

The Network of Chinese Human Rights Defenders & a Coalition of Chinese NGOs

Civil Society Report

Submitted to The Committee against Torture

for its Review at the 56th Session of the fifth periodic report (CAT/C/CHN/5)

by the People's Republic of China

on its Implementation of the Convention against Torture and Other Cruel Inhuman or
Degrading Treatment Or Punishment

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Executive Summary

The People's Republic of China has failed to implement specific articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) during the current period of review (2009 to the present). In practice, torture, as well as cruel, inhuman or degrading treatment and punishment remain persistent and widespread problems in China, especially in cases involving individuals whose views, speech, religious beliefs, or rights-defense work are deemed threatening by the Chinese Communist Party (CCP) (see list of detainees in Appendix 2).

In its defense, the State party has repeatedly referred to domestic legislative and regulatory changes since 2009, including amendments to the Criminal and Criminal Procedure Laws, in its State report and its September 2015 response to the Committee's List of Issues. New or amended Chinese laws and regulations do include some positive provisions; unfortunately, they also include many that will likely negatively influence efforts to prevent torture. In addition, authorities have—in the new National Security Law, draft Anti-Terrorism Law, and other draft laws and amendments—provided for broader police powers and exceptions to provisions intended to protect human rights.

In addition to flawed, contradictory, and incomplete laws and regulations, persistently lax implementation and weak enforcement of both the Convention and positive relevant domestic Chinese laws undermine efforts to prevent torture and punish torturers. Implementation and enforcement problems are, in part, linked to China's one-party, authoritarian political system under the CCP, as well as the lack of an independent judiciary and an absence of the rule of law. China's performance in implementing its treaty obligations to CAT cannot be meaningfully assessed without a sufficient understanding of the country's political structure. Law-enforcement officials and the judiciary often act in the interest of the CCP and disregard the law with impunity.

Documented cases and research conducted for this report demonstrate that authorities systematically violate some of the fundamental preventive measures and safeguards for detainees' and victims' rights. (Convention Articles 2, 11, 12, 13, 14, & 15)

Serious and persistent problems include:

- Lengthy or excessively prolonged pre-trial detention (p. 4) (See Appendices 1 & 2 on time limits for criminal proceedings and selected cases of prolonged and/or secret pre-trial detention)
- Blocked or hindered access to lawyers and failure of officials to notify families promptly (p. 6)
- Human rights lawyers subjected to arbitrary detention and violence (p. 8)
- Evidence extracted through torture still admitted in court trials (p. 8)
- Lack of impartial investigations, especially into alleged tortures in extralegal detention facilities (p. 12)
- Light punishments for torturers, fueling a cycle of impunity (p. 17)
- Difficulties faced when attempting to file complaints about torture and lack of confidentiality for complainants (p. 19)
- Reprisals against complainants or victims seeking reparations (p. 20)
- Deprivation of proper medical treatment for detainees as a form of reprisal (p. 23)
- Compensation to victims is rare, and mostly unfair or inadequate (p. 26)
- Blocked civil society participation in CAT review and reprisals against those seeking participation (p. 29)

Key recommendations: The Committee against Torture, other international organizations, and State parties to the Convention should urge China to:

- Implement effective measures to ensure that all detained suspects, regardless of charges against them, are provided fundamental legal safeguards in detention, including the right to access a lawyer and have the defendant's family notified within the time frame specified by law, and to appear before a judge within a reasonable period of time, in accordance with international standards;
- Release human rights lawyers and activists who have been put under secret "residential surveillance" or criminal detention for an unreasonably prolonged period without trial (some individuals have been detained for more than two years) (See Appendix 2);
- Revise Article 73 of the Criminal Procedure Law so that "residential surveillance" no longer permits authorities to detain an individual incommunicado without a trial;
- Take effective measures to ensure that lawyers can, independently and without fear of harassment and retaliation, defend their clients' legal rights;
- Revise Article 309 of the newly amended Criminal Law so that the law cannot be used to punish lawyers for exercising their free speech rights in court;
- Strictly enforce relevant legal provisions to ensure that illegal evidence extracted through torture is excluded in court trials, and hold judges accountable for admitting such evidence;
- Establish an effective and independent oversight mechanism to ensure prompt, impartial, and effective investigation into all allegations of torture and all instances of death in custody; require that those responsible for deaths resulting from torture or wilful negligence are prosecuted; and make public information about the results of such investigations, including details of penalties levied against them, and any compensation given to victims' families;
- Make public data on state agents who have been investigated and criminally prosecuted for acts of torture, including their names, crimes, and the specific criminal punishments;
- Abolish the Politics and Law Committees, which are invested with the authority to interfere in ("guide") court rulings and dictate verdicts; expand pilot circuit court projects and other measures designed to move toward a more independent judiciary, free from government and CCP interference;
- Abolish all forms of extralegal detention, including "black jails" and the CCP disciplinary *shuanggui* system; investigate alleged abuses committed in these facilities as well as in the abandoned Re-education Through Labor camps;
- Ensure that police departments, prosecutors' offices, and courts record or register complaints of alleged torture, and pursue lawsuits filed by complainants;
- Establish and implement safe and independent complaint procedures, and protect complainants from retaliation;
- Hold criminally responsible state agents who commit acts of retaliation against torture victims who report on or seek redress for mistreatment;
- Provide timely and adequate medical treatment for detainees and prisoners by doctors of their own or their families' choosing; release detainees for needed treatment, and hold state agents criminally accountable for the use of deprivation of medical treatment to retaliate against detainees/prisoners of conscience;
- Provide timely, fair, and adequate compensation to victims subjected to torture in extralegal detention facilities and in the now-abolished Re-education Through Labor camps;
- Take effective measures to ensure that court rulings on state compensation are enforceable by law;
- End any reprisals against Chinese citizens who participate in, or who seek information necessary for, treaty body reviews and other UN human rights activities.

I. Imperfect Preventive Measures & Potentially Positive Provisions Disregarded in Practice (Convention Articles 2, 11, 15)¹

1. In the past, the Chinese Communist Party (CCP) and China's central government have acknowledged that torture² and other forms of mistreatment do occur in China, but they have provided only meager and highly aggregated data on those cases. Chinese authorities have also passed or revised some laws as legislative curbs on torture, however flawed, inconsistent, and incomplete they may be. Official acknowledgement and regulation are necessary steps to begin to address the problem of torture, but authorities need to acknowledge all acts of mistreatment and cruel, inhuman or degrading treatment or punishment, no matter what type of case is involved. In its September 2015 response to the Committee against Torture's ("the Committee") List of Issues, the Chinese government continued to assert that "reports" of torture were "not true." Authorities deny that "so-called 'figures with different political views'" are subjected to "torture"³ despite overwhelming documented evidence indicating otherwise.

2. Partial data compiled by Chinese NGOs within the Chinese Human Rights Defenders (CHRD) network add a measure of weight to the reported evidence that torture remains a common practice in China. Collected data indicates that between January 2012 and June 30, 2015, authorities deprived individuals of their liberty in 2,340 cases. Of those cases, 637—or over a quarter of the total—have allegedly involved some sort of physical or verbal abuse while in custody.⁴ In conducting research for its report, CHRD analyzed more than 800 cases of alleged torture in China, most of which occurred in the years since 2009. These cases include the treatment of both "ordinary" criminal suspects as well as individuals engaged in "politically sensitive" conduct. The latter involved individuals who the government has labeled "elements of instability" or threats to the Communist Party's monopoly on power. They include human rights defenders and lawyers, and political, religious, and ethnic minority activists. This joint civil society report from CHRD and a coalition of NGOs supplements information provided to the Committee in our previous joint civil society report of February 2015.⁵

3. In one telling example, police reportedly tortured human rights lawyer Yu Wensheng (余文生) to punish him for representing a detained human rights defender who had expressed support for pro-democracy protesters in Hong Kong. Authorities detained Yu on October 13, 2014. He described being shackled to a chair so tightly for several days that he could not move. During this time, guards continually tightened the manacles, causing extreme pain. When he was released from the chair, his arms had swollen to three times their normal size. The guards said to him, "We won't let you die, but you'll wish you were dead!" Police held Yu incommunicado before releasing him in January 2015. Yu has filed numerous complaints and lawsuits seeking an investigation into the police torture, but they have been repeatedly rejected or ignored.⁶

4. In another example, in March 2014, police officers severely beat four rights lawyers after detaining them in Heilongjiang Province, where they had tried to visit their clients locked up in a black jail in Jiansanjiang City.⁷ The lawyers—Jiang Tianyong (江天勇), Tang Jitian (唐吉田), Wang Cheng (王成), and Zhang Junjie (张俊杰)—sustained serious injuries from the physical abuse. Medical examinations found that, all combined, they sustained more than 20 broken ribs. The lawyers later filed formal complaints over the mistreatment but received no reply from authorities.⁸ Despite the medical evidence of injuries and the lawyers' first-person accounts, the Chinese government's September 2015 responses to the Committee's List of Issues denied the allegation that the four lawyers had been "beaten and tortured" while providing no explanation for its refusal to thoroughly investigate the incident.⁹

5. In its “Concluding Observations” from the 2008 review, the Committee pointed to three overarching obstacles that impede the government’s overall compliance with the Convention: the use of “state secrets” regulations to deprive due process rights; the harassment of lawyers and other human rights defenders (HRDs); and physical abuse by state agents that was largely carried out with impunity.¹⁰ The Committee reiterated these concerns in its List of Issues sent to the Chinese government in May 2015.¹¹ However, in neither its amended laws and recently promulgated regulations, nor, more importantly, in practice, have the Chinese authorities effectively addressed these concerns in the seven years since the Committee first expressed them.

6. Indeed, in the period since President Xi Jinping came to power in March 2013, authorities have, if anything, enhanced and expanded their use of extralegal and abusive conduct, carrying out a succession of ever-harsher crackdowns on civil liberties. Some of the most crucial preventive measures that exist in Chinese laws or regulations to safeguard detainees from torture and mistreatment have been routinely ignored during these crackdowns; that is, officials have routinely disregarded, or only selectively abided by, applicable provisions of the law. For example, our research found that, from the moment they are detained, authorities regularly strip detainees of their legal safeguards. This includes holding individuals in custody for longer periods than allowed by law, blocking access to legal counsel, extracting confessions through torture that are later used in court proceedings,¹² and monitoring or recording meetings between incarcerated persons and their lawyers. These practices, which have become increasingly common, run counter to both Chinese and international laws, and create conditions facilitating the increased use of torture behind walls of impunity. In addition, these practices make it virtually impossible for victims to safely file complaints of torture without the threat of reprisals, let alone to expect independent and impartial investigations into their complaints.

7. The findings of this report contradict the Chinese central government’s claim that the institutional mechanisms it has established serve to enforce amended laws and prevent torture.¹³ Highlighted below are several key preventive measures and safeguards stipulated by Chinese laws and regulations that police have systematically disregarded during crackdowns on political dissent and civil society activism carried out under the leadership of President Xi Jinping. While some of these tactics were also used during the terms of previous Chinese leaders, the sustained and systematic manner in which safeguards have been ignored under Xi is unprecedented.

A) Prolonged Pre-Trial Detention, Enforced Disappearance

8. Most of the cases we documented took place during the State party’s most recent reporting period, especially since 2013, and demonstrate that many detainees, particularly those who are accused of involvement in politically “sensitive” cases, are subjected to lengthy detention that lasts well beyond what is permitted by law, and with no involvement by the judiciary. Such detentions are often secretive (i.e., lawyers are denied visits, and families are not notified within the 24-hour time frame required by law of either the location of detention or of the nature of the charges.)¹⁴ Many detainees have been held beyond the 37-day time period of criminal detention as prescribed by law, even when police lack sufficient evidence to justify formal arrests.¹⁵ Furthermore, in a number of cases where an individual has been formally arrested, authorities have repeatedly extended the length of detention during the investigation and review period before any formal charge is made.¹⁶ Detainees in some instances have been held for unreasonably prolonged periods of time or even indefinitely. (See *Appendix 2: “36 Selected Cases of Prolonged and/or Secret Pre-trial Detentions (2013-Present).”*)

9. In some cases, police did not provide an official explanation for secret detentions; in others, they cited vague “national security concerns” as the reason for denying lawyers visits or

holding detainees under “residential surveillance” in police-designated secret locations. Such detentions can legally last for up to six months without a guarantee of release. By allowing “residential surveillance” in undisclosed locations, authorities have apparently flouted other legal provisions limiting the duration of pre-trial detention and have used prolonged deprivation of liberty to punish detainees without judicial review. This form of “residential surveillance” is tantamount to “forcibly disappearing” these detainees, putting them at greater risk of torture by police interrogators.

10. China’s Criminal Procedure Law (CPL) allows this form of enforced disappearance. Since the previous version of the CPL first took effect in 1996, in theory, residential surveillance was a form of pre-trial, non-custodial detention served at home. Article 73 in the amended CPL (March 2012), however, allows for individuals to be placed under residential surveillance at a “designated location” for up to six months in cases involving suspected crimes of “endangering state security,” “terrorism,” and major “bribery,” and when serving residential surveillance at home would be deemed by police to “hinder an investigation.” While the provision stipulates that families must be notified within 24 hours when an individual has been placed under residential surveillance, it does not indicate that they must be told the place of detention.

11. Since early July 2015, 11 human rights lawyers and activists have been placed under “residential surveillance,” and six have been subjected to “enforced disappearance” in unknown locations. All 17 individuals have been held without access to their lawyers.¹⁷ China’s newly issued National Security Law, which took effect on July 1, 2015, further strengthens the broad powers of police by giving them the discretion to cite “national security” as a pretext for detaining individuals for extended periods of time and depriving them of their due process rights.¹⁸ As one example of how this new law is being implemented, a recent police “decision” clearly indicates that “endangering national security” was the justification for denying detained lawyer Xie Yang’s access to a lawyer. Police said Xie was suspected of “inciting subversion of state power,” and to date he has been in custody for 3.5 months without being able to meet with his lawyer. (See *Appendix 3*: “Public Security Bureau, Branch Division, Changsha City, “Written Decision on Denial of Permission to Meet Criminal Suspect” Concerning Detained Lawyer Xie Yang (Notice to Xie’s Lawyer).”)

