

## CHINA

### CAT A/45/44 (1990)

471. The Committee considered the initial report of China (CAT/C/7/Add.5) at its 50<sup>th</sup> and 51<sup>st</sup> meetings, held on 27 April 1990 (CAT/C/SR.50 and 51).

472. The report was introduced by the representative of the State party, who emphasized the efforts made by his Government to combat torture and safeguard human rights and stated that all the relevant provisions of the Convention were reflected in Chinese domestic law. There was no special legislative procedure for incorporating international conventions into domestic law; they automatically entered into force upon ratification. Acts of torture as defined in the Convention were strictly prohibited under Chinese law. It was strictly forbidden for a State functionary to extract confessions through torture or to obtain evidence through threats or other unlawful means. Similarly, it was forbidden for law enforcement officials to mistreat or insult a suspect and for prison staff to torture or mistreat detainees. Any breach of those prohibitions was punishable by law.

473. Regarding the legitimate rights and interests of prisoners, the representative emphasized that not only was it forbidden to beat or abuse prisoners or subject them to corporal punishment, but also that they were guaranteed medical care and safety at work. He added that penal sanctions under Chinese law were designed to reform prisoners and, by re-education through labour, to help them break with their past and again become citizens useful to society. He also referred to Council of State regulations dated 17 March 1990 concerning detention centres, which dealt with the legitimate rights and interests of prisoners and specified that such centres must combine strict vigilance with education and vigorously exclude blows, abuse, corporal punishment and maltreatment. Moreover, detention centres were placed under the supervision of the procuratorates, and appeals and complaints from prisoners must be brought before the competent bodies as rapidly as possible.

474. With a view to preventing acts of torture, the Government paid the closest attention to the selection and training of judicial personnel, medical workers and public servants and required them to have a high standard of professional ethics. With the same aim, the media played an important supervisory role by exposing unlawful practices. In addition, citizens had to be aware of their dual responsibility in regard to respect for the laws and monitoring of the acts of State officials. He also explained that his Government exercised its criminal jurisdiction in respect of offences of torture whether or not committed on Chinese territory and that it wished to develop international co-operation in the area of extradition and judicial assistance.

475. The representative added, however, that it was difficult to eliminate torture. In that connection, the Chinese Government had adopted appropriate measures, but was aware that there was still much to be done not only in the matter of legislation but also in the fields of justice, administration, information and education.

476. The members of the Committee welcomed with interest the report, which contained fairly

detailed information on the constitutional framework and demonstrated the Government's desire to co-operate with the Committee. They nevertheless expressed regret that the report had been drafted in too general a manner and failed to give details of the practical application of each of the Convention's provisions in China. It did not therefore conform to the Committee's general guidelines regarding the form and contents of initial reports (CAT/C/4/Rev.1).

477. Members requested further information on the mechanism for incorporating the Convention into Chinese law and, in particular, on the precise place occupied by the Convention in Chinese domestic law. In that connection, they observed that, although being directly applied in China, the Convention should nevertheless be complemented by suitable domestic legislation. They also requested detailed information on the characteristics and jurisdiction of the various courts, particularly the people's courts, possible emergency courts, military courts and administrative tribunals, and asked how judges and prosecutors were appointed, how their independence was guaranteed and what were the relationships between, and the respective powers of, the public security organs, the examining magistrate, the procuratorate and the courts.

478. With regard to the death penalty, members asked what were the offences for which it could be pronounced, what were the applicable remedies available, and how many times it had been pronounced and carried out in recent months. Further information was requested regarding any factors or difficulties affecting the implementation of the Convention; in that connection, it was asked whether any cases of extrajudicial execution or unlawful detention had come to the attention of the Chinese authorities and, if so, what steps had been taken to punish those responsible.

479. With regard to articles 1 and 4 of the Convention, members asked whether there was a specific definition of the crime of torture under Chinese law and whether certain forms of corporal punishment were authorized in China. Information was also requested on the severity with which the crime of torture was punished, in relation to other offences.

480. With regard to article 2 of the Convention, members expressed a desire for fuller information on the measures taken to prevent acts of torture and the general provisions prevailing in the event of exceptional circumstances. It was also asked whether an order from a superior or a public authority could be invoked to justify torture.

481. Members requested further details on the implementation of articles 5 to 9 of the Convention, particularly with reference to the principle of universal jurisdiction laid down by those articles, and on article 3 of the Criminal Law mentioned in paragraph 44 of the report. Members noted with interest that, since 1985, 520 million citizens had received legal education and, in that connection, asked what measures had been taken to implement article 10 of the Convention concerning education and information regarding the prohibition against torture.

482. With regard to article 11 of the Convention, members asked whether incommunicado detention existed in China and, if so, what were its duration and limits; whether a prisoner could demand a medical examination and, if so, whether it was the prisoner or the public authorities that named the doctor. Clarification was requested on article 5 of the Regulations on Arrest and Detention, under which the organ responsible for the arrest was exonerated from notifying the family of the arrested person within 24 hours of the reason for arrest and the place of custody where such notification

would hinder the investigation or there was no way to notify them. An explanation was also requested of the provision whereby a public security organ could detain any person who was “proved by conclusive evidence to be guilty”. It was also asked how many prisons and prisoners there were in China; what was the duration of pre-trial detention; where there were military prisons and, if so, how they were administered; what were the functions of members of the armed forces in regard to detention; what was distinction drawn between reform and rehabilitation through labour; whether there were still specific reform establishments for counter-revolutionary offenders; and whether the practice of reforming counter-revolutionaries through labour was not contrary to the requirements of article 16 of the Convention. It was also asked how political prisoners were treated, what the average length of their detention was and whether they were tried by ordinary courts or by special courts. Lastly, further information was requested on the machinery available for supervising detention conditions and on the consequences of the reform mentioned in paragraph 17 of the report.

