

People's Republic of China

The Olympics countdown – failing to keep human rights promises

Introduction

With just two years to go until the Olympic Games take place in Beijing, the Chinese authorities are failing to meet the human rights commitments they made when Beijing was awarded the Olympics in April 2001.(1) Serious human rights violations continue to be reported across the country fueling instability and discontent. Grassroots human rights activists continue to be detained and imprisoned, and official controls over the media and the Internet are growing tighter.

While there have been some positive legislative and judicial changes in connection with the application of the death penalty, progress appears to have stalled in connection with other punishments, including "Re-education through Labour" (RTL) and other abusive forms of administrative detention.

This report summarizes a number of Amnesty International's human rights concerns in China – concerns which the organization is continuing to highlight as key areas for reform in the run-up to the Olympics. They 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 considers that positive reforms in all of these areas are essential if China is to live up to its promises to improve human rights.

Each section is accompanied by recommendations, summarized at the end of the report, which Amnesty International considers would constitute significant and concrete progress in the run-up to the Olympics. They form a core component of the organization's broader agenda for human rights reform in China.

"Preservation of human dignity" and the death penalty

"The goal of Olympism is to place sport at the service of the harmonious development of man, with a view to promoting a peaceful society concerned with the preservation of human dignity" Olympic Charter, Fundamental Principles of Olympism.(2)

The death penalty continues to be applicable to around 68 offences in the Chinese criminal law, including several violent crimes, such as robbery, rape and murder. It is also applicable to some non-violent crimes such as economic crimes (eg. tax fraud and embezzlement) and drug offences where the circumstances are 'serious'. In violating the right to life and the prohibition of torture and cruel inhuman and degrading treatment, the

death penalty fundamentally undermines the "preservation of human dignity" which lies at the heart of the Olympic Charter. These concerns apply to both the death penalty system as a whole as well as the conditions of detention of those held on death row in China.

Death penalty prisoners continue to be handcuffed and shackled on death row in all parts of China, including Beijing. During his visit to China in November 2005, the UN Special Rapporteur on torture met with death penalty prisoners held at the Beijing Municipality Detention Centre while they awaited appeal. He noted that they were 'handcuffed and shackled with leg-irons weighing approximately three kilograms, 24 hours per day and in all circumstances (including during meals, visits to the toilet etc).'(3) Prison officials reportedly defended this practice as a necessary measure for their own safety, the security of others, to prevent them from fleeing and to prevent suicide. The Special Rapporteur on torture observed that 'the continuous handcuffing and shackling of death row prisoners constitutes an imposition of additional punishment without justification, leading to severe suffering, and amounting to torture.' He recommended that the practice be abolished.

Prisoners are executed by shooting, usually to the back of the head, and increasingly by lethal injection. Since lethal injection was introduced with reforms to the Criminal Procedure Law in 1996, dozens of mobile execution vans have been produced and mobilized for the purpose. The exact ratio of executions by shooting and by lethal injection is unclear, but some Chinese legal academics estimate that lethal injection may now account for as many as 40% of all executions.⁽⁴⁾ The drugs used for lethal injection (sodium thiopental to induce unconsciousness, pancuronium bromide to stop breathing, and potassium chloride to stop the heart) are reportedly only produced in Beijing and provincial officials are required to travel to the capital to collect the chemicals at their own expense.⁽⁵⁾

The use of lethal injection does not mitigate the cruelty of the punishment and the involvement of medical professionals in executions runs counter to international medical ethics.⁽⁶⁾ Amnesty International is also concerned that the use of lethal injection may also facilitate the extraction of organs from executed prisoners. At an International Conference on Liver Transplants in July 2005, the Vice-Minister of Health, Huang Jiefu reportedly acknowledged that the majority of organs used for transplant in China come from executed prisoners.⁽⁷⁾ In March 2006, Chinese transplantation specialists estimated that this may now account for as many as 99% of transplanted organs.⁽⁸⁾ Chinese transplantation websites, aimed at foreign clients in search of organ transplants, also appear to reflect such practices. For example, the Beijing-based Bek-Transplant.com website openly admits under its "Frequently Asked Questions" section that the organs they use come from "people that are executed in China."⁽⁹⁾

Some Chinese transplant surgeons appear to be uneasy about their involvement in organ extraction from death penalty prisoners. According to a recent media report published in April 2006, one (unnamed) Chinese surgeon stated:

"Once a court agrees, the doctors can go to the execution field, wait in a sterile van, and

harvest the organ right after the execution. Such experiences are a severe moral and mental shock to many surgeons, because the prisoners do not usually die immediately after they are shot. But surgeons have to act quickly to get the organs due to freshness requirements.

To some extent, the doctors are part of the execution. That is too much for many young doctors to accept ... but if you want to do the transplants you have to face the reality."(10)

Organ transplants have become a highly profitable business, particularly since the commercialization of health care in China. There are serious concerns that the potential to profit from such transactions combined with apparently widespread corruption among police, courts and hospitals may lead to abusive practices. It may also provide an economic incentive to retain the death penalty.

On 28 March 2006, the Chinese Ministry of Health released new regulations on organ transplants which took effect on 1 July 2006.(11) They ban the buying and selling of organs and stress that organs may only be removed with the written consent of the donor. However, medical experts have criticized them for not addressing the crux of the problem. For example, Professor Chen Zhonghua, a transplantation specialist who reportedly helped to draft the regulations, has stated that they only offer guidance on transplants from live donors and fail to address key issues such as the source of organs.(12) It remains unclear how well the new regulations will be enforced. International medical standards state that organ transplants may only take place 'voluntarily' and with the 'free and informed' consent of the donor. Amnesty International considers that those faced with the trauma and anguish of imminent execution are not in a position to provide such consent. In addition, the secrecy surrounding the application of the death penalty in China makes it impossible to independently verify whether such consent was given.

