

# PEOPLE'S REPUBLIC OF CHINA

## Torture and ill-treatment

### Comments on China's Second Periodic Report to the UN Committee Against Torture

Torture and ill-treatment of prisoners are common in China. Such abuses occur in police stations, detention centres, labour camps and prisons, sometimes resulting in the death of the victims. Chinese law prohibits only some forms of torture and ill-treatment. Though China has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, Convention against Torture), the authorities have failed to introduce basic safeguards to prevent torture or to bring many torturers to justice.

This document summarizes Amnesty International's concerns about the use of torture in China and comments on the second periodic report submitted recently by the Government of the People's Republic of China to the United Nations on its implementation of the Convention against Torture<sup>1</sup>. This report will be examined by the UN Committee against Torture (CAT) at its next session in April-May 1996.

China ratified the Convention against Torture in 1988. It submitted an initial report on its implementation of the Convention to the UN in December 1989. The CAT found this report inadequate and asked China for an additional report, which was submitted in late 1992<sup>2</sup>. In the additional report, the government stated that over the years, particularly since China had ratified the Convention, it had adopted "effective" legislative, judicial, administrative and other measures to "rigorously forbid all acts of torture and guarantee that the rights of the person and the democratic rights of citizens are not violated". In reality, however, no fundamental preventive measures had been taken since the 1980 Criminal Law outlawed some forms of torture.

This concern still stands. China's second periodic report to the CAT shows that, seven years after it ratified the Convention against Torture, the government has still not taken measures to prohibit all acts of torture by law, as required by the Convention. Basic safeguards to prevent torture and ill-treatment, such as early and regular access to lawyers, are still lacking, and the ineffectiveness of the measures taken by the government is demonstrated by the continuing high incidence of torture in China.

The government's second periodic report highlights a number of measures taken by the authorities in the past few years to further prohibit torture and punish. While these new measures are welcome, they are insufficient to stop torture which remains widespread.

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<sup>1</sup> The government's report, dated 2 December 1995, was published in English by the UN as *Second periodic reports of State parties due in 1993, Addendum, China*, CAT/C/20/Add.5, 20 February 1996.

<sup>2</sup> See AI's document *China - Torture and Ill-treatment: Comments on the additional report of the People's Republic of China to the UN Committee against Torture*, AI Index: ASA 17/11/93, March 1993.

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

## I. PATTERNS OF TORTURE AND ILL-TREATMENT

Amnesty International has described its concerns about the use of torture and ill-treatment in China in a recent report, entitled *China - No one is safe: Political repression and abuse of power in the 1990s* (hereafter *No one is safe*)<sup>3</sup>. These concerns are briefly summarized below. For further information about the patterns of torture and examples of its use, see Chapter 4 of *No one is safe* ("torture and impunity", pages 63-84). Amnesty International has continued to receive reports of torture since this report was written.

A wide variety of reports show that the incidence of torture is widespread, systemic and far higher than suggested by official statistics. Torture is inflicted on political and common criminal prisoners alike. It affects people who are not suspected of crimes at all, but who get involved in disputes with police or other officials, who attempt to defend their rights, or who are seen as easy prey by corrupt officials (see, for example, the case of Yan Zhengxue, pages 9-11 and 63 of *No one is safe*, and those of four teenage girls and two young men who were tortured last year in Liaoning province, page 68 of *No one is safe*).

One recently reported incident, which involved the wife of the Mayor of Shenzhen, shows the extent to which anyone is at risk of ill-treatment by police and other security officials. According to a press report, Shenzhen Mayor Li Zibin recently addressed a letter to President Jiang Zemin complaining that his wife, Ms Chai, and her driver had been beaten by two People's Armed Police (PAP) officers while driving back home on 5 March 1996. The incident occurred when her car was blocked by a PAP jeep and her driver tried to gain access by pressing the car's horn, the report says. The driver was then beaten by the PAP officers and, when Ms Chai criticized them, the officers grabbed her hair and knocked her head repeatedly against the front of her car. In his letter, Mayor Li Zibin reportedly said: "If I, as a Mayor of Shenzhen, cannot even protect my wife, how can I protect the citizens of Shenzhen?"<sup>4</sup> According to the press report, the nephew of the Shenzhen Party Committee Secretary had also been beaten by PAP officers in another incident last year.

Police brutality in the streets, which has been widely reported, is a reflection of the widespread and often far worse brutality that can take place in police custody. In many instances, torture and ill-treatment have resulted in death (see below, page 13, on deaths in custody).

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<sup>3</sup> AI Index: ASA 17/01/96, published in March 1996.

<sup>4</sup> *South China Morning Post*, Hong Kong, 19 March 1996.

In police stations and detention centres, criminal suspects are frequently tortured and ill-treated during preliminary or pre-trial detention in order to intimidate them, force them to give information about themselves or others, or coerce confessions (see pages 67-70 of AI's report *No one is safe*). The authorities' policies on law enforcement, which give vast powers to the security agencies and regularly call for "hard crackdowns" on crime, together with the lack of public accountability mean that expedient means, including torture, are often used by those in charge of enforcing the law in order to achieve results.

