ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **E**

ЭКОНОМИЧЕСКИЙ И СОЦИАЛЬНЫЙ СОВЕТ

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КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
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ГРАЖДАНСКИЕ И ПОЛИТИЧЕСКИЕ ПРАВА, ВКЛЮЧАЯ ВОПРОСЫ ПЫТОК И ЗАДЕРЖАНИЙ

Доклад Специального докладчика по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания Манфреда Новака

МИССИЯ В КИТАЙ*

* Резюме доклада об этой миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется на языке представления и на китайском языке. Добавления имеются только на английском языке и распространяются в том виде, в котором они были получены.

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Резюме

Специальный докладчик по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания совершил поездку в Китай в период с 20 ноября по 2 декабря 2005 года по приглашению правительства. Он выражает признательность правительству за всестороннее сотрудничество, обеспеченное ему в течение всей поездки. Настоящий доклад содержит исследование правовых аспектов и фактов, касающихся существующей в Китае ситуации в связи с пытками или жестоким обращением.

Специальный докладчик основывает свое исследование на тщательном анализе правовых рамок, индивидуальных сообщений и письменной информации, полученной из самых различных источников, а также на основе проведенных с ними бесед, включая государственных должностных лиц, неправительственные организации, адвокатов, жертв и свидетелей, а также непосредственных посещений мест содержания под стражей. Соответственно он рекомендует правительству принять ряд мер для обеспечения соблюдения его обязательства по предупреждению и наказанию актов пыток и других форм жестокого обращения.

Специальный докладчик считает, что, хотя масштабы применения пыток сокращаются, в особенности в городских районах, эта практика по-прежнему широко распространена в Китае. Он приветствует готовность правительства признать распространенность применения пыток в рамках системы уголовного правосудия, а также предпринятые за последние годы на центральном и местном уровнях различные усилия по борьбе с пытками и другими видами жестокого обращения. По мнению Специального докладчика, эти меры содействовали последовательному сокращению масштабов применения пыток на протяжении последних лет.

Сохранению практики применения пыток в Китае способствуют многие факторы. В их число входят правила доказывания, побуждающие лиц, проводящих допросы, получать признания с помощью пыток, чрезмерно длительные сроки, в течение которых лица, подозреваемые в совершении уголовных преступлений, содержатся под стражей в полиции без судебного контроля, отсутствие правовой культуры, основанной на презумпции невиновности (включая отсутствие реального права хранить молчание), и ограниченные права защитников и их возможности доступа к задержанным лицам. Ситуация усугубляется отсутствием самогенерирующих и/или самоподдерживающих социальных и политических институтов, включая: свободную и проводящую собственные расследования прессу, созданные в рамках гражданского общества независимые организации по наблюдению за соблюдением прав человека, независимые

комиссии, осуществляющие посещения мест содержания под стражей, и независимые, справедливые и доступные суды и прокуроры.

Хотя базовые условия в местах содержания под стражей, как представляется, в целом являются удовлетворительными, Специальный докладчик был впечатлен суровостью тюремной дисциплины и явным страхом, испытываемым заключенными, и их опасениями говорить правду в ходе собеседований.

Существующая система уголовного правосудия и используемые в ней принципы, предусматривающие уделение значительного внимания признанию вины, другим видам признаний и перевоспитанию, вызывают особую обеспокоенность в случае преступлений политического характера и системы административного задержания, основанной на принципе "перевоспитания трудом". Сочетание лишения свободы в качестве санкции за мирное осуществление свободы выражения мнений, свободы собраний и религии с мерами, предусматривающими перевоспитание посредством принуждения, унижения и наказания, направленными на признание вины и изменение личности заключенных вплоть до подавления их воли, представляет собой одну из форм бесчеловечного или унижающего достоинство обращения или наказания, которая не совместима с основными ценностями любого демократического общества, основанного на культуре прав человека.

Приложение

REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED NOWAK, ON HIS MISSION TO CHINA (20 NOVEMBER TO 2 DECEMBER 2005)

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Abbreviations and acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CDP	Chinese Democratic Party
CL	the Criminal Law
CPL	the Criminal Procedure Law
ICCPR	International Covenant on Civil and Political Rights
MPS	Ministry of Public Security
NPC	National People's Congress
OPCAT	Optional Protocol to the Convention against Torture
PSB	Public Security Bureau
RTL	Re-education through Labour
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
TAR	Tibet Autonomous Region
TOR	terms of reference
XUAR	Xinjiang Uighur Autonomous Region

Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a mission to China from 20 November to 2 December 2005, at the invitation of the Government. The mission to China, which included visits to Beijing; Lhasa, Tibet Autonomous Region (TAR); and Urumqi, Xinjiang Uighur Autonomous Region (XUAR), materialized nearly 10 years after the initial request for a visit from the Special Rapporteur.[1] Over the course of the visit, he examined the legal framework and governmental activities relating to the prohibition of torture and other forms of ill-treatment. He also examined the response of the Government to allegations of violations, particularly in relation to inquiry, impunity and prevention. The Special Rapporteur has based his findings on the situation of torture and ill-treatment in China on written information from and interviews with a wide array of sources, including Government officials, non-governmental organizations, lawyers, victims themselves, and witnesses, as well as from on-site inspections of detention facilities.

2. The main purposes of the visit were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment, to promote preventive mechanisms to eradicate torture and ill-treatment, and to begin a process of cooperation with the Government.

3. While visits were also planned for Jinan in Shandong Province and Yining in the XUAR, the Special Rapporteur sincerely regrets that he had to cancel these visits owing to time constraints, and expresses his gratitude to the Ministry of Foreign Affairs and the respective leaderships of Shandong Province and Yining Autonomous Prefecture for accommodating these last-minute changes to the programme.

4. While in Beijing, the Special Rapporteur met with officials of the Government, including Assistant Foreign Minister Shen Guofang; Vice-Minister of Justice Fan Fangping; Vice-Minister of Public Security Meng Hongwei; and Deputy Procurator-General Wang Zhenchuan. In Lhasa and Urumqi, the Special Rapporteur met with the Vice-Chairman of the Tibet Autonomous Region, Nima Cering, the Vice-Chairman of Xinjiang Uighur Autonomous Region, Jiapar Abibula, and with local officials, including from the Office of Foreign Affairs, the People's Court, the Procuratorate, and the Departments of Justice and Public Security.

5. In Beijing, the Special Rapporteur visited No. 2 Municipal Detention Centre, Prison No. 2 (twice) and the Municipal Women's Re-education through Labour (RTL) Facility. In Lhasa he visited Lhasa Prison, Tibet Autonomous Region Prison (also known as Drapchi Prison), and the recently opened Qushui Prison. In Urumqi, he visited Prisons No. 1, No. 3, and No. 4, as well as

the Liu Dao Wan Detention Centre. In all facilities, the Special Rapporteur met with prison management and interviewed detainees in private.

6. The Special Rapporteur also met with prominent members of civil society, including the All China Lawyers' Association, the Beijing Lawyers' Association, China University for Political Science and Law, Renmin University, Tsinghua University, Beijing University, the Chinese Academy of Social Sciences and the Beijing Child Legal and Research Centre. Meetings were also held with individual lawyers, human rights defenders, academics, and members of the diplomatic corps and United Nations Country Team.

7. A preliminary version of this report was sent on 3 January 2006 to the Government for comments. On 25 January 2006 the Government provided detailed comments on the preliminary report, which have been carefully studied and taken into account.

8. The Special Rapporteur extends his appreciation for the support provided to him by the United Nations Resident Coordinator, Mr. K. Malik; the Office of the High Commissioner for Human Rights; and Ms. N. Hughes and Ms. E. McArthur, of the Ludwig Boltzmann Institute of Human Rights.

I. PARTICULAR CIRCUMSTANCES OF FACT-FINDING

9. The Special Rapporteur wishes to express his deep appreciation to the Government, and in particular the Ministry of Foreign Affairs, for its professionalism, cooperation and shared commitment to the objectives of the mission. The Ministry of Foreign Affairs team, headed by Dr. Shen Yongxiang, accompanied the Special Rapporteur throughout the visit to official meetings and detention facilities. The Special Rapporteur credits the Ministry for its great efforts in ensuring that the mission proceeded as smoothly as possible and that his terms of reference (TOR) were in principle respected. All meetings with detainees were carried out in privacy and in locations designated by the Special Rapporteur. No request for a meeting or interviewing of a particular individual nor for a visit to any particular detention centre was refused. Prison staff were generally cooperative and helped the Special Rapporteur meet with prisoners on his list, even those who had been transferred to different facilities.

10. The Special Rapporteur feels, however, compelled to point out that security and intelligence officials attempted to obstruct or restrict his attempts at fact-finding, particularly at the outset of the visit when his team was followed in their Beijing hotel and its vicinity. Furthermore, during the visit a number of alleged victims and family members, lawyers and human rights defenders were intimidated by security personnel, placed under police surveillance,

instructed not to meet the Special Rapporteur, or were physically prevented from meeting with him.[2]

11. Prison officials restricted interviews to their own working hours, which limited the number of facilities visited and detainees interviewed. The Special Rapporteur and his team were also prevented from bringing photographic or electronic equipment into prisons. Furthermore, as the Special Rapporteur was unable to obtain a letter of authorization from the relevant authorities to visit detention centres alone (in contrast to his previous country visits), officials from the Ministry of Foreign Affairs accompanied him to detention centres to ensure unrestricted access. As the authorities were generally informed approximately an hour in advance, the visits could not be considered to have been strictly "unannounced". Nonetheless, this practice significantly improves upon the modalities employed in previous visits to China of the special procedures of the Commission on Human Rights.

12. Under these conditions, and taking into account the size and complexity of China as well as the limited duration of the mission, the Special Rapporteur acknowledges the limitations in drawing up a comprehensive set of findings and conclusions on the situation of torture and ill-treatment in China. His conclusions therefore also draw upon interviews conducted before his visit, as well as on information received through the mandate's individual communication procedures and from various non-governmental and other sources.

II. LEGAL AND ORGANIZATIONAL FRAMEWORK

A. International level

13. China is a party to five of the seven major international human rights treaties.[3] Of these, the following expressly prohibit torture and ill-treatment: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). The competence of the Committee against Torture to receive individual complaints has not been recognized by China under article 22 of CAT. Further, China has declared that it does not consider itself bound by articles 20 and 30, paragraph 1, of CAT. China has signed and is preparing to ratify the International Covenant on Civil and Political Rights (ICCPR).

B. National level

Constitutional amendment on human rights

14. On 14 March 2004, the National People's Congress (NPC) amended the Constitution to add the provision, "The State respects and safeguards human rights", providing for the first time

in its history a constitutional protection of human rights.[4] The Special Rapporteur was informed that, as a consequence of this decision, the Criminal Law (CL), the Criminal Procedure Law (CPL) and the framework governing administrative detention are under consideration by the NPC Standing Committee in order to bring them into line with the new provisions of the Constitution.[5]

Definition and prohibition of torture

15. While there is no explicit definition of torture in Chinese domestic legislation, basic elements of the definition of torture under CAT are reflected in several provisions of the Criminal Law[6] (CL) which prohibit: extortion of a confession under torture by a judicial officer (*xingxun bigong*) (art. 247); extraction of testimony by the use of force by a judicial officer (*baoli quzheng*) (art. 247); physical abuse of inmates as well as instigation of detainee-on-detainee violence by a policeman or other officer of an institution of confinement like a prison, a detention house or a custody house (art. 248). The CL also lists several other offences related to the prohibition of torture and other forms of ill-treatment.[7]

16. However, Chinese legislation does not fully reflect all aspects of the definition of torture as outlined in article 1 of CAT and as required by its article 4. Article 94 of the revised CL defines "judicial officers" as "persons who exercise the functions of investigation, prosecution, adjudication and supervision or control" leaving room for uncertainty as to whether those hired temporarily, or seconded from non-judicial departments to assist in criminal investigations can be prosecuted for these offences.[8] In addition, the Supreme People's Procuratorate (SPP), which directly handles all investigations of torture, further restricted the application of article 247 of the CL to: cruel methods or evil impact; resulting in suicide or mental disorder; causing unjust, false or erroneous cases; coercing confessions/extorting testimony by violence more than three times or against more than three people; or instigating, instructing or forcing others to coerce confessions/extract testimony by violence.[9] In the same decision, the SPP held that prosecution under article 248 was limited to causing injury (*qingshang*) to the detained person; instigating the suicide of the detained person or mental disorder or other serious consequences; beating or corporally punishing and maltreating more than three times or more than three detainees; using cruel methods (*canren shouduan*), having an evil impact; or instigating detainees to beat, corporally punish or maltreat other detainees involving the above.[10]

17. The CL does not clearly reflect the following elements of torture as defined in article 1 of CAT: mental torture;[11] the involvement of a public official directly or at the instigation or consent or with the acquiescence of a public official or another person acting in an official capacity; and infliction of the act for a specific purpose, such as extracting a confession, obtaining information, punishment, intimidation, discrimination.

Penalization of acts of torture and other forms of ill-treatment

18. The penalization of acts of torture is stipulated in articles 247 and 248 of the CL.[12] Other regulations complement the CL,[13] including the Regulations on the Use of Police Instruments and Weapons by the People's Police.[14] The Supreme People's Court (SPC) has also issued Measures concerning the Punishment of Judicial Personnel of the People's Court Who Break the Law during Trials, and a set of Disciplinary Measures Concerning Judicial Personnel of the People's Court.[15] The Rules on the Handling of Criminal Cases by Public Security Authorities[16] aim at ensuring a correct implementation of the Criminal Procedure Law and contain a number of safeguards for detainees.

19. However, the Public Security Organs Regulations on Pursuing Responsibility for Policemen's Errors in Implementing the Law and other regulations stipulate that "responsibility for 'errors', including forcing confessions (*bigong*) or testimony, will not be pursued where the law is unclear or judicial interpretations inconsistent; where the errors are made as a result of unforeseen or irresistible reasons; where the policeman was carrying out an order from a superior; or where the policeman was handling a case according to regulations on cooperation with other units".

Safeguards during arrest and pretrial detention

20. The Criminal Procedure Law (CPL) was revised in 1996[17] with a view to, inter alia, strengthening guarantees against torture and was supplemented in 1998 by a document on the comprehensive interpretation of certain sensitive and controversial issues.[18]

Notification of custody

21. Articles 64 and 71 of the CPL stipulate that, in case of detention or arrest, the detained or arrested person's family or work unit must be informed of the reason for the detention or arrest and the whereabouts within 24 hours. However, this safeguard may be limited in cases of possible impediment to investigation or impossibility to notify. Rule 108 of the Rules on the Handling of Criminal Cases by Public Security Authorities also stipulates that detention notification may be withheld in certain cases.[19]

Right to be informed of the reasons for the arrest and on the rights entitled to while in custody

22. Rule 36 of the Rules on the Handling of Criminal Cases by Public Security Authorities stipulates that, from the day a criminal suspect is first interrogated or subject to compulsory measures by a public security authority, he/she must be informed on record of his/her rights to engage a lawyer.

Access to legal representatives

23. Article 96 of the CPL provides that access by a lawyer is possible following the first interrogation, but not immediate access to the public security case file.[20] The role of the lawyers in criminal cases is also codified in the Lawyers Law.[21] Rule 11 of the Rules concerning Several Issues Encountered in the Implementation of the CPL[22] provides that a visit with a suspect requested by a lawyer must be arranged within 48 hours. However, in the case of detainees suspected of being organizers, leaders or members of a criminal ring, terrorist movements or smuggling, drug-dealing or embezzlement conspiracy involving more than two accomplices, a visit request by his lawyer must be arranged within five days.[23]

24. Although access to a lawyer is guaranteed by Chinese legislation, this safeguard is seriously limited in practice and particularly in cases where a State secret is involved, as lawyers must obtain approval of the investigating organ pursuant to article 96 of CPL. Neither the CPL nor other regulations provide a clear-cut definition of this concept. Article 8 (6) of the Law on Preservation of State Secrets also stipulates that details of the investigation of crimes are to be protected as "State secrets". The Rules on State Secrets and Detailed Classification Levels for Issues in Public Security Work[24] also state that all details of criminal cases under investigation should be considered "State secrets". As no law provides a clear definition of "State secrets", the Special Rapporteur is particularly concerned about the restriction on the right to defence imposed by regulations issued by public security departments, prison administrations or prosecutors when a case involves national security or State secrets, following on the concern expressed by the Working Group on Arbitrary Detention after its 2004 visit.[25]

25. In addition to the requirement to obtain permission, lawyers and defendants face another series of obstacles triggered either by rules and regulations issued by public security departments and prosecutors which impose further restrictions on the access to lawyers, or by individual crime investigators who can independently prevent lawyers from meeting with their clients. Several defence lawyers, as well as leading legal academics interviewed by the Special Rapporteur, claimed that meetings between lawyers and detainees were closely supervised by the authorities and were often subjected to strict time limits, that lawyers could hardly obtain the necessary information from the prosecution, that lawyers who have too vigorously defended their clients can be detained and convicted of various crimes. Indeed, under article 306 of the CL, lawyers can be sentenced to up to seven years' imprisonment for destroying or fabricating evidence, forcing or inciting a witness to change his or her testimony or committing perjury. Article 38 adds to this provision by making "interfering with the proceedings before judicial organs" an offence. This "sword of Damocles", as it is known, can be invoked to harass, intimidate and sanction lawyers. Under it, any lawyer who counsels a client to repudiate a

forced confession, for example, could risk prosecution. Finally, witnesses rarely appear in court, and the prosecution generally reads out their statements, depriving the accused of the opportunity to cross-examine them, as per the 1996 CPL revision.[26] Rules of evidence are rudimentary, and illegally obtained evidence is often admitted in practice.[27]

Access to medical examination and care

26. While Chinese law and prison and detention centre regulations cover medical attention for detainees quite comprehensively, none of the provisions establish prisoners' rights to independent medical examinations.

Right to habeas corpus

27. Domestic legislation does not provide for any process similar to the system of habeas corpus or any other legal recourse for imprisoned persons to challenge decisions on pretrial detention before a court. At the most, suspects, defendants, lawyers and relatives may request the release of suspects or defendants upon finding that their detention has exceeded time limits (article 75 of the CPL).

