RIGHTS TO DUE PROCESS
PERSISTENT TORTURE
UNACCOUNTABLE TORTURERS

A Report on China’s Implementation of the UN Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment

CHINESE HUMAN RIGHTS DEFENDERS (CHRD)

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Executive Summary

Except for some progress in the promulgation of legislation and administrative documents, China has made no clear, discernible progress toward prohibiting the use of torture or of cruel, inhuman and degrading treatment in the period since the submission of China’s last report to the UN in 1999, this report finds. Twenty years after China ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988, all are routinely practiced by government personnel with a wide variety of official duties as well as by persons affiliated with, or working on behalf of, the state to such a wide extent that their practice must be considered systematic.

This report was submitted to the UN Committee against Torture (hereafter referred to as “the Committee”) in early October 2008 as it prepared to consider China’s state report during its 41st session on November 7 and 10, 2008, in Geneva. This report from Chinese Human Rights Defenders is unique as it has been submitted by members of Chinese civil society and prepared by lawyers, independent legal experts and human rights activists in China. By contrast, the Chinese government has not been transparent in the process of preparing its current state report or previous state reports. It has not invited the participation or contribution of civil society, or invited members of civil society to participate in or observe the review process at the United Nations.

Many aspects of current Chinese law still provide fertile grounds for torture. China’s legal definition of “torture” is much narrower than that of CAT and the law has not been amended to include all elements of the practice as defined in the Convention.

The use of violence and abuse of power by the police and other law enforcement officials, such as Urban Inspection Officers (chengguan) and family planning officials, are common. Officials who use such violence are rarely investigated or held accountable.

China has made little attempt to abolish the official system of administrative punishment, Re-education through Labor, a form of arbitrary detention about which the Committee has raised serious concerns. The police have also made use of vague provisions in the Criminal Law to subject individuals to involuntary hospitalization in psychiatric institutions. In addition, China has developed an illegal network of interceptors and secret detention facilities, commonly referred to as “black jails” and “law education classes,” to persecute and arbitrarily detain petitioners. Torture and ill-treatment are routinely practiced in these extra-legal detention facilities. This
combination of official and unofficial arbitrary detention systems is used to punish human rights activists, petitioners and Falun Gong practitioners. In theory, individuals can challenge their incarceration by applying for an administrative review, or filing an administrative lawsuit against the relevant government officials or agencies, but these remedies are rarely effective in changing decisions on arbitrary detention.

Conditions in detention facilities remain poor. Incarcerated individuals are often forced to labor under poor and dangerous working conditions. Detention authorities tolerate and even promote inter-inmate violence; prisoners on death row are subjected to cruel treatment.

The lack of protection for the right to a fair trial increases the risk of torture and other mistreatment in China’s detention facilities. Investigators and prosecutors rely heavily on confessions, which are often made without the presence of a lawyer, as evidence; a confession obtained by torture is still admissible in court. A suspect’s access to legal counsel is routinely limited and arbitrarily denied by the Public Security Bureau (PSB), while lawyers are often reluctant to defend certain criminal cases for a number of reasons, one of which includes a fear of being prosecuted under intimidating laws relating to lawyers’ speech in court. Suspects can be legally detained for months before being brought in front of a judge. Because the provisions stipulating the legal limit for pretrial detention are numerous and complex, in addition to there being no equivalent to habeas corpus in Chinese law, the PSB and the Procuratorate are able to extend the period of pretrial detention multiple times while making it difficult for the detainee to challenge the legality of their detention. Meanwhile, the right to appeal is often curtailed, and appeals, rather than being taken up by the higher court, are routinely sent back to the original court for “retrial,” often leading to the same, if not harsher, sentences.

Perpetrators of torture are almost never held criminally accountable, largely because there are no independent complaint mechanisms to which victims have recourse. The PSB and Procuratorate, under intense pressure to “strike hard” on crime, have little incentive to investigate allegations of torture against their employees who use torture to “solve” cases quickly. The Procuratorate and the judiciary, which in theory might provide some institutional safeguards against torture, are unable to genuinely and independently supervise law enforcement agencies. The Procuratorate is ineffective in its supervision of police conduct because its primary purpose—prosecution of accused individuals—is aligned with that of the police. The judiciary, being subordinate to other organs of government administration and under the control of the CCP’s Political-Legal Committees, lacks independence. It is unwilling to seriously investigate allegations of torture and hold perpetrators accountable, especially in sensitive cases in which the verdict has been predetermined by the Political-Legal Committees. In addition, evidence needed to prosecute perpetrators of torture is very difficult to obtain due to a number of factors, such as the increased use of torture techniques which leave no physical traces.

Victims of torture almost never receive adequate compensation as there is a lack of effective mechanisms to ensure that victims are properly compensated. In the few cases in which compensation is granted, given the painful and lengthy process victims must go through to receive it, the amount received is very small.

Recommendations on specific measures the Chinese government can and should take to address the significant deficiencies in China’s fulfillment of its obligations under CAT are presented at the end of this report.
Common methods of torture in China

Common methods of torture and other cruel, inhuman, or degrading treatment or punishment in China include:

- **Beatings**
  The victim is kicked or beaten with bare fists, batons, electric batons or belts. The victim may also be hung up and beaten.

- **Handcuffing in painful positions**
  The victim’s hands or feet are cuffed and then the victim is hung by the wrists or ankles and may be left hanging in this position for a period of days, during which the cuffs cut through the flesh.
  A similar and especially painful method is to cuff the victim’s hands behind their back and fix the cuffs to chains on a wall so the victim is suspended off the ground.
  Another method is to pull one hand back over one shoulder, pull the other hand up from behind, and cuff both hands together before fixing the cuffs to chains hanging from the wall.

- **Burning with fire or cigarette butts**

- **Exposing to extreme cold or heat**
  The victim is made to stand under the sun for hours at a time.
  After beating, the torturer pours cold water on the victim to wake them up, turns down the air-conditioner to a very low temperature and positions an electric fan to blow directly on the victim.

- **Shining strong light into the victim’s eyes from a close distance**

- **Prolonged standing, kneeling or squatting**
  The victim is forced to stand or kneel on a hard uneven surface or hold a “squatting horse” position for hours at a time. In “squatting horse,” the victim is forced to hold a half-sitting position without any form of support, putting ever-increasing strain on thigh and leg muscles.

- **Tiger bench**
  The victim is made to sit upright on a long bench with hands tied behind their back. The thighs are secured with a rope to the bench and bricks placed under the feet to lift them off the floor. This puts extreme strain on the knees and is a very painful form of torture, especially when conducted for an extended period of time.

- **Sexual abuse**
  The victim’s genitals are kicked or beaten using bamboo, batons or electric batons.
  The torturer thrusts foreign objects into the victim’s anus or vagina.

- **Food and drink are withheld for long periods**
● Force-feeding excrement or unsanitary objects
● Forced labor in dangerous working conditions
● Arbitrary detention
   The victim is held in illegal detention facilities such as a “black jail,” an “educational class,” or RTL camp without charge or trial, or incarcerated without due process or for exercising basic human rights.
● Using or threatening to use trained dogs to attack the victim
● Mock executions
● Solitary confinement
● Sleep deprivation
   The victim is prevented from sleeping for a period of days. Making loud noise or smearing chili pepper on the victim’s eyes are used to keep the victim awake.
● Threatening the safety of the victim’s family
   During interrogation, the victim is told that if they do not cooperate, their family may be arrested or tortured.
● Humiliating treatment
   This includes spitting in the victim’s face.

Definition of Torture

China’s definition of “torture” is narrower than that of the Convention against Torture

As the Committee noted in paragraph 1 of its List of Issues concerning China’s Fourth and Fifth Periodic Report, the definition of torture in current Chinese laws and regulations is extremely narrow and does not include all elements of the definition as articulated in Article 1 of CAT.4

“The Supreme People's Procuratorate Regulations on Standards for Filing Criminal Cases of Dereliction of Duty and Rights Infringement,”5 the latest government edict elaborating on torture-related concepts outlined in the Criminal Law,6 defines “torture to extract confession” (xingun bigong) as “the use of corporal punishment... by judicial staff to extract confessions from criminal suspects or defendants.” It defines the “use of violence to obtain evidence” (baoli quzheng) as “the use of violence to extract witness testimonies by judicial staff” and “abuse of individuals under supervision” (nuedai bei jianguaren) as “beatings or other corporal punishments by supervisors [of official detention facilities] of incarcerated individuals.”

