

IMPUNITY FOR TORTURERS CONTINUES DESPITE CHANGES IN THE LAW

REPORT ON IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE IN THE PEOPLE'S REPUBLIC OF CHINA

BY HUMAN RIGHTS IN CHINA

APRIL 2000

*Prepared to Assist in the Assessment of the Third Periodic Report of
the People's Republic of China on Implementation of the UN Convention Against Torture
and Other Cruel, Inhuman or Degrading Treatment or Punishment*

HUMAN RIGHTS IN CHINA

Head office: 350 Fifth Avenue, Room 3309, New York, NY 10118, USA

Tel: (212) 239-4495; fax: (212) 239-2561

Branch office: 8/B, Tung Lee Commercial Building, 95 Jervois Street, Hong Kong, China

Tel: (852) 2710-8021; fax: (852) 2710-8027

e-mail: hrichina@hrichina.org

Web site: <http://www.hrichina.org/>

C O N T E N T S

INTRODUCTION	3
SUMMARY OF CONCERNS	3
ASSESSMENT OF THE GOVERNMENT REPORT	5
BACKGROUND ON THE SITUATION REGARDING TORTURE AND ILL-TREATMENT	6
1. The prevalence of torture	6
2. More openness, but within strict limits	8
3. Lack of independent monitoring	9
ARTICLES 1 AND 2: DEFINITION OF TORTURE AND MEASURES TO COMBAT IT	10
ARTICLE 1: DEFINITIONAL ISSUES	10
1. Overly-narrow definition of torture	11
2. Reported penalties are inconsequential	12
ARTICLE 2: ANTI-TORTURE LAWS AND POLICIES	13
ARTICLE 4: FAILURE TO CRIMINALIZE TORTURE BY NON-STATE PERSONNEL	14
1. Non-state personnel exempt from punishment for torture	14
2. Non-state personnel with police duties	15
3. Cell bosses	16
ARTICLE 10: EDUCATION AND INFORMATION ON THE PROHIBITION OF TORTURE	16
ARTICLE 13: COMPLAINTS PROCEDURES INADEQUATE	18
1. Lack of proper implementation procedures and new methods of dealing with complaints	18
<i>A. Lack of access to legal counsel for defendants and suspects</i>	<i>18</i>
<i>B. Denial of lawyers' requests to meet detained clients</i>	<i>20</i>
I. Denial of meeting requests on "state secrets" grounds	20
II. Denial of meetings for no reason at all	21
<i>C. Limitations on meetings with lawyers</i>	<i>22</i>
<i>D. Abusive conditions of lawyer-client meetings</i>	<i>22</i>
<i>E. Difficulty in bringing torturers to trial</i>	<i>24</i>
2. Concerns About Access to Complaints Procedures in Administrative and Illegal Detention	25
<i>A. Torture and ill-treatment in C&R</i>	<i>26</i>
I. Abusive conditions of detention	27
II. Endemic violence	27
III. Deaths in custody	29
IV. Lack of redress and accountability	29
<i>B. Torture and ill-treatment in RTL</i>	<i>29</i>
ARTICLE 15: EVIDENCE OBTAINED THROUGH TORTURE STILL ADMISSIBLE AT TRIAL	30
1. Lack of exclusionary rule	30
2. Lack of a presumption of innocence and a right against self-incrimination	32
ARTICLE 16: CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	33
1. Denial of medical care and abuse of psychiatry	33
2. Violence in the implementation of the population control policy	33
3. Ill-treatment in non-custodial situations	35
CONCLUSION AND RECOMMENDATIONS	36
APPENDIX I: SELECTED CASES OF TORTURE AND ILL-TREATMENT	39

Introduction

The Chinese government's Third Periodic Report under the Convention Against Torture is completely inadequate, given the scale and severity of the problem of torture and ill-treatment in the People's Republic of China today.

The government report fails to reflect statements by high-ranking officials, including the Minister of Public Security himself, that the problem of torture remains very serious. It also does not mention the many cases of torture published in the domestic Chinese media during the reporting period, or the statistics published in various books and periodicals on the incidence of this crime. And it ignores the debates over appropriate measures to combat torture in legal and professional journals, as well as the proposals of Chinese scholars on the changes needed in various laws and policies to eliminate the practice of torturing and ill-treating criminal suspects and others in detention.

Human Rights in China (HRIC)'s report assesses China's progress in implementation of the Convention since its last report, concentrating on the legal and regulatory regime relating to torture. This report does not describe the forms of torture most commonly used or provide extensive examination of recent cases, since such materials are available in other reports and are hardly the focus of the government's report. We examine in particular the recent changes in the Criminal Law (CL) and Criminal Procedure Law (CPL), looking at how they have affected the rights of detained persons in practice. We also provide some information on situations in which torture and ill-treatment is a significant problem, but which are not covered in the government report. In particular, we provide some detail on detention under Custody and Repatriation, since this form of detention is entirely outside the current oversight mechanisms and has previously received no attention outside China.

HRIC's overall conclusion based on an assessment of current laws, policies and practice, is that China has failed to act upon the majority of the Committee's 1996 recommendations, and thus its implementation of the Convention during the reporting period has been entirely insufficient. Despite a small increase in transparency, we find that persons acting in an official capacity who torture and ill-treat others in violation of the Convention generally do so with impunity, as the government has failed to establish effective mechanisms to hold them accountable and prevent such abuse.

Following each section of this report, we suggest some questions for the Committee to pose to the Chinese representatives regarding China's report, current laws and regulations, practices and the reality. We present recommendations to the Chinese government for reforms of the legal system, government policies and practices necessary for China to meet its obligations under the Convention. In Appendix I, we provide a list of illustrative cases of torture and ill-treatment, almost all of which were never investigated or dealt with in any way by the authorities.

Summary of Concerns

The following is a summary of our concerns and findings under the various articles of the Convention, and of our recommendations.

Article 1: Definition of torture

Despite minor progress in expanding offenses of torture and ill-treatment that can be prosecuted, the definition of torture in Chinese law continues to fall far short of the definition contained in Article 1 of the Convention. Torture in Chinese law is still essentially defined as the use of physical force which has serious consequences, resulting in permanent injury or death, to coerce a statement or confession.

Given this definition, torture is rarely prosecuted in China. While providing impunity for officials who use physical violence, this reality also effectively encourages many law enforcement officials to rely on ill-treatment, rather than on proper investigative techniques, to break cases.

Article 2: Anti-torture laws and policies

China has generally failed to take substantive measures to prevent torture since its last report to the Committee in 1995. China's revised CPL, along with the revised CL, has done little to prevent torture. Moreover, the inadequate sentences handed down to torturers in most cases demonstrate the ineffectiveness of China's implementation policies. Suggestions for further reforms of the law from scholars and officials have been ignored.

Article 4: Failure to criminalize acts of torture by non-state personnel

Although the Convention requires that any persons acting in an official capacity be liable for the crime of torture, China has failed to ensure that this is the case. The many persons engaged in law enforcement work who are not categorized as officials are immune from China's legal provisions prohibiting torture. The use of inmates to torture and ill-treat other inmates remains endemic, yet no effective action has been taken to hold officials responsible for this.

Article 10: Education and information on the prohibition against torture

The government report details a number of training courses, self-study programs and qualification tests made available to law enforcement officials over the past few years, yet fails to provide any information on how much these focus on torture prevention. No information is available with regard to whether these courses include information about the Convention itself.

Article 13: Complaints procedures inadequate

China's third report fails to describe any substantially new procedures established to deal with torture complaints, while existing complaints procedures remain seriously inadequate.

Insufficient safeguards for the rights of suspects and defendants, failure to implement the existing safeguards and loopholes in the law that allow the authorities to ignore such safeguards make complaints procedures useless in many cases. The revised CPL, while an improvement over the old laws, does not guarantee the right to a lawyer for persons detained or arrested, leaving so much discretion in granting access as to make the right virtually meaningless. Lawyers are frequently barred from meeting with detained or imprisoned clients on the grounds that the case involves "state secrets," or for no reason, at all. And when lawyer-client meetings do take place, they are often hampered by a lack of even minimal privacy, and severe time restrictions.

In cases involving torture, since defendants are accusing state officials of acts seen as damaging to the image of state organs, lawyers representing the victims and their families often encounter a great deal of obstruction from the local Party committees or other official bodies. Many cases are never prosecuted.

The government report entirely fails to address the fact that torture and ill-treatment occurs frequently in administrative and illegal detention, and this is outside the judicial process and often beyond the scope of the existing systems of oversight. The absence of such safeguards means that inmates held in administrative detention may have particular difficulty in making complaints and gaining redress, compensation and rehabilitation when they are victims of torture or ill-treatment.

Article 15: Evidence obtained by torture still admissible at trial

China's statement, in its third report, that confessions obtained through torture are inadmissible at trial is misleading. While the CL and the CPL prohibit the extraction of confessions through torture, the lack of an exclusionary rule barring the admission of evidence obtained through illegal means renders these provisions mere empty words. In fact, under current rules the only restriction is that a confession obtained through torture may not be used as the sole basis for deciding a case. Unfortunately, the longstanding conviction among many scholars and practitioners that tortured confessions and evidence derived therefrom are a legitimate weapon in the fight against crime means that adopting an exclusionary rule has not yet been seriously considered by the authorities.

The CPL also lacks an unambiguous presumption of innocence and a right to remain silent to avoid self-incrimination. Many scholars in China have recommended that the PRC adopt these basic principles in its criminal law in order to bring the Chinese legal system into compliance with international human rights norms.

Article 16: Other acts of cruel, inhuman or degrading treatment or punishment

The government report fails to mention many types of ill-treatment occurring inside and outside custodial facilities. Along with the routine denial of humane conditions of detention in most facilities in which persons are incarcerated, for those detained these include indefinite incarceration in mental institutions as a form of punishment and the widespread denial of medical care for those suffering from illness, including potentially life-threatening medical conditions.

Other particular areas of concern include the use of force to implement the population control policy. Also, brutality and the use of excessive force in the course of law enforcement remain a widespread problem in China, as evidenced by the violence used on protestors from the Falungong group, but the government report makes no mention of ill-treatment in non-custodial situations.

Recommendations in brief:

1. Ensure all detainees have prompt access to lawyers and family members
2. Revise laws on torture to bring them into compliance with the Convention
3. Increase transparency in order to combat torture
4. Enforce laws protecting the rights of persons in detention
5. Make mechanisms for receiving complaints and investigating and prosecuting torture cases independent so they can operate effectively
6. Eliminate all forms of detention without judicial oversight
7. Publicize China's obligations under the Convention

Assessment of the Government Report

Considering the severity of the problem of torture and ill-treatment in the People's Republic of China, the Chinese government's third periodic report to the Committee on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention") is seriously inadequate.

Throughout the report, there is a lack of information about the nature and prevalence of torture and ill-treatment in China. The government has failed to provide any meaningful statistics comparing the incidence of torture before and after the implementation of its new legal reforms. This is despite the fact that the last two years have seen the publication in China of a variety of authoritative books, articles and other publications (some of which are referenced below) containing numerous specific examples of torture as well as nationwide statistics. The government has also failed to examine the key question of how or whether laws, policies and programs relating to the prevention of torture and

ill-treatment are implemented in practice, the obstacles met while implementing them, the full scope of punitive measures available in the case of non-compliance and the extent to which such punishments have been used.

Many of the anti-torture laws that China describes in its report lack implementation procedures, or contain implementation rules that diminish their effectiveness, yet these procedures and rules are not even mentioned in the government's report. There is virtually no information about how complaints procedures or mechanisms for gaining redress may be accessed, and to what extent victims of torture or ill-treatment actually make use of such procedures or mechanisms. China's report also lacks detailed information on anti-torture education, and does not even mention how or whether the Convention, itself, is publicized inside China, among either law enforcement officials or ordinary citizens.

Additionally, three critical areas are ignored in China's report: (i) torture in administrative detention; (ii) torture by non-state personnel; and (iii) torture outside custodial settings. These omissions are especially troublesome in light of the significant number of documented cases of torture that fall into these categories. The report is also silent about groups particularly vulnerable to torture, such as women, migrants, minorities and the mentally ill. Torture of juveniles is mentioned only briefly.

Furthermore, the government report does not even mention the debate over legal and policy measures to combat torture that has been in progress both prior to the revisions to the CL and the CPL and after their enactment. Legal scholars and professionals in China have discussed such issues as the need to establish the right to silence in Chinese law, the effects of continuing to allow evidence obtained through torture to be admissible in court and the serious problems caused by loopholes in the law regarding suspects' right to counsel.

Finally, China's report, despite its brevity, contains a significant amount of irrelevant information and repetition. Thus, unfortunately, the report generally fails to cover the most important torture-related issues. In the light of these serious deficiencies, HRIC considers that the Chinese government has not met the basic requirements of reporting under the Convention.

Background on the Situation Regarding Torture and Ill-Treatment

1. The prevalence of torture

Torture remains a systemic problem in China. Indeed, according to China's official statistics, torture may have actually increased over the past several years, and 1996—the year of the largest anti-crime campaign since 1983-1986—saw the highest number of torture cases since at least 1990.¹ In his annual report to the National People's Congress in March 1999, Chief Prosecutor Han Zhubin owned up to a catalogue of abuse and corruption within the prosecution service, including “the illegal handling of cases, the use of forceful measures against suspects and even the extraction of false confessions.”²

Tortured confessions are still a routine part of law enforcement, as China's own Minister of Public Security, Jia Chunwang, admitted at a summer 1998 public security conference:

The problem of forced confessions—in a number of areas, it absolutely exists. Recently, while I was visiting basic level public security organs, talking with university student trainees, some of them told

¹ See Wang Gangping, ed., *The Crime of Tortured Confession (Xingxun bigong zui)*, Beijing, People's Procuratorate Press, 1997, at 9.

² Agence France Presse (AFP), March 10, 1999.

*me that they themselves have beaten people. Of all the letters I have received from the masses since coming to the MPS, two types are most common. The first says that in some areas, the social order is bad and the criminals are ferocious. The second type says that the people's police are breaking the law as they enforce the law. By committing forced confessions, they have turned some one who has committed no crime into a criminal, or turned someone who committed a minor violation into a serious criminal violator, and harmed the masses terribly.*³

This is by no means the only kind of torture utilized in today's China, however. As described below, torture is pervasive in administrative detention, in illegal detention facilities and in non-custodial situations. Furthermore, torture continues to be tolerated, and even condoned, by the Chinese government. This raises serious questions about the China's commitment to the letter and the spirit of the Convention.

The official numbers reveal troubling trends. Recently published statistics from the Supreme People's Procuratorate (SPP) on criminal cases of confessions obtained through torture between 1979 and 1996 indicate an average of 364 cases per year between 1979 and 1989, and upward of 400 cases per year for most years in the 1990s.⁴ The SPP reported that between 1993 and 1994, at least 241 persons were tortured to death, while at least 64 others suffered "severe injuries."⁵ Although the MPS launched an internal campaign against torture one year later, in late 1995, a confidential report conceded that the campaign had been, at best, only partly successful.⁶ According to MPS statistics, there were 67 torture cases involving 109 police officers in the first half of 1996 (an annual rate of 134 cases), and between July and August, some 32 persons had been tortured to death.⁷ The SPP's statistics do not accord with this number, reporting that the official torture rate was really *more than three times higher* (493 cases), and the trend from 1995 to 1996 had actually *deteriorated*, with cases increasing more than 20 percent.⁸

Even considering the overly-narrow definition of torture adopted by the Chinese authorities, these figures probably represent only the tip of the iceberg. The 1993-1994 SPP statistics, for example, suggest that a startling one-third to one-fourth of all torture cases resulted in death; a more plausible explanation for these figures is that most torture cases do not get reported or prosecuted unless they result in death or other serious consequences. This analysis is supported by at least one authoritative source, which indicated that in 1988, the procuratorates received 1,048 complaints about torture to coerce a statement, but only 170 were filed for investigation.⁹ And a recent article in a Chinese legal journal noted: "Torture cases investigated by the authorities generally fall into two categories: one

³ "Minister Jia Chunwang's speech" to the Dalian conference on building the Public Security corps, June 12, 1998, in *Theory and Practice on Standardizing Construction of the Public Security Corps (Gong'an duiwu zhengguihua jianshe lilun yu shijian)*, Beijing, China People's Public Security University Press, 1998.