12. In responding to the Committee’s List of Issues, the State party noted the legal provisions outlining the conditions under which authorities are not required to notify a detainee’s family of his or her status within 24 hours. These conditions¹⁹ include: when doing so may result in family members “leaking state secrets,” “hindering an investigation” by “destroying or fabricating evidence,” “interfering” with evidence collection, “colluding” with witnesses, or helping criminal accomplices to escape from police. In none of the cases we documented is it justifiable to say that the timely release of relevant information to family members would have resulted in the “leaking of state secrets” or the “hindering of an investigation.” Chinese law does not clearly define “state secrets,” allowing government officials to abuse this rationale with impunity. Chinese authorities have not provided any information on specific cases where these types of actions have occurred, thus the rationale for stipulating such exceptions to the law is unfounded. The State party also stated that “barriers” such as a natural disaster—an extraordinarily rare circumstance—would justify authorities’ claims that they were “unable” to contact family members about detentions.²⁰ These conditions do not apply to the cases that we have documented where police did not notify detainees’ families for weeks or months. In these cases, family members were easy to contact. In some instances, family members sought out police on their own while searching for their missing loved one. Finally, the government has failed to clarify who has judicial power to determine if and when a detainee’s family should be notified, thus leaving the power to make such a determination in the hands of the police.

13. Unreasonably prolonged detentions have become the new norm since 2013, as the Chinese government, under the leadership of President Xi, has initiated several campaigns against human rights lawyers and activists. In just one example, police held more than 30 individuals in criminal detention for lengthy periods without indicting them after seizing them in the nationwide operation against mainland supporters of the pro-democracy protests in Hong Kong in the fall of 2014. In some cases, detainees were held for as long as 12 months. Guo Yushan (郭玉闪) and He Zhengjun (何正军), the co-founder and the administrative director of the independent think tank the Transition Institute, were held for nearly one year before being released in September 2015 without charge.²¹ In most of these cases, police did not notify the families of the detention within 24 hours, even though the vast majority of the detainees were being held on suspicion of “creating a disturbance,” a crime that does not involve “national security,” the pretext often cited by police for overriding legal provisions.²²

14. One of the most illustrative cases of this abusive pattern involves the prominent human rights lawyer Pu Zhiqiang (浦志强), who was seized in May 2014 after attending a gathering at a private home to mark the 25th anniversary of the 1989 Tiananmen Massacre. Pu has been held in detention for 20 months and, as of November 2015, has yet to be brought before a judge. Authorities formally arrested him in June 2014 and indicted him in May 2015.²³ Another egregious case involves three HRDs—Huang Wenxun (黄文勋), Yuan Fengchu (袁奉初), and Yuan Xiaohua (袁小华). Arrested in July 2013 in Hubei Province, they have spent more than two years in pre-trial detention. Police seized them during the first crackdown under Xi Jinping—one that targeted activists calling for greater government transparency and an end to Party and government corruption.²⁴

15. According to the Criminal Procedure Law (2012), police are permitted to detain a person for up to 14.7 months before the individual faces a first-instance trial (and sees a judge for the first time). This does not take into account several provisions that permit police to restart the investigation period, allowing for further delay. An individual could be kept in detention for a further 11 months, or indefinitely upon approval of the Supreme People’s Court, before a verdict is announced. (See *Appendix 1: “Criminal Procedure Law (2012): Chart of Legal Provisions from Criminal Detention to First-Instance Trial”* for the various lengths of times at each stage of a case’s investigation, during which police are allowed by law to detain criminal suspects.)

16. First detained in early July 2015, more than 20 human rights lawyers and activists have been held incommunicado in China for a period longer than 100 days. This contradicts statements in the Chinese government’s response to the Committee’s List of Issues—namely that those who hold politically dissenting views have not been “cut off from contact with the outside world for more than three months.”²⁵ In the three months since the group of more than 20 individuals were taken into custody, some of the families and lawyers of the detainees have yet to learn their exact locations or the charges against them, even after looking for them at police stations and making inquiries at government offices. Authorities have invariably cited “state secrets” as the reason for refusing to provide answers about these individuals. The group includes human rights lawyers Wang Yu (王宇), Li Heping (李和平), and Wang Quanzhang (王全璋).²⁶ (See *Appendix 2: “36 Selected Cases of Prolonged and/or Secret Pre-trial Detention (2013-Present).”*)

B) Detainees’ Access to Legal Counsel Hindered

17. Regarding the Committee’s concern in its previous Concluding Observations and the 2015 List of Issues on restricting access to legal counsel on politicized grounds, Chinese authorities continue to deny some detainees their right to access a lawyer within 48 hours of being

taken into police custody. In many of the cases documented in this report, denial of access to legal representation has exceeded the initial 48 hours, persisting often for weeks or even months after the detainees were initially taken into police custody. Lawyers have indicated that such denials have no legal basis and that police have completely disregarded the country's CPL and Lawyer's Law.²⁷ Chinese authorities, by allowing such illegal police behavior, act in contradiction to a statement in China's past reporting to the Committee (i.e., that, for detainees, the "early presence of a lawyer acts as a powerful deterrent against incidents of torture").²⁸

18. Police often cite "national security" or "state secrets" orally or in written rejections to lawyers' requests to see detainees. In most cases, however, authorities detain these individuals on suspicion of offenses that have nothing to do with "national security" or "state secrets," such as "disrupting traffic" or "disrupting social/public order," or "creating a disturbance." Another common "reason" cited by police for denying lawyers' requests to meet detainees is that such meetings would "hinder an investigation," though police have not produced evidence or provided explanations for that determination.²⁹ The government does not adequately address the Committee's concerns by simply citing regulations or laws in the State party report and the State's response to the List of Issues concerning such legal restrictions on access to legal representation. Instead, the state has only created more questions, such as: what, if any, independent judicial process is involved in determining what constitutes "a state secret" or a threat to "national security"?; and why is the Lawyer's Law, which stipulates lawyers may have access to detainees without police permission, overridden by legal provisions concerning "national security" or "state secrets?"

19. When Chinese authorities cite legal provisions for barring family members or lawyers from visiting individuals in pre-trial detention, detainees held in undisclosed locations are at the mercy of police officials who act without any judicial oversight.³⁰ Individuals held incommunicado during police investigations, especially those detained for political reasons, are at increased risk of torture by officials, who may use such tactics to coerce a confession. Based on the cases we documented, most acts of torture occur in the initial days, weeks, or months in custody, and before a detainee is allowed to see a lawyer. Lawyers interviewed for this report told us that officials have delayed lawyer visits in order to allow time for a detainee's injuries or visible wounds to heal, so lawyers would not be able to see the physical results of torture.³¹

20. In the case of activist Wu Gan (吴淦), who was detained in Fujian Province in May 2015, authorities refused Wu's lawyers' requests to visit him for more than a month after he was first detained. Officials at the detention center told the lawyers that meeting Wu might lead to "leaking state secrets" since Wu was facing a charge of "inciting subversion of state power." There is reason to believe, however, that police are using politicized charges against Wu to justify his secret detention and denial of legal counsel, and are retaliating against his criticism of government officials' handling of the death of a petitioner shot by police in a train station in Heilongjiang Province.³²

21. For weeks in 2014, police in Henan Province denied lawyers' requests to visit detained human rights lawyers Chang Boyang (常伯阳) and Ji Laisong (姬来松) and a dozen activists, including Jia Lingmin (贾灵敏) and Yu Shiwen (于世文), though they only faced non-political charges such as "creating a disturbance," "gathering a crowd to disrupt order of a public place," or "illegal business activity." These non-political charges did not stop police from denying lawyers' visits on the grounds that the detainees were being held on suspicion of "endangering state security."³³

C) Lawyers Targeted for Safeguarding Clients' Legal Rights

22. Since President Xi Jinping came to power in 2013, Chinese authorities have escalated persecution of criminal defense lawyers to an unprecedented degree. These lawyers have represented clients in politically “sensitive” cases and have tried to protect these individuals’ legal rights under Chinese law, including the right to file complaints and protest breaches of the law and abuses of power by law-enforcement and judicial authorities. Contrary to the government’s claim in its response to the Committee’s List of Issues³⁴ that it “does not permit so-called ‘retaliation’ against the normal work of lawyers,” there have been massive police operations, well-coordinated nationwide by the Ministry of Public Security, targeting these criminal defense lawyers. The latest round of persecution started on July 9, 2015, and has so far involved police interrogations of more than 300 lawyers and activists, searches of homes and law offices, abductions, and criminal detention of more than 20 individuals, including several being put under “residential surveillance” in unknown locations. Many of those released were warned against speaking publicly in support of detained fellow lawyers.³⁵

23. In recent years, violent physical attacks against lawyers who insisted on challenging illegal official behavior or abnormal procedures by police, prosecutors, judges or court staff have been ramped up in severity and frequency.³⁶ CHRD documented eight cases of violence against lawyers in the first six months of 2015 alone, with several of the incidents resulting in serious physical injuries. In Guangxi Province in May, unidentified individuals armed with batons and knives attacked attorney Xie Yang (谢阳) while he was providing legal advice to clients in Nanning City. Xie’s right leg was fractured, and he sustained many bruises. In April, two judges and several bailiffs attacked lawyer Cui Hui (崔慧) at a Beijing courthouse. Doctors later found injuries to her scalp and eye sockets, and soft tissue damage over 40 percent of her body. (Four weeks later, government investigators claimed that no beating had taken place and offered video footage as proof, which Cui and other lawyers believe was heavily doctored.)³⁷

24. In addition, amendments to the Criminal Law, which go into effect on November 1, 2015, codify the criminalization of challenges by lawyers in cases where authorities break the law and when the legal rights of lawyers’ clients are abused at trial. In the Ninth Amendment to the Criminal Law, Article 309, which penalizes “disrupting courtroom order,” would be amended to give authorities broad powers to interpret lawyers’ speech in court as “insulting,” “threatening,” or “disruptive”—an offense punishable by up to three years in prison. This amended article now provides a pretext for judges to expel lawyers from court proceedings. This happened to lawyers Dong Qianrong (董前勇) and Wang Yu (王宇) during a case in Beijing in April 2015, and to lawyer Wang Quanzhang (王全璋) in Shandong Province in June 2015, when they protested procedural violations by the courts that deprived their clients of legal rights.³⁸ Through state media, Chinese authorities have tried to justify the detention of several lawyers in July 2015, claiming they had exhibited such “disruptive” behavior in court.³⁹

D) Courts Rarely Throw Out Evidence Extracted Through Torture

25. In the 2012 amendments to the CPL, Chinese law for the first time explicitly banned illegal evidence extracted by torture in the prosecution of criminal cases, following a 2010 judicial interpretation on the same subject.⁴⁰ While the changes technically brought Chinese law in line with the Convention against Torture (Article 15), there are few signs that Chinese courts have since implemented the amendments. Even a report in state-run media drew that conclusion; after reviewing verdicts posted online by the Supreme People’s Court, journalists at the state-run *South Reviews Magazine* did not uncover a single instance of a court decision tossing out illegal evidence, according to an October 2014 article.⁴¹ In its responses to the 2015 Committee’s List of

Issues, the government listed just five cases where evidence extracted through torture had been thrown out, though it did not specify how or if the discarding of evidence affected the outcome of the cases.⁴²

26. Among the cases documented for this report, we found that the courts frequently did not enforce the CPL amendments stipulating exclusion of evidence gained through torture. Judges would decline requests raised by lawyers to exclude the admissibility of confessions suspected to have been extracted from torture, or would interrupt the testimony by criminal suspects about mistreatment they suffered to force them to confess. In court proceedings, video footage from prisons and detention facilities has not been commonly used to substantiate a defendant's allegations of torture or to prosecute alleged abusers.

27. In July 2010, lawyer Zhu Mingyong (朱明勇) released a video online, in which his client, alleged Chongqing mob boss Fan Qihang (樊奇杭), who had been sentenced to death, described his torture by police. In the video, Fan said mistreatment led to a coerced confession that was later used to convict him, and he displayed the scars on his body from the alleged abuse. Before releasing the video, lawyer Zhu also submitted it to the Supreme People's Court (SPC), which was reviewing Fan's sentence. In September 2010, the SPC approved Fan's death sentence despite the existence of the video, and he was subsequently executed. There is no evidence that the SPC ever viewed the video or ordered an investigation of Fan's torture allegations.⁴³

28. In February 2015, a Hunan court sentenced two criminal suspects to lengthy prison terms based on coerced confessions. The illegal evidence was initially thrown out but then re-admitted. The two suspects were relatives and supporters of an ethnic minority leader who died in detention after exposing government corruption. The defendants, Long Xianyuan (龙贤员) and Long Xianjiang (龙贤江), both detained in connection to the same case, had accused police of torturing them to force confessions after they were detained for "triad-related crimes" following protests over the minority leader's death. The Jishou City People's Court had initially excluded the evidence from the trial and dismissed the case, but the procuratorate indicted the two men again. This time, the Jishou court convicted the two based on the evidence that had been previously tossed out, and sentenced them to 15 and 25 years in prison, respectively.⁴⁴

29. In its 2008 Concluding Observations, the Committee noted the government's admission that "illegal interrogation" had resulted in "nearly every wrongful verdict in recent years."⁴⁵ Almost a decade after that statement by the State party, the situation has not improved. Recently, high-ranking Chinese officials have spoken with some openness about the causal relationship between torture and wrongful convictions. China's State Council stated in 2014 that procuratorates "provided 54,949 opinions" to "correct illegal investigation activities such as misuse of compulsory measures, illegally obtaining evidence and extorting confessions by torture."⁴⁶ A state-media commentary that appeared in 2014 acknowledged that forcing confessions through torture "has not been rare" in China.⁴⁷ In January 2015, Su Zelin, deputy director with the Commission for Legislative Affairs of the National People's Congress Standing Committee, reportedly said 90 percent of cases of "miscarriages of justice" that result in long prison sentences or executions are due to extracting evidence via torture, an observation echoed by other officials. Seven months later, the director of the Zhejiang Province Supreme People's Court stated in an article that virtually all criminal cases with unjust convictions, particularly wrongful executions, come about due to illegal evidence extracted via torture.⁴⁸

30. One reason for the prevalence of forced confessions involving torture is that China's criminal justice system rewards high conviction rates and speedy convictions in prosecuting criminal suspects, which increases the pressure to give significant weight to suspects' own

confessions. These policies and practices create incentives for police to continue to use torture to coerce confessions.⁴⁹ As one lawyer put it, the “detection of criminal behavior” is intertwined with the use of torture, making it that much more difficult to halt.⁵⁰ In responding to the Committee’s List of Issues, the Chinese government cited CPL (Article 53), which stipulates that self-incrimination alone must not result in conviction or sentencing. The government provided no evidence to back up its claim, however, that “consistent judicial practice” in China is not to rely on confessions alone in convictions.”⁵¹ This response by the State party did not directly deny allegations that the courts continue to rely on coerced evidence.

