EMBARGOED FOR: 30 April 2007 **Public**

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People's Republic of China

The Olympics countdown: Repression of activists overshadows death penalty and media reforms

April 2007 **Summary** **AI Index: ASA 17/015/2007**

An overriding preoccupation with ensuring 'harmony' and 'stability' has featured heavily in China's preparations for hosting major events including the Olympic Games in August 2008. Several senior Chinese officials appear to continue to equate such principles with a need to 'strike hard' against those perceived to be jeopardizing such an environment. Amnesty International remains deeply concerned that such 'strike hard' policies continue to be used to constrain the legitimate activities of a range of peaceful activists in China, including journalists, lawyers and human rights defenders.

This report updates concerns in these areas, illustrated by the experiences of several individuals who have been detained or imprisoned in violation of their fundamental human rights. The failure of the Chinese authorities to address the legal and institutional weaknesses that allow such violations to flourish continues to hamper efforts to strengthen rule of law in China – a cornerstone for 'harmony' or 'stability' - and casts a deep shadow over other legal reforms which have been introduced over recent months.

New measures have recently been introduced with regard to two human rights issues which Amnesty International is highlighting in connection with China's hosting of the Olympics: the death penalty and media freedom. In this update, Amnesty International summarizes these reforms and assesses how far they fulfil China's promises to improve human rights in the run-up to the Beijing Olympics..

The briefing also includes developments with regard to the use of "Re-education through Labour" (RTL) and other forms of punitive administrative detention as well as

the general situation for human rights defenders in China. There is little evidence of reform in these latter areas, with the Olympics apparently acting as a catalyst to extend the use of administrative detention, at least in Beijing, and a continued crackdown on human rights defenders, including prominent rights defence lawyers and those attempting to report on human rights violations.

This briefing updates two previous "Olympics Countdown" reports published by Amnesty International: "*People's Republic of China: The Olympics countdown – three years of human rights reform?"*, August 2005 (AI Index: ASA 17/021/2005) and "*People's Republic of China: The Olympics countdown – failing to keep human rights promises"*, September 2006 (AI Index ASA 17/046/2006).

KEYWORDS:

This report summarizes a 23-page document (9,460 words): *People's Republic of China: The Olympics countdown – repression of activists overshadows death penalty and media reforms*, (AI Index: ASA 17/015/2007) issued by Amnesty International in April 2007. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at http://www.amnesty.org and Amnesty International news releases can be received by email: http://www.amnesty.org/email/email_updates.html

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PEOPLE'S REPUBLIC OF CHINA

The Olympics countdown: Repression of activists overshadows death penalty and media reforms

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The Olympics countdown – repression of activists overshadows death penalty and media reforms

Introduction

"We must make efforts to create a harmonious society and a good social environment for successfully holding the 17th Communist Party Congress and the Beijing Olympic Games[…]We must strike hard at hostile forces at home and abroad, such as ethnic separatists, religious extremists, violent terrorists and 'heretical organizations' like the Falun Gong who carry out destabilizing activities." Zhou Yongkang, Minister of Public Security.1

An overriding preoccupation with ensuring 'harmony' and 'stability' has featured heavily in China's preparations for hosting major events including the Olympic Games in August 2008. As the statement above also illustrates, several senior Chinese officials appear to continue to equate such principles with a need to 'strike hard' against those perceived to be jeopardizing such an environment. While the statement refers to 'violent terrorism', it also includes groups or activists who may be engaged in peaceful activities, such as Falun Gong practitioners, 'religious extremists' or 'ethnic separatists.'

Amnesty International remains deeply concerned that such 'strike hard' policies continue to be used to constrain the legitimate activities of a range of peaceful activists in China, including journalists, lawyers and human rights defenders. This report updates concerns in these areas, illustrated by the experiences of several individuals who have been detained or imprisoned in violation of their fundamental human rights. The failure of the Chinese authorities to address the legal and institutional weaknesses that allow such violations to flourish continues to hamper efforts to strengthen rule of law in China – a cornerstone for 'harmony' or 'stability' - and casts a deep shadow over other legal reforms which have been introduced over recent months.

New measures have recently been introduced with regard to two human rights issues which Amnesty International is highlighting in connection with China's hosting of the Olympics: the death penalty and media freedom. In this update, Amnesty International summarizes these reforms and assesses how far they fulfil China's promises to improve human rights in the run-up to the Beijing Olympics, which will take place in August 2008. The briefing also includes developments with regard to the use of "Re-education through Labour" (RTL) and other forms of punitive administrative detention as well as the general situation for human rights defenders in China. There is little evidence of reform in these latter areas, with the Olympics apparently acting as a catalyst to extend the use of administrative detention, at least in Beijing, and a continued

1 "Zhou Yongkang orders crackdown on hostile forces at home and abroad in run-up to 17th CCP Congress," (迎接十七大，周永康要求严打境内外敌对势力), *Duowei Xinwen wang*, 21 March 2007. See also "China police chief urges crackdown on 'hostile forces'" *Agence France Presse (AFP)*, 20 March 2007.

crackdown on human rights defenders, including prominent rights defence lawyers and those attempting to report on human rights violations.

This briefing updates two previous "Olympics Countdown" reports published by Amnesty International.2 The organization did not receive an official response from the Chinese authorities when the last update was published in September 2006. However, in response to a media question during a press conference, Foreign Ministry spokesperson, Qin Gang, said that Amnesty International is 'biased against China' and that its reports are often 'made out of political motives and false content.'3 He added that it was wrong to suggest that China's efforts to improve human rights were merely because of the Olympics, since this is like 'gauging the heart of a gentlemen with one's own mean yardstick.' He suggested that '[i]f some organizations or individuals politicize the Olympic Games out of ulterior motives, it is a violation of the principle of the Olympic Games.'

Amnesty International re-emphasizes that the organization has no political agenda and is concerned solely with the respect and protection of human rights in China as in other countries throughout the world. The links made between Beijing's hosting of the Olympics and human rights were made repeatedly by Chinese officials themselves when Beijing was awarded the Olympics in 2001, and echoed by representatives of the International Olympic Committee (IOC). The IOC has also repeatedly stated that they rely on international human rights organizations including Amnesty International to monitor and report on such human rights developments. The concerns which Amnesty International is raising in the run-up to the Olympic Games are human rights issues which have a direct link with preparations for the Olympics in Beijing or with core principles in the Olympic Charter. They are also relevant human rights issues in the context of China's forthcoming ratification of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International remains hopeful that the authorities will address these concerns as the Olympics approach.

The IOC also responded to the September 2006 update, reportedly stating that it was 'unrealistic' to expect the IOC to put pressure on governments.4 Amnesty International is disappointed by this response, which appears to be backtracking from more proactive statements made previously by IOC. For example, in April 2002, IOC President Jacques Rogge said that the IOC had 'urged the Chinese government to improve, as soon as possible, their record in human rights' and that 'if either security, logistics or human rights are not acted upon to our satisfaction then we will act.'5 During a meeting on 31 January 2007 requested by the IOC, IOC representatives clarified to Amnesty International that they did indeed take human rights issues seriously, and had raised certain issues with the authorities.

2 "*People's Republic of China: The Olympics countdown – three years of human rights reform?"*, August 2005 (AI Index: ASA 17/021/2005) and "*People's Republic of China: The Olympics countdown – failing to keep human rights promises"*, September 2006 (AI Index ASA 17/046/2006),

3 See "Foreign Ministry Spokesman Qin Gang's Regular Press Conference on 21 September 2006", 22 September 2006, available at: http://www.fmprc.gov.cn/eng/xwfw/s2510/t273085.htm.

4 See, for example, IOC spokesperson, Giselle Davies, quoted in "China: Amnesty International Blasts Rights Observance Ahead Of Olympics," *Radio Free Europe/Radio Liberty*, 21 September 2006.

