



Chinese Human Rights Defenders (CHRD) 维权网

Web: <http://chrdnet.org/> Email: networkcrd@gmail.com
Promoting human rights and empowering grassroots activism in China

Report on Several Issues Raised by the Chinese Government's Response to the UN Committee Against Torture's Recommendations for Follow-Up in 2009

Introduction

This submission by the Chinese Human Rights Defenders (CHRD) addresses several issues raised by the Chinese government's response to the request by the Committee Against Torture (CAT) for information pursuant to CAT's follow-up procedure.¹ The Chinese government was supposed to have provided information about measures it took during the year after its review (which took place in November 2008) to implement several recommendations highlighted by CAT for follow-up (namely, those contained in paragraphs 11, 15, 17, and 23).² Not only did the Chinese government's November 2009 response fail to address what measures, if any, it took during 2009 to implement the highlighted recommendations, but China also misused the follow-up procedure to challenge, and defend itself against, the observations contained in CAT's Concluding Observations (paragraphs 11-37).³ In fact, the Chinese government did not take any meaningful steps during 2009 to implement the recommendations for follow-up. Rather, 2009 and the first seven months of 2010 have witnessed the persistence, and in some cases, the worsening, of many of the problems and trends that CAT identified as subjects of particular concern.

Because CHRD cannot cover all of the issues raised by the Chinese government's response in this brief submission, we have focused on the following topics: the lack of legal safeguards for detainees, including the continued use of torture to extract confessions, the ongoing harassment of and violence against human rights lawyers, defenders, and petitioners, and the persistent refusal of the Chinese government to conduct a full and impartial investigation into the violent suppression of the 1989 Democracy Movement. While CHRD welcomes the recent issuance by the Chinese government of new rules that bar the use of statements obtained through torture in criminal proceedings, given the lack of an independent judiciary and the Chinese government's poor track record with respect to the implementation of rights protection provisions contained in, for example, the Criminal Procedure Law and the Lawyers' Law, CHRD does not hold out much

¹ See CAT's web page, "Follow Up," <http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>.

² CAT's Concluding Observations were issued on December 12, 2008. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION, Concluding Observations of the Committee against Torture: CHINA, CAT/C/CHN/CO/4 [hereinafter "Concluding Observations"], available in English at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/457/10/PDF/G0845710.pdf?OpenElement>. See Paragraph 44 for the list of recommendations for follow-up. A slightly different iteration of the list of recommendations for follow-up ("Extracts for follow-up") is available at http://www2.ohchr.org/english/bodies/cat/docs/China_COBs_extract_for_follow_up.pdf.

³ See "Comments by the Government of the People's Republic of China" concerning the concluding observations and recommendations of the Committee against Torture (CAT/C/CHN/CO/4), 9 December 2009 [hereinafter "China's Follow-Up Response"], available in English at <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT.C.CHN.CO.4.Add2.pdf>.

hope for effective implementation of these new rules.⁴

The Lack of Legal Safeguards for Detainees and Use of Torture to Extract Confessions

The recommendations contained in Paragraph 11 of the Concluding Observations relate to “immediate steps” China should take “to prevent acts of torture and ill-treatment throughout the country,” including the right of access to counsel, and the right “to appear before a judge within a time limit in accordance with international standards.” Ignoring CAT’s recommendations, the Chinese government simply recited existing legal provisions and took issue with the observations contained in Paragraph 11.

In Paragraph 11(a), CAT noted “with concern” the government’s “[f]ailure to bring detainees promptly before a judge, thus keeping them in prolonged police detention without charge for up to 37 days or in some cases for longer periods.” The Chinese government’s rejection of this observation does not accord with the facts. First, many criminal suspects are held for months, or even longer, before being brought before a judge.⁵ As CHRDR noted in our October 2008 submission to CAT, articles 124, 126, 127, and 128 of the Criminal Procedure Law (CPL) combine to permit the police to detain a suspect for *over one year* after arrest (*daibu*) before sending the case to the procuratorate (*i.e.*, the prosecuting agency), which then reviews the case to determine whether to issue an indictment.⁶ Second, with respect to the 37-day pre-arrest warrantless detention period authorized by the CPL in certain types of cases, the government has offered no data or statistics to support its assertion that the 37-day period is used only in those limited circumstances stipulated by the CPL. In fact, the police routinely subject all types of criminal suspects to 37 days of pre-arrest detention before obtaining arrest approval from the procuratorate.⁷ Needless to say, the Chinese government has not implemented “effective measures” to ensure that all detained suspects “appear before a judge within a time limit in accordance with international standards,” as CAT recommended in Paragraph 11.⁸

⁴ For an English translation of the new rules, see Dui Hua Human Rights Journal, “Rules Concerning Questions about Exclusion of Illegal Evidence in Handling Criminal Cases” (关于办理刑事案件排除非法证据若干问题的规定), issued by the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice, effective July 1, 2010, available at http://www.duihuajournal.org/2010/06/translation-chinas-new-rules-on_25.html.