Length of detention without charge

28. There are three types of custodial pretrial detention and two types of non-custodial pretrial restriction.

29. Custodial detention includes coercive summons (*juchuan*), a measure by which public security departments, prosecutors and courts may forcibly take in a suspect for questioning for a period of up to 12 hours.[28] Another form of custodial detention is criminal detention (*juliu*),[29] and the third is arrest (*daibu*).[30]

30. Other forms of pretrial restriction without charge or judicial review include supervised residence (*jianshi juzhu*), and taking a guarantee and awaiting trial (*qubao houshen*). Pursuant to article 57 of the CPL, those subjected to supervised residence are forbidden to leave their home or their designated place of residence or meet other persons without permission. Interpretations of the CPL have extended the period of supervised residence to up to three years.

Length of detention for investigation after charge

31. According to the CPL, once the procuratorate has approved a formal arrest, a suspect may be held for up to a total of seven months in investigative detention[31] or, in the exceptional case of

the discovery of "new crimes", indefinitely.[32] In addition, the suspect could be held in detention for a total of an additional six and a half months after the initial post-arrest investigative detention period has ended and before an indictment is issued in the case where the procuratorate requests supplementary investigations to be carried out.[33]

32. The Special Rapporteur has been informed by China that the public security, procuratorial, and court departments place a high level of importance on and have taken strong measures to rectify and prevent the problem of extended custody in China.[34]

Re-education through Labour

33. Re-education through Labour (RTL) is one type of administrative detention.[35] There is no law underpinning the system of RTL; rather, the regulatory framework is comprised of a patchwork of administrative regulations[36] contrary to the 2000 Legislation Law, which states that only the National People's Congress, and in some cases its Standing Committee, can pass legislation on matters relating to the deprivation of liberty of Chinese citizens.[37] According to article 10 of the 1982 Regulations, six categories of petty offenders are identified as not deserving criminal sanctions: counter-revolutionaries or elements who oppose the Communist Party or socialism; those who commit minor offences relating to group crimes of murder, robbery, rape or arson; those who commit minor offences such as hooliganism, prostitution, theft, or fraud; those who gather together to fight, disturb social order, or instigate turmoil; those who have a job but repeatedly refuse to work, and disrupt labour discipline, complain endlessly, as well as disrupt the production order, work order, school and research institute order and people's normal life; and those who instigate others to commit crimes. Terms for RTL are fixed at between one and three years with the possibility of an extension of one year.[38] Decisions on RTL are supposed to be taken by an Administrative Committee comprised of officials from the bureaux of civil affairs, public security and labour. In practice, however, public security officials dominate the decision-making process.[39]

Political crimes

34. While the crimes of "counter-revolution" and "hooliganism" were removed from China's CL in 1997, they were replaced with equally vague crimes such as "endangering national security" which is applied to a broad range of offences (arts. 102-123),[40] "splitting the State or undermining the unity of the country" (art. 103), "armed rebellion or armed riot" (art. 104), "subverting the State power or overthrowing the socialist system" (art. 105), "espionage" (art. 110) and "stealing, spying, buying or unlawfully supplying State secrets or intelligence to individuals outside the territory of China" (art. 111). The vague definition of these crimes leaves their application open to abuse particularly of the rights to freedom of religion, speech, and assembly.[41]

35. In the report of its 2004 visit to China, the Working Group on Arbitrary Detention expressed concern regarding definitions in criminal law legislation having such vague, imprecise or sweeping elements like "disrupting social order", "endangering national security", "violating the unity and integrity of the State", "subverting public order", "affecting national security" and the like. The Working Group recommended that these crimes be defined in precise terms and an exception be introduced into the CL to the effect that the peaceful activity in the exercise of the fundamental rights guaranteed by the Universal Declaration of Human Rights not be considered criminal.[42] To date, this recommendation has not been implemented.

Complaints and investigation

36. Legal provisions dealing with the right of detainees to make a complaint include: article 41 (2) of the Chinese Constitution which states: "In case of complaints, charges, or exposures made by citizens, the State organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them"; article 22 of the Prison Law;[43] article 46 of the Regulations on Detention;[44] article 153 of the Regulations on the Procedures of Public Security Organs in Handling Criminal Cases;[45] and article 254 of the CL.[46] According to article 18 of the CPL, the SPP is the mechanism responsible for investigating and prosecuting crimes committed by State functionaries (see article 18 of the CPL).[47]

Use of confessions and statements extracted through torture

37. Article 43 of the CPL stipulates that "it shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means". However, the CPL does not explicitly prohibit the use of confessions extracted through torture as evidence before the courts as required by article 15 of CAT. In the Decision on Specific Issues in the Implementation of the CPL of 8 September 1998, the SPC held that confessions under torture could not become the basis for determining a case (*buneng zuowi ding'an de genju*). In the Rules on implementing the CPL, of 18 January 1999, the Supreme People's Court held: "Criminal suspects' confessions, victims' statements, and witness testimonies collected through torture to extract a confession (*xingxun bigong*), or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge (*buneng zuowei zhikong fanzui de genzhu*)". Therefore, while such confessions shall not form the basis for charges and convictions, the SPC decision does not exclude their admissibility in judicial proceedings. Further, the SPC Rules are only binding for judicial organs and do not apply to administrative organs.

Compensation

38. Article 41 of the Chinese Constitution provides that citizens who have suffered losses through infringement of their civil rights by any State organ or functionary have the right to compensation in accordance with the law. The right to compensation is further developed in articles 3 and 15 of the Law on State Compensation.[48]

39. However, article 17.1 of the Law on State Compensation stipulates that those detained or sentenced to criminal punishment who "intentionally fabricate confessions or falsify other evidence of guilt" will not be granted compensation by the State.

III. THE SITUATION OF TORTURE AND ILL-TREATMENT

Analysis of communications of the Special Rapporteur

40. The Special Rapporteur recalls that over the last several years his predecessors have received a number of serious allegations related to torture and other forms of ill-treatment in China, which have been submitted to the Government for its comments. He cautions that such information does not necessarily illustrate the state of torture and ill-treatment in a given country, but rather reflects the state of information brought to the attention of the Special Rapporteur. Nevertheless, over a period of time, the number and consistency of the allegations received may be informative.

41. Since 2000, the Special Rapporteur and his predecessors have reported 314 cases of alleged torture to the Government of China. These cases represent well over 1,160 individuals.[49] Over the past five years, the Special Rapporteur has received 52 responses from the Government of China relating to a total of 90 cases.[50]

42. The following table indicates the typology of the victims of alleged torture and ill-treatment.

Table 1

Victims of alleged torture

Victims	Percentage
Falun Gong practitioners	66
Uighurs	11
Sex workers	8
Tibetans	6
Human rights defenders	5
Political dissidents	2
Other (persons infected with HIV/AIDS and members of religious groups)	2

43. The following table indicates the locations where alleged torture and ill-treatment took place.

Table 2

Locations of alleged torture

Places	Percentage
Pretrial detention centres	27
Re-education through labour (RTL) camps	25
Police stations	17
Psychiatric hospitals (*ankang*)	8
Public places	5
Other (police transit, birth control offices, army barracks, private residences)	18

44. The following table indicates the typology of the alleged perpetrators.

Table 3

Typology of alleged perpetrators

Perpetrators	Percentage
Police and other public security officers	47
RTL staff	21
Prison staff	13
Pretrial detention centre staff	7
Psychiatric hospital (*ankang*) staff	7
Fellow prisoners at the instigation or acquiescence of detention facility staff	5

45. The methods of torture alleged include, among others: beatings with sticks and batons; use of electric shock batons; cigarette burns; hooding/blindfolding; guard-instructed or permitted beatings by fellow prisoners; use of handcuffs or ankle fetters for extended periods (including in solitary confinement or secure holding areas); submersion in pits of water or sewage; exposure to conditions of extreme heat or cold; being forced to maintain uncomfortable positions, such as sitting, squatting, lying down, or standing for long periods of time, sometimes with objects held under arms; deprivation of sleep, food or water; prolonged solitary confinement; denial of medical treatment and medication; hard labour; and suspension from overhead fixtures with handcuffs. In several cases, the techniques employed have been given particular terminologies,

such as the "tiger bench", where one is forced to sit motionless on a tiny stool a few centimetres off the ground; "reversing an airplane", where one is forced to bend over while holding legs straight, feet close together and arms lifted high; or "exhausting an eagle", where one is forced to stand on a tall stool and subjected to beatings until exhaustion. Several of these forms of torture have been corroborated by studies carried out by Chinese academics.[51] On the basis of the information he received during his mission, the Special Rapporteur confirms that many of these methods of torture have been used in China.

Efforts to combat torture

46. In recent years, the issue of torture has become a subject of public concern and debate within China, particularly after several prominent wrongful-conviction cases came to light in 2005.[52] The growing willingness of officials and scholars to acknowledge China's torture problem is a significant step forward. Chinese scholars and journalists are increasingly publishing detailed critiques on the practice of torture in China and related problems in the criminal justice system, including weak investigations, lack of professionalism in the police, and confessions extorted by torture.[53] Chinese officials and analysts have characterized the torture problem as "widespread" in basic level organs; "deeply entrenched", a "stubborn illness", and a "malignant tumour" that "is difficult to stop" in practice, with forced confessions characterized as "common in many places in China because the police are often under great pressure from above to solve criminal cases".[54]

47. The Government's willingness to acknowledge the pervasiveness of torture was confirmed when the Supreme People's Procuratorate published *The Crime of Tortured Confession (Xingxun Bigong Zui)* in late 1997, including China's first public official statistics on criminal cases of tortured confession - reporting an average of 364 cases per year between 1979 and 1989, upward of 400 cases per year for most years in the 1990s, and the admission that 241 persons had been tortured to death over the two-year period 1993-1994.[55]

48. Following on from its recognition of the problem, the Government has undertaken a number of measures to tackle torture, in particular the SPC, the SPP and the Ministry of Public Security (MPS). In August 2003, the Minister of Public Security, Zhou Yongkang, issued a set of unified regulations on the standardization of law enforcement procedures for public security institutions entitled "Regulations on the Procedures for Handling Administrative Cases", including procedures defining police powers in respect of time limits for confiscation of property, legal means for gathering evidence, time limits on investigation and examination of suspects, etc. In 2004, the Ministry issued regulations prohibiting the use of torture and threats to gain confessions and initiated a nationwide campaign to improve policemen's criminal investigation capacity. In the same year, the SPP launched a nationwide campaign to crack

down on officials who abuse their powers. The SPP announced in 2005 that eliminating interrogation through torture was a priority of its work agenda and has instructed procurators that confessions obtained as a result of torture cannot form a basis for the formal approval of arrests and that prosecutors must work to eliminate illegally obtained evidence.[56]

49. In addition to initiatives at the central level, several promising initiatives have been taken in several parts of the country. The Zhejiang provincial Public Security Department issued regulations on forced confessions stating that local police chiefs will be expected to resign in any district where there are more than two cases of forced confessions resulting in injuries, miscarriages of justice or public order problems. In mid-April 2005, Sichuan law enforcement and judicial authorities issued a joint opinion prohibiting the use of illegally obtained evidence, and requiring courts to exclude coerced statements and confessions if police cannot provide a rational explanation of the alleged coercion or refuse to investigate allegations of abuse. Following the Special Rapporteur's December 2005 visit, he learned that the Hebei provincial procuratorate, high court, and public security bureau issued a joint opinion prohibiting the use of torture to obtain evidence against a criminal suspect.[57] As well, the Hubei provincial procuratorate, high court, justice department, public security bureau and State security bureau together issued regulations on criminal evidence, including the prohibition of the use of testimonies acquired through torture.

50. Practical measures to combat torture have included piloting systems of audio and video recording in interrogation rooms,[58] strengthening representation during the investigative and pretrial phase of the criminal process by placing lawyers on a 24-hour basis in pilot police stations, designing interrogation rooms which separate suspects from interrogators, and placing resident procurators in places of detention and near public security bureaux to supervise law enforcement personnel.

51. The Special Rapporteur also observes positive developments at the legislative level, including the planned reform of several laws relevant to the criminal procedure, which he hopes will bring Chinese legislation into greater conformity with international norms, particularly the fair trial standards contained in the International Covenant on Civil and Political Rights (ICCPR) which China signed in 1998 and is preparing to ratify. He also welcomes the resumption by the Supreme People's Court (SPC) of its authority to review all death penalty cases,[59] particularly given the fact that the quality of the judiciary increases as one ascends the hierarchy. The Special Rapporteur suggests that China might use the opportunity of this important event to increase transparency regarding the number of death sentences in the country, as well as to consider legislation that would allow direct petitioning to the SPC in cases where individuals do not feel that they were provided with adequate relief by lower courts in cases involving the use of torture, access to counsel, etc.

Effectiveness of efforts to combat torture

52. The Special Rapporteur notes that China was among the first States to ratify the Convention against Torture (CAT) in 1988, which requires States parties to take measures for the prevention of torture and to punish every act of torture with appropriately serious penalties. Although Chinese law prohibits gathering evidence through torture and provides for punishment of those guilty of torture, the Chinese definition of torture does not fully correspond to the international standard contained in article 1 of CAT. In particular, physical or psychological torture that leaves no physical trace is difficult if not impossible to punish with appropriate penalties in China (indeed, the Chinese word for torture, *kuxing*, principally connotes physical torture).

53. Although the central Government has made significant efforts to reduce the practice of torture (as noted above), the effectiveness of these efforts is significantly hampered by the degree of localism inherent in policing and criminal procedure at the grass-roots level, which impedes the effective implementation of central regulations, guidance, training, prohibitions, etc.[60] Although the Ministry of Public Security formally exercises leadership over nationwide public security work, local Party Committees enjoy substantial authority to interpret and implement policy in their regions including by exercising leadership over respective Public Security Bureaux (PSBs). This results in localized and semi-autonomous police forces shaped by local power balances and economic resources, with accountability to local political leaders. This situation is aggravated by problems of underfunding and poor remuneration for police, particularly in the more economically disadvantaged western provinces.[61]

54. Combating torture in China is further impeded by the absence of essential procedural safeguards necessary to make its prohibition effective, including: the effective exclusion of evidence from statements established to be made as a result of torture; the presumption of innocence;[62] the privilege against self-incrimination; the right to remain silent;[63] timely notice of reasons for detention or arrest; prompt external review of detention or arrest; granting of non-custodial measures, such as bail; the right of habeas corpus; timely access to counsel; and adequate time and facilities to prepare a defence.

55. The presence of a lawyer is not only a right guaranteed under international human rights law but also an important means to prevent the use of torture. Not only do lawyers ensure supervision of investigators' behaviour during interrogation, but they facilitate prosecution of investigators who have utilized torture. They also enable witnesses to provide evidence to court that statements were acquired through illegal means. Yet in China, most suspects are interrogated without lawyers.[64]

56. Other serious shortcomings are the lack of an independent monitoring mechanism of all places of detention and a functional complaints mechanism. While there is no shortage of internal oversight mechanisms in China's law enforcement system, it must be noted that these are not independent, nor are they publicly perceived as independent. These include the Communist Party Committee that, along with Government's political and personnel departments, oversees hiring, firing, review and promotion in every Public Security Bureau department; the public security branches of the Party's Discipline Inspection Committee and the Government's Ministry of Supervision; the "Masses Letters and Visits Office" that accept and investigate citizens' complaints within each Public Security Bureau department; and the Procurators. In addition to their lack of independence, these mechanisms are largely ineffective due to the fact that the pressure to crack cases is larger than the incentive to address abuses.[65] Yet priority seems to still be placed on developing systems for internal investigation as opposed to independent monitoring. Complex systems for "allocating responsibility" have been publicized in the police, procuratorate and courts in recent years. It is still unclear what impact these will have in practice, particularly as they will be unlikely to exercise genuine independence from Government institutions and authorities.

57. While procurators, some of whom are resident in prisons and near police stations, are mandated to monitor police, the procuratorate's dual functions of prosecution and police oversight means that it is unlikely to proactively uncover police malpractice, especially if such actions are seen as undermining the police's ability to perform in their joint endeavour to crack down on growing crime. In other words, it is difficult to rely on the vigilance of procurators whose interest in convicting suspects as charged might compromise their ability to oversee the police and prison guards. In addition, procurators encounter substantial difficulties in practice to exercise their supervisory role, including because detainees are afraid to report instances of torture to them. The inefficiency of current complaint and oversight mechanisms is clear from the paucity of complaints and prosecutions in a country the size of China.[66]

58. International practice has shown that the most effective way to fight torture is through self-generating and/or self-sustaining social and political institutions including: a free and investigatory press, citizen-based human rights monitoring organizations, independent, fair and accessible courts and prosecutors, and the accountability that comes through regular elections. Judicial oversight is particularly important. Without a court system that judges cases fairly and independently according to law, thereby redressing grievances in a timely manner, the problem of torture cannot be brought under effective control, particularly in a context where police exercise wide discretion in matters of arrest and detention and are under great pressure to solve cases.

59. The Special Rapporteur is of the opinion that the establishment of a system of preventive visits to all places of detention as envisaged by the Optional Protocol to the Convention against Torture (OPCAT) would greatly enhance efforts to prevent torture or ill-treatment from occurring within places of detention. In this regard, the Special Rapporteur urges China to ratify the Optional Protocol and to establish a truly independent monitoring mechanism, where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal, to visit all places where persons are deprived of their liberty throughout the country.

IV. DEPRIVATION OF LIBERTY FOR POLITICAL CRIMES AND FORCED RE-EDUCATION AS A FORM OF INHUMAN OR DEGRADING TREATMENT

60. The criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes. Although many such crimes, such as "organizing a counter-revolutionary group" and "counter-revolutionary propaganda and incitement" were abolished in 1997, members of the "democracy movement" and political dissidents who were sentenced before 1997 for these crimes are still serving long prison sentences today.[67] The Special Rapporteur welcomes the decision of the Government of China to grant prisoners convicted of these crimes the same access to sentence reduction and parole as other prisoners, and notes the relatively large number of sentence reductions and early releases granted to such prisoners. However, prisoners are still serving sentences for counter-revolution, and several hundred more are serving sentences for "hooliganism". Most systems provide for the release of prisoners serving sentences for a crime that is removed from the criminal law. Article 15, paragraph 1, of ICCPR suggests that, at a minimum, reviews of the prisoners' sentences should be carried out. Release of all counter-revolutionaries and hooligans imprisoned for non-violent related offences (e.g. leading a counter-revolutionary group, engaging in counter-revolutionary propaganda and incitement) would be a milestone in China's effort to ratify the ICCPR.

