**NGOs Report:**

**The Chinese Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Aspect of Rule of Law**

**Submitted jointly by**

China Society for Human Rights Studies（CSHRS， in special consultative status with ECOSOC）

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1. We’ve noticed that, China has implemented the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture) since 1988. From then on, China has always been conscientiously ensuring compliance with obligations of the convention and vigorously promoting anti-torture legalization. The domestic human rights condition has also been continuously improving at the same time.

2. First, China has made “torture” incriminated in line with the aim, spirit and relevant provisions of the Convention against Torture, and has been trying to legalize the “torture”. Although the definition of “torture” in Chinese Criminal Law is different from that in the Convention against Torture, and there is no charges system of “torture”, the essence is consistent with the convention.

(a) The Criminal Law sets up 7 charges directly related to torture by means of 6 special provisions(including articles of 238, 245, 247, 248, 254, 443) to detail the regulations in the convention.

(b) The subjects of crimes include both general and special ones(i.e. the subjects of the crime of retaliation or frame are state organ functionaries, the subjects of the crime of maltreat of subordinates are military officials).

(c) Crimes could not only possibly be some kind of behaviors directly “committed” by executants, but also be “inciting”(semantically including positive instigation and negative consent or acquiescence) others to commit torture acts, such as the crime of subjecting prisoners or internees to battery or corporal punishment.

(d) General subjects and special subjects can both commit a crime concerning torture, and an aggravated punishment or heavier punishment shall be given to special subjects. For example, the aggravated punishment given to a state functionary who takes advantage of his office authority to unlawfully detain another person, and the aggravated punishment given to a judiciary functionary who abuses his power of office and illegally subjects another person to a body search.

(e) Besides the punishment to offense of act, the aggravated punishment given to consequential offense can even be applied to felony of death penalty, such as judiciary functionaries extorts confession by torture or extorts testimony by means of violence, or, the supervising or administering persons of a supervising or administering organ such as a prison, bride well or house of detention subjects prisoners or internees to battery or corporal punishment, if deformity or death of another person is caused, the offender shall be decided a crime or given a heavier punishment according to the crime of willful and malicious injury and offence of intentional killing.

(f) If there were any tortures when committing a crime, there could be combined punishment for several crimes, for example, as stated in article 42 of the Criminal Law Amendment (9), 2015, whoever organizes or forces any other person or persons to engage in prostitution, and commit other criminal act of killing, injuring, raping or trafficking, shall be punished according to the provisions of combined punishment for several crimes.

(g) There are types of direct and indirect（such as instigators ） principal offenders, and accomplices in the Criminal Law, so act of torture, trying to commit torture, ordering to commit torture or conspiracy of torture are all actually covered by Chinese Criminal Law, there is no omission of act types.

(h) According to principles of constitution of a crime, any acts conforming to the definition of “torture” in the Convention against Torture, even though not covered by the charges concerning torture in the Criminal Law, could possibly be punished because of other crimes. For example, the Criminal Law Amendment (9) has abolished death penalties in 9 charges, besides, there is another added regulation, such as: whoever is responsible for the minors, the elderly, the sick, the disabled, subjecting persons under his guardianship and nursing duties to tortures, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

3. Secondly, some important legislative improvements on criminal procedure and judicial implementation work have been made consequently. In 2012, China has amended the Criminal Procedure Law, the provisions added and amended are 30% of former provisions. The whole guideline of this amendment, with the aim of limiting prosecuted power as well as protecting the rights of suspects of crime, adapted to international standards, and made significant breakthrough in many aspects. For example, “respecting and protecting human rights” had been written in General Provisions, of the Criminal Procedure Law, that transferred the idea of criminal procedure from over-weighting attacking crimes to laying equal stress on both attacking crimes and protecting human rights. There were institution constructions in Lawyers’ system, legal evidence system and mechanisms of forbidding confession extortion. For example, China has entrenched the right to the privilege against self-incriminated and added to completed the rules of illegal evidence exclusion, and has regulated to use video or tape to record in the process of interrogation, now China has primarily established a comprehensive mechanisms of forbidding confession extortion. Meanwhile, China has regulated that the policemen should serve as a witness at court, and has completed regulations about the legal status of defendant and added the right of court to decide compulsive medical treatment and concerning procedures, and China has restricted the circumstances of not notifying the family after detention to avoid impeding the investigation only to suspects of crime of endangering state security and terrorist activities, in favor of keeping investigation agencies’ abuses of undercover detention and arrest within limits. For the implementation of the Criminal Procedure Law, the judicial authority also introduced some related specific provisions. For example, in August, 2015, the Supreme People's Procuratorate regulated so called "Eight Prohibitions" to the investigation on power-abuse cases, which includes “any random preliminary investigation or mandatory measures taken to restrict the personal, property rights of the object of investigation during the investigation is strictly prohibited”, “interrogation is strictly prohibited in the process of non-synchronous audio and video”, “any torture and other illegal behaviors of evidence collection are strictly forbidden”, “it is strictly prohibited to prevent or hinder lawyers to meet with the suspect”, “it is strictly prohibited to illegally monitor others in designated residences” and so on.

