

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

Concluding observations of the Committee against Torture
(Extracts for follow-up)

CHINA

(...)

C. Principal subjects concerns and recommendations

(...)

Widespread torture and ill-treatment and insufficient safeguards during detention

11. Notwithstanding the State party's efforts to address the practice of torture and related problems in the criminal justice system, the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, the Committee notes with concern the lack of legal safeguards for detainees, including:

- (a) Failure 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;
- (b) Absence of systematic registration of all detainees and failure to keep records of all periods of pretrial detention;
- (c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members;
- (d) Continued 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, as in the case of Yang Chunlin. Furthermore, while the Committee appreciates that the Supreme Court has issued several decisions to prevent the use of confessions obtained under torture as evidence before the courts, Chinese Criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention.
- (e) The lack of an effective independent monitoring mechanism on the situation of detainees (arts. 2, 11 and 15).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country.

As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered.

The State party should take the measures necessary to ensure that, both in legislation and in practice, statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention. The State party should review all cases in which persons were convicted on the basis of coerced confessions with a view to releasing those who were wrongly convicted.

The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.

(...)

Main obstacles to the effective implementation of the Convention

15. The Committee identified three over-arching problems that impact all other issues raised by the Committee in the list of issues and during the oral presentations: the 1988 Law on the Preservation of State Secrets in the People's Republic of China; the reported harassment of lawyers and human rights defenders; and the abuses carried out by unaccountable 'thugs' who use physical violence against specific defenders but enjoy *de facto* immunity. Collectively, these problems stand in the way of ensuring the legal safeguards that the Committee generally recommends to all States parties to the Convention as necessary for the prevention of torture.

(A) State secrets law

While taking note of the oral information from the State party on the conditions of application of the 1988 Law on the Preservation of State Secrets in the People's Republic of China, the Committee expressed grave concern over the use of this law which severely undermines the availability of information about torture, criminal justice and related issues. The broad application of this law raises a range of issues relating to the application of the Convention in the State party:

(a) this Law prevents the disclosure of crucial information that would enable the Committee to identify possible patterns of abuse requiring attention, such as disaggregated statistical information on detainees in all forms of detention and custody and ill-treatment in the State party, information on groups and entities deemed to be “hostile organizations”, “minority splittist organizations”, “hostile religious organizations”, “reactionary sects”, as well as basic information on places of detention, information about the “circumstances of prisoners of great influence”, violations of the law or codes of conduct by public security organs, information on matters inside prisons;

(b) this Law provides that the determination of whether a piece of information is a State secret lies with the public body producing this information;

(c) this Law prevents any public process of determination as to whether a matter is a State secret and the possibility of appeal before an independent tribunal;

(d) the classification of a case falling under the State Secrets law allows officials to deny detainees access to lawyers, a fundamental safeguard for preventing torture, and such denial appears to be in contradiction with the 2007 amended Lawyers Law (arts.2 and 19).

The State party should review its legislation on State secrets with a view to ensuring that information, including statistics, relevant to the assessment of the State party’s compliance with the provisions of the Convention throughout its territory, including in the Special Administrative Regions, is available to the Committee.

The State party should provide information on the criteria used to establish that a piece of information is a State secret and on the number of cases falling under the purview of the legislation on State secrets.

The State party should ensure that the determination as to whether a matter is a State secret can be appealed before an independent tribunal.

The State party should ensure that every suspect is afforded the right to have prompt access to an independent lawyer, where possible of their own choosing, including in cases involving “state secrets”.

(B) Data collection

Despite its previous conclusions and recommendations that the State party provide the Committee with statistical information (A/55/44, para.130), the Committee regrets that this was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel, as well as on detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities severely hampers the identification of possible patterns of abuse requiring attention (art.2 and 19).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by

gender, ethnicity, age, geographical region and type and location of place of deprivation of liberty, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities.

(C) Harassment of defence lawyers

The Committee is concerned about information received according to which article 306 of the Penal Code, along with article 39 of the Criminal Procedure Law, allowing prosecutors to arrest lawyers on grounds of “perjury” or “false testimony”, has been used to intimidate some defence lawyers. The Committee also notes with great concern reported harassment of lawyers, such as Teng Biao and Gao Zhisheng, who have tried to offer their services to petitioners, human rights defenders and other dissidents, and reports that this harassment was conducted by unaccountable personnel alleged to be hired by State authorities (art. 2).

The State party should abolish any legal provisions which undermine the independence of lawyers and should investigate all attacks against lawyers and petitioners, with a view to prosecution as appropriate.

