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# PEOPLE'S REPUBLIC OF CHINA

## State Secrets -- a pretext for repression

Since 1989 dozens of people, including prisoners of conscience, have been detained in the People's Republic of China (PRC) on charges related to "state secrets". At least 14 people, whose cases are of concern to Amnesty International, are currently imprisoned on such charges. Others have been released but are still on bail awaiting trial on appeal. The nature of some of these cases raises concerns that the legislation on state secrets is being used to repress fundamental freedoms.

The meaning given to the term "state secrets" in China is very broad. It encompasses matters which would be the subject of public scrutiny in other countries and goes far beyond what is needed to protect national security. Among the issues which are classified as state secrets, for example, are the national statistics on the number of people sentenced to death and executed every year. Virtually anything can be classified as a state secret if the authorities so decide.

Amnesty International is concerned that the legislation on state secrets is being used to prevent public debate on a wide range of issues which have little to do with national security and to imprison people for the peaceful exercise of their right to freedom of expression and association. The organization is also concerned that those charged with state secrets offences face unfair judicial procedures.

### **I. Background: State secrets, national security and political control**

A series of laws and regulations relating to the protection of state secrets and state security has been promulgated in China in recent years. They are part of measures taken by the authorities to tighten control over information circulating within China and contacts with foreigners, as well as to prevent dissemination abroad of information judged to be politically sensitive. State control over information had loosened since the launch in the 1980s of economic reforms and an "open door" policy, which opened the country to foreign investment and led to growing contacts with foreign companies and individuals.

The *Law of the PRC on the Protection of State Secrets* was adopted on 5 September 1988, replacing the 1951 *Interim Regulations for Protecting State Secrets*. On 25 May 1990 the *Procedures for Implementing the Law of the PRC on the Protection of State Secrets* were introduced. Since then, a number of regulations that include provisions on state secrets have been issued, including the *Law of the PRC on Safeguarding State Security*.

Various press reports indicated in 1994 that a large number of other regulations pertaining to state secrets were due to be issued or revised.<sup>1</sup>

In October 1993 the Chinese Justice Minister stated during a press conference that the controversial provisions on “counter-revolutionary crimes” in the Criminal Law might some day be abandoned in favour of a state security or sedition law. Since the mid-1980s there had been a debate within Chinese legal circles about whether to retain provisions on “counter-revolutionary crimes” in China’s Criminal Law. Some legal scholars considered that maintaining ostensibly political crimes in the law was detrimental to China’s image and that these provisions should be repealed. Some advocated that they be replaced by provisions on national security. This debate in legal circles reflected a broad demand within China to end political persecution and de-politicize legislation. It came amidst efforts to revive a professional judicial system, following the “lawlessness” which had prevailed during the Cultural Revolution (1966-1976). Despite the introduction of legislation on state security and state secrets since 1988, these provisions remain in force and may even be used in combination with the new legislation, like in Bao Tong’s case (see Chapter V).

The new legislation on state secrets reflected the government’s growing concern about the circulation of information traditionally regarded as “*neibu*” (“internal”, non-public) since the “open door policy” was introduced. The official newspaper *People's Daily* pointed out at the time the State Secrets Law was adopted:

"The [1951] *Interim Regulations for Protecting State Secrets*... can no longer meet the objective needs arising from the tremendous changes of the situation... Currently, special efforts should be made to understand and handle correctly the relationship between national security work and the reform and open policy; that is, between keeping state secrets and making the activities of leading organs open to the public."<sup>2</sup>

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<sup>1</sup> According to the *Huaqiao Ribao (Overseas Chinese Daily)*, 1 December 1994, a "Committee of the Working Group on Legislation on State Secrets" met in Hainan on 30 November 1994 to study further regulations to be issued in 1995 and to examine issues on management of secrets within large and mid-scale state industries. The State Secrets Bureau had reportedly planned to issue more than 20 new regulations and to revise almost 100 existing ones (see Appendix 2: List of recent regulations related to state secrets and state security.)

<sup>2</sup> *Renmin Ribao (People's Daily)*, 6 September 1988.

Since then, official denunciations of the “leaking” state secrets have continued, portraying such dissemination as a threat to national security. Some cases in which people were given heavy prison sentences for divulging alleged state secrets to the foreign media were publicized in the official press. In 1993 a series of articles attacked the “leaking” of “state secrets” after a new law on state security was promulgated. On 11 October 1993 a front-page editorial of the official *People's Daily* carried a message from Jiang Zemin, General Secretary of the Chinese Communist Party (CCP), calling for new efforts to bolster state security:

"A small number of hostile forces abroad have never ceased activities threatening China's security... They exploit the avenues of China's reform and opening up to collect, pilfer and spy on our government, economic, technological and military secrets. They use any conduit to carry out activities of infiltration, splitting up and destroying. The whole nation should not slacken its vigilance."<sup>3</sup>

These official statements about state secrets and national security must be seen against a background of government-imposed restrictions over freedom of information and expression, including freedom of the press. In early January 1996, the official newspaper *Liberation Army Daily* cited CCP General Secretary Jiang Zemin as giving the following message to newspapers in China: “The most important thing in running newspapers is to uphold the party and political line.”<sup>4</sup>

State controls are being extended to new forms of media. In mid-January 1996 the government introduced a system to control information distributed to subscribers in China by foreign wire services which provide economic information, to be implemented from 15 April 1996. The official *New China News Agency*, *Xinhua*, was made responsible for this task. In return for its distribution of information for other agencies, *Xinhua* shall receive service fees, but also censor any information from such foreign services which “slanders or jeopardizes the national interests of China”. Approved agencies that released such information or information forbidden by Chinese law would be dealt with according to law, a *Xinhua* official told *Reuters*. According to *Xinhua*, this was not an attempt to censor information but “to prevent malicious attacks on China”. Earlier in January, after limiting access to satellite television, the

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<sup>3</sup> Cited by *Reuters*, 11 October 1993.

<sup>4</sup> *The Independent* (London), 5 January 1996.

authorities had also confirmed their intention to limit access by Chinese users to some Internet information, including pornographic but also “anti-government” information.<sup>5</sup>

It is in this context of political pressure on Chinese journalists and control of the sources of information that the state secrets legislation has been enforced. It contains vague and sweeping provisions which open the door to human rights violations.

## **II. State secrets legislation: open to abuse**

### **2.1. A broad definition of state secrets**

The *Law of the PRC on the Protection of State Secrets* (hereinafter: State Secrets Law) gives a general definition of state secrets as being "matters that affect the security and interests of the state". The law does not define precisely what constitutes the “security and interests of the state”, but it lists broad categories of information which fall within the scope of state secrets. These include conventional matters of national security, such as national defence. However, they also include "secrets" concerning “important policy decisions on state affairs”, “economic and social development”, “science and technology development” and “criminal investigations”. The definition is not exhaustive and includes "other state secrets that by decision of the state departments on protecting state secrets should be safeguarded".

This already broad definition is made even broader by another provision, according to which "secrets of political parties" will also be considered to be "state secrets" if they are deemed to "affect the security and interests of the state". In China, where the affairs of the CCP are intricately linked to those of the state, this effectively bans public reporting or debate of any political issue that the CCP authorities decide should not be disclosed.

According to Shen Hongying, director of the State Secrets Bureau, the national department responsible for classifying secret information, there were about 300 “serious” cases of “leaking” state secrets in China in 1994, of which about a third concerned scientific, technological and economic secrets. "As China's scientific and technological as well as economic strength grows rapidly nowadays, there are increasing cases involving the stealing

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<sup>5</sup> *Bookseller*, 12 January 1996.

of secret information of science, technology and economy by foreign companies", he said.<sup>6</sup> Other official sources indicated in 1994 that the number of cases where such confidential documents were being illegally brought out of the country through the Shenzhen customs rose by 100 per cent in 1993. It is not known, however, how many of these cases led to detention.<sup>7</sup>

The broad scope of what the Chinese authorities consider to be a threat to national security or other legitimate interests is illustrated by the following story, published in the official *Tibet Daily* in October 1993 as a public example of "state secrets: a worker in a towel factory gave the representative of a foreign hotel a bottle of special water used by the factory, which was the secret behind the product's success. This allowed the foreign hotel to get hold of the technique, following which the hotel no longer ordered towels from the factory. "This anecdote shows the painful lesson of the factory's negligence of education in keeping secrets," said the newspaper. "By revealing secrets to a foreigner, the worker causes huge economic losses not only to his factory but also to the state. Therefore, every citizen should enhance his security awareness and do his part in consciously guarding state secrets."<sup>8</sup>

The scope of "state secrets" was widened even further in 1990 when the *Procedures for Implementing the Law of the PRC on the Protection of State Secrets* (hereinafter: Implementation Procedures) were adopted. These stipulate that if the disclosure of information on certain matters resulted in a number of "consequences", this information should be classified as a state secret. Eight consequences are defined, including "endangering the consolidation and defence of the state political power", and "affecting state unification, national unity and social stability". This refers to virtually any information that is deemed to undermine the authority of the government or to be a potential source of social discontent or ethnic unrest.

## **2.2. a broad scope of criminal responsibility**

Under the State Secrets Law, all citizens have the "duty to guard state secrets". Any form of disclosure of state secrets can be punished. The Implementation Procedures stipulate that either of the following acts constitute "disclosing state secrets":

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<sup>6</sup> *Zhongguo Xinwen She (China News Agency)* in English 24 April 1995, cited by SWB (Summary of World Broadcast).

<sup>7</sup> *Zhongguo Xinwen She*, 12 April 1995.

<sup>8</sup> *Xizang Ribao (Tibet Daily)* 10 October 1993; translation SWB, 16 November 1993.

1. Making state secrets known to unauthorised persons;
2. Making state secrets go beyond the designated limits, and being unable to prove that they have not become known to unauthorized persons.

