



## Chinese Human Rights Defenders (CHRD) 维权网

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Promoting human rights and empowering grassroots activism in China

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### Issues and Cases CHRD Recommends the Committee against Torture Include in its

#### List of Issues for the Chinese Government to Address in its Fifth Periodic Report

This submission, prepared by Chinese Human Rights Defenders (CHRD), raises a number of issues and cases which we urge the Committee against Torture (CAT) to include in the List of Issues (LOI) it will request the Chinese government to address in its fifth periodic report to CAT. This document is also intended to supplement our recent report on the Chinese government's December 2009 submission to CAT under the Committee's follow-up procedure.<sup>1</sup>

Torture remains a serious problem in China and one that urgently demands a genuine commitment to reform on the part of the Chinese government. This submission does not purport to provide a comprehensive overview of the current situation, but rather identifies some of the areas of greatest concern. We urge CAT to press the Chinese government for concrete evidence of actions being taken to address the issues and cases raised here, many of which CAT has raised with China in the past.

#### **I. Recommended Issues for CAT to Include in its LOI for the Chinese Government**

##### **A. Unnatural deaths in detention centers**

Owing partially to local officials' ham-handed attempts to cover up unnatural deaths of individuals in police custody through bizarre, often illogical explanations, detention center (*kanshousuo*) deaths has been one of the most visible human rights issues in China during the past two years. Unnatural deaths of detainees have been an ongoing concern of CAT's as well. The Committee included a question on unusual deaths in detention facilities in its List of Issues provided to the Chinese government for China's fourth periodic report, and in its 2008 Concluding Observations on China's report (hereinafter "Concluding Observations"), CAT stated "that it remains concerned about reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody."<sup>2</sup>

<sup>1</sup> CHRD, "Report on Several Issues Raised by the Chinese Government's Response to the UN Committee Against Torture's Recommendations for Follow-Up in 2009." For the text of that report, and for more information on CAT's follow-up procedure, see CAT's web page, "Follow Up," <http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>.

<sup>2</sup> UN Committee against Torture (CAT), "Concluding observations of the Committee against Torture: China," 12 December 2008, CAT/C/CHN/CO/4, available at <http://www.unhcr.org/refworld/docid/496c854b2.html>, para. 12; and "List of issues to be considered during the examination of the fourth periodic report of China," September 9, 2008, (CAT/C/CHN/Q/4), <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.Q.4EN.pdf>, para. 2 (d).

In its submission to CAT in December 2009, the Chinese government wrote that “in 2009, the Supreme People's Procuratorate (SPP) and the Ministry of Public Security (MPS) jointly carried out an inspection campaign dealing specifically with regulation and law enforcement of detention facilities throughout China.”<sup>3</sup> Indeed, in late April 2009, the SPP stated that there had been 15 unnatural deaths in detention thus far in 2009 and that the inspection campaign with the MPS aimed to crack down on “jail bullies” and ensure improved management of detention centers.<sup>4</sup>

However, more than a year after that inspection campaign and related efforts on the part of the Chinese government, victims both young and old continue to perish in different types of detention facilities across the country. A *Zhejiang Daily* report<sup>5</sup> published in June 2010 cites five additional cases since the beginning of this year; moreover, CHRD has documented several cases of suspicious deaths in Re-education through Labor camps during the same time period.<sup>6</sup> Far from an exhaustive account, these reports only serve to hint at the severity of the problem.

Most deaths in detention centers occur as the result of one of two phenomena: violence perpetrated by “jail bullies” and the use of torture to extract confessions. “Jail bullies,” detainees who attack other inmates with the explicit or understood consent of prison officials, are most often blamed for the deaths of other detainees, and yet the Chinese government, despite issuing notices on the problem as far back as 1988, has so far been unable or unwilling to take effective measures to root out and eliminate jail bullies.<sup>7</sup> Given that the public security apparatus (under the MPS) is responsible for both managing detention centers *and* investigating criminal cases, the prevalence of the use of torture to extract confessions is not surprising.

**CHRD recommends that CAT ask the Chinese government to:** provide information on concrete steps being taken to address the issue of deaths in detention centers since the SPP and MPS's joint review of detention center management in mid- 2009. CHRD reiterates its recommendation that the Chinese government transfer management authority over detention centers from the Ministry of Public Security to a different government agency.<sup>8</sup>

## **B. New regulations banning evidence obtained through torture face uncertain future**

On June 25, 2010, the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice jointly issued two new regulations regarding evidence in criminal cases: one dealing with evidence in capital cases, and the other concerning the exclusion of

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<sup>3</sup> “Comments by the Government of the People's Republic of China concerning the concluding observations and recommendations of the Committee against Torture,” December 9, 2009, CAT/C/CHN/CO/4/Add.2 <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT.C.CHN.CO.4.Add2.pdf>, para. 2.

<sup>4</sup> “Top Prosecuting Body Starts Jail Safety Drive After Inmate Deaths,” *South China Morning Post*, April 21, 2009.

<sup>5</sup> For an English translation, see the Dui Hua Human Rights Journal, <http://www.duihuahrjournal.org/2010/06/zhejiang-daily-compiles-morose.html>.

<sup>6</sup> See, e.g., CHRD, “Deaths Highlight Continued Problem of Torture, Poor Oversight in Detention Facilities,” October 6, 2009; CHRD, “Man Dies in Re-education through Labor Camp, Allegedly Tortured,” *China Human Rights Briefing* May 4-10, 2010.

<sup>7</sup> CHRD, “Supreme People's Procuratorate Reports on Actions Taken Against ‘Prison Bullies’ in 2009,” *China Human Rights Briefing* March 9-15, 2010, <http://chrdnet.org/2010/03/16/china-human-rights-briefing-march-9-15-2010/>.

