



PEOPLE'S REPUBLIC OF CHINA
PERMANENT MISSION AT GENEVA

(Translation)

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**Introductory Statement by H.E. Ambassador Li Baodong,
Head of Chinese Delegation, at the consideration of
the Committee Against Torture
on China's 4th and 5th Periodic Reports**

Mr. Chairman,
Distinguished Members of the Committee,

First of all, I would like to extend, on behalf of the Chinese delegation, our greetings and respects to all the distinguished members of the Committee. The Committee has made enormous efforts and played an important role in promoting the purposes and principles of the Convention and reinforcing the global efforts to ban and prevent torture. The Chinese Government appreciates your endeavour and will continue to support the work of the Committee.

Today, I am delighted to lead the Chinese delegation and conduct dialogue with members of the Committee on China's 4th and 5th periodic reports on the implementation the *Convention Against Torture*. The Chinese delegation is composed of 32 members from relevant departments of the Central Government and the Governments of Hong Kong and Macao Special Administrative Regions. The fact that my delegation has representatives from so many different departments fully shows that the Chinese Government attaches great importance to the Committee and this meeting. Members of my delegation are ready to conduct constructive dialogue with Members of the Committee in a

cooperative, sincere and responsible manner.

Mr. Chairman,

China has all along stood firm to oppose torture. Since China ratified the Convention in 1988, we have made unswerving efforts to improve our work in legislative, law enforcement and judicial areas, so as to ban, prevent and punish torture of all forms more effectively. The Chinese Government has earnestly fulfilled its reporting obligation under the Convention. The combined 4th and 5th periodic reports are completed after extensively soliciting opinions from state and government departments and the related NGOs. The combined report, prepared under the Committee's *General Guidelines Regarding the Form and Contents of the Periodic Report*, has followed the sequence of articles of the Convention and described in details China's new measures and new progress in implementing the Convention since the submission of the 3rd periodic report in 1999. It also shows that the Chinese Government has carefully considered and adopted suggestions put forward by the Committee in its concluding observations of the consideration of China's 3rd periodic report.

In late June this year, after receiving the Committee's list of issues to be taken up at the consideration, the Chinese Government immediately started to collect a wide spectrum of information and materials and submitted a detailed written reply within a fairly short period of time.

Mr. Chairman,

In recent years, China has pursued the scientific outlook on development with people's interests at its core. While making continued efforts to develop economy and raise people's living standard, we remain committed to promoting democratic legal construction, establishing the concept of rule of law, safeguarding and advancing various human rights, with a view to building a more harmonious society. When China's Constitution was amended in 2004, the principle of "respect for and protection of human rights" was added. *The guidelines of China's 11th five-year plan for national economic and social development (2006-2010)* issued in March 2006 reaffirmed this principle and, for the first time, set forth the clear objective of promoting all-round development of human rights in such national guidance document. To safeguard and promote human rights has become an important part of national development strategy and a concept widely accepted. Under such circumstances, legislative, administrative and judicial organs at all levels continue to

adopt effective measures to reform and improve relevant mechanisms, regulate law enforcement and judicial behaviours, and reinforce supervision and control to ensure fair law enforcement and judicial acts. New progress has been made in banning and preventing torture. Now I would like to take this opportunity to give you a general picture in this area.

First, in recent years, China has adhered to the principle of putting people's interests first and protecting human rights in its legislative work. This has contributed greatly to preventing and curbing torture. Here are two examples:

1. The Law on Administrative Punishments for Public Order and Security

To impose punishments for public order and security violations is an administrative power that has a fairly direct and wide influence on citizens' rights and interests. In order to better prevent and ban torture in public security administration cases, and taking into account the Committee's recommendation of strengthening prevention and punishment of torture in non-judicial areas, *The Law on Administrative Punishments for Public Order and Security* was adopted on August 28, 2005 by the Standing Committee of the National People's Congress. The Law stipulates in explicit terms that in dealing with public order and security cases and in imposing administrative punishments, the public security organs shall adhere to the basic principles of respect for and guarantee of human rights, protection of citizens' dignity, and openness and impartiality. In its provisions, the Law has raised the level of regulation, control and supervision of law enforcement acts taken by public security organs, and strengthened protection of citizens' legitimate rights and interests, including such clear provisions as "any proof gathered by illegal means shall not be the basis for punishment, such as making an interrogation by torture or extorting a confession from the interrogated, or threatening, enticing or cheating the interrogated." This has, for the first time, established in the form of national law the exclusion rule of illegal evidence. This explicitly prohibits punishments based only on the statements of the violators of public security administration and no other evidence. The Law also strictly restricts the length of interrogation after the summons, which may not last more than eight hours at most; and where the circumstances are complicated, the time for interrogation may not exceed twenty four hours. The Law also provides that administrative detention shall not be imposed on those who have not yet reached age 16, or those who have already reached age 16

but have not yet reached age 18 and this is their first offence against administration of public order, or those who are aged 70 or above, or pregnant women and women who breast feed their infants of less than one year old. The combined administrative detention shall not be longer than 20 days. In particular, the Law has a chapter exclusively for law enforcement supervision, detailing basic behaviour standard for the policemen in handling cases and the general rules for human rights protection, prohibiting such torture and inhuman behaviours as beating, scolding, maltreating or insulting those who have offended against the administration of public order. In case of failure, the policemen shall be subject to, according to seriousness of each case, administrative sanction or criminal liabilities. This Law has played an important role in promoting fair and civilized law enforcement by people's police, and reduce and curb torture in non-judicial areas.

2. Amendment of *the Law on Lawyers*

In October 2007, the Standing Committee of the National People's Congress adopted the amended *Law on Lawyers*. The amended Law has accepted suggestions of the Committee, emphasized the principle of human rights protection, and enhanced the coordination and unity between effective fight against crimes and full protection of human rights. Based on its original structure, the Law has clear provisions on the lawyers' right to meet with criminal suspects during investigation, to exchange views with criminal suspects and defendants, to investigate, collect evidence and defend, and on lawyers' immunity privilege. This helps ensure effective fulfillment of lawyers responsibilities at various stages of criminal procedure, protection of legitimate rights and interests of criminal suspects and defendants, control of judicial power at various stages of investigation, prosecution, trial and penalty, and prevention of torture and other inhuman treatments against citizens involved in proceedings. The Law became effective on June 1, 2008.

Mr. Chairman,

In addition to legislative measures, relevant Chinese departments have made focused efforts to prevent and punish torture.

1. Prevention

The Chinese Government continues to give priority to cutting the root causes and curbing torture.

The key to prevention of torture lies in higher professionalism of law enforcement personnel. The Committee indicated at its previous consideration that the Government should continue to intensify efforts to provide law enforcement officials with training on international human rights standards. The Chinese Government attaches great importance to this. Since 2005, nation-wide campaign has been conducted within law enforcement and legislative systems to promote the concept of rule of law and protection of human rights with fairness and justice as its core value. The level of awareness and capacity of law enforcement officials has been raised in terms of civilized and standardized enforcement and protection of citizens' legitimate rights and interests. Reinforced efforts have been made by people's courts, people's procuratorates, public security organs and prison administration departments to offer professional training, and an important part of its textbooks includes the *Convention Against Torture* and other UN human rights protection instruments. The above Chinese departments have also carried out exchanges and cooperation with UN human rights agencies, foreign human rights organizations and specialists through discussions, seminars and training courses.

System building provides guarantee for prevention of torture. Chinese law enforcement and judicial organs have promulgated a number of new important regulations. For instance, since 2005, the Ministry of Public Security has amended the *Procedural Provisions for the Handling of Administrative Cases by Public Security Organs and the Procedural Provisions for the Handling of Criminal Cases by Public Security Organs*, formulated the regulations on the length of detention for criminal cases applicable to public security organs and other regulations. The Supreme People's Procuratorate has promulgated the *Regulations on Standards for Filing Criminal Cases of Dereliction of Duty and Rights Infringement*, and the procuratorial measures for prisons and detention facilities. The Ministry of Justice issued *2006-2010 Guidelines for People's Prison Police on Re-education Through Labour and Six Prohibitions on People's Prison Police*. Preventive mechanisms have been set up and strengthened at major links of law enforcement and judicial procedures.

