



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

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COMMITTEE AGAINST TORTURE

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

**Fourth periodic reports of States parties due in 2004**

**Addendum\* \*\***

**CHINA**

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\* For the initial report of China, see CAT/C/7/Add.5; for its consideration, see CAT/C/SR.50; CAT/C/SR.51 and Official Records of the General Assembly, forty-fifth session, Supplement No. 45 (A/45/44), paras. 471-502.

For the second periodic report, see CAT/C/20/Add.5; for its consideration, see CAT/C/SR.251, 252/Add.1 and 254 and Official Records of the General Assembly, fifty-first session, Supplement No. 51 (A/51/44), paras. 138-150.

For the third periodic report, see CAT/C/39/Add.2; for its consideration, see CAT/C/SR.414, 417 and 421 and Official Records of the General Assembly, fifty-fifth session, Supplement No. 55 (A/55/44), paras. 106-145.

\*\* 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.

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## Preface

1. This report comprises the fourth and fifth reports of the People's Republic of China, as submitted in accordance with Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "the Convention").
2. In December 1989, China submitted the initial report (CAT/C/7/Add.5) on the implementation of the Convention, and in October 1992 submitted a supplementary report (CAT/C/7/Add.14) (hereafter "the supplementary report"). The third report (CAT/C/3/9/Add. 2) was submitted in 1999, and was accepted in 2000 for consideration by the United Nations Committee Against Torture (hereafter "the Committee").
3. China's initial report, supplementary report, and second and third reports explained in detail the organization of China's governmental system and administrative, legislative and judicial bodies, its legal structure, and the concrete legal provisions and implementations in respect of preventing torture. The present report reports on the measures taken and the progress achieved in regard to implementation of Part 1 of the Convention since the submission of the third report in 1999, and gives a detailed introduction of China's implementation of the Convention in respect of concerns raised by the Committee during its consideration of the previous report and in its "Conclusions and Recommendations".
4. Part 2 of this report deals with implementation of the Convention in the Hong Kong Special Administrative Region of China, whilst Part 3 deals with implementation in the Macau Special Administrative Region. These parts are compiled by the Hong Kong Special Administrative Region and the Macau Special Administrative Region respectively.

## **PART I**

### **1. New measures and progress relating to the implementation of the Convention**

#### **Article 2**

5. Paragraphs 64-71 of China's supplementary report, Paragraphs 6-7 and 85 of the second report, and Paragraphs 6-10 of the third report remain effective. Since the submission of the third report in 1999, China has taken further effective legislative, administrative and judicial measures to prevent acts of torture.

6. On 14 March 2004, the Second Session of China's Tenth National People's Congress passed an amendment to the Constitution of the People's Republic of China (hereafter "the Constitution"), which clearly stipulated that "the state respects and protects human rights" (Article 33). The Constitution determines principles for the respecting and protection of human rights, and establishes the prominent position given to the protection of human rights in China's legal system and in its national development strategy. It thus opens up extensive prospects for the full development of human rights in China, and is beneficial to their promotion. From the perspective of preventing torture, the inclusion of human rights in the Constitution will further promote the development of concepts, systems and action relating to protection of the legitimate rights and interests of criminal suspects, defendants and criminals. It is thus beneficial to the adoption of further measures to implement the various requirements of the Convention.

7. In order to protect social order, safeguard public security, protect the legitimate rights and interests of citizens, legal persons and other organizations, standardize and ensure that public security organs and the people's police carry out their security administration duties according to the law, on 28 August 2005, the Seventeenth Meeting of the Standing Committee of the Tenth National People's Congress passed the Law of the People's Republic of China on Administrative Penalties for Public Security. This law gives public security organs and the people's police the necessary powers to carry out their security administration duties, whilst at the same time imposing stricter regulation in respect of how police powers are used. In addition, it establishes a special regulation covering the supervision of law-enforcement, strengthens standards and supervision in regard to the actions of the people's police in carrying out the law, and lays down provisions that should be followed and acts that are prohibited when public security organs and the people's police are dealing with cases involving social order. It also clearly defines legal responsibility pertaining in cases where these provisions have been violated, in order to prevent citizens' legitimate rights and interests from being harmed through inappropriate use or even downright misuse of these powers. For instance, Article 21 of the said law stipulates: "Persons who commit acts which offend against the administration of public order and who should be punished by administrative detention in accordance with this law shall not be so punished if one of the following situations obtains:

(a) They have reached age 14 but have not yet reached age 16;

(b) If they have already reached age 16 but have not yet reached age 18 and this is their first offence against administration of public order;

- (c) If they are aged 70 or above;
- (d) If they are pregnant or are breast-feeding an infant of less than one year old.”

8. Article 79 stipulates: “Public security organs and the people’s police should carry out investigations of public order cases in accordance with the law. The use of torture to extort a confession and the collection of evidence through such methods as threatening, enticing or cheating are strictly forbidden. Evidence collected by illegal means is not to be used as the basis for punishment.”

9. Article 112 stipulates: “Public security organs and the people’s police shall deal with public order cases lawfully, fairly, strictly and efficiently; they shall enforce the law in a responsible way and not practice favouritism or engage in irregularities.”

10. Article 113 stipulates: “When public security bodies and the people’s police are dealing with public order cases, they are forbidden to beat, maltreat or insult the person who has offended against the administration of public order.”

11. Article 114 stipulates: “When public security bodies and the people’s police are dealing with public order cases, they should consciously accept the scrutiny of society and its citizens. When public security bodies and the people’s police are dealing with public order cases, where the law is not strictly enforced or where there are violations of the law or breaches of discipline, any unit or individual has the right to report the case to the public security organs or to the people’s procuratorate or an administrative procuratorial body, and to bring charges; the body that has received the complaint or charge should deal with it in a timely fashion according to their duty.”

12. On 28 December 2000, the Nineteenth Meeting of the Standing Committee of the Ninth National People’s Congress passed the Extradition Law of the People’s Republic of China (hereafter “Extradition Law”). According to Article 8 of the Extradition Law, when a foreign country submits an extradition request to the People’s Republic of China, extradition should be refused if it is possible that the person sought will be liable to criminal prosecution or punishment on the grounds of race, religion, nationality, gender, political views or status, or if the person sought might receive unfair treatment during the judicial process on these same grounds, or if the said person has previously been subjected to torture in the requesting country or may be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The above provisions in essence transfer the provisions in Article 3 of the Convention into domestic legal requirements, and have an important significance in respect of preventing subjects of extradition requests from being tortured in the country in question.

13. On 28 June 1999, the Tenth Meeting of the Standing Committee of the Ninth National People’s Congress passed the Law of the People’s Republic of China on the Prevention of Juvenile Delinquency (hereafter “the Law on the Prevention of Juvenile Delinquency”). This law makes provisions regarding such issues as education for the prevention of juvenile delinquency, prevention of juvenile misbehaviours, rectification and treatment of serious juvenile misbehaviours, juveniles’ self-protection against crimes, prevention of juveniles from committing criminal offences again, and related legal responsibilities.

14. In accordance with Article 44 of the Law on the Prevention of Juvenile Delinquency, when investigating the criminal responsibility of juvenile delinquents, the guidelines of enlightenment, persuasion and reformation and the principle of taking enlightenment as the dominant factor while making punishment subsidiary shall be adhered to. When handling cases involving juvenile delinquency, judicial organs shall guarantee that juveniles exercise their litigation rights, and get legal assistance, and enlighten them on the legal system in accordance with the physiological and psychological characteristics of juveniles and the circumstances under which they commit the criminal offenses. Trials of criminal cases involving juvenile delinquency in a people's court shall be conducted by a juvenile court formed, in accordance with law, by judges who are familiar with the physical and mental characteristics of juveniles or of such judges and people's assessors. No cases involving criminal offenses committed by juveniles who have reached the age of 14 but are under the age of 16 shall be heard in public. Generally, no cases involving criminal offenses committed by juveniles who have reached the age of 16 but are under the age of 18 shall be heard in public either. For cases involving criminal offenses committed by juveniles, no names, dwelling places, photos, nor materials from which people can tell who the juveniles are may be disclosed in news reports, films and television programs and publications. (Article 45) Juveniles who are detained or arrested or who are serving their sentences shall be jailed, administered and educated separately from adults. During the period when juvenile delinquents are serving their sentences, the executing organ shall enforce legal education and conduct vocational and technical training among them. For juvenile delinquents who have not finished compulsory education, the executing organ shall ensure that they continue to receive such education. (Article 46). These stipulations are of benefit to the prevention of use of torture and other cruel, inhuman or degrading treatment upon juveniles.

