



*United Nations Committee against Torture*

September 30, 2008

Committee Members

United Nations Committee against Torture

**Re: Fourth Periodic Report of China, 41<sup>st</sup> session of the Committee against Torture – coercive drug dependence treatment and potential cruel inhuman or degrading treatment or punishment**

Dear Committee Members,

We write in advance of the upcoming Committee against Torture periodic review of China to submit information regarding the government's policies and practices on coercive drug dependence treatment and HIV prevention, treatment and care for people detained in drug detoxification and re-education through labour centres.

China's continued engagement in the periodic reporting process to the Committee is to be commended, as are the initiatives and improvements relating to the implementation of the Convention set out in the State party's fourth periodic report. We welcome the opportunity for positive discussion between the Committee and the State party.

We welcome the emphasis placed by the Committee in the "List of Issues" on questions that address concerns about re-education through labour and rehabilitation centres; about police training with regard to torture and ill-treatment of vulnerable persons; and about health status of detainees with HIV and AIDS. The issues we raise in this letter relate to these questions in order to facilitate a thorough discussion with the Chinese delegation.

**In particular, we wish to raise potential cruel, inhuman and degrading treatment or punishment of drug users detained in coercive drug dependence treatment and re-education through labour centres – including gaps in HIV prevention, treatment and care for those detainees.**

The information we present is based on in-depth interviews by Human Rights Watch with drug users who had been detained in forced detoxification and/or re-education centres; NGO workers, health care workers, and security officials with experience in forced detoxification and/or re-education through labour centres; government officials from the Chinese Center for Disease Control and provincial and city health departments; and medical staff at methadone and AIDS clinics during research missions in 2007 in Guangxi Province (publication forthcoming) and in 2002 and 2003 in Yunnan Province (published in "Locked Doors: The Human Rights of People Living with HIV/AIDS in China," attached and available online at <http://www.hrw.org/reports/2003/china0803/china0903full.pdf>), and research by UNAIDS and other international health experts on this issue (cited below).

Our specific recommendations for points of discussion with the State party are set out at end of this letter.

## **Potential cruel, inhuman or degrading treatment or punishment of drug users in drug detoxification and enforced rehabilitation and re-education through labour centres: Articles 2, 10, 11, 12, 13, and 16 of the Convention**

In China, the law states that “drug users must be rehabilitated” and China has adopted compulsory measures as the main principle guiding rehabilitation.<sup>1</sup> Official government policy stipulates that all patients in compulsory rehabilitation centres be provided with “medical and psychological treatment, legal education and moral education.”<sup>2</sup> The question at issue is how such rehabilitation is implemented.

According to Government policy, the local police may subject a drug user to between three and six months detention in a forced detoxification centre, and repeat offenders to re-education through labour centres (RELC) for one to three years.<sup>3</sup> In each case, such detention is administrative and without trial or other semblance of due process. The most recently available data from 2005 indicate that there were approximately 700 mandatory drug detoxification centres in China and 165 re-education through labour centres housing a total of more than 350,000 drug users.<sup>4</sup>

The UN Special Rapporteur on Torture has stated that the re-education through labour system in China “and similar methods of re-education in prisons, pretrial detention centres, and other institutions . . . can also be considered as a form of inhuman or degrading treatment or punishment, if not mental torture” and recommended that China abolish re-education through labour in administrative detention and similar forms of forced re-education practices in prisons, pretrial detention centres, and psychiatric hospitals.<sup>5</sup>

Drug users who had been held in drug detoxification and RELCs reported to Human Rights Watch that they were required to perform unpaid, forced labour, and were subjected to psychological and moral re-education consisting of rote repetition of slogans (such as “drug use is bad, I am bad”), marching in formation, and repetitive drills. Drug users also reported punishment for not working fast enough, including having food withheld, not being allowed to sleep, and being beaten. Human Rights Watch interviewed a former guard at an RELC in Guangxi Province who stated that physical and sexual abuse of drug users was common.

