

## CHINA

## ORGAN PROCUREMENT AND JUDICIAL EXECUTION IN CHINA

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**Introduction**

In recent years, it has become increasingly evident that executed prisoners are the principal source of supply of body organs for medical transplantation purposes in China. While most observers would acknowledge the moral dilemmas implicit in this situation, the chronic shortage of voluntary organ donors around the world has led some to believe that such practices may still be justified: through their deaths, after all, condemned criminals can contribute to saving the lives of innocent victims of disease. Recent research by Human Rights Watch/Asia has uncovered, however, important new documentary and other evidence demonstrating that China's heavy reliance on executed prisoners

as a source of transplant organs entails a wide range of unacceptable human rights and medical ethics violations.<sup>(1)</sup>

The obvious linkage between China's extensive use of the death penalty and the country's burgeoning organ trade and transplant program has attracted mounting international attention and alarm. In 1993, the U.N. Committee Against Torture formally asked the Chinese government "whether the death sentence might not constitute a form of cruel and unusual punishment...[and] whether the bodies of persons executed could be used for the purpose of organ transplants."<sup>(2)</sup> Later the same year, a report on the British government's first human rights delegation to China officially called upon the Chinese government to produce "a code of conduct for executions which prohibits...the use of organs from executed prisoners for spare part surgery."<sup>(3)</sup> An estimated 2,000 to 3,000 organs (mainly kidneys and corneas) from prisoners each year are used in this manner, with government officials reportedly receiving priority in their allocation.

A growing worldwide trade in human organs, whereby the poor in countries such as India and Brazil are induced to sell their body parts to meet the transplant needs of high-paying customers, largely from the developed countries, has been widely condemned because of its financially exploitative nature and its abuse of medical ethics. China's extensive use of executed prisoners as a source of organs for medical transplantation purposes, a problem which so far has received somewhat less international attention, likewise creates serious cause for concern on a number of basic human rights grounds.

The consent of prisoners to use their organs after death, although required by law, appears rarely to be sought. In some cases, prisoners and their families are not even informed that the organs will be removed, although in others, the families are given cash payments. Since the prisoner's body is cremated immediately after execution and any

last written will or statement can be censored by the authorities, moreover, family members have no way of ascertaining whether or not organs have been removed.

The execution procedure prescribed by Chinese law (shooting in the back of the head), is sometimes violated in order to expedite harvesting of prisoners' organs. According to Chinese legal authorities, some executions are even deliberately mishandled to ensure that the prisoners are not yet dead when their organs are removed.

The lack of adequate judicial safeguards in China, coupled with the existence of government directives allowing political offenders and other nonviolent criminals to be sentenced to death, virtually guarantee that a significant number

of wrongful executions will take place. Some of those unfairly sentenced may be unwitting organ donors.

The use of condemned prisoners' organs involves members of the medical profession in the execution process in violation of international standards of medical ethics. Chinese doctors participate in pre-execution medical tests, matching of donors with recipients and scheduling of operations, often on a first-paid, first-served basis. Surgeons are commonly present at execution grounds to perform on-site removal of vital organs.

Application of the "brain death" criterion as a standard for when life ends, a criterion now widely accepted elsewhere in the world and one likely soon to be adopted by China also, could further increase the scope of rights violations arising from the use of condemned prisoners' organs, since it is a more difficult standard to measure, and easier to falsify, than China's current heart-death standard.<sup>(4)</sup>

The practice of using executed prisoners' organs for transplant purposes creates an undesirable incentive for the authorities to refrain from either abolishing capital punishment or reducing the scope of its application.

Although many countries around the world, most notably the United States, retain the death penalty, there is a growing international consensus that capital punishment is incompatible with the right to life and the right not to be subject to cruel, inhuman and degrading treatment or punishment.<sup>(5)</sup> Not only does China extensively resort to judicial execution, but many specific aspects of death penalty-related judicial practice in China clearly violate internationally-recognized legal standards. Even if these abuses were corrected, however, and the full requirements of due legal process were observed, the use of condemned prisoners' organs for transplant purposes would still, on account of flaws inherent in the whole concept of prisoner "consent" in this issue, be unacceptable for human rights reasons.

In this report, Human Rights Watch/Asia calls on the Chinese government to ban all further use of prisoners' organs for transplant operations, provide precise statistical data on capital punishment and executions and comply with the United Nations' "Principles of Medical Ethics" relevant to the role of the medical profession in protecting prisoners against torture and other ill-treatment. It also calls on foreign governments, especially in the Asian region, to discourage or bar their citizens from obtaining organ transplants in China and on foreign funding agencies to adopt a policy of non-participation in all Chinese government-sponsored organ transplant-related research programs. It also calls on foreign medical and pharmaceutical companies which supply goods or services to China's transplant program to cease such activity until the Chinese

authorities can demonstrate that executed prisoners' organs are no longer being used for transplant purposes.

## **I. Medical Advances and the Anti-Crime Campaign**

China's organ transplantation program began during the 1960s, when a number of kidney transplant operations were conducted with the help of foreign medical advisers; the program was not publicly announced, however, until 1974. In the late 1970s (the period just after the death of Mao Zedong), there reportedly "arose a high tide of kidney, liver, heart and lung transplants across the country."<sup>(6)</sup> But the success rate remained low, and by the early 1980s the country's organ transplant program appeared to be faltering.

From 1983 onwards, two unrelated factors combined to give a major boost to the program: first, the commencement of a series of "crackdown on crime" (*yan-da*) campaigns, held every year since 1983, which greatly increased the number of criminals sentenced to death and hence the potential supply of transplantable organs; and second, the introduction to China of Cyclosporine A, an acknowledged "wonder drug" which greatly raised the success rate in transplant operations. During the "crackdown" campaigns, the list of crimes punishable by execution in China was expanded to include many nonviolent or economic crimes including corruption, embezzlement, and drug trafficking. Police and other security personnel came under increased pressure from their superiors to meet "arrest quotas" and to capture as many offenders as possible, in order to show their enthusiasm for the national campaign.<sup>(7)</sup> Millions of "common criminals" have been arrested and convicted after summary and often unfair trials in China since 1983, and tens of thousands have been sentenced to death and executed.<sup>(8)</sup>

By 1984, at least ninety-eight hospitals around China had begun to carry out organ transplant operations, and a national coordinating body, the Organ Transplantation Registration Center, had been established in Wuhan.<sup>(9)</sup> Cyclosporine A (CsA), an immunosuppressive agent which inhibits the body's natural tendency to reject foreign body tissue, was introduced into China in the mid-1980s, apparently by the Swiss company Sandoz. Between then and 1987, according to China's medical authorities, the first-year survival rate for recipients of kidney transplants rose, from 50 to 80 percent, and by 1991, according to a recent study, the figure had risen to more than 90 percent.<sup>(10)</sup> The vast majority of kidney transplant patients in China now receive expensive follow-up treatment involving CsA therapy.<sup>(11)</sup> In addition to the drug's lifesaving benefits, widespread use of CsA unavoidably introduced a major new financial element into the organ transplantation process, for its high price created not only a need to cut costs in other areas, but also an incentive to

provide organ transplants for high-paying foreign customers as a way of subsidizing wider domestic availability.<sup>(12)</sup>

From the early 1980s onwards, therefore, dramatic advances in medical science went hand in hand with a series of anti-crime campaigns that produced a steadily growing supply of body organs for transplant surgery. In the absence of proper legal safeguards for prisoners' rights, this caused the evolving relationship between China's surgical capacity, patient demand and organ supply to develop in a particularly abusive direction.

## **II. Organ Procurement from Condemned Prisoners**

In 1980, an official PRC medical journal titled the *Journal of Chinese Organ Transplantation* (now published quarterly) was established to serve the scientific research needs of the country's emerging organ-transplant community.

Conspicuous by its absence in the journal is any sustained attention to the vital problem of organ sourcing - an issue that tends to dominate Western medical literature on the subject. Only rarely does one encounter discussions of possible solutions to the medical profession's difficulties, universally evident elsewhere in the world, in finding sufficient donors for organ transplant. (Those that appear focus on pleas for legal recognition of the "brain death" criterion.) Far from reflecting any abundance of organ donors in China, where demand still far exceeds supply, the lack of open medical discussion instead suggests clearly the existence of some officially imposed prohibition or taboo on the topic. Above all, in virtually none of the actual case studies discussed in the journal are the identities of the organ donors disclosed. The revealing exception to this rule is considered below.

Until recently, the Chinese government consistently denied that executed prisoners were used as a source of organs for transplant in China. The Ministry of Health, for example, made repeated statements denying all knowledge of the practice until 1991.<sup>(13)</sup> However, mounting evidence has since forced grudging admissions from Chinese government representatives that executed prisoners' organs are in fact used, although this is said to occur "only in rare instances" and "with the consent of the person" due to be executed.<sup>(14)</sup>

Clear evidence exists, however, to show that the bodies of executed prisoners are the source for many, in fact most of the organ transplant operations performed in China. The first such item is a set of Chinese government "internal circulation only" (*neibu*) regulations, recently uncovered by Human Rights Watch/Asia, which set forth explicit guidelines on how the practice is to be administered. One document, published by the Ministry of Justice in June 1981 and titled "Reply Concerning the Question of the Utilization of the Corpses of Criminals Sentenced to Death," characterizes the utilization of the corpses of

criminals sentenced to death as being "very necessary from the standpoint of medical treatment and scientific research."<sup>(15)</sup> A second and more detailed document, issued jointly in October 1984 by several central-level law enforcement agencies and titled "Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals," reveals by its very title that the practice has long been a standard one in China.<sup>(16)</sup> (See Appendices I and II for translations of these documents.)

This and other documentary evidence is supported by a large body of anecdotal material that has been compiled in recent years by various groups and individuals including Human Rights Watch/Asia. The following are some examples:

A former People's Republic of China (PRC) surgeon, who for reasons of personal safety cannot be identified, in August 1994 recounted to a Western television journalist how he had removed, for transplant purposes, the kidneys of several condemned prisoners in a major Chinese city in 1988 on the evening prior to their execution.<sup>(17)</sup>

In early 1990, a leading surgeon at the Beijing Friendship Hospital informed a former PRC judge that all of the kidneys used by that hospital for transplant came from executed prisoners. Some months later, the same legal official was told by a doctor at the Shenzhen People's Armed Police Hospital that most of their transplanted organs were obtained from prisoners executed in Sichuan Province.<sup>(18)</sup>

A source at the First Affiliated Hospital of the Sun Yat-sen University of Medical Sciences, Guangzhou, reported in 1991 to a Hong Kong newspaper that Deacon Chiu, a millionaire and prominent Hong Kong resident, had received a kidney from an executed prisoner when he underwent a transplant operation at the hospital earlier that year.<sup>(19)</sup>

In August 1992, a recently-released Chinese prisoner informed another Hong Kong newspaper that, "A team of doctors was always on hand at execution grounds in major cities such as Beijing, Shanghai and Guangzhou, and, once the prisoners had been shot, the doctors immediately dissected the bodies and removed the organs required."<sup>(20)</sup>

According to a BBC television documentary program screened in late 1992, a Hong Kong physician, Dr. Man Kam Chan, had "referred more than a hundred patients to China for kidney transplants and he knows where the corpses are coming from." According to Dr. Kam, "As far as I know these kidneys are all...from executed prisoners. The reason why there are so many kidneys nowadays available for organ transplantation...is because of the worsening law

and order situation in China." The same BBC film crew later visited the Nanfang Hospital in Guangzhou, southern China, and interviewed medical staff there: "On the day we visited no operations were being carried out. We were told that since the Chinese New Year there had been a temporary halt to executions, but the transplants would be resumed soon."<sup>(21)</sup>

A former inmate of a jail in north-central China described to an Asian diplomat in April 1994 how he had seen, during a recent several-year period of incarceration, dozens of condemned prisoners being medically prepared for organ procurement. On the night before their executions, medical staff would enter the jail and take blood samples from the condemned prisoners. Early the next morning, the men would be taken away and injected (according to prison guards) with a drug that prepared them for organ removal.<sup>(22)</sup>

Additional evidence can be found in the pages of the *Journal of Chinese Organ Transplantation*, where a number of case studies on transplant operations published over the past ten years identified all of the donor subjects in question as having died from "extensive open cranial wounds" or even "massive, open-style cranial injury."<sup>(23)</sup> This clearly suggests that the donors in question were executed by shooting in the head and that the organs may have been removed on-site. (To be usable, vital organs such as livers and kidneys must be removed and properly stored within minutes after death;<sup>(24)</sup> "dead on arrival" hospital cases such as victims of vehicular or other accidents are reportedly unusable for most procurement purposes, and China's non-recognition of the "brain death" standard legally disqualifies most such donors that could be viable.) More generally, numerous other articles from the same journal reveal, in broad statistical terms, that China's typical organ-donor subjects are, prior to death, overwhelmingly young, male, and in good health -- an accurate profile of the majority of inmates of Chinese jails in the 1980s and 1990s.<sup>(25)</sup>

Expert estimates of the percentage of organs used in transplant operations that are obtained from executed criminals are consistently high. One Western transplantation surgeon who left China in the early 1990s reported that over 90 percent of all transplanted kidneys, which constitute the great majority of organs for transplant, came from executed prisoners.<sup>(26)</sup> And a study conducted by a surgeon at the Prince of Wales Hospital in Hong Kong found that 75 percent of kidney transplant patients from Hong Kong who underwent operations in China had received their new organs from executed prisoners.<sup>(27)</sup>

When combined with statistics on the number of transplants that take place in China each year, the approximate number of transplants involving organs from executed prisoners appears to be considerable. A survey of the *Journal of Chinese Organ Transplantation* over the past decade indicates that the number of kidney transplants carried out in China has more than doubled since 1988,

with altogether 1,905 such operations having been performed in 1992.<sup>(28)</sup> (A significant number of cornea, liver, pancreas, heart, lung, adrenal gland and other types of transplants are also carried out each year in China, but, with the exception of corneal grafts, the success rates for such operations are low, and kidneys and corneas still seem to account for the overwhelming majority.) If calculated on the basis of the estimated 75 to 90 percent incidence range mentioned above, the total number of kidneys from executed prisoners that were used in transplant operations during 1992 would amount to somewhere between 1,400 and 1,700 -- with the number likely to have increased annually since then.

