# CHINA

**Follow-up - State Reporting**
**i) Action by Treaty Bodies**

**CAT, A/64/44 (2009)**

## IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end

of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (http://www2.ohchr.org/english/bodies/cat/ sessions.htm).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture …" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman and degrading treatment or punishment …" (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (http://www2.ohchr.org/english/bodies/cat/sessions.htm).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters

seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

...

65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

**Follow-up procedure to conclusions and recommendations from May 2003 to May 2009**

**...**

**Forty-first session (November 2008)**

| State party | Information due in | Information received | Action taken |
|---|---|---|---|
| ... | | | |
| China<br>Hong Kong<br>Macao | November 2009 | 10 December 2008<br>CAT/C/CHN/CO/4/Add.1 | |
| ... | | | |

...

**CAT, A/65/44 (2010)**

## Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

| | |
|---|---|
| Ensure prompt, impartial and effective investigation(s) | 76 per cent |
| Prosecute and sanction persons responsible for abuses | 61 per cent |
| Guarantee legal safeguards | 57 per cent |
| Enable right to complain and have cases examined | 43 per cent |
| Conduct training, awareness-raising | 43 per cent |
| Ensure interrogation techniques in line with the Convention | 39 per cent |
| Provide redress and rehabilitation | 38 per cent |
| End gender-based violence, ensure protection of women | 34 per cent |
| Ensure monitoring of detention facilities/visit by independent body | 32 per cent |
| Carry out data collection on torture and ill-treatment | 30 per cent |
| Improve condition of detention, including overcrowding | 28 per cent |

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

**Follow-up procedure to concluding observations from May 2003 to May 2010**

...

**Forty-first session (November 2008)**

| State party | Information due in | Information received | Action taken |
|---|---|---|---|
| ... | | | |
| China | November 2009 | 10 December 2008 CAT/C/CHN/CO/4/Add.1<br><br>26 November 2009 CAT/C/CHN/CO/4/Add.2 | Information under review (China) |
| Hong Kong | | 7 January 2010 (Hong Kong) CAT/C/HKG/CO/4/Add.1 | Information under review (Hong Kong) |
| Macao | | 8 March 2010 (Macao) CAT/C/MAC/CO/4/Add.1 | Information under review (Macao) |
| ... | | | |

...

**Follow-up - State Reporting**
**ii) Action by State Party**

**CAT, CAT/C/CHN/CO/4/Add.1 (2008)**

**Comments by the Government of the People's Republic of China* to the concluding observations and recommendations of the Committee against Torture (CAT/C/CHN/CO/4)**

[10 December 2008]

China respects and protects human rights; it has consistently opposed torture and conscientiously fulfils its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention"). It has worked unceasingly to combat torture and has obtained notable results in this regard.

When the Committee against Torture considered China's report at its most recent session, the Chinese delegation, motivated by a spirit of genuine cooperation and responsibility, engaged in a profitable exchange with the Committee: it provided a detailed account of the measures taken by the Chinese Government to combat torture and of the current situation in that regard, and it provided replies to virtually all of the Committee's many questions which included relevant data. Most Committee members positively assessed China's efforts to combat torture and its achievements in that regard; they also welcomed the large volume of valuable information provided by the Chinese delegation and its contribution to the debate, and expressed their readiness to pursue their dialogue with China.

Regrettably, the Committee members designated as country rapporteurs, displaying a strong bias against China, paid no heed to the facts and disregarded the detailed and accurate information and thorough explanations provided by the Chinese Government. Instead, they cited an extremely small number of "reports" and "sources" fabricated by groups whose goal is the overthrow of the Chinese Government, thereby deliberately politicizing the review process. When the Chinese report was under consideration they made unwarranted criticisms of the Chinese Government, and they introduced many inaccuracies in the concluding observations: for example, they claim that China "suppressed" the so-called "1989 Democracy Movement" and "peaceful demonstrations" in Lhasa and neighbouring areas; they vilify China's "practice of torture" vis-à-vis ethnic minorities and "other vulnerable groups"; they irresponsibly spread the rumour fabricated by the Falun Gong cult that its members have been "subjected to torture" and "used for organ transplants"; they groundlessly accuse China of attacking "human rights defenders" and maintain that torture is "widespread" in detention centres. The Chinese Government strongly rejects all of these slanderous and untrue allegations.

It must be pointed out that the Committee against Torture was established under the Convention and should conduct its work within the framework of that instrument, in accordance with the principle of objectivity and fairness; the Committee should also promote the implementation of the Convention through cooperation with States parties based on equality and mutual respect. Abuse of the rapporteur's role by individual Committee members and using the

consideration of a State party's report as an opportunity to maliciously attack the State party severely compromises the fairness and objectivity of the exercise, and seriously undermines its integrity. Such acts are contrary to the objectives of the Convention and violate its authority; they not only undermine the basis for cooperation between China and the Committee, but also damage the Committee's image and credibility. The Chinese Government is deeply disturbed by this.

The progress made by China in the promotion and protection of human rights, including its efforts to combat torture, cannot be undone by anyone. The Chinese Government will unwaveringly persist in its efforts to protect human rights, and it seeks to engage in international cooperation in this area on the basis of equality and mutual respect. This position is immutable.

---

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**CAT, CAT/C/HKG/CO/4/Add.1 (2009)**

**Report of the Hong Kong Special Administrative Region on its response to the recommendations in paragraphs 7, 10 and 12 of the Concluding Observations of the Committee Against Torture adopted on 21 November 2008**

[November 2009]

## Introduction

Following consideration of the second periodic report of the Hong Kong Special Administrative Region (HKSAR), the Committee Against Torture adopted the concluding observations on 21 November 2008. Paragraph 17 thereof specifically requested the HKSAR to "provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 10 and 12."

2. The relevant recommendations were -

THAT the HKSAR should -

Refugees and non-return to torture (paragraph 7 of the Concluding Observations)

(a) incorporate the provisions contained in Article 3 of the Convention[1] under the Crimes (Torture) Ordinance;

(b) consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under Article 3 of the Convention, the merits of each individual case;

(c) ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or extradition;

(d) increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized;

(e) ensure effective post-return monitoring arrangements; and

(f) consider the extension of the 1951 Refugee Convention and the 1967 Protocol to Hong Kong.

Strip search and body cavity search (paragraph 10)

(g) ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with Article 16 of the Convention; an independent

mechanism to monitor those searches, upon request of the detainee, should also be provided;

(h) establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration Department and the Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses committed should be thoroughly investigated and, if substantiated, punished; and

(i) seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and should be performed by trained health personnel and with due regard for the individual's privacy and dignity.

Independent investigation of police misconduct (paragraph 12)

(j) continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints, in line with the requirements of Article 12 of the Convention.

3. In accordance with the request of the Committee Against Torture, this report sets out, under respective headings, the HKSAR's follow-up and response to the above recommendations.

**Refugees and non-return to torture**

4. Regarding Recommendations (a) to (c) at paragraph 2 above, the HKSAR Government plans to introduce legislation to provide for a statutory mechanism for the handling of torture claims based on Article 3 of the Convention. Before the introduction of new legislation, merits of each claim for protection against refoulement are carefully examined under an administrative mechanism which is designed to meet high standards of fairness. Unsuccessful claimants may file a petition to the Chief Executive of the HKSAR and may apply for judicial review of the decisions against them in accordance with the established procedures.

5. As for Recommendation (d), we always provide necessary support and assistance to victims of trafficking, depending on the merits of individual cases. These services include urgent intervention, as well as medical, counselling and other support services. It must however be stressed that the HKSAR is neither a destination nor a transit point for human trafficking.
Neither is it a place of origin for exporting illegal migrants. Over the years, cases of human trafficking are rare; the number of reported cases each year ranged between one to four from 2005 to 2008. There has been no reported case that involves children.

6. As regards Recommendation (e), we note that some States adopt post-return monitoring as assurance for persons returned under diplomatic assurances. In the HKSAR, the merits of each torture claim will be assessed and the claimants will not be removed to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. We have not sought any diplomatic assurance in complying with the obligations under Article 3 of

the Convention.

7. The HKSAR Government notes Recommendation (f) for extending the Refugee Convention and its 1967 Protocol to Hong Kong. Hong Kong is small in size and has a high and dense population. Our unique situation, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the Refugee Convention and Protocol were extended to Hong Kong. It is our firm position not to extend the Refugee Convention to Hong Kong and not to grant asylum.

**Strip search and body cavity search**

8. Regarding Recommendation (g), under the Police's guidelines on the handling of searches of detainees, a search involving removal of underwear should not be conducted on detainees routinely but only in circumstances with strong justifications.

9. The Police's Duty Officer, who decides on the scope of a search to be carried out on a detained person, should record the reason for and the scope of all these searches in the Police's Communal Information System (CIS). The immediate supervisor of the Duty Officer is required to audit these records, in particular to review all searches involving removal of underwear.

10. Specific procedural requirements are also in place to ensure that searches involving removal of underwear are carried out under restrictive conditions, e.g. the Police should conduct the search in a restricted area not in the view of persons other than those officers who are to carry out, witness or supervise the search; the search should be conducted by at least two officers; and all officers present during the search should be of the same gender as the detainee.

