



## **Chinese Human Rights Defenders (CHRD)**

Web: <http://crd-net.org/> Email: [networkcrd@gmail.com](mailto:networkcrd@gmail.com)  
One World, One Dream: Universal Human Rights

# **A Civil Society Report on China's Implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**by Chinese Human Rights Defenders**

**for consideration during the 41<sup>st</sup> session  
of the Committee against Torture**

October 10, 2008

---

### ***Executive Summary***

The report finds that except for some progress in the promulgation of legislation and administrative documents, China has made no clear and discernible improvement in prohibiting the use of torture, cruel, inhuman and degrading treatment. All are routinely practiced by government personnel with a wide variety of official duties as well as by persons affiliated with or working on behalf of the state to such a wide extent that their practice must be considered systematic.

Many aspects of current Chinese law still provide fertile grounds for torture. China's legal definition of "torture" is much narrower than that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and it has not been amended to include all elements of the practice as defined in the Convention.

The use of violence and abuse of power by the police and other law enforcement officials such as Urban Inspection Officers (*chengguan*) and family planning officials are common. Officials who use such violence are rarely investigated or held accountable.

China has made little attempt to abolish the official system of administrative punishment, Re-education through Labor (*laojiao*), a form of arbitrary detention about which the United Nations (UN) Committee against Torture (hereafter referred to as "the Committee") has raised serious concerns. The police have also made use of vague provisions in the Criminal Law to subject individuals to involuntary hospitalization in psychiatric institutions. In addition, China has developed an illegal network of interceptors and secret detention facilities commonly referred to as "black jails" (*heijianyu*) and "law education classes" (*xuefaban*) to persecute and arbitrarily detain petitioners. Torture and ill-treatment are routinely practiced in these extra-legal detention facilities. This combination of official and unofficial arbitrary detention systems has been used to punish human rights activists, petitioners and Falun Gong practitioners. In theory, individuals have recourse to challenge their incarceration by applying for an administrative review or filing an administrative lawsuit against the relevant government officials or agencies, but these remedies are rarely effective in challenging decisions on arbitrary detention.

Conditions in detention facilities remain poor. Incarcerated individuals are often forced to labor under poor and dangerous working conditions. Detention authorities tolerate and even promote inter-prisoner violence. Prisoners on death row are subjected to cruel treatment.

The lack of protection of the right to fair trial increases the risk of torture and other mistreatment in China's detention facilities. Investigators and prosecutors rely heavily on confession, often without the presence of a lawyer, as evidence. Confession obtained by torture is still admissible in court. A suspect's access to legal counsel is routinely limited and arbitrarily denied by the Public Security Bureau (PSB) while lawyers are often reluctant to defend certain criminal cases due to a number of reasons including a fear of prosecution according to intimidating laws regarding lawyers' speech in court. Suspects can be legally detained for months before being brought in front of a judge. Because the provisions stipulating the legal limit of pretrial detention are numerous and complex and there is no habeas corpus in Chinese law, the PSB and the Procuratorate can easily extend the period of pretrial detention multiple times while making it difficult for the detainee to challenge the legality of their detention. Meanwhile, the right to appeal is often curtailed, and appeals, rather than being taken up by the higher court, are routinely sent back to the original court for "re-trial", often leading to the same if not harsher sentences.

Perpetrators of torture are almost never held criminally accountable, largely because there are no independent complaint mechanisms to which victims of torture have recourse. The PSB and Procuratorate, under intense pressure to "strike hard" on crime, have little incentive to investigate allegations of torture against their own employees who use torture to "solve" cases quickly. The Procuratorate and the judiciary, which in theory might provide some institutional safeguards against torture, are unable to genuinely and independently supervise law enforcement agencies. The Procuratorate is ineffective in supervision of the conduct of the police because its

primary purpose—prosecution of accused individuals—is aligned with that of the police. The judiciary lacks independence, being subordinate to other organs of government administration and under the control of the Chinese Communist Party's (CCP's) Political-Legal Committees. It is unwilling to seriously investigate allegations of torture and hold perpetrators of torture accountable especially in sensitive cases in which the verdict has been pre-determined by the Political-Legal Committees. In addition, evidence needed to prosecute perpetrators of torture is very difficult to obtain due to a number of factors, such as the increased use of means of torture that do not leave physical traces.

Victims of torture almost never receive adequate compensation. There is a lack of effective mechanisms to ensure that victims of torture are properly compensated. In the few cases in which compensation is granted, the amount is a pittance especially considering the painful and long process victims must go through to receive it.

Recommendations of specific measures the Chinese government can and should take to address the significant deficiencies in China's fulfillment of its obligations under CAT are presented at the end of this report.

It is important to note that the Chinese government has not been transparent in the process of preparing its current state report (CAT/C/CHN/4) or previous state reports (CAT/C/7/Add.14 (1993), CAT/C/20/Add.5 (1995) and CAT/C/39/Add.2 (1999)), has not invited the participation or contribution of civil society, or invited members of civil society to participate in or observe the review process at the United Nations.

This report has been submitted by members of Chinese civil society and prepared by lawyers, independent legal experts and human rights activists in China.

---

### Article 1

#### **China's definition of "torture" is narrower than that of the Convention against Torture.**

As the Committee noted in paragraph 1 of its List of Issues (CAT/C/CHN/Q/4) concerning China's Fourth and Fifth Periodic Report (CAT/C/CHN/4) on the implementation of CAT, the definition of torture in current Chinese laws and regulations is extremely narrow and does not include all elements of the definition as articulated in Article 1 of CAT.

"The Supreme People's Procuratorate Regulations on Standards for Filing Criminal Cases of Dereliction of Duty and Rights Infringement"<sup>1</sup>, the latest government edict elaborating on torture-related concepts outlined in the Criminal Law<sup>2</sup>, defines "torture to extract confession"

(*xingxunbigong*) as “the use of corporal punishment...by judicial staff to extract confessions from criminal suspects or defendants”. It defines the “use of violence to obtain evidence” (*baoliquzheng*) as “the use of violence to extract witness testimonies by judicial staff” and “abuse of individuals under supervision” (*nuedaibeijianguanren*) as “beatings or other corporal punishments by supervisors [of official detention facilities] of incarcerated individuals”.

The Chinese definition only recognizes torture when it is practiced by specific officials (members of the judiciary and guards at detention facilities), at particular locations (official detention facilities) for particular purposes (extracting confession or witness testimonies). Excluded from the definition is the use of torture outside of official detention facilities, for purposes other than those stated in the Regulations, and by other public officials such as members of the PSB and paramilitary police. Neither is torture by individuals acting “at the instigation of or with the consent or acquiescence of a public official”, such as members of Joint Security Brigade (*lianfang duiyuan*)<sup>3</sup>, private security guards, chengguan and hired thugs, considered torture in Chinese law.

Moreover, Chinese law does not recognize psychological torture such as sleep deprivation, lengthy interrogation sessions, threatening individuals with attack by police dogs, threatening the safety of individuals' families, solitary confinement or mock executions as torture. These methods of torture are widely practiced for they leave no apparent physical trace, thus rendering it more difficult for the victim to collect evidence to seek legal redress.

## Article 2

### **Access to legal counsel is routinely limited and arbitrarily denied.**

China's state report (CAT/C/CHN/4) to the Committee claims that the administrative edict, “Regulations of People's Procuratorates to Ensure the Lawful Practice of Lawyers in Criminal Procedures”, strengthens “the role of lawyers in criminal prosecutions in regard to protecting the legitimate rights and interests of criminal suspects” (para.21). In addition, Article 33 of the Lawyers Law<sup>4</sup> states, “From the day a criminal suspect is taken into custody or questioned for the first time by investigative authorities, the entrusted lawyer...has the right to meet with the suspect / defendant...The meeting...is not to be monitored or eavesdropped upon.”

However, the basic right of the detainee to access to a lawyer is in practice far from being protected, especially in cases deemed “sensitive” by the government. As noted by the Committee in paragraph 2(a) of its List of Issues, in “sensitive” cases, police tell lawyers that because the cases involve “state secrets”, permission of the investigative organs (that is, in most cases, the PSB<sup>5</sup>) is needed before they can be granted access to their clients. No explanation is provided in regard to the question of what kinds of cases may be considered to involve “state secrets”; rather, lawyers are told that the investigative organ needs to review any cases under discussion. Thus in

practice, the permission of the PSB is always required in order for lawyers to be given access to their clients. Because there are no clear legal parameters to determine when and under what circumstances the police can claim a case involves "state secrets," police can use this exemption at will.

For example, human rights defenders, Chen Daojun (陈道军) and Huang Qi (黄琦), who have been detained since May 9 and June 10 respectively, have been forbidden access to legal counsel.<sup>6</sup> The two were taken into custody for posting dissident articles online and reporting on official corruption related to the May 12 Sichuan Earthquake. Chen and Huang's lawyers have been told that they are not allowed to meet the two because their cases involve "state secrets".

### **Confession is heavily relied on as evidence.**

The Committee is correct to note that criminal investigations still rely heavily on verbal statements and admission of guilt in paragraph 2(d) of its List of Issues. Investigators favor verbal statements because they are the easiest form of evidence to obtain. Torture is often used to extract confession from those taken into custody.

Investigators rely on confessions because of a number of factors.

