

**IMPLEMENTATION OF THE CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT IN THE PEOPLE'S REPUBLIC
OF CHINA**

A PARALLEL NGO REPORT BY HUMAN RIGHTS IN CHINA
OCTOBER 2008

*Submitted to the Committee Against Torture in advance of its review of the combined Fourth
and Fifth Periodic Reports of the People's Republic of China on implementation of the
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*



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ABOUT HUMAN RIGHTS IN CHINA. Founded by Chinese students and scholars in March 1989, HRIC is an international, Chinese, non-governmental organization with a mission to promote international human rights and advance the institutional protection of these rights in the People's Republic of China.

EXECUTIVE SUMMARY

Human Rights in China (HRIC) respectfully submits this report to the Committee Against Torture (“Committee”), in advance of the Committee’s review of the Government of the People’s Republic of China’s (“PRC”) combined Fourth and Fifth Periodic Reports on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) at its 41st session in November 2008.

HRIC also notes with appreciation the detailed and comprehensive list of issues to be considered during the examination of the State party’s Fourth Periodic Report and looks forward to the opportunity to contribute to the Committee’s review.

Key Areas of Concern

The **state secrets system** of the PRC presents a key challenge to monitoring and reducing the incidence of torture in China. The state secrets system, which comprises the *Law on the Protection of the State Secrets of the People’s Republic of China* (hereinafter *State Secrets Law*), *Measures for Implementing the Law on the Protection of the State Secrets of the People’s Republic of China*, and other relevant provisions of the *State Security Law*, *Penal Code*, and *Criminal Procedure Law*, prevents independent assessment of CAT implementation measures. In many instances, information requested by the Committee is classified as “state secrets.” Such information control obstructs the Committee’s review process and undermines legislative, administrative, judicial or other measures aimed at preventing acts of torture.

Additional areas of concern highlighted in this report include the **definition of torture** under PRC law, continuing **attacks on defense lawyers**, reform of administrative detention including **Reeducation-Through-Labor**, policies of the **Shanghai Cooperation Organization** impacting the prevention of torture, and accountability for victims of the **1989 Tiananmen crackdown**, including those that suffered torture and ill-treatment.

Summary of Recommendations

- The State party should ensure that the **definition of torture** under the *Penal Code* (amended 1997), *Criminal Procedure Law*, and all other relevant laws and regulation, is in compliance with **Article 1** of the CAT.
- The State party should take effective measures to prevent torture, pursuant to **Article 2(1)** of the CAT. Such effective measures would require the State party to reform the state secrets system, abolish Article 306 of the *Penal Code*, take steps to prevent attacks on lawyers, ensure access to legal representation under the revised *Lawyers Law*, and abolish the system of administrative detention-without-trial known as Reeducation-Through-Labor.
- The Committee should, pursuant to **Article 2(2)** of the CAT, which states that “no exceptional circumstances” may be invoked to justify torture, request information from the State party

regarding the State party's participation in the Shanghai Cooperation Organization (SCO). In particular, the Committee should request information relating to the prevention or use of torture by SCO member states on individuals suspected of terrorism, separatism or extremism.

- The State party should ensure, pursuant to **Article 4** of the CAT, that all acts of torture are criminal offenses under the *Penal Code* and are punishable with appropriate penalties.
- The State party should, pursuant to **Article 12, 13 and 14** of the CAT, provide all victims of the 1989 Tiananmen crackdown with a prompt and impartial investigation, respond to victims' complaints and afford victims with redress and fair and adequate compensation.

RECOMMENDATIONS

Article 1

- **Definition of torture:** A clear and consistent definition of torture must be formulated in full compliance with Article 1 of the CAT and include:
 - severe mental pain or suffering,
 - acts perpetrated with the consent or acquiescence of public officials or other person acting in official capacity, and
 - acts based upon discrimination of any kind.
- The State party should make clear that this revised definition applies in the *Penal Code* (amended 1997), *Criminal Procedure Law*, and all other relevant laws, regulations, official interpretations, and measures.

Article 2(1)

Reform of State Secrets System

The state secrets system needs comprehensive reform to both bring it into line with international norms and the PRC's obligations, and to advance good governance, the rule of law, and protect human rights. HRIC recognizes the structural, ideological and cultural challenges that legal reform efforts in China present, and the even greater implementation difficulties. The following recommendations reflect not only recommendations from international monitoring bodies and the international human rights community, but also domestic calls for reform from Chinese lawyers, jurists, scholars, officials and NGOs.

- **Revisions to the *State Secrets Law* should address the following issues:**
 - **The State party should promulgate a clear and consistent definition of state secrets** that is in keeping with international legal standards. As provided for in the ICCPR and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, any restriction placed on freedom of expression must be narrow, specific and limited to information that would threaten the life of the nation if disclosed.
 - In keeping with the Johannesburg Principles, **the *State Secrets Law*, the *Penal Code*, and the *State Security Law* should be revised so that punishment is only levied for actual harm to a legitimate national security interest.** The current provisions allowing for the classification of information that could cause potential harm should be revised to ensure that the law only punishes actual harm, and that if information has already been made generally available, the public's right to know overrides any invoked justification for stopping further publication of the information.
 - **An independent review mechanism for the classification of state secrets should be established.** Both institutions and bureaus, as well as individuals involved in state secrets legal proceedings, should have the right to seek independent review of the classification of the information involved.
 - Revisions should be made to the *State Secrets Law* and other regulations to **eliminate retroactive classification of information.**
 - Revisions should be made to the *State Secrets Law* in accordance with international norms and standards to **eliminate the distinctions in the scope of state secrets, and the severity of criminal sanctions, between domestic and external disclosure of state secrets.**

- The State party should provide information on the **current status of reforms** (if any) **to the state secrets system** during the Committee's review of its fourth periodic report.

Access to Counsel

- The State party should **revise the *Criminal Procedure Law*** to provide **guarantee of prompt access to legal counsel**.
- The State party should **resolve the conflict between** the right of lawyers to meet with their clients, which is protected by the amended ***Lawyers Law*, and the *State Secrets Law* and related laws**, which restrict right to legal counsel in state secrets cases to ensure full protection for lawyers and their clients.
- The State party should **abolish Article 306** of the *Penal Code*, which undermines the independence and effectiveness of lawyers to protect victims of torture and abuses of the criminal justice system.

Reeducation-Through-Labor (RTL) System

- The State party should **abolish the RTL system** as recommended by the CAT (2000) and advocated by many Chinese legal experts. Any form of administrative detention must afford full protections for ensuring that any deprivation of liberty are in compliance with domestic and international law, including judicial oversight and the right to legal representation.

Article 2(2)

- The Committee should request information regarding the **State party's participation in the Shanghai Cooperation Organization (SCO)** and the impact of the SCO on human rights, with specific attention to the use of torture on individuals suspected of terrorism, separatism, or extremism, including information and clarification regarding:
 - **the clear delineations among acts of terrorism, acts of separatism, and acts of extremism**, and what acts fall under each group;
 - **databases maintained by the SCO's Regional Anti-Terrorist Structure (RATS)**, the information on individuals that is compiled and analyzed by RATS, and how that information is used and exchanged by the State party as an SCO member;
 - the **oversight process** within the SCO for determining whether an individual or group identified as a terrorist, extremist, or separatist by an SCO member state has in fact committed such an offense;
 - how **many individuals have been extradited** to or from the State party pursuant to the Shanghai Convention, and for what crimes; and
 - the **success of the SCO in reducing the risk of terrorism** to the State party, including whether use of SCO mechanisms has led to the capture of individuals associated with internationally-recognized terrorist organizations.

Article 4

- The State party should ensure that **all acts of torture**, as defined by international law and **Article 1** of the CAT, are offences under its **criminal law**, and punishable with appropriate penalties in accordance with **Article 4**.