15. On 16 July 2003, the Fifteenth Session of the Standing Committee of the State Council passed the Regulations on Legal Aid (hereafter "the Regulations"). The Regulations give clear stipulations in respect of the scope, criteria and implementation process for legal aid, as well as the rights and obligations of the various parties involved in legal aid and their legal responsibilities. In this way, it provides an important legal basis for standardization of legal aid work. With regard to implementation of related provisions in the Convention, Articles 11 and 12 of the Regulations are of particular importance. According to Article 11 of the Regulations, in the following circumstances, a citizen involved in a criminal lawsuit may apply to the legal aid body for legal aid on the grounds of economic hardship:

(a) If the criminal suspect, for reasons of economic hardship, has not employed a lawyer after the first interrogation by the investigative body or from the day that compulsory measures are adopted;

(b) If the victim and their legal representative or close relative in public prosecution cases, because of economic hardship, has not enlisted a process attorney from the day of the case being transferred for examination and prosecution;

(c) Private prosecutors and their representatives in private prosecutions who, because of economic hardship, have not enlisted a process attorney from the day when the case is accepted for hearing by the people's court. However, in the following circumstances, when the people's court assigns a defender for the accused, the legal aid body shall provide legal aid and does not need to investigate the economic circumstances of the accused: when a public prosecutor is attending court in a public prosecution case and the defendant has not enlisted a defender; when

the defendant is blind, deaf, dumb, or juvenile and has not enlisted a defender; or when there is a possibility that the defendant may be sentenced to death but he has not enlisted a defender (Article 12).

16. On 18 June 2003, the Twelfth Session of the Standing Committee of the State Council passed Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities (hereafter “the Administrative Measures”, implemented on 1 August 2003), abolishing the system of internment and repatriation. Article 14 Paragraph 6 of the Administrative Measures clearly stipulates that: “Workers at help-stations shall consciously respect the relevant rules and provisions of the laws, regulations and policies of the state, and are not allowed to detain or covertly detain persons receiving help; they are not allowed to beat, inflict corporal punishment on, or maltreat those receiving help or instigate others to do so; they are not allowed to swindle, blackmail or misappropriate the belongings of persons receiving help; they are not allowed to withhold the daily necessities provided for those receiving help; they are not allowed to withhold the credentials or prosecution and appeal documents of those receiving help; they are not allowed to appoint the person receiving help to undertake administrative work; they are not allowed to use the person receiving help to undertake private work for personnel; they are not allowed to take liberties with women”; “those violating the aforementioned regulations such as to constitute a crime, shall be investigated for criminal responsibility according to the law; where such violations are still insufficient to constitute a crime, disciplinary action will be taken in accordance with the law.”

17. After the promulgation of the Administrative Measures, China’s Ministry of Civil Affairs on 21 July 2003 further formulated and promulgated the Implementation Rules for the Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities (implemented from 1 August 2003), which are designed to provide further clarifications on the understanding and application of certain provisions in the Administrative Measures.

18. China’s Ministry of Public Security has formulated and promulgated a series of regulations to ensure that the various law-enforcement activities of the public security organs have even stricter procedures and standards. These regulations are: Procedural Provisions for the Handling of Criminal Cases by Public Security Organs (14 May 1998), Procedural Provisions for the Handling of Administrative Cases by Public Security Organs (26 August 2003), Provisions on the Procedures for the Handling of Administrative Review Cases by Public Security Bodies (2 November 2002), Provisions on Application of Further Interrogation by Public Security Organs (12 July 2004), and Measures for the Administration of Compulsory Drug Addiction Treatment Centres (30 March 2000).

19. To prohibit the use of torture to extort confessions, on 2 January 2001, the Supreme People’s Procuratorate specially issued the Notice on the Strict Prohibition of the Use of Criminal Suspects’ Confessions Extorted by Torture as Evidence for Deciding Cases, requesting people’s procuratorates at all levels to firmly establish a culture of just and civilized law-enforcement, and to put a decisive stop to the use of torture to extort confessions. They must rigorously carry out the relevant legal stipulations regarding the strict prohibition of the use of torture to extort confessions, and must exclude any evidence that may have been extracted by torture. People’s procuratorates at all levels must greatly intensify their efforts in striking at the crime of extorting confessions through torture, and they should decisively investigate the criminal responsibility of the personnel in question, in accordance with the law.

20. On 6 August 1999, the Supreme People's Procuratorate passed the Regulations on Criteria for Filing Cases Directly Accepted, Filed and Investigated by the People's Procuratorates (Trial) (hereafter "the Criteria on the Filing of Cases"). On 20 July 2001, the Supreme People's Procuratorate passed the Criteria for Serious and Especially Serious Cases Involving Dereliction of Duty and Right-Violations Directly Accepted, Filed, and Investigated by the People's Procuratorates (Trial) (hereafter the "Criteria on Serious and Especially Serious Cases"). These two judicial interpretations explained the criteria for filing cases relating to crimes involving extortion of confessions by torture, use of violence to extort testimony, and mistreating of the person under supervision, as laid down in the regulations, as well as the criteria for defining serious and especially serious cases, thus providing a legal basis for the investigation and handling of torture cases.

21. On 30 December 2003, the Supreme People's Procuratorate passed the Regulations of People's Procuratorates to Ensure the Lawful Practice of Lawyers in Criminal Procedures. These regulations were aimed at strengthening the role of lawyers in criminal prosecutions in regard to protecting the legitimate rights and interests of criminal suspects (including not being tortured), and were a more detailed treatment of provisions in related clauses of the Code of Criminal Procedure of the People's Republic of China (hereafter "the Code of Criminal Procedure"), thus making it more explicit and concrete.

22. With regard to problems and links that may easily arise in criminal prosecution activities, the Supreme People's Procuratorate, the Supreme People's Court, the Ministry of Public Security and the Ministry of Security jointly issued the following standardized documents: Regulations on Certain Questions in the Implementation of the Code of Criminal Procedure (19 January 1998), Regulations on Certain Questions Regarding Bailing out for Summons (4 August 1999), Regulations on Questions Relating to the Lawful Application of Arrest Measures (6 August 2001), and Regulations on Questions Relating to the Application of Criminal Compulsory Measures (28 August 2000). The formulation and implementation of these standardized documents have important significance for the prohibition and prevention of misuse or illegal application of criminal compulsory measures and the use of torture during this process upon the party concerned.

23. To prevent and obviate the occurrence of torture and other cruel, inhuman or degrading treatment during the judicial process, China's judicial bodies have adopted a range of other measures.

24. Perfecting supervision mechanisms and ensuring the carrying out of duties in accordance with the law. The Ministry of Public Security has issued a series of internal supervision regulations: Regulations on the Work of Internal Supervision of Law-Enforcement in Public Security Organs (11 June 1999), Regulations on Investigation of Responsibility for Law-Enforcement Errors Committed by People's Police in Public Security Organs (11 June 1999), Measures for the Implementation of the Regulations on Supervision of Public Security Organizations (2 January 2001), and the Rules on Examination and Appraisal of Public Security Organs' Law Enforcement Quality (10 October 2001). Together these form a relatively systematic and comprehensive system for the supervision of law enforcement and responsibility for errors.

25. On 15 August 2003, the Ministry of Public Security arranged and initiated a special extended detention clear-up activity in public security organs nationwide. By 31 December 2003 the full clear-up was completed. According to the statistics for 31 October 2005, links in the public security organs dealing with cases did not have any persons under extended detention.