Other sources presently used by China's transplant community include a small number of live-donor grafts from patients' relatives and an increasing reliance on prenatal or neonatal organs.<sup>(29)</sup> According to the medical literature, however, the vast majority of transplanted organs are still derived from cadaveric donors. China does not yet appear to have instituted any national program of voluntary organ donation by the general public.<sup>(30)</sup>

### **III. Lack of Donor Consent**

One of the most serious problems with China's use of executed prisoners' organs in transplant operations is that the prisoners' prior consent for organ removal is reportedly often not sought.<sup>(31)</sup> According to Chinese law, a corpse cannot be used for dissection or organ transplantation purposes unless the consent of the person whose body is to be used or the consent of their family is first obtained. The official "Rules Concerning the Dissection of Corpses," issued by the Ministry of Health in 1979, stipulate that ordinary dissections may be carried out only when "the deceased has so provided in a will or the family volunteers [the corpse] for dissection," or when no one claims the body.<sup>(32)</sup> (See Appendix III for a full translation of this document.) Similarly, the 1984 "Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals" provide that organs may only be extracted when no one claims the body or the family refuses to claim it, or when the condemned criminal volunteers his or her corpse for dissection or the family subsequently consents to such use. The latter document failed, however, to incorporate a number of specific rights protections that appeared in the former one.

Moreover, Chinese prison authorities are authorized by the government to screen and censor the wills of condemned prisoners in order to avoid political or any other public controversy. According to confidential regulations issued by the Supreme People's Court and other senior law-enforcement agencies in 1984,

The people's court responsible for handing a condemned criminal over for execution should promptly examine any last wills or statements made by the condemned criminal....Those parts which are slanderous in nature or which

make reactionary statements are not to be handed over to the person's family....Sections complaining about grievances or alleged injustices are not to be passed on to the person's family.<sup>(33)</sup>

The authorities' frequent failure to seek authorization from the condemned person's family, too, was acknowledged in an article published in 1989 in the official Chinese press:

Since in China there are relatively few donors of human organs, some medical units and People's Courts get together and use the opportunity of the execution of criminals to use organs of executed prisoners without obtaining the agreement of prisoners' families. By so doing they can obtain relatively healthy human organs and they do not need to spend money.<sup>(34)</sup>

But even in the apparent minority of cases where the consent of prisoners is sought as required by law, the abusive circumstances of detention and incarceration in China, from the time a person is first accused of a capital offense until the moment of his or her execution, are such as to render absurd any notion of "free and voluntary consent." As soon as suspected capital offenders are caught and charged by the police, they are shackled at the ankles and kept in this condition until the time of trial. If the prisoner is then sentenced to death, he or she will remain in leg irons, and often also in handcuffs, continuously until the last few moments before execution. Condemned prisoners are usually held in this restrictive and degrading condition in small dark cells together with minor sentenced prisoners who are charged with the duty of feeding them, helping them use the toilet, and closely supervising them to make sure they do not commit suicide.<sup>(35)</sup> In some prisons, moreover, they are held in total isolation, sometimes for months.<sup>(36)</sup> The following account of conditions on "death row" in the Tianjin Municipal Jail, written by a retired prison guard who worked there for many years, appeared in a book published officially in China in 1989:

There is a special place inside the jail for holding condemned prisoners - a long chamber comprising several "solitary quarters" (*du ju*), one cell for each evil felon. The door to the chamber is lined with black rubber, very heavy, like an "entrance to hell" designed by some devil. The corridor is dark and deathly quiet. No sounds at all can be heard apart from the footsteps of guards and the clinking of ankle-fetters. Each criminal is kept all alone in a tiny, narrow cell. The four walls are lined with thick, springy sheets of leather, and it is as dark as a coffin. If they wish to talk to the guards, prisoners must stand and speak through a surveillance hole in the door.

All of the prisoners are in handcuffs and leg irons, which will not be removed before the time of their execution. In order to eat, drink or go to the toilet, they

have to be helped by "general duties" staff (*zayi*, prisoners serving light sentences). Once transferred there, condemned prisoners are denied access to the [communal] latrine and are barred from reading newspapers or listening to the prison's educational broadcasts. The only recreation left to them is to doze lethargically or just sit there in blank contemplation. In effect, criminals sent to the "solitary quarters" have lost even their souls, for what awaits them is death.<sup>(37)</sup>

Crucially, condemned prisoners are usually not told that their appeals against the death sentence have been rejected until only a few hours before their actual executions, nor are their families so informed. Often they will have been held on "death row" for weeks or even months without knowing that their appeals have already been rejected, since the authorities postpone individual executions until a sufficiently large group of condemned prisoners, usually ten or more, has accumulated for purposes of holding a pre-execution "mass sentencing rally" (*xuanpan dahui*) for public edification.<sup>(38)</sup> Prisoners therefore have no time, upon learning of their fate, to give instructions that their bodies not be used for transplantation purposes; indeed, they and their families are often not even informed that the transplant will occur. In other cases, not only are families informed but they are offered cash sums in advance - anything from several hundred to a few thousand yuan, to authorize use of the condemned person's body. Refusal to grant permission, however, may reportedly result in the families being presented with unauthorized bills for large sums of money by the police, covering everything from the cost of the prisoners' food and "board" while in detention to the price of the bullet used for the execution (about six cents) plus onerous cremation charges.<sup>(39)</sup> A barrage of medical tests are done on the prisoner in the days before he or she is executed, but medical personnel are reportedly forbidden to reveal to the prisoner the reason for the tests, and any questions asked of the doctors will go unanswered.<sup>(40)</sup>

According to a former judge directly familiar with pre-execution procedures in Shenzhen, condemned prisoners would typically be taken, still in leg irons, into individual interrogation rooms at the jail at around 10:00 P.M. on the night before their execution. Each prisoner would be placed in a chair and have his or her wrists bound tightly to its arms with rope; another rope would then be tied around the prisoner's waist while the feet remained in shackles. The judge responsible for announcing the court's final rejection of the prisoner's appeal against execution would then enter the room, read the final death warrant aloud to the prisoner and request that he or she sign their name to the document. Since the wrists remained tied to the chair, this was often a difficult feat. Should the prisoner prove unwilling to sign, the judge would forcibly press his or her finger on to an ink pad and stamp a fingerprint on the sentencing document. The judge would then depart, and the prisoner -- as a "security precaution" against

attempted escape or suicide -- would remain bound to the chair for the rest of the night.

At no point, according to this informed source, were prisoners asked if they were willing to allow their organs to be removed after execution. During the night, they would be watched over by specially assigned prisoners who would feed them their last meal and perhaps help them smoke a final cigarette. At dawn, each prisoner would be untied from the chair, then placed (still in fetters) on the back of an open lorry, an armed guard to either side, and driven slowly to the execution ground. A thin rope tied around the prisoner's neck would be gripped tightly by one of the guards throughout the journey, which would usually be punctuated by the harrowing ordeal of being presented at a "mass sentencing rally."<sup>(41)</sup> Such coercive pre-execution procedures as these preclude all meaningful possibility of "free consent" being given.

The bodies of executed prisoners are cremated immediately after sentence is carried out, making it impossible for their families to determine whether or not the bodies have been used for medical purposes.<sup>(42)</sup> Prisoners are technically allowed to write wills, but often this is done in the interrogation room while their arms are still tied to the chairs on which they sit. As mentioned, moreover, wills may be officially censored; in practice, any number of officials, from the armed guards who stand watch over the condemned person to the prison governor himself, can simply destroy any documents which they feel reflect badly on the prison facility.<sup>(43)</sup> With the family of the prisoner unable to prove that their relative's organs have been removed and the prisoner unable to express his or her own wishes in this regard, unauthorized dissection and organ removal can be carried out by the authorities with impunity.

#### **IV. China's Record on Wrongful Convictions**

Since 1949, millions of people have fallen victim to political frame-ups and persecution in China, and for the first three decades of the People's Republic the legal system acted as the direct agency of much of this state-sponsored repression. According to official statistics, during the Cultural Revolution (1966-76) no less than 725,000 persons were wrongly convicted by the courts.<sup>(44)</sup> (Countless other innocent political casualties went without benefit of any trial during this period, since the police and court systems were disbanded for several years.) In the province of Sichuan alone, 108,200 cases of major injustice had been officially overturned by 1985, including "the overwhelming majority of a total of 54,800 counterrevolutionaries" sentenced throughout the province during the Cultural Revolution.<sup>(45)</sup>

From Mao's death in September 1976 until late 1978, when Deng Xiaoping returned to power, judicial abuses continued apace. By 1982, the government

had officially overturned verdicts of guilt in, and exonerated the victims of, "more than 27,800 counterrevolutionary cases" falsely adjudicated by the courts during those two years.<sup>(46)</sup> (Since a single "case" [*anjian*] usually involves several defendants, the total number of those wrongly convicted was probably well over 50,000.) As official statistics later compiled for the province of Fujian alone indicate, however, a high proportion of those so rehabilitated were probably dead by then. According to a confidential report prepared over a decade ago by the Fujian provincial justice authorities, ninety-three out of a total of 750 "counterrevolutionaries" sentenced by the province's courts during the two-year period 1977-78 had received the death penalty and been executed. Subsequently, the government conducted a review of altogether ninety-eight of the sentences of "counterrevolution" passed during the period in question by intermediate courts in the province's two main cities, Fuzhou and Xiamen, and by six other municipal and county courts in the province. Its findings were as follows:

We discovered serious problems with regard to ninety-three of the cases, amounting to 94.3 percent of the total. Among these, sixty-seven of the convicted persons, or 68.36 percent of all the cases reviewed, were in fact completely innocent. Two persons, or 2.05 percent of the total, should have been exempted from criminal punishment. In twenty-one cases, or 21.4 percent of the total, either the wrong charges had been applied or the sentences imposed were too heavy. And in a further three cases, or 3.06 percent of the total, either the facts were unclear or the evidence was insufficient.<sup>(47)</sup>

The government report carefully avoided specifying how many wrongfully convicted persons had been among the list of those actually executed, confining itself to the comment, "A small number of persons who should not have received the death penalty were sentenced to death." But the figures spoke clearly enough for themselves: virtually all of the cases had been miscarriages of justice.

These appalling statistics from just one province during the period 1976-78 lead naturally to the question: just how many of the upward of 27,800 persons now officially acknowledged to have been falsely convicted as "counterrevolutionaries" nationwide during the same period were also executed? And a yet more sinister question: what became of their bodies? As may be recalled, this was the very period described in the *Journal of Chinese Organ Transplantation* as having witnessed "a high tide of kidney, liver, heart and lung transplants across the country." While the Chinese authorities are unlikely to shed light on such matters, the following case serves vividly to illustrate how a combination of arbitrary laws on "counterrevolution," weak judicial safeguards

and a growing need for organ donors combined, during this period, to produce mind-boggling violations of human rights.

## **V. The Case of Zhong Haiyuan**

Zhong Haiyuan, a young woman, was a teacher at a middle school in Ganzhou, Jiangxi Province. Sometime after Mao Zedong's death in late 1976, one of Zhong's colleagues, Zhu Yi, wrote a number of articles and big character posters that were critical of Hua Guofeng, Mao's successor. When Zhu Yi learned that the police were searching for him on account of his writings, he gave the manuscripts to Zhong Haiyuan for safekeeping. They were later found in her possession, and as a result Zhong was tried and sentenced to death for "counterrevolutionary" offenses.

At Zhong Haiyuan's execution on April 30, 1978, she was shot twice in the head but did not die. Instead of waiting for her death, medical personnel were allowed to take her body into a specially erected operating facility on the prison premises and to remove both kidneys while she was still living. One kidney was transplanted into the body of the son of a high-ranking military official -- a deputy battalion commander of the Nanjing Military Region who had earlier arranged for officials at the Jiangxi prison to facilitate the operation.