- The State party should include in subsequent reports to the Committee cases where quasi or non-state officials are prosecuted (if any), as well as instances in which officials are prosecuted for encouraging or acquiescing in acts of torture. The State party should also detail the punishments handed down in these cases.

Article 12, 13, 14

- **June Fourth and mass violations:** As the twentieth anniversary of the 1989 crackdown approaches in 2009, the State party should ensure that the victims and their families are afforded a prompt and impartial investigation, redress, and fair and adequate compensation as required by Articles 12, 13, and 14. The State party should specifically respond to the requests of the Tiananmen Mothers, and other Chinese voices calling for:
 - a full investigation into the crackdown;
 - a public accounting and appropriate restitution;
 - prosecution of those responsible;
 - reassessment of the 1989 Democracy Movement; and
 - dialogue with the authorities.

PROGRESS UNDER SPECIFIC ARTICLES OF THE CONVENTION

ARTICLE 1(1): DEFINITION OF TORTURE

ARTICLE 1 (1)

For the purposes of this Convention, torture means **any act by which severe pain or suffering, whether physical or mental**, is intentionally inflicted on a person for such purposes as **obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination** of any kind, when such pain or suffering is inflicted by or at the instigation of or **with the consent or acquiescence of a public official or other person acting in an official capacity**. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (Emphasis added.)

1 The State party's laws and regulations do not clearly define torture in conformity with Article 1 of the CAT. Specifically, they fail to define torture as clearly including severe mental pain and suffering, the use of torture by temporary, quasi- or non-governmental actors, and torture for any reason based on discrimination of any kind.

Failure to address severe mental pain and suffering:

2 The specific provisions of the State party's *Penal Code* cited in its Fourth Periodic Report (paras 134 and 135) do not set forth a definition of torture that fully complies with the definition detailed in the CAT.

- **Article 247 of the *Penal Code*** prohibits extortion of a confession from suspects or defendants under torture by a judicial officer, as well as extraction of testimony from witnesses through the use of force by a judicial officer.
- **Article 248 of the *Penal Code*** prohibits physical abuse of detainees and prison inmates and the instigation of detainee-on-detainee violence by an officer of an institution of confinement, such as a prison, detention centre or custody house.

However, Articles 247 and 248 prohibit only use of force or physical abuse. They do not prohibit infliction of severe mental pain and suffering.

3 The State party's Fourth Periodic Report also references "relevant judicial interpretations" that purport to clarify that mental pain or distress is included in the State party's definition of torture (para 136). However, the State party report fails to cite or provide specific judicial interpretations that address and clarify the definition of torture in Chinese law in compliance with Article 1.

4 In addition to *Penal Code* provisions cited by the State party report, provisions related to the prohibition of the use of torture are spread out through other relevant legal provisions of the State party. For example:

- **Article 43 of the *Criminal Procedure Law*** states that it "shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means."
- ***Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases (2006, SPP Provisions)*** prohibit the use of corporal punishment or disguised corporal punishment on criminal suspects or defendants by judicial officers to coerce confessions that "bring about the criminal suspect or defendant's suicide, serious injury through self-infliction, death or mental disorder."

5 Article 43 of the *Criminal Procedure Law* and the *SPP Provisions* narrowly address the use of torture as punishment or to coerce a confession. The SPP reference to mental disorder refers to a possible result of physical abuse along with suicide, serious injury, or death. But mental torture includes all methods of ill-treatment that do not necessarily result in physical harm or mental disorder, but which are recognized internationally as conduct constituting torture under Article 1 of the CAT. For example, the infliction of severe mental pain and suffering on Tibetans, house church members, and Falun Gong practitioners who have been forced to renounce their faith or religious leaders, or endure Reeducation-Through-Labor, constitutes torture, irrespective of whether they subsequently commit suicide or harm themselves.

Failure to address the use of torture by temporary, quasi- or non-governmental actors:

6 Articles 247 and 248 of the *Penal Code* and the *SPP Provisions* prohibit acts of torture by "judicial officers" and "officers of institutions of confinement," but do not mention temporary or quasi-governmental employees, hired thugs or detainees ordered or induced by officials to mistreat other detainees. There has been a rise in thug violence—with the explicit or implicit support of the authorities—against lawyers, petitioners, activists, and the practitioners of non-state-sanctioned religions.¹

Failure to clearly prohibit acts of torture for any reason based on discrimination of any kind:

7 The definition of torture in Chinese law also does not address other elements of torture set forth in Article 1, such as acts of torture based upon discrimination of any kind. The failure to include this element of torture is particularly significant and related to the concerns raised by this Committee regarding the detention, sentencing, and treatment of persons in connection with the March 2008 unrest in the Tibet Autonomous Region (TAM) and neighboring prefectures and counties, persons of Uyghur ethnicity in the Xinjiang Uyghur Autonomous Region (XUAR), and acts of torture inflicted on religious practitioners or adherents of non-state-sanctioned religions.

ARTICLE 2(1): EFFECTIVE MEASURES

ARTICLE 2 (1)

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

State Secrets System²

8 The state secrets system stands as the single most significant obstacle to the prevention of torture in the PRC, as it sweeps a vast universe of information, including much of the specific information requested by the Committee, into a non-transparent black hole of protected information. This overbroad reach of the state secrets system makes it exceedingly difficult to obtain accurate, comprehensive and reliable information that is necessary for a constructive assessment of the new measures and progress cited in the State party's Fourth Periodic Report, because much of the information is classified or designated *neibu* (internal). (For a list of the types of information classified as state secrets or designated as internal matters, see "Annex 1: The PRC's State Secrets System.")

9 The state secrets system comprises the *Law on the Protection of State Secrets of the People's Republic of China* (1988, hereinafter *State Secrets Law*)³ and the *Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China* (1990).⁴ Related provisions in the *State Security Law*,⁵ the *Penal Code*⁶ and the *Supreme People's Court Interpretation of Certain Issues Regarding the Specific Application of the Law When Trying Cases of Stealing, Gathering, Procuring or Illegally Providing State Secrets or Intelligence Outside of the Country*⁷ stipulate administrative and criminal sanctions for violations of state secrets or state security provisions. The *Criminal Procedure Law*⁸ sets forth relevant procedures for investigation, prosecution, and defense of state secrets and state security cases. Under these laws and provisions, the types of information explicitly classified as state secrets range from unemployment rates, information about strikes, data on the numbers of people fleeing from famine, to programs and plans for prison and Reeducation-Through-Labor work, and provincial and national statistics on the number of executions.

10 State secrets are classified as “Top Secret” (绝密), “Highly Secret” (机密), and “Secret” (秘密).

Classifications cannot be challenged or appealed. In addition, government documents that are not classified as state secrets can be designated as “*neibu*” (internal, 内部) and are banned from public circulation. There is no clear line between classified state secrets and *neibu* information because state secrets charges may be applied to a case that involves only *neibu* information. Also, information can be classified as state secrets **retroactively**. Individuals can be subject to criminal and administrative sanctions, and Party members can be subject to Party sanctions, for either knowingly or unknowingly disclosing, leaking, divulging, or possessing state secrets.⁹

11 Information about the treatment of persons detained or sentenced in connection with the March 2008 Tibetan demonstrations and information about any investigations into deaths in connection with the March 2008 Tibetan demonstrations are all classified or related to classified information. The following are examples from PRC regulations of types of information pertaining to ethnic work and religious matters that have been classified.

| CATEGORY AND TYPE OF INFORMATION | SS CLASSIFICATION |
|---|-------------------|
| ETHNIC WORK | |
| <ul style="list-style-type: none"> “Secret intelligence involving the coordination of national security, the stability of social administration, ethnic unity ...and other especially important intelligence”¹⁰ | Top Secret 绝密 |
| <ul style="list-style-type: none"> “Analyses of important developments and information on anything that could seriously harm ethnic relations, or that for other ethnic reasons could endanger national unity or affect social stability”¹¹ | Top Secret 绝密 |
| <ul style="list-style-type: none"> “Strategies and measures for dealing with the occurrence of major ethnic-related public order emergencies”¹² | Top Secret 绝密 |
| <ul style="list-style-type: none"> “Strategies and measures used in handling ethnic separatist activities”¹³ | Top Secret 绝密 |
| RELIGIOUS MATTERS | |
| <ul style="list-style-type: none"> “Strategies and measures for handling major public order emergencies involving religious matters”¹⁴ | Top Secret 绝密 |