5 See ASA 17/046/2006, p.19, n.58.

Amnesty International considers that the IOC has significant influence with the Chinese authorities in the run-up to the Beijing Olympics and continues to urge IOC representatives to raise human rights concerns as the Olympics approach. If private dialogue appears to be having little effect, for example with regard to the use of abusive forms of administrative detention or the harassment and imprisonment of human rights defenders, then the IOC should consider making these concerns public, especially with the Olympics little more than a year away.

Death penalty - moves towards "preserving human dignity"?

Sweden: *"[…] More than 80% of the total number of executions in the world today take place in China where a shockingly high number of crimes can lead to the death penalty. This is certainly not in the Olympic spirit."*

China: *"[…] We find particularly unacceptable the reference in his statement to death penalty statistics and the linkage between the death penalty and the Olympic spirit. According to the Olympic Charter, the Olympic Games are a major athletic meet of the whole world. No country should take this opportunity to politicize the Olympic Games. Mr President, China is a country with a rule of law. The death penalty only applies to the most heinous crimes in China and this is entirely compatible with the provisions of the International Covenant on Civil and Political Rights (ICCPR). This year starting from 1 January, the right of approval of death sentences will return to the Supreme People's Court (SPC). By doing this, we are seeking to limit the application of the death penalty in China. I'm confident that with the development and progress in my country, the application of the death penalty will be further reduced and it will finally be abolished."*

Statements made by the Swedish and Chinese representatives to the UN Human Rights Council, (HRC) 12 March 2007 6

The statement by the Swedish representative above is a recent illustration of connections which are increasingly being made in international fora between China's hosting of the Olympics in 2008 and ongoing human rights concerns. Amnesty International hopes that such connections will help to strengthen domestic efforts towards reform in line with the expectations of human rights activists within China and human rights promises made by Chinese officials when Beijing was awarded the Olympics in 2001.

Amnesty International is disappointed, however, that in his response, La Yifan, the Chinese representative to the HRC, referred to 'politicization', instead of recognizing the legitimate connections between Olympic principles of 'human dignity' and concerns about the death penalty as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. In contrast, public comments from leading Chinese officials suggest that the recent death penalty reforms have been driven in large part by concerns for respect for 'preservation of

6 A record of the meeting is available here: http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/B0ACE4B6EF0F09BDC125729C00427038?OpenDocument.

human dignity' – an important principle in the Olympic Charter. For example, in March 2007, Xiao Yang, President of the SPC reportedly stated: "*A case involving a human life is a matter of vital importance…We can never be more careful in this regard."* 7 In the same month, Ni Shouming, an SPC spokesperson stated: "*Abolishing capital punishment has been a global trend, and we will eventually work towards that direction*." 8

Amnesty International welcomes this and other recent statements made by Chinese officials which underscore the value of human life. The organization also welcomes reforms, including the restoration of SPC review, which are intended to reduce the number of those who are sentenced to death and executed and strengthen safeguards against unfair trials. However, Amnesty International is concerned that these reforms will only have a limited impact unless they are broadened and accompanied by other essential measures as detailed below. There is also a risk that they could have the adverse effect of shoring up the death penalty system, notwithstanding the confidence expressed by China's UN HRC representative that the death penalty will finally be abolished.

Restoration of Supreme People's Court review

On 1 January 2007, the SPC formally resumed its role of approving all death sentences passed in China. Amnesty International has welcomed this reform in the hope that it will result in a significant reduction in the number of death sentences passed in China and spur reforms in the judicial system which further compliance with international fair trial standards. Since this measure. was introduced there has been substantial debate among Chinese academics and international observers over the significance of the reform. Analysis has been hampered, however, by a lack of clear information about the mechanics of the review process – with little public information available about how the reviews are being conducted in practice. 9

Some commentators have drawn attention to limitations in the review process, namely that it is aimed more at ensuring that procedures have been followed correctly, rather than determining the facts of the case. One Beijing-based source reported to Amnesty International that the procedure seems to focus largely on ensuring that the death penalty is applied in a consistent, uniform manner across provinces, rather than effectively addressing potential miscarriages of justice in individual cases. In apparent recognition of such limitations, some Chinese legal scholars have recommended that the SPC review system be transformed into a full three-tier system of appeals in order to better safeguard the right to a fair trial. For example, one academic

7 "China pulls back on death penalty," *UPI*, 16 March 2007, available at http://www.playfuls.com/news_10_19344-China-Pulls-Back-On-Death-Penalty.html

8 "Chief justice vows 'extreme caution' in death penalty cases" *Beijing Review*, 15 March 2007, available at http://www.bjreview.com.cn/headline/txt/2007-03/15/content_59293.htm

9 For further information on the structure of the review panels, and some aspects of the review process, see "Death penalty reform should bring drop in Chinese executions", *Dialogue, Issue 26, Winter 2007*, the Dui Hua Foundation, available at http://www.duihua.org/our_work/publications/newsletter/nl_index/NL_2007.htm and "Report from China: Supreme People's Court" by Jiahong Yang available at: http://www.thecourt.ca/2007/03/27/report-from-china-supreme-peoples-court/

has argued that it is important to ensure a particularly strict procedure in view of the 'special nature' of death penalty cases: "Now that we have established a death penalty review procedure and set up so many courts and judges, why not turn it into a substantial litigation procedure? This is perfectly possible. The key thing is the attitude of our legislators."10

In defence of the reform, however, some Chinese legal academics have cautioned that the SPC review was never intended to be a full hearing into the facts of the case, and that it should not be seen in isolation but as part of a wider package of criminal justice reforms aimed at improving the quality of trials. These include new regulations introduced last year mandating open court hearings for death sentence appeals11 and proposed amendments to the Criminal Procedure Law, which (if adopted) reportedly include reforms aimed at improving access to lawyers for detainees and eliminating the use of illegally-obtained evidence in court.12

The promulgation of new regulations in February 2007 clarified the circumstances in which the SPC should either approve, revise or remand death sentences.13 An accompanying *Xinhua* article stressed that in most cases the SPC does not have the authority to issue a new decision or declare a defendant innocent if it discovers errors in the original judgment.14 In most situations, such cases have to be sent back to the lower court for retrial, and there appears to be no limit to the number of times this can be ordered. Amnesty International fears that this could result in recurring retrials in capital cases, thereby perpetuating the anguish of those under sentence of death.

On 12 March 2007, China's key judicial organs issued a joint directive urging judicial departments to strictly control and prudently apply death sentences, to safeguard the legal rights of suspects and to ensure that death penalty prisoners have the right to meet their family after the sentence is confirmed. The order also underlined that the SPC exercises final approval of death penalty cases and stressed that public parading of convicts and securing confessions through torture are banned.15 Amnesty International welcomes this move, but is concerned that such

10 Professor Chen Weidong, quoted in "Five big queries remain on restoration of SPC review of death sentences" (最高法院收回死刑复核权存在五大悬疑), 19 December 2006, http://news.sina.com.cn/c/2006-12-19/102111830638.shtml.

11 See ASA 17/046/2006, p.6.

12 These aspects were highlighted by Professor Chen Guangzhong, an expert on Chinese Criminal Procedure, during a presentation at an international conference: Crime, Law and Justice in Chinese Societies: Global Challenges and Local Responses, Chinese University of Hong Kong, 16-18 March 2007.

13 "Regulations concerning several issues relating to SPC approval of death penalty cases" (最高人民法院关于复核死刑案件若干问题的规定) , effective from 28 February 2007. Available in Chinese at http://rmfyb.chinacourt.org/public/detail.php?id=106249. The regulations clarify that in most cases, the SPC should send the case back to High People's Court for retrial if errors are found in the judgment. It can only directly change the original death penalty sentences in certain cases involving individual defendants facing multiple death sentences, or multiple defendants facing death sentences.

14 "China's Supreme People's Court to order provinces to retry death sentences", *Xinhua*, 28 February 2007, available at http://en.chinacourt.org/public/detail.php?id=4134.

