

## TORTURE IN CHINA

### Introduction<sup>1</sup>

Following the June 4, 1989 crackdown in China and the arrests of thousands of workers, students and others who had participated in the pro-democracy movement, reports of appalling conditions of detention and of physical abuses and torture of detainees began to surface. These reports have been confirmed by some of those released in the past year.<sup>2</sup> A lecturer at Teacher's College, Fujian, for example, gave an interview in May 1990 to a Hong Kong paper saying that he was denied food, water and sleep during interrogation and that as punishment for failing to "confess," he was put in with criminals who beat him on the orders of prison guards. In at least one case, a student arrested after June 4 is reported to have died in custody.

But torture in Chinese police stations and prisons did not begin on June 4, 1989 nor will it end with the release of the last pro-democracy detainee. It is an endemic problem which Chinese authorities, during the period of relative judicial openness between 1985 and 1989, acknowledged and tried to curb. Four key factors obstructed their efforts then and remain in place today, virtually ensuring that torture will continue to be a problem in China. Those factors are inadequate legal safeguards for the rights of detainees; emphasis by the police on obtaining "confessions" in order to facilitate prompt convictions by the courts; failure by the authorities to investigate and prosecute police officers who use torture; and widespread use of administrative detention, especially in the form of "re-education through labor."

Asia Watch calls on the Chinese government to fully investigate any and all allegations of torture; to strengthen the legal safeguards for detainees in areas such as right to counsel and limits on incommunicado detention; and to end extra-judicial forms of punishment which tend to facilitate torture. It also reiterates its appeal for a full public accounting of all those arrested since June 4, 1989, including those released and those still in custody. Information on the whereabouts of prisoners and regular access to them by their families is one way to reduce the risk of torture.

---

<sup>1</sup> This publication is based on a submission by Asia Watch to the United Nations Committee on Torture and on published accounts in the Chinese law press.

<sup>2</sup> A very different kind of treatment was meted out to some of the most influential prisoners such as the journalist Dai Qing who said she was uniformly well-treated throughout her incarceration.

The use of torture against detainees first became a common feature of police interrogations of suspects during the Cultural Revolution (1966-76) but it re-emerged again throughout the country, however, after the commencement of the government's campaign to "crack down on crime" in September 1983, when a premium was placed upon "dealing with serious criminal cases quickly and severely." A number of legal safeguards against such abuses as false imprisonment and wrongful conviction were reduced in the course of this campaign. Since then the Chinese police have, apparently, increasingly resorted to the use of torture as a means of extracting confessions from suspects.

Numerous statements by Chinese officials in the Chinese law press, from 1985 until early 1989, indicated that the incidence of torture in police custody had shown a continual increase throughout that period - despite a government campaign to expose and curb the abuse. In the course of the latter campaign, several hundred recent cases of serious and often fatal use of torture by police authorities were graphically reported in the official press.

While Asia Watch commends the Chinese authorities for taking steps between 1985 and early 1989 to publicize and reduce the high incidence of torture in Chinese prisons, we must stress the following three crucial points:

**First,** according to the Chinese authorities own published statistics on this topic, the campaign against torture was not effective, indeed it was a failure: the volume of torture cases increased dramatically over the period in question. Clearly, this means that the steps taken to remedy the problem by the authorities were, and continue to be, wholly inadequate.

**Second,** the Chinese press exposures of torture which appeared during the period of relative judicial openness between 1985 and early 1989, dealt almost exclusively with those cases which had been examined and rectified by the authorities, and in which the guilty policemen had been brought to justice. Information gathered directly by Asia Watch from a wide range of other sources, including former Chinese policemen and actual torture victims, indicates clearly that the use of severe beatings and torture against detainees is endemic within the Chinese police force, and that the torture cases which have been publicly revealed in the Chinese law press represent only the tip of an iceberg.

**Third,** following the imposition of martial law in Beijing and the government's brutal military suppression of the peaceful pro-democracy movement in Beijing and other parts of China in June 1989, the campaign to expose and punish police officers who used torture to force confessions from suspects has virtually ceased. Such cases are no longer published in the Chinese law press, and

the problem has once again faded from view under a shroud of media silence and official inaction.