These provisions appear to suggest that defendants could be convicted even if there is no evidence that the state secret became known to unauthorised persons, merely because they cannot prove the contrary. This violates the fundamental legal principle of presumption of innocence, entailing that the prosecution have the burden of proving their case.

The State Secrets Law makes clear that people can be held legally responsible for any form of disclosure of state secrets, including “in private conversation or communications” (Article 24), or if state secrets are disclosed through negligence or intentionally (Article 31).

The law stipulates that punishment for disclosure of state secrets in serious cases shall be pursued under Article 186 of the Criminal Law, which provides for a maximum of seven years' imprisonment. However, some supplementary regulations to the State Secrets Law, also adopted in 1988, increased the punishment to anything up to the death penalty for those who "steal, secretly gather, buy or illegally provide state secrets for organizations, groups or individuals outside the territory". This clause has been used in recent years to impose heavy prison sentences on people accused of disclosing or passing on secret information to foreign reporters or newspapers (see Chapter V, the cases of Bai Weiji, Gao Yu, Xi Yang and Wu Shishen). As of early 1996, the harshest sentence known to have been imposed on someone convicted of disclosure of state secrets charges was life imprisonment.

### **2.3. Open secrets**

The State Secrets Law stipulates that the "concrete" scope of state secrets shall be determined by various national and local state organs with different responsibilities. It describes three degrees of secrecy: "secret" (*mimi*), "highly secret" (*jimi*) and "top secret" (*juemi*), and defines the degree of secrecy by the extent of damage to state security or state interests that may result following disclosure.

In practice, the degree of secrecy is relative without clear guidance, and the law is applied inconsistently and arbitrarily. The complex system of classification of information and the extent of circulation of “internal” information within the CCP, which has about 50 million members, give an enormous number of people in China access to so-called “secrets”. It means that in

effect such information is already accessible to the public domain, and that its disclosure could not be considered as a criminal offence under international standards.

Among documents considered to be "top secret" are "central" documents issued by the Central Committee of the CCP and by the State Council (government) which have a restricted distribution at provincial level. The degree of secrecy determines in reverse proportion the scope of distribution, but this may change according to needs. For example, some central "confidential" material may be circulated to CCP members and cadres, and sometimes also to all citizens, in case of major events or a change in the leadership. When the degree of secrecy is low, administrations are allowed to reprint certain documents and expand distribution. *Xinhua* has its own wide range of internal publications, including "top secret" ones. There is also a range of publications that have a restricted but broad domestic distribution, including books marked "internal" (*neibu*) because the information they contain may be politically sensitive.<sup>9</sup>

While in practice, many documents and publications that are marked for restricted circulation are widely available, any information marked for restricted circulation may be declared to constitute a "state secret" whenever it suits the authorities. People have been detained for disclosure of such open secrets, as in Bai Weiji's case (see page 21).

### III. Contravention of international standards

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression, and provides that this right "includes freedom ... to seek, receive and impart information and ideas through any media and regardless of frontiers." It is widely considered that Article 19 of the UDHR is a norm of customary international law, binding on all states. However, it is also recognized in international law that some rights, such as the right to freedom of expression, are not absolute and may be limited for certain narrowly defined reasons. Article 29(2) of the UDHR provides that

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<sup>9</sup> See Huai Yan, Suisheng Zhao: "Notes on China's confidential documents", in *The Journal of Contemporary China*, n.4, Fall 1993.

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

The International Covenant on Civil and Political Rights (ICCPR) also guarantees the right to freedom of expression, and spells out in more detail the permissible restrictions on that right. Article 19(3) of the ICCPR states that the exercise of the right to freedom of expression “carries with it special duties and responsibilities” and that it may therefore be subjected to certain restrictions. However, it stipulates that these “shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or of public order or of public health or morals”. Although China is not a party to the ICCPR, this provision is recognized as an authoritative statement of the extent to which the rights to freedom of expression may be limited.

The legislation on state secrets in China, and the manner in which this legislation is implemented, violates these international standards in a number of respects.

### **3.1 Legitimate national security interests**

While it is open to the Chinese authorities (or to any other government) to restrict freedom of expression when there are national security interests at stake, international law does not grant an unfettered discretion to states to define for themselves what constitutes an issue of national security. The UN Special Rapporteur on freedom of opinion and expression has stated in this respect:

“For the purpose of protecting national security, the right to freedom of expression and information can be restricted only in the most serious cases of a direct political or military threat to the entire nation.”<sup>10</sup>

Furthermore, it is also well established in international law that the “threat” must implicitly relate to a threat of the use of force or violence, or to matters concerning the state’s ability to respond to such a threat. Again, in the words of the Special Rapporteur:

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<sup>10</sup> See: “*Report of the Special Rapporteur, Mr Abid Hussein, pursuant to the Commission on Human Rights Resolution 1993/45*”. Reference E/CN.4/1995/32, 14 December 1995, para 48.

"Only in highly exceptional cases can a nation's security be directly threatened by a person's exercise of the right to freedom of expression. Such a threat would require, at the very least, the clear establishment of the person's ability and intention to cause the taking of actions directly threatening national security, in particular by propagating or inciting the use of violence."<sup>11</sup>

The Chinese definition of state secrets, most of which the government appears to justify on national security grounds, goes far beyond the restrictive scope of national security interests in international law. The general reference to matters affecting the "security and interests of the state", and the broad categories in which "state secrets" are located, including "important policy decisions on state affairs" and "economic and social development", clearly cover matters that do not relate to direct political or military threats to China. Many of the issues covered, and indeed the information disclosed in the cases discussed below where the state secrets law has been applied, would be the subject of public scrutiny and debate in most countries and would not appear to pose a threat to national security as set out in international law.

The cases discussed below show how the state secrets legislation has been applied in ways that do not relate to any legitimate matter of national security, but rather to protect the government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of public institutions in China, to restrict criticism of public figures or dissent from official policies, to suppress labour unrest and to intimidate journalists.<sup>12</sup>

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<sup>11</sup> Experts in international law, national security and human rights met in Johannesburg, South Africa, in October 1995 and adopted a declaration of principles (the "*Johannesburg Principles on National Security, Freedom of Expression and Access to Information*"), which states in Principle 2: "A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the threat or use of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government." The meeting was convened by Article 19, the International Centre Against Censorship (a non-governmental organization dealing with freedom of expression) and the Centre for Applied Legal Studies of the University of Witwatersrand.

<sup>12</sup> See in this regard Principle 2(b) of the "Johannesburg Principles" ... a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect the government from exposure of wrongdoing, or to entrench a particular ideology, or to conceal information about the functioning of its public institutions, or to suppress industrial unrest."

### **3.2 Restrictions must be provided by law**

Under international law, restrictions on freedom of expression must be “provided by law”. This requirement means not only that legislation is in place setting out such restrictions, but also that such legislation sets clear and precise parameters for the type of information or expression which is to be restricted. The legislation must be sufficiently precise to enable individuals to know in advance whether obtaining or releasing information, or otherwise exercising their right to freedom of expression, will be unlawful. Vague definition of what is a “state secret”, or definitions which give too much discretion to the authorities to decide in each case, after the fact, what constitutes a “state secret” do not meet this requirement. Such definitions have the effect of allowing for blanket restrictions which in turn stifle legitimate political debate.

As discussed above, the definition of state secrets in Chinese legislation is very broad, and includes an apparent catchall category -- “other state secrets that by decision of the state departments on protecting state secrets should be safeguarded”. In addition, the categories of information which the law does specify are themselves quite general (e.g. “secrets” concerning “important policy decisions on state affairs” or “secrets of political parties” that “affect the security and interests of the state”). The “concrete” scope of the law is left to be determined by a number of national and local organs. This leaves room for politically motivated detention without charge for lengthy periods, pending the decision of local organs on whether a crime was committed or not.<sup>13</sup> The overall effect is that it is very difficult to anticipate in advance with any degree of certainty what types of information are “state secrets”. For Chinese citizens, in particular journalists and others engaged in following and reporting on public affairs, the only sure means of not running foul of the state secrets legislation is to be extremely cautious in reporting on, or obtaining information about, political and economic issues in China.

### **3.3 Restrictions must be necessary**

Under international law, a restriction on freedom of expression must be “necessary” to meet one of the legitimate reasons (such as the protection of national security) which are recognized as justifying restrictions. This means that even when an issue may legitimately relate to national security, and the law clearly defines the scope of permissible restrictions, the restrictions imposed must be proportional to the threat to national security. The Special Rapporteur on freedom of opinion and expression has indicated that “the general rule is the protection of the

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<sup>13</sup> See the case of the eleven seafarers and that of Xin Hong in Chapter IV.

freedom [of expression]" and restrictions on this freedom "should be the exception to the rule. The restriction may not be applied in such a way that the expression of an opinion on any particular matter is merely suppressed"<sup>14</sup>. In China, the legislation on state secrets has been used precisely for that purpose, in particular for intimidating and imprisoning human rights defenders and journalists, or stifling attempts by citizens to participate in political debate.

The obligation clearly lies on the government to demonstrate why particular restrictions are necessary or why punishing disclosure of "state secrets" is warranted. Given that the trials of those charged with "leaking" state secrets or related offences fall far short of international standards (and are often held in secret), it appears that the Chinese Government shirks this obligation. In addition, in some cases (see below), people have been charged and imprisoned for disclosing "secret" information that was in effect already widely known and available. It is hard to see why a restriction on information to protect national security is necessary when that information is already widely known.<sup>15</sup>

Finally, even if one accepts that it is legitimate to punish a particular individual for disclosing information that might legitimately relate to national security issues, the punishment should be proportionate to the crime. In many of the cases below, people have been sentenced to many years in prison for disclosing information that was already widely known.<sup>16</sup>

#### **IV. State secrets - a pretext for repression**

The cases described below illustrate how the state secrets legislation in China has been used to arbitrarily imprison people, many of them prisoners of conscience. These cases highlight the broad definition of "state secrets", the ambiguity of the law and the political motivations underlying prosecution and sentencing. They show the way in which the law has been used to stifle legitimate political debate and restrict freedom of expression. In addition, the cases point

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<sup>14</sup> Op. cit., paragraph 44.