E) Video Cameras in Lawyer-Client Meetings, Not in Interrogation Chambers

31. In its September 2015 response to the Committee’s List of Issues, the government noted that China’s CPL forbids police from recording or monitoring conversations between lawyers and incarcerated clients.⁵² Nevertheless, the government did not respond to accusations of frequent breaches of related laws at detention facilities, nor did it provide any information about investigations into allegations of monitoring lawyer-client meetings. Lawyers interviewed for this report said they have filed numerous complaints about police monitoring or recording their meetings with detainees, which is common practice.⁵³ Such a practice has the effect of intimidating detainees, who may not reveal torture to lawyers for fear of retaliation.

32. In the spring of 2015, attorneys for detained lawyer Pu Zhiqiang reported that meetings with Pu had been recorded and videotaped. In a separate incident, one lawyer interviewed said that police recorded his meeting with a detained Falun Gong practitioner and then used the recording to intimidate the lawyer and pressure him to drop the case.⁵⁴

33. In a widely reported death penalty case, a police recording of a meeting between lawyers and the defendant caused a man to spend six years on death row in Fujian Province. That man, shop owner Nian Bin (念斌), said at his first trial, in 2007, that police interrogators had tortured him to coerce a “confession” to a murder he did not commit. Prior to his trial, however, Nian did not mention the torture to his lawyers because the police had threatened him; Nian had been intimidated when police sat in the room and videotaped a meeting between him and his lawyers. The tape, which included statements by Nian to his lawyers admitting to the murder, was later used as evidence during a trial in 2008, leading to his conviction and death sentence. In 2013, after Nian had spent six years awaiting execution, information about police coercion in his case finally came to light. It was presented in August 2014, when a court heard his appeal. Nian’s conviction was subsequently overturned, and he was released.⁵⁵

34. In contrast to the widespread presence of surveillance cameras in Chinese cities, authorities only sporadically install audio/video cameras at detention facilities or interrogation chambers, despite a new provision in the CPL amendment. The CPL provision adopted in 2012 encourages the use of audio and video recordings for criminal interrogations—which can serve as a check on police behavior—but the law does not make it mandatory for all interrogations.⁵⁶ Officials at police stations and detention facilities can take advantage of this loophole, which weakens measures to deter torture during interrogations. The government stated in its response to the Committee’s 2015 List of Issues that the Supreme People’s Procuratorate has issued amendments and rules stipulating that interrogations be recorded and videotaped. Authorities also claim that e-surveillance equipment has been installed in all sites across the country where criminal cases are handled.⁵⁷ However, based on interviews with lawyers and former detainees, we believe that interrogation chambers across the country have been insufficiently equipped with audio/video cameras.⁵⁸ Flexible legal provisions as well as lax implementation of laws and

regulations have made it difficult for lawyers to obtain electronic evidence if their clients alleged mistreatment.

35. Several Chinese lawyers interviewed for this report said that police officers have found many ways to avoid having their behavior recorded in order to hide evidence of mistreatment of criminal suspects. For instance, in several incidents of torture-induced confessions reported by lawyers, the acts of torture often took place in bathrooms or hallways where surveillance cameras were not installed. Police also are known to only selectively tape parts of interrogations or edit videos or audio recordings so that potentially incriminating footage is deleted.⁵⁹

36. A criminal gang case in Hunan in March 2015 provides a good illustration of how police manipulate recording equipment when they use torture during interrogations. Police reportedly turned off video cameras installed in the interrogation chamber during their alleged torture of several defendants, including Jiang Ronghua (蒋荣华), in order to extract confessions. The Hengyang City People's Procuratorate did not conduct an investigation after suspects retracted their confessions and claimed they had been tortured. Instead, the procuratorate indicted them, and their coerced confessions were used against them at trial. In court, the judge dismissed Jiang's account about how police turned off the cameras and proceeded to torture and threaten him until he signed the interrogation record that the police had forged. The judge repeatedly tried to interrupt Jiang during the trial, though Jiang managed to disclose some details of his ordeal, including the fact that while recording equipment was turned off he was hung from a ceiling, repeatedly beaten, and one interrogator shoved a dirty toilet brush violently into his mouth.⁶⁰

37. Authorities have denied torture victims and their lawyers access to video records. After the January 2015 death in detention of farmer Yang Wusi (杨五四) in Anhui Province, his family's lawyer asked the Qianshan Public Security Bureau to release video surveillance recordings at the facility where Yang was detained at the time of his death. Officials at the facility refused to make the video recordings available. Yang's family had demanded that local authorities provide an explanation of Yang's death, as the family suspected that he had been tortured to death. Doctors found through an autopsy that Yang had no food in his stomach, bruises on his body, a wound on his head, and bloodstains on his clothes, strongly suggesting that he may have been severely beaten and even starved to death. His family said that Yang, who was criminally detained in November 2014 on suspicion of rape, was in good health before he was taken into police custody.⁶¹ Without the video recordings, it was impossible for the family to find out how Yang had died and very difficult to file complaints demanding an investigation.

Recommendations:

The Committee against Torture, other international organizations, and State parties to the Convention should urge China to:

- **Implement effective measures to ensure that all detained suspects, regardless of the charges, be provided fundamental legal safeguards in detention, including the right to access a lawyer and have the family notified within the time specified in law, and to appear before a judge within a reasonable period of time, in accordance with international standards;**
- **Release human rights lawyers and activists who have been put under secret "residential surveillance" or criminal detention for an unreasonably prolonged period without a trial (See Appendix 2);**

- **Amend relevant provisions in the Criminal Law and Criminal Procedure Law that permit secret detention and enforced disappearance, in violation of Article 2 of the Convention; specifically, revise Article 73 of the Criminal Procedure Law so that “residential surveillance” cannot be used to allow authorities to detain an individual incommunicado without a trial, and hold criminally accountable any government agents responsible for cases of enforced disappearance;**
- **Take effective measures to ensure that lawyers can, independently and without fear of harassment and retaliation, defend their clients’ legal rights, including challenging police misconduct and procedural violations in court or political interference in judicial review;**
- **Revise Article 309 of the newly amended Criminal Law so that the law cannot be used to undermine the independence of lawyers and punish lawyers’ free speech in court, and take immediate action to investigate accusations of arbitrary detention of and violence against human right lawyers;**
- **Take necessary measures and strictly enforce relevant legal provisions to ensure that illegal evidence extracted through torture is excluded in court trials, and hold judges accountable for admitting illegal evidence;**
- **Establish effective and confidential monitoring procedures in all incarceration facilities, and ensure that any designated monitoring body can function with independence; and**
- **Withdraw its reservation to Article 20 of the Convention, which empowers the Committee to investigate allegations of systematic acts of torture, thus declare in favor of Articles 21 and 22; ratify the Optional Protocol to the Convention against Torture as soon as possible.**

II. Impartial Investigation Impossible Without Independent Judiciary (Articles 11, 12)

38. Impartial investigation into torture allegations has been a great concern of the Committee in all its reviews of China, especially in 2008.⁶² Without an independent judicial system, there cannot be impartial investigation of police conduct. Contrary to the State party’s assertions in its response to the Committee’s 2015 List of Issues, China has no independent mechanisms to conduct such investigations. Under China’s one-party, authoritarian system, the legislative, legal, and judicial systems are not independent from the CCP. China’s performance in implementing its treaty obligations to CAT cannot be meaningfully assessed without a sufficient understanding of the country’s political structure.

39. In 2013, during China’s second Universal Periodic Review, the government accepted recommendations on “ensuring proper, independent investigations” into allegations of assaults against members of civil society, yet China’s suppression of civil society has since escalated and defense lawyers have come under assault for demanding fair trials and non-interference in their work.⁶³ Specifically, authorities have refused to investigate several deaths in detention that are believed to have been due to torture, including the death of activist Cao Shunli (曹顺利). Chinese authorities have ignored or rejected the vast majority of torture complaints that have been filed in other cases requesting investigations.

40. It is especially rare for authorities to grant a request for investigation into alleged torture that has occurred in extralegal detention facilities. In addition, almost no independent and impartial investigation of torture that takes place within the *shuanggui* (双规) system—the internal CCP disciplinary system for investigating party officials—is known to have been conducted, and no suspected torturer has publicly been known to have been prosecuted through normal legal procedures.

A) No Independent Power Invested in Designated “Investigators”

41. The People’s Procuratorate offices at the central, provincial, municipal, and county levels are the main agencies tasked with investigating complaints of police misconduct. These offices, however, are not independent, financially or otherwise, from local governments, even in light of limited pilot circuit court projects. Nor are procuratorate offices independent from the Chinese Communist Party.⁶⁴ The problem of independence remains a fundamental hurdle to ensuring impartial investigation of alleged torture by police and other State agents.

42. The problem of procuratorate independence is tied to China’s political system. Although the Chinese Constitution states that “the people’s procuratorates exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual,”⁶⁵ the Constitution also declares that “local people’s procuratorates at different levels are responsible to the organs of state power at the corresponding levels which created them and to the people’s procuratorates at the higher level.”⁶⁶ The Constitution does not mention that procuratorates are not subject to interference by the CCP. Existing laws also include similar clauses.⁶⁷ It is also unclear exactly what laws are referred to in the clause “the people’s procuratorates exercise procuratorial power independently, in accordance with the provisions of the law.” What provisions of the law? In what ways do these laws influence the independent exercise of procuratorial power? In a major policy document released in 2014, Chinese leaders emphasized that the Communist Party coordinates all sides of work with people’s congresses, governments, and judicial and prosecutorial bodies.⁶⁸ Furthermore, the Public Procurators Law stipulates that a procuratorate must possess “fine *political* and professional quality” (emphasis added), a legal requirement that limits procuratorial independence from the Party.⁶⁹

43. In its response to the Committee’s List of Issues, the government made two circular and rather unconvincing claims: Procuratorates function independently because the law stipulates that they should; and procuratorates conduct impartial investigations because different departments within the procuratorate are responsible for supervising and prosecuting public security agencies.⁷⁰ The State party did not provide any details about how independence is protected or other proof to substantiate these claims.

44. Procuratorates play a dual role as the supervisor of law-enforcement bodies (including public security agencies, i.e., the police) and prosecutors of their cases, making it unfeasible to be impartial or independent when considering torture allegations against police.

45. Chinese lawyers said in interviews that procuratorate personnel rarely make unannounced visits to check on police performance in detention facilities, even though they are legally allowed to do so. Officials who are supposed to be stationed at detention facilities to receive complaints from detainees are rarely there, the lawyers said, and written complaints deposited in designated boxes, which appear to be rarely installed, are delivered by guards to officials from the procuratorates, often leading to retaliation against detainees. Several lawyers also observed that this complaint/investigation mechanism is meaningless since the procuratorates, which manage

detention facilities, have a political interest in looking good to their superiors. If police are involved in allegations of a forced confession, or are tasked by the government with punishing detainees for having disclosed high-ranking officials' corruption or organized protests against illegal land grabs by relatives of officials, the procuratorate officials who work under the same government authorities are unlikely to investigate or prosecute the police. As one lawyer put it, "They are in this together!" Officials managing detention facilities could also be demoted or lose their jobs for tarnishing China's "national image" if an accusation of torture at the facility gets into the international press.⁷¹

46. The CCP's Politics and Law Committees (*zhengfawei* 政法委) (PLC), which are Party organizations at each administrative level that coordinate judicial work and usually include local Party secretaries and heads of police departments, have power over the procuratorates.⁷² In its response to the Committee's List of Issues, the State party noted that the PLCs address torture "by coordinating the work of judicial bodies, urging fulfilment of their duties according to the law, creating a fair judicial environment, leading in handling affairs according to the law, and guaranteeing unified and correct implementation of the Constitution and laws." The government has asserted that PLCs do not "directly" take part in investigations and do not make concrete suggestions regarding judicial decisions.⁷³ However, it is common knowledge that these committees give instructions to authorities and interfere in judicial affairs.⁷⁴ In March 2014, Meng Jianzhu, secretary of the Communist Party Central Committee Political and Legal Affairs Commission, is reported to have said in internal meetings that CCP officials must not intervene in specific cases, although the Party would still have final control over outcomes in "politically sensitive" cases.⁷⁵ The CCP itself minced no words about the Party's primacy in its official report issued after the CCP's Fourth Plenum on "Ruling According to the Law" in October 2014; in the report, it was reaffirmed that PLCs are the Party organizations within the judiciary that ensure the political direction of work and "must be maintained for the long term."⁷⁶

47. The procuratorates tend to reject or refuse to look into detainees' or their lawyers' complaints. In one case, police at a Beijing detention center had denied eight applications from a lawyer who requested visits to see detained activist Ge Zhihui (葛志慧) before the procuratorate accepted the lawyer's complaint in April 2014 and ordered police to allow him access to Ge.⁷⁷ By that point, Ge had been repeatedly tortured and subjected to other forms of mistreatment. She told her lawyer that, to restrict her movements, police had handcuffed and chained her up. Ge, who is disabled and needs crutches to walk, reported that she was deprived of sleep, blocked from using the toilet, banned from speaking to other detainees, not allowed to shower for more than three weeks, and given unidentifiable medication that made her sick. After Ge was released on bail, she filed a complaint with the local procuratorate about the abuse she had suffered, but after more than a year has had no response, and no known investigation has been conducted.⁷⁸

48. While the CPL stipulates that procuratorates exercise the authority to investigate acts of suspected torture or abuse of power by police,⁷⁹ officers from the relevant public security bureau who operate detention facilities also have discretion in handling such claims of mistreatment.⁸⁰ Requiring police to investigate themselves, however, creates an inherent conflict of interests. According to the State party, if a procuratorate investigates a complaint of police torture, the police bureau is involved in the process, as "discipline inspection and supervision departments" within prisons and detention centers can participate in or initiate investigations into alleged police torture.⁸¹ Often under these conditions, allegations against police officers are not open to public scrutiny, making it possible for police to suppress accusations, prevent investigations, and protect their colleagues from prosecution, or even seek revenge against detainees who filed complaints.

49. One case that illustrates the lack of independent bodies within incarceration facilities is that of imprisoned magazine editor Wang Hanfei (王寒非). Wang suffered severe injuries from assaults by guards in Chenzhou Prison in Hunan Province between April and May 2013.⁸² He received four stitches for wounds on his face and lost hearing in his left ear. The prison's Deputy Director Deng Xu (邓旭), a police officer, told Wang's wife that Wang was injured in an altercation with another inmate.⁸³ To date, there has been no known investigation by prison authorities into Wang's allegations that the guards had been the perpetrators, nor has there been an investigation of prison authorities themselves who, Wang has maintained, ordered his torture.