26. In May 2003, the Supreme People's Procuratorate decided to begin a special nationwide initiative to clear up and correct the problem of extended detention. The procuratorial bodies determined to begin with themselves, and to first solve the question of extended detention among the various procuratorial links. In July of that year they effected a situation in which procuratorial links had no cases of extended detention. They earnestly carried out their legal supervision duties, and urged other government and judicial organs to initiate clear-up drives, giving opinions on procuratorial correction 274,219 times and urging the correction of 25,736 people. At the same time, they strengthened construction of relevant mechanisms, and on 24 November issued Certain Provisions Regarding the Prevention and Correction of Extended Detention in Procuratorial Work (hereafter "Certain Provisions"), establishing such systems as notification of the time-limit for detention, reporting the conditions of detention, indicating when the detention time-limit has been reached, regular inspection reports, complaints and rectification procedures for extended detention, and investigation of responsibility for extended detention. The Certain Provisions clearly stipulate that: with regard to misuse of official powers or serious neglect of responsibilities leading to the extended detention of criminal suspects or defendants, there shall be an investigation into the disciplinary responsibility of the person in charge directly responsible and of others directly responsible; where the actions constitute a crime, criminal responsibility will be investigated in accordance with the regulations relating to the crimes of misuse of official powers and dereliction of duty as set out in Article 397 of the Penal Code of the People's Republic of China. The Supreme People's Procuratorate has also established a special hotline and email address to receive reports of extended detention by the procuratorial bodies, to consciously ensure public monitoring.

27. On 24 August 2005, the Supreme People's Procuratorate passed the Opinion on the Three-Year Implementation of Further Reforms in the Procuratorate, which outlined the reform and perfecting of the legal supervision system in litigation, the practical safeguarding of judicial fairness, and the protection of human rights as the major tasks for the next three years of procuratorial reform. The document explicitly proposed: "perfecting the mechanisms for supervision, investigation and handling of such illegal practices as extorting confessions through torture in the course of investigative activities; and perfecting, in accordance with the law, the rules on exclusion of illegal evidence in the scrutinizing of arrests and prosecutions. The Supreme People's Procuratorate formulates rules on the exclusion of illegal evidence in the scrutinizing of arrests and prosecutions, and makes provision for mechanisms to deal with such acts of criminality as extorting confessions by torture." "Establishing and perfecting lasting effective mechanisms for the prevention and correction of extended detention." "Exploring the establishment of a system by which it would be possible to recommend that relevant departments change the persons dealing with a case, where a procuratorial organ discovers that judicial personnel have shown dereliction of duty or other circumstances influencing fairness during the filing, investigation, prosecution, trial and implementation of a case." "Perfecting a mechanism for the handling and transfer of cases of dereliction of duty on the part of judicial personnel. Establishing mechanisms for the sharing of information between professional departments such as those involved in investigation and supervision, public prosecutions, anti-corruption and bribery work, anti-dereliction and anti-rights-infringement work, investigation of charges and

appeals, and civil and administrative procuratorial work; broadening the channels for the exposing of illegal and criminal acts on the part of judicial personnel; and establishing and perfecting linked and supporting systems for the scrutinizing, investigation, transfer and handling of clues in cases.”

28. In 2003, the people’s courts undertook a comprehensive correction of extended detention cases, and in this regard adopted a whole range of powerful measures.

29. On 29 July 2003, the Supreme People’s Court issued the Notice of the Supreme People’s Court on Relevant Issues Concerning Clearing up Cases of Extended Detention, which required that courts at all levels further enhance their understanding of the issue, give high priority to the problem of extended detention, actively take effective measures and put maximum effort into clearing up cases of extended detention. At the same time, it raised specific requirements with regard to the measures to be adopted in regard to clearing up the deadlines of extended detention cases and in regard to the issue of how to strengthen procuratorial supervision.

30. On 24 August 2003, the Supreme People’s Court made arrangements for carrying out the task of clearing up cases of extended detention, requesting that courts at all levels make the clearing up of cases exceeding the judicial time-limit (including criminal cases involving extended detention and civil and administrative cases exceeding the judicial time-limit) an immediate priority. It required that a comprehensive clear-up of such cases be undertaken, involving the investigation and uncovering of the reasons for cases exceeding the time-limit as well as the adopting of measures; by November 2003, criminal cases involving extended detention had to be entirely cleared up. A weekly reporting system was established for cases exceeding the time-limit, under which each higher court must report in writing each week to the Supreme Court regarding the situation in respect of clearing up such cases in courts under their authority, with the Supreme Court then making a regular report on the situation as a whole. In cases where the facts were not clear, where evidence was insufficient and where it was not possible to determine the guilt of the accused, a verdict of innocent should be resolutely declared in accordance with the law, without hesitation or indecision. With regard to the measures adopted by the Supreme Court, various media sources reported on this with the headline “If guilty, pass sentence; if innocent, set free”, leading to a vigorous response from all sectors of society.

31. On 10 October 2003, the Supreme People’s Court convened a video-conference of courts nationwide on the question of a further clear-up of cases exceeding the judicial time-limit. This reviewed the previous clear-up process and confirmed the results achieved thus far, whilst at the same time making clear the tasks to be undertaken in the next clear-up exercise. The work of clearing up criminal cases exceeding the judicial time-limit was to be done in strict adherence to the principles and requirements of “punishing crime according to the law and safeguarding human rights according to the law”.

32. In order to strengthen coordination between public security, procuratorial and court bodies, and to strengthen efforts in regard to solving the problem of extended detention, on 12 November 2003, the Supreme People’s Court together with the Supreme People’s Procuratorate and the Ministry of Public Security issued a Circular of the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security on Strictly Abiding by the Code of Criminal Procedure and Earnestly Redressing and Preventing Extended

Detentions, demanding the strict implementation of the Code of Criminal Procedure, with the guilty being held responsible in accordance with the law and the innocent being resolutely released, thus practically correcting and preventing the phenomenon of extended detention.

33. On 1 December 2003, the Supreme People's Court issued the Notice of the Supreme People's Court on Introducing Ten Measures to Practically Prevent New Extended Detention from Occurring, with a view to practically preventing cases of extended detention through such measures as the establishment of an extended detention early warning mechanism.
34. The Supreme People's Court also publicized in all sectors of society the establishment of a hotline for reporting cases of extended detention, welcoming supervision by the public. Through much hard work, by 31 December 2003, courts nationwide had cleared up a total of 4,100 extended detention cases, with 7,658 defendants under extended detention being given a decision. All extended detention cases in courts nationwide were successfully cleared up as scheduled.
35. Strengthening external supervision to prevent and eliminate the problem of unjust law-enforcement. On 27 April 2003, the Ministry of Public Security issued Regulations of the Ministry of Public Security on the Work of Specially Invited Supervisors, and established a system of specially invited supervisors. Under this system, specially appointed supervisors can undertake supervision of the way in which public security organs and people's police carry out their duties, enforce the law and respect discipline and the law, and can make known illegal or undisciplined behaviour on the part of the public security organs and people's police as reported and accused by members of the general public.
36. In September 2003, the Supreme People's Procuratorate formulated the Regulations on Implementation of the System of People's Supervisors for Cases Directly Accepted and Investigated by the People's Procuratorates, and on 5 July 2004 this was revised as the Regulations on Implementation of the System of People's Supervisors (Trial). The duty of people's supervisors is to undertake supervision of cases involving occupational crime which have been investigated by the people's procuratorate but where there is an intention to quash the case or not handle it by bringing charges, or where the criminal suspect does not accept arrest. People's supervisors may raise objections when they find that one of the following circumstances obtains in an occupational crime case dealt with by a people's procuratorate:
- (a) where a case should have been filed for investigation but was not, or where a case was filed for investigation when it should not have been;
  - (b) extended detention;
  - (c) illegal searches, withholding and freezing of property;
  - (d) where criminal compensation should have been given but was not authenticated in accordance with the law, or where no decision was given on criminal compensation;
  - (e) where a procurator, in dealing with a case, has engaged in fraudulent practices for personal gain, taking bribes and bending the law, extorting confessions through torture,

extracting evidence by violence, and other such illegal or undisciplined practices. The Regulations also specifically stipulate the supervisory procedures of the people's supervisors, to ensure that their work can be carried out successfully.