Details of the atrocity were independently compiled by two professional Chinese journalists. One was Lao Gui, the famous author and *Fazhi Ribao* (Legal Daily) writer, who some years after the event interviewed the police officer who had executed Zhong Haiyuan. (The man was by then deeply remorseful.)<sup>(48)</sup> The case was also investigated and subsequently written up in book-length form by a reporter named Hu Ping, who interviewed both the executioner and also various provincial and central-level officials closely familiar with the case. Hu received numerous private admissions from them that Zhong's trial and execution had been a total miscarriage of justice. The government, however, has never publicly acknowledged the fact.<sup>(49)</sup>

## **VI. Expanded Use of the Death Penalty Since 1983**

According to the government, everything changed for the better in China after Deng Xiaoping's political ascendancy in late 1978. The progress made by the post-Mao leadership on the economic front has been amply noted elsewhere and needs no further comment here. An elaborate system of laws and judicial regulation -- criminal, civil and administrative -- was also established after 1979, and the formal rudiments of an objective rule of law began to appear. The officially acknowledged number of "counterrevolutionary cases" adjudicated and determined by China's courts over the period 1980-84 was 7,123 (with the number of people sentenced being probably twice or more that amount) - a

horrendous statistic, but still one significantly lower than that recorded for the previous period.<sup>(50)</sup> But in substantive legal terms, and especially in the critical area of criminal justice practices and their implications for observance of the human rights of accused dissidents, very little in fact changed.<sup>(51)</sup> Most of whatever progress was achieved in this area during Deng's first decade in power was wiped out at a stroke by the military suppression of June 4, 1989 and the subsequent prolonged crackdown on dissent. China's prisons are now more heavily stocked with political and religious prisoners than they were in the mid-1980s.

Nowhere are the judicial failings of the regime more evident than in China's current extreme reliance on the use of capital punishment. Not only are there far more prisoners in Chinese jails today than there were prior to 1983 (according to one official source: "Since the 'crackdown on crime', the prison population has doubled"),<sup>(52)</sup> but far more people are now being condemned to death and judicially executed each year in China than at any time since, probably, the early 1950s. And the trend shows no sign of declining: according to official statistics, the number of people actually executed in Henan Province alone between January and July 1989 increased 47.28 percent over the same period the previous year, while the number of those sentenced to death with a two-year suspension increased by 107.8 percent.<sup>(53)</sup> This startling situation was graphically depicted by a Chinese legal scholar in an article which appeared recently in the *Law Review* of Wuhan University. The author prefaced a plea for the authorities to bring a speedy halt to China's decade-long expansion in the scope and use of capital punishment with the table shown below.<sup>(54)</sup>

As can be seen, there are currently, as a result of legislative changes introduced by the government since 1982, two-and-a-half times as many criminal offenses punishable by the death penalty, and almost three times as many articles of law stipulating capital punishment, as there were prior to the introduction of the Criminal Law in 1979.)<sup>(55)</sup> In all, notes the author, "Around thirty-five percent of the [two hundred or so] criminal offenses specified in the Criminal Law are now punishable by death."

period statutes	Before promulgation of Criminal Law (1950s and 60s)	Early period of Criminal Law (from late 1970s)	Period of amendments to Criminal Law (1982 to 1992)	Current total	Comparison of periods before and after promulgation of Criminal Law
Articles in law stipulating	18	16	34	50	+178%

death penalty				
Offenses	26	39	65	+150%
liable to	26			
death penalty				

**Table 1. Death Penalty-Related Legislative Trend**

Besides this ominously clear legislative trend, the absolute number of death penalty sentences and executions has also been rising rapidly over the past decade. Total annual execution statistics for single cities or provinces, let alone those for the country as a whole, are treated as "state secrets" of the first order in China, and only a relatively small number of death penalty cases (those regarded as being useful for purposes of public education or deterrence) are ever published.<sup>(56)</sup> Central government records of the total numbers of executions carried out each year certainly exist. According to a top judicial directive of June 1981, "All High People's Courts should report to the Supreme People's Court, on or before the fifth day of each month, the number of death penalties approved and executions carried out by them during the previous month, in order to facilitate the completion of overall [national] statistics for submission to senior levels."<sup>(57)</sup> So great was the nationwide wave of executions that followed the launching of the first "crackdown on crime" campaign, however, that by April 1984 the reporting process appears largely to have broken down.<sup>(58)</sup> By June 1985, it was clear that there were so many executions taking place that provincial and regional-level courts had begun to adopt an almost casual approach to the question of record-keeping.<sup>(59)</sup> Since then, judicial indifference to the victims of capital punishment appears to have been growing in direct proportion to the increase in the number of executions.

Despite the sudden relative surge in executions from 1983 onward, it is often assumed that the absolute number of those executed nowadays each year in China remains well below corresponding figures for the 1970s. As mentioned, actual statistics on death penalty use in China are a closely guarded secret. But a chink in this armor of secrecy was revealed by the Wuhan legal scholar quoted above:

During the 1970s and up until the early 1980s, the total number of those sentenced to death and executed in one particular province of China had never reached triple figures. But from 1983 onwards, the number has consistently been in the three-figure range annually -- in fact, some years it has almost reached quadruple figures. And during the annual crackdown campaign in a single city administered by that province, the number of those sentenced to the death

penalty in a six-month period alone not only went into triple figures, it even exceeded the total number of death penalty sentences passed each year throughout the entire province during the 1970s.<sup>(60)</sup>

Moreover, "More than fifty percent of capital offenders are between eighteen and twenty-five years old." Most disturbing of all, however, was an admission made by another legal scholar in 1990, concerning the potentially dire consequences of the courts' continued reliance upon a longstanding PRC judicial practice known as "verdict first, trial second" (*xianpan houshen*). This officially acknowledged procedure, whereby legal authorities and Party officials meet to decide verdicts in advance of the actual trials,

...not only renders the trial itself a mere formality, stripping the accused's right of defense of all practical significance...It also means that if new facts should emerge in the course of the court hearing which demonstrate that the accused should not, after all, be sentenced to death, then the court -- constrained by his prior characterization as being "a criminal element upon whom the death sentence should be passed" -- will nonetheless conceal and uphold the error that was committed.<sup>(61)</sup>

In other words, in cases where the predetermined sentence is death, the court may feel compelled, as a result of political pressure from above, to uphold and enforce that ruling even when the defendant has been shown at trial to be innocent of the alleged crime. It is hard to imagine any more cynical manipulation of the judicial process than this.<sup>(62)</sup>

One final aspect of the post-1983 criminal justice system in China should also be mentioned, namely the existence of secret regulations permitting courts to pass death sentences on those found guilty of certain types of nonviolent dissidence. According to all publicly available laws and regulations in China, the maximum penalty that can be imposed for such activities (even for the major offense of "counterrevolutionary propaganda and incitement") is life imprisonment. A top-secret Communist Party directive, issued in August 1983 on the eve of the first "crackdown" campaign, however, listed "seven categories" (*qige fangmian*) of criminal elements who were to form the main target of the crackdown and upon whom expedited death sentences could be passed. According to the directive, detainees of these seven types were all to be "dealt resolute blows and given severe and prompt punishment....Those requiring severe punishment must be sentenced heavily, and those who deserve to die must be executed." The "seventh" category comprises: "Active counterrevolutionary elements who write counterrevolutionary slogans, flyers, liaison messages and anonymous letters."<sup>(63)</sup> No executions of peaceful dissidents have been publicly announced in China since Deng's return to power. The Party's Central Committee is not known for issuing secret directives that it

does not intend to see enforced, however, nor are the country's judicial authorities noted for their reluctance in complying with orders from the top.

## **VII. Prevalence of Torture in the 1990s**

Under China's weak system of legal safeguards for the rights of the accused, one factor virtually guarantees a high rate of wrongful convictions and executions, namely widespread torture by law enforcement officers bent on extracting confessions to meet government pressure for "speedy arrests and speedy punishment" (*kuai bu kuai pan*). There has been a well documented and rapidly growing epidemic of torture cases in China since the early 1980s, mainly involving so-called common criminal detainees.<sup>(64)</sup> In a sense, forced confessions have performed an equivalent role in producing widespread false convictions in the 1980s and 1990s in China to that which political persecution and frame-ups played over the previous three decades. In December 1986, China signed the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, formally ratifying the following year. Police brutality against detainees surged again throughout the country, however, following the Tiananmen Square crackdown in June 1989, and it has shown no signs of abating since then.

International legal standards recognize prolonged incommunicado detention to be perhaps the main factor facilitating use of torture by police authorities. In China, this problem exists to an extreme degree. Under law, prisoners are denied access not only to their families but even to a defense lawyer, from the moment they are first detained and until a matter of days before their trial. Since pre-trial detention often lasts from several months to more than a year, interrogators have ample time and opportunity to coerce prisoners into making the required confessions. An official newspaper stated in October 1993 that a total of 1,687 cases of police and justice officials extracting confessions by torture had occurred nationwide since 1988.<sup>(65)</sup> If accurate, this figure would certainly be worrying enough. However, a recent study of police abuses in just one, medium-sized Chinese municipality (*shi*) - Jiaozuo City in Henan Province -- yielded twenty-seven cases of forced confessions having been obtained under police torture between 1990 and 1993, in which four of the victims were tortured to death.<sup>(66)</sup> There are altogether 476 "municipal-level" cities and major towns in China.

In short, for health professionals to become involved in the procurement and use of organs from executed prisoners whose trials were often unfair and from whom confessions may well have been coerced is to run a dangerously high risk of direct involvement in the process of judicial abuse and wrongful execution. In the relationship between China's increased use of capital punishment and the rapid development of the country's organ transplantation industry, it is clearly

the former that is driving the latter, rather than vice versa. However, demand from the medical community for transplantable organs may pose an additional incentive for courts to expedite killings of people whose guilt is in doubt or who might otherwise be spared. Each year, thousands of prisoners in China receive two-year suspended death sentences (*si-huan*). The criteria applied by courts around the country for deciding whether to commute sentences to life imprisonment or to proceed with execution after the probationary period vary widely,<sup>(67)</sup> and the need for organs may be one explanatory factor.

## VIII. The Process of Execution and Organ Removal

Chinese law requires that prisoners be executed by shooting in the back of the head, a method which allows the undamaged harvesting of such organs as kidneys and livers.<sup>(68)</sup> At the execution site, a court judge and a procuratorial official are supposed to question the condemned prisoner in order to verify that he or she is the correct person (a vital procedure referred to as *yanming zhengshen*: "verifying the name and checking the person") and to record any last words or wishes. If a prisoner protests that he or she has been wrongfully convicted or presents new exoneratory evidence, the procuratorial official is according to law supposed to order the execution delayed for further investigation.<sup>(69)</sup> However, other government regulations afford officials presiding over executions a loophole that allows them to ignore the prisoner's appeal, "if it is obvious that the criminal is making the...statements fraudulently."<sup>(70)</sup> There are no standards laid down for determining what is "obvious," so the decision on whether or not to delay execution remains completely discretionary. The lack of clearly defined procedures even led one official who had supervised many executions to complain, "At the most critical and important juncture, when the death sentence is finally being carried out, it seems as if there are no rules to be followed" (*wu zhang ke xun*). ("Some executioners," he noted, "even demand dark sunglasses, facemasks, gloves and soap" before getting down to work.)<sup>(71)</sup>

Two coroners, one from the court and another from the procuracy, are required to be present at the execution ground to certify the prisoner's death, which is measured as the time at which the heart stops beating.<sup>(72)</sup> The normal method of doing this, however, is reportedly for one or both of the coroners simply to examine the prisoner's eyes. According to a former judge of the Shenzhen Municipal Intermediate Court who has witnessed executions, the coroners sometimes ignore the requirement altogether and proclaim the prisoner dead based only upon the fact that he or she has duly received a bullet in the head.<sup>(73)</sup>

Medical personnel, who have been notified by the court in advance of the time and place of execution, are also present on the scene, and the moment death is announced they move swiftly to extract the organs. The government's

"Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals" stresses in chilling detail the secretive nature of the organ harvesting process and the furtive role performed by medical personnel:

The use of corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding negative repercussions. [The removal of organs] should normally be carried out within the utilizing [medical] unit. Where it is genuinely necessary, with the permission of the people's court that is carrying out the death sentence, a surgical vehicle from the health department may be permitted to drive onto the execution grounds to remove the organs, but it is not permissible to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation for organ removal is going on.<sup>(74)</sup>

There is evidence, moreover, that official execution procedures are ignored when they make removal of desirable organs less convenient. As was noted above, Human Rights Watch/Asia has received reports of kidneys having been removed from prisoners on the night prior to their executions.<sup>(75)</sup> Still more shocking is the revelation -- made authoritatively in an official Chinese law textbook -- that executions are sometimes deliberately botched so that the victims' bodies can be kept alive longer, thereby making organ transplantation procedures more viable. According to the official source, "A very few localities, in order to be able to use particular organs from the criminals' bodies, even go so far as to deliberately avoid killing them completely when carrying out the death sentence, so as to preserve live tissue."<sup>(76)</sup> In other words, vivisection sometimes occurs.