⁴ Wang Gangping, *supra* note 1, at 9.

⁵ *Id.*

⁶ "MPS Situation Report on the Public Security Departments Opening Up a Special Education and Rectification Program on Stopping Tortured Confessions" (*Gonganbu guanyu gong'an jiguan kaizhan zhizhi xingxun bigong zhuanxiang jiaoyu zhengdun de qingkuang tongbao*), Law Enforcement Handbook (*Zhifa shouce*) (*hereinafter* "ZFSC"), Vol. 18 (1996), at 378-379.

⁷ *Id.*

⁸ Wang Gangping, *supra* note 1, at 9.

⁹ See *1988 Yearbook of China's Procuratorate*, People's Procuratorate Press, 1989, at 410. Earlier and later editions of the yearbook did not include the number of complaints of torture.

category involves [the] innocen[ce] [of alleged torturers] and the other involves cases in which the torture victims were either tortured to death or seriously injured.”¹⁰ HRIC is aware of many cases in which families believe that persons who died in custody were tortured to death, but no case was ever filed for investigation.¹¹

2. More openness, but within strict limits

Human Rights in China is gratified that the Chinese government is permitting more reporting on torture, and publicly exposing more torture-related cases. This has been particularly apparent in the last several years.

However, restrictions on the publication of information about cases involving torture mean that reports of cases may frequently be suppressed when the authorities, whether local or national, so choose. Cases reported in the domestic media appear to be selected to show that the authorities are taking a strong line on halting and punishing police misbehavior. None of the many torture cases involving political dissidents have been reported in the Chinese media. During the reporting period, there has been no effort to repeal the regulations which allow for information on torture cases to be withheld purely to protect the public image of the police and other agencies.

In 1986, the CCP ordered that, in order to cover up “incidents” which could tarnish the reputation of the security organs, any media reports concerning actions of the Public Security Bureau (PSB) and any other state functionaries had to be approved by the CCP Central Committee or its local committees before release.¹² An internal circular issued by the Ministry of Public Security in 1993 stated: “In general, torture cases should not be made public... Model cases [collected for the purpose of general education] may be circulated internally within a fairly large sphere in order to educate people.”¹³

Some such directives appear directly aimed at undermining the credibility and work of international human rights organizations. For example, implementing regulations on the 1989 State Secrets Law place very high classification levels on most prison information, including any information “which foreign human rights organizations demand we provide on the conditions of our country’s prisoners,” or about China’s unspecified “countermeasures” (*duice*) against these monitors.¹⁴

¹⁰ See Ma Haijian and Li Bingtao: “Procedural Instrumentalism and Torture for Extracting Statements” (*Chengxu gongju zhuyi yu xingxun bigong*), *Journal of Public Security University*, No. 1, 1997, at 37.

¹¹ See, for examples, List of Selected Cases, below, and cases cited in HRIC, *Words Without Substance: The Implementation of the Convention Against Torture in the People’s Republic of China*, April 1996.

¹² See CCP Central Committee Propaganda Department, “Notice Regarding Doing a Good Job of Reports Correcting the Working Style of the CCP” (*Guanyu zuohao duanzheng dangfeng xuanchuan baodao tongzhi*), *Judicial Handbook* (*Sifa shouce*, hereinafter SFSC), People’s Court Press, 1988, vol. 4, at 783-784.

¹³ The Supreme People’s Procuratorate and the Ministry of Public Security, “Notice on Close Cooperation among the People’s Procuratorate and the Public Security Departments in Investigating Torture Cases” (*Guanyu jiaqing jiancha gong’an jiguan zai chaban xingxun bigong anjian zhong miqie peihe de tongzhi*), issued January 6, 1993.; see also ZFSC, No. 15, 1993, at 191.

¹⁴ See “Notice of the Ministry of Justice and the State Bureau for the Protection of Secrets on Circulating ‘Concrete Regulations on State Secrets and Their Level of Secrecy in Judicial Administrative Work’” (*Sifa bu, guojia baomi ju guanyu yinfa ‘sifa xingzheng gongzuo zhong guojia mimi ji qi miji jutifanwei de guiding’ de tongzhi*), January 6, 1990, in *Labor Reform Work Handbook* (*Laogai gongzuo shouce*), 1987.3-1993.3, Law Press, Beijing, 1993, at 6-9.

Chinese citizens who reveal incidents of torture may find themselves subject to punishment, particularly in politically sensitive cases. **Guo Shaokun**, a police officer, was convicted of “fraud” in 1999 and is currently serving a two-year sentence after exposing some of his colleagues who had beaten and detained citizens involved in a village protest. June Fourth activist Jiang Qisheng was arrested on May 18, 1999, the day after releasing the details of the torture of fellow activist Cao Jiahe (see Appendix I). Chu Hailan (see Appendix I) was repeatedly detained and beaten for insisting that her husband be provided with medical treatment after he suffered torture in the RTL camp where he was being held.

The government has also attempted to suppress overseas reporting of torture cases. In April 1998 and October 1997, a Canadian television network, CTV, secretly filmed suspects being beaten at a Shanghai police station. The footage shows at least two suspects receiving blows while handcuffed to bars in the second-story window of a police station. “Every time we went, it only took a couple of hours before we saw what we saw,” said CTV’s Beijing bureau chief, Holly Doan. “That convinced me that it happens regularly.”¹⁵ A senior PBS official said that the footage was a fabrication and threatened to sue the network for defamation. No suit was ever filed.

In one recent case, four members of the banned Falungong spiritual group have reportedly been charged with revealing “state secrets” for exposing the death in custody of a fellow disciple. On October 7, 1999, Falungong practitioner Zhao Jinhua was confirmed dead by the Zhangxingzhen precinct in Zhaoyan City. Zhao was allegedly beaten to death by police in custody. Police had Zhao’s body cremated on October 9, before the family could examine it properly. Not only did the PSB in Zhaoyuan City refuse to initiate an investigation, they set up a 20-member team charged with discovering who had given the information to the foreign media, ultimately pinning the blame on four other Falungong members, Liu Jinling, Li Yanling, Chi Yunling and Chen Shihuan, who were arrested for revealing “state secrets” in December 1999, reportedly for disclosing the information about Zhao’s death.¹⁶

3. Lack of independent monitoring

One of the principal reasons for the failure of the Chinese legal system to prevent torture effectively is the lack of independent monitoring mechanisms. There is no shortage of internal oversight organs in China’s law enforcement system. These include the Communist Party Committee that, along with government-side Political and Personnel departments, oversees hiring, firing, review and promotion in every PSB department; the public security branches of the Party’s Discipline Inspection Committee and the government’s Ministry of Supervision; and the “Masses Letters and Visits Office” that accept and investigate citizens’ complaints within each PSB department. But police officers are usually less interested in addressing abuses than they are in procuring the salary increases, cash bonuses and promotions connected to high case-cracking rates. External oversight is equally ineffective, relying on the vigilance of procurators whose interest in convicting suspects as charged dampens their incentive to oversee the police. In addition, procuratorates and the judiciary have a lower status in the hierarchy of government departments than the PSB, and therefore find it difficult to perform their supervisory roles.

Most importantly, China lacks an independent judiciary, and the judiciary suffers from relatively low status in comparison to other state organs. Generally speaking, all judges are nominated by the Chinese Communist Party (CCP) committee at the corresponding level. According to an internal Party document, those selected as judges at different levels should have reached a corresponding rank

¹⁵ “Row erupts over film of suspects’ ‘beatings,’” *South China Morning Post* (SCMP), May 19, 1998.

¹⁶ See AFP, December 13, 1999.

within the Party system.¹⁷ The initial nomination of candidates for president of People's Courts or People's Procuratorates at all levels is to be made by the Party committee at the same level, while the role of the People's Congress is merely to approve the nomination. Judges have to be responsible to both the Party group within each court and the local Party committee.

Further, the political-legal committees within the Party committees at all levels may interfere in the routine work of the judiciary by reviewing cases submitted to the local courts.¹⁸ In most sensitive cases, especially those of a political nature, the political-legal committee normally plays a dominant role in reaching the final decision. Thus, there is little or no accountability for torture crimes, a situation exacerbated by the lack of any non-governmental human rights organizations within China, and the strict limitations China imposes on outside monitoring mechanisms.

Articles 1 and 2: Definition of Torture and Measures to Combat It

Article 1: Definitional issues

In Article 1 of the Convention, "torture" is defined as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or the person acting in an official capacity.

While during this reporting period China may have taken a small step forward in terms of the kinds of offenses that can be prosecuted, it still sets the threshold for torture too low, and has not fully incorporated Article 1 of the Convention into Chinese domestic law.

A report prepared for the Committee Against Torture (CAT) by HRIC in 1996¹⁹ highlighted the significant differences between the definition of torture under Chinese domestic law and that under Article 1 of the Convention. In sum, first, by defining torture narrowly as the use of force to "coerce a statement," the concept of torture in domestic law clearly falls short of the requirements of the Convention. Second, the penalties prescribed for torture in the CL are relatively light compared to those for other crimes. Third, there is no mention of psychological torture in Chinese law. Fourth, under the CPL, all investigations of the crime of torture are to be handled directly by the Supreme People's Procuratorate (SPP), which has created a very narrow definition of the offense. Fifth, crimes committed by persons who are not considered officials but are acting in an official capacity are not included in the definition, in direct contravention of the notion in Article 1 of the Convention that those punishable for torture should not exclude any people acting in an official capacity. Such persons include members of a number of quasi-governmental bodies, including the militia known as the United Security Squad (*lianfangdui*), as well as trustees in custodial facilities who are given powers to

¹⁷ See the CCP Secretariat, "Notice on Strengthening the Assignment of Personnel in the People's Courts and People's Procuratorates," SFSC, Vol.3, at 613.

¹⁸ On the functioning of the political-legal committees, see the CCP Central Committee, "Instructions on Strengthening Political-legal Work," SFSC, vol. 2, at 287.

¹⁹ HRIC, *Words Without Substance: The Implementation of the Convention Against Torture in the People's Republic of China*, April 1996.

maintain “order.” In the ensuing four years, there has been little progress in addressing these definitional lacunae, despite the recommendations of CAT following the examination of China’s last report.

1. Overly-narrow definition of torture

As part of the 1997 revision of the CL, an amendment was made explicitly prohibiting the use of force against witnesses to extract testimony.²⁰ This is obviously a positive development since the previous definition had only envisaged torture as being committed against crime suspects, as is the addition of slightly higher penalties for the commission of this and other torture-related crimes.²¹

However, such changes should only be considered marginal improvements, and thus, contrary to the Chinese government’s contention in its report, Chinese law still does not even come close to meeting the requirements of Article 1 of the Convention. Furthermore, as described below, a number of implementing rules actually serve to restrict the definition of torture much further than might be expected from a reading of the language of the current CL.

The revised CL still fails to criminalize the “mental” torture stipulated in Article 1 of the Convention. China’s statement that, by criminalizing the use of “humiliation” (*wuru zui*) by both public officials and private persons in Article 246 of the CL, Chinese law “defines a practitioner of torture in an even broader sense than the Convention”²² is evidently false. Article 246 reads in full:

Using violent or other means brazenly to humiliate another or fabricating facts to slander another, when the circumstances are serious, may be punished by up to three years imprisonment, criminal detention, control, or deprivation of political rights.

Crimes under the previous paragraph are only to be dealt with if a complaint is lodged; however, exceptions may be made in those cases which seriously damage public order or the interests of the state.

There is no sense in which this offense can be construed as covering the crime of psychological torture and ill-treatment covered by Article 1 of the Convention.

Unfortunately, following revision of the CL, the latest Trial Rules enacted in 1999 by the SPP governing the prosecution of torture define torture in a very narrow sense, thus effectively further restricting the legal definition of the crime.²³ These rules call for prosecution only when torture results in disability, death, or other serious consequences. Section 3(2) of the Trial Rules reads:

Torture involving the following circumstances should be filed for investigation:

- 1. The method [of infliction of torture] is very cruel and has an extremely negative influence on society;*
- 2. [The torture] results in suicide or causes a mental disorder;*
- 3. [The torture] causes [the torture victim to confess to a crime s/he did not commit];*
- 4. [The torturer] commits torture more than three times or tortures more than three people;*
- 5. [The torturer] instigates, instructs or forces [a third party to commit] torture.*

²⁰ See CL Article 247; CAT/C/39/Add. 2, paras. 8(a), 8(b), 14(a).

²¹ See *id.*, para. 8(b).

²² *Id.*, para. 64

²³ The Supreme People’s Procuratorate, *Trial Rules on the Standard of Filing for Investigation of the Cases Directly under Investigation by People’s Procuratorates* (guanyu renmin zhijie shouli lian zhencha anjian lian biao zhun de guiding shixing), issued on September 16, 1999.

The Trial Rules use almost identical language to establish prosecution standards for cases involving crimes under Article 247 (extracting testimony from witnesses by force [*baoli quzheng zui*]) and Article 248 (maltreating persons in custody [*niuedai bei jianguanren zui*]) of the CL. From these explanations it is clear that the SPP has substantially narrowed the definition of torture under the CL, undermining even the minor progress China has made toward implementing the principles of the Convention. Such a definition compounds existing ignorance on the importance of preventing torture and appears to encourage officials not to view torture as a serious matter.

A recent book authored by prosecutors and published by the People's Procuratorate Press²⁴ confirms that torture is only selectively punished in China, reinforcing the notion that this crime should only be investigated if (i) the torturer carried out the act for a malicious purpose, or tortures multiple people and shows no repentance; or (ii) the torture results in death or disability, was committed in a particularly cruel manner, or was used to obtain a false confession.²⁵ Such formulations imply that the Chinese authorities will turn a blind eye to torture provided that there is no lasting evidence of serious physical harm, and appear to give the green light to commonly-employed methods of torture such as lengthy interrogation, sleep deprivation, long-term denial of food and toilet privileges and solitary confinement, all of which are unlikely to cause visible bodily harm. Unfortunately, this is not simply an inference. In a 1991 report concerning torture, after reviewing four cases, the authors observed:

*[Since it had been stressed that the results of torture but not the act itself were punishable] some police officers and cadres erroneously believed that beating inmates would not be serious if you were skillful in administering the beating, because there would be no trouble as long as there were no deaths. They... committed acts of torture in the following way: first, they chose to beat people held for minor offenses like theft, hooliganism and gang activity, but they never lifted a finger against inmates in important cases; second, they selectively beat the inmates on various parts of the body excluding the head and other important parts; third, they usually perpetrated the torture during the night.*²⁶

2. Reported penalties are inconsequential

With a few notable exceptions, cases of torture that are prosecuted tend to result in very lenient penalties, and thus do not have much of a deterrent effect. Procuratorates frequently allow torturers to evade responsibility for their crimes, either by not filing cases for investigation or by exempting the individuals concerned from prosecution. Ironically, one of the excuses for such light punishments is that the torture took place while the accused were carrying out their duty, which for some reason excluded them from the provisions of the Convention.

