoned by the authorities for interrogation. No further details are available about Liu Huanwen's arrest and sentence. He is reported to have been sent to a labour camp to carry out his two-year sentence.

Nine Tibetan nuns accused of shouting slogans on 2 September 1989

Nine Tibetan nuns were "sentenced" on 11 September 1989 to terms of two years of re-education through labour for shouting slogans in favour of Tibet's independence at a festival held in Lhasa on 2 September 1989. The nuns belonged to the Chubsang and Shungsep nunneries near Lhasa. Six of them were given three-year terms. They are: Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsog Tenzin, Pasang Dolma and Dawa Lhanzhum. The names of the three others, who received two-year terms, are not known.

The sentences against them were passed on 11 September 1989 by the Labour Re-education Administrative Committee of Lhasa, according to a report published a few days later by the official *Tibet Daily* (Xizang Ribao). They were accused of "separatist activities" and of "breaking martial-law regulations" for reportedly shouting "long live independent Tibet" after climbing onto a platform during a drama performance at the Norbulinka, the Dalai Lama's former summer palace. The performance was part of a traditional Tibetan festival attended by thousands of people. In the report on their sentencing, the *Tibet Daily* emphasized the "great arrogance" of the nuns and the "seriousness" of their "criminal" activities. Their place of detention is not known.

Five Tibetan nuns accused of involvement in a demonstration on 22 September 1989

Five Tibetan nuns, Rinzen Choedron, Choenyi Lhamo, Tashi Choezom, Sonam Choedron and Kunchok Drohma, were sentenced on 24 September 1989 to terms of three years of re-education through labour for shouting pro-independence slogans in the Barkhor area of central Lhasa two days earlier. They were accused of "breaking martial law regulations", according to a report in the *Tibet Daily* of 25 September 1989. The newspaper reported that a sixth nun, Rinzen Choenyi, aged 19, who had been arrested together with the five others on 22 September, was kept in detention pending a formal trial. Her case appeared to have been treated differently because she had been detained previously for allegedly taking part in a demonstration in June 1988, though she had been subsequently released without being charged on grounds of good behaviour. She was sentenced in October 1989 to seven years' imprisonment for her part in the 22 September 1989 demonstration. The place of detention of the five who were assigned to re-education through labour is not known.

Five Tibetan monks accused of involvement in a demonstration in late September 1989

Letsoe (Liecuo), Phuntchok (Pujue), Lhakpa, Trinley and Tenzin, all monks from the Palhalupuk monastery below Chakpori Hill, were brought to a "mass sentencing rally" in Lhasa on 3 November 1989 and sentenced without trial to three years of re-education through labour. They were accused of taking part in demonstrations held in the Barkhor area of Lhasa in late September 1989. One of them, Tenzin, had allegedly participated in a demonstration on 30 September, holding up a Tibetan national banner depicting snow-capped mountains and snowlions. The place of detention of the five monks is not known.

Eight Tibetans accused of involvement in demonstrations on 14 and 15 October 1989

Eight Tibetans, including six nuns, were sentenced on 22 October 1989 to terms of two and three years of re-education through labour for demonstrating in favour of Tibet's

independence in Lhasa in mid-October 1989, according to the official *Tibet Daily*. Six of them were accused of demonstrating on 14 October. They included four nuns, Tenzin Wangmo, Tenzin Dorje, Phuntsog Sangye and Kelsang Wangmo, who received three-year terms, and two lay people, Kelsang Dolkai and Tsichoe, who were respectively given two-year and three-year terms. Two other nuns, Lobsang Drolma and Ngawang Tsultrim, were sentenced to three years of re-education through labour for staging a demonstration on 15 October 1989. According to the *Tibet Daily*, two more nuns had been placed under arrest pending trial for allegedly leading the 14 October demonstration.

VIII. CRITICISMS AND JUSTIFICATIONS OF RE-EDUCATION THROUGH LABOUR IN CHINA

For several years before 1989, Chinese jurists had openly voiced criticisms of the practice of administrative detention, including the system of re-education through labour. Some had also called for a review of the relevant legislation. These calls for reforms stopped with the 1989 crackdown on pro-democracy protesters and no fundamental criticism of administrative detention appears to have been published since then. Those published previously, as well as official justifications for re-education through labour, are cited below.