<sup>15</sup> See Principle 16 of the Johannesburg Principles: "Once information has been made generally available, even through illegal means, any justification for trying to stop further publication will be overridden by the public's right to know."

<sup>16</sup> See the case of Gao Yu in chapter 5.1.

to efforts to intimidate and imprison human rights defenders and journalists, and to suppress trade union rights.

#### **4.1. Restriction on political debate**

CCP officials and journalists have been charged with state secrets offences for divulging or publishing information about the affairs of the Party or government, or about the lives of state leaders. Under the law, state secrets include "the affairs of political parties" when these are deemed to "affect the security and interests of the State". This has resulted in the detention of prisoners of conscience. Among those still imprisoned is Bao Tong, a high-ranking CCP official before his arrest (see page 18). Other cases are cited below.

Chen Xiaodong, aged 40, a former cadre of the Shanghai CCP General Office, was sentenced in August 1994 to a one-year suspended prison term plus one year's deprivation of political rights<sup>17</sup>. He was released after having been detained for nearly 10 months. He was reportedly accused of "leaking important state secrets" for having written an essay called "*The General Secretary Brought Me Bad Luck*". This essay referred to his dismissal from his job at the Shanghai CCP General Office due to an article he published in 1990 about CCP General Secretary Jiang Zemin. According to the New York-based organization Human Rights in China, Chen Xiaodong was apprehended on 22 October 1993 in Shanghai, carrying a manuscript of a book, "*Shanghai literary circles in the eighties: the inside story*", which included the essay in question. After his apprehension, he was reportedly forced to confess to "having illicit contacts with a foreign country".<sup>18</sup> Amnesty International believes that Chen Xiaodong was detained purely for exercising his right of freedom of expression, that his detention was motivated by a desire to clamp down on critics or unofficial accounts of the Chinese leadership, and that he was a prisoner of conscience.

Qi Lin, aged 38, a former assistant foreign editor with the official *Beijing Daily (Beijing Ribao)*, was apprehended on 11 July 1991. On 8 April 1992 he was sentenced to four years in prison after a trial *in camera* for "leaking state secrets". He was accused of having provided

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<sup>17</sup> In China, a criminal sentence may be followed by a fixed-term deprivation of political rights. The convict is therefore deprived of the right to elect and the right to be elected; the rights provided by Article 35 of the Constitution: freedom of speech, of the press, of assembly, of association, of procession and of demonstration; the right to hold a position in state organs and the right to hold a leading position in any enterprise, institution or people's organization.

<sup>18</sup> See Human Rights in China: *China Rights Forum*, Summer 1995, pp 16-17.

information for an article in the Taiwan newspaper *United Daily News (Lianhebao)* which appeared on 8 January 1991. The article concerned disciplinary measures taken by the CCP authorities against Hu Jiwei, former editor of the *People's Daily* and member of the National People's Congress Standing Committee, because of his activities during the 1989 pro-democracy movement. The information was widely known in intellectual circles in China. Qi Lin became seriously ill in prison and was released on medical parole after one year in detention. Upon his release, he was not reinstated in his old post and unable to obtain work as a journalist with any other paper, and found himself unemployed. Amnesty International considered Qi Lin was a prisoner of conscience.<sup>19</sup>

Yu Xiguang, 37, was sentenced in 1994 to two years in prison for "leaking state secrets". A lecturer at the central CCP school, his alleged offence was to have printed a letter of self-criticism written by Deng Xiaoping in the 1970s in a book, *The Stormy Twilight*. According to the press, Deng Xiaoping's letter, originally written in 1973, was banned at the time it was written and never distributed.<sup>20</sup>

Two other people were reportedly detained in connection with the case: Bu Weihua, a researcher on CCP history, and Xiao Donglian, an army officer. The three are said to have been detained on 27 December 1993 and indicted on 5 January 1994<sup>21</sup>. Yu Xiguang was tried at the end of September 1994 and sentenced on 16 December 1994. Yu Xiguang's wife was not informed about the trial. After the trial, Yu Xiguang was reportedly detained in the newly opened Dahongmen International and Political Prison, in southern Beijing, which is controlled by the Beijing Department of State Security<sup>22</sup>. Amnesty International considers that Yu Xiguang was detained solely for exercising his right to freedom of expression and was a prisoner of conscience. He is now presumed released after completion of his sentence. It is not known whether Bu Weihua and Xiao Donglian were tried with him and their whereabouts are not known. Amnesty International is calling on the Chinese authorities to disclose their legal status and whereabouts.

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<sup>19</sup> See Amnesty International: "*Recent Trial and Arrests Connected to the 1989 pro-democracy Movement*", AI Index ASA 17/08/92, 31 January 1992. See also Urgent Actions ASA 17/16/92, ASA 17/17/92, ASA 17/30/92 and ASA 17/14/93.

<sup>20</sup> *Hong Kong Standard*, 11 November 1994.

<sup>21</sup> *Huaqiao Ribao*, 11 November 1994.

<sup>22</sup> *Eastern Express*, 30 December 1994.

The complexity of the Chinese classification procedures, the intervention of various levels of administration which may disagree on a particular case, and the broad scope and vagueness of the law have resulted in others being detained for lengthy periods without charge or trial for political reasons.

Eleven Chinese seafarers were detained in 1992 after leading a successful dispute over wages and working conditions with their Greek employer, with the help of the International Transport Workers Federation (ITF)<sup>23</sup>. Ten were apprehended<sup>24</sup> on their return from Italy at Beijing Airport on 19 April; one was apprehended at his home in Guangzhou in November.

Three of the men, Gao Xiaohui, Hua Chungui and Zhang Aizhao, were detained without charge or trial for four months before being formally arrested and charged with "leaking state secrets". They were detained a further 10 months before being tried, acquitted and released. The eight others, Xu Shichang, Zhu Ming, Yao Rongqing, Song Jianzhong, Wang Jianmin, Cao Chenghai, Jiang Binghua and Li Jinqiu, were reportedly detained without charge or trial for an undetermined period, before being released without charge.

Several Chinese press articles indicate that the reason for their detention was that they had revealed to "a foreign organization" (the ITF) the wages they actually received after a Chinese employment agency took its commission from the Greek employer<sup>25</sup>. The magazine *Democracy and Law* explained that action was taken against the seamen under pressure from the foreign shipping company, which told the employment agency it would not hire more people from them if the 11 men were not jailed. The article quoted the employment agency's regulations as expressly forbidding Chinese crews from contacting the ITF while abroad or

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<sup>23</sup> The seamen had been working for one year on the *Arcadia*, a Bahamian registered cargo vessel. They reported to the Chinese manning agent, a company in Tianjin, that they were badly treated and worked extremely long hours, but received no response. They then turned to the ITF, who resolved the dispute and obtained the missing wages. They were repatriated to China at their request.

<sup>24</sup> The distinction between "apprehension" and "arrest" refers to the fact that in China, after people are taken in custody by the police - ie apprehended (*jubu*) - they often stay in detention without charge, under various form of administrative detention, for a prolonged period before being formally charged - ie arrested (*daibu*) - when a proper criminal investigation begins.

<sup>25</sup> The seafarers are believed to have been paid US\$95 a month, whereas the International Labour Organization prescribed a monthly minimum of US\$296.

revealing their salaries: this information would harm the interests of the Chinese manning industry and was therefore a state secret<sup>26</sup>.

The case of the three men was heard on 8 August 1993 before Tianjin Heping District People's Court. According to *Democracy and Law*, the accusation was based on a 1989 interpretation by the Tianjin State Secrets Bureau, addressed to the Ministry of Labour, which stated that "the quoted price of the labour force belongs to state secrets"<sup>27</sup>. The defence lawyers provided the tribunal with a document issued on 23 July 1993 by the Secretariat of the Ministry of Labour, according to which "the quoted price" did not relate to salaries given to workers sent abroad by domestic companies. The defence lawyers concluded that the affair was nothing but a wage dispute between the shipping company, the employment agency company and the seamen, a civil dispute that should not have been handled by the Procuratorate.

The tribunal reserved its judgment. The seamen were eventually released on bail on 18 August 1993, after 14 months in detention. On 3 January 1995 the three men were acquitted when the case came before Tianjin Municipality Heping District People's Court. According to a press article<sup>28</sup>, the court declared that although the defendants had infringed regulations included in their contracts, they had not committed a crime.

Nevertheless, two of the defendants, Hua Chungui and Gao Xiaohui, are reported to have appealed against the judgment on the grounds that it said they had violated their contract and because it had failed to order the return of their confiscated property. The local Procuratorate is also reported to have appealed, insisting that the three men were guilty of the crime as originally charged. The Procuratorate's appeal was sent for review by Tianjin Intermediary People's Court, but as of March 1996, the court was still reported not to have ruled on the

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<sup>26</sup> The seafarers were reportedly met at Beijing airport by the manning agent and 10 agents of Tianjin Heping District Procuratorate, who took them back to Tianjin city, 150 kilometres southeast of Beijing, in a police car. They were body-searched and all their possessions, personal documents and foreign currency were seized. All original documents relating to the dispute were confiscated. The money seized was reportedly handed back to the manning company before the men were charged. See *Minzhu yu Fazhi* (Democracy and Law), April 1994, pages 22 to 25 and *Nanfang Ribao* (Southern Daily), September 1993.

<sup>27</sup> Document 1993-89: "Letter of interpretation about 'quoted prices of working force abroad'".