Torture is also often used as an instrument of political repression against people considered to be a threat to the established order. Dissidents with a high international profile may enjoy some protection from the worst forms of torture, but this does not apply for ordinary members of groups targeted by the state. Amnesty International has documented numerous such cases in various reports and documents in the past few years, including in *No one is safe* (pages 70-77). In these cases, the perpetrators of torture often invoke official policies as a justification for their actions (see the case of Li Dexian, *No one is safe*, p.72). Amnesty International believes that the government's failure to prosecute perpetrators of torture in political cases points to official acquiescence in such practices. While some officials who torture criminal suspects are prosecuted, there are no known cases of officials being prosecuted for torturing a political prisoner.

In prisons and labour camps, the official penal policy, which makes "acknowledgement of guilt" and forced labour fundamental requirements for the "reform" of prisoners, creates an environment in which abuses of prisoners often occur. Prisoners are expected to show total obedience to guards, to acknowledge that they are "criminals", and to perform any amount of the work required without complaining. They are frequently humiliated and subjected to punishments which amount to torture or cruel, inhuman or degrading treatment or punishment. Punishments range from deprivation of privileges to being beaten, shackled and placed in solitary confinement in extremely harsh conditions. This may happen if prisoners complain, do not fulfil work quotas, disobey orders or infringe regulations. Many examples of such ill-treatment have been reported in recent years. (See *No one is safe*, pages 73-77).

In addition, in recent years, officials in detention centres, prisons and labour camps have increasingly used "cell bosses" or "prison trustees" to discipline and ill-treat other prisoners. Cell bosses and trustees are prisoners who are put in charge of supervising groups of prisoners. They are often allowed to terrorize other inmates at will, with the connivance of prison guards. Often, they also carry out the guards' orders to "teach a lesson" to a prisoner deemed to be unruly or slow at "confessing" - which invariably means beating the prisoner. This allows guards and interrogators to deny responsibility if the prisoner is found to have been ill-treated. Many sources have reported that abuses carried out by trustees at the instigation of, or with the connivance of, prison officials have become very widespread since the early 1990s. Some former police officers interviewed by Amnesty International have admitted that this was a way for police and prison officers to avoid directly breaking the law.

In this context, few prisoners dare to make complaints for fear of retaliation or because they think it is futile. Procurators, who are responsible for monitoring law-enforcement activities, are often unwilling or powerless to act. According to many sources, their visits to places of detention, or in some cases their permanent presence there, has little impact on the treatment of prisoners. The procuracies'

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primary role is to investigate and prosecute crime, for which they cooperate closely with the police. In view of this dual function and the lack of independence of the judiciary in China, their impartiality as a monitoring body is questionable.

## **II. WHY TORTURE CONTINUES**

Torture often results from official policies and institutionalized practices in the law enforcement and judicial process, such as those described above. Various aspects of the legal system contribute to its use, notably the inadequacy of the legislation against torture and the lack of guarantees for prisoners' rights. The authorities' failure to prosecute many torturers creates a climate of impunity which is also a major contributing factor.

### **1. Inadequate legislation**

Under the Convention against Torture, China is legally bound to criminalize all acts of torture and ill-treatment. The Convention also says that punishments for torture should reflect "their grave nature" (Article 4). Chinese law fails to meet these requirements.

The provisions against torture in China's Criminal Law are inadequate and have not been reviewed since the law came into force in 1980. The Criminal Law prohibits only one form of torture and some forms of ill-treatment in limited circumstances (see below). Thus many acts which constitute torture or ill-treatment are not offences under the Criminal Law.

Article 4 of the Convention against Torture obliges each State Party to ensure that "all acts of torture are offences in its criminal law". It states that the same shall apply to "an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture." Article 1 of the Convention defines torture as meaning:

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

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

China's Criminal Law prohibits two specific offences involving torture or ill-treatment of prisoners by state officials - namely, "torture to coerce a statement" (Article 136) - which is also translated as "torture to extract a confession" - and "corporal punishment and abuse" of prisoners in some limited circumstances (Article 189). These provisions do not prohibit all acts of torture and ill-treatment. They exclude many circumstances in which such abuses occur, notably the use of torture to punish, intimidate, or coerce a person.