1. A PUNISHMENT IMPOSED SOLELY BY THE POLICE

The 1979 *Supplementary Regulations* on re-education through labour provide that the bodies empowered to impose this penalty are the Labour Re-education Administrative Committees (LRACs) of large and medium-sized cities, which comprise leading members of the civil affairs, public security [police] and labour departments of the local governments. Both official and unofficial sources, however, indicate that the police have continued to exercise this power on their own. The national newspaper, *Legal Daily*, stated in 1988:

> "... for many years now, the work of examining and approving cases of re-education through labour has consistently remained outside the scope of legal supervision ... [Even now,] the work of examining and approving, and also of

> implementing, re-education through labour is carried out solely by the public security organs."[31]

The author of this article attributed this failure to the "temporary character and loose organization of the LRACs", which results in their being "incapable either of shouldering the job of examining and approving labour re-education cases, or of divesting the public security organs of this role". The author added:

> "In practice, the majority of LRACs exist only in name; some of them meet barely once a year, and the question of their being able to examine or approve cases is thus purely rhetorical."

In an earlier article, Liang Guohai, a judge of the Supreme People's Court, stressed the risk of injustices arising from the powers vested in the police in such cases and argued strongly that lawyers should be allowed to act in the defence of people sentenced either to labour re-education, detention or fines:

> "In particular, since the punishments concerned are all imposed on the sole authority of the public security organs, the likelihood of errors and mistakes arising is even greater than in those cases where the public security, procuracy and courts work in concert with each other ... Clearly, lawyers not only can act in the defence of such persons, but it is quite imperative that they should do so."[32]

The author of another article referred to a new illegal practice by police, involving the preliminary custody of people who had been "marked down" for re-education through labour in order to investigate them:

> "At present, the form [of investigation] commonly adopted by certain public security organs when handling cases of re-education through labour is: `labour re-education investigation' (*laojiao shencha*). In recent years, `labour re-education investigation' ... has emerged as a type of coercive measure which

[31] *Legal Daily*, 10 February 1988.

[32] *China Legal News*, 30 April 1987.

entails temporarily restricting the personal liberty of those who have been marked down for re-education through labour. However, there exists no legal foundation for this whatever. Hence, the use of this measure for taking into custody and investigating those who have been marked down for re-education through labour is quite clearly unlawful."[33]

2. AN ALTERNATIVE TO EXEMPTION FROM PROSECUTION

Chinese officials and jurists have been at pains to explain why there exists in China a punishment such as re-education through labour, which entails long-term detention without charge or trial. Some have tried to find justification for it in the provisions of the Criminal Law.

At the time of the adoption of the 1979 *Supplementary Regulations* on re-education through labour, Lao Cangbi, then Minister of Public Security, stated that the work of re-education through labour had been "quite successful" over the previous 20 years and that it should be continued in order to "safeguard social order", "defend the four modernizations" and "save" those ordered to undergo re-education through labour. Moreover, he said, the conduct of re-education through labour was in accord with "the spirit of Article 32 of the Criminal Law"[34]. This article provides that administrative sanctions may be imposed in certain circumstances to people who have been exempted from criminal punishment by a court. It reads:

"Where the circumstances of a person's crime are minor and do not require sentencing to punishment, an exemption from criminal sanction may be granted him, but he may, according to the different circumstances of each case, be reprimanded or ordered to make a statement of repentance or formal apology, or make compensation for losses, or be subjected to administrative sanctions by the competent department."

[33] *Faxue*, No 7, 1987.

[34] Report on the meeting of the National People's Congress Standing Committee, New China News Agency, 26 November 1979.

This attempt to justify re-education through labour through the provisions of Article 32 of the Criminal Law found an echo in a 1987 article in the national newspaper, *China Legal News*. The article was entitled "Certain accused persons who have been declared exempt from prosecution may be dealt with by means of re-education through labour"[35]. The author of the article argued that the reference to administrative sanctions in Article 32 of the Criminal Law made it possible to impose re-education through labour to people who had been exempted from prosecution by the courts. The article seemed to imply that this was the actual practice, though it did not cite any example. Throughout the article, the author referred to cases where the accused had been exempted from "prosecution" by the "courts". This particular formulation is puzzling as exemption from prosecution is not what Article 32 covers. Indeed, "exemption from prosecution" (which can be granted by the procuracies during pre-trial investigation, under Article 101 of the Criminal Procedure Law) is quite different from "exemption from criminal punishment" (which can be granted by the courts after a full trial hearing, under Article 32 of the Criminal Law.) It is not clear whether the author of the article did actually confuse the two procedures, or whether he simply referred to Article 32 in order to support his argument.