B) Lack of Investigation Into Deaths in Detention

50. The death of activist Cao Shunli in March 2014 speaks volumes about the absence of accountability for torturers and the absence of justice for torture victims, especially those whom the government considers a "hostile force" or "political threat." The case also exposes the obstacles for families who push for independent investigation of torture allegations. Cao campaigned to persuade the Chinese government to allow civil society participation in the Universal Periodic Review by accepting information and comments on the government's "National Human Rights Report" that was to be submitted to the UN. She died after spending over five months in detention. During her detention, authorities denied her adequate medical treatment and refused to grant her medical bail as her health deteriorated. When she was finally hospitalized with organ failure, one doctor at the hospital reportedly expressed shock at her horrendous state of health. Immediately after Cao's death, authorities refused to let the activist's family see her body for two weeks, and when the family was finally able to do so, they noticed bruises and discoloration on Cao's body.⁸⁴

51. To date, Cao's family has not buried her body, which remains in a morgue in Beijing, as her family continues to hope for an independent investigation into her death. Family members openly called for an independent investigation before officials warned them to stay silent. They came under intense pressure from authorities not to pursue the matter.⁸⁵ Meanwhile, Chinese authorities have long washed their hands of any responsibility. Just three days after Cao died, police released a statement that dismissed outright the apparent circumstances that led to her death, and made no mention of any investigation held to support their claims.⁸⁶

52. In responding to the Committee's questions about the death of Cao, the government insisted that she was given "timely" treatment and that her family and lawyers were allowed to visit her at the hospital.⁸⁷ In fact, Cao's lawyer was never permitted to enter the hospital ward, which was guarded by detention center officials around the clock. At least 20 friends of Cao were detained, some for up to one month, for trying to visit her at the hospital.⁸⁸ Cao's lawyer, Wang Yu (王宇), was abducted on July 9, 2015, and has since disappeared into police custody.⁸⁹

53. There have been other deaths in custody with political undertones where authorities have either ordered the body cremated (against the wishes of families) or refused to hand over remains. In June 2012, activist Li Wangyang (李旺阳), a labor leader during the 1989 pro-democracy movement who had spent many years in jail, died under mysterious circumstances in a hospital in Hunan Province. Authorities officially declared his death a suicide after an "investigation" by government officials, details of which have not been disclosed. Police pressured Li's family into agreeing to cremate his body soon after his death.⁹⁰

54. In July 2015, prison officials in Sichuan Province ordered the cremation of the body of Tibetan monk Tenzin Delek Rinpoche, who had died in prison, thus depriving his family of the opportunity to perform traditional Tibetan funeral rites. It is suspected that the monk died from

neglect and lack of proper medical treatment while serving a life sentence on trumped-up charges of “terrorism” and “inciting separatism.”⁹¹

C) Lack of Investigation Into Torture in Extralegal Detention

55. Individuals who have reported being tortured while locked up in facilities that fall outside the scope of the country’s penal system face nearly insurmountable obstacles in filing complaints. Such cases have very rarely been investigated. Such illegal facilities include “black jails,” where an individual can be detained for an indeterminate period of time on orders from government officials; psychiatric hospitals, where an individual may be sent by police and held involuntarily; and Re-education Through Labor (RTL) camps, which were officially dismantled as of January 2014.

56. The Chinese government has come out with staunch denials of the existence of black jails⁹² and claimed that some criminals who ran such detention cells have been prosecuted. This official denial makes it especially hard for victims of torture in these facilities to file complaints, much less to convince government authorities to investigate their allegations. Take, for example, the case of petitioner Gu Julian (顾菊莲). Police in Jiangxi Province refused to let her file a complaint about mistreatment at a black jail for two weeks in March 2012. Gu had been beaten, confined to a small room, and deprived of food. Police officers at the local station said the issue was not under police jurisdiction, and told her to approach the local commission for discipline and inspection, which monitors behavior of CCP officials. They stated that the commission “may criticize” the individual who beat her.⁹³ The lack of any accountability for abusers in black jails is one reason that China has faced international criticism for failing to shut them down and prosecute the abusers. Such criticism has come from, for example, the Committee against Torture and the Committee on the Elimination of All Forms of Discrimination against Women.⁹⁴

57. China’s Mental Health Law (2012) prohibits the detention of anyone to a psychiatric hospital against his or her will, absent recommendations from doctors who examined the detainee.⁹⁵ However, having this provision on paper does not mean authorities implement it, and forced commitment to psychiatric hospitals by government officials or police officers continues to occur. In most cases, authorities forcibly commit political dissidents or those pursuing grievances against official abuse, and order doctors or staff not to release them. Once inside the hospital, such detainees are coerced into admitting to a mental illness, or must promise to stop trying to lodge complaints or abandon their “evil cult” beliefs (such as in cases of Falun Gong practitioners or members of underground Christian “house churches”).⁹⁶

58. In one such example, former factory worker Xing Shiku (邢世库) has been detained in a psychiatric hospital for eight years and claimed he was mistreated, but the government has flatly denied his allegations. Since 2007, Xing has been held in a facility in Harbin City in Heilongjiang Province, where he has been tied up in chains and struck in the head with electric pricks by hospital staff. In a 2013 response to inquiries about Xing’s case from the UN Working Group on Arbitrary Detention, the Chinese government denied the torture allegations and claimed Xing was receiving “good treatment.” However, the government’s claims lacked credibility since there has been no transparent investigation conducted. Evidence collected by Xing’s family and a local NGO, including a video interview of Xing by an activist from an NGO in 2012, contradict government claims. The video clearly shows chains attached to his bed. In May 2014, the Working Group on Arbitrary Detention declared Xing’s detention “arbitrary” and recommended that Chinese authorities release him and provide state compensation. However, the recommendation was completely ignored by the government, and Xing remains detained at the psychiatric institution.⁹⁷ This case illustrates that government authorities are often the main

obstacle to independent investigation of torture allegations. It also shows that, even when an independent international inquiry by a UN body has drawn its conclusions (and a local independent NGO investigation uncovered clear evidence), the government still can deny the outcome of investigations and refuse to take remedial actions required under its treaty obligations as a State party to the Torture Convention.

D) CCP Discipline Inspection Commissions: Torture in the Extralegal Shuanggui System

59. The government continues to claim that “discipline inspection commissions,” which are bodies that oversee Chinese Communist Party officials, can fairly investigate alleged misdeeds by state agents, including acts of torture.⁹⁸ However, within what is known as the *shuanggui* system, in which discipline inspection commissions detain and investigate CCP officials outside of the procuratorial or judicial systems, the same body responsible for the torture is also tasked with investigating accusations of torture, a dual role that virtually guarantees impunity for torturers. Such is the case with the death of Hunan official Peng Ying (彭瑛), who died after supposedly “falling” from the window of a building in June 2015. The local Party discipline inspection commission, which held him in the building and interrogated him, said it would investigate Peng’s death, and concluded that it was a suicide. However, Peng’s family believed that he was tortured to death. Family members who identified the body saw that his fingernails had been ripped out, his body and face were covered in bruises (believed to be unrelated to the fall), and his hands had visible injuries from being shackled.⁹⁹

60. Another *shuanggui* case exhibits the difficulties of pursuing a politically independent and impartial investigation. A former deputy CCP secretary, Xiao Yifei (肖云飞) of Hunan Province, was reportedly subjected to multiple forms of torture while being detained and interrogated in *shuanggui* over the course of several months in 2012. His interrogators abused him with a form of torture called “hanging pig,” where Xiao’s hands were cuffed behind his back as he was hung from the ceiling and beaten. He was also forced to wear heavy body armor and struck with a wooden stick, and his torturers simulated his drowning. Xiao’s case was transferred to the local procuratorate, which threw it out for lack of evidence. After his release, Xiao made several unsuccessful requests for an investigation into his torture under *shuanggui*, and he was detained in retaliation for his pursuits in 2014.¹⁰⁰

E) Light Punishments Fuel Cycle of Impunity for Torturers

61. The persistence of widespread use of torture is likely a consequence of the impunity enjoyed by torturers, including police officials and other State agents. State agents accused of torture are rarely held criminally accountable for their actions. The Committee has raised concerns about light or no criminal punishments being given to perpetrators of torture and recommended that the government ensure torture is “punishable by appropriate penalties which take into account their grave nature.”¹⁰¹ It is difficult to judge whether the situation has seen any substantial improvement. The government has provided the Committee with unspecific data about the number of convictions related to acts of torture, largely ignoring the Committee’s requests for details on specific types of punishment and the lengths of prison sentences for convicted individuals.¹⁰² In so doing, the government avoided answering the Committee’s question whether convicted torturers have been given “appropriate penalties.” Indeed, the government’s refusal to provide specific data makes it difficult to assess whether “appropriate penalties” stipulated in relevant Chinese laws have been implemented.¹⁰³

62. In the hundreds of cases of alleged torture of human rights defenders reviewed for this report, not a single case involved punishment for torturers. Neither accused perpetrators of abuse

from the abolished RTL camps nor officials who have operated black jails have received criminal punishments. Instead, many former RTL guards have been transferred to other posts at drug rehabilitation centres and “legal education” centers—administrative detention facilities with similar functions to RTL camps—and also to prisons, detention centers, and judicial offices.¹⁰⁴ In criminal cases involving black jails, the very small number of guards who have been punished have usually been convicted of offenses related to operating an “illegal detention” facility, not for acts of torture.¹⁰⁵

63. The cases publicized in state media in which authorities have punished perpetrators of torture and handed down criminal penalties have involved death or severe injury of the victim. The tendency is for authorities to take action to punish the perpetrators following public outcry over the incidents exposed by print media or online news agencies. The official data provided to the Committee almost entirely focuses on such cases. A survey of cases from the late 1990s to 2012 reported in China’s state media showed that of 17 cases where victims died as a result of police trying to extract confessions, only six cases resulted in penalties of over 10 years for the perpetrators. In the other 11 cases, defendants who tortured victims to death received one to three years’ imprisonment, and in six of these cases, the defendants were only given suspended punishments. Nevertheless, torturers avoiding punishment is closer to the norm; in 30 other torture cases reported in the same period, 18 defendants involved in seven of the cases were found guilty of a crime, but all avoided criminal punishment.¹⁰⁶ The State party provided only general data about these cases, so it is difficult to ascertain when and why perpetrators are punished and when they are not.

64. In 2009, state media touted one case of prosecution as an example of how “effectively” the criminal justice system punishes torturers. In 2008, criminal suspect Wan Jianguo (万建国) had died in an interrogation room and his body was reportedly covered with injuries. The procuratorate investigated nine police officers (but only charged four) for causing Wan’s death by torturing him to obtain a confession. Eventually, the Nanchang City Intermediate People’s Court found only one officer guilty of “intentional injury”—a far less serious charge than “intentional homicide,” which arguably would have been more appropriate—and handed down a 12-year sentence. The court convicted the three others of “torture to force confession,” but gave no criminal punishment to two of the convicted officers. The third officer, Xia Xiangdong (夏向东), the head of the local police department, was sent to prison for just one year. Xia Xiangdong appealed his one-year prison sentence, which a higher court overturned in 2011. Wan Jianguo’s wife complained that the verdicts were “extremely unjust” and the penalties “far too light.” Indeed, the officers who caused Wan’s death should have been given harsher penalties according to China’s Criminal Law.¹⁰⁷

65. In one case, a man named Yu Gangfeng (于钢峰) died three days after being taken into custody in Henan Province in 2011. Police said he passed away from “vomiting to death.” In 2013, three officers who had been on duty at the time of Yu’s death were brought to trial and convicted of “abuse of power,” but none of them was given any criminal punishment.¹⁰⁸ In the case of persecuted human rights lawyer and housing rights activist Ni Yulan (倪玉兰), the police officers she accused of torturing and crippling her were in fact promoted instead of being reassigned or punished.¹⁰⁹

66. The most common punishment for police officers who are found guilty of having committed acts of torture is an administrative penalty as stipulated under China’s Police Law.¹¹⁰ As stated by the director of a criminal division in the Hubei Provincial People’s Procuratorate, “there are few criminal punishments but many suspended punishments, and little criminal responsibility being pursued, but a preponderance of administrative penalties.”¹¹¹ In fact, it

appears that even administrative penalties are rare. Data from the 1990s-to-2012 survey mentioned above revealed that officers found guilty of torture were not demoted and instead retained their positions.¹¹² This survey and the few cases reported in state media support the conclusion that impunity is the norm for police officers convicted of committing acts of torture.

Recommendations:

The Committee, other international organizations, and state parties to the Convention should urge China to:

- **Establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigations into all allegations of torture, and ensure that all acts of torture are punishable by appropriate penalties in line with their severity;**
- **Take measures to ensure impartiality and independence of investigation into all instances of death in custody, and that those responsible for such deaths resulting from torture or wilful negligence are prosecuted; make public information on the result of such investigations, any penalties levied against those responsible, and any compensation given to victims' families;**
- **Make public data on state agents who have been investigated, criminally prosecuted for acts of torture, including their names, crimes, and specific criminal punishments;**
- **Abolish the Politics and Law Committees, which, despite the State party's claims to the contrary, are invested with the authority to interfere in ("guide") court rulings and dictate verdicts; expand pilot circuit court projects and other measures to ensure the independence of the judiciary; and**
- **Abolish all forms of extralegal detention, including "black jails" and the CCP disciplinary *shuanggui* system; investigate alleged abuses committed in these facilities, as well as in the now-abolished Re-education Through Labor camps.**

III. Reprisals for Seeking Accountability (Article 13)

67. Victims of torture in China tend not to file complaints or seek accountability. Reasons for this include a lack of knowledge, the woefully ineffective legal or administrative channels for filing complaints, the lack of confidence in the country's law-enforcement and criminal justice systems, and the fear of reprisals. As explained previously in this report, authorities pressure victims to drop complaints or threaten them for making accusations.