There has been a drastic deterioration in general human rights standards that has occurred throughout China since June 4, 1989, notably, the arrest and continued detention without charge or trial of many thousands of pro-democracy demonstrators, the suppression of all freedom of political expression, demonstration and association, and the pervasive intrusion of the state authorities into all aspects of citizens' lives. In addition, combatting and preventing torture no longer appear to be regarded as a priority by the Chinese authorities. Thus, it is clear that the problem of torture in police custody can only have become still more severe in China since the repressive crackdown began last June.

Asia Watch believes that torture and other forms of cruel, inhuman and degrading treatment or punishment are currently being extensively applied against large number of detained pro-democracy activists and demonstrators, and also against a range of other peacefully dissident groups in society - including Tibetans who advocate independence for Tibet, and Catholic believers and clergy who seek to maintain their allegiance to the Vatican.

### **Why Torture Occurs in China**

According to Asia Watch's research findings, there are several factors contributing to the high incidence of the use of torture. Incommunicado detention; denial of proper access to defense counsel; lack of due legal process; weak external supervision over police activities; and lack of judicial independence form, together, the principal facilitating conditions leading to the widespread use of torture in China today.

#### **1) Inadequate legal safeguards for the rights of detainees.**

China signed the United Nations Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment on December 12, 1986. Upon ratification, the Convention went into effect for China on November 3, 1988 and China subsequently submitted a report to the Committee Against Torture which outlines measures it has taken to fulfill its obligations under the Convention. The report cites many legal provisions contained in China's Criminal Law, Criminal Procedure Law and the Chinese Constitution which are intended to protect citizens from arbitrary arrest, torture and wrongful imprisonment.

It is clear from numerous reports published in the Chinese law press between 1985 and early 1989, however, that most of these legal safeguards and provisions are in fact routinely ignored and violated by China's law-enforcement officials. Articles published

during this period complained strenuously, for example, about the wholesale violation by the Chinese police of specified time-periods within which detainees have to be charged and brought to trial.

In reality, criminal detainees - especially in the period since the military suppression of the pro-democracy movement last June - are held without charge or trial far in excess of lawful time-limits and in appalling conditions of detention. Furthermore, their families are often not even informed as to their place of custody.

Another major defect of China's criminal justice system lies in the severe restrictions placed by the authorities on detainees' access to defense counsel. Accused persons are expressly denied the right to see any lawyer or other impartial advisor until after the prosecution indictment has been issued. This is almost always less than one week before the case goes to trial, and in most cases is less than three days before start of trial - a grossly inadequate period of time in which to be able to assemble a proper case for the defense. It means, moreover, that detainees in China are deprived of legal counsel throughout the period of pre-trial detention and investigation, which usually lasts several months and often exceeds one year, and so have no-one to advise them of their rights or ensure that they are not subjected to torture, beatings or other gross ill-treatment during their detention and interrogation.

An article which appeared in China's law press in October 1988 illustrates this lack of access to adequate defense counsel. It describes a complex and serious case in which an innocent man had been coerced, by means of a police beating, into confessing to a murder of which he knew absolutely nothing. The man had then been found guilty by the court and given a suspended death sentence. Subsequently it was only thanks to the efforts of a very diligent defense lawyer who had been allowed only one day in which to prepare a defense case that the man was eventually declared innocent and released.<sup>3</sup> It is easy to imagine that many others are not so lucky.

As regards supervision of due process from within the legal system itself: a section of the Chinese Procuratorate - known as the "Legal-Disciplinary Procuratorial Department" - is charged by law with the task of investigating and dealing with torture abuses and other violations of detainees' rights. This judicial organ is, however, seriously understaffed, and official Chinese press reports indicate that it is frequently powerless to rectify such

---

<sup>3</sup> " 'Si qiu' sheng huan ji," Law Daily, October 20, 1988.

abuses in face of the intense obstruction and opposition which it generally encounters from the police and the local Communist Party leadership, when it attempts to investigate allegations of torture and other ill-treatment in police custody. A report from the Chinese law press recently characterized these "Legal-Disciplinary" departments as being, in terms of effectiveness, "little more than old folks homes."