483. With regard to articles 12 and 13 of the Convention, members noted with interest that a very large number of human rights violations had been considered in accordance with the law. They asked for what offences the 20,000 cases mentioned had been brought to court and what had been the results of those cases. They also inquired how many complaints had been lodged for acts of torture; how many officials had been prosecuted for torture and with what results; what means were available to citizens to prove that they had been victims of such acts; and what procedures were followed for receiving and investigating complaints on the subject.

484. It was also noted that the Chinese Government had not hesitated to recognize in its report that torture had yet to be eliminated completely. In that connection, members referred to the numerous allegations of torture in China, particularly in Tibet, mentioned both in the report prepared by the Special Rapporteur to examine questions relevant to torture (E/CN.4/1990/17) and in the information transmitted by non-governmental organizations, and asked what was the Government’s position in that respect. More specifically, questions were put concerning the particular status of Tibet in the People’s Republic of China, the measures adopted to protect the rights of the Tibetan population and, more generally, steps taken to combat torture practices with a view to their final elimination.

485. With regard to article 14 of the Convention, members inquired how the Chinese authorities ensured the redress, compensation and medical treatment that torture victims needed, and requested information on the form of redress, the average amount of compensation granted and the number of cases in which it had been granted.

486. Lastly, with regard to article 15 of the Convention, members asked whether a statement obtained through torture could be invoked as evidence in legal proceedings.

487. In reply to questions raised by members of the Committee, the representative explained that any convention acceded to by China became binding as soon as it entered into force. Furthermore, in the event of a discrepancy between provisions of an international instrument and domestic law, the latter was brought into line with the former. Where subtle differences remained, international instruments took precedence over domestic law. He therefore emphasized that offences under the Convention were regarded as offences under Chinese domestic law. He added that, according to the Constitution, People’s Courts and the People’s Procuratorate were independent of the administrative organs, social groups and individuals. The judicial system was composed of the Supreme People’s

Court, the Provisional District and Special People's Courts, and the Local Courts and no adjudication could take place outside those courts. With respect to the appointment of judges, he stated that the system was currently being reformulated. Judges and prosecutors were all appointed by the administrative organs and were subjected to strict tests, not only of their ability, but also of their moral and other qualities.

488. With regard to the death penalty, he stated that the need for capital punishment was determined by the overall social and political situation and the need to combat crime, as well as by the wishes of the population as a whole. However, its application was extremely limited in scope. The death sentence was thus applicable only to the most serious crimes. Furthermore, where the death sentence was not immediately implemented, the sentence could be suspended for two years. If, within that period, the criminal showed himself repentant or of exemplary conduct, the sentence might be reduced to 15 to 20 years. The sentence was not carried out in the case of persons under 18 years of age. Moreover, provisions existed in the Constitution and the Criminal Procedure Law to prevent summary or arbitrary sentences. To avoid the inappropriate use of capital punishment, the Criminal Procedure Law provided for a checking procedure whereby sentences were confirmed by the Supreme Court, or by the Higher People's Court on the authorization of the Supreme Court.

489. In response to questions raised in connection with articles 1 and 4 of the Convention, the representative emphasized his Government's firm opposition to torture and other cruel, inhuman or degrading treatment or punishment and stated that Chinese domestic law defined torture and laid down penalties for such practices, and that any person found guilty of having used torture or other inhuman or degrading treatment to extract a confession was punished to the full extent of the law.

490. With reference to questions raised in connection with article 2 of the Convention, the representative declared that, in the view of his Government, war, the threat of war, domestic instability, an emergency situation or orders from a superior were no excuse for resorting to torture.

491. Referring to articles 5 to 9 of the Convention, the representative stated that the provisions governing extradition and judicial assistance in criminal matters served as a basis for co-operation with other countries.

492. In reply to questions raised under article 10 of the Convention, the representative explained that the popularization of legal education had received great attention from the Party and the Government. The content of the legal education programme was such that it was not only internal laws that were publicized and popularized, but also international laws and United Nations instruments, including the Convention against Torture. The courses were run at various levels, with particular emphasis on training courses for law enforcement officials. Furthermore, a survey of United Nations activities in the field of crime prevention and selections of relevant documents had been published. The representative emphasized that the programme had yielded results throughout the country, leading, in particular, to a reduction in the incidence of cruel and inhuman treatment.

493. With regard to article 11 of the Convention, the representative stated that there were no cases of secret detention or of prisoners being held incommunicado, except when it was necessary to segregate male and female prisoners, adult and young prisoners, or certain categories of prisoners from other inmates. He added that there had been cases - albeit very exceptional - where in the

interests of the investigation or to prevent the release of information or complicity, families had not been notified of a person's arrest. In normal circumstances, however, the public security organs would inform the families. Referring to paragraph 46 of the report and the question of conclusive evidence, he drew the Committee's attention to the provisions of article 41 of the Criminal Procedure Law under which a security organ could detain an active criminal or suspect. Regarding the duration of pre-trial detention, he explained, *inter alia*, that, under article 48 of the Criminal Procedure Law, where a person was arrested by a public security organ, the People's Procuratorate had to review and approve the arrest within three days. That period might be extended by one to four days. The period of pre-trial custody was, in normal circumstances, no longer than two months. He also stated that the total number of persons tried and sentenced for serious offences in 1989 had been 481,658, and that offences committed by soldiers on duty were dealt with by a military procuratorate and tried by military organs.