61. After the 1997 changes, political dissidents, journalists, writers, lawyers, human rights defenders, Falun Gong practitioners, and members of the Tibetan and Uighur ethnic, linguistic and religious minorities were often prosecuted as a result of having exercised their human rights to freedom of speech, assembly, association or religion. They are often sentenced to long prison terms for political crimes such as endangering national security through undermining the unity of the country, subversion or unlawfully supplying State secrets to individuals outside the country.[68] Although many of these prisoners deny having committed any wrongful act and, therefore, do not confess during trial (often despite undergoing torture), they sometimes change their mind after having been subjected to forced re-education while serving their prison sentences. If politically deviant and dissident behaviour is not subjected to criminal sanctions,

the respective target groups, such as Falun Gong practitioners and human rights defenders, are often subjected to years of administrative detention, such as RTL, for having disturbed the social order or similar petty offences.

62. Many prisoners serving sentences for political crimes and detainees subjected to RTL who submitted complaints to the Special Rapporteur or whom he personally met in detention, claimed that the disproportionate, discriminatory and unjust deprivation of personal liberty (often for a very long period of time) together with the forced re-education system to which they were subjected caused more severe pain and suffering than the physical torture they might have endured during interrogation by the police. Indeed, some of these measures of re-education through coercion, humiliation and punishment aim at altering the personality of detainees up to the point of even breaking their will.

63. In response to the Special Rapporteur's characterization of forced re-education as a form of inhuman or degrading treatment, the Chinese authorities advanced several arguments in written comments of 25 January 2006 on the preliminary draft report, including that re-education is premised on helping detainees re-enter society and that since many detainees "are led to a life of crime because they love leisure and hate labour and resort to illegal means to gain others' property", prisons and re-education through labour facilities organize appropriate work "in order to cultivate abilities and habits of self-reliance and prevent problems such as poor mental health because they have nothing to do". Furthermore, the Special Rapporteur was informed that, in order to further enforce the law in a civilized manner, China's Ministry of Justice Prison Bureau has begun training psychotherapists in the prison system with national professional accreditation in order to prevent and eliminate torture of prison inmates. According to China, "at present nearly 90 per cent of China's prisons have begun this work and more than 1,000 prison system psychotherapists have already been trained".[69]

64. In the opinion of the Special Rapporteur, methods used in the system of RTL in China, and similar methods of re-education in prisons, pretrial detention centres, and other institutions often go beyond legitimate rehabilitation measures provided for in article 10 of the ICCPR. Indeed, some of these measures strike at the very core of the human right to personal integrity, dignity and humanity, as protected by articles 7 and 10 of the ICCPR, as well as articles 1 and 16 of the CAT. RTL constitutes not only a serious violation of the human right to personal liberty, but can also be considered as a form of inhuman and degrading treatment or punishment, if not mental torture. RTL and similar measures of forced re-education in prisons, pretrial detention centres, religious institutions and psychiatric hospitals should therefore be abolished.

65. The human rights to privacy, freedom of expression, religion, assembly and association lie at the very heart of a democratic society, which, according to its White Paper on Democracy,

China has committed itself to achieve.[70] Under international human rights law, Governments can only interfere with the expression of political opinions, religious convictions, moral values or minority views when they constitute incitement to hatred or violence or a direct threat to national security or public safety in the country. A system of State surveillance of citizens with non-conformist views and with severe punishments for such "deviant behaviour", such as long-term prison sentences for vaguely defined crimes, including endangering national security, undermining the unity of the country, subverting State power, or unlawfully supplying State secrets to individuals outside the territory, as well as subjecting them to RTL, seems to be incompatible with the core values of a society based upon a culture of human rights and leads to intimidation, submissiveness, self-censorship and a "culture of fear", which in turn interferes with the right not to be subjected to inhuman and degrading treatment or punishment.

V. CONDITIONS IN DETENTION

In general

66. The Special Rapporteur visited a total of 10 detention facilities. As is the usual practice, during visits to places of detention, the Special Rapporteur held private interviews with detainees (summaries of which are included in appendix 2). However, he observed that a considerable number of detainees that were approached for interviews did not express a willingness to speak with the Special Rapporteur, and several of those who did requested absolute confidentiality. Consequently, the information contained in appendix 2 does not reflect the full situation, as a significant amount of the information on torture practices was received in confidence.

67. In general, the Special Rapporteur found that although the specific conditions of the facilities varied, in terms of basic conditions, such as food, medicine and hygiene, they were generally satisfactory (detailed findings on conditions in detention are listed for each facility visited in appendix 2). However, the Special Rapporteur noticed a palpable level of fear when talking to detainees. He also was struck by the strict level of discipline exerted on detainees in different facilities. Time and again, he entered cells and found all detainees sitting cross-legged on a mattress or in similar forced positions reading the CL or prison rules. According to information provided by detainees, such forced re-education, in particular in pretrial detention centres, goes on for most of the day. It is usually conducted on the order of one of the fellow detainees who is considered "chief" of the cell. There is very little privacy and opportunity for individual recreation, such as reading a book, etc. Even when serving long prison sentences, persons convicted of political offences usually have no right to work and very little time for recreation. They are not allowed to practise their religion (e.g. Buddhism in Tibet, Islam in Xinjiang).

Circumstances surrounding capital punishment

68. The Special Rapporteur is also concerned about the circumstances surrounding the death penalty, including the situation of prisoners on death row. At the Beijing Municipality Detention Centre, where the Special Rapporteur spoke with prisoners sentenced to death at first instance awaiting appeal, he noted that these prisoners were handcuffed and shackled with leg irons weighing approximately 3 kg, 24 hours per day and in all circumstances (i.e. including during meals, visits to the toilet, etc).[71] In the opinion of the Special Rapporteur this practice is inhuman and degrading and serves only as an additional form of punishment of someone already subjected to the stress and grief associated with having been sentenced to death.

69. The Special Rapporteur wishes to express concern at the high number of crimes for which the death penalty can be applied, and the lack of official statistics on the application of the death penalty, which contributes to the perception of secrecy.[72] He encourages the Government to both narrow its scope and to be more transparent towards family members and the public at large regarding its use, including by making statistics on the death penalty public information. The Special Rapporteur notes allegations that some provincial authorities are introducing mobile execution vans (converted 24-seater buses) manufactured by a State-owned company.[73] These mobile execution vans were reportedly approved by Yunnan Provincial authorities on 6 March 2003, and 18 such vans were distributed to all intermediate courts and one high court in Yunnan Province in 2003. In December 2003, the SPC in Beijing reportedly urged all provinces to acquire execution vans "that can put to death convicted criminals immediately after sentencing".

70. The Special Rapporteur welcomes the anticipated recovery by the Supreme People's Court of responsibility for final approval of the death penalty.[74]

VI. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

71. The Special Rapporteur wishes to express his sincere gratitude to the Government of China for having invited him and for having facilitated his mission in general accordance with his terms of reference. He welcomes the Government's willingness to acknowledge the pervasiveness of torture in the criminal justice system and various efforts undertaken in recent years at the central and the provincial level to combat torture and ill-treatment. In particular, he notes the 2004 regulations issued by the Ministry of Public Security prohibiting the use of torture and threats to gain confessions and the announcement by the Supreme People's Procuratorate in 2005 that eliminating interrogation through torture

was a priority of its work agenda. Recent efforts to eradicate torture include a nationwide campaign to clear up and rectify extended police custody, large-scale training of the police, piloting systems of audio and video recording in interrogation rooms, placing lawyers on a 24-hour basis in pilot police stations and establishing resident procurators in places of detention and near public security bureaux to supervise law enforcement personnel.

72. These and similar measures have contributed to a steady decline of torture practices over recent years. Nevertheless, on the basis of a considerable number of allegations that he and his predecessors received over the years, as well as other reliable governmental and non-governmental information and his own fact-finding during the mission, the Special Rapporteur believes that torture, though on the decline particularly in urban areas, remains widespread in China.

73. Many factors contribute to the continuing practice of torture in China. They include rules of evidence that create incentives for interrogators to obtain confessions through torture, the excessive length of time that criminal suspects are held in police custody without judicial control, the absence of a legal culture based on the presumption of innocence (including the absence of an effective right to remain silent); and restricted rights and access of defence counsel.

74. The situation is aggravated by the lack of self-generating and/or self-sustaining social and political institutions including: a free and investigatory press, citizen-based independent human rights monitoring organizations, and independent, fair and accessible courts and prosecutors.

75. Judicial oversight is particularly important. One of the largest overall obstacles to eliminating torture in China is the institutional weakness and lack of independence of the judiciary, particularly in a context where police exercise wide discretion in matters of arrest and detention and are under great pressure to solve cases. Nor do there seem to currently be any truly independent monitoring mechanisms of places of detention or complaints mechanisms in China. The procuratorate is not perceived as an independent monitoring organ given its role in convicting suspects. Nor does the procuratorate have the requisite independence to meet the international criteria of a judicial officer authorized by law to exercise judicial power to take decisions on arrest.

76. At the provincial and municipal levels, the efforts of the central Government to reduce the practice of torture are significantly hampered by the degree of "localism" inherent in policing and criminal procedure, impeding the effective implementation of

central regulations, guidance, training, prohibitions, etc. Such localism also impedes effective accountability and oversight.

77. The basic conditions in the detention facilities visited by the Special Rapporteur including food, medical care and hygienic conditions, seem to be generally satisfactory. But the Special Rapporteur was struck by the strictness of prison discipline and a palpable level of fear and self-censorship when talking to detainees. Detainees, particularly in pretrial detention facilities where they should enjoy the presumption of innocence, seem to spend many hours a day sitting in a fixed position and being forced to read to each other the Criminal Law or prison rules.

78. Even when serving long prison sentences, persons convicted of political crimes often have no right to work and very little time for recreation. They are usually not allowed to practise their religion. Convicted prisoners who have not confessed to their crimes are put under special education systems and are deprived of certain rights and privileges which converted prisoners enjoy, such as family visits, access to a telephone or the incentive of reduced sentences. Prisoners on death row are mixed with pretrial detainees and shackled with leg irons and sometimes also handcuffed for 24 hours a day. Such additional punishment is not compatible with the right to personal integrity, dignity and humanity.

79. The criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes, such as "counter-revolutionary crimes" before the 1997 CL reform, or crimes "endangering national security" thereafter. In addition, persons with politically deviant or dissident behaviour are often subjected to Re-education through Labour and other administrative detention for up to four years for having disturbed the social order.

80. Many prisoners serving sentences for political crimes and detainees subjected to RTL claimed that the disproportionate, discriminatory and unjust deprivation of liberty, together with the forced re-education, caused more severe pain or suffering than the physical torture during police interrogation.

81. In the opinion of the Special Rapporteur, the combination of deprivation of liberty as a sanction for the peaceful exercise of freedom of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at admission of culpability and altering the personality of detainees up to the point of even breaking their will, strike at the very core of the human right to personal integrity, dignity and humanity. It constitutes a form of inhuman and degrading treatment or punishment

leading to submissiveness and a "culture of fear", which is incompatible with the core values of any democratic society based upon a culture of human rights.

Recommendations

82. **On the basis of his conclusions, the Special Rapporteur puts forward a number of recommendations and expresses his hope that the Government will take them into account in the context of ongoing reform efforts aimed at the eradication of torture and ill-treatment.**

Investigation and prosecution of torture

(a) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.

(b) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.

(c) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty pending trial, and prosecuted.

(d) The declaration should be made with respect to article 22 of CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.

Prevention of torture and ill-treatment through safeguards in the criminal justice system

(e) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pretrial detention, which normally should not exceed a period of 48 hours. After this period they should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators is permitted.

(f) Recourse to pretrial detention in the Criminal Procedure Law should be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.

(g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.

(h) Confessions made without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence. Video and audio taping of all persons present during proceedings in interrogation rooms should be expanded throughout the country.

(i) Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint from the defendant), order an independent medical examination.

(j) The reform of the CPL should conform to fair trial provisions, as guaranteed in article 14 of ICCPR, including the following: the right to remain silent and the privilege against self-incrimination; the effective exclusion of evidence extracted through torture; the presumption of innocence; timely notice of reasons for detention or arrest; prompt external review of detention or arrest; timely access to counsel; adequate time and facilities to prepare a defence; appearance and cross-examination of witnesses; and ensuring the independence and impartiality of the judiciary.

(k) The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts.[75]

(l) Section 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution should be abolished.

Other measures of prevention

(m) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism be established - where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal - to visit all places where persons are deprived of their liberty throughout the country.

(n) Systematic training programmes and awareness-raising campaigns should be carried out on the principles of the Convention against Torture for the public at large, public security personnel, legal professionals and the judiciary.

(o) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.

Circumstances surrounding capital punishment

(p) Death row prisoners should not be subjected to additional punishment such as being handcuffed and shackled.

(q) The restoration of Supreme Court review for all death sentences should be utilized as an opportunity to publish national statistics on the application of the death penalty.

(r) The scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes.

Deprivation of liberty for political crimes

(s) Political crimes that leave large discretion to law enforcement and prosecution authorities such as "endangering national security", "subverting State power", "undermining the unity of the country", "supplying of State secrets to individuals abroad", etc. should be abolished.

(t) All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.

Forced re-education

(u) "Re-education through Labour" and similar forms of forced re-education in prisons, pretrial detention centres and psychiatric hospitals should be abolished.

(v) Any decision regarding deprivation of liberty must be made by a judicial and not administrative organ.

Follow-up

(w) The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the Office of the United Nations High Commissioner for Human Rights, for assistance in the follow-up to the above recommendations.

APPENDIX 1

NOTES

[1] The visit of the Special Rapporteur on Torture to PRC has its origins in a 1995 request by the then Special Rapporteur, Sir Nigel Rodley, for an invitation to carry out a fact-finding mission. The Government responded in 1999 with an invitation for a "friendly visit" in May 2000, however, differences between the Government and the Special Rapporteur on the standard methodology for country visits by United Nations human rights experts (including unannounced visits to detention centres and private meetings with detainees) prevented it from being realized. In spring 2004, the Government extended an unconditional invitation to the then Special Rapporteur, Theo van Boven, for a two-week visit in June of that year, which was later postponed. Upon Manfred Nowak's appointment as Special Rapporteur on Torture in December 2004, the Government renewed its invitation for a visit in 2005, accepting his Terms of Reference.

[2] For instance, see the cases of Gao Zhisheng, Mao Hengfeng, Liu Xinjian, Ma Yalian and Li Shan Na in Appendix 3.

[3] China is party to and has submitted reports under each of the following international human rights treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). The Hong Kong and Macau Special Administrative Regions are also both bound by the International Covenant on Civil and Political Rights (CCPR), which the PRC signed in October 1998.

[4] According to the Working Group on Arbitrary Detention, "The Constitution has been complemented by a provision granting constitutional rank to the protection of human rights. On 14 March 2004, the NPC amended the constitution to add the provisions." "The State respects and safeguards human rights," providing for the first time in its history a constitutional protection of human rights" Report of the UN Working Group on Arbitrary Detention, Mission to China, E/CN.4/2005/6/Add.4, §19 (c). In written comments to the preliminary report of the Special Rapporteur the Chinese authorities, on 25 January 2006, stated the following "This is a step forward in giving the protection of human rights a prominent place in China's legislation and national development strategy."

[5] The following information was provided to the Special Rapporteur in written comments from the PRC on 25 January 2006: "In order to implement this constitutional principle, China has adopted a series of reform measures in the legislative area. At present, China's legislative departments are in the process of accelerating reform of the criminal, civil, and administrative procedure laws in order to improve judicial redress measures, highlight the role of lawyers, and protect the rights of suspects. Since reform of the reeducation through labor system was formally included in the five-year legislative plan of the new National People's Congress in 2003, China's relevant departments have been carrying out their work according to schedule and at present work on the first draft of the new 'Illegal Behavior Correction Law' has been completed. At the same time, China's legislative departments are accelerating revision of the 'Administrative Review Law' and 'National Compensation Law' in order to improve the administrative litigation procedure and compensation mechanisms. In August 2005, the National People's Congress passed the 'Public Security Administration Punishment Law', which will take effect in March 2006, in order to further establish standards for the fundamental behaviors that public security agencies should respect and for supervision of law enforcement and thereby further standardize the exercise of police powers. In October 2005, the Supreme People's Court issued its second five-year reform outline, explicitly restoring to the Supreme Court the power of review over the death penalty. From January 1, 2006, courts are required to hold hearings in death penalty cases of second instance where an appeal has been raised because of serious factual or evidentiary problems; in the second half of the year, all death penalty cases of second instance will be tried in a court hearing. The aforementioned legislative measures will without doubt provide more complete and stronger legal and judicial protections for China's [efforts to] prevent and combat torture and protect the rights of detainees."

[6] Criminal Law adopted at the Second Session of the Fifth NPC on 1 July, 1979 and Revised at the Fifth Session of the Eighth NPC on 14 March, 1997.

[7] These include: intentional homicide (article 232); negligent causing of death (article 233); intentional injury (article 234); negligent injury (article 235); acts against or insulting a woman by violence, coercion or any other forcible means (article 237); unlawful detention (article 238); public humiliation (article 246); maltreatment of a family member (article 260); obstruction of a witness or instigation to give false testimony by violence or threat (article 307); beating or subjecting another person held in custody to corporal punishment or instigating another person to do so (article 315(4)). These other offences relate to public officials and non-public persons as perpetrators. In non-criminal areas, China has passed and formulated relevant legal regulations to prevent torture. Art. 41 of the "Regulations on Public Security Administration" states: "Public security personnel carrying out these provisions…are prohibited from mistreating, abusing, or insulting persons who have violated public security administration. Violators are

subject to administrative punishment; in cases that constitute criminal behaviour, criminal responsibility will be pursued." Art. 116 of the "Public Security Administration Punishment Law," which will go into effect on March 1, 2006 and replace the "Regulations on Public Security Administration," also has similar language. The "Provisional Methods on Reeducation Through Labor" and the "Code of Conduct for Police Officers Working in Reeducation Through Labor" also clearly prohibit torture, overwork, and misuse of incarceration and police weapons.