15 "Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice demand that death penalty cases are dealt with more strictly and according to the law" (最高人民法院 最高人民检察院 公安部 司法部要求进一步严格依法办案确保办理死刑案件质量) available at

directives will have limited impact unless they are backed by effective mechanisms of implementation and enforcement at the local level. Public parading of convicts, for example, had already been banned in a Supreme Court interpretation of the Criminal Procedure Law in 1998, yet reports of such abuses have persisted.16 Similarly, despite the SPC's ruling on open court appeals last year, concerns remain that open hearings may still be the exception rather than the rule in many parts of China.17

A key issue for debate among Chinese legal academics has been whether defendants or their lawyers are entitled to make representations to the SPC review panels (or 'collegiate benches'). According to the official news agency, *Xinhua*, an unidentified Supreme Court official stated that 'the attorney of a defendant is allowed to air opinion [sic] during the review, and the opinion will be heard by the court.'18. There is little information available, however, to determine whether or not this is happening in practice.

Amnesty International is concerned that a limited paper review would not expose serious human rights violations, such as the use of torture by the police to extort confessions from suspects, if evidence relating to such abuses had not already been introduced into the courtroom. For example, in a recent case, Xu Shuangfu, the leader of an unofficial Protestant group called "Three Grades of Servants" was executed along with 11 others in November 2006 after being convicted of murdering 20 members of another group, "Eastern Lightning" in 2003-2004. Xu Shuangfu reportedly claimed that he had confessed under torture during police interrogation and that the torture had included beatings with heavy chains and sticks, electric shocks to the toes, fingers and genitals and forced injection of hot pepper, gasoline and ginger into the nose. However, both the first instance and appeal courts refused to allow his lawyers to introduce these allegations as evidence in his defence.19 In view of such reports, Amnesty International considers it essential that the defendant or their lawyer be able to make direct submissions and representations to the SPC review panel for consideration alongside other documents relating to the case.

On 19 March 2007, *Xinhua* reported that the SPC had approved four death sentences since the court resumed its right of review on 1 January 2007. These were separate cases, involving crimes of kidnapping, murder, rape and arson from Shanghai Municipality, Jiangxi Province, Jiangsu Province and Fujian Province. The report quoted an unnamed judge who said that the SPC

http://www.chinacourt.org/public/detail.php?id=237697. See also "Procedures detailed for death penalties", *China Daily*, 12 March 2007 and "Chinese law enforcement agencies urge caution in handling death penalty cases", *Xinhua*, 11 March 2007.

16 See 最高人民法院关于执行《中华人民共和国刑事诉讼法》若干问题的解释 available at: http://www.cecc.gov/pages/selectLaws/criminalJustice/supremeCourtInterpretation.php?PHPSESSID=2a75dd13357692203938d2d07509d2a1 and *People's Republic of China: Executed according to law? – the death penalty in China*, March 2004 (ASA 17/003/2004) p.44.

17 See for example comment of former head of the SPC research department, Professor Zhou Daoluan in "China takes serious control over death penalty judgments (中国严格"把关"死刑判决), Beijing Review, 6 February 2007.

18 Review of death penalty cautious and strict: Supreme Court, *Xinhua*, 13 March 2007.

19 For further information, see "Executions of three protestants despite evidence of torture raises fear of a rush to carry out death sentences", *Chinese Rights Defenders (CRD)*, 4 December 2006.

collegiate benches had also 'found cases lacking evidence and returned them to lower courts for further enquiries', but he refused to provide a total figure for the number of cases reviewed so far.20

If it is true that the SPC had only approved four cases by 19 March 2007, it appears that at least 13 individuals have been executed since 1 January 2007 without their cases being approved by the SPC as required by law. During the course of monitoring Chinese news reports on the death penalty during 3-16 February – two weeks before Chinese New Year, traditionally a peak period for executions in China – Amnesty International documented 13 executions which took place in five provinces or autonomous regions, namely Jiangsu, Sichuan, Shandong, Qinghai and Xinjiang. These were all different from the four SPC-approved cases mentioned above and none of the media reports mentioned that the decisions had been approved by the SPC before the executions were carried out. 21 It is possible that the lower courts in these instances believed they were not legally obliged to seek SPC approval because the cases had commenced before the SPC review procedure was formally introduced. However, leading Chinese criminal procedure specialists have argued that cases which began before 1 January 2007 and were not finalised before this date, should indeed be reviewed by the SPC.22

Amnesty International is deeply concerned that individuals appear to have been executed by local courts since 1 January 2007 without approval from the SPC. The organization calls on the authorities to increase transparency over the review process by making public full information on the nature of the reviews, including clarifying whether procedures exist for defendants or their lawyers to make representations to the review panels as well as full details and statistics on the number of cases approved, revised or sent back to lower courts for retrial.

Extensive application and scope of the death penalty

"Making death penalty statistics public would safeguard the legitimate rights of citizens to understand and grasp the situation with regard to the death penalty. It could also help society effectively monitor the way the death penalty is applied by criminal and judicial organs" Professor Zhao Bingzhi, Chinese criminal law specialist. 23

Chinese legal academics have claimed that the restoration of SPC review is likely to result in a 20-30% reduction in the number of executions carried out in China. Amnesty International considers that it will be impossible to make an objective assessment of these claims unless the Chinese authorities reveal full, national statistics on the death penalty for the periods before and

20 "Supreme People's Court approves four death sentences", *Xinhua*, 19 March 2007. The individuals executed were: Yu Maoge, Zhao Guiyong, Liu Shilin and Li Shumu.
21 The executions were of Liu Jianzhong (刘建中)，Yang Zhonghua （杨仲华） Xu Yinggang （徐应刚） Li Dongsheng （李东生） Mei Zhanxiu （梅占秀） Ma Xuegang （马雪刚） Li Jinhua （李金花）Lin Wenqing （蔺文清） Ma Shunqing （马顺清）Fan Shexin （樊社新） Ismail Semed （伊斯马依·赛买提）Cao Zhongzhi （曹忠治）and Chen Ji （陈吉）.
22 See, for example, comments of Professors Zhao Bingzhi and Chen Weidong in "Five big queries…" op. cit.
23 Original quote in Chinese in "Five big queries…" op. cit.

after the review was introduced.

Official figures on death sentences and executions remain shrouded in secrecy, making objective analysis of the application of the death penalty in China extremely difficult. In March 2007, Zhao Long, vice-chair of the Jiangsu People's Congress and delegate to the National People's Congress (NPC), expressed disappointment that the SPC's annual report to the NPC did not provide disaggregated data on the death penalty. 24 Instead, the SPC maintained its previous practice of combining death penalty figures with statistics for those sentenced to prison terms of five years to life imprisonment (a total of 153,724 people).

Later the same month, Liu Jiachen, a former Vice-President of the SPC stated that the number of death sentences meted out by courts during 2006 'hit a record low in more than a decade.'25 He added that: "*We cannot rely our hope [sic] on death penalties to curb crimes. We may tackle the increasing criminal cases via many other ways […] The concept also accords with the world's trend to gradually lighten penalties, which means stringent punishment can only be imposed for only a small number of serious offenders*."26 However, he refused to reveal the exact number of death sentences last year. According to its monitoring of public reports available, Amnesty International estimated that at least 1010 people were executed and 2790 sentenced to death during 2006, although the true figures were undoubtedly much higher.27

The US-based Dui Hua Foundation considers that the real figure for executions in 2006 is in the region of 7,500-8,000 based on its contacts with individuals in China who have access to official information.28 This is in line with another estimate made by a Chinese criminal law professor in early 2006 and is considered credible by Amnesty International.29 If this figure is accurate, it would certainly be lower than the estimate of 10,000 executions per year made by a senior Chinese legislator in March 2004. Nevertheless, it still accounts for 13 times the combined number of executions reported to have been carried out in the rest of the world in 2006.30

In addition to traditional 'peak periods' for executions before national events in China such as National Day (1 October) and Anti-Drugs Day (26 June), Amnesty International recorded a dramatic rise in executions in December 2006, which appeared to be the result of local courts attempting to 'clear up' cases before SPC review was introduced on 1 January 2007. During the last two weeks of December, Amnesty International monitored 131 executions (compared with 74 before National Day, and 55 before Anti-Drugs Day). These included mass executions of 10 or 12

24 "No word on death sentence numbers", *South China Morning Post (SCMP)* 14 March 2007.
25 "Least number of death sentences meted out in 2007", *Xinhua*, 15 March 2007.
26 Ibid.
27 These figures are somewhat lower than figures monitored by Amnesty International for previous years, but may represent lower levels of reporting and not necessarily a drop in executions and death sentences.
28 Statistics put forward by John Kamm, Executive Director of the Duihua Foundation at the World Coalition against the Death Penalty conference, Paris, France, 1-3 February 2007.
29 Prof Liu Renwen's estimate of 8,000 executions is cited in previous AI Olympics Countdown report (ASA 17/046/2006) p. 4.
30 See *Amnesty International: "Death sentences and executions in 2006"*, April 2007 (ACT 50/004/2007), *"Facts and figures on the death penalty"*, April 2007 (ACT 50/002/2007) and "*List of abolitionist and retentionist countries (1 January 2007)"*, April 2007 (ACT 50/001/2007).

people in some cases.