The Chinese definition only recognizes torture when it is practiced by specific officials (members of the judiciary and guards at detention facilities), at particular locations (official detention facilities) for particular purposes (extracting confession or witness testimonies). Excluded from the definition is the use of torture outside of official detention facilities for purposes other than those stated in the Regulations and by other public officials such as members of the PSB and paramilitary police. Neither is torture by individuals acting “at the instigation of or with
the consent or acquiescence of a public official," such as members of Joint Security Brigade, private security guards, Urban Inspection Officers and hired thugs, considered torture in Chinese law.

Moreover, Chinese law does not recognize psychological torture—such as sleep deprivation, lengthy interrogation sessions, threatening individuals with attack by police dogs, threatening the safety of individuals' families, solitary confinement, or mock executions—as torture; these methods are widely practiced as they leave no apparent physical trace, thus making it more difficult for the victim to collect evidence to seek legal redress.

**Use of Violence by Government Officials**

**The use of excessive force by the police is common**

In its List of Issues, the Committee mentioned the use of excessive force by the police. Despite regulations such as the Public Order Administration Punishment Law that prohibit the use of beatings, mistreatment and degrading treatment in law enforcement, without effective means to implement these regulations, those who violate the regulations are rarely held accountable.

The use of excessive force by the police is not just incidental to law enforcement; the police intentionally and actively use excessive force in the interception of petitioners, which is an illegal practice. Policemen work as “interceptors” and often join others in hunting down petitioners and in the process humiliate, beat and otherwise mistreat those they intercept. They also transfer petitioners whom they have apprehended to local interceptors who forcibly return the petitioners to their home provinces.

The case of Shanghai petitioner, **Duan Huimin** (段惠民), a laid-off worker who petitioned for appropriate compensation following his dismissal from a state-owned company, illustrates these abuses. While petitioning in Beijing with his sister on November 3, 2006, Duan was intercepted and severely beaten by a dozen Shanghai interceptors (including policemen such as Yan Jianguo). The day after, Duan was sent back to Shanghai and criminally detained at Shanghai PSB Huangpu District Detention Center for “provoking and making trouble.” While in detention, Duan bled and vomited blood. Both he and his family repeatedly requested that he be allowed to see a doctor, but their requests were denied by the head of the detention center. On November 29, Duan was sentenced to one year of RTL for “Disturbing social security and order.” He was finally allowed access to medical treatment on December 28, about 60 days after his beating by the interceptors. However, by then he was so seriously ill that he died soon after on January 2, 2007.
Other law enforcement officials, such as the Urban Inspection Officers who are responsible for enforcing a plethora of regulations on issues ranging from illegal structures to illegal hawking, are notorious for their use of excessive force in carrying out their duties. For example, Li Siqiao (李四桥), a farmer from Yangliu Village, Jiangjun Road, Dongxihu District, Wuhan City, Hubei Province, died on June 5, 2008, following a severe beating by dozens of Urban Inspection Officers. On May 23, Li was mending a shed on his farm when the officers arrived and disputed the legality of the structure; the shed was pushed over and Li was roughly handled. When they started to beat his parents Li tried to intervene to stop them but then they started beating him. He was badly hurt and was rushed to Wuhan Xiehe Hospital where he died 12 days later. (See the Appendix in the online version of this report for more cases of the use of excessive force in law enforcement)

**Officials who use extensive violence in the implementation of the family planning policy are rarely investigated or held accountable**

The Committee asked in paragraph 6 of its List of Issues about the investigation, prosecution and conviction of officials who use violence against citizens in the implementation of the population policy.

In implementing the National Family Planning Policy, local governments are pressed to accomplish the Policy’s objectives, which often include fulfilling quotas for births, contraceptive use and sterilizations. When the number of births in a local area goes above quota, local officials may face demotion, reduced bonuses, or a less promising political future. To ensure that the quota is met, local governments typically dispatch medical personnel, local officials and police officers to villages to conduct searches for “illegal pregnancies.” In cases in which alleged “illegal pregnancies” are reported or discovered the women are taken to hospital for abortion or sterilization. Pregnant women are persuaded, or even coerced, to abort fetuses. If they go into hiding to evade capture, relatives may be questioned, fined, detained, beaten, or have their property confiscated unless they are able to persuade the woman to return and comply with the requirements imposed by the family planning officials. CHRD has received reports that many local government officials, such as those in Linyi City and Zaozhuang City in Shandong Province, Guannan County in Jiangsu Province, Bobai County in Guangxi Province and numerous others localities have employed such violence.

Family planning officials and those acting on their behalf act with impunity. When one victim confronted a Linyi official, the latter said, “Feel free to go and complain! You can complain to the county government or to Linyi government, [I don’t care] because it costs me at most RMB 10,000 to beat you to death!”

The above quotation was documented by Teng Biao, a lawyer and legal scholar, and Chen Guangcheng, a human rights activist now behind bars in Linyi Prison. In 2005, the two conducted an investigation of the implementation of population policy in Linyi. They also provided legal advice to victims and assisted them in filing lawsuits against the relevant government officials, as such practices violate the Population and Family Planning Law. The vocal complaints of Teng, Chen and other activists, documented by human rights groups and widely reported in the international press, and to a lesser extent in the domestic press, eventually reached the State Family Planning Commission. It issued a statement criticizing the Linyi government for its use of violence, but this was ignored by local officials. The Commission had planned to send officials to Linyi to investigate the allegations, but
it soon gave up after Linyi officials reported that the activists exposing the violence were "criminals." Eventually some activists, Chen among them, found themselves the targets of retaliation by local officials. Chen was convicted of "intentionally damaging property and gathering crowds to disturb transport order" and on March 11, 2006 was sentenced to four years and three months' imprisonment. Those in Linyi who filed lawsuits against local officials were forced to withdraw their cases and were retaliated against by officials.

CHRD has documented many other cases in which officials are not held legally accountable for their misconduct. In these cases, victims either do not lodge complaints because they do not know how to or are too afraid to do so for fear that they will be punished for the alleged "illegal" pregnancies or children, or they complain to the local Office of Population Policy and their complaints are ignored. Some victims petition local government and higher authorities for redress, and are subsequently subjected to even more violence and persecution by interceptors from their local areas.

**Arbitrary Detention**

**Re-education through Labor continues to be widely used despite calls for its abolition**

The Committee is correct to note in its List of Issues that the Chinese government has taken no action to abolish the Re-education through Labor System. Not only has the government taken no action to abolish this practice, the system has been used in recent years as a tool to punish Falun Gong practitioners, petitioners and human rights activists.

Individuals may challenge the decision to send them to RTL by applying for an administrative review by the local RTL Management Committee, an administrative organ dominated by the PSB. They can submit their application for review to the People's Government at the same level as the Committee or to the RTL Management Committee at a level higher than the Committee that made the decision.

According to Article 2 of the Administrative Litigation Law, if the decision is upheld the individual can then file an administrative lawsuit against the RTL Management Committee which made the decision. Thus, an individual may only have their case reviewed by a judge after the decision has been made to send the individual to RTL and after they have served time in an RTL camp, and, even then, only those who file an administrative lawsuit and whose cases are accepted by the court may have their cases reviewed by a judge. Until recently the courts rarely accepted or dealt seriously with such lawsuits. Even in rare cases when the courts do agree to hear the lawsuit the RTL decision is almost always upheld.

Few individuals actually make use of these two remedies to challenge the RTL decision. A 1998 report by the UN Working Group on Arbitrary Detention concurs that the effectiveness of administrative lawsuits is "very relative, as can be seen from the very small number of such proceedings." This situation has changed little in the intervening years. CHRD's survey in 2008 reveals that only five percent of the 1,000 petitioners interviewed who had been sent to RTL applied for administrative review or filed an administrative lawsuit. Out of those 50 individuals, only one was granted a shorter punishment—from two years to one year—largely because she was a Green Card holder.
and supported by the U.S. government in her administrative review. None of the 50 managed to overturn the initial RTL decision using the two remedies.

Because of a combination of factors, individuals do not make use of the two remedies. Some barriers to using the remedies are: lack of knowledge about them, lack of access to legal counsel due to high cost and fear of retaliation, especially by the PSB. They also feel the remedies are ineffective because the government agencies which undertake the review are not independent from the RTL Management Committee which made the original decision.

