February 27, 1991

The Beijing Trials:
Secret Judicial Procedures and the Exclusion of Foreign Observers

Since January 5, 1991, more than 30 leaders of the 1989 Chinese pro-democracy movement, including Chen Ziming, Wang Juntao, Wang Dan, Ren Wanding and Bao Zunxin, have been brought to trial in Beijing on charges of "counterrevolution" and sentenced to prison terms ranging from two to thirteen years.[1] (Where verdicts have not been announced, Asia Watch is concerned that the sentences may have been considerably heavier.) And the trials are not yet over. On February 19, 1991, the *South China Morning Post* reported that worker leaders Han Dongfang and Li Jinjin had been moved to Qincheng Prison and would be brought to trial.

The Chinese government insists that these trials are being openly and fairly conducted, an insupportable claim (and one refuted by Asia Watch elsewhere)[2] when in some cases, even the spouses and other members of the defendants' immediate families have been prevented from attending the proceedings. At the same time, the government has ignored all requests by outside groups to be allowed to observe the trials. Foreign journalists have been prevented by squads of uniformed and plainclothes police officials from approaching courthouses where trials are underway.

Until now, the rationale for excluding foreigners was widely assumed to be China's argument that the trials were an internal affair and not a matter for outside interference. In fact, however, there exists in China a series of official court regulations which specifically bar foreign observers from attending trials of almost all political, and some categories of criminal defendants. These various documents are presented here by Asia Watch, in English summary for the first time.

---

[1] Some of the trials held since January 1991 have resulted in the following sentences:

Name	Jail Term (yrs.)	Name	Jail Term (yrs.)		Released without punishment
Bao Zunxin	5	Wang Dan	4	Liu Xiaobo	
Chen Ziming	13	Wang Juntao	13	Chen Xiaoping	
Guo Haifeng	4	Wang Youcai	4	Li Yuqi	
Hu Ruoyang	4	Xaio Feng	3	Pang Zhihong	
Kong Zianfeng	3	Xue Jian-an	2	Chen Tao	
Li Nong	5	Yao Junling	2	Chen Lai	
Liu Gang	6	Yu Zhenbin	12	Li Chenghuan	
Liu Zihou	7(?)	Zhang Ming	3		
Ma Shaofeng	3	Zhang Qianjin	2	*Many other dissidents have been tried,*	
Ren Wanding	7	Zheng Zugang	2	*but their sentences are not known.*	

[2] See "Rough Justice in Beijing," *News From Asia Watch*, January 27, 1991.

Other previously unknown - and highly confidential - regulations summarized and excerpted below, dealing with the matter of access by foreign consular officials to their own nationals who have been detained in China, show that police and judicial authorities are even authorized by the Chinese government to violate international diplomatic conventions and bilateral consular agreements in order to prevent such access in certain cases. Since the Chinese authorities are prepared to dishonor such agreements and to deny outside access even to foreign nationals detained on criminal charges in China, it is not surprising that all efforts by concerned foreign groups and individuals to be allowed to observe the trials now in progress of the 1989 pro-democracy movement leaders have failed.[3]

Finally, the regulations uncovered by Asia Watch and excerpted below also include one grim reminder of the extent to which the authorities are determined to repress dissent: the censoring of wills of prisoners sentenced to death.

Guangdong High Court and Supreme People's Court Directives of 1982

On May 25, 1982, the Guangdong Provincial High People's Court requested formal instructions from the Supreme People's Court of China concerning a request which had recently been received from the United States Consulate in Guangzhou asking that U.S. consular officials be permitted to attend and observe trials in the province. (According to the State Department in Washington, D.C., U.S. consulates throughout China have been asking for the past ten years to be allowed to attend trials of accused counterrevolutionaries and others but the Chinese government has consistently denied permission.)