12 With respect to concerns raised and with respect to specific information requested by the Committee about the criminal justice process and the Reeducation-Through-Labor (RTL) system, the following examples of information classified as state secrets illustrate the obstacles to obtaining data and information that can help prevent torture and hold officials accountable for their acts of torture.

| CATEGORY AND TYPE OF INFORMATION | SS CLASSIFICATION |
|--|---------------------|
| CRIMINAL INVESTIGATIONS & TRIALS | |
| <ul style="list-style-type: none"> ▪ “Plans and materials for investigating cases put on file for investigation that are currently being investigated by procuratorial organs and that could impact state security or social stability”¹⁵ | Top Secret 绝密 |
| <ul style="list-style-type: none"> ▪ “Plans and methods used to investigate important criminal cases already under investigation, as well as information on investigations, pre-adjudication, and the work of technical verification”¹⁶ | Highly Secret 机密 |
| <ul style="list-style-type: none"> ▪ “Specific plans and important case details on criminal cases that are in the information-gathering or the pretrial stages”¹⁷ | Secret 秘密 |
| <ul style="list-style-type: none"> ▪ “Information and statistics on those who are targets of investigation, under investigation, or under the control of public security organs”¹⁸ | Secret 秘密 |
| DETENTION CONDITIONS | |
| <ul style="list-style-type: none"> ▪ “Information on the place of custody or circumstances of prisoners or detainees with great influence”¹⁹ | Highly Secret 机密 |
| <ul style="list-style-type: none"> ▪ “Compiled information and statistics that have not yet been made public on criminals that have been arrested, captured, sent for Reeducation-Through-Labor or juvenile rehabilitation”²⁰ | Secret 秘密 |
| <ul style="list-style-type: none"> ▪ Information on the place of custody or circumstances of ordinary detainees²¹ | Secret 秘密 |
| <ul style="list-style-type: none"> ▪ “Statistics on the ideological tendencies and living and sanitation conditions of prisoners in detention and Reeducation-Through-Labor facilities nationwide”²² | Secret 秘密 |
| ADMINISTRATIVE DETENTION | |
| <ul style="list-style-type: none"> ▪ “Reeducation plans for Reeducation-Through-Labor inmates who engage in counterrevolutionary activities, illegal religious activities, illegal publications and the activities of illegal organizations”²³ | Internal matters 内部 |

| PUBLIC OFFICIALS & VIOLATIONS | |
|--|---------------------|
| <ul style="list-style-type: none"> ▪ “Statistics and specific case details regarding the use of torture to extract confessions and corporal punishment abuse that led to serious consequences”²⁴ | Highly secret 机密 |
| <ul style="list-style-type: none"> ▪ “Information not yet released on the investigations or trials of cases of judicial administration officers who violate discipline”²⁵ | Internal matters 内部 |
| <ul style="list-style-type: none"> ▪ “Data on instances of police officers causing injuries or disabilities to prisoners or Reeducation-Through-Labor inmates and instances of police officers violating the law or discipline”²⁶ | Internal matters 内部 |

Reeducation-Through-Labor (RTL)

13 RTL is a system of **administrative detention without judicial oversight** that places **detainees in situations** in which they are **vulnerable to abuse or torture**. RTL is the penalty given by public security departments to offenders of acts deemed “not serious enough” to warrant criminal prosecution. Sometimes RTL is used because evidence is insufficient to pursue criminal prosecution. The RTL system allows non-judicial panels of policemen, called RTL Approval Committees, to sentence people to up to three years of detention (may be extended for another one year) in prison-like facilities.

14 Under RTL, **detainees are deprived of their right to due process**, including the right to counsel, right to a fair trial and right to have the lawfulness of their detention reviewed by a judicial authority.²⁷ RTL has been applied to hundreds of thousands of people.²⁸ It has become a **tool used by authorities to harass, intimidate, or silence petitioners, whistle blowers and rights activists**.²⁹ The RTL system contradicts the 2000 *Law on Legislation*, which states that only the National People’s Congress (NPC), and in some cases its Standing Committee, can pass legislation on matters relating to the deprivation of liberty of Chinese citizens.³⁰

15 Since 2003, when the Chinese legislature first took up the issue, there has been **growing pressure** from the international and domestic communities **to reform or abolish the RTL system**, including very vocal support among legal scholars, lawyers, and judges. In 2007, the NPC and Chinese People’s Political Consultative Conference (CPPCC) proposed including the draft reform bill, the “Illegal Behavior Correction Law,” on the agenda of proposed legislation to be considered, but the Congresses have not yet indicated a timeline for its consideration.

Despite the apparent stalling in the progress of the “Illegal Behavior Correction Law,” active policy debates continue among NPC legislative planning experts, judges, and other Chinese experts and scholars. Many advocate reforming or abolishing the system; others favor “perfecting” it.³¹

Limited Access to Legal Counsel

16 Limited access to legal counsel for defendants is another major obstacle to insuring fair treatment and preventing abuses during the criminal justice process. The problems can be categorized into the following three areas:

16.1 Limited or no legal representation in criminal cases. The *Criminal Procedure Law*³² provides for a suspect's right to counsel—a right that is also codified in the *Lawyers Law*³³ of the People's Republic of China. However, in practice, **most criminal defendants do not have legal representation, which might otherwise deter ill-treatment or the use of torture to extract confessions.** When criminal suspects do manage to get legal representation, they customarily have to wait for extended periods after being taken into custody. In May 2006, the Lawyer's Rights and Interests Protection Committee of the Beijing Lawyers Association conducted a survey on problems of lawyers' access to clients in custody in Beijing. Drawing upon data from Beijing detention centers, the survey indicated that lawyers frequently experience limited access to their clients. It also indicated that during the investigatory and examination/prosecution stages, **90% of respondents were only permitted to meet with their clients after submitting multiple applications.**³⁴ Even then, the meeting would not be arranged within 48 hours of the suspect being detained, despite provisions in the *Regulations on Several Issues Encountered during the Implementation of the Criminal Procedure Law*,³⁵ which set forth that a lawyer must be able to meet with a suspect within 48 hours of requesting a meeting.

16.2 Limited or no access to counsel in cases allegedly involving state secrets. The *Criminal Procedure Law* stipulates that for cases involving state secrets, a criminal suspect must obtain approval from the investigative organ before appointing a lawyer, and the lawyer must also obtain approval from the investigative organ before meeting with the suspect. There is no judicial review or supervision of the initial determination by police that a case involves "state secrets." Instead, the police have wide, unfettered discretion to determine that a case involves "state secrets." The invocation of "state secrets" has become a common tactic used by police to deprive suspects of access to counsel.³⁶

16.3 The recently amended *Lawyers Law* conflicts with the *Criminal Procedure Law* and the *State Secrets Law*. The revised *Lawyers Law*³⁷ provides the right for a lawyer to meet with a criminal suspect unmonitored after the investigating organ has finished the initial interrogation or after the implementation of compulsory measures (i.e., detention). Other than the requirement that the lawyer present three documents (the lawyer's practice license, proof provided by his law firm, and engagement letter or legal aid letter), the revised *Lawyers Law* does not impose any other restrictions and makes no exception for the right of lawyers to meet with their clients, including no exception for state secrets cases.