The State party should take immediate action to investigate acts of intimidation and other ways of impeding the independent work of lawyers.

(D) Harassment and violence against human rights defenders and petitioners

The Committee expresses its concern at information on a pattern of harassment and violence against human rights defenders, such as Hu Jia. Such actions severely hamper the capacity of civil society monitoring groups to function, and do not encourage information to be shared, investigations to occur and cases to be brought to the authorities. Despite the State party’s assurance that no unofficial personnel have been hired by public authorities to harass lawyers or petitioners, the Committee is concerned at the persistent reports on attempts to curb the activities of human rights activists, such as Li Heping. This includes violence by unofficial personnel allegedly engaged by public authorities to harass lawyers and petitioners, the use of different forms of administrative detention, such as “residential surveillance”, re-education through labour and secret places of detention. The Committee is concerned by allegations that unofficial personnel have not been held accountable for such behaviour (arts. 12 and 16).

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.

The State party should abolish the use of unofficial personnel to harass human rights defenders, including lawyers and petitioners.

(...)

1989 Democracy Movement

17. Despite repeated requests from groups of relatives of persons killed, arrested or disappeared on or following June 4th, 1989 Beijing suppression of the Democracy Movement, the Committee is concerned about the lack of investigations into these events, the failure to inform family members of the fate of their relatives, and regrets that those responsible for excessive use of force have not faced any sanctions, administrative or criminal (art. 12).

The State party should conduct a full and impartial investigation into the suppression of the Democracy movement in Beijing in June 1989, provide information on the persons who are still detained from that period, inform the family members of their findings, offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture and other ill-treatment.

(...)

National, ethnic or religious minorities and other vulnerable groups

18. The Committee is greatly concerned by the allegations of targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners. In addition, the return of North Korean border-crossers and refugees is also an area of concern for the Committee with regard to vulnerable groups, as articulated below.

(A) Events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties: widespread reported excessive use of force and other abuses

The Committee notes with great concern the reports received on the recent crackdown in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in the State party which has deepened a climate of fear and further inhibits accountability. These reports follow longstanding reports of torture, beatings, shackling and other abusive treatment, in particular of Tibetan monks and nuns, at the hands of public officials, public security and state security, as well as paramilitary and even unofficial personnel at the instigation or with the acquiescence or consent of public officials. Notwithstanding the numbers provided by the State party on persons arrested and those sentenced to imprisonment in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties, the Committee regrets the lack of further information on these persons. In particular, the State party reported that 1231 suspects “have redeemed themselves and been released after receiving education and administrative punishment”, but has provided no further information on these cases or their treatment. In particular, the Committee expresses its concern at:

- (a) The large number of persons detained or arrested in the aftermath of the March 2008 demonstrations and related events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in Gansu, Sichuan and Qinghai provinces, and the reported lack of restraint with which persons were treated, based on numerous allegations and credible reports made available to the Committee;
- (b) The failure to investigate the deaths resulting from indiscriminate firing by the police into crowds of reportedly largely peaceful demonstrators in Kardze county, Ngaba county, and Lhasa;
- (c) The failure to conduct independent and impartial investigations into allegations that some of the large number of persons detained or arrested have been subjected to torture or cruel, inhuman or degrading treatment;
- (d) The failure to allow independent and impartial investigators into the region;
- (e) The consistent allegations that some of those arrested could not notify their relatives, did not have prompt access to an independent doctor, nor to an independent lawyer, that lawyers offering to represent them were warned and otherwise deterred from providing that legal assistance, and that the speeded up trials of 69 Tibetans led to them being reportedly sentenced in a summary manner;
- (f) The large number of persons who have been arrested, but whose current whereabouts remain unknown and which the State party has been unable to clarify despite written and oral requests from the Committee (list of issues, question 2(1), CAT/C/CHN/Q/4) (arts. 2, 11 and 12).

The State party should conduct a thorough and independent inquiry into the reported excessive use of force, including against peaceful demonstrators and notably monks, in Kardze county, Ngaba county, and Lhasa.

The State party should conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment and should ensure that those responsible are prosecuted.

The State party should ensure that all persons who were detained or arrested in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties have prompt access to an independent lawyer and independent medical care and the right to lodge complaints in a confidential atmosphere, free from reprisal or harassment.

The State party should adopt all necessary measures to prohibit and prevent enforced disappearances, to shed light on the fate of missing persons, including Genden Choekyi Nyima, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention. The State party should conduct investigations or inquests into the deaths, including deaths in custody, of persons killed in the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties.

(...)

35. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11, 15, 17 and 18 (A) above.

(...)
