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人权委员会  
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公民权利和政治权利，包括酷刑和拘留问题

酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题  
特别报告员曼弗雷德·诺瓦克的报告

对中国的访问\*

\* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，仅以原文和中文分发。附录仅有英文，原文照发。

## 内 容 提 要

应中国政府邀请，酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别报告员于 2005 年 11 月 20 日至 12 月 2 日访问了中国。特别报告员感谢中国政府在他访问期间与他充分合作。本报告对中国的酷刑或虐待状况的法律和实际问题进行了研究。

特别报告员的结论是基于对法律框架、个人来文和来源广泛的书面信息和交谈的透彻分析，其中包括政府官员、非政府组织、律师、受害者和证人，以及对羁押场所的现场视察。因此，他建议该国政府采取各种措施，以履行其防止和制止酷刑行为和其他形式虐待的承诺。

尽管酷刑在减少，特别是在城市地区，但特报告员相信，酷刑在中国仍然普遍存在。他欢迎该国政府愿意承认刑事司法制度中普遍存在酷刑，近年来，在中央和省一级作出了各种努力，反对酷刑和虐待。特别报告员认为，由于这些措施，近年来酷刑做法稳步减少。

中国持续的酷刑做法有许多成因。这些因素包括促使审讯员刑讯逼供的证据规则，刑事犯罪嫌疑人没有司法控制的情况下被警察羁押的时间过长，缺乏一种基于无罪推定的法律文化(包括缺乏有效的保持沉默的权利)，和被告律师权利和手段受到限制。缺乏自我生成和/或自我维持的社会和政治机构加重了这种情况：缺乏自由和好查究的新闻界，以公民为基础的独立的人权监督组织，访问羁押场所的独立委员会，以及独立、公正和可诉诸的法院和检察院。

羁押场所的基本条件看来总体令人满意，但在同被羁押者交谈时，特别报告员对监狱纪律之严格、恐惧和自我约束程度之明显印象深刻。

在政治罪和“劳动教养”的行政拘留制度方面，刑事司法制度及该制度十分注重使人认罪、获取口供和教育改造，这一点特别令人不安。以剥夺自由作为对和平行使言论、结社和宗教自由的制裁，加上通过强制、羞辱和惩罚的改造措施，以求被羁押者认罪和改变个性，直至摧毁其意志，这是一种不人道或有辱人格的待遇或处罚，与基于人权文化的任何民主社会的核心价值不相容。

## 附 件

### 酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题 特别报告员曼弗雷德·诺瓦克的报告对中国的访问 (2005年11月20日至12月2日)

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## 缩 略 语

CAT	《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》
CDP	中国民主党
CL	《刑法》
CPL	《刑事诉讼法》
ICCPR	《公民权利和政治权利国际公约》
MPS	公安部
NPC	全国人民代表大会
OPCAT	《禁止酷刑公约任择议定书》
PSB	公安局
RTL	劳动教养
SPC	最高人民法院
SPP	最高人民检察院
TAR	西藏自治区
TOR	职权范围
XUAR	新疆维吾尔自治区

## 导 言

1. 应中国政府的邀请，酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别报告员曼弗雷德·诺瓦克于 2005 年 11 月 20 日至 12 月 2 日对中国进行了访问。对中国的访问在特别报告员首次提出访问要求<sup>1</sup> 近十年之后成行，访问地点包括北京；西藏自治区拉萨；新疆维吾尔自治区乌鲁木齐。在访问过程中，他考察了有关禁止酷刑和其他形式虐待的法律框架和政府行为。他还研究了政府对指称侵权事项的答复，特别是有关调查、有罪不罚和预防问题。特别报告员关于中国酷刑和虐待情况的结论以来源广泛的书面信息和交谈为基础，其中包括政府官员、非政府组织、律师、受害者本人和证人，以及对羁押场所的现场视察。

2. 访问的主要目的是评估有关酷刑和其他残忍、不人道或有人格的待遇或处罚的现况，促进各种预防机制，根除酷刑和虐待，并开始一个与该国政府合作的进程。

3. 原来还计划访问山东省济南和新疆维吾尔自治区伊宁，但由于时间有限，特别报告员不得不取消对上述地区的访问。特别报告员对此深表歉意，并感谢外交部和山东省及伊宁自治州有关领导体谅对行程最后一刻的变更。

4. 在北京，特别报告员会见了政府官员，包括外交部部长助理沈国放；司法部副部长范方平；公安部副部长孟宏伟；副检察长王振川。在拉萨和乌鲁木齐，特别报告员会见了西藏自治区副主席尼玛次仁，新疆维吾尔自治区副主席贾帕尔·阿比布拉和地方官员，包括外事办公室、人民法院、检察院、司法厅和公安厅的官员。

5. 在北京，特别报告员访问了北京市第二看守所，第二监狱(两次)和北京市女子劳教所。在拉萨，他访问了拉萨监狱，西藏自治区监狱(也被称为“扎布奇”监狱)，和近期启用的曲水监狱。在乌鲁木齐，他访问了第一、第三和第四监狱，以及六道湾看守所。在这些场所，特别报告员会见了监狱管理人员，并私下与被监管人交谈。

6. 特别报告员还会见了民间社会知名人士，包括中华全国律师协会、北京律师协会、中国政法大学、人民大学、清华大学、北京大学、中国社会科学院和北京儿童法律研究中心。还会见了一些律师、人权维护者，学者、驻华使团和联合国驻华机构人员。

7. 本报告初稿曾于 2006 年 1 月 3 日发给该国政府供其评论。2006 年 1 月 25 日，该国政府就初步报告提供了详细的评论，有关评论得到详细的研究和考虑。

8. 特别报告员对联合国驻地协调员 K. Malik 先生；人权事务高级专员办事处；以及鲁德维格—伯特斯曼人权研究院的 N. Hughes 女士和 E. McArthur 女士提供的支持表示感谢。

## 一、事实调查的特定情况

9. 特别报告员谨此对中国政府、特别是外交部表现出的专业水平、合作精神和共同致力于访问团的目标深表赞赏。以沈永祥博士为首的外交部小组全程陪同特别报告员，出席正式会见和访问羁押场所。特别报告员盛赞外交部作出了极大的努力，确保访问尽可能顺利进行，其职权范围原则上得到尊重。与在押人员的所有会见均在特别报告员指定的地点私下进行。与任何特定个人的会见或交谈要求，以及对任何特定羁押场所的访问要求，从未遭到过拒绝。狱方工作人员普遍持合作态度，并帮助特别报告员会见其名单上的在押人员，甚至那些被转到他处的人员。

10. 但是，特别报告员不得不指出，安全和情报官员试图阻挠或限制其事实调查努力，特别是在访问之初，特别报告员一行在北京的饭店及其附近被跟踪。而且，在访问期间，若干据称受害者及其家庭成员、律师和人权维护者遭到保安人员恫吓、受到警方监视、被嘱咐不得会见特别报告员、或被实际阻止与他见面。<sup>2</sup>