1. Article 136 prohibits “torture to coerce a statement”. It is applicable to “state personnel” who inflict such torture “on an offender”, providing punishments ranging from “criminal detention” to three years’ imprisonment, and “heavier punishment” if such torture causes injury or disability<sup>5</sup>. The minimum punishment, “criminal detention”, consists of between 15 days and six months’ detention (Article 37). The availability of light punishments for serious acts of torture is well known to police and prison officials in China. It reinforces the sense of impunity given by the knowledge that few torturers are ever brought to justice.
2. Article 189 is applicable specifically to “judicial personnel” who “violate laws and regulations on prison management” by subjecting prisoners to “corporal punishment and abuse”. This wording restricts significantly the scope of application of Article 189. It is generally interpreted as referring to “judicial personnel” in penal institutions, thus excluding police or other officials and other places of detention. It punishes only judicial personnel who are deemed to have acted in violation of prison regulations. This restricts further the scope of application: prison regulations in China allow punishments which are regarded as constituting ill-treatment and are prohibited under international standards, for example the prolonged use of handcuffs and leg-irons on prisoners sentenced to death. Furthermore, under Article 189, corporal punishment and abuse is punishable only “when the circumstances are serious”. The law does not specify what circumstances are considered serious, so that perpetrators may escape prosecution if investigators decide their actions are not serious. As in Article 136, the minimum punishment for inflicting “corporal punishment and abuse” on prisoners is “criminal detention”. Generally, this offence is not considered by Chinese law to be a crime of the same nature and gravity as “torture to coerce a statement”. Unlike Article 136, it is not part of the section of the Criminal Law dealing with “crimes of infringing upon the rights of the person and the democratic rights of citizens”. Instead, it comes under a section of the law which deals with “crimes of dereliction of duty” by state officials.

The inadequacy of these provisions is one of the reasons why many acts of torture and ill-treatment remain unacknowledged and many perpetrators unpunished.

## 2. Incommunicado detention

Incommunicado detention - one of the major factors facilitating torture - remains the norm for most detainees. People taken into police custody are held incommunicado for long periods, without access to lawyers, judges or relatives. Many are held under administrative regulations, outside the judicial process. Administrative detainees have no right of access to a lawyer except to present an appeal against their detention order, a procedure which is in practice unavailable to the majority of such detainees. Under the Criminal Procedure Law (CPL), those charged with criminal offences are at

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<sup>5</sup> Under Article 134 of the Criminal Law, intentional injury is punishable, like torture to extract confessions, by criminal detention or up to three years’ imprisonment; causing serious injury can be punished by prison terms of three to seven years, and causing death by minimum seven years.

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present guaranteed access to lawyers only seven days before the trial - usually several months after arrest. Amendments to the CPL, which were passed recently by the legislature and are due to come into force in 1997, bring forward the time at which detainees will be given access to lawyer, but still leave Chinese law far behind international standards in this area (see below, Section III, page 11).

In practice, people held in police custody are often held without charge and without access to lawyers, judges or relatives for months or even years<sup>6</sup>

See *China - No one is safe*, op.cit., pp. 25.26.<sup>7</sup> While held incommunicado, they are put under pressure to confess to crimes or coerced into doing so. Obtaining “confessions” from the accused has long been an established part of the judicial process. The numerous reports available about the extent of “torture to extract confessions”, including from official sources, show that the practice continues.

Access to the family is usually granted only after the prisoner has been sentenced, in principle once a month. In practice, family visits are considered a privilege rather than a right and can be denied at any time at the whim of prison officials<sup>8</sup>. Such visits are usually closely monitored by guards and prisoners may be prevented from talking about their treatment in prison or suffer retaliation if they do. Relatives may also suffer retaliation if they complain about the prisoner’s treatment.

Prisoners serving sentences in labour camps or prisons have no guaranteed access to lawyers once they have exhausted the appeal procedures. Like untried detainees, they are totally at the mercy of their jailers.

### 3. Inadequate investigations and impunity

Article 12 of the Convention against Torture requires State Parties to investigate “promptly and impartially” whenever there are reasonable grounds to believe that torture has taken place. The same applies to other forms of ill-treatment (Article 16). Article 7 also requires states to prosecute those responsible for torture.

China’s second periodic report does not comment on its implementation of Articles 7 and 12 of the Convention in the past four years. It simply refers to relevant paragraphs of the additional report

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<sup>6</sup> Wei Jingsheng, China’s best known dissident, is a well known example. He was held incommunicado and without charge for nearly 20 months after being detained by police in April 1994. He was charged in November 1995 with “attempting to overthrow the government” and sentenced in December 1995 to 14 years’ imprisonment on this charge.

<sup>8</sup> The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), Principle 19, provides that detainees have the right to be visited by and communicate with their family. Principle 15 states that communication by the detainee with the “outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.

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submitted in 1992. These merely contained general statements and explained the role of the people's procuratorates (procuracies) and other bodies in monitoring prisoners' treatment and dealing with complaints. Elsewhere in the additional report, however, figures were cited for the number of cases of torture investigated and prosecuted in 1990 and 1991.

Unlike the additional report, the second periodic report does not cite any figures for the number of cases of torture investigated or prosecuted by the authorities in recent years. The number of cases investigated every year is published in China in the annual work report of the Supreme People's Procuratorate (SPP) to the National People's Congress (China's parliament). However, the authorities do not regularly publish statistics for the number of perpetrators of torture who are prosecuted or their punishment.

In 1995, according to the latest SPP report, 412 cases of "torture to extract confessions" were placed on file for investigation<sup>9</sup>. The figure was 409 in 1994, and 378 in 1993. While these figures indicate that some cases are investigated, there is evidence that many are not. Indeed, few of the official reports have ever recorded cases of "corporal punishment and abuse" of prisoners - even though this is also prohibited by law and there are many reports of such abuses. Moreover, since the law clearly limits the scope of official action, the official reports never record cases of torture for reasons other than to "extract confessions".