**Government officials exploit general & vague provisions in the article of the Criminal Law regarding involuntary hospitalization to incarcerate dissidents in psychiatric hospitals**

The Committee asks in its List of Issues about “the legal safeguards of persons in health institutions subjected to involuntary hospitalization, particularly in psychiatric hospitals.” The main legal basis for involuntary hospitalization is Article 18 of the Criminal Law, which states that,

*If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment.* (Emphasis added)

The provisions of this article are general and vague and include no clear details as to the circumstances under which an individual should be subjected to compulsory medical treatment. As a result, interpretation of this Article varies widely across the country. Local governments develop their own regulations on involuntary hospitalization, many of which have few safeguards to protect the human rights of individuals incarcerated. In some provinces and cities, involuntary hospitalization has been used as a means to restrict civil liberties. In Tianjin and Shanghai for example, the relevant regulations stipulate that individuals who “disturb public order,” (another general and vague term) can be subjected to involuntary hospitalization.

Police possess wide powers to determine whether individuals are suffering

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**THE CASE OF LIU JIE**

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LIU, A HEILONGJIANG PETITIONER & HUMAN RIGHTS DEFENDER, IS A CLASSIC EXAMPLE OF THE FUTILITY OF THE TWO REMEDIES AGAINST RTL DECISIONS

On November 12, 2007, Liu was sent to 18 months of RTL by Heilongjiang Nongken RTL Management Committee for “Instigating trouble and disturbing social order.” On November 28, 2007, Liu filed an administrative review with the Heilongjiang RTL Management Committee, but it was rejected on February 19, 2008, because the Committee could not find “anything wrong” with the original decision. Liu then filed an administrative lawsuit suing the Heilongjiang Nongken RTL Management Committee, but both Nangang District People’s Court and Heilongjiang Military Farm Bureau Intermediate People’s Court in Heilongjiang Province refused to accept the case, providing no explanation for their decision.

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from “mental illness” and whether they should be incarcerated in mental hospitals. Article 14 of the Police Law\textsuperscript{17} states that,

...the people’s police of public security organs may take protective measures to restrain a mental patient who seriously endangers public security or other people’s personal safety. If it is necessary to send the patient to a designated institution or place for guardianship, the matter shall be reported for approval to the public security organ of a people’s government at or above the county level, and his or her guardian shall be notified without delay.

The police are not required by law to arrange an independent mental health evaluation of the individual and can subject them to involuntary hospitalization following approval from a higher PSB. Even when the individual’s mental state is evaluated, it is questionable how independent and professional are the mental health “experts” who carry out the examination.

The system is full of loopholes and provides much room for arbitrary interpretation. It has been used to hospitalize “Falun Gong practitioners and Tibetans... not for medical reasons,” as the Committee has noted in its List of Issues.\textsuperscript{18} It is important to point out that petitioners are also frequent victims. A survey for a CHRD report\textsuperscript{19} found that 3.1% of petitioners contacted had been imprisoned in psychiatric institutions, and many more than once. Their mental health was generally not evaluated and there was no evidence to suggest that they were mentally ill or posed any threat to society. In the psychiatric institutions they were often beaten and forced to take unknown medication.

The legal framework regulating involuntary hospitalization is incomplete and complex. It does not spell out the mechanisms for challenging decisions on involuntary hospitalization. Chinese lawyers generally find it difficult to intervene effectively in aiding individuals sent to psychiatric hospitals. This is

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\textsuperscript{17} For more case studies of individuals forcibly detained in psychiatric institutions by the police, please see the Appendix online. Appendix II in CHRD’s recent report, Dancing in Shackles: A Report on the Situation of Human Rights Defenders in China (2007) also contains such cases.
complicated by the fact that the PSB often persuades or coerces the family into signing an agreement to commit the individual to a psychiatric hospital.

**Petitioners are ill-treated & arbitrarily detained for lodging complaints**

In paragraph 2(j) and paragraph 2(k) of the List of Issues the Committee raised the issues of “retrievers,” or “interceptors,” and the illegal detention facilities used to detain petitioners. These two interrelated issues involve human rights violations that deserve greater attention as they are illegal, secret measures which target petitioners who bring complaints about lower levels of government to higher authorities and who are amongst those most vulnerable to human rights abuses.  

Interception does not exist legally or publicly, but evidence points to extensive, rapidly expanding operations. In recent years, because the number of petitions has continued to rise, interception has become a major area of responsibility for various local governments, and many departments at different levels are involved. Government agencies which are involved in, and contribute staff to, interception operations include Letters and Visits Offices, the PSB, the Procuratorate, the judiciary, the police, local government offices located in provincial capitals and in Beijing (“liaison offices”) and the government units directly responsible for the alleged rights violations described in the petitions.

Interceptors harass, monitor, kidnap and beat petitioners; after they are kidnapped, some are beaten, in several documented cases, even to death. They are often detained in Beijing or in their home areas after being forcibly returned. Petitioners may be imprisoned or detained in psychiatric institutions, RTL camps, “black jails” or “law educational classes” without charge or trial.

“Black jails” are temporary detention and interrogation centers where detainees face further interrogation, beatings, mistreatment, imprisonment and arbitrary detention. In Beijing “black jails” are usually rented space or liaison offices used by local interceptors before petitioners are escorted back to their home provinces. A 2007 CHRD report identified the locations of a number of “black jails” in Beijing established by local governments. A 2008 follow-up report finds that they are still in operation, while more have sprung up in Beijing and elsewhere in the country. Petitioners are also sent to “black jails” in their hometowns, where they can be incarcerated for days or months without any legal procedures. They may be crowded into small rooms, poorly fed, deprived of health care and proper sanitation facilities. Many petitioners are elderly and some have children, while a significant number are disabled or have medical conditions. They are prohibited from contacting the outside world during their detention.
In addition, there are many reported cases of illegal detention in local “law education classes.” According to CHRD’s sources, such “education classes” are found nationwide. These “classes” are similar to “black jails” in that petitioners are detained in secret and well-guarded locations. They are usually held incommunicado and their families have no knowledge of their whereabouts. Detainees in these classes are also often mistreated and beaten.

Interception, “black jails” and education classes do not officially exist; thus, there is no official means whereby interceptors can be held accountable for their actions and neither do any official institutions have oversight over individuals detained in these illegal facilities. In theory, petitioners can apply for an administrative review or file an administrative lawsuit against the relevant government officials or agencies, but the courts invariably refuse to accept such cases.

In its List of Issues, the Committee also asked about the whereabouts of Ye Guoqiang (叶国强) and Ye Guozhu (叶国柱). The Ye brothers are petitioners-turned-activists who were fighting for compensation for the forcible demolition of their home and restaurant to make way for construction for the Olympics. For their activities to defend human rights, the two have been repeatedly detained and imprisoned.

In October 2003, after the brothers had repeatedly petitioned authorities for compensation, without success, Ye Guoqiang, in desperation, attempted suicide, for which he was sentenced to two years in jail for “making trouble.” On September 29, 2007, Ye was again taken into custody after he staged a protest in front of the Beijing Xuanwu District government building calling on the CCP to help disabled people. Ye was detained on suspicion of “Inciting subversion of state power” and released on bail on January 9, 2008. Conditions were placed on his release: that he not petition or make contact with anyone overseas and that he report to the police whenever summoned.

Ye Guozhu was sentenced to four years in prison on December 18, 2004, for “making trouble” after he applied for permission to organize a protest against forced evictions.

On July 22, 2008, four days before Ye was due to be released, he was taken away from Chaobai Prison by Xuanwu police and detained on suspicion of “gathering crowds to disturb order in public places.” It is believed that Ye Guozhu was detained to prevent him from speaking out against, or organizing public protests, during the Olympics. He was subsequently held at Beijing PSB Xuanwu District Sub-division Detention Center.