11. 狱方官员以工作时间为由限制交谈，从而限制了访问的场所数目和交谈的在押人员人数。还阻止特别报告员及其工作人员将摄影和电子器具带入监狱。而且，(与其先前的国别访问不同)，特别报告员无法从有关主管部门取得可由其自行访问羁押场所的授权函，而是由外交部官员陪同访问羁押场所，以确保出入不受限制。鉴于通常提前约一个小时通知有关主管部门，从严格意义上讲，访问不能被视为“未经通知”。尽管如此，在人权委员会特别程序过去访问中国所采用的方法基础上，有关做法已大有改进。

12. 在此情况下，并考虑到中国幅员辽阔，情况复杂，以及访问时间有限，特别报告员承认，就中国的酷刑和虐待情况得出一套完整的调查结果和结论受到各种局限。因此，他的结论还吸收了访问前进行的交谈，以及通过有关任务授权的个人来文程序及各种非政府来源和其他来源收到的资料。

## 二、法律和组织框架

### 国际一级

13. 中国是七项主要国际人权条约中五项条约的缔约国。<sup>3</sup> 其中下列公约明确禁止酷刑和虐待：《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》（《禁止酷刑公约》）和《儿童权利公约》。中国不承认禁止酷刑委员会根据《禁止酷刑公约》第 22 条受理个人申诉的权限。而且，中国宣布，中国并不认为其受《禁止酷刑公约》第 20 条和第 30 条第 1 款的约束。中国已签署并正准备批准《公民权利和政治权利国际公约》。

### 国家一级

#### 关于人权的宪法修订

14. 2004 年 3 月 14 日，全国人民代表大会(全国人大)修订了《宪法》，增加了“国家尊重和保障人权”的规定，有史以来首次规定对人权实行宪法保护。<sup>4</sup> 特别报告员得知，在这一决定作出之后，为了与《宪法》新规定保持一致，全国人大常委会正在对《刑法》、《刑事诉讼法》和行政拘留的法律制度进行审议。<sup>5</sup>

#### 酷刑的定义和禁止酷刑

15. 尽管中国国内立法中没有关于酷刑的明确定义，但《刑法》<sup>6</sup> 的一些条款反映了《禁止酷刑公约》酷刑定义的基本内容，禁止：司法工作人员刑讯逼供(第二百四十七条)；司法工作人员使用暴力逼取证人证言(第二百四十七条)；监狱、拘留所、看守所等监管机构的监管人员对被监管人进行殴打或者体罚虐待以及指使被监管人殴打或者体罚虐待其他被监管人(第二百四十八条)。《刑法》还列出了与禁止酷刑和其他形式虐待有关的一些其他罪行。<sup>7</sup>

16. 但是，中国的立法没有按照《禁止酷刑公约》第 4 条的要求，充分反映其第 1 条所列酷刑定义的所有方面。修订的《刑法》第九十四条将“司法工作人员”界定为“指有侦查、检察、审判、监管职责的工作人员”，从而在是否可就这些罪行起诉临

时雇用的或非司法部门推荐的协助刑侦工作的人员方面留下了不确定性。<sup>8</sup> 此外，最高人民检察院直接受理立案侦查所有酷刑案件，将《刑法》第二百四十七条的适用进一步限于：手段残忍、影响恶劣；致人自杀或者精神失常；造成冤、假、错案；3 次以上或者对 3 人以上进行刑讯逼供；授意、指使、强迫他人刑讯逼供。<sup>9</sup> 在同一规定中，最高人民检察院将第二百四十八条之下的起诉限于：造成被监管人轻伤；致使被监管人自杀、精神失常或其他严重后果；对被监管人 3 人以上或 3 次以上实施殴打、体罚虐待；手段残忍、影响恶劣；或指使被监管人殴打、体罚虐待其他被监管人，具有上述情形之一的。<sup>10</sup>

17. 《刑法》没有明确反映《禁止酷刑公约》第 1 条所界定的下列酷刑内容：精神上的酷刑，<sup>11</sup> 直接涉及公职人员或在其唆使、同意或默许下以官方身份行使职权的其他人；行为的实施是为了某种具体目的，如得到招供、获得情报、处罚、恫吓或歧视。

#### 将酷刑行为和其他形式虐待定为刑事罪

18. 《刑法》第二百四十七条和第二百四十八条规定，酷刑行为为刑事犯罪。<sup>12</sup> 补充《刑法》的其他规定<sup>13</sup> 包括《人民警察使用警械和武器条例》<sup>14</sup> 最高人民法院也颁布了《人民法院审判人员违法审判责任追究办法》和一套《人民法院审判纪律处分办法》。<sup>15</sup> 《公安机关办理刑事案件程序规定》<sup>16</sup> 旨在保障正确实施《刑事诉讼法》，其中载有许多对被羁押者的保障措施。

19. 但是，《公安机关人民警察执法过错责任追究规定》和其他条例中规定，“法律规定不明确或者有关司法解释不一致；因不能预见或无法抗拒的原因致使错误发生；执行上级命令；按照办案协作规定协助办案的，不追究‘过错’的责任，包括刑讯逼供和暴力取证”。

#### 逮捕和候审羁押期间的保障

20. 《刑事诉讼法》于 1996 年修订，<sup>17</sup> 以便除其他外强化反对酷刑的保障措施，该法得到 1998 年一份全面解释若干敏感和有争议问题的文件的补充。<sup>18</sup>



### 拘留通知

21. 《刑事诉讼法》第六十四条和第七十一条规定，拘留或逮捕后，应当把被拘留或逮捕的原因和羁押的处所，在二十四小时内通知被拘留人或被逮捕人的家属或者他的所在单位。但是，在有碍侦查或者无法通知的情形下，对这一保障可加以限制。《公安机关办理刑事案件程序规定》第一百零八条也规定，在特定情况下，可暂不予通知。<sup>19</sup>

### 有权被告知逮捕的理由和羁押期间的应有权利

22. 《公安机关办理刑事案件程序规定》第三十六条规定，公安机关在对犯罪嫌疑人依法进行第一次讯问后或者采取强制措施之日起，应当告知犯罪嫌疑人有权聘请律师，并记录在案。

### 获得法律代表

23. 《刑事诉讼法》第九十六条规定，在第一次询问后，可以聘请律师，但却不能立即查阅公安案件档案。<sup>20</sup> 律师在刑事案件中的作用也编入了《律师法》。<sup>21</sup> 《关于刑事诉讼法实施中若干问题的规定》<sup>22</sup> 第 11 条规定，律师提出会见犯罪嫌疑人的，应当在四十八小时内安排会见。但是，对于组织、领导、参加黑社会性质组织罪、组织、领导、参加恐怖活动组织罪或者走私犯罪、毒品犯罪、贪污贿赂犯罪等重大复杂的两人以上的共同犯罪案件，律师提出会见犯罪嫌疑人的，应当在五日内安排会见。<sup>23</sup>