<sup>28</sup> *Huaqiao Ribao* (Overseas Daily), 7 January 1995.

appeal. In the meantime, the 11 are believed to have suffered hardship: all lost their original jobs, they have been prevented from leaving their home town for more than three years and have been unable to find work since their navigation documents were seized.<sup>29</sup>

Amnesty International believes that the 11 seafarers were detained for having exercised their right to freedom of expression and association and were prisoners of conscience. It is concerned that three of them were detained for a prolonged period without charge or trial, and that an appeal is still pending which could result in them being imprisoned. It is also concerned that the eight others were detained for an undetermined period without charge or trial and that all 11 may have been restricted in their freedom of movement after release.

The case of Xin Hong, a 67-year-old retired coal delivery worker, also illustrates how the misclassification of information as state secrets can be used for political reasons. Xin Hong was apprehended on 26 August 1994 in Tianjin and accused of "leaking state secrets", apparently in connection with her son's activities abroad. Her son, Gao Peiqi, was a police officer in Shenzhen before he was detained for six months in 1990 in connection with the crackdown on the 1989 pro-democracy protests<sup>30</sup>. He subsequently fled China and went to the United Kingdom where he became a leading member of a Chinese exile organization. There are grounds to believe that her detention was in fact a means of retaliating against her son's activities abroad.

After her arrest, Xin Hong's house in Tianjin was searched and letters and some of her son's personal work diaries were confiscated. She had been sending such documents to her son at his request, and this was the reason for her detention<sup>31</sup>. The seized diaries were reportedly sent back to Shenzhen Public Security Bureau (PSB) to determine whether they contained state secrets or not. Gao Peiqi's diaries might have included details on criminal cases, a category protected by the State Secrets Law when they are "in the course of investigation".

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<sup>29</sup>See: "*ITF Complaint Against the People's Republic of China to the International Labour Organization Committee on Freedom of Association*", December 1994. The ITF document provides other examples of persecution by the Chinese authorities against seafarers trying to pursue their "legitimate grievances".

<sup>30</sup> On 4 June 1989, a series of pro-democracy demonstrations was brutally suppressed by the army in Beijing, causing at least a thousand deaths. This was followed by the detention of many more across the country.

<sup>31</sup> See Amnesty International: Urgent Actions ASA 17/39/94 and ASA 17/75/95.

But, if so, the details could only have concerned cases that were at least five years old, which could be unlikely to still have been "in the course" of investigation. Furthermore, according to Gao Peiqi, when he himself was detained in February 1990, the family house was searched by the political affairs' section of Shenzhen police, who did not seize his diaries.

In October 1994 a police officer told the family that "if in appearance the diaries did not contain secrets, it did when put all together". On 4 November 1994 it was announced that Xin Hong had been formally arrested, charged with "illegally providing state secrets", and transferred to Tianjin prison. She was eventually released in May 1995 without being tried after eight months in detention. Amnesty International considered she was a prisoner of conscience and asked for her immediate and unconditional release.

#### **4.2. Repression of human rights defenders**

Human rights activists have been charged with "stealing" or circulating "state secrets" specifically for collecting and disseminating information about human rights violations in China.

Gedun Rinchen, a Tibetan tourist guide, and Lobsang Yonten, a 65-year-old former monk, were detained for eight months in Tibet in 1993. Detained on 13 May 1993, they were accused of having prepared a letter for a delegation of European Community diplomats due to arrive in the Tibetan capital, Lhasa, in mid-May 1993. The letter concerned human rights abuses in Tibet. Gedun Rinchen was also accused of having "stolen state secrets" for collecting information on human rights violations over a period of years. Both men were released in January 1994 after intense international pressure. Since his release, Gedun Rinchen escaped to India, but Lobsang Yonten died of natural causes nine months later.<sup>32</sup>

Harry Wu, aged 58, was expelled from China on 24 August 1995 after more than two months in detention, hours after having been sentenced to 15 years' imprisonment by Wuhan Intermediate People's Court. A Chinese-born US citizen, Harry Wu was detained at the border with Kazakhstan, in the Xinjiang Autonomous Region, as he was trying to enter China. A former political prisoner in China, he is the founder and Executive Director of the Laogai Research Foundation, a human rights organization focusing on the labour camp system in

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<sup>32</sup> See Amnesty International: "*Appeal for Gedun Rinchen*", AI index ASA 17/28/93, July 1993 and Urgent Actions ASA 17/21/93, ASA 17/24/93, ASA 17/35/93, ASA 17/43/93, ASA 17/04/94, ASA 17/35/93, ASA 17/43/93.

China. He was charged with “stealing, prying into and illegally providing state secrets to overseas institutions, organizations and people”. The main accusations against him related to his trips to China between 1991 and 1994 during which he gathered information and made films on reform-through-labour camps, prisons and organ transplants from executed prisoners.<sup>33</sup>

### **4.3. Clampdown on the press**

A number of those detained for divulging alleged state secrets are journalists and other people who either worked for or wrote articles for the foreign media, mainly the Hong Kong press, or provided them with information. These arrests have been interpreted by Hong Kong journalists as an attempt to draw them into self-censorship ahead of the 1997 reintegration of Hong Kong into the PRC. Among such cases are those of Gao Yu, Bai Weiji and his wife Zhao Lei, Xi Yang and Wu Shishen (see Chapter V).

The sensitivity of media and publishing activities in China is underlined by the fact that the State Secrets Law includes provisions entailing special duties for these professions. Article 20 states that:

“The publication and distribution of newspapers, magazines, books, maps, charts, reference material, and video tapes, as well as the production and broadcasting of radio and television programs and movies, should observe the relevant security regulations against disclosure of state secrets”.

Xi Yang, a reporter for the *Ming Pao*, a Hong Kong newspaper, was sentenced in 1994 to 12 years’ imprisonment for having revealed in an article information on China’s financial plans (see page 23). The Chinese authorities condemned him for practices they do not recognize as “normal” journalism. However, Hong Kong and international media organizations questioned the Chinese authorities’ definition of “normal” journalism and condemned Xi Yang’s sentence. Even some leading pro-China figures in Hong Kong joined in the condemnation of his sentence. Various groups, including Hong Kong delegates to China’s National People’s Congress, urged Beijing to publish the text of the verdict against Xi Yang. The Democratic Alliance, a political group in Hong Kong, also called on the Chinese judicial authorities to issue

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<sup>33</sup> See Amnesty International: Urgent Actions ASA 17/43/95 and ASA 17/48/95.

guidelines on the definition of state secrets "given the fact that Hong Kong journalists might be able to obtain state secrets from proper channels while reporting in China".<sup>34</sup>

On 5 November 1993, Jia Chunwang, the State Security Minister, commenting on Xi Yang's arrest, was quoted as saying:

"In the case of doing a story on the People's Bank of China, the normal coverage procedure dictated that the first person who the reporter should interview is the bank president or personnel authorized by the president; it would be illegal to make unauthorized contacts with bank employees for an interview."<sup>35</sup>

Making official sources the only "normal" source of information greatly limits the gathering of information, in such a way that it may be seen as contravening the right to "seek, receive and impart information any ideas of all kinds, regardless of frontiers" as guaranteed by Article 19 of the ICCPR. In practice, most journalists working in China, whether Chinese or foreign, may have to ignore such restrictive rules and run the risk of prosecution. The situation is even more threatening for the majority of Chinese journalists who work for the official press, in particular for agencies, national and provincial dailies, as well as radio and television stations, as they are employed by the state. State workers are, under the Criminal Law and its jurisprudence, even more bound to observe secrecy rules than ordinary citizens. When found guilty of offences related to state secrets, their status as state workers may be a ground for an aggravated sentence, as in the case of Wu Shishen (see page 30).<sup>36</sup>

## V. The victims

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<sup>34</sup> *South China Morning Post* (SCMP), 6 April 1994.

<sup>35</sup> Reported by Xu Simin, member of the Chinese People's Political Consultative Conference Standing Committee, in his Hong Kong newspaper, *The Mirror*. Translated by FBIS (Foreign Broadcast Information Service), 26 November 1993.

<sup>36</sup> Article 186 of the Criminal Law (1980), under which people found guilty of state secrets offences may be sentenced, still refers primarily to state employees as potential offenders. It provides thereafter that "non-state employees" are subject to similar punishment "at the discretion of the authorities". In an article published at the time of promulgation of the law, the *People's Daily* also underlined the special duties of state employees when specifying: "State functionaries, in particular, should exemplify themselves in observing the State Secrets Law and constantly show concern for state secrets and security. Leading party and government organs who shoulder important tasks should play an exemplary role" (cited by FBIS, 6 September 1988).

Most of the cases described below are those of people who are currently serving prison sentences on state secrets charges or who were detained in connection with these cases. All those sentenced have been tried behind closed doors. Article 111 of the Criminal Procedure Law provides that all state secrets cases be heard *in camera*. In addition, in at least several cases the verdict is known to have been passed in secret, in contravention of China's own law, which provides that the verdict should be announced in public "in all cases". Incommunicado detention before trial has been reported in several of these cases and is believed to be systematic. Limited access to lawyers has also been reported.

### **5.1. Prisoners of conscience**

Amnesty International considers a number of people tried and sentenced on charges related to state secrets to be prisoners of conscience. These are cases where the authorities appear to have gone way beyond the limited restrictions on freedom of expression permissible under international law in the interests of national security. In many cases, information allegedly disclosed was not directly related to matters of security of the state, or the information was already in the public domain. The interference of high-level political authorities, leading to disproportionate sentences in some cases, compounds the suspicion that state secrets legislation is being used as a tool of political repression rather than a genuine mean of protecting the national security.