<sup>8</sup> See CHRD, “Persistent Torture, Unaccountable Torturers: A Report on China's Implementation of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” November 5, 2008, <http://chrdnet.org/2008/11/05/persistent-torture-unaccountable-torturers/>. This recommendation appears on page 29.

confessions which had been extracted through torture.<sup>9</sup> These regulations went into effect on July 1, 2010. While the appearance of these regulations is an encouraging sign, CHRD is concerned that these regulations contain certain problematic provisions, and it remains to be seen whether they will prove to be effective in preventing torture.

There are a number of articles in these regulations, particularly in the Rules Concerning Questions about the Exclusion of Illegal Evidence in Handling Criminal Cases, which are worrisome. Among these is Article 6, which places an undue burden of proof on the victim of torture. Defendants are required to provide evidence including persons, time, place, and manner of the torture inflicted upon them, some of which may be difficult or impossible for a torture victim to ascertain or understand at the time they were tortured or afterwards. The rules are silent regarding the consequences if a defendant cannot produce this evidence. Article 12 poses a problem as well. When a judgment of a court of first instance is appealed, according to the Criminal Procedure Law (CPL), courts of second instance are required to “conduct a complete review of the facts... not limited by the scope of appeal.”<sup>10</sup> The new rules, however, appear to conflict with this provision of the CPL. The new rules provide that if a defendant alleges that a confession was extracted through torture, and the procuratorate “does not provide evidence to confirm [the legality]” of the confession, the court is not required to investigate how the confession was obtained. It simply states that the confession may not be used as a basis for conviction.

Even more important than the language of these regulations, however, is their implementation. Early indications have not been encouraging. In late July, lawyer Zhu Mingyong released to the public a video recording in which his client, alleged Chongqing mob boss Fan Qihang, describes being subjected to torture by police seeking to extract a confession and displays scars left by their abuse. Fan was convicted and sentenced to death based on a confession obtained through this torture. Zhu publicly released the video after having submitted it to the Supreme People’s Court (SPC), as Fan’s case went to the SPC for review of his death sentence. In August, a group of prominent Chinese lawyers, including Teng Biao, Li Xiongbing, and Li Fangping, signed a public letter calling on the SPC to investigate the allegations of torture in Fan’s case. Fan’s case remains under review at the time of writing. (See Part II of this report for more information about his case).

**CHRD recommends that CAT ask the Chinese government to:** provide information on the implementation of the two new rules regarding evidence in criminal cases: since taking effect, how many times have they been invoked successfully? What has been the outcome of those cases in which torture has been alleged? What evidence can the Chinese government provide that these rules are actually being implemented? And what is the status of the Fan Qihang case? Has there been an investigation into his allegations, have the individuals who tortured him been apprehended, and what is the status of the SPC review of his death sentence?

### **C. Revised State Secrets Law fails to address CAT’s recommendations**

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<sup>9</sup> The Dui Hua Foundation has translated the text of these regulations into English and made them available on their website at <http://www.duihua.org/hrjournal/evidence/evidence.htm>.

<sup>10</sup> Article 186 of the CPL states “A People’s Court of second instance shall conduct a complete review of the facts determined and the application of law in the judgment of first instance and shall not be limited by the scope of appeal or protest.”

The Standing Committee of the National People's Congress adopted revisions to the State Secrets Law (SSL) on April 29, 2010. Unfortunately, the amendments did not address CAT's recommendations in its Concluding Observations relating to the states secrets regime – that the Chinese government, among other actions, “ensure that every suspect is afforded the right to have prompt access to an independent lawyer, where possible of their own choosing, including in cases involving ‘state secrets’” and “ensure that the determination as to whether a matter is a State secret can be appealed before an independent tribunal.”<sup>11</sup>

The revised SSL does not explicitly refer to the right to legal representation of suspects in cases involving state secrets. Although Article 33 of the Lawyers Law states that a lawyer has the right to meet with a criminal suspect once the suspect authorizes the lawyer to act as his or her representative, Article 96 of the Criminal Procedure Law states that “approval of the investigative organ” must be obtained in cases which involve state secrets. Local regulations place similar limits on a lawyer's right to access his or her client.<sup>12</sup> In its December 2009 submission, the Chinese government downplayed this concern, writing that “it is illegal for case-management officers to reject lawyers' requests to meet with their clients on the grounds of the need for confidentiality.”<sup>13</sup> However, CHRD continues to document such cases: to give just one example, on May 19 of this year, lawyer Zheng Jianwei attempted to meet with detained village chief Xu Kun, who was involved in a high-profile land rights dispute in Baihutou Village, Beihai City, Guangxi Province. Beihai Public Security Bureau officials told Zheng that he could not meet with Xu, who had already been in their custody for five days, because Xu's case involved state secrets.<sup>14</sup>

The revisions to the SSL do not address the process by which a piece of information is designated to be a state secret – a process that remains unsupervised by an independent body and subject to abuse by police. Although Article 20 of the SSL states that, when in doubt, government organs can bring the matter to the attention of the National Administration for the Protection of State Secrets (NAPSS) and its local bureaus, they are not obligated to do so. Even if they do consult with the NAPSS in some cases, the extent to which it is “independent” from those making the designation is questionable. The revised law does not outline any mechanism by which a citizen accused of violating the SSL may challenge, or even inquire about, the classification of pieces of information as state secrets. Although the government claimed in its December 2009 submission on follow-up that “detainees have the right to challenge decisions as to whether a matter constitutes a state secret,” and that “the state security department... shall determine the validity of the challenge,”<sup>15</sup> the NAPSS usually does not respond to such challenges and when citizens bring the matter to the courts, the cases are frequently ignored.