24. 尽管中国法律保障聘请律师，但这一保障实际上受到严重限制，特别是在涉及国家秘密的案件中，因为根据《刑事诉讼法》第九十六条，律师必须经过侦查机关批准。《刑事诉讼法》和其他法规都没有提供这一概念的明确定义。《保守国家秘密法》第八条第(六)款还规定，追查刑事犯罪中的所有细节均应作为“国家秘密”保守。《公安工作中国家秘密及其密级具体范围的规定》<sup>24</sup> 中也规定，正在侦察的刑事案件的具体情节均应被视为“国家秘密”。由于没有任何法律提供关于“国家秘密”的明确定义，特别报告员尤其关注在案件涉及国家安全或国家秘密时，由公安部门、监狱管理部门或检察院颁布的规章限制辩护权的情况，在此之前，任意拘留问题工作组在 2004 年的访问之后对此问题曾表示担心。<sup>25</sup>

25. 除了要获得许可的要求之外，律师和被告还面临由于公安部门和检察院颁布的规则和条例——进一步限制会见律师的权利——而引起的、或由个别刑侦人员——他们可以独立地阻碍律师会见委托人——而引起的另外一系列障碍。特别报告员与之交谈的一些辩护律师和著名的法律学者称，律师和被监管人之间的会见受到主管部门的密切监视，并常常有严格的时间限制，律师几乎不能从检方获得必要的资料，那些为其委托人辩护过于有力的律师可能被拘留并以各种罪名定罪。确实，根据《刑法》第三百零六条，律师可因毁灭、伪造证据，威胁、引诱证人改变证言或者作伪证，被处以七年以上有期徒刑。第三十八条补充了这一规定，将“干扰司法机关诉讼活动”定为罪行。这一所谓“达摩克利斯剑”可被用来刁难、恫吓和处罚律师。在这种情形下，例如，建议委托人推翻被迫招供的任何律师都可能被起诉。最后，证人很少出庭，一般由检方宣读其证言，从而剥夺了被告根据 1996 年修订的《刑事诉讼法》询问证人的机会。<sup>26</sup> 证据规则尚未发展完全，非法获得的证据在实际中常常被接纳。<sup>27</sup>

#### 获得医疗检查和照料

26. 中国的法律以及监狱和羁押场所的规章相当全面地涵盖了被羁押者的医疗问题，但没有任何规定确定在押犯获得独立医疗检查的权利。

#### 获得人身保护的權利

27. 国内立法没有规定任何类似于人身保护制度的程序，也没有任何其他法律手段，供被羁押者用以在法院质疑关于候审羁押的决定。嫌疑人、被告、律师和亲属最多可在发现其羁押超过时限之时要求释放嫌疑人或被告（《刑事诉讼法》第七十五条）。

#### 未经起诉的羁押期限

28. 有三类候审拘押，和两类非拘押候审限制。

29. 候审拘押包括拘传——公安部门、检察院和法院用以强制嫌疑人接受询问的一种措施，时间最长为 12 个小时。<sup>28</sup> 另一种候审拘押的形式为刑事拘留，<sup>29</sup> 第三种为逮捕。<sup>30</sup>

30. 未经起诉或司法审查的其他候审限制的形式包括监视居住和取保候审。根据《刑事诉讼法》第五十七条，被监视居住者，未经批准不得离开住处或指定居所，不得会见他人。对《刑事诉讼法》的解释将监视居住的时限延长到三年。

#### 起诉后的侦察羁押期限

31. 根据《刑事诉讼法》，一旦检察院正式批捕，在侦查期间，嫌疑人最多共计可被羁押七个月，<sup>31</sup> 或在发现“新罪行”的特殊情况下，被无限期羁押。<sup>32</sup> 此外，在检察院要求进行补充调查的案件中，在逮捕后侦察羁押期结束之后至提出起诉书之前，嫌疑人另外共计可被羁押六个半月。<sup>33</sup>

32. 中国告知特别报告员，公检法部门高度重视并采取有力措施在全国纠正并防止超期羁押问题。<sup>34</sup>

#### 劳动教养

33. 劳动教养是行政拘留的一种。<sup>35</sup> 劳动教养制度目前没有法律依据；而有关规范框架由一些有违于 2000 年《立法法》的行政法规<sup>36</sup> 拼凑而成，《立法法》规定，涉及剥夺中国公民自由的事项，只有全国人大及在某些情况下其常务委员会才可立法。<sup>37</sup> 1982 年的《劳动教养试行办法》第十条列出了六类不够刑事处分的轻微犯罪的人：反革命分子、反党反社会主义分子；结伙杀人、抢劫、强奸、放火等犯罪团伙中，不够刑事处分的；有流氓、卖淫、盗窃、诈骗等违法犯罪行为，不够刑事处分的；聚众斗殴、寻衅滋事、煽动闹事的；有工作岗位，长期拒绝劳动，破坏劳动纪律，而又不断无理取闹，扰乱生产秩序、工作秩序、教学科研秩序和生活秩序的；和教唆他人违法犯罪的。劳动教养期限确定为一至三年，并可延长一年。<sup>38</sup> 送交劳动教养的决定应由民政、公安和劳动部门的官员组成的管理委员会作出。但实际上是公安部门官员主导决策进程。<sup>39</sup>

#### 政治罪

34. 尽管 1997 年中国《刑法》取消了“反革命罪”和“流氓罪”，但却代之以同样模糊的罪名，如“危害国家安全罪”，适用于一系列广泛的罪行(第一百零二条至第一百二十三条)、<sup>40</sup> “分裂国家、破坏国家统一”(第一百零三条)、“武装叛乱或者

武装暴乱”(第一百零四条)、“颠覆国家政权、推翻社会主义制度”(第一百零五条)、“间谍”(第一百一十条),和“为境外的人员窃取、刺探、收买、非法提供国家秘密或者情报”(第一百一十一条)。这些罪行定义含糊,因而可能被滥用,特别是在涉及宗教、言论和结社自由权方面。<sup>41</sup>

35. 在关于 2004 年访问中国的报告中,任意拘留问题工作组对刑事立法中有诸如“扰乱社会秩序”、“危害国家安全”、“破坏国家统一和完整”、“扰乱公共秩序”、“影响国家安全”等如此模糊、不确切或笼统的内容表示了关注。工作组建议,以确切的用语界定这些罪行,并在刑法中规定一项例外,即:行使《世界人权宣言》所保障的基本权利的和平活动不被视为犯罪。<sup>42</sup> 至今为止,这项建议尚未落实。