This lack of transparency about the process of execution is mirrored by official secrecy over the exact number of people sentenced to death and executed every year in China. The Chinese government refuses to publish full national statistics on death sentences and executions. Based on public reports available, Amnesty International estimated that at least 1,770 people were executed and 3,900 people were sentenced to death during 2005, although the true figures were believed to be much higher. In March 2004, Chinese legislator Chen Zhonglin estimated the figure at around 10,000 executions per year. Earlier this year, Liu Renwen, a leading Chinese abolitionist and criminal law professor, estimated that around 8,000 people are executed per year based on information obtained from local officials and judges.(13)

No one who is sentenced to death in China receives a fair trial in line with international human rights standards. Failings include: lack of prompt access to lawyers, lack of presumption of innocence, political interference in the judiciary and failure to exclude evidence extracted through torture. A number of cases recently reported in the Chinese

press reveal that innocent people had been put to death in China due to the widespread use of torture by the police to extract confessions:

- **Nie Shubin**, a young farmer from North China, was executed in 1995 for the rape and murder of a local woman. He had reportedly been tortured in police custody. In early 2005, a suspect detained in connection with another case, reportedly confessed to the same crime, apparently describing the crime scene in detail. Judicial authorities later admitted their mistake prompting Nie Shubin's family to seek official compensation.
- **She Xianglin** and **Teng Xingshan** were both convicted of the murder of their wives in two separate cases in 1994 and 1987 respectively. Both were sentenced to death despite pleas of innocence and allegations that both had confessed because they had been severely beaten during interrogations. In both cases, the alleged murder victims reappeared several years later - in April and June 2005 respectively. She Xianglin's sentence was commuted to 15 years imprisonment after a re-trial. He was released after 11 years in prison on 1 April 2005 and officially cleared of all charges later the same month. He and his family were awarded compensation of 450,000 yuan (approx. US\$55,500) in October 2005. Teng Xingshan, however, was executed in 1989.

Public concern over such cases appears to have accelerated moves towards reform of the death penalty system, in particular attempts to improve the quality of trials faced by death penalty suspects. In October 2005, the Supreme People's Court (SPC) formally announced that it would soon resume its approval role for all death sentences passed in China – a role which it had previously delegated to lower courts for most cases. Chinese legal reformists have speculated that this will lead to a 20-30% reduction in the number of executions.(14) Amnesty International hopes that this reform will result in better quality trials and a significant reduction in the number of those sentenced to death and executed.

However, the failure of the authorities to disclose full statistics will continue to make monitoring and analysis problematic. Amnesty International also notes that ensuring Supreme People's Court review of capital trials does not necessarily mean that such trials will meet international human rights standards.(15) The reform may also have the adverse effect of further entrenching the death penalty system in China.

According to a report from the official Chinese News Agency, *Xinhua*, Chen Guangzhong, a consultant to the SPC, stated in April 2006 that three new criminal tribunals had been established under the SPC to review certain death sentence cases from provincial courts. However, he added that the judges did not yet formally have the right to review and make final decisions on the cases and declined to say when the tribunals would formally regain this power.(16) Professor Liu Renwen, a criminal law specialist from the Chinese Academy of Social Sciences in Beijing, had previously cautioned that

the branches were too short-staffed to deal with all death penalty cases and that lower courts appeared to be resisting the reform for fear of losing what they see as their power to control crime.(17)

In June 2006, SPC Vice-president Xiong Xuanguo announced that 30 judges from lower courts had already been chosen to conduct SPC reviews. He said that they had already received three months training, but would need a further probationary year before officially assuming office. He added that the court was also preparing to recruit lawyers and law teachers 'with strong political qualifications and a sense of responsibility' to work as senior judges on death penalty reviews.(18) An internal notice sent in the same month to lawyer's associations confirmed that the SPC was seeking 20 'outstanding criminal lawyers' to work as chief judges.(19) Other reports indicate that the SPC has also recruited 19 recently graduated Master's degree students to train to conduct death penalty reviews. They are currently undergoing training at lower level courts in Sichuan, Guangdong, Jiangsu and Shandong, and will reportedly take up their posts in the SPC at the end of this year.(20)

A separate but related reform has also been highlighted in the official Chinese media in recent months. In March 2006, the President of the SPC, Xiao Yang, announced that from 1 July 2006, all second-instance trials of death sentences (ie death sentence appeals) would be heard in open court. According to another unnamed official from the SPC, this would be conducive to 'improving protection of human rights' and would serve as a 'procedural guarantee for preventing misjudge [*sic*] in death sentence cases'.(21) In the past, death penalty appeals had often been merely a review of documents relating to the case with no opportunity for defendants or their lawyers to appear again in court.(22)

Open court appeals had already been standard practice in some parts of China before this ruling, including Beijing, Shanghai, Tianjin, Hainan and Qinghai. The effect of the decision therefore appears to be to standardize this practice across the country. Chinese media reports indicate that several other provinces and regions, including Zhejiang, Inner Mongolia and Heilongjiang, are now conducting death penalty appeals in open court.

Amnesty International welcomes this reform and other moves towards improving the quality of trials of those facing the death penalty in China in the hope that this will lead to fewer executions and fewer miscarriages of justice. To this end, the organization urges the authorities to restore SPC review of all death sentences as soon as possible. However, these measures should also be accompanied by full transparency on national statistics for death sentences and executions (including for previous years) in order to determine whether the reforms lead to a reduction in executions as anticipated.

