

Suggested questions and issues to be raised with the Chinese government in advance of the fifth review of its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Submitted to the Committee against Torture for its pre-sessional working group

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Overview

The People's Republic of China's ("the State party") fifth periodic report¹ on its implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("the Convention") both points to progress made and recognizes persisting challenges. While the State party provides extensive information on formal legislative measures and reforms, many of the concerns and questions reflected in the Committee against Torture's ("the Committee") concluding observations on the State party's last review, as well as the subsequent letter from the Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture ("the Rapporteur for Follow-up") are not adequately addressed. In particular, in addition to legislative and policy reforms, more information is needed on implementation efforts, including benchmarks, assessment mechanisms, and disaggregated statistical data on the impact and effectiveness of measures taken. As the Committee has noted previously, such information is critical to enabling a constructive and informed review.

To contribute to the Committee's upcoming pre-session working group, Human Rights in China (HRIC) has prepared a list of concerns and proposed questions set out below. These questions are organized into three overarching and structural issues that broadly impact on the effective implementation of the Convention – access to information, access to justice, and government accountability. Recognizing the severe time and resources constraints faced by the Committee, as well as the broad coverage of the State party report, HRIC believes that focusing on crosscutting issues will contribute to a more impactful upcoming review. The relevant Convention articles are provided in brackets next to each subsection.

Access to Information

Detainees' Knowledge of Rights [Articles 2, 11, 15]

In its concluding observations (2008), the Committee expressed concern about the failure to notify detainees of their rights at the time of detention.²

In response, the State party highlighted recent draft Provisions on Informing Detainees of their Rights and Obligations by Criminal Detention Facilities in its periodic report (2014).³

It may be helpful for the Committee to request an update and to ask:

- What is the status of these provisions and what measures have been undertaken or are planned for implementing them?

¹ NB. State party identifies this as the sixth report in its foreword

² United Nations Committee Against Torture, Concluding Observations of the Committee against Torture on the Fourth Periodic Report of China, ¶ 11(c), U.N. Doc. CAT/C/CHN/CO/412 (December 2008) [hereinafter Concluding Observations]

³ People's Republic of China, *Fifth report of the People's Republic of China on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 99, U.N. Doc. CAT/C/CHN/5 (Apr. 3, 2014) [hereinafter *2014 State Report*]

State Secrets [Articles 2, 19]

In its concluding observations (2008) and follow-up process, the Committee has expressed concern regarding the impact of the State party's state secrets legal framework on the availability of information on torture, criminal justice and related abuses.⁴ The Committee has further requested additional information on the criteria and process for categorizing information as a state secret, the number of cases falling under the purview of states secrets legislation, and the process for challenging classification disputes.⁵

In its follow-up response to the Committee (2009), the State party reported that the State Secrets Law's (1988) Implementing Measures (1990) provide for an "error-correction system" and also that "detainees have the right to challenge decisions as to whether a matter constitutes a state secret."⁶

Since this response, a revised Law on Guarding State Secrets (2010) and set of Regulations on the Implementation of the Law on Guarding State Secrets (2014) has been adopted.

In its periodic report (2014) the State party has provided no information on the impact of these revisions to the State secrets legal framework, notwithstanding additional questions posed by the Rapporteur for Follow-up's letter (2010).

In light of these on-going legislative developments that impact availability of information, criminal justice, and related abuses, the Committee may wish to follow up on and pursue the following questions:

- How does the 2010 State Secrets law and 2014 Implementing Regulations impact on classification of information related to torture (e.g., unnatural deaths in detention)?
- How many investigations involving States secrets have been initiated during the review period? What were the dispositions of these investigations? Of the total number of investigations, how many were charged with a State secrets crime?
- What is the process under the new State Secrets Law and Implementing Regulations for individuals to challenge classifications of specific information?

Access to Justice**Right to Legal Counsel** [Article 2]

In addition to the above concerns regarding the state secrets system, the Committee also indicated that the "State party should ensure that every suspect is afforded the right to have prompt access to an independent lawyer, where possible of their own choosing, including in cases involving "State secrets".⁷

⁴ *Concluding Observations*, ¶ 16 and Felice Gaer, Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee Against Torture, *Follow-up Letter to People's Republic of China with Request for Further Information*, (Oct. 29, 2010) [hereinafter *Follow-up Letter*].

⁵ *Id.*

⁶ People's Republic of China, *Comments by the Government of the People's Republic of China Concerning the Concluding Observations and Recommendations of the Committee Against Torture*, Section 5, U.N. Doc. CAT/C/CHN/CO/4 (Dec. 18. 2009) [hereinafter *State Party Follow-up Response*].