According to many sources, few cases of torture are investigated and even fewer prosecuted, due to frequent cover-ups by superior officers or other authorities<sup>10</sup> as well as other factors. When investigations are launched, they are often dropped and disciplinary sanctions are imposed in preference to criminal punishment.

China's second periodic report refers to disciplinary sanctions as well as criminal punishments (paragraphs 15 to 16), but it does not make clear which cases are considered worth a criminal investigation. Unofficial sources suggest that few cases go through the formal criminal process. This would seem to be confirmed by the fact that the law criminalizes only some acts of torture and ill-treatment.

The government's report also shows that various bodies are involved in investigating complaints and reports of torture, including administrative departments, the public security (police) agencies and judicial bodies (paragraph 69). The report, however, does not clarify how investigation is coordinated between the various bodies, or at what stage it is decided whether or not a criminal investigation will take place, nor how and by whom this decision is taken. Indeed, the government has never published information on the procedures followed during investigation, even though this question has been raised on several occasions by the UN Special Rapporteur on Torture.

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<sup>9</sup> Report on the Work of the Supreme People's Procuratorate, delivered by Procurator General Zhang Siqing at the fourth session of the Eighth National People's Congress on 12 March 1996.

<sup>10</sup> See *China - No one is safe*, op.cit., page 82.

In the numerous cases of political prisoners who are reported to have been tortured or ill-treated, the government has provided no evidence that there have been criminal investigations. Amnesty International has never come across a report of an official being investigated or prosecuted for torturing or ill-treating a political prisoner. In many such cases, the government has denied the allegations, sometimes claiming that they were investigated and found to be untrue. However, it has never substantiated such claims and has given no details of the investigations which it claimed had taken place.

Neither has the government ever published information to show that investigations have been carried out into places of detention where groups of prisoners are reported to have been persistently subjected to torture or other ill-treatment, such as the Hunan provincial No.3 Prison and other prisons and detention centres in Hunan province, the Lingyuan No.2 Labour Reform Detachment in Liaoning Province, Prison No.1 and Prison No.2 in Shaanxi province, the Hubei provincial No.1 Reform Through Labour Detachment (known as Hanyang prison) and the Hewan labour camp in Hubei province, Beijing Prison No.2, the Qinghe Labour Reform farm near Tianjin, Drapchi prison and the Gutsa detention centre in Lhasa, the Guangzhou No.1 Re-education Through Labour Centre, the Huang Hua detention centre in Guangdong province, and many other places.

Amnesty International believes that the failure to thoroughly and impartially investigate all reports and complaints of torture and to bring perpetrators to justice is one of the major reasons why torture continues in China. This creates a climate of impunity which is further encouraged by the knowledge that not all acts of torture and ill-treatment are punishable by law and that the punishments, when imposed, are often light.

### III. RECENT DEVELOPMENTS

China's second periodic report states that, "since 1992, China's legislative, administrative and judicial institutions have not ceased to formulate new measures in their respective domains to prevent torture and to protect the physical integrity and democratic rights of citizens against violations" (paragraph 5). It cites several new laws introduced in recent years, notably the State Compensation Law, promulgated in May 1994. While the introduction of this law is welcome, it only provides a mechanism for financial redress against officials who abuse their power. It neither prevents torture nor ensures that torturers are prosecuted.

To Amnesty International's knowledge, there have been very few reports related to the application of the State Compensation Law in cases of torture. One report was published in the official newspaper *Legal Daily* on 21 July 1994, shortly after the law was promulgated. It reported the outcome of a suit brought by a lawyer, Li Qiang, who had been illegally detained and beaten up by police some two months earlier while he was working on a case in Beijing. Li Qiang suffered several injuries as a result of the beating, the newspaper said. A hospital record showed that this included concussion, *commotio retinae* and injuries to his soft tissues. Following his release, he filed a suit against the Public Security (police) agency responsible for his illegal detention and ill-treatment. The police, however, twice refused to appear in court. They were eventually tried *in absentia* on 20 July 1994. According to the *Legal Daily*, the court ruled that the police had "lost the lawsuit" and would have to pay 3,440.30 *yuan* to Li Qiang as compensation for his medical and hospital fees. The newspaper, however, did not



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indicate that the court or other judicial authorities had initiated criminal proceedings against the police officers for ill-treating Li Qiang, even though this is required under the Criminal Law.

Other new laws, such as the Prison Law and the People's Police Law, promulgated in December 1994 and February 1995 respectively, include some provisions against torture and ill-treatment, but most of these essentially repeat the prohibitions formulated in the Criminal Law (see above). They introduce a few new stipulations related to the practice of torture - for instance the People's Police Law gives policemen the right to refuse to carry out "any directive that exceeds the mandate of the people's police as defined by laws and regulations" (Article 33). This, according to the government, is aimed at encouraging policemen to refuse to obey a superior's order to use torture. The Prison Law also forbids prison and police officers to "allow others to beat prisoners" (Article 14), which appears to refer to the growing phenomenon of ill-treatment carried out by cell bosses and "trusted" prisoners (see above, page 4). Such provisions are welcome, but they do not address the need for more fundamental measures and basic safeguards to prevent torture and ill-treatment.