37. Rigorous investigation of criminal responsibility, to reduce and put an end to the occurrence of torture cases. The Ministry of Public Security has continually given full importance to solving the problem of extorting confessions through torture, and has convened conferences on a number of occasions, issuing specific documents on the subject. It has stressed that all public security organs, when investigating cases, must gather comprehensive evidence in strict accordance with legal procedure, and that the use of torture to extort confessions is strictly forbidden. It has further required that in cases involving serious violation of the law or violation of discipline on the part of the people's police (including cases in which the use of torture to extort a confession has led to death), the responsibility of the immediate supervisor must be ascertained according to the circumstances; where necessary, the responsibility of the supervisor in charge or the main supervisor will be ascertained. Public security organs at all levels are required at all times to place the emphasis on preventing and stopping cases involving extortion of confessions through torture, as a means to solve the problem of occupational violations of the law. They must take effective measures and continually increase their efforts in supervision and in handling cases. Cases involving extortion of confession through torture have decreased year on year.

38. In 1999, public security organs at all levels organised and initiated various forms of law-enforcement inspection, consolidating their achievements in regard to rectification, as part of the thorough implementation of the Regulations on the Work of Internal Supervision of Law-Enforcement in Public Security Organs and the Regulations on Investigation of Responsibility for Law-Enforcement Errors Committed by People's Police in Public Security Organs.

39. In 2000, public security organs nationwide and the Standing Committee of the National People's Congress initiated a large-scale inspection activity in regard to the thorough implementation of the Code of Criminal Procedure, forcefully encouraging all areas to take further their work to rectify the problem of extorting confessions through torture. On 12 March 2001, the Ministry of Public Security held a video-conference on rectifying the use of torture to extort confessions, misuse of firearms or police instruments, and misuse of compulsory measures. They requested public security organs in all areas to further consolidate on their achievements in regard to rectifying the use of torture to extort confessions, to ensure a substantial decline in these three types of cases, and to strive to ensure that cases resulting in death do not arise. Where cases of the above three types arise, they are to be promptly dealt with in accordance with the law, and particularly in cases leading to death or injury of the party involved, strict punishment should be applied in accordance with the law, with responsibility on the part of the relevant public security organ's supervisor being ascertained strictly in accordance the relevant regulations. Public security organs in all areas, in accordance with the demands of the Ministry of Public Security, earnestly embarked on the necessary work. Some local public security organs also initiated special rectification work targeting salient problems specific to themselves, with good results. In Qinghai province, for example, a special rectification drive was launched from 1999 to the end of 2000, and in the public security system for the whole province, not a single case of extorting confessions through torture occurred.

40. On 26 February 2002, the Ministry of Public Security decided to initiate a rectification drive to rectify the salient problems among the police ranks of public security organs nationwide, requiring that the guiding principle of strict correction of the police in accordance with the law be adhered to, and that emphasis be placed on solving such problems as the extortion of confessions by torture; they required further the resolute investigation and handling of cases of police violation of discipline or the law, and the serious investigation of the responsibility of supervisors. At the same time, organs were required to investigate loopholes, standardize administration, establish lastingly effective mechanisms for tackling problems, and consciously accept the supervision of all sectors of society.

41. In January 2001, the Supreme People's Court declared that the guiding theme for the work of the people's courts in the 21st Century would be "fairness and efficiency", stressing that all judicial activities of the people's courts must achieve the following: trials must be open, procedures legal, trial periods rigorously adhered to, judgments fair and implementation carried out according to the law. In the last few years, the work of the people's courts has closely adhered to this guiding theme. Promoting judicial fairness inevitably requires the guarantee that the legitimate rights and interests of criminal suspects and defendants are not harmed, and requires the punishment and correction in accordance with the law of the use of torture to extort confessions, the use of violence to extract testimony, and other such acts of torture that seriously harm the human rights of criminal suspects and defendants and that impair judicial fairness. The promotion of high judicial efficiency inevitably requires the guarantee that the cases of criminal suspects and defendants will be tried quickly and without delay, and requires the forbidding and cessation of detention measures that exceed the legally prescribed time-period and which thus harm the legitimate rights and interests of criminal suspects and defendants. This has important significance for the punishment, correction and prevention of acts of torture.

42. In the last few years, people's courts at all levels have been assiduously putting into practice the concrete requirements of the Five-Year Reform Plan of the People's Courts (issued on 20 October 1999), and have been reforming the format of criminal trials, on the basis of implementing the various regulations of the Penal Code and Code of Criminal Procedure. The new format of criminal trials strengthens the openness of trials and places emphasis on the neutrality of the court, thus further assuring equality in the status and rights of the prosecution and the defence. Under this new format, any acts of torture that harm the legitimate rights and interests of criminal suspects and defendants can more easily be exposed, verified and punished. Therefore, the deepening of reforms in the format of criminal trials has, overall, been beneficial in preventing the occurrence of various acts of torture.

43. In July 2003, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly issued the Circular on the Launching of Experimental Community Correction Work, with a view to implementing a practical investigation of community correction as a punishment for criminals whose crimes are minor or were committed with less malicious intent and who are of no major harm to society, as well as criminals who have already been granted bail in accordance with the law. At present, six provinces and cities under the direct control of the central government, namely Beijing, Shanghai, Tianjin, Jiangsu, Zhejiang and Shandong, have initiated experimental community correction work. Community correction is a form of sentencing that is the counterpart to correction through incarceration. It refers to a form of non-custodial punishment by which a criminal who meets the conditions for community correction is placed in the community, and,

under the auspices of a specialized state agency and with the assistance of relevant community groups, non-governmental organizations and social volunteers, undergoes correction of his criminal mentality and his bad behavioural tendencies, within a period of time fixed by judgment, ruling or decision, and which also facilitates his smooth reintegration into society. The initiation of this experimental community correction work demonstrates that China is currently working hard to move towards the relaxation and humanization of punishment, and has important significance in regard to preventing criminals from receiving unnecessary custodial punishments.

### Article 3

44. Paragraph 74 of China's supplementary report remains effective.

45. The Extradition Law, which was passed on 28 December 2000, makes provisions concerning such issues as the conditions and procedures relating to extradition requests made to China, investigation of extradition requests, bodies deciding extradition, and procedures for challenging extradition decisions, and is of important significance in regard to ensuring that extraditions are properly carried out, strengthening international cooperation in regard to punishment of criminals, ensuring that the person extradited is not subject to the threat of torture, and protecting the legitimate rights and interests of individuals and organizations. As stipulated in Article 8 of the Extradition Law, if the person sought has ever been subjected to torture or may be subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting country, then China will refuse extradition. These stipulations meet the needs of Article 3 of the Convention, and hence can prevent and obviate the danger that the person sought may face torture.

46. Article 10 of the Extradition Law stipulates that the organ responsible for accepting and handling extradition requests is the Ministry of Foreign Affairs of the People's Republic of China, and that the request for extradition made by the requesting state shall be submitted to the said ministry.

47. When the requesting state makes an extradition request, it shall write a letter of request, which shall specify:

(a) The name of the requesting authority;

(b) The name, sex, age, nationality, category and number of identification documents, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;

(c) Facts of the offence, including the time, place, conduct and outcome of the offence;  
and

(d) Legal provisions on adjudgement, measurement of penalty and prescription for prosecution. (Article 11). A letter of request for extradition submitted by the Requesting State shall be accompanied by:

(i) Where extradition is requested for the purpose of instituting criminal proceedings, a copy of the warrant of arrest or other document with the same

effect; where extradition is requested for the purpose of executing criminal punishment, a copy of a legally effective written judgment or verdict, and where part of a punishment has already been executed, a statement to such an effect; and

- (ii) The necessary evidence of the offence or evidentiary material. The Requesting State shall provide the photographs and fingerprints of the person sought and other material in its control which may help to identify that person. (Article 12). The letter of request for extradition and other relevant documents submitted by the Requesting State shall be officially signed or sealed by the competent authority of the Requesting State and be accompanied by translations in Chinese or other languages agreed to by the Ministry of Foreign Affairs of the People's Republic of China. (Article 13).

