



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CHN/CO/4
12 December 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-first session

Geneva, 3-21 November 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

CHINA

1. The Committee considered the fourth periodic report of China (CAT/C/CHN/4) at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), and adopted, at its 864th meeting, on 21 November 2008 (CAT/C/SR.864), the concluding observations as set out below.

A. Introduction

2. The Committee welcomes the fourth periodic report of China, which, while generally following the Committee's guidelines for reporting, lacks adequate statistical data and practical information on the implementation of the provisions of the Convention.

3. The Committee notes with appreciation the extensive written response provided to the list of issues (CAT/C/CHN/Q/4). The Committee also appreciates the size and diverse expertise of the State party delegation, the comprehensive detailed responses to many oral questions and the additional information provided by representatives of the State party to questions raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the ongoing reform of the State party's legal framework with the adoption of the following acts:

- (a) The 2001 Marriage Law explicitly prohibiting domestic violence;

- (b) The 2007 amended Law on Lawyers, guaranteeing lawyers' right to meet with criminal suspects;
 - (c) The 2005 Law on Administrative Punishments for Public Order and Security, which requires inter alia that security organs shall adhere to principles of respect for human rights guarantees and which, in particular, according to the Representative of the State party, "has, for the first time established in national law the exclusion rule of illegal evidence".
5. The Committee appreciates the promulgation of the following new regulations:
- (a) The amendment, since 2005, of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs and the Procedural Provisions for the Handling of Criminal Cases by Public Security Organs;
 - (b) Issuance by the Ministry of Justice (14 February 2006) of "Six prohibitions on people's prison police" and "Six prohibitions for RTL guards"; and by the Supreme People's Procuratorate (26 July 2006) of "Regulations on filing cases standard on infringing rights by dereliction of duty", focused on preventing abuses in detention and investigating abuses;
 - (c) Reforms of the death penalty system aimed at creating a system of review that could ensure that wrongful convictions are overturned before executions are carried out;
 - (d) The prohibition of corporal punishment of children in schools and judicial processes.
6. The Committee welcomes the ongoing efforts made by the State party to combat torture practices, including the adoption of administrative regulations prohibiting the use of torture to obtain confessions, the provision of nationwide training of the police and the introduction of audio and video recording in interrogation rooms, notwithstanding the lack of adequate methods of enforcement for the administrative regulations and the lack of changes to criminal or criminal procedure laws.
7. The Committee welcomes the accession of China to:
- (a) The International Covenant on Economic, Social and Cultural Rights, in 2001;
 - (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2002; and
 - (c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2008.
8. The Committee also notes with interest that China has invited and received a visit from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which was made in November-December 2005. The Committee further notes that the Government of China has also received the Working Group on Arbitrary Detention twice.

9. The Committee notes the statement by Wang Zhenchuan, the Deputy Procurator-General of the Supreme People's Procuratorate in November 2006 that "nearly every wrongful verdict in recent years ... involved ... illegal interrogation". In this regard, the Committee notes with interest the Special Rapporteur on the question of torture's observation that "the growing willingness of officials and scholars to acknowledge China's torture problem is a significant step forward". Efforts beginning with the publication of *The Crime of Tortured Confession* in the late 1990s have acknowledged the torture problem, inter alia by addressing wrongful convictions, weak investigations, lack of professionalism in the police, and confessions extorted by torture, and by the resumption by the Supreme People's Court of its authority to review all death penalty cases (see E/CN.4/2006/6/Add.6, paras. 46-51).

10. The Committee also welcomes the efforts made by non-governmental organizations, national and international, to provide it with relevant reports and information, and encourages the State party to strengthen further its cooperation with them with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Widespread torture and ill-treatment and insufficient safeguards during detention

11. Notwithstanding the State party's efforts to address the practice of torture and related problems in the criminal justice system, the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, the Committee notes with concern the lack of legal safeguards for detainees, including:

(a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police detention without charge for up to 37 days or in some cases for longer periods;

(b) Absence of systematic registration of all detainees and failure to keep records of all periods of pretrial detention;

(c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members;

(d) Continued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects, as in the case of Yang Chunlin. Furthermore, while the Committee appreciates that the Supreme Court has issued several decisions to prevent the use of confessions obtained under torture as evidence before the courts, Chinese Criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention;

(e) The lack of an effective independent monitoring mechanism on the situation of detainees (arts. 2, 11 and 15).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country.