[8] Compare this to the 1979 Criminal Law, articles 13 and 83, which stipulated that a wider range of officials could be prosecuted for "torture to coerce a confession", as the prohibition applied to "state personnel" defined as "all personnel of state organs, enterprises and institutions and other personnel engaged in public service according to the law". In written comments to the Special Raaporteur of 3 January 2006, the PRC felt that it was necessary to point out that most Chinese laws do not distinguish between torture by civil servants and torture by non civil-servants. "Other than the crimes of "coercive interrogation and violent extraction of evidence" and "subjecting imprisoned persons to corporal punishment," for which law enforcement officers are naturally the subject of prosecution, China's criminal code also has other provisions prohibiting torture, such as "murder with intent" (art. 232), and "impairing with testimony" (art. 307), for which the subject is not limited to civil servants and may also include non-civil servants. The scope of the subjects for crimes of torture under Chinese law is broad and is in accord with Article 1, Para. 2 CAT."

[9] Decision on the Criteria for Filing Cases in those Cases where Filing and Investigation is Directly Handled by the Procuratorate of 16 September 1999.

[10] Ibid.

[11] In written comments of 25 January 2006 the PRC stated that, "according to judicial practice", article 247 ("coercive interrogation and violent extraction of evidence") of the CL includes "deliberately subjecting a victim to …taking medication, hypnosis, or any other acts that cause a person high level of pain or loss of consciousness or will". In addition the PRC stated that articles 147 ("insulting another") and the crimes of illegal search and illegal detention are also related to the prohibition of mental torture.

[12] Article 247 provides: "Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law." Article 248 of CL provides:

"Any policeman or other officer of an institution of confinement like a prison, a detention house or a custody house who beats a prisoner or maltreats him by subjecting him to corporal punishment, if the circumstances are serious shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law. Any policeman or other officer who instigates a person held in custody to beat or maltreat another person held in custody by subjecting him to corporal punishment, the policeman or officer shall be punished in accordance with the provisions of the preceding paragraph." The CL also provides that the judicial officer who causes death to the victim may be sentenced to death.

[13] A Decision on Severely Punishing Criminals Seriously Endangering Social Order and Security complements the CL and prescribes that those who intentionally do harm to the body of others that leads to serious injury or death can be condemned beyond the maximum punishment prescribed in the CL, even to the death penalty. Passed by the Standing Committee of the NPC in September 1979.

[14] This stipulates that police officers who cause unnecessary personal injury or death or loss of personal property through unlawful use of police instruments or weapons shall be punished by law. Issued by the State Council of China in 1996.

[15] See CAT/C/39/Add.2, paras. 9 and 10.

[16] Revision was published by the Ministry of Public Security on 14 May 1998.

[17] Entered into force in 1997.

[18] SPC, SPP, MPS, MSS, MOJ, and NPC Standing Committee Legal Affairs Working Committee: Joint Rules Concerning Several Issues Encountered in the Implementation of the CPL, issued on 19 January 1998.

[19] When a suspected accomplice may be alerted to flee or hide, or to destroy or falsify evidence; when the suspect refuses to reveal his true name, address or identity; or when notification would impede investigation or when notification is not feasible. In any case, pursuant to Rule 108, the reason for any failure to notify within 24 hours must be specified in the detention notification. Rule 125 contains a similar clause with respect to notification of arrest.

[20] Article 96 of the CPL provides that "after the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him, he may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial. If a case involves State secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer. The appointed lawyer shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to enquire about the case. When the lawyer meets with the criminal suspect in custody, the investigation organ may, in light of the seriousness of the crime and where it deems it necessary, send its people to be present at the meeting. If a case involves State secrets, before the lawyer meets with the criminal suspect, he shall have to obtain the approval of the investigation organ". This provision constitutes an important improvement upon the 1979 Criminal Code which allowed lawyers to be involved in a process only after the cases were brought before the courts and provided them with seven-day advance notice for the preparation of the defence. In addition, pursuant to articles 36, 156 and 180 of the revised CPL, lawyers can collect evidence, including evidence gathered by the prosecutors, they can meet with their clients and communicate with them and they can defend their clients in court trials, including cross-examining witnesses and appealing on behalf of their clients.

[21] Promulgated in 1996 and took effect at the same time as the CPL.

[22] See supra note 16.

[23] Rules 36, 39, 43 and 44 also refer to the "participation of lawyers in criminal proceedings". See CAT/C/39/Add.2, para. 74.

[24] Issued by the Ministry of Public Security on 17 October 1989. See article 2(c)-11.

[25] UN Working Group on Arbitrary Detention, Report of the UN Working Group on Arbitrary Detention, Mission to China, E/CN.4/2005/6/Add.4, para. 76.

[26] It is worrying that, while article 47 of the CPL provides that "the testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides, that is, the public prosecutor and victim as well as the defendant and defenders …", article 14 of the Interpretation of the SPC on Several Issues Regarding the Implementation of the CPL of June 1998 provides for 4 exceptional cases in which a witness may be absent, including; "for any other reason".

[27] See the *Study of the Prevention of and Counter Measures for The Extortion of Confessions by Torture of the Legal Studies Association (The Task Group On The Prevention of the Use of Torture in Interrogation), March 2005, at p.6 (Analysis for the Reasons of Use of Torture)* "in judicial practice, due to the fact that a verbal affidavit is not just a kind of evidence, but is also often used as an important lead to further evidence, verbal confessions have become irreplaceable evidence. Added to that, there is the traditional view that 'no verbal confession then no recorded case', and that 'verbal confessions are king evidence'. Some judiciary personnel have formed the view that verbal confessions are the best. This results in an investigative approach centred round confessions as evidence. It urges investigators to use any means possible in order to obtain a verbal confession from a suspect. That motive easily leads to the use of torture."

[28] See article 50 of the CPL read in conjunction with articles 63 to 65 of the SPC Interpretations on Several Issues Regarding Implementation of the CPL, articles 32 to 36 of the SPP Rules on the Criminal Process for People's Procuratorate and articles 60 to 62 of the Rules on the Process of Handling Criminal Cases by Public Security Departments issued by the MPS. A similar power is available pursuant to article 9 of the People's Police Law which gives police the right to detain individuals for questioning (*liuzhi panwen*) for up to 24 hours, with a possible extension of an extra 24 hours. Currently, the CPL does not limit the number of times coercive summons may be used and it does not specify how long authorities must wait between the uses of coercive summons. See Article 69 of the CPL which stipulates: "If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days. As to the arrest of a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang, the time limit for submitting a request for examination and approval may be extended to 30 days. The People's Procuratorate shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ. If the People's Procuratorate disapproves the arrest, the public security organ shall, upon receiving notification, immediately release the detainee and inform the People's Procuratorate of the result without delay. If further investigation is necessary, and if the released person meets the conditions for obtaining a guarantor pending trial or for residential surveillance, he shall be allowed to obtain a guarantor pending trial or subjected to residential surveillance according to law."

[29] When one of the seven emergency circumstances listed in article 61 of the CPL is met, crime investigation authorities may detain people for a ten-day period, which can be extended

to 14 days. The criminal detention can be further prolonged for up to 37 days when the detainee is suspected of "committing crimes from one place to another, repeatedly, or in a gang".

30 Pursuant to article 60 of the CPL, authorities may formally arrest a suspect "when there is evidence to support the facts of a crime and the criminal suspect or defendant could be sentenced to a sanction of not less than imprisonment, and if such measures as allowing him to obtain a guarantor pending trial or placing him under residential surveillance would be insufficient to prevent the occurrence of danger to society". According to article 59 of the CPL, "arrests of criminal suspects or defendants shall be subject to approval by a People's Procuratorate or decision by a People's Court and shall be executed by a public security organ".

31 According to the CPL, the basic time limit for holding a suspect in detention after formal arrest and before trial is two months. In 'complex' cases, this period may be extended by one month, for a total period of three months (article 124). Under certain conditions involving 'major' or 'complex' cases, the initial three month period may be extended for another two months (article 126). If the case involves a crime where the punishment is fixed-term imprisonment of ten years or greater, a second two month extension of the investigation period is permitted (article 127). Thus, once the procuratorate has approved a formal arrest, a suspect may be held for up to a total of seven months in investigative detention.

32 In addition, where the police find evidence of 'other major crimes' during the investigation (article 128) the investigative period for these alleged new crimes will begin on their 'discovery'. This means that the suspect may be held in pretrial detention for another seven months. There does not appear to be any limit on the number of times this "new crimes" exception may be invoked.

33 After the investigation period expires, the police must submit a recommendation for prosecution to the procuratorate. The procuratorate has one month to examine the recommendation for prosecution (article 138). In "major" or "complex" cases, this examination period may be extended for up to another two weeks, for a total of one and one-half months (article 138). This period may be further extended if a 'supplementary investigation' is deemed necessary. The procuratorate may request that the police conduct a supplementary investigation of up to 1 month. After the 1 month supplementary investigation period, the time the procuratorate has to examine the case for prosecution is reset, meaning the procuratorate has up to an additional 1½ months after the end of the supplementary investigation to decide whether to prosecute (article 140). The procuratorate may request up to two supplementary investigations. So, if two supplementary investigations are requested and the procuratorate takes the maximum period to evaluate the case after each supplementary investigation, the suspect could be held in

detention for a total of an additional 6½ months after the initial post-arrest investigative detention period has ended and before an indictment is issued.

[34] The Special Rapporteur has been informed of the following developments: "in May 2003, the Supreme People's Procuratorate initiated a special nationwide campaign and by July 2003 no cases of extended custody in the procuratorial sector had been reported. Procuratorial agencies also pressed other law enforcement agencies to initiate clearing-up work, issuing 274,219 procuratorial rectification opinions that year that resulted in rectification for 25,736 individuals. In May 2004, the Supreme People's Procuratorate, along with the Supreme People's Court and the Ministry of Public Security jointly issued a "Notice on Strictly Enforcing the Criminal Procedure Code and Conscientiously Rectifying and Preventing Extended Custody" and launched a national campaign of inspection and clearing-up targeted at extended custody that rectified extended custody for 7,132 individuals. Presently, the number of provinces, autonomous regions, and municipalities in which there are no cases of extended custody anywhere within the litigation system has risen from 14 at the end of 2003 to 29. Serious cases of extended custody lasting more than three years have been eliminated, and the number of individuals held beyond time limits in the nation is at a historic low. In order to consolidate these results of clearing up extended custody, the Supreme People's Procuratorate recently established long-acting mechanisms to prevent and rectify extended custody. Courts nationwide are strictly carrying out a system of weekly reports on clearing up cases of extended custody and a system of supervision and complaint, and in cases in which the facts are unclear, evidence is insufficient, or defendants cannot be found guilty they are announcing acquittals according to law. In 2004, a total of 873 existing and new cases involving 2,432 individuals were cleared up, and by year end all cases of extended custody were completely cleared up, with the exception of those cases [extended for] legal reasons. Many media outlets have reported on this under the headline "Punish the guilty; release the innocent", creating a strong response from all circles of society."

[35] Administrative detention includes: Re-education through Labour (*laodong jiaoyang*); Custody and Education (*shourong* jiaoyang); Enforced Drug Rehabilitation (*qianzhi jiedu*); Administrative Detention (*xingzheng juliu*); Work Study Schools (*gongdu xuexiao*); and psychiatric incarceration.

[36] The major provisions governing the system of RTL include the following: A Decision of the State Council on the Question of Re-education Through Labor (Guowuyuan guanyu laodong jiaoyang wenti de jueding) of 1 August 1957; A Supplementary Decision of the State Council on Re-education Through Labor (Guowuyuan guanyu laodong jiaoyang de fuchong guiding) of 29 November 1979; A Notice of the State Council on Re-Issuing the Ministry of Public

Security's Trial Methods for Implementation of Re-education Through Labor (*Guowuyuan guangu zhanfa gonganbu zhiding de laodong jiaoyang shixing banfa de tongzhi*) of 21 January 1982; Regulations on Public Security Organs' Handling of Re-Education Through Labor Cases (2002).

[37] Legislation Law, passed 15 March 2000, effective as of 1 July 2000.

[38] See article 3 of the Supplementary Decision of the State Council on Re-education Through Labor (Guowuyuan guanyu laodong jiaoyang de fuchong guiding) of 29 November 1979.

[39] See para 43 of the report of the UN Working Group on Arbitrary Detention on its 1997 visit to China. UN Doc. E/CN.4/1998/44/Add.2. The Working Group goes on to acknowledge in paras. 45 and 46 that while the measure of re-education through labour still raises concerns, important decisions have nevertheless been taken and improvements made … "since the 1996 reform, new guarantees have improved administrative detention and re-education through labour institution."

[40] See paras 42-53 of the report of the UN Working Group on Arbitrary Detention on its 1997 visit to China. UN Doc. E/CN.4/1998/44/Add.2.

[41] See, e.g., the cases of Yang Zili, Xu Wei, He Depu, Yang Jianli, Jigme Tenzin, Lobsang Tsuitrim, Jigme Gyatsu, Tohti Tunyaz Mozat, Rebiya Kadeer and Nur Mohammat Yasin in Appendix 2.

[42] Report of the UN Working Group on Arbitrary Detention, Mission to China, E/CN.4/2005/6/Add.4, para. 23.

[43] "Any appeal, accusation or complaint by a criminal must be promptly forwarded without delay." See CAT/C/39/Add.2, para. 42.

[44] "Any appeal or complaint by an inmate must be promptly forwarded without obstruction or delay. Any denunciation or accusation concerning an unlawful act by a law enforcement official must be promptly communicated to a people's inspectorate". See CAT/C/39/Add.2, para. 43.

[45] "Any accusation or complaint by a detainee must be promptly communicated to a relevant authority without delay, suppression or obstruction. Any denunciation of or accusation against a law enforcement official must be communicated by the detention authority to a supervisory public security organ or people's inspectorate". See CAT/C/39/Add.2, para. 44.

[46] "Any functionary of a State organ who, abusing his power or using his public office for private ends, retaliates against or frames up complainants, petitioners, critics or persons who report against him shall be sentenced to fixed-term imprisonment of not more than two years or to criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years."

[47] CAT/C/39/Add.2, para. 67.

[48] Came into effect in January 1995.

[49] In addition to this figure, it is to be noted that one case sent in 2003 (E/CN.4/2003/68/Add.1 para. 301) detailed the alleged ill treatment and torture of thousands of Falun Gong practitioners.

[50] In 36% of responses received, the Government denied that any torture or ill treatment had taken place and indicated that the facts alleged by the Special Rapporteur were false. Responses in relation to alleged death in custody accounted for 15% of the replies received. In all but two of these responses the Government stated that the individual had died due to natural circumstances. The two exceptions involved suicide and hunger strike. In 20% of the responses the Government informed that the individual concerned had been released due to completion of sentence, medical parole, payment of bail and in one case confession. Several responses reported that the investigations were ongoing or pending.

[51] Chen Yunsheng, *Towards Human Rights and the Rule of Law - Anti-torture Analysis, China Social Science Publishing House, September 2003, first edition*. See note 53.

[52] In early 2005, Chinese reports on two wrongful murder convictions, those of Nie Shubin and Shi Xianglin elicited a strong reaction in the Chinese news media and prompted public scrutiny of the criminal justice system. Both cases reportedly involved coerced confessions. As news of these cases spread, reports of other wrongful convictions emerged. "The Unjust Case of She Xianglin Murdering His Wife: the Price of Efforts to Seek Redress and Innocence on a Common Chinese Peasant Household" [She Xianglin sha qi yuanan: yige putong zhongguo nongmin jiating de shenyuan zhilu yu qingbai daijia], Southern Metropolitan Daily (Online), 5 April 05. "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved" [lüshi yanzhong de "Nie", "She" liangan: fansi cai neng dailai sifa tizhi de gaishan], Criminal Defense Net (Online), 13 April 05; "Legal Redemption for Erroneous Death Sentences" [Sixing wupan de falü jiushu], Modern Bulletin (Online), 16 March 05;

Tang Weibin, Li Changzheng, "How Do Unjust Cases Come About? Following the Trail of Hubei's She Xianglin 'Wife Murder' Case" [Yuanan shi zenme zaocheng de? Hubei She Xianglin "sha qi" an zhuizong], Procuratorate Daily (Online), 8 April 05; "Analyzing the Xu Jingxiang Unjust Case"[Xu Jingxiang yuanan pouxi], China Youth Online, 10 May 05; "Don't Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture, [Bie rangzhengyi zheduan le chibang: cong mianan kan xingxun bigong], Legal Daily (Online), 22 April 05; "Return of 'Murdered Wife' Calls China's Judicial System in Question", People's Daily (Online); "Behave Prosecutors to Protect Innocent", China Daily, 28 May 05 (FBIS, 28 May 05); Ge Lin, "Why a Not Guilty Verdict Is a Rarity of Rarities" [Wuzui panjue weihe fengmaolinjiao], Southern Weekend (Online), 16 June 05; Jiang Hong, "Commentary: Use Vigorous Legal Supervision to Prevent Unjust Cases" [Shelun: yong qiang you li de falü jiandu fangzhi cuoan], Justice Net (Online), 26 April05; Yuan Zhengbing, Cui Zuojun, Liu Jinlin, "To Prevent Unjust Cases, Firmly Grasp the Relation with Arresting Personnel", Procuratorate Daily (Online).