#### 申诉和调查

36. 关于被监管人申诉权利的法律规定包括:中国《宪法》第四十一条第(2)款,其中规定“对于公民的申诉、控告或者检举,有关国家机关必须查清事实,负责处理。任何人不得压制和打击报复”;《监狱法》第二十二条;<sup>43</sup> 《拘留条例》第四十六条;<sup>44</sup> 《公安机关办理刑事案件程序规定》第一百五十三条;<sup>45</sup> 和《刑法》第二百五十四条。<sup>46</sup> 根据《刑事诉讼法》第十八条,最高人民检察院是负责侦查和起诉国家机关工作人员犯罪的机关(见《刑事诉讼法》第十八条)。<sup>47</sup>

#### 使用以酷刑取得的供述和供词

37. 《刑事诉讼法》第四十三条规定“严禁刑讯逼供和以威胁、引诱、欺骗以及其他非法的方法收集证据”。但是,《刑事诉讼法》并未根据《禁止酷刑公约》第 15 条的要求,明确禁止在法院使用以酷刑取得的供述为证据。在 1998 年 9 月 8 日《关于执行〈中华人民共和国刑事诉讼法〉若干问题的解释》中,最高人民法院规定,采用刑讯逼供取得的供述,不能作为定案的根据。在 1999 年 1 月 18 日关于实施《刑事诉讼法》的规则中,最高人民法院规定:“以刑讯逼供或者威胁、引诱、欺骗等非法的方法收集的犯罪嫌疑人供述、被害人陈述、证人证言,不能作为指控犯罪的根据”。因此,尽管此种供述不能作为指控和定罪的根据,但最高人民法院的决定并未排除在司法诉讼中予以采纳。而且,最高人民法院的规则仅对司法机关有约束力,不适用于行政机关。

## 赔偿

38. 中国《宪法》第四十一条规定，由于国家机关和国家工作人员侵犯公民权利而受到损失的人，有依照法律规定取得赔偿的权利。《国家赔偿法》第三条和第十五条进一步规定了取得赔偿的权利。<sup>48</sup>

39. 但是，《国家赔偿法》第十七条第(一)款规定，“因公民自己故意作虚伪供述，或者伪造其他有罪证据”被羁押或者被判处刑罚的，国家不承担赔偿责任。

## 三、酷刑和虐待的情况

### 对特别报告员来文的分析

40. 特别报告员忆及，在过去几年，其历届前任收到了关于在中国施行酷刑和其他形式虐待的许多严重指控，并已将其转交中国政府请其发表意见。他告诫说，此种资料并不一定举例说明了某国的酷刑和虐待情况，但却可以反映提请特别报告员注意的信息情况。不过，就一段时间所收到的指控的数量和内容的一致性来看，也有可能说明问题。

41. 自 2000 年以来，特别报告员及其历届前任向中国政府报告了 314 起所称酷刑案件。这些案件涉及 1160 多人。<sup>49</sup> 过去五年间，特别报告员收到了中国政府就 90 起案件作出的 52 项答复。<sup>50</sup>

42. 下表说明了指控的酷刑和虐待的类型。

表 1

### 指控的酷刑受害者

受害者	百分比
法轮功练习者	66
维吾尔人	11
性工作者	8
西藏人	6
人权维护者	5
持不同政见者	2
其他人(艾滋病毒感染者/艾滋病患者和宗教团体成员)	2

43. 下表说明了指控的酷刑和虐待发生地点。

表 2

指控的酷刑发生地点

地 点	百分比
看守所	27
劳教所	25
派出所	17
精神病院(安康院)	8
公共场所	5
其他(警方转押、计划生育办公室、军营、私人住宅)	18

44. 下表说明了指称犯罪者的类型。

表 3

指称犯罪者的类型

犯 罪 者	百分比
警察和其他公安人员	47
劳教所看管人员	21
监狱看管人员	13
看守所看管人员	7
精神病院(安康院)工作人员	7
受拘留所看管人员教唆或默许的同室犯人	5

45. 所指控的酷刑方法包括：棍棒殴打，使用电警棍，烟头灼烧，蒙头/蒙眼睛，在看守指使或允许下由同室犯人殴打，长期使用手铐或脚镣(包括关禁闭或专门关押地方)，闷到水塘或污水中，置于极热和极冷环境中，被迫保持不适姿势，如长期坐、蹲、躺、站，有时候肢下垫上物体，不许睡觉、吃饭、喝水；长期关禁闭；不予治疗，不给药物；高强度劳役，用手铐悬吊。在一些情况下，酷刑方法有特定叫法，如“老虎凳”，强迫人坐在离地面几厘米高的小板凳上不得动弹；“坐飞机”，强迫人弯腰，双腿直立、并拢，双臂高高举起；“累死老鹰”，强迫人站在高板凳上被打，直至筋疲力尽。<sup>51</sup> 根据访问期间收到的信息，特别报告员确认，这些酷刑方法，有许多在中国采用过。

## 为反酷刑所做的努力

46. 近年来，在中国国内，尤其是在 2005 年一些突出的错判案被媒体曝光之后，酷刑问题已成为公众所关注和辩论的一个主题。<sup>52</sup> 官员与学者更加愿意承认中国的酷刑问题，这是一大进步。中国的学者和新闻工作者越来越多地发表详细的批评文章，抨击中国的酷刑做法和刑事司法制度中的有关问题，包括调查不力、警方缺乏专业精神，和酷刑逼供。<sup>53</sup> 中国的官员和分析家将酷刑问题描绘为在基层组织中“十分普遍”，“根深蒂固”，是一“痼疾”，是实践中“难以杜绝的”一个“恶瘤”，逼供“在中国许多地方是普遍现象，因为警方时常受到来自上面的巨大压力，要求其侦破刑事案”。<sup>54</sup>

47. 以下事实可以确认政府愿意承认普遍存在酷刑现象，即 1997 年下半年，最高人民检察院发表了一份题为“刑讯逼供罪”的报告，其中列入了中国第一次公布的有关刑讯逼供刑事案件的官方统计数字。根据该报告，1979 年至 1989 年期间，每年平均发生 364 起案件，在 1990 年代，多数年份每年此类案件达到 400 起，报告还承认在 1993 至 1994 年两年期间内，有 241 人被拷打致死。<sup>55</sup>

48. 中国政府认识到问题的存在，已采取许多措施解决酷刑问题，尤其是最高人民法院、最高人民检察院和公安部。2003 年 8 月，公安部长周永康颁布了公安机关执法程序标准化的统一条例，题为“办理行政案件程序规定”，有关程序界定了警方在没收财产时限方面的权限，合法的收集证据手段，讯问和询问嫌疑人的时限等。2004 年，公安部颁布条例，禁止使用酷刑和威胁取得口供，并在全国范围内发起加强警方刑侦能力的运动。同一年，最高人民检察院开展了一场全国性运动，制裁那些滥用权力的官员。2005 年，最高人民检察院宣布，消除刑讯逼供做法将是工作的重中之重，并要求检察官不得将使用酷刑取得的口供作为正式批准逮捕的依据，以及检察官必须努力排除非法获得的证据。<sup>56</sup>