As an alternative to this distressing denial of the condemned person's right to die with a minimum degree of dignity, officials in other parts of China sometimes resort illegally to such means as the use of lethal injection to induce death.<sup>(77)</sup> Lethal injection is clearly the most convenient method of execution to use for purposes of organ harvesting, since it minimizes trauma to the body. Finally, when cranial injury would destroy coveted body parts, prisoners are sometimes unlawfully shot in parts of the body other than the head. A former Shanghai police official, interviewed by Asia Watch (now HRW/Asia) in 1990, reported witnessing the execution of a prisoner whose eyes were desired for transplant purposes: "In order to preserve the eyes, the prisoner was shot in the heart. This is what happens. If they need the heart, the prisoner would be shot in the head instead."<sup>(78)</sup>

Through a number of urgent directives issued over the past decade demanding increased security at China's execution grounds, the government has sought to ensure that no evidence of these gruesome abuses will ever reach the outside

world. The most recent directive, in July 1990, was occasioned by the publication in the U.S. magazine *Newsweek* and the German weekly *Star* of a dozen photographs that had been smuggled out of China depicting the actual execution of two condemned prisoners. The appearance overseas of these photographs, declared the authorities, had "exerted an extremely damaging effect" on the country's international image. In future, only court officials would be authorized to take photographs or shoot video footage of executions; even the procurator (the official with primary responsibility for supervising implementation of the death penalty) would be barred from doing so.<sup>(79)</sup>

## **IX. An Organ Market with Chinese Characteristics**

While there are no statistics available detailing who the recipients of organ transplants are, the majority are probably mainland Chinese citizens. Government cadres, however, are reportedly given preferential status for organ procurement. Doctors at the Shenzhen People's Armed Police Hospital told a former Intermediate Court judge that they would be particularly happy to accommodate his request to obtain a donated kidney for his brother, since they wanted the court to help in arranging a steady supply of executed prisoners' organs.<sup>(80)</sup> And according to a recent investigative article in a Hong Kong magazine, hospitals usually make a special effort to meet expeditiously the needs of cadres requiring organ transplants:

In the senior cadre wards of high-level hospitals, organ needs are recorded promptly. Instructions from the [Party] leadership say that medical departments should naturally expend every possible effort to meet the needs of loyal servants of the revolution, and so organs from condemned prisoners are first of all reserved for their use. Long before the prisoner is executed...his or her health records, details of blood type and so forth will have been sent to the hospital, which then merely waits for the bullet being fired.<sup>(81)</sup>

Prompt organ transplant surgery is known to be widely available in China for high-paying foreign or overseas Chinese patients also. Patients are told exactly when they should arrive at the hospital, and the organs duly arrive on time. Quite how hospitals meet patient needs so quickly is a question with grave legal and medical ethics implications, for it would clearly suggest that execution dates are scheduled to conform with patient transplantation needs, rather than with the strict requirements of due legal process.

Body organs from China also seem to be an irresistible resource for a number of nearby Asian countries with chronic donor shortages. In Hong Kong, for example, only fifty-five kidney transplants were performed in 1990, but there was a waiting list of some 600 patients.<sup>(82)</sup> Shortages in Hong Kong, as in some other Asian countries, are due in large part to a traditional belief that bodies

should be buried intact and that "desecration" of the body is to be avoided. (This belief is also widely held in mainland China, but it is apparently not an obstacle because of the ready availability of condemned prisoners.)<sup>(83)</sup> Despite strong official disapproval by Hong Kong's medical profession and recent government legislative proposals designed to limit the circumstances where prisoners' organs may be accepted for transplant, patients from Hong Kong continue to travel to China for relatively affordable, but often medically dangerous transplant operations.<sup>(84)</sup>

## **X. The "Brain Death" Criterion**

China's current legal standard for determining the time of death is the moment at which the heart stops beating. Elsewhere in the world, medical advances have led to a near-universal adoption of the "brain-stem death" criterion as being a more accurate and scientific standard of clinical death. According to Dr. Yu Yuk-ling, chief neurologist at Hong Kong's Queen Mary Hospital, for example, "This concept is a valid one. It is accepted by the medical profession and is used worldwide."<sup>(85)</sup> At executions in China, the moment of death is monitored and announced by a coroner present at the scene. As a number of recent medical journal articles have noted, however, heart death is not the most convenient standard for the purpose of harvesting organs. Over the past decade, numerous articles by members of China's medical profession have appeared advocating adoption of the brain-death standard as a means of increasing the supply of organs for transplant. According to a typical view,

China should quickly formulate a law using the "brain death" (*nao siwang*) concept in order to broaden the supply and safeguard the quality of organs. This is really the key to developing China's organ transplantation work; one might even say that whether or not corpses can be readily used for medical treatment and research constitutes the standard and measure of whether a country is modern.<sup>(86)</sup>

With China's medical profession apparently united in calling for adoption of the brain-death standard, it is likely to be only a matter of time before the law is altered accordingly. In fact, it seems that this standard is already used at times despite its current illegality. An article describing a lung transplant in the *Chinese Journal of Organ Transplantation*, for instance, identified the donor as male, twenty-seven years old, and "brain dead".<sup>(87)</sup> Another article describes a kidney transplant which was undertaken, "when the donor became brain dead."<sup>(88)</sup>

Recognition of the brain death standard would clearly be beneficial to China's organ supply situation, since it would allow broader access to non-prisoner sources of organs, for example respirator-sustained accident victims. In the

context of China's execution and organ-harvesting process, however, adopting brain death as the legal standard could have highly abusive consequences. For medical professionals, brain death is often a difficult standard to monitor; in contrast to heart death, complex medical technology is required to determine the presence or absence of brain waves.<sup>(89)</sup> Moreover, having to play a dual role at the execution ground, that of a surgeon preparing to save life by transferring an organ from one body to another and that of a doctor pronouncing an executed person dead, creates a potential conflict of interest for medical professionals in which there may be an incentive to prematurely diagnose or even deliberately falsify brain death.<sup>(90)</sup>

A comparison with Taiwan's experience after that country changed its law to recognize the brain death criterion shows the dangers in this regard. Amendments made to the death penalty procedural rules in May 1991 allowed for the first diagnosis of brain-stem death to be made at the place of execution. This decision followed several cases of failure to execute prisoners successfully with one bullet before transferring them to the hospital. Under the new rules, participating physicians reportedly had to wait twenty minutes before pronouncing a prisoner brain dead and allowing the organs to be harvested. (In China, organ extraction often begins immediately after execution.) Taiwan's new rules, however, also allowed doctors to anesthetize prisoners just before execution, and anesthesia makes it more difficult to diagnose brain death.

The decision to allow the brain death standard to be used for executed prisoners was met with criticism by members of Taiwan's medical profession, for reasons including the difficulty of pronouncing brain death at the scene of execution and the likelihood of pressure to expedite death or falsify pronouncements of brain death in order to facilitate successful organ transplants. "There are a lot of problems with this issue," observed Dr. Hung Tsu-pei, director of academic affairs at the National Taiwan University College of Medicine. "At the place of execution there are no adequate facilities for the diagnosis of brain death, and at the same time the recipient [of a transplant] may be in a hurry." Another Taiwanese physician cited the possibility of coercion by politicians to do whatever was necessary for a speedy organ donation: "In a totalitarian country like Taiwan, a judge is not immune to political pressure. Those high up in the system may say that we need more transplant organs, and even those in the medical profession are subject to such political pressure."<sup>(91)</sup> (Political pressure of this kind is likely to be much more pervasive in China than in Taiwan.) As a result of opposition from the medical community, especially neurologists, the Taiwan authorities have reportedly not authorized any further use of executed prisoners' organs since 1992.

Adoption of the brain death criterion may well be necessary to the long-term development of China's organ transplantation capability; but unless coupled with an outright ban on the procurement of organs from prisoners, the new standard could well result in further serious rights violations.

## **XI. Violations of International Medical Ethics**

The involvement of Chinese doctors and other medical personnel in the process of removing executed prisoners' organs is necessarily extensive. Before the executions take place, medical workers perform blood tests to determine the prisoner's health and suitability as an organ donor.<sup>(92)</sup> Hospitals are notified ahead of time of when the execution is to be held so they may arrange a donor-patient match and prepare to make the transplant.<sup>(93)</sup> Medical personnel are also present at the execution ground, awaiting the moment of death so that they can immediately remove the organs and rush them back to the hospital to perform the operation.

This widespread involvement of medical professionals in the judicial execution and transplantation process represents a grave violation of internationally accepted standards of medical behavior. According to the United Nations' "Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,"

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.<sup>(94)</sup>

Article 4 of the "Principles" further declares it to be a contravention of medical ethics:

...to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Obviously, the role played by health personnel in the execution and organ transplantation process in no way furthers the health of the prisoners involved. Instead, it converts state-sponsored killing into a grotesque, quasi-medical operation. Indeed the physician's primary duty to safeguard life and health is fundamentally corrupted by the practice of using executed prisoners as a source of organs.<sup>(95)</sup> "Physicians are agreed," writes Canadian physician Ronald D.

Guttmann, "that there should be no participation in the technology or act of the execution process." However, he notes,

Consultation is precisely what will be required if surgeons are to obtain vital organs for transplantation purposes. Transplantation professionals are asked to advise on "technical, legal and physiological implications of organ procurement." We are told that both parties, executioners and transplantation professionals, must be given assurances, i.e., they must understand each other. Is this not the deplorable involvement in the technology of execution that we want to avoid?<sup>(96)</sup>

An incident that occurred recently in Taiwan, a country which has stricter laws on prisoner consent and considerably more effective judicial safeguards than China, illustrates the type of horrifying misuse of medical resources that can occur as a result of this practice. When the sentence of a consenting prisoner scheduled to be an organ donor was carried out, he was not killed by the first bullet shot to his head. He was rushed to a hospital, where doctors were able to improve upon his condition. Later, after consultation with the Ministry of Justice, the medical staff agreed upon a convenient time to reschedule the execution. Saving life and taking life became hopelessly intermingled.<sup>(97)</sup>

## **Recommendations**

In view of the fundamentally coercive situation in which persons condemned to undergo judicial execution are placed and hence the impossibility of their giving genuinely free consent to removal and use of their organs for transplant operations, the Chinese government should take immediate steps to adopt legislation banning all further use of prisoners' organs for such purposes.

Since the outcome of all criminal trials should be a matter of public record, the Chinese government should promptly comply with a recent formal request by the U.N. Committee Against Torture that it provide "precise statistical data concerning the number of persons...sentenced to capital punishment and executed" in China. The authorities should also annul forthwith all "internal" directives ordering the secrecy of such statistics.<sup>(98)</sup>

The Chinese government should further invite the U.N. Special Rapporteur on Torture to undertake a systematic investigation of China's current judicial execution and organ procurement procedures, with a view to ensuring compliance with the U.N.'s "Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Foreign governments, especially in the Asia region, should take steps to discourage or bar their citizens from obtaining organ transplants in China, until such time as rigorous regulations and procedures are enacted by the Chinese government to ensure that prisoners' organs are not involved and that any organs for such use have been obtained with full prior consent of the donors or their families.

Foreign funding agencies, medical establishments and individual health practitioners should adopt a strict policy of non-participation in all PRC government-sponsored organ transplant-related research programs or academic gatherings. Foreign medical and pharmaceutical companies, such as Switzerland's Sandoz, which currently supply goods or services to China's organ transplant establishment should cease all such commercial activities until the Chinese authorities have demonstrated that executed prisoners' organs are no longer being used for transplant purposes.

In place of the current reliance on executed prisoners as a source for organ procurement, the Chinese government should take vigorous steps and commit adequate resources toward establishing a comprehensive national program to encourage voluntary organ donation by the general public.

Human Rights Watch/Asia urges the Chinese medical establishment to formulate and adopt its own code of ethical conduct, to include among other items a provision expressly barring health professionals from participation in any form of judicial execution-related organ transplantation activity. Irrespective of how death is technically determined or whether the prisoner gives "consent," involvement by physicians in the execution process is ethically unacceptable.

Finally, the Chinese government should take urgent steps to reverse the current alarming legislative and judicial trend toward increased use of the death penalty, with a view to eventually abolishing capital punishment - now widely acknowledged to be the ultimate form of "cruel, inhuman or degrading treatment or punishment" - altogether.

## **Appendices: Three Documents on the Disposition of Corpses in the prc**

### **Document 1**

*Ministry of Justice*

### **Reply Concerning the Question of the Utilization**

### **of the Corpses of Criminals Sentenced to Death<sup>(99)</sup>**

*(June 13, 1981)*

*(81) Sifa/Pu/Zi No. 163*

To the Shaanxi Province High People's Court:

Your report to the Supreme People's Court numbered "Shaan/Gao/Fa/Yi [Shaanxi High People's Court: Medical] (1981) No. 4" has been transmitted to our Ministry by that Court. Regarding the question of the utilization of the corpses of criminals sentenced to death, it is very necessary from the standpoint of medical treatment and scientific research. From the standpoint of our country's legal system and social customs, however, not only will the criminal's family be averse to it, but it will create a bad influence among the masses. Therefore, we believe that until new rules are formulated, the matter should continue to be handled in accordance with the 1952 joint directive of the Ministry of Public Security, the Ministry of Justice, and the Ministry of Health and the "Rules on the Dissection of Corpses" formulated in 1957 by the Ministry of Health and reissued in 1979 -- that is, where no one claims the corpse of a prisoner sentenced to death, it may be dissected, but in all other cases the consent of close relatives should be obtained before disposing of the corpse.