48. Where two or more states request extradition of the same person for the same or different conducts, the order of priority of the request for extradition shall be determined upon considering the factors such as the time when those requests for extradition are received by the People's Republic of China and the fact whether there are extradition treaties between the People's Republic of China and the Requesting States to go by. (Article 17).

49. With regard to examination of the extradition request, Article 16 Paragraph 1 of the Extradition Law stipulates: "Upon receiving the request for extradition from the Requesting State, the Ministry of Foreign Affairs shall examine whether the letter of request for extradition and the accompanying documents and material conform to the provisions of Section 2 in Chapter II of this Law and the provisions of extradition treaties." Article 18 stipulates: "Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State does not conform to the provisions of Section 2 in Chapter II of this Law or the provisions of extradition treaties, it may ask the Requesting State to furnish supplementary material within 30 days. The time limit may be extended for 15 days at the request of the Requesting State. If the Requesting State fails to provide supplementary material within the time limit mentioned above, the Ministry of Foreign Affairs shall terminate the extradition case. The Requesting State may make a fresh request for extradition of the person for the same offence." Article 19 stipulates: "Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State conforms to the provisions of Section 2 in Chapter II of this Law and the provisions of extradition treaties, it shall transmit the letter of request for extradition and the accompanying documents and material to the Supreme People's Court and the Supreme People's Procuratorate."

50. With regard to the letter of request and accompanying documents transmitted by the Ministry of Foreign Affairs, the Supreme People's Court will deal with them according to the situation and in accordance with the stipulations made in Article 20 of the Extradition Law. Article 20 stipulates: "Where the person sought is detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material it has received to the Higher People's Court concerned for examination. Where the said person is not detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, after receiving the letter of request for extradition and the accompanying

documents and material, notify the Ministry of Public Security to search for the person. Once finding the person, the public security organ shall, in light of the circumstances, subject that person to detention or residential surveillance for extradition and the Ministry of Public Security shall notify the Supreme People's Court of the fact. Upon receiving the notification of the Ministry of Public Security, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material to the Higher People's Court concerned for examination. Where, after searching, the public security organ is certain that the person sought is not in the territory of the People's Republic of China or it cannot find the person, the Ministry of Public Security shall, without delay, notify the Supreme People's Court of the fact. The latter shall, immediately after receiving the notification of the Ministry of Public Security, notify the Ministry of Foreign Affairs of the results of the search, and the Ministry of Foreign Affairs shall notify the Requesting State of the same."

51. Examination of an extradition request by the requesting country is undertaken by the Higher People's Court. Article 22 of the Extradition Law stipulates: "The Higher People's Court shall, in accordance with the relevant provisions of this Law and of extradition treaties regarding conditions for extradition, examine the request for extradition made by the Requesting State, which shall be conducted by a collegial panel composed of three judges." "When examining an extradition case, the Higher People's Court shall hear the pleadings of the person sought and the opinions of the Chinese lawyers entrusted by the person. The Higher People's Court shall, within 10 days from the date it receives the letter of request for extradition transmitted by the Supreme People's Court, serve a copy of the letter to the person. The person shall submit his opinions within 30 days from the date he receives the copy." (Article 23).

52. Having examined the request for extradition, the Higher People's Court shall, according to Article 24, render a decision. Article 24 stipulates: "After examination, the Higher People's Court shall:

(a) where the request for extradition made by the Requesting State is regarded as being in conformity with the provisions of this Law and of extradition treaties, render a decision that the request meets the conditions for extradition. Where the person whose extradition is requested falls under the category for postponed extradition according to Article 42 of this Law, it shall be so specified in the decision; or

(b) where the request for extradition made by the Requesting State is regarded not as being in conformity with the provisions of this Law and of extradition treaties, render a decision that no extradition shall be granted. Upon request by the Requesting State, the Higher People's Court may, on condition that other proceedings being conducted in the territory of the People's Republic of China are not hindered and the lawful rights and interests of any third party in the territory of the People's Republic of China are not impaired, decide to transfer the property related to the case, while rendering the decision that the request meets the conditions for extradition.

53. With regard to the decision rendered by the examining organ, the person sought and his appointed Chinese lawyers may, within ten days of the decision being read to the person sought, submit to the Supreme People's Court to challenge the decision. Article 25 of the Extradition Law stipulates: "After making the decision that the request meets the conditions for extradition or the decision that no extradition shall be granted, the Higher People's Court shall have it read

to the person sought and, within seven days from the date it makes the decision, submit the decision and the relevant material to the Supreme People's Court for review. Where the person sought refuses to accept the decision made by the Higher People's Court that the request meets the conditions for extradition, he and the Chinese lawyers entrusted by him may, within 10 days from the date the People's Court has the decision read to the person, submit their opinions to the Supreme People's Court."

54. When the Supreme People's Court reviews the decision made by the Higher People's Court, it should handle the matter according to the differing circumstances. Article 26 stipulates: "The Supreme People's Court shall review the decision made by the Higher People's Court and shall do the following respectively:

(a) where it believes that the decision made by the Higher People's Court conforms to the provisions of this Law and of extradition treaties, it shall approve it; and

(b) where it believes that the decision made by the Higher People's Court does not conform to the provisions of this Law and of extradition treaties, it may quash it and send the case back to the People's Court which has originally reviewed it for fresh review, or modify the decision directly."

55. For instance, in June 2001, the Republic of France submitted an extradition request for Martin Michel, a citizen of the Republic of France suspected of rape. In accordance with the provisions of the Extradition Law, China's Supreme People's Court assigned the Higher People's Court of Yunnan Province to examine the extradition request. After the Higher People's Court of Yunnan Province had examined the case, they rendered a decision that the request complied with the stipulations of the Extradition Law, and then submitted the case to the Supreme People's Court for review. The Supreme People's Court, in accordance with the law, organised a collegial panel to review the decision rendered by the Higher People's Court of Yunnan Province. On 14 November 2002, they approved the decision of the Higher People's Court of Yunnan Province that the French request for the extradition of Martin Michel complied with the permitted conditions of extradition as stipulated in China's Extradition Law.

56. "After making the decision of approval or modification, the Supreme People's Court shall, within seven days from the date it makes the decision, transmit the letter of decision to the Ministry of Foreign Affairs and, at the same time, serve it on the person sought. After approving the decision or making the decision that no extradition shall be granted, the Supreme People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought." (Article 28).

57. The State Council of China decides whether or not to extradite. Article 29 stipulates: "After receiving the decision made by the Supreme People's Court that no extradition shall be granted, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same. Upon receiving the decision made by the Supreme People's Court that the request meets the conditions for extradition, the Ministry of Foreign Affairs shall submit the decision to the State Council for which to decide whether to grant extradition. Where the State Council decides

not to grant extradition, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same. The People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought.”

58. In the foreign extradition treaties to which China is a signatory, the crime of torture is in all cases stipulated as an extraditable crime.

#### **Article 4**

59. See Paragraphs 74-81 of the supplementary report and Paragraphs 10-17 of the second report. Paragraph 14 of the third report is still effective.

60. According to Chinese law, torture is a criminal offence, and those inflicting torture or instigating or conspiring in torture are all severely punished in accordance with the law. The Penal Code of the People's Republic of China, amended in 1997 (hereafter “the Penal Code”) makes clear stipulations on this.

61. With regard to the regulations and punishments pertaining to the use of torture to extort a confession from a criminal suspect or defendant, or the use of violence to extort testimony from a witness, Article 247 stipulates: “Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law.”

62. With regard to the regulations and punishments pertaining when a prisoner is beaten or is mistreated by corporal punishment, Article 248 stipulates: “Any policeman or other officer of an institution of confinement like a prison, a detention house or a custody house who beats a prisoner or maltreats him by subjecting him to corporal punishment, if the circumstances are serious shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law. If any policeman or other officer who instigates a person held in custody to beat or maltreat another person held in custody by subjecting him to corporal punishment, the policeman or officer shall be punished in accordance with the provisions of the preceding paragraph.”