A particularly controversial case was the execution of Qiu Xinghua, a farmer from Ankang, Shaanxi province on 28 December 2006, just days before SPC review was introduced. Qiu had been convicted of killing 11 people earlier in 2006 because he believed his wife had been unfaithful. He was widely believed to be suffering from mental illness and several Chinese psychiatric experts called for a psychiatric appraisal. The case received substantial media coverage in China and generated a last minute open letter from prominent Chinese legal scholars calling for a psychiatric evaluation, which was circulated on the Internet.31 However, both the first-instance and appeal courts in Shaanxi refused to order a test. According to Article 18 of the Chinese Criminal Law, those with legally attested mental illness are not liable for crimes they committed when they are unable to control themselves, and the execution of those who were mentally ill at the time of the crime is prohibited under international human rights standards.

Debate over removing non-violent crimes from the scope of the death penalty has continued among Chinese legal academics, particularly over the possibility of removing the death penalty as a punishment for economic offences, including tax fraud, embezzlement and bribery. However, so far, the Chinese authorities have taken no steps to reduce the scope of the death penalty, which remains applicable to some 68 crimes, including non-violent crimes such as economic and drug-related offences. For example, in February 2007, the Yingkou Intermediate People's Court in Liaoning province sentenced business executive Wang Zhendong to death for swindling 3 billion Yuan from investors in his ant-breeding business.32 He reportedly promised a return of up to 60 per cent to those who invested in bags of ants asking them to come back in 37 days time after they had bred. Many investors in the scheme were reportedly poor villagers or laid-off workers from state-owned enterprises in Liaoning - one reportedly committed suicide after discovering that it was a scam.

The domestic debate on the death penalty and non-violent offences has often centered on the argument that the existence of the death penalty hampers China's efforts to secure extradition of alleged offenders who have fled abroad.33 Amnesty International welcomes this debate, but cautions that to focus solely on economic crimes could be seen to favour those in society accused of 'white-collar' offences – generally those with money, power and influence. The organization urges that the focus be broadened to include other non-violent crimes, including drug-related offences, leading swiftly to legislative reforms removing such crimes from the scope of the death penalty.

In this context, Amnesty International highlights the view of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions that the death penalty should be eliminated for such crimes. This interpretation of Article 6(2) of the ICCPR has been upheld by successive

31 For details of the open letter [in Chinese], see http://www.cnhubei.com/200612/ca1226726.htm

32 Ants are used as an ingredient in some forms of Chinese medicine.

33 See, for example, "Procuratorate official suggests abolishing the death penalty for economic crimes and increasing prison sentences to 30 years" (检察官建议废除经济犯罪死刑 将刑期提高到30年), *Zhongguo Xinwen Wang*, 22 March 2007.

Special Rapporteurs for over a decade.34 In his recent report to the UN HRC, of which China is a member, the Special Rapporteur expresses concern that China is among countries which "maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences."35

As concrete steps towards abolition of the death penalty in China, Amnesty International reiterates its calls to the Chinese authorities to:

- publish full national statistics on death sentences and executions in China, both in the interests of transparency and public accountability, and to assist analysts to determine whether the Supreme Court review process has led to a reduction in death sentences and executions as anticipated.
- reduce the number of crimes punishable by death, for example by removing non-violent crimes such as economic and drug-related offences from the scope of the death penalty.

Mixed messages on organ transplants

Amnesty International is puzzled by recent comments reportedly made by an official from the SPC suggesting that cases of organ transplants from executed criminals are 'quite exceptional' and that 'the main source of organs for transplant in China is voluntary donation by deceased citizens in accordance with their last wills.'36 These statements conflict with statements by China's Vice-Minister of Health last year that the majority of organs for transplant in China come from death penalty prisoners and similar assertions made by senior transplantation specialists in China.37

The claims are also at odds with reports of such usage documented by Amnesty International and other international NGOs – a widespread practice which, as one organ transplant patient suggested, 'everyone knows about in China'.38 In addition, China has no formal system of voluntary organ donation and cultural norms dictate that human remains, whether buried or cremated, should enter the earth intact. Amnesty International therefore considers that the official concerned (who is unnamed in the *Xinhua* report) should provide solid evidence for these claims.

The SPC official reportedly added that organs can only be used from executed prisoners if the individuals themselves have 'voluntarily expressed the wish to donate their organs and signed

34 See, for example**, "**Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74", at para 91, 24 December 1996, (UN Index. E/CN.4/1997/60).

35 "Civil and political rights including the questions of disappearances and summary executions – report of the Special Rapporteur on extrajudicial, summary or arbitrary executions," Philip Alston, Advance Edited Version, 29 January 2007 (UN Index: A/HRC/4/20), n.57. The other countries highlighted were Iran, Malaysia, Singapore, Thailand and the USA.

36 "China said to have 'strict restrictions' on use of executed criminals' organs," *Xinhua*, 13 March 2007.

37 See ASA 17/046/2006, p.3.

38 See quotes from organ transplant patients at Zhongshan Hospital, Shanghai: "La otra cara de China: el auge del negocio de la muerte", *El Economista*，2 October 2006.

relevant documents before death, or their families have given consent to such usage.' Amnesty International reiterates its concerns that those faced with the trauma and anguish of imminent execution are not in a position to provide such consent and that the secrecy surrounding the application of the death penalty in China makes it impossible to independently verify whether consent was given.

Amnesty International is disturbed by ongoing reports of organs being sold for transplant in China even after the Ministry of Health introduced new regulations banning the practice from 1 July 2006. For example, according to an undercover investigation by the BBC, staff at No 1 Central Hospital in Tianjin reportedly claimed that they could provide a liver for transplant at a cost of £50,000 (US$94,400) within three weeks, with the chief surgeon confirming that the donor might be an executed prisoner.39 One official reportedly said that there was a surplus of organs due to an increase in executions ahead of China's National Day on 1 October 2006.40

On 6 April 2007, the Xinhua news agency published the text of new regulations on organ transplants, apparently aimed at reinforcing the industry-wide regulations passed last year.41 Due to take effect on 1 May 2007, they include a ban on trading in organs and on live organ transplants from those under the age of 18. They state that donations should be 'voluntary' and 'noncompensatory' and that 'no organization or individual may force, dupe or lure anyone to donate his organs'. However, the regulations make no specific reference to the extraction of organs from death penalty prisoners, suggesting that the practice will continue. The regulations were reportedly welcomed by one senior transplantation specialist, Professor Chen Zhonghua, as 'a big step forward for the country's medical practices'.42 However he cautioned that: '[w]hether the regulations will be effective will depend on the strength of enforcement.'43

Police powers to punish – reform, abolition or status quo?

"We do not rule out the possibility of compelling all drug abusers in the capital to give up their addictions before the Olympics," Fu Zhenghua, deputy director of the Beijing Public Security Bureau.44

Amnesty International continues to receive regular reports of individuals being assigned to 'Re-education through Labour' (RTL) and other forms of administrative detention imposed without charge, trial or judicial review in violation of international fair trial standards. Fears remain that these abusive systems are being used to detain petty criminals, vagrants, drug addicts and others in order to 'clean-up' Beijing ahead of the Olympics.