49. 除了中央一级的主动行动之外，一些地方也采取了若干令人振奋的行动。浙江省公安厅颁布了关于刑讯逼供问题的条例，规定如果出现两起以上刑讯逼供案，导致人员受伤，执法不公或治安问题，该地区公安局长将引咎辞职。2005 年 4 月中旬，四川省执法和司法机关下发了联合意见，禁止使用非法获得的证据，并要求法院在警方无法对所指控的威吓提出合理的解释或拒绝对这一指控进行调查时，可排除威吓证词或口供。在 2005 年 12 月访问结束之后，特别报告员获悉，河北省检察院、高等法

院和公安厅下发了联合意见，禁止对刑事犯罪嫌疑人使用酷刑获得的证据。<sup>57</sup> 湖北省检察院、高等法院、司法厅、公安厅和国家安全局还联合颁发了刑事证据条例，包括禁止使用酷刑获得的证词。

50. 防止酷刑的实际措施包括，在试点审讯室安装录音录像系统；<sup>58</sup> 在刑事侦查和预审阶段加强律师作用，在试点警署，律师可在 24 小时内介入；在设计审讯室时，将嫌疑人与审讯人员隔离；在羁押场所和公安局附近派驻检察官，对执法人员实行监督。

51. 特别报告员还注意到立法机关的积极动态，其中包括计划对刑事程序的几项相关法律进行改革，他希望这将使中国的立法同国际规范进一步接轨，特别是同中国已于 1998 年签署并准备批准的《公民权利和政治权利国际公约》中规定的公正审判标准接轨。特别是鉴于司法机关级别越高，司法质量也会提高，他欢迎最高人民法院收回对所有死刑案件的复核权。<sup>59</sup> 特别报告员建议中国可利用这一契机加强该国死刑判决数量的透明度，并考虑制定立法，在当事人认为下级法院在牵涉到施用酷刑、取得律师辩护等案件中未提供充分救助时，可直接向最高人民法院申诉。

### 反酷刑努力的成效

52. 特别报告员注意到，中国是最早批准 1988 年《禁止酷刑公约》的国家之一。《公约》要求缔约国采取措施防止酷刑，并以相应的严厉处罚措施惩治一切酷刑行为。尽管中国法律禁止以酷刑手段收集证据，并规定对酷刑罪予以惩罚，但中国对酷刑的定义并没有同《禁止酷刑公约》第 1 条中的国际标准完全一致。特别是没有留下具体痕迹的身体或心理酷刑，在中国很难甚至不可能受到相应惩罚(其实，中文“酷刑”一词主要是指对身体的酷刑)。

53. 中央政府为减少酷刑做法作出了极大努力(如上文所指出)，但因基层治安管理和刑事程序上固有的地方观念，阻碍有效实施中央颁布的条例、指导意见、培训、禁令等，使得这些努力收效甚微。<sup>60</sup> 尽管形式上公安部统管全国公安工作，但地方党委拥有对其地区政策进行解释和执行的极大权力，包括对各自辖区公安厅的领导。这就致使警方力量因地方权力均衡和经济资源而出现地方化和半独立状态，警方对地方政治领导人负责。由于警方资金不足，薪水低微，这一状况进一步恶化，在经济条件较差的西部省份，情况尤其如此。<sup>61</sup>



54. 在中国，由于缺乏有效禁止酷刑的基本程序性保障，进一步阻碍了反酷刑工作。这些保障包括：有效排除酷刑产生的供词中所取得的证据；无罪推定；<sup>62</sup> 有权不自证其罪；有权保持沉默；<sup>63</sup> 及时通知被拘留或逮捕原因；及时由外部复核拘留或逮捕；采取非拘押措施，如取保，人身保护权；及时会见律师；并有充足的时间和手段准备辩护。

55. 律师在场不仅是国际人权法所保障的一项权利，它也是防止使用酷刑的一个重要手段。律师不仅要确保监督刑侦人员在审讯期间的行为，他们还要促使对使用酷刑的刑侦人员提出起诉。他们也使证人能够向法院提供证据，证明口供是通过非法手段获得的。但在中国，大多数嫌疑人在接受审讯时都没有律师在场。<sup>64</sup>

56. 其他严重的缺陷是缺乏对所有羁押场所的独立监督机制和有效的申诉机制。尽管中国的执法系统不乏内部监督机制，但必须指出的是，这些机制不具有独立性，公众也不将其视为独立机关。这些机关包括与政府政治和人事部门共同监督各公安厅的人员聘用、解聘、审查和晋升事宜的共产党委员会；党的纪律检查委员会各公安部门和政府监察部；各公安厅设立的接受和调查公民申诉的“群众来信和上访办公室”；以及检察院。除了缺乏独立性以外，这些机制因迫于压力侦破案件而无解决滥用职权问题的动机，其工作大多效率不高。<sup>65</sup> 工作重点似乎依然放在建立内部调查制度上，而不是实行独立监督。近年来，公检法部门对“责任划分”的复杂制度进行了宣传。但是，这些举措实际上将会产生什么影响，目前尚不得而知，尤其是因为这些部门不大可能真正独立于政府机构和当局。

57. 尽管检察官的任务是对警察实施监督，并且还有部分检察官派驻在监狱和派出所附近，但检察官担负着起诉和对警察实施监督的双重职责，这就表明它不可能主动揭露警方的玩忽职守行为，特别是如果此种起诉被看成是削弱警方的能力，使之在打击日益增多的犯罪行为的联合行动中无法履行职责的话。换言之，依赖检察官的监督是很难的，因为检察官对嫌疑人罪名成立而将其定罪的高度重视有可能影响其对警察和监管人员监督的能力。此外，检察官在行使监督职能的实际过程中面临多种困难，包括被羁押人害怕将其所受酷刑举报出来。目前申诉和监督机制效率低下，在中国偌大一个国家中申诉和起诉案件数量之小，就很能说明问题。<sup>66</sup>

58. 国际惯例表明，反酷刑最有效的方法就是由自我生成和/或自我维持的社会和政治机构来实施监督，这包括自由并可展开调查活动的新闻界、公民人权监督组织、

独立、公正和可诉诸的法院和检察院，以及定期选举的问责制。司法监督尤其重要。如果法院系统不能依法公正独立审案并及时纠正冤屈，酷刑问题就不能得到有效控制。这一点，在警察拥有宽泛的酌处权实行逮捕和拘留并在巨大压力下结案的情形之下，尤为如此。

59. 特别报告员认为，按照《禁止酷刑公约任择议定书》的设想，建立查访所有羁押场所的预防性制度，将会大大加强防止羁押场所内发生酷刑或虐待行为的努力。在这方面，特别报告员敦促中国批准《任择议定书》，并建立一个真正独立的监督机制。在这一机制下，将任命查访委员会成员，查访全国各地所有关押被剥夺自由的人的场所，委员会成员任期固定且不得解聘。