One particularly brutal case of torture reported in the Law Daily in September 1988, illustrates the procuratorate's lack of effective power over the police. According to the report, Zhu Yongshun, a mentally retarded deaf mute, was seized by Officer Yan Xiuwei merely for innocently "overhearing" a conversation. The man's cousin, Sun Mingdi, then tried to intervene but he too was promptly seized. In the police station the next morning:

Yan Xiuwei summoned three other officers of the Criminal Police Squad, named Sun Xiliang, Zhou Linhua and Yu Shuheng to come over and lend a hand. Officer Zhou Linhua first of all tightened up the ropes binding Sun and Zhu, and then began giving the two of them hard karate chops to the back of their necks. The ropes cut deeply into their flesh, causing so much pain that the sweat was soon pouring off of them and their breathing came only in gasps. Officer sun Xiliang then came across and lashed them both viciously across the ears, and, digging his fingers under the ropes, he placed his knees across their abdomens and forced his weight hard down on top of them. Sun Mingdi lost consciousness there and then.

That evening, the mentally retarded Zhu was sentenced to ten days' administrative detention' by the police officers. As for Sun Mingdi:

By 22:00, he was on the verge of death, and had to be taken to the county hospital for emergency treatment. The surgeons extracted 1200 ml. of blood from his abdominal cavity, together with 500 ml. of congealed blood clots, and they excised a 15 cm. length of Sun's small intestine, which had been irreparably damaged.

According to the article, the Cang County Procuracy subsequently arrested Yan Xiuwei for the crime of illegal detention, and the other three officers were all suspended from duty and placed under investigation. But the local police authorities refused to accept this disciplinary intervention:

After Yan Xiuwei was arrested, the Cang County Public Security Bureau made out and printed a petition, in the name of the entire Bureau and carrying a large seal-mark, in which they raised objections to the procuracy's having brought

charges of illegal detention against Yan Xiuwei; they then sent this petition to all the various departments concerned.

They argued [in the petition] that it had been quite correct [for Officer Yan] to have taken Zhu Yongshun and Sun Mingdi into custody; they admitted only that the tying up of the two men by rope had been unlawful, since to do this without a written order violated the proper legal procedure.

The petition made no reference to Sun Mingdi's abdominal injuries or to the fact that his injuries had been serious enough to necessitate the surgical removal of part of his small intestine.

The question of independence of the judiciary should also be considered. The Chinese government's report to the Committee Against Torture states that, "in order to ensure that the legitimate rights and interests of citizens are not violated in judicial procedure," "legislative measures have been adopted to set forth the principle of independence of the judiciary." In reality, however, China's judges do not exercise any independent authority. According to articles published in the Chinese law press prior to June 1989, the verdicts rendered by judges in court are usually decided upon in closed sessions of various judicial committees, meeting in advance of the trial. (This practice is commonly referred to in China as "verdict first, trial second.").

The most important of such committees are the so-called "politics and law committees." These are organs of the Communist Party. They are found in all localities and at all levels of the judicial administration, and their task is to exercise "unified leadership by the Party" over all significant aspects of the judicial process. Most disturbing of all, however, is the fact that the post of chairman in these committees is usually held by the local police chief. As an article from the Chinese law press explained some years ago:

There now exists, in all parts of the country (gedi pubian cunzai), a situation whereby the Politics and Law Committee exercises unified leadership over the public security bureau [i.e. the police], the procuratorate and the courts - and whereby the chief of the public security bureau holds, concurrently, the post of Secretary of the Politics and Law Committee. [emphasis added]

As a result of this practice, the procuratorate's exercise of its legally-prescribed power of supervision over the public security organs frequently degenerates into an empty

formality.<sup>4</sup>

A case cited in December 1988 in Law Daily illustrates the problem of lack of independence of the judiciary. According to the report, in March 1986 several Public Security Bureau officers from Lishi County in Shanxi Province went to Xialouqiao village to investigate a rape case. First, they "kicked and punched" the suspect, a man named Ren, and "tied him up." Next:

They subjected a so-called 'witness' - a healthy 32 year-old peasant named Gao Qianhu, who actually had nothing at all to do with the case - to even more savage treatment, with the result that he is now crippled in his left arm... Suspect Ren and witness Gao were made to undergo more than ten hours of illegal detention and torture.<sup>5</sup>

The two police officers - Guo Wanchun, deputy head of the County PSB, and Song Nan, an investigating official - were brought to trial at the Lishi County Court on November 16, 1988 on charges of using torture to extort confessions. 500 people crowded into the courtroom to view the proceedings. The article describes the contemptuous attitude shown by the accused police officers at their trial, and also the casual attitude shown by the judge himself.