Another person mentioned in paragraph 2(l) of the Committee’s List of Issues, Wang Guilan (王桂兰), was taken into police custody on February 28, 2008, immediately after the release of an open letter which she had helped to organize, signed by 12,709 petitioners, calling on the government to improve the human rights situation. Wang was released in March. However, on April 17, 2008, Beijing police picked her up on the street and handed her to interceptors from Enshi City. Wang was escorted back to Enshi, where she was held at an isolated black jail. On July 29, 2008, she was criminally detained on suspicion of “disturbing social order.” According to the authorities, Wang was detained for accepting a phone interview with a foreign journalist during the Olympics. On August 28, she was sentenced to 15 months of RTL for “disturbing social order” and is currently held at Enshi Detention Center. She was later transferred to Wuhan RTL camp.
Prevalence of Torture in Detention Facilities & Prisons

Detention of suspects can last months before they appear before a judge

Criminal suspects can be detained for a long time before appearing before a judge, much longer than the 37 days noted in paragraph 2(f) of the Committee’s List of Issues. The period of pretrial detention is not only longer than observers think, the legal provisions governing how long a suspect can be held are numerous and complex.

According to Article 92 of the Criminal Procedure Law (CPL), the liberty of a criminal suspect can first be restricted by a summons for up to twelve hours duration. After this initial period, the police must either free the suspect or detain them. Under normal circumstances (CPL Article 65) the suspect must be interrogated within 24 hours, after which the police must either free them or apply to the Procuratorate for their formal arrest. However, in the case of crimes that were “committed from one place to another, repeatedly, or in a gang,” a suspect can be detained for up to 30 days (CPL Article 69). When the Procuratorate receives an application from the police for a formal arrest, it has up to seven days to approve the application. At this point, the total number of days for which a suspect may be detained is 37.

After the suspect is formally arrested, the police have a maximum of two months to investigate the case (CPL Article 124). In a particularly complex or “sensitive” case, this period can be extended for a month with the approval of the Procuratorate at the next highest level (CPL Article 124). For “a particularly grave and complex case,” this period can again be extended for a further two months with the approval of the “People's Procuratorate of a province, autonomous region or municipality directly under the Central Government” (CPL Article 126). If it is thought the suspect might be sentenced to a minimum fixed-term imprisonment of ten years, another two-month extension is possible, again with the approval of “the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government” (CPL Article 127).

Following this period of investigation, which can last up to seven months, the police must then either release the suspect or transfer their case to the Procuratorate for public prosecution. The Procuratorate has a month to decide whether or not to prosecute (CPL Article 138). However, this period can be extended to a month and a half for major or complex cases. If the Procuratorate decides that supplementary investigation is needed, it can either send the case back to the PSB or conduct the investigation itself. In either case, the supplementary investigation can take up to one month (CPL Article 140). After the Procuratorate receives the supplementary information, it has up to one and a half months in which to consider whether or not to prosecute the case. The Procuratorate can send the case back for supplementary investigation a further two times. The period for procuratorial investigation thus can last up to six and a half months.

Altogether, the period following formal arrest (including police investigation and procuratorial investigation periods) can last up to 13.5 months. Adding these two periods (detention and arrest) together, a suspect can be held for up to 14.5 months before being brought before a judge.

Most criminal offenses are investigated by the PSB and the legal limit of 14.5 months applies to cases investigated by them. However, offenses committed by government officials are handled directly by the Procuratorate. Criminal investigations by the Procuratorate follow a different set of time limits: after a suspect is taken into custody, the
Procuratorate must interrogate the suspect within 24 hours; they then have up to 14 days to formally arrest the suspect (CPL Articles 133 and 134). Following formal arrest, the case enters the public prosecution phase, which, as discussed above, can last up to six and a half months. Therefore, in cases investigated by the Procuratorate, the legal limit for pretrial detention is seven months.

However, a number of provisions in the CPL stipulate other circumstances under which a suspect could be legally detained beyond 14.5 months before being brought before a judge. Article 128 states that if “during the period of investigation a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody during investigation shall be recalculated... from the date on which such crimes are discovered.” Article 122 states that “The period during which the mental illness of a criminal suspect is being verified shall not be included in the period of time allowed for handling the case.” Article 128 states that in the case of a suspect who does not give their true name and address and whose identity is unknown, “The time limit for holding the suspect in custody during investigation shall be calculated from the date on which the suspect’s identity is discovered.”

From the moment a detainee is taken into custody, they are generally held in detention centers under the jurisdiction of the PSB. Detention centers hold both criminal suspects and individuals who are subject to administrative punishment. Once an individual has been convicted of a crime, they are then sent to prison. In detention centers, women are held separately from men, but minors might or might not be separated from adults, depending on the conditions inside the center.

There is no equivalent to habeas corpus in China’s legal system, therefore detainees have no legal recourse to challenge the legality of their detention. They can, however, submit complaints to the PSB and the Procuratorate. According to Chapter III of the Provisions on the Application of the Term of Criminal Custody by Public Security Organs, suspects, their legal representatives, relatives, or their lawyers can submit complaints regarding detention beyond the legal limit to the PSB or to the prosecutors stationed at the centers. The PSB should then investigate the complaints within three days of submission. Some detention centers are also equipped with computer systems holding a record of all detainees and also the cases of detainees who are detained beyond the legal limit. Such cases should be reported to the presiding officer and the detainees should be released. However, since the PSB is responsible for investigating the legality of its own actions and the Procuratorate is not independent from the PSB, there is no independent investigation of a complaint; the system provides much room for abuse.

**Conditions in detention facilities are poor; authorities tolerate inter-inmate violence**

In its List of Issues, the Committee asked about conditions in detention and prisons. Labor is often compulsory, and working conditions dangerous. Detainees are allowed to engage in simple recreational activities such as watching TV, running and reading. As for punishment, prison guards have the power to subject detainees to solitary confinement and assault by fellow prisoners and can bar detainees from family visits. The extent of restrictions over the practice of religion varies depending on the detention facilities. However, Falun Gong practitioners are always severely punished in all detention facilities for practicing their religion.
The Committee is correct to note (paragraph 12) that in detention centers, conditions “vary considerably” across China. In some centers the basic dignity of detainees’ is generally respected, but in others they may be subjected to verbal abuse and beatings, sometimes resulting in disability or death. The variation in conditions is largely due to uneven socio-economic development, with detention centers situated in the more developed areas comparatively better equipped (e.g. interrogation rooms have closed-circuit TV) and governed by stricter rules; the caliber of the guards and heads of the centers may also be different. When the head of a detention center decides to persecute a particular group of individuals, they may be treated particularly badly. The fact that prosecutors are stationed in detention centers and that the Ministry of Public Security and the Ministry of Justice occasionally send teams of investigators to the detention centers helps remedy, to some extent, inequalities in the treatment of detainees in these facilities.

The Committee mentioned the issue of inter-inmate violence in detention centers and indeed such violence is common and tolerated. Although guards are fully aware of the existence of bullies and inter-inmate violence in detention facilities, effective measures are not taken against such abuses. For example, Jia Xiaobing (贾小兵), a detained suspect at Xicheng Detention Center in Beijing, died following successive beatings by eight fellow detainees, but the guards were not punished or held legally accountable for his death.37

Prison guards often assign fellow prisoners to watch, harass, or punish “problematic individuals,” such as dissidents and human rights defenders. Prisoners who successfully carry out their assignments are rewarded while those who refuse to cooperate are punished. For example, imprisoned human rights defender, Hu Jia (胡佳) has been watched by four prisoners who stand to be docked points for good behavior if they fail to monitor and regularly report on him.38 Imprisoned reproductive rights activist Mao Hengfeng (毛恒凤) has been repeatedly tortured, mistreated and monitored by fellow prisoners at the prison hospital.39

**Forced labor under poor working conditions persists in detention facilities**

The Committee asks a series of questions regarding conditions in detention and prisons.40 CHRD has limited information concerning the answers to these questions; however, it has received many reports which provide details of the appalling labor conditions in such facilities. Below are two examples:

“I was criminally detained on April 19 [2001] in Futian Detention Center. The first thing I was made to do was assemble plastic flowers... from 7 a.m. to 11 p.m. without any afternoon breaks. Soon my hands were bloody. Due to the side effects of the toxic glue used, the wounds [in my hands] turned quickly into ulcers... among about 30 suspects in one cell, the few who worked the slowest were beaten by the head of the cell using an iron strip wrapped in plastic. Someone is beaten everyday. Those who resist [the beatings] were beaten by the police with iron straps, which sliced open the skin and revealed the flesh...” said an activist who was sentenced in 2001 to three years of imprisonment.41

“At Puyang RTL camp in Henan Province, we worked from 6:30 a.m. to 9:30 p.m. with three meal breaks each of thirty minutes... our main task was to strip the wires out of used tires... on March 12, 2008, Zhang Jianjian, one of the detainees at the camp, was working when four of his right hand fingers were accidentally caught in the machine. His
thumb and middle finger were injured particularly badly but the RTL camp did not send him to the hospital; his fingers were bandaged at the camp. The accident was caused by insufficient rest as well as almost no labor protection at the camp” said a labor activist serving 18 months of RTL. 