As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered.

The State party should take the measures necessary to ensure that, both in legislation and in practice, statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention. The State party should review all cases in which persons were convicted on the basis of coerced confessions with a view to releasing those who were wrongly convicted.

The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.

Conditions of detention and deaths in custody

12. While the Committee takes note of the information from the State party on conditions of detention in prisons, it remains concerned about reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody. While the Committee notes that the Special Rapporteur on the question of torture has found the availability of medical care in the detention facilities he visited to be generally satisfactory (E/CN.4/2006/6/Add.6, para. 77), it also notes with concern new information provided about inter alia the lack of treatment for drug users and people living with HIV/AIDS and regrets the lack of statistical data on the health of detainees (art. 11).

The State party should take effective measures to keep under systematic review all places of detention, including existing and available health services. Furthermore, the State party should take prompt measures to ensure that all instances of deaths in custody are independently investigated and that those responsible for such deaths resulting from torture, ill-treatment or wilful negligence are prosecuted. The Committee would appreciate a report on the outcome of such investigations, where completed, and about what penalties and remedies were provided.

Administrative detention, including “re-education through labour”

13. The Committee reiterates its previous recommendation to the State party to consider abolishing all forms of administrative detention (A/55/44, para.127). The Committee remains concerned at the extended use of all forms of administrative detention, including “re-education through labour”, for individuals who have never had their case tried in court, nor the possibility of challenging their administrative detention. It is also concerned with the failure to investigate allegations of torture and other ill-treatment in “re-education through labour” (RTL) facilities, in

particular against members of certain religious and ethnic minority groups. While the State party has indicated that the RTL system has recently been reformed and that further reform of the system is currently being envisaged, the Committee is concerned with repeated delays, despite calls from Chinese scholars to abolish the system (arts. 2 and 11).

The State party should immediately abolish all forms of administrative detention, including “re-education through labour”. The State party should provide more information, including current statistics, on those currently subject to administrative detention, the reasons for their detention, the means of challenging such detention and the safeguards put in place to prevent torture and ill-treatment in RTL facilities.

Secret detention centres

14. The Committee is concerned by allegations that secret detention facilities, including the so-called “black jails”, exist and are used to detain petitioners, such as those seeking to come to the capital, such as Wang Guilan. Detention in such facilities constitutes per se disappearance. Detainees are allegedly deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures with respect to their detention. The Committee is also concerned over other unacknowledged detention facilities such as those where prominent disappeared persons have been reportedly confined (arts. 2 and 11).

The State party should ensure that no one is detained in any secret detention facility. Detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should investigate, disclose the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated, and make reparations to the victims of enforced disappearances where appropriate.

Main obstacles to the effective implementation of the Convention

15. The Committee identified three overarching problems that impact all other issues raised by the Committee in the list of issues and during the oral presentations: (a) the 1988 Law on the Preservation of State Secrets in the People’s Republic of China; (b) the reported harassment of lawyers and human rights defenders; and (c) the abuses carried out by unaccountable “thugs” who use physical violence against specific defenders but enjoy de facto immunity. Collectively, these problems stand in the way of ensuring the legal safeguards that the Committee generally recommends to all States parties to the Convention as necessary for the prevention of torture.

1. State secrets law

16. While taking note of the oral information from the State party on the conditions of application of the 1988 Law on the Preservation of State Secrets in the People’s Republic of China, the Committee expressed grave concern over the use of this law which severely undermines the availability of information about torture, criminal justice and related issues. The broad application of this law raises a range of issues relating to the application of the Convention in the State party:

(a) This Law prevents the disclosure of crucial information that would enable the Committee to identify possible patterns of abuse requiring attention, such as disaggregated statistical information on detainees in all forms of detention and custody and ill-treatment in the State party, information on groups and entities deemed to be “hostile organizations”, “minority splittist organizations”, “hostile religious organizations”, “reactionary sects”, as well as basic information on places of detention, information about the “circumstances of prisoners of great influence”, violations of the law or codes of conduct by public security organs, information on matters inside prisons;

(b) This Law provides that the determination of whether a piece of information is a State secret lies with the public body producing this information;

(c) This Law prevents any public process of determination as to whether a matter is a State secret and the possibility of appeal before an independent tribunal;

(d) The classification of a case falling under the State Secrets law allows officials to deny detainees access to lawyers, a fundamental safeguard for preventing torture, and such denial appears to be in contradiction with the 2007 amended Lawyers Law (arts.2 and 19).