China's second periodic report shows that no change has yet been made to the inadequate provisions against torture in the Criminal Law. The government reports on its implementation of Article 4 of the Convention by citing new laws introduced in recent years (paragraphs 6 to 17). These laws, however, do not change the provisions of the Criminal Law. They do not compensate for the failure to prohibit all acts of torture and ill-treatment in the Criminal Law, as required by Article 4 of the Convention, or to introduce other basic safeguards against torture.

Among other recent measures are amendments to the Criminal Procedure Law (CPL), which were adopted on 17 March 1996 and will come into force in January 1997. While these changes are a positive step, they still leave the CPL far behind international standards for a fair judicial process, including concerning issues which are relevant to the practice of torture.

For example, the revised provisions significantly increase the period of **detention before charge**, which is currently maximum 10 days, by introducing in the CPL a category of suspects who are at present detained under one form of administrative detention, known as "shelter and investigation". Shelter and investigation issued by the police to detain, on its own authority, some categories of suspects without charge for periods of up to three months, without any judicial supervision (see *No one is safe* pages 20-24).

Under Article 69 of the revised CPL, ordinary criminal suspects will be detained for up to 14 days before charge (as compared to 10 days at present), and suspects who currently fall within the scope of "shelter and investigation" will be detained for up to 37 days before charge. This latter category covers people whose true identity, address or background are not clear, and who are suspected of having moved from place to place committing crimes or of forming gangs to commit crimes. The provisions of "shelter and investigation" have been frequently abused to detain people who did not fit this definition, including political dissidents whose identity, address and background were well known to the authorities. There are reasons to fear that the equivalent provisions in the CPL may be abused in the same way, unless more fundamental changes are made to both law and practice.

The intention of this change, according to Chinese official sources, is to abolish the system of "shelter and investigation". However, the amendments to the CPL do not in themselves abolish this measure.

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The government has not yet acted to abolish the regulations which provide for “shelter and investigation” and has given no indication of when it may do so. The abolition of this system, which is the source of many human rights violations, including torture, would be particularly welcome.

The CPL at present guarantees access to a lawyer seven days before trial, which may be months or even years after arrest. The revised law guarantees access earlier, but still after a long period of detention incommunicado. There are several provisions in the revised law which relate to access to lawyers, none of which guarantee the right to meet and communicate with the lawyer. The two main articles dealing with access to a lawyer are Article 33 and Article 96.

Article 33 of the revised law states that criminal suspects have the “right” to “retain” a lawyer from the time the case is transferred to the Procuracy for review and prosecution - that is at the end of the period of “investigation”. Investigation starts after a suspect is charged (either 14 or 37 days after being taken into police custody). Under the revised law, a suspect may be held for investigation for up to two months, which can be extended by one month in “complex cases” with the Procuracy’s approval (Article 124). The procuracies at certain level can further extend this period by up to two months in a variety of important or complex cases (Article 126), and by up to four months in similar cases where the suspect faces a sentence of 10 years or more (Article 127).

**Thus, depending on the cases, the revised law guarantees access to a lawyer after periods varying from two and half months to more than eight months. Another provision in the revised law (Article 36) states that the lawyer “may” meet and communicate with the suspect in custody, but it does not guarantee this as a right.**

Article 96 of the revised law also says that a suspect “may” engage a lawyer after the first session of interrogation by the “investigative organ”. The article does not specify at which time this may take place. However, the place of this article in a chapter of the law which deals with the phase of “investigation” (which starts after a suspect is charged - see above) seems to indicate that this refers to the first interrogation after “charge”, which can be several weeks after detention. This article does not guarantee access to a lawyer as a right - it merely makes it a possibility - and the law does not clarify in which cases this may be granted. In the event this is granted, it states that the lawyer “may” meet the suspect in custody, but it does not guarantee this as a right either.

While these provisions are an improvement, they mean that detainees can still be held incommunicado for weeks or months, without guaranteed access to lawyers, relatives or judges. Inasmuch as detainees are particularly vulnerable to torture in the first days and weeks after being detained, the new provisions do not increase protection in this respect. The revised provisions still fall far short of international standards which require that detainees be given prompt and regular access to lawyers<sup>11</sup>. Certainly, the access cannot be denied for many days or weeks as appears to be the case under the revised law<sup>12</sup>. The right of consulting with a lawyer includes the right to communicate and

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<sup>11</sup> See Body of Principles, Principles 15, 17 and 18.

<sup>12</sup> The UN Basic Principles on the Role of Lawyers states that access to a lawyer should be granted not later than 48 hours after the time of arrest or detention, whether or not a criminal charge has been laid.

meet with the lawyer out of the hearing of law enforcement officials and to be given adequate time and facilities to do so<sup>13</sup>.

Another requirement of the Convention against Torture - to explicitly prohibit the use of confessions extracted under torture as evidence in court (Article 15 of the Convention) - is not met in the revised CPL. China's second periodic report cites (at paragraph 56) a 1994 regulation of the Supreme People's Court (SPC) which includes this prohibition. If this prohibition has already been enforced since 1994 through the SPC regulation, it is hard to understand why it was not included in the CPL when it was revised.