494. Responding to other questions, the representative explained that there were no political prisoners or prisoners of conscience in China. Under Chinese criminal law, persons whose activities were aimed at overthrowing the people's democratic dictatorship and the socialist system or who wrought harm against the People's Republic of China had committed a counter-revolutionary offence. To have committed such an offence, not only must a person have tried to overthrow State power and the socialist system, but his acts must have constituted a threat to the security of the State. He added that rehabilitation through labour was an administrative measure comprising reform through compulsory education aimed at preventing and reducing offences. It was mainly imposed on persons who had refused to repent of repeatedly upsetting the social order or had committed minor offences for which punishment was thought inappropriate. The persons ordered to receive rehabilitation could appeal for review or file suit in court. Persons undergoing rehabilitation through labour did so in special institutions set up by the State, in which they received political, cultural and technical education and were placed in production units, which helped to rectify their aberrant opinions and habits and give them a better idea of law and culture while they learned skills. Of persons leaving the rehabilitation organs, over 90 per cent had been found to have reformed, becoming law-abiding citizens and living from the fruits of their own labour.

495. Referring to the rights and treatment of detainees, the representative stated that inspection bodies had been set up to prevent mistreatment in prisons. In 1989, 382 cases of violations of the rights of prisoners had come to light. In order to guarantee their legal rights and livelihood, prisoners enjoyed the right of appeal, the right to legal defence, the right not to be insulted and the right to security; they had the right to exchange letters and to meet members of their families; and they received medical care and were given the healthy environment they needed. Prisoners received a monthly allowance and, if they fulfilled their production quota, received a bonus. They worked an eight-hour day and were not required to work beyond the limits of their physical endurance. In every prison, there were regular political, cultural and technical classes that enabled prisoners to reintegrate smoothly into social life. He added that, since May 1983, responsibility for prisons had been confined to the judicial organs. There was therefore mutual supervision between public security organs and courts and, furthermore, management and re-education of prisoners had been strengthened.

496. In relation to articles 12 and 13 of the Convention, the representative stated that procedures guaranteeing the right of victims of torture to appeal for compensation had been improved.

Furthermore, in the few cases in which law enforcement officials had been found guilty of extracting confessions through torture or otherwise infringing the rights of detainees, they had been punished. He added that incidents involving the beating of prisoners had fallen by 87 per cent in 1989 as compared to 1988.

497. With regard to other questions, the representative stressed that following the anti-governmental disturbances in 1989, there had been no summary arrests or detentions of peaceful demonstrators, summary executions or widespread torture. A handful of persons engaged in anti-governmental rioting and criminal activities, such as looting, arson and murder, had been arrested. He added that those individuals had been a threat to China and its social system and had violated the rights of the majority, as well as the Constitution and Chinese penal law and that they had been tried in strict conformity with Chinese law. With regard to questions raised about Tibet, he explained that Tibet had enjoyed full autonomy since 1956. On a number of occasions over the past 30 years, a small minority had fomented disturbances, killing and injuring police officers and violating other Chinese laws. Those offenders had been tried in full conformity with the law. He also stated that allegations of torture in Tibet had proved to be entirely unfounded and that any further allegations would be investigated.

498. With reference to article 14 of the Convention, the representative explained that, under article 41 of the Constitution, persons who had been the victims of human rights violations at the hands of law enforcement officials could ask for compensation.

499. In connection with article 15 of the Convention, the representative drew the Committee's attention to article 32 of the Criminal Procedure Law that stipulated that the use of torture, threats or other violent measures to obtain evidence was prohibited.

500. The members of the Committee thanked the representative of China for his co-operation. They observed, however, that there were still some issues which needed clarification or additional information. They referred, in particular, to alleged cases of torture mentioned in the report of the Special Rapporteur of the Commission on Human Rights on questions relevant to torture, penalties applied in cases of torture, use of evidence obtained as a result of torture in judicial proceedings, as well as the definition of torture in Chinese legislation, the role of medical personnel in establishing whether torture had taken place, the application of the death penalty, the organization and independence of the judiciary, conditions of detention, contacts of detainees with their families, and military jurisdiction. An inquiry was also made regarding whether the Chinese Government was interested in co-operating with the United Nations Centre for Human Rights, which was expanding its programme of advisory services and technical assistance.

501. In view of the number of questions which had remained unanswered, the Committee, pursuant to rule 67, paragraph 2, of its rules of procedure, requested the Government of China to submit to the Committee by 31 December 1990 an additional report containing the information requested in accordance with the requirements of the Convention and the Committee's general guidelines.

502. The representative declared that his Government attached great importance to humanitarian values and had always opposed torture. The situation was not perfect in his country, but the Government was working hard to prohibit and prevent torture. He added that, in the context of a

population of 1.1 billion, cases of torture were not numerous. He also stated that his Government was already in close contact with the Centre for Human Rights with regard to matters of mutual concern. Finally, he stated that he was not authorized to accede to the Committee's request for an additional report; however, he assured the Committee that he would transmit that request to his Government.