He mentioned, however, that "certain comrades" disagreed with his view: they pointed out that Article 32 made no specific mention of re-education through labour as being one of the administrative sanctions which can be applied in such cases.

Indeed, the fact that Article 32 lists administrative sanctions among such informal sanctions as "reprimand", "formal apology" and "compensation", suggests that it was not meant to cover such a severe punishment as re-education through labour. Furthermore, the provisions of the Criminal Law allow the courts to impose "light" criminal sanctions such as "deprivation of political rights" and "criminal detention" (from 15 days to maximum six months). It is therefore dubious whether Article 32 of the Criminal Law can provide any legal justification for imposing re-education through labour, which involves detention for up to four years, to people found by a court to have committed offences "too minor" to warrant even the lighter criminal punishments.

3. CRITICISMS OF WRONGFUL RULINGS AND CALLS FOR REFORM

[35] *China Legal News*, 1 May 1987.

The author of a 1987 article in the Shanghai magazine, *Faxue* (Jurisprudence), called for a thorough review of the whole system of re-education through labour and for the drawing up of a new complete law. He stated:

"At present, there are some people in society who advocate the complete abolition of re-education through labour, as they consider its defects to outweigh its benefits. In my own opinion, the system of re-education through labour has indeed, over the past 30 years and more ... played a positive role. But the question of whether or not it can continue to play such a role, now and in the future, is one which requires further study. Hence, I suggest to the competent departments that they should carry out a systematic and comprehensive investigation into the labour re-education system, in order to ascertain whether or not there is any necessity for its continued existence. If such a need is found, then a full and complete *Law on Re-education Through Labour* must be drawn up as quickly as possible, so that the present problems of labour re-education legislation can be fundamentally solved."[36]

Another long article in the *Legal Daily* of 11 May 1988 called for a system of "petition and court appeal" to be set up for the benefit of people sentenced to re-education through labour. Noting that this punishment was "a far more severe form of administrative punishment than any other form", the article stated that the present lack of any system of court appeal was "abnormal". Indeed, a system of court appeal already existed for the far less severe form of administrative detention which can be imposed for a maximum of 15 days for minor public order offences. The author of the article stated that "fairly pronounced problems" had emerged due to the lack of judicial review in labour re-education cases. These problems included wrongful rulings:

"Owing to the fact that the current laws and regulations on labour re-education do not contain any specific stipulations allowing administrative litigation to take place, the problems that have emerged in this area are fairly pronounced ones.

"Some rulings of labour re-education (made by the Public Security Bureau) have been obviously inappropriate but those persons made to undergo the labour re-education have then petitioned the relevant departments dozens or even hundreds of times, without getting any satisfaction from them. The current

[36] *Faxue*, No 7, 1987.

> inability to ... request the judicial organs to defend their lawful rights and interests is, in both legal and moral senses, incompatible with the requirement to bring socialist democracy into play and to strengthen the socialist legal system."

The author then stated that setting up a system of court appeal would be "an effective way of reducing the occurrence of wrongful rulings of labour re-education, and thus of protecting the lawful rights and interests of citizens."

A system of court appeal has now been introduced under the Administrative Procedure Law which came into force in October 1990. It is unclear, however, how this system will function in practice. This question is examined below.

IX. THE ADMINISTRATIVE PROCEDURE LAW: A LIMITED REMEDY

A right of appeal to the courts against a range of administrative punishments, including administrative detention, has recently been introduced in China under the Administrative Procedure Law. The law was adopted by the National People's Congress on 4 April 1989 and came into force on 1 October 1990. The law is aimed at providing a remedy against abuses of power and illegal practices by administrative authorities. According to an official commentary, the coming into force of the law "will be of great significance in implementing the principle of protecting the citizens' legal rights and interests as provided in the Constitution"[37]. While the adoption of the law was indeed a significant development, Amnesty International considers that the law does not provide a remedy against arbitrary arrest and detention.