Positive changes in the revised law include a new clause which states that "no one may be considered guilty before conviction by a court" (Article 12) and a change in the terminology used throughout the CPL to describe detained persons as "criminal suspects" rather than "criminals" or "offenders". The new Article 12, however, does not seem to establish a presumption of innocence in Chinese law. Another article which is retained in the revised law (Article 35, previously Article 28) still places the burden of proof on the defence, rather than the prosecution. It reads, in relevant part: "The responsibility of a defender is, on the basis of the facts and the law, to present material evidence and opinions proving that the criminal suspect or defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility ..."

Apart from the amended provisions which still fall far short of international standards, the revised law still contains loopholes and vague provisions which will allow the authorities to apply the law arbitrarily and bypass the rights guaranteed by other provisions. For example, some provisions on "supervised residence" (see *No one is safe*, page 26) are still present in the amended law, though detainees can now only be held in "supervised residence" for a maximum of six months. "Supervised residence" was invoked in the case of Wei Jingsheng, China's best known dissident, to justify his detention without charge and incommunicado in an unregistered place of detention for nearly 20 months from April 1994 until November 1995.

The lack of independence of the judiciary and widespread malpractices in law-enforcement in China raise doubt as to the extent to which the most positive changes in the law will be implemented in practice.

#### **IV. DEATHS IN CUSTODY**

For the purpose of the examination of China's second periodic report, the Committee against Torture should look at the extent of deaths in custody in China, which remains largely unacknowledged by the authorities. Many deaths in custody are reported to result from torture or from ill-treatment combined with harsh prison conditions and denial of adequate medical care. Few such cases are properly investigated.

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<sup>13</sup> International Covenant on Civil and Political Rights, Article 14(3)(b) and Body of Principles, Principle 18.

The Chinese authorities do not publish statistics on deaths in custody. However, cases of deaths owing to torture have been reported by the Chinese press and unofficial sources. The press reports alone show that such cases are not rare. In the past few years, for instance, Amnesty International has recorded several dozen deaths as a result of torture reported in the Chinese press. These represent only a fraction of the true total.

Chinese press reports focus almost entirely on people who were tortured to death shortly after arrest, usually during interrogation, and on cases in which the authorities have eventually taken action against the perpetrators. The press has hardly ever reported deaths in penal institutions, which are also reported to be common, and it remains silent about the treatment of political prisoners. Press reports nevertheless show that deaths as a result of torture are not rare. For instance, the *Henan Legal Daily* of 7 October 1993 stated that, in Henan province alone, 41 prisoners and "innocent" suspects had died as a result of torture during interrogation between 1990 and 1992. The newspaper noted that torture methods had become more cruel, citing cases in which victims were tied and hung up, had boiling water poured over them, were hit with bottles, burned with cigarettes, whipped with leather or plastic belts, or had electric prods placed on their genitals<sup>14</sup>. Other deaths owing to torture reported in 1993 included cases in Anhui, Guangdong, Gansu, Sichuan and Shanxi provinces, and eight cases in an unidentified province reported by the *Shenzhen Legal Daily* in August. Among the victims were an 11-year-old boy and a disabled man. Amnesty International has not come across any other press reports citing provincial statistics for deaths owing to torture since 1993,<sup>15</sup> though individual cases have continued to be reported. Some examples are cited below.

In one case in Guangdong province, a peasant named Liang Rihua was arrested on 17 May 1993 on suspicion of stealing chickens. He was tortured to death within a few hours by police determined that he should confess to the alleged crime. According to a newspaper report, several police officers from the Tang Peng police station in Lianjiang county, Guangdong province, handcuffed Liang Rihua's hands behind his back, tied an electric wire to the handcuffs and suspended him by the wire to a window frame with his feet barely touching the ground. A few hours later he was dead. Following examination by legal and medical experts, Liang Rihua's death was found to have been caused by "prolonged suspension by the arms and beating"<sup>16</sup>. A senior officer of the Tang Peng police unit was reported to have been arrested in September 1993 for directing the torture of Liang Rihua, but no further developments are known to Amnesty International.

In another case, a man named Yang Hongquan was accused of stealing chickens and shoes and detained in a village in Mianzhu county, Sichuan province, on 14 January 1994. Within three hours of

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<sup>14</sup> See *Agence France Presse*, Beijing, 15 October 1993.

<sup>15</sup> A particularly large number of reports of torture appeared in the Chinese press in 1993, apparently following government instructions the previous year to "crackdown hard" on torture to extract confessions. At the time, China was preparing to submit its additional report to the UN Committee Against Torture. The March 1993 report from the Supreme People's Procuratorate to the National People's Congress referred to the crackdown on torture and cited 1,687 cases of police and justice officials who had been investigated for using torture to extract confessions between 1988 and 1992.