The State party should review its legislation on State secrets with a view to ensuring that information, including statistics, relevant to the assessment of the State party’s compliance with the provisions of the Convention throughout its territory, including in the Special Administrative Regions, is available to the Committee.

The State party should provide information on the criteria used to establish that a piece of information is a State secret and on the number of cases falling under the purview of the legislation on State secrets.

The State party should ensure that the determination as to whether a matter is a State secret can be appealed before an independent tribunal.

The State party should ensure that every suspect is afforded the right to have prompt access to an independent lawyer, where possible of their own choosing, including in cases involving “State secrets”.

2. Data collection

17. Despite its previous conclusions and recommendations that the State party provide the Committee with statistical information (A/55/44, para.130), the Committee regrets that this was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel, as well as on detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities severely hampers the identification of possible patterns of abuse requiring attention (arts. 2 and 19).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender,

ethnicity, age, geographical region and type and location of place of deprivation of liberty, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities.

3. Harassment of defence lawyers

18. The Committee is concerned about information received according to which article 306 of the Penal Code, along with article 39 of the Criminal Procedure Law, allowing prosecutors to arrest lawyers on grounds of “perjury” or “false testimony”, has been used to intimidate some defence lawyers. The Committee also notes with great concern reported harassment of lawyers, such as Teng Biao and Gao Zhisheng, who have tried to offer their services to petitioners, human rights defenders and other dissidents, and reports that this harassment was conducted by unaccountable personnel alleged to be hired by State authorities (art. 2).

The State party should abolish any legal provisions which undermine the independence of lawyers and should investigate all attacks against lawyers and petitioners, with a view to prosecution as appropriate.

The State party should take immediate action to investigate acts of intimidation and other ways of impeding the independent work of lawyers.

4. Harassment and violence against human rights defenders and petitioners

19. The Committee expresses its concern at information on a pattern of harassment and violence against human rights defenders, such as Hu Jia. Such actions severely hamper the capacity of civil-society monitoring groups to function, and do not encourage information to be shared, investigations to occur and cases to be brought to the authorities. Despite the State party’s assurance that no unofficial personnel have been hired by public authorities to harass lawyers or petitioners, the Committee is concerned at the persistent reports on attempts to curb the activities of human rights activists, such as Li Heping. This includes violence by unofficial personnel allegedly engaged by public authorities to harass lawyers and petitioners, the use of different forms of administrative detention, such as “residential surveillance”, re-education through labour and secret places of detention. The Committee is concerned by allegations that unofficial personnel have not been held accountable for such behaviour (arts. 12 and 16).

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.

The State party should abolish the use of unofficial personnel to harass human rights defenders, including lawyers and petitioners.

Lack of investigations

20. The Committee is deeply concerned by the lack of an effective mechanism for investigating allegations of torture as required by the Convention. As the Committee articulated

during the oral presentations, there are serious conflicts of interest with the role played by the Office of the Procuratorate which is charged with investigating allegations of torture by government officials and private actors acting with the acquiescence or consent of government officials, which may lead to ineffective and partial investigations (arts. 2, 11 and 12).

The State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment.

1989 Democracy Movement

21. Despite repeated requests from groups of relatives of persons killed, arrested or disappeared on or following the 4 June 1989 Beijing suppression of the Democracy Movement, the Committee is concerned about the lack of investigations into these events, the failure to inform family members of the fate of their relatives, and regrets that those responsible for excessive use of force have not faced any sanctions, administrative or criminal (art. 12).

The State party should conduct a full and impartial investigation into the suppression of the Democracy Movement in Beijing in June 1989, provide information on the persons who are still detained from that period, inform the family members of their findings, offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture and other ill-treatment.

National, ethnic or religious minorities and other vulnerable groups

22. The Committee is greatly concerned by the allegations of targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners. In addition, the return of border-crossers and refugees from the Democratic People's Republic of Korea is also an area of concern for the Committee with regard to vulnerable groups, as articulated below.