The Guangdong court's request took the form of a list of specific recommendations to the Supreme People's Court as to how the question of requests by foreigners to attend trials in China should be handled. The formal response (*Written Instructions of Reply*) of the Supreme People's Court, issued on July 5, 1982, endorsed these various recommendations and set out additional broad guidelines. Indicative of their authoritative character, both these documents are published in an official volume, unrestricted in its circulation, entitled *The Collected Laws of the People's Republic of China* (hereinafter referred to as *Collected Laws*).[4] It may be no coincidence that the trials and

---

[3]Asia Watch made two requests in 1990 to be allowed to observe the trials of those detained since June 4, 1989, but no response was received from the Chinese authorities. Similar requests by Amnesty International and other human rights organizations have likewise been ignored, and several recent delegations to Beijing by concerned Western groups wishing to meet with the accused and observe the trials, including Medecins du Monde and the "International Delegation Concerned with Human Rights in China" have encountered a wall of official silence in the Chinese capital. Requests by the U.S. Embassy in Beijing for permission to send observers to attend the trials have fared no better. At least two Chinese nationals presently studying in the U.S. have risked arrest by travelling to Beijing in an effort to gain admittance to the trials. One, Ge Xun, was tailed by Chinese police throughout his several-day-long, and entirely fruitless, sojourn around the relevant central government offices; the other, Mao Jiye, Secretary General of the Chinese Students and Scholars Federation in Canada was prevented by police at Beijing airport from entering the country and was put on the first available flight to Japan, where his flight to China originated.

[4] Zhonghua Renmin Gongheguo Fal Quanshu, edited by Wang Huaian et al, Jilin People's Publishing House, June 1989. The documents are entitled, respectively, "*Request for Instructions by the Guangdong Provincial High People's Court on Whether Foreigners are Allowed to be Present as Visitors or to Conduct Press Coverage when the People's Courts Hold Public Sittings on Cases which Do Not Involve Foreign Interests*" (ibid [*Third Impression*, December 1989], p.289); and "*Written Instructions of Reply of*

sentencing of most of the leading activists of the "Democracy Wall" period, including Wang Xizhe, Xu Wenli and Chen Erjin, took place during the same months as the issuance of the documents in question.

The *Request for Instructions* begins by referring to two other documents - *the Supreme People's Court's (Trial) Regulations for the People's Courts*, dated December 11, 1979, and the *Consular Convention between the People's Republic of China and the United States of America*. It points out that both these documents only contain provisions for the authorization of foreigners to attend trials concerning "cases which involve foreign interests." The *Request for Instructions* then sets forth the following recommendations, subsequently endorsed by the Supreme People's Court:

> *1. If foreign consular officials or other foreigners ask to be present as visitors at public hearings of specific cases which do not involve foreign interests, the people's courts should in general refuse permission.*[5]
>
> *2. For the purpose of carrying out external propaganda on the socialist legal system, the people's courts may selectively invite foreign consular officials or other foreigners to be present as visitors at, or to conduct press coverage of, public hearings of ordinary criminal cases or of cases involving civil or economic disputes. They shall comply with the courtroom rules of the people's courts.*
>
> *3. When the people's courts hold, in accordance with the law, public hearings of cases involving counterrevolution, or cases of dereliction of public duty relating to China's internal affairs, then foreigners and foreign journalists should in general not be permitted to be present as visitors or to conduct press coverage. Where cases damaging to the reputation of the state and nation, and also any other cases that are not suitable for foreigners to understand, are concerned, then foreigners and foreign journalists must, without exception, be denied permission to be present as visitors or to conduct press coverage whenever, in accordance with the law, public hearings of such cases are held.*
>
> *4. When foreigners or foreign journalists request to be present as visitors at, or to conduct press coverage of, public hearings of relevant cases by the people's courts, such requests should be handled in accordance with the stipulations of Article 9 of the Courtroom Rules.*[6] *The question of*

---

the Supreme People's Court on Whether Foreigners are Allowed to be Present as Visitors or to Conduct Press Coverage when the People's Courts Hold Public Sittings on Cases which Do Not Involve Foreign Interests" (p.288.).

[5] The original Chinese term for "cases which do not involve foreign interests" - fei shewai anjian - means, strictly speaking, cases either in which foreigners are not involved as parties to litigation or in which foreign legal interests are not at stake; it should not be construed as meaning, for example, "cases into which foreigners have no business poking their noses."