As one scholar noted, "the investigation of torture cases is usually a matter of 'going through the motions,' while torturers are commonly dealt with leniently."²⁷ In this regard, an internal circular issued by the MPS in 1995 is revealing, stating that: "[A]s for those cases involving beatings or verbal abuse, [we] should help the perpetrators to come to terms with their mistakes by appealing to them with emotion and educating them with moral reasoning. [We] should not punish them at all if they demonstrate repentance..."²⁸

²⁴ See Wang Gangping, *supra* note 1.

²⁵ See *id.* at 12-13.

²⁶ See Wang Dingsuo and Zhang Chongsheng, "Analysis of Four Cases of Torture to Coerce a Statement," *Chinese Public Security News*, Nov. 1, 1991, at 3.

²⁷ See Ma Haijian and Li Bingtao, *supra* note 10, at 37.

In many publicized cases, the torturer was merely subjected to administrative sanctions, or was fired from his job.²⁹ Of the few cases reported in the SPP's *The Crime of Tortured Confessions* in which persons were convicted of this crime, *all* received suspended sentences, even though in most of them the victims were severely injured or killed.

There have been a handful of death-by-torture cases where more severe sentences were handed down to torturers. But such stiff penalties are the exception rather than the rule, and there is certainly no consistency in sentencing in torture cases. For example, a court in eastern China sentenced four policemen to up to 11 years' imprisonment in a 1997 case involving the torturing of a bank robbery suspect to death. However, only one of the four policemen was handed down an 11-year prison term; the other three received much lighter sentences of five, four and three years, respectively.³⁰

Article 2: Anti-torture laws and policies

Article 2 of the Convention stipulates that:

Each State Party (to the Convention) shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Despite its much-vaunted legal reforms over the past few years, including the revision of the CL and the CPL in 1996 and 1997, respectively, in reality China has taken few substantive measures to prevent torture. Moreover, the measures that China has taken are simply not effective, either lacking implementation procedures altogether or containing implementation rules that diminish their utility.

At the beginning of 1999, for example, the SPP issued implementation rules stating that prosecutors should routinely read suspects under interrogation their rights in order to prevent abuses, including torture.³¹ However, these rules are vague and unspecific, and do not spell out either what kind of warning is required or the legal consequences (if any) of interrogating a suspect without such a warning. Thus, a reading of rights may not explain very much to the suspects, and the lack of a right to remain silent (see below) further devalues any warning prior to interrogation. More importantly, there is no such requirement of the police, the "vast majority" (*jueda duoshu*) of whom, according to an experienced investigator, believe that "torture is a fast and effective interrogation technique."³²

Many legal scholars in China have long been pointing out the deficiencies of current law and practice, and have argued that further reforms of the CL and CPL are absolutely necessary if the problem of torture and ill-treatment is to be properly addressed. Such reform proposals have focussed particularly on the need to establish a right to silence (*chenmo quan*) for suspects and witnesses and on enacting a

²⁸ Ministry of Public Security, "Notice on Concentrating on Rectifying Special Education Programs to Put a Stop to the Extraction of Statements by Torture" (*Guanyu jizhong kaizhan zhizhi xingxun bigong zhuanxiang jiaoyu zhengdun de tongzhi*), issued on December 15, 1995.

²⁹ *Legal Daily*, June 15, 1998, at 2.

³⁰ SCMP, February 2, 1997.

³¹ See Sections 7 and 8 of the Detailed Implementation Rules on the "Publicity of Prosecutorial Affairs" of People's Procuratorates (*renmin jianchayuan jianwu gongkai juti shishi bangfa*), issued on January 4, 1999.

³² Du Jingji, "A Superficial Discussion of the Sources of Tortured Confession and Policies to Deal with It" (*Qianlun xingxun bigong de chansheng jiqi duice*), in Wang Huaixu, ed., *Research and Practice of Investigation and Interrogation (Zhengcha xunwen yanjiu yu yingyong)*, Beijing, China People's Public Security University Press, 1998, at 374.

broad exclusionary rule making torture-produced evidence inadmissible.³³ Unfortunately, so far the government has failed to take up these important proposals.

While China's third report makes much of the Regulations on the Use of Police Instruments by the People's Police, issued by China's State Council in 1996,³⁴ these regulations are actually part of the problem, not the solution: only police officials who "cause unnecessary personal injury or death or loss of personal property through the unlawful use of police instruments or weapons" can be prosecuted under this act, while police officials who commit any other form of torture or ill-treatment that does not employ such instruments "shall be subject to administrative discipline."

Questions to ask the Chinese government representatives

1. Please provide statistics comparing the incidence of torture before and after the implementation of the revised CL and CPL in 1996 and 1997, respectively.
2. Please describe any laws, regulations or policies that specifically prohibit the use of "mental torture" as defined in Article 1 of the Convention. What types of actions constitute "mental torture" under Chinese law? Have there been any prosecutions for "mental torture?" Please break down cases according to part of the country and result.
3. Please provide concrete examples of cases that resulted in substantial penalties for the torturer, broken down by type of case, part of country and result. The SPP's statistics on criminal cases relating to coerced statements from 1993 to 1994 indicate that between one-third to one-fourth of all torture cases resulted in death. Can the government explain why such a high percentage of torture cases appear to result in death? Explain why, in the cases cited by the SPP's *The Crime of Tortured Confessions*, none of the torturers received more than a suspended sentence, even though most of the cases where the torturer was sentenced resulted in death or severe injury.
4. Please provide details of any cases in which torture not resulting in death or other severe consequences was punished in China, broken down by type of case, part of country and result. Please provide concrete examples of cases in which torture not resulting in death or other serious consequences was publicly reported. What kind of measures is the Chinese government taking to prevent methods of torture that do not result in detectible physical harm, like lengthy interrogation, sleep deprivation, long-term denial of food and toilet privileges and solitary confinement?
5. Please give details of problems encountered in implementing the Convention, and incorporating the Convention into domestic law.

Article 4: Failure to Criminalize Torture by Non-State Personnel

1. Non-state personnel exempt from punishment for torture

³³ See, for example, Zhou Guojun, "Discussion of Several Issues on the Prohibition of the Use of Torture to Extract Statements" (*Yanjiang xingxun bigong ruogan wenti tanguo*), *Political and Legal Forum*, No.1, 1999; Cui Min, *New Progress in China's Criminal Procedure Law: A Comprehensive Look Back at Research and Discussions of China's Criminal Procedure Law (Zhongguo xingshi susongfa de xin fazhan: xingshi susongfa xiugai yantao de quanmian huigu)*, Beijing, China People's Public Security University Press, 1996; Chen Guangzhong et al, *On the United Nations Standard of Criminal Justice and the Criminal Law System in China (Lianheguo xingshi sifa zhunze yu zhongguo xingshi fazhi)*, Legal Press, Beijing, 1998.

³⁴ See CAT/C/39/Add. 2, para. 9

According to Article 1 of the Convention, the crime of torture includes acts committed by *any person* acting in an official capacity. Article 4 requires that all acts of torture be made criminal offenses, including acts of complicity in torture. But in China's current laws and regulations, the only persons liable to prosecution for acts of torture are police, prosecutors and judicial officials. And even the latter, in some circumstances, may not be liable for prosecution for committing torture.

Under the revised CL, persons in many quasi-governmental bodies, including the United Security Squad, as well as security personnel engaged on a temporary or contract basis by police or local authorities, remain essentially immune from prosecution for torture. This is despite the fact that numerous state powers are delegated to such institutions and personnel, including the power to conduct preliminary investigations, to patrol the streets to maintain public order and to cooperate with the PSB in the investigation of crimes.

While it is possible to prosecute members of quasi-official bodies for the crime of "intentional injury" (*guyi shanghai zui*) as defined in Article 234 of the CL, or for illegal detention under Article 238 of the CL, in practice this rarely happens absent proof of serious physical harm to the victim. Furthermore, the former crime is analogous to common assault, and thus does not fit the definition of torture contained in Convention Article 1.

Furthermore, if they are not specifically involved in the investigation of a particular crime, officials who torture a suspect may not be liable for prosecution for that offense. Although China's third report claims that amendments to the CL prohibit the use of force by judicial personnel (*sifa gongzuo renyuanyuan*) to extract testimony,³⁵ according to one authoritative source judicial personnel and other officials are still exempt from prosecution unless they were specifically assigned to interrogate the torture victim:

According to the laws, the regulations and judicial practice, only those state functionaries who have been legally authorized to conduct interrogations can be prosecuted for the crime of extracting confessions by torture... which means that only public security personnel, state security personnel, prosecutors, legal workers in the courts and private and public entities, as well as those authorized to help in the investigation of a crime [may be liable for tortured confessions].³⁶

2. Non-state personnel with police duties

Since many non-state employees, including security guards, "temporary" police, guards hired by residence committees and the United Security Squad (*lianfangdui*) are used in law enforcement and custodial duties, there is a significant incidence of torture committed by such persons. Allocation of police is generally made in accordance with the number of residents registered to live in a particular district, and thus local government offices in areas where there are many migrants who are not formally registered often hire temporary security personnel to maintain security. Even when serving in such a capacity, non-state security personnel are not subject to the same requirements in terms of qualifications and training as formal law enforcement officials, so may not be aware of prohibitions on torture and ill-treatment.

Two examples of abuse by non-state personnel known to us are the case of Chu Hailan, beaten by hotel security guards who took her into custody to prevent her handing a letter to the High Commissioner for Human Rights, and labor activist Zhang Shanguang, currently serving a ten-year sentence for "endangering state security," who was beaten by members of the United Security Squad on August 6, 1998, because he failed to respond to questions.

³⁵ See CAT/C/39/Add. 2, para. 8(a)

³⁶ Wang Gangping, *supra* note 1, at 15-16.

A number of reported cases have resulted in death. In 1996, out of 31 death-by-torture cases reported by the Ministry of Public Security, 16 involved personnel working as security guards and in other “non-state” positions.³⁷ While 73 People’s Police officers were implicated in these cases, 47 temporary “contract” police officers, or members of the United Security Squad, had also taken part.³⁸ Given the propensity of the authorities to cover up abuses, and the much greater number of cases of torturing to death in 1996 reported by the SPP, as described above, the actual number of torture deaths caused by non-state personnel is likely to be significantly higher. That China’s third report fails to even mention, let alone describe, any measures the authorities have taken to combat this problem is therefore particularly troublesome.

3. *Cell bosses*

Another form of torture endemic to detention facilities, prisons and labor camps of all kinds that has not been sufficiently investigated is the practice of inmates committing abuses against other inmates at the instigation of, or without interference from, officials. In Chinese detention facilities, a few inmates who have “reformed well,” usually minor criminal offenders, are often assigned the job of supervising their cellmates (so-called “cell bosses”). As a reward for carrying out the tasks officials have given them, these inmates are given more freedom and privileges than their fellow inmates.

It is simply false to claim, as did China’s representatives in their last session before the Committee, that this problem does not exist in China. The law may prohibit it, but these laws are clearly not being enforced. According to former and current prisoners, such practices are *routine* in all places of detention in China. Inmates assigned to supervise others are widely known in the system as “second-rank cadres,” or “the second government,” indicating their power in the system. Officials tend to use such trustees to carry out torture against those who are not considered to be “accepting reform” or “submitting to Reeducation.” This practice falls squarely into the category of torture under Article 1 of the Convention and should be completely eliminated.³⁹

Questions to ask the Chinese government representatives

1. Does the government intend to make non-state personnel acting in an official capacity, such as members of the United Security Squad, liable for prosecution for the crime of torture?
2. Can the government provide any concrete examples where (i) members of quasi-official bodies were prosecuted for the crime of “intentional injury” under Article 234 of the CL or for illegal detention under Article 238 of the CL, and/or (ii) judicial personnel not specifically assigned to interrogate the suspect or defendant were prosecuted for torture? Please break down cases by type of case, part of country and result.

Article 10: Education and Information on the Prohibition of Torture

The government report details a number of training courses, self-study programs and qualification tests made available to law enforcement officials over the past few years,⁴⁰ yet fails to provide any

³⁷ ZFSC, Vol. 18 (1996), at 378-79.

³⁸ *Id.*

³⁹ See Article 1 of the Convention: “... the term ‘torture’ means any act by which... such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official.”

information on the content of these same courses, programs and tests. It is therefore impossible to know what kind of torture-prevention education is included in such courses, what prominence the subject is given, or what kind of materials are used. It is also impossible to assess, based on the information provided, whether the government is doing an effective job of incorporating anti-torture education into the training of law enforcement personnel.

The report provides no information at all on how the Convention itself is publicized inside China, among either law enforcement officials, medical personnel or ordinary civilians. In all the various campaigns against police abuses in recent years which have led to the reporting of a number of cases of torture, as described above, to our knowledge the fact that China is a party to the Convention has not been mentioned, and China's obligations under the treaty have not been cited as a reason for addressing these problems. Nor is the Convention used as a yardstick in measuring the legal and practical regime relating to torture and ill-treatment.

Questions to ask the Chinese government representatives

1. Please provide details of how anti-torture education features in the training of law enforcement officials and other relevant professionals, including detailed descriptions of the content of the training courses, self-study programs and qualification tests made available to law enforcement officials cited in paragraph 30 of China's third report. Are these courses, programs and tests mandatory or optional?
2. Is the government providing training on the treatment of torture victims and the prevention of torture to medical personnel?
3. How is the government publicizing the Convention within China, among both law enforcement officials and ordinary citizens?

⁴⁰ CAT/C/39/Add. 2, para. 30.

Article 13: Complaints Procedures Inadequate

1. Lack of proper implementation procedures and new methods of dealing with complaints

During the reporting period in question, the Chinese government has generally failed to address fundamental problems in China's public security system that call into question the effectiveness of existing complaints procedures. These include a systematic lack of transparency, pro-police bias, inability to protect citizen plaintiffs against revenge and the tendency of police managers to cover up abuses that reflect poorly upon them.

China's third report, while asserting that under Chinese law torture complaints must be "promptly" processed or forwarded to the relevant authorities,⁴¹ fails to provide any information on how these laws are implemented, or on how implementation rules may limit their effect.

The third report does not describe any new procedures established by China to deal with complaints since the government's previous report was reviewed by the Committee. While the report mentions the "oversight police" (*duchayuan*) system that has recently been set up, ostensibly to oversee the conduct of police officials,⁴² it is unclear whether the mandate of this new mechanism covers cases of torture and ill-treatment, and if so, in what fashion. There is no information provided on how detainees may access the oversight police.

Insufficient safeguards for the rights of suspects and defendants, failure to implement the existing safeguards and loopholes in the law that allow the authorities to ignore such safeguards make complaints procedures meaningless in many cases. Among the problems, some of which are described in detail below, are the lack of access to counsel during the investigative phase; arbitrary prohibitions on meetings between attorneys and criminal suspects or defendants; detention prior to formal arrest in excess of the 30 days stipulated by Chinese law; delays in notification of detainees' family members, or failure to notify them at all, despite provisions in Chinese law that mandate such notification no more than 24 hours after detention; delayed notification of dates for trial, or failure to notify, despite provisions in Chinese law that mandate such notification at least 10 days before trial; and prevention of defendants from speaking in their own defense at trial, including people who have not been able to retain counsel and thus have no other opportunities to present a defense.