53 For example, a hard-hitting study by legal expert Chen Yunsheng of the Chinese Academy of Social Sciences published in 2003 contained a graphic enumeration of the thirteen most common methods of torture in China. *Towards Human Rights and the Rule of Law - Anti-torture Analysis, by Chen Yunsheng, China Social Science Publishing House, September 2003, first edition*. In March 2005 the China Legal Studies Associations' Group On The Prevention of the Use of Torture in Interrogation undertook a ground-breaking "Study of the Prevention of and Counter Measures for The Extortion of Confessions", involving, inter alia, field research in Changchun, Jilin, and Yenji in Jilin Province and the cities of Guangzhou, Shenzhen, Zhuhai, Beijing, Tianjin and other cities in Guangdong Province. The project involved investigators, prosecutors, public security personnel, lawyers, and other legal personnel as well as academics from the legal and social sciences fields. For examples of Chinese reports on specific cases of torture, see Two Hainan Police Officers Sentenced for Causing Death by Extorting Confessions, The Beijing News, 11 November 2005; "Sichuan Investigates and Prosecutes A Case Where Torture Led to Person's Death" [Sichuan chachu yiqi xingxun bigong zhiren siwang an], China Youth Daily (Online), 18 November 04; Zhou Wenying and Zou Shilai, "Jiangxi Fuzhou: Make Inquiries an Required Procedure in Examining Arrests" [Jiangxi Fuzhou: ba xunwen zuowei shencha daibu bijing chengxu], Procuratorial Daily (Online), 4 January 05 (noting that interviews of suspects uncovered more than 29 cases including extended detention, torture, or violations of criminal procedure by public security personnel); Liu Li, "Sixty Officials Charged with Dereliction of Duty, Abuse of Power", China Daily (Online), 26 January 05 (noting that "some" of the sixty Beijing officials charged "used torture to coerce statements"); "Detention Discipline Incites Detainees to Whip Convict for Six Hours, Leading to His Death" [Kanshousuo guanjiao zhizhi zai ya renyuan bianda fanren 6 xiaoshi zhi qi siwang], Boxun (Online),

8 February 05 (citing Heilongjiang Daily story on the case); Supreme People's Procuratorate 2004 Work Report [Zuigao renmin jianchayuan 2004 nian gongzuo baogao], 9 March 05 (noting that a yearlong investigation uncovered more than 1,595 cases of torture, illegal detention, and other violations of human rights in 2003); "'Nie Shubin Murder Case' Still Unresolved" ['Nie Shubin yuan sha an' xuaner weijue], Southern Weekend (Online), 24 March 05; "Murdered Wife Lives, Proves Husbands Innocence", China Daily (Online), 4 April 05 (indicating that She Xianglin was beaten and had fingers broken during his interrogation); "14 Years of An Unjust Case of Wife Murder, 'Liaoning's She Xianglin' Li Huawei Obtains State Compensation" [14 nian sha qi yuanan 'Liaoning She Xianglin' Li Huawei huo guojia peichang], People's Daily (Online), 15 April 05; Lei Dao, "Why No Compensation After Eight Years of Unjust Imprisonment" [Ba nian yuanyu weihe bu peichang], Legal Daily (Online), 17 April 05. Fu Kuanzhi", Three Essential Elements That Must Be Put Forth to Put a Stop to Torture" [Dujue xingshi bigong xu jubei sange yausu], Procuratorial Daily (Online), 11 August 04 (stating not all evidence should be included if proven to be true, but that improve technology, better legal consciousness, and more reliance on material evidence necessary to combat torture); Li Jinlin, "China Law Society Opens Research Forum on the Torture Problem", [Zhongguo faxuehui zhaokai xingxun bigong wenti yanjiu zuotanhui], Procuratorial Daily (Online), 30 January 05 (citing poor investigative capacity and the use of case breaking rates to evaluate personnel); "Return of "Murdered Wife" Calls China's Judicial System in Question", People's Daily (Online), 5 April 05 (citing pressure from above to solve cases); Cheng Jishan, "Radical Measures to Policies Eliminate The Extortion of Confessions Through Torture" [Xiaochu xingxun bigong de zhiben zhice], Legal Daily (Online), 13 April 05 (citing lack of legal rules excluding all evidence derived from torture, presumptions of guilt by law enforcement, and the failure to prosecute torture cases); "Don't Allow the Wings of Justice to break: Using Unjust Cases to Look at Confessions Extorted Through Torture" [Bie rang zhengyi zheduan le chibang: cong mianan kan xingxun bigong], Legal Daily, 22 April 05 (citing numerous factors, including low quality and educational levels of investigative personnel, leadership and social pressure to break cases, the link between salaries/promotions and case breaking rates, lack of lawyers at interrogation).

54 "Study of the Prevention of and Counter Measures for The Extortion of Confessions", China Legal Studies Associations' Group On The Prevention of the Use of Torture in Interrogation, March 2005; Suggestions for Enhancing the Rights of Lawyers [Wei zhengjin lvshi quanli jianyan xiance], China Legal Publicity (Online), November 2004 (a Ministry of Justice Web site, noting that torture is "widespread" in basic level organs); Qin Ping, "How Local Criminal Evidence Standards Guarantee Implementation of the Criminal Procedure Law" [Difang de xingshi zhengju guifan ruhe baozhang xingshi susongfa de zhixing], Legal Daily (Online), 22 April 05 (characterizing the She Xianglin case as a "typical" case); "Return of

"Murdered Wife" Calls China's Judicial System in Question", People's Daily (Online), 5 April 05 (citing an unnamed law professor as stating, "Although strictly forbidden by law, forced confession has been common in many places in China because the police are often under great pressure from above to solve criminal cases."). An identical quote appeared in Xinhua and China Daily stories on the She Xianglin case; Cheng Jishan, "Radical Measures to Policies Eliminate The Extortion of Confessions Through Torture" [Xiaochu xingxun bigong de zhiben zhice], Legal Daily (Online), 13 April 05 (characterizing torture as a "malignant tumor" that "is difficult to stop in practice.") Jin Yan, "Judicial Reform in China: Seeking a Bottom Line to Police Power (*Zhong guo fa gai ge tan jiu jing cha quan li di xian*) in Lifeweek (*San naian sheng huo zhou kan*) 258 (Sept 22-29, 2003).

55 *Xingxun Bigong Zui*, pg. 9:

China Official Torture Statistics (1979-1996)

Year(s)	Tortured confession cases formally established	Persons tortured to death
1979-1989	over 4,000 total (avg. 364+/year)	(no report)
1990	472	(no report)
1991	407	(no report)
1992	352	(no report)
1993	398	126
1994	409	115
1995	412	(no report)
1996	493	at least 32 (Jan.-Aug., MPS statistic)

56 "Qiu Xueqiang, deputy director of the SPP, said the use of torture, threats, delusion and lies to collect evidence or extract confessions must be stopped." "China urges police to stop using torture to make people confess", Agence France Press, 27 May 2005. Since 2003, a dozen procuratory organs including the procuratorate at Hengshui City in Hebei Province started an experiment with "Police Work Areas" to enhance the quality of investigations and prevent the use of torture. Within a Police Work Area, there is an interview room, an inquiry room, a room for psychological tests, a room for controlling and monitoring, a case seminar room, a medical room, police waiting room, police equipment room, and safe keeping room. All activities related to a case are monitored. The monitoring network extends to detention centres. Within a Policing Area, there must be at least two judicial police officers present. When the suspect leaves, s/he must be escorted by judicial officers. There is cassette-taping and video-taping of the entire process from the moment when the personnel participating in the procedure enter into

a Policing Work Area. "Police Work Areas have standardized the investigative departments' acts of law enforcement. They have placed investigative personnel under supervision from judicial police, directive personnel and monitoring systems from beginning to end. On the other hand, the serious and hushed atmosphere in Police Work Areas put psychological pressure on people being investigated. This improves results of interviews, ensuring that police is able to conduct their own case investigations systematically." March 2005 Study of the Prevention of and Counter Measures for The Extortion of Confessions by Torture of the Legal Studies Association.

57 The "Guiding Opinion Regarding Prevention of Extorting Confessions Under Torture During Criminal Case Activity" went into effect in Hebei province on January 1, 2006. Apparently the opinion states, "Oral evidence obtained through extortion under torture cannot serve as the basis for approving arrest and prosecution." In addition, the opinion provides that the local procuratorate will initiate an investigation into cases where extortion under torture may constitute a crime. Liu Ruichuan, president of the Hebei provincial high court, highlighted in the 2005 progress report on rule of law developments in Hebei province that "Any witness deposition, victim testimony, or defendant statement that is verified for authenticity, and categorized as obtained through extortion under torture or other illegal means, cannot serve as the basis of a [criminal] verdict."

58 The SPP will roll out a system of audio and videotaping with sound recording starting in March 2006 and video recording in October 2007. "Interrogations to be taped prevent confession by torture", Associated Press in Beijing 19 January 2006. The following information was provided to the Special Rapporteur in written comments from the PRC on 25 January 2006: "… as of 1 March 2006, the country's investigation and prosecution authorities will follow a three-step process in which interrogations of persons charged with crimes involving abuse of public office will be recorded in their entirety on audiotape or videotape. First, interrogations of all persons suspected of crimes involving abuse of public office must be recorded on audiotape in their entirety, and cases before the Supreme People's Procuratorate and the people's procuratorates at the provincial, provincial capital and eastern district levels involving bribery and abuse of public office must be videotaped in their entirety; secondly, the recording (sound and video) in their entirety of cases of bribery and of crimes involving abuse of public office shall be extended to people's procuratorates at the autonomous prefecture and municipal levels in the central and western part of the country and at the prefecture, county and district levels in the eastern part; thirdly, as of 1 October 2007, all interrogations of persons suspected of crimes involving abuse of public office shall be recorded in their entirety on both audiotape and videotape."

[59] In October 2005, the Supreme People's Court issued its second five-year reform plan restoring to the Supreme Court the power of review over the death penalty. As of 1 January 2006, courts are required to hold hearings in death penalty cases of second instance where an appeal has been raised because of serious factual or evidentiary problems. According to information provided to the Special Rapporteur by the Ministry of Foreign Affairs, in the second half of 2006, all death penalty cases of second instance will be tried in a court hearing.

[60] Indeed, despite a variety of legal, administrative, discipline inspection and auditing oversight systems (i.e. Party Committee Discipline Units and Oversight Police), central monitoring is undermined by the fact that the oversight organs tend to be dominated by the local PSBs, while the Party- and state-based oversight organs tend to strengthen the control of local Party officials over public security. This situation is aggravated by problems of under funding and poor remuneration for police, particularly in economically disadvantaged provinces. According to the March 2005 Study of the Prevention of and Counter Measures for The Extortion of Confessions by Torture of the Legal Studies Association (The Task Group On The Prevention of the Use of Torture in Interrogation), "In some impoverished areas, the investigating organs' budgets are extremely tight. This is also an important external reason for the use of torture. When money is tight, there arises the conflict between saving costs and improving success rate. The investigators, in order to save on costs, will not want to carry out difficult and detailed investigation. They tend instead to place their hopes on obtaining a verbal confession from the suspect. Using simple and economical methods such as these, it is very easy for torture to occur."

[61] Tanner, M.S., and Green. E., "Central-local relations and state coercive power: Decentralized policing, social control, and the "rule of law" in China Quarterly, July 2003.

[62] With regard to the "presumption of innocence", Art. 12 of the CPL states that persons shall not be found guilty without being judged as such by a People's Court according to law. However, the Rapporteur was informed by several sources that in practice, the presumption of guilt is the traditional mentality. This statement is supported by the research findings of the March 2005 Study of the Prevention of and Counter Measures for The Extortion of Confessions by Torture of the Legal Studies Association states, with regard to interrogators, "they tend to want to hear confessions to guilt. They are not willing to listen to suspects' defence that they are not guilty, even to the point whereby the investigators do not allow the suspects to argue that they are not guilty. The investigators tend to treat suspects defence as dishonest and an act of resisting interrogation. In that mindset, the investigators, in order to obtain a verbal confession early on, will often resort to torture."

63 With respect to the "right to remain silent", Art. 93 of that law states: "The criminal suspect shall have the right to refuse to answer any questions that are irrelevant to the case." In other words, there is no right to remain silent in relation to "relevant" questions.

64 In cooperation with a NPC inspection of the implementation of the Lawyers Law, the Beijing Public Security Bureau (PSB) surveyed 51,184 criminal detentions between October 2003 and April 2005 and found that only 7,425 suspects met with lawyers during the first 48 hours of detention. The article asserts that the most important reason for the low representation rate is that police and prosecutors do not trust lawyers and are cautious about allowing lawyers to intervene during the investigation stage of a case. Given that Beijing is among China's most legally advanced locales, so it is likely that even a smaller percentage of suspects meet with lawyers in less-developed parts of the country. In a related article, the Legal Daily cited survey data indicating that only 4.6 percent of criminal defendants meet with their lawyers within the first three days of detention, an even lower figure than that cited by the Beijing PSB. It too noted the problem of public security interference with lawyers, citing one longtime defense lawyer who said that meeting with his clients continues to be a headache and that while some defense lawyers are able to meet their clients, the number of meetings, time, content, and other matters are still subject to heavy restrictions.

65 The March 2005 Study of the Prevention of and Counter Measures for The Extortion of Confessions by Torture of the Legal Studies Association (The Task Group On The Prevention of the Use of Torture in Interrogation) found that while investigating the use of torture, there existed a 'three fears' ideology among some of those responsible: 1) The fear that the dynamism and case success rates of the police would be affected; 2) The fear that they might 'air their own dirty linen in public' affecting the reputation of their own unit and their track record; and 3) The fear that once torture was exposed, they themselves would be investigated and lose jobs. As a result, the study claims that those who investigated cases relating to the use of torture didn't seriously investigate and handle them, even to the point of taking the defense of the offenders. "They believed that the use of torture was just mistakes relating to work methods and was problems difficult to avoid if one wanted to do a good job. They often belittled the importance of it all. Even when there was penalty, it was lenient."

66 The Special Rapporteur was informed, for example, that in Prison No. 4 in Urumqi, the procurators have not received a single torture complaint during the last decade. In the Tibetan Autonomous Region, he was told that no complaint had been received since 2003 and in the Beijing No. 2 Municipal Detention Centre, none were received since its establishment in June 2004. In the Xinjiang Uighur Autonomous Region, two cases of torture were established by the courts since 2000, and in the Tibet Autonomous Region one such case had been

confirmed. The Deputy Procurator-General informed the Special Rapporteur that only 33 law enforcement officials had been prosecuted for torture throughout the country during the first nine months of 2005. In addition, the Government in its comments of 25 January 2006 provided the Special Rapporteur with the following statistical information:

	Cases prosecuted for coercive interrogation	Individuals convicted	Cases prosecuted for "subjecting imprisoned persons to corporal punishment"	Individuals convicted
2000	137	121	52	23
2001	101	81	38	34
2002	55	44	30	18
2003	52	60	32	27
2004	53	82	40	40

According to the 2005 SPP's report to the NPC presented on 9 March 2005 (covering the year 2004), 1595 civil servants had been investigated for suspected criminal activity in cases involving "illegal detention, coercion of confessions, using violence to obtain evidence, abuse of detainees, sabotaging elections, and serious dereliction of duty resulting in serious loss of life or property." The report goes on to note that this is a 13.3 percent increase over the previous year's totals and that the SPP personally investigated 82 of the most serious cases. No information is provided, however, on the number of convictions. When compared with other national statistics, the figures for 2005 as well as the earlier statistics are certainly the tip of the iceberg in a country the size of China. http://www.spp.gov.cn/site2005/scripts/listSub.asp?cl=9201.

67 Cf., e.g., the case of Hu Shigen in Appendix 2.

68 See, e.g., the cases of Yang Zili, Xu Wei, He Depu, Yang Jianli, Jigme Tenzin, Lobsang Tsuitrim, Jigme Gyatsu, Tohti Tunyaz Mozat, Rebiya Kadeer and Nur Mohammat Yasin in Appendix 2.

69 In response to the Special Rapporteur's characterisation of Re-Education through Labour as inhuman or degrading treatment, the host authorities wished to advance the following arguments: "First, reform and re-education are premised on helping detainees re-enter society. Since many detainees' legal knowledge and cultural level is relatively low, detention facilities organize education in legal knowledge, morals, current affairs, and cultural knowledge in order to raise their legal perception and cultural level. Second, for those detainees who render meritorious service or show clear awareness of the damaging nature of their criminal behaviour, detention facilities may, based on the circumstances, request sentence reductions or reduction of time [for re-education] on their behalf according to law, or make other appropriate reward. But

restrictive punishment measures are only used on those detainees who violate the administrative regulations of the detention facility. Third, detention centres do not organize any kind of productive labour. Aside from a small number of persons already convicted to short sentences who carry out cooking, cleaning, or other maintenance work, detainees are not required to work. Fourth, since many detainees are led to a life of crime because they love leisure and hate labour and resort to illegal means to gain others' property, in order to cultivate abilities and habits of self-reliance and prevent problems such as poor mental health because they have nothing to do, prisons and re-education through labour facilities organize appropriate work. The time and intensity are both lower than average in society at large, and each month they are paid wages. Detention facilities also provide occupational and technological training in such skills as computers, tailoring, sewing, electronics repair, carpentry, cooking, hairstyling, driving, and automobile repair, and those who pass examinations are given cultural and technological certificates recognized in the general public. In order further to enforce the law in a civilized manner, China's Ministry of Justice Prison Bureau has begun training psychotherapists in the prison system with national professional accreditation in order to prevent and eliminate torture of prison inmates. At present nearly 90 per cent of China's prisons have begun this work and more than 1,000 prison system psychotherapists have already been trained."

[70] See the Government white paper, "Building of Political Democracy in China", 22 December 2005: "China holds that the harmonious world should be democratic, harmonious, just, and tolerant."

[71] Prison officials indicated that the average length of appeal was two months; that this practice was based on a nation-wide regulation for detention facilities; and that such measures were necessary for the prisoners' safety, the security of others, to prevent them from fleeing, and to prevent suicide.

[72] Chinese law provides for the death penalty for a wide range of offences that do not reach the international standard of "the most serious crimes." Under 51 different articles of the revised CL, the death penalty can be applied to more than 60 different crimes, including many economic and other non-violent crimes. The Report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, E/2005/3, para. 44, states that China is among those countries that do not publish statistics on sentences and executions. The Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions indicated in his 2005 Report to the Commission on Human Rights that the most important step that China could take at this stage would be to make the details as to the number of persons executed and crimes for which they are executed publicly available. The report states, "In a considerable number of countries information concerning the death penalty is

cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families. Such secrecy is incompatible with human rights standards in various respects. It undermines many of the safeguards which might operate to prevent errors or abuses and to ensure fair and just procedures at all stages. It denies the human dignity of those sentenced, many of whom are still eligible to appeal, and it denies the rights of family members to know the fate of their closest relatives. Moreover, secrecy prevents any informed public debate about capital punishment within the relevant society." Paras 57 and 58. Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions, Report to the Commission on Human Rights, E/CN.4/2005/7, paras 57-58.

[73] According to information received, the windowless execution chamber at the back of the van contains a metal bed on which the prisoner is strapped down. Once the needle is attached by a technician, a police officer presses a button and a syringe automatically injects the lethal drug into the prisoner's vein. The execution can be monitored from a video screen beside the driver and can be recorded.

[74] According to the 2004 SPC Work Report, in 2003 alone, the SPC changed the original sentence or ordered retrials in 118 of the 300 death penalty cases that it reviewed, leaving hopes for a reduction in application of the death penalty in China. The obligation of SPC review is set out in both the CL and the CPL (see below), but was undermined by a February 1980 decision by the Standing Committee of the National People's Congress by devolving the authority in certain categories of crimes, notably capital crimes of violence, to the higher courts and for drug offences to certain provincial-level higher courts. Pursuant to Articles 199 and 200 of the CPL of China, the SPC is the designated court to review and approve all death sentences rendered by lower courts across the country. According to Article 199, "Death sentences shall be subject to approval by the SPC." Article 200 stipulates, "A case of first instance where an Intermediate People's Court has imposed a death sentence and the defendant does not appeal shall be reviewed by a Higher People's Court and submitted to the SPC for approval. If the Higher People's Court does not agree with the death sentence, it may bring the case up for trial or remand the case for retrial."