In its follow-up response to the Committee (2009), the State party reported that, under its Criminal Procedure Law (1996), a criminal suspect in a case involving state secrets may hire a lawyer only if s/he obtains approval from the investigating body.⁸ The Rapporteur for Follow-up's subsequent letter requested clarification on the process for obtaining such approval, criteria for granting approval, detailed statistical information on the number of requests during the reporting period and the outcomes of these requests, and how long it takes after approval for a detainee to meet with an attorney.

Since 2009, the State party has amended its Criminal Procedure Law (2012) and revised the Law on Guarding State Secrets (2010).

In its periodic report (2014), the State party cites article 37 of the Criminal Procedure Law (amended 2012) which describes the process and nature of meetings between defense lawyers and their clients.⁹ This article clarifies the requirements of the lawyer making the request (holds a practicing license, law firm certificate and letter of appointment or official legal aid letter), timeframe for decision (within 48 hours), and the permissible scope of these meetings (details of the case, legal advice, and verification of relevant evidence). Article 37 also stipulates that such meetings shall not be monitored.

In light of these legislative developments and the additional information provided in the State party's periodic report (2014), the Committee may wish to follow-up on and pursue the below questions:

- During the reporting period, how many requests for approval to hire defense counsel have been submitted each year in cases where leaking state secrets is being investigated or charged?
- How many requests were granted and denied for each stage (investigations and post-charge)? What were the reasons for approval or denial?
- Were there any circumstances in which the processing of the request took longer than 48 hours and what were the reasons?

Independence of the Procuratorates [Articles 2, 11, 12]

In its concluding observations (2008), the Committee expressed concern regarding "the lack of an effective mechanism for investigating allegations of torture as required by the Convention" and, in particular, "serious conflicts of interest with the role played by the Office of the Procuratorate."¹⁰ The State party's follow-up response (2009) reported that a "salient feature of the Chinese procuratorial system is the independence of the procuratorates."¹¹ The Rapporteur for Follow-up's letter (2010) requested several further clarifications regarding the structure of this office and measures taken to ensure its independence.

⁷ *Concluding Observations*, ¶ 16

⁸ *State Party Follow-up Response*, section 1(c)

⁹ *2014 State Report*, ¶ 103

¹⁰ *Concluding Observations*, ¶ 20

¹¹ *State Party Follow-up Response*, section 8

While the State party has provided some information on new procuratorial oversight measures in its periodic report (2014), this information is not responsive to the Committee's questions regarding the potential conflicts of interest in the procuratorate's role in investigating allegations of torture.

Some questions that the Committee might pursue include:

- What specific measures are being taken to ensure the independence of the procuracy's monitoring?
- May the procuratorates make unannounced monitoring visits to detention facilities?

In addition to these outstanding concerns, recent official statements have identified issues related to the impact of the political-legal committees (*zhengfawei*) on the functioning of the procuracy and the courts. These committees are tasked with "unify[ing] the thinking and actions of various political and legal affairs departments based on the Party's line, principles, policies, and deployment."¹² To achieve this aim, political-legal committees have intervened in "politically sensitive" cases, from the investigation stage (police), to the indictment stage (by the procuratorate), to the ruling of the case (by the court). In late 2014, Meng Jianzhu, the current Secretary of the Central Political and Legal Affairs Committee, stated that "leaders should stop instructing on the handling of specific cases and allow all judicial organs to have a free hand."¹³ However, at the same time, statements by Party leaders, including President Xi Jinping, emphasizing the on-going importance of these committees.¹⁴

Given these conflicting official policy statements regarding the political-legal committees, the Committee may wish to follow-up on and pursue the below question:

- What specific measures have been taken to address the potential impact of these political-legal committees on the independence of the procuracy and the courts?

Government Accountability

Transparency of Detentions and Conditions

Registration of Detainees [Articles 2, 11, 15]

¹² 政法委改革加速 减少案件干预 (Reform of Political and Legislative Affairs Committee Speeds Up, Reducing Interference in Cases), New Beijing Newspaper, October 23, 2014, available at: <http://news.sina.com.cn/c/2014-10-23/023931030382.shtml>

¹³ Id.

¹⁴ For Xi Jinping's guidance to the political-legal committees, see 新华网：习近平：刀把子要掌握在手中(Xinhuanet: Xi Jinping: Controlling the "Knife" in Hand), Xinhuanet, January 21, 2015, available at: http://news.xinhuanet.com/politics/2015-01/21/c_127405691.htm and 美国之音：重提刀把子习意何在，共和国内无敌人 (Voice of America: What is the Meaning of Raising the "Knife" when there are no Enemies in China?), Voice of America (Chinese), January 24, 2015, available at: <http://www.voachinese.com/content/xijinping-hold-killing-knife-20150122/2609047.html>

In its concluding observations (2008), the Committee expressed concern regarding the “absence of systematic registration of all detainees” in the State party.¹⁵ Since its last review, the State party reports the continued development of its online law enforcement and case handling system to systematically track registration of detainees.¹⁶ In a subsequent letter to the State party (2010), the Rapporteur for Follow-up requested additional information regarding whether specific categories of information are tracked in this system. This information has not been provided in the 2014 report.