A. Lack of access to legal counsel for defendants and suspects

A defendant or suspect's right to counsel is a crucial component in ensuring that complaints procedures are effective, and that torture will be promptly reported and prosecuted. In this regard, the amendments to China's Criminal Procedure Law (CPL) in 1997 improving the legal rights of accused persons were at first widely regarded as a great leap forward.⁴³ In fact, while an improvement over the old laws in allowing earlier access to counsel, the revised CPL does not actually *guarantee* this right, since it contains no provision requiring that the authorities grant access, and there are no penalties if they fail to do so. In particular, the revisions state that an accused person may be held without notification to their family or legal representative if "this notification hinders the investigation of the crimes or cases." In practice, throughout the PSB's investigation of a case, suspects are normally

⁴¹ *Id.*, paras. 41-44; 46.

⁴² See CAT/C/39/Add. 2, paras. 45-46.

⁴³ See, e.g., Lawyers Committee for Human Rights, *Opening to Reform: An Analysis of China's Revised Criminal Procedure Law*, 1996.

completely isolated from the outside world; even members of their immediate families are not allowed to see or have contact with them.

According to the revised CPL, defendants or suspects can retain legal counsel “following the first interrogation.” However, since this latter term is left completely undefined, the circumstances of actual meetings have been interpreted very narrowly by the authorities. In practice, lawyers are often unable to meet their clients, either because the rules issued by public security departments and prosecutors place extra restrictions on such meetings, or because individual criminal investigation officers arbitrarily deny lawyers access, without any legal basis for so doing. A recent commentary by a PSB official illustrates the difficulties lawyers face in attempting to provide legal counsel in the early stages of the investigation:

The main reasons [for the investigating authority to refuse to allow the suspect access to counsel] may be summarized as follows:

1. Lawyers are hired by criminal suspects and regarded as opponents of the investigating authority; their early involvement is detrimental to the work of cracking down on the enemy and protecting [innocent] people.

2. Lawyers provide criminal suspects with legal counsel and legal aid, which enable suspects to realize and master more knowledge and skills in self-defense; or [help suspects to] carefully design their statements, so as to avoid critical issues about the crime and to evade legal punishment. All of these hinder the investigating authority from acquiring crucial evidence from the suspect’s statement, therefore obstructing criminal investigations.

3. Criminal suspects often refuse to confess or retract their earlier statement while waiting to retain counsel, since they hope to get legal assistance.

4. The [authorities] believe that lawyers may [help suspects] destroy or conceal evidence after meeting with suspects and learning the details of their cases, which will create added problems in the criminal investigation.⁴⁴

When a case is handed over to the procuratorates after the investigation has been completed, procuratorates are required to notify defendants’ families and lawyers. Defendants are then supposed to be able to meet with their lawyers to prepare their defense a minimum of ten days before the beginning of trial, though defendants are frequently denied this right in practice.⁴⁵

Thus defendants are in police custody for long periods of time without the benefit of monitoring of any kind by independent institutions or individuals, or by the procuratorates. Under such conditions, HRIC does not believe that the extensive provisions cited in China’s third report detailing the rights of detainees to file complaints are of much use in protecting detainees from abuse; in fact, filing a complaint may only result in further abuse. In these circumstances, the police can torture with impunity. HRIC believes that the situation described by Special Rapporteur Nigel Rodley in his 1995 report has not been appreciably altered by the complaints procedures detailed in China’s third report:

To register a complaint of torture during incommunicado detention, police and prison officials must be approached, and this requirement was said to dissuade most detainees and prisoners from making such complaints. While the procuracy is responsible for investigating complaints concerning torture, it was alleged that procurators often ignored such complaints because an investigation might pose a serious conflict of interest with the procurator’s role as State prosecutor in criminal cases. In this regard, it was said that the need for the procurators to cooperate closely with the police served as a

⁴⁴ Wang Longtian, “Thoughts on the Refusal of Crime Investigation Authorities to Permit the Involvement of Lawyers in Crime Investigation Activities,” (*Zhengcha jiguan jujue liushi jieru zhengcha huodong de sikao*), *Journal of Public Security University*, No. 2, 1998, at 82-83.

⁴⁵ See HRIC, “Abusing Rights According to Law,” *China Rights Forum*, Winter 1999-2000.

*disincentive to investigate torture complaints. Consequently, few investigations or prosecutions or torture complaints were said to have been carried out.*⁴⁶

B. Denial of lawyers' requests to meet detained clients

I. Denial of meeting requests on "state secrets" grounds

Preliminary investigations reveal that even after the revisions to the CPL, lawyers are frequently denied the right to meet and confer with their clients. In Huangshi City, Hubei Province, lawyers from 15 law firms accepted 108 cases in which legal counsel was requested, but in only 30 of those cases did lawyers actually manage to meet with their clients.⁴⁷ In one law firm to which seven cases were referred, not a single meeting between the lawyers and their clients was permitted.⁴⁸ In one province, from the day the revised CPL was enacted on January 1, 1997 through the beginning of 1998, the authorities granted only four requests from lawyers to meet with their clients.⁴⁹

A common complaint is that lawyers are barred from meeting with their clients under the pretext that the case involves "state secrets." According to the CPL, in cases involving "state secrets" attorneys must obtain advance approval from the authorities to meet with their detained or imprisoned clients.⁵⁰ Many Chinese scholars and lawyers interviewed by HRIC expressed concern that local officials tended to treat all information about the investigation of crimes as state secrets. Since the CPL does not define "state secrets," and the scope of secrets in other laws is extremely vague and broad, this has become a convenient tool for preventing attorneys from having any contact with their clients.

Many provisions of current law allow for matters relating to the investigation of crimes themselves to be classified as secrets. For example, Item 6 of Article 8 of the Law on the Preservation of State Secrets in the People's Republic of China (hereinafter the "State Secrets Law")⁵¹ stipulates that details of the investigation of a crime constitute state secrets. An MPS regulation contains similar language stating that all details of criminal investigations count as state secrets.⁵² Under these kinds of provisions, essentially all criminal cases under investigation can be categorized as "state secrets," requiring advance approval for attorney-client meetings. Even minor misdemeanors like reckless driving have been deemed to involve state secrets.⁵³

⁴⁶ See E/CN.4/1995/35, "Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32."

⁴⁷ Wang Ningjiang, "Lawyers Encountering Difficulty with Early Involvement" (*Lüshi tiqian jieru zaoyu kunnan*), *Democracy and the Law*, No. 19, 1997, at 18.

⁴⁸ *Id.*

⁴⁹ Cui Min, "Problems and Suggestions with Respect to the Implementation of the CPL" (*Xingshi susongfa shishi zhong de wenti yu jianyi*), *Modern Jurisprudence* (Xiandai faxue), No. 1, 1998, at 19.

⁵⁰ See CPL, Article 97, Item 2.

⁵¹ The State Secrets Law was promulgated by the NPC in 1988.

⁵² MPS, Practices on State Secrets and the Concrete Scope of Classification in the Public Security Work (*Gongan gongzuo zhong guojia mimi jiqi miji juti fangwei de guiding*), issued on October 17, 1989. According to Section 3(11) of this document, "details of on-going investigations and interrogation regarding such cases" should be classified as state secrets.

An article in a Chinese legal journal indicated that between January and March 1997, a lawyer was permitted to meet with the defendant during the investigation period in only one out of 42 cases.⁵⁴ On at least one occasion, officials admitted that some public security departments were denying all requests from lawyers for meetings with their clients under the rubric of protecting “state secrets.”⁵⁵ Another report said that during the first five months of the CPL’s implementation in one city, the criminal cases in which lawyers were denied permission to meet with their clients on state secret grounds accounted for 60 percent of all criminal cases.⁵⁶ In some cities, this percentage was even higher, close to 90 percent of all criminal cases.⁵⁷ One lawyer complained that he has not had a chance to meet with a client since the revised CPL came into effect.⁵⁸

II. Denial of meetings for no reason at all

Sometimes lawyers’ requests to visit their clients are denied for no apparent reason at all. According to numerous reports, certain public security officials simply refuse to explain their refusal to make the necessary arrangements for attorney-client meetings. In at least two cases, lawyers were informed that their clients did not want to see them, but the lawyers were not permitted to verify this information with their clients.⁵⁹ In other cases, particularly those involving political dissidents, defense lawyers are frightened away with threats and intimidation from the authorities. Wang Youcai, a leader in the fledgling China Democracy Party (CDP) who was sentenced to 11 years’ imprisonment in 1998, had originally retained a lawyer, but that attorney was detained several times and warned to terminate his representation of Wang. Wang’s wife, Hu Jiangxia, then made three separate applications to defend her husband herself, all of which were denied. In the end, Wang had no defense lawyer, and no representative. When Wang tried to speak in his own defense, the judge cut him off, declaring that his statement was not “pertinent” to the case.

⁵³ See Zou Gaoxiang et al, “Early Involvement in the Criminal Investigation Stage: An Embarrassing Topic for Lawyers” (*Zhengcha jieduan jieru yi ge ling lüshi gangga de huati*), *Southern Urban Daily*, August 29, 1998, at 21.

⁵⁴ Zhou Guojun, “Correctly Appreciating the Relationship between Lawyers and the Accused and Guaranteeing Lawyers’ Rights to Participate in Legal Action” (*Zhengque renshi lüshi yu bei zhuisuzhe de guanxi baozhang lüshi de susong quanli*), *Political and Legal Forum*, No. 5, 1997, at 66.

⁵⁵ Guo Guanghua, “The Ministry of Public Security Requests that All Public Security Departments Strictly Guarantee Lawyers’ Early Involvement in Criminal Cases” (*Gong’anbu yaoqiu geji gong’an jiguan jinjue baozhang lüshi tiqian jieru*), *People’s Public Security*, No. 4, 1999, at 10.

⁵⁶ Shao Jianping, “A Brief Analysis of the Relationship between ‘State Secrets’ and Lawyers’ Early Involvement” (*Qianxi lüshi tiqian jieru yu guojia mimi de guanxi*), *Contemporary Judiciary*, No. 2, 1999, at 35.

⁵⁷ Report: “New Practice of Jiangsu Province Regarding Lawyers’ Participation in Criminal Litigation” (*Lüshi canyu xingsu jiangsu you xin chuangshi*), *People’s Public Security*, No. 17, 1997, at 15.

⁵⁸ Wang Guangjing and Wang Longtian, “The Current Situation and Thoughts on Lawyers’ ‘Early Involvement’” (*Lüshi tiqian jieru de xianzhuang ji sikao*), *Democracy and the Law*, No. 5, 1998, at 30.

⁵⁹ A Shanghai lawyer told HRIC that he was informed his client refused to see him though he had been retained long before. The authorities did not give him the opportunity to verify this with his client. In another case in Xiamen, Fujian Province, the lawyer was informed that the defendant was unwilling to meet with him after he had been retained by the defendant’s family and worked on arranging a meeting for more than a month. See Mu Liancai, “Thoughts on the Environment in Which Lawyers Are Practicing Criminal Procedure Law” (*Dui lüshi canyu xingshi susong zhiye huanjing de sikao*), *Chinese Lawyer*, No. 12, 1997, at 10.

Similarly, Qin Yongmin, a veteran and outspoken democracy dissident from Wuhan who was sentenced to 12 years' imprisonment in December 1998 for "subverting state power," was unable to find a defense lawyer after the authorities warned lawyers in Wuhan not to take on his case. Qin's efforts to defend himself in court were repeatedly interrupted by judges. Liu Xianbin, a founder of the Sichuan branch of the CDP who was convicted of subverting state power in the summer of 1999, was also left without defense counsel after judicial authorities pressured a private lawyer to abandon his case.

C. Limitations on meetings with lawyers

Even when they are permitted to meet with clients during the period of police investigation, so many legal and practical restrictions are imposed that these meetings are often rendered useless. Prior to the enactment of the revised CPL, the MPS drafted implementation rules which stated that meetings between lawyers and defendants, if approved, should ordinarily be limited to only one meeting and should not be permitted more than twice, with each meeting lasting no longer than 30 minutes.⁶⁰ The draft MPS Interim rules were widely circulated within the public security system; consequently, many local security departments modeled their own rules after these draft rules, though the formal MPS Trial Rules eliminated the time limits when they were formally issued on December 20, 1996. In Guizhou, for example, regulations specify an even shorter time limit of 10-20 minutes for attorney-client meetings—this is actually an improvement over the five-minute limit set when the revised CPL was first enacted.⁶¹ The provincial public security departments in Shandong and Zhejiang limit attorneys to a one-time 30 minute visit with their clients.⁶² And in accordance with a document jointly issued by several judicial authorities in Xian, Shanxi Province, lawyers can only meet with clients once for no more than one hour.⁶³

D. Abusive conditions of lawyer-client meetings

In most cases, law enforcement officials insist on monitoring meetings between lawyers and detained or imprisoned clients, and they have full right to do so, as there is no provision requiring confidentiality for such meetings. The majority of officials attending such meetings are also in charge of the criminal investigation, and their presence cannot but have a chilling effect on any exchange between lawyer and client. Some local officials have even gone so far as to record or videotape lawyer-client meetings.⁶⁴ Lawyers and scholars have also complained that officials warn, "educate"

⁶⁰ See Article 10 of the Interim Rules on Lawyers' Participation in Criminal Litigation (*Lüshi canyu xingshi susong zangxing guiding*), hereinafter the "MPS Interim Rules." See also "Criminal Defense: Indispensable Pillars for Building a Judicial Justice System" (*Xingshi bianhu goujian sifa gongzheng dasha buke queshao de zhizhu*), *Chinese Lawyer*, No. 15, 1998, at 18.

⁶¹ Wang Ningjiang, *supra* note 47, at 19.

⁶² See Xiao Zhou, "On Guaranteeing the Rights of Lawyers in Litigation and the Criminal Procedure Law and the Judicial Interpretations" (*Xingsufa sifa jieshi yu lüshi susongquanli baozhang*), *China Jurisprudence*, No. 1, 1999, at 132. See also Wang Shujing, "Several Urgent Issues That Need to Be Solved Following the Lawyers' Law Coming Into Effect" (*Lüshi shishi hou jidai jige jieju de wenti*), *Chinese Lawyers Newspaper*, May 24, 1997, at 3.

⁶³ See the Several Opinions of the People's Procuratorate, the Intermediate People's Court, the Bureau of Public Security and the Bureau of Justice of Xi'an on Implementing the Criminal Procedure Law of the People's Republic of China (*Xianshi renmin jianchayuan xian shi zhongji renmin fayuan xian shi gong'anju xianshi sifaju guanyu shishi zhonghua renmin gongheguo xingshi susongfa ruogan yijian shixing*), issued on February 28, 1997.