1. China has high rates of crime and police are pressed to solve a large number of cases.
2. There is a shortage of resources for criminal investigation and the equipment and technology for investigation remain backward.
3. The strong emphasis within the legal and judicial departments on "striking hard" on crime mean little regard is given to the rights of the suspects. In cases of serious crimes, officials high in the hierarchy often set strict deadlines for solving them. In recent years, there have even been campaigns to ensure that all homicides are solved. Criminal investigators are thus under intense pressure. The prevailing attitude amongst them is that wrongful convictions are better than no convictions at all. As a result, there is a lack of effort to prevent wrongful conviction and to protect the rights of suspects.
4. Police officers are given incentives to solve cases quickly. The investigator's job performance, opportunity for promotion and the amount of bonuses are directly linked to the number of cases s/he solves.
5. The legitimization of "chuangshou" by state agencies —making money on the side to supplement government funding and support routine operations, a practice tolerated since the 1980s —means that fines are a major source of income for local PSBs. In June this year, *Youth Daily* exposed a shocking incident in Henan Province where police officers

tortured a young woman to confess to prostitution in order to fine a man for soliciting prostitutes.<sup>7</sup>

As a result of both the pressures and the incentives to solve criminal cases quickly, investigators either do not register the cases which cannot be solved or they “solve” the cases by taking in a few suspects and then forcing them to confess, often employing torture. Although the Procuratorate is supposed to supervise the conduct of the police, because the latter has greater power in general and when detaining individuals in particular, the Procuratorate does not have sufficient power to regulate police treatment of suspects and detention of individuals in practice.

### **Detention of suspects can last months before they appear before a judge.**

Criminal suspects can be detained for a very long time before being presented to a judge, much longer than the 37 days noted in paragraph 2(f) of the Committee's List of Issues. The period of pre-trial detention is not only longer than what observers often think, but the provisions stipulating the legal limit are numerous and complex.

According to Article 92 of the Code of Criminal Procedure (or Criminal Procedure Law, CPL), the liberty of a criminal suspect can first be restricted by summons (*juchuan*) for up to twelve hours. After this initial period, the police must either free the suspect or detain (*juliu*) her/him. Under normal circumstances (CPL Article 65), police must interrogate the suspect within twenty-four hours, after which the police can either free the suspect or apply to the Procuratorate for her/his formal arrest (*daibu*). However, in the case of crimes that were “committed from one place to another, repeatedly, or in a gang,” a suspect can be detained for up to thirty days (CPL Article 69). When the Procuratorate receives an application for formal arrest from the police, it has up to seven days to approve the arrest. At this point, the total number of days for which a suspect may be detained is 37.

After the suspect is formally arrested, the police have a maximum of two months to investigate the case (CPL Article 124). In a particularly complex or “sensitive” case, this period can be extended for a month with the approval of the Procuratorate at the next highest level (CPL Article 124). Then, for “a particularly grave and complex case,” this period can again be extended for two more months with the approval of the “People's Procuratorate of a province, autonomous region or municipality directly under the Central Government” (CPL Article 126). If the suspect might be sentenced to a minimum fixed-term imprisonment of ten years, another two-month extension is possible with the approval of, again, “the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government” (CPL Article 127).

Following this period of investigation, which could last up to seven months, the police then either must release the suspect or transfer her/his case to the Procuratorate for public prosecution.

The Procuratorate has a month to decide whether or not to prosecute her/him (CPL Article 138). However, this period can be extended to a month and a half for major or complex cases. If the Procuratorate decides that supplementary investigation is needed, it can either send the case back to the PSB or conduct the investigation itself. In either case, the supplementary investigation can take up to one month (CPL Article 140). After the Procuratorate receives the supplementary information, it has up to one and a half months in which to consider whether or not to prosecute the case. The Procuratorate can send the case back for supplementary investigation up to two times. The period for public prosecution thus can last up to six and a half months.

Altogether, the period following formal arrest (including investigation and public prosecution periods) can last up to 13.5 months. And adding these two periods (*juliu* and *daibu*) together, a suspect can be held for up to an astonishing 14.5 months before being brought before a judge.

Most criminal offenses are investigated by the PSB and the legal limit of 14.5 months applies to cases investigated by the PSB. However, offenses committed by government officials are handled directly by the Procuratorate. Criminal investigations by the Procuratorate follow a different set of time limits. After a suspect is taken into custody, the Procuratorate must interrogate the suspect within twenty-four hours. The Procuratorate then has up to 14 days to formally arrest (*daibu*) the suspect (CPL Articles 133 and 134). Following formal arrest, the case enters the public prosecution phase directly, which, as discussed above, could last up to six and a half months. Therefore, in cases investigated by the Procuratorate, the legal limit for pre-trial detention is seven months.

However, a number of provisions in the CPL stipulate other circumstances under which a suspect could be legally detained beyond 14.5 months before being brought before a judge. Article 128 states that if “during the period of investigation a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody during investigation shall be recalculated...from the date on which such crimes are discovered.” Article 122 states that “the period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.” Article 128 states that in the case of a suspect who does not give her/his true name and address and whose identity is unknown, “the time limit for holding him in custody during investigation shall be calculated from the date on which his identity is discovered.”

From the moment a detainee is taken into custody, s/he is held in detention centers (*juliusuo*) under the jurisdiction of the PSB. Detention centers hold both criminal suspects and individuals who are subject to administrative punishment. Once individuals are convicted of a crime, they are then sent to prisons. In detention centers, women are held separately from men, but minors might or might not be separated from adults depending on the conditions of the detention centers.

Detainees have no legal recourse to challenge the legality of their detention. Habeas corpus does not exist in China's legal system. Detainees can, however, submit complaints to the PSB and the Procuratorate. According to Chapter III of the Provisions on the Application of the Term of Criminal Custody by Public Security Organs<sup>8</sup>, suspects, their legal representatives, relatives or their lawyers can submit complaints regarding detention beyond the legal limit to the PSB or to the prosecutors stationed at the centers. The PSB should then investigate the complaints within three days of submission. Some detention centers are also equipped with computer systems holding a record of all detainees. The computer system records the cases of detainees who are detained beyond the legal limit. Such cases should be reported to the presiding officer and the detainees should be released. However, since the PSB is responsible for investigating the legality of its own actions and the Procuratorate is not independent from the PSB, there is no independent investigation of a complaint, and the system provides much room for abuse.

### **Re-education through Labor continues to be widely used despite calls for its abolition.**

The Committee is correct to note that the Chinese government has taken no action to abolish the Re-education through Labor System (RTL, CAT/C/CHN/Q/4 para. 2(h)), an administrative system under which about 230,000 individuals are held annually without charge or trial, according to one estimate in 1997 by the U.N. Working Group on Arbitrary Detention. Not only has the Chinese government not taken any action to abolish the practice, the system has been used as a major tool to punish Falun Gong practitioners, petitioners and human rights activists in recent years.

Individuals may challenge the decision to send them to RTL by first applying for an administrative review by the local RTL Management Committee, an administrative organ dominated by the PSB. They can submit their application for review to the People's Government at the same level as the Committee or to the RTL Management Committee at a level higher than the Committee that made the decision.

If through the review, the decision is upheld, according to Article 2 of the Administrative Litigation Law,<sup>9</sup> the individual can then file an administrative lawsuit against the RTL Management Committee which made the decision. Thus, an individual may only have her/his case reviewed by a judge after the decision has been made to send the individual to RTL and after he/she has served time in an RTL camp, and even then, only those who file an administrative lawsuit and whose cases are accepted by the court may have their cases reviewed by a judge. Until recently, the courts rarely accepted or dealt seriously with such lawsuits. Even in rare cases when the courts do agree to hear the lawsuit, the RTL decision is almost always upheld.

Few individuals actually make use of the two remedies to challenge the RTL decision. A report by the UN Working Group on Arbitrary Detention dated 1998 concurs that the effectiveness of

administrative lawsuits is “very relative, as can be seen from the very small number of such proceedings.” This situation has changed very little in the passing years. CHRD’s survey in 2008 shows that only 5% of the one-thousand interviewees who are petitioners sent to RTL applied for administrative review or filed an administrative lawsuit.<sup>10</sup> Out of those 50 individuals, only one was granted a shorter punishment—shortened from two years to one year—largely because she was a green-card holder and supported by the U.S. government in her administrative review. None of the fifty managed to overturn the initial RTL decision using the two remedies. Individuals do not make use of the two remedies because of a combination of factors. Some barriers to using the remedies are: lack of knowledge about them, lack of access to legal counsel due to high cost and fear of retaliation especially by the PSB. They also feel the remedies are ineffective because the government agencies which review the decision lack independence from the RTL Management Committee which made the original decision.

The case of Liu Jie (刘杰), a Heilongjiang petitioner and human rights defender, is a classic example of the near-total futility of these two remedies against RTL decisions. Liu filed an administrative review with the Heilongjiang RTL Management Committee, but it was rejected on February 19 because the Committee could not find “anything wrong” with the original decision. Liu then filed an administrative lawsuit suing the local RTL authorities for their decision, but both Nangang District People’s Court and Heilongjiang Military Farm Bureau Intermediate People’s Court in Heilongjiang Province verbally refused to accept the case without any explanation.<sup>11</sup>

### **Petitioners are ill-treated and arbitrarily detained for lodging complaints.**

The Committee raised the issues of “retrievers” or “interceptors” (*jiefang ren yuan*) in paragraph 2(j) and illegal detention facilities used to detain petitioners (or “black jails,” *heijianyu*) in paragraph 2(k) of the List of Issues. The two interrelated issues are serious human rights violations that deserve greater attention as they are illegal and secret measures targeting petitioners, who bring complaints about lower levels of government to higher authorities and who are amongst those most vulnerable to human rights abuses in China today. (See also CHRD’s recent report, *Silencing Complaints: Human Rights Abuses Against Petitioners in China*<sup>12</sup>)

Interception does not exist legally or publicly, but evidence points to rapidly expanding operations, extensive in scope. In recent years, because the number of petitions has continued to rise, interception has become a major area of responsibility for various local governments, and many departments at different levels are involved. Government agencies which are involved in and contribute staff to interception operations include Letters and Visits Offices (*xin fang bangongshi*), the PSB, the Procuratorate, the judiciary, the police, local government offices located in provincial capitals and in Beijing (“liaison offices”) and the government units directly

responsible for the alleged rights violations described in the petitions. Criminal gangs and thugs are also hired by these government agencies to intimidate, beat and even kill petitioners on their behalf.