Detainees in drug detention centres reported being housed in unsanitary and overcrowded conditions. Investigations by others have also described extreme ill-treatment in the name of ‘rehabilitation’, such as the administering of electric shocks while viewing pictures of drug

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<sup>1</sup> See Information Office of the State Council of the People’s Republic of China, “White Paper on Narcotics Control,” June 27, 2000, <http://www.china.org.cn/e-white/1/index.htm>.

<sup>2</sup> State Council of the People’s Republic of China, “Methods for Forced Detoxification,” 1995, Article 5 (in Chinese); See also “White Paper on Narcotics Control,” 2000, describing program of treatment at compulsory rehabilitation centers.

<sup>3</sup> State Council of the People’s Republic of China, “Methods for Forced Detoxification,” 1995. A new anti-drug law passed in 2007 by the Standing Committee of the National People’s Congress that took effect in June 2008 provides, at the discretion of the local public security bureau, that repeat drug offenders be confined to detoxification centers for 2 years, rather than be placed in RELCs. The law also states that in some cases drug users can be rehabilitated in the community. Standing Committee of the 10th national People’s Congress (2007) Prohibited Drugs law of the People’s Republic of China. Beijing: National People’s Congress. [in Chinese].

<sup>4</sup> Y. He and N. Swanstrom, Central Asia-Caucasus Institute and Silk Road Studies Program (Washington DC), “China’s War on Narcotics: Two Perspectives,” 2006.

<sup>5</sup> UN Commission on Human Rights, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to China,” E/CN.4/2006/6/Add.6, March 10, 2006, paras 64, 82 (u).

use.<sup>6</sup> A 2004 survey found that 9 percent of 3,213 Chinese heroin users had taken extreme steps such as swallowing glass to gain a medical exemption from forced treatment.<sup>7</sup>

Uncertainty relating to the period of detention also raises potential concerns in the context of the Convention. According to Government policy, the term of detention in drug detoxification centres may be renewed but cannot exceed one year. There is no judicial input into the proceedings but detainees may challenge their sentences by applying to the court to have them overturned.<sup>8</sup> However, Human Rights Watch's research suggests that in practice, few drug users are aware that they can challenge their sentences, and may be held indefinitely without official review of their sentences, leaving them uncertain as to when they may be released.

### **HIV prevention, treatment and care in detoxification and re-education through labour centres: Articles 10, 11, 12, 13, and 16 of the Convention**

China is believed to have between three and four million individuals who inject drugs, primarily heroin.<sup>9</sup> Injection drug use is a major route of transmission for new HIV infections in China. According to official statistics, as of 2007 there were approximately 700,000 people in China with HIV/AIDS – 260,000 of them drug users.<sup>10</sup> Nearly half of all new infections in 2007 were associated with injection drug use.<sup>11</sup> HIV rates among injection drug users are high: studies have estimated HIV prevalence among injection drug users from Guangxi, Yunnan, Xinjiang, Sichuan, Guangdong and Ningxia Provinces ranging from 10 to 80 percent,<sup>12,13</sup> and that 8 to 19 percent of drug users nationwide are HIV-positive.<sup>14</sup>

In the past few years, the Chinese government has made important public commitments to address injection-driven HIV in China, including programmes to greatly expand methadone maintenance therapy (a proven, effective therapy for opiate dependence, and critical to HIV prevention) and other HIV prevention programmes targeting injecting drug users. Such measures have included services for injection drug users confined to detoxification and re-education through labour centres.<sup>15</sup> Human Rights Watch research indicates, however, that

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<sup>6</sup> Daniel Wolfe, "Paradoxes in antiretroviral treatment for injecting drug users: Access, adherence and structural barriers in Asia and the former Soviet Union," *International Journal of Drug Policy*, vol.18 (2007), p.250.

<sup>7</sup> Juny et al., "Analysis of 272 cases of swallowing foreign body in compulsory detoxification," *China Journal of Drug Dependence*, Vol.13, no.3, p. 221-223.

<sup>8</sup> However, such review would be difficult to arrange once a person already is in detention both because of ignorance of the law by detainees and lack of access to lawyers.