1. Events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties: widespread reported excessive use of force and other abuses

23. The Committee notes with great concern the reports received on the recent crackdown in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in the State party, which has deepened a climate of fear and further inhibits accountability. These reports follow longstanding reports of torture, beatings, shackling and other abusive treatment, in particular of Tibetan monks and nuns, at the hands of public officials, public security and State security, as well as paramilitary and even unofficial personnel at the instigation or with the acquiescence or consent of public officials. Notwithstanding the numbers provided by the State party on persons arrested and those sentenced to imprisonment in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties, the Committee regrets the lack of further information on these persons. In particular, the State party reported that 1,231 suspects "have redeemed themselves and been released after receiving education and administrative punishment", but has provided no further information on these cases or their treatment. In particular, the Committee expresses its concern at:

- (a) The large number of persons detained or arrested in the aftermath of the March 2008 demonstrations and related events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in Gansu, Sichuan and Qinghai provinces, and the reported lack of restraint with which persons were treated, based on numerous allegations and credible reports made available to the Committee;
- (b) The failure to investigate the deaths resulting from indiscriminate firing by the police into crowds of reportedly largely peaceful demonstrators in Kardze county, Ngaba county and Lhasa;
- (c) The failure to conduct independent and impartial investigations into allegations that some of the large number of persons detained or arrested have been subjected to torture or cruel, inhuman or degrading treatment;
- (d) The failure to allow independent and impartial investigators into the region;
- (e) The consistent allegations that some of those arrested could not notify their relatives, did not have prompt access to an independent doctor, nor to an independent lawyer, that lawyers offering to represent them were warned and otherwise deterred from providing that legal assistance, and that the speeded up trials of 69 Tibetans led to them being reportedly sentenced in a summary manner;
- (f) The large number of persons who have been arrested, but whose current whereabouts remain unknown and which the State party has been unable to clarify despite written and oral requests from the Committee (list of issues, question 2(1), CAT/C/CHN/Q/4) (arts. 2, 11 and 12).

The State party should conduct a thorough and independent inquiry into the reported excessive use of force, including against peaceful demonstrators and notably monks, in Kardze county, Ngaba county and Lhasa.

The State party should conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment and should ensure that those responsible are prosecuted.

The State party should ensure that all persons who were detained or arrested in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties have prompt access to an independent lawyer and independent medical care and the right to lodge complaints in a confidential atmosphere, free from reprisal or harassment.

The State party should adopt all necessary measures to prohibit and prevent enforced disappearances, to shed light on the fate of missing persons, including Genden Choekyi Nyima, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention.

The State party should conduct investigations or inquests into the deaths, including deaths in custody, of persons killed in the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties.

2. Discrimination and violence against persons belonging to national, ethnic or religious minorities

24. The Committee is concerned with allegations raised in relation to acts of discrimination against and ill-treatment of persons of ethnic minority groups, in particular the Tibetans and the Uighurs, such as Ablikim Abdureyim, and with the alleged reluctance on the part of the police and authorities to conduct prompt, impartial and effective investigations into such acts of discrimination or violence (arts. 2, 12 and 16).

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by ensuring prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic minorities. The State party should prosecute and punish those responsible for such acts and ensure implementation of positive measures of prevention and protection.

The State party should give prompt consideration to expanding the recruitment of persons belonging to ethnic minorities into law enforcement.

3. Allegations concerning Falun Gong practitioners

25. While noting the State party's information about the 2006 Temporary Regulation on Human Organ Transplants and the 2007 Human Organ Transplant Ordinance, the Committee takes cognizance of the allegations presented to the Special Rapporteur on the question of torture who has noted that an increase in organ transplant operations coincides with "the beginning of the persecution of [Falun Gong practitioners]" and who asked for "a full explanation of the source of organ transplants" which could clarify the discrepancy and disprove the allegation of organ harvesting (A/HRC/7/3/Add.1). The Committee is further concerned with information received that Falun Gong practitioners have been extensively subjected to torture and ill-treatment in prisons and that some of them have been used for organ transplants (arts. 12 and 16).

The State party should immediately conduct or commission an independent investigation of the claims that some Falun Gong practitioners have been subjected to torture and used for organ transplants and take measures, as appropriate, to ensure that those responsible for such abuses are prosecuted and punished.

4. Non-refoulement and risk of torture

26. The Committee is greatly concerned by allegations that many individuals have been forcibly returned to the Democratic People's Republic of Korea, without any examination of the merits of each individual case, and subsequently been subjected to torture or cruel, inhuman or degrading treatment or punishment by the authorities. The Committee notes with concern that

these individuals are referred to by the State party as “illegal immigrants” or “snakeheads” and that such labels presume that these individuals are not deserving of any protection. Similarly, persons extradited to and from neighbouring States do not benefit from legal safeguards against return despite the risk of torture. The Committee is further concerned by the failure of the State party to clarify how it includes in its national laws or practice the prohibition on returning a person to a country where he or she faces a substantial risk of torture, and hence how the State party ensures that its obligations under article 3 of the Convention are fulfilled (art. 3).

Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

When determining the applicability of its obligations under article 3 of the Convention, the State party should establish an adequate screening process for status determination in order to determine whether persons subject to return may face a substantial risk of torture, particularly in view of the fact that it is reportedly a criminal offence to depart unofficially from the Democratic People’s Republic of Korea, and should provide the Office of the United Nations High Commissioner for Refugees with access to the border region and persons of concern. In the light of the large numbers of citizens of the above State who have crossed into China, the State party needs to be more active in ensuring that the obligations of article 3 are fully met. The State party should also ensure that adequate judicial mechanisms for the review of decisions are in place and sufficient legal defence available for each person subject to extradition, and ensure effective post-return monitoring arrangements.

The State party should provide data on the number of persons expelled or returned to neighbouring States.

The State party should pursue its efforts to adopt appropriate legislation to fully incorporate into domestic law its obligation under article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.

Violence against women

27. While welcoming the adoption of the 2001 Marriage Law explicitly prohibiting domestic violence and the formulation of the Chinese Women Development Programme (2001-2010) prohibiting all forms of violence against women, the Committee notes the concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women and joins it in being concerned by the lack of legislation prohibiting all forms of violence against women, among them marital rape, and providing effective remedies for victims (art. 16).

The State party should pursue its efforts to prevent and punish gender-based violence and, in particular, adopt legislation explicitly prohibiting all forms of violence against women and providing access to justice for victims.

28. The Committee notes the State party's efforts to ensure that female prisoners are supervised by female officers. However, the Committee is concerned about reported incidents of violence against women in detention centres, including against Tibetan nuns in detention, and regrets the lack of information on the number of complaints and the measures taken to prevent torture and ill-treatment of women in places of detention (arts. 12, 13 and 16).

The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials. The State party should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible, and providing redress and compensation to the victims.

Use of violence in the implementation of the population policy

29. The Committee notes again with concern the lack of investigation into the alleged use of coercive and violent measures to implement the population policy (A/55/44, para.122). While taking note of the information provided by the delegation of the State party that local officials in Lingyi City have been held accountable for using such coercive and violent measures, the Committee is concerned about the inadequacy of the sanctions actually taken against these and other officials who have engaged in similar conduct. It is equally concerned by the fact that human rights defenders, such as Chen Guangcheng, who have provided legal advice to victims and publicly denounced the use of coercive and violent measures to implement the population policy, have been harassed by the authorities, as have his lawyers (arts. 12 and 16).

The State party should implement the population policy in full compliance with the relevant provisions of the Convention and prosecute those responsible for resorting to coercive and violent measures in implementing such policy, in particular against women belonging to ethnic minority groups.

Compensation and rehabilitation

30. While noting the information provided about victims' rights to compensation envisaged in the Law on State Compensation, the Committee notes with concern the extremely small numbers of cases in which individuals have received such compensation. The Committee expresses its concern about the limited measures for the rehabilitation of victims of torture, including sexual violence, trafficking, domestic violence and ill-treatment (art. 14).

The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are provided to all victims of torture, including sexual violence, trafficking, domestic violence and ill-treatment, including medical and psychological assistance.

Impunity and appropriate penalties for acts of torture

31. The Committee is deeply concerned that allegations of torture and/or ill-treatment committed by law enforcement personnel are seldom investigated and prosecuted. The Committee notes with great concern that some instances of torture involving acts which are

considered as “relatively minor offences” can lead to only disciplinary or administrative punishment (arts. 2, 4 and 12).

The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially. It should also ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.

Definition of torture

32. While noting the State party’s assertion that all acts that may be described as “torture” within the meaning of article 1 of the Convention are criminally punishable in China, the Committee reiterates its previous conclusions and recommendations (A/55/44, para. 123) that the State party has not incorporated in its domestic law a definition of torture that fully complies with the definition contained in the Convention.