[75] A similar recommendation was made by the Working Group on Arbitrary Detention, E/CN.4/2005/6/Add.4, 29 December 2004, para 78.

Appendix 2

Places of detention - Individual cases

1. The following accounts are based on allegations by detainees while being interviewed by the Special Rapporteur. The Government has not yet provided information on these cases or responded to the recommendations of the Special Rapporteur.

A. Beijing

I. **Beijing Prison No. 2** (Visited on 22 and 24 November 2005)

2. The Special Rapporteur was informed by a number of detainees that, even after persons who have not confessed to an offence have been convicted and sentenced, they are subject to restrictions within the prison, such as limited or restricted access to telephone or family visit privileges until they confess, or are provided the incentive of a reduced sentence if they confess.

3. **Hu Shigen**, aged 50. Founding member of "China Freedom and Democracy Party" and "China Free Labour Union," convicted of "organizing and leading a counterrevolutionary group" and "counterrevolutionary propaganda and incitement" by the Beijing Intermediate People's Court and sentenced on June 14, 1995 to 20 years' imprisonment. Currently serving sentence in Beijing No. 2 Prison. He is due for release on May 26, 2012. Detained on 27 May 1992 and formally arrested on 27 September 1992, he was interrogated between July and August 1992 in Section 7 of the Beijing Public Security Second Bureau. Each interrogation lasted for prolonged periods of time, one session in particular lasting for 20 hours, without a recess. He stated that he had not been tortured during the three years in the detention centre although he did sustain a minor injury during a 'conflict' with the court clerk. After this 'conflict' he was handcuffed behind his back and thrown off a truck. He mentioned this incident in court. When questioned by the Special Rapporteur about any allegations of ill-treatment during interrogation, he was reluctant to discuss this. Despite being put under pressure to do so, he did not confess for the first 12 years of his detention. For this reason he was treated differently from other inmates in terms of family reunion and telephone call privileges. He eventually confessed in April 2003 as he felt that his situation was helpless, and he wanted to receive a reduced sentence, though no reduction has been granted to date. In the past two years he has not been allowed to make any phone calls. He has seen his daughter twice since he was detained, in 2004 and 2005. He receives visits from his brother. He is allowed to write letters. He complains of heart problems, hypertension, nasal/respiratory tract problems, back pains and numbness on the right side of his body. While treatment is provided by prison medical staff, the medications available and the services are limited. **The Special Rapporteur recommends that he be granted the same rights as other prisoners, in particular concerning the right to phone calls with family**

members etc. The fact that a person has not confessed should not be used as an excuse to impose additional punishment on a detainee such as refusal of the right to access with the outside world. He should be ensured access to adequate medical care including appropriate medication. Taking into account that the above-mentioned person was sentenced for political crimes which were removed from China's Criminal Law in 1997, the Special Rapporteur appeals to the Government that he be immediately released.

4. **Yang Zili**, aged 34, a former journalist and member of the 'New Youth Study Group,' which organized discussions on democratic and political reforms in China. On 13 March 2001, he was detained together with other members of the group on charges of 'subversion.' He was detained in the Beijing Municipal State Security Bureau until February 2004, where he was interrogated from March to June 2001. His first court hearing was in September 2001 and the second in May 2003. During this period he was not allowed to communicate with his family. He had the right to talk to a lawyer but strict conditions were imposed on his meetings. He had seen his wife twice since his arrest. He was sentenced on 28 May 2003 by Beijing Municipal No 1 Intermediate People's Court to eight years imprisonment and 2 years deprivation of political rights for the crime of 'subversion'. During his interrogation by state security agents in April 2001 he was forced to stand from 9pm to 5am beside a chair with one hand handcuffed to the chair, and was not permitted to sit down during this time. This was carried out with the purpose of extracting a confession. During his detention in the State Security Bureau he was aware that personnel only beat those who they thought had a 'bad attitude'. He did not confess. For this reason he cannot telephone his parents or have visits from relatives, though he can write letters and is allowed monthly visits from his wife. Incentives for confession are the possibility of reduced sentences, visits by relatives or family reunion privileges. He reports his present health is satisfactory though the in-house medical services are limited. **The Special Rapporteur recommends he be granted the same rights as other prisoners, particularly the right to phone calls with and visits from family members. The fact that a person has not confessed should not be used as an excuse to impose additional punishment on a detainee such as refusal of the right to access with the outside world or removal of privileges. Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

5. **Xu Wei**, aged 31 years, a former writer and editor for Beijing newspaper *Consumer Daily*, and member of the 'New Youth Study Group'. On 13 March 2001, he was detained together with other members of the group by Beijing State Security officials and was held in secret detention for over two years without trial. He was tortured during police interrogations by agents of the Office Responsible for returning Criminals from Outside of Beijing. He was tortured by agents of State Security who brutally beat him, used electric batons to shock him in his solar plexus, soles of his feet and genitals. He continues to experience occasional numbness

in his lower body. His confession was extracted through torture and he was sentenced to 10 years imprisonment and 2 years deprivation of political rights on 28 May 2003 for the crime of 'subversion' despite having raised allegations of torture in court. Xu's case was submitted to the WGAD. At the time of the meeting with the Special Rapporteur, he was in poor health, appearing thin and exhausted, and had recently gone on hunger strike. He indicated that he was not allowed to see a lawyer until after his trial which is why he went on hunger strike. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

6. **He Depu**, aged 49, a former member of the Chinese Democratic Party (CDP). On 4 November 2002, he was arrested, pushed into a police car, handcuffed and his coat was wrapped over his head making it difficult for him to breathe. He fell unconscious in the car. He was driven to an unknown location and carried to a windowless room on the third floor of a three-storey building. He Depu was later taken to Operation Division 1, Beijing Public Security Bureau, where he was held for 85 days and interrogated about CDP activities. He was confined to bed for 85 days and constantly guarded by four armed police. He was told to lie in bed with his hands and feet visibly outside of the blanket. If he did not obey the blanket was taken away. If he used his hands to scratch himself this was a violation of the rules. He said that the purpose was to weaken him; as if *"to kill someone with a soft knife."* As a result he did not sleep properly and was cold as the blanket was very thin. One day he touched a nearby radiator to see if it was warm and was denied a meal as punishment. He reportedly sustained bed sores on his back and bottom. He did not confess. In the Collection and Redistribution Centre (CRC) his head and face were pushed against the floor in order to force a confession. A policeman and four inmates held him down against the floor for 5-6 hours. He first saw his wife and lawyer in the summer of 2003. At the end of 2003 he was sentenced to eight years in prison by Beijing Number 1 Intermediate People's Court for 'instigation and subversion" of the Government. Following the trial, he reportedly called for democracy in China and for the end of one-party rule, for which he was swiftly taken by the police to a pretrial chamber, where he was handcuffed behind his back, his head was pushed backwards causing him to fall to the floor, and was beaten and trampled on for 20 minutes. He could not get up and suffered from a swollen head and body. He arrived at Beijing Prison Number 2 on 14 January 2004. He complained that the food was bad, that he can see his wife for only 30 minutes every month. He is only allowed to exercise for two hours per week but this is not guaranteed. In his cell there are 10 people in an area of approximately $2m^2$. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

7. **Yang Jianli**, aged 42, US-permanent resident (holding a Ph.D. degree in Mathematics from UC Berkeley (1991) and a Ph.D. in Political Economy from the Harvard University Kennedy School of Government (2001) and political activist. Barred from returning to China for

approximately 13 years, he entered China illegally and was arrested as he sought to travel to Thailand on 27 April 2002. For one year his family was not informed of his arrest. He was held in a Beijing public security facility for over seven months and was then moved to the State Security Detention Centre. He recounted that on one occasion, about two weeks after the Chinese New Year in late February 2003, as he was praying whilst washing, a guard asked him what he was doing and he replied that he was a Christian. Two days later four guards beat him because he talked back and 'had not shown proper respect.' He was forced to squat for 1.5 hours, and was kicked and beaten with an electric baton. In an opinion adopted on 7 May 2003, the Working Group on Arbitrary Detention concluded that Dr. Yang's arrest and detention are arbitrary, and infringed his right to a fair trial. This decision was based on evidence that the Chinese authorities had detained Dr Yang for more than two months without an arrest warrant or charge. They also failed to formally acknowledge Dr Yang's arrest or give him access to a lawyer throughout this time. The WGAD requested that the Chinese Government "take the necessary steps to remedy the situation." In March 2004, in protest of his continued detention despite an overdue verdict, he refused to wear a uniform. As punishment he was handcuffed for two weeks. He was convicted of espionage and "illegal border crossing" by Beijing No. 2 Intermediate People's Court and sentenced on 13 May, 2004 to five years' imprisonment plus deprivation of political rights for one year. Shortly thereafter prisoners were sent to his cell to regularly harass him, the accumulated stress of which reportedly resulted in him suffering a stroke in July 2004. He is due for release from Beijing No. 2 Prison on 27 April, 2007. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

II. **Beijing No. 2 Municipal Detention Centre** (Visited on 23 November 2005)

8. The authorities initially brought the Special Rapporteur to a cell of nine newly arrived detainees. They sat rigidly with newspapers and booklets in their hands, reportedly studying for an exam, not even flinching when the Special Rapporteur approached them. The same situation of strict discipline, fear and obedience was apparent in other cells where the pretrial detainees were held. Only one detainee was willing to speak, after lengthy reassurances (see below). The Special Rapporteur then visited the section of the Beijing No. 2 Municipal Detention Centre which holds prisoners sentenced to death at first instance and awaiting appeal. There were approximately 50 death row prisoners held in 12 cells, containing between 7 to 12 prisoners. Prisoners sentenced to death were handcuffed, as well as shackled with leg-irons weighing approximately 3kg for 24hrs per day, including during toilet visits and bathing. This practice is reportedly based on a nation-wide regulation for detention facilities and officials indicated this was for their own security, to prevent prisoners from committing suicide, and for the security of others. Among the death row prisoners in each cell, there were pretrial detainees who assisted the others. The Special Rapporteur noted the presence of a stainless steel restraint chair which

was fixed to the floor and had a steel belt which could be swung across the prisoner's mid-section and fixed to the other side of the chair. These chairs were used in interrogation rooms which separated interrogators from suspects with iron bars, and in "education" rooms, where prisoners were restrained while being educated about how to rebuild their lives. The Special Rapporteur observed in one room a prisoner, who was sentenced to death, handcuffed and shackled, restrained in the chair during a discussion with two officers about his treatment in the facility. He spoke to another death row prisoner who requested absolute confidentiality. **The Special Rapporteur is of the opinion that the continuous handcuffing and shackling of death row prisoners constitutes an imposition of additional punishment without justification, leading to severe suffering, and amounting to torture, as defined by article 1 CAT. The Special Rapporteur recommends that this practice be abolished.**

9. **He Zcheng Xiong**, aged 19, Qio Xian village, Yudai town, Daxing district. On 20 July 2005, he was detained by police at his home in connection with an altercation with a rival gang. He was handcuffed and brought by car to the Daxing District Public Security Bureau. He was brought to the Beijing No.2 Municipal Detention Centre in August, and indicated that he was never ill-treated by the police. He stated that he confessed on the first day he was interrogated, yet remains in custody due to complications of his case. He cannot communicate with his family, except through his lawyer, who has fully informed them about his situation. When questioned by the Special Rapporteur why he and his nine cell mates were sitting rigidly in a row staring at a newspaper unflinchingly when he entered the cell, He Zcheng Xiong stated that it was customary to concentrate when studying. In the three months he was held in the 4 x 8 m cell, he indicated that there were no incidents between prisoners due to the harmonious relations they had with each other. Discipline consisted of discussions with guards on how to improve their lives. Upon arrival at the facility he was examined by a doctor, and inspected daily.

III. **Beijing Municipal Women's Re-education Through Labour (RTL) Facility** (Visited on 24 November 2005)

10. The Special Rapporteur observed that the general conditions of the facility seemed satisfactory. However, he is deeply concerned by the prolonged periods for which detainees are held in solitary confinement. During his visit, he inspected the 'Intensive Training' section which houses 10 small solitary confinement cells and was informed by the prison authorities that the maximum duration in solitary confinement was seven days. However, on consulting the registry the Special Rapporteur noted that of the six people held in solitary confinement between 1 January 2005 and 24 November 2005, three had been held for 60 days and one for 27 days. Detainees also stated that Falun Gong practitioners who had not renounced their beliefs after six months in detention were placed in the Intensive Training section until they were 'reformed'.

Falun Gong practitioners formerly detained at this facility mentioned that they would refer to this section as the "Intensive Torture Section".

11. The Special Rapportuer notes that a number of detainees declined to speak to him, and others requested absolute confidentiality. The only person willing to speak openly with the Special Rapporteur was the following:

12. Ms. **Yang Yu Ming**, a Falun Gong practitioner. Since 14 April 2005, she has been detained for "disrupting social order." She described her treatment in detention as 'quite good'. She said that she is allocated study time and sometimes is able to do physical exercise. It is her first time in RTL and she has had no encounter with ill-treatment to date. She said that the majority of detainees are Falun Gong practitioners.

B. Lhasa, Tibet Autonomous Region

IV. **Lhasa Prison No. 1** (Visited on 26 November 2005)

13. The prison has a male prison population of 800 detainees of which approximately 70% are Tibetan, 20% are Han Chinese and 10% belong to other ethnic groups. General conditions were satisfactory and inmates can work by weaving Tibetan mats, planting flowers and fixing cars. In terms of solitary confinement, the Special Rapporteur noted that the cells measured 4m x 8m, with a large window and concrete floor. He was told that a detainee can spend between one and 15 days in solitary confinement. The Special Rapporteur was not given access to any prison registers as the relevant Officer was not present.

14. The first set of prisoners that the Special Rapporteur approached for an interview all declined the opportunity to speak with him. After lengthy assurances, one prisoner was willing to speak openly with the Special Rapporteur.

15. **Tseren Puntso**, aged 23. On 13 July 2002 at his business, he was arrested in connection with the homicide of a person who died as a result of a fight the previous day. He confessed immediately at the police station and was detained at the Shikaze Pretrial Detention Centre until January 2003, when he was transferred to Lhasa Prison to serve a seven-year sentence, which has been reduced to six. From this time until April 2003 he was held in the section known as the "Team for New Prisoners", where new arrivals undergo education on prison rules. He indicated that he has not been ill-treated. In the summer time he carries out basic mechanical repairs. Recreation includes basketball games in the main court of the prison. Tibetan, Chinese and mathematics are taught at the prison.

V. **Tibet Autonomous Region Prison, also known as Drapchi Prison** (Visited on 27 November 2005)

16. The prison, sometimes referred to as Drapchi Prison, has a mixed population of approximately 900 inmates of which 7 to 8% are women. The Special Rapporteur was informed that virtually all of the detainees have confessed to their crimes, and that a strong emphasis on education is placed on those who have not yet confessed. He was told that there had been a sharp decrease in solitary confinement cases, with only one such case since 2003 where the person concerned wanted to commit suicide. There are 10 isolation cells, the tenth cell is padded and designed especially for detainees with suicidal tendencies. All have a window in the roof with direct sunlight and also a surveillance camera. The Special Rapporteur was also provided with a list of 15 names of detainees who had died in custody - one related to suicide and the other 14 due to illness. While no detainee interviewed in TAR prison claimed to have been tortured or ill treated during detention there, the Special Rapporteur received reports from former TAR prisoners held in other facilities, who reported being bound and beaten with a sand-filled plastic stick, as well as reports of being beaten with electroshock batons. Although high level officials of TAR had informed the Special Rapporteur that all prisoners who had received a sentence of more than 10 years were serving their sentence in the TAR prison, he found out only during his visit to the TAR prison that most of the prisoners that the Special Rapporteur wished to interview had in fact been moved on 12 April 2005 to the newly established Qushui prison, the existence of which had not been mentioned at all during the briefing with the TAR officials.

17. The Special Rapporteur requested to meet with a number of prisoners but was told only after a considerable delay that these individuals had been transferred in April 2005 to a newly established facility, Qushui Prison. Detainees interviewed at Drapchi prison requested absolute confidentiality.

VI. **Qushui Prison** (Visited on 27 November 2005)

18. Qushui prison is a new prison which was opened in April 2005. It has a male prison population of over 300. It is to this prison that a large number of former TAR prison detainees were transferred as part of its reorganization. The Special Rapporteur was informed that Qushui prison is for very serious crimes (i.e. sentences of over 15 years), and holds the principal criminal actors while accessories are held in Drapchi. The Special Rapporteur was particularly concerned by reports that Tibetan monks held in this prison are not allowed to pray and that in some cases are only allowed outside of their cells for 20 minutes per day. Concern was also expressed by reports that prisoners cannot work nor exercise and that they have nothing to read. Prisoners complained about the food, the extreme temperatures experienced in the cells during the summer and winter months and a general feeling of weakness due to lack of exercise. Prisoners transferred from Drapchi stated that basic conditions were better in Drapchi. In

particular, that the prison lacks proper work and recreation facilities for long term prisoners. **The Special Rapporteur recommends that in general: prisoners are provided with recreational activities; are allowed to conduct religious worship; the temperature is adequately controlled, particularly in summer and winter months; and that the quality of food is improved.**

19. Due to time constraints (late arrival from Drapchi prison, strict working hours of prison staff), the Special Rapporteur was able to interview only 3 out of a list of 10 prisoners whom he had wished to see.