#### **Bao Tong**

Bao Tong, 59, is currently serving a seven-year prison sentence to be followed by two years' deprivation of political rights. Bao Tong is the most senior CCP official to have been sentenced for state secrets offences since 1989. He is reported to be



**Bao Tong**

seriously ill and held at Beijing First Hospital.<sup>37</sup>

Bao Tong was a close assistant of the former CCP General Secretary, Zhao Ziyang, who resigned shortly before the imposition of martial law in Beijing on 20 May 1989. Bao Tong was apprehended shortly after, on 28 May 1989. He was then a member of the CCP Central Committee (CCPCC) and Director of the CCPCC Research Centre for Reform of the Political Structure. Under his direction, the centre had drawn up a draft scheme for political reform, which was reportedly opposed by anti-reform elements in the CCP leadership.

Following his detention, Bao Tong was held for a year at Qincheng prison in Beijing. In May 1990 he was placed under house arrest in Beijing for 20 months. In January 1992 he was formally arrested and charged with "leaking important state secrets" and "counter-revolutionary propaganda and agitation" and taken back to Qincheng prison. He remained there for six months before he was tried on 21 July 1992. The sentence passed on Bao Tong, more than three years after his detention, appears to have been an act of political retribution. Indeed, the decision to sentence him is reported to have been taken directly by senior CCP leaders.

After a related trial on 5 August 1992, Gao Shan was sentenced to four years' imprisonment, also on charges of "leaking state secrets". He was an economist and researcher in the CCPCC Research Centre for Reform of the Political Structure headed by Bao Tong. Gao Shan had been apprehended in May 1989 and was held in detention without trial for more than three years. The charge against him appears to be related to his "spreading" the "state secret" allegedly disclosed by Bao Tong. Gao Shan was released on parole in January 1993.

Bao Tong's trial was held *in camera* at the Beijing People's Intermediate Court and lasted four or five hours. He was represented by two lawyers who had reportedly met him only twice before the trial. His family was refused entry to the court, but were reportedly allowed to hear the sentencing.

The text of the verdict against him states that there was "conclusive, complete and sufficient" evidence to pronounce Bao Tong guilty, but it gives no indication of the nature of the

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<sup>37</sup> See Amnesty International: Urgent Actions ASA 17/22/93 and ASA 17/03/95.

evidence<sup>38</sup>. According to the verdict, the charge of "leaking important state secrets" was based solely on a private conversation between Bao Tong and Gao Shan on 17 May 1989. The verdict gives no indication of the nature of the "important state secret situation" which Bao Tong allegedly "leaked" to Gao Shan, but according to other sources this concerned the impending declaration of martial law and the resignation of Zhao Ziyang from the post of CCP Secretary General, both of which were made public on 20 May 1989.

The other charge against Bao Tong, of "counter-revolutionary propaganda and agitation", appears to be based on the accusation that he "indicated agreement" to having communicated to others part of a private conversation with a senior official on 20 May 1989. Bao Tong appealed against the verdict, but the appeal was rejected and the original sentence upheld by the Beijing Municipal High People's Court on 6 August 1992.

The detention of Bao Tong and Gao Shan in 1989 was widely reported to be based on their association with Zhao Ziyang, disgraced for his conciliatory attitude towards the pro-democracy demonstrators. Bao Tong had been secretary to Zhao Ziyang and is believed to have written some of his speeches. The decision to formally charge Bao Tong some two and a half years after his apprehension and to sentence him to imprisonment was reportedly taken at a senior level of the CCP.

Amnesty International is concerned that the charges against Bao Tong and Gao Shan, brought in a context of brutal repression of a pro-democracy movement, were not brought for legitimate reasons of protecting national security. The organization believes the charges were brought for political reasons, namely their association with Zhao Ziyang and pro-reform policies.

Amnesty International is also concerned that their trials were closed to the public and not conducted in accordance with international standards for fair trial. Amnesty International believes that Bao Tong, like Gao Shan, was imprisoned for peacefully exercising his right to freedom of opinion and expression and is a prisoner of conscience. It calls on the authorities to release Bao Tong immediately and unconditionally.

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<sup>38</sup> The verdict of Bao Tong's trial has been fully published by Amnesty International (see: "*Appeal on behalf of Chinese Communist Party official Bao Tong and researcher Gao Shan*", AI Index: ASA 17/45/92).

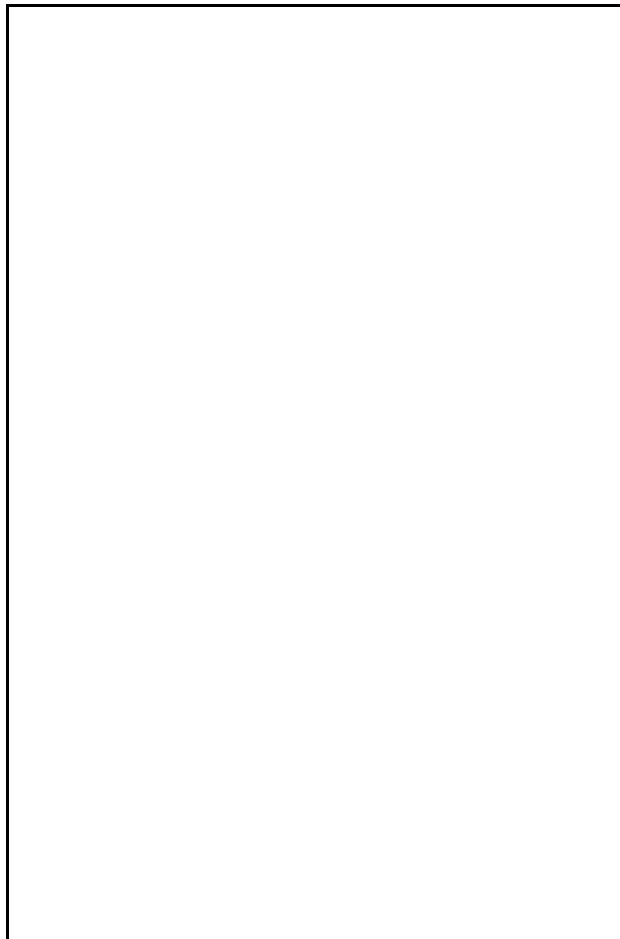
### Bai Weiji, Zhao Lei and Tang Yi

Bai Weiji and Zhao Lei, a husband and wife in their thirties, are currently serving sentences of 10 and six years' imprisonment respectively for "illegally providing state secrets to a foreigner". Bai Weiji was apprehended at his home in Beijing on 5 May 1992. Nearly a year later, on 21 April 1993, Zhao Lei was also apprehended. The couple were both tried *in camera* and sentenced on 20 May 1993 by the Beijing Intermediate People's Court. The sentences were upheld by a higher court in July 1993. Two other people detained in connection with the case, Wang Jun and Tang Yi, were sentenced in April 1993 to two and four years' imprisonment respectively.

Bai Weiji was accused of having obtained internal documents from Chinese friends and given them to

Lena Sun, then correspondent for the *Washington Post*. On 17 May 1992 the police raided her office in Beijing and confiscated what they said were secret documents. Lena Sun was briefly detained for interrogation.

Bai Weiji had known Lena Sun since 1977, when they were classmates at university in Beijing. After graduating in 1981, he first worked at the CCP General Office and then at the Foreign Ministry's Information Department, where he monitored the foreign press and prepared news summaries for ministry officials. In 1989, during the pro-democracy protests, he helped organize colleagues, including Zhao Lei, to march to Tian'anmen Square. As a result, he lost his job and CCP membership.



Bai Weiji and Zhao Lei

In a press article published in July 1993<sup>39</sup>, Lena Sun acknowledged receiving documents from Bai Weiji but said the documents included only economic reports, foreign policy analyses and speeches by Chinese leaders, none of which directly relate to national security or would be considered as "state secrets" in most other countries. They were "internal" publications (*neibu*) that are in principle allowed to circulate at certain levels within the CCP but in reality reach a far wider audience in China, including foreign correspondents in Beijing.

Following his detention, Bai Weiji reportedly first denied receiving material from Chinese friends. However, the authorities reportedly confronted him with a video tape taken secretly of meetings he had with one of his friends. The names of those who allegedly provided Bai Weiji with restricted material have not been made public, but they are believed to be Wang Jun and Tang Yi.

Tang Yi, 36, assistant to Commerce Minister Hu Ping, is believed to have admitted to the authorities that he showed documents to Bai Weiji, but to have insisted that he did not know that they were going to be given to a foreigner.

Wang Jun, reportedly apprehended around 25 May 1992, was a former journalist for the overseas edition of the *People's Daily*. He was disciplined by the authorities in June 1989 for his participation in the pro-democracy movement and banned from working as a journalist. Later sentenced to two years' imprisonment in April 1993 for his involvement in Bai Weiji's case, he was believed to be a prisoner of conscience. He is now presumed to have been released.

Bai Weiji and his co-accused were tried *in camera*. The authorities have never provided evidence that the documents at issue concerned matters of national security. As for Zhao Lei, the sentence against her was apparently based only on accusations that she translated some of the documents.

Amnesty International is concerned that Bai Weiji, Zhao Lei, Tang Yi and Wang Jun, imprisoned for the peaceful exercise of their right to freedom of expression, were prisoners of conscience, and that three of them remain in arbitrary detention.