<sup>9</sup> Country Coordinating Mechanism of China, "Reducing HIV Transmission Among and From Vulnerable Groups and Alleviating its Impact in Seven Provinces in China. Round Four Proposal to The Global Fund against HIV, TB and Malaria," 2004.

<sup>10</sup> State Council of the People's Republic of China AIDS Working Committee and The UN Theme Group on AIDS in China, "A Joint Assessment of HIV/AIDS Prevention, Treatment and Care in China," 2007.

<sup>11</sup> *Ibid.*

<sup>12</sup> State Council AIDS Working Committee Office and UNAIDS China Office, "A joint assessment of HIV/AIDS prevention, treatment and care in China," 2004.

<sup>13</sup> China Ministry of Health and United Nations Theme Group on HIV/AIDS in China. "A joint assessment of HIV/AIDS prevention, treatment and care in China," 2003.

<sup>14</sup> Mathers, B., et al. and the Reference Group to the United Nations on HIV and injecting drug use, "The global epidemiology of injecting drug use and HIV among people who inject drugs: a systematic review," *The Lancet*, vol.372 (2008), published online September 24, 2008.

<sup>15</sup> See Sullivan SG, Wu Z, "Rapid scale up of harm reduction" *China. Int J Drug Policy*, 18:118-28 (2007); State Council of the People's Republic of China, "Chinese National Medium-and Long-Term Strategic Plan for HIV/AIDS Prevention and Control (1998-2010)," State Council Document, GF (1998)38; State Council of the People's Republic of China "China's Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2001- 2005)," State Council Document, 2001(40); State Council of the People's Republic of China, "State Council Notice on Strengthening HIV/AIDS Prevention and Control," State Council Document,

many drug users detained in forced detoxification and RELCs in Guangxi and Yunnan Provinces have been denied HIV services altogether, or when services were available, they were provided in a manner that may amount to cruel, inhuman, or degrading treatment.

Injection drug users who had been detained in forced detoxification and RELCs in Guangxi and Yunnan Provinces reported to Human Rights Watch that once inside these facilities, they were repeatedly tested for HIV but not provided with the result, nor with counseling on HIV prevention or treatment, or with HIV prevention methods. Detainees are therefore left in the dark as to whether they have a potentially life threatening blood borne virus, and are alerted to the threat of contracting HIV, but provided with no means of protecting themselves from HIV or safeguarding their health if they are HIV-positive. In 2007, Government and NGO sources and health care providers in Guangxi Province told Human Rights Watch that repeated testing without disclosing the result was the current policy for drug detoxification, RELC, and prisons throughout China.

Human Rights Watch's research found that as of June 2008, methadone maintenance therapy was not available to opiate dependent drug users in detoxification and RELCs throughout the country. The research suggests that many drug users on antiretroviral therapy were unable to continue treatment while institutionalized in a drug detoxification centre or RELC because the facilities in which they were detained did not provide antiretroviral therapy. Human Rights Watch's research also found that drug users who had been detained in drug detoxification and RELCs had poor or no access to basic medical services or to medical services critical to HIV care, such as prophylaxis or treatment for infections to which people living with HIV are susceptible and CD4 tests, which mark immune system function.

The failure to ensure access to methadone or other opiate substitution therapy, as well as the failure to ensure continuity of care for detainees on antiretroviral therapy, may result in violations of basic obligations to protect detainees from exposure to inhuman or degrading treatment. Forced, abrupt opioid withdrawal (both from legally prescribed therapy such as methadone as well as illicit opioids) can cause profound mental and physical pain, and in turn, cause detainees to risk HIV and other blood-borne diseases by sharing injection equipment to deal with withdrawal symptoms.<sup>16</sup> The failure to ensure access to antiretroviral therapy for drug users on treatment prior to detention may compromise their health, and ultimately their lives, as incomplete adherence to treatment can lead to resistance to antiretroviral medications, and therefore a reduction in available antiretroviral therapies, and been associated with clinical progression of HIV disease and mortality.<sup>17</sup>

The Committee against Torture, the Special Rapporteur on Torture, as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Court of Human Rights all have raised concerns that the failure to provide

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2004(7).

