

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/CHN/CO/5)

CHINA

(...)

C. Principal subjects of concern and recommendations

(...)

Restrictions to the rights to access a lawyer and to give notification of custody

12. While appreciating the 2012 amendment to the Criminal Procedure Law, which, inter alia, stipulates that a defence lawyer may meet with a suspect within 48 hours at the latest from the moment of the request, the Committee regrets that the Law does not guarantee the right of the detained person to meet with a lawyer from the very outset of the detention. The Committee is also concerned that in cases of “endangering State security”, “terrorism” or serious “bribery”, the lawyer must obtain permission from public security investigators to meet with the suspect, and investigators may legally withhold permission for an indefinite period of time if they believe that the meeting could hinder the investigation or could result in the disclosure of State secrets. Public security investigators may also refuse the notification of the detention to family members in the same type of cases if it is considered that the notification may impede their investigation. Notwithstanding that detainees may challenge the decision of whether or not their cases concern State secrets before the national or provincial authorities for confidential affairs, the Committee considers that this remedy does not offer detainees an option to be heard before an independent and impartial authority and against all grounds of refusal. The Committee notes with concern consistent reports indicating that public security officials constantly refuse lawyers’ access to suspects and notification to their relatives on the grounds that the case concerns State secrets, even when the detained person is not charged with State security crimes (art. 2).

13. The Committee urges the State party to adopt effective measures to ensure, in law and in practice, that detainees are afforded all legal safeguards from the very outset of the detention, including the safeguards mentioned in paragraphs 13 and 14 of the Committee’s general comment No. 2. In particular, the State party should:

(a) Amend its legislation and grant all detainees the right to have access to a lawyer from the very outset of deprivation of liberty, including during the initial interrogation by the police, irrespective of the charge brought against them;

- (b) **Ensure in practice that detainees are able to communicate with a lawyer in full confidentiality;**
- (c) **Guarantee that the relatives or other persons of the detainee's choice are notified of the facts, the reasons and the place of detention within the 24 hours specified in the law;**
- (d) **Repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of "endangering State security", "terrorism", serious "bribery" or cases involving "State secrets";**
- (e) **Ensure that detainees, their legal representatives and relatives can challenge any unlawful restriction to have access to their clients or to notify the relatives before a judge;**
- (f) **Regularly monitor compliance with the legal safeguards by all public officials and ensure that those who do not comply with those safeguards are duly disciplined.**

(...)

Reported crackdown on defence lawyers and activists

18. The Committee is deeply concerned about the unprecedented detention and interrogation of, reportedly, more than 200 lawyers and activists since 9 July 2015. Of those, 25 remain reportedly under residential surveillance at a designated location and 4 are allegedly unaccounted for. This reported crackdown on human rights lawyers follows a series of other reported escalating abuses on lawyers for carrying out their professional responsibilities, particularly on cases involving government accountability and issues such as torture and the defence of human rights activists and religious practitioners. Such abuses include detention on suspicion of broadly defined charges, such as "picking quarrels and provoking trouble", and ill-treatment and torture while in detention. Other interferences with the legal profession have been, reportedly, the refusal of annual re-registration, the revocation of lawyers' licences and evictions from courtrooms on questionable grounds, as in the cases of Wang Quanzhang, Wu Liangshu or Zhang Keke. The Committee expresses concern at the all-inclusive category of "other conduct that disrupts court order" in various articles of the Law on Lawyers, the Criminal Procedure Law and in the newly amended article 309 of the Criminal Law, which in its view is overbroad, undermines the principle of legal certainty and is open to abusive interpretation and application. The Committee is concerned that the above-mentioned abuses and restrictions may deter lawyers from raising reports of torture in their clients' defence for fear of reprisals, weakening the safeguards of the rule of law that are necessary for the effective protection against torture (art. 2).

- 19. **The State party should stop sanctioning lawyers for actions taken in accordance with recognized professional duties, such as legitimately advising or representing any client or client's cause or challenging**

procedural violations in court, which should be made possible without fear of prosecution under national security laws, or being accused of disrupting the court order (see Basic Principles on the Role of Lawyers, para. 16). The State party should also:

(a) Ensure the prompt, thorough and impartial investigation of all the human rights violations perpetrated against lawyers, that those responsible are tried and punished in accordance with the gravity of their acts and that the victims obtain redress;

(b) Adopt without delay the necessary measures to ensure the development of a fully independent and self-regulating legal profession, so that lawyers are able to perform all of their professional functions without intimidation, harassment or improper interference;

(c) Undertake a review of all the legislation affecting the exercise of the legal profession in accordance with international standards, with a view to amending those provisions that undermine lawyers' independence.