4. Besides, China has amended a part of provisions of the Law of the People's Republic of China on Prison, Law of the People's Republic of China on Lawyers, Law of the People's Republic of China on the Protection of Minors, Law of the People's Republic of China on the Prevention of Juvenile Delinquency, Law of the People's Republic of China on Public Security Administration, Law of the People's Republic of China on State Compensation, of the People's Republic of China on People's Police, and so on. And besides, Regulation on Detention Facilities and Measures for the Implementation of the Regulation on Detention Facilities and other administrative regulations and department regulations have come into force in 2012. In 2014, the Administrative Procedure Law of the People's Republic of China has got amended for the first time in 24 years. It regulates that the administrative organs and their functionaries can’t intervene and impede courts to deal with administrative cases, and brings in centralized jurisdiction and hierarchical jurisdiction, setting several courts to handle administrative cases cross administrative regions, and reduces intervention in administrative trial from local government, and improves the level of adjudication supervision of the procuratorate.

5. We’ve noticed that, in the light of the changes of legislation against torture, a series of significant actions have been taken, in law enforcement, judicial activities and legal supervision.

(a) China has officially annulled 58-year “system of *Laojiao*”, the system of reeducation through labor, in 2013. In 2011, the Supreme People's Court and other 10 Ministries and Committees conducted pilot reforms of system of *Laojiao* in four cities, and the system of *Laojiao* was replaced by correctional education to illegal acts. In early 2013, politics and law committees in many cities ceased examination and approval for *Laojiao*, and up to October of 2013, there were 1.665 million personnels of community correction and 1.007 million released personnels of correction from place to place.

(b) China has improved the structure of lawyer resource distribution, and has realized full coverage of lawyers for the first time. China has resolved the problem that there is no lawyer in 174 counties by means of founding law firms and selecting outstanding lawyer volunteers. At the end of 2014, there has been 271 thousand lawyers, 22 thousand law firms, and 667 thousand criminal lawsuits in 2014.

(c) Lawyers’ rights to practice have been fully guaranteed. Since the implementation of new Law of the People's Republic of China on Criminal Procedure, Ministry of Public Security, Ministry of Housing and Urban-rural Construction, National Development and Reform Commission, the Supreme People’s Court and the Supreme People’s Procuratorate have severally published some specific provisions to solve the problem of the difficulties for lawyers to meet, to access to the files, to investigate and collect evidence, and to question and debate on relevant issues during their practicing, such as the Standards of the Construction of Detention Centers, Provisions on the Protection of the Rights of Lawyers by Law and Proposals on the Establishment of A Sound Working Mechanism to Prevent Miscarriages of Justice in Criminal. Meanwhile, they also have launched a reservation system of lawyers’ meeting, and been trying to consummate lawyers’ rights to practice by law during the investigation, prosecution and trial. In 2014, the number of arranging meetings of all the houses of detention has been over 1 million. There was no any circumstance that lawyers couldn’t meet their clients in legal limit of time. Many houses of detention have launched web platforms of reservation, and 98.7% of houses of detention all over our country have published contact number to public society, 95.8% of reservations can be arranged by phone calls. Ministry of Public Security has revised the Provisions on the Procedures for Handling Criminal Cases by Public Security Organs, and has detailed lawyers right to acceptance of authority, right to know cases, right to meet and right of correspondence. Public security organs have actively organized topic trainings in order to raise their consciousness on procedure, evidence and human rights protection, and try to reduce or preclude issues that infringed lawyers’ rights in practice. In the first half of 2015, procuratorates nationwide have served more than 2200 applications for interviewing and 110000 applications for file reviews in investigation, and have proposed to the departments concerned from defendants and agents more than 400 cases about impeding litigation rights.

(d) The legal aids have been further improved. In July, 2014, Ministry of Public Security proposed 16 items of convenience-for-people measures and benefit-for-people measures, in which there was a requirement that those large and medium cities of appropriate conditions should establish legal aid work stations in houses of detention. So far, more than 1700 houses of detention have built work stations. In June, 2014, General Office of the CPC Central Committee and General Office of the State Council printed and distributed Opinion on Issues concerning Improve the Legal Aid System.