**Prisoners on death row subjected to cruel treatment**

The Committee asks about the conditions of detention for prisoners on death row (CAT/C/CHN/Q/4 para. 13 and 29). CHRD interviewed a number of lawyers who have worked on death penalty cases. They confirmed that prisoners on death row are usually shackled 24 hours a day, from the time of their conviction until their execution. This treatment is sometimes also applied to detained suspects who, if convicted, could face the death penalty. One lawyer described what he saw recently at a detention centre in Fu’an City in Fujian Province:

> One suspect facing charges for a serious crime was shackled and handcuffed 24 hours a day and detained in the same cell as other suspects. One fellow was ordered to feed him and help him with defecation, urination and other necessary actions. When asked, the guards at the detention centre justified this treatment as preventive: to prevent suspects from escaping or harming others. When the same detainee later appeared in court to stand trial, the handcuffs and leg irons were taken off.

One lawyer also confirmed that the practice of harvesting organs of executed prisoners without their or their families’ consent has continued. However, it is very difficult to obtain more detailed information about the situation of prisoners on death row because lawyers and families of those sentenced to death are often denied visits to the prisoners. Often, lawyers and families are not informed of the execution until after it has happened.

Statistical data on the number of prisoners sentenced to death and awaiting execution and the number of executions carried out continue to be classified as state secrets and are therefore unavailable to the public. Shooting continues to be the main method of execution in China, though some provinces, such as Yunnan and Sichuan, have replaced bullets with lethal injections.

**Lack of Legal Safeguards to Prevent Torture**

**Confession commonly used as evidence**

The Committee is correct to note in paragraph 2(d) of its List of Issues that criminal investigations still rely heavily on verbal statements for admissions of guilt. Investigators favor verbal statements because they are the easiest form of evidence to obtain. Torture is often used to extract confession from those taken into custody.

Investigators rely on confessions because of a number of factors:

- The police are pressed to solve a large number of cases.
- There is a shortage of resources for criminal investigation and the equipment and technology used for investigative purposes remain inadequate.
- The strong emphasis within the legal and judicial departments on “Striking hard” on crime mean little regard is given to the rights of the suspects. In cases of serious crimes, high officials often set strict deadlines for solving them. In recent years, there have even been campaigns to ensure that all homicides are solved. Criminal investigators thus come under intense pressure and the prevailing attitude is that wrongful
convictions are better than no convictions at all. As a result, there is a lack of effort to prevent wrongful conviction and to protect the rights of suspects.

- Police officers are given incentives to solve cases quickly: investigators’ job performance, opportunity for promotion and bonuses are directly linked to the number of cases solved.

- Since the 1980s, making money on the side to supplement government funding and support routine operations has been tolerated, which means that fines are a major source of income for local PSBs. In June this year, China Youth Daily exposed a shocking incident in Henan Province where police officers tortured a young woman to confess to prostitution so they could fine a man for soliciting prostitutes.43

- As a result of both the pressures and the incentives to solve criminal cases quickly, investigators either do not register the cases which cannot be solved or they “solve” the cases by taking in a few suspects and then forcing a confession out of them, often employing torture to achieve this. Although the Procuratorate is supposed to supervise the conduct of the police, because the latter has greater power in general, particularly when it comes to detaining individuals, the Procuratorate lacks sufficient power in practice to regulate police treatment of suspects and their detention.

**Confessions obtained through torture admissible in court**

Generally, confessions obtained through torture are still admissible in court. Many courts do not make the distinction between confessions obtained under duress and other kinds of evidence, and allow the former be used as evidence. Although according to Article 43 of the CPL it is “strictly forbidden to extract confessions by torture and to collect evidence by threat, enticement, deceit, or other unlawful means,” the CPL does not stipulate that evidence obtained by such means is inadmissible in judicial proceedings. Article 61 of the Supreme People’s Court Explanation of Several Issues on the Implementation of the People’s Republic of China Code of Criminal Procedure44 stipulates that “witness testimonies, statements by the victims and the accused obtained through torture... cannot be used as the basis for conviction,” it does not categorically declare that such evidence is inadmissible. Furthermore, the Explanation is not a legally-binding document and its focus on statements and testimonies does not preclude the use of physical evidence obtained through torture. Similarly, Article 79 of the
Public Order Administration Punishment Law of the People's Republic of China prohibits the use of evidence obtained by torture only when it is used as “the basis for punishment.”

**Access to legal counsel routinely limited & arbitrarily denied**

China’s state report to the Committee claims that the administrative edict, Regulations of People’s Procuratorates to Ensure the Lawful Practice of Lawyers in Criminal Procedures, strengthens “the role of lawyers in criminal prosecutions in regard to protecting the legitimate rights and interests of criminal suspects.” In addition, Article 33 of the Lawyers Law states, “From the day a criminal suspect is taken into custody or questioned for the first time by investigative authorities, the entrusted lawyer… has the right to meet with the suspect/defendant… The meeting… should not be monitored or eavesdropped upon.”

However, the detainee’s basic right of access to a lawyer is far from being protected, especially in cases deemed “sensitive” by the government. As noted by the Committee in paragraph 2(a) of its List of Issues, in “sensitive” cases, citing CPL 96, police tell lawyers that because the cases involve “state secrets,” permission of the investigative organs (that is, in most cases, the PSB) is needed before they can be granted access to their clients. No explanation is provided in regard to the question of what kinds of cases may be considered to involve “state secrets”; rather, lawyers are told that the investigative organ needs to review any cases under discussion. Thus in practice, the permission of the PSB is always required by lawyers before they are allowed access to their clients. Because there are no clear legal parameters to determine when and under what circumstances the police can claim a case involves “state secrets,” the police can use this exemption at will.

For example, human rights defenders Chen Daojun (陈道军) and Huang Qi (黄琦), who have been detained since May 9 and June 10, 2008, respectively, have been denied access to legal counsel. The two were taken into custody for posting dissident articles online and reporting on official corruption related to the May 12 Sichuan Earthquake. Chen and Huang’s lawyers have been told that they are not allowed to meet the two because their cases involve “state secrets.”

**Lawyers are deterred from defending detained clients**

The Committee is correct to note in paragraph 2(p) of its List of Issues that, according to Article 306 of the Criminal Law, lawyers lay themselves open to being imprisoned for defending clients in criminal cases. As a result, many lawyers avoid such cases, leaving most detainees with no legal representation and thus exposing them to increased risk of torture and ill-treatment.

According to Article 306 of the Criminal Law,

> **During the course of criminal procedure, any defense lawyer and legal representative who destroys or falsifies evidence, or assists parties concerned in destroying or falsifying evidence, or threatening or luring witnesses to contravene facts, change their testimony or make false testimony is to be sentenced to not more than three years of fixed-term imprisonment or criminal detention…**

According to Chinese criminal lawyers, in recent years Article 306 has been used by the Procuratorate to investigate and prosecute lawyers, but it is not clear how many have been convicted in this way. Even when the Procuratorate has no intention of proceeding towards conviction of a lawyer on such charges, it may make use of this article as a threat. As a result of the Article's use to intimidate and dissuade lawyers from taking “sensitive”
cases, the number of lawyers handling criminal cases has not increased despite the increase in their numbers. Many of them are afraid of handling criminal cases. According to one estimate, on average, each lawyer handles fewer than one criminal case a year and over 70% of criminal cases have no involvement of lawyers at all. In some highly publicized criminal cases, the court appoints a lawyer for the defendant, but often without the defendant’s consent or without the defendant having the chance to meet the lawyer before going to trial.

CHRD wishes to bring to the attention of the Committee an especially worrying development in Chinese law: the addition of Article 37 to the newly amended Lawyers Law. Article 37 states, “When a lawyer is acting on behalf of, and speaking in defense of, a defendant, s/he will not be legally responsible. However, this does not apply to lawyers whose speech endangers national security, or who maliciously slanders others and seriously disturbs the order of the court” (italics added for emphasis). CHRD is concerned that the newly amended Lawyers Law will have the effect of curbing criminal lawyers and lawyers in general in their efforts to defend their clients as well as discouraging lawyers from taking cases which may incur the displeasure of the authorities. CHRD is also concerned that the Lawyers Law will be used as a tool to infringe upon the independence of lawyers and to persecute human rights lawyers.