Document 2

*Supreme People's Court*

*Supreme People's Procuracy*

*Ministry of Public Security*

*Ministry of Justice*

*Ministry of Health*

*Ministry of Civil Affairs*

**Temporary Rules Concerning the Utilization of**

**Corpses or Organs from the Corpses of**

**Executed Criminals**<sup>(100)</sup>

*(October 9, 1984)*

To the Higher Level People's Courts and People's Procuracies, the Departments (Bureaux) of Public Security, Departments (Bureaux) of Justice, Departments

(Bureaux) of Health, and Departments (Bureaux) of Civil Affairs of Each Province, Autonomous Region, and Directly-Administered City:

With the advance of our country's medical science, some units involved in medical treatment, medical education, and medical research have asked to use the corpses or organs of executed criminals for the purposes of scientific research or organ transplant surgery. In order to support the advancement of medical research and to help change social customs, and on the premise of strictly implementing provisions of law and paying close attention to political repercussions,<sup>(101)</sup> the following rules have been formulated concerning the question of the utilization of the corpses or organs from the corpses of executed criminals.

(1) The execution of criminals sentenced to death for immediate implementation<sup>(102)</sup> must be carried out in accordance with the relevant provision of the Criminal Law: "[The death penalty] is to be carried out by means of shooting."<sup>(103)</sup> After the execution has been carried out, the corpse may be disposed of only after death has been confirmed by the supervising procuratorial official on the site.

(2) After the sentence of death on a criminal has been carried out, the corpse or, after cremation, the ashes may be claimed by the [criminal's] family.

(3) The corpses or organs of executed criminals may be provided for use in any the following circumstances:

1. No one claims the body or the family refuses to claim the body;
2. The executed criminal has volunteered to have his corpse provided to a medical treatment or health unit for use;
3. The family consents to the use of the corpse.

(4) Utilization of the corpse or organs of an executed criminal should be handled according to the following rules.

1. The utilizing unit must possess the necessary facilities and technical skills to carry out medical research or organ transplant surgery. It must obtain a "Special Permit" issued upon examination and approval by the provincial, city, or autonomous region department (bureau) of health and must file a report with the local city or prefecture bureau of health.

2. The utilization of corpses shall be arranged in a unified way by the city or prefectural department of health. In accordance with the degree and urgency of

need and the principle of comprehensive utilization, it shall separately establish liaison with the people's court that implements the death sentence and the utilizing unit.

3. After the order to implement the death sentence has been handed down, when there is a corpse that can be directly used, the people's court should provide prior notice to the city or prefectural department of health, which shall in turn notify the utilizing unit. At the same time, it shall issue to the utilizing unit a certificate of corpse utilization and send a copy to the people's court responsible for implementing the death sentence and to the people's procuracy responsible for supervision at the site. The utilizing unit should on its own initiative contact the people's court; it must not miss the legally stipulated time limit for the people's court to carry out the execution.

With respect to corpses that can be used only after the permission of the family has been obtained, the people's court shall notify the health departments to discuss the matter with the family and to reach a written agreement concerning such issues as the scope of the use of the corpse, method and costs of disposition after use, and financial compensation. The city or prefectural department of health shall issue to the utilizing unit the certificate of corpse utilization in accordance with [the terms of] the agreement, and shall send a copy to [other] concerned units.

Where the executed criminal has volunteered to have his corpse provided to a medical treatment unit for use, there should be a formal written certificate or record signed by the criminal and deposited at the people's court where it can be inspected.

4. The use of the corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding negative repercussions. [The removal of organs] should normally be carried out within the utilizing unit. Where it is genuinely necessary, then with the permission of the people's court that is carrying out the death sentence, a surgical vehicle from the health department may be permitted to drive onto the execution grounds to remove the organs, but it is not permitted to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation for organ removal is going on.

5. After the corpse has been used, the crematorium shall assist the utilizing unit in carrying out a timely cremation. Where a burial or other disposition is necessary, the utilizing unit shall be responsible. If the family wishes to claim the ashes, the people's court shall notify the family that they may go to the crematorium to claim them.

(5) In Han regions the corpses and organs of executed criminals of minority nationality shall in principle not be used.

In regions where there is a concentration of minority nationalities, the funerary customs of minority nationalities should be respected when implementing these rules.

Document 3

*Ministry of Health*

### **Rules Concerning the Dissection of Corpses**<sup>(104)</sup>

*(September 10, 1979)*

**Article 1** These rules are formulated in order to facilitate education, to raise the quality of diagnosis and treatment, and to promote the development of medical science while taking into account our country's social customs.

**Article 2** There are the following three types of corpse dissection.

(1) Ordinary dissection. This may be carried out only by medical schools and other relevant educational and research institutions when conducting teaching or research on the human body. Corpses may be collected for ordinary dissection in the following cases:

1. The deceased has so provided in a will or the family volunteers [the corpse] for dissection;
2. No one claims the corpse.

(2) Forensic dissection. This may be carried out only by people's courts, people's procuracies, and public security bureaux at various levels as well as departments of forensic medicine attached to medical schools. Forensic dissection should be carried out when any one of the following conditions is met:

1. A criminal case is involved and it is necessary to dissect the corpse<sup>(105)</sup> in order to determine the cause of death, or it is necessary to investigate the cause and nature of the death of an anonymous corpse;
2. Homicide or suicide is suspected in a case of sudden death;
3. Legal questions are involved in a case of death by industrial or agricultural poisoning or by a lethal contagious disease.

(3) Pathological dissection. This may be carried out only by the pathology departments of institutions of education, medical treatment, medical and scientific research, and preventive medicine. Pathological dissection should be carried out when any one of the following conditions is met:

1. The cause of death is unclear;
2. It is of value for scientific research;
3. The deceased has so provided in a will or the family volunteers [the corpse] for dissection;
4. The death is suspected to be a case of occupational poisoning, lethal contagious disease, or collective poisoning.

In cases (1) and (2) above,<sup>(106)</sup> the consent of the family or of a responsible person from the deceased's work unit should normally be obtained first. In cases where the deceased was a beneficiary of medical treatment paid for by the state or through labor insurance and the state medical treatment or health facility deems it necessary to clarify the cause of death and the diagnosis, then in principle pathological dissection should be carried out. All units concerned should actively assist the medical treatment or health facility in dealing with the family.<sup>(107)</sup>

**Article 3** Dissection of a corpse may be carried out only after a doctor has verified the death and signed a death certificate.

**Article 4** An unclaimed corpse should be preserved for a month before being used for ordinary dissection. If during this month a name and contact location are discovered, timely notice should be provided to the potential claimant to come and claim the corpse within a fixed period of time. If the corpse is not claimed within that time, then after reporting to and receiving approval from the [government] organ in charge [of the utilizing unit] or the public security department, dissection may be undertaken.

**Article 5** Pathology dissection departments undertake corpse dissection only at the behest of institutions of medical treatment, prevention, scientific research, and health administration and other relevant government organs.

**Article 6** If in the course of pathological dissection homicide or suicide becomes suspected, the unit undertaking the dissection should report to the public security bureau requesting that a forensic medical specialist be sent to conduct dissection or that the dissection be conducted jointly by a forensic medical specialist and a pathologist.

**Article 7** In the case of corpses subjected to pathological or forensic dissection, some of the tissues or organs may be retained for use in diagnosis and research. This should, however, be subject to the principle of maintaining as far as possible the integrity of the outward appearance. If it is necessary to damage the outward appearance, the consent of the family or of the deceased's work unit should be obtained.

**Article 8** In the case of pathological dissection or forensic dissection, a diagnostic report should normally be sent within one month to the unit requesting the dissection. Where the cause of death is found to be a lethal contagious disease, a report should be made to the local department in charge of health within twelve hours of confirming the diagnosis.

**Article 9** Pathological dissection should be undertaken with respect for the customs of national minorities. The scientific significance of pathological dissection should be actively publicized and a change in prevailing customs advocated.

**Article 10** Where the deceased has willed the use of his body for dissection or the family has volunteered it, then in cases of self-paid health care the hospital may, according to the circumstances, pay an amount toward covering cremation costs (not to exceed forty *yuan*).<sup>(108)</sup>

**Article 11** All units that undertake pathological or forensic dissection should establish a dissection log and record the following items:

1. Corpse number, name, age, sex, home town;
2. Origin of corpse;
3. Reason for dissection;
4. Clinical diagnosis;
5. Date of dissection;
6. Name of person conducting dissection;
7. Diagnosis after dissection;
8. Date of dissection report;
9. Miscellaneous notes.

If the name or home town cannot be ascertained, item 1 may contain only the number, sex, and estimated age, and the rest marked "unknown."

**Article 12** Units that undertake pathological and forensic dissection should make a written report at least once a year to the [government] department in charge [of them] on their activities in the dissection of corpses, including diagnoses after dissection.

**Article 13** From the date of the promulgation of these rules, any past relevant rules that are in conflict with these rules shall no longer be in effect.

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### ***Human Rights Watch/Asia (formerly Asia Watch)***

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Asia division was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Sidney Jones is the executive director; Mike Jendrzeczyk is the Washington director; Robin Munro is the Hong Kong director; Therese Caouette, Patricia Gossman and Jeannine Guthrie are research associates; Cathy Yai-Wen Lee and Grace Oboma-Layat are associates; Mickey Spiegel is a research consultant. Jack Greenberg is the chair of the advisory committee and Orville Schell is vice chair.

1. <sup>0</sup> We are grateful to Elizabeth Bynum, a Columbia University law student and 1994 summer intern with Human Rights Watch/Asia, for valuable assistance in the preparation of an earlier version of this report. The report was researched and redrafted in expanded form by Robin Munro, Hong Kong director of HRW/Asia. Valuable medical comments were provided by Dr. David Rothman, Bernard Schoenberg Professor of Social Medicine, Professor of History, and Director for the Center for the Study of Society and Medicine at Columbia College of Physicians and Surgeons.

2. <sup>0</sup> United Nations, *Report of the Committee against Torture*, Forty-Eighth Session of the General Assembly, Supplement No.44 (A/48/44), 1993, pp.64-65.

3. <sup>0</sup> *Report on Visit to China by the Delegation led by Lord Howe of Aberavon* (London: hmsO), July 1993, p.40.

4. <sup>0</sup> The "brain death" standard is for the most part uncontroversial from a human rights point of view. For details of how the standard may be abused in the context of organ-harvesting from executed prisoners, see pp. [13-14](#) below.

5. See United Nations General Assembly Resolution 32/61 of December 8, 1971 and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the Abolition of the Death Penalty (adopted by General Assembly Resolution 44/128 of December 15, 1989. The Protocol notes that Article 6 of the ICCPR "refers to the abolition of the death penalty in terms that strongly suggest abolition is desirable" and notes that all measures toward abolition "should be considered as progress in the enjoyment of the right to life."

Human Rights Watch/Asia opposes the infliction of capital punishment in all circumstances, on the grounds that it is cruel, often carried out in a discriminatory manner and irreversible. The inherent fallibility of all criminal justice systems assures that even when full process of law is respected innocent persons are sometimes executed; in such cases, miscarriages of justice can never be corrected.

6. <sup>0</sup> "Developing New Styles of Operation to Raise the Level of Organ Transplantation in the 1990s" (*Kaizhan Xin de Shushi Tigao Wo Guo Jiushi Niandai Qiguan Yizhi de Shuiping*), *Journal of Chinese Organ Transplantation* (hereinafter referred to as jcot), 1990 Vol.11, No.1.

7. <sup>0</sup> "The Big Secret of Trading in Condemned Prisoners' Organs Revealed" (*Siqiu Qiguan Maimai Da Jiemi*), *Jiushi Niandai* (The Nineties), December 1993, pp.42-46.

8. <sup>0</sup> Statistics on the number of death sentences and executions carried out in China are regarded as "state secrets" by the government and are never made public. (For further details on this, see pp. [10-10](#), below.) According to most outside estimates, however, somewhere in the region of 20,000 people were executed in 1983, the year of the first "crackdown" campaign, and annual totals remained high for the rest of the decade. According to Amnesty International, which monitors use of the death penalty worldwide, the numbers of death sentences and executions reported publicly by the authorities this decade are as follows: in 1990 there were at least 980 death sentences and 750 completed executions; the numbers were 1,650 and 1,050 respectively in 1991; and 1,890 and 1,079 in 1992. During 1993, at least 2,564 persons were sentenced to death, of whom at least 1,419 were actually executed. (Amnesty International, *China*:

*Death Penalty Figures Recorded for 1993* (ASA 17/15/94, London, April 1994); *China: The Death Penalty: Unprecedented Rise in Death Sentences and Executions Since September 1993* (ASA 17/02/94, London, January 1994); and *China: The Death Penalty in 1992* (ASA 17/09/93, London, July 1993). The actual totals were inevitably far higher.

9. <sup>0</sup> See "Statistics on China's Kidney Transplant Operations," (*Woguo Shen Yizhi Shu de Tongji*), jcot, 1984 Vol.5, No.2. The article listed the names of these ninety-eight hospitals and asked "all [medical] units which have not yet registered" with the Wuhan Organ Transplant Registration Center to "do so promptly." The current number of hospitals in China involved in organ transplantation is not known.