## **CAT A/48/44 (1993)**

387. The Committee considered the additional report of China (CAT/C/7/Add.14) at its 143<sup>rd</sup> and 146<sup>th</sup> meetings, on 22 and 23 April 1993 (see CAT/C/SR.143/Add.2,144/Add.2, 145/Add.2 and 146/Add.2 and 4).

388. The report was introduced by the representative of the State party, who stated that China paid great attention, both in its legislative texts and in its judicial practice, to the protection of the rights and freedoms of citizens and their democratic rights. The Penal Code explicitly prohibited torture, thus upholding the rights of the person and the inviolability of the dignity of the human person. The Criminal Procedure Law set out in detail the procedure for investigating and punishing offences, including that the torture. Other texts played an important role in preventing and combating torture, in particular by enabling any victims to be compensated. Draft laws on prisons, judges and procurators were under consideration. In addition a national legal training and awareness programme would be renewed for a further five years. The situation in China and the efforts made by the Government must, however, be seen in their historical context: the majority of the legislative efforts aimed at introducing the primacy of law had in fact been undertaken only since 1979. Moreover, since China currently had 1.16 billion inhabitants, the implementation of such legal provisions gave rise to unquestionable difficulties.

389. The competence of procurators extended to offences allegedly committed by State bodies, including law enforcement agencies. With regard to the prohibition of torture, the procurator was empowered to approve, disapprove or revise an order for arrest; he investigated cases, instituted proceedings and visited places of detention. Any allegations of torture or human rights violations were thus referred to him. The number of cases of torture brought before procurators had fallen from 472 in 1990 to 407 in 1991, a reduction of 13.5 per cent, and then to 339 in 1992, a drop of 16.7 per cent.

390. With regard to certain questions raised during the consideration of the initial report of China, the representative of the State party explained the place of Tibet in the constitutional structure of China. He recalled that Tibet was an integral part of Chinese territory and that the political and judicial system of the People's Republic applied equally to Tibet. Its population enjoyed the same political rights as other Chinese populations.

391. The members of the Committee welcomed the additional report of China, which endeavoured to provide the clarifications requested by the Committee following its consideration of the initial report and said that the presence of a high-level delegation was proof of the desire of the Government of China to cooperate with the Committee.

392. With regard to the constitutional and legal framework for the implementation of the Convention, the members of the Committee asked how the monitoring of the People's Supreme Court by the Standing Committee of the People's National Congress could be reconciled with the principle of the independence of the judiciary; how the judges and procurators of the People's Supreme Court were appointed and dismissed; whether the Chinese Communist Party was subject to non-interference in cases heard by the people's courts; whether the training given to judicial



personnel and doctors related to the Conventional; and, in general, what measures had been taken to prevent acts of torture from being committed.

393. The members of the Committee, referring to the assurances given by the Chinese delegation during the consideration of the initial report, asked what the outcome of inquiries conducted into alleged cases of torture in Tibet had been. They also referred to the report of the Special Rapporteur of the Commission on Human Rights to examine questions relevant to torture (E/CN.4/1993/26) generally deploring the use of torture and other cruel, inhuman or degrading treatment or punishment in China. They drew attention to information received from many non-governmental sources alleging repeated violations of human rights in Tibet, the systematic use of force against peaceful demonstrations in Tibet and acts of religious and racial discrimination against the population in general, and asked what the position of the authorities was in that regard.

394. On the subject of article 1 of the Convention as read in conjunction with article 4, the members of the Committee requested clarifications about the incorporation of the definition of torture into Chinese domestic legislation.

395. The members of the Committee asked how article 2, paragraph 3, of the Convention, according to which an order from a superior officer or a public authority may not be invoked as a justification of torture, was applied. In particular, they asked whether the rule stemmed from an administrative decision, whether it covered all forms of torture and whether it also applied to military personnel.

396. With reference to article 3 of the Convention, the members of the Committee wished to know whether an arrested person could be extradited to a country where he would be in danger of the death penalty and, if not, whether there were provisions in Chinese legislation which enabled the person concerned to be brought before the competent national courts.

397. Clarifications were also sought on the legislative measures adopted in order to safeguard the universal jurisdiction provided for in articles 5 to 7 of the Convention.

398. Further information was requested about the implementation of articles 8 and 9 of the Convention, particularly with regard to the mutual judicial assistance procedure followed in practice.

399. The members of the Committee asked what measures were taken to give practical effect to the provisions of article 10 of the Convention.

400. With regard to article 11 of the Convention, the members of the Committee requested information on rules relating to the interrogation of suspects and the prohibition of corporal punishment with a view to extorting confessions, since allegations by non-governmental organizations referred to many cases of persons detained in secret, and on opportunities for persons arrested to contact a family member, consult a qualified doctor and choose a lawyer as soon as they were arrested. They also asked how many persons were detained in the country's prisons or held in administrative detention and whether measures were envisaged to place a time-limit on the length of pre-trial detention. They requested further information on the definition of the crime of counter-revolution and on the situation of the 4,329 persons held in Chinese prisons for such crimes; they asked whether re-education through labour could be used as part of administrative penalties, how

many persons were affected by such penalties and how many had died in prison or in re-education-through-labour camps.