The right to appeal often violated & cases are sent back to original courts for “retrial”

When higher courts receive appeals of cases in which the facts are unclear or there is insufficient evidence, they return the cases to the original courts for retrial rather than reviewing and adjudicating the cases themselves. The original courts tend to deliver the same or even harsher sentences because they, together with the local police and Procuratorate which participate in the investigation and prosecution, do not want to admit any wrongdoing. On rare occasions, the original court may deliver a lighter sentence following retrial. In some cases, for fear of a harsher sentence, the defendants and their lawyers decide not to appeal the court’s verdict.

This practice is in direct contradiction to the government’s claim that “In cases where the facts are not clear, where evidence is insufficient and where it is not possible to determine the guilt of the accused, a verdict of innocent should be resolutely declared in accordance with the law, without hesitation or indecision” (CAT/C/CHN/4 para.30). The right to appeal, which aims to ensure at least two layers of judicial scrutiny of any case, the second of which must be conducted by a higher court, is, in practice, frequently violated.

Investigation of Torture & Accountability for Torture

The judiciary is not independent & restraints on police power are insufficient

At the root of the widespread use of torture is a lack of effective restraints on the coercive powers of law enforcement agencies. This has several causes, including the priority given to political considerations over individual rights and the lack of independent oversight of these agencies.

The prioritization of political considerations is most clearly demonstrated by the case of Falun Gong. After the government decided to crack down on Falun Gong, it established Office 610, a political office with higher status than the judiciary, the PSB and the Procuratorate, to persecute its adherents. In theory, Falun Gong practitioners can petition its Letters and Visits Office or sue Office 610 for torture, but in practice, even these limited complaint
mechanisms are closed to practitioners because they are treated as a "special category" and their complaints are not accepted by government offices. Falun Gong practitioners rarely lodge official complaints for fear of being subjected to even worse persecution due to their membership in the so-called “evil cult.” It is believed that Office 610 is responsible for the torture and cruel treatment of many Falun Gong practitioners and that its officers are never punished or held legally responsible for their crimes.

The Procuratorate and the judiciary, which might have otherwise provided some institutional safeguards against torture, are unable to genuinely and independently supervise law enforcement agencies for several reasons.

Firstly, the Procuratorate, which combines the contradictory functions of prosecution of criminal suspects and supervision of the conduct of the police, is unlikely to be effective in carrying out the latter function because its primary purpose is aligned with that of the PSB; that is, to solve a case quickly and punish perpetrators.

Secondly, the CCP’s Political-Legal Committee is responsible for directing and controlling the judiciary, the PSB and the Procuratorate. In many local areas, the Secretary of the Political-Legal Committee is also head of the PSB. Under this arrangement, heads of the Procuratorate and the judiciary are both under the control of the PSB and thus have less power than the PSB, making it impossible for the judiciary or the Procuratorate to hold police officers accountable for torture. The Political-Legal Committee requires the Procuratorate, the judiciary and the PSB to “cooperate” in solving major cases rather than acting as checks on each other.

Thirdly, during court proceedings involving “sensitive” cases, the presiding judge has to follow the guidance of the court’s Judicial Committee. Made up of the head of the court and its main judges, it ensures that “guidance” from the Political-Legal Committee is implemented. Thus, the power of presiding judges to make independent rulings based on the merits of a case is limited, including in regard to dismissing evidence obtained through torture.

Finally, the local Procuratorate and Court, which, according to Article 5 of the CPL, are to be “free from interference by any administrative organ, public organization or individual,” are in fact under the control of the local government in addition to being subjected to the influence of the Political-Legal Committee. Among other forms of subordination, the local Procuratorate and Courts are dependent on the local government for funding of their routine operations: the decision-making power over the funding of the Procuratorate and Courts, promotion and personnel matters, as well as the working conditions (such as the purchase of new equipment) at the Procuratorate and Courts, rests with the local government. It therefore frequently interferes with the Procuratorate’s and the Courts’ decisions regarding investigation, arrest, prosecution, conviction and sentencing. The local government often presses the Procuratorate to give up investigation of local cadres or orders it to arrest or prosecute individuals based on political considerations.

**Perpetrators of torture rarely punished or held legally accountable**

Victims of torture, their lawyers, families, or anyone with knowledge of the commission of an act of torture can submit a complaint to the PSB Superintendent’s Office or the Procuratorate. In both cases, the complainants usually receive some form of response, either verbal or written, stating that after “investigation” no evidence of torture to extract confession was found.
Victims and their lawyers often complain about torture to presiding judges during trial, but the judges either ignore the complaint or dismiss it when the police deny the allegation in court. In a number of trials involving the death penalty, defendants complained of being tortured to extract a confession and in some cases even showed the judges the physical signs of beatings. Such cases include those of Chen Guoqing (陈国清) and three other villagers from Chengde City, Hebei Province who were sentenced to death for “robbery”; Cheng Fagen (程发根) and three villagers from Leping City in Jiangxi Province convicted of “murder, robbery and rape”; and Yang Ming (杨明), an official from Guizhou Province convicted of “corruption and bribery.” However, the courts ignored the allegations of torture as well as the contradictions and dubious nature of the evidence, convicted the defendants and sentenced them to death.

At times, some officials are held legally accountable for torture, but their sentences, given the gravity of the crime, are generally light. For example, Liu Han (刘翰), a former Chief of Investigation at Jiuqiang City PSB Gongqing Subdivision in Jiangxi Province, was sentenced to a year in prison in 2005 for torturing a suspect to death in 1997. Two other policemen who participated in the torture were each sentenced to ten and six months’ imprisonment, commuted to a year of probation. Three policemen from Qiubei PSB in Wenshan Zhuang and Miao Autonomous Prefecture, Yunnan Province, Li Guangxing (李光兴), Liu Zichun (刘自春) and Lu Liangjia (卢梁甲), were sentenced to 18 months’ imprisonment for torturing to extract confession. The victim, Wang Shuhong (王树红), was beaten with electric batons and wooden rods, causing him permanent disability.

Victims & their lawyers face difficulties obtaining evidence

When the authorities ignore or deny complaints of torture, there is very little the victims or their lawyers can do because it is often too difficult to obtain evidence of torture.

Investigators often make use of methods of torture and mistreatment which do not leave physical traces, making it hard to collect evidence. In some cases, when the torture has left physical wounds, police have delayed granting permission to lawyers to meet the detainee or have delayed trial until the suspect’s wounds have become less visible.

Closed-circuit cameras are installed in some detention centers and prisons to deter inter-inmate violence and the police from using torture, but not all detention centers are so equipped. Where cameras are installed, the police have full control over the filming and the disposal of filmed material, therefore footage can be edited or deleted at will; thus the cameras lose their monitoring function.

Official detention centers are not the only facilities where police use torture. It is a common practice of local police stations to maintain temporary detention facilities such as rented hostels, basements and offices. Individuals are also often detained in their homes. In these informal detention facilities, it is even less likely that evidence of torture will be documented. Torturers sometimes use “creative” combinations of official detention centers and unofficial detention facilities to avoid leaving evidence of their deeds. For example, Yang Maodong (杨茂东, a.k.a. Guo Feixiong 郭飞雄), an imprisoned human rights defender from Guangdong Province, was blindfolded and taken away from the detention center where he was being held to an unknown location in Shenyang, Liaoning Province, where police tortured him to extract a confession. After torture, police returned...
Guo to the detention center for further interrogation. Police could then deny torturing him at the detention center.

**Victims of torture almost never receive adequate compensation**

Most victims of torture are often unable to win compensation, even when they try. Song Dewen (宋德文), a Heilongjiang villager released in 2002 after being held for seven years without trial, has not yet received compensation for having been arbitrarily detained. Even if victims are compensated, they usually receive a very small amount. For example, Wang Weifa (王威发), a Hunan villager wrongfully convicted of robbery and rape based on a confession extracted by torture, received RMB 33,000 (USD 4,836) in compensation from the local government after spending 30 years in prison. Dissatisfied with the compensation, Wang sought compensation from the local courts in accordance with the Law on State Compensation, but the courts refused to accept his case.