**CHRD recommends that CAT ask the Chinese government to:** further revise the State Secrets Law in keeping with CAT's recommendations in the Concluding Observations, as outlined above, without delay.

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<sup>11</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), para. 16.

<sup>12</sup> See for example, Beijing High Court, Beijing Procuratorate, Beijing Bureau of Justice, Beijing PSB and Beijing Bureau of State Security, “Trial regulations on the relevant questions regarding lawyers meeting with suspects in custody” (关于律师会见在押犯罪嫌疑人、被告人有关问题的规定 (试行)), effective since June 2, 2008.

<sup>13</sup> “Comments by the Government of the People's Republic of China concerning the concluding observations and recommendations of the Committee against Torture” (CAT/C/CHN/CO/4/Add.2), para. 5(d).

<sup>14</sup> CHRD, “More Details Emerge Regarding Government Retaliation against Villagers in Guangxi Province,” *China Human Rights Briefing May 18-24, 2010*, <http://chrinet.org/2010/05/26/china-human-rights-briefing-may-18-24-2010/>.

<sup>15</sup> “Comments by the Government of the People's Republic of China concerning the concluding observations and recommendations of the Committee against Torture” (CAT/C/CHN/CO/4/Add.2), para. 5(c).

#### **D. The ongoing harassment and abuse of human rights lawyers and human rights defenders**

CHRD remains deeply concerned by the continued harassment of and violence against human rights lawyers and human rights defenders. CAT raised this issue in its Concluding Observations, noting “persistent reports on attempts to curb the activities of human rights activists ... [including] violence by unofficial personnel allegedly engaged by public authorities to harass lawyers and petitioners, the use of different forms of administrative detention, such as ‘residential surveillance,’ re-education through labour and secret places of detention.”<sup>16</sup> The Concluding Observations also recommends the Chinese government address “acts of intimidation and other ways of impeding the independent work of lawyers.”<sup>17</sup> Based on ample reports received by CHRD since the end of the follow-up period, it is clear that these trends have continued into 2010 and that the Chinese government has not acted to protect either human rights lawyers or defenders from harassment, intimidation, or other abuse.<sup>18</sup>

CHRD wishes to once again highlight the situation of human rights attorneys Gao Zhisheng and Zheng Enchong. Gao disappeared in mid-April 2010 after resurfacing for about two weeks following a 13-month disappearance between February 2009 and March 2010. CHRD believes that the government produced Gao in a response to international pressure on his behalf, and once again “disappeared” him once that pressure eased. He remains at high risk of being tortured. In an article published in the *South China Morning Post* on June 13, 2010, Gao is quoted as saying he was tortured for 48 hours in the past year, and “treated like an animal,” being forced to sit in a fixed position for 16 hours a day, denied toilet paper, toothbrushes and showers.<sup>19</sup>

As for Zheng Enchong, there is no question about his whereabouts. Imprisoned in 2003 for “leaking state secrets,” Zheng has been under illegal house arrest at his home in Shanghai since his release from prison on June 5, 2006. While under unlawful house arrest, Zheng has been summoned by the police for questioning on more than 76 occasions, and has been frequently harassed by police assigned to guard him. Though he is under constant surveillance and monitoring, Zheng continues to provide assistance to victims of forced evictions and housing activists in Shanghai.<sup>20</sup>

In its Concluding Observations, CAT recommended that the Chinese government “take immediate action to investigate acts of intimidation and other ways of impeding the independent work of lawyers.”<sup>21</sup> In the summer of 2009, however, as CHRD described in its report on China’s follow-up, the government instead increased its efforts to abuse the annual review process of the performances of lawyers to strip the licenses of the most vocal lawyers and to intimidate the rest of the lawyer community. Beginning in May 2009, the bureaus of justice in Beijing, Heilongjiang and Guangxi pressured law firms at which a collection of roughly

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<sup>16</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), para. 19.

<sup>17</sup> *Id.* at para. 18.

<sup>18</sup> For information on harassment and abuse of human rights lawyers and HRDs since the Concluding Observations, please refer to CHRD’s 2010 report, “Report on Several Issues Raised by the Chinese Government’s Response to the UN Committee Against Torture’s Recommendations for Follow-Up in 2009,” available at [http://www2.ohchr.org/english/bodies/cat/docs/followup/ngos/CHRD\\_China41.pdf](http://www2.ohchr.org/english/bodies/cat/docs/followup/ngos/CHRD_China41.pdf).

<sup>19</sup> Paul Mooney, “Beijing’s Mafia Justice for Lawyer They Won’t Lock Up but Can’t Set Free,” June 13, 2010, [http://www.pjmooney.com/pjmooney/Most\\_Recent\\_Articles/Entries/2010/6/13\\_Beijings\\_Mafia\\_Justice\\_for\\_Lawyer\\_They\\_Wont\\_Lock\\_Up\\_but\\_Cant\\_Set\\_Free.html](http://www.pjmooney.com/pjmooney/Most_Recent_Articles/Entries/2010/6/13_Beijings_Mafia_Justice_for_Lawyer_They_Wont_Lock_Up_but_Cant_Set_Free.html).

<sup>20</sup> CHRD, “Housing Rights Activist and Former Lawyer Zheng Enchong Summoned,” *China Human Rights Briefing December 31, 2009- January 6, 2010*, <http://chrdnet.org/2010/01/25/china-human-rights-briefings-december-31-2009-january-6-2010/>.

<sup>21</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), para. 18.

25 or 30 human rights lawyers worked to “coordinate” with the authorities by either terminating their contracts or “failing” them in the annual review.