Interceptors harass, monitor, kidnap and beat petitioners. After petitioners are kidnapped, some are beaten, even to death in several documented cases. They are often detained in Beijing or in their home areas after being forcibly returned. They may be imprisoned or detained in psychiatric institutions, RTL camps, "black jails" or "educational classes" (*xuefaban* or *xuexiban*) without charge or trial.

"Black jails" are temporary detention and interrogation centers where detainees face further interrogation, beatings, mistreatment, imprisonment and arbitrary detention. In Beijing, black jails are usually rented space or liaison offices used by local interceptors before they escort petitioners back to their home provinces. A CHRD report<sup>13</sup> identified the locations of a number of black jails in Beijing established by local governments.<sup>14</sup> Petitioners are also sent to black jails in their hometowns. The detainees can be incarcerated in the black jails for days or months without any legal procedures. They are crowded into small rooms, poorly fed, and without proper sanitation facilities or health care. Many are elderly and some have children, while a significant number have medical conditions or are disabled. They are prohibited from contacting the outside world.

In addition, there are many reported cases of illegal detention in local "law education classes." According to CHRD's sources, such "education classes" are found nationwide.<sup>15</sup> These "classes" are similar to black jails in that petitioners are detained in secret and well-guarded locations. They are usually held incommunicado and their families have no knowledge of their whereabouts.<sup>16</sup> Detainees in these classes are also often mistreated and beaten.<sup>17</sup>

Interception, black jails and educational classes do not officially exist. Thus, there is no official means to hold interceptors accountable and no official institution has oversight over individuals detained in these illegal facilities. In theory, petitioners can apply for an administrative review or file an administrative lawsuit against the relevant government officials or agencies, but the courts always refuse to accept such cases.

The Committee also asked about the whereabouts of Ye Guoqiang (叶国强) and Ye Guozhu (叶国柱) (CAT/C/CHN/Q/4 para. 2(k)). The Ye brothers are petitioners-turned-activists who had petitioned the government to compensate them for forcibly demolishing their home and restaurant to make way for construction for the Olympics. For their activities to defend human rights, the two have been repeatedly detained and imprisoned. The particulars of their cases are given below.

Ye Guoqiang:

- In October 2003, after the brothers had repeatedly petitioned authorities for compensation without success, Ye Guoqiang attempted suicide in desperation. For that, he was sentenced to two years in jail between 2003 and 2005 for “provoking and making trouble.”
- On September 29, 2007, Ye was again taken into police custody after he staged a protest calling on the CCP to help disabled people in front of the Beijing Xuanwu District government building. Ye was detained on suspicion of “inciting subversion of state power” and was released on bail on January 9, 2008.<sup>18</sup> Authorities placed conditions on Ye's release, including that he not make contact with anyone overseas or petition and that he report to the police whenever summoned.

Ye Guozhu:

- Ye Guozhu was sentenced to four years in prison for “provoking and making trouble” on December 18, 2004 after he applied for permission to organize a protest against forced evictions.
- On July 22, 2008, four days before he was due to be released, Ye was taken away from Chaobai Prison by Xuanwu police. Ye was detained on suspicion of “gathering crowds to disturb the order of public places.” It is believed that Ye Guozhu was detained to prevent him from speaking out against, or organizing public protests during, the Olympics.<sup>19</sup> Ye is now held at Beijing PSB Xuanwu District Sub-division Detention Center.

Wang Guilan (王桂兰), whom the Committee mentioned in paragraph 2(1) of the List of Issues, has been sent to RTL. Wang was taken into police custody on February 28, 2008 immediately after the release of an open letter, which Wang had helped to organize, signed by 12,709 petitioners calling on the Chinese government to improve the human rights situation. Wang was released in March. However, on April 17, Beijing police picked Wang up off the street and handed her to interceptors from Enshi City. Wang was escorted back to Enshi, where she was held at an isolated black jail. On July 29, Wang was criminally detained on suspicion of “disturbing social order.” According to the authorities, Wang was detained for accepting a phone interview with foreign journalist during the Olympics. On August 28, Wang was sent to fifteen months of RTL for “disturbing social order.” Wang is currently held at Enshi Detention Center. It is believed that she will soon be to be transferred to Wuhan RTL camp.<sup>20</sup>

### **Harassment and arbitrary detention of human rights defenders are not investigated.**

Human rights defenders (HRDs) are frequently subjected to various kinds of persecution and retaliation, including arbitrary detention, torture and other cruel, inhuman or degrading treatment

or punishment, forced disappearance and police monitoring. Even after such cases are reported to the police and other relevant government departments, the Chinese government rarely, if ever, investigates them, much less holds the perpetrators accountable or takes steps to prevent such practices.

The Committee mentioned the case of Teng Biao (滕彪, CAT/C/CHN/Q/4 para. 2(n)), a well-known human rights lawyer who was kidnapped and arbitrarily detained by police from the National Security Unit of Beijing PSB on March 6.<sup>21</sup> About six months prior to Teng's arbitrary arrest, on September 29, 2007, another well-known human rights lawyer, Li Heping (李和平), was kidnapped under very similar circumstances. He was brought to an undisclosed location for interrogation and received severe beatings by unidentified men in plain clothes before he was dumped in the woods outside Beijing.<sup>22</sup> Li reported the abduction to his local PSB, which told him that the case would be investigated. To date, Teng's and Li's kidnappers have not been held accountable for their crimes, and CHRD is not aware that any investigations into the incidents have been conducted. The police have never even acknowledged responsibility for Li's kidnapping and assault. After their releases, Li and Teng continued to be harassed by Beijing police.

The Committee also raised questions (CAT/C/CHN/Q/4 para. 2(n)) about the case of Chen Guangcheng (陈光城), the blind reproductive rights activist from Linyi City, Shandong Province convicted of "intentionally damaging property and gathering crowds to disturb transport order" and sentenced to four years and three months imprisonment on March 11, 2006. Chen continues to languish in Linyi Prison. During his imprisonment, Chen has been insulted, fed poor quality food, given insufficient bedding and barred from accessing the books brought by his family. In June 2007, Chen was beaten by fellow inmates under the instructions of the prison authorities. Since September 2007, the authorities have barred Chen's wife, Yuan Weijing (袁伟静), from visiting him. As for the attacks on and harassment and arbitrary detention of the lawyers and activists who defended and supported Chen during his trial, such as Li Fangping (李方平), Li Subin (李苏滨), Xu Zhiyong (许志永), Hu Jia (胡佳), Li Jinsong (李劲松), Zhang Lihui (张立辉) and Gao Zhisheng (高智晟), CHRD documented them extensively in our communiqué to the UN's Special Procedures.<sup>23</sup> CHRD is not aware that any official investigations to investigate these incidents have been conducted.

The Committee mentioned the case of Yang Chunlin (杨春林, CAT/C/CHN/Q/4 para. 20), the Olympics Prisoner who was convicted of "inciting subversion of state power" and sentenced to five years' imprisonment for collecting signatures for a petition entitled "We Want Human Rights, not the Olympics". According to Yang, he was tortured and coerced to confess while in detention. Yang, his family and lawyers are not aware of any investigations launched in response to the allegations of torture. Not only did the Chinese government not investigate Yang's alleged torture while in detention, Yang was subjected to further torture and degrading treatment. In his

trial on February 19, 2008, Yang, in handcuffs and heavy leg irons, was made to wear a black hood and walk up six flights of stairs to reach the courtroom. During the trial, Yang was released from the leg irons, but his legs were fastened to an iron seat, rendering him unable to stretch, move or stand up during the five-hour trial.<sup>24</sup> At his sentencing hearing on March 24, court police hit Yang several times with electric batons when he attempted to speak with his family who attended the sentencing hearing.<sup>25</sup> On March 28, Yang told his lawyers that he was beaten by guards at the detention center on March 5 after he had publicly pointed out the misconduct of some prison cadres.<sup>26</sup> When Yang's sister brought a complaint letter about his beating during the sentence hearing to Jiamusi Intermediate People's Court, the head of the Court not only admitted the incident, he even told her that the beating was "planned and permitted [by the Court] following careful study".<sup>27</sup>

### **Lawyers are deterred from defending detained clients**

The Committee is correct to note in paragraph 2(p) of its List of Issues that Chinese lawyers can be imprisoned for defending their clients in criminal cases according to Article 306 of the Criminal Law. As a result, many lawyers avoid handling criminal cases, leaving most detainees in China with no legal representation and exposing them to increased risk of torture and mistreatment.

According to Article 306 of the Criminal Law,

"During the course of criminal procedure, any defense lawyer and legal representative who destroys or falsifies evidence, or assists parties concerned in destroying or falsifying evidence, or threatening or luring witnesses to contravene facts, change their testimony or make false testimony is to be sentenced to not more than three years of fixed-term imprisonment or criminal detention..."

According to Chinese criminal lawyers, the Procuratorate has used Article 306 to investigate and prosecute lawyers in recent years. It is unclear how many lawyers have been convicted. Even when the Procuratorate has no intention of proceeding towards conviction of a lawyer on such charges, it makes use of this article to threaten him/her. As a result of the Article's use to intimidate and dissuade lawyers from taking "sensitive" cases, the number of lawyers handling criminal cases has not increased even though the overall number of lawyers has grown. Many lawyers are afraid of handling criminal cases. According to one estimate, on average, each Chinese lawyer handles fewer than one criminal case a year and over 70% of criminal cases have no involvement of lawyers at all.<sup>28</sup> In some highly publicized criminal cases, the court appoints a lawyer for the defendant, but often without the defendant's consent or the defendant having the chance to meet the lawyer before trial.

CHRD wishes to bring to the attention of the Committee an especially worrying development in Chinese law—the addition of Article 37 to the newly amended Lawyers Law. Article 37 states, “When a lawyer is acting on behalf of, and speaking in defense of, a defendant, s/he will not be legally responsible. However, *this does not apply to lawyers whose speech endangers the national security, or who maliciously slanders others and seriously disturbs the order of the court*” (italics added for emphasis). Article 37 provides opportunity for the state to characterize lawyers’ speech as dangerous, maliciously slanderous, and a disturbance of the order of the court. CHRD is worried that the newly amended Lawyers Law will have the effect of curbing criminal lawyers and lawyers in general in their efforts to defend their clients as well as of discouraging lawyers from taking cases which may bring the wrath of powerful authorities down upon them. CHRD is also concerned that the Lawyers Law will be used as a tool to infringe upon the independence of lawyers and to persecute human rights lawyers.