Supervision and control play a key role in prevention. Law

enforcement and judicial departments have intensified their efforts to increase transparency of law enforcement and openness of police, procuratorate, trial and prison work, and strengthen and improve mechanisms of supervision. Since 2005, in order to clarify and fulfill the individual responsibility in law enforcement, the State Council has promoted nation-wide administrative law enforcement responsibility system. Since 2006, the Ministry of Public Security has enhanced, step by step, nation-wide system of full video coverage of interrogation of murder cases and those involving underworld organizations. Public security organs continue the practice of law enforcement evaluation and use the method of "veto with one vote" in annual evaluation in cases of death or serious injury caused by torture, beating, physical punishment, maltreatment, and misuse of firearms. If a public security organ receives such a veto in its annual evaluation, it means its performance is below standard. If it gets voted twice, its leader shall resign or be removed from the post. The Supreme People's Court has promoted nation-wide second trial of cases involving death sentence, and will gradually adopt full video coverage of interrogation. Till the end of 2007, the procuratorial organs established their agencies in 98% of prisons and detention facilities, including 77 procuratorates in large prisons or prison concentrated areas, and 3,300 offices in medium prisons and detention facilities. At present, 12,000 people from procuratorate organs at different levels are working in this field, and 8,800 of them are on a fairly permanent and regular basis. The appointment system is practiced in many prisons, through which prisoners and detainees have the right to have appointed face-to-face meetings with procurators to reflect problems and raise complaints.

Public participation is an important part of supervision and control. Law enforcement and judicial organs at all levels have actively accepted supervision from all social sectors, established hotlines and letter boxes, strengthened exchanges with NGOs to listen to their views and suggestions, and attached importance to concerns and calls expressed by people through media and Internet. Problems thus reflected are being investigated and solved. The departments concerned have also established spokesman system to give information to wider publicity. Another system is to have specially invited supervisors from national people's congress, political consultative conference, social organization and media. The Ministry of Public Security now has 113 such supervisors, and the public security organs above the county level have over 200,000 invited supervisors. Thanks to information supplied by people and media, judicial organs are able to discover and handle some torture cases in a timely manner.

2. Punishment Against Torture

It is clearly stipulated in the *Convention Against Torture* and the relevant Chinese laws that torture of various forms must be punished in a timely and resolute manner. Upon receiving complaints about violation of law and torture against citizens, the departments concerned always conduct serious investigations. If proved to be true, it will be handled according to law. If it is of criminal nature, criminal responsibility will be sought. *The Regulations on the Punishment of Civil Servants of Administrative Organs* issued in 2007 stipulate clearly that infringing on the personal rights of citizens by assault and battery, physical punishment or unlawful imprisonment shall be given a demerit or the punishment of expulsion according to the seriousness of the circumstances.

On the basis of the *Regulations on Investigation of Responsibilities for Law Enforcement Errors Committed by People's Police in Public Security Organs*, *the Regulations on the Work of Internal Supervision of Law Enforcement in the Public Security Organs*, and other relevant regulations, a fairly complete law enforcement supervision system has been established among public security organs. From 2005 to 2007, 137 public security policemen received administrative and disciplinary punishment because of extorting confessions by torture and 48 because of mistreatment of detainees.

In July 2006, the Supreme People's Procuratorate issued the *Regulations on Standards for Filing Criminal Cases of Dereliction of Duty and Rights Infringement*, which embodied China's new achievements in legislative and judicial areas, provided clear definition of the subject of criminal cases of dereliction of duty and rights infringement, and further clarified and specified the circumstances for filing such cases. From 2006 to 2007, China's procuratorial organs focused, in accordance with the Regulations, on public servants infringing citizens' human rights and democratic rights by abusing powers, including 160 cases involving 258 people of extortion of confessions by torture, mistreatment of detainees, and collection of evidence by violent means.