At the time of this writing, CHRDR is aware of at least six lawyers who still have not been able to obtain license renewals.<sup>22</sup> Furthermore, in May 2010, government authorities permanently revoked the lawyers’ license of two Beijing human rights lawyers, Tang Jitian and Liu Wei—a move that was widely believed to be punishment for their defense of Falun Gong practitioners and other “sensitive” clients. Teng Biao, a prominent human rights defender and law professor, who himself had his lawyers’ license cancelled by Beijing authorities in 2008, noted about Liu and Tang’s case, “the revocation of licenses is, after imprisonment, the harshest form of punishment” which the authorities can give to a lawyer.<sup>23</sup> Authorities have also taken action against law firms deemed to be involved in too many “sensitive” cases. One such firm, Beijing’s Yitong Law Firm, which was “temporarily” suspended for six months in February 2009, had not obtained approval from the relevant authorities to re-open as of March 2010.

Human rights defenders, like lawyers, continue to be punished for their activities. In a recent case, Xu Yishun, a human rights defender and former journalist from Hebei province was sent to a Re-education through Labor (RTL) camp in April 2010. While officially he was being punished for “fraud,” he was detained only after he attempted to visit Yuan Weijing, the wife of imprisoned Shandong human rights defender Chen Guangcheng. In July, Xu suffered head injuries and hearing loss after he was beaten by other inmates. In August, Xu ended up in the hospital after suffering a heart attack brought on by his hunger strike to protest the RTL system and his own detention.<sup>24</sup>

Activists also remain targets of harassment and violence outside of detention facilities. In June, Henan activist Liu Shasha was kidnapped by three men outside the east gate of People’s University in Beijing. Her kidnappers, whom she identified as Beijing National Security officers and government officials from Tongbai County, Henan Province, hooded Liu and drove her to an unknown location on the outskirts of Beijing. There, she had her hands bound and was repeatedly beaten over the course of the night by her captors. Liu was then driven to Ci County, outside Handan City, Hebei Province, and abandoned the following day after her kidnappers stole her cell phone and bank card. She was able to return to Beijing on July 18, and has filed a police report regarding the incident. CHRDR is not aware of any investigation into the incident having been launched to date.<sup>25</sup>

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<sup>22</sup> The license of Jiang Tianyong (江天勇) was cancelled on July 9, 2009; the licenses of Yang Huiwen (杨慧文), Wen Haibo (温海波), Zhang Lihui (张立辉), Li Jingsong (李劲松), and Tong Chaoping (童朝平) have not been renewed. CHRDR, “Lawyers Face Revocation of their Licenses for Defending Human Rights,” May 25, 2009; CHRDR, “Licenses of 18 Rights Lawyers Still not Renewed a Month after Deadline,” July 2, 2009; CHRDR, “Update: At Least Eight Human Rights Lawyers Remain Without Licenses,” *China Human Rights Briefing January 14-18, 2010*, January 27, 2010.

<sup>23</sup> CHRDR, “Hearing on Revocation of Lawyers’ Licenses Ends without Decision, Lawyers Condemn Baseless Punishment,” April 22, 2010, <http://chrdrnet.org/2010/04/22/hearing-on-revocation-of-lawyers-licenses-ends-without-decision-lawyers-condemn-baseless-punishment/>.

<sup>24</sup> CHRDR, “Hebei Province Reporter and Activist Xu Yishun Reportedly Beaten in RTL Camp,” *China Human Rights Briefing July 6-12, 2010*, <http://chrdrnet.org/2010/07/13/china-human-rights-briefing-july-6-12-2010/> and “Detained Hebei Reporter Xu Yishun Hospitalized after Heart Attack Brought on by Hunger Strike,” *China Human Rights Briefing August 17-23, 2010*, <http://chrdrnet.org/2010/08/24/china-human-rights-briefing-august-17-23-2010/>.

<sup>25</sup> CHRDR, “Activist Liu Shasha Kidnapped in Beijing, Beaten by Police and Government Officials,” *China Human Rights Briefing, July 14-19, 2010*, <http://chrdrnet.org/2010/07/20/china-human-rights-briefing-weekly-july-14-19-2010/>.

Finally, police and government officials have accelerated their crackdown on civil society organizations and activists working together to promote human rights in the past year and a half. In 2009, officials harassed a number of prominent NGOs, including Aizhixing (which focuses on HIV/AIDS issues) and Yirenping (which focuses on public health), and forced Gongmeng (which focuses on the rule of law and constitutional reform) to close after declaring it “illegal” and fining it 1.42 million RMB for “tax evasion.”<sup>26</sup> Leaders of these groups were personally affected: Wan Yanhai, who oversees Aizhixing, fled to the United States with his family to escape the growing pressure on his organization, while Gongmeng founder Xu Zhiyong was arrested and detained nearly a month in the summer of 2009 before being released on bail pending trial, a measure which was only lifted in September 2010. The government continues to target grassroots activists as well: in the spring and early summer of 2010, five human rights defenders—Li Jinfang, Xie Qiang, Gu Chuan, Wang Debang, and Zhou Weilin—were separately summoned for interrogations and had their homes raided by police.<sup>27</sup> In each case, the activists were taken in for hours of questioning and lost computers and other personal property. In Li Jinfang’s case, police also froze her bank account.

**CHRD recommends that CAT ask the Chinese government to:** discuss concrete measures being taken to protect human rights defenders and human rights lawyers from harassment and violence, and specifically address the cases of Gao Zhisheng, Zheng Enchong, Tang Jitian, Liu Wei, Xu Yishun, Liu Shasha, Li Jinfang, Xie Qiang, Gu Chuan, Wang Debang, and Zhou Weilin.