**Government officials use general and vague provisions in the article of the Criminal Law regarding involuntary hospitalization to incarcerate dissidents in psychiatric hospitals.**

The Committee asks about “the legal safeguards of persons in health institutions subjected to involuntary hospitalization, particularly in psychiatric hospitals” (CAT/C/CHN/Q/4 para. 2(p)). The main legal basis for involuntary hospitalization is Article 18 of the Criminal Law, which states,

“A mentally ill person who causes dangerous consequences at a time when he is unable to recognize or unable to control his own conduct is not to bear criminal responsibility after being established through accreditation of legal procedures; but his family or guardian shall be ordered to subject him to strict surveillance and arrange for his medical treatment. *When necessary, he will be given compulsory medical treatment by the government*” (Italics added for emphasis).

The provisions of this article are very general and vague. They include no concrete details as to the circumstances under which the individual should be subjected to compulsory medical treatment. As a result, interpretation of this Article varies widely across the country. Local governments develop their own regulations on involuntary hospitalization, many of which have few safeguards to protect the human rights of individuals incarcerated. In some provinces and cities, involuntary hospitalization has been used as a means to restrict civil liberties. In Tianjin and Shanghai for example, the relevant regulations stipulate that individuals who “disturb public order”, another general and vague term, can be subjected to involuntary hospitalization.

Police have wide powers in determining “mental illness” and incarcerating people in mental hospitals. Article 14 of the Police Law<sup>29</sup> states,

“...the people's policemen of public security organs may take protective measures to restrain a mental patient who seriously endangers public security or other people's personal safety. If it is necessary to send the patient to a designated institution or place for guardianship, the matter shall be reported for approval to the public security organ of a people's government at or above the county level, and his or her guardian shall be notified without delay.”

The police are not required by law to arrange an independent mental health evaluation of the individual and can subject her/him to involuntary hospitalization following approval from a higher PSB. Even when the individual's mental state is evaluated, it is questionable how independent and professional the mental health “experts” are who carry out the evaluation. The system is full of loopholes and provides much room for arbitrary interpretation. It has been

Hu Jing (胡敬), a workers' rights activist and member of the banned Pan-Blue Alliance of Chinese Nationalists, has thrice been subjected to involuntary hospitalization since 2005. In 2005, while on his way to Tiananmen Square in Beijing where he had planned to burn a Chinese Communist Party (CCP) flag in protest, he was intercepted and sent to Chongqing Jiulongpo District Mental Health Center by Chongqing Police. Before his admission, the police dispatched two psychiatrists to evaluate Hu's mental state. Hu refused to answer the questions. However, the psychiatrists claimed that Hu suffers from “extreme psychosis” and admitted him to the hospital, where he was reportedly mistreated.

Between November 2007 and January 2008, Hu was again sent to the psychiatric institution for petitioning about workers' rights in Beijing. Reportedly, after his release from the first detention, Hu was confirmed to be mentally healthy when he went for an independent assessment. The reason the Chongqing Police forcibly confined him to the psychiatric institution a second time was that they were unhappy about him getting an independent mental assessment.

In early July 2008, Chongqing police sent him to the local psychiatric institution to prevent him from petitioning during the Olympics. Hu was released on September 19.

Hu claims that Chongqing Jiulongpo District Mental Health Center has refused to give him his mental health record despite repeated requests.

For more case studies of individuals forcibly detained in psychiatric institutions by the police, please see Appendix II in CHRD's recent report, *Dancing in Shackles: A Report on the Situation of Human Rights Defenders in China (2007)*<sup>30</sup>

used to hospitalize “Falun Gong practitioners and Tibetans...not for medical reasons”, as the Committee has noted in paragraph 2(p) of its List of Issues. It is important to point out that

petitioners are also frequent victims. In a CHRD report<sup>31</sup>, it was found that 3.1% of the surveyed petitioners had been imprisoned in psychiatric institutions. Many had suffered this fate more than once. The mental health of the individuals was generally not evaluated. There was no evidence to suggest that they were mentally ill or posed any threat to society. In the psychiatric institutions, they were often beaten and forced to take unknown medication that could be harmful to them.

The legal framework regulating involuntary hospitalization is incomplete and complex. It does not spell out the mechanisms to challenge decisions of involuntary hospitalization. Chinese lawyers generally find it difficult to intervene effectively in aiding individuals sent to psychiatric hospitals. This is complicated by the fact that the PSB often persuades or coerces the family into signing an agreement to commit the individual against her/his will to a psychiatric hospital.

**The right to appeal is often violated, and cases are sent back to original courts for “re-trial”.**

When higher courts receive appeals of cases in which the facts are unclear or the evidence is insufficient, they send the cases back to the original courts for re-trial rather than reviewing and adjudicating the cases themselves. The original courts tend to deliver the same or even harsher sentences because they, together with the local police and Procuratorate which participate in the investigation and prosecution, do not want to admit any wrongdoing. On rare occasions, the original court may deliver a lighter sentence following re-trial. In some cases, for fear of a harsher sentence, the defendants and their lawyers decide not to appeal the court's verdict. This practice is in direct contradiction to the Chinese government's claim that “in cases where the facts were not clear, where evidence was insufficient and where it was not possible to determine the guilt of the accused, a verdict of innocent should be resolutely declared in accordance with the law, without hesitation or indecision” (CAT/C/CHN/4 para.30). The right to appeal, which aims to ensure at least two layers of judicial scrutiny of any case, the second of which must be conducted by a higher court, is therefore frequently violated in practice.

Article 4

**Officials who use extensive violence in the implementation of the family planning policy are rarely investigated or held accountable.**

The Committee asked in paragraph 6 of its List of Issues about the investigation, prosecution and conviction of officials who use violence against citizens in the implementation of the population policy.

In implementing the national family planning policy, local governments are pressed to accomplish the policy's objectives, which often include fulfilling quotas for births, contraceptive use and sterilizations. When the number of births in a local area goes above quota, local officials

may face demotion, reduced bonuses, or a less promising political future. To ensure that the quota is met, local governments typically dispatch medical personnel, local officials and police officers to villages to conduct searches for “illegal pregnancies.” In cases in which an alleged “illegal pregnancy” is reported or discovered, they take women to hospitals for abortion or sterilization. The pregnant woman is persuaded, or more often coerced, to abort the fetus. If a woman goes into hiding to evade capture, her relatives may be questioned, fined, detained, beaten, or have their property confiscated unless they are able to persuade the woman to return and comply with family planning officials. CHRD has received reports that many local government officials, such as those in Linyi City and Zaozhuang City in Shandong Province, Guannan County in Jiangsu Province, Bobai County in Guangxi Province and numerous others localities have employed such violence.

Family planning officials and those acting with their consent act with impunity. When one victim confronted a Linyi official, the latter said, “Feel free to go and complain! You can complain to the county government or to Linyi government, [I don't care] because it costs me at most RMB 10,000 to beat you to death!”<sup>32</sup>

The above quotation was documented by Teng Biao, a lawyer and legal scholar, and Chen Guangcheng, a human rights activist now imprisoned in Linyi Prison. In 2005, the two conducted an investigation of the implementation of population policy in Linyi. They also provided legal advice to victims and assisted them in filing lawsuits against the relevant government officials, as such practices violate the Population and Family Planning Law.<sup>33</sup> The vocal complaints of Chen, Teng and other activists, documented by human rights groups and widely reported in the international press and to a lesser extent in the domestic press, eventually reached the State Family Planning Commission (*guojia jihua shengyu weiyuanhui*), a central government agency. It issued a statement criticizing Linyi government for its use of violence, but local officials ignored it. The Commission had planned to send officials to Linyi to investigate the allegations, but it soon gave up after Linyi officials reported that the activists exposing the violence were “criminals.” Eventually, some activists, Chen among them, found themselves the targets of retaliation by local officials. Chen was convicted of “intentionally damaging property and gathering crowds to disturb transport order” and sentenced to four years and three months imprisonment on March 11, 2006. Those in Linyi who filed lawsuits against local officials were forced to withdraw their cases and suffered retaliation from officials.

CHRD has documented many other cases in which officials are not held legally accountable for their misconduct. In these cases, victims either do not lodge complaints because they do not know how to or are too afraid to do so for fear that they will be punished for the alleged “illegal” pregnancies or children, or they complain to the local Office of Population Policy (*jishengban*) and their complaints are ignored. Some victims petition local government and higher authorities

for redress, and are subsequently subjected to even more violence and persecution by interceptors from their local areas.

### Article 10

#### **The Chinese government actively prohibits human rights education in China.**

The Chinese government may have allowed international agencies to conduct some limited human rights training of government officials, the impact of which is yet to be assessed. However, it is clear that the government has not fulfilled its obligations to widely educate its employees and citizens about human rights or the international prohibition against torture. It has in fact actively blocked access to information and training courses for civil society actors on human rights. Websites reporting on human rights violations, such as those of CHRD, Independent Chinese PEN, Rights Defense China (*weiquan zhongguo*) and Citizens' Rights and Livelihood (*minsheng guancha*) are either blocked, censored or closed by the authorities. Police have barred activists from distributing copies of the Universal Declaration of Human Rights to fellow citizens, and have confiscated the Declaration from activists, referring to it as an “illegal publication”. Between 2006 and 2008, several NGO activists, such as Liu Zhengyou (刘正有), Yao Lifa (姚立法), Zan Aizong (咎爱宗), and Zeng Jinyan (曾金燕), have been barred from leaving the country for training courses on human rights in Geneva.