11. A detainee may raise his/her concerns, if any, about a search for consideration by the Duty Officer. The Duty Officer's decision, together with his/her reasoning and/or any other actions taken, will be conveyed to the detained person and recorded in the CIS. Should a detained person feel aggrieved by the search, he/she may lodge a complaint with the Complaints Against Police Office (CAPO), and CAPO's investigation is subject to the scrutiny of the statutory Independent Police Complaints Council (IPCC). A police officer is liable to disciplinary action for any misconduct in carrying out the search. Where criminal offences are involved, the officers concerned may face prosecution.

12. Regarding Recommendation (h), strict guidelines on search of a detainee or a prisoner are in place for all the relevant law enforcement agencies, including the Immigration Department (ImmD) and Correctional Services Department (CSD). Officers in ImmD and CSD who carry out searches must comply with these guidelines and ensure that all body searches are lawful, justified and reasonably conducted. These searches are closely monitored and supervised by supervisory officers of ImmD and CSD.

13. A person subject to search by a law enforcement agency may express his/her grievance to the officer-in-charge on the spot. Alternatively, he/she may lodge a complaint through various channels, such as the complaint handling unit of the relevant department and visiting Justices of

the Peace. These channels are made known to the public as well as the individuals subject to a search. Officers who are found to have breached any guidelines and procedures in carrying out the search are liable to disciplinary actions. Where criminal offences are involved, the officers concerned may face prosecution.

14. On Recommendation (i), Rule 9 of the Prison Rules (Cap. 234, sub. leg. A) empowers CSD officers to conduct body cavity searches on prisoners. Under the current practice, body cavity searches are conducted by trained medical staff (i.e. a medical officer or a hospital officer who is a qualified nurse) of the same sex.

15. Rule 9 also stipulates that the searching of a prisoner must be conducted with due regard to decency and self-respect, and in as seemly a manner as is consistent with the necessity of discovering any concealed articles. Besides, no prisoner may be stripped and searched in the presence of another prisoner unless a senior officer considers it necessary in the interests of the security of a prison or the safety of any person.

16. CSD will continue to explore the feasibility of other ways, including use of radiographic equipment, to reduce manual searches of body cavity.

**Independent investigation of police misconduct**

17. With respect to Recommendation (j), the HKSAR Government has already put in place a two-tier police complaints system. CAPO, the first tier, is responsible for handling and investigating public complaints against members of the police force. CAPO works separately from other Police formations to ensure its impartiality in handling the complaints. The IPCC, the second tier, is an independent civilian oversight body specifically established to monitor and review CAPO's handling and investigation of complaints. The IPCC has become a statutory body with the commencement of the Independent Police Complaints Council Ordinance (Cap. 604) (the IPCC Ordinance) on 1 June 2009. Members of the IPCC are drawn from a wide spectrum of the community. Members are appointed to the IPCC having regard to their ability, expertise and commitment to public service to ensure that the complaints are dealt with fairly and impartially.

18. There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially. CAPO prepares detailed investigation reports on all reportable complaints for submission to the IPCC. The IPCC rigorously examines the reports. Where IPCC members have doubts about a particular investigation, they may invite the complainants, complainees and witnesses to interviews. The IPCC may also ask CAPO to submit for its reference any documents or information relevant to a complaint. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask CAPO to clarify any doubts or to reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive of the HKSAR, together with recommendations as to its disposition. The IPCC has adequate means to ensure that the investigations of all reportable complaints lodged with CAPO are conducted properly and effectively.

19. The IPCC Ordinance imposes statutory obligations on the Police to provide assistance to

the IPCC and to comply with other requirements made by the IPCC under the Ordinance. The IPCC has undertaken to adopt a more pro-active approach to monitor the investigation of serious cases and cases of public interest. The IPCC monitors CAPO's investigation directly under the arrangement in which 91 observers and IPCC members may, at any time and without prior appointment, attend interviews conducted by CAPO and observe the collection of evidence by CAPO during investigations. The observers and the IPCC members concerned will report their comments to the IPCC on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected.

20. The two-tier system, as codified in the IPCC Ordinance, serves the objective of ensuring that public complaints against members of the police force are handled fairly and impartially. We will continue to ensure that appropriate resources are provided to the statutory IPCC to facilitate the effective discharge of its functions under the IPCC Ordinance.

---

[1] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**CAT, CAT/C/CHN/CO/4/Add.2 (2009)**

**Comments by the Government of the People's Republic of China concerning the concluding observations and recommendations of the Committee against Torture (CAT/C/CHN/CO/4)**

[9 December 2009]

**Response by the Government of China to the Concluding Observations of the Committee against Torture**

On 3 December 3 2008, the Government of the People's Republic of China submitted to the United Nations Committee against Torture its official comments on the concluding observations (hereinafter referred to as "the observations") that the Committee made after considering the Chinese Government's report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which reflects China's principled position. The Government of China hereby wishes to respond further to the specific issues raised in paragraphs 11 to 37 of the observations one by one (see attachment).

The Chinese side pointed out in its official comments that some allegations and comments in "the observations" did not square with the objective facts and they were therefore not acceptable to the Chinese side. China already offered explanations to many issues raised in "the observations" in its report to the Committee and during its dialogue with the latter. It is the hope of the Chinese Government that this response to the observations will help the Committee to have a more comprehensive and objective knowledge of efforts and achievements made by the Chinese Government against torture.

The Chinese Government, a party to the Convention, will earnestly fulfil its international obligations and continue to make unremitting efforts to combat torture and protect human rights in other areas in accordance with the provisions of the Convention. In the meantime, the Chinese Government is ready to continuously increase international cooperation and exchanges in the field of human rights on the basis of equality and mutual respect.

**Response of the Government of China to relevant issues in the observations (pars. 11 to 37)**

**1. With regard to the "widespread torture and ill-treatment and insufficient safeguards during detention" alleged in paragraph 11 of the observations**

The Committee stated that "the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings." The Government of China contends that this statement seriously distorts the truth.

First, China's laws expressly prohibit extorting confessions by acts of torture. According to article 46 of the Criminal Procedure Law of the People's Republic of China, no defendant can be found guilty and sentenced to a criminal punishment without other evidence than the statement of the defendant. Article 43 of the Law stipulates that judges, procurators and investigators must collect evidence in accordance with the legally prescribed process and that it is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. In addition, article 61 of the Interpretation of the Supreme People's Court on Some Issues Relating to the Application of the Criminal Procedure Law of the People's Republic of China and article 140 of the Rules of Criminal Litigation for the People's Procuratorates both specifically prohibit the collecting evidence by illegal means.

Secondly, in terms of law enforcement, the Chinese public security organs have taken a series of measures to prevent the extorting of confessions by torture and have achieved remarkable results in this regard:

First, China has enhanced training of police in law enforcement to improve their understanding of the law, legal procedures and legitimate rights. Consequently, the law enforcement situation and case-handling capabilities of the people's police have improved. Second, China has increased input in the development of criminal investigation infrastructure, such as criminal technology and intelligence collection, so as to improve the ability of the public security organs in finding, collecting and using physical evidence and to prevent investigators from relying on confessions. Third, China has rigorously enforced the discipline of case management so as to prevent extortion of confessions by torture. Furthermore, public security organs have vigorously explored the possibility of establishing a system of audio and video recording of interrogations. Fourth, public security organs have willingly accepted supervision, thereby ensuring full protection of the legitimate rights and interests of criminal suspects. The Chinese public security organs at all levels have internal law enforcement monitoring bodies, which are responsible for monitoring law enforcement activities of the police and handling or punishing cases involving violations of law or regulations. In addition, the Chinese public security organs at all levels are subject to supervision of the people's congresses, governments, political consultative conferences and people's procuratorates as well as the news media and the general public.

In recent years, instances of confessions extracted by torture have occurred in sporadic places in China, but this practice is by no means widespread. The Chinese Government will give further explanation later when discussing other specific issues mentioned in the observations.

**(a) With regard to the allegation of "failure to bring detainees promptly before a judge, thus keeping them in prolonged police detention without charge for up to 37 days or in some cases for longer periods"**

The Criminal Procedure Law provides for the length of detention of suspects under investigation. According to article 69 of the Law, the public security organ shall submit a request for arresting a detainee to the People's Procuratorate for review and approval within three days of his/her detention, if it deems it necessary to arrest him/her. Under special circumstances, the time limit for submitting an arrest request could be extended by one to four days. The time limit for arrest requests involving major criminal suspects such as roving criminals, repeat offenders or

members of a criminal gang may be extended to 30 days. The People's Procuratorate shall make a decision on the arrest request, approval or disapproval within seven days from the date of receiving the written request from a public security organ.