#### **E. Use of black jails continues, as does torture and abuse within them**

The Chinese government, as recently as December 2009, denied the existence of secret detention facilities, known as “black jails,” which are predominantly used to hold petitioners in Beijing as well as in the provinces.<sup>28</sup> However, in late November 2009, *Outlook Weekly*, a publication of the official Xinhua News Agency, ran a story detailing the use of black jails by government interceptors to detain petitioners in Beijing. Though the article did not use the term “black jails,” instead calling them “a chain of gray enterprises,” some activists were hopeful that this story might herald a relaxation on restrictions faced by domestic media regarding covering issues relating to black jails and abuses taking place inside these secret facilities around the country.<sup>29</sup>

<sup>26</sup> For more information on these and other cases, see CHRD’s “Annual Report on the Situation of Human Rights Defenders in China (2009),” available online at <http://chrdnet.org/2010/04/25/annual-report-on-the-situation-of-human-rights-defenders-in-china-2009/>.

<sup>27</sup> CHRD, “Human Rights Defender Li Jinfang Summoned by Police, Home Raided and Property Confiscated,” July 1, 2010, <http://chrdnet.org/2010/07/01/human-rights-defender-li-jinfang-summoned-by-police-home-raided-and-property-confiscated/>.

CHRD, “Police Raid Home of Human Rights Defender and Charter 08 Signatory Xie Qiang,” March 11, 2010, <http://chrdnet.org/2010/03/11/police-raid-home-of-human-rights-defender-and-charter-08-signatory-xie-qiang/>.

CHRD, “Police Raid Home of Beijing Activist Gu Chuan as Pressure on Human Rights Defenders Increases,” April 9, 2010, <http://chrdnet.org/2010/04/09/police-raid-home-of-beijing-activist-gu-chuan-as-pressure-on-human-rights-defenders-increases/>.

CHRD, “Beijing Activist Wang Debang Interrogated by Police, Home Searched,” May 13, 2010, <http://chrdnet.org/2010/05/13/beijing-activist-wang-debang-interrogated-by-police-home-searched/>.

CHRD, “Anhui Workers’ Rights Activist Zhou Weilin Summoned, Computer Confiscated by Police,” *China Human Rights Briefing*, May 25-31, 2010, <http://chrdnet.org/2010/06/02/china-human-rights-briefing-may-25-31-2010/>.

<sup>28</sup> “Comments by the Government of the People’s Republic of China concerning the concluding observations and recommendations of the Committee against Torture” (CAT/C/CHN/CO/4/Add.2), para. 4. During the Human Rights Council’s Universal Periodic Review Working Group’s review of China’s human rights record on February 9, 2009, the Chinese delegation stated, “there is no such thing as ‘black jails’” in China.

<sup>29</sup> See, for example, Jamie FlorCruz, “Chinese state media reveal secret, illegal jails”, CNN.com, <http://edition.cnn.com/2009/WORLD/asiapcf/11/30/china.black.jails/index.html>.

Unfortunately, this was not the case. No further reporting has been done by state-run media, and black jails continue to operate unimpeded in the capital and across the country. Torture and violence within black jails remain a serious problem. One typical report received this year by CHRD involved Tu Yingchang, a petitioner from Xiangfan City, Hubei Province, who was seized in Beijing on March 6. Tu was detained first in a black jail in Beijing and then moved to one in Niushou Town, Hubei Province, where he was beaten and left with injuries to his head, back and lungs. Tu was hospitalized for treatment, and when his family summoned the police, the officers who arrived told them they could not help because they could not interfere with the work of the government.<sup>30</sup>

However, even when perpetrators of violence are held accountable (and these cases are exceptionally rare), officials conspicuously avoid confronting the problem of illegal detention. A widely-publicized case from last winter involving a young woman named Li Ruirui from Anhui Province demonstrates this phenomenon well. On December 10, 2009, a district court in Beijing found black jail guard Xu Jian guilty of raping Li, a petitioner who had traveled to Beijing and was promptly detained in a black jail located in the Juyuan Guesthouse, where Xu was employed. Xu was sentenced to eight years in prison. No further criminal or civil charges were pursued against the individuals who illegally detained Li, the local government that rented the room in the Juyuan Guesthouse, or the owner or manager of Juyuan.<sup>31</sup>

**CHRD recommends that CAT ask the Chinese government:** what concrete steps it has taken to ensure that no one is detained in illegal detention facilities and what steps it has taken to respond to allegations brought by citizens regarding detention and abuses in black jails. CAT should specifically ask the government about the above-mentioned *Outlook Weekly* article, and what measures it has taken to address the issues raised in that report.

#### **F. Re-education through labor camps continue to operate**

CAT has raised the issue of Re-education through Labor (RTL) with the Chinese government on a number of occasions, and has repeatedly recommended that the government “consider abolishing all forms of administration detention.”<sup>32</sup> While the Chinese government stated in its submission on follow-up to CAT’s 2008 Concluding Observations that “the Standing Committee of the National People’s Congress has decided to include in its legislative agenda the Law on the Correction of Unlawful Behaviour through Education” in order to “transform the system of reeducation through labour into a system for the correction of unlawful behaviour through education,”<sup>33</sup> no draft of this legislation, which has been discussed for several years, has yet been made public. In the meantime, abuses within the RTL system continue unabated.

One troubling development in the past year, to add to the list of concerns about RTL already noted by CAT, has been the increasing use of RTL to detain veteran petitioners. At least four localities—Inner Mongolia Autonomous Region, Jiangsu Province, Wuhan Municipality, and the city of Shenzhen—have issued notices decreeing that RTL will be used as a punishment for “abnormal petitioning,” despite the stipulation in the

<sup>30</sup> CHRD, “Hubei Petitioner Hospitalized Following Beating in Police Station,” *China Human Rights Briefing March 31-April 6, 2010*, <http://chrnet.org/2010/04/06/china-human-rights-briefing-march-31-april-6-2010/>.