Extended detention is the hotbed of torture. Before 2003, due to the failure of some local law enforcement and judicial officials to handle

their cases strictly according to law and incomplete supervisory mechanisms, there were quite a few cases of extended detention. In 2003, special nation-wide efforts were made to clear up and correct such cases with the establishment of standing mechanisms in this regard. This issue has thus been dealt with effectively, witnessing a drastic decline from 24,921 person/time in 2003 to 85 person/time in 2007. Meanwhile, based on practical needs, law enforcement and judicial departments at all levels have conducted regular reviews on law enforcement and made special control efforts to prevent extorting confessions by torture. Major progress has been made as a result of the resolute review efforts, the criminal and disciplinary punishments given to law enforcement and judicial officials with misconducts, and the serious investigation of the responsibility of supervisors.

In dealing with various torture cases, legislative organs have acted strictly according to the nature of each case, its circumstances, and provisions of the law, and given punishment accordingly. Serious punishment has been given without leniency to those who infringed others' rights on purpose and caused citizens' serious injury or even death. For example, among those typical cases of serious infringement on human rights announced by the Supreme People's Procuratorate in 2005, there is a case of extorting confession by violent means. It happened at the end of 2004 when a witness was killed by violent attack of a local policeman. The procuratorate instituted a public prosecution, and court sentenced the perpetrator to life imprisonment and life long deprivation of political rights.

Through the above efforts, torture cases have been reduced by a big margin. In 2006, there were trials of 64 cases involving 119 people of extorting confessions by torture; and in 2007, the number of such cases was reduced to 40 involving 82 people. Previously in 2003, there were 75 such cases involving 141 people; in 2004, there were 79 cases with 135 people; and in 2005, there were 70 cases with 132 people. Cases of extorting confessions by torture and ill-treatment of detainees have been kept at a low level, and in 2006 and 2007, the number of such cases and people involved is both single digit.

Mr. Chairman,

Complete elimination of torture requires sustained unswerving efforts.

To achieve this final goal, the Chinese Government will continue to improve its legal system, reinforce its endeavour in education, prevention and punishment, and earnestly implement all provisions of the Convention, so as to make new progress in its efforts against torture. The Chinese Government is ready to conduct close cooperation and exchanges with the Committee, the international organizations and other countries, and work jointly for the realization of the purposes and objectives of the Convention.

Mr. Chairman,

Since the Chinese Government's resumption of exercising sovereignty over Hong Kong on July 1, 1997 and over Macao on December 20, 1999, the *Convention Against Torture* became applicable to the Hong Kong and Macao Special Administrative Regions respectively. According to the Basic Laws of the Hong Kong SAR and the Macao SAR, the Chinese Government pursues the policy of "one country, two systems" with the Hong Kong SAR and the Macao SAR enjoying a high degree of autonomy and managing their own affairs. The implementation of the Convention in the Hong Kong SAR and the Macao SAR is compiled by the two SAR Governments respectively.

Please allow me to invite Mr. James O'Neil from the Hong Kong SAR and Mr. Jorge Costa Oliveira from the Macao SAR to deliver their speeches on their implementation of the Convention.

Thank you, Mr. Chairman.

**The Hearing of the UN Committee Against Torture
on the 2nd HKSAR Periodic Report under the
Convention Against Torture (November 2008)**

**Opening Statement by
Mr James O'Neil, Deputy Solicitor General of
Hong Kong Special Administrative Region**

Thank you, Mr/Madam Chairman.

2. Let me first affirm the commitment of the Government of the Hong Kong Special Administrative Region to protect human rights and to comply fully and effectively with the requirements and commitments under the Convention Against Torture.