According to the above-mentioned law, the length of time criminal suspects may be held after the public security organs detain them falls into two categories: one is the period that the public security organs may hold a person in order to submit a request to the procuratorate for approval, i.e. 3, 7 or 30 days, depending on the complexity of a case and the difficulties involved in investigating the case; the other is time allowed to the procuratorate in order to review and decide on the arrest request, which is 7 days. In practice, the public security organs detain criminal suspects in strict accordance with the statutory detention time limits. In no cases have criminal suspects been "kept in prolonged police detention for up to 37 days". The extended 30-day detention provision applies only to three particular types of criminal suspects, namely, roving criminals, perpetrators of repeated offences and members of criminal gangs. The public security organs should release criminal suspects from detention as soon as the people's procuratorate denies the arrest request.

**(b) With regard to the allegation of "absence of systematic registration of all detainees and failure to keep records of all periods of pretrial detention"**

China maintains a systematic registration of all detainees and keeps records of pretrial detention. Chinese detention facilities accept suspects on the basis of detention warrants or arrest warrants. Once a detainee is accepted, his/her personal information, including name, gender, age, home address, working unit, family member(s), alleged offenses and unit handling the case is systematically recorded. Detention facilities also have detailed records of detention periods for investigation, examination, prosecution, trial and other stages of the proceedings. Before the time limit is due, the detention facility sends a notification to the unit handling the case to remind the latter of the time limit and to ensure that detention does not exceed the time limit. At the same time, the procurators accredited to the detention facilities by the procuratorial organs also keep a detailed record of the length of detention of each detainee. Detention facilities also provide the procuratorates with networks access to their information on detainees' custody so that the latter can monitor the status of detention in real time more easily. The rulings and judgements of the court may also contain a detailed record of the dates of detention and arrest of the accused, and such periods can be deducted from the sentence.

**(c) With regard to the allegation of "restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members"**

Article 96 of the Criminal Procedure Law clearly stipulates that a criminal suspect may appoint a lawyer to provide legal advice and fill petitions and complaints on the suspect's behalf immediately after the suspect is interrogated by an investigative body for the first time or from the day on which coercive measures (including detention) are taken against the suspect. If a case involves State secrets, the criminal suspect shall obtain approval from the investigative body before appointing a lawyer. In practice, the law enforcement organs will help criminal suspects or their families to designate a lawyer and provide free legal assistance to those who cannot

afford to hire a lawyer. If a lawyer requests a meeting with a criminal suspect or defendant, the detention facilities will arrange for the requested meeting after checking the relevant identification documents of the lawyer in accordance with the law.

Detention facilities are equipped with doctors. Detainees who are sick are entitled to timely medical care, and if they are seriously ill, they can be released on bail for medical treatment in accordance with the law. In recent years, more and more detention facilities have sought cooperation from community hospitals to meet the needs of detainees for medical care. A community hospital may dispatch a number of doctors to a detention facility to provide detainees with medical treatment. In addition, the Code of Conduct for Detention Facilities provides strict regulations on the working procedures for doctors dispatched to detention facilities in this manner. Such doctors shall conduct medical check-ups of detainees, suspects and criminals which cover all the items listed in medical examination form for detainees. If they see injuries, they should ask the detainee how the injuries were incurred and make notes on the examination form, which should be signed and confirmed by both the custody officer and the detainee. The department concerned should initiate a formal investigation into the case if the doctor finds that there is a likelihood of torture. Once it is ascertained that acts of torture did occur, the perpetrators shall be held responsible according to law.

The Regulations on Detention Facilities and their implementing legislation clearly stipulate the many rights that detainees enjoy. Detainees are informed of their rights under the law by the units managing their case and also by the detention facilities and the procurators accredited to the facilities. The detention facilities and accredited procurators usually prominently post the rights enjoyed by detainees under the law. In many localities, detainees are issued detainees rights cards. Detainees may also be informed of their legitimate rights by their lawyers once the lawyer has been appointed. The law enforcement monitoring bodies of the public security organs at all levels check to ensure that detention facilities are implementing this regulation and make this a priority of their inspections so as to effectively safeguard the legitimate rights and interests of detainees.

With respect to the right of detainees to contact their families, it is the practice of the Chinese law enforcement organs to notify, in accordance with the provisions of the Criminal Procedure Law, the family or work unit of a detainee of the grounds for detention and the place of custody within 24 hours of detention, unless such notification may impede the investigation or is impossible to carry out.

**(d) With regard to the allegation of "continued reliance on confessions as a common form of evidence for prosecution", that "Chinese Criminal Procedure Law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention" and "the case of Yang Chunlin"**

China's Criminal Procedure Law provides that the confession and defence statements of suspects and defendants can be used as evidence, but that they are only part of the evidence of the criminal proceedings. Article 46 of the Law provides that a defendant cannot be found guilty and sentenced to a criminal punishment if there is no evidence other than his own statement. The Law also explicitly prohibits extortion of confessions by torture. Article 43 of the Law

stipulates that judges, prosecutors and investigators must collect evidence in accordance with the legally prescribed process and that it is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Article 61 of the Interpretation of the Supreme People's Court on Some Issues Relating to the Application of the Criminal Procedure Law of the People's Republic of China strictly prohibits the collection of evidence by illegal means. Testimony of witnesses, statements of victims and the confessions of criminal suspects, once proved to be obtained by extortion, threat, enticement, deceit or other unlawful means, cannot serve as the basis for decisions. Article 140 of the Regulations of the Supreme People's Procuratorate on Criminal Procedure by the People's Procuratorates reiterates the principle of strict prohibition of extortion of confession by torture, which is provided for in the Criminal Procedure Law. Furthermore, article 265 of the Regulations reiterates that confessions of criminal suspects, statements of victims and witness testimony obtained by torture or threat, enticement, deceit and other illegal methods cannot serve as the basis for criminal charges. The Notice On Performing Duties Strictly According to Law and Effectively Ensuring Quality of Handling Criminal Cases issued in 2004 by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security also make it clear that no verdict shall be based on confessions of criminal suspects, statements of victims and witness testimonies obtained by torture or threat, enticement, deceit and other illegal methods.

According to the provision of article 2 of the Resolution of the Standing Committee of the National People's Congress on Improvement of Legal Interpretation, which stipulates that "all issues related to application of specific laws and decrees in administration of justice by courts shall be interpreted by the Supreme People's Court and all issues related to application of specific laws and decrees in performing procuratorial work by procuratorial organs shall be interpreted by the Supreme People's Procuratorate", the judicial interpretation of practical application of article 43 of the Criminal Procedure Law has legal force, which must be observed by all investigative, procuratorial and judicial organs.

While firmly preventing the extortion of confessions by torture, judicial organs in China have made resolute and determined efforts to rectify the isolated cases in which such extortion of confessions has occurred, and compensate the victims.

The Chinese Government is of the view that the above-mentioned legal provisions and judicial practice demonstrate first and foremost that criminal proceedings in China do not solely rely on the attitude or confessions of criminal suspects and defendants. The allegation in the observations that China's "continued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects" does not square with either the provisions of China's law or its judicial practice. Second, China's law has explicitly banned the extortion of confessions by torture. The observations allege that "Chinese criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention", which testifies to a misunderstanding of China's legal system.

With regard to the case of Yang Chunlin, our investigation shows that Yang Chunlin, male, born on 29 July, 1956, Han nationality, resident of Jiamusi City, Heilongjiang, was unemployed. On 27 March 2008, he was found guilty of inciting subversion of State power and sentenced to

imprisonment for five years and deprivation of political rights for two years by the Intermediate People's Court of Jiamusi City, Heilongjiang Province. The public security organ handled the case in strict accordance with the Criminal Procedure Law, and there is no evidence of extortion of a confession by torture.

**(e) With regard to the allegation of "lack of an effective independent monitoring mechanism on the situation of detainees"**

In recent years, China's public security organs have steadily improved and perfected the supervision mechanism, in particular the external oversight mechanism, to protect the legitimate rights and interests of those held in detention facilities.

The people's procuratorates are legal supervisory organs independent of the Government. Legal supervision provided by the people's procuratorates are the main oversight mechanism to monitor detention facilities in China. Procuratorial organs at all levels in China have supervisory and monitoring bodies to oversee detention facilities and accredit procurators to detention facilities to exercise legal supervision. The Law on the Procuratorial Functions of the People's Procuratorates in Detention Facilities stipulates a clearly defined mandate for these procurators. Among other things, they oversee detention facilities to ensure that they comply with the law in their supervision of detainees, in keeping criminal suspects and defendants not beyond the legally prescribed time limit and in enforcing penalties. They monitor the public security organs and ensure that they put each case on file for investigation strictly according to law. They monitor people's courts and ensure that the latter conduct judicial proceedings according to law. They accept and handle complaints, reports and appeals by detainees, their legal representatives and close relatives.

There are currently more than 12,000 procurators assigned to detention facilities accredited by procuratorial organs at all levels throughout China, and over 8,800 of them have been dispatched directly to prisons and detention facilities. By the end of 2007, some 77 procuratorates had been set up in large prisons or areas with a concentration of prisons, more than 3,300 procurator's offices had been set up in small and medium-sized prisons and detention facilities, and resident procurators had been sent to more than 98 per cent of all prisons and detention facilities in China. For the remaining small number of prisons and detention facilities without procuratorates, procurator's offices or accredited procurators, the people's procuratorates have sent full-time procurators specifically for this purpose or to conduct inspection tours there.