<sup>16</sup> See R.D. Bruce and R.A Schleifer, "Ethical and human rights imperatives to ensure medication-assisted treatment for opioid dependence in prisons and pre-trial detention," *International Journal of Drug Policy*, vol.19 (2008) p.17-23, and studies cited therein.

<sup>17</sup> See World Health Organization, WHO Regional Offices for South-East Asia and the Western Pacific, "HIV/AIDS Care and Treatment for People Who Inject Drugs In Asia. A Guide to Essential Practice" p. 34 (citing studies); see also Matt Curtis, ed., Open Society Institute (New York), "Delivering HIV Care and Treatment for People Who Use Drugs: Lessons from Research and Practice," 2006, p. 25-35.

adequate health services to detainees may contribute to conditions amounting to cruel, inhuman and degrading treatment.<sup>18</sup>

### **Recommended questions for the discussion with the Chinese delegation:**

1. The UN Special Rapporteur on Torture has characterized forced re-education through labour as a form of inhuman or degrading treatment, if not mental torture, and recommended that this practice be abolished. **We encourage the Committee to ask the Chinese government what steps it is taking either to abolish this practice altogether or to mitigate related inhuman or degrading treatment.**
2. We were pleased to note that the Committee has acknowledged that the criminal justice system, including the system of re-education through labour, may create conditions for the occurrence of cruel, inhuman or degrading treatment or punishment, and asked for information about unusual deaths in prisons and other facilities. **In this regard, we encourage the Committee to ask specifically for statistics and information of deaths (including cause of death) of drug users consigned to drug detoxification and re-education through labour centres.**
3. When discussing with the Chinese government the collection of data with respect to re-education through labour camps and rehabilitation centres (question no. 2(g)), **we encourage you to ask for disaggregated data for re-education through labour camps that includes information on the number of people detained for drug use or drug possession.**
4. When discussing police training (question no. 10), **we encourage you to ask specifically about training regarding torture and ill-treatment of drug users, including drug users on methadone substitution therapy or dependent on heroin, whose arrest or detention poses risk of mental and physical suffering.**
5. On the issue of complaints and complaint mechanisms (question no. 16), **we encourage you to ask: a) for data on individuals detained for drug use or possession; and b) for information about steps taken to ensure that drug users are able to file complaints about torture or ill-treatment by police or while in detention.**
6. When discussing detainee health status and health services (question no. 27), **we encourage you to ask: a) for detailed statistical data about the health status of drug users in drug detoxification and re-education through labour camps (including HIV and Hepatitis B and C status); b) for information about access to HIV prevention and treatment services in drug detoxification and re-education through labour centres, including steps taken to ensure continuity of antiretroviral treatment to detainees; and c) for information about access to methadone or other opiate substitution therapy, including steps taken to ensure access to opiate substitution therapy, to opioid dependent detainees in drug detoxification and re-education through labour camps.**

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<sup>18</sup> See Committee against Torture, "Concluding Observations: New Zealand" UN Doc A/53/44 19, 1998. para 175; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," UN Doc No A/62/221, August 13, 2007, para 9; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "CPT standards," CPT/IN/E, 2002, section 3; European Court of Human Rights (ECHR), *Pantea v. Romania*, (Application no. 33343/96), judgment of June 3, 2003.

We would welcome an opportunity to discuss these issues further and to answer any questions you may have regarding this letter or the enclosed materials.

Thank you for your consideration and we hope that our input will contribute to a constructive dialogue with the Chinese delegation in November.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Amon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph Amon  
Director, Health and Human Rights Program  
Human Rights Watch

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Gerry Stimson  
Executive Director  
International Harm Reduction Association

A handwritten signature in black ink, appearing to read "Sara L.M. Davis". The signature is cursive and somewhat stylized.

Sara L.M. Davis  
Executive Director  
Asia Catalyst