39 "Organ sales 'thriving' in China", *BBC*, 27 September 2006, available at http://news.bbc.co.uk/2/hi/asia-pacific/5386720.stm.
40 Ibid.
41 "Regulations for Human Organ Transplant", as carried by *Xinhua*, 6 April 2007.
42 "Draft law on organ transplants passed", *SCMP*, 23 March 2007.
43 Ibid.
44 "Beijing may force drug abusers into year-long rehab," *Xinhua*, 7 February 2007.

On 7 February 2007, the Beijing Public Security Bureau announced that during the coming year, the police would shift the focus of its anti-drugs efforts from public entertainment venues toward targeting individual users and extend terms of 'Enforced Drug Rehabilitation' (*qiangzhi jiedu*) from six months to one year.45 These moves heighten concerns that Beijing's hosting of the Olympics is being used by the authorities as a pretext to expand the use of abusive forms of punitive administrative detention rather than as a catalyst for reform or abolition of these systems in line with international human rights standards.46

It remains unclear whether reform of 'Enforced Drug Rehabilitation' (and other forms of punitive administrative detention, such as 'Custody and Education') is on the legislative agenda alongside RTL. While national steps towards reform or abolition of RTL appear to have stalled, there may be some positive signs of reform at the local level. On 4 April 2007, it was reported that Chongqing municipality has passed new regulations allowing lawyers to represent those facing detention in RTL facilities.47 Some local lawyers have expressed hopes that this will lead to greater transparency in the system but have cautioned that further structural reforms are needed since 'the decision-makers are still the police, there is no supervision from outsiders, and judicial procedures are not applied.'48 Other lawyers, however, are less positive, suggesting that the regulations may contain nothing new, since the crucial factor is when exactly detainees are allowed to retain lawyers (i.e. before or after the police make a formal decision to impose RTL) and whether such access is dependant on approval by the police.49

On 1 March 2007, the China Daily newspaper reported that the draft new law proposed to replace RTL, the Illegal Behaviour Correction Law (*weifa xingwei jiaozhi fa)*, is included on the NPC legislative plan for discussion this year, noting that the reform process had stalled for two years because of 'disagreements'.50 The article suggests that RTL facilities will be renamed 'correctional centres' and made more 'school-like' with all bars and gates removed, and that terms of detention will be reduced to 'less than 18 months.' This appears to reflect general legal commentary on the proposed new law which has been publicly available for over a year.51

45 Ibid.

46 For related concerns about Beijing's use of RTL ahead of the Olympics, see ASA 17/046/2006, p.7-9. Similar to the RTL system, those detained in "Enforced Drug Rehabilitation" facilities are held there without due process and conditions of detention are reported to be appalling. For further information, see *"Locked Doors: The Human Rights of People Living with HIV/AIDS in China"*, Human Rights Watch, August 2003.

47 "Lawyers win role for people facing labour-camp cases," *SCMP*, 4 April 2007. The full text of the regulations are available [in Chinese] here: http://www.acla.org.cn/pages/2007-4-5/s38842.html

48 Ibid. Quote from Chongqing lawyer, Han Deyun.

49 See, for example, comments from Beijing laywers, Teng Biao and Mo Shaoping in "Chongqing permits lawyers to represent RTL cases" (中国重庆允许律师代理劳动教养案), *Voice of America*, 4 April 2007. Teng Biao notes that in the past the police have generally prevented lawyers from assisting RTL suspects and fears that in practice this will continue to be the case, particularly in the period between initial detention and the handing down of an RTL decision. Mo Shaoping notes that lawyers have always been allowed, at least in principle, to assist RTL detainees mount administrative appeals against RTL decisions made by the police.

50 "New law to abolish laojiao system", *China Daily*, 1 March 2007.

51 See *People's Republic of China: Abolishing 'Re-education through Labour' and other forms of punitive administrative detention – an opportunity to bring the law into line with the International Covenant on Civil*

The report also suggests, however, that 'lots of disagreements' remain to be resolved, in particular differences of opinion between the Supreme People's Court (SPC), which is apparently calling for 'all detentions to be imposed only after a court's decision', and the Ministry of Public Security (MPS), which 'proposes to maintain the current practice, with a judicial review coming after the administrative enforcement.' It is far from certain, therefore, whether any reforms will be introduced in the near future

Amnesty International considers that the stance of the SPC appears to be more in line with international fair trial standards relating to 'deprivation of liberty' than that of the MPS.52 In line with human rights promises made in the run-up to the Olympics and declared intentions to ratify the ICCPR, Amnesty International once again urges the Chinese authorities to

- Abolish all forms of punitive administrative detentions imposed without charge, trial or judicial review without further delay, ensuring that decisions on detention are no longer exclusively in the hands of the police.

  Case update - Bu Dongwei: Falun Gong practitioner Bu Dongwei is now known to be held at Tuanhe RTL facility in Beijing, where he is reportedly forced to do packing work. His family only received official confirmation of his whereabouts at the end of August 2006, three months after he was first detained. The authorities have reportedly claimed that he decided not to appeal against his two-and-a-half year term, but his family dispute this. Officials from Tuanhe RTL facility have reportedly asked Bu Dongwei's family to contribute money towards his living expenses – around 400 Yuan per month (approx. US$52).

  Bu Dongwei (also known as David Bu) was assigned to two-and-a-half years' RTL on 19 June 2006 in Beijing for "resisting the implementation of national law and disturbing social order" after police discovered Falun Gong literature at his home. The authorities initially refused to disclose his place of detention to his family. Bu Dongwei had been working in Beijing for the U.S. aid organization, the Asia Foundation, before he was taken away by police from his home in Haidian district on 19 May 2006. Amnesty International considers Bu Dongwei to be a prisoner of conscience, detained in violation of his fundamental human rights to freedom of expression, association and religion, and continues to call for his immediate and unconditional release.

Repression of human rights defenders and their families

In mid-April 2007, two veteran Chinese dissidents, Chen Ziming and Ren Wanding, were granted permission to leave mainland China for the first time and visit Hong Kong. Chen Ziming, who had

and Political Rights' May 2006 (AI Index: ASA 17/016/2006)
52 For details of these standards, see ASA 17/016/2006 op. cit.

been imprisoned for 13 years in 1991 for his involvement in the 1989 pro-democracy movement, claimed that this was a sign of greater official tolerance for activists ahead of the Olympic Games in August 2008.53 The issue of freedom of movement was also underscored by the intervention of the central authorities to allow Dr Gao Yaojie, a prominent AIDS activist, to leave her home in Henan province, where she had been held by the local authorities under a form of 'house arrest', and travel to the USA to receive a Vital Voices Global Women's Leadership Award in February 2007.

Amnesty International welcomes the apparent relaxation of policy that these cases represent and urges the authorities to expand this to ensure that the full diversity of peaceful activists and human rights defenders in China can carry out their activities without fear of restrictions on their fundamental human rights, including freedom from arbitrary detention and freedom of movement.

Some other recent examples may also suggest signs of growing tolerance for individual rights activism, including successful attempts by some families to win better compensation for their homes threatened with demolition. A recent well-publicised, iconic example in the Chinese and international media was efforts by one family in Chongqing city to hold out against developers wishing to demolish their home, which became labelled as a 'nail house'. Their defiance during a three-year stand-off against developers eventually paid off in April 2007, when they were awarded higher levels of compensation, which they accepted. At the same time, however, reports continue of other families being evicted from their homes or land, sometimes violently and apparently without adequate compensation.

Amnesty International remains deeply concerned that human rights defenders who attempt to report more widely on violations, challenge policies which are deemed politically sensitive, or try to rally others to their cause face serious risk of abuse. Arbitrary detention, harassment and surveillance of such activists and their families has continued since the publication of the last Olympics update, with the convictions of several key rights advocates and the growing use of informal forms of 'house arrest' against others.

