



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/7/Add.5
6 December 1989

Original: ENGLISH

COMMITTEE AGAINST TORTURE

UN LIBRARY

APR 5 1990

UN/SA COLLECTION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

CHINA

[1 December 1989]

1. The Third Meeting of the Standing Committee of the Seventh National People's Congress of the People's Republic of China ratified in September 1988 the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention). On 3 November of the same year, China became a party to the Convention.
2. In accordance with Article 19 of the Convention, the People's Republic of China submits herewith her first report on the implementation of the Convention.

I. IMPLEMENTATION OF THE CONVENTION

3. The People's Republic of China has always attached great importance to protecting the rights of the person and democratic rights of citizens, and is resolute in opposing torture and other cruel, inhuman or degrading treatment or punishment. Over the years China's legislative, judicial and administrative organs have done a great deal of work in ensuring the rights of the person and democratic rights of citizens by law and have achieved prominent results.

4. Article 37 of the revised Constitution of the People's Republic of China, which was adopted on 4 December 1982 at the Fifth Session of the Fifth National People's Congress, clearly stipulates that:

"Freedom of the person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

Unlawful detention or deprivation or restriction of citizens freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited."

5. Article 38 of the Constitution prescribes among other things that "the personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited."

6. Article 131 of the Criminal Law of the People's Republic of China which was adopted at the Second Session of the Fifth National People's Congress on 1 July 1979 stipulates, "The rights of the person, democratic rights and other rights of citizens shall be protected from unlawful infringement by any person or organization. If the circumstances of unlawful infringement are serious, those directly responsible shall be given criminal sanctions."

7. Article 136 of the Criminal Law provides further that:

"It shall be strictly forbidden to extort a confession by torture. Any State functionary who extorts a confession by torture shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Whoever causes injury or disability to a person through corporal punishment shall be charged with the crime of injury and given a heavier punishment."

8. Article 32 of the Criminal Procedure Law of the People's Republic of China, adopted on 1 July 1979 at the Second Session of the Fifth National People's Congress, stipulates that:

"Judicial, procuratorial and investigatory personnel must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the defendant's guilt or innocence and the gravity of his crime. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence and, except in special circumstances, they may be brought in to help the investigation."

9. Article 41 of the Regulations of the People's Republic of China on Administrative Penalty for Public Security which came into effect as of 1 January 1987 prescribes that:

"In implementing these Regulations, the public security officials should strictly abide by laws and disciplines and impartially implement the provisions, allowing no favouritism or fraudulent practices. It is forbidden to beat or abuse, mistreat or insult the offender. An administrative disciplinary sanction shall be incurred against those who break the above-mentioned provision. If such actions constitute a crime, criminal responsibility shall be investigated."

10. In order to ensure that the legitimate rights and interests of citizens are not violated in judicial procedure, legislative measures have been adopted to set forth the principle of independence of the judiciary in exercising legal function and the relations of mutual checks and supervision among the judicial authorities.

11. Article 3 of the Criminal Procedure Law provides that:

"The public security organs shall be responsible for investigation, detention and preliminary examination in criminal cases. The people's procuratorates shall be responsible for approving arrests, conducting procuratorial work (including investigation) and initiating public prosecution. The people's courts shall be responsible for adjudication. No other organ, organization or individual shall have the right to exercise such powers.

In conducting criminal proceedings, the people's courts, the people's procuratorates and the public security organs must strictly observe this Law and any relevant stipulations of other laws."

12. Article 8 of the Criminal Procedure Law further stipulates that "cases in the people's courts shall be heard in public, unless otherwise provided by this Law. A defendant shall have the right to defence, and the people's courts shall have the duty to guarantee his defence."

13. Article 2 of the Regulations of the People's Republic of China on Arrest and Detention, promulgated for implementation of 23 February 1979 provides that "no citizen of the People's Republic of China may be arrested except by decision of a people's court or with the approval of a people's procuratorate."

14. Article 5 of the aforementioned Regulations on Arrest and Detention further provides that:

"When a public security organ arrests an offender, it must hold an arrest warrant and announce the arrest to the person to be arrested. Within 24 hours after the arrest, the public security organ, the people's procuratorate or the people's court shall notify the family of the arrested person of the reason for arrest and the place of custody, except where notification would hinder the investigation or there is no way to notify them."