⁵ See, e.g., CHRDR, “Sichuan Activist Liu Zhengyou on Hunger Strike to Protest Illegally Prolonged Detention,” China Human Rights Briefing June 1-7, 2010; CHRDR, “Activist Quietly Sentenced to 2.5 Years in Prison after Long Delay,” January 6, 2009; CHRDR, “Democratic Activist Tried for “Subverting State Power” in Changsha,” China Human Rights Briefing April 27- May 3, 2009 (all CHRDR articles cited in this submission are available at <http://chrdnet.org>); Jerome A. Cohen, “Bail in China: A Crucial Human Right,” *South China Morning Post*, September 3, 2009, available at http://www.cfr.org/publication/20140/bail_in_china.html; Xiong QiuHong, *Drawing Lessons from Bail and Reducing Pretrial Detention* (借鉴保释制度与减少审前羁押) in *Bail and Guaranteed Pending Trial* (保释制度与取保候审) Chen Weidong, ed. 2003) at 174-76.

⁶ CHRDR, 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 41st session of the Committee against Torture, October 10, 2008, pp. 6-7, available at CAT’s web site, <http://www2.ohchr.org/english/bodies/cat/cats41.htm> (China review; information provided to the Committee).

⁷ See Chen Weidong, *Report on the Investigation of Problems with the Implementation of the Criminal Procedure Law* (刑事诉讼法问题调研报告) (2001), at 13.

⁸ In its 2004 report on its mission to China, the UN Working Group on Arbitrary Detention noted as an area of concern that the “holding period in police custody of criminal suspects without judicial approval is too long” and not in keeping with international law and standards. CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION: Report of the Working Group on Arbitrary Detention: Addendum, Mission to China, E/CN.4/2005/6/Add.4, 29 December 2004, para.74; see also paras. 28-32.

In Paragraph 11(c), CAT also noted “with concern” detainees’ “restricted access to lawyers.” The Chinese government’s assertion that a meeting between a detainee and his or her lawyer will be arranged “after checking the relevant identification documents of the lawyer in accordance with law”⁹ is contradicted by numerous cases reported to CHRD as well as articles in the Chinese media and blogosphere that discuss the ongoing difficulties criminal defense lawyers and their detained clients face in arranging meetings, despite recent revisions to the Lawyers’ Law that aimed to improve access between attorneys and detainees.¹⁰ These new provisions, however, are not being implemented effectively.¹¹ Police still frequently invoke “state secrets” to prevent lawyers from meeting with their clients, or cite “internal” rules and procedures to delay, prevent, or otherwise constrain attorney-client meetings. Moreover, although the revised Lawyers’ Law clearly prohibits the monitoring or recording of attorney-client meetings (see art. 33), CHRD continues to document instances of police monitoring in person or through the use of audio/visual devices.¹²

In paragraph 11(d), CAT expressed concern about the “[c]ontinued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects.” Indeed, a May 2010 *China Daily* editorial noted: “Torture is still playing a role in extracting a confession from suspects in custody.”¹³ Torture was at issue in two recent troubling convictions: the 15-year sentence meted out to Tibetan environmentalist Karma Samdrup in June and the 8-year sentence handed down to U.S. geologist Xue Feng on vague “state secrets” charges in July.¹⁴ State-run media and the blogosphere erupted this spring over the wrongful murder conviction 11 years ago of Zhao Zuohai when the purported “victim,” a fellow villager, suddenly reappeared in their village in late April. After his release from prison in early May, Zhao said he had been repeatedly beaten, subjected to sleep deprivation and death threats while in police custody, and that his “confession” to a murder that never occurred “was as ‘instructed’ by the police.”¹⁵

Unnatural deaths in detention centers (*kanshousuo*) has perhaps been the most visible issue in China during the follow-up period and into 2010. Following a widely-publicized February 2009

⁹ China’s Follow-Up Response, at 4, para.1(c).