In theory, victims of torture must be compensated. According to the Law on State Compensation, the victim can either apply to the government agency under the auspices of which the torture occurred, or raise the issue when filing an administrative review or lawsuit concerning the case. The government agency involved has to compensate the victim within two months of the receipt of the application. If the government agency fails to deliver the compensation within the legal limit, or if the victim is dissatisfied with the compensation allocated, they can then sue the government agency.

In other words, the government unit charged with processing the application and delivering compensation is the one responsible for the torture. Although the victim can sue the government unit for failure to deliver compensation, the lack of an independent judiciary means there are no reliable mechanisms to ensure that victims of torture are properly compensated.

For a certain period of time victims of torture sometimes receive free medical care from the government unit responsible for the torture if the agency wishes to cover up these illegal acts. However, there appears to be no explicit provision in Chinese law that ensures that victims receive appropriate medical attention in such circumstances.

**Harassment & arbitrary detention of human rights defenders not investigated**

Human rights defenders (HRDs) are frequently subjected to various kinds of persecution and retaliation, including police monitoring, forced disappearance, arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment. Even after such cases are reported to the police and the relevant government departments, the authorities rarely, if ever, investigate them, much less hold the perpetrators accountable or takes steps to prevent such practices.
In its List of Issues, the Committee mentioned the case of Teng Biao (滕彪), a well-known human rights lawyer who was kidnapped and arbitrarily detained on March 6, 2008, by police from the National Security Unit of Beijing PSB. About six months prior to Teng’s arbitrary arrest, on September 29, 2007, another well-known human rights lawyer, Li Heping (李和平), was kidnapped under similar circumstances. He was taken to an undisclosed location for interrogation and was beaten severely by unidentified men before being dumped in the woods outside Beijing. Li reported the abduction to his local PSB, which told him that the case would be investigated. To date, those who kidnapped Teng and Li have not been held accountable for their crimes, and CHRD is not aware that any investigations into the incidents were conducted. The police have never acknowledged responsibility for Li’s kidnapping and assault. After their release, Li and Teng continued to be harassed by Beijing police.

The Committee also raised questions in the List of Issues about the case of Chen Guangcheng (陈光诚), the blind reproductive rights activist from Linyi City, Shandong Province, convicted of “Intentionally damaging property and gathering crowds to disturb transport order,” and sentenced on March 11, 2006, to four years and three months’ imprisonment. Chen continues to languish in Linyi Prison. During his imprisonment, he has been verbally abused, fed poor quality food, given insufficient bedding and prevented from reading the books brought by his family. In June 2007, under the instructions of the prison authorities, Chen was beaten by fellow inmates. Since September 2007, Chen’s wife Yuan Weijing (袁伟静) has been barred from visiting him. As for the attacks, harassment and arbitrary detention of the lawyers and activists who defended and supported Chen during his trial, such as Li Fangping (李方平), Li Subin (李苏滨), Xu Zhiyong (许志永), Hu Jia (胡佳), Li Jinsong (李劲松), Zhang Lihui (张立辉) and Gao Zhisheng (高智晟), CHRD documented their experiences in our communiqué to the UN’s Special Procedures. CHRD is not aware of any official investigations into these incidents.

In the List of Issues, the Committee mentioned the case of Yang Chunlin (杨春林), the Olympics prisoner who was convicted of “Inciting subversion of state power” and sentenced to five years’ imprisonment for collecting signatures for a petition entitled “We Want Human Rights, not the Olympics.” According to Yang, he was tortured and coerced to confess while in detention. Yang, his family and lawyers are not aware of any investigation launched in response to his allegations of torture. Not only did the government not investigate his alleged torture while in detention, he was subjected to further torture and degrading treatment. At his trial on February 19, 2008, Yang, in handcuffs and leg irons, was made to wear a black hood and walk up six flights of stairs to reach the courtroom. During the trial, he was released from the leg irons, but his legs were fastened to an iron seat, preventing him from stretching, moving or standing up during the five-hour trial. At his sentencing hearing on March 24, court police hit him several times with electric batons when he attempted to speak with his family who were present. On March 28, Yang told his lawyers that he was beaten by guards at the detention center on March 5 after he had publicly described the misconduct of some prison cadres. When Yang’s sister brought a complaint letter about the beating Yang received during the sentencing hearing to Jiamusi Intermediate People’s Court, the head of the Court not only admitted the incident, but said that the beating was “planned and permitted [by the Court] following careful study.”
Recommendations to the Chinese government

Amend the definition of torture

Amend the definition of torture so that it conforms to that of the Convention and includes all elements of the practices of torture and cruel, inhuman and degrading treatment and punishment as described in the Convention. The revised definition should:

- Include perpetrators of torture who are government officials and those acting with the consent or acquiescence of a public official;
- Include the infliction of mental suffering, such as the forms listed in paragraph 1 of this report; and
- Clearly state that if the act can be defined as torture under the new definition, then it is torture regardless of where it is committed or for what purpose.

Reform the detention system

- Increase the incidence of releasing suspects on bail to await trial by revising Article 51 of the CPL to ensure that pretrial detention should be restricted to individuals who are suspected of committing violent, major, or serious offenses.
- Revise the CPL in order to guarantee the right of detainees to challenge the legality of their detention before an independent court.
- Transfer the power to approve arrest and various legal extensions to pretrial detention from the Procuratorate to independent courts.
- Transfer the power to control detention centers holding suspects awaiting trial from the PSB to a different government agency, as suggested by the Special Rapporteur on Torture in his 2006 report on China.
- Revise Articles 122 and 128 of the CPL, which allow indefinite pretrial detention under certain circumstances, so that there are clear time limits are imposed.
- Equip all detention centers with closed-circuit cameras.
- Hold guards at detention facilities responsible for beatings and other mistreatment to which detainees under their supervision are subjected, whether such treatment is inflicted by officials or other inmates.
- Do not review or examine correspondence sent by detainees unless under special circumstances as stipulated in the law, and under no circumstances inspect detainees’ correspondence with lawyers or offices which receive complaints.
- Make labor for prisoners and detainees voluntary and ensure that it occurs in a safe working environment and prisoners and detainees are paid for their labor.

Abolish all forms of arbitrary detention

- Abolish the RTL system and subsume any punishment that involves deprivation of liberty under the Criminal Law system.
- Immediately close all “black jails,” “law education classes” and all other illegal and unofficial detention facilities.
• Draft a Mental Health Law which sets clear requirements and procedures for subjecting individuals to involuntary hospitalization to protect their legal and human rights.

**Abolish the death penalty & respect the rights of individuals sentenced to death**

• Set a timetable for abolition of the death penalty. In the meantime, put safeguards in place to end abuses associated with the death penalty and drastically curtail the number of death sentences.

• Declare a moratorium on executions. Replace the death penalty with “Death with suspended execution.”

• Drastically reduce the list of crimes punishable by death, limiting it to only very grave and violent crimes.

• Individuals who have committed non-violent crimes, such as economic crimes, should not be sentenced to death.

• Cease classifying statistics on the death penalty as state secrets and make such information publicly available.

• Respect the basic human rights and dignity of individuals who have been sentenced to death.

• Do not subject death row prisoners to other cruel, inhuman or degrading treatment or punishment, such as public executions and forcing them to wear handcuffs and leg irons.

• Prohibit secret executions.

• Guarantee the visitation rights of families and legal representatives of individuals sentenced to death.

• Prohibit the removal of the organs of those executed unless they have consented in writing in the presence of their lawyer or family to donate their organs.

**Hold government officials legally accountable for torture**

• Hold officials legally accountable for torture if found guilty.

• Investigate all complaints of torture against all government officials and individuals employed by the government or working on the government’s behalf, and in particular, government and CCP officials responsible for detention centers, Urban Inspection Officers, and officials responsible for implementing the population policy.

**Strengthen the independence of the judiciary**

• Abolish the Political-Legal Committee.

**Render all evidence obtained through torture inadmissible**

• Amend the Criminal Procedure Law so that it explicitly prohibits the use of all evidence obtained through torture.

• The CPL should explicitly state that any evidence obtained through torture is inadmissible in all proceedings.