15. In ensuring that the rights of the person and democratic rights of citizens are not violated in normal life, work, study and political activities, the related Chinese laws protect as well the legitimate rights and interests of prisoners that are serving penalty under the criminal laws. In China criminal penalty does not aim solely at punishing criminals. It combines punishment with reform so that criminals may break with their evil past and again become law-abiding citizens useful to society. For this purpose, the State helps prisoners to understand the crimes for which they are sentenced mainly by way of education and reform through labour during their service of penalty. Besides the State has formulated laws against extortion of confessions by torture or ill-treatment by corporal punishment by the administrative staff of prisons.

16. The Regulations on Labour Reform of the People's Republic of China promulgated for implementation in early 1954 provides that "the labour reform institutions shall exercise strict regulation upon counter-revolutionary offenders and other criminal offenders during their imprisonment and allow no favouritism or fraudulent practices. Maltreatment and corporal torture are prohibited". The Regulations provide further among other things that "inmates should be put in mixed wards, single cells, female wards or patient wards respectively according to the actual situation. Female inmates should be placed under the supervision of female jailers." "The labour reform institutions shall set up clinics, hospitals or other medical agencies compatible to their own size and equipped with necessary medical facilities," and "frequently take care of inmates' bathing, haircut, laundry, sterilization and epidemic prevention and other sanitation matters." "Fees arising from medical care, education, sport and entertainment of inmates shall be covered by the labour reform institutions pursuant to the prescribed standard and according to the actual need."

17. In May 1983, the State Council of the People's Republic of China made a decision to transfer the administration of prisons and other correctional institutions from the Ministry of Public Security to the Ministry of Justice mainly for the purpose of establishing effective checks and balance in the State judicial system among the public security organs, the procuratorates, the courts and the judicial administrative organs, thereby avoiding abuse of power by any such authorities.

18. In January 1988, a senior official of China's Ministry of Justice made a statement in the People's Daily, China's leading newspaper, reiterating humanitarian policy pursued by China's labour reform institutions in treating inmates. Beating, scolding or corporal punishment is prohibited strictly and the inmates' medical care, safety in production and labour protection effectively guaranteed.

19. The State also pays great attention to supervision of prisons. In particular, it has strengthened legal supervision of execution of court judgement or decision of criminal cases and activities in prisons and reform institutions. There are 59 detached procuratorates and more than 580 permanent procuratorial groups in such places, where they investigated and handled in 1988, 159 cases of corporal punishment or maltreatment of criminals undergoing reform through labour and persons undergoing rehabilitation through labour and cases of favouritism or fraudulent practices, unauthorized release of inmates and dereliction of duty. Meanwhile, procuratorates dealt seriously with cases of complaint filed by such criminals and persons which helped rectify erroneous or improper court judgements or decisions passed against 569 persons undergoing reform through labour and 60 persons undergoing rehabilitation through labour.

20. The State safeguards by law the rights of citizens to make charges or complaints against, or exposures of any State judicial functionary or other functionary for violation of the law by inflicting on citizens torture and other cruel, inhuman or degrading treatment or punishment and punishes in accordance with the law those directly responsible for such violations.

21. Article 41 of the Constitution states that:

"Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any State organ or functionary. Citizens have the right to make to relevant State organs complaints or charges against, or exposures of, any State organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of the facts for purposes of libel or false incrimination is prohibited. The State organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them."

22. Article 6 of the Organic Law of the People's Procuratorates of the People's Republic of China which was effective as of 1 January 1980 stipulates that: "People's procuratorates shall, in accordance with the law, protect the citizens' right to lodge complaints against State functionaries who break the law and shall investigate the legal responsibility of those persons who infringe upon other citizens' right of the person and their democratic and other rights." Pursuant to this provision, the State has established the procuratorial department in charge of legal and disciplinary affairs in the Supreme People's Procuratorate and such corresponding agencies in people's procuratorates at various local levels, which are exclusively devoted to handling offences of infringing upon other citizens' right by State functionaries and determining through the placement of a case on file for investigation whether to initiate a prosecution.