> **Case update – Ye Guozhu:** Housing rights activist, Ye Guozhu, continues to serve a four-year prison sentence in connection with his efforts to organize a demonstration against alleged forced evictions in Beijing in connection with preparations for the Olympics. He reportedly continues to suffer from health problems, partly as a result of being tortured in detention, including a recent incident towards the end of 2006 when he was reportedly beaten with electro-shock batons by guards at Chaobai prison. In February 2007, Ye Guozhu was once again assigned to a period of 'discipline' in Qingyuan prison, apparently in connection with his ongoing attempts to appeal against his conviction. This is reportedly due to last for ten months. Amnesty International is seriously concerned for the health of Ye Guozhu. The organization considers Ye Guozhu a prisoner of conscience and continues to call for his immediate and unconditional release.

53 "Beijing to relax grip beyond Olympics – China dissident", *Reuters*, 17 April 2007

Concerns remain over inadequate compensation for those evicted from their homes as a result of construction in Beijing in the run-up to the Olympics. On 28 March 2007, officials organized a guided media trip for journalists to the recently-completed Shunyi Olympic Rowing-Canoeing Park, around 40km north-east of Beijing, which had been the focus of a land seizure dispute since mid-2005. During the media trip, residents of nearby Maxinzhuang village, Beixiaoying county, Shunyi district, told reporters that they had still not been compensated for the loss of their farmland and one villager added that two people remained in prison for their part in the protests in 2005.54 However, the general manager of the Park reportedly claimed that the dispute had been settled as early as July 2005.55

Amnesty International is unable to independently verify these reports, but urges the Chinese authorities to clarify exactly when and how much compensation was paid to the villagers and to provide further details about those detained or imprisoned as a result of the dispute, including the charges against them, their terms of imprisonment and their state of health. The organization also urges the IOC to raise these allegations of forced evictions and related arrests with the Chinese authorities in an attempt to clarify the situation.

China's recent National People's Congress (NPC), held from 5-16 March 2007 in Beijing, was accompanied by a wave of detentions of petitioners and activists in the capital. The exact number is unclear, but a local activist claimed that the crackdown was much more severe than in 2006, with the police rounding up over 2,000 people.56 The Chinese Rights Defenders (CRD) estimated that 'several thousand' were detained during the first week of the Congress, adding that "the clean-up of the city is likely a dress rehearsal for…the Olympic Games."57 The group also sent an Open Letter to the NPC calling for a constitutional review of the crime of 'inciting subversion' (Article 105 (2) of the Criminal Code). 58 This provision has frequently been used as a pretext to detain and prosecute rights advocates, including journalists and lawyers, in violation of their fundamental human rights to freedom of expression and association.

In a recent case, **Gao Zhisheng**, a defence lawyer and rights activist, was convicted of 'inciting subversion' in December 2006 in connection with his activism, including his organization of a hunger-strike protest in Beijing in February 2006 to draw attention to the plight of several other activists who had been subjected to human rights violations. The authorities had already suspended the operations of his law firm and revoked his law licence in late 2005 after he published an open letter calling for religious freedom and an end to the 'barbaric' persecution of the Falun Gong spiritual movement. Unusually, the court ruled that his three-year prison sentence should be suspended for five years, meaning that he would not be imprisoned unless he commits criminal offences during the five year period.

54 "Secrecy as hunt for outside Games' volunteers begins", *SCMP*, 29 March 2007.
55 Ibid.
56 "Olympic preview as China cracks down on dissent," *AFP*, 14 March 2007.
57 Ibid.
58 "维权网"致全国人大公开信：建议启动对"煽动颠覆国家政权罪"的违宪审查，废除以言治罪的"合法"工具" : http://crd-net.org/Article/ShowArticle.asp?ArticleID=3619 , translated as "CRD Open Letter to the NPC, Urging Constitutional Review of the Crime of "Inciting Subversion" and Abolition of Law Criminalizing Free Expression), http://crd-net.org/Article/ShowArticle.asp?ArticleID=3744

Following his 'release' on 22 December 2006, Gao Zhisheng was reunited with his family, but they all remain under tight surveillance by the police. In April 2007 Gao Zhisheng claimed to other activists that he had been treated harshly during his four months in formal police custody, including being handcuffed and forced to sit in an iron chair or cross-legged for extended periods, and having bright lights shone on him. He said he only agreed to confess to his 'crime' in order to protect his family.

Gao Zhisheng's wife, Geng He, and their two children, have been held under police surveillance since he was detained on 15 August 2006. While Gao Zhisheng was in detention, Geng He was reportedly warned not to contact or communicate with anyone, especially the media, about his case. The police also forcibly escorted their 13-year-old daughter to school where she was monitored throughout the day. On one occasion, she reportedly refused to be escorted from school back home in a police car, and was subsequently dragged into the car causing bruising to her legs and neck.59

Such patterns of police control, surveillance and arbitrary detention are increasingly being employed against activists and members of their families in Beijing and other parts of China, particularly during significant public events. It is likely, therefore, that the Chinese authorities will employ similar tactics at the time of the Olympics in 2008. Whether activists are held as detainees in police stations or as prisoners in their own homes, such detention without charge is inherently arbitrary and in violation of international human rights standards.

Amnesty International is particularly concerned about the growing use of forms of 'house arrest' or 'residential surveillance' ('*jianshi juzhu*' - known informally in Chinese as '*ruanjin*' or 'soft detention') against human rights defenders and activists highlighting other issues deemed to be politically sensitive. While the Chinese Criminal Procedure Law lists 'residential surveillance' as one of a number of measures that may be used by the police against criminal suspects, in practice activists are rarely shown any official notice explaining the reasons for their detention and periods often exceed the maximum limit of six months as prescribed by law.60 Amnesty International considers the use of such detention without charge against peaceful activists to be arbitrary and in violation of numerous international human rights standards, including the right to liberty and security of the person, fair trial, freedom of movement and freedom of association.

59 For further information, see Amnesty International Urgent Action, *China: Fear for safety/death threats: Gao Zhisheng*, 19 January 2006 (ASA 17/001/2006) and related updates, ASA 17/047/2006, ASA 17/055/2006 and ASA 17/007/2007.

60 According to China's Criminal Procedure Law, 'residential surveillance' is one of several measures that may be employed by the police against suspects before they are formally charged with any crime. During this time they have no right of access to a judge to challenge the grounds of their detention, except in circumstances where the length of detention has exceeded the legal time limit of six months. It is extremely difficult to mount such a challenge, particularly if the police provide no legal documents at the outset of detention. Even as prescribed by Chinese law, 'residential surveillance' contravenes essential elements of the right to fair trial under international human rights standards, including both customary international law and the ICCPR. These include the right to be brought promptly before a judge or judicial officer and the right to challenge the lawfulness of detention.

Case update – Qi Zhiyong: Qi Zhiyong, disabled activist and campaigner for justice for victims of the 1989 Tiananmen Square crackdown, was held under surveillance by the police in his home between 28 February and 18 March 2007 as the NPC meeting took place in Beijing. However, he claimed this was more 'relaxed' than in previous years in that the police were generally polite and did not use physical violence against him. He was also reportedly allowed to take his daughter to school and go for medical checks on his false leg. The authorities are still reportedly preventing him from setting up his small shop, and his wife has been unable to get a new job since she was dismissed from her post last year. The local authorities reportedly continue to prevent him and members of his family from liaising with other disabled people or conducting media interviews.61

Other examples of the use of 'house arrest' include the confinement of HIV/AIDS activist, **Hu Jia**, to his home in Beijing, including a continuous period of 214 days from 17 July 2006, following his 'release' from 41 days police detention on 28 March 2006. His detention appeared to be linked to his support for the hunger-strike protest organized by Gao Zhisheng and mentioned above, although he was never formally charged. During 'house arrest', he was prevented from leaving his home by several plain clothes police stationed in a downstairs apartment and outside the apartment building. They also placed his wife, **Zeng Jinyan**, under tight surveillance, occasionally confining her to her home, but more frequently following her when she left home and subjecting her to intimidation and harassment.