[6] The *Courtroom Rules of the People's Courts*, issued by the Adjudication Committee of the Supreme People's Court on December 11, 1979, came into force on January 1, 1980. Article 9 of the *Courtroom Rules* reads: "In cases where foreigners request to attend as visitors, or foreign journalists request to conduct press coverage of public hearings of cases involving foreign interests, they may submit the request to the chief competent department and may, upon approval of the people's court, be admitted to the courtroom after showing a visitor's permit or pass permit issued by the people's court; moreover, they should observe the various stipulations set forth in Articles 5,6,7 and 8 of these Rules." (The latter articles cover matters such as that minors, the mentally ill and intoxicated persons are not to be admitted to courtrooms; and that no tape-recording, photographing, clapping or speech-making will be permitted from the visitors' gallery.)

which cases to select [for this purpose] should be considered and decided upon by the court presidents, and, moreover, the prior agreement of the external affairs departments and authorization by the intermediate courts must be obtained. In cases involving either counterrevolution or dereliction of public duty, prior approval and authorization by the high courts must be obtained. Their reactions and opinions[7] should be promptly reported to the court at the next higher level and to [other] relevant departments.

In brief, then, the Guangdong High Court's recommendations concerning trials of counterrevolutionaries were that foreigners of all types "should in general not be permitted to be present," and moreover that the exclusion of foreigners should be automatic "where cases damaging to the reputation of the state and nation," and also "any other cases the details of which it would be disadvantageous to permit foreigners to become acquainted with," are concerned. These various points would seem to dispense quite comprehensively with any possibility of foreigners ever gaining admittance to trials of counterrevolutionaries in China. In light of them, the stipulation in section 4 of the *Request for Instructions* of a notional procedure by which foreigners might be admitted to such trials appears to have no practical substance or significance.

In its *Written Instructions of Reply* of July 5, 1982, the Supreme People's Court informed the Guangdong High Court that, "...after joint deliberations with the chief competent departments of the Ministry of Foreign Affairs, *we are in basic agreement with the opinions of your court*" (emphasis added.) The *Written Instructions of Reply* then detailed three sets of procedures to be followed in the event of requests being received from foreigners to attend trials of "cases which do not involve foreign interests." In the second of these, the Supreme People's Court stressed that the types of trials to which foreigners (including embassy officials, consular staff and journalists) are to be granted admittance "should be selected with great care" (*yingdang shenzhong di yuyi xuanze*) and that "in general, it is appropriate to select common criminal cases and civil cases."[8]

Thus, while the *Written Instructions of Reply* do not explicitly endorse the Guangdong High Court's recommended ban on the admission of foreign observers to trials of counterrevolutionaries, the Supreme People's Court's expression of "fundamental agreement" with the *Request for Instructions* as a whole show that such an endorsement was in fact clearly implicit in the *Written Instructions of Reply*. (Any reasonable interpretation to the contrary would require the Supreme People's Court to have specifically rejected the Guangdong court's recommendation on this point, something which it did not do.)

---

[7] It is unclear from the original text as to whether this phrase ("Their reactions and opinions") refers to the views of foreigners and foreign journalists who have been admitted to trials, or alternatively to the views of the "high courts," as referred to in the preceding sentence.

[8] Authorization for such admission must be obtained from the external affairs departments and from courts at the next higher level. The other two procedures mentioned in the *Written Instruction of Reply* are that such requests should be addressed to the "competent foreign affairs departments" and then discussed and decided upon by them in conjunction with the people's courts, which should issue visitors' and journalists' passes to the successful applicants. Third, the Supreme Court advises that if the Guangdong court decides to grant permission for U.S. Consular officials to attend, locally, "trials which do not involve foreign interests," then, in order "not to give undue prominence to one particular country," consular officials or journalists of other foreign countries should also be invited to attend the relevant trials.

But the obsessive degree of secrecy shown by China's courts extends well beyond the mere physical exclusion of foreigners from courtrooms in sensitive cases. The *Collected Laws* also includes the text of another important judicial directive, dated October 18, 1957 and entitled *Written Instructions of Reply of the Supreme People's Court Instructing that the Judgment of Cases which Should Not be Heard in Public According to Law Should Still Be Made Public to the Society*. Although left unspecified in this particular text, the types of cases "which should not be heard in public" certainly include those specified in the *Criminal Procedure Law of China* (1980). According to Article 111 of the latter:

> *The people's courts shall conduct adjudication of cases in the first instance in public. However, cases involving state secrets or the private affairs of individuals are not to be heard in public.*[9]

In response to the question of whether or not public announcements should be made of court judgments in cases held *in camera* (a question raised during the height of the notorious "Anti-Rightist Campaign" by the Shaanxi Provincial High People's Court in a memorandum of August 6, 1957), the Supreme People's Court directive answered in the affirmative. In its further elaborations on the point, however, the Supreme People's Court stated:

> *If the judgement [in such a case] can be announced immediately after the hearing, then, even if no members of the public are present*[10] *at the time, the judgment should nonetheless be immediately announced.*

Given that almost all of the several hundred thousand casualties of the 1957 "Anti-Rightist Campaign" were 20 years later, at the time of Deng Xiaoping's renewed rise to power, fully rehabilitated and declared to have been the victims of wholesale frame-ups and miscarriages of justice by the Party-controlled courts, the recent inclusion in *Collected Laws* of this clear example of judicial "giving with one hand and taking away with the other" gives serious cause for concern. However, the main point of the 1957 document's reproduction in the 1989 volume seems, in view of the fact that it appears immediately after the exchange between the Guangdong High Court and the Supreme People's Court, to be to underscore the restriction of foreigners' access to information about sensitive trials. The document states:

> *The purpose of allowing, in accordance with law, certain cases not to be heard in public is so that certain undesirable consequences which might ensue if the cases were heard in public may be avoided. Thus, when preparing the written judgments, adjudicative personnel should, when entering the facts of the crimes, carefully avoid mentioning any details which might produce these undesirable consequences. In cases involving state secrets, secrecy should be carefully maintained...*[11]

---

[9] *The Criminal Law and the Criminal Procedure Law of the People's Republic of China*, Foreign Languages Press (Beijing 1984), p.150. Article 111 further states: "Cases involving the commission of crimes by minors...are also generally not to be heard in public." Hearings of all these three types of cases are, of course, closed to Chinese as well as to foreigners.

[10] "sui wu qunzhong pangting..."

[11] *Collected Laws* (ibid) p.289.

In other words, according to China's Supreme People's Court, even when a trial has been held in camera and the verdict is to be "publicly" announced in a courtroom devoid of members of the public, the written verdict should still be carefully doctored in order to erase important facts - ones which in cases of counterrevolution are likely to have been crucial to the determination of guilt - from the legal record. This directive is, as mentioned, a judicial relic of the discredited "Anti-Rightist" period, but it remains in force. The section of *Collected Laws* (the most authoritative legal reference source in China) in which it and the Guangdong High Court-Supreme People's Court exchange appear, is probably the first thing that senior Chinese officials will have turned to recently when assessing their response to the numerous requests by foreign governments, groups and individuals to be admitted as observers to the trials now underway of 1989 pro-democracy movement leaders.

As another example of the Supreme People's Court's ostensible insistence upon adherence to due process while, in the next breath, effectively conferring carte blanche authority on the courts to violate it, a document issued by the Supreme People's Court on September 20, 1983 should also be mentioned. The document, entitled *Reply (1) of the Supreme People's Court on Matters Relating to the Application in Practice of the Laws by the People's Courts in Adjudicating Cases Involving Severe Criminal Offenses*[12], gave the Supreme People's Court's answers to a number of questions raised by the lower courts concerning draconian new legislation which was introduced in 1983 in connection with a major campaign that year to "crack down on crime." (The campaign, which involved the execution of many thousands of so-called "serious criminals," continued until at least 1985; the 1983 legislation remained in force thereafter, and a new round of the "crackdown on crime," still in progress in February 1991 was launched in early of 1990.) According to section 12 of the Supreme People's Courts' *Reply (1)*:

> *Question: In order to strike prompt and severe blows against criminal activities, would it be permissible not to hold hearings of certain cases in public? ([Query from courts in] Jiangxi, Fujian and Henan provinces and from the railroads court system.)*
>
> *Answer: According to the stipulations of Article 111 of the Criminal Procedure Law, the people's courts should hear all cases in open court except where the law specifies otherwise. However, [the courts] may, in accordance with specific circumstances, be flexible in determining the scope of trials to be heard openly.*"(emphasis added)[13]

As mentioned above, Article 111 clearly states that the only types of cases to be heard *in camera* are those "involving state secrets or the private affairs of individuals" (and also those involving minors.) In the passage just cited, however, the Supreme People's Court in effect instructed the lower courts not to feel bound by the *Criminal Procedure Law* and, instead, simply to decide for themselves which cases to hold publicly and which ones to conduct behind closed doors.

Confidential Regulations of 1981 on Consular Access to Detained Foreigners

On June 19, 1981, a highly confidential directive was issued jointly by China's public security, foreign affairs

---

[12] *Collected Laws* (ibid), p.126.