**Establish an agency under the NPC to receive complaints of torture and to oversee investigations of torture**

• Establish a sub-committee under the NPCSC to receive complaints of alleged abuses and torture at detention facilities and to oversee investigations by the Procuratorate and the courts.
The Procuratorate should investigate complaints and prosecute perpetrators. The court should bring the accused to trial in accordance with criminal procedures, as well as process compensation for victims of torture. Both Procuratorate and court should report to the supervisory sub-committee.

Make publicly available information and statistics regarding the cases of torture reported to the sub-committee, investigations conducted under its supervision and the results of such investigations.

Protect the rights of lawyers

- Abolish Article 306 of the Criminal Law and Article 37 of the Lawyers Law to ensure that lawyers enjoy the right to freedom of expression during trial.
- Protect the rights of suspects to have a lawyer present during their interrogation.
- Revise Article 96 of the CPL to remove the clause barring lawyers’ access to their clients involving “state secrets.”

Allow greater supervision of detention facilities by members of the public

- Allow the media, interested members of the public and civil society groups access to prisons and detention facilities for inspections.
- Establish effective channels for these individuals and groups to make suggestions to officials responsible for these facilities.
- Strengthen and protect the right of deputies to the People’s Congresses at all levels to supervise and inspect detention facilities.
- Officials responsible for these facilities must also answer queries and complaints raised by these deputies.
- To ensure that deputies play an effective role in monitoring these facilities, elections to People’s Congresses must be free and fair.

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1 CAT/C/CHN/4, June 27, 2007.
2 CAT/C/CHN/Q/4, September 9, 2008.
3 CAT/C/CHN/Q/4 para. 34
4 National People’s Congress Standing Committee, Criminal Law of the People’s Republic of China (中华人民共和国刑法), effective October 1, 1997. These are individuals living in the neighborhood who volunteer and assist the police on specific tasks to ensure the “security” of the neighborhood. These tasks could include monitoring specific individuals or types of individuals (for example, petitioners adherents of Falun Gong).
DUE PROCESS


12 CAT/C/CHN/Q/4 para. 2(h)

13 NPCSC, Administrative Litigation Law of the People’s Republic of China (中华人民共和国行政诉讼法), effective October 1, 1990.


15 CHRD, Open Letter to the Standing Committee of the National People’s Congress: It is Difficult to Establish the Rule of Law without the Abolition of Re-education through Labor (维权网致全国人大常委公开信：劳教不废，法治难立), July 2, 2008, http://www.crd-net.org/Article/Class1/200807/20080702234552_9241_2.html

16 CAT/C/CHN/Q/4 para. 2(p)


18 CAT/C/CHN/Q/4 para. 2(p)


23 In an interview, Huang Qi, founder of 64tianwang.com, one of China's prominent human rights information websites, said: “We know that there are too many of this kind of ‘classes;’ they are innumerable.” See “Yang Xianhong Interviews 7-year-old Girl: Eating Leftovers” (杨宪宏访谈七岁女孩：吃剩菜剩饭), 64tianwang.com, January 20, 2007, http://www.crd-net.org/Article/Class53/200701/20070120121754_3168.html


25 See for example, Radio Free Asia, “Liu Qinfang, who Petitioned Because of her Husband Yao Baohua, was Sent to an Education Class <为丈夫姚宝华上访而被送往学习班>,” http://www.crd-net.org/Article/fmzj/200710/200710112445_5943.html

26 CAT/C/CHN/Q/4 para. 2(k)


28 For more information, see CHRD, “Olympics Prisoner Ye Guozhu Taken Away from Jail; His Whereabouts Unknown,” July 26, 2008,
http://www.crd-net.org/Article/Class9/Class10/200807/20080726125112_9643.html

CHRD, “China Formally Detains Olympics Prisoner Ye Guozhu to Prevent Protests,” July 27, 2008,
http://www.crd-net.org/Article/Class9/Class10/200807/20080727102216_9652.html

29 CHRD, “Olympics Crackdown Continues as Another Activist Is Sent to Labor Camp,” August 30, 2008,
http://www.crd-net.org/Article/Class9/Class10/200808/20080831115236_10342.html

30 拘传 (juchuan)
31 拘留 (juliu)
32 逮捕 (daibu)

33 MPS, Application of the Term of Criminal Custody by Public Security Organs (公安机关适用刑事羁押期限规定), effective since May 1, 2006.

34 Prosecutors are stationed in detention centers and prisons but they are not present in other detention facilities such as RTL camps.

35 CAT/C/CHN/Q/4 para. 11, 12 and 30

36 CAT/C/CHN/Q/4 para.31

37 Eight prisoners were convicted of Jia’s murder. His family also sued Xicheng PSB and eventually received compensation through an out-of-court settlement with the PSB. However, none of the guards at Xicheng Detention Center were held legally accountable. For more information, see Liu Qiang, “Questions on the Nature of Supervision in Detention Centers: Starting the Discussion from a Case of State Compensation” (看守所监管行为的性质问题—从一起国家赔偿案说开去), Suzhou Judicial Web, http://www.szsfj.gov.cn/yqweb/ViewInfo.asp?id=1133; Yang Wenxue, "Suspect Beaten to Death in Detention Center; Family Lost in First Trial Suing the PSB (嫌犯在看守所被打致死 家属状告公安局一審敗訴)", People Net,

38 CHRD, “Update on Imprisoned Activist Hu Jia and His Wife Zeng Jinyan,” August 26, 2008,
http://crd-net.org/Article/Class9/Class10/200808/20080831115236_10342.html

39 CHRD, “Imprisoned Activist Mao Hengfeng Allegedly Tortured,” July 11, 2008,
http://crd-net.org/Article/Class9/Class10/200711/200710802042_6276.html

40 CAT/C/CHN/Q/4 para.31

41 Tao Jun, “Detention Centers: Full of Ill-treatment and Torture” (充满虐待和酷刑的看守所), December 8, 2006,

42 CRLW, “Li Guohong Exposes Poor Working Conditions that Led to Serious Injuries at a Re-education through Labor Camp” (李国宏劳教所内披露劳动条件恶劣致人严重受伤), March 13, 2008,
http://www.crd-net.org/Article/Class18/liguohong/200803/20080313100359_8010.html


44 Supreme People’s Court, Explanation of Several Issues on the Implementation of the PRC Code of Criminal Procedure (最高人民法院关于执行<中华人民共和国刑事诉讼法>若干问题的解释), September 8, 1998.
NPCSC, Public Order Administration Punishment Law of the People's Republic of China, see above.

NPCSC, PRC Lawyers Law (中华人民共和国律师法), effective June 1, 2008.

Most criminal cases are investigated by the PSB except those involving government officials. Article 18 of the Criminal Procedure Law states that, “Investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law. Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights—committed by State functionaries by taking advantage of their functions and powers—shall be placed on file for investigation by the People's Procuratorates. Cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need to be handled directly by the People's Procuratorates. They may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level.”

CHRD, “Detained Sichuan Activists Denied Access to Legal Counsel”, June 25, 2008, http://www.crd-net.org/Article/Class9/Class15/200806/20080625223747_9160.html. Huang's lawyer was finally allowed to meet him on September 24, three and a half months after he was taken into custody; Chen is still denied access to legal counsel.


The four were first convicted of “robbery” and sentenced to death by Chengde Intermediate People’s Court in August 1996. Between 1996 and 2000, the case was sent from Hebei Provincial High Court back to Chengde Intermediate People’s Court for retrial due to “unclear facts.” In one of the retrials in October 2000, Chengde Intermediate People’s Court sentenced Chen and Yang to death, He to a suspended life sentence and Zhu to life imprisonment. In July 2003, the Hebei Provincial High Court heard the trial of the four for the first time instead of sending the case for retrial. Chen, Yang and He were sentenced to suspended death sentences and Zhu to life imprisonment. Throughout the four’s numerous trials, the judges never recorded or investigated the defendants’ claims that they were tortured into confessing.


57 CAT/C/CHN/Q/4 para. 2(n).
59 CAT/C/CHN/Q/4 para. 2(n)
61 CAT/C/CHN/Q/4 para. 20
65 CRLW, “Head of Jiamusi Court Said Yang Chunlin’s Beating by Electric Baton was Carefully Considered” (<佳木斯法院院长放言杨春林遭电击是法院精心策划), May 4, 2008, http://www.crd-net.org/Article/Class18/yangchunlin/200805/20080504225906_8558.html
66 E/CN.4/2006/Add.6