¹⁰ See, e.g., “A Day in the Life of a Criminal Defense Lawyer,” *Dui Hua Human Rights Journal*, July 9, 2010, (translating lawyer Liu Xiaoyuan’s blog post detailing the difficulties he experienced recently in arranging to meet a client charged with “inciting subversion” in Sichuan province); Shi Po, “The Plight of Criminal Defense Lawyers” (刑辩律师的困境), *Southern Window* (南风窗), July 7, 2010, available at <http://www.nfcmag.com/articles/2177> (observing that in most cases lawyers must first obtain approval from the investigating agency before meeting with a detained client).

¹¹ *Ibid.* See also “New Lawyers Law One Year On – ‘The Three Difficulties’ Still Have Not Been Resolved” (新律师法‘周岁’三难‘仍未解决’) *Southern Metropolis Daily*, June 4, 2009, available at http://law.southcn.com/fzxw/content/2009-06/04/content_5217568_3.htm.

¹² See also “A Day in the Life of a Criminal Defense Lawyer.”

¹³ “Policing the Police,” *China Daily*, May 13, 2010, http://www.chinadaily.com.cn/opinion/2010-05/13/content_9843194.htm.

¹⁴ See, e.g., CHRD, “Tibetan Environmental Activist Karma Samdrup States in Court He Was Tortured to Extract Confession” (西藏环保人士噶玛桑珠在法庭上控诉酷刑), June 26, 2010, available at <http://www.peacehall.com/news/gb/china/2010/06/201006261316.shtml>; see also Andrew Jacobs, “Tibetan Environmentalist Receives 15-Year Sentence,” *New York Times*, June 24, 2010; Jerome A. Cohen, “Justice Denied: A US Geologist’s Conviction Reflects Deep Failures in Mainland’s Legal System,” *South China Morning Post*, July 21, 2010, available at <http://www.usasialaw.org/?p=3851>.

¹⁵ “Policing the Police,” *China Daily*, May 13, 2010; Peng Pu, “Former Police Deputy Held Over Wrongful 1999 Conviction,” *Global Times*, July 15, 2010; “Zhao Zuohai Case Provokes Responses on Legal Protections from Chinese Public, Government,” *Dui Hua Human Rights Journal*, June 2, 2010.

case in which officials in Yunnan Province unconvincingly attributed the death of a detainee to an injury sustained during a game of “hide-and-seek,” Chinese media and netizens have continued to expose and comment on other cases of mysterious deaths in detention centers.¹⁶ The *China Daily* editorial mentioned above observed that “[a]larming cases of unexplained deaths continue to occur in” detention centers and that they point to “the police’s alleged inhuman behavior against criminal suspects.”¹⁷ Moreover, CHRD has documented several cases of suspicious deaths in Re-education through Labor camps during the follow-up period and into 2010.¹⁸

Harassment of and Violence Against Human Rights Lawyers, Defenders, and Petitioners

During the follow-up period, the Chinese government failed to implement CAT’s recommendations regarding the protection of human rights lawyers, defenders, and petitioners against intimidation and abuse. The situation for human rights lawyers deteriorated markedly during 2009 and into 2010. Between February and May 2009, Beijing lawyers Li Baiguang, Cheng Hai, Zhang Kai, and Li Chunfu, as well as Guangxi lawyer Yang Zaixin, were assaulted in separate incidents by government officials or unidentified individuals believed to be affiliated with local authorities.¹⁹ In July 2009, disbarred Liaoning lawyer Wang Yonghang, who defended Falun Gong practitioners, was severely beaten in police custody.²⁰ CHRD is not aware of any investigations or of any individuals being held accountable in connection with these assaults. Human rights lawyer Gao Zhisheng disappeared in February 2009, suddenly re-appeared in March 2010 only to disappear again in April. Gao had endured torture during an earlier abduction by police in 2007, and again during his disappearance in 2009, and it is believed he faces a high risk of being tortured again.²¹ Gao’s current whereabouts are unknown. During 2009 and 2010, local justice bureaus have revoked, cancelled, or refused to renew the lawyers’ licenses of certain human rights lawyers, including Jiang Tianyong, Tang Jitian, Liu Wei, and others.²² Shanghai human rights lawyer Zheng Enchong remains under illegal house arrest.

Official and unofficial personnel continue to torture, harass and arbitrarily detain human rights defenders and petitioners. For example, in August 2009, police in Chengdu, Sichuan province beat prominent activist and artist Ai Weiwei so severely that Ai suffered a cerebral hemorrhage. Ai had traveled to Chengdu to testify as a defense witness on behalf of human rights defender

¹⁶ See, e.g., CHRD, “Deaths Highlight Continued Problems of Torture, Poor Oversight in Detention Facilities,” October 6, 2010; “Urgently Awaiting the End of Unnatural Deaths in Detention Centers” (非正常死亡, 亟待遇), June 24, 2010, http://zjdaily.zjol.com.cn/html/2010-06/24/content_423806.htm?div=-1; an English translation is available at the Dui Hua Human Rights Journal, June 25, 2010.