The Administrative Procedure Law provides that individuals and organizations can initiate proceedings in a court of law to challenge "specific administrative acts" -- that is sanctions -- imposed on them by administrative authorities. These administrative acts include fines, cancellation of licences, confiscation of property, orders to suspend business operations, administrative detention orders, and other administrative sanctions. By the time

[37] State Council circular calling for implementation of the Administrative Procedure Law, cited by the New China News Agency on 15 January 1990, translated in Foreign Broadcast Information Service(FBIS)-CHI-90-061 of 26 January 1990.

the law was adopted, a right of appeal to the courts already existed against the less severe form of administrative detention, which involves detention for a maximum of 15 days for public order offences (such as violations of traffic regulations). This right of appeal was introduced when a new Security Administration Punishment Act, which deals with public order offences, came into force in January 1987.

In principle, the Administrative Procedure Law extends a similar form of appeal to other forms of administrative detention. This however cannot be regarded as a substitute for trial. Under the provisions of the law, individuals or organizations who do not accept administrative sanctions can apply for review. This is a three-stage process. First, such individuals must apply for review to an administrative body at a higher level than that which imposed the sanction - for example a person served with an administrative detention order by the Public Security Bureau of a provincial city should apply for review first to the Public Security Department for the whole province. Then if they do not accept the results of that review, such individuals can lodge an appeal before a court within 15 days of receipt of the written decision of the review. Finally, if the court confirms the original judgement, the appellants can appeal to a higher court within 15 days of receipt of the notice of judgement by the court of first instance (articles 37, 38 and 58 of the law.)

During the first stage of review, it may take up to two months for the administrative body which carries out the review to reach a decision (Article 37), whereas the applicant has only three months from the date the sanction is known to lodge an appeal before a court (Article 39). Once the court receives the "bill of prosecution", it must decide within seven days whether to accept or refuse to hear the case, and if accepted, it must make a judgement within three months (Article 42 and 57). Appeal to a higher court may then take up to two and a half months before a final judgement is made and this period may be extended if needed with the approval of the Supreme People's Court (Article 58 and 60.) Thus, the whole process may take well over seven months. While this delay may be needed in cases involving complex economic matters, for those who are challenging administrative detention orders, the process is long, cumbersome and virtually unworkable.

Detainees may be forced to remain in jail throughout the whole process of review and court hearing. According to Article 44 of the law, the execution of the administrative sanction is not to be suspended pending the court hearing, unless such a suspension is requested by the administrative body which imposed the sanction (which is very unlikely in cases of administrative detention), or unless the court which hears the case decides that executing the sanction "will cause irreparable losses, and the public interests of the society will not be injured by such suspension". Thus, in all cases, the sanction will not be suspended during the first stage of administrative review, except at the discretion of the administrative authority which imposed the sanction, and once the case is brought before a court, the court can only decide to suspend the punishment when executing it would "cause irreparable losses". For those who are challenging administrative detention orders, this is likely to mean that they will

remain in detention throughout the whole process of administrative review and court appeal. In the words of an official commentator, the law provides citizens with a remedy "after the event".[38]

The Administrative Procedure Law gives the courts only limited authority to decide a case on its merits: a court may only substitute its decision for that of the administrative authority if the original punishment is determined to have been clearly "unfair". Failing this, if the court finds that there was insufficient evidence against the person to justify the punishment, the court may quash the original decision but must then send the case back for reconsideration by the administrative authority responsible. The same applies to cases where the court finds that the administrative authority concerned had wrongly applied laws and regulations, or violated legal procedures, or been guilty of abuse of power. It is then up to the administrative authority to make a new decision on the case. Furthermore, there is no indication how the court is to decide what is illegal or an abuse of power, or when a punishment is clearly unfair.

The new law is an attempt to provide a remedy against authorities who act beyond the legitimate scope of existing administrative laws and regulations. However, as has been shown earlier, the laws and regulations on administrative detention, particularly those on shelter and investigation, are vague, contradictory and lacking in any clear guidance of what is their legitimate scope. Except in extreme cases, such as that of the defence lawyer Zhou Lin (see page 13, above), it is not clear what would amount to an abuse of power, or would be considered clearly unfair, or exactly which procedures would be considered illegal. Neither the existing laws and regulations on administrative detention, nor the Administrative Procedure Law, provide any guidance to the courts or to prospective applicants. Consequently, it must be questioned whether there will be any consistency in decisions of the review courts throughout China.