Yuan Weijing, the wife of Chen Guangcheng, has also been subjected to 'house arrest', police surveillance and other abuses in Linyi city, Shandong province since September 2005 apparently because of her support for Chen Guangcheng and attempts to secure justice for him.62 Yuan Weijing had worked closely with her husband to compile information about women affected by the abusive family planning policies in Linyi in 2005. She was taken away by police for 'questioning' on 28 November 2006 the day after Chen Guangcheng's retrial (see below) and was released eight hours later, when witnesses saw her being dragged out of a police car and thrown down on the side of the road outside her village.

Crying and unable to speak properly, Yuan Weijing appeared to have been severely traumatized by her experience. After hospital treatment, she later stated that she had been treated roughly and verbally abused by the police, but appeared unable to provide further details. During her detention, the police had also formally issued Yuan Weijing with a 'residential surveillance' order stating that she was suspected of 'intentionally disrupting traffic and inciting the destruction of public property', apparently in connection with the charges that had already been upheld against her husband. Chinese rights activists have noted that Yuan Weijing had already been under tight police surveillance for over one year without any legal order.

"I could expect everything they [officials] have done to me. I am angry, but not for the

61 For further information and background on Qi Zhiyong, see previous Olympics Countdown report (ASA 17/046/2006).

62 See below and previous Olympics Coutdown report (ASA 17/046/2006) for further information on Chen Guangcheng and Yuan Weijing.

result, just for their deliberate acts to break the law even though they are the executors of the law.…I will spare no effort to seek justice for my husband." Yuan Weijing.63

Case update - Chen Guangcheng: Blind legal advisor Chen Guangcheng, had also been held under 'house arrest' for almost one year before he was brought to trial on 18 August 2006. Hopes for his release grew in October 2006 when the Linyi City Intermediate People's Court rejected the lower court's verdict in his case and ordered a retrial citing procedural irregularities, including that his own lawyers had been prevented from attending the trial. While his self-appointed lawyers were allowed to represent him at his retrial, held on 27 November 2006, the process was again characterized by serious procedural flaws. In particular, several key defence witnesses who claimed to have been tortured into providing testimony against Chen Guangcheng, were detained by police - or unidentified men believed to be linked to the police - to prevent them from attending the trial. The court issued its verdict on 1 December 2006, restoring his original conviction and sentence. On 12 January 2007 the Linyi Intermediate People's Court announced that it upheld the verdict, confirming Chen Guangcheng's sentence of four-years-and-three-months in prison for "damaging public property and gathering people to block traffic".

Chen Guangcheng has now been transferred to Linyi Prison in Shandong province. His lawyers were able to visit him in prison on 20 March 2007 and have submitted requests to prison, court and judicial officals that Chen Guangcheng be allowed to serve his sentence outside prison due to his blindness. Their requests have so far gone unanswered. Chen Guangcheng reportedly remains determined to challenge his conviction and has attempted to register a formal complaint about his case with the local prosecuting authorities. He is also continuing to discuss with his lawyers ways to use the law to bring the Linyi local authorities to book for their alleged family planning abuses.

In March 2007, the *Index on Censorship* honoured Chen Guangcheng with its 'Whistleblower Award' alongside four other 'champions of free expression' from other countries.64 Amnesty International deplores the conviction and imprisonment of prisoner of conscience Chen Guangcheng and continues to call for his immediate and unconditional release.

Media freedom? Double standards for foreign vs. domestic journalists

On I January 2007, new regulations for foreign journalists took effect aimed at increasing their freedom to cover news stories in China in the run-up to and during the Olympics. Whereas in the past, foreign journalists formally had to request permission from local authorities before conducting investigations and interviews outside Beijing, the new regulations make it clear that:

63 Quoted in "Blind birth-control activist loses plea", *SCMP*, 13 January 2007.
64 See "Index Freedom of Expression Awards" at http://www.indexonline.org/en/news/articles/2007/1/index-awards-shortlist-2007.shtml

"to interview organizations or individuals in China, foreign journalists need only to obtain their prior consent."65 Amnesty International welcomes these regulations to the extent that they facilitate foreign media reporting in China. However, uncertainty remains as to whether they also apply to the autonomous regions of Tibet and Xinjiang and they do nothing to increase media freedom for domestic journalists, who typically face more serious human rights violations than foreign media. While officials have suggested that they may be extended, Article 9 of the current regulations makes clear that they expire on 17 October 2008.

Early testing of the regulations by several journalists suggested that they were indeed able to obtain access to cover several stories without official permission. Some were able to cover sensitive subjects such as interviews by Reuters with Xinna, the wife of Hada, a prisoner of conscience in Inner Mongolia, and Bao Tong, aide to former Premier Zhao Ziyang.66 *The Economist* was also able to cover the devastating impact of HIV/AIDS in Henan province.67 More recent examples, however, suggest that some provincial officials are not respecting the regulations.68 These include the police detention and expulsion of two BBC journalists from Zhushan, Hunan province in March 2007 after they tried to investigate reports of a death of a student during a large-scale protest about an increase in public transport fees.69

Certain local authorities appear to have responded to the regulations by attempting to rein in their own officials and encouraging them to suppress the publication of negative stories. For example, the Pingdu city government in Shandong province reportedly issued a document in March urging its officials to 'use all measures to downsize the impact of negative reporting to a minimum level'.70 One investigative reporter claimed that this showed that local officials were scared of increased transparency in a more open media environment.71

The regulations should also be seen in the context of measures introduced in September 2006 to strengthen Xinhua's supervision over the distribution of news from foreign agencies within China. The measures prohibit the distribution of news and information which serves to 'endanger China's national security, reputation and interests' and 'undermine China's social stability' as well as several other broadly-defined categories.72 It appears, therefore, that while foreign journalists may have more freedom to cover sensitive issues, their reports run a high risk of being censored from a domestic audience through Xinhua's strengthened control over distribution.

65 "Regulations on reporting activities in China by foreign journalists during the Beijing Olympic Games and the preparatory period", *Xinhua*, 1 December 2006, Article 6. Similar rules have also been introduced for journalists from Hong Kong, Macau and Taiwan.
66 "China sticks, in part, to vow on media freedom", *Reuters*, 1 January 2007.
67 "China's AIDS scandal," *The Economist*, 18 January 2007.
68 For further details, see "Disturbing lapses in application of new rules for foreign media", *Reporters Without Borders*, 22 March 2007.
69 Ibid.
70 "Free media for Games=media free of bad news, one city says," *SCMP*, 20 March 2007.
71 Ibid.
72 Article 11 of "Measures for administering the release of news and information in China by foreign news agencies". Full text printed in English in *People's Daily*, 10 September 2006.

The authorities attempts to tighten control over the domestic media have been underscored by three official rulings since the beginning of 2007:

- In January 2007, Chinese Communist Party (CCP) Central Propaganda Department imposed new 'pre-censorship' rules forcing the media to seek permission to cover significant historical events or anniversaries involving figures deemed to be controversial or politically sensitive;73

- This was followed by the introduction of restrictions by the Propaganda Department of the State Administration of Radio, Film and Television (SARFT) banning news reporting on 20 specific issues, including discussions of judicial corruption and rights protection campaigns, in the run-up to the 17th CCP Congress in October;74

- In February 2007, it was reported that the CCP Central Propaganda Department had set up a new penalty points system for print media indicating that media outlets would be subjected to closure if all their points were deducted. Media would initially be allocated 12 points, but it was unclear exactly how 'wrongdoing' would be determined or calculated. A state media executive reportedly said that 'the new system is a clear message that the top leadership wants a peaceful social environment ahead of the 17th CCP congress and next year's Olympic Games."75

These rulings tighten restrictions on mainland Chinese journalists and writers, who already operate in a stifling atmosphere of censorship and run the risk of serious human rights violations if they report on issues deemed sensitive by the authorities. Despite these risks, however, many Chinese journalists continue to conduct investigative reporting on a variety of subjects, including environmental, health and human rights issues, hoping that their subjects will not fall foul of the censors.