68. According to Chinese lawyers interviewed for this report, victims might be discouraged from submitting complaints or seeking redress within the legal system because they lack basic information about the law or the legal system, or do not know how to file a complaint.¹¹³ Those who do take the initiative to file complaints face many challenges and must confront the reality that alleged torturers very rarely face punishment and that obtaining redress is incredibly rare. Lawyers pointed out some practical issues faced by victims who do wish to file a torture complaint through the legal system, including that getting courts to docket a case is too time-consuming, disruptive to their daily lives, and expensive.¹¹⁴ Legal aid is available in some cases,

but lawyers interviewed for this report said the system is abused; authorities only provide legal aid to lawyers who follow their orders in cases.¹¹⁵

69. Facing such challenges, a large portion of torture victims in China have sought redress through the country's petitioning (*xinfang* 信访) system, a relic from the Mao era that falls outside of the normal justice system. In this system, citizens call, submit written petitions to, or visit government, Party, or judicial authorities at the local or higher administrative levels to get them to resolve disputes, rule on wrongdoings, or provide remedies. Petitioning, however, is rarely effective, and hundreds of thousands of petitioners each year overwhelm the system. Petitioning also leaves complainants vulnerable to harassment, physical assaults, and detention, among other acts of reprisal by the very officials against whom redress is being sought.¹¹⁶

A) Reprisals Against Torture Complainants

70. The lack of effective and confidential procedures for dealing with allegations of torture contributes to the problem of official reprisals against complainants. Although written regulations on filing complaints in detention centers do exist in Chinese law, the law still provides little protection to complainants.¹¹⁷ According to one government regulation, if a detainee submits a complaint about torture that occurred at the facility, those running the detention facility are to handle the complaint. This process violates the principle of confidentiality, and may lead to retaliation against the complainant.¹¹⁸

71. Though detention centers and prisons are now required to have “complaint boxes” in which individuals can leave allegations of torture,¹¹⁹ these complaints are often inspected or confiscated by the police who run the facilities.¹²⁰ One former detainee interviewed for this report said that there is normally no “follow-up” when a complaint of abuse by guards or cellmates is submitted. Although authorities are required to install procuratorial offices in detention centers to receive complaints and monitor police conduct, interviews with Chinese lawyers revealed that bringing complaints to these offices is simply not a route for seeking redress. The lawyers have observed that procuratorate offices are not regularly staffed—perhaps only once or twice per week, for just a half-day—thus making it difficult to set up confidential meetings.¹²¹

72. The Committee's concerns about torture victims facing reprisal for seeking accountability in China¹²² are well-founded, as reprisals remain a serious problem. There are numerous reported cases of official retaliation by guards or officials against individuals who have sought redress for past abuses at RTL camps, black jails, detention centers, and prisons. Reprisals have taken the form of physical beatings, harassment, intimidation, detentions, and prison sentences.

73. In June 2014, eight women who had been detained and tortured at the Masanjia Women's RTL Camp in Liaoning Province were sentenced to prison for terms ranging from 12 to 18 months on charges of “creating a disturbance” for demanding accountability and State compensation for the abuses committed by officials.¹²³ Li Liyong (李立勇), Shi Junmei (石俊梅), Su Dezhen (苏德珍), Sun Rongyou (孙荣佑), Zhang Hongshu (张洪书), Zhao Lifen (赵丽芬), Zhong Shujuan (仲淑娟), and Zhu Jianyun (朱建云)—some of whom are in their 70s—had petitioned government authorities and demonstrated in front of government offices. They were ignored, pushed away, intimidated, and briefly detained several times before authorities finally arrested them and put them on trial.¹²⁴ In October 2014, the Committee on the Elimination of Discrimination against Women asked the Chinese government to ensure that women who were sent to RTL receive adequate compensation.¹²⁵ The government ignored this recommendation, and none of the women have received any compensation.

74. Some victims seeking redress through the petitioning system have encountered a disturbing form of retaliation. After offering petitioners compensation on the condition that they stop pursuing their complaints, authorities filed charges against them for “extorting the government” or “extortion.”¹²⁶ We have documented 21 such cases since 2010. At least five petitioners have been sent to prison; the longest punishment was a 10.5-year sentence handed down to petitioner Jing Chun (景春) of Jilin Province.¹²⁷

75. Government authorities also retaliate against family members of victims if they insist on an investigation or do not halt their efforts to seek accountability. As one example, prison authorities in Sichuan Province detained the sister and niece of Tibetan monk Tenzin Delek Rinpoche in July 2015 after they insisted on an investigation into his death and took part in a sit-in outside the building where the monk was believed to have served his sentence.¹²⁸ As another example, after activist Li Wangyang died in a hospital in 2012, Hunan police put Li’s relatives under house arrest when they questioned the government’s claim that he had committed suicide.¹²⁹ In the case of Hubei petitioner Wang Delan (王德兰), who was allegedly beaten to death by black jail guards, local officials detained some of her relatives so they could not speak out about the incident.¹³⁰ In addition, family members of Shandong petitioner Li Shulian (李淑莲), who had died in a black jail in 2009, went missing for months in 2010 after they tried to push for answers from officials about her death. Her family suspected that she had died from abuse suffered in the black jail, but officials claimed that she had committed suicide. Li’s daughter went into hiding for fear of reprisals from authorities, and guards at a government building beat Li’s sister when she went there to inquire about Li’s missing family members.¹³¹

76. Fear of retaliation is the primary reason why many victims refrain from reporting abuses to police or filing complaints with procuratorates. In one example, Guangdong-based activist Li Biyun (李碧云), who has been brutally assaulted and detained by police several times since 2009, has never reported her abuse to authorities. She said it was because she wanted to avoid further mistreatment, including from her assailants. Li is a housing rights activist and tried to run as an independent (i.e., non-Communist Party) candidate in her local People’s Congress election in 2012. Since then, she has faced relentless harassment, detentions, and torture for extended periods by police and hired thugs.¹³²

77. Some lawyers who were subjected to torture or violent assault in the hands of police have chosen not to file complaints about their own mistreatment, or have given up trying to hold their torturers accountable. In the harsh political climate since President Xi Jinping came to office in March 2013, Chinese rights lawyers have become increasingly worried about reprisals, given the growing hostility towards civil society and human rights defenders displayed by authorities. Some lawyers interviewed for this report said that they want to be able to continue their work to fight for the rights of the accused, and in order to do that, they must avoid being sent to jail themselves or having their law license revoked. Thus, not pursuing justice for themselves is the price such lawyers pay for defending the legal rights of their fellow citizens.¹³³

B) Obstacles to Filing Complaints

78. Chinese government authorities have adopted various tactics to stonewall the efforts of victims to obtain justice. These include refusing to accept reports of torture, ignoring filed complaints, and intimidating victims so they will refrain from reporting abuses or pursuing justice.

79. *Refusing to record complaints of torture:* In November 2013, petitioner Yin Huimin (尹慧敏) was tortured while she was administratively detained in Shanghai. Yin was shackled and hung from an iron railing for 48 hours, deprived of food, and prohibited from using the toilet. The abuse she suffered caused an infection on her lower body and extensive bruising. After she was released, she went to a police station to file a complaint, which police refused to record. Undeterred, she came back with her supporters. Police blocked them from entering the Shanghai Municipal Public Security Bureau, however, and threatened them with punishment.¹³⁴

80. *Turning a blind eye to complaints:* Police and government officials in Chongqing Municipality refused to respond to a complaint about a police beating in June 2015 that led to vision loss for petitioner Wu Yongfang (伍永芳). The hospital where Wu went for medical treatment would not reveal or hand over results of her physical examination, which could have implicated police in her case. Along with her family and supporters, Wu complained to the district and village government officials and the local police station, but they received no reply.¹³⁵ In another case, police severely beat Yang Qi (杨奇) in 2009 after he told officials in Ruzhou City that he would inform higher authorities of vote rigging in a local election. Yang suffered multiple internal injuries. He and his family complained to the local public security bureau, but police never responded to his complaint.¹³⁶

81. *Intimidating victims seeking redress:* Two sisters from Hubei Province—Jin Hanyan (金汉艳) and Jin Hanqin (金汉琴)—were criminally detained in Beijing in May 2014. Police held them for more than 30 days in a detention center, during which time they were subjected to torture and other mistreatment. The women applied to the Fengtai District Sub-Bureau of the Beijing Public Security Bureau (PSB) for compensation for the psychological trauma, medical bills, and lost wages. The PSB accepted the application, but then an official called the women and threatened to take away their government-provided welfare benefits and medical coverage if they pursued the case.¹³⁷

82. Government officials have not been held accountable for using the above tactics to obstruct victims' access to justice. Individuals who are determined to seek accountability, however, are not easily discouraged even after their persistence has not paid off. One example is that of Jiangsu petitioner Zhou Wenxiang (周文香), who submitted his complaints to officials at the Beijing Municipal Public Security Bureau or the Ministry of Public Security more than 50 times. Neither of these government agencies has ever replied to his complaints, which involved abuses, including a violent beating, which he suffered in a black jail in September 2010. Finally, in May 2012, a Beijing court held hearings concerning alleged abuses linked to black jails in Beijing, including Zhou's. However, the court failed to notify the complainants as to the time and place of the proceedings, and Zhou did not attend because he did not know about the hearing. The court has since refused to release its ruling to Zhou and others whose cases were heard.¹³⁸ Another case where persistence failed to pay involved that of human rights lawyer Cheng Hai (程海). Cheng reportedly submitted more than 200 complaints to procuratorial, public security, and court officials in Dalian, as well as to the Supreme People's Court, concerning four separate incidents of police beatings that he suffered as a result of his having defended Falun Gong practitioners in 2013. Authorities either refused to receive the complaints or did not respond or follow up.¹³⁹

C) Deprivation of Medical Treatment as a Form of Reprisal

83. Deprivation of medical treatment for detainees who suffer illnesses or sustain injuries from torture while in custody has been a pervasive problem. In the past year, we have closely followed 16 cases of currently detained or imprisoned individuals who suffer from deteriorating health and have been deprived of adequate medical treatment and denied release on medical grounds.¹⁴⁰ Some of them are experiencing the same pattern of abuse that led to the death of activist Cao Shunli in detention—a lack of access to adequate medical treatment while in custody, a gradual decline in health, development of new illnesses or injuries from torture, and rejection of (or no response to) requests by lawyers or family members for medical release. In these political cases, deprivation and neglect appear to be purposefully used as a form of reprisal or punishment.

84. However, in its response to the Committee's List of Issues,¹⁴¹ the Chinese government stated that it "had not found issues related to official agencies depriving the right of detainees to timely and comprehensive medical treatment as a method of retaliation." The government did not deny that medical examinations are not conducted independently outside of incarceration facilities or without government personnel present.¹⁴² This tacit acknowledgement confirms reports that detainees and prisoners are unable to access treatment by a doctor of their own choosing on request, or be examined by an independent doctor in a position to report torture when evidence is uncovered.

85. The information provided by the government on this point is contradicted by numerous reports, including those by CHRD,¹⁴³ and is unconvincing in its denial of allegations of deprived medical treatment in incarceration facilities. Specific examples include the following:

- 86. **Cao Shunli.** Human rights defender Cao Shunli was successfully managing her health problems at the time she was seized in September 2013, but she was not allowed to take medication that she had brought with her into detention. After not receiving adequate medical treatment for months, Cao eventually died in March 2014 from complications from illnesses that developed or were exacerbated while in custody.
- 87. Others who have died after not being provided medical care in custody include Chen Xiaoming (陈晓明), Duan Huimin (段惠民), Goshul Lobsang, and Tenzin Choedak.¹⁴⁴
- 88. **Chen Xi.** The government responded to the Committee's inquiry about the health situation of imprisoned activist Chen Xi (陈西) by stating that it is "good." From the information we have obtained, this is false. Chen's wife reported that Chen has grown extremely weak in prison and has lost a great deal of weight. In early 2015, she expressed the fear that he would die in prison if he did not get proper medical treatment.¹⁴⁵
- 89. **Wang Yonghang.** The government maintains that the imprisoned lawyer Wang Yonghang (王永航) has not been tortured. To the contrary, we have learned from his family and lawyers that Wang has been subjected to violence and inhumane treatment since being detained in July 2009, and that his health has seriously deteriorated due to mistreatment and several serious illnesses that have not been properly treated.¹⁴⁶
- 90. **Pu Zhiqiang.** In the case of detained lawyer Pu Zhiqiang (浦志强), the government has provided no information on the state of his health during his 18-month detention. His lawyers and family have informed us that he has not received proper treatment for several medical conditions during his detention. On a recent visit, lawyers found that Pu's

physical condition was very fragile. He was hospitalized in August 2015 with shortness of breath and, according to his lawyer, he has suffered from worsening prostatitis and high blood sugar.¹⁴⁷

- **91. Xie Fulin.** The government made no mention of the medical condition of democracy activist Xie Fulin (谢福林), or the treatment he received during his incarceration. His family had feared that Xie was near death, as he was seriously ill and had been beaten by prison guards. The government only noted that he had been released on July 22, 2015.¹⁴⁸
- **92. Gao Zhisheng.** The government did not provide any information on the health of oft-persecuted lawyer Gao Zhisheng (高智晟). However, Gao himself revealed details of his torture while in prison and his current medical condition in a video interview posted online in September 2015. (Authorities detained him briefly after he released the video.) The recent interview leaves little doubt that Gao was tortured in retaliation for his professional work as a lawyer and his earlier revelations regarding his torture. It also shows that the ill-treatment he received was endorsed, if not directly ordered, by high-level authorities. Gao, who lost several teeth due to deprived medical treatment and generally poor nutrition and hygienic conditions while incarcerated, said that authorities have even prevented him from seeing a dentist since his release from prison in August 2014. Gao, who remains under house arrest at his home in a remote village in Shaanxi Province, said he was kept in “solitary confinement” (in a closed cell measuring about seven square meters) for three years during his imprisonment in Xinjiang, far in excess of the 15 days allowed under exceptional circumstances by Chinese law. He remembered that police who tortured him in 2007 had said to him, “The Communist Party relies on us. The higher government officials are nothing without us and what we do for them.”¹⁴⁹
- **93. Liu Ping.** The government did respond to the Committee’s inquiry by providing some information concerning the case of imprisoned Jiangxi activist Liu Ping (刘萍). We had reported that Liu had been severely beaten by police to extract a confession before she was put on trial, and that she was deprived of medical treatment in detention. According to the government’s response, Liu did receive a medical examination, but the findings were that she had not been beaten, and thus her coerced confession was not excluded from the trial.¹⁵⁰ According to information received from Liu’s daughter and her lawyers, Liu has been mistreated at the detention center and while in prison. She told her daughter during a visit in April 2015 that she was not allowed to speak during the meeting with her, leading her daughter to suspect that her mother was being mistreated and threatened during that period.¹⁵¹

D) Reprisals Against Those Seeking Justice for Tiananmen Victims

94. After more than a quarter-century, the Chinese government has still not allowed an independent investigation or taken up any “disciplinary and/or criminal proceedings regarding the alleged excessive use of force, torture, and other ill-treatment by State officials during and after the violent suppression of the Tiananmen Square protests in Beijing in 1989.” Instead, “authorities continue to suppress any efforts by families, survivors or supporters to commemorate the event and to demand accountability for the human rights abuses committed in 1989.”¹⁵² Twenty-one individuals who participated in the 1989 pro-democracy movement are now imprisoned or detained for their post-1989 activities promoting human rights and democracy and for refusing to give up seeking justice for Tiananmen Massacre victims.¹⁵³

95. In the months leading up to the 25th anniversary of June Fourth in 2014, Chinese authorities in several cities began to preemptively increase surveillance and restrict the movement of some activists. Police tried to prevent activists from organizing events to draw public attention to the regime's past atrocities. Police took as many as 150 such individuals into custody or brief detention for questioning. Authorities have since criminally detained or sentenced 10 of them, and several were subjected to torture or inhumane treatment. Seven of the 10 have been put on trial, two others have been indicted and await trial, and one, the veteran dissident journalist Gao Yu (高瑜), was sentenced to prison in April 2015.