### Article 11

#### **Forced labor under poor working conditions persists in detention facilities.**

The Committee asks a series of questions regarding conditions in detention and prisons (CAT/C/CHN/Q/4 para.11 and 12). CHRD has limited information concerning these aspects, but would like to highlight the system of forced labor in detention facilities such as detention centers (*kanshuosuo*), RTL camps and prisons. CHRD has received many reports of appalling conditions of labor in detention facilities.

Below are some examples:

“I was criminally detained on April 19 [2001] in Futian Detention Center. The first thing I was made to do was assemble plastic flowers...from 7 a.m. to 11 p.m. without any afternoon breaks. Soon my hands were bloody. Due to the side effects of the toxic glue used, the wounds [in my hands] turned quickly into ulcers...among about thirty suspects in one cell, the few who worked the slowest were beaten by the head of the cell using an iron strip wrapped in plastic. Someone is beaten everyday. Those who resist [the beatings] were beaten by the police with iron straps, which sliced open the skin and

revealed the flesh..." said an activist who was sentenced to three years of imprisonment in 2001.<sup>34</sup>

"At Puyang RTL camp in Henan Province, we worked between 6:30 a.m. and 9:30 p.m. with three meal breaks each of thirty minutes...our main task is to strip the wires out of used tires...on March 12, 2008, Zhang Jianjian, one of the detainees at the camp, was working when four of his right hand fingers were accidentally wound into the machine. His thumb and middle finger were injured particularly badly but the RTL camp did not send him to the hospital but bandaged his fingers at the camp. The accident today was caused by a lack of [adequate] rest as well as almost no labor protection at the camp" said a labor activist currently serving 18 months of RTL.<sup>35</sup>

### **Prisoners on death row are subjected to cruel treatment.**

The Committee asks about the conditions of detention for prisoners on death row (CAT/C/CHN/Q/4 para. 13 and 29). On this issue, CHRD interviewed a number of lawyers who worked on death penalty cases. The lawyers confirmed that prisoners on death row are usually shackled 24 hours a day from the time of their conviction until their execution. This treatment is sometimes applied as well to detained suspects who, if convicted, could face the death penalty. One lawyer described what he saw at a detention center in Fu'an City in Fujian Province recently:

"One suspect facing charges for a serious crime was shackled and handcuffed 24 hours a day. He was detained in the same cell with other suspects. One fellow suspect was ordered to feed him and help him with defecation, urination and other necessary actions. When asked, the guards at the detention center justified this treatment as preventive – to prevent suspects from escaping or harming others. When the same detainee later appeared in court to stand trial, the handcuffs and leg irons were taken off."

One Chinese lawyer also confirmed that the practice of harvesting organs of executed prisoners without their own or their families' consent has continued. However, CHRD finds it very difficult to obtain more detailed information about the situation of prisoners on death row because lawyers and families of those sentenced to death are often denied visits to the prisoners. Often, lawyers and families are not informed of the execution until after it has happened.

Statistical data on the number of prisoners sentenced to death and awaiting execution and the number of executions carried out continue to be classified as state secrets, unavailable to the public.

Shooting continues to be the main method of execution in China, though some provinces such as Yunnan and Sichuan have replaced bullets with lethal injections. There is no evidence suggesting

that China has systematically taken any specific procedures to reduce to a minimum unnecessary suffering during execution.

### Articles 12 and 13

#### **Perpetrators of torture are rarely punished or held legally accountable.**

Perpetrators of torture are rarely punished or held legally accountable. Victims of torture, their lawyers, families or anyone with knowledge of the commission of an act of torture can submit a complaint to the PSB Superintendent's Office (*jingwuduchashi*) or the Procuratorate. In both cases, the complainants usually receive some form of response, either verbal or written, stating that after "investigation" no evidence of torture to extract confession was found.

Victims of torture and their lawyers often complain about torture to presiding judges during trial, but presiding judges either ignore the complaint or quickly dismiss it after the police deny the allegation in court. In a number of trials involving the death penalty, defendants complained about torture to extract confession and in some cases even showed the judges their scars. Such cases include those of Chen Guoqing (陈国清) and three other villagers from Chengde City, Hebei Province who were sentenced to death<sup>36</sup> for "robbery"; Cheng Fagen (程发根) and three other villagers from Leping City in Jiangxi Province convicted of "murder, robbery and rape";<sup>37</sup> and Yang Ming (杨明), an official from Guizhou Province convicted of "corruption and bribery". However, the courts invariably ignored the allegations of torture as well as contradictions and other dubious aspects in the evidence, convicted the defendants and sentenced them to death.

At times, some officials are held legally accountable for torture, but their sentences are generally light considering the gravity of the crime. For example, Liu Han (刘翰), a former chief of investigation at Jiuqiang City PSB Gongqing Subdivision in Jiangxi Province, was sentenced to one year in prison in 2005 for torturing a suspect to death in 1997. Two other policemen who participated in the torture were sentenced to ten and six months of imprisonment each and both sentences were commuted to one year of probation.<sup>38</sup> Three policemen from Qiubei PSB in Wenshan Zhuang and Miao Autonomous Prefecture, Yunnan Province, Li Guangxing (李光兴), Liu Zichun (刘自春) and Lu Liangjia (卢梁甲), were sentenced to only 18 months of imprisonment for torturing to extract confession. The victim, Wang Shuhong (王树红), was beaten by electric batons and wooden rods which led to permanent disability.<sup>39</sup>

#### **Victims and their lawyers face difficulties in obtaining evidence to prosecute torture.**

When the authorities ignore or deny complaints of torture, there is very little victims of torture or their lawyers can do because it is often difficult to obtain evidence of torture.

Investigators often make use of methods of torture and mistreatment that do not leave physical traces, making it difficult to collect evidence against the alleged torturers. In some cases, when torture left physical wounds, police delayed granting permission to lawyers to meet the detainee or delayed trial until the wounds became less visible.

Closed-circuit cameras are installed in some detention centers to deter the police from using torture and other mistreatment, but not all detention centers are so equipped. In detention centers where cameras are installed, the police have full control over the filming and the disposal of filmed material. The police can therefore easily delete and edit the footage at will. Thus, the cameras lose their supervisory function of police conduct.

Official detention centers are not the only facilities where police use torture. It is a common practice of local police stations to maintain temporary detention facilities such as rented hostels, basements and offices. Individuals are often detained in their homes as well. In these informal detention facilities, it is even less likely that evidence of torture will be filmed or otherwise documented. Torturers sometimes use “creative” combinations of official detention centers and unofficial detention facilities to avoid leaving evidence of their deeds. For example, Yang Maodong (杨茂东, a.k.a. Guo Feixiong [郭飞雄])<sup>40</sup>, an imprisoned human rights defender from Guangdong Province, was blindfolded and taken away from the detention center where he was held to an unknown location in Shenyang, Liaoning Province where police tortured him to extract confession. After torture, police returned Guo to the detention center for further interrogation. Police could then deny torturing him at the detention center.

### **Judicial independence and restraints on police power are lacking.**

At the root of the prevalence of torture is a lack of effective restraints on the coercive powers of law enforcement agencies. This has several main causes, including the priority given to political considerations over individual rights and the lack of genuine independent oversight or checks on these agencies.

The prioritization of political considerations over individual human rights is most clearly demonstrated by the case of Falun Gong. After the Chinese government decided to crack down on Falun Gong, it established Office 610 to persecute Falun Gong adherents. As a political office, it has higher status than the judiciary, the PSB and the Procuratorate. In theory, Falun Gong practitioners can petition its Letters and Visits Office or sue Office 610 for torture. In practice, even these limited complaint mechanisms are closed to Falun Gong practitioners because they are treated as a “special category” and their complaints are not accepted by government offices. Falun Gong practitioners rarely lodge official complaints for fear of being subjected to even worse persecution due to their membership in the so-called “evil cult”. It is believed that Office

610 is responsible for the torture and cruel treatment of many Falun Gong practitioners and that its officers are never punished or held legally responsible for their crimes.

The Procuratorate and the judiciary, which might have otherwise provided some institutional safeguards against torture, are unable to genuinely and independently supervise law enforcement agencies for several reasons.

Firstly, the Procuratorate, which serves the contradictory functions of prosecution of accused individuals and supervision of the conduct of the police, is unlikely to be effective in carrying out the latter function because its primary purpose is aligned with that of the PSB—that is, to solve a case quickly and render punishment.

Secondly, the CCP's Political-Legal Committee (*zhengfawei*) is responsible for directing and controlling the judiciary, the PSB and the Procuratorate. In many local areas, the Secretary of the Political-Legal Committee is also head of the PSB. Under this arrangement, heads of the Procuratorate and the judiciary are both under the control of the PSB and thus have less power than the PSB, rendering it in effect impossible for the judiciary or the Procuratorate to hold police officers accountable for torture. The Political-Legal Committee requires the Procuratorate, the judiciary and the PSB to “cooperate” in solving major cases rather than acting as checks on each others' misconduct.

Thirdly, during court proceedings involving “sensitive” cases, the presiding judge has to follow the guidance of the court's Judicial Committee (*shenpan weiyuanhui*). Made up of the head and other main judges of the court, it ensures that the “guidance” from the Political-Legal Committee is implemented. Thus, the power of presiding judges to make independent rulings based on the merits of a case is highly constrained, also in regard to dismissing evidence obtained by torture.

Finally, the local Procuratorate and Court, which according to Article 5 of the CPL are to be “free from interference by any administrative organ, public organization or individual”, are in fact under the control of the local government in addition to being subjected to the influence of the Political-Legal Committee. Among other forms of subordination, the local Procuratorate and Court are dependent on the local government for funding of their routine operations. The local government has decision-making power over not only the funding of the Procuratorate and Court but also over promotion and other personnel matters, as well as the working conditions (such as the purchase of new equipment) at the Procuratorate and Court. The local government therefore frequently interferes with the Procuratorate's and the Court's decisions regarding investigation, arrest, prosecution, conviction and sentencing of individuals. The local government often presses the Procuratorate to give up investigation of local cadres or orders it to arrest or prosecute individuals based on political considerations.