Because the new law works within the existing system, it is clear that the authorities have failed to challenge the fundamental principles and rules on which administrative detention is based. Arbitrary detention without charge or trial will continue notwithstanding the Administrative Procedure Law. A complete national review and reform of the laws and regulations on administrative detention would be required in order to remove inconsistencies between the regulations existing at various levels of government and state law, and to reduce the incidence of arbitrary arrest and detention in China.

The extent to which even the limited remedy provided by the Administrative Procedure Law will be available in practice to people detained administratively is not known.

[38] See "Several Questions Concerning the Administrative Procedure Law" by Xiao Xun, in *People's Daily*, 10 March 1991, translated in FBIS-CHI-91-056, 22 March 1991.

To Amnesty International's knowledge, the official media have not yet reported any specific case in which people subjected to shelter and investigation or re-education through labour have appealed to the courts. There are many obstacles in the way of making such appeals, especially for people detained for shelter and investigation: they are held incommunicado and are totally defenceless while in police custody. They may easily be intimidated or prevented from exercising the right to appeal, and many of them may be unaware of their rights under the law.

There are other practical obstacles to the proper implementation of the law. The police or other officials may be reluctant to become the "accused" in a court of law, and may exert pressure on the courts. Official sources have acknowledged that this is one of the obstacles to proper implementation of the law. One official commentator, for instance, stated in 1990 that there had been a series of difficulties in the course of setting up the administrative procedural system, including the "widespread phenomenon" of "reluctance to sue an official". He went on:

"Certain administrative organs refuse to respond to charges or enforce the court's verdict, with some even interfering with the verdicts of the courts ... Some judicial personnel are intimidated by the official being sued and cannot handle the cases with impartiality.

"With the implementation of the Administrative Procedure Law, the problems cited above are not likely to disappear immediately, while new problems are bound to crop up."[39]

Another major obstacle to the full implementation of the law is the disparity of the administrative regulations in different parts of the country. Official sources confirm that this problem remains unresolved [40] . Furthermore, many administrative regulations are unpublished and therefore practically impossible to challenge before a court.[41]

[39] "The Development of an Administrative Procedure System in China" by Yuan Ma, in *People's Daily* overseas edition, 19 October 1990, translated in FBIS-CHI-90-205 of 23 October 1990.

[40] See Report from the President of the Supreme People's Court, delivered on 3 April 1991 to the National People's Congress, as printed in the *People's Daily*, of 13 April, 1991.

[41] See "Administrative Litigation Law: Citizens Can Sue the State but not the Party" by Edward J.Epstein, in *China News Analysis*, No.1386, 1 June 1989.

The new law, while positive in some respects, does not prevent arbitrary detention without charge or trial, or radically change the system of widespread administrative detention. It does not, therefore, provide protection for the rights of people who are and will continue to be the victims of arbitrary administrative detention.

X. CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

Amnesty International remains concerned that administrative detention continues to be widely used in China to detain people vaguely defined as "anti-social elements" and dissidents who have merely exercised their rights to freedom of expression, belief or association. Administrative detention often results in arbitrary arrest and detention in clear breach of the principles enshrined in international human rights standards, such as the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the International Covenant on Civil and Political Rights (ICCPR). The Body of Principles, which the UN General Assembly adopted by consensus in 1988, requires that any form of detention must be ordered by, or be subject to, the effective control of a judicial or similar authority (Principle 4). It provides that no person may be kept in detention without being given an effective opportunity to have his/her case heard promptly by a judicial or similar authority (Principle 11). It requires also that each detainee (and his/her counsel) "shall receive prompt and full communication of any order of detention, together with the reasons therefor", and shall have the right "to defend himself or to be assisted by counsel as prescribed by law" (Principle 11). After the first hearing, "a judicial or other authority shall be empowered to review as appropriate the continuance of detention" (Principle 11).

Article 9 of the ICCPR similarly provides that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. 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 to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

The laws and regulations providing for administrative detention in China use vague language and are drawn broadly, allowing the authorities to detain people suspected of involvement in a wide range of activities including legitimate exercise of their basic human rights as well as unlawful acts. They permit the detention of people officially regarded as being "anti-socialist" or "anti-Party", who are held for the peaceful exercise of their rights to freedom of opinion or belief.

The administrative laws and regulations vest wide discretionary powers with the police, who in many cases have sole authority to impose detention. Contrary to the UN Body of Principles and the ICCPR, the police are not required to inform promptly the detainee of the specific reasons for the detention or of the information upon which it is based.