10. <sup>0</sup> See: "*Relie Zhuhe Diyi Jie Quanguo Huanbaosu A Yantao Hui de Shengli Zhaokai*", jcot, 1987 Vol.8, No.3"; and "*Linchuang Shen Yizhi Jinzhan*", jcot, 1991 Vol.12, No.4. See also "*Shi Shen Yizhi Huanzhe Changqi Yingyong Huanbaosu de Tihui*", jcot, 1991 Vol.12, No.1, in which a study of 144 kidney transplant patients who were treated with CsA yielded a first-year survival rate of 97.2 percent. (After two years the figure was 96.5 percent, after three years it was 84 percent, and after four years, 73 percent). The accuracy and reliability of these statistics has been questioned by physicians consulted by HRW/Asia.

11. <sup>0</sup> Of altogether 9,594 patients who had received kidney transplants by the end of 1992, 8,755 reportedly received CsA drug therapy (i.e. 91.2 percent). "*Zhonghua Yixuehui Dierjie Quanguo Qiguan Yizhi Xueshuhuiyi Jiyao*," jcot, 1994 Vol.15, No.2. The drug has a number of toxic side-effects, and some recipients tend to develop cancer; a new generation of immunosuppressives, especially a drug called FK 506, is the latest focus of interest among China's transplant community.

12. <sup>0</sup> The cost of a kidney transplant operation for Chinese citizens reportedly ranges anywhere from 5,000 *yuan* to as much as 30,000 *yuan*. Foreign patients usually pay somewhere in the region of US\$30,000.

13. <sup>0</sup> "Hong Kong Disputes China's Trade in Kidneys," *International Herald Tribune*, June 4, 1991; and "China Experts Work on Organ Donation Laws," *South China Morning Post*, (Hong Kong), May 11, 1991.

14. <sup>0</sup> The U.N. Committee Against Torture summarized these and other official comments made in April 1993 by China's delegation to the U.N., led by Amb. Jin Yongjian, as follows: "Removal of organs without the permission of either the person or his family was not standard practice. There were, however, cases in which permission had been given to remove organs from the bodies of persons executed." (United Nations, *Report of the Committee against Torture*,

Forty-eighth Session of the General Assembly, Supplement No.44 [A/48/44], 1993.)

15. <sup>0</sup> "Reply Concerning the Question of the Utilization of the Corpses of Criminals Sentenced to Death," issued by the Ministry of Justice, June 13, 1981.

16. <sup>0</sup> "Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals," issued jointly by the Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security, Ministry of Justice, Ministry of Health and Ministry of Civil Affairs on October 9, 1984.

17. <sup>0</sup> This recorded interview is scheduled to be broadcast by the television station concerned later this year as part of a larger program on the topic. For further evidence of vivisection-style organ procurement practices, see p.12, below.

18. <sup>0</sup> Testimony of Zhang Xin, former judge of the Shenzhen Intermediate People's Court (Economic Judgments Enforcement Division), interviewed by Human Rights Watch/Asia in August 1994. For details of Zhang's personal background, see "Tearful Complaint by a Chinese Communist Judge Forced into Exile" (*Yiwei Beipo Wangming Tianya Zhonggong Faguan de Xuelei Kongsu*), in *Qian Shao* (Frontline magazine), May 1994, pp.44-46; "Top Mainland Official Seeks Asylum," *Eastern Express*, August 19, 1994; "Fleeing Judge Took Documents," *Eastern Express*, August 20, 1994; and "'Outcast' Judge Sneaks Son Out," *Sunday Morning Post*, August 21, 1994.

19. <sup>0</sup> "Deacon Chiu recovers with \$1 million kidney," *Hong Kong Standard*, May 17, 1991. Mr. Chiu reportedly made a million-dollar "donation" to the Guangzhou hospital before he underwent the successful kidney transplant surgery.

20. <sup>0</sup> "Organs of Shot Prisoners Used," *South China Morning Post*, August 17, 1992.

21. <sup>0</sup> "The Great Organ Bazaar," BBC *Assignment* program, broadcast on June 23, 1992. The previous year, according to the *International Herald Tribune* (June 4, 1991), "Dr. M.K. Chan, a prominent renal specialist who is among the few doctors in Hong Kong to refer patients to the mainland for the operations, said: 'Almost all kidneys transplanted in China come from executed prisoners. That's the main source, along with a few donated by living relatives.'" See also: "Kidney Trading in Hong Kong," by Siu-Keung Lam, *Lancet* (Journal, of the British Medical Association), 1991, No.338, p.453. According to Dr. Lam, "Kidneys are usually obtained from prisoners who are executed for offenses

such as rape, burglary, or political 'crimes' against the state. No consent for organ removal is given by either the prisoner or the family."

22. <sup>0</sup> This information was passed to HRW/Asia directly by the diplomat concerned, who for professional reasons must remain anonymous; the prisoner himself is too scared of possible reprisals to be publicly identified. Other sources mention that condemned prisoners scheduled for organ removal are sometimes injected with an anticoagulant agent prior to execution.

23. <sup>0</sup> These cases were the few exceptions to the rule, mentioned above, that donor sources are almost never explicitly discussed or identified. See: "Procurement of Cadaver Donor Liver, its Perfusion and Preparation" (*Gan Yizhi Shu Gong Gan Qiequ Guanzhu ji Xiuzheng Shoushu*), jcot, 1980 Vol.1, No.1; "Summary of Papers Presented at the First National Conference of Organ Transplantation" (*Qiguan Yizhixueshu Zuotanhui Xueshu Xiaojie*), jcot, 1981 Vol.2, No.2; *Tongzhong Yizhi Shen Zi Faxing Polie*, jcot 1981 Vol.2, No.2; 5 *Lie Shen Yizhi Jixing Paichi Yizhi Shen de Bingli Gaibian*, jcot, 1982 Vol.3, No.1; and *Yuanwei Guanxi Zhengkuai Qiequ Shi Yi, Pi, Shen, Shenshangxian de Tihui*, jcot, 1986 Vol.7, No.4.

24. <sup>0</sup> According to one medical article, "In a liver transplant operation, the ordinary time for the warm ischemia (*re quexue*) process [i.e. removal and perfusion of the organ] should not exceed eight to ten minutes...Warm ischemia time refers to the period from when breathing ceases and the heart stops to when low-temperature irrigation of the portal veins begins". ("Experience of Nine Cases of Donated Liver Preservation [Low Temperature]" (*Gonggan Diwen Baocun 9 Lie de Jingyan*), jcot, January 1, 1982.) Similarly, "For donated kidneys, a warm ischemia time that does not exceed ten minutes is best". (*Shen Yizhi Huanzhe Cunhuo Wunian 80 Lie Tanta*o, jcot, 1994 Vol.15, No.1.)

25. <sup>0</sup> See: "Experience with 107 Cadaveric Renal Transplants" ("*Shiti Shen Yizhi 107 Ci de Tihui*"), jcot, 1985 Vol.6, No.3 (Of 107 transplants from corpses, all but one donor were between the ages of twenty and forty); "*Shi Shen Zhengkuai Quequ Shoushu Fangfa de Gaijin*," jcot, 1990 Vol.11, No.3 (135 of 138 donors studied were males aged eighteen to forty-six, with the average age being 24.9 years old); "*Shen Yizhi Huanzhe Cunhuo Wunian 80 Lie Tanta*o," jcot 1984 January, Vol.15, No.1 (Of eighty kidney donors, all were males between the ages of nineteen to forty-seven, 90 percent of whom were under thirty years old); "*90 Lieci Shiti Shen Yizhi de Tihui*," jcot, 1990 Vol. 11, No.2 (All ninety kidney donors studied were male, and 87.78 percent of them were eighteen to thirty-one years old). Since young males tend to get themselves killed more readily than other sections of the population, most organ donors in the West also tend to fall within this category. As explained above, however, China's non-

recognition of "brain death" make the majority of accident fatality cases unusable for organ procurement purposes.

26. <sup>0</sup> Ronald D. Guttman, M.D., "On the Use of Organs from Executed Prisoners," *Transplantation Reviews*, Vol.6, No.3 (July) 1992, pp.189-193.

27. <sup>0</sup> Study by Dr. Peter Chan Siu-foon, surgeon in charge of urology and kidney transplantation at the department of surgery, Prince of Wales Hospital, of twenty-six kidney patients from Hong Kong who had transplant operations in China; see "Prisoners' kidneys used in transplants," *Hong Kong Standard*. January 8, 1991.

28. <sup>0</sup> Numbers of kidney transplant operations carried out since 1988: 840 in 1988; 1,049 in 1989; 1,607 in 1990; 1,771 in 1991; and 1,905 in 1992 (the last year for which statistics were available.) See "*Zhonghua Yixuehui Dierci Quanguo Qiguan Yizhixueshu Huiyi Jiyao*," jcot, 1991 Vol.12, No.1, p.41 (1988 and 1989 statistics); "*Zhongguo Qiguan Yizhi de Xianzhuang*," jcot, 1992 Vol.13, No.2 (1990 statistic); "*Zongjie Guoqu, Zhouwang Weilai, ba Woguo Qiguan Yizhi Gongzuo Tuixiang Qianjin*," jcot, 1994 January, Vol.15, No.1 (1991 and 1992 statistics).

29. <sup>0</sup> The use of prenatal and neonatal organs is widely supported by the international transplantation community as providing one solution to the worldwide shortage of donors. China, however, seems to be well ahead of the field in this area: "In China, the conditions for using fetal-embryo organs for procurement purposes are comparatively advantageous, and we can fully exploit this distinctive feature in our experimental research and clinical work." ("Warm Congratulations on the Convening of the Second National Organ Transplantation Symposium" (*Relie Qingzhu Dierci Quanguo Qiguan Yizhi Xueshu Huiyi de Zhaokai*), jcot, 1991, Vol.12, No.1.) And according to an article published last year, "The use of freshly-induced dead fetuses for organ-transplant procurement purposes represents a major distinguishing hallmark (*yi da tese*) of China's organ transplantation work." ("Improve the Technique of Multiple Fetal-Abdominal Organ Removal" (*Gailiang Tai'er Fubu Duo-Qiguan Lianhe Zhaiqushu*), jcot, 1993, Vol.14, No.4.)

30. <sup>0</sup> In 1991, the Ministry of Health was reported as having "...set up a group of experts to work on legislation aimed at encouraging people to donate their kidneys for transplant....It is thought the Ministry could bring in an 'opt-out' scheme." (See "China Experts Work on Organ Donation Laws," *South China Morning Post*, May 11, 1991.) So far, no such plan appears to have been adopted.

31. <sup>0</sup> In the United States, prisoners awaiting execution are barred from bequeathing their organs for transplant purposes on the grounds that they are vulnerable to such pressures as coercion, intimidation and inducement, and so cannot provide genuine free consent. This legal ban is now being challenged in the U.S. courts by a prisoner who wishes to donate his organs to medical science. Dr. Jack Kevorkian (sometimes known as "Dr. Death" for his efforts to win legal acceptance of voluntary euthanasia) has campaigned vigorously in the U.S. in recent years to have the ban on prisoner organ-donation overturned.

32. <sup>0</sup> "Rules Concerning the Dissection of Corpses," issued by the Ministry of Health, September 10, 1979.

33. <sup>0</sup> "Circular Concerning the Correct Handling of Last Wills and Various Objects Left Behind by Criminals Condemned to Death," issued by the Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security and Ministry of Justice on January 11, 1984. The directive explained the need for such censorship as follows: "Recently, certain areas have reported that a tiny minority of criminals who have been sentenced to death have been using the opportunity to write letters and leave last testaments as a means of engaging in slander, so as to confuse the issues of right and wrong and poison people's minds." (For further details, see: *The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers*, Asia Watch, February 27, 1991.)

34. <sup>0</sup> The author added, "But I reckon this method is incorrect from a legal point of view." ("Some Thoughts on the Processing of the Wills of Executed Criminals," *Fazhi Ribao* (Legal Daily), July 19, 1989, cited in Amnesty International [ASA 17/09/93, July 1993], pp.7-8.) The article continued: "In my view, death penalty prisoners' last words about such important issues as the disposal of their bodies...should be recorded in writing and bear the thumbmark of the person making the oral will; it should be transmitted to the relatives in the form of an official legal document...The units in charge of executing prisoners should give consideration to this work.

35. <sup>0</sup> Testimony of Zhang Xin (see Footnote ? above.)

36. <sup>0</sup> "Prisoners falling under any of the following categories may...be placed in solitary confinement cells: ...3) Those under sentence of death and for whom final approval of execution is pending....Except in the case of condemned prisoners for whom final approval of execution is still pending and the case of prisoners who pose a particularly serious danger, those undergoing solitary confinement should not in addition be made to wear implements of restraint....Except in the case of condemned prisoners for whom final approval of execution is still pending and

also the cases of prisoners currently undergoing trial, the period of solitary confinement is in general not to exceed a period of seven to ten days. The maximum permissible period is 15 days." (See: "Detailed Rules for the Disciplinary Work of Prisons and Labor Reform Detachments [Provisional]" (*Jianyu, Laogai Dui Guanjiao Gongzuo Xize [Shixing]*), issued by the Ministry of Public Security on February 18, 1982 (Articles 61-63.)

37. <sup>0</sup> Zhongguo Jianyu Jishi ("A Real-life Account of China's Prisons"), published by Tuanjie Press (Beijing), February 1989, p.334.