Amnesty International also urges the Chinese authorities to take further steps towards abolition of the death penalty by reducing the number of crimes punishable by death in the Criminal Law. In this regard, Amnesty International welcomes a motion submitted by Jiang Bixin, President of the Hunan Higher People's Court to China's National People's Congress (NPC) in March 2006 calling for the death penalty to be gradually phased out for economic crimes such as embezzlement and accepting bribes.(23) The NPC's formal

reaction to this proposal is unclear, but when questioned about this motion, the SPC President Xiao Yang reportedly responded:

"This does not fit with the current situation in China; it is not possible to abolish the death penalty. There are no relevant provisions in China's current legislation for abolishing the death penalty. China's Criminal Law clearly stipulates that the death penalty should be retained, although we must apply it carefully, safeguarding human rights."(24)

In this context, Amnesty International notes that previous revisions to the Criminal Code eliminated the death penalty as a punishment for certain types of economic offences, although the recent trend has been to increase the scope. Such assertions also run counter to assurances given by the Chinese authorities in international fora, including to second governments engaged in human rights dialogues with China, that their eventual goal is to abolish the death penalty.

In line with official commitments to improve human rights in the run-up to the Olympics, Amnesty International continues to urge the Chinese authorities to take immediate and concrete measures towards abolition of the death penalty before August 2008. Given that there is no evidence that the death penalty deters crime any more than other punishments, the organization also urges the authorities to initiate public education on the reality of the death penalty in China and to refocus their efforts towards developing effective crime control policies at the local level.

Using 'Re-education through Labour' to safeguard Olympic security

"As the Olympic Games approaches, it is an important political duty to provide a secure, clean and ordered city environment to ensure that the Olympics runs smoothly....However, what has shocked many legal experts is that RTL will be used as an important tool in the clean-up efforts, and that its scope will be enlarged." Chinese writer and journalist, Lü Minghe. (25)

"The combination of deprivation of liberty as a sanction for the peaceful exercise of freedom of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment, which is incompatible with the core values of any democratic society based upon a culture of human rights", UN Special Rapporteur on torture.(26)

"Re-education through Labour" (RTL) continues to be used extensively in China despite repeated calls from both inside and outside China for the system to be abolished. Amnesty International is concerned that the forthcoming Olympics Games may be acting as an incentive for the authorities to retain the system in the name of maintaining public order in Beijing.

Hundreds of thousands of people are believed to be held in RTL facilities across the country as a punishment for so-called minor offences which are not deemed serious

enough to be punished under the Criminal Law. Periods of RTL, ranging from one to three years (extendable for a further year) are imposed by the police without charge, trial or judicial review. Chinese legal reformists have pointed out that these periods are much higher than minimum penalties under the formal Criminal Law and have raised serious concerns about the unchecked power of the police in imposing such punishments. Amnesty International is also concerned that those held in RTL facilities are at high risk of torture or ill-treatment, particularly if they refuse to acknowledge their 'offending' behaviour, recant their beliefs or resist 'reform'.

In a recent case, Falun Gong practitioner, **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 have reportedly 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 him to be a prisoner of conscience and calls for his immediate and unconditional release.(27)

Attempts by the authorities to replace RTL with new legislation known as the "Illegal Behaviour Correction Law" (IBCL) have stalled. The law is reported to remain in draft stage within the legislative committee of the National People's Congress, although no draft has been made publicly available. In May 2006, Amnesty International published a memorandum to the Chinese authorities analyzing the substance of the new law and assessing it against international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR) which China has signed and declared an intention to ratify in the near future.(28) The organization concluded that while the law contains some improvements compared with RTL, it still falls short of international standards in several crucial respects, in particular the failure to transfer responsibility for imposing punishments from the police to an independent court or tribunal. Amnesty International recommended that the authorities abandon attempts to introduce a new law, and instead bring all offences punishable with deprivation of liberty within the scope of the Criminal Law.

There has been no evidence of any further moves towards reforming or abolishing RTL over recent months. The rise of the Falun Gong spiritual movement in China and the mass detentions of Falun Gong practitioners which ensued after it was banned in 1999 has often been cited as a key reason why earlier attempts to review the system stalled. Recent developments also indicate that the perceived need to improve Beijing's environment in time for the Olympics may also be hampering efforts towards reform.

On 8 May 2006, the Beijing city authorities decided that RTL would be used as a way to control various types of "offending behaviour" to clean up the city's image in the run-up to the Olympics. This would include serious cases of 'unlawful advertising or leafleting, unlicensed taxis, unlicensed businesses, vagrancy and begging'.(29) What is considered to be 'serious' appears to be defined as those who have engaged in such acts more than twice. Chinese commentators have argued that this is the first time since mid-2003 that

officials have specifically invoked the use of ‘controversial measures’ like RTL at the local level in order to address public order issues in the cities.(30)

In August 2003, an abusive form of administrative detention, "Custody and Repatriation" (*shourong qiansong*, C&R) was abolished in the wake of a public outcry over the brutal murder of migrant worker, Sun Zhigang, in police custody in Guangzhou. This system was used to target vagrants and others without fixed abode in the cities. Amnesty International welcomed this reform, noting that, like RTL, C&R could be imposed at the whim of the police without reference to the courts, and that torture and ill-treatment were frequently reported in such facilities. The organization is deeply concerned at apparent attempts by the Beijing authorities to use RTL as a substitute for C&R under the guise of cleaning up the city for the Olympics in 2008.

Amnesty International is also concerned about the continued existence of two other forms of punitive administrative detention imposed by the police in China: ‘Custody and Education’ (*shourong jiaoyu*), used to punish alleged prostitutes and their clients with between six months and two years’ administrative detention, and Enforced Drug Rehabilitation’ (*qiangzhi jiedu*), which enables the police to impose between three and six months’ detention for alleged drug addicts.

In line with human rights promises made in the run-up to the Olympics and declared intentions to ratify the ICCPR, the organization urges the authorities to abolish all forms of punitive administrative detention imposed without charge, trial or judicial review without further delay.