20. **Jigme Tenzin** (Bangri Tsamtrul Rinpoche), aged 43, a lama and founder of an orphanage, was arrested in August 1999 and later convicted of inciting splittism and sentenced to 15 years and seven months imprisonment in a closed hearing by Lhasa Municipal Intermediate People's Court in September 2000. His sentencing document lists evidence against him that includes meeting the Dalai Lama, accepting a donation for the home from a foundation in India, and a business relationship with a Tibetan contractor who lowered a Chinese flag and attempted to blow himself up in front of the Potala Palace in Lhasa in August 1999. He acknowledged meeting the Dalai Lama, accepting the contribution, and knowing the contractor, but he denied the charges against him and rejected the court's portrayal of events. He told the Special Rapporteur that the first five days of his detention was the most difficult period as he was continuously interrogated night and day. He was held handcuffed with one hand behind his shoulder and the other around his waist, and empty bottles were put in the spaces between his arms. His legs were fettered, he was hooded and made to kneel on a low stool for 1.5 hours. The room where he was held was dark and dirty and without natural sunlight. Regular interrogations continued over the following three months. Most of the time he was wearing handcuffs and shackles, even when eating and sleeping. Because of this and because he was afraid it was often hard to sleep. The police wanted him to confess for the flag incident, as well as to having established the children's home for political purposes. He was moved to Gutsa for one year and then to Drapchi. In Gutsa he stayed together with either three to five persons in a room which had a monitoring device. In his section there were only "political prisoners". After 2000 his treatment improved. He had access to a television, water when he wanted it, and had longer free time. He was provided educational classes regarding the status of Tibet. After these classes he confessed as he did not want to spend his "whole life" in prison, having already spent six years in prison. He complains of heart disease and gall stones, for which he mostly treats with family-provided medication. His family visits him once a month. He has no right to telephone but he can send letters to his wife. He complained of monotony and boredom, having to spend most of his time in his room and not being allowed to pray. He told the Special Rapporteur that the most serious criminals are locked up most of the time. He can, however, go outside in the morning until noon. **Since he has been convicted of a political crime, possibly**

on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.

20. **Lobsang Tsuitrim**, aged 29, a monk. He was first detained on 8 November 1995. During interrogations he was shocked with an electric baton all over his body, including on the face. In one incident in Drapchi, on 4 May 1998, his arms and legs were tied together and he was beaten with a stick (plastic with sand inside) in connection with a disagreement concerning the raising of flags. Since then he has not been subjected to ill treatment, and is expected to be released in 2009. He pointed out that the conditions at Drapchi were better than in Quishui Prison: the food is worse; he only has 20 minutes of free time outside his cell a day; the temperatures inside in the summers are hot and very cold in the winter. In either Drapchi or Qushui Prisons, he complained of boredom: the prisoners must sit in their cells, they cannot pray though many are devoutly religious, nor can they work, practice sports, or have access to reading material. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

21. **Jigme Gyatsu**. On 30 March 1996, he was arrested and beaten by the criminal investigation team. He was subsequently sentenced to 15 years imprisonment and 5 years deprivation of political rights on 25 November 1996 by Lhasa Municipal Intermediate People's Court for the crime of endangering national security in connection with establishing an illegal organization. He told the Special Rapporteur that the ill treatment was worst in Gutsa, where he stayed for one year and one month. Since the persons he was charged together with had already confessed, he also decided to confess. He then was transferred to Drapchi Prison in April 1997. In one incident in March 2004, he yelled out, "Long live the Dalai Lama," for which he was kicked and beaten, including with electric batons. The electric batons were used on his back and chest with painful effect, and ceased once the Chief of Police came and stopped it. After this incident his sentence was extended for an additional two years. He recalled that the general conditions in Drapchi were better than in Quishi Prison: better food, the cells were better lit and ventilated, and the temperatures inside were not as extreme in summers and winters. He can spend 3.5 hours per day outside of his cell. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

C. Urumqi, Xinjiang Uighur Autonomous Region

VII. **Urumqi Prison No. 3** (Visited on 29 November 2005)

22. The prison has a population of approximately 1925 male detainees. The Special Rapporteur was informed that this prison was in the process of moving to a new facility.

One detainee told the Special Rapporteur that he is interrogated on a daily basis and that he was unable to communicate with his family.

23. **Tohti Tunyaz Mozat** (pen name Tohti Muzart), aged 46, an ethnic Uighur historian and author from Xinjiang. Tohti Tunyaz was a postgraduate student at the University of Tokyo in Japan specializing in China's policy towards ethnic minorities. When he travelled back to the XUAR to collect material for his thesis (on the region's history before the establishment of the People's Republic of China in 1949) he was arrested by agents of the State Security Bureau on February 6, 1998. He was formally charged on November 10, 1998, tried on March 10, 1999 in the Urumqi Municipal Intermediate People's Court and later convicted and sentenced to 11 years imprisonment on appeal to Xinjiang Uyghur Autonomous Region Higher People's Court for "inciting splittism" and "illegally procuring state secrets" on February 15, 2000. He is due for release on February 10, 2009. He told the Special Rapporteur that he had been held in a pretrial detention facility unknown to him for more than two years. At the beginning he was the only one in the cell. He was interrogated daily and said that he had not been physically tortured. He was unable to communicate with his family. He had two lawyers, who visited him six months after his arrest and before the prosecution stage. Only after the verdict in early 2000, when he was sentenced to 11 years' imprisonment, was he put in a cell with other persons. After the two years he was brought immediately to Prison No. 3. He informed the Special Rapporteur that the guards are fairly respectful and kind and do not mistreat him verbally or physically. He has received visits from his family and writes letters. He works for eight hours a day doing technical work. In May 2001, the WGAD stated that his detention was arbitrary and contravened several UDHR articles, including the rights to freedom of thought, opinion and expression. The WGAD stated that, ""Mr. Tohti Tunyaz cannot be sentenced merely for writing a research paper, which, even if it were published, lay within his right to exercise the freedoms of thought, expression and opinion which are enjoyed by everyone and which can by no means be regarded as reprehensible if exercised through peaceful means, as they were in this case." **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

24. **Abdulghani Memetemin**, aged 41, journalist for German-based East Turkistan Information Center (ETIC). On 28 August 2002, by approval of the Kashgar Secondary Court, he was arrested by Kashgar State Security officers in the main square of Kashgar, on suspicion of instigation of secession of country, and providing state secrets to organizations outside the country. As soon as he was arrested, the police told him about his right to have a lawyer, and was repeatedly provided the opportunity to obtain one, which he refused. He was detained in the guard room in the Kashgar State Security Bureau for one month, and was not tortured. During the interrogation he confessed to all crimes. During this time no one knew where he was being detained except for his wife. On 28 December 2002, he was sentenced to nine years'

imprisonment and 3 years deprivation of political rights. He arrived at Prison No. 3 on 17 February 2004, and for the first year he could not speak with any other person apart from the guards. He indicated that he now receives monthly family visits, has access to reading materials and is unaware of verbal threats or ill-treatment.

VI. **Liu Dao Wan Detention Centre** (Visited on 30 November 2005)

25. The Special Rapporteur was disturbed by the conditions of one death row detainee who was shackled continuously. Unlike the Beijing No. 2 Municipal Detention Centre, death row prisoners in Liu Dao Wan are not continuously handcuffed. The Special Rapporteur is of the opinion that the continuous shackling of death row prisoners constitutes an imposition of additional punishment without any justification, leading to unnecessary suffering.

26. **Rebiya Kadeer**, aged 59. The Special Rapporteur conducted an interview with Rebiya Kadeer in Geneva on 19 October 2005. Rebiya Kadeer, of Uighur ethnic decent, was a successful businesswoman and philanthropist as well as an advocate for the Uighur ethnic group and women's rights in the PRC. She was arrested in August 1999 on her way to meet a delegation from the United States Congressional Research Service to complain about "political prisoners" in Xianjiang. After a secret trial, the Urumqi Intermediate People's Court sentenced her to eight years in prison on 10 March 2000 for 'unlawfully supplying state secrets or intelligence to entities outside China' (CL 111). The written verdict describes these 'state secrets or intelligence' as news clippings from publicly available newspapers in Xinjiang that she had mailed to her husband in the United States. Her eight year sentence was set to expire on 12 August 2007 but was cut short by 12 months for good behaviour. She was released from custody in April 2005 and is currently residing in the US. Rebiya Kadeer alleges that she was held in solitary confinement in Liu Dao Wan Detention Centre for 2 years from August 1999 until August 2001 before being transferred to No. 2 Women's Prison (Baijahu). For these two years she was held in a dark cell approximately 4 x 3m. She was forced to sit in her room on a small wooden stool with her hands on her knees, looking down at the floor, for 12 hours per day. She was not allowed to receive visitors during this time. She was seldom allowed to leave her cell to go outside. Over a period of 45 days she was only allowed outside for 10 minutes and she was interrogated 90 times. While she was never physically tortured, she told the Special Rapporteur that guards would torture detainees in adjacent cells in order to scare her into confessing. She said that the most severe suffering which she endured was caused by the fact that she was not allowed to speak to anybody apart from the guards for 2 years and was not allowed to move. She alleges that she overheard a conversation of 2 guards relating to the existence of a 'water torture chamber' located in the basement of the facility. While there have been no recent allegations of water torture carried out at this facility, the Special Rapporteur was able to confirm the existence of a well in a below-ground outhouse located in the grounds of the

facility similar to that described to him by Rebiya Kadeer which is currently being used to store vegetables.

27. **Zhou Hai Zhong**, aged 23. He was sentenced to death at first instance on 11 August 2005 for the kidnapping and murder of two children. He is currently awaiting a decision on his appeal. He has been wearing shackles 24 hours per day since after his trial. He spends most of his day in a 19 people cell where he has to sit cross-legged on a mattress listening to a cell mate read aloud the prison regulations and rules. **The Special Rapporteur is of the opinion that the continuous shackling of death row prisoners constitutes an imposition of additional punishment without justification, leading to suffering. He recommends this practice be abolished.**

28. **Evance Orphan Minison**, a Malawi national. On 4 June 2005, he was arrested at the airport in Urumqi on suspicion of drug offences, brought directly to a local police station, and immediately confessed to the charges. He has a lawyer but the lawyer is not proficient in English and Mr Minison does not understand Chinese. He was transferred to Liu Dao Wan Detention Centre around 23 October 2005, and is currently awaiting his first instance hearing. He says that the conditions were better in the police station where he was first detained. He is made to sit cross-legged on a mattress with fellow detainees for the most part of the day as a form of re-education. This involves the "chief" of the room (according to prison guards the most educated person in the cell is nominated 'chief') reading from a text, normally the prison regulations or the Criminal Code. None of his fellow detainees speaks English and there are no books or newspapers in English. He complained that he was very cold and that while he is sitting he is not allowed to wear his hat to cover his ears. He is not allowed to go outside. He has not been able to contact his family. **The Special Rapporteur recommended that he be provided with a lawyer who speaks English, with English reading material, be able to contact his family, and be provided warm clothing. The prison director agreed to implement them immediately that same afternoon in so far as this was possible within the framework of the national laws and regulations of China.**

VII. **Urumqi Prison No. 1** (Visited on 30 November 2005)

29. The prison was opened on 26 June 2002 and has a male prison population of which 1,337 are Hans, 1,056 are Uighur, 400 are Hui, 200 are Kazakh and the remainder belong to other ethnic groups. The Special Rapporteur was also concerned by reports that detainees were not allowed to pray in detention.

30. The Special Rapporteur notes that a number of detainees interviewed requested absolute confidentiality.

31. **Nur Mohammat Yasin** (pen name Örkixi), aged 31, a Uighur writer and poet and author of the book, *Wild Pigeon*. He was arrested by the PSB and questioned by the SSB. During interrogations between 30 November 2004 and 17 May 2005 he was subjected to threats and beatings by the Kashgar Prefecture State Security Bureau. In one incident during an argument with a policeman, he was hit in the face and suffered a bleeding nose. He was sentenced to 10 years' imprisonment on charges of inciting separatism because of having published the book Wild Pigeon. He was brought to Prison No. 1, where he was beaten by fellow prisoners in his cell because he did not speak Mandarin. He thinks that there is no point in complaining to the prison guards. **Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.**

VIII. **Urumqi Prison No. 4** (Visited on 1 December 2005)

32. Urumqi Prison No. 4 has a male prison population of 1,731 of which 741 are Hans, 689 are Uighur, 170 are Hui and less than 1% is Mongolian. 134 detainees are sentenced to life imprisonment, 71 are sentenced to death penalty with 2 year reprieve and the remainder have fixed term sentences. 12% of the prisoners are detained for endangering national security. During the first three months in detention there is a special psychological training to see if the detainees have a violent disposition. If deemed violent they receive a separate management. At times if a detainee is 'not in a good mood' they can be seen as a threat and be subjected to seven days of 'special management'. In terms of solitary confinement there is a maximum duration of 15 days. The Special Rapporteur was able to interview two detainees who were in solitary confinement. One detainee had been held in solitary confinement for nearly three weeks, and the second detainee did not know anymore for how long he had been held in solitary confinement.

33. The Special Rapporteur noted that one political prisoner convicted of political crimes whom he interviewed in Prison No.4 requested absolute confidentiality.

34. **Yi Sheng Tang**, aged 44. He has been in solitary confinement for nearly three weeks. At the time of the meeting with the Special Rapporteur, it was apparent that he was suffering from psychological problems and was distressed. **The Special Rapporteur recommended to the prison officials that he be immediately released from solitary confinement. The prison officials promised to do whatever was possible to comply with the request of the Special Rapporteur.**

35. **Cao Xin Dong**, aged 43. He did not know how long he had been in solitary confinement for and had not been told how long he would be kept in. He was sentenced to 20 years imprisonment for car theft and fraud.

Appendix 3

Individual cases - Outside detention facilities

1. The following cases document interviews carried out by the Special Rapporteur with individuals outside of detention. The interviews were either carried out in person or by telephone. The interview partners were either alleged victims of torture or ill-treatment or family members of alleged victims, or lawyers representing torture victims. In addition to torture allegations, some interviews (Nos. 1, 2, 3, 4) also provide evidence about attempts of the Chinese authorities at obstructing the fact-finding of the Special Rapporteur. In two cases (Nos. 3 and 5) the Government denied the allegations and provided a different version of the facts which have been appended.

2. **Gao Zhisheng**, aged 41, lawyer, Beijing. (Interview in Beijing on 20 and 21 November 2005)Active on cases involving corruption, land seizures, police abuses and religious freedom, he reported that he and his family have been put under constant surveillance since 19 October 2005. This followed the publication of an open letter of 18 October to the President of the NPCs, concerning the persecution of Falun Gong. Gao Zhisheng has to date published three open letters to the Chinese authorities protesting the treatment of Falun Gong practitioners in China. He has also carried out a number of 'fact-finding' trips including to Urumqi in order to investigate the alleged persecution of Christians and other minorities. His law firm was closed down in November 2005 and shortly afterwards his personal permit to practice law was revoked. The Special Rapporteur met with Gao Zhisheng on the evening of 20 November. Gao Zhisheng reported that on his way to the meeting he was followed by three cars that attempted to obstruct him from meeting the Special Rapporteur. Photographs provided by Gao Zhisheng indicate scratches on both sides of his car where the police cars collided with. His wife reported that during the visit of the Special Rapporteur there were five cars outside his house 24 hours a day and that three agents were following his child to school and back every day. During the meeting with the Special Rapporteur, he noted that he and his team were being heavily monitored by intelligence officers with portable listening devices and cameras from an adjacent table. When he approached them the three officers become irate, and the meeting with Mr. Gao was continued elsewhere. **The Special Rapporteur protested to the Ministry of Foreign Affairs the following day.**

3. An urgent action was sent out on 26 November 2005 in relation to the above events. On 21 December 2005 the Special Rapporteur on Torture submitted to the PRC a letter of allegation in relation to a decision to close down the legal practice of Mr Gao Zhisheng. No response has been received to either of the above communications to date. The Special Rapporteur continues to receive worrying allegations concerning the situation of this person

including the following; that on 13 January 2006 Gao Zhisheng was beaten by plain-clothes officers after he tried to protest against aggressive surveillance and that, on the night of 17 January 2006, cars he believes belong to the security services attempted to run him down.

4. **Yao Fusing**, aged 55, worker's representative. (Interviewed out on 22 November 2005 with his wife Guo Sujing in Beijing). He was arrested on 17 March 2002 but officially taken into custody on 29 March 2002. During his interrogation in Tialing Detention Centre, 17-21 March 2002, he was handcuffed and shackled to the floor. In Liaoying pretrial detention centre he was not given a quilt during cold weather even though he suffers from coronary heart disease and half of his body is numb. It is reported that he was transferred through eight prisons and that the worst prison was Su Jia Tong Prison where the prisoners were not allowed to wash their faces, were allowed 3 controlled toilet visits per day and fed one steamed cornflour bun a day.

5. **Li Jianfeng** (The interview took place on 22 November 2005 with his father, Li Jinghong, in Beijing). According to his father, Li Jenfeng was formerly the Chief Judge of the Intermediate Court of Lingde City, Fujian Province. He is presently carrying out a 16-year sentence for subversion in Jian Yang No.2 Prison. Li Jianfeng was detained on 31 October 2003 along with seven other accomplices, all of whom were allegedly tortured during police interrogation. It is believed that he was arrested for defending vulnerable groups and for exposing the alleged corruption of the City Secretary. In the Criminal Investigative Brigade of Lin De City, Li Jianfeng was imprisoned in a small iron cage measuring less than $1m^2$ for 11 days. During this time, a strong spotlight was shone into the cage 24 hours a day, he was deprived of water and denied access to a medical doctor. His father reported that electric batons discharging high voltage electric shocks were used on his son's eyes and on the tips of his ears. Before formal imprisonment he was transferred through 5 pre trial detention centres. It is reported that when he arrived to a new pre trial detention centre, the staff would tell the veteran detainees to torture and hit the new arrivals. As a result of this his son reportedly suffered a cerebral swelling and suffers from headaches, fainting, dizziness and ringing in the ear. It is alleged that he fainted when he was in San Ming City pre trail detention centre. It was also reported that Li Jianfeng's wife, who was Deputy Head of Ling De District, was also detained for 5 months - no reason was given for her detention. After her release she was demoted to researcher.