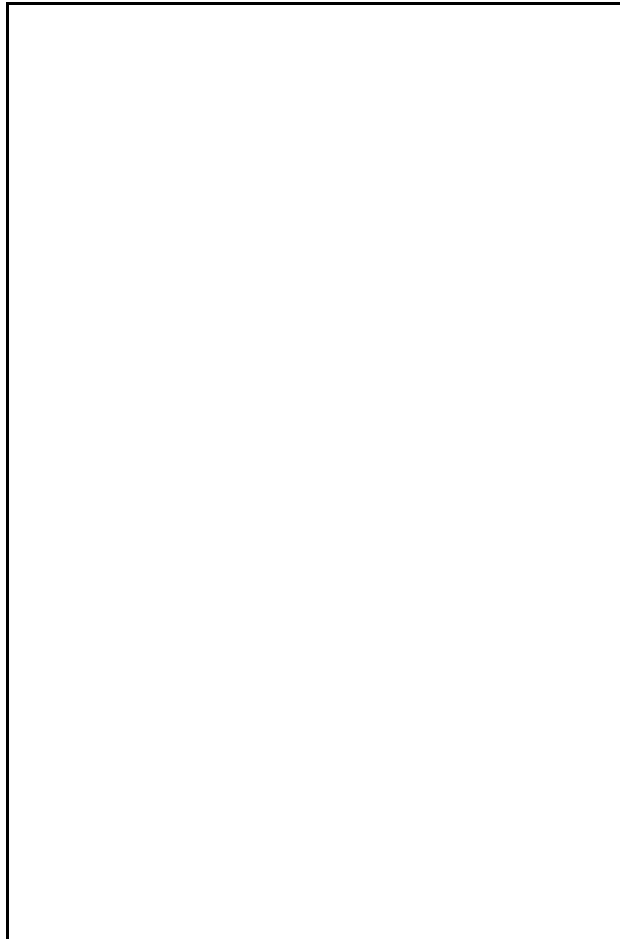
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<sup>39</sup> *Washington Post*, 25 July 1993.

## Xi Yang and Tian Ye

Xi Yang and Tian Ye have been detained in Beijing for more than two years. Both were tried in 1994 under articles on protection of state secrets of the State Security Law. They were sentenced to 12 years' and 15 years' imprisonment respectively for disclosing confidential information about the People's Bank of China.

Xi Yang, 37, a Chinese citizen and reporter for the Hong Kong newspaper *Ming Pao*, was apprehended by plainclothes officers of the Beijing Municipal State Security Bureau (SSB, *Anquanju*) on 27 September 1993. He was formally arrested on 7 October 1993 and charged, according to Article 4.3 of the State Security Law, with "stealing and prying into state secrets" (*qiequ, citan guojia mimi*). He was accused of having illegally obtained confidential information about financial matters and of passing it on for publication to a "Hong Kong publication".



Xi Yang

Tian Ye, a vice-director of the general office of the Foreign Affairs Bureau of the People's Bank of China, had been apprehended earlier. In June or July 1993, he had allegedly shown Xi Yang or provided him with confidential documents concerning plans for modifications on deposit and loan interest rates of the Bank of China and its policy on international gold transactions.

The accusation is believed to be connected to a report published on 28 July 1993 in the *Ming Pao*, when Vice-Premier Zhu Rongji was launching a plan for restructuring the Bank of China. The article briefly described Zhu Rongji's organization of work and tasks of named officials within the new central bank. It also cited a Chinese official commenting on a possible intervention on the international gold market and the unlikelihood of a raise in deposit interest

rates in the near future. Most of this information had already been publicized or publicly debated in Hong Kong.<sup>40</sup>

On 9 October 1993, two days after Xi Yang was formally arrested (charged), the official news agency *Xinhua* commented on the case as if the defendants had already been found guilty:

"The compromise of these secrets had caused serious consequences. The state security bodies have obtained conclusive evidence of their activities which jeopardize state security, and Xi Yang and Tian Ye have confessed everything".

According to the Hong Kong press, on 30 November 1993 the SSB recommended to the Beijing Municipal People's Procuratorate that Xi Yang be indicted. It was reported on 24 December 1993 that Xi Yang had been indicted on charges of "stealing and prying into state secrets", that the Beijing Municipal People's Court had already accepted the case and that he would not hire a lawyer, despite the fact that his employer, the *Ming Pao*, had engaged a Chinese mainland lawyer for him. According to the *Ming Pao*<sup>41</sup>, it is not clear whether the newspaper's message about the lawyer was ever conveyed to Xi Yang.

There are indications that a first hearing of the case by the Beijing Intermediate People's Court took place at the beginning of 1994 and that the court, on that occasion, had found the prosecution evidence to be insufficient. The court sent the case back to the Procuratorate for "further investigation". Both Xi Yang and Tian Ye were then tried *in camera* at an unknown date. The sentences were passed on 28 March 1994. Tian Ye was considered the "main culprit" and received the heaviest sentence. Xi Yang's family was not notified of the hearing at which the verdict was passed; they were informed of his sentence only on 1 April, four days after the decision was made<sup>42</sup>. Neither defendant had a lawyer and both reportedly pleaded guilty.

On 11 April 1994 *Xinhua* stated that the accusation was "proved by solid evidence and confessed to by Xi Yang himself."<sup>43</sup> However, there are reasons to doubt whether Xi Yang's confession, if indeed he did confess, was freely made. Apart from a 30-minute meeting with his father, during which they were not allowed to talk about his case, Xi Yang was held incommunicado during the whole judicial process. There are also reasons to question why he

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<sup>40</sup> See: Ming Pao Chubanshe Bianji Weiyuanhui: "Xi Yang Dailai Le..." (What Xi Yang brought up...), 1994.

<sup>41</sup> *Ming Pao*, 24 December 1993.

<sup>42</sup> *Ming Pao*, 5 April 1994.

<sup>43</sup> *Xinhua* Hong Kong service, 11 April 1994, translated by FBIS, 12 April 1994.

pleaded guilty and did not hire a lawyer for his trial, in view of the fact that he later appealed against the verdict, hired a lawyer to present his appeal and pleaded not guilty. The appeal, however, was rejected and the original sentence against him and Tian Ye, who had also appealed, was upheld by the Beijing High People's Court on 15 April 1994. State television showed him and Tian Ye listening to the appeal being rejected by a judge. According to unofficial sources, Xi Yang's defence lawyers argued that "the lower court had based its verdict on insufficient evidence, confused facts and had misapplied the law".<sup>44</sup>

Official sources have stated that the disclosure of the alleged secret information by Xi Yang had had "serious consequences for the national economy". However, despite the unusual number of reports about the case in the official Chinese press, the nature or extent of the damages made to state interests were never described, nor was the incriminatory article named.

The official Chinese news agencies commented that Xi Yang's sentence was "light", saying "leniency" had been applied because the defendants pleaded guilty.<sup>45</sup> According to Amnesty International's record, however, the sentences imposed on Xi Yang and Tian Ye are among the heaviest imposed on charges related to state secrets in recent years.

In addition, several reports in the Hong Kong press indicated that the heavy sentences had been imposed after an intervention from high ranking political officials, including by Zhu Rongji, who reportedly needed to establish his personal authority while his macro-control policy encountered resistance. Intervention by CCP General Secretary Jiang Zemin in favour of a severe sentence was also reported.

Amnesty International is concerned that the government has failed to show how the information disclosed constituted a legitimate state secret and what damage had been caused by its disclosure. The organization believes that the prosecution and sentence of Xi Yang and Tian Ye followed a series of unfair judicial proceedings, including a trial *in camera*, were politically motivated, and that the case appears to have been prosecuted for the purpose of deterring Chinese and Hong Kong journalists from exercising their right to freedom of expression. Amnesty International believes that Xi Yang and Tian Ye are prisoners of conscience, imprisoned for the peaceful exercise of their right to freedom of expression.

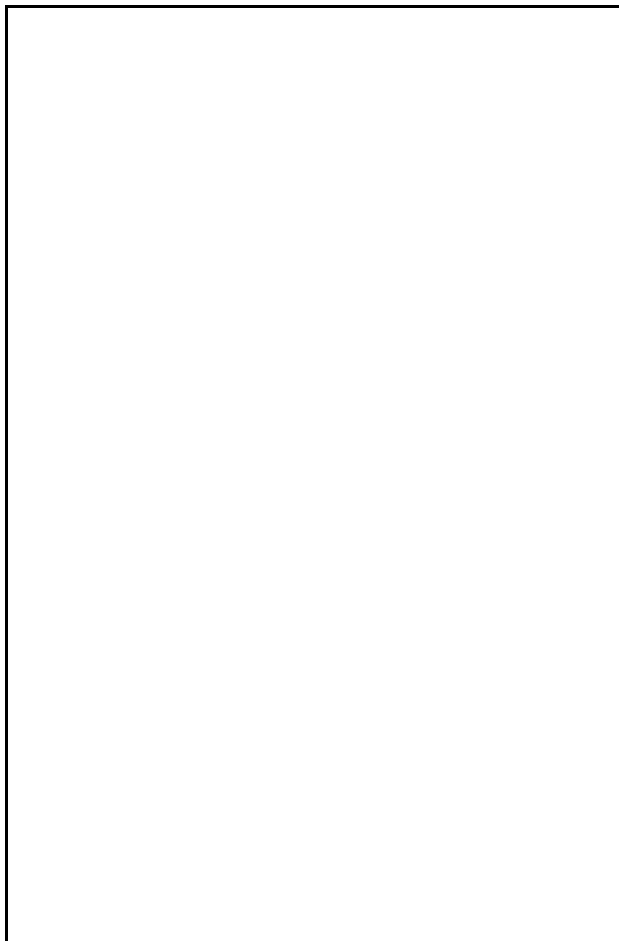
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<sup>44</sup> Reuters, 16 April 1994.

<sup>45</sup> Reuters, 12 April 1994.

## Gao Yu

Gao Yu is currently serving a six-year prison sentence to be followed by one year's deprivation of political rights for allegedly "leaking state secrets". A well-known journalist in China, Gao Yu was apprehended by Beijing State Security officials on 2 October 1993, two days before she was due to leave China to take up a fellowship at Columbia University in New York. She was formally arrested 10 days later. On 12 March 1994 the Beijing Municipal People's Procuratorate issued an indictment charging Gao Yu with "spying and illegally providing state secrets" in violation of Article 4 of the State Security Law. This article refers to "endangering state security" by "stealing, prying into or illegally transmitting state secrets... domestically in conjunction with overseas organizations or individuals, either directly or by providing assistance to others".<sup>46</sup>



On 5 May 1994, after a hearing which Gao Yu was not open to the public but at which her lawyers were present, the Beijing Intermediate People's Court ruled that the prosecution's evidence against Gao Yu "still needed to be verified", which means that the evidence was insufficient to convict her. However, the court returned the case to the procuracy for "supplementary investigation and verification".