Arbitrary detention, torture and harassment of human rights defenders

Chinese human rights defenders continue to face severe obstacles in their attempts to draw attention to ongoing abuses, some of which are directly related to the Olympics and the host city, Beijing. The authorities have taken no measures to reform or abolish articles of the Criminal Law which are frequently used to detain and imprison human rights defenders and others in violation of their rights to freedom of expression, association and assembly.(31)

Grassroots human rights activists, including defence lawyers, legal advisors as well as journalists and other reporters of human rights violations play an essential role in China, as in all countries, of drawing attention to ongoing abuses and winning redress for the victims. Attempts to prevent or impede the peaceful activities of human rights defenders run counter to the UN Declaration on Human Rights Defenders(32) and promises made by the Chinese authorities that human rights will improve as result of Beijing being awarded the Olympics.

Alleged forced evictions continue to be reported in Beijing. For example, in July 2006, it was reported that ten families were refusing to leave a building located next to the new site of China Central Television (which will broadcast the Olympics in 2008) claiming that offers of compensation from the local authorities are inadequate. Protest slogans

plastered over the building reportedly read: 'don't cheat and bully people', 'human rights', and 'illegal demolition'.(33) Residents of Beijing's historic Qianmen district have also complained about the low levels of compensation offered for their homes due to demolition and re-construction. One (unnamed) resident reportedly said: "The Olympics is good for China, it shows that we have the ability, the strength, the wealth to hold such an international event. But it should not be used as an excuse to hurt ordinary citizens, to drive people from their homes."(34) Another resident surnamed Yu added: "The Olympics has dealt a great blow to ordinary citizens, it has disrupted our lives. This is what we feel about it, but we cannot say it out loud."(35)

Amnesty International has already raised serious concerns about the imprisonment of **Ye Guozhu** after he sought permission to organize a demonstration in Beijing with other alleged victims of forced evictions due to construction in preparation for the Olympic Games.(36) Ye Guozhu continues to serve his four-year sentence in Chaobai prison after being convicted of 'picking quarrels and stirring up trouble' by the No.2 Beijing Municipal Intermediate Court on 18 December 2004. Amnesty International considers Ye Guozhu to be a prisoner of conscience, detained solely in violation of his rights to expression, association and assembly, and continues to urge the Chinese authorities to release him immediately and unconditionally.

It has recently emerged that Ye Guozhu has been tortured in detention. According to reliable reports received by Amnesty International, he was suspended from the ceiling by the arms and beaten repeatedly by police in Dongcheng district detention centre, Beijing, before he was imprisoned, causing him serious back pain. He was also reportedly tortured while being held in a different prison, Qingyuan prison, for four months in the second half of 2005, apparently because he refused to admit his 'guilt'. This included beatings with electro-shock batons, being forced to sit upright all day on a hard chair for extended periods, and being forced to wear hand-cuffs and fetters which caused swelling around his ankles. His treatment appears to have improved in Chaobai prison, but he suffers from pre-existing medical complaints, including high blood pressure, heart problems and cerebral thrombosis. He also reportedly suffers pain in his back and ankles as a result of his previous torture and ill-treatment. The prison authorities are reportedly only providing him with basic medicine for high blood pressure, leaving his other ailments and injuries untreated.

Other activists have also been subjected to forced evictions as a result of Olympics-related construction in Beijing. **Qi Zhiyong**, who had to have a leg amputated as a result of being shot by security forces during the 1989 Tiananmen crackdown, set up a small shop in Beijing to eke out a living after being forced to resign from his company due to his disability. However, he has been forced to move this shop several times as a result of construction apparently related to the Olympics. Earlier this year, the authorities revoked his trading license and detained him for 51 days after he participated in a 'hunger-strike' protest in February 2006 to draw attention to recent beatings of other Chinese activists and the lawyers that sought to defend them. Qi's wife was also dismissed from her job, apparently as a result of her husband's campaigning activities. With an eight-year old daughter to support and faced with high medical bills to treat the lingering effects of his

injury, Qi Zhiyong and his wife find it hard to make ends meet.(37)

Those seeking to obtain justice for victims of alleged forced evictions in other cities have also been detained and harassed. Defence lawyer **Zheng Enchong**, who had built up a reputation defending those forced out of their homes as a result of construction in Shanghai continues to suffer harassment and intimidation, even after his release from prison on 5 June 2006.(38) He was detained on four separate occasions by the police in June and July about issues relating to his work as a lawyer, including information they discovered on his computer about alleged forced evictions. He has reportedly been warned by local police and officials that his safety may be in danger if he continues to work on such issues. His family have also been warned not to speak to the media about his situation.(39)

Defence lawyers in other parts of China have also suffered serious human rights violations over recent months. Blind human rights activist and legal advisor, **Chen Guangcheng**, was tried on 18 August 2006 for "damaging public property and gathering people to block traffic". During the trial the local police reportedly blocked a 300-metre area around the court, preventing his supporters from drawing near. Only three of Chen's brothers were allowed to attend the trial, while his wife, Yuan Weijing, was prevented from attending by 10 police officers standing guard at her home. Chen's own defence lawyers were also prevented from attending, and Chen was represented by two other court-appointed lawyers. The trial was completed the same day, and the verdict was announced on 24 August 2006: he was found guilty and sentenced to four years and three months in prison. His (self-appointed) lawyers have vowed to appeal the judgment.

Chen Guangcheng's trial follows months of arbitrary detention since September 2005, during which he was confined to his home in Linyi city, Shandong province, and subjected to frequent beatings by the local police. Prior to his detention, he had been assisting Linyi villagers in a lawsuit against local authorities who had carried out a campaign of forced sterilizations and abortions in pursuit of birth quotas which reportedly affected thousands of local women. Members of Chen Guangcheng's family and his own defence lawyers have also been subjected to beatings, harassment and intimidation.