3. The Hong Kong Special Administrative Region benefits not only from the human rights protection in the common law but also from the extensive protection of human rights in the Basic Law, under the Hong Kong Bill of Rights Ordinance and other legislative measures. In particular, the requirement that no one shall be subjected to torture or other forms of ill-treatment under Article 7 of the International Covenant on Civil and Political Rights is entrenched in the Basic Law. No law passed by the legislature may contravene the Basic Law. Nor may any administrative measure be inconsistent with the Basic Law. The article is implemented at the domestic level through the Hong Kong Bill of Rights Ordinance. These requirements are enforced in our courts by an independent judiciary.

4. It is against this background of a high level of protection of human rights that we once again come before the Committee to submit ourselves to examination. Over the years this has resulted in progressive improvements in meeting the requirements of the Convention in full and in helping to ensure that effective protections and safeguards are maintained and reinforced.

5. We have set out in our written replies to the List of Issues the new administrative procedures and legislation which have been introduced since submission of our report in 2006. I shall not repeat these in detail but will briefly address the Committee on developments on significant issues in three areas which were reflected in the List of Issues as being of significant interest to Members.

Independent Police Complaints Council Ordinance

6. Firstly with the passage of the Independent Police Complaints Council Ordinance in July 2008 the independent body which oversees complaints against the police has been placed on a statutory basis. This Ordinance sets out the functions, powers and operation of the IPCC as well as placing a statutory obligation on the police to comply with its requirements. We intend to bring the IPCC into operation under the statute in the first half of 2009.

Search of Detainees

7. Secondly concerns have been expressed both by the Committee and domestically about the exercise by the Police of their powers to search detained persons. These concerns have been addressed in the new Guidelines on Searching of Detained Persons that have been introduced and applied by the Police since 1 July 2008. They stipulate more stringent requirements in respect of the scope of searches that may be carried out on detainees, the procedure to be adopted and keeping of records of searches conducted. We are monitoring the implementation of the Guidelines to ensure that frontline officers give due regard to the privacy and dignity of the detainees when conducting searches. The requirements under the Guidelines are reflected in the training given to serving police officers and to new recruits on induction.

Screening of CAT Claimants

8. Finally with regard to torture claimants the Government has put in place mechanisms to ensure that in screening of claimants high standards of procedural fairness are applied.

9. We stand ready to explain any issue that the Committee may wish to raise and will endeavour to give full and satisfactory answers to questions raised.

10. Mr/Madam Chairman, thank you.

Honorable Chairperson of the Committee,
Honorable Members of the Committee,
His Excellency Ambassador Li Baodong,

The Government of the Macao Special Administrative Region takes great pleasure in attending this Committee's session at the hearing of China's fourth periodic report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Part III of the present China's report incorporates the initial report for Macao as a Special Administrative Region of the P. R. of China after China's resumption of the exercise of sovereignty over Macao. Thus embodying the principle of "One Country, Two Systems".

In our report under consideration we have strived to the best of our abilities to be accurate, to provide thorough and complete information and to address the various issues of specific interest to the Committee. We have taken the same approach in the replies to the written questions submitted by the Committee.

To this effect, we endeavoured to have this initial report demonstrate that the measures that along the years have been adopted in the Macao SAR – be it through legislation or via administrative rules and procedures, and practices – give effect to the rights recognized in this Convention and ensure that the obligations arising from the Convention are complied with.

The respect for fundamental rights and freedoms is deeply rooted in the Macao SAR legal system and is cherished by Macao residents as a cornerstone of their way of living.

The promotion and protection of human rights and the rule of law are important priorities of Macao's policy. Therefore, the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is of the utmost importance for us.

Subjecting a person to torture or inhuman treatments is absolutely and expressly forbidden in the Macao SAR at the constitutional level and autonomously criminalized in ordinary legislation. In addition, human dignity is also, at all levels, considered to be inviolable.

Furthermore, infliction of torture or other cruel treatment constitutes aggravating circumstances for several crimes. Some other ill-treatment conducts are also defined as specific crimes, such as the crime of ill-treatment or excessive loads on minors, incapables or one's spouse, coercion, medical or chirurgical arbitrary intervention or treatment, etc.