63. In regard to joint intentional crimes, Article 25 stipulates: “A joint crime refers to an intentional crime committed by two or more persons jointly. A negligent crime committed by two or more persons jointly shall not be punished as a joint crime; however, those who should bear criminal responsibility shall be individually punished according to the crimes they have committed.”

64. With regard to instigating others to commit a crime, Article 29 stipulates: “Anyone who instigates another to commit a crime shall be punished according to the role he plays in a joint

crime. Anyone who instigates a person under the age of 18 to commit a crime shall be given a heavier punishment. If the instigated person has not committed the instigated crime, the instigator may be given a lighter or mitigated punishment.”

65. On 6 August 1999 and 20 July 2001, the Supreme People’s Procuratorate respectively passed the Criteria on the Filing of Cases and the Criteria on Serious and Especially Serious Cases (see Paragraph 14). These made concrete and clear stipulations regarding the criteria for filing cases and criteria for the defining of serious and especially serious cases involving crimes of torture such as the use of torture to extort confessions, the use of violence to extort testimony, and maltreatment of the person under supervision, as provided for in the Penal Code. According to the provisions of the Criteria on the Filing of Cases, cases shall be filed in all cases where torture is used to extort confessions, where cruel methods are used to malicious effect, where suicide or mental derangement results, where injustices, false or erroneous trials result, or where a person has authorized, instructed or forced another to extort confession through torture.

66. The Criteria on Serious and Especially Serious Cases stipulate, in respect of use of torture to extort confessions, that serious and especially large cases are those which:

- (a) lead to serious injury or mental derangement;
- (b) involve the use of torture to extort a confession five or more times or in relation to five or more persons;
- (c) which are unjust, false, or erroneous. “Especially serious cases” are those which:
  - (i) result in death;
  - (ii) involve the use of torture to extort a confession seven or more times or in relation to seven or more persons;
  - (iii) cause an innocent person to be sentenced to ten or more years imprisonment, life imprisonment, or the death penalty.

#### **Article 5**

67. Paragraphs 15-17 of China’s third report remain effective.

#### **Article 6**

68. Paragraphs 85-89 of China’s supplementary report remain effective.

#### **Article 7**

69. Paragraph 90 of China’s supplementary report and Paragraph 19 of the third report remain effective.

70. Article 16 of China’s Code of Criminal Procedure stipulates: “Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be

investigated.” Chinese law guarantees that any person suspected of committing the crimes described in the Convention will receive fair treatment at all stages of the litigation process, and in this respect, Paragraphs 91-98 of China’s supplementary report remain effective.

### Article 8

71. China’s Extradition Law provides the legal basis for the enhancement of international cooperation in punishing crime and the guaranteeing of a normal extradition process. Article 6 Paragraph 3 of the Extradition Law stipulates that an extradition treaty refers to a treaty on extradition, which is concluded between the People’s Republic of China and a foreign state or to which both the People’s Republic of China and a foreign state are parties, or any other treaty which contains provisions in respect of extradition. Therefore, all the multilateral international conventions to which China is a party, including the Convention Against Torture, and the relevant provisions of the bilateral extradition treaties which China has signed with other countries, can all serve as the legal basis for cooperation in respect of extradition.

72. As of 1 December 2005, China had signed extradition treaties with 23 countries, of which 17 have already come into force. See the following table:

Country	Name of Country	Date of Signing	Date of Entry into Force
1.	Thailand	1993.08.26	1999.03.07
2.	Belarus	1995.06.22	1998.05.07
3.	Russia	1995.06.26	1997.01.10
4.	Bulgaria	1996.05.20	1997.07.03
5.	Romania	1996.07.01	1999.01.16
6.	Kazakhstan	1996.07.05	1998.02.10
7.	Mongolia	1997.08.19	1999.01.10
8.	Kyrgyzstan	1998.04.27	2004.04.27
9.	Ukraine	1998.12.10	2000.07.13
10.	Kampuchea	1999.02.09	2000.12.13
11.	Uzbekistan	1999.11.08	2000.09.29
12.	South Korea	2000.10.18	2002.04.12
13.	Philippines	2001.10.30	-
14.	Peru	2001.11.05	2003.04.05
15.	Tunisia	2001.11.19	-
16.	South Africa	2001.12.10	2004.11.17
17.	Laos	2002.02.04	2003.08.13
18.	UAE	2002.05.13	2004.05.24
19.	Lithuania	2002.06.17	2003.06.21
20.	Pakistan	2003.11.03	-
21.	Lesotho	2003.11.06	-
22.	Brazil	2004.11.12	-
23.	Spain	2005.11.14	-

### Article 9

73. Paragraph 100 of China’s supplementary report remains effective.

74. As of 1 December 2005, China had signed criminal (combined civil and criminal) judicial assistance treaties with 36 countries, or which 26 treaties have already come into force. These provide the legal basis for assistance between the signatory states in regard to criminal prosecutions relating to crimes described in Article 4 of the Convention. See the following table:

Country	Name of Country	Date of Signing	Date of Entry into Force
1.	Poland	1987.06.05	1988.02.13
2.	Mongolia	1989.08.31	1990.10.29
3.	Romania	1991.01.16	1993.01.22
4.	Russia	1992.06.19	1993.11.14
5.	Turkey	1992.09.28	1995.10.26
6.	Ukraine	1992.10.31	1994.01.19
7.	Cuba	1992.11.24	1994.03.26
8.	Belarus	1993.01.11	1993.11.29
9.	Kazakhstan	1993.01.14	1995.07.11
10.	Egypt	1994.04.21	1995.05.31
11.	Canada	1994.07.29	1995.07.01
12.	Greece	1994.10.17	1996.06.29
13.	Bulgaria	1995.04.07	1996.05.27
14.	Cyprus	1995.04.25	1996.01.11
15.	Kyrgyzstan	1996.07.04	1997.09.26
16.	Tajikistan	1996.09.16	1998.09.02
17.	Uzbekistan	1997.12.11	1998.08.29
18.	Vietnam	1998.10.19	1999.12.25
19.	South Korea	1998.11.12	2000.03.24
20.	Laos	1999.01.25	2001.12.15
21.	Colombia	1999.05.14	2004.05.27
22.	Tunisia	1999.11.30	2000.12.30
23.	Lithuania	2000.03.20	-
24.	USA	2000.06.19	2001.03.08
25.	Indonesia	2000.07.24	-
26.	Philippines	2000.10.16	-
27.	Estonia	2002.06.12	-
28.	South Africa	2003.01.20	2004.11.17
29.	Thailand	2003.06.21	2005.02.20
30.	North Korea	2003.11.19	-
31.	Latvia	2004.04.15	2005.09.18
32.	Brazil	2004.05.24	-
33.	Mexico	2005.01.24	-
34.	Peru	2005.01.27	-
35.	France	2005.04.18	-
36.	Spain	2005.07.21	-

### Articles 10 and 11

75. See Paragraphs 101-102 of China's supplementary report, Paragraphs 27-37 of the second report, and Paragraphs 26-35 of the third report.

76. The prohibition of torture has been a consistent position of the Chinese government. The Chinese government has not only proclaimed by law the prohibition of torture but has also placed full importance on education about and publicizing of prohibition of torture for state functionaries, in particular law-enforcement personnel in the public security, procuratorial, court and judicial administrative departments.

77. Since the submission of the third report in 1999, China's public security, procuratorial, court and judicial administrative departments have adopted a series of measures for publicity and education in regard to the prohibition of torture.

78. Since 1998, the Ministry of Public Security has carried out a substantial amount of work in regard to training public security people's police in the protection of human rights.