Amnesty International considers the charges against Chen Guangcheng to be a politically motivated attempt to prevent him from pursuing his peaceful and legitimate activities as a human rights defender, including his legal case against the local authorities. The organization considers him to be a prisoner of conscience and calls for his immediate and unconditional release.(40)

More generally, Amnesty International is concerned that a recent "Guiding Opinion on Lawyers handling Mass Cases", announced by the official All China Lawyers Association (ACLA) in May 2006, tightens official controls on lawyers representing groups of victims bring lawsuits against local officials and others in connection with various injustices, including alleged land expropriation, forced evictions and other human rights violations.(41) The Opinion states that lawyers should report to the Lawyers Association for 'support, supervision and guidance' (*zhichi, zhidao he jiandu*) as soon as

they have taken on a 'mass case'. The Opinion also warns lawyers not to encourage or participate in mass petitions to administrative offices, and advises a 'cautious approach' (*shenzhong duidai*) in contacts with overseas organizations and the media.

The ruling follows official announcements by the Ministry of Public Security earlier this year that there were 87,000 protests, demonstrations and other 'public order disturbances' in 2005, compared with 74,000 in 2004.(42) While the Opinion formally recognizes the role that lawyers play in helping to resolve disputes, Amnesty International is concerned that the practical effect of the ruling will be to erode the ability of individual lawyers or law offices to act independently. This is likely to dissuade lawyers from representing victims of human rights violations at the local level, or hamper their ability to assist victims to present an effective defence.

This ruling also appears to conflict with other recent moves by the ACLA to push for lawyers to be given greater rights of representation, including prompt, guaranteed and unfettered access to their clients in police detention. The ACLA filed a proposal with the Standing Committee of the National People's Congress to amend the Criminal Procedure Law (CPL) to this effect in July 2006.(43) Currently under the CPL, access to a lawyer during the investigation stage of pre-trial detention is not a guaranteed right to all suspects and remains firmly at the discretion of the investigating authorities.(44) In practice, very few detainees have a legal representative during the investigation stage of detention, leaving suspects highly vulnerable to torture or ill-treatment. According to prominent lawyer Mo Shaoping, who has defended numerous dissidents and rights activists, only 30 per cent of criminal suspects are currently represented by a lawyer, with the rate falling to 10 per cent in some parts of China.(45) Review of the CPL is reported to be on the legislative agenda of the NPC but progress has been slow and it remains unclear exactly what changes will be formally proposed.

Amnesty International urges the authorities to take concrete measures to ensure that lawyers have prompt and regular access to their clients in detention in line with international human rights standards, including the ICCPR. The authorities should also review and reform all laws, regulations and policies which impede the ability of defence lawyers to provide their clients with an effective defence.

Complete media freedom?

"We will give the media complete freedom to report when they come to China. [...] We are confident that the Games coming to China not only promotes our economy but also enhances all social conditions, including education, health and human rights." Wang Wei, secretary general of the Beijing Olympic Bid Committee, China Daily, 13 July 2001.

"The shutdown of [website] Century China is just another instance of the Chinese government suppressing the freedom of its people. Therefore we must stage a focused and unyielding protest against the government's abuse of power." One Hundred Intellectuals' Appeal Letter on the Shutdown of *Century China*, published on 2 August 2006.(46)

On 7 August 2006, the International Olympic Committee (IOC) celebrated ‘two years to go’ before the Beijing Olympics by announcing a new look for its website (www.olympic.org) to ‘provide Olympic enthusiasts with better access to their favorite information.’(47) There is no doubt that this website will be accessible in China. However, the websites of hundreds of other international organizations, including those of human rights organizations like Amnesty International, Human Rights Watch and Human Rights in China, remain blocked by the Chinese authorities.

The crackdown on individual journalists, newspapers and websites in China has continued over the last year, raising serious doubts about China’s commitment to ensure ‘complete media freedom’ during the Beijing Olympics. These concerns were echoed recently by the Foreign Correspondents’ Club of China (FCCC) which published a survey on 7 August 2006 showing that the police had detained foreign journalists on at least 38 occasions over the last two years, most of whom were covering stories relating to social issues such as environmental protests, land disputes and the plight of HIV/AIDS victims.(48)

In a recent statement, the executive vice-president of the Beijing 2008 Olympics Organising Committee (BOCOG), Jiang Xiaoyu, appeared to acknowledge that changes may be necessary: "If our existing regulations and practice conflict with Olympic norms and our promise, we will make changes to conform with the International Olympic Committee’s requirements and Games norms". However, he added that: "all the reporters will have to abide by China’s laws."(49) Two days later, Liu Qi, the President of BOCOG announced that China will issue a regulation next year to facilitate foreign media coverage of the Olympics.(50)

As noted above, many aspects of Chinese law and policy conflict with international human rights standards, including rights to freedom of expression. Broad and vaguely defined ‘state secrets’ and ‘subversion’ charges in the Criminal Law continue to be used to arbitrarily detain and prosecute journalists, editors and Internet users. While foreign journalists are generally detained for short periods and may face expulsion, Chinese journalists and writers often face much harsher treatment for reporting on issues deemed sensitive by the authorities. For example:

- **Huang Jinqiu** (pen-name: Qing Shuijun) a writer and journalist, continues to serve a 12-year sentence for ‘subversion’ in Pukou Prison near Nanjing city, Jiangsu province. He was arrested in September 2003 and convicted one year later in connection with political essays he posted on the Internet, including plans to establish a China Patriotic Democracy Party. His sentence was confirmed on appeal. He was reportedly subjected to beatings and sleep deprivation in prison in late 2004, apparently after he tried to bring further legal proceedings against his conviction.
- Journalist **Shi Tao** continues to serve a 10-year prison sentence for sending an email summarising a Chinese Central Propaganda Department

communiqué on how journalists should handle the 15th anniversary of the crackdown on the 1989 pro-democracy movement. He was detained on 24 November 2004 at his home in Taiyuan, Shanxi province and later charged with "illegally divulging state secrets abroad". He was sentenced in April 2005 by the Changsha Intermediate People's Court, Hunan Province and his appeal was turned down in June 2005. He is held in Chishan prison in Yuanjiang city where he is reportedly forced to work on processing jewellery; he is reportedly suffering from respiratory problems and skin inflammation caused by the dust. His conviction was partly based on information provided to the Chinese authorities by the Internet company, Yahoo! (see below).