⁶⁴ Wang Ningjiang, *supra* note 47, at 19.

and intimidate detainees and prisoners in front of their lawyers; some investigative authorities have actually encouraged officials to take advantage of lawyer-client meetings to “crack” tough cases, or to obtain statements from defendants.⁶⁵

In some localities, attorneys are forced to meet with their clients under deplorable conditions. Detention centers do not usually provide sufficient space for lawyer-client meetings, and lawyers must stand in line to visit with their clients. In the Changsha Number One Detention Center, which houses more than 1,000 detainees, there is only one room available for attorneys to meet with their clients; it is common for several meetings to be held simultaneously in the same room.⁶⁶ In Shiyan City, Hubei Province, meetings are held outdoors in the prison yard, while in Xiangyang, lawyers and clients are separated by a glass screen with a hole in the middle, forcing both sides to shout to be heard.⁶⁷ And in Ezhou, lawyers must meet with clients inside a metal cage without any chairs inside it, so that law enforcement officials can monitor their conversation and deter over-long meetings.⁶⁸

The authorities often attempt to censor conversations between attorneys and clients in advance of their meetings. Some officials have told lawyers that they were only permitted to know the charges against their clients, while others claim that inquiry into the details of the case would jeopardize the criminal investigation.⁶⁹ In fact, to ensure that lawyer-client meetings do not hamper their investigatory work, some officials require lawyers to submit a written account of what they plan to discuss with their client in advance of any meeting, and insist that the meeting be carried out exactly according to these pre-approved “talking points.”⁷⁰ To add insult to injury, many detention centers force lawyers to assume a policing role by bringing handcuffs to use on their clients.⁷¹

⁶⁵ Guo Xiaobin, “On Reform and Progress of the Works of Crime Investigation after Entry into Effects of the New Criminal Procedure Law (*Lun xin xingshi susongfa shishi hou xingshi zhengcha gongzuode gaige yu fazhang*),” *Studies on Criminal Investigation*, No. 1, 1998, at 11.

⁶⁶ See Deng Ruixiang, “Early Involvement: Gearing-Up Time is Over” (*Tiqian jieru, moheqi yi guo*), *People’s Public Security*, No. 4, 1999, at 8.

⁶⁷ Wang Ningjiang, *supra* note 47, at 19.

⁶⁸ *Id.*

⁶⁹ See Yang Zongzhen and Xue Hongwei, “Thoughts on Several Issues Concerning Lawyers’ Involvement in the Investigation of Crimes (*guanyu lüshi jieru zhengcha jige wenti de sikao*),” *People’s Public Security University Journal*, No. 1, 1997, at 37.

⁷⁰ Report: “Criminal Defense: An Indispensable Pillar in the Construction of Criminal Justice (*Xingshi bianhu goujian sifa gongzheng dasha qushao de zhizhu*),” *China Lawyer*, No. 1, 1998, at 24; Zhou Guojun, *supra* note 33, at 69.

⁷¹ See Xia Lu, “On ‘Thirteen Difficulties’ in Lawyer’s Criminal Defense and the Corresponding Improvements (*Lüshi xingbian shisan nan de wenti ji gaijin*),” *China Lawyer*, No. 17, 1997, at 6.

E. Difficulty in bringing torturers to trial

Defense lawyers in China are still not able to play a strong role during trial. There is plenty of evidence that lawyers' interventions in trials are subject to the control of Party committees at the central and local levels,⁷² especially in politically sensitive cases.

In cases involving torture, since defendants are accusing state officials of acts seen as damaging to the image of state organs, lawyers representing the victims and their families often encounter a great deal of obstruction from the local Party committees or other official bodies. While there is no systematic data available on the effectiveness of law suits brought charging officials with torture, 1993 statistics from the Jiangxi provincial PSB indicated that of over 100,000 social order cases handled, only 101 resulted in administrative litigation cases, of which the courts eventually ordered a mere 15 police decisions rescinded or amended. Although some Western scholars and journalists have suggested that the actual number of successful suits is much higher, it clearly is no easy matter to bring a torture claim to court, let alone win a judgment. HRIC is not aware of a single case in which political, religious or ethnic dissidents have succeeded in bringing a case regarding torture or ill-treatment to court, although many have tried to do so.

A 1995 case demonstrates how difficult it can be for a victim to bring a torturer to trial. Twice courts in Liaoyang rejected the suit of a young female engineer who, after being arrested by police on suspicion of having stolen a jeep, was beaten for several hours to force her to confess. As a result, she became deaf in one ear and suffered from brain damage. The courts cited "insufficient evidence" in acquitting the police officer she accused of beating her. Only in 1998, after national media took up the case and a provincial CCP committee second secretary issued an "instruction" on it, did the Liaoning Procuratorate take up the case, which was eventually heard in the Liaoning High People's Court.⁷³ Because the officer continued to protest his innocence, he received a "severe" sentence of three years in prison.

The failure promptly to investigate this and other similar cases directly violates the standards established in the Convention and in other international human rights instruments.

Questions to ask the Chinese government representatives

1. Please provide details of torture complaints dealt with and lawsuits filed under current Chinese law, broken down by type of case, part of the country and result. How does the government assist torture victims who want to bring suit against their torturers when public prosecutors have failed to take action on such cases? What specific actions has the government taken to punish torturers? Please provide numbers of cases of various types, and some particular examples.
2. Give the percentage of cases, broken down by part of the country, in which legal counsel was requested by a prisoner or detainee and lawyers were actually able to meet with these prisoners and detainees prior to the case being transferred to the procuratorate. On what grounds can a lawyer be denied permission to meet with an imprisoned or detained client? What percentage of meetings between lawyers and detained or imprisoned clients, broken

⁷² See for example, HRIC, *Going Through the Motions: the Role of Defense Counsel in the Trials of the 1989 Protesters*, March 1993.

⁷³ "Handcuffed female engineer permanently injured by beating, Liaoning criminal division officer sentenced to three years in prison" (*Kaoda nügongchengshi zhi can, liaoning xingjing panjian san nian*), *Ming Pao*, October 28, 1998.

down by part of the country, are barred on “state secret” grounds? What kind of criminal investigations, if any, cannot be categorized as state secrets?

3. What percentage of torture complaints result in litigation, and what percentage of torture cases litigated result in a finding for the plaintiff? Has this percentage increased, decreased or remained the same over the past five years? Please provide a breakdown by type of case, part of the country and result.
4. Can the government give details of any cases in which medical personnel have been involved in acts of torture? Have there ever been complaints by torture victims in detention against medical personnel for active involvement or lack of care? How can individuals forcibly committed to a mental institution obtain redress? Please provide cases.

2. Concerns About Lack of Access to Complaints Procedures in Administrative and Illegal Detention

In its report, the government only addressed two types of torture: the use of torture during interrogation and the ill-treatment of prison inmates. Yet torture frequently occurs in administrative and illegal detention, since this is outside the judicial process and often beyond the scope of the existing systems of oversight. HRIC believes that the absence of such safeguards means that inmates held in administrative detention may have particular difficulty in making complaints and gaining redress, compensation and rehabilitation when they are victims of torture or ill-treatment. Thus there are particular concerns about the provisions of Article 13 of the Convention in relation to administrative and illegal detention.

A principal form of administrative detention is “Reeducation Through Labor” (*laodong jiaoyang*) (hereinafter “RTL”), which is both a punishment and a coercive measure that empowers the PSB to send people to labor camps for up to three years without any judicial process.⁷⁴ A second, lesser-known but equally widespread and problematic form of administrative detention is “Custody and Repatriation” (*shourong qiansong*) (hereinafter “C&R”), under which millions of China’s poorest people, mostly migrant workers but also including children and the mentally ill, who live in the cities without the requisite registration can be rounded up and held in detention centers until they pay to get out or are sent home to the place where they are registered.⁷⁵

According to Beijing’s own statistics, over 200,000 Chinese citizens are currently detained under RTL,⁷⁶ while C&R now affects upward of two million people every year, some five to 20 percent of

⁷⁴ Although the Administrative Litigation Law of the PRC, promulgated in 1989, does entitle people to a limited right to challenge RTL decisions, initial RTL decisions are made at the discretion of the PSB. A person held under RTL would have great difficulty in proving to a court’s satisfaction that s/he was wrongly sentenced to such a term, since the regulations governing this measure give the public security departments very broad discretion to detain people in this way. Very few cases are known to have been reversed following challenges under the Administrative Litigation Law and, to our knowledge, not a single appeal by a dissident against an RTL sentence has been successful.

⁷⁵ The information on C&R is from HRIC, *Not Welcome at the Party: Behind the Clean-up of China’s Cities—a Report on Administrative Detention Under “Custody and Repatriation,”* September 1999.

⁷⁶ *China Law Yearbook* (1987-1997), China Law Yearbook Press, 1998, at 872. This figure does not include people convicted of prostitution, soliciting the services of a prostitute or drug use – all crimes punishable by RTL. Thus, even assuming that the government is not underestimating the number of dissidents serving RTL sentences, the actual number of citizens in RTL is probably significantly higher.

whom are children.⁷⁷ Yet these forms of administrative detention are completely ignored by China's third report.

By contrast, the report makes much of the elimination, under the revised CPL, of Shelter and Investigation (*shourong shencha*) (hereinafter "S&I"), a measure under which the PSB could detain people virtually indefinitely without any judicial procedure.⁷⁸ However, since C&R today functions very much like S&I did in the past, in reality this change has done little to reduce the incidence of administrative detention.

In addition, the government's report entirely fails to mention the problem of torture and ill-treatment in extra-legal forms of detention. In many places, local authorities set up detention facilities that are completely outside the legal and regulatory regime. It has been acknowledged that such practices are widespread, for example, in a book published in China in 1998 entitled *The Crime of Illegal Detention*.⁷⁹ One use to which local governments put such illegal detention facilities is to incarcerate people who have violated the population policies (see below). Another is imprisoning debtors: the township government in Genzi, Guangdong Province, set up cages in its offices to incarcerate debtors until they paid up the money owed. A newspaper in the province reported that in a two year period, more than 50 people had been locked into the 1.5 square meter cages, one for over 60 days.⁸⁰ While the debtors still caged were freed after the media reported the practice, no action appears to have been taken against the officials who used or authorized this.

A. Torture and ill-treatment in C&R

C&R is one of the forms of administrative detention most widely used in China today, yet it has received almost no attention outside China, and little inside China, either. One of the reasons for this apparent "oversight" is that the majority of those detained under C&R belong to the most marginalized groups in Chinese society, often referred to by the city authorities as the "three nos personnel" (*sanwu rennyuan*), having no papers, no job and no fixed abode. Persons targeted for detention include beggars, street children, garbage collectors, prostitutes, the homeless, the mentally-ill, people in low-status occupations whose household registrations (*hukou*) are not located in the city where they are working or doing business and people who have traveled to a city to exercise their constitutional right to complain to the authorities about official misbehavior or other concerns.

Another reason is that C&R is not considered a punishment or legal measure, but rather a form of welfare. C&R is authorized by a national statute passed by the State Council in 1982,⁸¹ as well as by

⁷⁷ According to 1996 figures, children represented close to six percent of C&R detainees. See Ministry of Civil Affairs, "Record of National Meeting to Exchange Actual Experiences on the Work of C&R" (*Quanguo shourong qiansong gongzuo xianchang jingyan jiaoliuhui huiyi jiyao*), *Collection of Documents on Civil Affairs Work*, China Society Publishing House, 1996.

However, the following article puts the proportion of minors in the C&R system at 20 percent: "Care and Education Together, Combining Custody and Resettlement: Jiamusi Sets Up a 'Delivering Warmth School' for Indigent Children" (*Guanhuai jiaoyu bingju, shourong anzhi jiehe, jiamusi wei liulang ertong chuangan 'wenwen xuexiao'*), *China Society News*, November 23, 1993.

⁷⁸ See CAT/C/39/Add. 2, para. 34.

⁷⁹ Zhang Zhijie, *The Crime of Illegal Detention (Feifa jujin zui)*, Beijing, China Procuratorate Publishing House, 1996.

⁸⁰ Matthew Miller, "Debtors held in cages by officials," *South China Morning Post*, December 4, 1999.

⁸¹ "Measures for the Custody and Repatriation of Vagrant Beggars in the Cities (for Trial Implementation)" was issued jointly by the Ministry of Civil Affairs and the Ministry of Public Security in October 1982.

local regulations passed by particular provinces and cities. Under these regulations, the police and officials of the civil affairs departments may detain a person virtually indefinitely. There is no judicial procedure for determining whether this is appropriate, or whether the person in question falls into the category of people subject to such custody according to the regulations. Persons detained may appeal administratively, but as the people responsible for receiving the appeal are generally those in charge of the custodial facility in which they are detained, such appeals may be pointless or may even result in the detainee being subjected to abuse.

The fact that detainees have no rights to due process is only part of the problem. The lack of rights guarantees combines with a lack of supervisory systems, whether public or institutional, to allow abusive conditions inside the C&R centers. Official publications speak of the problem of cell bosses and crime within the centers, and some mention that there have been deaths as a result.

I. Abusive conditions of detention

The conditions in almost all the C&R centers on which Human Rights in China has collected information clearly constitute inhuman and degrading treatment, and violate national regulations. The Detailed Implementing Regulations for the Measures for the Custody and Repatriation of Vagrant Beggars in the Cities (For Trial Implementation) (below, 1982 Implementing Regulations) require that the general population of C&R centers be well treated, mandating that inmates be provided with proper food and conditions (Article 9), and that those who are ill are to be given medical treatment or admitted to the hospital (Art. 10).

But there has been little effort to ensure that these regulations are followed in practice. In all but one of the C&R centers HRIC investigated,⁸² inmates are held in overcrowded conditions in large cells, sleeping on the floor or on a common platform. Windows are generally small and high up, so there is little natural light and ventilation is very poor. Access to toilet and washing facilities is usually restricted. Many articles in official journals published in China state that the C&R centers are often in dilapidated, old buildings and that conditions are poor. In the C&R centers we investigated in Guangdong, 30-90 inmates share a cell. Many have only two or three communal toilets inside the cell. In most places, water is provided only at certain times of day, and bathing is often restricted by lack of opportunity or lack of time provided.

Inmates often have only tap water to drink. In most Chinese cities, people boil water before drinking it, and in the absence of such precautions, many become sick with intestinal complaints. With such poor living conditions and hygiene, inmates often develop skin complaints and pest infestations. There is little, if any, access to medical attention. Food is routinely of low quality in terms of nutrition, sufficiency and sanitation.

In facilities where inmates are required to work—mostly those in the rural areas to which people are sent after processing in a central urban facility—they frequently have to labor 12 to 14 hours per day, mostly doing farm work. Inmates reported that this was often grueling, subsisting as they were on an inadequate diet and with insufficient water and no protection from the elements. Work-related injuries were reportedly common, as inmates did not have protective clothing or proper tools for their work. In some facilities in Guangdong, inmates were sent out to work in neighboring electronics and shoe factories when these were short of labor power.

II. Endemic violence

⁸² See Appendix II of the HRIC report cited in *supra* note 75 for a list of facilities on which HRIC collected information.