Torture and ill-treatment of detainees are reportedly common in some administrative detention centres and police often prolong detentions beyond the legally permitted limits. They also use administrative detention provisions to detain people who do not in fact come within the scope of the relevant laws and regulations, and in some cases are permitted to do so by the authorities. Police also have discretion to review or extend detention depending on the "attitude" of the detainee. In practice, detainees are often held for longer than the most severe sentence that could have been imposed on them by a court if they had been formally charged with a criminal offence under the Criminal Law. Detainees are often "transferred" from one form of administrative detention to another. They are also liable to be retained

indefinitely for "in-camp employment" after serving a period of re-education through labour in a labour camp.

Another concern is the lack of independent review of the actions of the police and other administrative authorities who impose administrative detention. Detention orders are issued without judicial supervision and there is no automatic judicial review of the decision contrary to the requirements of the UN Body of Principles and the ICCPR. Though a right of appeal to the courts was recently introduced under the Administrative Procedure Law, it is left to the detainee to request a review of the detention. The UN Body of Principles explicitly requires that *all* detainees must be brought before a judicial or similar authority promptly after arrest. Furthermore, the new Administrative Procedure Law only gives limited powers to the courts to make judicial amendments and does not guarantee detainees a fair hearing of their cases. Amnesty International is concerned that such review, when it takes place at all, falls short of an effective and thorough judicial examination of the substantive reasons for detention, and does not adequately question the legitimacy of such detention. The review, therefore, is inadequate to prevent arbitrary detention, and falls short of internationally recognized principles for effective judicial review. In practice, even this limited remedy may be unavailable to many detainees who may be put under pressure not to use the appeal procedure or prevented from doing so. In addition, the courts may be reluctant to challenge the orders issued by executive authority, or the court's decisions may be ignored by the detaining authorities.

International standards require that detainees have access to a court as soon as possible after arrest both to ensure a prompt review of the grounds for detention and because it is often during the initial period in custody that detainees are most vulnerable to serious abuses such as torture.

2. RECOMMENDATIONS

Amnesty International is concerned that some of the existing administrative laws in China permit the detention of people who merely exercise their fundamental rights to freedom of opinion or belief. It calls on the Chinese authorities to release all prisoners of conscience held under such provisions and to repeal legislation which permits the detention of people described as "anti-socialist", "anti-party" or "counter-revolutionary elements" who have merely exercised their internationally-recognized fundamental rights.

Amnesty International considers that administrative detention should not be used as a substitute for, and means of avoiding the safeguards of, the criminal justice system, as is the case under the system of re-education through labour in China, and the system of shelter and investigation, which substitutes for criminal detention and denies detainees all safeguards

provided in both national legislation and international law. It recommends that the Chinese authorities initiate an urgent review of the system of administrative detention without charge or trial and consider whether there is any necessity to maintain this practice in law.

Amnesty International opposes the arbitrary detention without charge or trial of all political detainees. It considers that such detainees should not continue to be held in detention unless they are charged with a recognizably criminal offence and given a fair trial within a reasonable time, in accordance with the specific internationally-recognized requirements for a fair trial set forth in Article 14 of the ICCPR:

Article 14

1. All persons shall be equal before courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ...

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not be compelled to testify against himself or to confess guilt.

Amnesty International is also concerned at reports that detainees held in administrative detention centres are frequently subjected to torture or other ill-treatment. The organization calls for prompt investigation of all complaints and reports of torture by independent and impartial bodies not involved in the process of arrest, detention or investigation of detainees. The methods and findings should be public, as required by the United Nations Convention against Torture and the United Nations Body of Principles. Safeguards should be introduced in legislation to ensure that all detainees are brought before a judge promptly after being taken into custody, and that relatives, lawyers and doctors have prompt and regular access to them.

Amnesty International therefore calls on the Chinese authorities to establish a thorough review into the cases of all administrative detainees in order to ensure the release of all prisoners of conscience and that all other uncharged political detainees are released if they are not to be tried fairly and promptly on recognizably criminal charges. Such a review should also lead to the early introduction of full safeguards for the basic human rights of all detainees, including safeguards against possible torture or ill-treatment. Amnesty International also urges the Chinese authorities to repeal existing legislation relating to administrative detention to ensure that it can no longer be used to imprison prisoners of conscience.