Restrictions and Attacks on Lawyers

17 Restrictions on lawyers undermine their ability to protect defendants from torture; violence against lawyers makes them the victims of torture.³⁸

Legal and regulatory restrictions

17.1 Article 306 of the *Penal Code*³⁹—along with Article 38 of the *Criminal Procedure Law*—allows prosecutors to arrest lawyers on grounds of "perjury" or "false testimony." According to these provisions, lawyers can be targeted as defendants themselves when they are accused of destroying or fabricating evidence, or forcing or inciting a witness to change testimony. These acts are punishable by imprisonment of up to seven years. However, available statistics suggest that Article 306 has been misused to intimidate and target rights defense lawyers. A total of approximately 500 lawyers were detained between 1997 and 2002,⁴⁰ and more than 100 lawyers have been accused specifically of violating Article 306 by fabricating evidence. Of these Article 306 cases, more than 90 percent have been cleared.⁴¹ Many lawyers and experts have advocated the abolition of Article 306.

17.2 Guiding Opinion on Lawyers Handling Collective Cases (中华全国律师协会关于律师办理群体性案件指导意见)⁴² issued by the All-China Lawyers Association (ACLA) in 2006 require lawyers taking on "collective" cases—i.e. cases involving **more than ten people**—and "**major sensitive cases**" to immediately report to and accept the supervision and guidance of judicial administrative organs. The Opinion also **warns lawyers not to encourage their clients to participate, or participate themselves, in petitions of government offices, and not to contact foreign organizations and media.** Only "**politically qualified lawyers**" are allowed to deal with "collective, major sensitive cases," and before accepting those cases, they need the approval of **at least three law firm partners.** The ACLA guiding opinion was preceded and followed by similar guiding opinions and regulations issued by provincial and municipal bureaus of justice.⁴³ These guidelines and regulations **seriously hamper the independence** of lawyers and **undermine their important role in ensuring the effectiveness of legislative, administrative, judicial or other measures taken to prevent torture.**

Procedural obstacles

17.3 The criminal justice system does adequately protect the independence of lawyers in the performance of their work. Like all other criminal suspects, lawyers who are being investigated are often held in prolonged pre-trial detention and have difficulty meeting with their own lawyers, and when released they and their families are subject to harassment and intimidation by the authorities. Lawyers who take up other lawyers' defense cases are also perceived as challenging the authorities and are harassed frequently.⁴⁴

Attacks on lawyers

17.4 In recent years, rights defense lawyers have increasingly become the targets of violence and victims of torture. In addition to the high-profile cases of **Teng Biao, Chen Guangcheng, Li Fangping, and Li Subin**, scores of other rights defense lawyers have been harassed, intimidated, physically attacked and even tortured in prison. The following are two recent examples:

Guo Feixiong 郭飞雄 (also known as Yang Maodong 杨茂东)

Guo Feixiong is a **Guangzhou-based activist and writer**. He also worked as a **legal adviser** at the Beijing-based Shengzhi Law Office and provided legal assistance on a number of controversial **rights defense cases**, including helping the **villagers of Taishi**, Guangdong province, to remove their corrupt village chief in 2005. Immediately following his activities in Taishi, he was detained for three months on "suspicion of disturbing the public order." In November 2005, the Shengzhi Law Office was shut down because its founder, prominent human rights lawyer Gao Zhisheng, represented Falun Gong practitioners and posted three letters on the Internet criticizing the Chinese government for its repression of the Falun Gong.

When Gao was detained in August 2006, Guo also provided legal assistance to Gao. Guo himself was formally arrested in September 2006 on the charge of "illegal business activity" in connection with the 2001 publication of *Shenyang Political Earthquake* 《沈阳政坛地震》, a book he edited about a political scandal in Shenyang, Liaoning province. In November 2007, he was sentenced to five years in prison and fined 40,000 *yuan*.

During his **15-month detention** in Guangzhou and Shengyang, Guo was **tortured** numerous times, including being:

- **interrogated for 13 consecutive days and nights** right after his initial detention;
- **tied down** to a wooden bed for **42 days** with his arms and legs shackled;
- **hung from the ceiling** by his arms and legs while the police electrocuted his genitals with a **high voltage baton**. Guo attempted suicide the following day.

According to Guo's wife, **Zhang Qing**, Guo's **conviction was based on the confession he gave during the torture with electric baton**. In December 2007, a month after his conviction, Guo was transferred to the Meizhou Prison, Guangdong province, where he began a hunger strike to protest his treatment. A few days later, he was severely beaten by a fellow inmate while 200 other inmates watched. The prison authority also threatened to send him to a mental institution. At Meizhou Prison, he went on hunger strike several times. During one of these strikes, in February 2008, he was force-fed a liquid that made him vomit for more than a week and turned his urine red.

At Meizhou Prison, in addition to beatings and forced feeding, Guo has endured solitary confinement and been deprived of reading materials and monthly family visits.

His wife, Zhang Qing, last visited him on August 29, 2008, and reported that Guo's health has not returned to normal and that Guo looked emaciated. She was not allowed to give him the medicine she brought with her.

Li Heping 李和平

Li Heping is a **Beijing-based lawyer** who has **advised and represented** a number of **political dissidents, house church activists, Falun Gong practitioners, and victims of forced eviction**. In 2005, Li appealed to the Beijing Bureau of Judicial Affairs on behalf of imprisoned fellow rights defense lawyer **Gao Zhisheng**. On September 29, 2007, **Li was kidnapped, beaten and tortured** with electric batons for several hours by a group of unidentified men believed to be thugs hired by the Beijing Municipal Public Security Bureau and the Beijing Municipal Bureau of State Security. On March 7, 2008, while Li was driving his seven-year-old son to school, an unmarked car crashed into him, destroying the trunk of his car. He saw three people in the car who he believed were from the group trailing him since January 2008.

From "An **Open Letter** to the State Council, Supreme People's Procuratorate, Ministry of Public Security, and Ministry of State Security **about the Abduction of Lawyer Li Heping**," signed by **112 lawyers, intellectuals, and rights defense activists**, October 8, 2007:

*On September 29, 2007, at 5:30 in the afternoon, lawyer Li Heping of the Beijing Global Law Firm was **abducted by a group of unidentified individuals** in the office parking lot as he left work. Li was hooded, thrown into an unmarked car, and taken to a basement outside Beijing. He was **slapped, kicked, and beaten on the head** with water bottles by more than 10 people. His attackers also used electric rods to beat Li for four or five hours continuously. ... In the early morning of September 30, at around 1:00 a.m., the assailants hooded Li again and drove away in two unmarked vehicles. They dumped Li in the woods outside the city. When Li returned home to check on his personal belongings, he found that the **assailants had taken appeal documents** on the case of his client, Cao Dong, his **mobile phone SIM card, computer hard disk, law license, business card holder, and notebook**. His laptop was completely reformatted, and execution files for booting the computer were also deleted.*

*We also understand that lawyer Li has been under **constant surveillance, harassed, and threatened** by the Domestic Security Protection Section of the Beijing Municipal Public Security Bureau and the Beijing Municipal Bureau of State Security. There were even officials from those organs trailing Li at the scene of his abduction.*

*We believe, based on the characteristics of the crime committed against Li, that it is obvious that **the assailants were not common hired thugs**. The reasons are (1) they kidnapped Li while he was being watched by Domestic Security Protection Section officers and drove away in two cars with no registration plates on Beijing streets; (2) they claimed that Li was allegedly involved in a certain unspecified case, hit him with batons, and did not bother to hide their identity as they warned Li "to get out of Beijing" outright; and (3) they did not take Li's money but took or destroyed all relevant belongings and documents used in his legal practice. This evidence leads us to believe that these individuals are backed by a politically powerful group. Therefore, the Ministry of Public Security and the Ministry of State Security have the responsibility and obligation to fully investigate and account for this criminal offense. (Emphasis added.)*

ARTICLE 2(2): NO EXCEPTIONAL CIRCUMSTANCES

ARTICLE 2 (2)

No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.