96. Gao, an outspoken advocate of the pro-democracy movement, is serving a seven-year prison term for allegedly "illegally disseminating state secrets overseas." According to her lawyer, Gao, 71, has been mistreated while in detention. Specifically, she has been deprived of adequate medical treatment, leading to a decline in her health. Authorities have refused to release her on medical grounds. She remains behind bars at Beijing No. 1 Detention Center, awaiting the outcome of an appeal on her sentence, which has been delayed three times.

97. The other individuals who have been put on trial include disbarred rights lawyer Tang Jingling (唐荆陵) and his associates Wang Qingying (王清营) and Yuan Xinting (袁新亭). They were charged with "inciting subversion of state power" for, among other things, trying to commemorate June Fourth through peaceful activities such as meditation. The men are detained at Guangzhou No. 1 Detention Center in Guangdong.¹⁵⁴ The three other Tiananmen-related detainees who participated in the 1989 protests and whose cases have gone to trial are: Buddhist monk Sheng Guan (圣观, aka Xu Zhiqiang, 徐志强) and Huang Fangmei (黄芳梅), who are both held at Wuhan No. 1 Detention Center in Hubei, and freelance writer Jiang Lijun (姜力均), held at Shenyang City No. 1 Detention Center in Liaoning Province.¹⁵⁵

98. Three detainees are languishing in prolonged pre-trial detention. For 17 months, authorities have held activist Yu Shiwen, indicted on a charge of "disrupting public order," in the Zhengzhou No. 3 Detention Center. Police detained Yu in May 2014 after he co-organized a Tiananmen memorial event. Authorities have detained rights lawyer Pu Zhiqiang for 18 months at Beijing No. 1 Detention Center. Police took him into custody in May 2014 after he attended a small gathering at a private residence, where some Tiananmen victims' families and participants remembered the victims, as they have done almost every year since 1989.

99. In connection with this round of government reprisals against those who try to keep the memory of Tiananmen alive, activist Zhang Kun (张昆) was formally arrested and is detained at Xuzhou City Detention Center in Jiangsu.¹⁵⁶ In addition, authorities detained Sichuan-based activist Chen Yunfei (陈云飞) in March 2015 after he visited the graves of two Tiananmen victims. He was later formally arrested on suspicion of "inciting subversion of state power."¹⁵⁷

Recommendations:

The Committee, other international organizations, and state parties to the Convention should urge China to:

- **Ensure that police departments, prosecutors' offices, and courts record or register complaints of alleged torture, and accept lawsuits filed by complainants;**
- **Establish and implement safe, independent, and effective complaint procedures, and protect complainants from retaliation;**

- **Conduct a full and impartial investigation into the June 1989 suppression of the pro-democracy movement, provide information on persons detained for commemorating Tiananmen and seeking justice for victims, offer apologies and reparation as appropriate to families of Tiananmen victims, and prosecute those found responsible for excessive use of force, torture, and other ill-treatment;**
- **Hold criminally responsible state agents who commit acts of retaliation against torture victims who report on or seek redress for mistreatment; and**
- **Provide timely and adequate medical treatment for detainees and prisoners by doctors of their own or their families' choosing, release them for such treatment, and hold state agents criminally accountable for depriving medical treatment as a weapon of retaliation against detainees/prisoners, and for deaths resulting from such deprivation.**

IV. Lack of Fair Procedures for Obtaining State Compensation (Article 14)

100. In addition to its failure to implement the Committee's recommendations in its previous Concluding Observations,¹⁵⁸ China continues to lack effective and fair procedures for providing State compensation to torture victims. These victims rarely receive official redress, including financial compensation. China's State Compensation Law, the main law stipulating the conditions under which individuals may be compensated, does not provide effective procedures for seeking compensation, and authorities have not implemented the requirements for compensation outlined by the law.

101. Anecdotal evidence suggests that in the relatively few cases where authorities provided State compensation to torture victims, they did so only in response to public outrage or prominent media coverage.¹⁵⁹ These cases involved very serious abuse, and evidence of torture was exposed by the media and irrefutable. In its response to the Committee's List of Issues, the government has supplied sparse data on State compensation cases since 2009. The government stated that Chinese courts issued judgments on 6,311 compensation cases from January 2013 to June 2015, and only 12 compensation cases heard between 2009 and June 2015 involved severe injuries or deaths from torture due to coerced confessions.¹⁶⁰ None of the information provided by the State party included details about these cases, data about how many individuals were awarded compensation, the amount of compensation, if any, or explanations regarding the reasons for the compensation.

102. The government states that the courts only handle cases where those seeking compensation have not agreed to accept compensation offered by police or prosecutors. If this is true, then most compensation cases are likely handled outside of the judicial system, which means that compensation is handled with very little judicial oversight and may not strictly follow legal standards. This fits well with what we have learned from examined cases of many Chinese petitioners. Government authorities or public security officials, who handle petitioners, offer them "unofficial" compensation, such as low-income welfare payments or money to buy houses to replace those demolished in forced evictions, on the condition that they stop petitioning, discontinue lawsuits against government officials, or move from property marked for demolition by developers. Such extrajudicial dealings take place outside the law and without any oversight by the courts. As such, they are rife with abuse. As discussed earlier in this report, police have arrested petitioners and charged them with "extorting the government" in cases where the aggrieved had earlier accepted compensation from authorities.

A) Obstacles Faced by Victims Seeking State Compensation

103. Although the Chinese Constitution grants citizens the right to compensation according to processes detailed in the State Compensation Law, there are numerous and often insurmountable obstacles, both in law and in practice, that impede the ability of torture victims to seek and obtain compensation.

104. For instance, the government is protected from liability if an individual is found to have “intentionally made false statements or fabricated evidence of guilt.” Courts have used this to deny compensation to torture victims who had been coerced into making false confessions.¹⁶¹ This is the case, as reported in state media in 2014, with villager Pang Zongxiang (庞宗祥). Authorities in Guangxi Province acquitted and freed Pang after he had served six years in prison on a wrongful conviction for robbery. After his release, Pang filed for compensation at the Beihai Intermediate People’s Court, alleging that he had been tortured to confess to the crime. The court rejected his application, ruling that there was no evidence Pang had been tortured into confessing, and that his earlier admission of guilt meant he had “intentionally misled” authorities.¹⁶² Instead of ordering an investigation into Pang’s torture allegation, the court put the burden on him to produce evidence of torture. With so much time having passed, it is now almost impossible for Pang to collect evidence of his being tortured.

105. The State Compensation Law spells out specific timelines for the handling of compensation cases, but these provisions do not appear to be adequately enforced in practice. The statute of limitations for applying for compensation is two years from when the act of torture (or other offense) was declared unlawful. A victim whose case has been filed with a court should receive a judicial reply within three months, and payment should be made within one week if a court rules in favour of compensation. Courts themselves have delayed decisions on such cases in violation of the law. Authorities also may turn a blind eye to applications for compensation for political reasons, just as they often do with torture complaints or requests to investigate alleged abuse. This appears to have occurred in the case for Hangzhou democracy activist Lü Gengsong (吕耿松), who, after applying in August 2012 for compensation over his imprisonment, did not receive a judicial response within the legally required three-month period.¹⁶³

106. Even in those rare cases where a torture victim wins State compensation in court, the amount awarded may be below standard, and the process of receiving the actual payment could be very protracted. For example, a Zhejiang Province court, after taking three years to process the case, ordered a local public security bureau to provide compensation (and a formal apology) to 60-year-old Zhan Xianfang (詹现方) for wrongful detention in psychiatric facilities between 2000 and 2007. The court’s decision, however, made no mention of “torture.” Zhan said that the amount awarded (110,000 Chinese RMB, the equivalent of US \$17,320) was lower than what the law prescribes. With an appeal by the police still pending, Zhan is uncertain whether she may ultimately receive even this much.¹⁶⁴

107. The amount of potential compensation stipulated by law for deprivation of liberty is rising—from 162 RMB (approx. \$25) per day in 2012 to approximately 200 RMB (approx. \$31) starting in 2016.¹⁶⁵ This is still inadequate to compensate for the harm (including psychological, physical, and economic) caused by wrongful detention and abuses that are common in Chinese incarceration facilities. The conditions in detention centers and prisons are notoriously poor, but the State does not consider bad food, hygiene, environment, or sleeping conditions suffered by detainees/prisoners as torture or mistreatment.¹⁶⁶ In contrast to the few cases described in the State party’s response to the Committee’s 2015 List of Issues,¹⁶⁷ Chinese lawyers told us that

even when victims manage to get courts to hear their cases and rule in their favor, the amount of state compensation calculated in cases of torture or other forms of ill-treatment—even those leading to deaths—is very low.¹⁶⁸ In one case, a Hunan court ruled in 2011 that consumer rights activist Chen Shuguang (陈曙光) should be compensated for being wrongfully imprisoned for one year. The court ordered the lower district court that convicted Chen to pay him 31,597 RMB for “invaded personal liberty” (on the basis of about 143 RMB/day), but only 3,000 RMB (approx. \$471) for “psychological and emotional suffering,” a very small fraction of the 270,000 RMB (approx. \$46,600) that Chen had requested.¹⁶⁹

108. If a criminal court refuses to handle a compensation case, the victim may pursue redress through civil action. Civil lawsuits, however, bring even less guarantee that a favorable ruling for a victim will be implemented. In the case of 16-year-old schoolgirl Qu Runyue (屈润月), who was beaten and crippled by the husband of a local official in Sichuan in 2014, no criminal charges were filed against the man due to his political connections. Qu’s family filed a civil lawsuit against him. A court determined the defendant was only 20 percent responsible for Qu’s disablement, and ordered him to financially compensate the victim for her psychological trauma and to cover some of her medical expenses that resulted from the assault. Nevertheless, as of July 2015, Qu had not received any compensation, and the court had not taken steps to enforce its ruling, despite the fact that it has the power in civil cases to seize an offender’s assets to compensate a victim.¹⁷⁰

B) Compensation Denied to Victims of Re-Education Through Labor

109. The government has not compensated former detainees from Re-education Through Labor camps who have demanded redress for abuses. Torture in these now-defunct camps has been reported in Chinese media and is known to have been widespread, and many victims have tried to obtain State compensation. However, the Chinese government has refused to officially acknowledge allegations of torture in the camps, and has denied to the Committee against Torture that torture and ill-treatment in the RTL system was used against ethnic minorities and members of religious groups.¹⁷¹ In its Concluding Observations in 2014, the Committee on the Elimination of All Forms of Discrimination against Women recommended “that all women who were subjected to RTL receive adequate compensation,” but we have found no evidence that the government has implemented this recommendation.¹⁷² In fact, when the National People’s Congress abolished the RTL system in 2013, its resolution stated that all previous RTL decisions still stand, practically legitimizing past abuses in the oft-criticized detention system and making victims’ pursuit of State compensation almost impossible.¹⁷³

110. According to former RTL detainees who spoke to CHRD, authorities have consistently refused to accept or record their complaints over mistreatment, which has hindered their efforts to seek compensation. One woman said that she requested compensation and filed a lawsuit to hold the police who abused her criminally accountable, but “there was no response [from the court], and no way to argue [my case].”¹⁷⁴ Another RTL victim said that authorities refused to register her case because she had been accused of “inciting subversion of state power,” a national security crime; as a consequence, no government body would investigate her allegations of mistreatment, meaning that no court would ever hear her case.¹⁷⁵ Past RTL detainees also have found it difficult to pursue compensation for the same reason as other victims of torture: the court places the burden of proof for producing evidence on their shoulders. The victims of these camps are extremely unlikely to receive any support from guards or police officers in pursuing cases against their colleagues. In the case of one woman who was sent to a hospital for treatment after being physically and sexually assaulted by three guards in an RTL camp, doctors who had treated her refused to give her an official diagnosis or access to her medical records, thus making it

impossible for her to produce any documentation of abuses she had suffered.¹⁷⁶ A documentary film released in 2013 about an RTL survivor's testimony detailed rampant abuses, along with the risks and difficulties in gathering evidence of abuse after being released.¹⁷⁷

Recommendations:

The Committee, other international organizations, and state parties to the Convention should urge China to:

- **Ensure implementation of legal standards in the State Compensation Law and revise relevant provisions in this law in order to comply with Article 14 of the Convention;**
- **Provide timely, fair and adequate compensation to victims who were subjected to torture in extralegal detention facilities and in the now-abandoned Re-education through Labor camps; and**
- **Take effective measures to ensure that court rulings on State compensation are enforceable by law.**

V. Citizens Seeking Information From the Government for the Committee's Review Stonewalled

111. The government has consistently refused to provide specific and disaggregated data on torture cases, punishments for perpetrators, and compensation to victims as requested by the Committee. While the Chinese government has provided some generalized aggregated data concerning punishment levied against state perpetrators of torture,¹⁷⁸ it has not been forthcoming with the detailed information requested by the Committee since the last review, namely "complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel."¹⁷⁹ As noted by the Committee, the lack of disclosure of disaggregated statistical information on torture prevents the identification of "possible patterns of abuse requiring attention," including "circumstances of prisoners of great influence" (e.g., prominent HRDs), violations of laws by public security organs, and "information on matters inside prisons."¹⁸⁰

112. In China, private citizens have faced barriers and, even worse, reprisals for demanding that the government make such data available, as provided for under the scope of China's Open Government Information Regulations.¹⁸¹ The government apparently treats such information as, or tantamount to, "state secrets." Many citizens question the accuracy of data that the government has already provided to the Committee. Starting in the spring of 2015, several citizens filed requests to seek further information and transparency in the treaty body review process, in order to raise public awareness at the national level and use the review as a useful and meaningful step in addressing the problem of torture in China.