401. The members requested clarifications about the conditions in which a person could be subjected to a form of administrative detention known as “protective custody during investigation”; the number of persons involved and the procedural safeguards available to them, in particular any opportunity for remedies in cases of torture; and allegations that persons thus placed in “protective custody during investigation” were deprived of certain rights, particularly that of communicating with members of their family or their defence counsel, and were frequently detained for longer than the regulation three months and subjected to torture. They also asked whether steps had been taken by the competent authorities as a result of allegations of torture and suspicious death among persons detained in such special centres.

402. As to articles 12 and 13 of the Convention, the members of the Committee said that they would like further information on complaints filed against public officials, on the outcome of the inquiries conducted and on the number and nature of sentences handed down against persons found guilty of violating citizens’ human and democratic rights and of acts of torture in particular.

403. On the subject of article 14 of the Convention, the members of the Committee also requested clarifications of the conditions in which a victim of an act of torture, or claimants on his behalf, could obtain compensation, particularly when the guilty person was an agent of the State.

404. With reference to article 15 of the Convention, the members of the Committee asked whether a statement obtained by torture could be invoked as evidence in a trial, whether such cases had occurred in practice and what use the courts made of such evidence.

405. On article 16 of the Convention, the members referred to information from non-governmental sources according to which sentences to the death penalty had increased sharply during recent years, having reached 1,891 in 1992, involving 1,079 executions. They requested clarifications in that regard and asked whether the death sentence might not constitute a form of cruel and inhuman treatment in some cases, particularly when the enforcement of such a sentence remained pending for a long period. It was also asked whether the bodies of persons executed could be used for the purpose of organ transplants.

406. Lastly, the members of the Committee asked whether the Government of China was planning to recognize the Committee’s competence under articles 21 and 22 of the Convention and to withdraw its reservation on article 20 of the Convention.

407. In reply to the questions raised, the representative of the State party said that, in conformity with article 126 of the Constitution, the courts exercised their functions without any interference by administrative organs, social groups or individuals. The Chinese judicial system was based on the responsibility of the courts to the People’s Congress, but those courts handed down their decisions in complete freedom. Judges and Procurator General were elected by the People’s National Congress, which could revoke their appointment. The independence of the courts with regard to social groups was guaranteed and the Communist Party did not intervene at all in decisions of the courts.

408. With reference to articles 1 and 4 of the Convention, the representative of the State party said that chapters IV and VII of the Penal Code contained specific provisions guaranteeing the protection of individuals against any violation of their rights. The definition given in article 136 of the Penal Code corresponded to that contained in article 1 of the Convention.

409. Responding to questions raised in connection with article 2, paragraph 3, of the Convention, the representative of the State party explained that superior orders could not be invoked to excuse offences involving torture, and administrative and criminal procedures were available in such cases.

410. With regard to articles 8 and 9 of the Convention, the representative of the State party explained that China was currently drafting legislation on the question of extradition and had signed bilateral agreements with a number of countries on reciprocal arrangements in commercial and judicial matters, including extradition. Any extradition order had to comply with the basic principles of international law, including the provisions of the Convention, and if not extradited, a citizen of another State would be tried under provision of China's Penal Code.

411. Referring to article 10 of the Convention, the representative of the State party stressed that the Government of China attached great importance to the training of judicial personnel with regard not only to domestic legislation, but also to the international conventions to which China was a party, in particular the Convention against Torture. No special legal training was given to medical staff or armed forces personnel, who nevertheless benefited from the measures taken as part of the national legal training and awareness campaign.

412. With regard to article 11 of the Convention, the representative of the State party said that, in 1993, there were 684 reform-through-labour centres, 155 prisons, 492 rehabilitation centres and 37 social reintegration centres for juvenile offenders. The total prison population was some 1,209,945, i.e., about 1 prisoner per 1,000 inhabitants. Solitary confinement applied only to certain prisoners who had committed serious violations of prison regulations and must not exceed 15 days. Prisoners subjected to such a régime were entitled to the same standards of hygiene and living as other inmates and were given support in order to help them reform.

413. Reform through education and labour in China was carried out in accordance with an Act approved by the People's National Congress in 1957. It was intended to reduce crime and to safeguard the public through persuasion and education. It did not entail punishment, but was intended to restrain potential juvenile offenders, particularly in urban areas. Persons detained in reform-through-labour camps were entitled to free medical attention. The standard of medical attention provided in such establishments was higher than the national average. The death rate in those camps was extremely low, moreover, and the staff were expressly prohibited from subjecting inmates to humiliation, ill-treatment or torture. In 1990 and 1991, a total of 21 agents of the State had been punished for such offences; no cases had been reported in 1992.

414. Administrative detention, also known as public security detention, was imposed by public security organs for minor offences. Offenders could be held for a period of up to 15 days and public security officials were strictly forbidden to beat, curse, humiliate or otherwise intimidate detainees.

415. There were no specific provisions covering counter-revolutionary and political offences and

the concept of political crime did not exist in China. The crimes of counter-revolution referred to in the Penal Code were a category of criminal offences including all activities carried out with the specific intention of subverting State power or overthrowing the Government. The judicial bodies which tried such cases showed particular circumspection and the courts strictly abided by the principles and procedures laid down in the Code of Criminal Procedure. Persons found guilty of counter-revolutionary crimes had been sentenced in strict conformity with articles 91 and 102 of the Penal Code, according to the gravity of the offences committed.