#### 四、因政治罪剥夺自由和强迫管教是一种 不人道和有辱人格的待遇

60. 刑事司法制度及其关注重点是使人认罪，获取口供和教育改造，这涉及到政治性质的犯罪时就格外令人不安。虽然许多此类犯罪在 1997 年予以废除，诸如“组织反革命集团”和“反革命宣传和煽动”，但在 1997 年以前因这些犯罪而被判刑的“民主运动”成员和持不同政见者，至今依然在监狱长期服刑。<sup>67</sup> 特别报告员欢迎中国政府决定允许被判犯有这些罪行的犯人与其他犯人一样，享有获得减刑和假释的权利，并注意到法院已作出较大量的决定，对此类犯人予以减刑和提前释放。不过，犯人目前仍因反革命罪而服刑，还有数百人因“流氓罪”服刑。大多数制度都规定释放因刑法所排除的罪行而服刑的犯人。根据《公民权利和政治权利国际公约》第十五条第 1 款，至少应对犯人所处刑罚进行复核。释放所有因非暴力犯罪行为而监禁的反革命分子和流氓(例如，领导反革命集团，从事反革命宣传和煽动活动)，将会成为中国为批准《公民权利和政治权利国际公约》所做努力的一个里程碑。

61. 在 1997 年的改革之后，持不同政见者、新闻记者、作家、律师、人权维护者、法轮功练习者，以及西藏和维吾尔族人、语言和宗教少数群体成员，经常会因行使其言论、集会、结社或宗教自由等人权而受到起诉。他们往往因政治性质的罪行而被判处长期监禁，诸如破坏国家统一，危及国家安全、颠覆或非法向境外人士提供国家机密等罪名。<sup>68</sup> 虽然有许多犯人否认有过任何不法行为，在审判期间不招供(尽管经常会遭受酷刑)，但是在服刑期间经过强制性教育改造之后，他们有时会改变想法。即

使政治上的偏离行为和持不同政见的行为不受刑事制裁，各个目标群体，如法轮功练习者和人权维护者，也往往会因搅乱社会秩序或类似的轻罪而受到数年的行政拘留，如劳动教养。

62. 在向特别报告员提交了申诉书或特别报告员在羁押场所个别会见的那些因政治性质的犯罪服刑的犯人和被劳动教养的被羁押人当中，有许多人声称，他们的人身自由遭到过度、歧视性和不公正的剥夺(常常是长期剥夺)，以及所受到的强制性教育改造，给他们所造成的痛苦与伤害远远大于在警方审讯期间可能遭受的身体折磨。实际上，以胁迫、屈辱和惩罚手段进行管教的这些措施，目的是改变被羁押人的人格，及至打垮他们的意志。

63. 针对特别报告员关于强迫管教是一种不人道或有辱人格的待遇的说法，中国当局在 2006 年 1 月 25 日关于初次报告草案的书面意见中提出了几点意见，包括管教的前提是帮助被羁押人重返社会，以及鉴于许多被羁押人“好逸恶劳，采用非法手段获取他人财产，容易走上犯罪的道路”，监狱和劳动管教所组织适当的劳动，“以培养其自食其力的能力和习惯，防止发生因无所事事而精神空虚等问题”。此外，特别报告员还获悉，为了促进文明执法，中国司法部监狱管理局已开始在监狱系统培训心理咨询师，给予国家专业评定，以防止和消除对同室犯人的折磨行为。中国说，“到目前为止，全国有近 90% 的监狱开展了这项工作，已培训监狱系统心理咨询师 1,000 余人”。<sup>69</sup>

64. 特别报告员认为，中国劳动教养制度中使用的方法，以及监狱、看守所和其他社会公共机构中采用的类似方法，通常都超越了《公民权利和政治权利国际公约》第十条所规定的合法康复措施。实际上，其中一些措施涉及到《公民权利和政治权利国际公约》第七条和第十条以及《禁止酷刑公约》第 1 条和第 16 条所保护的人格完整、人的尊严和人性等人权的核心。劳动教养不仅构成对人身自由这一人权的严重侵犯，也应被视为一种不人道和有辱人格的待遇或惩罚，如果不算精神折磨的话。因此，劳动教养以及监狱、看守所、宗教机构和精神病院中采取的类似强迫管教措施应予废除。

65. 享有隐私、言论、宗教、集会和结社自由等人权，是民主社会的核心所在，按照《民主白皮书》的说法，中国承诺致力于实现这一目标。<sup>70</sup> 根据国际人权法，政府对表达政治观点、宗教信仰、道德价值、或少数意见的干预只能在其构成煽动仇恨

或暴力，或直接威胁国家或公共安全的情况下方可进行。对持非顺从意见的公民实行国家监视，并对此种“偏离的行为”用定义笼统的罪行，比如危害国家安全、破坏国家统一、颠覆国家政权，或非法向境外人士提供国家机密，处以长期监禁等严厉惩罚以及送交劳动教养，这样一种制度，似乎与建立在人权文化基础上的社会的核心价值不相符，并导致恐吓、顺从、自我检查和“恐惧的文化”，从而干涉了不受不人道和有辱人格的待遇或惩处的权利。

## 五、羁押的条件

### 概述

66. 特别报告员总共访问了 10 个羁押场所。按照通常做法，特别报告员在访问羁押场所期间同被羁押人进行了私下交谈(谈话提要载于附录 2)。然而，他注意到有相当多的被羁押人不愿意与特别报告员交谈，其中几位确实要求绝对保密。因此，附录 2 所载资料并未充分反映实际情况，有关酷刑做法的相当多的资料是以秘密方式提供的。

67. 大体上，特别报告员认为，羁押场所的具体情况有所不同，但就食物、医药和卫生等基本条件而言，总体情况还是令人满意的(关于所访问的各羁押场所的拘留条件的详细定论，载列于附录 2)。不过，在同被羁押人交谈过程中，特别报告员注意到有显而易见的恐惧心理。各个羁押场所中被羁押人严格的纪律约束也使他深有触动。他每次进入牢房，都发现所有被羁押人都盘腿坐在垫子上，或以类似强迫性姿势在阅读《刑法》或监狱条例。据被羁押人所提供的资料，此种强迫管教，尤其是在看守所，是每天要作的主要事情。通常是由一名同室犯人带领进行，即牢房的“组长”。犯人几乎无个人隐私可言，也没有个人娱乐时间，比如读书，等等。因政治性质的罪行而定罪的人，即使长期服刑，通常也无权工作，并且娱乐时间也极少。不允许他们信奉其宗教(比如，西藏的佛教、新疆的伊斯兰教)。