79. Initiating education and training, with the focus on leading cadres at all levels. In the light of international human rights standards, special targeted training about the Constitution, Penal Code and Code of Criminal Procedure has been established, to raise the legal competence of leading cadres, as well as their ability to manage things according to the law. In 2003, the Ministry of Public Security issued the Circular on the Launching of Rotational Training in Correct Thinking on Law-Enforcement for Members of Leadership Teams in Public Security Departments at County Level, launching intensive educational activities to correct thinking on law-enforcement, using actual instances and typical cases to provide large-scale training for base-level leading cadres and to educate leading cadres to understand the system of the minimum standards of fairness in international justice, and to study in depth the relevant contents of human rights protection and establish a firm awareness of human rights. The Twelfth National Public Security Conference, held from 20 to 22 November 2003, proposed that priority must be placed on solving such salient problems of law-enforcement as the use of torture to extort confession, as well as on safeguarding the legitimate rights and interests of the state, collectives, groups and individual citizens.

80. Integrating international human rights standards with law-enforcement practice, organising and launching action-training for the entire public security people's police, especially police at the grass-roots and front-line, raising the level of the people's police in handling cases. A compulsory training system has been established for people's police, which applies to recruitment, service, promotion and on-the-ground action, and in 2003 training was organised for more than 1.13 million people's police. In these various types of training, education on the legal system was a compulsory component, with the requirement that law courses must take up at least 30 percent of the total course time.

81. Emphasising training and cooperation in regard to international human rights, with the theme of human rights protection, and initiating cooperation and exchange with relevant international organizations and police departments in other countries. For example, in July 2001, an international symposium on "human rights and the police" was jointly organised with the Office of the United Nations High Commissioner for Human Rights, whilst from November to

December 2003, a high-level police officer training class was jointly organised on the theme of human rights protection. In addition to this, a number of training groups were also sent to countries including Canada and France for observation and study.

82. In order to strengthen training for procurators, the Supreme People's Procuratorate specially formulated the Plan for the Implementation of Occupational Training for Procurators and the Provisional Regulations on the Training of Procurators, which mapped out the content and format of procurator training, for instance service-related training, promotional training, training on special issues, and other occupational training.

83. China's National Procurators' College and its provincial-level campuses are the specialized training bodies for procurators, and each year they invite human rights experts to give classes on the subject of human rights protection. Procuratorial departments responsible for investigating and handling dereliction of duty and rights violations involving crimes of torture organize special training each year, to adapt to the needs of case-handling.

84. In 1998, the Supreme People's Procuratorate issued a document aimed at seriously addressing the problem of legal and disciplinary violations that had been vigorously reported by the public. It clearly stipulated the following:

- (a) it is strictly forbidden to overstep the bounds of jurisdiction when handling cases;
- (b) it is strictly forbidden to employ any coercive measures in regard to a witness;
- (c) before a case is filed, coercive measures are not to be employed in regard to criminal suspects; 4) extended detention is strictly forbidden;
- (d) a procuratorate or interview room is not to be used as a detention room;
- (e) interviews in general should be carried out in a custody house, and if they must be carried out in an interview room of a procuratorate, then a remand system must be strictly implemented;
- (f) all those who have used torture to extort a confession in handling a case will be dealt with after having first been suspended from their duties;
- (g) in cases where dereliction of duty, illegal detention or illegal handling, etc., has resulted in death, in addition to investigation of the person directly responsible in accordance with the law and discipline, where a leader shows serious dereliction of duty, he will be removed from his position in accordance with legally prescribed procedure;
- (h) it is strictly forbidden to withhold, embezzle, or set aside funds for private gain.

85. In 2003, the Supreme People's Procuratorate launched an educational activity in procuratorial bodies nationwide, which aimed at "strengthening legal supervision, protecting fairness and justice." Procuratorial bodies at all levels linked this in closely with their actual practice, consciously participated and assiduously listened to opinions from different sectors of society, with the result that this educational activity achieved relatively good results. Through major clearing-up and special investigation of quashed cases, unauthorized arrests, unprosecuted

cases, cases judged innocent, as well as instances of withholding funds, a total of 410,000 cases were reviewed, and 6,643 cases in which quality-related problems such as insufficiently rigorous procedures and non-standard legal documents existed were corrected. A clear-up was undertaken of cases involving illegal withholding of funds and failure to return or turn in funds on time, and the said funds were duly turned in and returned in accordance with the law. A strict investigation of 424 procuratorial personnel involved in illegal or undisciplined behaviour was undertaken, and of these, 21 received a criminal punishment.

86. On 19 March 2004, the Supreme People's Procuratorate convened a video-conference. It required that procurators nationwide should earnestly study the amendments to the constitution, firmly establish an awareness of the constitution, earnestly safeguard the authority of the constitution, make respect for and safeguarding of human rights a central principle running through all the various links in the law-enforcement and case-handling process, vigorously combat criminal crimes, steadfastly investigate and deal with cases of crime in which the personnel of state organs had used their position to seriously infringe citizens' rights of person and democratic rights, and ensure that the fundamental citizens' rights provided by the constitution are not infringed.

87. On 18 October 2001, the Supreme People's Court promulgated the Basic Code of Professional Ethics for Judges of the People's Republic of China, which requires that judges must safeguard judicial fairness, raise judicial efficiency, uphold clean, honest and just practices, respect judicial protocol, enhance their personal development and limit their extra-judicial activities.

88. China's Ministry of Justice requires that the prison system carry out education in civilized law-enforcement for all prison officers, to eradicate the occurrence of crimes of cruelty such as maltreatment and corporal punishment. In accordance with the requirements of the Ministry of Justice, each province employs appropriate means such as holding training sessions and organising study groups, to provide training in prison law and human rights conventions for the vast majority of officers. The Ministry of Justice has compiled the regulations of the Convention Against Torture and China's relevant laws and regulations into a booklet which it has issued to every officer, requiring that they earnestly study and master its contents, and that they conduct themselves in strict accordance with the law.

89. In 1999, the Ministry of Justice issued the Circular on the Launching of Basic Education to Improve the Quality of People's Police in the Prison Service Nationwide, having, after three years of hard work, completed its nationwide training of people's police prison staff. The training generally included the relevant contents of international human rights treaties, such as legal and prison-related professional standards and international human rights standards.

90. In February 2000, the Ministry of Justice compiled a Note on Rigorous Law-Enforcement with Enthusiastic Service, which was issued to the entire national judicial administrative system, requiring that all law-enforcement personnel earnestly study and thoroughly implement it.

91. To meet the requirements of prison law-enforcement activities, the Ministry of Justice, starting in 2002, trained nationwide almost 2000 prison wardens in almost 700 prisons. For the training courses, lecturers were appointed, including famous experts, scholars and heads of related departments from mainland China, together with officials from the Correctional Services

Department of the Hong Kong Special Administrative Region. Through the training, the prison wardens received instruction in the legal system, honest administration, and related general knowledge, and this raised the understanding among the leading echelons in the prison sector with regard to the importance and urgency of developing prison reform; it corrected the guiding work philosophy, and strengthened the conception of the enforcement of law and discipline.

92. In 2002, the Bureau of Prisons of the Ministry of Justice, the Department of Training and Employment of the Ministry of Labour and the Chinese Employment Certification Centre jointly issued a document on training national professionally qualified prison counsellors. The duty of these counsellors is to prevent and eradicate the use of torture upon inmates and, within the conditions of imprisonment, to provide help for inmates in regard to such underlying issues as education on psychological health, consultation on psychological barriers, and correction of psychological illnesses. To date, almost 1000 national professionally qualified prison counselors have been trained, providing the human resources to begin the work of psychological correction of criminals. Nationwide, almost ninety percent of prisons have begun such work.

93. In 2004, the Ministry of Justice organised a symposium in commemoration of the tenth anniversary of the promulgation of the Prison Law, stressing further that the Prison Law must be implemented in an unstinting and thorough fashion, and that fair law-enforcement, civilized administration, strict control of the police, protection of the legitimate rights and interests of criminals, and a consciousness rooted in the hearts of the people must be made the guiding standards of the entire people's police. From May 2005, the Ministry of Justice launched a special reform and consolidation activity in the prison system, which lasted half a year, and had the theme of "standardizing law-enforcement behaviour, promoting fair law-enforcement". This activity was chiefly concerned with initiating work in four key aspects: standardizing law-enforcement behaviour, putting into practice the "three resolutely eradicates" (namely, resolutely eradicate the problems of beating, corporal punishment, degradation and mistreatment; resolutely eradicate the problem of criminals doing excessively strenuous work for an excessive time; and resolutely eradicate the problem of prisons indiscriminately charging fees), strengthening prison administration, and promoting openness in prison business. In the course of launching this activity, the prison system nationwide held 2,846 training programmes at different levels, carrying out training in the relevant legal rules and regulations that personnel must thoroughly understand. Some 280,000 people's police prison staff nationwide, including staff in the Bureau of Prisons of the Ministry of Justice, took part in a unified examination.