14. *Yangcheng Wanbao (Yangcheng Evening News)*, 8 June 1993.

his detention he had been tortured to death by a police officer and other people, while the local police chief, Lu Zhiming, directed his "interrogation". On 9 May 1995, the perpetrators were tried and sentenced on charges of "illegally detaining" Yang Hongquan. The choice of the charge seems to have determined the light sentences: Lu Ziming received a suspended sentence of three years and the police officer, Deng Guoyun, a suspended sentence of two years<sup>17</sup>. This punishment contrasts with that of another case in which a chief of police in Changzhi, Shanxi province, was sentenced to death for torturing a schoolteacher to death. This case is cited in China's second periodic report to the CAT (paragraph 95). A few other cases have been reported by the press in the past year.

Many deaths resulting from torture or ill-treatment are also reported by unofficial sources, but few can be checked or verified. In one case in 1993, Ding Zuoming, a peasant from Lixing county, Anhui province, was reportedly beaten to death by local officials after he and others petitioned the local government against heavy taxes<sup>18</sup>. Amnesty International does not know whether the authorities have taken any action in this case. The incident occurred during rural protests against excessive taxes and fees imposed on farmers. At the time, peasants in various areas reported that they were beaten by officials if they complained about the taxes or could not pay them.

One report received by Amnesty International concerned an 18-year-old boy, Shi Shufei, who was allegedly tortured to death by police in the Public Security Bureau Detention Centre of Dandong city in Liaoning province. According to the report, he had been arrested in May 1993 on suspicion of stealing a necklace from a policeman's relative. He was then tortured by police in a bid to extort money from him or his family. He reportedly died in the detention centre in November 1993, following which his family appealed in vain to the authorities to investigate the case. They then turned to the press, but the press was not interested either and told the family that there were "legal restrictions on news reporting".

In a similar case in March 1996, the parents of Wang Jingbo, a 33 year-old employee at the Capital Iron and Steel Works in Beijing, claimed that their son had been beaten to death while illegally detained by the Chaoyang district Public Security Bureau in Beijing. In a statement distributed to foreign journalists, they asked for an impartial investigation into the death of their son. According to the statement, Wang Jingbo was taken into police custody on 26 November 1995 and died a few days later, on 3 December. His family was informed the next day and was later provided with a death certificate which said he had died of cerebral bleeding. They asked for an autopsy which showed that Wang had suffered a brain haemorrhage but also that 12 of his ribs were broken, the statement said. His parents were reportedly told on 4 March 1996 by the head of the detention centre where Wang had been held that the cause of Wang's death was pneumonia in addition to his injuries. The official apparently blamed the injuries on beatings by other prisoners.

The same claim was made by the authorities in the case of Zheng Musheng, a farmer and house-church Christian from Dongkou county in Hunan province, who died in police custody in January 1994. He was reportedly accused of "swindling people and seriously disturbing public order

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<sup>17</sup> *Sichuan Daily*, 30 May 1995.

<sup>18</sup> See "Resistance and Reform in China", *op. cit.*, p.15.

by spreading rumours and fallacies". Unofficial sources say that he was detained because of his religious activities. According to several reports, Zheng Musheng was taken to the Shanmen police station in Dongkou county, where he was tortured by police to make him "confess his crimes". The following day he was reportedly transferred to the Dongkou county Public Security office, where he died. Police officials later told his family that he had died in custody after being beaten and seriously injured by 13 prison inmates. There was no inquest. Zheng Musheng's family was only notified of his death eight days after he died. They were allowed to see his body on 17 January – 11 days after his death. They said there were deep rope burns on his ankles, indicating he had been tied up, and multiple stab wounds on his body, which was inconsistent with the police claim that he had been beaten by prison inmates. His body was cremated on 19 January, even though Zheng Musheng's widow, Yin Dongxiu, had refused to sign the official document authorizing cremation. She was reportedly offered a large sum of money by the Shanmen and Dongkou police for signing the document, but refused. In May 1994 Yin Dongxiu filed a suit against local and county police officials for mounting a cover-up to conceal the circumstances of her husband's murder. Since then she is reported to have been interrogated by police many times, her house has been ransacked and she has been kept under heavy police surveillance. Meanwhile her legal case has reportedly made little progress.

In a similar case the previous year, the authorities had also denied that Lai Manping, a Protestant preacher in Shaanxi province, had died due to torture. His death followed a police raid on a religious meeting in Taoyuan village in March 1993, during which several Christians, including Lai, were repeatedly tortured by police. The incident was documented by a detailed eye-witness account, photographs of the injuries suffered by some of the victims and reports from other unofficial sources. The authorities denied the allegations of torture very shortly after the incident was reported outside China, but did not provide any evidence to prove that the allegations were unfounded<sup>19</sup>.