416. Replying to further questions, the representative said that detention during investigation could not last more than two months and correspondence to the period during which proceedings might or might not be instituted. Under Chinese law, families of defendants were normally notified of the fact and place of detention, unless accessories to the alleged offence were still at large. Persons who were arrested had to be informed of the nature of the charges at the time of arrest.

417. In reply to questions on articles 12 and 13 of the Convention, the representative of the State party provided detailed information on the number of complaints of torture filed from 1990 to 1992. Any persons found guilty of extorting a confession by torture or having subjected a prisoner to corporal punishment, ill-treatment, harassment or humiliation were liable to prison sentences varying according to the gravity of the offence and the extent of the ill-treatment and even to the death sentence in the most serious cases. Furthermore, if a case of torture was discovered, the Ministry responsible for supervising the civil authorities would take action, if necessary by initiating proceedings, even in the absence of a complaint.

418. Referring to article 14 of the Convention, the representative of the State party said that, if a death occurred following an act of torture, the perpetrator was brought before the people's court. The perpetrator of such acts was required to compensate the victim or his surviving relatives; if he was not solvent, the production unit to which he belonged addressed a request to the finance department, which then compensated the victim. The Civil Code also included provisions for awarding compensation for mental suffering.

419. In reply to questions on article 15 of the Convention, the representative to the State party said that, in 1958, the Minister for Justice had prepared a 10-point list of principles to be observed, one of which prohibited obtaining confessions by torture. In 1983, a code of conduct for the legal and legislative professions had been published, reproducing and elaborating on the same principle. When China became a party to the Convention in 1988, the Minister of Public Security had issued a circular stating that the people's police were required to study and apply the convention. Lastly, the Penal Code very clearly stipulated that judicial bodies charged with investigating criminal cases could not base their rulings on evidence obtained by torture or illegal means and that, in the absence of other evidence, no penalty could be handed down.

420. With reference to article 16 of the Convention, the representative of the State party explained that capital punishment was reserved for persons who had committed only the most heinous crimes and its application was subject to extremely strict conditions. During the two-year stay of execution, the convicted person was subjected to reform through labour and his conduct was monitored for signs of successful rehabilitation. The death penalty was therefore carried out only in exceptional cases in which offenders resolutely refused to reform or committed further crimes while in prison.

Removal of organs without the permission of either the person or his family was not standard practice. There were, however, cases in which permission had been given to remove organs from the bodies of persons executed.

421. Responding to other questions, the representative of the State party said that reconsideration of the reservation made by China to article 30 of the Convention was under way. Furthermore, the Committee's views regarding the reservation entered in respect of article 20 would be duly taken into account.

422. Lastly, the representative of the State party drew the Committee's attention to the fact that a great deal of the material referred to by its members had been supplied by non-governmental organizations, some of which were particularly biased against China. The credibility of such material was therefore questionable. The report of the Special Rapporteur on questions of torture had used the same sources of information and had to be treated with equal caution. China was making valiant efforts to improve its legal system and promote democracy. Any violations of the Convention were merely isolated cases and were not representative of the policy of the Government of China.

#### Conclusions and recommendations

423. The Committee expressed its gratitude for the detailed report submitted by the Government of China, which was in conformity with the Committee's guidelines, as well as for the explanations provided by the delegation.

424. The Committee took note with satisfaction of the many legislative, judicial and administrative measures which had been adopted by the Government in order to comply with the various provisions of the Convention. The Committee welcomed, in particular, the reforms relating to the Penal Code and the efforts made to raise public awareness through the printing of textbooks used in information, education, training, promotion and protection programmes in the area of human rights.

425. Although the Committee was aware of the obvious difficulties facing China, it expressed concern at the use of administrative detention and the cases of torture alleged and deplored by various non-governmental organizations, in particular in Tibet. It recommended that energetic measures be taken by the authorities to prevent such cases and to punish those responsible and requested precise statistical data concerning the number of persons in administrative detention, sentenced to capital punishment and executed.

426. The Committee also called upon the Government to consider making declarations with regard to articles 21 and 22 of the Convention and withdrawing the reservation entered in respect of article 20 of the Convention.

427. The Committee recommended that arrested or detained persons should have more extensive guarantees immediately following their arrest and that their family, lawyer or doctor should have prompt and regular access to them. In order to guarantee the protection of detainees during interrogation, separation between the authorities responsible for detention, on the one hand, and investigation, on the other, should be provided for. The conduct of interrogations should be

monitored in the framework of administrative and other forms of detention. In that regard, legislation could be considered that would enable detainees to lodge complaints and allow plaintiffs and witnesses to be protected against any ensuing ill-treatment or intimidation.

428. The Committee also recommended that criminal proceedings be systematically initiated against persons accused of acts of torture. Those procedures should be conducted independently of any disciplinary measures taken by the security forces. Procedures should be introduced to guarantee the medical examination of persons detained or arrested, to be carried out by qualified and independent medical doctors, immediately following arrest and at regular intervals thereafter, in particular before release. Training for law enforcement personnel, members of the armed forces and medical doctors should be accentuated and extended and should concern, in particular, limitations on the use of instruments, equipment and weapons by the security forces.

429. Finally, the Committee expressed the hope that, despite the difficulties and obstacles which might be encountered by the Government of China, the political will and the various legislative measures taken or envisaged would lead to significant progress in promoting in-depth research into the circumstances in which torture was practised and into the necessary ways and means of ending or at least reducing the incidence of torture.