### 与死刑有关的情况

68. 特别报告员还对与死刑有关的情况表示关切，其中包括已判死刑犯人的境遇。在北京市看守所，特别报告员在同一审判处死刑等待上诉的犯人交谈时注意到，

这些犯人每天 24 小时被戴上手铐和重约三公斤的脚镣，无论什么情况(包括吃饭和上厕所等)。<sup>71</sup> 特别报告员认为，这样做不人道，有辱人格，对于已因判处死刑而精神紧张和痛苦的人来说，这是另一种形式的惩罚。

69. 特别报告员对可判处死刑的罪名较多以及缺少官方死刑统计数据表示关切，认为后者助长了神秘观念。<sup>72</sup> 他鼓励该国政府缩小死刑范围，对死刑适用情况应向亲属和社会增加透明度，其中包括公布死刑统计数据。特别报告员注意到，有指控说，一些省政府在采用一家国有公司制造的流动处决车(由 24 个座位的公共汽车改装而成)。<sup>73</sup> 据报道，2003 年 3 月 6 日云南省政府批准采用这种流动处决车，2003 年云南省所有中级法院和一家高等法院已分配到 18 辆此种车辆。2003 年 12 月，据报北京最高人民法院敦促各省购置处决车，“可在判决之后将既决罪犯立即处决”。

70. 特别报告员欢迎最高人民法院计划收回对死刑案件的最后复核权。<sup>74</sup>

## 六、结论和建议

### 结 论

71. 特别报告员真诚地感谢中国政府邀请其进行访问，并按照其职权范围为访问提供了便利。他对中国政府愿意承认在刑事司法系统中普遍存在酷刑现象以及近年来在中央和省级为反酷刑和虐待所作出的各种努力表示欢迎。尤其是，他注意到公安部 2004 年颁布了有关条例，禁止使用酷刑和威胁手段取得口供，最高人民检察院 2005 年也宣布消除刑讯逼供将是工作的重中之重。最近为消除酷刑所作出的努力包括：在全国范围内开展清理和纠正警察超期羁押问题；对警察进行大规模培训；在试点审讯室安装录音录象记录系统；在试点警署，律师可在 24 小时内介入；以及在羁押场所和公安局附近派驻检察官，对执法人员实行监督。

72. 由于近年来所做的这些努力以及类似措施，酷刑行为不断减少。不过，根据特别报告员及其历届前任几年来所收到的大量指控和其他可靠的政府和非政府资料，以及特别报告员自己在访问期间所作的事实调查，他认为，尽管酷刑行为尤其在城市地区有所减少，但在中国仍然普遍存在。

73. 中国之所以依然存在酷刑行为，这里有多种因素。其中包括促使审讯者通过酷刑手段获得口供的证据规则；在无司法管制的情况下长时间羁押刑事嫌疑人；缺乏

基于无罪推定原则的法律文化(包括缺乏有效的保持沉默权);以及被告律师的权利和手段受到限制。

74. 由于缺乏自我生成和/或自我维持的社会政治机构,这包括有言论自由并可展开调查活动的新闻界、独立的公民人权监督组织和独立、公正和可诉诸的法院和检察院,致使情况更加严重。

75. 司法监督尤其重要。在中国妨碍消除酷刑行为的最大障碍之一,就是体制薄弱,司法机关缺乏独立性,这一点,在警察拥有宽泛的酌处权实行逮捕和拘留并在巨大压力下结案的情形之下,尤为如此。在中国,目前似乎也没有对羁押场所或申诉机制给予真正独立监督的机制。鉴于检察院在对嫌疑人定罪方面所起的作用,它也不被视为一个独立的监督机关。在司法官员依法受权行使作出逮捕决定的司法权力方面,检察院也不具有符合国际标准的必要的独立性。

76. 在省市一级,由于在治安管理和刑事程序上固有的“地方观念”,阻碍有效实施中央颁布的条例、指导意见、培训、禁令等,使得中央政府为减少酷刑行为所作出的努力收效甚微。此种地方观念也妨碍有效地实施问责制和监督。

77. 在特别报告员所访问的羁押场所,基本条件,包括食物、医疗和卫生条件,总体看来是令人满意的。但是,特别报告员也强烈地感受到监狱纪律的严格性,他在与被羁押人进行交谈时,明显感到对方有恐惧心理,并实行自我约束。尤其是在看守所内本应以无罪推定原则对待的被羁押人,似乎每天有很长时间必须以固定姿势坐着,并被迫相互朗读《刑法》或监狱条例。

78. 因政治性质的罪行而定罪的人,即使长期服刑,往往也无权工作,并且娱乐时间也极少。通常不允许他们信奉其宗教。未坦白认罪的既决犯人,要接受特殊管教,并剥夺其某些权利和特权,即思想转变的犯人可享受的权利,如家人探监、打电话或减刑奖励。已判死刑犯人与候审被羁押人被关一起,并戴上脚镣,有时一天 24 小时被戴上手铐。这种额外的惩处与人格完整、人的尊严和人性权利是不一致的。

79. 刑事司法制度及其关注重点是使人认罪,获取口供和教育改造,这涉及到政治性质的犯罪时就格外令人不安,如 1997 年《刑法》改革之前的“反革命罪”,或之后的“危害国家安全”罪。此外,有政治偏离行为或不同政见行为的人往往会以扰乱社会秩序的罪名被送去劳教,或处以长达四年的行政拘留。

80. 许多因政治性质的犯罪服刑的犯人和受到劳教的被羁押人声称，过度、歧视性和不公正地剥夺他们的自由(常常是长期剥夺)，以及强迫管教，所造成的痛苦与伤害远远大于警方审讯期间实施酷刑给身体带来的痛苦。

81. 特别报告员认为，把剥夺自由作为对和平行使言论、集会和宗教自由权的一种制裁，以及采取以胁迫、屈辱和惩罚手段进行管教的措施，其目的是承认有罪和改变被羁押人的人格，及至打垮他们的意志，这涉及到人格完整、人的尊严和人性等人权的核心。它构成一种不人道和有辱人格的待遇或惩处，导致顺从和“恐惧的文化”，与任何建立在于人权文化基础上的民主社会的核心价值不相符。

## 建 议

82. 根据所作结论，特别报告员提出了若干建议，并希望政府结合目前所进行的旨在消除酷刑和虐待行为的改革努力，对之加以认真考虑。

### 对酷刑行为进行调查和起诉

- (a) 根据《禁止酷刑公约》第 1 条，对酷刑罪下定义应为优先事项，并根据其严重性给予相应处罚。
- (b) 对所有涉及酷刑和虐待行为的指控，应由一独立机关进行迅速而彻底的调查，该机关不得与对据称受害人案子进行调查和起诉的机关有任何联系。
- (c) 任何因滥用职权或实施酷刑而受到起诉的政府官员，包括涉嫌共谋实施酷刑或忽视证据的检察官和法官，均应立即停职，并对其提出起诉。
- (d) 应当就《禁止酷刑公约》第 22 条作出声明，承认禁止酷刑委员会有资格接受和审议声称为违犯《公约》条款行为受害者提交的来文。