38. <sup>0</sup> In 1986, the government ordered an end -- "especially in cities open to foreigners...where it might create an unfavorable impression" -- to the time-honored practice of parading condemned criminals through the streets in trucks on the morning of their execution. In many parts of China, however, the practice reportedly continues as before. ("Directive Concerning the Strict Prohibition on Parading on the Streets in Front of the Masses Criminals Who Are About to Be Executed" (*Guanyu Zhixing Sixing Yanjin Youjie Shizhong de Tongzhi*), issued on July 24, 1986, by the Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security and Ministry of Justice.)

39. <sup>0</sup> See: "The Truth About Organs Taken from Condemned Prisoners in China" (*Dalu Siqiu Bei Gequ Qiguan Zhenxiang*), *Jiushi Niandai*. (The Nineties), February 1993, pp.24-27.

40. <sup>0</sup> Guttman, "On the Use of Organs from Executed Prisoners," p.190. Most prisoners executed in China are men, but a certain proportion are women. According to the source cited above in Footnote ?, condemned women are usually held in communal cells rather than in solitary, but they are shackled until the time of execution. In fact (see p.353), "Because of the implements of restraint they wear, [female] condemned criminals are unable even to remove their clothes before going to sleep."

41. <sup>0</sup> Testimony of Zhang Xin, August 1994. Mr. Zhang observed similar procedures both in Heilongjiang Province before 1988 and in Shenzhen, Guangdong Province, between 1988 and 1992. Pre-execution practices and conditions vary somewhat around the country: in some prisons, condemned persons are allowed to share a relatively comfortable last meal with fellow inmates on the night before execution; in others, they are kept shackled hand and foot in solitary confinement cells.

42. <sup>0</sup> "After the corpse has been used, the crematorium shall assist the utilizing unit in carrying out a timely cremation...If the family wishes to claim the ashes, the people's court shall notify the family that they may go to the crematorium to

claim them." ("Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals," Article 4, Paragraph 5.)

43. <sup>0</sup> Testimony of Zhang Xin, August 1994.

44. <sup>0</sup> "Report on Opinions Concerning the Further Investigation and Overturning of Unjust, False and Erroneous Cases Handled by the Political and Legal Authorities," issued jointly on December 25, 1982 by the Party Committees of the Ministry of Public Security, Supreme People's Procuracy and Supreme People's Court, in *Xingshi Shenpan Jiandu Shouce (Dierji)* ("A Handbook on Supervision of Criminal Trials, Vol.2"), published "for internal use only" (*neibu*) by People's Court Press, October 1991, pp.43-49.

45. <sup>0</sup> *Sichuan Shengqing* (A General Account of Sichuan Province), published (also *neibu*) by Sichuan People's Press, December 1987, p.548.

46. <sup>0</sup> See source cited in Footnote ?.

47. <sup>0</sup> "Many 'Unjust, False and Erroneous' Verdicts Also Found Among Cases Tried Between 1977 and 1978," *Renmin Sifa Xuanbian* ("A Compilation of Articles from 'People's Justice' Magazine"), Law Publishing House, February 1983, pp.116-8. (The volume is marked "for internal use only.") Among twenty-one of the "counterrevolutionaries" sentenced by the Fuzhou Intermediate Court, the report added, "Seventeen, or 77 percent of the total, were found to have been completely innocent....The original verdict was upheld in only one case." And of nine such verdicts rendered by the Xiamen Intermediate Court, "All were found to have problems."

48. <sup>0</sup> "*Baoshi Huangye de Nüfan*" ("Female Prisoners Die Violent Deaths in the Wilderness"), by Lao Gui, *Zhongguo Zhi Chun* (China Spring), September 1992, pp.76-91.

49. <sup>0</sup> *Xue Ji Hong Tudi* ("Earth Red with Blood Sacrifice"), by Hu Ping. Initially published in *samizdat* or "underground" form, Hu's account of the fate of Zhong Haiyuan circulated widely in China during the 1980s. It was scheduled for official publication in 1991, but was banned nationwide by the authorities at the last moment. Another woman employee at Zhong's middle school, Li Jiulian, had been arrested on May 15, 1969, after her diary was found to contain comments critical of the Party leadership. Eight years later, on December 14, 1977, Li was also executed.

50. <sup>0</sup> See *Dangdai Zhongguo de Shenpan Gongzuo (Shang)* (China Today: The People's Judicial Work, Vol.1), Contemporary China Publishing House, December 1993, p.245. According to the book, the figure of 7,123

"counterrevolutionaries" represented 0.43 percent of all criminals sentenced during the period in question. (Acknowledgements to John Kamm for bringing this source to our attention.) None of these documentary sources provide, however, any indication of the number of "counterrevolutionaries" sentenced over the period 1978-80, namely the first two years of Deng's rule. This was an extremely intense phase of the government purge of former political figures associated with "ultra-leftism" in China, and the number of cases may have equalled or exceeded those of the previous two years.

51. <sup>0</sup> The best general survey of the human rights' failings of China's legal system is *Criminal Justice With Chinese Characteristics: China's Criminal Process and Violations of Human Rights*, by Timothy A. Gelatt, published by the Lawyers Committee for Human Rights (New York), May 1993.

52. <sup>0</sup> "'Yan-da' hou, ya-fan meng zeng yibei". See "Further Thoughts on the Reform of the Labor-Reform Economic Structure," in *Fanzui Yu Gaizao Yanjiu* (Research on Crime and Reform), 1990, No.6, p.5.

53. <sup>0</sup> "Criminal Trials Work Report of the Henan Provincial High People's Court" (*Henan Sheng Gaoji Renmin Fayuan Guanyu Xingshi Shenpan Gongzuo de Baogao*), August 25, 1989, in *Renmin Fayuan Nianjian 1989* (1989 People's Court Yearbook), People's Court Press (Beijing: 1992), p.462.

54. <sup>0</sup> "Uphold Mao Zedong's People's Democratic Dictatorship-Style Viewpoint on the Death Penalty as a Guide to Our Legislative and Judicial [Practice] on the Death Penalty" (*Jianchi Yi Mao Zedong Renmin Minzhu Zhuanzheng Sixing Guan Zhidao Sixing Lifa Yu Sifa*), by Wang Minghu, in *Faxue Pinglun* (Law Review Monthly of Wuhan University), 1994, No.1, pp.9-16 and 32.

55. <sup>0</sup> The Criminal Law reduced from eighteen to sixteen the number of articles in law stipulating capital punishment; if 1979 (i.e. column 3) is taken as the point of comparison, therefore, the number of death penalty statutes can be seen to have more than tripled. nb: The table's fourth column, "Period of Amendments to Criminal Law (1982-92)," refers to a number of supplementary amendments made to the Criminal Law, namely the npc Standing Committee's *Decision Regarding the Severe Punishment of Criminals Who Seriously Undermine the Economy* (March 8, 1982), *Decision Regarding the Severe Punishment of Criminal Elements Who Seriously Endanger Public Security* (September 2, 1983), *Supplementary Provisions Regarding the Punishment for Crimes of Smuggling* (January 21, 1988) and *Supplementary Provisions Regarding the Punishment for Crimes of Corruption and Bribery* (January 21, 1988.) These regulations and directives added altogether twenty-four articles stipulating the death penalty and twenty-nine further capital offenses to those appearing in the 1979 Criminal Law. Column four also refers to a new item of

criminal legislation, the *Interim Regulations of the prc on Punishment of Servicemen Who Commit Crimes Contrary to Their Duties* (January 1, 1982), which added ten new death-penalty articles and made ten new offenses punishable by death. Taken together, these various laws and amendments raised the tallies by thirty-four and thirty-nine items respectively, making a current overall total in Chinese law of fifty articles carrying the death penalty and sixty-five specific capital offenses. (The author appears, however, to have overlooked the npc Standing Committee's *Supplementary Regulations Regarding the Crime of Revealing State Secrets* [September 5, 1988], which made that crime also punishable by death, so raising the total number of capital offenses to sixty-six.)

56. <sup>0</sup> According to Article 9 of the Supreme People's Court's November 21, 1985 "Various Regulations Concerning Statistical Work of the People's Courts," "Judicial statistical reports are to be classified as either state secret-level (*jimi*) or top secret-level (*juemi*) materials, and must be kept confidential....Strict control must be maintained over the scope of distribution of all year-end aggregate statistical material relating to individual provinces, autonomous regions and directly-administered municipalities, and especially so in the case of statistical material on death penalty cases."

57. <sup>0</sup> *Notification on Several Points Concerning Implementation of the NPC Standing Committee's "Decision on the Question of Approval of Death Penalty Cases,"* Supreme People's Court, June 11, 1981.

58. <sup>0</sup> As the Supreme People's Court complained, "Since the start of the 'crackdown' campaign...in August 1983, there has been a dramatic increase (*ju zeng*) in the quantity of death penalty cases, but also major discrepancies in the numbers of case reports submitted by the various regions....[Henceforth] all concluded death penalty cases must be promptly reported to this court." (*Notification Concerning the Unified Reporting of Death Penalty Case Materials*, Supreme People's Court, April 9, 1984.)

59. <sup>0</sup> The continued non-reporting of death penalty cases evoked this second urgent directive: "Some High People's Courts are still failing to submit [death penalty] case reports to the senior authorities or else are filing incomplete reports...They should now review all their records and submit any previously unreported or incompletely reported cases to the senior authorities." ("Notification on Earnestly Implementing the 'Notification Concerning the Unified Reporting of Death Penalty Case Materials'," Supreme People's Court, June 8, 1985.)

60. <sup>0</sup> Wang Minghu, *op cit.* On a conservative reading of these general figures, the average total number of executions carried out annually in the province in question can be safely estimated to be at least three hundred. Multiplying this

figure by the thirty-one provincial-level administrative units in China would give a very rough total for the whole country of over nine thousand executions per year. (In reality, the general level of the indicative figures mentioned above suggest that a far higher national total would be more accurate.) As regards the youthfulness of most condemned prisoners: it appears this has a seldom-noted effect upon public sentiment toward China's widespread use of the death penalty (although current public demand for the latter seems to remain high.) According to the author, "Not only are [most] condemned prisoners in no way the target of strong public anger, they even arouse feelings of pity and compassion among the masses. Members of the public feel that because they are young, first-time offenders who are still susceptible to education, the government should take forceful steps to try and save them..." (Elsewhere, the author states: "Approximately seventy per cent of all those targeted for the death penalty [in China] are young people of around the age of twenty years old.")

61. <sup>0</sup> "My Humble Opinion on the `Decision of the Standing Committee of the National People's Congress Regarding the Procedure for Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security'," in *Falü Kexue* (Legal Science), 1990, No.1, pp.54-55.

62. <sup>0</sup> For a further discussion of fair trial concerns in China, see Asia Watch, *Detained in China and Tibet: A Directory of Political and Religious Prisoners* (New York: Human Rights Watch, February 1994), pp.xvii-xxi.

63. <sup>0</sup> "Decision of the Central Committee of the Chinese Communist Party to Strike Severe Blows against Criminal Activities," (*Zhonggong Zhongyang Guanyu Yanli Daji Xingshi Fanzui Huodong de Jueding*), also known as "CPC Central Committee [1983] Document No.31," dated August 25, 1983; excerpts in *Dazu Xian Jiancha Zhi* (*Annals of the Dazu County Procuracy*), a "restricted circulation" volume compiled and published by Dazu County Procuracy (Sichuan, 1988), pp.132-133.

64. <sup>0</sup> See, for example, *Anthems of Defeat: Crackdown in Hunan Province, 1989-1992* (Chapter 5: "Torture and Ill-Treatment in Prison"), Asia Watch, June 1992; "Torture in China," Asia Watch, July 1990; *Torture in China: Comments on the Official Report of China to the Committee Against Torture*, prepared by the International League for Human Rights and the Ad Hoc Study Group on Human Rights in China (New York), April 1990; and *China: Torture and Ill-Treatment of Prisoners*, Amnesty International, (London), July 1987.

65. <sup>0</sup> *Henan Legal News*, October 7, 1993, reported by Agence France Presse, October 15, 1993.

66. <sup>0</sup> "Some Thoughts on the Investigation of Cases of Confessions Forced through Torture" (*Chaban Xingxun Bigong Anjian de Tihui*), in *Renmin Jiancha* (People's Procuracy Journal), 1994, No.3, pp.30-32.

67. <sup>0</sup> According to an article published in April 1990, the percentage of "suspended death-sentence" prisoners held in People's Liberation Army (pla)-run labor camps in Xinjiang who were actually executed after the probationary period is almost twice as high as that in any other part of the country. ("Thoughts on Reforming the Labor-Reform System's Administrative Structure," *Laogai Laojiao Lilun Yanjiu* (Theoretical Studies in Labor Reform and Labor Re-education), No.2, 1990, p.43.) This severe discrepancy is probably attributable to a joint directive issued by key government ministries on September 21, 1985, authorizing the Xinjiang authorities to "handle flexibly" (*biantong chuli*) the legal procedures governing the question of commutation or implementation of suspended death sentences.

68. <sup>0</sup> PRC Criminal Law, Article 45.