23. According to the report submitted to the First Session of the Seventh National People's Congress by the Supreme People's Procuratorate, China's procuratorates at various local levels further strengthened the work of law and discipline inspection and investigated and dealt with, in accordance with the law, more than 30,000 offences of infringing upon other citizens' rights of the person and their democratic rights from 1983 to 1987, of which over 20,000 cases were brought to the court.
24. According to the report submitted to the Second Session of the Seventh National People's Congress by the Supreme People's Procuratorate in 1988, China's procuratorates at various local levels investigated and dealt with, in accordance with the law, more than 4,700 cases of infringement upon other citizens' rights of the person and their democratic rights by State judicial functionaries or other State functionaries.
25. The State also attaches great importance to the supervision of State administrative organs and their functionaries. In 1986, the Eighteenth Session of the Sixth National People's Congress made a decision regarding the establishment of the Ministry of Supervision, one of whose important tasks is to supervise and investigate acts of State administrative organs and their functionaries that violate the State law or administrative discipline, and give them certain administrative penalties or make suggestions concerning administrative penalties or legal punishment to the departments concerned.
26. The State has also adopted a series of legislative measures so that citizens can protect their lawful rights and interests through judicial channels and be compensated in accordance with the law when their rights and interests have been illegally infringed by judicial or administrative functionaries.
27. Paragraph 3 of Article 41 of the Constitution provides that "citizens who have suffered losses as a result of infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law."
28. Article 42 of the Regulations on Administrative Penalties for Public Security stipulates that "the public security organs shall admit their mistake to those who are punished by mistake and return fines and confiscated property; in case the legal rights and interests of those who are so punished have been infringed, the loss shall be compensated for".
29. On 4 April, 1989, the Second Session of the Seventh National People's Congress adopted the Administrative Procedure Law of the People's Republic of China. It reaffirms through concrete legal procedures the right of citizens to obtain judicial remedy in accordance with the law if their lawful rights and interests have been infringed.
30. Article 2 of the Administrative Procedure Law provides that "if a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this law."

31. Article 56 of the Administrative Procedure Law stipulates that "in handling administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, it shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people's court considers the person to have committed a crime, it shall transfer the relevant materials to the public security and procuratorial organs."

32. Article 67 of the Administrative Procedure Law stipulates that:

"A citizen, a legal person or any other organization that suffers damage because of the infringement upon his or its lawful rights and interests by a specific administrative act of an administrative organ or the personnel of an administrative organ, shall have the right to claim compensation. If a citizen, a legal person or any other organization makes an independent claim for damages, the case shall first be dealt with by an administrative organ. Anyone who refuses to accept the disposition by the administrative organ may file a suit in a people's court."

33. Article 68 of the Administrative Procedure Law stipulates that:

"If a specific administrative act undertaken by an administrative organ or the personnel of an administrative organ infringes upon the lawful rights and interests of a citizen, a legal person or any other organization and causes damage, the administrative organ or the administrative organ to which the above-mentioned personnel belongs shall be liable for compensation. After paying the compensation, the administrative organ shall instruct those members of its personnel who have committed intentional or gross mistakes in the case to bear part or all of the damages."

34. After the promulgation of the Administrative Procedure Law, the State propagated the law in various forms so that the State organ, the State functionary and citizens in general could understand the importance of the law and be aware of its main contents, thereby effectively protecting the lawful rights and interests of citizens, legal persons and other organizations and promoting the exercise of administrative power by administrative organs in accordance with the law.

35. To establish among all citizens the consciousness of acting in accordance with the law, the 13th Meeting of the Standing Committee of the Sixth National People's Congress adopted the Resolution on Acquainting Citizens with Basic Knowledge of Law and put it into practice in November 1985 so that the masses could get acquainted with and abide by the law and use law as a weapon in combating all sorts of illegal activities and breach of discipline and that the sense of legal system among leading cadres and vast numbers of functionaries could be effectively strengthened and their consciousness of abiding by the law and discipline could be raised.