<sup>31</sup> “Black Jail Guard Sentenced Today for Raping Female Petitioner (黑监狱看守强奸处女访民案今日已宣判(图)),” December 10, 2009, <http://chinarights2.blogspot.com/2009/12/2920.html>.

<sup>32</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), para. 13.

<sup>33</sup> “Comments by the Government of the People’s Republic of China concerning the concluding observations and recommendations of the Committee against Torture” (CAT/C/CHN/CO/4/Add.2 ), para. 3



PRC Legislation Law that “mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person must be enacted by the National People’s Congress or its Standing Committee.”<sup>34</sup>

**CHRD recommends that CAT ask the Chinese government to:** abolish all forms of administrative detention, including Re-education through Labor, and to provide CAT with information on the progress and content of the “Law on the Correction of Unlawful Behaviour through Education.” CAT should also ask the government for information regarding the legal basis for local governments to authorize the use of RTL to detain petitioners who engage in so-called “abnormal petitioning.”

### **G. Petitioners as targets of police abuse**

In its Concluding Observations, CAT recommended that the Chinese government “investigate all attacks against... petitioners, with a view to prosecution as appropriate,” adding that the government should “take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees.”<sup>35</sup> The Chinese government has failed to act on these recommendations. Rather, some government officials have essentially admitted that violence against petitioners is acceptable. In July 2010, Chen Yulian, the wife of a local official, was beaten by six plainclothes police officers outside of a government office in Wuhan, Hubei Province. High-ranking police officials were forced to apologize to Chen, and in doing so explained that she was “mistaken” for a petitioner.<sup>36</sup>

CHRD continues to receive reports of petitioners who have suffered beatings at the hands of police, officials, or other individuals acting on the direction of officials. In the past few months, for example, CHRD learned of the case of Liu Jiayuan, a veteran from Hunan province, who, in March, petitioned at the Civil Affairs Office in Jinfeng Township, Xinhua County, Hunan Province regarding government subsidies for veterans. Rather than handle his inquiry, a group of over twenty township officials beat and kicked Liu for half an hour, stopping only when the police arrived. No officials were apprehended by the police. Liu sustained injuries to his head, neck, chest and back.<sup>37</sup>

In another such case, Wang Qunfeng, a petitioner from Sanmenxia City, Henan Province, had to be hospitalized after three unidentified individuals beat her while she was being forcibly returned from Beijing to her hometown in May 2010. The three individuals responsible for beating Liu were questioned by police following the incident, but were released without being charged.<sup>38</sup>

**CHRD recommends that CAT ask the Chinese government to:** provide information about what steps are being taken to protect the rights of petitioners and curtail the use of violence by interceptors or police to prevent petitioners from lodging complaints with higher authorities. CAT should also ask the Chinese

<sup>34</sup> CECC, “Shenzhen Expands Measures Against ‘Abnormal Petitioning,’” May 11, 2010, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=140222&PHPSESSID=5a5ac34371f7fb260938ad7800611adc>.

<sup>35</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), paras. 18 and 19.

<sup>36</sup> Zhao Lei, “Ruckus over beating of ‘petitioner,’” *China Daily*, July 21, 2010, [http://www.chinadaily.com.cn/cndy/2010-07/21/content\\_11027777.htm](http://www.chinadaily.com.cn/cndy/2010-07/21/content_11027777.htm).

<sup>37</sup> CHRD, “Hunan Veterans Beaten for Making Enquiries at Civil Affairs Office,” *China Human Rights Briefing May 4-10, 2010*, <http://chrdnet.org/2010/05/11/china-human-rights-briefing-may-4-10-2010/>.

<sup>38</sup> CHRD, “Henan Petitioner Hospitalized after Beating during Forced Return from Beijing,” *China Human Rights Briefing May 18-24, 2010*, <http://chrdnet.org/2010/05/26/china-human-rights-briefing-may-18-24-2010/>.

government to provide data on police, government officials, or private citizens investigated or prosecuted for attacks on petitioners.

## H. Involuntary confinement in psychiatric institutions for non-medical reasons

In its Concluding Observations, CAT recommended that China “take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical. Where hospitalization is required for medical reasons, the State party should ensure that it is decided only upon the advice of *independent psychiatric experts* and that such decisions can be appealed” (emphasis added).<sup>39</sup> In its submission to CAT pursuant to the follow-up procedure, the Chinese government essentially acknowledged that it has not acted upon this recommendation, stating that “no compulsory medical treatment can be imposed without *judicial* identification and verification of the mental illness” (emphasis added).<sup>40</sup>

In practice, even this judicial identification and verification is often foregone by local officials, who use psychiatric institutions to detain petitioners and other individuals, often for extended periods of time. On September 1, 2010, CHRD received a report regarding Zhao Xiuzhen, a petitioner from Chongqing who was held against her will in Huangjueya Psychiatric Hospital in Nan’an District for 514 days between 2008 and 2010. During her detention, she was tied to a bed, slapped, and forcibly given injections and medication. Following her release, Zhao went to have her mental health status evaluated at a medical center, and was certified not mentally ill.<sup>41</sup>

At the moment, the Chinese government does have a draft mental health law on the table, which it made public in 2009.<sup>42</sup> However, the central government has given no indication that it plans to act on this draft law in the near future, and concerns remain over this proposed law’s provisions regarding involuntary commitment. Several local governments have issued regulations that deal with involuntary hospitalization of those deemed to have psychiatric disorders. The sixth and most recent such set of regulations was issued in Wuhan City, Hubei Province on July 20, 2010 and went into effect on September 1.<sup>43</sup> According to Article 25 of these regulations, individuals with “serious mental disorders” should be “helped” by their “work units, public security officials, sub- district officials, township or town government officials, neighborhood committee members, or village committee members” if their relatives or guardians are “unable” to institutionalize these individuals. These vague regulations give government officials wide rein to declare that an individual suffers from a “serious mental disorder” and send them to a psychiatric institution, where they are liable to be held for an extended period of time. At no point is the opinion of a qualified mental health professional required.