¹⁷ “Policing the Police,” *China Daily*, May 13, 2010.

¹⁸ See, e.g., CHRD, “Deaths Highlight Continued Problem of Torture, Poor Oversight in Detention Facilities,” October 6, 2009; CHRD, “Man Dies in Re-education through Labor Camp, Allegedly Tortured,” *China Human Rights Briefing* May 4-10, 2010 .

¹⁹ See, e.g., CHRD, “Beijing Lawyer Cheng Hai Assaulted by Officials for Representing Falun Going Practitioner,” April 14, 2009; CHRD, “Lawyers Face Revocation of their Licenses for Defending Human Rights,” May 25, 2009.

²⁰ CHRD, “Debarred Lawyer Tortured and Arrested in Northeastern China ,” August 27, 2009.

²¹ CHRD, “Gao Zhisheng Revealed Details of Torture and Mistreatment in Newspaper Interview before Disappearance,” *China Human Rights Briefing*, June 8-14, 2010.

²² See, e.g., CHRD, “Lawyers Face Revocation of their Licenses for Defending Human Rights,” May 25, 2009; CHRD, “Licenses of 18 Rights Lawyers Still not Renewed a Month after Deadline,” July 2, 2009; CHRD, “Update: At Least Eight Human Rights Lawyers Remain Without Licenses,” *China Human Rights Briefing* January 14-18, 2010.

Tan Zuoren, who was facing trial on “inciting subversion” charges.²³ In early October 2009, Shandong petitioner Li Shulian died while illegally detained in a black jail. Although officials declared Li’s death a “suicide by hanging,” her family and fellow petitioners believe that Li died as a result of beatings and mistreatment.²⁴ In July 2010, high-ranking police officials in Wuhan, Hubei province effectively admitted that petitioners are targets of police abuse when they apologized to Chen Yulian, the wife of a local official, for the beating she suffered at the hands of six plainclothes police officers who mistook her for a petitioner.²⁵

1989 Democracy Movement

In its Concluding Observations, CAT recommended that the Chinese government “conduct a full and impartial investigation into the suppression of the Democracy Movement in Beijing in June 1989” and “offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture, and other ill-treatment.”²⁶ The Chinese government’s response to CAT’s recommendation reflects its steadfast refusal to address June 4: “The Chinese Government has closed the case concerning the political turmoil in the spring and summer of 1989.” Public discussion and commemoration of the massacre remains taboo. In June 2009, at least five activists were sent to Re-education through Labor camps for organizing activities to commemorate the twentieth anniversary of the massacre. Officials harassed and/or temporarily detained dozens of other individuals to prevent them from organizing or taking part in commemorative activities.²⁷ In June 2010, a number of activists were again harassed and detained.²⁸

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In sum, the Chinese government simply ignored CAT’s recommendations for follow-up. Torture and mistreatment at the hands of official and unofficial personnel remain widespread, and the situation with respect to a number of CAT’s areas of concern has worsened, rather than improved, since CAT’s review of China in late 2008.

²³ “Ai Weiwei Returns to Beijing from Munich (艾未未从慕尼黑回到北京)”, October 20, 2009, http://crd-net.org/Article/Class53/200910/20091020153009_17839.html; See “Lao Ma Ti Hua (老妈蹄花)”, a documentary about Ai’s ordeal in Chengdu that includes footage of the police attack is available at <http://www.youtube.com/watch?v=MOFyq5M8ZKU>.

²⁴ CHR, “Deaths Highlight Continued Problem of Torture, Poor Oversight in Detention Facilities,” October 6, 2009; CHR, “Activists Blocked From Investigating Case of Death Following Mistreatment,” *China Human Rights Briefing*, October 5-9, 2009.

²⁵ Zhao Lei, “Ruckus over beating of ‘petitioner’,” *China Daily*, July 21, 2010, http://www.chinadaily.com.cn/cndy/2010-07/21/content_11027777.htm.

²⁶ Concluding Observations, para. 21.

²⁷ CHR, “Police Detain and Harass Activists on Eve of Tiananmen Anniversary,” June 4, 2009; CHR, “Annual Report on the Situation of Human Rights Defenders in China (2009),” p. 19, April 26, 2010.

²⁸ CHR, “Tiananmen Anniversary Marked by Harassment, Detentions, and Official Silence,” June 3, 2010.