(e) The mode of preventing extortion of confessions by torture is transferring from exclusion by investigation and verification afterwards, to prevention ahead of the event. Since August, 2012, the Supreme People’s Procuratorate and Ministry of Public Security combined with Litigation System and Judicial Reform Center of Renmin University of China and other NGOs, have conducted tests in many cities around China about: changing actively video recording to passively video recording, and making recording be a restrict manner of questioning personnel. Parts of provincial procuratorates have realized three-level network, and CCRs in province-level procuratorates can supervise the questioning records of basic-level procuratorates. Some cities have set up secret petition boxes in the toilet of house of detention, such as house of detention of Wuhu City. And some cities have conducted tests on making timetables of detain limit, such as procuratorate of Jinxian County, they provided notifications of crime suspects’ rights and duties to detainees when arraigned, and gave details and explanations of detention time limit to them. Police representatives of about 20 provinces and cities were received training on questioning, they didn’t request suspects to “tell the truth and confess” any more, but on the contrary, they allowed them to lie, then pointed out the flaws. All the successful experiences of these tests have been extended nationwide.

(f) Misjudged cases have been corrected, and the idea of “*in dubio pro reo*” has been widely carried out. In 2014, the Supreme People’s Court corrected 12 important misjudged cases of courts nationwide, including Yang Botao Case, Zhang Guangxiang Case, Nianbin Case, Wang Yuansong Case, Huge Jiletu Case, and so on, and most clients set free claimed that they got extorting confession by torture or by inducement. These 12 cases finally obtained judgments revised or withdraw under the principle of “*in dubio pro reo*”, which gets more and more acceptance in public security organs and procuratorate organs. In 2014, more than 1000 cases got revised by courts all over our country according to retrial procedures.

(g) Overdue custody cases have been cleared. Up to 30th, April, 2013, there were 1845 cases involving 4459 persons who were detained above 3 years and not yet judged. 1766 pieces of these cases involving 4299 persons have been cleared, and most of the rest have been put into new trial procedures.

(h) Cases which lawyers accusing organs impeding their rights to criminal litigation have been rectified. Procuratorates have been seriously exercising their supervision obligations on judicial organs impeding lawyers’ rights. From January, 2013 to June, 2015, there have been 4109 cases about lawyers’ accusations, and 3372 cases have gotten informed and revised.

6. We’ve noticed that, considerable improvements of autonomous legalization of judiciary have been helpful and effective for realizing the goal of the Convention against Torture. China is converting from scattered and regional improvement of human rights status to integrated top-level design of legal protection of human rights. In 2012, the report of the Eighteenth National Congress of the Communist Party of China drew the outline of the vision of pushing on the human rights status according to rule of law: the rule of law should be fully implemented as a basic strategy, a law-based government should be basically in function, judicial credibility should be steadily enhanced, and human rights should be fully respected and protected. In 2013, the “Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform” in the Third Plenary Session of the 18th CPC Central Committee proposed an important reform goal of “improve the judicial system to protect human rights”, and requested that “prohibit extorting confession by torture, corporal punishment and maltreatment, and strictly implement rules that illegal evidences are not adopted, gradually reduce the number of charges that could lead to the death penalty”, “abolish *Laojiao*”, “give full play to the important role of lawyers in safeguarding the legitimate rights and interests of citizens and legal persons in accordance with the law”. The fourth Chapter “Guarantee judicial fairness, raise judicial credibility” of the “Decision of the Central Committee of the Communist Party of China on Some Major Issues concerning Comprehensively Moving Governing the Country According to the Law Forward” in the Fourth Plenary Session of the 18th CPC Central Committee, specially listed out the fifth section “Fortify judicial safeguards of human rights”, and stressed “Protection of Five Rights”, mentioned as “Strengthen institutional protections of parties’ and other litigation participants’ right to know, to make comments , to defend and debate, to make requests, and to appeal in the course of litigation procedures”. China has started the judicial reform process under integrated top-level design. For example, the Supreme People's Court has established circuit courts to trial major cross administrative divisions cases, and has established People’s Courts and People’s Procuratorates whose jurisdiction extends beyond administrative divisions in favor of excluding any intervention to trial and procuratorial work and ensuring independent and impartial exercise of judicial and procuratorial powers in accordance with the law.

7. In the view of development, China has made great progress implementing the Convention against Torture in legal system in recent years, and has performed obligations in convention. However, the practice of prohibiting torture is still somehow restricted historical tradition, domestic conditions, period required of implementation of measures and so on. Top-level designs systematically and programs the rule of law protection system are expected.

8. We propose that China could establish socialist legal system with Chinese characteristics, and amend related laws and improve the legal system against torture, combining especially the contents of international conventions and the present situations in social transformation, to attack all kinds of torture acts under the law. For example, “charge of torture” is expected to be set up when the conditions are appropriate. While making construction of state security and public security, eg., a *Anti Terrorism Law* is proposed to be made as soon as possible, with coordination of state security and human rights protection.