18 As part of its efforts to respond to the threat of terrorist acts, the State party is an active member of the **Shanghai Cooperation Organization (SCO)**, which also includes the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan, and the Republic of Uzbekistan. The SCO was founded on the belief that joint efforts by the member states within the framework of the SCO are an effective form of combating terrorism, separatism and extremism.⁴⁵

19 By linking acts of ‘terrorism’⁴⁶ with acts of ‘separatism’⁴⁷ or ‘extremism’⁴⁸ through the vehicle of the SCO, the State party takes advantage of the presumptive legitimacy of anti-terrorism measures to crack down on the rights of its people to religious and cultural freedoms, which the government often equates with separatism or extremism, if not outright terrorism—particularly in the context of the XUAR. Notably, the Shanghai Convention on Combating Terrorism, Separatism and Extremism that defines these acts states that the SCO’s chosen definitions “shall not affect any international treaty or any national law of the Parties, [which] provides or may provide for a *broader* application of the terms used in this Article.” Art. 1.2 (emphasis added). **It is thus unclear whether an international treaty or national law providing a *more limited* reading of what constitutes a terrorist, extremist, or separatist act, may be trumped by the Shanghai Convention with respect to the activities of the SCO.**

20 Through the SCO, the State party is **ultimately aided in its efforts to control government-labeled ‘terrorist’, ‘separatist’, or ‘extremist’ elements in the XUAR by five other member states, some of which share borders with the XUAR.** The member states cooperate on extradition,⁴⁹ and also exchange information through the SCO’s **Regional Anti-Terrorist Structure (RATS)**, which compiles and analyzes data from all member states relating to offending activities. It is unclear whether any **oversight** is exercised by the SCO concerning a member’s application of one of the “three evil” labels to an individual or group operating within that particular member’s borders.

ARTICLE 12: PROMPT AND IMPARTIAL INVESTIGATIONS
ARTICLE 13: RIGHT OF COMPLAINT
ARTICLE 14: ADEQUATE COMPENSATION

ARTICLE 12

Each State Party shall ensure that its competent authorities proceed to a **prompt and impartial investigation**, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

ARTICLE 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the **right to complain** and to have his **case promptly and impartially examined** by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

ARTICLE 14

1. Each State Party shall ensure in its legal system that the **victim of an act of torture obtains redress** and has an **enforceable right to fair and adequate compensation** including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law. (Emphasis added.)

June Fourth 1989 Crackdown

21 The State party has failed to provide the victims of the 1989 crackdown and their families with a **prompt and impartial investigation, has not responded to their complaints, and has not afforded them redress or fair and adequate compensation as required by Articles 12, 13, and 14.**

22 On June 4, 1989, the Chinese government violently cracked down on student, democracy, and worker activists in Tiananmen Square. Now, nineteen years later, the Chinese government has yet to respond to the numerous domestic calls for full investigation and official accountability, compensation for victims and their families, and reassessment of the 1989 Democracy Movement and its suppression. The total numbers of deaths and of individuals imprisoned or still in prison for June Fourth-related activities are still unknown. Due to government censorship and historical amnesia, there is now an entire generation of young Chinese that do not know or believe that a violent crackdown even occurred.⁵⁰

23 Led by Ding Zilin, a retired university professor whose teenage son was shot and killed by government troops during the protests, the Tiananmen Mothers are a group of rights defenders—those wounded during the crackdown and the families of those who were killed or disappeared—who have been working together to collect information and contest official claims about what really happened in 1989. For more than a decade, they have called for:

- a full investigation into the crackdown;
- a public accounting and appropriate restitution;
- prosecution of those responsible;
- reassessment of the 1989 Democracy Movement; and, most recently,
- dialogue with the authorities.⁵¹

Excerpts from their recent messages to the Chinese government are as follows:

[W]e are disappointed that our requests, year after year, have come to nothing . . . [T]he government has repeatedly refused dialogue with the victims' family members, how can [it] face the whole world? Is it really possible that, as the host of the 2008 Olympic Games, the government can be at ease allowing athletes from all over the world to tread on this piece of blood-stained soil and participate in the Olympics? (Tiananmen Mothers, February 2008)¹

In the model plays of the Cultural Revolution, there is a song lyric that goes, "Hatred in the heart must send forth shoots." For us, too, hatred sends forth shoots, but the shoots growing from us are not those of revenge, but rather those that seek peace, justice, and tranquility. (Tiananmen Mothers, May 2007)

ENDNOTES

Article 1(1)

¹ He Qinglian, "Officially Sanctioned Crime and Property Rights," *China Rights Forum*, 2007, no. 2, http://www.hrichina.org/public/PDFs/CRE.2.2007/CRF-2007-2_Property.pdf.

Article 2(1)

² Human Rights in China, *State Secrets: China's Legal Labyrinth*, www.hrichina.org/public/contents/41421.

³ Law on the Protection of State Secrets of the People's Republic of China (*hereinafter* State Secrets Law) [中华人民共和国保守国家秘密法], issued by the Standing Committee of the National People's Congress [全国人民代表大会常务委员会], promulgated on September 5, 1988, and effective on May 1, 1989, Art. 2.

⁴ Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China (*hereinafter* Implementation Measures) [中华人民共和国保守国家秘密法实施办法], issued by the National Administration for the Protection of State Secrets [国家保密局], promulgated and effective on May 25, 1990.

⁵ State Security Law of the People's Republic of China (*hereinafter* State Security Law) [中华人民共和国国家安全法], issued by the Standing Committee of the National People's Congress [全国人民代表大会常务委员会], promulgated and effective on February 22, 1993.

⁶ Criminal Law of the People's Republic of China (*hereinafter* Criminal Law) [中华人民共和国刑法], issued by the National People's Congress [全国人民代表大会], promulgated on July 1, 1979, revised in 1997, and amended 1999, 2001, 2002, 2005, 2006.

⁷ Supreme People's Court Interpretation of Certain Issues Regarding the Specific Application of the Law When Trying Cases of Stealing, Gathering, Procuring or Illegally Providing State Secrets or Intelligence Outside of the Country [最高人民法院关于审理为境外窃取、刺探、收买、非法提供国家秘密、情报案件具体应用法律若干问题的解释], promulgated on January 17, 2001, and effective on January 22, 2001.

⁸ Criminal Procedure Law of the People's Republic of China (*hereinafter* Criminal Procedure Law) [中华人民共和国刑事诉讼法], issued by the National People's Congress [全国人民代表大会] on July 1 1979 and amended on March 17 1996, the amended version effective on January 1, 1997.

⁹ Human Rights in China, *State Secrets: China's Legal Labyrinth*, www.hrichina.org/public/contents/41421

¹⁰ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work (*hereinafter* Regulation on Public Security Work) [公安工作中国家秘密及其密级具体范围的规定], issued by the Ministry of Public Security [公安部] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on March 28, 1995, and effective on May 1, 1995, Art. 2A.2.

¹¹ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Ethnic Work [民族工作中国家秘密及其密级具体范围的规定], issued by the State Ethnic Affairs Commission [国家民族事务委员会] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on March 17, 1995, Art. 3.1.1.

¹² *Ibid.*, Art. 3.1.2

¹³ *Ibid.*, Art. 3.1.3

¹⁴ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work [宗教工作中国家秘密及其密级具体范围的规定], issued by the State Administration of Religious Affairs [国务院宗教事务局] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on October 12, 1995, Art. 3.1.1.

¹⁵ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Procuratorates (*hereinafter* Regulation on People's Procuratorates) [检察工作中国家秘密及其密级具体范围的规定], issued by the Supreme People's Procuratorate [最高人民检察院] and the National Administration for the Protection of State Secrets [国家保密局], effective on January 15, 1996, Art. 3A.1.

¹⁶ Regulation on Public Security Work, Art. 2B.7.

¹⁷ *Ibid.*, Art. 2C.8.

¹⁸ *Ibid.*, Art. 2C.7.

¹⁹ *Ibid.*, Art. 2B.8.