Many inmates reported beatings and abuse, both by guards and by cell bosses. The use of cell bosses is common in many C&R centers, according to both a number of official articles and HRIC's interviews with former detainees. The guards in C&R centers routinely rely on trustees to maintain "order." This is despite the fact that most provincial regulations governing C&R explicitly ban the practice of giving inmates "management" duties. According to Article 24 of the 1982 Implementing Regulations, C&R staff may not beat, curse or physically punish detainees; may not defraud them or expropriate their possessions; may not confiscate their foodstuffs or daily necessities; may not censor their correspondence; may not employ detainees to "manage" others in custody or require detainees to do private tasks for them; and may not "take liberties with women." Yet as dissident poet Huang Xiang, a detainee in the C&R Center in Changping County, Beijing Municipality between May 18 to June 20, 1995, described in an interview with HRIC: "The jailor doesn't take any responsibility. He says he didn't beat anybody. They put the 'group leaders' (i.e., the cell bosses) in charge, and encourage them to beat you instead."⁸³

Some articles in official journals speak of the problem of cell bosses and inmates who abuse others, but generally fail to remark that the practice of appointing trustees in C&R facilities is a violation of the national regulations. One piece in *Guangdong Civil Affairs* described how C&R inmates can be abused by the "black authorities" in the centers, but condoned the practice of using trustees in the following way:

The black authorities do have a certain function. To a certain degree, they supplement the insufficiency of guards [guanjiào, literally, those who subject people to discipline]. For example, they assign cleaning tasks, assist the guards in organizing a proper system for labor, maintain order in the cells and so on. Once a "new soldier" went on a hunger strike because he couldn't accept [being detained]. The guards had worked on him for a whole day, but to no avail. After that, he was put into cell No. 2. He went in at lunchtime and by dinner he came out to get his food. What had happened was that the "person beside the window" [probably the best position in the cell, meaning the cell boss] had threatened him with force, while at the same time educating him with "reason." Since they share the same fate, the detainees can understand each other. In fact, the level of hygiene and order in the cells is strongly related to the authority of the "person beside the window;" [the two] are directly correlated.⁸⁴

This candid acknowledgement of the utility of threats of violence gives little cause for hope that guards would prevent trustees from following through on such threats when necessary. All the former detainees interviewed by HRIC, both men and women, had either been beaten themselves or had witnessed beatings of other detainees, both by guards and cell bosses. In the Dajianshan C&R Center in rural Guangdong Province, for example, people who did not work fast enough could be beaten by the trustees heading their teams. In addition, a former inmate there reported that cell bullies hit the children held there with them and forced them to repair uniforms and perform cleaning duties.

A rare account of conditions in this center published in the official newspaper *China Youth News* in July 1998 paints a horrifying picture of life at Dajianshan. It confirms that inmates wake before first light and work until about 9:00 p.m., with only short breaks for food that is filthy and inadequate. The article gave details about five cases in which named detainees had suffered or witnessed abuse by cell bosses including people having all their clothes, shoes and money taken; and people being beaten and kicked for not working hard enough or for other reasons. Even when guards witnessed such behavior or received complaints about it, they did nothing. Staff told reporters they had "heard" that cell bosses

⁸³ Id. at 49.

⁸⁴ Liang Guihong, "Observation and Analysis of a Kind of Black Authority over C&R Personnel" (*Dui shourong ren yuan yizhong heise quanwei de guan cha he qian xi*), *Guangdong Civil Affairs*, No.1, 1991.

were beating other inmates, but no one had complained to them. On leaving the facility, inmates were required to sign a statement saying that they had not been beaten there.⁸⁵

The journalists who wrote this report went to speak to the people in charge at Dajianshan about the cases of abuse they had found, and also to their superiors in the civil affairs department. None of these officials undertook to investigate the cases, or expressed concern about the abuses. When HRIC investigated the facility a year later, it appeared that little had changed there.

III. Deaths in custody

The 1982 Implementing Regulations require that “abnormal deaths” in C&R centers be investigated. Article 10 reads, in part: “The occurrence of accidents resulting in abnormal deaths must be prevented. The cause of death of persons during their time awaiting repatriation in the centers must be investigated, and in cases of abnormal death, a forensic doctor must make a determination of the cause and it must be reported to the higher level departments in charge.”

However, in the official article quoted above that justifies the use of trustees, the author states there are “no regulations” dealing with deaths caused by inter-inmate violence. This view implies that civil affairs officials only regard the “abnormal deaths” mentioned in the national regulations as covering deaths possibly caused by staff members. Thus there may be no accountability for such deaths.

HRIC’s interviewees reported knowledge of a number of such deaths. One man detained in the Dajianshan C&R Center reported that in June 1999 an old man was so severely beaten by cell bosses that he died after a few days. Huang Xiang, the dissident poet mentioned above, saw several bodies being taken out of the Changping C&R Center in Beijing when he was held there in 1995.

IV. Lack of redress and accountability

The lack of transparency at C&R centers means that torture and ill-treatment can occur with impunity. In order to conform to the mandate of the Convention, at a minimum procuratorates should be empowered to inspect all C&R centers on a regular basis, and to receive and investigate complaints related to C&R. C&R facilities should further be open to visits by journalists, international human rights groups and other concerned parties.

B. Torture and ill-treatment in RTL

Torture and ill-treatment in RTL is also endemic and extreme. As illustrated by the cases in Appendix I, most of the concerns expressed above also pertain to RTL, and abuse at the hands of both non-state personnel and cell bosses is particularly problematic. RTL centers are notorious for their filth and lack of sanitation, and detainees are also frequently denied visits from family members and access to proper medical care, as in the cases of Zhang Xianliang and Zhou Guoqiang, described below.

⁸⁵ Lin Wei, Dai Zigeng and Zhu Defu, “Shadow Behind the Sunlight: Report from Daijianshan C&R Center in Guangzhou City,” *China Youth News*, July 24, 1998.

Questions to ask the Chinese government representatives

1. Please provide statistics on the number of detainees currently sentenced to each of (i) RTL and (ii) C&R. Please provide statistics on the occurrence of torture in RTL and C&R. Please provide details of complaints of torture in RTL and C&R dealt with and law suits filed under Chinese law, broken down by type of case, part of the country and result.
2. Please provide statistics on the number of illegal detention facilities. What measures has the government taken to eliminate such illegal forms of detention? Please provide details of complaints of torture in illegal detention facilities and suits filed under Chinese law, broken down by type of case, part of the country and result.
3. Please provide statistics on the incidence of death in RTL and C&R, and illegal detention facilities, broken down by part of the country. How, if at all, has the government investigated these deaths? Please provide details of any prosecutions related to such deaths, broken down by part of the country and result.

Article 15: Evidence Obtained Through Torture Still Admissible at Trial*1. Lack of exclusionary rule*

China's third report states that, under Chinese law:

*No testimony by a witness, declaration by a victim or confession by the accused deemed by the court to have been obtained by unlawful means such as torture, threats, enticement or deceit can be admitted as evidence.*⁸⁶

Unfortunately, this statement is misleading, since evidence obtained through torture remains admissible in court, and is widely used. Current law only prohibits the conviction of persons solely on the basis of a confession obtained through torture. According to a noted criminal procedure law expert, "using very large amounts of evidence derived from torture and other illegal means (especially the accused person's confession) remains, as before, a principal basis for proving cases."⁸⁷

While Article 43 of the CPL makes the extraction of confessions through torture illegal, and Article 247 of the CL prohibits the extraction of confessions through torture as well as the torture of witnesses, China still has not established an exclusionary rule barring the admission of evidence obtained through illegal means. Article 43 of the CPL and Article 247 of the CL address only the tortured confession, not other kinds of evidence obtained through torture. Thus, under current Chinese law, all evidence obtained through illegal means is admissible at trial. According to the SPP's Trial Rules on Criminal Procedure enacted in 1997, "physical or documentary evidence, if verified as able to prove the truth of a case, may be used as legal evidence to prosecute a crime."⁸⁸ The Rules of the People's Procuratorates on Criminal Procedure, issued by the SPP on January 18, 1999, (a replacement for the 1997 Trial Rules) leaves out this paragraph, but it appears that evidence obtained through illegal means is still used in practice. A recent authoritative book authored by senior prosecutors expressly states:

⁸⁶ CAT/C/39/Add. 2, para. 52

⁸⁷ Cui Min, "New Progress, *supra* note 33, at 216.

⁸⁸ 1997 Trial Rules, Article 233.

*Physical evidence, if verified as able to prove the truth of a case, may be used for prosecuting crimes. Since the physical evidence is irreplaceable and irreproducible, [we] should not simply exclude evidence obtained through illegal means as a method of fighting crime.*⁸⁹

Additionally, while both the interpretation issued by the Supreme People's Court (SPC)⁹⁰ and the SPP's Trial Rules officially ban the use of tortured confessions or statements,⁹¹ the tortured confession or statement may be legally "recollected" for use as evidence at trial: once a confession has been extracted through torture, the torturer can request that the defendant or suspect repeat his or her statement, this time without the use of torture, and if the defendant or suspect complies, the confession may be admissible.⁹² Evidence derived from the tortured confession or statement is also admissible, creating a situation where the "fruit of the poisonous tree" is deemed bona fide evidence in the Chinese judicial system. Moreover, Article 61 of the SPC's Interpretation provides that:

Upon being verified to have been obtained through torture, inducement, intimidation or deception, the testimony of a witness, the statement of a victim or the statement of a defendant should not be used as the basis for deciding the case in question.

Since prisoners and detainees are isolated from the outside world, it is difficult for them to produce solid evidence of torture absent visible physical injuries. With only their word against that of the prosecution, torture victims are unlikely to have their claims accepted. In fact, a Shanghai judge told HRIC that judges rarely give credence to a defendant's claim to have been tortured, and that evidence is almost never rendered inadmissible based on such a claim.

Many scholars agree that the lack of an exclusionary rule is one of the principal reasons for the prevalence of torture in China. According to one commentator:

*[In practice] crime investigators often extract a confession of guilt or details of a crime through torture or other coercive means... which further demonstrates that the failure of the CPL to address the exclusion of illegal evidence is largely to blame for the [widespread reliance on] torture.*⁹³

This commentator went on to suggest chopping down the "poisonous tree" to get rid of the use of its "fruit" as evidence in court.⁹⁴ Another scholar commented:

Now that [the CPL and the CL] prohibit the collection of evidence through illegal means, there must be corresponding provisions excluding the [admission] of that [same] illegally obtained evidence.

⁸⁹ Chen Guoqing, *Application and Interpretation of the Rules of the Peoples' Procuratorates on Criminal Procedure (Renmin jianchayuan xingshi susong guize shiyi yu shiyong)*, Police Officer Education Press, Beijing, 1999, at 277-278.

⁹⁰ Interpretation on Several Issues Regarding Implementation of the Criminal Procedure Law of the People's Republic of China (*Guanyu zhixing zhonghu renmin gongheguo xingshi susongfa ruogan wenti de jieshi*) (hereinafter the "SPC Interpretation"), issued on June 28, 1998 (367 articles).

⁹¹ SPC's Interpretation, Article 61, and SPP's Trial Rules, Article 265.

⁹² See Chen Guoqing, *supra* note 89, at 278.

⁹³ Zhou Guojun, "Discussion of Several Issues," *supra* note 33, at 93.

⁹⁴ *Id.*

*Otherwise, the stipulations prohibiting the use of torture to extract confessions are mere empty words.*⁹⁵

Professor Cui Min, an influential criminal procedure specialist at China People's Public Security University, echoed these sentiments, stating that as long as illegally-obtained evidence is admissible, "the clause 'extorting confessions by torture is strictly forbidden' essentially exists in name only."⁹⁶

Other academics and practitioners, however, believe that tortured confessions are a legitimate and necessary weapon in the fight against crime. Police investigation scholar Du Jingji argued that an exclusionary rule is impractical, since it would permit too many criminals to escape legal sanctions:

*As a result of four years of research and study on criminal investigatory work, this author believes that in contemporary judicial practice, the number of real crimes solved through the illegal criminal practice of tortured confession is far, far greater than the number of false cases it creates. This is an objective truth that we cannot contradict.*⁹⁷

2. Lack of a presumption of innocence and a right against self-incrimination

The CPL lacks both an unambiguous presumption of innocence and a right to remain silent to avoid self-incrimination (*chenmo quan*). While Article 12 of the CPL declares that "no person shall be found guilty without being judged as such by a People's Court according to law," and Article 46 maintains that "a defendant cannot be found guilty and sentenced to a criminal punishment if there is only his statement but no evidence," these provisions are undermined by Article 93, which facilitates the use of tortured confessions by *requiring* the criminal suspect to "answer the investigator's questions truthfully." Suspects may only decline to answer questions unrelated to the case, and the degree to which even this limited exception is enforced is doubtful. Additionally, there has been no retreat from the policy known as "lenience to those who confess and severity to those who resist" (*tanbai congkuan, kangju congyan*).

Many legal scholars in China have recommended that the principle against self-incrimination and the right to remain silent being incorporated into the CL, and point out that this will bring the Chinese legal system into compliance with international human rights norms. As one such scholar commented:

*The obligation of suspects or defendants to respond to official interrogation is not in accord with international standards of criminal justice, namely, the principle against self-incrimination... defendants or suspects have no choice but to answer [the questions put to them by their interrogator]... which leads to the following negative consequences: a) the encouragement of official reliance on confessions... b) the widespread use of torture... c) the weakening of the legal status of suspects or defendants in the criminal process...*⁹⁸

⁹⁵ Ma Haijian and Li Bingtao, *supra* note 10, at 64-65.

⁹⁶ Cui Min, "New Progress, *supra* note 33, at 216. Professor Cui was a key participant in drafting the revised Criminal Procedure Law.

⁹⁷ Du Jingji, *supra* note 32, at 374.

⁹⁸ Chen et al., *supra* note 33, at 281-282.

Questions to the Chinese government representatives

1. What steps is the government taking to enact an exclusionary rule barring all evidence obtained through torture from use at trial? What actions has the government taken to combat the notion among many law enforcement officials that tortured confessions are a legitimate and necessary weapon in the fight against crime?
2. What steps is the government taking to incorporate the principle protecting a suspect against self-incrimination and the right to remain silent into China's criminal law?

Article 16: Acts of Cruel, Inhuman or Degrading Treatment or Punishment*1. Denial of medical care and abuse of psychiatry*

While Articles 17 and 54 of China's Prison Law and Article 25 of the Detention Center Regulations suggest, in vague language, that prison and detention facilities "should" (*yingdang*) be equipped with basic medical equipment and "should" provide prisoners and detainees with timely medical attention, there is no express right to medical care for prisoners and detainees under Chinese law. Accordingly, as illustrated by many of the cases below, prisoners and detainees are frequently denied proper medical attention, even when they enter the prison or detention center with a known medical condition, and this situation is aggravated by the poor food, sanitation and living conditions endemic to most prison and detention facilities.

Another disturbing trend is the growing use of forced confinement in mental institutions as a means of punishing dissidents. As in the cases of Wang Miaogen and Wang Wanxing, described below, dissidents are committed to mental institutions against their will, even though their families and friends do not believe they pose any threat to themselves or society, and they have not had the benefit of a trial or an independent medical evaluation. In some cases, such individuals are given strong psychiatric drugs against their will. Such tactics are in clear violation of Article 16 of the Convention, as well as due process and international human rights norms, and are an abuse of psychiatry.

Questions to ask the Chinese government representatives

1. Under what circumstances can a person be forcibly incarcerated in a mental institution under Chinese law? What kind of due process is necessary before the government places a person in a mental institution against his or her will, and without the cooperation of his or her family?
2. What measures has the government taken to ensure that all detainees have proper access to medical care? What training has been provided to medical personnel in caring for torture victims and documenting torture cases?

2. Violence in the implementation of the population control policy

The implementation of the population control policy has given rise to illegal detention and ill-treatment of individuals, mostly women, as a means of punishing those who fail to abide by the policy requirements or of coercing them into abiding by these requirements.