A recent case which gave rise to considerable concern, was the beating to death of reporter Lan Chengzhang in January 2007, after he tried to investigate the operations of an illegal coal mine in Hunyuan county, Shanxi province. He died of a brain haemorrhage after allegedly being beaten by thugs hired by the owner of the mine. Local authorities initially suggested that he was not an accredited reporter and may have been trying to seek payoffs from the mine owner in return for not reporting problems at the mine.76 These claims were disputed in some Chinese newspapers, but local police reportedly obstructed the activities of journalists who went to Hunyuan to investigate Lan's death.77 Following the intervention of central officials, including President Hu Jintao, the Shanxi authorities reportedly assigned 70 police officers to investigate the case.78

73 "Party introduces new censorship rule," *SCMP*, 16 January 2007.
74 "Chinese media regulator sets out 'forbidden areas'", *SCMP*, 24 February 2007.
75 "China tightens media grip with penalty points system," *SCMP*, 9 February 2007.
76 See "China outcry grows over beating death of reporter," *Reuters*, 17 January 2007.
77 Ibid.
78 "Hu orders inquiry into fatal beating of reporter at mine," *SCMP*, 25 January 2007.

The killing of journalists is rare in China,79 but other serious human rights violations, including the arbitrary detention and imprisonment of reporters and journalists remains widespread. In addition, all media in China remain subject to censorship by the authorities, with books and articles frequently banned or taken out of public circulation. Recent examples include the banning of a memoir of veteran Chinese journalist Dai Huang and the withdrawal from circulation of a book entitled "Past Stories of Peking Opera Stars" (伶人往事) by writer Zhang Yihe. Both authors have initiated lawsuits in an attempt to overturn the decisions, which were made by China's General Administration of Press and Publication (GAPP).80 Wu Shulin, deputy director of GAPP reportedly stated that Zhang's book was withdrawn because of her sensitive identity rather than anything the book contained.81

> *"I believed the current legal situation in China had improved since the time I was jailed….but [the authorities'] concern shows that over the long term, the suppression of intellectuals has deeply scarred their minds and people are still seized by fear…for this I have to stand up,"* Zhang Yihe.82

Over recent months, the Chinese authorities have also sought to further tighten controls over the Internet. On 24 January 2007, President Hu Jintao reportedly ordered officials to better regulate the Internet and 'purify the online environment' ensuring that online information is 'healthy' and 'ethically inspiring'.83 This has been followed by further censoring of certain websites, blogs and online articles, including the following:

- In March 2007, the SARFT reportedly ordered the closure of www.ccztv.com, a website providing news broadcasts over the Internet. The move reportedly followed a crackdown on eight web TV companies in December 2006 in an attempt to stop unauthorized news broadcasts.

- In the same month, the director of GAPP, Long Xinmin, announced that new rules were being developed to further regulate Internet publishing. Singling out bloggers and webcasting as a key challenge, he said: "We must recognize that in an era when the Internet is developing at a breakneck pace, government oversight and control measures

79 Two journalists are known to have died in China in 2006 after being beaten – both reportedly at the hands of the police: Wu Xianghu and Xiao Guopeng. For further information see: "China – Annual Report 2007", *Reporters without Borders* and "International Press Institute (IPI) condemns killing of Chinese journalist", *IPI*, 17 January 2007

80 Courts have so far refused to accept Dai Huang's case, and Zhang Yihe's legal action is still under preparation For further information, see "China's press Czar vs. authors of censored books," *CRD*, 22 March 2007.

81 See "Author confronts the censors again", *SCMP*, 25 January 2007. As daughter of former 'rightist' Zhang Bojun, she spent ten years' in prison during the Cultural Revolution and her two previous works had also been banned.

82 Ibid.

"Chinese president order tighter controls over Internet," *Xinhua*, 24 January 2007, "China's Hu vows to 'purify' Internet," *Reuters*, 24 January 2007.

and means are facing new tests"84 One target has apparently been Beijing lawyer, Pu Zhiqiang, who recently discovered that three of his blogs were removed from the popular Chinese Internet gateway, sohu.com. The only explanation he received was a message from the administrator that "it was ordered by the authorities from above."85 He had used his blogs to discuss legal topics and issues related to freedom of speech and expression.

- On 6 March 2007, the authorities announced a ban on any more Internet cafes opening this year.86 This was reinforced later in the month when Xinhua reported that the authorities would crack down on any attempts to sell new licenses for Internet cafes. Tuo Zuhai, an official from the Ministry of Culture, explained that the almost 120,000 Internet cafes in China already met the demand of the market and that a further increase would lead to 'negative competition'.87

Amnesty International considers that while foreign journalists may now have more freedom to conduct interviews in China, restrictions over the domestic distribution of their reports has been tightened along with intensified policies of censorship and control over the domestic Chinese media. This crackdown runs counter to promises by Chinese officials to ensure 'complete media freedom' at the time of the Olympics.

Case update: Huang Jinqiu: Huang Jinqiu continues to serve a 12-year sentence in Pukou prison, Nanjing city, Jiangsu province in connection with his Internet writings. His treatment in prison appears to have improved over recent months. He is now allowed to listen to the radio and read newspapers, and has reportedly been assigned to work producing the prison newsletter.

Case update: Shi Tao: Shi Tao continues to serve a 10-year sentence for sending an email summarizing a Chinese Central Propaganda Department communiqué on how journalists should handle the 15th anniversary of the crackdown on the 1989 pro-democracy movement. It appears that he is still working with gemstones, but has now been transferred from polishing to making necklaces or chains and his health appears to have improved as a result. He is reportedly kept under tight control, with family visits requiring special approval from the prison manager. He is not allowed to receive printed matter, including books or newspapers. In November 2006, the World Association of Newspapers awarded its annual Golden Pen of Freedom prize to Shi Tao.88

In March 2007, Hong Kong's privacy commission cleared Yahoo! Hong Kong Ltd of any liability for sharing Shi Tao's account user information with the Chinese authorities apparently because there was 'insufficient evidence' to hold the company liable under

84 "China looks to rein in bloggers," *Reuters*, 12 March 2007.
85 "Internet police keep tight grip on blogs," *SCMP*, 8 March 2007.
86 "China bans new Internet cafes," *AFP*, 6 March 2007
87 "Chinese pledges to eradicate sales of new Internet bar licences," *Xinhua*, 20 March 2007.
88 See "Jailed Chinese journalists wins WAN Golden Pen of Freedom," at http://www.wan-press.org/article12610.html.

Hong Kong privacy laws.89 Key elements of the decision hinged on the relationship between Yahoo! Hong Kong and Yahoo! China and whether an individual's IP address constitutes personal data.90 Shi Tao's supporters have criticized the ruling, including Albert Ho, Chair of the Democratic Party in Hong Kong who brought the complaint on Shi Tao's behalf. Amnesty International remains deeply concerned about the role of Yahoo! in providing information to the authorities that helped to secure Shi Tao's conviction, and more generally about the involvement of global Internet companies in the practice of government censorship in China.

While Amnesty International has broader human rights concerns in China as the 2008 Olympics approach, the organization will be monitoring the Chinese government's performance particularly closely in areas with a direct link to preparations for the Olympics, to core principles in the Olympic charter and to promises of human rights improvements made by Chinese officials at the awarding of the 2008 Olympics to China in 2001. These are: the continuing use of the death penalty and abusive forms of administrative detention, the arbitrary detention, imprisonment, torture and harassment of human rights defenders, including journalists and lawyers, and the censorship of the Internet.

Amnesty International urges the International OIympic Committee (IOC) and the wider Olympic movement to work with the organization's wordwide membership and in solidarity with human rights activists within China to press the Chinese government to deliver positive concrete and lasting human rights reforms before August 2008.

89 "Yahoo is cleared in case of Chinese journalist," *Wall Street Journal*, 15 March 2007.
90 Ibid. See also "Hong Kong: Yahoo cleared of breaching privacy," *The Standard*, 15 March 2007 and "Yahoo! cleared in Hong Kong case over jailed Chinese journalist," *AFP*, 14 March 2007.