### 从刑事司法制度上予以保障，防止发生酷刑和虐待行为

- (e) 对被依法逮捕的人，在审讯员或侦查员所控制的羁押场所内的关押时间不应超过法律所规定的获得候审拘留司法授权所必要的时间，通常这一时间不应超过 48 小时。之后应将他们移交由不同权力机构管辖的看守所，该看守所不得与审讯员或侦查员有任何进一步的无人监督的联系。

- (f) 《刑事诉讼法》中诉诸预审拘留的做法应当加以限制，尤其是对非暴力、未成年人或不严重的罪行，并扩大采取保候审和保证金一类的非拘留措施。
- (g) 应当有效地保证所有被羁押人有能力向一独立法院质疑拘留的合法性，比如，通过请求人身保护诉讼。
- (h) 无律师在场并且法官未予确认的口供，不应作为证据采用。在审讯室审理期间对所有在场的人进行录音录象，这一做法应当推广到全国。
- (i) 法官和检察官应当定期询问被警察羁押的人，了解他们所受到的待遇情况，如有任何疑问(即使被告没有提出正式申诉)，亦应下令进行独立的体格检查。
- (j) 《刑事诉讼法》改革应当符合《公民权利和政治权利国际公约》第十四条关于公正审判的规定，包括做出如下规定：有权保持沉默，有权不自证其罪；有效排除酷刑取得的证据；无罪推定；及时通知被拘留或逮捕原因；迅速由外部复核拘留或逮捕；及时会见律师；有充足的时间和手段准备辩护；证人出庭和交叉询问证人；以及确保司法机关的独立性和公正性。
- (k) 检察官下令或批准逮捕的权力和对警察和看守所的监督权，应当移交独立法院。<sup>75</sup>
- (l) 《刑法》第三百零六条应当予以废除，根据该条规定，任何律师，比如说，如建议当事人推翻强迫口供，就可能受到起诉。

#### 其他预防措施

- (m) 应当批准《禁止酷刑公约任择议定书》，并建立真正独立的监督机制，在这一机制下，任命查访委员会成员，查访全国各地所有羁押被剥夺自由的人的场所，委员会成员任期固定，且不得解聘。
- (n) 通过系统的培训方案和宣传运动，对一般公众、公安人员、法律专业人士和司法机构开展有关《禁止酷刑公约》原则的教育。
- (o) 对于身心受到伤害的酷刑和虐待受害人，应当给予相应的实质性补偿，以及适当的医疗和康复。



### 与死刑有关的情况

- (p) 对于已判死刑犯人，不应再受到戴手铐和脚镣等其他惩罚。
- (q) 应当利用最高法院收回对所有死刑案件的复核权这一契机，公布全国适用死刑的统计数据。
- (r) 应当缩小死刑范围，比如，废除经济和非暴力罪死刑。

### 因政治罪剥夺自由

- (s) 应当废除为执法和检察机关留有较大任意裁量权的政治罪，如“危害国家安全”、“颠覆国家政权”、“破坏国家统一”、“为境外人士提供国家机密”，等等。
- (t) 应当释放所有因和平行使言论、集会、结社和宗教自由而被判处刑罚的人，这些人是在 1997 年《刑法》改革前后依据对政治罪的笼统定义而被判刑。

### 强迫管教

- (u) 应当废除“劳动教养”以及在监狱、看守所和精神病院的类似强迫管教做法。
- (v) 任何涉及剥夺自由的决定，必须由司法机关而不是行政机关作出。

### 后续行动

- (w) 特别报告员建议政府继续与有关国际组织以及联合国人权事务高级专员办事处合作，以便在就上述建议采取后续行动方面获得帮助。

## Appendix 1

### Notes

<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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.”

<sup>5</sup> 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."

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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 Raapporteur 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.”

<sup>9</sup> Decision on the Criteria for Filing Cases in those Cases where Filing and Investigation is Directly Handled by the Procuratorate of 16 September 1999.

<sup>10</sup> Ibid.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> See CAT/C/39/Add.2, paras. 9 and 10.

<sup>16</sup> Revision was published by the Ministry of Public Security on 14 May 1998.

<sup>17</sup> Entered into force in 1997.

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> Promulgated in 1996 and took effect at the same time as the CPL.

<sup>22</sup> See supra note 16.

<sup>23</sup> Rules 36, 39, 43 and 44 also refer to the “participation of lawyers in criminal proceedings”. See CAT/C/39/Add.2, para. 74.

<sup>24</sup> Issued by the Ministry of Public Security on 17 October 1989. See article 2(c)-11.

<sup>25</sup> 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.

<sup>26</sup> 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”.

<sup>27</sup> 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.”

<sup>28</sup> 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.”

<sup>29</sup> 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”.

<sup>30</sup> 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”.

<sup>31</sup> 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.

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> 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."

<sup>35</sup> 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.

<sup>36</sup> 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 jue ding*) 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).

<sup>37</sup> Legislation Law, passed 15 March 2000, effective as of 1 July 2000.

<sup>38</sup> 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.

<sup>39</sup> 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."

<sup>40</sup> 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.

<sup>41</sup> 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 Mohammad Yasin in Appendix 2.



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

<sup>43</sup> “Any appeal, accusation or complaint by a criminal must be promptly forwarded without delay.” See CAT/C/39/Add.2, para. 42.

<sup>44</sup> “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.

<sup>45</sup> “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.

<sup>46</sup> “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.”

<sup>47</sup> CAT/C/39/Add.2, para. 67.

<sup>48</sup> Came into effect in January 1995.

<sup>49</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> 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” [lùshi 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 pouxu], 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 April 05; Yuan Zhengbing, Cui Zuojun, Liu Jinlin, “To Prevent Unjust Cases, Firmly Grasp the Relation with Arresting Personnel”, Procuratorate Daily (Online).

<sup>53</sup> 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 guanbiao 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).

<sup>54</sup> "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).

<sup>55</sup> *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)

<sup>56</sup> “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.

<sup>57</sup> 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.”

<sup>58</sup> 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.”

<sup>59</sup> 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.

<sup>60</sup> 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.”

<sup>61</sup> 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.

<sup>62</sup> 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.”

<sup>63</sup> 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.

<sup>64</sup> 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.

<sup>65</sup> 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.”

<sup>66</sup> 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>.

<sup>67</sup> Cf., e.g., the case of Hu Shigen in Appendix 2.

<sup>68</sup> 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 Mohammad Yasin in Appendix 2.

<sup>69</sup> 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."

<sup>70</sup> 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."

<sup>71</sup> 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.

<sup>72</sup> 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.

<sup>73</sup> 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.

<sup>74</sup> 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."

<sup>75</sup> 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

##### 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<sup>2</sup>. **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 Rapporteur 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 descent, 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 (Bajahu). 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<sup>2</sup> 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 Dagan 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 Rapporteur 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.

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