Despite a wealth of evidence to prove the charges of torture (the guilty police officers had even, on the night of the offense, made a tape-recorded account of how they had tied and bound the victim), the judge declared Guo Wanchun to be innocent. Although Song Nan was found guilty, the judge decided for some reason: "to show lenience and exempt him from criminal punishment."

However:

Three days after the trial, under pressure from public opinion, the Lishi County People's Court wrote an investigation report to the Standing Committee of the County People's Congress and to the County's Party Committee saying: "The presiding judge showed, subjectively, a lack of seriousness, and failed to give sufficient forethought to certain problems and situations that were likely to arise

---

<sup>4</sup>"Guanyu jiancha jiguan tizhi gaige de jidian yijian," Faxue Jikan (Law Quarterly), January 1987, pp. 70-1.

<sup>5</sup> "Rang miaoshi fating de 'yingxiongmen' liang xiang," Fazhi Ribao (Law Daily), December 31, 1988.

during the court hearing. His mastery of the proceedings was weak, and he lacked any kind of decisive guiding strategy..."

On November of last year, the Luliang District Intermediate Court criticized the trial heavily in its Court Newsheet, and the County Procuracy then formally raised a complaint about the case. Thus, only under great public pressure was such judiciary negligence investigated.

If even the procuratorate - China's "legal watchdog" body - is unable to exercise effective control over the police, then what chance does the judiciary have, under a system amounting to "unified leadership by the public security organs?"

**2) A strong emphasis by the police on obtaining confessions, in order to facilitate prompt convictions by the courts.**

The principle of the "presumption of innocence" - a fundamental tenet of international law that is enshrined in the UN's Universal Declaration of Human Rights - is not recognized under China's criminal justice system. Instead, detainees are expected to confess and show contrition at all times, regardless of whether or not they have committed any crime. Failure to do so, and attempts to plead innocence, are viewed by the police and judicial authorities in China as showing "hostility to the law" and as constituting further proof of guilt.

Chinese law specifies that convictions cannot be made on the basis of confessions alone, and that corroborating evidence must also be presented. In practice, however, this provision - like many others found in Chinese law - is widely ignored by the courts. In effect, a strong presumption of guilt characterizes all stages of the criminal process in China. Acquittal rates are thus extremely low, and wrongful convictions based on extorted confessions and flimsy or non-existent evidence are common.

A Chinese official who escaped from China after the suppression of the pro-democracy movement in June 1989, for example, recently informed Asia Watch: "The first thing we [in the police force] do when a suspect is brought into the police station is to give him a good beating and use our electric batons on him."

In one case cited in the Chinese law press in March 1988, a factory security cadre named Li and two others carried out "interrogation by corporal punishment" of an employee suspected of having stolen some central heating equipment, thereby making the man confess. He later retracted the confession, whereupon:



[The security officials] began to torture him by kicking and beating. They made him run along after a motorbike whilst carrying an item of central heating equipment, with the result that he fell off a bridge and broke one of his lumbar vertebrae, so losing his capacity to work.<sup>6</sup>

The article, however, made no mention of any legal proceedings having been taken against the guilty security officials. It merely commented that certain enterprises had recently been "appointing [as security personnel] people who have a weak conception of law and who are lacking in the qualifications required for security work." this had led "...to an increase in cases of law-breaking and indiscipline by security officials."

By the public admission of the Chinese authorities, moreover, the incidence of gross ill-treatment of detainees and of wrongful convictions based on extorted confessions has always, since 1949, been particularly high during the periodic major political campaigns waged by the authorities to root out and purge from society so-called "counterrevolutionary elements." The harsh campaign of repression that was launched against the pro-democracy movement in China in June 1989, and which continues today, forms but the latest example of this long-standing trend of governmental abuse, and all the available independent evidence suggest that the incidence of police beatings and torture, aimed at extracting confessions of guilt from pro-democracy detainees and others, has sharply escalated since the crackdown began last June.