The case was resubmitted to the court by the procuracy on 4 June 1994, and a second hearing subsequently took place. According to an independent source, no supplementary evidence was presented by the prosecution and the indictment remained unchanged. On 19 July 1994 the court

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<sup>46</sup> See also Human Rights in China and Human Rights Watch/Asia: "*Leaking state secrets: the case of Gao Yu*", June 1995.

again found the evidence against Gao Yu to be insufficient and returned the case once more to the procuracy for "supplementary investigation and verification".

The procuracy again presented the case to the court on 25 August. On 10 November 1994, after more than a year in detention, Gao Yu was sentenced to six years' imprisonment. Neither Gao Yu's husband nor her lawyers were given any notification of the hearing at which the verdict was passed, as required under Chinese law, and they were therefore not present at the trial. Her lawyers were later told by an official at the Beijing Intermediate Court that the court had been "unable to find them".

According to the verdict against her, Gao Yu was sentenced under Article 186 of the Criminal Law for "disclosing important state secrets". She was accused of obtaining "state secrets" from Gao Chao, a friend who worked for the General Office of the CCPCC. The "secret" information was allegedly published in articles Gao Yu wrote for an unspecified Hong Kong magazine during the first four months of 1993. The court said that the "state secrets" concerned structural reforms and other matters within state bodies and came from two classified documents which Gao Chao had shown her. One was said to be a speech by a CCPCC leader; the other a report from the CCPCC Organizational Department concerning structural reforms and the administrative management (civil service).

While the information reportedly obtained by Gao Yu may have been confidential, there is no indication that it concerned matters the disclosure of which would affect national security. In spite of this, the court concluded that Gao Yu's actions had violated state security laws and regulations and amounted to "disclosing important state secrets".

In her appeal to the Beijing High People's Court, Gao Yu maintained that her detention and trial were political. She stated that the documents which she was accused of having "leaked" did not contain "state secrets". One document referred to adjustments to be made in ministries and commissions such as the "wage system reform" which, she said, were public knowledge in China and had been published by the Hong Kong based pro-China newspaper, *Wen Wei Po*. The second document was a speech by Jiang Zemin. The extracts which Gao Yu published were three guiding ideas of Deng Xiaoping which, she claimed, had become part of China's foreign policy over the years. Gao Yu also pointed to procedural irregularities in the proceedings against her, such as the refusal by the Beijing Intermediate People's Court to include into the court dossier the many pages of evidence collected by her lawyers, and the manipulation of witnesses' evidence. Gao Yu's conviction and sentence were upheld by the High Court on 24 December 1994.

Gao Yu had previously been detained for 14 months from 3 June 1989 until August 1990 for her involvement in the pro-democracy movement. In 1988 she had taken a senior job on the

*Economics Weekly*, an influential pro-reform newspaper run by an independent research institute set up by Chen Ziming and Wang Juntao, both of whom were subsequently sentenced to lengthy terms of imprisonment for their alleged involvement in orchestrating the 1989 pro-democracy protests. Gao Yu was involved in mediating between students and the authorities, and was one of the first intellectuals to be detained. During this period in detention, Gao Yu is reported to have developed a heart condition from which she is said to be still suffering.

Gao Yu was declared arbitrarily detained by the UN Working Group on Arbitrary Detention in April 1996, in relation to the exercise of the freedom of expression.<sup>47</sup>

Gao Chao, 38, was apprehended in April 1993. He was tried and sentenced on 10 November 1994 by the Beijing Intermediate People's Court on two separate offences, both related to state secrets. As well as allegedly providing Gao Yu with secret information, he was also accused of taking bribes from two enterprise managers in exchange for "top secret" information.

As Gao Chao was charged with several offences, it is likely that several sentences were consolidated into his 13-year prison sentence. It is not clear, however, how the different sentences were distributed. It is not clear either why the Chinese authorities chose to try him at the same trial on charges not related to Gao Yu. Amnesty International does not know the nature of the "secret" allegedly sold to two managers, Yu Zuomin and Yu Shaozheng, both of whom were tried for murder in a separate case. It seems, however, that the confusion between these separate cases was used to discredit Gao Yu and Gao Chao.<sup>48</sup> To Amnesty International's knowledge, there is no relationship between the two offences allegedly committed by Gao Chao. The organization has no details, however, of the alleged offence related to Yu Zuomin and Yu Shaozheng.

As for the "secrets" allegedly divulged by Gao Yu, Amnesty International believes the information was already public knowledge and that the Chinese authorities failed to show how its disclosure and subsequent publication harmed national security.

Amnesty International is concerned that Gao Yu is imprisoned solely for her peaceful exercise of the right to freedom of expression, and that the judicial process against her and her trial were grossly unfair. Amnesty International considers she is a prisoner of conscience and calls for her unconditional release. It also asks the Chinese authorities to clarify which part of Gao Chao's sentence is related to "leaking a secret" to Gao Yu and its relationship with the other alleged offence of taking bribes.

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<sup>47</sup> Decision of the UN Working Group on Arbitrary Detention No. 46/1995 (People's Republic of China), paragraph 9a.

<sup>48</sup> *Xinhua*, 23 December 1994 in English, cited by SWB, 28 December 1994.

## Yu Meisun

Yu Meisun, 41, is currently serving a three-year prison sentence for "leaking important state secrets". Yu Meisun was apprehended on 3 January 1994 by the Beijing Security Bureau (*Anquanju*) and then formally arrested. He was accused of having shown State Council documents to a Shanghai journalist. He was sentenced in early August 1994 by the Beijing Intermediate People's Court.

Yu Meisun was the secretary of Gu Ming, former deputy director of the State Council Office and vice-chairman of the Legal Committee of the Seventh National People's Congress (parliament). He was also holding an associate professorship in the law department at Beijing University and was known for his beliefs in democracy and the rule of law.

According to the press, Wang Jienan, head of the Beijing Bureau of the Shanghai paper *Wenhuibao*, obtained some CCPCC and State Council documents from the offices of Yu Meisun and Gu Ming. Yu Meisun is said to have shown these documents to Wang Jienan for reference only, making clear that he was not permitted to make copies. Wang Jienan reportedly secretly photocopied the material, without Yu Meisun's knowledge.

Wang Jienan used the documents, focusing primarily on CCP economic policy, in his reports in official Party newspapers. Several of these pieces were singled out for commendation. It was only after the information was used in other articles in the Hong Kong press that the Shanghai State Security Bureau launched an investigation. Wang Jienan was detained for interrogation for a short period and released. He was reportedly stripped of his official title but continued to work in Beijing.

Yu Meisun, however, was prosecuted and tried. He is reported to have appealed against his sentence. His lawyer is said to have pointed out the difference of treatment between Yu Meisun and Wang Jienan and argued that both were Party members and State cadres, the *Wenhuibao* being an organ of the CCP. According to the New-York based non-governmental organization Human Rights in China, the lawyer also highlighted that Yu Meisun's intention had been to "more effectively publicize the general and specific policies of the Party".<sup>49</sup> Many high-level Party cadres are reported to have intervened on behalf of Yu Meisun, but the CCP Secretary General is said to have had the final say in his sentence.

Amnesty International believes that Yu Meisun was sentenced for exercising his right to freedom of expression and is a prisoner of conscience.

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<sup>49</sup> See: *China Rights Forum*, Summer 1995.

## **5.2. Possible prisoners of conscience**

### **Wu Shishen and Ma Tao**

Wu Shishen is currently serving a life sentence for "selling state secrets". He has also been deprived of his political rights for life. He was sentenced by the Beijing Intermediate People's Court on 30 August 1993 after five months in detention. A sub-editor for the domestic news department of the *New China News Agency (Xinhua)*, he was apprehended in Beijing in October 1992 and accused of providing an advance copy of a speech by CCP General Secretary Jiang Zemin to Leung Waiman, a journalist for the Hong Kong *Express (Kuaibao)*. The speech was later delivered at the opening of the Party's congress, a week after appearing in the *Express*. Ma Tao, a sub-editor at the *China Health Education News*, was sentenced to six years' imprisonment and one year's deprivation of political rights for assisting Wu Shishen: she is believed to be Wu Shishen's wife.

Leung Waiman had been in Beijing for the 14th Congress of the CCP in October 1992. She was apprehended by State Security officers from her hotel in Beijing on 25 October 1992. She was held for five days for investigation for "activities incompatible with her status". *Xinhua* alleged she had "bribed government employees to obtain secrets and documents of the CCP and government". On 31 October 1992 she was released and banned from China for two years.

*Xinhua* reported the trial of Wu Shishen and Ma Tao in August 1993. The agency said that the case was heard in secret by a bench of judges, that the two defendants had pleaded guilty and had entrusted lawyers to defend them in court.<sup>50</sup> It added:

"According to the verdict of the court, on 4 October 1992, the accused Wu Shishen, by taking advantage of his work, secretly printed the most confidential document and asked the accused Ma Tao to forward it to a reporter of a Hong Kong newspaper, who gave Wu and Ma 5,000 yuan in foreign exchange currency".<sup>51</sup>

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<sup>50</sup>*Xinhua* in English, 30 August 1993, cited by SWB on 31 August 1993.

<sup>51</sup> Around US\$700 in 1995.