To further pursue and follow-up on this issue, the Committee may wish to ask:

- Does the detainee registration system record:
 - actual time of the detainee's loss of freedom?
 - time of formal custody or arrest?
 - name of other officers or personnel who accompanied the detainee to the detention facility under an official capacity?
 - name(s) of the officers who register the detainee?
- How many detainees are currently registered under this system, and how does this number compare with the number of detainees that were registered nationally at the time the new system was implemented?
- How many detention facilities are included and what proportion of the total number of detention facilities nationally does this represents?
- What is the geographic breakdown of the facilities participating in the system?

Additional information is also needed on:

- measures taken to ensure security and confidentiality of health data stored in this registration system, and
- access to that information by family and independent medical examiners to such health data.

Independent Monitoring Mechanisms [Articles 2, 11, 12]

In its concluding observations (2008) and follow-up process, the Committee also expressed concern regarding the lack of an effective *independent* monitoring mechanism on the situation of detainees.¹⁷

In its periodic report (2014), as part of oversight and safeguard measures to prevent occurrences of torture, the State Party points to oversight by community organizations, public opinion, and popular masses, including families of prisoners and unscheduled inspection tours by deputies to people's congresses.¹⁸ The State party further reports that, since 2009, the Ministry of Public Security has been promoting the opening of criminal detention facilities to the public and requiring criminal detention

¹⁵ *Concluding Observations*, ¶ 11(b)

¹⁶ *2014 State Report*, ¶ 31

¹⁷ *Concluding Observations*, ¶ 11(e)

¹⁸ *2014 State Report*, ¶ 57

facilities to accept public oversight by convening meetings with relatives of persons in custody and their lawyers, and inviting visits by news media.¹⁹

To assess the impact of these oversight and safeguard measures, additional information is needed on:

- Which specific community organizations are involved? What is the total number of such organizations, and what is their presence in the prisons (e.g. numbers, locations)?
- What is the process for opening the criminal detention facilities to the public, including procedure, times, and public dissemination of this information?
- How do these organizations exercise their oversight function? How are input, feedback, and suggestions offered by these community organizations and the public are collected, reviewed, and responded to by the criminal detention facilities? How many unscheduled inspection tours of detention facilities have been undertaken by the deputies to the people's congresses during the reporting period?

III-treatment of Detainees

Investigations into Complaints of Abuse [Articles 12, 13]

In light of the State party's confirmation that "information on detention and custody and ill-treatment...does not constitute state secrets as defined by law,"²⁰ the Rapporteur for Follow-up's letter (2010) requested information on complaints of abuse submitted by detainees, how many such complaints were investigated and by whom, and how many led to prosecutions and with what outcomes.

The State party reports that "[f]rom 2008 to the end of 2011, the procuratorial authorities handled 158 cases of detainee abuse, involving 191 persons and also that a total of 245 individuals were convicted for abusing detainees during the same period.²¹ The periodic report (2014) further provides one specific example of a prosecution for detainee abuse.²²). With respect to administrative detention facilities only, the State party also references reporting procedures for accusations of maltreatment under Article 29 of the Regulations on Administrative Detention Facilities.²³

In order to put these statistics and case example in a meaningful context, information is needed on the total number of complaints of abuse submitted. The Committee may therefore wish to request specific information on:

- How many complaints of abuse have been submitted by detainees?
- How many of these complaints have been investigated?
- Who investigated these complaints?
- How many of these complaints led to prosecutions and what were their outcomes?

¹⁹ 2014 State Report, ¶ 64

²⁰ State Party Follow-up Response, section 5(a)

²¹ 2014 State Report, ¶ 72, 74

²² 2014 State Report, ¶ 73

²³ 2014 State Report, ¶ 76

- What punishments did perpetrators receive?
- What forms of redress were provided to the victims?
- Of these complaints, how many were allegations of torture or ill-treatment? How many of these allegations led to investigations and what were the outcomes for the detainees and perpetrators?
- What measures are in place to ensure the confidentiality of parties reporting ill-treatment under the administrative detention regulations?

Deaths in Detention [Article 11]

The Committee's observations further expressed concern regarding the high number of deaths in custody.²⁴

The State party's follow-up response (2009) described the guidelines and process for handling instances of unnatural deaths in custody.²⁵ However, in order to assess the effectiveness of the implementation of these measures, information is needed regarding the number of complaints received, number of investigations, outcomes of such investigations and punishments meted out for convictions.