113. Since early 2015, dozens of Chinese citizens submitted to the government more than 100 Open Government Information (OGI) applications requesting further information about torture cases or greater detail about the aggregated information in China's fifth periodic report to the Committee against Torture.¹⁸² Specifically, the individuals sought to verify claims in the report that torturers in China are held criminally accountable in line with Chinese law governing crimes of torture. To date, no government body has not provided detailed information on individual

cases. The information requested is similar to what the Committee has asked the Chinese government to provide in the Committee's 2015 List of Issues.¹⁸³ Notably, the government did not provide such information in its September 2015 response to the Committee either, indicating China's continuing pattern of non-cooperation with treaty bodies.

114. In uniform written responses to the information disclosure requests, three Chinese ministries—the Ministry of Foreign Affairs (MFA), the Ministry of Justice (MOJ), and the Ministry of Public Security (MPS)—refused to disclose any information. They stated the “reasons” respectively as: the requested data falls out of the scope of open government information disclosure; the data requested do not exist; and disclosure of government information that involves compilation, analysis, or enhancement can be denied.¹⁸⁴ (For a sample of these written replies, see *Appendix 4*: “Sample Replies from the PRC Ministry of Foreign Affairs (i), Ministry of Public Security (ii), and Ministry of Justice (iii) to Chinese Citizen Application for Information Disclosure on Data Submitted to UN Committee against Torture.”)

115. According to the MFA's written reply, the information used in the State report was given by the MOJ, which the MFA passed on to the Committee. This insinuates that the MFA itself is not responsible for the accuracy or origin of the data in the State's report. Also, contradictions raised by the MOJ's response raise serious questions about the reliability of claims made in the State report. Specifically, in its response, the MOJ stated that data do not exist for “officers who have been charged with committing torture during 2007 to 2014 and actions taken against them.”¹⁸⁵ Yet, according to China's fifth periodic report, 657 individuals were found guilty of crimes related to torture from 2007 to 2011, including “extracting confessions through torture,” “obtaining illegal evidence,” and “mistreatment.”

116. Many applicants seeking answers did not give up in their quest for information, believing that the MFA's actions breached the Open Government Information Regulations. They filed administrative lawsuits against the MFA with a court in Beijing or requested that China's State Council conduct an administrative review of the MFA's behavior. The lawsuits referenced MFA's violations of OGI regulations, arguing that government administrative organs are responsible for disclosing information that they have formulated and, if the organ is unable to disclose the information, they should provide the name and contact information of the responsible government agency.¹⁸⁶

117. The State Council has rejected the requests, stating that such administrative acts do not fall under the scope of what the Council adjudicates. (See *Appendix 5*: “PRC State Council Refusal to Conduct Administrative Review of the Ministry of Foreign Affairs' Refusal to Disclose Information Submitted for Committee Review.”) The Beijing Municipal No. 3 Intermediate People's Court did not accept the administrative lawsuits, declaring that private citizens cannot file litigation against “diplomatic actions” such as the preparation and submission of State reports to the United Nations, including for the Committee's review.¹⁸⁷ The applicants appealed to the Beijing Municipal Higher People's Court, which stated in September 2015 that it would hear two of the lawsuits, but the court has said it will not conduct a public hearing and will only issue a written decision.¹⁸⁸ (See *Appendix 6*: “Beijing Municipal Higher People's Court Notice Stating It Will Not Conduct a Public Hearing and Will Only Issue Its Written Decision.”) If so, the court's decision would very likely come down after the Committee's review in November 2015, thus shielding the government from Committee scrutiny over the issues of transparency and non-cooperation.

118. After trying in vain to obtain information from the government about torture cases, the individuals filing the requests have found it impossible to obtain any further information from the

government related to criminal punishment for perpetrators of torture. They have concluded that the “government information disclosure” system, a mechanism through which Chinese citizens can supposedly apply to obtain “government information,” is either closed to them or dysfunctional.

119. Some applicants who submitted applications for information have faced reprisals—questioning by officials, intimidation, or even detention and interrogation. At least five people have been detained after submitting requests, and the family of one applicant has been harassed.¹⁸⁹

Recommendations:

The Committee, other international organizations, and state parties to the Convention should urge China to:

- **Consult with civil society in the preparation for treaty body reviews, making information submitted for the reviews publically available;**
- **Fully cooperate with the Committee’s review, providing specific and disaggregated data that are required by the Committee; and**
- **End any reprisals against Chinese citizens who seek information necessary for, and participation in, treaty body reviews and other UN human rights activities.**

APPENDICES

Appendix 1: Criminal Procedure Law (2012): Chart of Legal Provisions From Criminal Detention to First-Instance Trial

Agency Responsible	Detention Step	CPL Description		Time Period		CPL Article	Approving Body	
Public security bureau	Criminal Detention	Ordinary Criminal Suspect		3 Days	37 days	Article 89	Public security bureau	
		Prolong For Special Circumstances		1-4 Days				
		Major cases		23 Days				
Procuratorate	Approval of Arrest	Procuratorate Approve or Reject Request for Arrest		7 Days			Procuratorate	
PUBLIC SECURITY BUREAU ISSUES ARREST NOTICE (逮捕书)								
Public security bureau	Investigation	Investigative Period of Suspect Following Arrest		2 Months	3 Months	Article 154	Public security bureau	
		For Complex Cases Only		1 Month			Higher Court	
		Major, Complicated Cases: (1) In Remote Areas; (2) Involving Gang Crimes; (3) Crimes Committed in Several Locations; (4) Cases In Large Areas Making it Difficult to Gather Evidence		2 Month extension (upon approval)		Article 156	Provincial/Autonomous Region/Municipality Level Procuratorate	
		Further Extend if Suspect Faces Penalty of 10+ Years		2 Months		Article 157	Same as Article 156	
		Discover Suspect Committed Other Crimes		Restart Investigation (From Article 154)		Article 158	Public security bureau	
		Discovery of Suspect's True Identity		Restart Investigation (From Article 154)				
POLICE ISSUES RECOMMENDATION FOR INDICTMENT (起诉意见书)								
Procuratorate	Examine For Indictment	Decision to Indict Following Police Recommendation		1 Month	1.5 Months	Article 169	Procuratorate	
		Extension for Complex Cases		15 Days				
		If Jurisdiction Changes		Restart Investigation				
Public security bureau	Supplementary Investigation	1st Supplementary Investigation		1 Month			Public security bureau	
Procuratorate	Examine For Indictment	Examination of 1 st Supplementary Investigation	Ordinary Case	1 Month	1.5 Months	Article 171	Procuratorate	
			Extension	15 Days				
Public security bureau	Supplementary Investigation	2 nd Supplementary Investigation		1 Month				Public security bureau
Procuratorate	Examine For Indictment	Examination of 2 nd Supplementary Investigation	Ordinary Case	1 Month	1.5 Months			Procuratorate
			Extension	15 Days				
PROCURATORATE ISSUES INDICTMENT (起诉书)								
People's court	1 st instance trial	Announce verdict in public hearing		2 Months	3 Months	Article 202	First instance court	
				1 Month extension				
		Extension for death penalty cases, and under provisions stipulated under Article 156		3 Months			One level higher court	
		Under special circumstances, can further extend		No time limit specified			Supreme People's Court	
		If Jurisdiction Changes		Restart Investigation			First instance court	
People's court	1 st instance trial	Extend hearing due to: (1) notify new witnesses; collect new physical evidence; or hold a new investigation; (2) Procurators apply for supplementary investigation; (3) Application for recusal.		1 Month		Article 198	First instance court	
Procuratorate	Supplementary Investigation	Supplementary investigation		1 Month		Article 199	Procuratorate	
People's court	1 st instance trial	Following supplementary investigation, court recalculates trial period		3 Months		Article 202	First instance court	
PEOPLE'S COURT ISSUES VERDICT (判决书)								
Procuratorate, legal representative or affected party	Appeal (from defendant) or counter appeal (from procuratorate)	Lodge an appeal against court verdict		10 Days		Article 219	Procuratorate, defendant, individuals involved	

Appendix 2: 36 Selected Cases of Prolonged and/or Secret Pre-trial Detention (2013-Present)

Names	Length of Pre-Trial Detention	Detention Location Known?	Allowed Lawyer Visit? (If no, reason given)
Pre-trial detention ongoing as of 10/26/2015 (21 individuals)			
Huang Wenxun 黄文勋	29 months	Yes	Yes
Yuan Fengchu 袁奉初	29 months	Yes	Yes
Yuan Xiaohua 袁小华	29 months	Yes	Yes
Pu Zhiqiang 浦志强	18 months	Yes	Yes
Yu Shiwen 于世文	17 months	Yes	Yes
Su Changlan 苏昌兰	12 months	Yes	Yes
Xia Lin 夏霖	11.5 months	Yes	Yes
Wang Yu 王宇	3.5 months	No	No; Endangering State Security
Wang Quanzhang 王全璋	3.5 months	Yes	No; Endangering State Security
Bao Longjun 包龙军	3.5 months	No	No; Endangering State Security
Li Heping 李和平	3.5 months	No	No; Endangering State Security
Zhou Shifeng 周世锋	3.5 months	No	No; Endangering State Security
Zhao Wei 赵威	3.5 months	Yes	No; Endangering State Security
Liu Sixin 刘四新	3.5 months	Yes	No; Endangering State Security
Sui Muqing 隋牧青	3.5 months	No	No; Endangering State Security
Xie Yang 谢阳	3.5 months	No	No; Endangering State Security
Lin Bin 林斌	3.5 months	No	No; Endangering State Security
Gou Hongguo 沟洪国	3.5 months	No	No; Endangering State Security
Xie Yuandong 谢远东	3.5 months	No	No; Endangering State Security
Xu Zhihan 徐知汉	3.5 months	No	No; Endangering State Security
Gao Yue 高月	3 months	No	No; Endangering State Security
Tried: No verdict announced (7 individuals)			
Tang Jingling 唐荆陵	14 months	Yes	Yes
Wang Qingying 王清营	14 months	Yes	Yes
Yuan Xinting 袁新亭	14 months	Yes	Yes
Guo Feixiong 郭飞雄	15.5 months	Yes	Yes
Sun Desheng 孙德胜	15.5 months	Yes	Yes
Jia Lingmin 贾灵敏	11.5 months	Yes	Yes
Liu Yuandong 刘远东	11 months	Yes	Yes
Tried: Convicted (4 individuals)			
Zhao Haitong 赵海通	9 months	Yes	Yes
Bian Xiaohui 卞晓辉	9 months	Yes	Yes
Ilham Tohti 伊力哈木·土赫提	8 months	Yes	Yes
Gao Yu 高瑜	7 months	Yes	Yes
Released on bail (4 individuals)			
Guo Yushan 郭玉闪	11 months	Yes	No; Endangering State Security
Han Ying 韩颖	8 months	Yes	Yes
Huang Zerong 黄泽荣	5.5 months	Yes	Yes
Huang Kaiping 黄凯平	3.5 months	No	No; N/A

Source: CHRD's Prisoner of Conscience Profiles and Focus Campaigns (www.chrdnet.com)

长沙市公安局直属分局
不准予会见犯罪嫌疑人决定书

因犯罪嫌疑人谢阳涉嫌煽动颠覆国家政权案属于危害国家安全犯罪案件，会见妨碍侦查或者可能泄露国家秘密，根据《中华人民共和国刑事诉讼法》第三十七条第三款之规定，决定不准予申请人会见犯罪嫌疑人谢阳。

公安局(印)
二〇一五年七月十四日
直属分局

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Appendix 4: Sample Replies to Chinese Citizens' Applications for Information Disclosure on Data Submitted to CAT From PRC Ministry of Foreign Affairs (i), Ministry of Public Security (ii), and Ministry of Justice (iii)

(i) Ministry of Foreign Affairs

中华人民共和国外交部

关于政府信息公开申请的复函

李蔚：

我部于2015年7月10日收到你就我国对禁止酷刑委员会的结论和建议（CAT/C/CHN/CO/4）所作评论提出的政府信息公开申请。经认真研究，现答复如下：

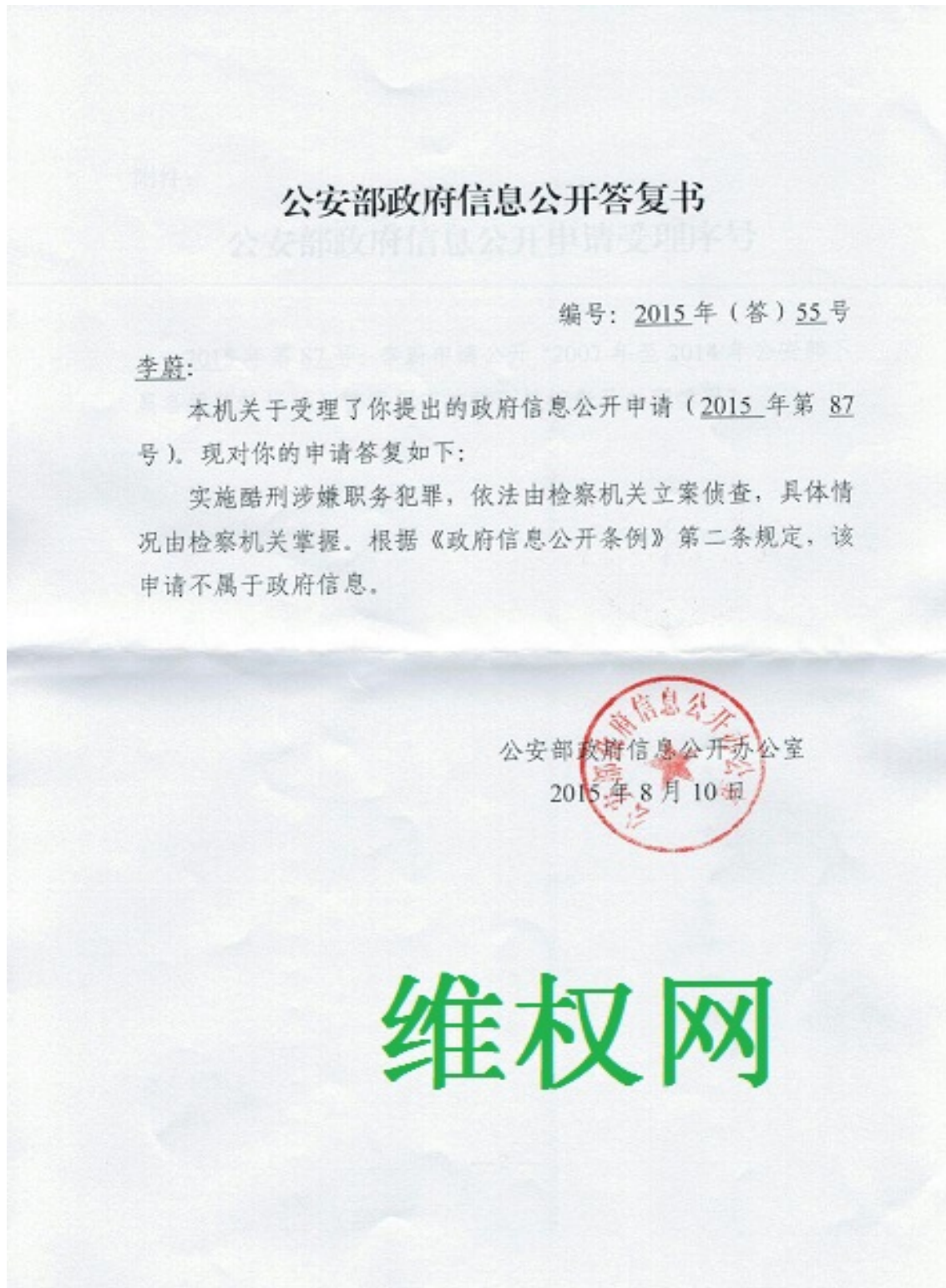
上述评论系由外交部会同有关部门撰写，内容涵盖我国立法、司法、行政等多方面工作。该评论第14段所提及的信息为司法机关提供，我部不掌握相关案件的具体情况。根据《中华人民共和国政府信息公开条例》（国务院令492号）第17条、第21条第（三）项规定，你申请公开的内容不属于我部政府信息公开范畴。