9. We propose that speeding up system construction be made, to limit administrative powers and oversight of these powers. Powers should be clearly defined by law, and administrative agencies can’t set any authorities beyond the law, if there is no regulations of laws. No decisions should be made to derogate the rights and interests or add duties of citizens, legal persons and other organizations. The government legal counsel system is expected to be actively practiced, as well as reduction of types of law enforcement team, and overcoming privileged thinking, firmly opposing and punishing law enforcement and cruel law enforcement. It is expected to complete linkage mechanisms between administrative law enforcement and criminal justice, and consummate case transfer standards and procedures, establishing structures to share information, reporting case details and transfer cases among administrative law enforcement agencies, public security agencies, prosecutorial agencies and trial agencies. There is more to be done to strengthen constraints over internal governmental power, consummate internal supervision to government’s departmental-level and specific supervision, and improve supervision of higher-level agencies over lower-level agencies, as well as establish regularized supervision systems. Judicial supervision systems should be improved for the implementation of for administrative compulsory measures that touching upon citizens' rights and interests in personality and property, as well as the system of procurates’ supervision and correction to administrative agencies’ acts or omissions. It is proposed to enact legislation of the Law of the House of Detention in time, and timely start the amendment of the Public Security Administration Punishment Law and so on.

10. We propose that, great efforts be made to promote judicial reform, improving the judicial system on torture prohibition, and to reform trial-centered litigation system, improving the laws concerning doctrine of a legally prescribed punishment for a special crime, the rule *in dubio pro reo*, and principle of illegal evidence exclusion, so as to guarantee the facts evidences from investigation, examination and prosecution be amenable to any laws. It should be implemented fully the system of final judgment and ending litigation, and put “separating litigations from petitions” into practice, in order to guarantee litigants’ petition rights. As to petitions against effective judgments and verdicts of judiciary, it is suggested be adopted into lawyer system gradually. Those petitioners who can’t employ lawyer should be take into the range of legal aid. The punishment execution system should be improved. It is proposed to clarify the authorities of each level of judiciary, and improve internal supervision mechanisms.

11. We propose that, improvement is needed for a better mechanisms for lawyers to defend their rights in practicing and institutions to punish them for breaking the rules, and it is necessary to revise “Administrative Measures for the Practice of Lawyers” in time, to further clear the border of practicing behaviors, and regulate lawyers behaviors on meeting clients and participation in trial, and to further improve legal remedies and assistance mechanisms for lawyers’ rights, as well as to further improve disciplinary punishment institutions to complete the supervision system of lawyers’ practice.

12. We propose that, further improvement should be made for good supervision on law enforcement and judicial activities, by developing the supervision institutions of judicature and society on administrative organs, improving remedial and accountability mechanisms, strengthening the supervision of law enforcement and judicial activities concerning torture between higher-level organs and lower-level organs as well as among organs, guaranteeing media and people’s participation in the administration of justice, and create a mechanism that keeps the judiciary “in the sunshine”.

13. Additionally at last, we propose further improvement of the linkage mechanisms concerning torture prohibition both in international laws and domestic laws, and of strengthening the cultivation and education of consciousness on torture prohibition.

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**China Society for Human Rights Studies**

**NGO in consultative status with ECOSOC of the United Nations**

**Chinese Name**： 中国人权研究会

**English Name**： China Society for Human Rights Studies（CSHRS）

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The current Director of CESHR is Prof. Fu-Zitang, who is the President of SWUPL and the Co-director is Prof. Zhang-Yonghe. And now CESHR has permanent advisory boards in Charged with the academic and degrees judgments independently. In addition, the center has 3 secondary branches as the department of integrated administration. Moreover, 6 working-groups have been founded in CESHR which is consisted of 19 staffs with Ph.D. degrees and 8 staffs with the overseas educational backgrounds. The CESHR office building occupies over 1000 square meters and the books stored in our library are over 10000 in Chinese edition and over 1000 in other languages. The CESHR has two parallel editorial departments which in charge of *CHINA HUMAN RIGHTS REVIEW* separately in Chinese edition and English edition.

Since 2014, the center establishes the connections with the human rights organizations or other NGOs located all over East Asia, the EU, North America and Latin America and had got the cooperation intentions in memorandum with 5 unions.

The CESHR puts forward the digital construction in order to follow the guidance of national-level information development and strategies. The center is planning to establish an unique digital Human Rights Database integrating the collection-analyses-monitory-practical functions in order to reach the aims as the digital process of the traditional positive evidences and the academic resources, the collection of the propaganda, cooperation and communications and the intelligent controls on the education and training programs. The CESHR is building the first digital library in the human rights areas in China which could promote the studies of human rights in China.

The center persists in the following core principles that the practices make the population of human rights ideas, the education and trainings brings the specialists on HR, the positive investigations service the HR policies-making, and to make the rapid development of human right business in China is one of the CESHR’s purpose.

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