Macao SAR authorities are also engaged in furthering a policy aiming at preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment. All persons responsible in this area, be it in the creation of new legislation or in the implementation of existing laws, are well aware of the importance to abolish all forms of mistreatments of persons, especially when vulnerable groups are concerned. Efforts with regard to the prevention and eradication of torture will continue to be undertaken in the future.

Appropriate training in human rights is mandatory to police officers, prison wardens and other law enforcement officials.

Nonetheless, a Commission for Disciplinary Control of the Security Forces and Services of Macao was established in 2005. It is directed to the defence of legality and of the fundamental

rights of the people and has competence to follow up complaints lodged by citizens against any member of the staff of the Macao SAR Security Forces Corporations and Services related to their members' civic conduct, eventual legality infringements, actions against fundamental rights or any suspicions of irregularities or deficient operation of those Services.

Under Macao law, and in practice, we endeavour to ensure that the physical and psychological integrity of prisoners and other confined persons is respected under all circumstances.

Macao's Legal Framework on the Execution of Measures Depriving Personal Freedom is based on the general principle that the person in custody remains entitled to his fundamental rights, subject to the limitations that are inherent to the conviction.

Prisoners in Macao are provided accommodation, clothing, hygiene and food in terms that safeguard their health and dignity. Their contact with the outside world is also promoted, by means of their right to receive visitors and of their right to send correspondence.

To the effect of the application to the Macao SAR of the Convention Relating to the Status of Refugees, of 28 July 1951, and of its Protocol of 31 January 1967, it was adopted Law 1/2004 which establishes the Legal Framework on the Recognition and Loss of Refugee Status. This Law guarantees conditions of dignity to the applicant from the moment of the appraisal of the admissibility of his request to the moment when a final decision thereon is taken. It also ensures applicants who have been victims of torture, rape or other abuses of a physical or sexual nature special attention and follow-up by the SWI or humanitarian entities.

The said Law fully observes the principle of *non-refoulement*. In accordance with it, a person who is recognized as a refugee is allowed to remain in the Macao SAR as long as he maintains such status. This Law also provides that “the submission of an application for the recognition of refugee status suspends any administrative proceedings instituted against the applicant or his family dependents on account of his entry into the MSAR”, such being the case of expulsion proceedings, which shall be filed, if the refugee status is recognized.

Under Law 1/2004, a Commission for Refugees was set up. If a person seeking to be recognized as refugee claims to have been or to face the risk of being tortured or ill-treated, this Commission, in cooperation with the UNHCR, will assess the claim according to international law’s criteria to which the internal law directly refers. It is worth mentioning that the UNHCR is entitled to take direct part in the application process, to freely contact persons who request the status of refugee (as well as refugees), and to give them any kind of support that it deems necessary. Furthermore, all decisions within the application process must be notified to the UNHCR.

Another area of special concern to the Macau SAR is the one regarding the fight against trafficking in persons, where new legislation was passed in 2008. Law 6/2008, on the Fight Against Trafficking in Persons provides for an enlarged definition of the crime of trafficking in persons in accordance with the most modern international instruments, allows for the extension of the Macao SAR criminal jurisdiction, and it also establishes a comprehensive scheme on victims’ protection.

A Commission to Follow the Implementation of Dissuasive Measures Against Trafficking in Human Beings was also set up.

Finally, new legislation was adopted and several preventive measures against terrorism and terrorism financing were taken. Nonetheless, an appropriate balance between the need to guarantee the security of persons and the respect for human rights was kept.

Honorable Chairperson,
Honorable Members of the Committee,

The effective and independent international monitoring of compliance with international human rights standards is an issue of great relevance for the Macao SAR Government.

Thus, this session and its outcome are not only welcomed but perceived as an indispensable step in enabling us to further improve the several ways through which we give effect to fundamental rights and freedoms in the Macao SAR.

Thank you very much for your kind attention.