### Article 14

#### **Victims of torture almost never receive adequate compensation.**

Most victims of torture are often unable to win compensation, even when they try. Song Dewen (宋德文), a Heilongjiang villager released in 2002 following seven years of detention without trial, has not yet received compensation for having been arbitrarily detained. Even if victims are compensated, they usually receive a pitiful amount after going through a painstaking process. For example, Wang Weifa (王威发), a Hunan villager wrongfully convicted of robbery and rape based on a confession extracted by torture, received RMB 33,000 (USD 4,836) in compensation from the local government after thirty years in prison. Dissatisfied with the compensation, Wang went to the local courts to seek compensation in accordance with the Law on State Compensation,<sup>41</sup> but the courts refused to accept his case.

In theory, victims of torture must be compensated. According to the Law on State Compensation, the victim can either apply to the government agency accused of torture, or raise the issue when filing an administrative review and lawsuit concerning the case. The government agency accused of torture needs to compensate the victim within two months of the receipt of the application. If the government agency fails to deliver the compensation within the legal limit or if the victim is dissatisfied with the compensation allocated, s/he can then sue the government agency.

In other words, the government unit charged with processing the application and delivering compensation is the very one that was responsible for the torture. Although the victim can sue the government unit for failure to deliver compensation, the lack of independence of the judiciary means that there is a lack of effective mechanisms to ensure that victims of torture are properly compensated.

### Article 15

#### **Confession obtained by torture is admissible in court.**

Generally, confession obtained by torture is still admissible in court. Many courts do not make the distinction between confession obtained by torture and other kinds of evidence but allow the former be used as evidence. Although according to Article 43 of the CPL it is “strictly forbidden to extract confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means,” the CPL does not stipulate that evidence obtained by such means is inadmissible in all judicial proceedings. Article 61 of the Supreme People's Court Explanation of Several Issues on the Implementation of the People's Republic of China Code of Criminal Procedure<sup>42</sup> stipulates that “witness testimonies, statements by the victims and the accused obtained through torture...cannot be used as the basis for conviction,” but again, it does not

categorically declare that such evidence is inadmissible. Furthermore, the Explanation is not a legally-binding document and its focus on statements and testimonies does not preclude the use of *physical* evidence obtained through torture. Similarly, Article 75 of the Public Order Administration Punishment Law of the People's Republic of China<sup>43</sup> prohibits the use of evidence obtained by torture only when it is used as “the basis for punishment”.

### Article 16

#### **Detention authorities tolerate and even promote inter-prisoner violence; prisoners are used to exert control over “problematic” prisoners.**

The Committee mentioned the issue of inter-prisoner violence (CAT/C/CHN/Q/4 para. 31) and indeed such violence is common and tolerated in detention centers. Although guards are fully aware of the existence of violent bullies and inter-prisoner violence in detention facilities, they do not take effective measures against such individuals. For example, Jia Xiaobing (贾小兵), a detained suspect at Xicheng Detention Center in Beijing, died following successive beatings by eight fellow detainees, but the guards were not punished or held legally accountable.<sup>44</sup>

Prison guards often assign fellow prisoners to watch, harass or punish dissidents and human rights defenders. Prisoners who successfully carry out their assignments are rewarded while those who refuse to cooperate are punished. For example, imprisoned human rights defender, Hu Jia (胡佳), has been watched by four prisoners who stand to be docked points for good behavior if they fail to monitor and regularly report on Hu.<sup>45</sup> Imprisoned reproductive rights activist, Mao Hengfeng (毛恒凤), has been repeatedly tortured, mistreated and monitored by fellow prisoners at the prison hospital.<sup>46</sup>

#### **The use of excessive force by the police is common.**

The Committee mentioned the use of excessive force by the police (CAT/C/CHN/Q/4 para. 34). Despite regulations such as the Public Order Administration Punishment Law<sup>47</sup> that prohibit the use of beatings, mistreatment and degrading treatment in law enforcement, without effective means to implement these regulations, those who violate the regulations are rarely held accountable.

The use of excessive force by the police is not just incidental to legal enforcement; the police intentionally and actively use excessive force in the interception of petitioners (*shangfangren*), an illegal practice. Policemen work as interceptors (*jiefang renyuan*) and often join others in hunting down petitioners and in the process humiliate, beat and otherwise mistreat those they intercept. They also transfer petitioners whom they have apprehended to local interceptors who forcibly send the petitioners back to their home provinces.

The case of Shanghai petitioner, Duan Huimin (段惠民), a laid-off worker who petitioned for appropriate compensation following his dismissal from a state-owned company, illustrates these abuses. While petitioning in Beijing with his sister, Duan was intercepted and severely beaten by a dozen Shanghai interceptors (including policemen such as Yan Jianguo (严建国)) on November 3, 2006. The day after, Duan was sent back to Shanghai and criminally detained at Shanghai PSB Huangpu District Detention Center for “provoking and making trouble.” While in detention, Duan bled and vomited blood. Duan and his family repeatedly requested that he be allowed to see a doctor, but their requests were denied by the head of the detention center. On November 29, Duan was sent to one year of RTL for “disturbing social security and order.” Duan was finally allowed access to medical treatment on December 28, about 60 days after he was severely beaten by the interceptors. However, by then he was so seriously ill that he died soon after on January 2, 2007.

Other law enforcement officials, such as the Urban Inspection Officers (*chengguan*) who are responsible for enforcing a plethora of regulations in cities ranging from illegal structures to illegal hawking, are notorious for their use of excessive violence in carrying out their duties. For example, Li Siqiao (李四桥), a farmer from Yangliu Village, Jiangjun Road, Dongxihu District, Wuhan City, Hubei Province died on June 5, 2008 following severe beatings by dozens of Urban Inspection Officers. On May 23, Li was mending a shed on his farm when the officers arrived and disputed the legality of the structure. The officers pushed the shed over and roughly handled and beat Li's parents. Li tried to stop the officers, and the latter started beating him. Li was rushed to Wuhan Xiehe Hospital where he died twelve days later.

### Recommendations to the Chinese government

#### **Amend the definition of torture.**

- Amend the definition of torture so that it conforms to that of the Convention and includes all elements of the practices of torture and cruel, inhuman and degrading treatment and punishment as described in the Convention.
  - The revised definition should
    - include perpetrators of torture who are government officials and those acting with the consent or acquiescence of a public official;
    - clearly include the infliction of mental suffering, such as the forms listed in paragraph 1 of this report; and
    - clearly state that if the act can be defined as torture under the new definition, then it is torture no matter where it is committed and no matter what the purpose.

**Reform the detention system.**

- Increase the incidence of granting of bail by revising Article 51 of the CPL to ensure that pretrial detention should be restricted to individuals who are suspected of committing violent, major or serious offenses.
- Revise the CPL in order to guarantee the right of detainees to challenge the legality of their detention before an independent court.
- Transfer the power to approve arrest and various legal extensions to pretrial detention from the Procuratorate to independent courts.
- Transfer the power to control detention centers holding suspects awaiting trial from the PSB to a different government agency, as suggested by the Special Rapporteur on Torture in his 2006 report on China (E/CN.4/2006/Add.6), in order that “no further unsupervised contact with the interrogators or investigators is permitted”.
- Revise Articles 122 and 128 in the CPL, which allow indefinite pretrial detention under certain circumstances, such that clear time limits are imposed.
- Equip all detention centers with closed-circuit cameras.
- Hold guards at detention facilities responsible for beatings and other mistreatment to which detainees under their supervision are subjected, whether such treatment is inflicted by officials or other detainees or prisoners.
- Do not review or examine correspondence sent by detainees unless under special circumstances as stipulated in the law, and under no circumstances inspect detainees' correspondence with lawyers or offices which receive complaints.
- Allow prisoners and detainees to labor voluntarily in a safe working environment and pay prisoners and detainees for their labor.

**Abolish all forms of arbitrary detention.**

- Abolish the RTL system and subsume any punishment that involves deprivation of liberty under the Criminal Law system.
- Close immediately all “black jails”, “law education classes” and all other illegal and unofficial detention facilities.
- Adopt a Mental Health Law which outlines explicitly the requirements and procedures for subjecting individuals to involuntary hospitalization to protect their legal and human rights.

### **Abolish the death penalty and respect the rights of individuals sentenced to death.**

- Draft a timetable to abolish the death penalty. In the meantime, put safeguards in place to end abuses associated with the death penalty and drastically curtail death sentences.
  - Declare a moratorium on executions. Replace the death penalty with “death with suspended execution” (sihuan).
  - Drastically reduce the list of crimes punishable by death to only very grave and violent crimes.
    - Individuals who have committed non-violent crimes, such as economic crimes, should not be sentenced to death.
  - Cease classifying statistics on the death penalty as state secrets and make such information publicly available.
  - Respect the basic human rights and dignity of individuals who have been sentenced to death.
    - Do not subject them to other cruel, inhuman or degrading treatment or punishment, such as public executions and forcing them to wear handcuffs and leg irons around the clock.
    - Prohibit secret executions.
    - Guarantee the visitation rights of families and legal representatives of individuals sentenced to death.
    - Prohibit the removal of the organs of those executed unless they have consented in writing in the presence of their lawyer or family to donate their organs.

### **Hold government officials legally accountable for torture.**

- Hold officials legally accountable for torture if found guilty.
- Investigate complaints of torture against all government officials and individuals employed by the government or working on the government's behalf, and in particular, government and CCP officials responsible for detention centers, Urban Inspection Officers, and officials responsible for implementing the population policy.

### **Strengthen the independence of the judiciary.**

- Abolish the Political-Legal Committee.

**Render all evidence obtained through torture inadmissible.**

- Amend the Criminal Procedure Law so that it explicitly prohibits the use of all evidence obtained through torture.
  - The CPL should explicitly state that any evidence obtained through torture is inadmissible in all proceedings.