此复。



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(ii) Ministry of Public Security



中华人民共和国司法部

政府信息公开告知书

[2015]第 054 号

李蔚：

你提出的关于公开“2007 年至 2014 年全国司法部下属各监管场所及其干警因实施酷刑被控告及处理情况”的政府信息公开申请收悉。现答复如下。

你所申请公开的政府信息不存在。

禁止酷刑是我国监狱系统明令禁止的。近年来我们持续做好这方面的工作，主要体现在加强禁止酷刑制度建设，进一步对禁止酷刑予以制度保障；加强禁止酷刑教育培训；加强对禁止酷刑监督，依法接受检察机关的法律监督，接受罪犯及其近亲属和社会公众的监督。



维权网

国务院法制办公室

国法复(2015) 776 号

陈建芳:

来信收悉。你对外交部作出的《关于政府信息公开申请的复函》不服,未向作出该具体行政行为的外交部申请行政复议,直接向国务院申请裁决,不属于《中华人民共和国行政复议法》第十四条规定的可以向国务院申请裁决的情形。

特此告知。

二〇一五年八月二十四日



维权网

Appendix 6: Beijing Municipal Higher People's Court Notice Stating It Will Not Conduct a Public Hearing and Will Only Issue Its Written Decision

北京市高级人民法院 诉讼告知书

(2015)高行终字第 03489 号

李蔚:

上诉人李蔚因与被上诉人中华人民共和国外交部行政诉讼一案,不服北京市第三中级人民法院作出的(2015)三中行初字第 00670 号行政裁定,向本院提起上诉。

本院已立案审理,现告知你单位本案合议庭组成人员为杨艳、魏志坚、谷升,书记员李旭晗。依据法律规定,合议庭决定对本案进行书面审理。

请于收到通知后五日内将是否申请审判人员回避及你(你单位)的相关身份证明(营业执照副本复印件、组织机构代码复印件、法人身份证明、法人身份证复印件、授权委托书、律师所函、律师证复印件、委托代理人身份证复印件)、上诉状电子版(发送邮件到 gybanan@163.com)及地址确认书邮寄回本院。

特此通知



二〇一五年九月二十一日

地址:北京市朝阳区建国门南大街 10 号 北京市高级人民法院立案庭 李旭晗 收

电话: 85268389

邮编: 100022

Notes

¹ This report was jointly prepared by the Network of Chinese Human Rights Defenders (CHRD) and a coalition of human rights groups and lawyers based inside China. These local contributors have over the past several years collected data and conducted interviews with hundreds of victims of torture or their families. We held several seminars and workshops to discuss the issues extensively with dozens of Chinese lawyers, scholars, and HRDs. CHRD conducted further research, checked references, and assembled the report. (Out of concerns for their safety due to a persistent pattern of government retaliation, the identities of these groups and individuals are being withheld.)

² Specific methods of torture will not be discussed in great detail in this report. Interviewees for this report, however, have provided information about such methods Chinese officials use against detainees. Examples include, detainees' being forced to sleep in shifts ("double bunking"), stare at lamps, and drink urine. In addition, incarcerated individuals have been shackled behind the back or to another detainee; and sources revealed that detention center guards have threatened to put women in cells with male inmates to be raped. See CHRD and Coalition of NGOs, Information Submission to the UN Committee Against Torture for Consideration in List of Issues, February 9, 2015 <https://chrdnet.com/2015/02/chrd-information-submission-to-the-un-committee-against-torture-for-the-review-of-the-fifth-periodic-report-of-china-february-2015/>.

³ Response by the Government of the People's Republic of China to the Committee against Torture's List of issues (advanced unedited version) in relation to the fifth periodic report of China, CAT/C/CHN/Q/5/Add.2, October 2015, para. 3 (5).

⁴ CHRD, Deprivation of Liberty and Torture/Other Mistreatment of Human Rights Defenders in China (partial data), <https://www.chrdnet.com/2015/02/deprivation-of-liberty-and-torture-other-mistreatment-of-human-rights-defenders-in-china-partial-data-updated-6302013/>.

⁵ CHRD and Coalition of NGOs, Information Submission for Consideration in List of Issues.

⁶ CHRD, End Violence Against Human Rights Lawyers, 2015 <https://chrdnet.com/2015/10/end-violence-against-human-rights-lawyers/>.

⁷ Committee against Torture, List of issues in relation to the fifth periodic report of China, CAT/C/CHN/Q/5/Add.1, June 2015, para. 4 (c); Response by the Government to the Committee against Torture's List of issues, 2015, para. 4 (3).

⁸ Police also briefly detained several lawyers who protested the four lawyers' mistreatment, including Fu Yonggang (付永刚), Wang Quanzhang (王全章), and Wang Shengsheng (王胜生). CHRD, "China Has Obligation to End Violence Against Lawyers," April 3, 2014, <http://www.chrdnet.com/2014/04/china-has-obligation-to-end-violence-against-lawyers/>; CHRD, Submission to UN on Jiang Tianyong, Tang Jitian, Wang Cheng, and Zhang Junjie, May 16, 2014, <http://chrdnet.com/2014/06/submission-to-un-on-jiang-tianyong-tang-jitian-wang-cheng-and-zhang-junjie-may-16-2014/>.

⁹ Response by the Government to the Committee against Torture's List of issues, 2015, para. 4 (3).

¹⁰ Concluding Observations by the Committee against Torture, CAT/C/CHN/CO/4, 2008, para. 15.

¹¹ Committee against Torture, List of issues, 2015, paras. 3-4.

¹² Concluding Observations by the Committee against Torture, 2008, para. 11 (a,c,d).

¹³ For example, during the second Universal Periodic Review (UPR) of China, in 2013, the government stated a UN Human Rights Council recommendation to implement such mechanisms was "being implemented." The recommendation was made by the Government of Denmark. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), A/HRC/25/5, 2013; Addendum to Report of the Working Group on the Universal Periodic Review, A/HRC/25/5/Add., 2014, comments, 186.51.

¹⁴ According to the Criminal Procedure Law (CPL), under Article 83, police must notify families of a loved one's detention within 24 hours, unless they are suspected of crimes that fall under the category of "endangering state security," terrorism, or serious bribery offenses. Under Article 37, lawyers must be allowed to visit their client within

48 hours. Criminal Procedure Law of the People's Republic of China (中华人民共和国刑事诉讼法), 1996, amended 2012, http://www.gov.cn/flfg/2012-03/17/content_2094354.htm.

¹⁵ According to the CPL, under Article 89, a detainee must be either formally arrested or released within 37 days of being placed under criminal detention. Criminal Procedure Law, 1996, amended 2012. For example, five individuals criminally detained between July 10-11, 2015 have not been formally arrested as of October 26, 2015. CHRD, Individuals Affected by July 10 Crackdown on Rights Lawyers, 2015, <https://chrdnet.com/2015/07/individuals-affected-by-july-10-crackdown-on-rights-lawyers/>; Beijing police criminally detained Tianjin-based activist Xu Nailai (许乃来) on October 12, 2014 and held him at Daxing District Detention Center and Beijing No. 731 Hospital. Authorities released Xu on December 30 without arresting or charging him, a total of 80 days in custody. CHRD, Individuals Detained in Mainland China for Supporting Hong Kong Pro-Democracy Protests, 2014, <https://chrdnet.com/2014/10/individuals-detained-in-mainland-china-for-supporting-hong-kong-pro-democracy-protests/>.

¹⁶ See, for example, the cases of Pu Zhiqiang and Su Changlan. CHRD, Prisoner of Conscience – Pu Zhiqiang, <http://www.chrdnet.com/2014/06/prisoner-of-conscience-pu-zhiqiang/>; Su Changlan, CHRD, Prisoner of Conscience – Su Changlan, <https://chrdnet.com/2015/05/prisoner-of-conscience-su-changlan/>.

¹⁷ CHRD, Individuals Affected by July 10 Crackdown on Rights Lawyers.

¹⁸ National Security Law of the People's Republic of China (中华人民共和国国家安全法), 2015, http://www.mod.gov.cn/auth/2015-07/02/content_4592636.htm. For a critical analysis of this law in its draft form, see CHRD, "China's Draft National Security Law: More License To Abuse Human Rights," May 21, 2015, <https://chrdnet.com/2015/05/chrb-chinas-draft-national-security-law-more-license-to-abuse-human-rights-515-212015/>.

¹⁹ In addition to Article 83 of the CPL, procuratorial and public security laws also permit authorities to not notify families of a loved one's detention status within 24 hours. Article 133, People's Procuratorate Rules of Criminal Procedure (Provisional) (人民检察院刑事诉讼规则(试行), 2012, http://www.spp.gov.cn/flfg/gfwj/201212/t20121228_52197.shtml; Article 123, Public Security Organ Regulations on Procedures for Handling Criminal Cases (公安机关办理刑事案件程序规定), 2012, <http://www.mps.gov.cn/n16/n1282/n3493/n3823/n442421/3486957.html>.

²⁰ Committee against Torture, List of issues, 2015, paras. 3 (e); Response by the Government to the Committee against Torture's List of issues, 2015, para. 3 (5).

²¹ CHRD, Prisoner of Conscience – Guo Yushan, <https://chrdnet.com/2015/01/prisoner-of-conscience-guo-yushan/>; CHRD, Submission to UN on Guo Yushan and He Zhengjun, June 20, 2015, <https://chrdnet.com/2015/07/submission-to-un-on-guo-yushan-and-he-zhengjun-june-20-2015/>.

²² CHRD, Individuals Detained in Mainland China for Supporting Hong Kong Pro-Democracy Protests.

²³ CHRD, Prisoner of Conscience – Pu Zhiqiang.

²⁴ CHRD, Prisoner of Conscience – Huang Wenxun, <http://www.chrdnet.com/2014/01/prisoner-of-conscience-huang-wenxun/>; CHRD, Prisoner of Conscience – Yuan Fengchu, <https://chrdnet.com/2014/04/prisoner-of-conscience-yuan-fengchu/>; CHRD, Prisoner of Conscience – Yuan Xiaohua, <https://chrdnet.com/2014/04/prisoner-of-conscience-yuan-xiaohua/>.

²⁵ As one example, Huang Kaiping (黄凯平), the managing director of the Transition Institute, was held under criminal detention incommunicado for 110 days as part of the crackdown on supporters of the Hong Kong demonstrations in 2014. CHRD, Individuals Detained in Mainland China for Supporting Hong Kong Pro-Democracy Protests; Response by the Government to the Committee against Torture's List of issues, 2015, para. 3 (5).

²⁶ CHRD, Individuals Affected by July 10 Crackdown on Rights Lawyers.

²⁷ Article 37 stipulates that detention centers must arrange for detainees to meet their lawyers within 48 hours from the time they are taken into police custody. Criminal Procedure Law, 1996, amended 2012.

²⁸ Third Periodic State Report (CAT/C/39/Add.2), 1999, para. 71.

²⁹ Article 49, Public Security Organ Procedures for Handling Criminal Cases, 2012.

³⁰ CHRD interviews, 2015.

³¹ CHRD interviews, 2015.

³² CHRD, *China Human Rights Briefing*, June 26-July 2, 2015, <https://chrdnet.com/2015/07/chrh-626-722015-criminal-charges-state-media-smear-campaign-against-versatile-rights-activist/>.

³³ CHRD, Individuals Affected by Government Crackdown Around 25th Anniversary of Tiananmen Massacre, 2014, <https://chrdnet.com/2014/05/individuals-affected-by-government-crackdown-around-25th-anniversary-of-tiananmen-massacre/>.

³⁴ Response by the Government to the Committee against Torture's List of issues, September 2015, para. 4 (2).

³⁵ CHRD, Individuals Affected by July 10 Crackdown on Rights Lawyers.

³⁶ CHRD, End Violence Against Human Rights Lawyers; CHRD, Individuals Affected by July 10 Crackdown on Rights Lawyers.

³⁷ CHRD, Submission to UN on Behalf of Three Lawyers, June 11, 2015, <https://chrdnet.com/2015/06/submission-to-un-on-behalf-of-three-lawyers-june-11-2015/>.

³⁸ CHRD, End Violence Against Human Rights Lawyers.

³⁹ CHRD, "China: Drop Draft Criminal Law Amendments & Protect Human Rights," August 4, 2015, <https://chrdnet.com/2015/08/china-drop-draft-criminal-law-amendments-protect-human-rights/>.

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