Supervision has been carried out by the procuratorial organs in a number of ways. Detainees may request a meeting with the resident procurators in writing or orally. They may also lodge complaints at any time by placing a letter in the complaint boxes that detention facilities install in the centres, the keys to which are controlled by resident procurators. The fact that the law enforcement status of detention facilities is available online has enabled resident procurators to exercise dynamic monitoring, independently search information at any time and supervise detention facilities in real time. An appointments system exists through which dates are determined for resident procurators to meet families or relatives of detainees and receive their complaints. This system has been improved.

Apart from supervision and monitoring by the procuratorial organs, the Chinese Government has improved supervision of the work of detention facilities by other means. Among them, a system of making public how policing is conducted in detention facilities has been instituted, through which case-handling rules, regulations and procedures are made public for supervision by the general public. Law enforcement supervisors are employed. A system of subjecting detention facilities to supervision by deputies to People's Congresses and members of the Political Consultative Conferences has been introduced. Regular and irregular inspections of the work of detention facilities are carried out. Families of detainees are regularly invited to meetings for their opinions on the supervisory work.

**2. Concerning the "conditions of detention and deaths in custody", "the lack of treatment for drug users and people living with HIV/AIDS", and "lack of statistical data on the health of detainees" cited in paragraph 12 of the observations**

China's public security organs attach great importance to investigation of any detainee deaths in detention facilities. In order to effectively prevent and handle through the law enforcement process any instances of unnatural deaths of persons in custody resulting from abuse, corporal punishment or the extracting of confessions by torture or from police negligence, the supervisory bodies of the public security organs at all levels have consistently carried out on-site inspections and investigations, both publicly and privately, in order to constantly improve timely and dynamic supervision. In addition, a 24-hour duty and back-up system has been established to ensure timely investigation and handling of such major cases of serious consequences as deaths of detainees. If job-related crimes are suspected to have taken place involving torture or ill-treatment of detainees or dereliction of duty, the procuratorial organs will initiate an investigation and bring the perpetrators to justice and hold them criminally responsible. In the year of 2008, there were 14 deaths of detainees caused by beating in detention facilities throughout China, and all the perpetrators were punished according to law.

In 2009, the Supreme People's Procuratorate and the Ministry of Public Security jointly carried out an inspection campaign dealing specifically with regulation and law enforcement of detention facilities throughout China. Physical examinations to detect injuries were conducted for all detainees and the routine law enforcement activities and management of detention facilities were screwed to prevent unnatural deaths and other accidents. An oversight system was put in place, under which police inspectors of the public security organs could enter detention facilities for on-site inspections any time with an inspection pass, helping them to detect any major problems in these law enforcement activities in timely fashion and supervise the implementation of corrective measures.

Article 55 of the Prison Law of the People's Republic of China provides that in the event of a prisoner's death during imprisonment, the prison shall inform the prisoner's family, the people's procuratorate and the people's court of the death immediately. In the event of a death caused by illness, the prison shall make a medical appraisal. If it considers the medical appraisal dubious, the people's procuratorate may start another medical appraisal on the cause of the death. If the family members of the deceased prisoner have doubts as to the prison's medical appraisal, they may raise their suspicion with the people's procuratorate. Article 27 of the Regulations on Detention Facilities stipulates that any death of a prisoner in custody shall be reported

immediately to the people's procuratorate and the case-management organ, that an appraisal of the cause of the death shall be conducted by a forensic pathologist or a physician and that the family of the deceased shall be notified.

With respect to the reference in paragraph 12 to "the lack of treatment for drug users and people living with HIV/AIDS" and "the lack of statistical data on the health of detainees" in China's detention facilities, it should be noted that detention facilities in China always provide timely medical treatment to all detainee patients, including drug users and persons with HIV/AIDS or send them to local hospitals when necessary, in accordance with the provisions of article 26 of the Regulations on Detention Facilities. As for the statistical data on the health of detainees, the Ministry of Public Security has requested detention facilities throughout China to establish health records for detainees setting out their health status in detail. This measure is being improved.

**3. Concerning the recommendation in paragraph 13 that "the State party should abolish all forms of administrative detention, including 're-education through labour' "**

Under Chinese law, administrative detention is an administrative punishment which temporarily restricts the personal freedom of a person and is applicable only to those who have violated a law but whose act does not constitute a criminal offence. Chinese law strictly regulates the institution of administrative detention, criteria for administrative detention and its approval procedures. The Law on Public Security Administrative Punishments stipulates that administrative punishments that may restrict the freedom of a person shall be prescribed by law and imposed by public security organs only after the facts have been ascertained. Before imposing administrative punishments on the person concerned, the latter shall be notified of the facts, grounds and basis for imposing the punishments and of the rights he/she enjoys under the law. The person or parties concerned shall have the right to state their cases and defend themselves. The administrative organs shall hear their views fully and review the facts, grounds and evidence they have presented. The administrative organs may not impose more severe punishments because the individuals concerned have tried to defend themselves. If the person concerned refuses to accept the decision on administrative penalty, he/she may request administrative review or bring an administrative lawsuit in accordance with the law. The Law on Public Security Administrative Punishments also stipulates that a person liable to punishment may request administrative review, bring an administrative lawsuit or apply for deferred administrative detention if he/she refuses the decision ordering administrative punishment. A citizen who has been erroneously detained may request State compensation in accordance with the State Compensation Law.

Re-education through labour is a coercive administrative measure for reform through education. It is a means of correction through education, which is applicable to those who have committed a minor crime or a crime not serious enough for criminal punishment, and to persons who have repeatedly violated security regulations. According to the provisions of the Decision of the State Council on Re-education through Labour approved by the Standing Committee of the National People's Congress, all decisions ordering offenders to undergo re-education through labour shall be made in strict accordance with statutory procedures. Re-education through labour Administrative Committees shall take their decisions in accordance with the law governing re-education through labour and administrative regulations, and in the light of the facts, nature,

circumstances and seriousness of the consequences of unlawful acts of a person who meets the statutory requirements for such punishment. If a person ordered to undergo re-education through labour refuses to accept the decision, he/she may request an administrative review or bring an administrative lawsuit before a people's court. The administrative organ handling the review or the court may revoke or modify the decision in accordance with the law if it deems that decision ordering re-education through labour was not made on solid grounds.

In recent years, China has redoubled its efforts to reform the review and approval system for cases involving re-education through labour and has introduced five reform measures, including legal counsel for cases involving re-education through labour, thorough implementation of a system of inquiry and consultation, shorter terms for labour re-education, expanding the scope of re-education through labour outside re-education facilities, and closer supervision. The Standing Committee of the National People's Congress has decided to include in its legislative agenda the Law on the Correction of Unlawful Behaviour through Education with an intention to transform the system of re-education through labour into a system for the correction of unlawful behaviour through education. The proposed law, once enacted, will set out the criteria for eligibility for correction through education, decision-making procedures, the duration of correction through education, ways of implementing decisions ordering correction through education, and the supervisory and control system.

In addition, the actions directed "against members of certain religious and ethnic minority groups" mentioned in this paragraph simply do not exist in China.

**4. Concerning the recommendation in paragraph 14 of the observations that "the State party should ensure that no one is detained in any secret detention facility"**

Chinese law explicitly provides for protections of citizens' freedom of person and prohibits the unlawful detention of any person. Article 37 of the Constitution of the People's Republic of China provides that the personal freedom of citizens of the People's Republic of China is inviolable. No citizen may be arrested without the approval or decision by the people's procuratorate or a decision by the people's court. Any arrest decisions must be implemented by the public security organs. Unlawful detention or deprivation or restriction of personal freedom of citizens by unlawful means is prohibited. Unlawful searches of the person of citizens is prohibited. China does not have detention facilities other than those established according to law.

**5. Concerning the allegation in paragraph 16 of the observations that "the Law on the Preservation of State Secrets in the People's Republic of China ... severely undermines the availability of information about torture, criminal justice and related issues"**

The Chinese Government believes that this allegation derives from misunderstanding based on a lack of knowledge of the Chinese legal system. The Chinese side wishes to elaborate on the specific issues raised in this paragraph.

**(a) Concerning the allegation in the observations that "this Law prevents the disclosure of crucial information"**

The Chinese Government attaches importance to making information public and has taken effective measures to ensure its citizens' access to information about their country and society, and their right to participation and supervision. For example, The Regulations of the People's Republic of China on Disclosure of Government Information formulated by the State Council establish the scope, ways and procedures for making public government information to ensure that such information usefully informs citizens' productivity, life and economic and social activities. At the same time, the Government requires that its citizens guard State secrets in accordance with the law, as do Governments of all other countries in the world.

According to article 2 of the Law of the People's Republic of China on the Preservation of State Secrets, "State secrets" refers to information on matters that have been established through proper legal procedures as having a vital stake on State security and national interest and are known only to a limited number of people for a given period of time. Article 8 of the Law contains detailed description of State secrets.

The Law of the People's Republic of China on the Preservation of State Secrets provides for the preservation of State secrets. However, information on "detention and custody and ill-treatment … violations of the law or codes of conduct by public security organs", cited in the observations, does not constitute State secrets as defined by law. In practice, the public security organs throughout China abide strictly by the aforementioned Law where the scope of State secrets and their degrees of confidentiality are concerned.