- **Yang Tongyan**, (pen-name: Yang Tianshui), a freelance writer, was sentenced to 12 years in prison in May 2006 for 'subversion'. His conviction was based on his writings in support of political and democratic change in China. He was also accused of receiving money from abroad for distribution to imprisoned dissidents and their families, and of planning to form a local branch of the banned China Democracy Party. Yang had previously served a ten-year prison sentence for criticizing the crackdown on the 1989 pro-democracy movement and allegedly trying to form an opposition political party.

Amnesty International considers all three individuals to be prisoners of conscience, detained solely for exercising their fundamental human rights to freedom of expression and association. They should be released immediately and unconditionally.

Over the last year, the Chinese authorities have intensified their controls over media outlets, including newspapers, magazines and websites. One case which gave rise to considerable concern within and outside China was the temporary closure and sacking of the editors of 'Freezing Point' (*Bingdian*), a popular supplement to the China Youth Daily, after it carried an academic article criticizing the official interpretation of certain historical events, including the 1900 Boxer Rebellion. The paper was closed down for five weeks from 24 January 2006, resuming publication only after its editor Li Datong and deputy editor, Lu Yuegang had been dismissed.

Li Datong was among a group of 103 Chinese scholars, writers and lawyers who published an open letter in early August 2006 calling for an end to Internet censorship in China. This was sparked by the official closure of a popular website, *Century China*, which had hosted eight online forums for intellectual exchange, and had attracted many prominent Chinese intellectuals within and outside China. In a letter written just before its closure, the website's editor wrote:

"Ever since its establishment, our website has aimed to construct a cyber world where rationality and freedom of speech reign. For six years we made great efforts to attain this goal because we believe that such a public space is beneficial to developing equality, freedom, rationality and other crucial factors for modern

society, and that we could do our part to accelerate China's academic advancement and cultural development."(51)

The website was forced to close after it reportedly received a notice from the authorities on 25 July 2006 accusing it of 'illegally providing news information and violating Internet regulations.'(52) One of these regulations, introduced on 25 September 2005 by the State Council and Ministry of Information Industry, specifically targets online news providers, urging them to "serve socialism and correctly guide public opinion."(53)

Century China is just one of numerous websites which have reportedly been closed down over the last year. Other recent examples include: *China Consultation Net*, closed down in August 2006 after it conducted a public opinion survey on Communist Party election procedure; *Ewiki*, regarded as a mainland equivalent of the online encyclopedia, *Wikipedia*; and blogs by a Tibetan writer, Woeser, apparently after she published a picture of the Dalai Lama on one of them.

Amnesty International remains deeply concerned about the involvement of overseas Internet companies in China's Internet censorship regime. In July 2006, the organization published a report examining the role of Yahoo!, Microsoft and Google in Internet repression in China.(54) All three companies have in different ways facilitated or participated in the practice of government censorship in China:

- Microsoft closed down the blog of Zhao Jing, a Beijing-based researcher for the New York Times, on 30 December 2005 at the request of the Chinese government. Tests have shown that it also prohibits users of MSN Spaces in China from using certain terms such as 'human rights', 'Falun Gong' or 'Tibet independence' in their account name or blog title;
- Google announced in January 2006 the launch of 'www.google.cn', a self-censoring search engine as an alternative to its existing search engine based outside China (www.google.com);(55)
- Yahoo! has voluntarily signed the Chinese government's 'Public Pledge on Self-discipline for the Chinese Internet Industry', thereby aligning itself with official efforts to censor the Internet.(56) Yahoo! has also provided information to the authorities, which has helped to secure the conviction of at least four Chinese Internet users on 'state secrets' or 'subversion' charges in violation of their rights to freedom of expression. One of them, Shi Tao (mentioned above) used his Yahoo! email account to send information overseas. Yahoo! provided account holder information to the authorities which was later used as evidence in his case, resulting in his ten-year sentence. More recently, it has come to light that Yahoo! provided information to the authorities that helped to secure the conviction of **Li Zhi**, who was sentenced to eight years in prison in 2003 for 'subversion' in connection with political articles that he posted on the Internet and his attempts (online) to join the banned China Democracy Party.(57)

Amnesty International has made specific recommendations to Microsoft, Google, Yahoo! and other Internet companies operating in China to address ongoing restrictions on freedom of expression and to avoid contributing to further human rights abuses. These include: making a public commitment to honour guarantees of freedom of expression in the Chinese Constitution and under international human rights standards; lobbying for the release of those imprisoned solely for the peaceful and legitimate exercise of their freedom of expression; being transparent about the filtering process in China, including the words or phrases they censor and how these are selected; and exhausting all judicial remedies and appeals in China and internationally before complying with state directives that violate human rights.

Given the direct connection between media freedom and China's hosting of the Olympics, Amnesty International will continue to monitor progress by the Chinese government in respecting and protecting the right to freedom of expression. The organization will campaign for Internet freedom in China by lobbying both the Chinese authorities and the companies that assist them in the run-up to the Beijing Olympics in August 2008.

While Amnesty International has broader human rights concerns in China, the organization will be monitoring the Chinese government's progress closely in these particular areas over the next two years given their direct connection with its hosting of the Olympics and the lives of citizens residing in the capital city.

Amnesty International urges the International Olympic Committee (IOC) and the wider Olympic movement to work with the organization's worldwide membership and in solidarity with human rights activists within China to press for concrete and positive human rights reform in China before August 2008.