## **CAT A/51/44 (1996)**

138. The Committee considered the second periodic report of China (CAT/C/20/Add.5) at its 251<sup>st</sup>, 252<sup>nd</sup> and 254<sup>th</sup> meetings, on 3 and 6 May 1996 (CAT/C/SR.251, 252/Add.1 and 254), and has adopted the following conclusions and recommendations:

### **1. Introduction**

139. The Committee welcomes the report of the Government of China as well as its core document (HRI/CORE/1/Add.21). The second periodic report of China dated 2 December 1995 was due on 2 November 1993. Since China had presented a supplementary report dated 8 October 1992, the timing of this report is quite satisfactory to the Committee.

140. The second periodic report of China follows the Committee's guidelines and meets them satisfactorily.

141. The Committee also thanks the representative of the State party for his most enlightening verbal introduction to the report and for the way in which he and the other members of the Chinese delegation responded so constructively to the questions asked.

### **2. Positive aspects**

142. The reforms contained in the amendments to the Criminal Procedure Law, to take effect in 1997, are an important step towards developing the rule of law in China and towards that country being able to meet its obligations pursuant to the Convention.

143. There are instances reported of police officials being prosecuted and convicted for acts of torture in China, including Tibet.

144. The various steps taken by the Ministry of Public Security pursuant to its notice of January 1992, so as to educate personnel on the prohibition of torture, are noted with satisfaction.

145. The provision of effective administrative and criminal compensation to victims of abuse is a most welcome development.

146. The Committee notes with pleasure the affirmation of the representative of China that "heads of cells and trusties" in prisons, as alleged by some non-governmental organizations, do not exist in China.

### **3. Factors and difficulties impeding the application of the provisions of the Convention**

147. The Committee acknowledges the sheer size of the task confronting China in policing and administrating a huge land mass with 1.2 billion people at a time of economic and social reconstruction.

#### 4. Subjects of concern

148. The Committee is concerned that according to information supplied by non-governmental organizations torture may be practised on a widespread basis in China.

149. The committee is concerned also about the following:

(a) The failure to incorporate the crime of torture into the domestic legal system, in terms consistent with the definition contained in article 1 of the Convention;

(b) The claims drawn to the attention of the Committee by non-governmental organizations that torture occurs in China in police stations and prisons in circumstances that very often do not result in investigation and proper resolution by the authorities;

(c) The claims made by some non-governmental organizations that the Procuratorate has yet to establish its authority over the police, security and prison services when dealing with allegations of torture and cruel, inhuman or degrading treatment or punishment;

(d) The fact that some methods of capital punishment may be in breach of article 16 of the Convention;

(e) The claims made by non-governmental organizations that the special environment that exists in Tibet continued to create conditions that result in alleged maltreatment and even death of persons held in police custody and prisons;

(f) The failure to provide access to legal counsel to persons at the earliest time of their contact with the authorities. Allegations are made by some non-governmental organizations that incommunicado detention is still prevalent in China;

(g) The important number of deaths reported to the Committee, apparently arising out of police custody.

#### 5. Recommendations

150. The Committee recommends to the State party the following:

(a) China should enact a law defining the crime of torture in terms consistent with article 1 of the Convention;

(b) A comprehensive system should be established to review, investigate and effectively deal with complaints of maltreatment, by those in custody of every sort. If the Procuratorate is the body that carries out the investigations, it should be given the necessary jurisdiction to carry out its functions, even over the objections of the organ that it is investigating;

(c) The methods of execution of prisoners sentenced to death should be brought into conformity with article 16 of the Convention;



(d) Conditions in prisons should be brought into conformity with article 16 of the Convention;

(e) 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;

(f) China should consider cooperating in the rehabilitation of torture victims by supporting the establishment of a Rehabilitation Centre for Torture victims in Beijing or some other large cities of the country;

(g) China should continue with its most welcome reforms to its criminal penal law, and continue to train its law enforcement personnel, procurators, judges and medical doctors to become professionals of the highest standing;

(h) China is invited to consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22 of the Convention;

(i) An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the Convention against Torture, that the committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China.

## **CAT A/55/44 (2000)**

106. The Committee considered the third periodic report of China (CAT/C/39/Add.2) at its 414th, 417th and 421st meetings on 4, 5 and 9 May 2000 (CAT/C/SR.414, 417 and 421), and adopted the following conclusions and recommendations.

### **1. Introduction**

107. The third periodic report of China consists of two parts. Part I covers the whole of China, with the exception of the Hong Kong Special Administrative Region, and Part II covers the Hong Kong Special Administrative Region only.

108. The Committee welcomes the third periodic report of China, which conforms with the general guidelines for the preparation of State party reports. The Committee expresses its appreciation for the additional information and replies provided by the State party and the continued and constructive cooperation of China with the Committee.

### **Part I – China, excluding the Hong Kong Special Administrative Region**

#### **2. Positive aspects**

109. The Committee appreciates and encourages the continuing efforts of the Government of China to introduce such amendments into its legislation and practices as would bring them into line with international human rights norms and to entrench legality constitutionally.

110. The Committee welcomes the action taken by the Government of China to implement a number of the recommendations made previously by the Committee, in particular with regard to timely access to defence counsel, the presumption of innocence, amendments to the Criminal Law and Procedure pertaining to fair trials and the introduction of more severe punishment for acts of torture.