**(b) Concerning the claim in the observations that the Law of the People's Republic of China on the Preservation of State Secrets "provides that the determination of whether a piece of information is a State secret lies with the public body producing this information"**

Under the Law of the People's Republic of China on the Preservation of State Secrets, State organs and units at all levels shall determine, in accordance with the provisions on State secrets and on the specific scope of classified materials, the degrees of confidentiality of all information on matters deemed to be State secrets. Chinese law gives secrets-generating organs and units the power to determine the scope and degrees of confidentiality of State secrets while establishing strict limits and procedures to ensure that such power is exercised properly.

**(c) Concerning the claim in the observations that [the Law on the Preservation of State Secrets] "prevents any public process of determination as to whether a matter is a State secret and the possibility of appeal before an independent tribunal"**

According to the Law of the People's Republic of China on the Preservation of State Secrets, the Chinese authorities concerned determine, in accordance with established procedures by law, whether or not a matter constitutes a State secret. In the event of a dispute as to whether a piece of information constitutes a State secret and the degree of confidentiality it should be assigned, the case may be submitted to the appointed authorities for a solution.

The Measures of Implementation of the Law of the People's Republic of China on The Preservation of State Secrets also provides for an error- correction system. Under that system, if the organ or unit which determined the degree of confidentiality has found that its decision is

inconsistent with the relevant provisions governing the scope of secrets, it shall promptly correct the mistake. The organs above it or the security department concerned shall also promptly notify the organ or unit which made the erroneous determination and shall demand an immediate correction. Thus the allegation in the observations concerning the procedures for determining State secrets does not conform to reality.

Moreover detainees have the right to challenge decisions as to whether a matter constitutes a State secret, whereupon the State security department or the body of the provincial People's Government in charge of State secrets shall determine the validity of the challenge.

Though China's legal system differs from that of the West, the ultimate goal of determining whether or not a matter constitutes a State secret is to safeguard national security and interests, regardless of whether the determination is made by executive or judicial means. The Chinese security departments at all levels have identified confidential information in strict accordance with the provisions of the law. There is no systemic problem in China in this regard.

**(d) Concerning the claim that "the classification of a case falling under the State Secrets law allows officials to deny detainees access to lawyers"**

The Criminal Procedure Law provides that a criminal suspect in a case involving State secrets may hire a lawyer only if he/she obtains approval from the investigating body. This is to prevent disclosure of State secrets, and it is common international practice. In practice, the public security bodies allow criminal suspects to employ a lawyer so long as this does not lead to leakage of State secrets. It is illegal for case-management officers to reject lawyers' requests to meet with their clients on the grounds of the need for confidentiality. If such officers are found to have rejected legitimate requests, they are held responsible for their conduct under the law. The Lawyers Law, as amended in October 2007, also contains provisions on meetings between lawyers and their clients. All these provisions help to ensure the timely intervention of lawyers in such cases and help to safeguard the legitimate rights and interests of the persons concerned.

**6. Concerning the recommendation in paragraph 17 of the observations that "the State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level"**

The observations contain a request to the State party to provide detailed and complex statistical data, which are very difficult for a large developing country with extremely complicated national conditions such as China to compile within a short period of time, to say nothing of the huge cost involved in the compilation of the requested statistical data. Nevertheless, the Chinese Government attaches great importance to the Committee's observations and will work harder to improve its statistics regarding its efforts to combat torture.

**7. Concerning the recommendation in paragraph 18 of the observations that "the State party should abolish any legal provisions which undermine the independence of lawyers and should investigate all attacks against lawyers and petitioners" and the allegations in paragraphs 18 and 19 of "harassment … against" Teng Piao, Gao Zhicheng, Hu Jia and Li Heping**

China's Lawyers Law establishes the immunity of lawyers from responsibility for their statements during judicial proceedings. Paragraph 2 of article 37 of the Law clearly provides that lawyers shall not be held legally responsible for representing their clients or presenting defense opinions in court. However, the Lawyers Law also makes clear provision for exceptions to immunity: remarks of lawyers that endanger national security, constitute malicious attacks against others or seriously disrupt the order of the court constitute such exceptions. In addition, article 306 of the Criminal Law provides that attorneys or defence lawyers who destroy or fabricate evidence, help defendants to destroy or fabricate evidence, threaten or induce a witness into changing testimony against the facts or committing perjury during criminal proceedings shall be held criminally responsible for their conduct according to law. These provisions guarantee the full exercise by lawyers of their right to provide a defence and also safeguard the authority and impartiality of the law.

Now, the Chinese Government wishes to provide clarification regarding the so-called "harassment" of several persons referred to in these paragraphs:

Gao Zhisheng, male, born on 20 April 1964, Han nationality, was formerly a lawyer with the Shengzhi Law Firm in Beijing. He was found guilty of the crime of inciting subversion of State power and was sentenced to three years imprisonment with a five-year reprieve and one year's deprivation of political rights by the people's court on 22 December 2006.

Hu Jia, male, was born on 25 July 1973. On 3 April 2008 he was found guilty of the crime of inciting subversion of State power and sentenced by the people's court to imprisonment for three and a half years with a one-year deprivation of political rights.

Hu Jia was not a lawyer, while Gao Zhisheng was punished by law for engaging in criminal activities, not for his lawyer's status.

Teng Biao, male, born on 2 August 1973, is a lecturer with China University of Political Science and Law and was formerly a part-time lawyer with the Huayi Law Firm in Beijing. He stopped practicing law when the University disapproved of this part-time arrangement.

Li Heping, male, born on 26 October 1970, Han nationality, was formerly a lawyer with the Gaobolonghua Law Firm in Beijing. In the annual assessment of lawyers and law firms in 2009, Li failed the assessment examination at the law firm where he was working, and the judicial and administrative organs did not renew his lawyer's registration according to law.

**8. Concerning the allegation in paragraph 20 of the observations of a "lack of an effective mechanism for investigating allegations of torture as required by the Convention … there are serious conflicts of interest with the role played by the Office of the Procuratorate which is charged with investigating … which may lead to ineffective and partial investigations"**

The Chinese Government believes that this allegation results from a lack of knowledge of China's procuratorial system, amd, in particular, of the independent status of the Chinese

procuratorial organs.

A salient feature of the Chinese procuratorial system is the independence of the procuratorates guaranteed by the Constitution. Article 129 of the Constitution stipulates that the people's procuratorates of the People's Republic of China are State organs for legal supervision. Article 131 stipulates that the people's procuratorates exercise procuratorial power independently in accordance with the law and free from intervention by any administrative organs, social groups or individuals. The Criminal Procedure Law defines the terms of reference of the people's procuratorates. In China, the procuratorates, courts and governments are all elected by the People's Congresses at the same level. But the procuratorial organs are State organs exclusively responsible for legal supervision, independent of the executive organs. Most countries in Europe and America have adopted a political system of separation of the executive, legislative and judicial powers, in which the procuratorial bodies are often under the executive branch. In some countries, the Minister or Deputy Minister of Justice serves concurrently as the Attorney-General and procurators are nominated or appointed by Minister of Justice with the main responsibility for public prosecution.

A comparison of the two systems shows that there are significant differences between procuratorates in China and the national prosecutorial authorities in Europe and the United States in terms of constitutional and independent status. The constitutional independence of procuratorial organs in China means that independent investigations by procuratorates of cases involving torture by government officials will not result in any serious conflict of interest with the responsibilities of the Office of the Procuratorate. China's judicial practice has proved that, giving procuratorate, which has an exclusive role for legal supervision, a mandate to investigate criminal torture cases has helped to safeguard the legitimate rights and interests of detainees and ensure that law enforcement is carried out in a fair and civilized manner and in strict accordance with law and regulations.

**9. Concerning the recommendation in paragraph 21 of the observations that "the State party should conduct a full and impartial investigation into the suppression of the Democracy Movement in Beijing in June 1989, provide information on the persons who are still detained from that period, inform the family members of their findings, offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture and other ill-treatment"**

The Chinese Government has closed the case concerning the political turmoil in the spring and summer of 1989. The practice of the past 20 years has made it clear that the timely and decisive measures taken by the Chinese Government at the time were necessary and correct. The observations refer to the incident as "the Democracy Movement"; this is a distortion of the nature of the incident, which is inconsistent with the Committee's responsibilities.

**10. Concerning the allegations in paragraph 22 to 26 of the observations of "targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners" and the reference to "the return of border-crossers … from the Democratic People's Republic of Korea"**

Chinese citizens are equal before the law and enjoy equal protection under the law. "Targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups" simply do not exist in China. With regard to specific concerns raised in paragraphs 22 to 26, we wish to state the following:

**(a) Concerning the "events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties: widespread reported excessive use of force and other abuses"**

The acts of violence involving vandalism, beating, smashing, looting and burning in Lhasa and other places in mid-March 2008 were serious criminal activities premeditated, deliberately incited, carefully planned and organized by secessionist elements advocating Tibetan independence. These incidents caused the death of 18 innocent people and inflicted injury on hundreds of innocent people, doing serious harm and damage to people's lives and property and seriously affecting the economic and social development and stability of Lhasa and other places. The general public strongly demanded that the judiciary organs should bring the criminals to justice.

