



Téléfax: (41-22) 917 90 08
Téléphone: (41-22) 917 91.02
Internet www.ohchr.org
Email: jnataf@ohchr.org



Adresse:
Palais des Nations
CH-1211 GENEVE 10

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29 October 2010

Excellency,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture ("CAT"), I refer to the examination of the fourth periodic report of China (CAT/C/CHN/4) by this Committee at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846). The Committee's Concluding Observations (CAT/C/CHN/CO/4), adopted on 21 November 2008 and transmitted to your Permanent Mission, requested in paragraph 44 that the Government of China provide within a year further information on the specific concerns listed in paragraphs 11, 15, 17 and 23.

Your letter of 26 November 2009 (CAT/C/CHN/CO/4/Add.2) provides your Government's comments on the above-mentioned paragraphs, and other items concerning the Concluding Observations. The Committee appreciates additional information that can assist in its ongoing analysis of the issues identified for follow up. Because the Committee's follow up procedure always focuses on a few serious protective and achievable recommendations, this reply to your follow-up letter will address only the items identified in paragraphs 11, 15, 17 and 23 of the Concluding Observations. As Rapporteur on Follow-up, I would be grateful for clarification on the following matters, where sufficient information has not yet been provided to complete an analysis of the progress made regarding implementation of aspects of the Convention.

Legal safeguards to prevent torture (Paragraph 11)

Regarding paragraph 11 of the Concluding Observations, the Committee remains concerned at the lack of legal safeguards for detainees. Please provide information on any concrete steps the State party has taken to guarantee these fundamental safeguards without exception. The Committee would appreciate the State party's clarification on how often exceptions to the rules are invoked that delay or deny detainees' right to legal counsel or doctors. The Committee also expressed concern regarding detainees' restricted access to independent doctors and the State's reported failure to notify detainees of their rights at the time of detention. Please provide documentation, including statistics, on the number of formal investigations into suspected cases of torture that have been initiated as a result of requests by or concerns from on-site doctors or those dispatched from community hospitals, as described in section 3(c) (page 4) of the English translation of China's response, including names, locations and detailed information on such cases and their outcomes. Please also clarify at what point a detainee may request a medical examination and who must approve or authorize such access.

According to the follow-up response, criminal suspects in cases involving state secrets may hire a lawyer "only if he/she obtains approval from the investigating body." Please clarify the process by which suspects obtain such approval, as well as information on the criteria of assessment used to determine whether

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H.E. Mr. HE Yafei
Ambassador extraordinary and plenipotentiary
Permanent Representative of the People's Republic of China
to the United Nations Office at Geneva
Fax: 022 793 70 14

such approval is granted. Please also provide the Committee with detailed, statistical information on the number of such requests that have been submitted each year during the reporting period, how many were granted and denied and the reasons for the denial. At what stage in their detention may suspects apply for this approval and how long is the application process? What is the time lapse from the moment of approval to the moment when the detainee actually meets with the attorney? Please clarify how prompt access to independent lawyers for detainees whose cases involve state secrets is ensured, as recommended by the Committee.

The Committee also notes with concern reports about the excessive use and length of pre-trial detention. To assess them, the Committee seeks information from the State Party regarding the use of the permissible 30 day extension for the three types of criminals mentioned in China's response: "roving criminals, perpetrators of repeat offences, and members of criminal gangs." Specifically, please provide information on the number of such cases in which pre-trial detention has been extended to 30 days (disaggregated by location, gender, age, and alleged offence or charge), as well as the specific circumstances that could warrant the 30-day extension for such criminal suspects. Please also provide detailed information on the guarantee of habeas corpus or equivalent measures through which a detainee may challenge the lawfulness of detention.

The Committee is pleased to note the response explaining that China has established a comprehensive system for registering detainees. Please clarify whether the registers record (a) the actual time of a person's loss of freedom, (b) the time of registration of formal custody or arrest, (c) the name of other officers or personnel acting in an official capacity who may have accompanied the suspect to the detention facility, and (d) the name(s) of the officer actually registering the detainee. What abuses of the register have been found?

The Committee is also pleased to note the information on laws and provisions that prohibit the use of coerced confessions in criminal proceedings, notably the recently adopted regulations on evidence in capital cases and the prohibition of confessions obtained through torture. However, the Committee remains concerned at reports that, in practice, these laws are neither strictly adhered to nor enforced, and that the new regulations of July 2010 require torture victims to prove that their confessions were coerced (Article 6 of the Rules Concerning the Exclusion of Illegal Evidence in Handling Criminal Cases). Please provide the Committee with detailed information on the oversight and other mechanisms in place to enforce and effectively implement laws mentioned in the Government of China's response to recommendation 11(d). Also, following up on the information on page 5 of China's response, please provide the Committee with (a) the number of cases in which detainees have alleged that their confessions were obtained by torture, including information on any investigations carried out into such allegations; (b) the findings of the investigations; (c) whether any officials have been held accountable for extracting confessions through torture and with what punishments; and (d) whether compensation has been offered to any victims. Please also provide further information on any investigation carried out into the allegations of Yang Chunlin that his confession was extorted using torture, including the number of officials investigated and their rank, whether Mr. Chunlin was examined by a medical doctor and if so at what stage of the investigation, and the findings of the investigation.