111. The Committee notes the effective abolition of the procedure of shelter for investigation and protection and the introduction of certain aspects of fair trial in respect of other proceedings of administrative detention, including re-education through labour.

112. The Committee notes the State party's expressed willingness to cooperate internationally to provide rehabilitation for victims of torture.

113. The Committee welcomes the assurances of the State party that the Convention is binding on Chinese law enforcement and judicial organs.

114. The Committee expresses its appreciation of the State party's communication to the Secretary-General of the United Nations, dated 19 October 1999, whereby it extended the application of the Convention to the Macao Special Administrative Region.

### **3. Factors and difficulties impeding the application of the provisions of the Convention**

115. There are no new factors and difficulties impeding the application of the Convention apart from those referred to in the Committee's conclusions following the examination of the second periodic report of China.

### **4. Subjects of concern**

116. The Committee is concerned about the continuing allegations of serious incidents of torture, especially involving Tibetans and other national minorities.

117. The Committee notes with concern the absence of detailed information and statistics regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender.

118. The Committee is concerned that reforms are not implemented uniformly and equally in all parts of China.

119. Concern is expressed about the fact that rules and practices of certain procurators limit the prosecution of torture suspects to certain serious cases.

120. The Committee is concerned about the system of administrative sanctions that permits extrajudicial custodial orders in respect of individuals that have not committed, or are not charged with, a violation of the law.

121. The absence of a uniform and effective investigation mechanism to examine allegations of torture is noted with concern.

122. The Committee expresses concern about reports of coercive and violent measures resorted to by some local officials in implementing the population policy of the State party, contrary to the relevant provisions of the Convention.

### **5. Recommendations**

123. The Committee recommends that the State party incorporate in its domestic law a definition of torture that fully complies with the definition contained in the Convention.

124. The State party is invited to consider, in respect of both its mainland and the Hong Kong Special Administrative Region, declaring in favour of articles 21 and 22 of the Convention and withdrawing its reservation under article 20, and to ensure the continued applicability of article 20 in the Hong Kong Special Administrative Region.

125. The Committee recommends that the State party continue the process of reform, monitor the uniform and effective implementation of new laws and practices and take other measures as appropriate to this end.

126. The Committee recommends that the State party consider abolishing the requirement of applying for permission before a suspect can have access for any reason to a lawyer whilst in custody.

127. The Committee recommends that the State party consider abolishing all forms of administrative detention, in accordance with the relevant international standards.

128. The Committee recommends that the State party ensure the prompt, thorough, effective and impartial investigation of all allegations of torture.

129. The Committee encourages the State party to continue and to intensify its efforts to provide training courses on international human rights standards for law enforcement officers.

130. The Committee recommends that in the next periodic report the State party provide answers to questions that it did not find possible to address during the present consideration and include detailed statistics, disaggregated, *inter alia*, by region and gender.

## **Part II – Hong Kong Special Administrative Region**

### **6. Factors and difficulties impeding the application of the provisions of the Convention**

131. The Committee notes that the reintegration of the Hong Kong Special Administrative Region into China created no factors and difficulties impeding the application of the Convention.

### **7. Positive aspects**

132. The Committee expresses its appreciation to the Government of China for the steps taken to ensure the continued application of the Convention in the Hong Kong Special Administrative Region, the authorities of which have prepared parts of the report.

133. The Committee welcomes the release of all Vietnamese refugees and migrants and the closure of the Pillar Point detention centre.

134. The Committee welcomes the adoption of legislation to facilitate the extradition of persons suspected of having committed acts of torture.

135. The Committee notes as positive the strengthening of the independence of the Independent Police Complaints Council.

136. The Committee welcomes the increase of the maximum sentence for certain sexual crimes, such as incest, and the abolition of the requirement of corroboration in respect of sexual offences.

137. The Committee welcomes the introduction of training courses and other educational measures targeting law enforcement personnel, and the fact that interviews of detainees are videotaped.

## **8. Subjects of concern**

138. The Committee is concerned that the reference to "lawful authority, justification or excuse" as a defence for a person charged with torture, as well as the definition of a public official in the Crimes (Torture) Ordinance, chapter 427, are not in full conformity with article 1 of the Convention.

139. The Committee is concerned that there have as yet been no prosecutions under the Crimes (Torture) Ordinance, despite circumstances brought to the attention of the Committee justifying such prosecutions.

140. Concern is expressed that not all instances of torture and other cruel, inhuman or degrading treatment or punishment are covered by the Crimes (Torture) Ordinance.

141. It is noted with concern that practices in the Hong Kong Special Administrative Region relating to refugees may not be in full conformity with article 3 of the Convention.

## **9. Recommendations**

142. The Committee recommends that the necessary steps be taken to ensure that torture, as defined in article 1 of the Convention, is effectively prosecuted and appropriately sanctioned and that efforts be made to prevent other acts of cruel, inhuman or degrading treatment or punishment, in accordance with the provisions of the Convention.

143. The Committee recommends that continued efforts be made to ensure that the Independent Police Complaints Council becomes a statutory body, with increased competence.

144. The Committee recommends the continuation and intensification of preventive measures, including training for law enforcement officials.

145. The Committee recommends that laws and practices relating to refugees be brought into full conformity with article 3 of the Convention.