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<sup>39</sup> “Concluding observations of the Committee against Torture: China” (CAT/C/CHN/CO/4), para. 35.

<sup>40</sup> “Comments by the Government of the People’s Republic of China concerning the concluding observations and recommendations of the Committee against Torture” (CAT/C/CHN/CO/4/Add.2), para 18.

<sup>41</sup> CHRD, “<重庆访民赵秀珍因公致残上访被数次关精神病院>,” September 1, 2010, <http://news.boxun.com/news/gb/china/2010/09/201009021025.shtml>.

<sup>42</sup> 精神卫生法（征求意见稿）[Mental Health Law (Draft to Solicit Others' Opinions) ], [http://article.chinalawinfo.com/Article\\_Detail.asp?ArticleID=48318](http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=48318).

<sup>43</sup> “Wuhan City Mental Health Regulations Published Yesterday, Take Effect September 1” 《武汉市精神卫生条例》昨公布 9月1日实施), July 20, 2010, <http://ctdsw.cnhubei.com/cnews/shfz/201007/t1310313.shtml>.

**CHRD recommends that CAT ask the Chinese government to:** provide information on the progress of the draft national mental health law, and discuss the draft law's provisions regarding the process by which an individual may be involuntary hospitalized and how an individual can challenge such a decision.

## **II. Cases CHRD Recommends CAT Include in its List of Issues**

We have mentioned several specific individual cases in our discussion above, which we request CAT raise with the Chinese government in the List of Issues. Below we highlight several other cases (and provide more information about Fan Qihang's case) that illustrate the following: 1) the continued use of torture and mistreatment by government officials to retaliate against human rights defenders and pressure them into abandoning their activism (e.g., Ni Yulan), and 2) the continued reliance on confessions in criminal cases, in both high profile, politically important cases (e.g., Fan Qihang) and more common, run-of-the-mill type criminal cases (e.g., the case of Fang Chunping, Huang Zhiqiang, Cheng Lihe, and Cheng Fagen and the case of Gan Jinhua).

### **A. Ni Yulan**

Now homeless and living temporarily in a Beijing hotel with her husband, Ms. Ni was a lawyer who became particularly involved in housing rights cases in the buildup to the Beijing Olympics, mobilizing support and providing legal advice to evictees whose homes were demolished.

Ms. Ni has suffered repeated episodes of harassment, arbitrary detention, torture, and other cruel, inhuman and degrading treatment since 2002. Her home in Beijing's Xicheng District was forcibly demolished in 2008, and all of her and her husband's personal property was confiscated or destroyed in the process. The torture and mistreatment she endured on multiple occasions over the past eight years has left her unable to walk and in poor health, with broken teeth, trouble breathing, heart problems, and difficulties performing bodily functions.

CHRD urges CAT to raise Ms. Ni's case because she continues to suffer harassment and mistreatment at the hands of government officials, and no action has been taken to hold those who tortured her responsible for their actions. Ms. Ni was released from prison on April 15 of this year after serving two years for "obstructing official business," a charge handed down after she demanded demolition workers provide legal documentation authorizing the destruction of her home in April 2008. Without a home to which she could return, Ms. Ni and her husband at first found themselves sleeping in a Beijing park, as police pressured hotel managers into denying the couple lodging. During this time, Ms. Ni and her husband were briefly detained on a number of occasions for a variety of illegitimate reasons, including preventing them from speaking with the media and foreign diplomats. While they have since been able to rent a room in Beijing's Yuxingong Hotel, police continue to monitor and harass Ms. Ni and her husband.<sup>44</sup>

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<sup>44</sup> For more information on Ni Yulan, see: "Emergency Shelter," a documentary about Ni Yulan: <http://chrdnet.org/2010/06/21/emergency-shelter-a-documentary-about-ni-yulan/> and Peter Ford, "Why Chinese activist Ni Yulan lost nearly everything," *Christian Science Monitor*, July 6, 2010, <http://www.csmonitor.com/World/Asia-Pacific/2010/0706/Why-Chinese-activist-Ni-Yulan-lost-nearly-everything>.

## **B. Fan Qihang**

Fan Qihang is a construction entrepreneur from Chongqing. During Chongqing Party secretary Bo Xilai's crackdown on organized crime in the municipality, Fan was put on trial for mafia-related crimes and accused of being a boss in a local organized crime outfit.

Mr. Fan was convicted of "organizing, leading and participating in triads," murder, and other charges, and sentenced to death in February, 2010. His conviction came on the basis of a "confession" that he incited others to murder an alleged drug dealer, as well as to other crimes attributed to him. However, this "confession" was extracted by police during more than five months of torture at an unofficial facility run by the police in Tieshanping, located on a mountainside in the suburbs of Chongqing.

Evidence of Fan's torture has been provided to the public by his lawyer, Zhu Mingyong (a video is available online at [http://events.scmp.com/news/content/tieshanping\\_interview.mp4](http://events.scmp.com/news/content/tieshanping_interview.mp4)). Zhu gained access to his client only after he had been transferred from Tieshanping to a regular detention center, at a point when the case no longer fell under the responsibility of the police. It was then that Zhu made video recordings of Fan's accounts of his torture.