[13] "Dan gongkai shenpan de guimo, keyi anzhao shiji qingkuang linghuo queding."

and judicial authorities setting forth regulations governing the access of foreign embassy officials, consular staff and journalists to foreign nationals detained in China on criminal charges or as criminal suspects, and detailing the correspondence rights of such detainees. The document is entitled *Joint Circular of the Ministry of Public Security, Ministry of Foreign Affairs, Supreme People's Court and Supreme People's Procuratorate Concerning How to Handle the Matter of Interviews with Offenders of Foreign Nationality Held in Custody and the Correspondence of Such Offenders with the Outside World*.[14] Appended to the directive - which was issued to provincial-level foreign affairs departments and public security offices and to high people's courts and high people's procuratorates only - were two versions of the relevant regulations.

Asia Watch has in its possession the full version of the various documents concerned, found in a confidential volume entitled *Manual of Law Enforcement (Part 3)*.[15] The second version of the regulations covers the matter of outside access both to Chinese and to foreign detainees, and is, according to the joint directive, the one which is to be given to foreign embassies or consulates in the event of a national of the foreign country concerned being arrested or detained in China. The first (and much longer) version deals exclusively with the matter of diplomatic access to detained foreign nationals. In a Kafka-like inversion of the expected, however, this document is marked "confidential." It sets forth a range of restrictions on diplomatic access to foreign-national detainees, the existence of which is not even hinted at in the second version of the regulations, namely that intended for foreign diplomatic scrutiny.

A comparison of the full version of the texts with the version that appears in the openly published *Collected Laws of the People's Republic of China* (p.310), reveals the existence of what can only be termed a policy of deliberate duplicity by the Chinese authorities towards the international diplomatic community. When the Chinese government declares, as it has consistently done in connection with the trials of 1989 pro-democracy movement leaders, that foreign criticisms of human rights abuses in China are "groundless" since official actions have invariably been carried out "in strict accordance with the law," the question must then be asked, to which version of the "law" are the authorities referring? To the openly released version of the laws or regulations concerned, or to the "restricted access," confidentially circulated (*neibu*) version? As the following extracts show, the distinction can be crucial. Additionally, the documents' secret restrictions on outside consular access even to foreign nationals held in China help to account, by extension, for the current unqualified refusal of the authorities to admit foreign observers to the trials of the 1989 Chinese dissident leaders, or indeed to allow foreigners any access to the defendants whatsoever.

The *Joint Circular* of June 19, 1981 begins by noting that in 1955, China "specifically drew up confidential regulations" concerning the issue of "meetings with detained criminals of U.S. nationality." Recent diplomatic developments, however, had necessitated the `updating' of these regulations:

> *Not long ago, the Chinese Government signed and joined the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations*[16] *and also signed a number of bilateral*

---

[14] *Zhifa Shouce (Di San Ji)*["Manual of Law Enforcement (Part 3)], edited by the Policy and Law Research Office of the Ministry of Public Security, Masses Publishing House (Beijing 1985, Second Impression), pp.209-213.

[15] See footnote 12 for publication details.

[16] China's participation in the Vienna Convention on Diplomatic Relations became effective on December 25, 1975, and on September 15, 1980 China dropped one of its three former reservations concerning specific articles of the convention. China's participation in the Vienna Convention on Consular Relations became effective on August 1, 1979.

consular "agreements" and "exchange of notes" with the United States, Canada and Australia. All of these documents contain stipulations that if a citizen of the dispatching nation is detained or arrested, then the receiving nation should, among other things, permit visits [with the detainee] to take place. Moreover, thes documents are all binding in nature upon the two parties; they must be respected by both sides, and no infringement of them is permitted.

The circular then stated that, since foreign nationals were currently being detained in more than ten different provinces, municipalities and autonomous regions throughout China, it had become necessary to set forth so-called "clear and precise regulations" on the matter of access to detained foreign nationals. But in a striking non sequitur, insofar as foreign diplomatic access to the truth of the matter is concerned, the circular continues:

Hence, we have formulated a set of Confidential Regulations Concerning Meetings with Offenders of Foreign Nationalities Held in Custody and the Correspondence of Such Offenders with the Outside World, a set of Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World and also a Permit of Visitation.

The Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World can be given to embassies and consulates [whose staff are] permitted to visit their nationals who have committed crimes in China.

The fact that such vital matters as the proper channels and procedure by which foreign diplomatic and consular officials are supposed to apply for permission to visit their detained nationals are covered in the confidential regulations, and not in the version that such officials are actually given by the authorities, is perhaps the least troubling aspect of this highly distinctive piece of legislative packaging. Much more so is the hitherto entirely unknown fact, as revealed in the *Confidential Regulations* - which deal only with foreign detainees - that foreign nationals can also, just like Chinese citizens, be charged with the crime of "counterrevolution." As the *Confidential Regulations* explain:

1. Principles for the conduct of meetings. In general, meetings will be permitted in the case of ordinary criminal offenders upon whom judgment has already been passed and also those upon whom judgment has not yet been passed, and also in the case of counterrevolutionary criminals upon whom judgment has already been passed. Permission may also be granted for meetings with counterrevolutionaries upon whom judgment has not yet been passed, provided that this would hinder neither the investigation nor the trial.[17]

But the worst is yet to come:

---

[17] It is unclear to whom, precisely, this notion of `foreign counterrevolutionaries' might be intended to refer. A number of Hong Kong Chinese, and dozens of Taiwan Chinese have been arrested and convicted on charges of counter-Revolution over the past decade; but the Chinese authorities regard Chinese from both Hong Kong and Taiwan as being citizens of the PRC - and certainly not as the "foreign nationals" with whom the Confidential Regulations are solely concerned. In any event, the existence of this category of crime should certainly give pause for thought to any foreigners who may be thinking of involving themselves in, for example, China's post-June 1989 underground dissident movement.

Where it would hinder either the investigation or the trial, meetings [with foreign counterrevolutionaries upon whom judgment has not yet been passed] should temporarily be denied. But the decision is to be rendered by the public security department (or bureau) at provincial, municipal or autonomous-regional level, or by the high people's court, and a report should be sent to, and placed on file by, the Ministry of Public Security, the Ministry of Foreign Affairs, the Supreme People's Court and the Supreme People's Procuratorate.

In cases where, because it would hinder either the investigation or the trial, permission for meetings is temporarily denied, then, on the basis of the stipulations of the Criminal Procedure Law, the family or work-unit of the foreigner concerned is not to be informed that he or she has been detained or arrested.[18]

In the event of the other side making, on the basis of the relevant provisions of the Vienna Convention on Consular Relations or various bilateral treaties or agreements, representations about the matter to China's foreign affairs or other departments, then we can find some pretext or excuse to raise by way of an explanation, or we can just procrastinate."[19]

The above passage in effect provides, in terms leaving no room for doubt, a policeman's charter for the secret and incommunicado detention of foreigners in China. That charter potentially extends, moreover, up to and including the trial and conviction stage, and in such cases also including, throughout, the withholding of notification even from the accused's family. ("Where it would hinder either the investigation or the trial" is cited in respect of both these latter points.) In addition, the passage not only condones but actively encourages China's police and judicial authorities to disregard major international and bilateral agreements which the very same document earlier states, as noted above, "are all binding in nature upon the two parties; they must be respected by both sides, and no infringement of them is permitted."

Elsewhere, in reference to cases where meetings with foreign detainees have been authorized, *Confidential Regulations* makes the choice comment: "As regards location, the meetings should be arranged to take place in a reception room, rather than in the [prisoner's] cell, in order to prevent any observation of prison conditions from taking place."

---

[18] Although not specified in the *Confidential Regulations*, the "stipulations of the Criminal Procedure Law" alluded to here are probably: Articles 43 and 50. Article 43 states: "When a public security organ detains a person, it must produce a detention warrant. The family of the detained person or his unit shall be notified within twenty-four hours after detention of the reasons for detention and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them." And Article 50 states: "When a public security organ arrests a person, it must produce an arrest warrant. The family of the arrested person or his unit shall be notified within twenty-four hours after arrest of the reasons for arrest and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them."

[19] "...ke tuoci jieshi huo tuoyan". The translation here is based upon the definition of terms given in A Chinese-English Dictionary, a standard PRC reference book published in Beijing in 1982: "tuoci: 1) find a pretext; make an excuse....2) pretext; excuse; subterfuge...[e.g.] He said he was busy, but that was just an excuse." "tuoyan: delay; put off; procrastinate....[e.g.] The deadline is drawing near; we can't delay any more....play for time; stall (for time)....dilatory (delaying, stalling) tactics."