(...)

Independence of the investigations of torture allegations

22. The Committee continues to be concerned that the dual functions of procuratorates, namely, prosecution and pre-indictment review of the police investigation, creates a conflict of interest that could taint the impartiality of its actions, even if carried out by different departments. It takes note, furthermore, of the State party's position that the Chinese Communist Party Politics and Law Committees coordinate the work of judicial bodies without directly taking part in investigations or suggesting lines of action to judges. The Committee is concerned, however, at the necessity of keeping a political body to coordinate the proceedings, with a potential to interfere in judicial affairs, particularly in cases of political relevance. In view of the above, the Committee regrets that the State party has not provided disaggregated and complete information on the number of torture-related complaints, received from all sources, for each of the crimes that cover the various aspects of the definition of torture. It has also received no information on the number of investigations on torture allegations initiated ex officio by procuratorates or as a result of information reported by doctors. The Committee notes, furthermore, that the State party has failed to produce information about the criminal or disciplinary sanctions imposed on offenders (arts. 2 and 12).

23. The Committee reiterates its previous recommendation (see CAT/C/CHN/CO/4, para. 20) and requests the State party to provide information on the number of torture-related complaints received since 2008, the number of investigations on torture allegations initiated ex officio by procuratorates or as a result of information reported by doctors, and concerning the criminal or disciplinary sanctions imposed on those found to have committed torture or ill-treatment. The Committee also urges the State party to establish an independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of

torture and ill-treatment. The State party should take the necessary steps to ensure that:

- (a) There is no institutional or hierarchical relationship between the independent oversight investigators and the suspected perpetrators of torture and ill-treatment;**
- (b) The independent oversight mechanism is able to perform its functions without interference of any kind;**
- (c) Alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation;**
- (d) Chinese Communist Party Politics and Law Committees are prevented from undertaking inappropriate or unwarranted interference with the judicial process (see Basic Principles on the Independence of the Judiciary, para. 4);**
- (e) All reports of torture or ill-treatment are promptly, effectively and impartially investigated;**
- (f) Persons suspected of having committed torture or ill-treatment are duly prosecuted and, if they are found guilty, receive sentences that are commensurate with the gravity of their acts and victims are afforded appropriate redress.**

(...)

State secrets provisions and lack of data

30. Recalling its previous recommendations (see CAT/C/CHN/CO/4, paras. 16 and 17), the Committee remains concerned at the use of State secrecy provisions to avoid the availability of information about torture, criminal justice and related issues. While appreciating the State party's assertion that "information regarding torture does not fall within the scope of State secrets", the Committee expresses concern at the State party's failure to provide a substantial amount of data requested by the Committee in the list of issues and during the dialogue. In the absence of the information requested, the Committee finds itself unable to fully assess the State party's actions in the light of the provisions the Convention. Furthermore, the Committee regrets that the same concerns raised in its previous recommendation with regard to the 1988 Law on the Preservation of State Secrets persist in relation to the 2010 Law on Guarding State Secrets. The Committee is also disturbed at reports that a significant amount of information related to torture and the actions of public security authorities under the Criminal Procedure Law remain out of the public domain owing to the State secrets exception of the Regulations on Open Government Information. Furthermore, it notes with concern the limited scope of the Regulations on Open Government Information to information about administrative actions by

administrative organs, excluding matters within the criminal law system (arts. 12, 13, 14 and 16).

31. The Committee calls for the declassification of information related to torture, in particular, information about the whereabouts and state of health of detained persons whose cases fall under the scope of the State Secrets Law. The State party should also declassify information on the numbers of deaths in custody, detainees registered, allegations of torture and ill-treatment and consequent investigations, administrative detention and death penalty cases. The State party should ensure that the determination as to whether a matter is a State secret should be the object of an appeal before an independent tribunal.

(...)

Follow-up procedure

61. The Committee requests the State party to provide, by 9 December 2016, information on follow-up to the Committee's recommendations on restrictions to the rights to access a lawyer and to give notification of custody; the reported crackdown on lawyers and activists; the independence of investigations into torture allegations; and State secret provisions and lack of data (see paras. 13, 19, 23 and 31 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

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