69. <sup>0</sup> According to the *Detailed Rules on Criminal Procuratorial Work (Provisional)* (*Renmin Jianchayuan Xingshi Jiancha Gongzuo Xize [Shixing]*), issued by the Supreme People's Procuracy on October 10, 1991:

Article 105: Before carrying out the death sentence, if the People's Procurator performing on-site supervision discovers that any of the following circumstances exist, he must suggest to the People's Court that implementation of the sentence be temporarily stopped....If the criminal claims at the execution site that he or she was wrongly sentenced and raises new evidence, circumstances or conditions, then implementation of the sentence should be temporarily halted.

70. <sup>0</sup> See: "Reply by the Supreme People's Procuracy Concerning Some Questions on Applicability of the Law in the Struggle to Severely Crackdown on Crime" (*Zui Gao Renmin Jianchayuan Guanyu Zai Yanli Daji Xingshi Fanzui Douzheng Zhong Juti Yingyong Falü de Ruogan Wenti de Dafu*), issued by the Supreme People's Procuracy on January 1, 1984.

71. <sup>0</sup> "A Brief Discussion of the Work of On-Site Supervision of Death Sentences" (*Guanyu Sixing Linchang Jiandu Gongzuo Chutan*), in *Hebei Faxue* (Hebei Legal Science), No.1, 1989, pp.43-44.

72. <sup>0</sup> According to Article 106 of the "Detailed Rules on Criminal Procuratorial Work" (*Provisional*) (*Renmin Jianchayuan Xingshi Jiancha Gongzuo Xize [Shixing]*), issued by the Supreme People's Procuracy on October 10, 1991, "After carrying out the death penalty, the on-site supervising staff member of the

People's Procuracy must investigate whether or not the criminal is really dead, and write up a 'Death Penalty On-Site Supervisory Report', which he should sign and place on file." Similarly, the Supreme People's Court's "Notification on the Strengthening of Court Forensic Work" (*Guanyu Jiaqiang Fayuan Fayi Gongzuo de Tongzhi*), issued on March 21, 1986, states as being one of the main duties of court coroners: "...to inspect, evaluate and photograph the corpses of executed criminals." See also: "Detailed Rules for Forensic Work of the People's Procuracy (Provisional)" (*Renmin Jianchayuan Fayi Gongzuo Xize [Shixing]*), issued by the Supreme People's Procuracy on January 28, 1988.

73. <sup>0</sup> Testimony of Zhang Xin, August 1994.

74. "Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals," *op cit*.

75. <sup>0</sup>See also: "The Truth About Organs Taken from Condemned Prisoners in China," *Jiushi Niandai*, *op cit*.

76. <sup>0</sup> Dong Chunjiang et al, *Laogai Jiancha Gailun* ("An Introduction to Labor Reform Procuratorial Work"), published by *Zhongguo Zhengfa Daxue Chubanshe* (China Law and Politics University Press), 1988, p.30. The precise wording of the passage is as follows: "*Gebie difang bu yong qiangjue de fangfa, er yong zhushe mazuiji de fangfa zhixing [sixing]; ji gebie difang shenzhi weile liyong zuifan shentishang de mou yi qiguan, zai dui qi zhixing sixing shi, guyi bu wanquan jibi, yi baoliu huoti zuzhi.*" The book noted that procurators should "promptly rectify" such practices whenever found.

77. <sup>0</sup> *Ibid*.

78. <sup>0</sup> For excerpts from the interview, see *Torture in China: Comments on the Official Report of China to the Committee Against Torture*, prepared by the International League for Human Rights and the Ad Hoc Study Group on Human Rights in China, April 1990 (New York). According to a more recent report, "'If they want the [corneas] they shoot in the chest. If they want the internal organs, they shoot in the head', said [an] official who has been present at two executions where organs have been removed." (See "China's Executioners: A Punishing Schedule" and "China's Executed Convicts Unwitting Organ Donors," *Washington Post*, March 27, 1994.) The most vivid recent description of the actual execution process in China, an article by Jan Wong of the *Toronto Globe and Mail*, was carried in the *South China Morning Post* (April 22, 1994) under the title "The Final Hour on China's Death Row."

79. <sup>0</sup> See: "Notice Concerning the Adoption of Strict Measures to Prevent Reactionary Publications from Making Use of Our Execution of Criminals in

Order to Create Rumors and Vilify China" (*Guanyu Yanfang Fandong Baokan Liyong Wo Chujue Fanren Jinxing Zaoyao Wumie de Tongzhi*), issued on November 21, 1984, by the CPC Central Committee's Propaganda Department, Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security and Ministry of Justice; and "Notification Concerning the Strict Control of Photographic and Journalistic Coverage at Sites Where Executions are Being Carried out" (*Guanyu Yange Kongzhi Zai Sixing Zhixing Xianchang Jinxing Paishe He Caifang de Tongzhi*), issued by the Ministry of Public Security, Supreme People's Court and Supreme People's Procuracy on July 16, 1990. (*Newsweek* magazine had the distinction of being criticized by name in both of the directives.)

80. <sup>0</sup> Testimony of Zhang Xin, August 1994.

81. <sup>0</sup> "The Big Secret of Trading in Condemned Prisoners' Organs Revealed," *Jiushi Niandai*, op cit.

82. <sup>0</sup> "Shortage of Kidneys Puts a Price on Life," *South China Morning Post*, May 11, 1991.

83. <sup>0</sup> The traditional prohibition on desecration of the corpse, however, has coexisted in parts of China in recent history with one the darkest vestiges of primitive society, namely cannibalism. One such outbreak, in Anhui Province in the immediate aftermath of the "Great Leap Forward" of 1958-60, was occasioned purely by mass famine. ("Revelations on Mao's Famine: A Great Leap Into Death," Washington Post Service, in *International Herald Tribune*, July 18, 1994.) But later epidemics of cannibalism, in Guangxi Province and the southwestern part of neighboring Hunan Province in the late 1960s, were prompted by a unique mixture of Red Guard-inspired political revenge against "class enemies" and a local ethnic-minority (mainly Zhuang) vestigial tradition whereby the consumption of human internal organs, especially the liver and heart, were believed to bring powerful spiritual and medicinal benefits. (See: "A Tale of Red Guards and Cannibals," *New York Times*, January 6, 1993; "Unspeakable Crimes," *Time*, January 18, 1993; "The River of Blood," *The Guardian*, November 27, 1993; and, for full details of the gory episode, *Lishi de Yi Bufen* [A Part of History: Eleven Letters that Could Never Be Sent ("Letter No.8")], by Zheng Yi, published by Wanxiang Press, Taipei, March 1993.)

84. <sup>0</sup> Many Hong Kong residents who have undergone kidney transplants in China have experienced serious medical problems after the operations. A 1991 study by the Kidney Action Group (a Hong Kong-based medical pressure group) reported that eighty-one Hong Kong residents needed remedial medical care after having kidney transplants in China, mostly for hepatitis. ("China Kidney Patients Hit by Hepatitis," *Hong Kong Standard*, May 20, 1991.) An internal

report released by the Sun Yat-sen University of Medical Science in Guangzhou (one of the biggest transplant hospitals in China) found that the chance of dying from the effects of a transplant in China was 18 percent, or almost one in five, much higher than the approximately 8 percent figure for Hong Kong. ("Risking it All for the Chance of a New Life," *South China Morning Post*, (Hong Kong) April 4, 1992.) The notoriously bad health and hygiene conditions in Chinese prisons, especially the high incidence of viral hepatitis, may well have increased the post-operative medical risks for these organ recipients. Opposition to the growing organ trade was expressed as follows by a group of thirty-four Hong Kong-based kidney specialists: "We cannot support and do not want to be associated with organ transplantation obtained by financial means. We believe it is unethical to promote or to arrange organ transplantations that would put the patients and their staff at risk." (See "General Public Misled Over Kidney Transplantations," *South China Morning Post* [Letters to the Editor], February 7, 1991.)

85. <sup>0</sup> "Brain Death: The Medical Checks," *South China Morning Post*, October 28, 1993.) The article continues, "The problem with harvesting organs from a cadaver is that it must be done as soon as possible. This is the main root of people's fear concerning brain stem death, according to Dr. Michael Tsang Tse-shu, consultant physician at Queen Mary Hospital...`There are people who panic that it may be over-used'."

86. <sup>0</sup> "The Prospects for Organ Transplantation Work in China: Congratulations on Eight Years of Publication of the *Journal of Chinese Organ Transplantation*" (*Dui Fazhan Woguo Qiguan Yizhi Gongzuo de Qiwan*), jcot, 1987, Vol.8, No.1. Other recent articles advocating adoption of the brain death standard include: "Congratulations on the Founding of the Chinese Society of Organ Transplantation and Best Wishes to Its First Congress" (*Relie Qingzhu Zhonghua Yixuehui Qiguan Yizhixuehui de Chengli Ji Diyici Quanguo Qiguan Yizhixueshu Huiyi de Zhaokai*), jcot, 1988, Vol.9, No.3 ("everyone in the medical profession should call unceasingly for [the brain death criterion] and strive to make brain dead people a source of organs..."); "An Urgent Proposal Concerning the Supply of Donor Organs for Allografting in China" (*Guanyu Jixu Jiejue Qiguan Yizhi Gongzuo Zhong Gongti Laiyuan Wenti de Huiyu*), jcot, 1985, Vol.6, No.3; and "Recent Advances in Clinical Liver Transplantation" (*Linchuang Gan Yizhi de Xin Jinzhan*), jcot, 1984, Vol.5, No.4.

87. <sup>0</sup> "Clinical Report of the Second Human Lung Transplantation" (*Dierlie Renti Fei Yizhi de Linchuang Baogao*), jcot, 1981 Vol.2, No.1.

88. <sup>0</sup> "An Introduction to Massive Perfusion and Hypothermic Storage of Cadaveric Kidney in Situ" (*Shi Shen Yuanwei Dajiliang Guanxi ji Leng Zangfa Jieshao*), jcot, 1984 Vol.5, No.1, p.13.

89. Other criteria for ascertainment of "brain death" include the absence of cortical blood flow, no cortical function, and so on. Taken together, these allow the (medically more accurate) clinical diagnosis of "irreversible brain damage" to be made. And as one Western physician consulted by HRW/Asia pointed out, "'Brain death' is an unfortunate term and represents *death*." Any discussion of it "...is not strong in the context of an execution. It strengthens the belief that the term 'brain death' is a medical diagnosis -- death is death!"

90. <sup>0</sup> Noted in Ronald D. Guttman, "Ethical Standards for Publication and Presentation" (uncorrected proof of article scheduled for publication in *Transplantation*, August 1994.)

91. <sup>0</sup> Information in this and preceding paragraph from: "Organ Donation After Execution in China," J. Parry, *British Medical Journal*, 1991, No.303, p.1420.

92. <sup>0</sup> Guttman, "On the Use of Organs from Executed Prisoners," p.190.

93. <sup>0</sup> "The Big Secret of Trading in Condemned Prisoners' Organs Revealed," *Jiushi Niandai*, op cit.

94. <sup>0</sup> "Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," adopted by the General Assembly of the United Nations on 18 December 1982 (Resolution 37/194), Principle 3.

95. <sup>0</sup> For further discussion of this point, see *Medicine Betrayed: The Participation of Doctors in Human Rights Abuses*, published by Zed Books (London) in association with the British Medical Association, 1992, pp.98-105 and *passim*.

96. <sup>0</sup> Guttman, p.192. The author allows, however, that it would be ethically acceptable for a physician to certify death following an execution.

97. <sup>0</sup> "Revoici Notre Depeche de Taiwan-Justice Qui Comportait des Erreurs Acharnement," Agence France Presse, April 16, 1991; cited in Guttman, p.191.

98. <sup>0</sup> See, for example, the 1985 Supreme People's Court directive quoted in Footnote ?, above.

99. <sup>0</sup> *Guanyu Panchu Sixing Fanren de Shiti Liyong Wenti de Fuhan*, in **Sifa Shouce** ("Judicial Handbook"), Vol.2, People's Court Press, October 1987, p.738.

100. <sup>0</sup> *Guanyu Liyong Sixing Zuifan Shiti Huo Shiti Qiguan de Zanxing Guiding*, in **Zhonghua Renmin Gongheguo Falü Guifanxing Jieshi Jicheng** ("A Collection of Standard Interpretations of the Laws of the prc"), Jilin People's Press, April 1991, pp.1500-1501.

101. <sup>0</sup> "*Zhuyi zhengzhi yingxiang*."

102. <sup>0</sup> As opposed to the two-year suspended death sentence available under the Criminal Law.

103. <sup>0</sup> PRC Criminal Law, Article 45.

104. <sup>0</sup> *Guanyu Jiepou Shiti Guize*, in **Zhonghua Renmin Gongheguo Falü Guifanxing Jieshi Jicheng** ("A Collection of Standard Interpretations of the Laws of the prc"), Jilin People's Press, April 1991, pp.1477-78.

105. <sup>0</sup> I.e., to conduct an autopsy.

106. <sup>0</sup> I.e., ordinary dissection and forensic dissection.

107. <sup>0</sup> Literally, "doing work on the family," meaning reconciling the family to what has happened.

108. <sup>0</sup> The usual cost of cremation in China is at least 400 *yuan*. (See "China's Cremation Rate Hits All-Time High," Xinhua General News Service [Beijing], April 13, 1992.)