A May 6, 1990 article printed in World Journal stated that according to Hong Kong's Ming Bao, a lecturer at Teacher's College at Fujian who was arrested last year for involvement in the pro-democracy movement, was recently released. In an interview he said that while detained he was continuously interrogated. Methods to force him to confess included withholding food and water and not allowing him to sleep. Because he refused to confess he was later kept with criminals, whom the prison guards ordered to beat and assault him. Other criminals found every way to humiliate him and torture him in order to shorten their own sentences. The guards then accused him of making trouble and fighting with other prisoners so he was handcuffed and shackled.

Another incidence of torture which took place in the aftermath of the military suppression of the pro-democracy

---

<sup>6</sup> "Flagrant Misuse of Powers of Office and Wanton Infringement of Employees' Rights of the Person - Security personnel of certain enterprises in Mudanjiang seriously break the law and flout discipline," Law Daily, March 2, 1988.

movement was reported in World Journal on January 23, 1990. On July 2, 1989, student leader Wang Dan, who topped the government's "most wanted list" after June 4, was arrested in Beijing when he tried to meet secretly with a Taiwan journalist. Both the journalist and his Chinese driver, a man named Wang Yang, were arrested around the same time. The journalist was later released, but Wang Yang was jailed for 45 days. Now in Australia and seeking political asylum, Wang recently told the Hong Kong newspaper *Singtao News* of his conditions of treatment in detention. For the entire 45 days, he said, he was kept shackled by handcuffs and leg-irons, and on each of his daily interrogations by the police he was badly beaten. His cell, a dingy room of only 18 square meters, held no less than 19 prisoners. He explained that he was put on a regime known as "the four dishes and one soup, with permission to wear a watch" - prison jargon which, actually meant that his only food was a broth made of four ingredients, and that he had to be kept shackled hand and foot.

A member of the Chinese legal profession who recently escaped to the West has informed Asia Watch of another one of the many grave violations of human rights in China since the pro-democracy movement. In mid-June, 1989, the lawyer visited a police detention center where he saw a detained student lying unconscious from a severe gash-wound in his forehead. According to the lawyer, the wound was "about five inches long and crawling with small white maggots." When he tried to persuade the duty police officer to allow the student to receive medical treatment, the officer threatened him with immediate arrest if he persisted in this request. When the lawyer returned two days later, he was told by the officer: "There's no need for medical treatment now. The student died yesterday."

**3) Failure by the authorities to investigate and pursue rigorously the criminal responsibility of police officers who use torture, and to punish them with appropriate severity.**

The Chinese government's report to the Committee Against Torture cites the case of a police chief who was sentenced to life imprisonment for committing torture offenses. However, this is the only reported case in which such a sentence has ever been imposed on a police official for this category of offense. By contrast, the Chinese press reporting on torture cases in recent years contains many examples of guilty police officers who have received inexplicably lenient treatment by the courts, or who have even, apparently, received no criminal punishment at all.

Chinese press reports published during the period of relative

openness which preceded last June's crackdown, shed light on some of the reasons behind this failure of the authorities to apply the law strictly in cases of torture and ill-treatment. In July 1988, the chief of police in Cang County, Hebei Province, told investigative reporters from the official Law Daily:

Although we've noticed that [our police officers] sometimes do some punching or kicking, we haven't dealt with the problem promptly or severely, for fear of damaging the officers' general enthusiasm for their work....

As regards [officers] beating and insulting people, well, it all depends upon the circumstances. If they beat up bad people, then we don't really pursue the matter, we just criticize them.<sup>7</sup>

In fact, Chinese police and judicial authorities commonly "turn a blind eye" to these and much more serious violations of detainees' human rights. According to Article 136 of China's Criminal Law, "any state functionary who extorts a confession by torture is supposed to be punished by a sentence of up to three years imprisonment, and by a much longer term of imprisonment when "injury or disability" has been inflicted. In actual judicial practice, however, a very different set of rules and standards is applied. These are spelled out in sources less readily accessible than the Criminal Law.

Article 189 of the Criminal Law, for example, specifies that those found guilty of "inflicting corporal punishment and abuse on imprisoned persons" must be sentenced to up to three years imprisonment, and to up to ten years "when the circumstances are especially serious." The China Law News of December 1987, however, interpreted these seemingly clear stipulations in a very different manner:

According to the stipulations of the Criminal Law, the criminal charge [of "inflicting corporal punishment and abuse on imprisoned persons"] is only to be brought when the circumstances of the offense are serious. For example: when it results in injury or disability; when [the guilty official] has continued frequently to beat, curse or inflict corporal punishment upon imprisoned persons, despite repeated warnings and education; or when barbaric methods have been used to insult [prisoners'] personal dignity; and so forth.