Please provide further information as to the punishments meted out to the perpetrators of the 14 detainee deaths in 2008 resulting from beatings, cited in section 2 (page 7) of the State Party's reply and whether families of these victims have had recourse to adequate redress including compensation.

With regard to paragraph 11(e) of the Concluding Observations, the Committee appreciates the information provided on the role of people's procuratorates in monitoring China's detention facilities. In light of the response of the Government of China indicating that the people's procuratorates are in fact independent of the government, please clarify who the procuratorates report to, their precise relationship to one another and to the Government of China, and how their independence is ensured in practice. The Committee would also like to know whether the procuratorates are able to carry out unannounced monitoring visits to prisons and other detention facilities. In addition, have any measures been taken to establish an independent mechanism other than the procuratorate to monitor all places of detention. The Committee also commends the State party for the reported improvements made to the accessibility of the people's procuratorates for detainees and their families. In this regard, please provide information on the number of complaints that have been submitted to the procuratorates through the mechanisms described on page 7 of your response; also, please clarify how many of these complaints were allegations of torture or ill-treatment, how many of those complaints led to investigations, and with what outcomes for the detainee and the perpetrator.

State Secrets Law (Paragraph 15)

In paragraph 15 of the Concluding Observations, the Committee identified (a) the State Secrets laws; (b) the reported harassment of lawyers and human rights defenders; and (c) the lack of accountability for abuses carried out by private actors acting with the acquiescence or consent of government officials, as the three main obstacles that stand in the way of ensuring the legal safeguards for the prevention of torture in China.

The Committee appreciates the information provided regarding the Committee's concern on the 1988 Law on the Preservation of State Secrets. The Committee remains concerned that the State Secrets laws continue to be overly used, restricting the availability of much information which is necessary to determine compliance with the Convention. According to information before the Committee, a new State Secrets law is due to come into effect in October 2010 (*Law on Guarding State Secrets*). Please clarify whether and how the new State Secrets law will impact other legislation on state secrets, including the regulations addressing issues related to torture. The Committee would also be grateful to receive further information as to the criteria involved in the process by which information is categorized as a state secret. The Committee has received reports that State Secrets laws have been applied retroactively. Please provide information on whether such retroactive application is provided for in the law and if not, how it is justified in practice. Also, please provide statistical information on the number of cases which have retroactively been classified as a state secret.

The Committee notes that "information on detention and custody and ill-treatment ... violations of the law or codes of conduct by public security organs", cited in the observations, does *not* constitute state secrets as defined by law." [as stated in item 5(a) on page 10 of the English translation]. In light of this, please provide detailed statistical information on the number of complaints of abuse submitted by detainees, the number of such complaints that were investigated and by whom, how many led to prosecutions and with what outcomes, including information on punishments meted out to perpetrators and redress provided for victims. Also, please provide information on the number of cases under the purview of State Secrets legislation, the grounds for such classification, and average duration of detention for persons whose cases fall under State Secrets laws.

The Committee is also pleased to learn that "in the event of a dispute as to whether a piece of information constitutes a State Secret...the case may be submitted to the appointed authorities for a solution." We would appreciate receiving further information on this process and who may initiate such a submission. The response also states that "detainees have a right to challenge decisions as to whether a matter constitutes a State Secret." How accessible is this process to detainees? Please clarify whether such challenges may be submitted to an independent tribunal, and how many such challenges have been submitted and their outcomes.

Harassment of lawyers, human rights defenders and petitioners (Paragraph 15)

With regard to allegations of harassment of lawyers and human rights defenders, the Committee notes with concern ongoing reports that article 306 of the Chinese Penal Code and article 39 of the Criminal Procedure Law continue to be used to intimidate and repress some lawyers and impede their efforts to defend clients or take on "sensitive" cases. The Committee welcomes clarification of the steps taken by the State party to revise or abolish these provisions with a view to ensuring the independence of lawyers. The Committee is also gravely concerned over the reported assaults and beatings suffered by lawyers and other human rights defenders in 2009 and 2010, numbering at least six (Li Baiguang, Cheng Hai, Zhang Kai, and Li Chunfu in Beijing; Yang Zaixin in Guangxi; and Wang Yonghang who was reportedly beaten in police custody in Liaoning). Have any of these incidents been under investigation? Please provide information on the number of complaints filed by human rights defenders or lawyers who allege they have been subjected to abuse, how many official investigations have been undertaken in such cases, what are the results of any such investigations, the number of resulting prosecutions, and the outcomes of these proceedings. According to information before the Committee, local justice bureaus have engaged in efforts to revoke, cancel or refuse renewal of licenses for some lawyers or have pressured local law firms to do the same for certain lawyers working on human rights-related issues. Please comment on these claims and provide information on protections for such lawyers.