**Establish an agency under the People's Congress to receive complaints of torture and to oversee investigations of torture.**

- Establish a sub-committee under the Standing Committee of the People's Congress to receive complaints of alleged abuses and torture at detention facilities and to oversee investigations by the Procuratorate and the court.
  - The Procuratorate should investigate complaints and prosecute perpetrators. The court should bring the accused to trial in accordance with criminal procedures, as well as process compensation for victims of torture. Both Procuratorate and court should report to the supervisory sub-committee,
- Make publicly available information and statistics regarding the cases of torture reported to the sub-committee, investigations conducted under its supervision, and the results of such investigations.

**Protect the rights of lawyers.**

- Abolish Article 306 of the Criminal Law and Article 37 of the Lawyers Law to ensure that lawyers enjoy the right to freedom of expression during trial
- Protect the right of a lawyer to be present during the interrogation of the suspect.
- Revise Article 96 of the CPL such that the clause barring the lawyer's access to her/his clients because the case involves "state secrets" is deleted.

**Allow greater supervision of detention facilities by members of the public.**

- Allow the media, interested members of the public and civil society groups unhindered access to its prisons and detention facilities for inspections.
- Establish effective channels for these individuals and groups to make suggestions to officials responsible for these facilities.

- Strengthen and protect the right of deputies to the People's Congresses at all levels to supervise and inspect detention facilities.
  - Officials responsible for these facilities must also answer queries and complaints raised by these deputies.
  - To ensure that deputies play an effective role in monitoring these facilities, elections to these positions must be free and fair.

*Notes:*

---

<sup>1</sup> The Supreme People's Procuratorate, "The Supreme People's Procuratorate Regulations on Standards for Filing Criminal Cases of Dereliction of Duty and Rights Infringement <最高人民检察院关于渎职侵权犯罪案件立案标准的规定> (*zuigao renmin jianchayuan guanyu duzhi qinquanfanzui anjian lian biao zhun di guiding*)", effective since July 26, 2006.

<sup>2</sup> National People's Congress, "Criminal Law of the People's Republic of China <中华人民共和国刑法> (*zhonghua renmin gongheguo xingfa*)", effective since October 1, 1997.

<sup>3</sup> They are individuals living in the neighborhood who volunteer and assist the police on specific tasks to ensure the "security" of the neighborhood. These tasks could include monitoring specific individuals or types of individuals (for example, petitioners and adherents of Falun Gong).

<sup>4</sup> National People's Congress Standing Committee, "Lawyers Law of the People's Republic of China <中华人民共和国律师法> (*zhonghua renmin gongheguo lushi fa*)", effective since June 1, 2008.

<sup>5</sup> Most criminal cases are investigated by the PSB except those involving government officials. Article 18 of the Criminal Procedure Law states that, "investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law. Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights -- committed by State functionaries by taking advantage of their functions and powers -- shall be placed on file for investigation by the People's Procuratorates. If cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level."

<sup>6</sup> CHRD, "Detained Sichuan Activists Denied Access to Legal Counsel", June 25, 2008, [http://www.crd-net.org/Article/Class9/Class15/200806/20080625223747\\_9160.html](http://www.crd-net.org/Article/Class9/Class15/200806/20080625223747_9160.html). Huang's lawyer was finally allowed to meet him on September 24, three-and-a-half months after he was taken into custody; Chen is still denied access to legal counsel.

<sup>7</sup> *China Youth Daily*, "First Trial Rule that Henan Xinan PSB to Compensate RMB 35,000 for 'Virgin Prostitution Case'", June 12, 2008

<sup>8</sup> Ministry of Public Security, "Application of the Term of Criminal Custody by Public Security Organs <公安机关适用刑事羁押期限规定> (*gongan jiguan shiyong xinshi jiya qixian guiding*)", effective since May 1, 2006.

---

<sup>9</sup>National People's Congress Standing Committee "Administrative Litigation Law of the People's Republic of China <中華人民共和國行政訴訟法> (*zhonghua renmin gongheguo xingzheng susong fa*)", effective since October 1, 1990.

<sup>10</sup> CHRD, "CHRD's Open Letter to the Standing Committee of the National People's Congress: It is Difficult to Establish the Rule of Law without the Abolition of Re-education through Labor <维权网致全国人大常委会公开信：劳教不废，法治难立>", July 2, 2008, [http://www.crd-net.org/Article/Class1/200807/20080702234552\\_9241\\_2.html](http://www.crd-net.org/Article/Class1/200807/20080702234552_9241_2.html)

<sup>11</sup> CHRD, "Human Rights Defender Liu Jie's Re-education through Labor Decision Upheld", February 22, 2008, [http://www.crd-net.org/Article/Class9/Class10/200802/20080222231012\\_7702.html](http://www.crd-net.org/Article/Class9/Class10/200802/20080222231012_7702.html); CHRD, "Human Rights Defender Liu Jie Appeals Again", *China Human Rights Briefing March I Edition*, March 18, 2008, [http://www.crd-net.org/Article/Class9/Class10/200803/20080318201928\\_8097.html](http://www.crd-net.org/Article/Class9/Class10/200803/20080318201928_8097.html)

<sup>12</sup> CHRD, Silencing Complaints: Human Rights Abuses Against Petitioners in China, March 14, 2008, [http://www.crd-net.org/Article/Class9/Class11/200803/20080314221750\\_8056.html](http://www.crd-net.org/Article/Class9/Class11/200803/20080314221750_8056.html)

<sup>13</sup> See CHRD, " 'Black Jails' in the Host City of the 'Open Olympics': Secret detention facilities in Beijing are illegally incarcerating petitioners", September 21, 2007, available here: [http://www.crd-net.org/Article/Class9/class97/200709/20070921161949\\_5739.html](http://www.crd-net.org/Article/Class9/class97/200709/20070921161949_5739.html)

<sup>14</sup> The "black jails" CHRD identified in the report are:

(a) a two-storey building located behind the Jingyuan Inn in Wulidian, Fengtai District, Beijing managed by the Beijing liaison office of Nanyang City government, Henan Province;

(b) the basement of an Inner Mongolian inn located behind the Beijing Art Museum in Dongcheng District used by the Beijing liaison office of Jixi City, Heilongjiang Province;

(c) the Beijing liaison office of Shiyan City, Hebei Province;

(d) Beijing liaison office of Liaoning Province;

(e) a two-storey building at the northwestern corner of Taoran Ting Park, in the back wing of the Green Tree Inn, about five hundred meters south of the Supreme Court;

(f) the basement of the Beijing liaison office of Pingdingshan City, Henan Province at the southwestern corner of Taoran Ting Park;

(g) the Tianmei Inn at 131 Canlan Lane, which is across the street from the Nanheng Street stop of the No. 381 bus that leaves Beijing South Train Station

<sup>15</sup> In an interview, Huang Qi, founder of 64tianwang.com, one of China's prominent human rights information websites, said: "We know that there are too many of this kind of 'classes'—they are innumerable." See "Yang Xianhong Interviews 7-year-old Girl: Eating Leftovers <杨宪宏访谈七岁女孩：吃剩菜剩饭>", 64tianwang.com, January 20, 2007, [http://www.crd-net.org/Article/Class53/200701/20070120121754\\_3168.html](http://www.crd-net.org/Article/Class53/200701/20070120121754_3168.html)

<sup>15</sup> See CHRD, "A Look at how Hunan's Jiangyong County Forcibly Detains Petitioners in 'Education Classes' <看看湖南江永县是怎样将上访者强关“学习班”>," February 12, 2008, [http://www.crd-net.org/Article/fmzj/200802/20080212212353\\_7549.html](http://www.crd-net.org/Article/fmzj/200802/20080212212353_7549.html)

<sup>16</sup> See for example, Radio Free Asia, "Liu Qinfang, who Petitioned Because of her Husband Yao Baohua, was Sent to an Education Class <为丈夫姚宝华上访刘勤凤被送学习班>", [http://www.crd-net.org/Article/fmzi/200710/20071010112445\\_5943.html](http://www.crd-net.org/Article/fmzi/200710/20071010112445_5943.html)

<sup>17</sup> See for example, 64tianwang, "7-year-old Chinese girl detained for 65 days in an education class, <中国 7 岁女孩在“学法班”被关押 65 天>" [http://www.crd-net.org/Article/Class53/200701/20070108110148\\_3054.html](http://www.crd-net.org/Article/Class53/200701/20070108110148_3054.html)

<sup>18</sup> For more information, see CHRD "Son and Brother of Ye Guozhu, the "Olympics Prisoner," Detained", September 30, 2007, [http://www.crd-net.org/Article/Class9/Class10/200710/20071001230524\\_5849.html](http://www.crd-net.org/Article/Class9/Class10/200710/20071001230524_5849.html)

<sup>19</sup> For more information, see CHRD, "Olympics Prisoner Ye Guozhu Taken Away from Jail; His Whereabouts Unknown", July 26, 2008, [http://www.crd-net.org/Article/Class9/Class10/200807/20080726125112\\_9643.html](http://www.crd-net.org/Article/Class9/Class10/200807/20080726125112_9643.html); CHRD, "China Formally Detains Olympics Prisoner Ye Guozhu to Prevent Protests", July 27, 2008, [http://www.crd-net.org/Article/Class9/Class10/200807/20080727102216\\_9652.html](http://www.crd-net.org/Article/Class9/Class10/200807/20080727102216_9652.html)

<sup>20</sup> CHRD, "Olympics Crackdown Continues as Another Activist Is Sent to Labor Camp", August 30, 2008, [http://www.crd-net.org/Article/Class9/Class10/200808/20080831115236\\_10342.html](http://www.crd-net.org/Article/Class9/Class10/200808/20080831115236_10342.html)