The public security organs of Tibet Autonomous Region have detained or arrested, according to law, 953 criminal suspects who were suspected of having been involved in vandalism, beating, smashing, looting and burning during the violence in Lhasa and other places on 14 March in violation of law. In addition, 362 criminal suspects have voluntarily given themselves up to the public security organs. The judiciary organs of Tibet Autonomous Region have released 1,231 suspects after imposing public security penalties and education and accepting their statements of repentance. Sentences have been pronounced on 77 who were found guilty of the crimes of arson, robbery, theft, obstruction of public duties, rioting, inciting crowds to social disturbances and/or assaulting State organs. Punishment has also been meted out to 7 who were found guilty of espionage and/or illegally providing intelligence overseas.

In dealing with the serious violent incidents which took place in Lhasa and other places on 14 March, the judicial organs of Tibet Autonomous Region processed the cases in strict accordance with the law and in a fair and civilized manner, and fully safeguarded the legitimate rights and interests of criminal suspects. In the process of protecting people's lives and property and maintaining law and order, 242 public security officers and armed police officers on duty were killed or wounded by the mob (including one death and 23 seriously injured). Three law-breakers died, one of them from jumping off a building to avoid being caught; he was rushed to hospital, but the rescue measures were to no avail. The Intermediate People's Court of Lhasa City and the district and county people's courts tried the suspects in strict compliance with the provisions of the Criminal Law and the Criminal Procedure Law. Defendants belonging to minorities were provided with interpreters. The defendants' defence counsels presented their defense opinions fully. The litigation rights of the defendants were safeguarded in full and their ethnic customs and dignity were fully respected.

**(b) Concerning the "discrimination and violence against persons belonging to national, ethnic or religious minorities"**

The China's Constitution stipulates that all ethnic groups of the People's Republic of China are equal and that the State protects the legitimate rights and interests of all ethnic minorities and prohibits discrimination and oppression against any ethnic groups. The public security organs consistently adhere to the principle of universal equality before the law in their law enforcement activities without discrimination or violence against people of any nationality.

With regard to the case of Ablikim Abdureyim referred to in this paragraph, investigations have revealed that Ablikim Abdureyim was sentenced in April 2007 to nine years' imprisonment and three years' deprivation of political rights for inciting secession of the State. He is now serving his sentence. The prison protects all his rights and interests in strict accordance with the Prison Law and relevant regulations.

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

Falun Gong is a cult organization. The vast majority of Falun Gong practitioners have been deceived and are victims, too. Accordingly, the Chinese Government has adopted a policy of "unity, education and rescue the majority" towards Falun Gong practitioners. The entire society has done a great deal of patient and painstaking work to help these practitioners throw off the spiritual shackles of the cult. The great majority of the practitioners have now fully realized the cult nature of Falun Gong, escaped from Li Hongzhi's spiritual control and returned to society and resumed a normal life.

China's judicial authorities have penalized, in strict accordance with the law, only a very small number of Falun Gong practitioners for their involvement in illegal and criminal activities. Their legitimate rights and interests have been fully guaranteed. The so-called persecution against Falun Gong practitioners and the use of such persons for organ transplants by the Chinese Government are pure fabrications, and the Chinese Government has repeatedly rejected this fallacy.

**(d) On the issue of "non-refoulement" of North Koreans who have entered China illegally**

The Chinese public security organs are bound by the Law of the People's Republic of China on Control of the Entry and Exit of Aliens to investigate and process cases involving the illegal entry of aliens, which includes their deportation. In recent years, some North Koreans have illegally entered China for economic reasons. They do not meet the criteria of refugees set in Convention relating to the Status of Refugees and its Protocol. Their illegal entry has violated Chinese law and disrupted the normal order of entry into and exit from China. It is entirely legitimate and necessary for the public security organs to properly handle, in accordance with the relevant laws and regulations, the illegal entry of aliens, including illegal entry by Koreans, in order to safeguard China's national security and maintain its entry and exit order procedures.

As a party to Convention relating to the Status of Refugees and its Protocol, China has always strictly observed the provisions of the Convention and its Protocol and has earnestly fulfilled its

obligations under the Convention and the Protocol. The Chinese Government's selfless provision of refuge to more than 300,000 Indo-Chinese refugees for a long time amply demonstrates this statement. The Chinese Government has consistently carefully handled the illegal entry of Koreans in accordance with the domestic law, international law and humanitarian principles. Facts have proved that the Chinese approach is appropriate and effective, and in the interests of all parties.

**11. With regard to the statement in paragraph 27 of the observations that the Committee is "concerned by the lack of legislation prohibiting all forms of violence against women, among them marital rape, and providing effective remedies for victims"**

Chinese law prohibits domestic violence. China has taken various effective measures to prevent and stop domestic violence. Article 3 of the Marriage Law of China "prohibits domestic violence and the ill-treatment and desertion of one family member by another". Article 46, paragraph 1, of of the Law on the Protection of Women's Rights and Interests provides for "prohibition of domestic violence against women". Perpetrators of domestic violence shall be brought to justice according to law. According to the provisions of the Criminal Law, those who have committed domestic violence and whose acts have constituted a crime shall be held criminally responsible on the ground of causing intentional injuries and ill-treatment. According to article 45 of the Marriage Law, "those engaged in domestic violence, maltreatment or desertion of family member(s) shall be held criminally responsible for their criminal acts according to law. The victims may initiate proceedings in a people's court in accordance with the relevant provisions of the Criminal Procedure Law. The public security organs shall investigate the case according to law, and the people's procuratorate shall initiate public proceedings according to law".

While prohibiting all forms of domestic violence, the law provides for a variety of effective remedies.

First, women who are victims of domestic violence are entitled to divorce when mediation fails. Article 32 of the Marriage Law provides that divorce shall be granted if mediation fails in case of domestic violence, maltreatment or desertion of family member(s). Article 46 provides that the party without fault shall have the right to request for damage compensation if divorce is the result of domestic violence, maltreatment or desertion of family member(s).

Secondly, the Government, the relevant departments and social organizations shall, in accordance with the law, provide support and assistance to women victims of domestic violence and promptly dissuade and stop all forms of domestic violence. They can also impose, in accordance with the law, penalties or even criminal prosecution against perpetrator of domestic violence. Article 46, paragraph 3, of of the Law on the Protection of Women's Rights and Interests states that "the public security organs, departments of civil affairs, judicial and administrative organs, urban and rural self-governing grass-roots voluntary organizations and public organizations shall, within the scope of their responsibilities, prevent and stop domestic violence and provide assistance to the women victims according to law".

**12. Concerning the allegation in paragraph 28 of the observations of a "lack of information on the number of complaints and the measures taken to prevent torture and**

**ill-treatment of women in places of detention"**

China has always attached great importance to the protection of the legitimate rights and interests of women in custody and has forbidden abuse, corporal punishment and ill-treatment of women in custody. In order to better protect the legitimate rights and interests of detainees, including women detainees, Chinese law explicitly provides that female detainees shall be dealt only by female police officers. The public security organs at all levels have set up law enforcement supervision units which are responsible for overseeing law enforcement activities by police and for investigating cases involving unlawful acts committed by police officers and, if such unlawful acts constitute a criminal offence, their criminal responsibility will be investigated, in accordance with the law. Meanwhile, the public security organs at all levels are subject to the supervision of the People's Congresses, governments, political consultative conferences, the people's procuratorates, the news media and the general public. The procuratorial organs shall file a case and open an investigation into suspected criminal torture, in accordance with the law. In cases where relatively minor harm has been done and the offence does not constitute a crime, the public security organs may, in accordance with the law, investigate the administrative responsibility of such persons.

In addition, the public security organs have in recent years taken various measures to prevent violence among detainees, including female detainees, in detention facilities. For example, each cell is placed under the care of at least two police officers, a principal officer and an assistant. Each cell is also equipped with an alarm device to enable detainees to sound the alarm any time they feel themselves at risk of violence. In addition, detainees may make an appointment with a resident procurator to lodge a complaint at any time.

**13. Concerning the allegations in paragraph 29 of the observations regarding the "use of violence in the implementation of the population policy", that "local officials in Lingyi City have been held accountable for using such coercive and violent measures", and regarding the "case of Chen Guangcheng"**

The Chinese Government expects that the staff of local governments at all levels will perform their administrative functions, implement the family planning policy and enforce law strictly in accordance with the law and in a civilized manner. It exhorts them not to violate the legitimate rights and interests of citizens. Article 19 of the Law on Population and Family Planning explicitly states that "Contraception shall play a main role in family planning. The State creates conditions to guarantee that the citizens have knowledge of and choose safe, effective and appropriate contraception measures". The competent national authorities have vigorously promoted informed choices of contraceptive methods, redoubled efforts for management in accordance with the law and have requested local authorities to implement the family planning policy in strict accordance with the provisions of laws and regulations. It is absolutely impermissible to force people to surgery, much less subject them to unlawful detention. Anyone who violates laws and regulations shall be held responsible and liable to an administrative or criminal investigation.