---

<sup>7</sup> "Zhi'an yue bu hao, yue yao congyan zhi jing," Fazhi Ribao (Law Daily), September 23, 1988.

When the circumstances of the corporal punishment or abuse have been minor, then criminal responsibility should not be pursued, and the matter may be handled by means of Party or governmental disciplinary action.<sup>8</sup>

Such "disciplinary action" in China rarely amounts to more than a "slap on the wrist" - specifically, a warning from one's superiors or a temporary suspension from work. It never involves imprisonment, even for a day, since Party and government bodies are not formally empowered to order criminal sanctions (only the judiciary may do this).

Similarly, a Chinese law textbook added the following major rider and qualification to the apparently clear stipulations of Article 136 of the Criminal Law, which deals with crimes of "using torture to extort confessions:"

When handling specific cases, we must be sure to distinguish clearly between, on the one hand, the use of torture to extort confessions, and on the other hand, ordinary errors (sic) involving the extraction of confessions by coercion and then giving credence to such confessions.

Cases of this type which clearly derive from a low level of policy-understanding or to lack of professional experience or lack of resourcefulness [on the part of the perpetrator], and where the circumstances of the case are clearly minor and the social harm incurred is not great, may be handled by administrative means<sup>9</sup> only, in order to educate the person concerned and prevent him committing further crimes.<sup>10</sup>

The disparity here between the recognition of the actions in question as being "crimes," and the stipulation that they should nonetheless be punished "by administrative means" only, is strikingly illustrative of the general lack of seriousness and severity with which such offenses by law-enforcement officials are

---

<sup>8</sup> "Zhengque reshi yu chuli tifa nuedai bei jianguan ren yuan zui," Zhongguo Fazhi Bao (China Law News), October 12, 1987.

<sup>9</sup> "Administrative means" is an alternative designation for the afore-mentioned "Party and governmental disciplinary action."

<sup>10</sup> Zhonghua Renmin Gongheguo Xingfa Fenze Jiangyi ("Lectures on the Special Provisions of the Criminal Law of the PRC"), Law Publishing House, May 1982, pp. 463-5. See also Zhonghua Renmin Gongheguo Xingfa Gailun ("A Comprehensive Account of the Criminal Law of the PRC"), pp. 138-41.

pursued in China. Moreover, it is usually only those cases in which a criminal punishment is imposed by the courts that are ever publicly reported upon in the Chinese press. Most torture cases that come to trial are not reported upon in the press and most cases of torture are never even brought to trial; they are dealt with (if at all) "administratively."

#### **4) Torture and ill-treatment arising from extra-judicial forms of detentive punishment.**

The Chinese government's report to the Committee Against Torture refers in several places to the Regulations on Administrative Penalties for Public Security. What the Chinese government's report does not mention, however, is that these Regulations allow the Chinese police to impose, entirely on their own authority, "administrative" (as opposed to criminal) prison sentences of up to 15 days upon anyone whom they consider has committed an offense. No trial is required, although the individual so sentenced may in theory lodge an appeal with the court.

A law press article of August 1987 described how in June 1985 a police official, took advantage of this power to impose an "administrative" sentence which led to the torture and ultimately the death of the innocent suspect held. The official, named Du, was the former head of the criminal investigation unit of the public security sub-bureau of Tangshan's Xin District. He summoned for questioning in connection with a robbery, a "suspect" named Dan Baosheng.<sup>11</sup>

First, according to the report, Du handcuffed the suspect to the stair handrail in the Public Security Bureau office. Then, "without having gone through any legal procedure whatever," he held Dan in custody in a "surveillance room" for a full 15 days.

During this time, Du interrogated Dan on many occasions. Moreover, together with another criminal investigation officer, he forged a note in the handwriting of Dan's younger brother, carrying a false message implying that the latter was worried about the imminent uncovering of their 'criminal acts.' This was a means of applying psychological pressure on Dan to confess to the robbery. Upon seeing the note, Dan became very anxious, and within half an hour of receiving it, he committed suicide by hanging himself. In May 1986, the real perpetrator of the robbery was discovered: a man named Gu Fenglai.