The Committee may therefore wish to request specific information on:

- How many instances of unnatural deaths in detention were identified and investigated during the reporting period?
- What were the outcomes of those investigations? What penalties have been imposed on perpetrators? What information and remedies have been provided to family members of the victims?

Secret Detention Centers [Articles 2, 11]

In its concluding observations (2008), the Committee expressed concerns about allegations that secret detention facilities exist that are used to detain petitioners and emphasized that the State party should investigate, disclose the existence of any such facilities and the authority under which they have been established, and make reparations to the victims of enforced disappearances where appropriate.²⁶

In its follow-up response to the Committee (2009), the State party notes that, under its Criminal Law (1997), officials who abet or provide consent or tacit consent to acts of torture by private citizens are subject to joint-liability for those offenses.²⁷

To further pursue and follow up on this issue, the Committee may wish to ask:

- How many private citizens have been prosecuted for illegally operating secret detention facilities (disaggregated by location) during the reporting period? What were the punishments meted out for convictions?

²⁴ *Concluding Observations*, ¶ 12

²⁵ *State Party Follow-up Response*, section 2

²⁶ *Concluding Observations*, ¶ 14

²⁷ *State Party Follow-up Response*, section 16

- What steps and measures has the State party taken to address the continued private detention of its citizens in illegal facilities?
- How many officials were jointly prosecuted for acts of torture by private citizens during the reporting period and what were the outcomes of these cases?

Use of Violence in the Implementation of the Population Policy [Articles 2, 12, 16]

In its concluding observations (2008) and follow-up process, the Committee raised concerns regarding the use of violence in the implementation of the population policy.²⁸ In its follow-up response to the Committee (2009), the State party cites one example of officials in Linyi city who had violated the law in carrying out family planning activities and had been punished in accordance with the law.²⁹ The State party further reports that the National Population and Family Planning Commission has offered systematic and targeted training to review the lessons from these cases and correct activities that many infringe on people's rights.³⁰

To further pursue and follow-up on this issue, the Committee may wish to ask:

- What is the total number of cases annually against officials for illegal actions related to family planning activities that have been investigated and prosecuted during the reporting period?
- What steps have been taken with respect to prevention, complaints, investigation, prosecution, and punishment in response to the alleged use of coercive and violent measures to implement the population policy?

State Compensation [Article 14]

In its concluding observations (2008) and follow-up process, the Committee expressed concern with the "extremely small numbers of cases" in which individuals received compensation under the State party's State Compensation Law.³¹ The State party's periodic report (2014) references an amendment to this law that included new procedural options for compensation and a broadened definition of harm to include mental injury.³² The State party further points to related interpretations by its highest court clarifying procedures and conditions for filing such claims and annual standards for calculating compensation.

To better understand the impact of these changes on its prior concerns, the Committee may wish to ask:

- How many state compensation cases related to torture have been initiated since the amended provisions went into effect and how many resulted in compensation?
- Of those cases, how many involved compensation for psychological harm and what were the range of awards for successful cases?

²⁸ *Concluding Observations*, ¶ 29

²⁹ *State Party Follow-up Response*, section 13

³⁰ *Id.*

³¹ *Concluding Observations*, ¶ 30

³² *2014 State Report*, ¶ 80-84

Training Measures [Article 10]

Finally, in the State party's follow-up response to the Committee (2009) and periodic report (2014) it describes enhanced training of police, public security organs, and the enforcement of case management measures.³³ HRIC notes that the State party has provided detailed and random statistics about the number of individuals, hours, courses, and meetings related to these trainings.³⁴ However, to put these statistics in a meaningful context it is important to know the size of the target constituency, as well as information about the impact of these trainings on changing behavior and practices.

In order to better understand the impact of these trainings and to advance more effective efforts in the future, the Committee may wish to ask:

- What is the total number of individuals in each targeted training group (e.g., law enforcement officers, detention personnel, judges, etc.)?
- What is the overall size of target groups and percentage of those trained?
- What measures have been taken to monitor and assess impact of these trainings, for example whether baselines on knowledge and awareness of content were gathered, what data was collected on subsequent use of trainings by participants and changes in behavior following training, and how knowledge is updated and refreshed following trainings? Furthermore, what is the role, if any, of NGOs in these efforts?
- What kinds of instruction and training have been provided to medical personnel who are in contact with detainees, including the detection of signs of torture and ill-treatment, pursuant to international standards and under the Istanbul Protocol?

HRIC wishes to thank the Committee for the opportunity to provide this input and looks forward to making a full parallel submission in advance of the Committee's review of the State party.

³³ *State Party Follow-up Response*, sections 1, 9, and *2014 State Report*, ¶ 50-55

³⁴ *2014 State Report*, ¶ 50-55