It is true that some officials in individual counties and townships of Linyi city have violated law in carrying out family planning activities and have infringed the legitimate rights and interests of

citizens. However, these officials have been punished in accordance with the law. They have been subject to either administrative detention or removal from their posts. The National Population and Family Planning Commission has tried, through various means, to improve administration in accordance with the law and to safeguard the rights and interests of citizens. It has requested government staff in charge of population and family planning at all levels to learn lessons from these cases, review their own activities and correct any activities that may infringe people's rights. At the same time, it has offered systematic and targeted training in administration that is compliant with the law and in the provision of quality services.

With regard to the case of Chen Guangcheng: Chen Guangcheng, male, born on 12 November 1971, Han nationality, is a resident of Guchun Village, Shuanghou Township, Yinan County, Linyi City, Shandong Province. On 1 December 2006, Chen was sentenced by the People's Court of Yinan County to imprisonment of four years and three months for the crimes of wilful destruction of property and assembling a crowd to disrupt traffic. The allegation of harassment against Chen and his counsel in the observations is inconsistent with the facts.

**14. Concerning the statement in paragraph 30 of the observations whereby "the Committee expresses its concern about the limited measures for the rehabilitation of victims of torture, including sexual violence, trafficking, domestic violence and ill-treatment"**

The Chinese Government attaches great importance to safeguarding the legitimate rights and interests of its citizens. Article 41, paragraph 3, of China's Constitution provides that "citizens who have suffered losses through infringement of their civil rights by any State organs or functionary have the right to compensation in accordance with the law". Since the Law on State Compensation came into force on 1 January 1995, the executive and judicial organs have dealt with State compensation cases. The parties concerned have received State compensation in accordance with the law. This has played an important role in safeguarding the legitimate rights and interests of citizens, legal persons and other organizations. In 2007, Chinese courts heard 959 cases of State criminal compensation, including torture cases, which resulted in State compensation.

In the nearly 15 years that the Law on State Compensation has beem in force, China has witnessed remarkable economic and social development and changes. The protection of human rights has also gradually improved. Some of the provisions of this Law are no longer adequate to meet the needs of providing State compensation. In late 2005, the relevant bodies of the National People's Congress of China undertook a study of how to amend the Law on State Compensation. In October 2008, the Standing Committee of the National People's Congress considered the draft amendment for the first time and solicited views and opinions from the general public. In June 2009, the Standing Committee considered the draft for the second time. The draft amendment allows for greater scope for State compensation, a streamlined compensation process, higher compensation rates, regulated channels for compensation payment and improved the working procedures of the Compensation Commission and monitoring processes. These provisions, once put in place, will better protect the right of the torture victims to State compensation.

In addition, the Opinions on Relief Work for Criminal Victims formulated by relevant ministries

and departments of the Chinese Government on 9 March 2009 clearly defined the scope of the relief subjects and procedures for relief work. The document calls on all localities and local departments to come up with their own relief measures to help victims of crimes and to earnestly fulfil their obligation to help such victims. At present, this work is proceeding smoothly, and some crime victims have received timely relief. With relief work being carried out gradually throughout China, crime victims, including victims of torture, sexual violence, human trafficking, domestic violence and abuse, will get more care and assistance from the State and from society.

**15. Concerning the statements in paragraph 31 of the observations that "allegations of torture and/or ill-treatment committed by law enforcement personnel are seldom investigated and prosecuted … some instances of torture … can lead to only disciplinary or administrative punishment" and that "the State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially"**

The Chinese Government believes that the allegation in this paragraph is inconsistent with the facts.

First, there are channels available to detainees to bring charges of torture or ill-treatment or report such incidents in China. Detainees or their families can lodge complaints against torture or ill-treatment with detention facilities, the authorities at a rank above the detention facilities or the procuratorial bodies orally, in writing, via e-mail or by making appointments with the resident procurator. Others persons may also report such incidents to the above bodies. Each prison ward is equipped with a complaint box installed by the procuratorial organs and detention facilities in which detainees may deposit their complaints or reports, while every cell is equipped with an abuse alarm system. In addition, the policing monitoring bodies of public security organs verify, process and handle, in accordance with the Regulations on the Work of Internal Supervision of Law-Enforcement in Public Security Organs, complaints letters or telephone from members of the public alleging violations of the law or discipline by police.

Secondly, in the performance of their functions and powers, the Chinese law enforcement authorities seek to detect acts of torture or ill-treatment in detention facilities on their own. The authorities at a level above detention facilities make regular or ad-hoc inspections of detention facilities. The police monitoring bodies in the public security organs conduct on-site inspections of detention facilities. The procuratorial organs may visit prisons, prison cells, interrogation rooms and meeting rooms in an attempt to find out for themselves whether acts of torture or ill-treatment are taking place in detention facilities.

Thirdly, the Criminal Law, the Criminal Procedure Law and the People's Police Law of China all explicitly prohibit torture and abuse against citizens, including criminal suspects. Once an act of torture is detected, it will be strictly dealt with by the relevant law enforcement agency, in accordance with the law. If the circumstances of the case are not serious, the perpetrator will be subjected to disciplinary or administrative sanction by the competent authorities. Otherwise, the procuratorial organs will put the case on file, initiate an investigation and prosecute the perpetrator for criminal responsibility. The Chinese public security organs have made unrelenting efforts to investigate and punish any abuse of coercive measures, torture, corporal punishment and ill-treatment of criminal suspects whenever they find such cases, even though

very few police officers have been found to have perpetrated such acts. If a personn is suspected of having committed a crime, the procuratorial organs will investigate the person's criminal liability. If the harm caused is relatively minor and does not constitute a crime, the supervisory department will conduct an independent investigation and, depending on the seriousness of the violation, determine the person's administrative responsibility, whereupon an administrative sanction in the form of a warning, demerit, major demerit, demotion, removal from post may be imposed.

According to the Chinese law, the Chinese courts and procuratorial organs exercise, according to law, judicial or procuratorial power independently and hold public officials who have committed post-related crimes criminally responsible, in accordance with the law. The supervisory departments and petition bodies of the Chinese Government are also responsible for receiving and verifying reports and charges of criminal offences committed by public servants. All of this serves to ensure that charges of torture and ill-treatment by detainees are met with timely, effective and impartial investigations, in accordance with the law, and provide an institutional guarantee that the perpetrators will be held responsible for their acts in both disciplinary and legal terms.

**16. Concerning the allegation in paragraphs 32 and 33 of the observations that "the State party has not incorporated in its domestic law a definition of torture that fully complies with the definition contained in the Convention"**

Although no law in China is exclusively devoted to the definition of torture, all aspects of torture as defined in the Convention are covered in the relevant Chinese laws. Chinese laws strictly prohibits and punishes any form of torture against anyone, regardless of the perpetuator's intention or purpose and regardless of whether the act is committed with the consent, tacit or not, of an official or a public functionary.

First, the allegation in the observations that the relevant Chinese laws "do not cover acts by 'other persons acting in an official capacity' " is simply not true.

China's Criminal Law is applicable to all criminal acts of torture, irrespective of the identity, intent or purpose of the perpetrators. Furthermore, Chinese legislation has provisions that specifically cover crimes committed by officials and persons in specific capacities. For example, article 238, paragraph 4, of of the Criminal Law stipulates that if a public servant of a State organ commits the crime of unlawful detention by exploiting his/her office, he/she shall be punished severely. The provisions of article 247 of the Criminal Law concerning the crime of extorting confessions by means of torture and violence apply to judicial officers who obtain evidence by acts of torture. The provisions of article 248 of the Criminal Law concerning the crime of ill-treatment of detainees apply to supervisors who commit acts of torture against detainees. The establishment of these specific crimes reflects the determination to severely punish crimes committed by government officials and to more effectively protect the legitimate rights and interests of citizens.

Furthermore, China's policies and measures to prohibit torture are applicable to public servants in both the field of criminal justice and the field of administrative law enforcement. If an

ordinary person commits an act of torture abetted by or with the consent or tacit consent of a government official or a person exercising authority in an official capacity, under the provisions of the Criminal Law relatig to joint offences, the ordinary person shall be considered to be an accomplice and the applicable charges shall be brought against the government official.

Secondly, under the Chinese law, punishable acts of torture include both acts that cause physical pain, such beating or assaulting with instruments of torture, and acts causing mental pain, such as ill-treatment, humiliation and other means. For example, article 43 of the Criminal Procedure Law provides that "it shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means". Of these, "threat" is typically a way of causing mental suffering. The phrase "other unlawful means" includes any means that can cause physical and mental pain. Article 238 of the Criminal Law stipulates that anyone who unlawfully detains another person or deprives another person of his/her personal freedom by other means commits a crime. If a person is found to have assaulted or insulted another person, a heavier sentence shall be imposed. Under articles 247 and 248 of the Criminal Law, the crimes of extorting confessions by torture, violence and ill-treatment of detainees include those committed by use of violence and also by use of abuse, humiliation and other means or causing severe mental suffering. A public servant who has caused another person mental suffering by humiliating, slandering, illegally searching, illegally intruding into a citizen's home, illegally depriving he or her of his or her freedom of religious belief or infringing the customs of ethnic minorities, when performing official duties, he/she shall be punished according to law.