Recommendations to the Chinese authorities

In line with official commitments to improve human rights in the run-up to the Olympics in August 2008, Amnesty International urges the Chinese authorities to introduce concrete reforms in the following areas:

Death Penalty

Put in place measures to significantly reduce the use of the death penalty as steps towards full abolition of the death penalty in China. These should include:

- Improving the quality of capital trials and reducing the number of executions by restoring Supreme Court review of all death sentences passed in China;
- Reducing the number of crimes punishable by death in China, for example by removing non-violent crimes such as economic and drugs offences from the scope of the death penalty;

- Increasing transparency by publishing official annual statistics on the total number of prisoners sentenced to death and executed in China.

Fair trials, torture and administrative detention

Take concrete steps to bring all forms of detention in China into line with international human rights law and standards, including measures to uphold the rights to fair trial and prevent torture. These should include:

- Abolishing ‘Re-education through Labour’, ‘Enforced Drug Rehabilitation’ and ‘Custody and Education’, ensuring that decisions on detention are no longer exclusively in the hands of the police.

Protection of human rights defenders

Ensure that human rights defenders are free to carry out their peaceful activities in line with the UN Declaration on Human Rights Defenders. Reforms should include:

- Ensuring that human rights defenders in China have access to and support from independent international human rights monitors;
- Substantial reform or abolition of vaguely-worded clauses in the Criminal Law which are frequently used to target human rights defenders, including ‘endangering national security’, ‘subverting state power’ and ‘leaking state secrets abroad’.
- Release of all journalists detained or imprisoned for their peaceful reporting activities and introduction of safeguards to ensure that both foreign and domestic journalists are able to cover issues of legitimate public concern without censorship;
- An end to harassment, arbitrary detention, imprisonment and other abuses directed at peaceful activists calling for an official investigation into the 1989 crackdown on the pro-democracy movement, and guarantees that they can engage in commemoration for the victims;
- Release of all those detained or imprisoned for peacefully protesting about alleged forced evictions, including as a result of Olympics-related construction projects, and measures to prevent further arbitrary detentions or harassment of such activists;
- Measures to ensure that defence lawyers have prompt and regular access to their clients in police detention and are not at risk of human rights abuses themselves for doing so.

Internet freedom

End all censorship of the Internet in China which constitutes a violation of the fundamental human rights to freedom of expression and information. This should include:

- The repeal of all laws and regulations aimed at restricting the free and legitimate flow of information online;
- The release of all those detained or imprisoned for peacefully expressing themselves online or for downloading information from the Internet, including human rights defenders and journalists

Recommendations to the International Olympic Committee (IOC) and the wider Olympic movement

Amnesty International reminds the IOC of its own expectation that human rights in China would improve as a result of Beijing being awarded the Olympics and of its encouragement to international human rights organizations, like Amnesty International, to monitor such progress. (58) In line with these commitments, Amnesty International urges the IOC to exert influence on the Chinese authorities to secure the above reforms before August 2008. In particular, Amnesty International urges the IOC and the Olympic movement to put pressure on the Chinese authorities to:

- release all prisoners of conscience, including the individuals highlighted in this report;
- accelerate and build on efforts towards abolishing the death penalty in line with the above recommendations;
- abandon plans to use "Re-education through Labour" to "clean-up" Beijing in the run-up to the Olympics and to abolish the system altogether;
- give international human rights organizations unfettered access to China for research purposes so that they can better monitor China's progress in human rights and discuss issues of concern with Chinese officials and human rights defenders;
- implement legal reforms to ensure protection of human rights defenders in China, including reforms to the Criminal Law as detailed above;
- repeal all laws and regulations aimed at restricting the free and legitimate flow of information online.

Recommendations to Internet companies with investments and interests in China

In line with the UN Human Rights Norms for Business, Amnesty International urges Yahoo!, Microsoft, Google and other Internet companies with interests in China to address ongoing restrictions on freedom of expression and avoid contributing to further human rights abuses. This should include:

- Using their influence with the Chinese authorities to lobby for the release of those detained or imprisoned for their use of the Internet as above;
- Publicly committing to honouring guarantees of freedom of expression in the Chinese Constitution and under international human rights standards;
- Ensuring complete transparency about the filtering process, including by making public which words or phrases are censored from the Internet in China and how these are selected;
- Exhausting all judicial remedies and appeals in China and internationally before complying with state directives that violate human rights.

(1) For example, in April 2001, Liu Jingmin, Vice-President of the Beijing 2008 bid committee, said that "by allowing Beijing to host the Games you will help the development of human rights" (<http://www.gamesbids.com/cgi-bin/news/viewnews.cgi?category=5&id=988126264&pf=1>); in May 2001, the Mayor of Beijing, Liu Qi pledged that by hosting the games, "social progress and economic development" in China and Beijing would move forward, as would China's human rights situation,' Agence France Presse (AFP), 14 July 2001. For details, see Amnesty International, People's Republic of China: The Olympics countdown – three years of human rights reform?, August 2005 (AI Index: ASA 17/021/2005).

(2) Available at http://multimedia.olympic.org/pdf/en_report_122.pdf

(3) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak – Mission to China, 10 March 2006, UN Doc. E/CN.4/2006/6/Add.6

(4) See "China makes ultimate punishment mobile", USA Today, 14 June 2006.

(5) Ibid.

(6) For further information see Amnesty International: Lethal Injection: The medical technology of execution, January 1998 (AI Index: ACT 50/001/1998) and update, September 1999 (AI Index: ACT 50/008/1999).

(7) See "Accelerating the regulation of organ transplants" [] Caijing Magazine, 28 November 2005, pp.118-120.

(8) "Top surgeon says he has seen only 20 cases of voluntary donation," South China Morning Post, 1 April 2006. It has recently been alleged that detained members of the Falun Gong spiritual movement may also have had organs extracted leading to numerous deaths in custody. Amnesty International is investigating these reports, but is currently unable to independently verify these allegations.

(9) www.bek-transplant.com

(10) South China Morning Post, 1 April 2006, op cit.