Implementing measures and practices relating to the 1979 "One Child Per Couple Policy" have been at best tolerated by the government, which has failed to enforce existing protections contained in national laws, and at worst, such abuses have been encouraged by government policy. In 1991 the government issued a document entitled "Decision on Stepping Up Family Planning Work and Strictly Controlling Population Growth," which tied the evaluation of the performance of population planning personnel and other local cadres directly to the achievement of centrally-allocated birth quotas in their

area: failure to meet the quota may entail sanctions such as demotion or loss of bonus.⁹⁹ Despite various welcome statements from the central government that it intends to focus population work on providing services, *it has failed to change this system of centrally-fixed, inflexible birth quotas.*

In order to avoid punishments, population officials may resort to drastic measures to achieve the quota, which include acts of violence against women and girls, as well as detention of pregnant women or members of their families. Acts of violence include: forced (sometimes late-term) abortions, forced sterilizations and forced IUD insertions. Girl children, as well as some children with disabilities, face threats to their survival including sex-selective abortion, infanticide, neglect and abandonment. These practices are officially banned, but in reality they continue as the objective of meeting quotas appears to override health and survival concerns. Thus the state's insistence on meeting demographic targets has combined with traditional attitudes and practices to threaten the survival, health, well-being and status of many women and girls.

Provincial and local regulations on the policy explicitly provide for harsh punishment and a certain degree of coercion. Testimonies from former or serving population control officials and former detainees indicate that population personnel can detain suspected violators of the population control policy without the involvement of the PSB.¹⁰⁰ Such detentions are illegal, according to current Chinese law. In some of the facilities described by former detainees, beatings are frequent, men and women are held in the same room, and inmates are not allowed to make phone calls or write letters, placing them in conditions of virtual incommunicado detention. Detainees include women who are pregnant out of plan and are being pressured to have an abortion, and others who are about to be sterilized or who have to pay fines. Elderly people, parents and children have been detained in such centers as hostages to coerce family members into complying with the population policy.

In her 1998 report, the UN Special Rapporteur on Violence against Women referred to the case of a Chinese man who was denied asylum in Canada because he was found to have "been an active participant in persecutory acts amounting to crimes against humanity." A former birth control officer, he had taken part in "seeking out women who had violated the one-child policy... tying the women up with ropes and taking them to the hospital where they were forcibly aborted or sterilized. He testified that he was aware of all the methods used to implement the one-child policy in his commune, including forcible abortion on women in advanced stages of pregnancy and the killing by injection of fetuses born alive."¹⁰¹ In another recent example, a 22-year-old female population control officer described her daily work in an industrializing city suburb in Zhejiang Province in a spring 1998 interview:

*Some of the people we are trying to control want to escape from us. Then we hold someone else in the family in a cell—the mother, the father... —for several weeks, several months, sometimes, until the person in question shows up.*¹⁰²

Although the government has repeatedly denied that it condones the use of force in the implementation of the population control policy, accounts of such violence perpetrated by individuals

⁹⁹ According to observers of some regions of rural China, officials are assessed according to various criteria, but achievement of population quotas is the one aspect of the assessment which they are not permitted to fail.

¹⁰⁰ Forced Abortion and Sterilization in China: The View from Inside, Subcommittee on International Operations and Human Rights, Committee on International Relations, US House of Representatives, June 9, 1998, Testimony of Gao Xiaoduan.

¹⁰¹ Commission on Human Rights, 54th session, Report of the Special Rapporteur on Violence against Women, its causes and consequences, Ms. Radhika Coomaraswamy, 26 January 1998, E/CN.4/1998/54.

¹⁰² Interview with family planning official, spring 1998, on file with HRIC.

in their official capacities have continued to emerge.¹⁰³ The government claims that officials who do use force will face punishment, yet HRIC has not been able to document a single case in which an official has been prosecuted for such abuses, and in some areas, courts have been instructed to refuse law suits related to the population policy brought by members of the public.

In our view, the fact that the population control policy remains a “priority national policy” and that rights abuses associated with it cannot be discussed publicly in the Chinese media, as well as the absence of a monitoring mechanism, all combine to create conditions of impunity. By failing to take action against population officials, to investigate occurrences of violence and coercion perpetrated against women, and to give victims the right to complain, we believe that the Chinese government implicitly condones acts of torture perpetrated in the context of the population control policy, according to the definition contained in Article 1 of the Convention.

Questions to ask the Chinese government representatives

1. The government has repeatedly stated that it does not condone the use of coercion in the implementation of the population control policy: Can the government explain how it defines coercion in this context? Can the government provide details of how it has communicated the prohibition of coercion to officials responsible for enforcing the policy, including population control personnel who are assigned birth quotas and medical personnel? Have these categories of personnel received education and training regarding the prohibition against torture?
2. Can the government provide detailed cases in which population control officials and/or medical personnel have been prosecuted for using force in the implementation of the policy, or been otherwise disciplined?
3. What measures has the government taken to put an end to illegal practices observed by population and medical personnel in the context of the population control policy, including the illegal detention of women and/or members of their families, and sex-selective abortions and infanticide performed in hospitals?
4. What are the avenues for redress available to women against whom population officials or medical personnel have used force resulting in physical and/or mental suffering? Are they entitled to compensation? Can the government provide details of cases?

3. Ill-treatment in non-custodial situations

Brutality and the use of excessive force in the course of law enforcement remain a widespread problem in China, but the government report makes no mention of torture and ill-treatment in non-custodial situations.

The use of excessive force has been much in evidence in the treatment of people detained while protesting against the July 1999 ban on the Falungong spiritual group. In the past year, thousands of Falungong members have been arrested and detained, hundreds of others have been sentenced to administrative detention under RTL and a number of Falungong leaders have been sent to serve lengthy prison terms after being convicted on criminal charges.

On a number of occasions, journalists and others have witnessed peaceful Falungong demonstrators being beaten with clubs, dragged by the hair and kicked by police who were detaining them. For example, on November 16, 1999, hundreds of Falungong members were arrested in Beijing's

¹⁰³ See for example, HRIC, *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, August 1995; HRIC, *Implementation of CEDAW in the PRC*, December 1998.

Tiananmen Square as they raised a banner to appeal for help from visiting U.N. Chief Kofi Annan. Up to 50 uniformed and plainclothes police officers pounced on the group as soon as they held up a bright red banner and started meditation exercises, beating them with clubs as they herded them into police buses.

Questions to ask the Chinese government representatives

1. Please provide details of complaints of torture in non-custodial situations, and of related suits filed under Chinese law, broken down by type of case, part of the country and result.

Conclusion and recommendations

Despite China's accession to the Convention more than twelve years ago, torture remains a systemic and regular practice in the PRC. Although the Chinese authorities have made repeated commitments to eliminate torture, and have enacted some legislation aimed at implementing these commitments, the concept of torture in Chinese law still does not reflect the requirements of the Convention. Legal deficiencies such as the lack of effective complaints procedures, barriers to access to legal counsel, the absence of an exclusionary rule barring the admission of evidence obtained through illegal means and the lack of an unambiguous presumption of innocence and a right to remain silent, combined with the deeply-rooted belief that tortured confessions are necessary to reign in crime, all undermine China's compliance with the Convention.

Moreover, in practice the goals of the Convention (such as educating and informing citizens on the prohibition against torture) are often sacrificed in favor of other goals (such as shielding state security organs from public scrutiny) that contribute to the widespread use of torture. When prosecuted at all, torturers are usually dealt with leniently, and certain kinds of torture outside the regular judicial process, such as torture in administrative detention and in non-custodial situations, are committed with complete impunity.

China has failed to act upon the majority of the Committee's 1996 recommendations.¹⁰⁴ A summary of these recommendations, and HRIC's assessment of China's actions in response to these recommendations, is as follows:

- Recommendation 1 ("That China enact a crime of torture in terms consistent with [A]rticle 1 of the [Convention]"): China has failed to fully incorporate Article 1 of the Convention into domestic law, as described above.
- Recommendation 2 ("That a comprehensive system be established to review, investigate and effectively deal with complaints of ill-treatment by those in custody of every sort..."): As described above, China has not established new procedures for dealing with complaints, and the existing system is severely inadequate.
- Recommendation 3 ("Methods of execution of prisoners sentenced to death should be brought into conformity with [A]rticle 16 of the [Convention]."): There has been no significant change in the ill-treatment of prisoners sentenced to death, despite the increasing use of lethal injection to replace execution by shooting.
- Recommendation 4 ("Conditions in prison should be brought into conformity with [A]rticle 16 of the [Convention]"): HRIC believes that there has been little progress in this area, as the lack of any

¹⁰⁴ See CAT/C/XVI/CRP.1/Add.5

effective oversight mechanisms means there is little incentive to improve conditions. In addition, existing oversight mechanisms do not cover many forms of administrative detention.

- Recommendation 5 (“Access to legal counsel should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. Access to the family and to a medical doctor should also be accommodated”): As described above, while there is a limited right of access to counsel and to family members, the police have virtually unlimited discretion to deny access, and there is no way to appeal against such denials. To the best of our knowledge, there have been no cases (apart from those involving detainees from Hong Kong) where family members were permitted to see detainees before trial, and lawyers are prohibited from meeting with prisoners or detainees on a regular basis. Prisoners and detainees are also routinely denied access to appropriate medical care.
- Recommendation 6 (“China is invited to consider cooperating with the Rehabilitation Centre for Torture Victims in setting up a torture victims rehabilitation center in Beijing or some other large center in that country”): To our knowledge, China has not established any rehabilitation centers for victims of torture, nor has it taken any steps to meet this goal.
- Recommendation 7 (“China should continue with its most welcome reforms to its Criminal Procedure Law and continue to train its law enforcement personnel, procurators, judges and doctors to become professionals of the highest standing”): While China has not enacted any legal reforms since 1997, HRIC welcomes China’s training of law enforcement personnel.
- Recommendation 8 (“China is invited to consider withdrawing its reservations under [A]rticles 21 and 22 of the [Convention]”): This recommendation was not acted upon in any way.
- Recommendation 9 (“An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the [Convention] that the Committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China”): There has been no significant progress in this arena, as described above.

Thus, it is clear that China has continued to avoid its obligations under the Convention. In view of the seriousness and prevalence of torture in the PRC, HRIC urges the Chinese government promptly to take the following actions in order to reduce and eventually eliminate torture in China:

1. **Ensure all detainees have access to lawyers and family members:** (a) Revise the relevant laws and regulations to ensure that all detainees can contact family members or friends promptly after they are detained. Telephones that detainees can use at low cost should be installed at all places of detention, and detainees should only be prevented from making telephone calls in exceptional circumstances that are clearly defined in law. (b) Revise the relevant laws and regulations to ensure that all detainees may engage lawyers immediately following their detention and meet with them promptly, and remove the legal loopholes which allow police to refuse detainees’ requests to meet with counsel.
2. **Revise laws on torture to bring them into compliance with the Convention:** (a) Revise the Criminal Law to incorporate the crime of torture as defined in Article 1 of the Convention, including explicitly recognizing that all persons acting in an official capacity may be subject to prosecution for this crime and incorporating the concept of mental torture, and to establish clear standards for prosecution and punishment of torture cases that recognize the severity of this crime. (b) Revise the legal provisions in the Criminal Law and Criminal Procedure Law to include a clear exclusionary rule barring the admission of *all* illegally-obtained evidence at trial, including evidence arising out of tortured confessions. (c) Revise the Criminal Law and the Criminal Procedure Law to incorporate all the dimensions of the presumption of innocence, as defined in international law, and the right to remain silent.

3. **Increase transparency in order to combat torture:** Repeal all regulations restricting media coverage of torture cases, in order to allow the media to carry out free and unrestricted reporting on cases and issues relating to torture and ill-treatment in order to raise public awareness of this matter, increase pressure on all relevant departments to improve their record in torture prevention and facilitate the exercise by all victims of torture of their rights to complain, to have their complaints investigated and to receive redress, compensation and rehabilitation when such complaints are verified.
4. **Enforce laws protecting the rights of persons in detention:** (a) Strictly enforce the ban on the use of trustees in all detention facilities, and hold guards and administrators legally responsible for instigating torture and ill-treatment of detainees by other inmates, or for failing to protect inmates from abuse by other detainees. (b) Strictly enforce the standards for treatment of detainees contained in China's laws and regulations and in international human rights instruments, including providing adequate food, medical care and living conditions to all those in custody.
5. **Make mechanisms for receiving complaints and investigating and prosecuting torture cases independent so they can operate effectively:** (a) Take concrete measures to ensure that the judiciary is truly independent in order to ensure that every case of torture may be impartially investigated and tried, that perpetrators of acts of torture receive penalties which accord with the seriousness of their crimes and that all torture victims be able to exercise their right to complain without fear of retaliation, as well as receiving proper compensation and rehabilitation. (b) Take action to establish truly independent oversight of law enforcement bodies, including procedures for receiving and investigating complaints from torture victims. As a first step, separate the oversight and torture investigation functions of the procuratorate from its function as public prosecutor.
6. **Eliminate all forms of detention without judicial oversight:** (a) Eliminate all forms of administrative detention, especially Reeducation Through Labor and Custody and Repatriation. (b) Intensify efforts to eliminate illegal, unregulated detention centers. (c) Draft proper procedures for the involuntary commitment to mental hospitals of mentally ill persons who are likely to cause harm to themselves or others, based on international standards, and eliminate detention in such institutions of person who do not fall into this category.
7. **Publicize China's obligations under the Convention:** (a) Make the text of the Convention a key element in the anti-torture education of law enforcement personnel, prison and administrative detention facilities officials, and medical personnel including officials running psychiatric institutions. (b) Encourage media reporting of the concluding observations of the CAT and discussion of what measures the government should take to further implement the Convention.

To the Committee:

HRIC suggests that the Committee urge the government of China to recognize the competence of the Committee under Articles 21 and 22 of the Convention, and encourage the government to withdraw its reservation on Article 20.

Appendix I: Selected Cases of Torture and Ill-Treatment¹⁰⁵

1. **Cao Jiahe**, editor of *Dongfang* magazine, was arbitrarily detained and tortured for collecting signatures to mark the anniversary of the June 4, 1989 Beijing massacre. On May 10, 1999, a group of policemen forcibly took Cao from his home blindfolded to an undisclosed location in the northwest suburbs and held him incommunicado until May 14. While detained, Cao was subjected to a marathon three-day interrogation session, and pressured to confess the details behind his signature campaign and plans for other June Fourth commemoration activities. During this time, Cao was forced to kneel, as police officers repeatedly kicked him and whipped him with a belt. He was beaten so badly that his whole body was scarred and bruised; his skin was cut, exposing flesh. Despite reporting of this incident in the international press, no action is known to have been taken of the officers who tortured Cao.

2. **Chadrel Rinpoche**, a former abbot of Talshilunpo Monastery in Shigatse, Tibet, and head of the official search team for the reincarnation of the Panchen Lama, currently detained in Chuandong No.3 Prison in Dazu County, Sichuan, is reportedly in bad health, and is being held in complete isolation in a compound where even top officials are forbidden to enter. Chadrel has been denied all outside contact since his arrival at the prison, and is not allowed even to leave his cell for exercise. In protest of the denial of even his most basic human rights under labor camp regulations, he reportedly commenced a hunger strike sometime in July 1997.

3. **Chen Longde**, sentenced to three years of RTL in 1996 after co-signing an open letter to the National People's Congress demanding the release of prominent jailed dissidents and a reassessment of the 1989 democracy movement, leaped from the roof of the Luoshan Reeducation Through Labor Camp on August 17, 1996, to avoid continual brutal beatings by prison guards using electric shock batons. As a result of this fall, Chen suffered from a fracture to his legs and hips and other injuries, and for some time was urinating blood.