In short, the provisions of China's legislation dealing with the prohibition and punishment of torture are consistent with the relevant provisions of the Convention.

**17. Concerning the statements in paragraph 34 of the observations that "specific data on death sentences is not publicly available", "the Committee expresses concern at the conditions of detention of convicted prisoners on death row, in particular the use of shackles for 24 hours a day" and "the questions raised … on the removal of organs from persons sentenced to death"**

The issue of the death penalty is not just a legal issue: it involves complex economic, political, cultural and social issues as well as public opinion. Given that different countries have different national conditions, the time required for achieving the goal of gradual reduction and eventual abolition of the death penalty cannot be the same for all. At present, conditions in China are not ripe for abolishing the death penalty.

Nevertheless, the death penalty applies only to those who have committed heinous crimes in China. The death penalty must be administered in accordance with the conditions and procedures prescribed by law. Recent years have witnessed fresh progress in the administration of criminal justice where the safeguarding of the human rights of death-row prisoners is concerned. Since 1 January 2007, the Supreme People's Court has exercised the exclusive right to review and approve all death penalty cases, putting an end to more than 20 years of decentralized death-penalty approval. This is further testimony to the criminal justice policy of "keeping the death penalty, but strictly controlling and applying it carefully".

China collects consolidated statistics of cases involving the death penalty, death penalty with a two-year reprieve, life imprisonment and imprisonment of over five years. The President of the Supreme People's Court reports these statistics to the National People's Congress in March every year, making them public to the whole world.

With regard to "the use of shackles" on death-row prisoners 24 hours a day, the placing of handcuffs and shackles on death-row prisoners is a temporary deterrent aimed at preventing them from committing violence, escape, suicide or disruption prison order. It does not constitute a cruel, inhuman or degrading treatment or punishment at all. Meanwhile, the provisions of the Regulations on Detention Facilities strictly prohibit the use of handcuffs and shackles as a means of torture or corporal punishment. In 2005, China hosted a visit by the Special Rapporteur of the United Nations Commission on Human Rights on the question of torture, during which the relevant authorities took note of the Special Rapporteur's concern on this subject. Efforts are currently beeing made to review this issue.

With regard to "the removal of organs from persons sentenced to death without free and informed consent", the following principles must be observed in China for the use of the bodies or body organs of the executed prisoners:

**First, the voluntary principle**. Article 7 of the Regulations of China on Human Organ Transplantation provides that "a citizen shall be entitled to donate or not to donate his or her human organs, and no organization or person may force, trick or entice others into donating their human organs". Prisoners on death row, who are citizens, enjoy, in accordance with the law, the right to donate or not to donate their organs. The Chinese Government has consistently adhered to the principle of humanitarianism and the voluntary principle, and has applied these principles to death-row prisoners and their families where the issue of human organ donation is concerned. It has resolutely stopped, investigated and punished all acts of purchasing, selling and illegally using human organs of death-row prisoners. China has never used the bodies or human organs of death-row prisoners, unless such prisoners had voluntarily decided to donate their organs before their death or their families have so decided. This practice is consistent with the prevailing international practice of organ donation.

**Second, the principle of no compensation**. Chinese law prohibits any form of purchase or sale of human organs by any organization or individual and prohibits the participation of any organization or individual in any activity relating to the purchase or selling of human organs. Anyone who violates these provisions shall be dealt with severely in accordance with the law. In reality, there have been no cases of illegal profits derived from the use of bodies or organs of prisoners on death row.

**Third, the principle of strict review and approval**. Chinese law sets strict limits on the use of bodies or organs of death-row prisoners and prohibits the abuse of such bodies and organs. It has also established strict application and approval procedures in this area and prohibits the use of bodies or organs without approval. Academic medical institutes or institutions providing medical care without proper qualifications are prohibited from using bodies or organs of death-row prisoners.

In sum, the allegations concerning the removal of organs from persons sentenced to death in this paragraph does not correspond to the facts.

**18. Concerning the allegation in paragrah 35 of the observations of "compulsory medical treatment by the authorities ... to detain some people in psychiatric hospitals for reasons other than medical"**

Article 18 of the Criminal Law stipulates that "a mental patient shall not be held criminally responsible for his/her acts that have caused harmful consequences, if committed when he/she is unable to recognize or control his/her own acts, which have been ascertained through proper legal procedures. However, his/her family or guardian should be requested to keep him/her strictly under control and make arrangements for his/her medical treatment and, when necessary, the Government may intervene and subject him/her to medical treatment".

Only those mental patients without criminal responsibility who have violated the Criminal Law are subjected to compulsory medical treatment. In reality, medical measures are imposed only on mental patients with no criminal responsibility who have created serious disturbances, such as killing or seriously injuring others, committing arson, seriously disrupting the social order, destroying public facilities and/or endangering public security and safety in violation of the Criminal Law. No compulsory medical treatment can be imposed without judicial identification and verification of the mental illness. If a mental patient or his/her guardian questions the validity of the decision concerning the compulsory medical treatment, he/she may demand re-identification and re-verification. The allegation that some people are detained in psychiatric hospitals for reasons other than medical grounds is inconsistent with the facts. As for Hu Jing, mentioned in "the observations", investigations have revealed that there is no such person in any of the facilities of compulsory medical treatment in China.

**19. Concerning the allegation in paragrah 36 ot the observations of an "insufficient level of practical training with regard to the provisions of the Convention for law enforcement officers" and a "lack of specific training to detect signs of torture and ill-treatment for medical personnel in detention facilities"**

China attaches great importance to the training of law enforcement personnel in the fight against torture. The Chinese public security organs and the procuratorial organs have both done much effective work.

China's public security organs have incorporated human rights training in every phase of their education and training programme for police. In 2003, the public security organs introduced a system of "three musts training", by which police officers must undergo training when taking office, when promoted in position or rank and when carrying out police operations at the grass-roots and operational level. So far 34,500 individual training sessions have been conducted for officials in senior positions at all levels throughout China and 715,000 sessions have been conducted for police officers upon promotion; police officers at the grass-roots level must receive intensive training for no less than 15 days each year. One element of such trainings is selected provisions of the Convention against Torture, focusing on those provisions of the criminal and administrative laws and regulations that are relevant to international human rights

standards. Equal emphasis is placed on substantive laws and procedural laws. A balance is stuck between public rights law and private rights law. Thanks to this training, police officers have significantly enhanced their ability to administer the law, their handling of law enforcement cases and their ability to protect human rights and improve human rights protection. In the future, the Chinese public security organs will further intensify training so as to greatly enhance the ability and capacity of law enforcement officers to respect and protect human rights.
Chinese detention facilities attach importance to enhanced training of their medical personnel and conduct professional training every year. The Ministry of Public Security is considering ways to strengthen training in the detection of acts of torture and ill-treatment.

The Chinese procuratorial organs have spared no efforts in training resident procurators in detention facilities. In recent years, the Supreme People's Procuratorate has compiled a serial of professional manuals for the training of procurators in detention facilities. In March 2008, the Supreme People's Procuratorate compiled and issued Working Methods of People's Procuratorates in Prisons, Working Methods of People's Procuratorates in Detention Facilities, Working Methods of People's Procuratorates in Facilities for Re-education through Labour and Working Methods of People's Procuratorates concerning Parole. The procuratorial organs subsequently organized study and training sessions for procurators in prisons and detention facilities. In March and April 2009, the Supreme People's Procuratorate organized three training sessions for directors of the procuratorial offices accredited to detention facilities, covering such subjects as ways of protecting the legitimate rights and interests of persons in custody and ways of investigating and handling job-related crime cases, including torture and ill-treatment. These targeted courses have helped to regulate and improve the supervision and inspection by procuratorial organs in detention facilities.

In order to enhance the capabilities of procurators to detect and identify signs of torture and ill-treatment, including medical and other professional knowledge which are often highly relevant in detecting signs of torture and ill-treatment, the procuratorial organs are also making arrangements for medical testimony in case of suspected acts of torture or ill-treatment of detainees through their internal technical units or by commissioning other medical accreditation bodies in order to effectively safeguard the legitimate rights and interests of detainees.

**20. Concerning the statements in paragraph 37 of the observations that "the Committee appreciates the information on the importance given by the State party to anti-terrorist work and the information on their attempts to strengthen anti-terrorism legislation and other relevant measures" and "the Committee urges the State party to ensure that any measure to combat terrorism … be carried out with full respect for … international human rights law"**

The Chinese Government welcomes the positive comments made by the Committee on its efforts to combat terrorism. The Chinese Government will continue to listen carefully to views and suggestions from all parties, including those of the Committee. It will effectively carry out comprehensive counter-terrorism activities at both the national and international levels, including efforts to more effectively protect human rights while fighting against terrorism. The Chinese Government will make the strengthening of anti-terrorism legislation one of its priorities. In particular, it will make the protection of human rights a fundamental principle of this legislation.