36. In the report submitted to the 5th Meeting of the Standing Committee of the Seventh National People's Congress in December 1988, the Ministry of Justice stated: Since 1985, about 520 million of 750 million citizens who were supposed to receive legal education have received such education. The three-year work of popularizing legal education among all the people has achieved initial success in strengthening the law consciousness among State functionaries and other citizens and their awareness of the legal system and enabling them to acquire some necessary knowledge of law. The undertaking of such work has played a positive role in the prevention of torture and other cruel, inhuman or degrading treatment throughout China.

37. To prevent and prohibit torture, the State has been strict in selecting and training judicial personnel, medical workers, public servants and other personnel and requires them to have a fairly high standard of professional ethics. In accordance with the law, the State judicial authorities deal with those who act against the law. To facilitate study of international instruments concerning the prohibition of torture by the above-mentioned personnel, the State published in August 1985 "A Survey of United Nations Activities in the Field of Crimes Prevention and Selections of Relative Documents" in Chinese - China's major language, which collected important documents relating to the prohibition of torture. This book was circulated nationwide as one of the principal textbooks for personnel in the public security organs, procuratorates and courts, the judicial administrative organs and other departments concerned.

II. MATERIALS WITH RESPECT TO ARTICLES OF PART I OF THE CONVENTION

38. The act of torture defined by the Convention, which also constitutes a crime under the stipulations of the Criminal Law of the People's Republic of China, is strictly prohibited in accordance with the relevant laws of the People's Republic of China.

39. In addition to the stipulations already cited in Part I of this report, Article 143 of the Criminal Law of the People's Republic of China also provides that:

"The unlawful detention of another person or the unlawful deprivation of his personal freedom by any other means shall be strictly prohibited. A violator shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or deprivation of political rights. In circumstances where battery or humiliation has occurred, the violator shall be given a heavier punishment.

Whoever commits the crime mentioned in the preceding paragraph and causes serious bodily injury shall be sentenced to fixed-term imprisonment of not less than 3 years and not more than 10 years; if he causes a person's death, he shall be sentenced to a fixed-term imprisonment of not less than 7 years."

40. Article 144 of the Criminal Law states that:

"Whoever unlawfully subjects another person to public surveillance, unlawfully subjects another person to a body search or a search of his residence or unlawfully intrudes into another person's residence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention."

41. Article 145 of the Criminal Law states that:

"Whoever, by violence or other methods, including the use of 'big character posters' and 'small character posters', publicly insults another person or fabricates facts to defame him, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or deprivation of political rights."

42. Article 189 of the Criminal Law states that:

"Any judicial functionary who violates the laws and regulations on prison management and subjects prisoners or internees to corporal punishment, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 3 years and not more than 10 years."

43. In 1987, the 21st Meeting of the Standing Committee of the Sixth National People's Congress of the People's Republic of China decided that the People's Republic of China shall, within the scope of obligation it has assumed in the international treaties it has concluded or acceded to, exercise criminal jurisdiction over offences set forth in such treaties. In accordance with this decision, whoever commits the offences defined in the international treaties concluded or acceded to by China, including torture, shall be subject to the jurisdiction of the People's Republic of China under the law.

44. With respect to the specific stipulations of criminal jurisdiction, Article 3 of the Criminal Law states:

"This law is applicable to anyone who commits a crime within the territory of the People's Republic of China, unless the case is covered by special legal provisions.

This law is also applicable to anyone who commits a crime on board a ship or airplane of the People's Republic of China."

45. Moreover, the Criminal Law also provides that this law may be applicable to any foreigner who, beyond the territory of the People's Republic of China, commits a crime against the State of the People's Republic of China or its citizens, punishable by imprisonment of not less than three years, provided that criminal liability of any foreigner who enjoys diplomatic privileges and immunity shall be resolved through diplomatic channels.

46. In accordance with the stipulations of the relevant laws of the State, a public security organ may detain any person who is in the process of committing a crime or is proved by conclusive evidence to be guilty.

47. Article 43 of the Criminal Procedure Law stipulates that:

"When detaining a person, a public security organ must produce a detention warrant.

Within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for detention and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them."