Zhu made the courageous decision to publicly release this evidence because his client's case is now up for review by the Supreme People's Court; if the court upholds Fan's sentence, he will be put to death. In mid-July, Zhu submitted his recordings documenting Fan's torture to the Supreme People's Court, but has yet to receive any response. CHRD asks CAT to raise Fan's case with the Chinese government not only because Fan's life is at risk based on a confession extracted through torture, but because this case is, in the words of Professors Jerome Cohen and Eva Pils, "a golden opportunity to demonstrate that the new exclusionary guidelines must be taken more seriously than previous attempts to ban coerced confessions."<sup>45</sup>

## **C. The case of Fang Chunping, Huang Zhiqiang, Cheng Lihe, and Cheng Fagen**

CHRD has brought the case of Fang Chunping, Huang Zhiqiang, Cheng Lihe, and Cheng Fagen to the attention of CAT on previous occasions, but we wish to once again highlight their plight to emphasize the Chinese government's continued refusal to address allegations of torture made by prisoners who have been convicted based on their forced "confessions." Fang, Huang, and Cheng have been incarcerated for "murder, robbery, and rape" in Jingdezhen's Number Three Prison for nearly seven years.

The four were convicted in 2003 and sentenced to death, but this sentence was thrown out on appeal. Following a retrial in which they were again sentenced to death, the Jiangxi Province High Court commuted their sentences to suspended death sentences in 2006. In overturning the lower court's ruling, the Jiangxi

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<sup>45</sup> For more information on Fan Qihang, see: CHRD, "China's Highest Court Must Overturn Death Sentence Based on Confession Extracted by Torture," August 3, 2010, <http://chrnet.org/2010/08/03/chinas-highest-court-must-overturn-death-sentence-based-on-confession-extracted-by-torture/>;

"Open letter requesting Supreme People's Court immediately to open an investigation into the use of torture in the Chongqing anti-mafia campaign," August 23, 2010, <http://chrnet.org/2010/08/23/open-letter-requesting-supreme-people%E2%80%99s-court-immediately-to-open-an-investigation-into-the-use-of-torture-in-the-chongqing-anti-mafia-campaign/>; and

Jerome A. Cohen and Eva Pils, "Rules and reality: New guidelines to ban coerced confessions will be tested in a case before China's top court," September 2, 2010, <http://www.scmp.com/portal/site/SCMP/menuitem.2af62ecb329d3d7733492d9253a0a0a0/?vgnextoid=ce85297083dca210VgnVCM10000360a0a0aRCRD&ss=China&s=News>.

Province High Court noted that confessions of the four defendants were inconsistent and contradictory, and that the evidence presented by the prosecution was insufficient.

The men have claimed for years that their “confessions” were extracted by torture. As human rights defender and law professor Teng Biao notes, police in the case were under a great deal of pressure to secure a conviction, and because the authorities were unable to link any of the men to the crime through concrete evidence, they were forced to rely on confessions. And yet, when the defendants’ confessions were presented in court, they contradicted not only each other but the central facts of the case.

CHRD calls on CAT to raise the case of Fang, Huang, Cheng, and Cheng because the Chinese government has so far proved unwilling to investigate the allegations of torture brought by the four. We also are concerned that, the longer the men stay in detention, the greater the risk that they will once again be tortured. According to an Amnesty International press release, “a prison official... recently told the family of one [of the four] that they were only keeping him alive as this would allow them to torture him further.” Fang, Huang, and Cheng Fagen went on a hunger strike earlier this year to draw attention to their case, as efforts to seek redress through the judicial system have failed time and again.<sup>46</sup>

#### **D. Gan Jinhua**

Finally, in a case similar to that of Fang, Huang, Cheng, and Cheng, Mr. Gan Jinhua was arrested in 2004 and convicted of robbing and killing two nuns in Guangdong Province. Following his final appeal, Gan’s sentence was upheld in December 2009.

Mr. Gan was convicted and sentenced to death primarily on the strength of a confession which was extracted by torture and without reliable concrete evidence. Gan, who was interrogated over the course of more than one hundred hours, from 8 am on November 12, 2004, to 11 pm on November 16, 2004, was prevented from sleeping for more than three days and threatened by police while being questioned. Furthermore, Gan’s lawyers protest that his trial was marred by serious procedural flaws.

CHRD urges CAT to raise Gan’s case with the Chinese government because, at the time of writing, his case remains under review by the Supreme People’s Court and, if the court fails to overturn his sentence, he will be executed. No investigations into his allegations of torture, or efforts to hold those responsible for torturing him accountable, have been undertaken.<sup>47</sup>

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<sup>46</sup> For more information on these four prisoners, see: CHRD, “Hunger Strike by Death Row Inmates Underlines Use of Torture, Failure of Courts,” February 26, 2010, <http://chrdnet.org/2010/03/01/hunger-strike-by-death-row-inmates-underlines-use-of-torture-failure-of-courts/> and

Amnesty International, “Document - China: Four men at risk of torture in China: Cheng Fagen, Cheng Lihe, Fang Chunping, Huang Zhiqiang,” April 13, 2010, <http://www.amnesty.org/en/library/asset/ASA17/014/2010/en/7d47aa4f-7c7e-4efd-bd46-5b9e4c41a388/asa170142010en.html>.

<sup>47</sup> For more information on Gan Jinhua’s case, see: Amnesty International, “Chinese man faces death penalty,” January 15, 2010, <http://www.amnesty.org/en/library/info/ASA17/004/2010/en>.

Anthony Kuhn, “Executions In China Under Growing Scrutiny,” NPR, June 22, 2010, <http://www.npr.org/templates/story/story.php?storyId=127375392>.

CHRD, “Citizens Petition Supreme People’s Court to Halt Execution of Gan Jinhua,” *China Human Rights Briefing* December 31, 2009-January 6, 2010, <http://chrdnet.org/2010/01/25/china-human-rights-briefings-december-31-2009-january-6-2010/>.