Needless to say, if the basic rights of foreign nationals can be treated with such obvious contempt by the Chinese authorities, there can be little hope that the rights of Chinese citizens might fare any better. Indeed, the actual fate of thousands of Chinese pro-democracy activists held incommunicado or brought secretly to trial since the start of the June 4, 1989 repression has been at least as bad, and often much worse, than the potential scenario outlined above.

In a final act of calculated diplomatic deception, the version of the Joint Circular of June 19, 1981 which appears in the June 1989 volume, *Collected Law of the People's Republic of China*, has been carefully doctored to remove all reference to the *Confidential Regulations*. Only the *Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World*, the document authorized for foreign diplomatic scrutiny, is included as an appendix in the volume; the *Confidential Regulations* have been airbrushed from the scene, and the effect is to make it appear that the Joint Circular refers exclusively to the former document.[20]

In short, the truly authoritative laws and regulations in China (as opposed to many of those which appear publicly in the statute books), in effect comprise one enormous and virtually impenetrable "state secret," especially where the judicial punishment of dissent or "counterrevolution" is concerned.

---

[20] On August 27, 1987, the Chinese authorities issued another set of public regulations concerning cases involving foreign nationals, entitled *Regulations of the Ministry of Foreign Affairs, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Various Matters Relating to the Handling of Cases Involving Foreign Interests*. This document, which also appears in *Collected Laws*, dealt more fully with the issues of notification of detention and arrest and of providing consular access to detainees than did either of the June 1981 regulations, and specified that the *Vienna Convention on Consular Relations* and bilateral diplomatic agreements were to be respected. It also stated that "...where conflicts arise between the present regulations and any previous regulations, the present regulations should in all cases be taken as the standard."

However, the preface to *Collected Laws* stipulates equally clearly that the volume comprises only those "laws and decrees that are currently in effect." The preface adds that "certain sections" of the laws and regulations included in the volume have been superseded by "subsequent legal interpretations and are thus no longer in effect"; but it also states that where this is the case, "the inoperative sections have not been deleted, and explanatory footnotes have instead been added." The June 19, 1981 *Joint Circular* and the open *Regulations*, discussed at considerable length above, are reproduced in *Collected Laws* without the addition of any such explanatory footnotes.

Moreover, the original format of the documents' presentation, as found in the confidential *Manual of Law Enforcement (Part 3)* (see footnote 12) is maintained in *Collected Laws*, inasmuch as both the original appendices to the 1981 *Joint Circular* are clearly noted in the latter. The difference is that the first appendix - which in the uncensored version comprises the *Confidential Regulations* - is (as one would only expect of such a document) listed in *Collected Laws* simply as having been "Omitted". It is not footnoted in the text as having been either "superseded" or rendered "inoperative" by any more recent regulations. The 1981 *Confidential Regulations* can therefore safely be assumed to be still effective. Above all, however, the authorities' time-honored custom, which is well exemplified by the case of the June 1981 documents, of producing "paired" regulations, one to be made public and the other kept confidential, provides firm grounds for surmising the likely existence of a "confidential" variant of almost any law or regulation publicly promulgated by the Chinese authorities - including, of course, one such for the August 27, 1987 *Regulations...Relating to the Handling of Cases Involving Foreign Interests*.

Confidential Regulations of 1984 on the Censoring of Prisoners Wills

The lengths to which the Chinese government is prepared to go in order to muzzle dissent are remarkable. Many autocratic regimes try to silence their critics even beyond the grave, but only the Chinese authorities have, so far as is known, actually drawn up detailed regulations which convert the task into a bureaucratic routine. The document, issued on January 11, 1984, is entitled *Circular of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice Concerning the Correct Handling of Last Wills and Various Objects Left Behind by Criminals Condemned to Death*.[21] As was noted earlier, the "crackdown on crime" which began in the summer of 1983 subsequently led to expedited trials and summary execution for many thousands of those accused by the authorities of committing "serious crimes." As the 1984 circular makes clear, many of these persons regarded their trials and convictions as travesties of justice and the death sentences imposed upon them as being entirely wrongful. The purpose of the January 1984 government circular, which sanctioned the censoring of the last wills and testaments of people condemned to death, was to ensure that even the families of the condemned individuals would never be able to know the details of their relatives' final thoughts.