---

<sup>11</sup> "Supervise in Accordance with the Law - Be Strict in the Execution of the Law," China Law News, August 22, 1987.

At the urging of the Tangshan Municipal Procuracy, the Xin District Procuracy finally began to investigate the case, five days after the real criminal was apprehended. But it dragged matters out, and did not initiate a prosecution until December 1986. After the hearing, the Xin District Court declared that "the circumstances of the crime were conspicuously minor," and on 27 January 1987 it announced its verdict: Officer Du was to be "exempted from any criminal proceedings."

Finally, however, the Tangshan Municipal People's Congress sent a group of People's Congress Representatives to investigate the case. "The court duly conducted a trial of second instance...the original verdict was quashed, and Du was sentenced to a period of fixed-term imprisonment." The length of the prison sentence, however, was not announced.

The Chinese government's report to the Committee on Torture naturally makes no mention of a far more serious, and very widely applied, form of "administrative" imprisonment, namely, so-called "re-education through labor." Each year an unknown number of people is sentenced to three to four years of this form of detention without trial, which is dispensed solely on the authority of the police. No appeal to the courts is possible, and conditions of detention are reportedly often as severe as those undergone by court-sentenced criminals.

The practice of detention without trial is internationally recognized as providing one of the main facilitating conditions for the occurrence of torture and other forms of cruel, inhuman and degrading treatment or punishment. Since the police and other law enforcers are not, in such circumstances, accountable to the courts, they are left free to use any means they wish to use in order to obtain confessions from those whom they detain. This point is particularly apposite in China's case, since the procuratorate, which is responsible for exercising "legal-supervision" over the running of criminal penal institutions, was only recently authorized to extend this supervisory function to include "re-education through labor" camps as well. Previously, they had been subject to no external supervision whatever.

The available evidence suggests strongly that sentencing people to "re-education through labor" for periods of up to four years represents an easy and convenient option for China's police. Indeed, their independent power to impose this punishment probably constitutes their prime, and certainly most arbitrary, source of legal authority. Suspects can be sentenced by the police to lengthy terms of "re-education through labor" solely on the basis of crudely extracted confessions which would not stand

up to scrutiny in a court of law, even in China.

Moreover, this form of sentencing is often used against political offenders. In a number of officially reported cases, pro-democracy activists detained in China since June 1989 have been summarily sentenced to undergo terms of "re-education through labor."

Until such time as China abolishes the various widely-used forms of extra-judicial detention which it currently operates, therefore, a major and glaring deficiency in its existing legislative measures to prevent torture and other forms of cruel, inhuman and degrading treatment or punishment will continue to exist.

### Conclusion

The following passage, which appeared in the Chinese law press in October 1987, may serve to convey what is probably the chief obstacle to the progressive elimination of torture and ill-treatment in the People's Republic of China. Concerning the question of "the corporal punishment and abuse of imprisoned persons," the press article noted:

Perhaps the problem is that [some] penal officials, being under the influence of "leftist" ways of thought, do not regard criminals as being human. They go so far as to think: "If we don't beat them and swear at them, the criminals won't fear us anymore..."<sup>12</sup>

### Recommendations

Asia Watch puts forth these recommendations to the Chinese government as minimal steps to reduce and eliminate torture and cruel and inhuman treatment:

- 1) Immediate implementation of legal safeguards such as access to legal counsel, limits to incommunicado detention and close oversight and monitoring of police, especially by judicial authorities.
- 2) Initiate prompt and thorough investigations of all allegations of torture and vigorously prosecute and sentence those responsible for ordering and carrying

---

<sup>12</sup> "Zhengque renshi yu chuli tifa nuedai bei jianguan ren yuan zui," Zhongguo Fazhi Bao (China Law News), October 12, 1987.

out acts of torture.

- 3) End extra-judicial forms of punishment, with no judicial oversight including the arbitrary authority of police to sentence offenders to "administrative" detention and "re-education through labor."
- 4) Publish a full accounting of all pro-democracy activists and those suspected of "counterrevolutionary offenses" held since June 1989 with information on their whereabouts and allow them access to their families and legal counsel as a safeguard against torture.