²⁰ *Ibid.*, Art. 2C.2.

²¹ *Ibid.*, Art. 2C.9.

²² Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work (*hereinafter* Regulation on Judicial Administration Work) [司法行政工作中国家秘密及其密级具体范围的规定], issued by the Ministry of Justice [司法部] and the National Administration for the Protection of State Secrets [国家保密局], promulgated August 31, 1995, and effective on October 15, 1995, Art. 4.13.

²³ *Ibid.*, Art. 4.1.

²⁴ Regulation on People's Procuratorates, Art. 3B.5.

²⁵ Regulation on Judicial Administration Work, Art. 4.12.

²⁶ *Ibid.*, Art. 4.8.

²⁷ Judicial review by a court can only take place after punishment is imposed.

²⁸ A 2007 *China Daily* article reports that PRC justice ministry figures "show that about 400,000 people have served their terms in 310 laojiao institutions." Wu Jiao, "New Law to Abolish Laojiao System," *China Daily*, March 1, 2007, http://www.chinadaily.com.cn/china/2007-03/01/content_816358.htm.

²⁹ See the proposal signed by 43 Chinese individuals including leading scholars and lawyers: "Citizens' Proposal to Abolish the Reeducation-Through-Labor System" [关于废除劳动教养制度的公民建议], November 29, 2007, <http://news.epochtimes.com/gb/7/12/4/n1926986.htm>; also see Human Rights in China, "Mao Hengfeng Abused in Prison Again," October 29, 2007, <http://www.hrichina.org/public/contents/45402>.

³⁰ Legislation Law of the People's Republic of China [中华人民共和国立法法], issued by the National People's Congress [全国人民代表大会], promulgated March 15, 2000, and effective July 1, 2000.

³¹ See "Forum for Specialists on the National People's Congress Five Year Legislation Plan" [全国人大五年立法规划专家座谈会], *Standing Committee of the Hunan Provincial People's Congress* [湖南省人民代表大会常务委员会], April 7, 2008, <http://www.hnrd.gov.cn/lfdt1.aspx?id=5894&type=1>; Da Wei [大卫], "10,000+ Chinese Experts and Scholars Promote the Abolishment of the Reeducation-Through-Labor System" [上万中国专家学者促废除劳动教养] *Voice of America*, July 8, 2008, <http://www.voanews.com/chinese/archive/2008-07/w2008-07-08-voa67.cfm>; Yin Qiang [尹强], "Dense Autumn Chill" [秋意浓], *Shifeng District Court Online* [石峰区法院网], November 25, 2008, <http://sfqfy.chinacourt.org/public/detail.php?id=106>.

³² Criminal Procedure Law, Art. 96.

³³ Lawyers Law of the People's Republic of China (*hereinafter* Lawyers Law) [中华人民共和国律师法], issued by the Standing Committee of the National People's Congress [全国人民代表大会常务委员会], promulgated May 15, 1996, and effective on January 1, 1997; revised October 28, 2007, and effective on June 1, 2008.

³⁴ Lü Liangbiao [吕良彪], "Analysis and Explanation the 'Difficulty of Visiting Clients' Experienced by Lawyers" [律师"会见难"及其破解], *All China Lawyers Association Online* [中国律师网], July 24, 2006, <http://www.chineselawyer.com.cn/pages/2006-7-24/s35695.html>.

³⁵ Regulations on Several Issues Encountered during the Implementation of the Criminal Procedure Law [关于刑事诉讼法实施中若干问题的规定], issued by the Supreme People's Court [最高人民法院], Supreme People's Procuratorate [最高人民检察院], Ministry of Public Security [公安部], Ministry of State Security [国家安全部], Ministry of Justice [司法部], and the Commission of Legislative Affairs of the Standing Committee of the National People's Congress [全国人大常委会法制工作委员会], promulgated on January 19, 1998, and effective on January 19, 1998, item 11.

³⁶ See, e.g., Human Rights in China, "Revised 'Lawyers Law' Fails to Protect Lawyers," June 19, 2008, <http://www.hrichina.org/public/contents/56883>; Human Rights in China, "Case Update: Huang Qi Denied Access to Counsel," June 24, 2008, <http://www.hrichina.org/public/contents/60742>.

³⁷ Lawyers Law, Art. 33.

³⁸ Human Rights in China, "Setback for the Rule of Law - Lawyers under Attack in China (Updated)," February 28 2007, <http://www.hrichina.org/public/contents/34781>; Human Rights Watch, *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China* (2007), <http://www.hrw.org/reports/2008/china0408/>.

³⁹ Criminal Law.

⁴⁰ Bill Savadove, "Justice Remains Shanghaied in City's Law Courts; Intimidation and Physical Violence Against Lawyers Is on the Rise, and Getting a Fair Trial is Still Far from Guaranteed," *South China Morning Post*, February 7, 2006.

⁴¹ Congressional-Executive Commission on China, "Chinese Article Claims That Research on the Difficulties Faced by Criminal Defense Lawyers Restricted After Revealing 'Shocking' Initial Results," January 13, 2005, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=5472>.

⁴² "Guiding Opinions on Lawyers Handling Collective Cases" [中华全国律师协会关于律师办理群体性案件指导意见], issued by the All-China Lawyers Association [中华全国律师协会] and approved by the Executive Council of the All China Lawyers Association [中华全国律师协会常务理事会议] on March 20, 2006, <http://www.chineselawyer.com.cn/pages/2006-5-15/s34852.html>.

⁴³ See "Opinions on Further Strengthening the Guidance of Lawyers Handling Major Cases" [关于进一步加强对律师办理重大案件指导工作的意见], promulgated by the Nantong Municipal Bureau of Justice [南通市司法局] on February 18, 2004, <http://www.ntda.gov.cn/wjzxqw/W2580001035.htm>;

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⁴⁴ Yi Sheng, "A Promise Unfulfilled: The Impact of China's 1996 Criminal Procedure Reform on China's Criminal Defence Lawyers' Role at the Pretrial Stage," *Perspectives* 5, no. 1 (2004), 23-25, http://www.law.yale.edu/documents/pdf/Part_2.pdf.

Article 2(2)

⁴⁵ Shanghai Convention on Combating Terrorism, Separatism and Extremism (*hereinafter* Shanghai Convention) [打击恐怖主义、分裂主义和极端主义上海公约], June 15, 2001, <http://www.sectsc.org/html/00093.html> (English); http://www.scosummit2006.org/zywj/2006-04/19/content_52.htm (Chinese).

⁴⁶ "[T]errorism' means: (a) any act recognized as an offence in one of the treaties listed in the Annex to this Convention (*hereinafter* referred to as "the Annex") and as defined in this Treaty; (b) other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act, and prosecuted in accordance with the national laws of the Parties." Shanghai Convention, Art. 1.1.1.

⁴⁷ "Separatism' means any act intended to violate territorial integrity of a State including by annexation of any part of its territory or to disintegrate a State, committed in a violent manner, as well as planning and preparing, and abetting such act, and subject to criminal prosecuting in accordance with the national laws of the Parties." Shanghai Convention Art. 1.1.2.

⁴⁸ "Extremism' is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties." Shanghai Convention, Art. 1.1.3.

⁴⁹ “In their mutual relations, the Parties shall consider acts referred to in Article 1 (1) of this Convention as extraditable offences.” Shanghai Convention, Art. 2.2.

⁵⁰ Human Rights in China, “June 4 – 2008: A Special Resource Packet,” *China Rights Forum*, 2008, no. 2, <http://www.hrichina.org/public/contents/55177>.

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⁵¹ Human Rights in China, “Introduction,” *China Rights Forum*, 2008, no. 2, http://hrichina.org/public/PDFs/CRF.2.2008/CRF-2008-2_Introduction.pdf.