So far, the official Chinese media has announced a total of 49 judicial executions of those involved in the 1989 pro-democracy movement. All have been either workers or peasants, rather than students or intellectuals. (Many of these may have been wrongfully executed, but any last statements of self-exoneration by the victims will have been destroyed and lost to history, thanks to the January 1984 circular.) Now that the series of show trials of the so-called "black hands" of the democracy movement appears to have been basically concluded, it is likely that the authorities will once again turn their attention to the thousands of worker participants in the movement who have been held in continued incommunicado detention since the June 1989 crackdown, their cases still unconcluded. In particular, the authorities have yet to bring to trial several of the main leaders of the Beijing Workers Federation, such as Han Dongfang, Liu Qiang, Li Jinjin and others, all of whom have been held incommunicado since June 1989. It is probable that these leaders of China's fledgling independent labor movement will be tried in secret, without any public notification, and their sentences may well be severe.

The "crackdown" legislation of 1983-84 remains in force in China today and provides the legal basis of the latest round of the anti-crime campaign, which began in spring 1990. The January 1984 circular thus provides a chilling reminder of the Chinese authorities' determination to pursue its policy of political thought control and the censorship of free expression to the very end. It also exemplifies their zeal in ensuring that the veil of secrecy concealing the more unsavory aspects of the criminal justice system is not lifted, even when the state has already exacted the ultimate penalty. The circular is addressed to provincial-level courts, procuratorates and public security and judicial organs:

> *Recently, certain areas have reported that a tiny minority of criminals who have been sentenced to death have been using the opportunity to write letters and leave last testaments as a means of engaging in slander, so as to confuse the issues of right and wrong and poison people's minds. In addition, some individuals have exploited the situation in order to hold funerals for executed*

---

[21] *Zhifa Shouce (Di Si Ji) - Daji xingshi fanzui zhuanji* ["Manual of Law-Enforcement (4) - Special issue on the crackdown against criminal offenders"], compiled by the Research Office of the Ministry of Public Security, Masses Publishing House (Beijing, June 1984), pp.68-69.

criminals and make trouble, thereby disturbing the proper social order. In order more smoothly to ensure the implementation of Articles 154 and 155 of the Criminal Procedure Law, and deal correctly with these problems, we therefore instruct as follows:

1. The people's court responsible for handing a condemned criminal over for execution should promptly examine any last wills or statements made by the condemned criminal, and deal with them in the following ways:

i) Wills and statements of a general nature, dealing with such matters as the bequeathing of property, settling of financial debts and entrusting of family affairs to others, are to be handed over to the person's family after duplicate copies have been made for future reference.

ii) Those parts which are slanderous in nature or which make reactionary statements are not to be handed over to the person's family.

iii) Where complaints of grievances and alleged injustices are concerned, the facts should be quickly investigated and the matter dealt with in accordance with the law. The sections [of the will or statement] complaining about the grievances or alleged injustices are not to be passed on to the person's family.

iv) Any part involving leads or clues to cases, or which is of a testimonial or similar nature, should be copied down and the information conveyed to the competent organs; such parts are not to be handed over to the person's family.

All other wills and statements, besides those containing the parts specified in sections ii), iii) and iv) above, are to be copied out and only the copies given to the person's family; the original document is to be placed on file for future reference [...]

4. It is strictly forbidden for any person to hold funerals and make trouble on behalf of a criminal who has been executed, or to take the opportunity to disturb public order or engage in other such acts.

* * *

For Further Information:
Sidney Jones (212) 972-8400
Mike Jendrzejczyk (202) 371-6592

News From Asia Watch is a publication of Asia Watch, an independent organization created in 1985 to monitor and promote internationally recognized human rights in Asia. The Chairman is Jack Greenberg, the Vice Chairs are Nadine Strossen and Orville Schell, and the Executive Director is Sidney Jones.

Asia Watch is a component of Human Rights Watch, which includes Africa Watch, Americas Watch, Helsinki Watch and Middle East Watch. The Chairman of Human Rights Watch is Robert L. Bernstein and the Vice Chair is Adrian

DeWind. Aryeh Neier is Executive Director; Kenneth Roth, Deputy Director; Holly Burkhalter, Washington Director; Susan Osnos, Press Director.