<sup>21</sup> CHRD, "On Eve of Five-Month Countdown to Olympics, Activists Abducted and Intimidated", March 7, 2008, [http://www.crd-net.org/Article/Class9/Class15/200803/20080314234447\\_8057.html](http://www.crd-net.org/Article/Class9/Class15/200803/20080314234447_8057.html); CHRD, "Outspoken Lawyer Who Commented on Olympics Released from Abduction", March 11, 2008, [http://www.crd-net.org/Article/Class9/Class15/200803/20080314220907\\_8054.html](http://www.crd-net.org/Article/Class9/Class15/200803/20080314220907_8054.html)

<sup>22</sup> CHRD, "Beijing Police Suspected of Abduction and Torture of Human Rights Lawyer Li Heping", October 1, 2007, [http://www.crd-net.org/Article/Class9/Class15/200710/20071001230730\\_5851.html](http://www.crd-net.org/Article/Class9/Class15/200710/20071001230730_5851.html)

<sup>23</sup> CHRD, "A Comprehend Communique on the Case of Chen Guangcheng to UN Special Procedures (III)", February 14, 2007, [http://www.crd-net.org/Article/Class9/Class48/Class62/200702/20070214190103\\_3425.html](http://www.crd-net.org/Article/Class9/Class48/Class62/200702/20070214190103_3425.html)

<sup>24</sup> CHRD, "'Olympics Detainee" Yang Chunlin Ill-treated during Trial", February 21, 2008, [http://www.crd-net.org/Article/Class9/Class15/200802/20080222115845\\_7691.html](http://www.crd-net.org/Article/Class9/Class15/200802/20080222115845_7691.html)

<sup>25</sup> CHRD, "'Olympics Prisoner" Yang Chunlin Sentenced to Five Years in Prison", March 24, 2008, [http://www.crd-net.org/Article/Class9/Class10/200803/20080326054123\\_8200.html](http://www.crd-net.org/Article/Class9/Class10/200803/20080326054123_8200.html)

<sup>26</sup> CHRD, "Olympics Prisoner Yang Chunlin Tortured", March 31, 2008, [http://www.crd-net.org/Article/Class9/Class15/200804/20080401150913\\_8255.html](http://www.crd-net.org/Article/Class9/Class15/200804/20080401150913_8255.html)

<sup>27</sup> Civil Rights and Livelihood Watch, "Head of Jiamusi Court Said Yang Chunlin's Beating by Electric Baton was Carefully Designed <佳木斯法院院长放言杨春林遭电击是法院精心策划>", May 4, 2008, [http://www.crd-net.org/Article/Class18/yangchunlin/200805/20080504225906\\_8558.html](http://www.crd-net.org/Article/Class18/yangchunlin/200805/20080504225906_8558.html)

<sup>28</sup> Jiang Shan (江山), "Chen Xingliang on the Current Situation and Predicament of Chinese Lawyers (陈兴良谈中国律师业的现状与困境)," [www.peoplelaw.com.cn](http://www.peoplelaw.com.cn), <http://www.peoplelaw.com.cn/jiuban/talking/fye.asp?type=18>

<sup>29</sup> National People's Congress Standing Committee, "Police Law of the People's Republic of China <中华人民共和国人民警察法> (*zhonghua renmin gongheguo renmin jingcha fa*)", effective since February 28, 1995.

<sup>30</sup> CHRD, "Dancing in Shackles: A Report on the Situation of Human Rights Defenders in China (2007)", April 30, 2008, [http://www.crd-net.org/Article/Class9/Class11/200805/20080501034205\\_8531.html](http://www.crd-net.org/Article/Class9/Class11/200805/20080501034205_8531.html)

- <sup>31</sup> CHRD, "Dancing in Shackles: A Report on the Situation of Human Rights Defenders in China (2007)", April 30, 2008, [http://crd-net.org/Article/Class9/Class11/200805/20080501034205\\_8531.html](http://crd-net.org/Article/Class9/Class11/200805/20080501034205_8531.html)
- <sup>32</sup> Teng Biao, "Investigation into Linyi Population Policy", September 10, 2005, [http://cnmpq.com/hukou/birthcontrol/tengbiao\\_linxint.htm](http://cnmpq.com/hukou/birthcontrol/tengbiao_linxint.htm)
- <sup>33</sup> National People's Congress Standing Committee, "Population and Family Planning Law of the People's Republic of China <中华人民共和国人口与计划生育法> (*zhonghua renmin gongheguo renkou yu jihua shengyufa*)", September 1, 2002.
- <sup>34</sup> Tao Jun, "Detention Centers: Full of Ill-treatment and Torture<充满虐待和酷刑的看守所>", December 8, 2006, [http://www.boxun.com/hero/2007/taojun/5\\_1.shtml](http://www.boxun.com/hero/2007/taojun/5_1.shtml)
- <sup>35</sup> Civil Rights and Livelihood Watch, "Li Guohong Exposes Poor Working Conditions that Led to Serious Injuries at a Re-education through Labor Camp <李国宏劳教所内披露劳动条件恶劣致人严重受伤>", March 13, 2008, [http://www.crd-net.org/Article/Class18/liguohong/200803/20080313100359\\_8010.html](http://www.crd-net.org/Article/Class18/liguohong/200803/20080313100359_8010.html)
- <sup>36</sup> The four were first convicted of "robbery" and sentenced to death by Chengde Intermediate People's Court in August 1996. Between 1996 and 2000, the case was sent from Hebei Provincial High Court back to Chengde Intermediate People's Court for re-trial due to "unclear facts". In one of the re-trials in October 2000, Chengde Intermediate People's Court sentenced Chen and Yang to death, He suspended life sentence and Zhu life imprisonment. In July 2003, Hebei Provincial High Court heard the trial of the four for the first time instead of sending the case for re-trial. Chen, Yang and He were sentenced to suspended life sentence while Zhu life imprisonment. Throughout the four's numerous trials, the judges never recorded or investigated the defendants' claims that they were tortured into confessions.
- <sup>37</sup> CHRD: "Reporting alleging torture to the Special Rapporteur on torture," December 1, 2005, [http://crd-net.org/Article/Class9/Class14/200512/20051201031409\\_319.html](http://crd-net.org/Article/Class9/Class14/200512/20051201031409_319.html)
- <sup>38</sup> Sinolaws, "Why is the sentence for torture to extract confession lighter than that of international assault <刑讯逼供为何比故意伤害罪判的轻>", July 5, 2005, <http://news.1488.com/news/review/2005/7-5/9-27-5-1.shtml>; Sina.com, "Jiangxi Jiuqiang Three Policemen Sentenced After Torturing to Death a Suspect <江西九江三名民警刑讯逼供致人猝死被判刑>", July 4, 2008, <http://news.sina.com.cn/s/2005-07-04/03086339037s.shtml>
- <sup>39</sup> Rizhao China, "Three Policemen Sentenced following Torture to Extract Confession <3 警察刑讯逼供被判刑>", June 27, 2005, <http://www.rz.gov.cn/zcfg/fzdt/20050627084834.htm>
- <sup>40</sup> CHRD, "Detained Human Rights Defender YANG Maodong Reports Being Tortured during Interrogation", June 1, 2007, [http://www.crd-net.org/Article/Class9/Class15/200706/20070601050221\\_4512.html](http://www.crd-net.org/Article/Class9/Class15/200706/20070601050221_4512.html)
- <sup>41</sup> National People's Congress Standing Committee, "State Compensation Law of the People's Republic of China <中华人民共和国国家赔偿法> (*zhonghua renmin gongheguo guojia peichangfa*), effective since January 1, 1995.
- <sup>42</sup> Supreme People's Court, "the Supreme People's Court Explanation of Several Issues on the Implementation of the People's Republic of China Code of Criminal Procedure <最高人民法院关于执行<中华人民共和国刑事诉讼法>若干问题的解释> (*zuigao renmin fayuan guanyu zhihang zhonghua renmin gongheguo xingshi susongfa ruogan wenti di jieshi*)", effective since September 8, 1998.

---

<sup>43</sup> National People's Congress Standing Committee, "Public Order Administration Punishment Law of the People's Republic of China <中华人民共和国治安管理处罚法> (*zhonghua renmin gongheguo zhianganli chufa fa*)", effective since March 1, 2006.

<sup>44</sup> Eight prisoners were convicted of Liu's murder. Liu's family also sued Xicheng PSB and eventually received compensation through an out-of-court settlement with the PSB. However, none of the guards at Xicheng Detention Center were held legally accountable. For more information, see Liu Qiang, "Questions on the Nature of Supervision in Detention Centers: Starting the Discussion from a Case of State Compensation <看守所监管行为的性质问题—从一起国家赔偿案说开去>", Suzhou Judicial Web, <http://www.szsfcj.gov.cn/yqweb/ViewInfo.asp?id=1133>; Yang Wenxue, "Suspect Beaten to Death in Detention Center; Family Lost in First Trial Suing the PSB <嫌犯在看守所被打致死 家属状告公安局一审败诉>", People Net, <http://www.people.com.cn/BIG5/shehui/1061/2224731.html>

<sup>45</sup> CHRD, "Update on Imprisoned Activist Hu Jia and His Wife Zeng Jinyan", August 26, 2008, [http://crd-net.org/Article/Class9/Class10/200808/20080826165124\\_10239.html](http://crd-net.org/Article/Class9/Class10/200808/20080826165124_10239.html)

<sup>46</sup> CHRD, "Imprisoned Activist Mao Hengfeng Allegedly Tortured", July 11, 2008, [http://crd-net.org/Article/Class9/Class15/200807/20080711094227\\_9347.html](http://crd-net.org/Article/Class9/Class15/200807/20080711094227_9347.html); CHRD, "Reproductive and Housing Rights Activist Mao Hengfeng Mistreated for the Second Time", *China Human Rights Briefing 2007 October Edition*, [http://crd-net.org/Article/Class9/Class10/200711/20071108002042\\_6276.html](http://crd-net.org/Article/Class9/Class10/200711/20071108002042_6276.html)

<sup>47</sup> National People's Congress Standing Committee, "Public Order Administration Punishment Law of the People's Republic of China <中华人民共和国治安管理处罚法> (*zhongguo zhian guanli chufafa*)", effective since March 1, 2006.