6. **Ma Yalian**, aged 42 (telephone interview 23 November 2005) Shanghai. Since 1998, in connection with a petition she has brought concerning her illegal eviction from her property, without compensation or temporary shelter, she alleges that she has been targeted by authorities by means of arbitrary detention to prevent her from further pursuing her complaint. Examples include administrative detention for 34 days on 23 April 2001 for disrupting court order, and violation of bail. She was detained at Huangpu Detention Centre on 24 July 2001 for five hours,

after being arrested without warrant by Shanghai police in Beijing for seeking administrative review at the Beijing Supreme People's Court and State Letter and Visits Bureau; and following a meeting with the State Letter and Visits Bureau on 7 September 2001, she was taken to the Fengtai Detention Centre for five days before taken back to Shanghai and detained at a detention facility for one year to serve an RTL sentence. On 19 February 2004, she was sentenced to 18 months' RTL for revealing the truth about the conditions of detention there. At the camp she was subjected to the "Cadillac" technique, where she was tied to a chair with a wide band of cloth bound tightly against her abdomen. She was stripped naked from the lower half of her body, left restrained like this for almost three days, and denied access to a toilet. She sustained swollen hands and pain in her abdomen. When she complained, fellow prisoners were ordered to beat her on three occasions. Because she ate little, she was deemed to have gone on hunger-strike and was sent to the Ti Lan Qiao Prison Hospital. There she was bound by her hands and feet to a bed, with a band across her torso for 18 days. She was denied access to a toilet. If she protested, the restraints would be tightened. Ma Ya Lian was sent to a smaller ward and given water sips at a time. If she wet her bed, she was slapped in the face by fellow prisoners. She alleges that authorities from Ximeng Police Station, Shanghai, have detained her from 14 to 21 November 2005 at Daguan Garden, Qingpu, Shanghai, as a result of President Bush's visit to China, to prevent her from raising her case, and was returned home on the afternoon of 21 November. She alleges that after she contacted the Special Rapporteur shortly after his arrival, the police have not allowed her to leave her home, even to dump garbage.

7. Following his visit, the Special Rapporteur received information that Ma Yalian was taken away by police on 14 January 2006 to the resident's Committee in Huangpu district, Shanghai. She was then reportedly driven away by a van to an unknown location. The Resident's Committee officials refused to inform her parents as to the reasons for her detention or her current whereabouts.

8. **Jia Jianying**, aged 47, Beijing. (Interview in Beijing on 24 November 2005) She is the wife of Mr. **He Depu**, currently in Beijing Prison No. 2 (see Appendix 2, para. 6). On 20 November 2005, the day of the Special Rapporteur's arrival, she was called by the local police station to say that she could not move freely before 25 November. She was told by the police that this was because of the UN visit. She was informed that she would be escorted to work and back from the next day on. On this day, police cars appeared outside her house. On 21 November, police cars began to escort her to and from work at the Xuanwu District Hospital Library. On 22 November at approximately 1pm, the party secretary of her work called her to let her know a police car was waiting outside for her. **Zhai Ming** (State Security) and **Zhang Zhengjie** (director of the local Zhan Lanlu Police Station) were waiting outside in the police car. She was then taken to Zhan Lanlu Police Station where she was put under the

custody of two police officers (**Liu Liming** and **Wang Jing Feng**). They told her that she should follow them and not make any phone calls. She was informed by the police officers that she would be taken away for a couple of days to avoid meeting with the visiting UN officials. She was taken to Changping County P.S.B Conference Centre 1.5 hrs away by car. At her request the police officers stopped by her house on their way to pick up some personal belongings. This was at approximately 15:30. She did not say anything to her mother but she whispered to her son that she was being taken away by the police. For this reason Jia Jianling was unable to meet the Special Rapporteur as arranged at 22.00hrs on 22 November. At 08.00hrs on 23 November the Special Rapporteur contacted Jia Jianying's mother, **Zhang Fengze**, in order to verify Jia Jianying's whereabouts. He then contacted the Ministry of Foreign Affairs in order to clarify the situation. Jia Jianying states that on 23 November at around 14.00hrs she was handed a phone by one of the police officers and told to call her son and explain that she was on a work unit study trip. Later she sent a short text to her mother, **Zhang Fengze**, saying that she had been taken away by the police. She did not indicate where she was being held, but indicated that she would be there for three days. According to her son, **He Jia**, aged 20, shortly after his grandmother, **Zhang Fengze**, was contacted by the Special Rapporteur, Jia Jianying telephoned to tell her mother not to speak with the Special Rapporteur any further. At 23:30hrs Jia Jianying was informed that she could go home the next day. During the two nights she spent at the conference centre she was followed everywhere she went by the police officers, and the female officer slept in the same room as her. On 24 November, she was escorted by the police officers from the conference centre at 10.00 and was taken back to the police station. She was told to promise not to tell the Special Rapporteur what had happened, that she would be questioned after having spoken with the Special Rapporteur the next day. She was told that she might meet with the UN people that day and that if she told the UN anything she would be responsible for any consequences. She was told that she could not meet the Special Rapporteur at her home but outside her home would be fine. The director of the police station told her that she had been sent back home, 'perhaps at the instruction of the foreign ministry'. When she arrived home at 1pm, the police told her 'if you meet with these UN people, tell them that we are not at your home anymore.' Over the last 8 years she has been put under house arrest approximately once a month dating from the time that her husband, He Depu, was arrested. As she has been taken away many times by the police, all her colleagues know about it. She estimates that 100 days in each year she is under house arrest, most recently during the Bush and Rice visits. **On 22 November, upon learning that Ms. Jia Jianying had been prevented by the authorities from meeting with him the previous night, the Special Rapporteur protested to the Ministry of Foreign Affairs. He interviewed her on the evening of 24 November.**

9. **While the Ministry of Foreign Affairs promised to provide, in writing, information concerning the above events, the Special Raporteur has not received any written comments to date. However, following his protest to the Ministry of Foreign Affairs, the Special**

Rapporteur was provided orally with the following information: The Special Rapporteur was informed that Ms. Jia Jianying had asked the police whether or not she could meet with him. The police gave their assent. However, Ms Jia Jianying changed her mind and decided to attend a work seminar instead which was taking place outside of Beijing. As the seminar was shorter than she envisaged, she was able to return early to Beijing where she met with the Special Rapporteur on 24 November 2005.

10. **Li Shan Na**, aged 25, Beijing. (Interview in Beijing on 24 November 2005) She is the wife of **Xu Yunghai**, a doctor and a Christian. Her husband, who reportedly helped publish an article about the persecution of a nun in Anshan City, was taken away from the hospital where they worked, together with herself, by officers of Beijing Municipal Police Bureau in November 2003, on suspicion of illegally releasing information ('intelligence') to foreign organizations. They were taken to the Fengsheng Police Station and questioned for seven hours and later released. The police, without a search warrant, then took her husband to his home to conduct a search. Her husband's office was also searched. After the search, Ms. Li did not know where the police had taken her husband. Three months later she learned that he was being detained in Anshan City, Xiaaoshau District. The first court hearing was on 1 March 2004 in Hanjzhou City. At first she was told that she could not attend the hearing but after insisting with the party secretary at the hospital where she worked, he allowed her to go on the assurance that she would not create any sort of trouble and that she sign a document to this effect. She refused to sign. On arrival in Hanjzhou she was told that she could not attend the hearing because it was not public as it concerned state secrets. She managed to gain access to her husband's second hearing in August 2004. At this hearing she received her husband's arrest warrant. She visited her husband for the first time in November 2004 in Xijiao Prison in Hanjzhou. At the meeting he told her that he had been beaten by other inmates at Hanjzhou Detention Centre. He felt that the beatings were at the instigation of the police because they saw what was happening but did not intervene. The effects which she brought to him in prison were all confiscated. Other inmates seemed to know a lot about his personal details including his bank account details which he assumed they could only have learned about from the police officers. Inmates continued to beat him. This is the only visit she has made as he is being detained far away. Ms. Li pointed out that according to law, her husband's two year sentence, which he will complete on 29 January 2006, should have been calculated as beginning at the point of arrest. However, the sentence only started as of the second hearing when she first received his arrest warrant. Ms. Li recounted recent restrictions on her freedom of movement. On 17 November 2005, prior to the visit of President Bush, the police came to her house at 9pm, asking about her weekend plans. She told them that she would visit her mother. They said she could not. When she insisted the police relented on the condition that they take her there. On 19 November, the day the US President arrived, the police were present outside her home, and escorted her to her mother. According to Ms. Li, on Saturday nights there is usually one police car outside her

home, which normally stays until 11 pm, returning at 5am the next day. However, the police stayed outside her house all night on this occasion. On Sunday, 20 November, when she asked the police, "Why are you still here, the President has gone,' the police replied, "A human rights organization is coming to Beijing.' In the middle of the interview with the Special Rapporteur on the evening of 24 November, Ms. Li received a call from the police asking where she was and telling her that they would come and pick her up. **The Special Rapporteur immediately protested to the Ministry of Foreign Affairs.**

11. Ms. **Mao Hengfeng**, aged 44, Shanghai (subject of previously transmitted communications, E/CN.4/2005/62/Add.1, para. 296) (Interviewed in Beijing on 24 November 2005). She alleges that she has been targeted by officials for various petitions she has made to Beijing authorities. In one instance, between 9 to 12 March 2003, she was detained at Daqiao Police Station, Yangpu district, Shanghai, where she was beaten heavily against a barred window. During her detention she was denied food and water, and the right to inform her family. The effect of the beatings left her numb on the left side of her body. When she was taken to the hospital, the staff found a petition written on her t-shirt, which resulted in her being taken back to the police station, where officers forcibly removed it. She was later detained from 12 to 16 March at the neighbourhood infectious disease centre and was shortly released thereafter. On 16 March 2004, she was detained, and later sentenced on 5 April 2004 to 18 months' of re-education through labour for "disrupting social order", to be served at the Qingpo Women's RTL camp, Shanghai. The camp reportedly manufactures Christmas tree lights, sweaters, and small toys. She was released on 12 September 2005. During her first 15 days at the camp, education consisted of being forced to stand from 5am to 11pm, with 15 minute breaks for meals. Non-compliance would result in beatings, often by other prisoners upon the orders of the guards. On other occasions, the prisoners would be forced to march in the hot sun for a half day, and those that disobeyed would be forced to march the whole day. She reported that one prisoner, Ms. **Li Limao**, who was a Falun Gong practitioner, died one month after the Chinese New Year in 2005 following a punishment for disobedience. She was hung from a window from her hands tied behind her back, and with her toes just touching the floor. Mao Hengfeng reported that a "white powder" was often mixed in the prisoners' meals which had a sedative effect. Following the 15 day education period, when she refused to work, Mao Hengfeng was placed in a cell with two other prisoners. There she was regularly forced to sit or stand for long durations at the risk of being beaten if she did not comply. Between 9 to 17 August 2004, on the orders of the guards, the prisoners had tied her arms and legs to a bed and attempted to force drugs into her mouth to force her to admit her wrongdoing. During this time she was refused access to a toilet. After 17 August 2004, she was moved to a small disciplinary cell for one week, tied to a bed, and her face covered with a mask with only a hole for her nose. Again she was forced to admit her crime, but when she accused the other prisoners of being 'fascist' they attempted to suffocate her. Between 9 to 12 November 2004, she was brought back to this cell, tied to the bed, and not provided with appropriate bedding and

clothing despite the cold, and lack of heating. Speakers in the cell blasted loud music. Visits were granted at the discretion of the prison management, despite regulations stipulating monthly visits, and usually after injuries had sufficiently healed. Medical treatment for her injuries consisted merely of lotion, and when she appealed for further treatment she was threatened with being handcuffed and shackled. On one occasion, a doctor diagnosed her erroneously with high blood pressure and prescribed her medication which left her mouth numb for days. She indicated that she has complained to the authorities about her treatment with no effect. Mao Hengfeng also alleges that she has been detained by Daqiao Police Station officers on a number of times to prevent her from raising her complaints at high-level events and during visits of foreign dignitaries.

12. Following the visit of the Special Rapporteur two UAs were sent out on her behalf. The first UA of 5 January 2006 concerned allegations that she was being detained incommunicado by 7 Residents' Committee officials in a Shanghai hotel from 3-6 January. The officials reportedly beat her several times, grabbed her breasts and prevented her from sleeping during this period. The second UA of 1 February 2006 was sent out following her re-arrest on 24 January after she travelled to Beijing to take part in an unofficial memorial service marking the first anniversary of the death of former Chinese leader Zhao Ziyang. According to information received, she was forcibly taken back to Shanghai by police officers because of her protests about human right and was held incommunicado for 16 days by the Public Security Bureau of Shanghai in Liangren Hotel. She was released on 8 February 2006. No responses have been received from the PRC in relation to any of the UAs sent out on behalf of Mao Hengfeng.

13. **Liu Xinjian**, aged 49, Shanghai (Interviewed on 24 November 2005). She alleges that in relation to petitions she has made to the Communist People's Congress, concerning the illegal demolition of her home, and beatings by village security brigade personnel, she has been targeted by the authorities. She was detained on 16 February 2003 by police officers of Qibao Police Station, beaten by personnel with fists and feet, taken for a psychiatric evaluation, and held there for two days before being transferred to the Minghang Detention Centre. On 22 February, she was transferred to the Ti Lan Qiao Prison Hospital, restrained to a bed for five days and sedated, before being taken to the Minghang Psychiatric Hospital on 3 March. On 3 June 2003, she lodged a complaint at the Supreme People's Court, Shanghai and sought to see the Chief Judge, in connection with a divorce case. Officers of Qibao Town Police Station detained her and took her to the Minghang Psychiatric Hospital the following day. At the hospital she was restrained to a bed for five days and forced to take tranquilizers. She was given four injections, which left her feeling thirsty, unable to swallow, numbed her tongue and impaired her vision. When she questioned the chief physician why she was being treated like this, he responded, "You are not in a hospital, but in a prison." Her son visited her weekly. He

tried to bail her out on numerous occasions, and even appealed for help from a local television station, with no success. The hospital required the consent of the police station in order to release her, and upon the guarantee of her son that she would not make any further petitions, she was released on 20 January 2004.

14. **Zhao Xing**, aged 37, lawyer and head of the Empowerment Rights Institute (telephone interview of 28 November 2005). Earlier this year he had tried to organize a demonstration against the former Premier. He was detained in Beijing County Security Bureau and then in the Beijing Detention Centre. After two months and three days he was released on bail. He sought the consent of the police to visit family members in Chengdu. He also had some farmers' cases there. On 13 November 2005 at 1pm, he traveled to Chengdu with his parents by train in the company of a policeman. In Chengdu he observed that he was being constantly followed by two cars. On 17 November at about 10pm, he was beaten outside the Chungling Hotel by six or seven persons in plainclothes, witnessed by a number of people in his tour group. He was beaten with an iron bar on the head and on his right leg, which was fractured from the knee upwards. He reported the beating about half an hour after the incident to the police and asked them for a record of the incident and to protect the evidence. They refused to do this. The police took him to Mao County hospital about one and a half hours away. He arrived there at midnight and stayed until 6am of 18 November. He was treated for his injuries there. He received 11 stitches for his head but the doctors there told him that they could not treat his leg. He was later taken to the orthopaedic hospital of the Chengdu army region, where he was at the time of the interview. Though he would not require surgery, he was told that he would have to remain there with his leg in a cast for two months. The police have indicated to him that one suspect has been located but has not been arrested. According to his investigations, approximately 80% of those detained are tortured in order to extract confessions, typically in the police station or at the brigade for criminal investigation.

15. In written comments of 25 January 2006, the Government provided the following information in relation to the above case: "On November 17, 2005, Zhao Xin was traveling with a tour group in Jiuzhaigou, Sichuan and lodged at the Qianglin Hotel in Mao County, Aba Prefecture, Sichuan Province. During that time, Zhao and three other members of the tour group drank a great deal of alcohol in the hotel nightclub, there was a dispute with the hotel over the amount of the bill when it was time to pay, and he was assaulted by the nightclub manager and servers, leading to head injuries and multiple fractures in his kneecaps and ribs. Zhao sought inpatient treatment the following day in Chengdu's August First Orthopedic Hospital. Following the incident, the public security bureau in Mao County, Sichuan immediately carried out an investigation and obtained evidence according to law and criminally detained those who caused the disturbance. Zhao is presently receiving treatment in the Chengdu hospital. This case is in the process of being handled further according to legal procedures. This case is completely the result of a commercial consumer dispute."

16. **Chen Guangcheng**, aged 34, a self-taught lawyer, (telephone interview on 28 November 2005). Chen Guangcheng has been under "residential surveillance" (house arrest) since 6 September 2005 for exposing family planning violence in Linyi and providing legal aid to villagers who were to take legal action regarding these abuses against local authorities. His wife has also been prevented from leaving the house, and was once beaten when she came out to meet visitors. Their telephone line has been cut off and their computer confiscated. On 6 September 2005, Chen was detained in Beijing by police from Shandong Province, who took him back to Linyi and placed him under house arrest the following day. Since then, his house has reportedly been surrounded by up to 50 men and many cars; his landline and mobile phone services have been cut off, and his computer seized. On 4 October, law lecturer Xu Zhiyong, lawyer Li Fangping, and another lawyer attempted to visit Chen and negotiate with local officials to have his house arrest lifted. The lawyers were stopped on their way to the house. Chen reportedly managed to leave his house and spoke with them briefly, but was then forcibly taken back. When he resisted, he was beaten up by men surrounding his house. The lawyers tried to go to Chen's house, but they were stopped and reportedly beaten up and taken to a police station where they were interrogated. They were told that the case now involved "state secrets" and escorted back to Beijing. On 10 October, Chen Guangcheng's cousin Chen Guangli and another villager, also surnamed Chen, who had been giving interviews about Chen Guangcheng's situation to foreign reporters, were reportedly detained. On 24 October, two other Beijing scholars and friends of Chen Guangcheng went to visit him. As Chen ran out to greet them, he was stopped and beaten by more than 20 men stationed outside.

17. Since the Rapporteur's mission, the following has been reported that on 2 February 2006, Chen Hua, a neighbor and relative of Chen Guangcheng, reportedly protested the house-arrest of Chen Guangcheng to the security guards in front of the latter's home. Chen Hua was assaulted and arrested two days later. Although no detention order was shown to him or his family, he was held at the Xishan Public Security Detention Centre at Yinan County, Yilin City, Shandong Province until 12 February 2006. On 5 February, more than 200 villagers protested the Chen Hua's detention and Chen Guangcheng's house arrest. Some villagers attacked two police vehicles. However, the protest turned violent when the Police threw stones at villagers, causing several injuries, and then refused to take them to hospitals in nearby towns. The Public Security Bureau accused Chen Hua's wife, Chen Dengju, and other villagers of destroying public property, chasing "militia members" and Government officials, and overturning police cars. Police posted notices on 14 February threatening villagers who participated in the protest with "serious punishment" unless they came forward to "confess." On 15 February, Chen Guangcheng's wife Yuan Weijing was beaten up by guards hired by the village communist party secretary, when she set out for the food market. She was pushed into a ditch and received serious injuries to her liver but was unable to receive medical attention.