33. The Committee is concerned that the provisions relating to torture refer only to physical abuse and do not include the infliction of severe mental pain or suffering. It is also concerned that article 247 of the Criminal Law, article 43 of the Criminal Procedure Law and the Supreme People’s Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases restrict the prohibited practice of torture to the actions of judicial officers and officers of an institution of confinement and do not cover acts by “other persons acting in an official capacity”, including those acts that result from instigation, consent or acquiescence of a public official. Moreover, these provisions do not address the use of torture for purposes other than to extract confessions (art. 1).

The State party should include in its legislation a definition of torture that covers all the elements contained in article 1 of the Convention, including discrimination of any kind. The State party should ensure that persons who are not judicial officers and officers of an institution of confinement, but who act in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture. The State party should also ensure that its legislation prohibits the use of torture for all intents and purposes.

Death penalty cases and conditions of detention on death row

34. While noting that the State party has provided data on the large numbers of detainees serving death sentences, death sentences with a two-year reprieve, sentences for life imprisonment and imprisonment above five years, the Committee regrets that such data is not disaggregated according to the type of sentence and that specific data on death sentences is not publicly available according to article 3 of the Regulation on State Secrets and the specific scope of each level of secrets in the work of the People’s Procuratorates issued by the Supreme People’s Procuratorate. The Committee expresses concern at the conditions of detention of convicted prisoners on death row, in particular the use of shackles for 24 hours a day, amounting to cruel, inhuman or degrading treatment. Moreover the Committee is concerned about the questions raised by the United Nations Special Rapporteur on the question of torture (A/HRC/7/3/Add.1), on the removal of organs from persons sentenced to death without free and informed consent (arts. 11 and 16).

The State party should review its legislation with a view to restricting the imposition of the death penalty. The State party should provide specific data on death penalty cases and ensure that all persons on death row are afforded the protection provided by the Convention.

Forced medical treatment

35. While noting that article 18 of the Criminal Law allows a mentally ill person who has committed a crime but is not to bear any criminal responsibility for it to be given compulsory medical treatment by the authorities, the Committee also notes with concern that this provision has been misused to detain some people in psychiatric hospitals for reasons other than medical. The case of Hu Jing was raised by the Committee, but the State party has not provided a satisfactory answer (art. 11).

The State party should take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical. Where hospitalization is required for medical reasons, the State party should ensure that it is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed.

Training of law-enforcement and medical personnel

36. While welcoming the information provided by the delegation of the State party concerning its efforts to provide human rights training to law-enforcement and judicial officers, as well as grassroots officials, on the prevention of torture when they start their posts, when they are promoted and when they are posted in the field, the information provided does not clarify whether this training has been effective. The Committee regrets the insufficient level of practical training with regard to the provisions of the Convention for law enforcement officers. The Committee also notes with concern the lack of specific training to detect signs of torture and ill-treatment for medical personnel in detention facilities (art. 10).

The State party should intensify its efforts to reinforce and expand existing training programmes, including with non-governmental organisations, on the absolute prohibition of torture for law enforcement officers at all levels.

The State party should also ensure adequate training for medical personnel to detect signs of torture and ill-treatment and integrate the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment) in such training.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training programmes on instances of torture and ill-treatment.

Measures against terrorism

37. The Committee appreciates the information on the importance given by the State party to anti-terrorist work and the information on their attempts to strengthen anti-terrorism legislation

and other relevant measures, including international cooperation against terrorism. Notwithstanding this information, the Committee notes with concern that all rights in the Convention are not always respected in all circumstances.

The Committee urges the State party to ensure that any measure to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention and the absolute principle of non-refoulement.

38. The Committee encourages the State party to implement the recommendations contained in the report of the Special Rapporteur on the question of torture on his visit in November-December 2005 (A/CN.4/2006/6/Add.6) and to invite him back. The Committee also encourages the State party to invite other Special Rapporteurs.

39. The Committee also encourages the State party to consider making the declaration under articles 21 and 22 of the Convention.

40. The Committee reiterates its recommendation that the State party consider withdrawing its reservations and declarations to the Convention (A/55/44, para. 124).

41. The State party should consider ratifying the major United Nations human rights treaties to which it is not yet a party, namely the International Covenant on Civil and Political Rights and its two protocols, the Optional Protocol to the Convention against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention for the Protection of All Persons from Enforced Disappearance. The State party should also consider ratifying the Statute of the International Criminal Court.

42. The State party should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

43. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

44. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11, 15, 17 and 23 above.

45. The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 21 November 2012.