48. Article 48 of the Criminal Procedure Law stipulates:

"If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the people's procuratorate for examination and approval. Under special circumstances, the time-limit for submitting the request may be extended by one to four days. The people's procuratorate shall decide either to approve or disapprove the arrest within three days after receiving the request for approval of arrest from a public security organ. If the people's procuratorate disapproves the arrest, the public security organ shall, upon receiving notification of the decision, immediately release the detainee and issue him a release certificate.

If the public security organ or the people's procuratorate fails to act in accordance with the provisions of the preceding paragraph, the detainee and his family shall have the right to demand his release, and the public security organ or the people's procuratorate shall immediately release him."

49. Article 50 of the Criminal Procedure Law stipulates that:

"When making an arrest, a public security organ must produce an arrest warrant.

Within 24 hours after an arrest, the family of the arrested person or the unit to which he belongs shall be notified of the reasons for arrest and the place of detention, except in circumstances where such notification would hinder the investigation or there is no way of notifying them."

50. In case the offender is a foreigner, the public security organ shall, according to the stipulations of relevant Chinese laws, notify through diplomatic channels the embassy or consular office of his home country in China as soon as possible after his detention or arrest.

51. That everybody is equal before law is one of the fundamental principles of the Chinese law. Whoever, whether a Chinese or a foreigner, is engaged in activities deemed guilty under the Criminal Law of China shall be held criminally responsible. Although China has neither formulated any laws nor concluded any bilateral treaties with respect to extradition, any criminal offender discovered in its territory, on the condition that his unlawful activity is ascertained to be also unlawful and liable for criminal punishment under the Chinese Criminal Law, shall be handled strictly in accordance with the legal principle of aut dedere aut judicare so as to guarantee that the offender is subject to legal punishment that he deserves.

52. Those judicial assistance treaties concluded between China and other countries which contain judicial assistance in criminal matters stipulate in a clear and detailed manner the legal procedure of mutual provision of evidences for criminal procedure and the way and method for mutual provision of laws and materials for criminal procedure and the results of such procedure. In future, China will continue to conclude treaties or agreements with more countries on judicial assistance including that in criminal matters and co-operate as much as possible with all other countries in an endeavour to effectively prevent torture and other criminal offences.

53. As with other criminal offences, so torture, an act which endangers society, has yet to be eliminated completely in China. Due to a weak sense of legal system, the serious influence of privileges and the rather low professional level among some State functionaries, the phenomena of torture still exists in some localities. Therefore, the State has paid great attention to this situation and adopted corresponding measures to redress it. On the one hand, the State continues to strengthen legal education among its functionaries, and on the other, the State improves its various supervisory and procuratorial systems so that once discovered, all those who use torture, no matter in what capacity and for what reason, will be punished pursuant to law. Take the example of investigation into an injury case by Xinxiang Municipal Public Security Bureau of Henan Province on 17 December 1987. In order to extort a confession, six policemen, under the instruction of Wang Weiyang, deputy brigade leader of criminal police, tortured a suspect, thus causing his death from heart failure. On 17 July 1988, the Intermediate People's Court of Xinxiang City sentenced Wang Weiyang to life imprisonment on the charge of "offence of intentional injury" and his accomplices were sentenced to 15-year, 13-year, 7-year and 2-year imprisonment respectively.

54. In addition to various legislative, judicial, and administrative measures banning torture, the State also brings into full play a supervisory role by the mass media, using newspapers, magazines, broadcasting television and other mass media to expose and lash out at unlawful acts. The State propagates by facts the necessity and importance of the prevention of torture and other degrading treatment so as to educate the citizens in conscientious observance of law and in supervision of the work and other conduct of State functionaries to see if they are in compliance with laws and regulations.

55. The whole series of legislative, judicial and administrative measures adopted by the People's Republic of China for the implementation of the Convention are wholly in compliance with the relevant stipulations of the Convention and have yielded marked results. China will continue to work hard to fulfil earnestly its assumed obligation, formulate and strictly implement relevant laws and regulations, and adopt resolute measures to prevent and stamp out torture and other cruel, inhuman or degrading treatment so as to make due contribution to the total elimination of such phenomena and fulfilment of the purposes of the Convention. We will describe in detail our future work and progress in this respect in our next report.