*Xinhua* highlighted that the Hong Kong reporter's confession, together with the two defendants' guilty plea, had led to the guilty verdict. It cited the court's conclusion as follows:

"The Beijing Intermediate People's Court held that as state working personnel, Wu Shishen and Ma Tao defied the state law and sold top state secrets to a person overseas for personal gain and these acts constituted a crime of selling state secrets overseas according to the '*Additional Regulations for the Punishment of Crimes of Revealing State Secrets*'".

There is no information from independent sources about the trial, but the *Xinhua* account in itself raises questions about the nature of the evidence against the defendants. In particular, the account noticeably failed to mention that Wu Shishen or Ma Tao had solicited the money allegedly passed on to them by the Hong Kong reporter, a detail which would usually have been reported if it had been part of the evidence against them. It also fails to mention any argument presented by the defence. According to *Xinhua*, the defendants "pleaded guilty", but they had hired defence lawyers. In the Chinese judicial context, this indicates that the defendants may, at the least, have contested some of the evidence against them and hoped to get a mitigated sentence.

There are also reports that the verdict against them was decided before the trial, as is often the case in China, and dictated by a political leader. According to the Hong Kong newspaper *South China Morning Post* (SCMP), the judicial authorities had originally suggested a 10-year sentence for Wu Shishen, but Jiang Zemin insisted on a heavier sentence, having suffered great embarrassment by the advance publication of his speech. One day before the publication, Jiang Zemin had allegedly said in an internal meeting that the CCP congress was a test of how far they could protect the confidentiality of their work.

Both Wu Shishen and Mao Tao were declared arbitrarily detained by the United Nations Working Group on Arbitrary Detention in April 1996, in regard to their case concerning freedom of opinion and expression.<sup>52</sup>

The text of the speech in question dealt with issues of politics and policy, and not with issues which could be legitimately considered as matters of national security. The Chinese authorities have failed to show how the information disclosed constituted a legitimate national security matter.

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<sup>52</sup>Decision of the UN Working Group on Arbitrary Detention No. 46/1995 (People's Republic of China), paragraph a.

Since the trial was held in secret, there is no way of knowing whether the allegation that Wu Shishen accepted money for releasing a copy of the speech was substantiated in court. The money alleged to have changed hands was not that large - about US\$ 700. While the allegation, if true, might justify a conviction on a charge of bribery or corruption, a life sentence imposed on Wu Shishen is clearly disproportionate.

On the basis of the available information, and given the arbitrary manner in which the state secrets legislation is applied in China, Amnesty International considers that Wu Shishen and Ma Tao are possible prisoners of conscience, their imprisonment motivated by political factors and representing an arbitrary restriction on their right to freedom of expression. The organization is seeking for the clarification about the basis of the allegations and proceedings against them, and calls for a thorough review of their cases.

## VI. Conclusion and recommendations

Amnesty International believes that the Law on Protection of State Secrets is so broad that it invites abuses and, as highlighted by the cases described above, it has also been used to restrict unjustifiably freedom of expression. It calls on the Chinese authorities to review and amend this legislation to bring it in line with international standards, in particular, to allow:

- Ⓒ the legitimate exercise of the right of all people to gather and impart information, including journalists in the course of their work, and freely express their conscientiously held beliefs;
- Ⓒ public debate on matters of public interest, whose disclosure cannot be shown to jeopardize national security;
- Ⓒ the legitimate exercise of the right of all people to freedom of association, including their participation in foreign or international organizations.

Amnesty International calls for the release of the following prisoners of conscience:

- Ⓒ Bao Tong, Bai Weiji, Zhao Lei, Tang Yi, Xi Yang, Tian Ye, Yu Meisun and Gao Yu.

Amnesty International calls for a thorough review of the cases of the following possible prisoners of conscience:

- Ⓒ Wu Shishen and Ma Tao.

Amnesty International also calls the Chinese authorities to:

- C drop the charges still pending against the three seafarers: Hua Chungui, Gao Xiaohui and Zhang Aizhao;
- C clarify which part of the sentence against Gao Chao was linked to the case against Gao Yu, and publicize the verdict;
- C make public the legal status and whereabouts of Bo Weihua and Xiao Donglian.

## Appendix 1. List of cases related to state secrets since 1989

The following list includes people known by Amnesty International to have been detained on charges related to state secrets since 1989. It includes prisoners of conscience, possible prisoners of conscience as well as other cases of concern.

Abbreviations: CR = “counter-revolutionary” offences  
 LSS = “leaking state secrets”  
 SSS = “selling state secrets”  
 STS = “state security” offences  
 SP = “espionage”

*italics*: released or presumed released at the time of printing

Date of apprehension	Name(s)	Chinese Name(s)	Sentence	Charge
28/05/89 28/05/89	Bao Tong <i>Gao Shan</i>	•Ø Íđ	7 years <i>4 years</i>	LSS/CR <i>LSS/STS</i>
05/05/92 dd/mm/92 dd/mm/92 dd/04/93	Bai Weiji Tang Yi <i>Wang Jun</i> Zhao Lei (f)		10 years 4 years 2 years 6 years	LSS LSS <i>LSS</i> LSS
dd/10/92	Wu Shishen Ma Tao (f) <i>Leung Waiman</i>	Îâ ' ó Êî Âí Œî	life 6 years <i>banned for 2 years</i>	SSS SSS
29/04/93	Guan Jian	šİ 1·	15 yrs + 10 = 20	LSS SP
<i>13/05/93</i>	<i>Gedun Rinchen</i> <i>Lobsang Yonten</i>		<i>none</i> <i>none</i>	<i>SSS</i> <i>SSS</i>
27/09/93 dd/mm/93	Xi Yang Tian Ye	Šò ¼< Œ< À°	12 years 15 years	LSS LSS
02/10/93 dd/04/93	Gao Yu Gao Chao	š ð ..ð š ð »	6 years x +x = 13 yrs	LSS/STS LSS SSS

22/10/93	Chen Xiaodong		none	LSS
27/12/93	Yu Xiguang	ÓĚŠ° šâ	2 years	LSS
27/12/93	Bu Weihua	ž Î° »S	?	LSS
27/12/93	Xiao Donglian	Šô Ĩî Áî	?	LSS
03/01/94 dd/mm/94	Yu Meisun Wang Jienan	ÓĚ{ ^ Ý´	3 years	LSS
26/08/94	Xin Hong	oÁ Ů	none	LSS
19/06/95	Harry Wu (Peter Wu Hongda)	îâ Ů´ <	15 years + expulsion	SSS ISS

## Appendix 2. List of regulations on state secrets and state security

### State secrets

*Interim Regulations for Safeguarding State Secrets.* Promulgated in 1951 and abolished in 1988. Full English translation given by the article *State Secrets Laws* in: *China Law Reporter*, vol. II, n.4 (Fall 1983).

Öö »S „È { ¼3Ű ū •° ' Ĩ ū ĩÀ { Ĩ { Ü ~ Zhonghua Renmin Gongheguo Baoshou Guojia Mimi Fa (The Law on Protecting State Secrets of the PRC). Adopted at the 3rd session of the Seventh NPC Standing Committee on 5.9.88. In: *Zuixin Fagui Daquan*.. Qunzhong Chubanshe, 1993, p 125. Translated in English by *FBIS*, 9.9.88.

šĪ ÓÚ »Ī ŌĪōš ĀĪ ū ĩÀ { Ĩ { Ü ^, × μÄ Ɔ »ä šf Ī. *Guanyu Chengzhi Xielu Guojia Mimi Fanzhui de Buchong Guiding* (The Additional Regulations for the Punishment of Criminals Revealing State Secrets). Adopted by the 3rd session of the Seventh NPC Standing Committee on 5.9.88. In: *Zhonghua Renmin Gongheguo Falu Quanshu*, Jilin Chubanshe, 1989, page 119. See also *Penalties for Revealing Secrets*, *FBIS*, 6.9.88.

Ó€Ē7°Ī , ´ Ó•μ,, oo Àμ , ´ Öfšú ĩÀ { Ĩ { Ü ÔĪ Ɔ Ö´ oo šÜ ÊĪ°• ~ *Yinshua, Fuyin deng Xingye Fuzhi Guojia Mimi Zaiti Zhixing Guanli Banfa* (Interim Methods of Administration for Printing, Copying and Producing State Secrets Reports). Promulgated jointly by the State Secrets Bureau, the Ministry of Public Security, the Press and Publication Administration, the Ministry of Culture, and the Ministry of Light Industry on 9.4.90. In: *Gong'an Fagui Huibian*. Qunzhong Chubanshe, 1992, page 366.

Öö »S „È { ¼š3Ű ū •° ' Ĩ ū ĩÀ { Ĩ { Ü ~' μ' š°• ~ *Zhonghua Renmin Gongheguo Baoshou Guojia Mimi Fa Shishi Banfa* (Regulations for the Implementation of the Law on Protection of State Secrets of the PRC). Adopted by the State Council on 25.4.90 and promulgated by the State Secrets Bureau on 25.5.90. *Zuixin Fagui Daquan*, page 127-129.

*Regulations about the prohibition of sending through postal services or illegally carrying texts, documents or other items amounting to state secrets outside the boundaries.* Jointly promulgated by State Secrets Bureau and the General Administration of Customs, effective from 1 April 1995. See: *Kuaibao*, 6• •• 14.01.95.

Other new or revised texts expected:

- regulations on state technical and scientific state secrets;

- regulations about time limits and marking of state secrets (revised);
- regulations on definition, alteration, lifting of state secrets;
- regulations on meetings involving state secrets.

### **State Security**

*The Law on Safeguarding State Security of the PRC.* Adopted by the 30th session of the Seventh NPC Standing Committee on 22.2.93. Translated in English by FBIS, 24.2.93.

*Detailed rules for implementing the Law on Safeguarding State Security of the PRC,* adopted by the State Council 19th executive meeting on 10.5.94 and promulgated on 4.6.94. Translated in English by SWB, 15.7.94.