(11) "Temporary regulations on the administration and clinical application of organ transplantation technology [□□□□□□□□□□□□□□□□], available in Chinese at <http://www.mol.org.cn/news/NewsList.asp?newsid=4230&boardid=14>.

(12) "New organ transplant rules released", South China Morning Post, 28 March 2006.

(13) "China's secret execution rate revealed", Globe and Mail, 28 February 2006.

(14) See, for example, "China plans to use death penalty more sparingly", USA Today, 16 May 2006.

(15) For example, in December 2003, Liu Yong, a wealthy entrepreneur was executed after the SPC upheld his conviction for involvement in violent criminal gang activities and corruption despite concerns that the police may have tortured him into making a confession. A lower court had commuted his death sentence as a result of these allegations, but the SPC later ruled that these grounds were not sufficient to exempt Liu Yong from execution. He was killed by lethal injection in a mobile execution chamber near the courthouse.

(16) "China's Supreme Court tribunals begin to review death penalty cases", Xinhua, 3 April 2006.

(17) "China to open more death penalty cases to public", Reuters, 27 February 2006.

(18) "China's Supreme Court to hire lawyers, teachers for death penalty reviews", Xinhua, 30 June 2006.

(19) "Top Court recruiting lawyers to act as judges", South China Morning Post, 15 June 2006

(20) "Gaofa gedi jiajin xuandiao 'shengsi faguan" ("SPC accelerates selection of 'life and death judges' from various regions"), <http://www.people.com.cn/GB/paper447/17235/1510587.html>

(21) "China reforms death penalty trials in 2006 – chief justice", Xinhua, 11 March 2006.

(22) For further details on the death penalty trial process in China, see Amnesty International, People's Republic of China: Executed 'according to law'?" (AI Index: ASA 17/003/2004).

(23) "China's policy is to preserve death penalty", Xinhua, 12 March 2006.

(24) "Xiao Yang states that it is still not possible to abolish the death penalty, but that it should be used carefully, safeguarding human rights" (中国新闻网), Zhongguo Xinwen Wang, 12 March 2006, available in Chinese at <http://www.chinacourt.org/public/detail.php?id=198089>.

(25) "The difficult choice between cleaning up the city's image and protecting freedom" (中国新闻网), Caijing Magazine, Vol.159, 15 May 2006.

(26) From his report on mission to China in November 2005. op cit. (summary).

(27) For further information, see Amnesty International Urgent Action, ASA 17/049/2006, 29 August 2006.

(28) 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 and Political Rights' May 2006 (AI Index: ASA 17/016/2006)

(29) See: "The difficult choice between cleaning up the city's image and protecting freedom" (中国新闻网) and "Background: Taking advantage of RTL to clean up Beijing" (中国新闻网)" Caijing (财经) Magazine, Vol.159, 15 May 2006.

(30) Ibid.

(31) These include Articles 102, 103, 105, 106, 107, 110 and 111 of the Criminal Law. For further information, see Amnesty International People's Republic of China: Human Rights Defenders at risk, December 2004 (AI Index: ASA 17/045/2004). See also, report of UN Special Rapporteur on torture, op cit. at para.34.

(32) This is officially known as Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly Resolution 53/144 (Distr. GENERAL A/RES/53/144, 8 March 1999. For further information see ASA 17/045/2004, op cit.

(33) "Character building", Associated Press photograph published in South China Morning Post, 27 July 2006 (AP photo/Greg Baker).

- (47) "New look for www.olympic.org as Beijing 2008 celebrates two years to go," International Olympic Committee Press Release, 7 August 2008.
- (48) "Widespread Detentions of Foreign Journalists show China unprepared to host Olympics Press Corp in 2008", FCCC press release, 7 August 2006.
- (49) "China's Olympic organizers say committed to press freedom," Xinhua, 8 August 2006.
- (50) "China to issue regulation on foreign media coverage of 2008 Olympics," Xinhua, 10 August 2006.
- (51) Quoted in One Hundred Intellectual's Appeal Letter, op cit.
- (52) See "Intellectuals campaign against shutdown of website", South China Morning Post, 3 August 2006.
- (53) 'Regulation on the administration of Internet news and information services' (□□□□□□□□□□□□□□□□), 25 September 2005.
- (54) Amnesty International: "Undermining Freedom of Expression in China: the role of Yahoo!, Microsoft and Google" July 2006 (AI Index: POL 30/026/2006).
- (55) The non-censored one is still available to all Chinese internet users as it had been before, but searches need to pass through China's "firewall", which censors a great deal and slows down the search process. In mitigation, Google emphasizes that it has offered to inform users when information is being censored and has decided not to launch gmail or other services that hold personal and confidential information until the company feels confident that it can protect users' expectations in terms of privacy and security of confidential information.
- (56) For further information on this pledge, see Amnesty International, People's Republic of China: State control of the Internet in China, November 2002 (AI Index: ASA 17/007/2002).
- (57) The two other cases in which Yahoo! supplied information to the authorities are Jiang Lijun and Wang Xiaoning. For further information, see Human Rights Watch: Race to the Bottom: Corporate Complicity in Chinese Internet Censorship, August 2006, Volume 18, No.8 (C).
- (58) For example, in April 2002, IOC President Jacques Rogge said: "...we are convinced that the Olympic Games will improve the human rights record [in China]....We at the IOC urged the Chinese government to improve, as soon as possible, their record in human rights. However, the IOC is a responsible organisation and if either security, logistics or human rights are not acted upon to our satisfaction then we will act

[...] I've said clearly after discussions I had with Amnesty International that it is not our role to monitor human rights, because to monitor human rights you need specialized task forces and specialized people which we do not have. And I have said that we would be in close contact with Amnesty International and with Human Rights Watch and they will report to us and they will tell us what they feel." BBC "Hardtalk" programme, 23 April 2002

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