In Tibet, 11 political prisoners are reported to have died in prison or shortly after release due to torture or ill-treatment since 1987. They include four young Tibetan nuns who died between 1992 and 1995<sup>20</sup>. One of them, Phuntsog Yangkyi, aged 20, was serving a five-year prison sentence in Drapchi prison for taking part in a pro-independence demonstration in Lhasa, the capital of the Tibet Autonomous Region, in February 1992. According to unofficial sources, she was beaten by prison guards after she and other nuns sang nationalist songs in prison on 11 February 1994. She apparently lost consciousness after medical staff in the prison gave her medication because she was "speaking uncontrollably". She was transferred in late May or early June 1994 to the police hospital in Lhasa, where she died on 4 June. No independent medical investigation into the cause of her death was reported to have taken place before her burial. In July 1994 her case was submitted by the UN Special Rapporteur on torture to the Chinese Government. The government replied that the prison administration had discovered in May 1994 that Phuntsog Yangkyi had a tuberculoma and had sent her to hospital for treatment. They said that after her death the prison arranged for her remains to be

<sup>19</sup> See Amnesty International Urgent Actions ASA 17/18/93 (10 May 1993), ASA 17/25/93 (18 June 1993) and ASA 17/38/93 (4 November 1993).

<sup>20</sup> See *Medical concern: Deaths of female ex-prisoners -- People's Republic of China (Tibet)*, (AI Index: ASA 17/38/95), June 1995.

buried in accordance with Tibetan custom. Amnesty International subsequently called on the Chinese authorities to launch an inquiry into the circumstances of her death; no reply had been received by March 1996.

## V. CONCLUSIONS AND RECOMMENDATIONS

Reports from many sources, including official sources, show that torture remains widespread and systemic in China, despite the prohibition of some forms of torture and ill-treatment by law.

At present, no independent body, whether domestic or international, is allowed to monitor the treatment of prisoners in China. The International Committee of the Red Cross (ICRC) has been refused access to Chinese prisons by the government, after several years of negotiations. The ICRC procedures require unaccompanied and unimpeded meetings with any prisoner in any prison it visits. The government has refused to accept these conditions. In early 1995, a Chinese Justice Ministry official stated that China would not accept the ICRC standard requirements for prison visits and that such pre-conditions were "hardly feasible for China"<sup>21</sup>. This refusal has been repeated recently. Any country that prevents independent domestic as well as international scrutiny of its human rights record gives the impression it has much to hide. In the case of China, this has not prevented reports of abuses of prisoners from reaching the outside world, but it does suggest that the scale of violations may be far worse than can be documented.

While the government acknowledges that torture continues, it does not acknowledge its true extent or the reasons why it continues. It has yet to take effective measures to eradicate it. China's second periodic report cites a number of positive measures taken by the government in recent years to strengthen and implement the existing prohibition of torture. While Amnesty International welcomes these measures, it believes that the government is still failing to address its major obligations under the Convention against Torture, notably to clearly prohibit by law all acts of torture and ill-treatment, to promptly and impartially investigate all reports and complaints of torture, to prosecute all perpetrators, and to take other effective measures to prevent torture, including by allowing detainees prompt and regular access to lawyers, relatives and judges.

Amnesty International believes that the establishment of an independent national committee of inquiry into torture would provide the opportunity for a thorough review of the factors which facilitate torture and of the legal, institutional and other remedies needed to eradicate it. Pending such a review, Amnesty International urges the government to introduce without delay a number of measures which, the organization believes, would help to reduce the incidence of torture. They include:

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<sup>21</sup> See *South China Morning Post*, 28 January 1995.

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- to grant all detainees prompt and regular access to relatives, and lawyers and doctors of their choice;
  - to stop the use of electric batons during interrogation and in custody;
  - to ban leg-shackles and chains, and strictly limit the use of other instruments of restraint and solitary confinement;
  - to ensure that officials of all detention and penal institutions prevent ill-treatment of prisoners by "cell bosses" and "prison trustees", and that those delegating supervisory authority to "trusted" prisoners are accountable when other prisoners are tortured or ill-treated as a result. Furthermore, to end the use of prisoners to discipline or punish other prisoners.

To prevent torture in the long term, Amnesty International urges the authorities to review legislation so as to:

- prohibit all acts which constitute torture and cruel, inhuman or degrading treatment or punishment, in conformity with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- ensure that regulations on the discipline and punishment of prisoners conform with international standards for the treatment of prisoners, particularly with regard to the use of instruments of restraint and solitary confinement;
- introduce a clear separation of authority between the bodies responsible for detention and those in charge of interrogation, as well as procedures to ensure the safety of prisoners during interrogation and custody;
- place limits on incommunicado detention in line with international standards, by guaranteeing all detainees the right to meet relatives, and lawyers and doctors of their choice promptly after they are taken into custody and regularly thereafter;
- introduce procedures to ensure that all detainees are brought before a judicial authority promptly after being taken into custody and that this authority can effectively continue to supervise the legality and conditions of detention;
- ensure that statements extracted under torture are effectively prohibited to be used as evidence in court;
- introduce effective procedures to enable prisoners or their families or lawyer to make complaints about prisoners' treatment and have them considered without fear of reprisals, and to protect them and witnesses from any coercion or intimidation.

Amnesty International also urges the government to:

- recognize the competence of the UN Committee against Torture to receive individual complaints (Article 22) and to hear inter-state complaints (Article 21);
- provide full and prompt replies to requests for information by the UN Special Rapporteur on torture, invite him to visit China and grant him unrestricted access;
- allow independent domestic organizations and relevant international organizations such as the ICRC to monitor the situation of prisoners in China.