While still suffering from his injuries and on crutches, Chen was forced to work at the labor camp, and labor camp authorities refused to allow a necessary operation to remove a metal sheet applied to bones in his legs, or to give him suitable medicine. Chen was deprived of his right to bring a law suit against the prison for illegal treatment, and a promised investigation into his torture turned to nothing, according to his family. Chen's parents continually appealed in vain to the authorities for their son's release on medical parole. Chen was finally released in May 1999, at the end of his RTL term. He still walks on crutches due to the ill-treatment and his injuries.

4. **Chen Meng**, currently serving a 12-year sentence for faxing a "black list" of exiled Chinese nationals and former Chinese nationals who were to be barred from entering the country or detained on entry to "organizations outside China's borders," thus damaging the "reputation" of the government, has reportedly been held in solitary confinement since he was detained in 1995, and is said to be suffering without medical care from serious liver disease, including hepatitis B and C. Although international human rights organizations have appealed for his conditions to be improved, there has been no response from the authorities.

5. The World Organization Against Torture (OMCT)¹⁰⁶ recently requested urgent investigation into the circumstances of the death of **Chen Zixiu**, a Falungong practitioner from Shandong

¹⁰⁵ Unless otherwise noted, these cases were reported directly to HRIC by the victims or sources in China with access to information about them.

¹⁰⁶ Organization Mondiale Contre la Torture website is located at <http://www.omct.org>.

Province. According to OMCT, Chen was severely beaten following her arrest on February 17, 2000, and subsequent detention at the local “Falungong Detention and Transformation Center.” On February 21, at around 7 p.m., Chen’s family, who had been forced to pay a fine for Chen’s detention, was taken to a hotel by public security officers, and informed that Chen had died of a heart attack. However, they were reportedly not allowed to see Chen’s body right away, or even told where the body was.

The next day, February 22, they were allowed to leave the hotel and see Chen’s body in the mortuary. Chen’s daughter noted: “[Chen] had been dressed in funeral clothes, and wore make-up. When we opened her clothes, we saw big black and purple patches all over her body except the upper front part. There were bruises everywhere. Even her ears were dark purple. Her teeth were broken. In the yard, her clothes, quilt and underwear were covered with feces. Almost all her clothes were cut into pieces with scissors.” Chen’s family said that Chen had been in good health before her arrest.

6. In the late summer of 1998, **Cheng Meiying**, a Protestant house church leader, was struck by police officers who used a water-soaked rope whip and thrashed her head and face with a club. Cheng reportedly lost consciousness for three days and was subsequently released. Cheng is said to have suffered brain damage as a result of her injuries.
7. **Chu Hailan**, the wife of dissident and former RTL detainee Liu Nianchun, was apprehended at the gates of the Beijing Sheraton, where the U.N. High Commissioner of Human Rights was giving a talk on September 9, 1998. For attempting to hand a letter to Mary Robinson outside the hotel, Chu was detained for ten hours and so severely beaten by security personnel in the hotel that upon her release she was taken to the hospital. Ahead of Robinson’s visit to China, Chu wrote her an open letter urging her to raise Liu’s case with the Chinese government.

In August 1998, Chu and her mother-in-law Wu Huifen were forced out of a taxi into a PSB car while on their way to the Beijing municipal government to call for Liu’s release, and were detained for 12 hours at a local police station. Chu suffered a sprained ankle and bruises as a result of ill-treatment during her detention.
8. **Fan Zhen**, wife of former vice-mayor of Harbin Zhu Shengwen, spent one year and eight months in the Harbin detention center, where she shared a cell with more than 100 other prisoners. The overcrowding was so severe she had to sleep on her side. A bucket in the center of the cell served as a communal toilet and outdoor exercise was not allowed. She was released after her lawyer was notified she had been found guilty and sentenced to one year eight months imprisonment.
9. Political prisoner **Hu Jian** died in a Shanxi mental hospital in 1995. Before his forcible transfer to the hospital in 1994, Hu was serving a ten-year sentence for “counterrevolutionary propaganda and incitement” for his involvement in democracy demonstrations in 1989. He had been on a hunger strike for nearly two years and only survived through force-feeding. According to his mother, Hu suffered severe health problems due to harsh prison conditions, repeated beatings by guards and inmates and extended periods in shackles. Authorities consistently denied him proper medical treatment and refused repeated requests for medical parole. Hu’s mother was not given an autopsy report and was not permitted to see his body before it was cremated by the authorities.
10. The family of **Kang Wenbi**, a house church leader from Bijie District, Guizhou Province who was detained on June 30, 1999, fears that Kang will suffer the fate of at least two other local house church leaders, names unknown, who were reportedly tortured to death during interrogation by local public security officers. In these two cases, police authorities claimed that the deaths occurred at the hands of other prisoners, but no explanation was provided. The

families were only given a few hundred *yuan* to help pay for the burials—an admission that the authorities were in some sense responsible for the deaths.

11. **Li Hai**, a student leader in the 1989 Democracy Movement currently serving a nine-year prison term for compiling a list of those arrested for participating in the 1989 protests, has been beaten by guards and denied exercise time, and is not allowed to leave his cell because he refuses to confess, according to his mother Gong Liwen. Li has also been forced to perform up to 15 hours of hard labor each day, and was once put into solitary confinement for 25 days for a minor breach of dress code. On February 5, 1998, Gong sent a letter to the government pleading with them to stop the abuse of her son. To the best of our knowledge, this letter was never answered or acted upon in any way.
12. Father **Li Qinghua**, a priest in the underground Catholic church loyal to Rome, claimed he was tortured and sexually harassed by prostitutes while in police custody in November 1998. Father Li was released after a six-day detention.¹⁰⁷
13. **Liu Dongjie**, a suspect in an unknown crime committed while in air force uniform, set himself on fire because he was unable to bear the torture inflicted upon him by the military crime investigation unit. Liu died of severe burn wounds on August 13, 1998. He was reportedly beaten and subjected to electric shocks in an attempt to force him to confess.¹⁰⁸
14. **Liu Nianchun**, a former teacher and student of Chinese literature, was sentenced to three years' RTL on July 4, 1996, for "accepting illegal aid from human rights organizations abroad," "drafting an appeal in collaboration with former student leader Wang Dan that slandered the government" and "unauthorized labor activities." Shortly after helping to initiate the pro-democracy petition "Draw Lessons from Blood" and signing another petition calling for "a spirit of tolerance in China's political life," Liu was seized without warrant on May 21, 1995. Liu then "disappeared" until the day his RTL sentence was announced. Contrary to normal practice, the thirteen-month long detention before Liu's RTL term was not counted as time served. In May 1997 his term was then extended by 216 days because he "refused to reform." When Liu went on a hunger strike to protest the arbitrary extension of his sentence, labor camp authorities responded with food and water deprivation, electric shock torture and confinement. Liu was beaten with electric batons and locked in a dark, narrow cell where he got no food and water.
 Healthy when first detained, Liu became extremely ill, suffering from a blocked intestine, rectal bleeding, mouth sores and chronic stomach pain. Throughout Liu's imprisonment, his wife, Chu Hailan, regularly petitioned authorities for Liu's release on medical grounds, but Liu was not released until December 20, 1998, when he was exiled to the United States. Liu continues to suffer from various health problems due to abuse he sustained in RTL.
15. **Tang Yong**, codefendant of Wang Yongdong in a smuggling and murder trial, died while in detention. Although official reports termed his death a suicide, the autopsy report revealed that Tang's body was covered with wounds and blood, suggesting that he had been severely tortured. To date, however, the authorities have not undertaken any further investigation into the circumstances of Tang's death.¹⁰⁹

¹⁰⁷ "Vatican tells of sex assault on priest," *Hong Kong Standard*, January 5, 1999.

¹⁰⁸ Radio Free Asia commentary, July 21, 1999. The original text is available at http://www.rfa.org/comm_article.cgi?article_id=84&service=Mandarin

¹⁰⁹ *Southern Daily* (Nanfang ribao), November 27, 1998, at 5.

16. **Ulaanshuvu**, who in 1996 completed his five-year prison term for “counterrevolutionary propaganda and excitement” for allegedly writing two documents about the human rights situation in Inner Mongolia, had not fully recovered from a gall bladder operation at the time of his arrest in July 1991. Yet all medical treatment stopped during his incarceration and he was bed-ridden for at least one and a half years of his prison term. His left leg and right hand are shriveled and he suffers from chest pain and heart arrhythmia, as well as kidney trouble. Ulaanshuvu’s condition was further exacerbated by ill-treatment both in police custody prior to being sentenced. He was reportedly verbally abused, subjected to long periods of interrogation and deprived of sleep by the use of continual bright lights. He also reportedly received inadequate food in prison lost a lot of weight as a result.
17. **Wang Hui**, the wife of dissident Zhou Guoqiang, sued the Beijing police for detaining her for 27 days beginning May 15, 1996, and for torturing her. In early September 1996, the Beijing Dongcheng District Court agreed to hear her lawsuit against the Beijing police, whom she accused of illegally detaining her from May 16 to June 13, 1996. She also accused five guards at the suburban detention center where she was held of beating her up and insulting her while they were drunk. However, the court eventually refused to hear the case.
18. **Wang Miaogen**, a labor activist, has been forcibly committed to a psychiatric hospital since April 27, 1993. Wang was committed to the hospital, which is run by the PSB in Shanghai, to prevent him from disrupting the Asia Games, which took place in Shanghai in May 1993 as a showcase for China’s bid to host the 2000 Olympics in Beijing. Just prior to his confinement, Wang had staged a hunger strike in front of Shanghai’s PSB offices to protest the detention of fellow labor activists. Wang was consequently beaten up by the police, kicked in the head, tied up and gagged. Shortly thereafter, public security authorities arranged to have him committed. Because Wang has no family to advocate on his behalf, his conditions in the hospital are especially dire. Fellow activists who have visited Wang say he is forced to live in extreme filth with inadequate food and water.
19. **Wang Wanxing** was forcibly returned to Ankang Hospital, a psychiatric institution outside Beijing run by the PSB, on November 23, 1999. Wang has already spent more than seven years in the institution without having been tried or given an independent medical examination. He was originally detained on June 3, 1992, after attempting to unfurl a banner in Tiananmen Square to commemorate the June Fourth Massacre and to call for a reassessment of the official verdict on the 1989 Democracy Movement. On August 19, 1999, Wang was released for a three-month “trial period.” As that time came to an end, Wang told officials of his plans to hold a press conference to speak out about his confinement. Consequently, eight public security officers took Wang from his home on November 23 and re-committed him to psychiatric detention.
20. **Wang Yongdong**, a defendant accused of smuggling and murdering a child, was sentenced to death based on tortured evidence. Wang was spared from death and released after the Hunan High People’s Court found evidence suggesting the use of torture; the prosecutor agreed to withdraw charges when it became clear that the court was going to order a new trial. No investigation was ordered, even though the investigating authority ultimately admitted that torture had occurred, and the torturer was never punished. Additionally, it is notable that during the entire trial up to and including appeal, the defendant was not permitted to produce evidence in support of his torture claim, despite his repeated complaints of torture, and withdrawal of his tortured statement. Wang’s codefendant, Tang Yong (see above), was tortured to death.¹¹⁰

¹¹⁰ *Southern Daily* (Nanfang ribao), November 27, 1998, at 5.

21. **Xu Wenli**, a former Democracy Wall activist and leader in the fledgling China Democracy Party who in 1998 was sentenced to thirteen years' imprisonment for "endangering state security," suffers from severe hepatitis. Though Xu showed no symptoms of the disease when he began serving his current prison term, the prison hospital waited for 10 months before diagnosing the problem. Xu's whole body is reportedly swollen, for unknown reasons. Xu's wife, He Xintong, learned of Xu's condition during a monthly visit, but authorities have refused to provide a written record of their findings. She continues to appeal to prison officials for a complete independent medical evaluation and better medical treatment for her husband, so far to no avail. Xu reportedly receives substandard medication and inadequate food in prison.
22. **Yu Dongyue**, serving a 20-year prison term for defacing the portrait of Mao Zedong in Tiananmen Square during the 1989 demonstrations, has been savagely beaten and kept in a tiny isolation cell for refusing to acknowledge his guilt or cooperate with authorities. His sustained abuse has reportedly caused him to become insane.
23. **Zhang Lin**, a labor and peasant rights advocate sentenced to three years of RTL for allegedly entering China illegally and hiring prostitutes, reportedly suffers from beatings every 2-3 days while in custody at the Guangdong Province No. 1 Labor Camp. During his earlier three-year detention from 1994-1997, Zhang lost the use of his hands after being severely beaten and having an electric baton held to his head for an hour; his repeated appeals for medical attention were ignored. Zhang's body is reportedly covered with wounds, and his miserable state has driven him to attempt suicide two times. On July 22, 1999 Zhang went on a six-day hunger strike to protest his mistreatment. Zhang was denied family visits for nine months before his mother was permitted to meet with him in August 1999.
24. **Zhang Shanguang**, a Hunan labor activist currently serving a ten-year sentence for "endangering state security," was abused and beaten by members of the United Security Squad on August 6, 1998, because he allegedly failed to respond to questions about the labor organization he had attempted to set up and about his overseas connections. On August 21, Zhang's wife, Hou Xuezhu, was informed by the Huihua PSB that Zhang was about to be released on bail, and that she was needed to complete the necessary paperwork; when Hou arrived at the station, however, instead of processing her husband's release, the police threatened and verbally abused her, and suggested that she divorce Zhang. Zhang has suffered a recurrence of tuberculosis, which he contracted in 1992 during an earlier seven-year imprisonment for "spreading counterrevolutionary propaganda," and which was never properly treated. Zhang is reportedly spitting up blood, possibly as a result of ill-treatment in detention, but his repeated requests for proper medical attention have been denied. Dissidents throughout China have written at least two open letters to Chinese President Jiang Zemin and Premier Zhu Rongji protesting Zhang's ill-treatment at the hands of the authorities.
25. Former Democracy Wall activist **Zhang Xianliang**, who served three years of RTL between 1993 and 1996 for protesting the arrests of fellow Shanghai activists, developed serious health problems while detained at the Qingpu Labor Reform Farm, including suffering a heart attack for which he did not receive any medical treatment. Zhang's wife, Yan Huili, was refused visiting rights to see her ailing husband for more than three months. Yan went on a symbolic 24-hour hunger strike in February 1996, just before a summit between Chinese President Jiang Zemin and U.S. President Bill Clinton, to draw attention to her husband's treatment.
26. **Zhou Guoqiang**, a dissident lawyer who was imprisoned for four years of RTL in Shuanghe Farm, in Heilongjiang Province, suffered from serious heart and pulmonary problems during his detention. His wife, Wang Hui, was unable to obtain accurate information on his condition

and treatment. She said Zhou was sharing a “dirty and poorly heated cell” with 11 other inmates. Her repeated appeals for Zhou’s release on medical parole went unanswered.

27. **Zhu Shengwen**, former vice-mayor of Harbin, Heilongjiang is serving a life sentence on corruption charges. He has been in custody since October 1996, and is reportedly in poor health as a result of torture. Zhu said he was tortured into confessing to the bribery charges on which he was convicted in April 1998. He claimed to have been beaten each day by two convicted criminals while being held in solitary confinement in a maximum-security jail in northern Heilongjiang Province, as well as being denied permission to wash and suffering from hunger, thirst and diarrhea.

Zhu is current reported to be suffering from high blood pressure, a heart condition and failing eyesight. Zhu’s sentence was reduced to a 17-year term in December 1998. Held in Harbin No. 3 Prison, he shares a cell with about 40 other prisoners.

Despite repeated appeals from Zhu, his family and human rights groups, no action is known to have been taken to review his conviction or punish those responsible for torturing him.