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ANNEX 1: THE PRC'S STATE SECRETS SYSTEM¹

The current state secrets framework includes the *Law on the Protection of State Secrets of the People's Republic of China*² and the *Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China*.³ Related provisions in the *State Security Law*,⁴ the *Criminal Law*⁵ and the *Supreme People's Court Interpretation on State Secrets Cases*,⁶ stipulate administrative and criminal sanctions for violations of state secrets or state security provisions. The *Criminal Procedure Law*⁷ sets forth relevant procedures for investigation, prosecution, and defense of state secrets and state security cases. This framework is further supplemented by numerous laws and regulations that include references to state secrets and to obligations not to divulge them.

| 3. CLASSIFICATION OF INFORMATION UNDER STATE SECRETS PROVISIONS | | | |
|---|---|---|-------|
| CATEGORY | INFORMATION | SS LEVEL | NEIBU |
| GENERAL | <ul style="list-style-type: none"> Countermeasures that our country plans to adopt to deal with international human rights issues including prisoner reform, reform of reeducation-through-labor inmates, and crime prevention⁸ | <ul style="list-style-type: none"> <i>Highly Secret</i> 机密 | |
| | <ul style="list-style-type: none"> Although that [judicial] work itself is not a state secret, whenever there are matters that, once made public, could have a negative impact or undesirable results, then those secrets in judicial work must be protected and must not be made public or disseminated without authorization⁹ | | |
| CRIMINAL INVESTIGATIONS & TRIALS | <ul style="list-style-type: none"> Plans and materials for investigating cases put on file for investigation that are currently being investigated by procuratorial organs and that could impact state security or social stability¹⁰ | <ul style="list-style-type: none"> <i>Top Secret</i> 绝密 | |
| | <ul style="list-style-type: none"> Numerical and compiled statistics on counterrevolutionary cases¹¹ | <ul style="list-style-type: none"> <i>Highly Secret</i> 机密 | |
| | <ul style="list-style-type: none"> Plans and methods used to investigate important criminal cases already under investigation, as well as information on | <ul style="list-style-type: none"> <i>Highly Secret</i> 机密 | |

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| | <p>investigations, pre-adjudication, and the work of technical verification¹²</p> <ul style="list-style-type: none"> • Statistics on criminal cases, and on those arrested in connection with such cases, that have not yet been made public either nationwide or within provinces, autonomous regions or directly-administered municipalities¹³ • Specific plans and important case details on criminal cases that are in the information-gathering or the pretrial stages¹⁴ • Information and statistics on those who are targets of investigation, under investigation, or under the control of public security organs¹⁵ • Statistics and files, documents, and administrative measures that have not yet been made public¹⁶ • Specific details of criminal cases that have already been solved but whose public disclosure would have a negative impact¹⁷ • Statistical information not yet made public on any judicial administration work that is not a state secret¹⁸ | <ul style="list-style-type: none"> • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 • <i>Internal Matters</i> • <i>Internal Matters</i> • <i>Internal Matters</i> |
| DETENTION CONDITIONS | <ul style="list-style-type: none"> • Overall programs and plans for nationwide prison and Reeducation-Through-Labor work¹⁹ • Overall layout of national prisons and Reeducation-Through-Labor facilities²⁰ • Information on the detention and reform of prisoners with great influence currently serving sentences²¹ • Information on the place of custody or | <ul style="list-style-type: none"> • <i>Top Secret</i> 绝密 • <i>Highly Secret</i> 机密 • <i>Highly Secret</i> 机密 • <i>Highly Secret</i> |

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| | <p>circumstances of prisoners or detainees with great influence²²</p> <ul style="list-style-type: none"> • Compiled information and statistics that have not yet been made public on criminals that have been arrested, captured, sent for Reeducation-Through-Labor or juvenile rehabilitation...in any directly-administered municipality, autonomous region or province throughout the country²³ • Information on the place of custody or circumstances of ordinary detainees²⁴ • Compiled annual and quarterly statistics on prisoners currently in detention nationwide²⁵ • Specialized and sample surveys on, and the statistical classifications of, prisoners currently in detention and Reeducation-Through-Labor inmates nationwide²⁶ • Statistics on the ideological tendencies and living and sanitation conditions of prisoners in detention and Reeducation-Through-Labor facilities nationwide²⁷ | <p>机密</p> <ul style="list-style-type: none"> • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 • <i>Internal Matters</i> |
| <p>PUBLIC OFFICIALS & VIOLATIONS</p> | <ul style="list-style-type: none"> • Statistics and specific case details regarding the use of torture to extract confessions and corporal punishment abuse that led to serious consequences²⁸ • Information and statistics—about which a decision has not yet been made regarding whether to make such information public—concerning violations of the law or codes of conduct by public security officers²⁹ • All other matters concerning regulations of public security organs at the county level and above³⁰ • Information not yet released on the | <ul style="list-style-type: none"> • <i>Highly Secret</i> 机密 • <i>Internal Matters</i> • <i>Internal Matters</i> • <i>Internal</i> |

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| | <p>investigations or trials of cases of judicial administration officers who violate discipline³¹</p> <ul style="list-style-type: none"> • Data on instances of police officers causing injuries or disabilities to prisoners or Reeducation-Through-Labor inmates and instances of police officers violating the law or discipline³² | <p><i>Matters</i></p> <ul style="list-style-type: none"> • <i>Internal Matters</i> |
| ADMINISTRATIVE DETENTION | <ul style="list-style-type: none"> • Reeducation plans for Reeducation-Through-Labor inmates who engage in counterrevolutionary activities, illegal religious activities, illegal publications and the activities of illegal organizations³³ | <ul style="list-style-type: none"> • <i>Internal Matters</i> |
| DEATH PENALTY | <ul style="list-style-type: none"> • Statistics and compiled information on death sentences <ul style="list-style-type: none"> - nationwide;³⁴ - within provinces, autonomous regions or directly-administered municipalities;³⁵ - within provincially-administered municipalities (prefectures and autonomous prefectures)³⁶ • Annual or monthly statistics on cases involving the sentencing, ratification or implementation of the death penalty <ul style="list-style-type: none"> - national cases;³⁷ - cases tried at the provincial, autonomous region or directly-administered municipality level;³⁸ - cases tried by intermediate people's courts³⁹ • Statistics on the number of new prisoner executions and unusual deaths in prisons, | <ul style="list-style-type: none"> • <i>Top Secret</i> 绝密 • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 • <i>Top Secret</i> 绝密 • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 |

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| | <p>juvenile detention facilities and Reeducation-Through-Labor facilities</p> <ul style="list-style-type: none"> - nationwide and for any province, autonomous region or directly-administered municipality;⁴⁰ - at the level of province, autonomous region, directly-administered municipality or lower⁴¹ <ul style="list-style-type: none"> • Specific information on the corpses or on the use of bodily organs of prisoners who have been sentenced to death by people's courts⁴² • Criminal judiciary forms for reporting statistics on cases other than those involving the death penalty tried by people's courts at the intermediate level and above⁴³ • Plans to carry out the executions of prisoners of relatively high significance who have received the death penalty⁴⁴ | <ul style="list-style-type: none"> • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 • <i>Secret</i> 秘密 |
| WOMEN | <ul style="list-style-type: none"> • Statistics on the number of deaths resulting from problems with surgical birth control procedures or family planning <ul style="list-style-type: none"> - from family planning departments at the national level and at the level of province, autonomous region, directly-administered municipality or planned city;⁴⁵ - prefectural level;⁴⁶ - county level⁴⁷ • Statistics regarding the number of induced abortions <ul style="list-style-type: none"> - from family planning departments at the national level and at the level of province, autonomous region, directly-administered municipality or planned city;⁴⁸ - prefectural level;⁴⁹ | <ul style="list-style-type: none"> • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 • <i>Internal Matters</i> • <i>Highly Secret</i> 机密 • <i>Secret</i> 秘密 |