The Committee remains concerned about Gao Zhisheng who was reportedly released in March 2010, re-detained a month later and whose whereabouts remain unknown at this time. According to the reply from the State party, Gao was arrested and detained in 2009 for "inciting subversion of the State," as was human rights defender Hu Jia. Please provide further information on these cases—what were the grounds for prosecution for 'inciting subversion of State power'; were these prosecutions initiated by an individual complaint or by the State; and who carried out the investigation into the initial allegations against both lawyers?

Please address the continuing allegations that the Government of China has used or acquiesced in the use of unofficial personnel to intimidate and harass human rights defenders, lawyers and petitioners. The Committee expressed concern at the lack of an effective mechanism for investigating such allegations; the response indicates that the problem is CAT's "lack of understanding" of Chinese bodies and states that the procuratorate is indeed an "independent supervisory body." However, the reply does not address the concern raised by the Committee about the conflicting functions of the public prosecutors office – both to prosecute and supervise police *at the same time*. In fact, it seems to confirm the concern that the procuratorate combines these two functions at the same time. There are reports that the conflicting functions of the procuratorate and the lack of independence leads to a *de facto* lack of effective and impartial investigations -- particularly in cases of human rights defenders, lawyers and petitioners. The Committee reiterates its request for information regarding ongoing allegations that private persons acting with the acquiescence or consent of government officials enjoy *de facto* impunity. Please describe measures that ensure effective mechanisms to enable persons to bring complaints on abusive treatment and start proceedings against unofficial personnel.

Lack of statistical information (Paragraph 17)

Though the Committee appreciates the Government of China's statement that it will "work harder" to improve its statistics regarding efforts to combat torture, as stated on page 11 of your response, the Committee once again expresses dissatisfaction at the continued failure to provide the requested information, which is needed to complete a full assessment of China's compliance with the CAT follow up procedure. The Committee reiterates its recommendation in paragraph 17 of the Concluding Observations, and looks forward to receiving the statistical information requested, particularly on items identified under the follow-up procedure.

Tibetan Autonomous Region (Paragraph 23)

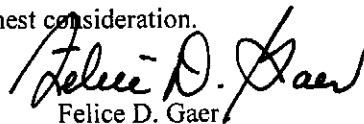
Regarding information regarding paragraph 23 on disruptions in the Tibetan Autonomous region in 2008, the Government replied that torture, ill treatment and disappearances directed against minorities "simply do not exist in China;" but the Committee continues to seek clarification concerning alleged abuses including the widespread reports of excessive use of force against non-violent demonstrators in Tibetan prefectures and counties in 2008. The reply states that 1231 persons were released from detention by the judiciary organs of the Tibet Autonomous Region, but no further information on these persons is provided. Please provide names of the persons released, reasons for the arrests, length of detention, whether they were afforded legal representation, how many were examined by doctors after their detention, and any further public security penalties imposed.

In view of the absence of more specific information, the Committee reiterates its recommendation that the State party conduct a thorough, independent and impartial inquiry into reportedly excessive use of force, including against peaceful demonstrators, into deaths, including deaths in custody, of persons killed in 2008 in the Tibetan Autonomous Region, and into allegations that some of the persons detained or arrested in connection with these events were subjected to torture or ill-treatment. Please clarify whether any investigations on these matters have taken place, and if so, please provide detailed information on the investigations and their outcomes. Did persons released from detention have a right to lodge complaints and have any done so?

The Committee also reiterates its request for information on the measures taken to prohibit and prevent enforced disappearances, and to shed light on the fate of missing persons such as Genden Choekyi Nyima, whose case is not referenced in the reply despite questions by the Committee. Please provide specific information on whether investigations have taken place, and whether any independent observers have been permitted to visit him, as well as detailed information on the current whereabouts of Choekyi Nyima.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. The Committee looks forward to pursuing the constructive dialogue it has started with China on the implementation of the Convention, and to receiving clarification to these questions.

Accept, Excellency, the assurances of my highest consideration.



Felice D. Gaer

Rapporteur for Follow-up on Conclusions and Recommendations
Committee against Torture