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| | <ul style="list-style-type: none"> - county level⁵⁰ • Compiled data regarding major cases that involve the killing of women and children⁵¹ • Cases of deaths or disabilities from problems with surgical birth control procedures or family planning⁵² • Collective disturbances or incidents that occurred as a result of using overly crude or brutal methods in family planning work⁵³ | <ul style="list-style-type: none"> • <i>Internal Matters</i> • <i>Secret</i> 秘密 • <i>Internal Matters</i> • <i>Internal Matters</i> |
| ETHNIC MINORITIES | <ul style="list-style-type: none"> • Secret intelligence involving the coordination of national security, the stability of social administration, ethnic unity and other especially important intelligence⁵⁴ • Analyses of important developments and information on anything that could seriously harm ethnic relations, or that for other ethnic reasons could endanger national unity or affect social stability⁵⁵ • Strategies and measures for dealing with the occurrence of major ethnic-related public order emergencies⁵⁶ • Strategies and measures used in handling ethnic separatist activities⁵⁷ | <ul style="list-style-type: none"> • <i>Top Secret</i> 绝密 • <i>Top Secret</i> 绝密 • <i>Top Secret</i> 绝密 • <i>Top Secret</i> 绝密 |
| RELIGIOUS MINORITIES | <ul style="list-style-type: none"> • Strategies and measures for handling major public order emergencies involving religious matters⁵⁸ | <ul style="list-style-type: none"> • <i>Top Secret</i> 绝密 |

¹ Human Rights in China, *State Secrets: China's Legal Labyrinth*, <http://hrichina.org/public/contents/41421>.

² Law on the Protection of State Secrets of the People's Republic of China [*hereinafter* State Secrets Law] (中华人民共和国保守国家秘密法), issued by the Standing Committee of the National People's Congress, promulgated on September 5, 1988 and effective on May 1, 1989, Art. 2.

³ Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China [*hereinafter* Implementation Measures] (中华人民共和国保守国家秘密法实施办法), issued by the National Administration for the Protection of State Secrets, promulgated and effective on May 25, 1990.

⁴ State Security Law of the People's Republic of China [*hereinafter* State Security Law] (中华人民共和国国家安全法), issued by the Standing Committee of the National People's Congress, promulgated and effective on February 22, 1993.

⁵ Criminal Law of the People's Republic of China [*hereinafter* Criminal Law] (中华人民共和国刑法), issued by the National People's Congress, promulgated on July 1, 1979, amended 1997, 1999, 2001, 2002, 2005, 2006.

⁶ Supreme People's Court Interpretation of Certain Issues Regarding the Specific Application of the Law When Trying Cases of Stealing, Gathering, Procuring or Illegally Providing State Secrets or Intelligence Outside of the Country [*hereinafter* SPC Interpretation] (最高人民法院关于审理为境外窃取、刺探、收买、非法提供国家秘密、情报案件具体应用法律若干问题的解释), promulgated on January 17, 2001 and effective on January 22, 2001.

⁷ Criminal Procedure Law of the People's Republic of China [*hereinafter* Criminal Procedure Law], (中华人民共和国刑事诉讼法), issued by the National People's Congress on July 1, 1979, amended on March 17, 1996 and the amended version was effective on January 1, 1997.

⁸ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work [*hereinafter* Regulation on Judicial Administration Work] (司法工作中国家秘密及其密级具体范围的规定), issued by the Ministry of Justice [司法部] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on August 31, 1995, and effective on October 15, 1995, Art. 2B.5.

⁹ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Courts [*hereinafter* Regulation on People's Courts] (人民法院工作中国家秘密及其密级具体范围的规定), issued by the Supreme People's Court [最高人民法院] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on July 31, 1995, and effective on August 8, 1995, Art. 7.

¹⁰ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Procuratorates [*hereinafter* Regulation on People's Procuratorates], (检察工作中国家秘密及其密级具体范围的规定), issued by the Supreme People's Procuratorate [最高人民检察院] and the National Administration for the Protection of State Secrets [国家保密局], effective on January 15, 1996, Art. 3A.1.

¹¹ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work [*hereinafter* Regulation on Public Security Work] (公安工作中国家秘密及其密级具体范围的规定), issued by the Ministry of Public Security [公安部] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on March 28, 1995, and effective on May 1, 1995, Art. 2B.3. See also: Regulation on People's Procuratorates, Art. 3B.2

¹² Regulation on Public Security Work., Art. 2B.7.

¹³ Regulation on People's Procuratorates, Art. 3C.2.

¹⁴ Regulation on Public Security Work, Art. 2C.8.

¹⁵ *Ibid.*, Art. 2C.7.

¹⁶ *Ibid.*, Art. 3.1.

¹⁷ *Ibid.*, Art. 3.6.

¹⁸ Regulation on Judicial Administration Work, Art. 4.16.

¹⁹ *Ibid.*, Art. 2A.1.

²⁰ *Ibid.*, Art. 2B.4.

²¹ *Ibid.*, Art. 2B.8.

²² Regulation on Public Security Work, Art. 2B.8.

²³ *Ibid.*, Art. 2C.2.

²⁴ *Ibid.*, Art. 2C.9.

²⁵ Regulation on Judicial Administration Work, Art. 2C.2

²⁶ *Ibid.*, 2C.5.

²⁷ *Ibid.*, Art. 4.13.

²⁸ Regulation on People's Procuratorates, Art. 3B.5.

²⁹ Regulation on Public Security Work, Art. 3.11.

³⁰ *Ibid.*, Art. 3.12.

³¹ Regulation on Judicial Administration Work, Art. 4.12.

³² *Ibid.*, Art. 4.8.

³³ *Ibid.*, Art. 4.1.

³⁴ Regulation on People's Procuratorates, Art. 3A.2.

³⁵ *Ibid.*, Art. 3B.4.

³⁶ *Ibid.*, Art. 3C.3.

³⁷ Regulation on People's Courts, Art. 3A.3.

³⁸ *Ibid.*, Art. 3B.3.

³⁹ *Ibid.*, Art. 3C.3.

⁴⁰ Regulation on Judicial Administration Work, Art. 2B.1.

⁴¹ *Ibid.*, Art. 2C.3.

⁴² Regulation on People's Courts, Art. 3B.4.

⁴³ *Ibid.*, Art. 3C.4.

⁴⁴ *Ibid.*, Art. 3C.5.

⁴⁵ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Family Planning Work [*hereinafter* Regulation on Family Planning Work] (计划生育工作中国家秘密及其密级具体范围的规定), issued by the State Family Planning Commission [国家计划生育委员会] (now State Population and Family Planning Commission) Supreme People's Court [国家人口与计划生育委员会] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on May 16, 1995, Art. 3.1.2.

⁴⁶ *Ibid.*, Art. 3.2.1.

⁴⁷ *Ibid.*, Art. 5.1.

⁴⁸ *Ibid.*, Art. 3.1.3.

⁴⁹ *Ibid.*, Art. 3.2.3.

⁵⁰ *Ibid.*, Art. 5.2.

⁵¹ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Women's Work (妇女工作中国家秘密及其密级具体范围的规定), issued by the All-China Women's Federation [中华全国妇女联合会] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on April 24, 1991, Art. 3.2.3.

⁵² Regulation on Family Planning Work, Art. 5.5.

⁵³ *Ibid.*, Art. 5.6.

⁵⁴ Regulation on Public Security Work, Art. 2A.2.

⁵⁵ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Ethnic Work (民族工作中国家秘密及其密级具体范围的规定), issued by the State Ethnic Affairs Commission [国家民族事务委员会] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on March 17, 1995, Art. 3.1.1.

⁵⁶ *Ibid.*, Art. 3.1.2.

⁵⁷ *Ibid.*, Art. 3.1.3.

⁵⁸ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work (宗教工作中国家秘密及其密级具体范围的规定), issued by the State Administration of Religious Affairs [国务院宗教事务局] and the National Administration for the Protection of State Secrets [国家保密局], promulgated on October 12, 1995, Art. 3.1.1.