## **Article 12**

94. Paragraphs 113-114 of the supplementary report remain effective.

95. According to the Constitution and relevant laws, the procuratorial bodies have the responsibility to investigate and deal with staff of state organs who commit dereliction of duty, or abuse their power to extort a confession from criminal suspects or defendants by torture, or who use force to extract testimony from witnesses (Article 247 of the Penal Code) and physically abuse inmates under their supervision (Article 248 of the Penal Code), for violations of citizens' rights of person and democratic rights. Procuratorates at various levels have set up more than 3000 special procuratorial bodies nationwide, with about 13,000 full-time staff, in an effort to ensure fair and prompt investigation into acts of torture.

96. The Chinese procuratorial bodies follow the following procedures for investigating and handling criminal cases of torture.

97. Accepting a case: According to Article 120 of the Supreme People's Procuratorate Rules on the Criminal Process for People's Procuratorates, the people's procuratorates directly accept reports, complaints, charges and criminal suspects' confessions.

98. Preliminary investigation: According to Article 129 of the Supreme People's Procuratorate Rules on the Criminal Process for People's Procuratorates, the investigative departments will follow up on reported cases and carry out preliminary investigations. They shall produce an investigation report and propose recommendations for review and approval by the chief procurator. For cases where responsibility has been ascertained for criminal acts that justify criminal charge, it should be recommended that a case be formally filed for investigation; for cases with no criminal evidence, or with obscure or inadequate evidence, or involving any of the circumstances stipulated by Article 15 of the Code of Criminal Procedure, it should be recommended that the cases be dismissed; for cases involving evidently minor offences, causing only moderate damage that does not justify criminal charges but where the offenders have violated laws and discipline, it should be recommended that the procuratorial body inform the supervisor of the offender for disciplinary punishment.

99. Cases filed for investigation: For cases filed for investigation, the criminal procedure process will be activated to carry out investigation and gather evidence and, when necessary and with the approval of competent authorities, detain or arrest (by public security organs) the criminal suspect.

100. Termination of investigation: after having completed investigations of all relevant facts of the cases, the investigative departments will transfer the case files to litigation departments for a decision on public prosecution.

101. Public prosecution: the litigation departments will review case files submitted by the investigative departments. For cases with verified investigative results on the criminal acts and ascertained and adequate evidence to justify litigation to a court, the litigation departments will institute a public prosecution in accordance with the law and provide support in the court for the prosecution. For cases involving minor offences and not punishable by criminal law, the litigation departments can decide not to initiate a prosecution.

102. Procuratorial bodies exercise independent prosecution rights provided by law, free from interference from administrative bodies, social organizations and individuals. During the periods of investigation and litigation reviews by the procuratorial bodies, all criminal suspects have access to legal assistance provided by lawyers.

103. According to the Constitution and other relevant laws, the people's procuratorates are legal supervisory bodies of the State, exercising the rights to supervise investigations, trials and the execution of criminal punishment. The procuratorates supervise and maintain the legality of the investigations of the public security organs in the following ways.

104. For cases that should be filed for investigation but which have not been registered by the police, the procuratorates have the right to demand explanation from the public security organs as to the reasons for not filing the case. Should the reasons be deemed untenable, the procuratorates should instruct the public security organs to register the cases for investigation.

105. The procuratorates monitor the legality of the investigations carried out by the public security organs as part of the criminal procedural process. The activities being monitored include specific investigative operations such as interrogation of suspects, interviewing witnesses, searches, etc. as well as compulsory measures such as detentions and arrests.

106. For minor violations of the law in the process of investigations, the procuratorates can either give an oral warning or issue a Note on Rectifying Illegal Actions for disciplinary punishment by the supervisory police authority of the incumbent. Should the acts of violations constitute a crime, the procuratorial departments in charge of dereliction of duty and abuse of power cases should file the incidents as cases for investigation and press criminal charges.

107. All levels of the people's procuratorates have instituted special procuratorial agencies in institutions of confinement. In July 1987, those special agencies opened resident offices in the prisons under their respective authority. The resident procurators exercise independent procuratorial rights and report directly to the procuratorates. They do not work under the leadership of the chief warden nor are their offices affiliated to the prisons where they reside. They accept reports, complaints and charges directly from the inmates and carry out investigations into incidents of corporal punishment, beating and abuse of inmates as the cases arise.

108. Since 1999, when China submitted the third report, the procuratorates have investigated and handled large amounts of criminal cases of personnel of state organs abusing their power and violating citizens' rights of person and democratic rights, including the use of torture to extort confessions, the use of violence to extort testimony from a witness and maltreatment of inmates. The total number of such cases is on the decline, a trend supported by the following statistics.

(a) 1999:

No. of criminal charges on the use of torture to extort confession:	143
No. of criminal charges on maltreatment of inmates:	42

(b) 2000:

No. of criminal charges on the use of torture to extort confession:	137
No. of criminal charges on maltreatment of inmates:	52

(c) 2001:

No. of criminal charges on the use of torture to extort confession:	101
No. of criminal charges on maltreatment of inmates:	38

(d) 2002:		
	No. of criminal charges on the use of torture to extort confession:	55
	No. of criminal charges on maltreatment of inmates:	30
(e) 2003:		
	No. of criminal charges on the use of torture to extort confession:	52
	No. of criminal charges on maltreatment of inmates:	32
	No. of criminal charges on the use of violence to extort testimony from witnesses:	7
(f) 2004:		
	No. of criminal charges on the use of torture to extort confession:	53
	No. of criminal charges on maltreatment of inmates:	40
	No. of criminal charges on the use of violence to extort testimony from witnesses:	4

109. In order to uphold the constitutional principle that “the state respects and protects human rights”, the Supreme People’s Procuratorate decided on 11 May 2004 to launch a year-long nationwide campaign to investigate and prosecute personnel of state organs who abuse their power and violate human rights. The whole procuratorial system was mobilized to act swiftly and to raise public awareness. All circles of society and the people responded positively to the campaign, by filing reports and complaints against the criminal acts of human rights violations. The procuratorial bodies pooled resources together in investigating and handling a batch of cases, including criminal cases of the use of torture to extort confession, the use of violence to extort testimony from witnesses and the maltreatment of inmates. The campaign achieved remarkable results for the designated period of time.

### **Article 13**

110. Paragraphs 42-48 of China’s third report remain effective.

111. China’s Constitution safeguards the right of victims of torture to file complaints to competent state authorities while at the same time protecting them or witnesses from being threatened or revenged against. Article 41 Paragraph 2 of the Constitution stipulates that: “In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.”

112. Article 46 of the People’s Police Law of the People’s Republic of China stipulates: “A citizen or an organization shall have the right to make exposure of or accusation against a people’s policeman’s violation of law or discipline to a people’s police organ, a people’s procuratorate or an administrative supervisory organ. The organ that accepts the exposure or accusation shall investigate and deal with the case without delay and notify the person or organization that made the exposure or accusation of the conclusion of the case. No person may suppress or retaliate against the citizen or organization that makes an exposure or accusation according to law. ”

113. The Prison Law stipulates the following:

(a) Article 21: “If a prisoner is not satisfied with the effective judgment, he may file a petition. A people’s procuratorate or a people’s court shall without delay handle the petitions filed by prisoners.”

(b) Article 22: “A prison shall without delay handle the complaints or accusations made by prisoners, or transfer the above material to a public security organ or a people’s procuratorate for handling. The public security organ or the people’s procuratorate shall inform the prison of the result of its handling.”

(c) Article 23: “A prison shall transfer without delay the petitions, complaints and accusations made by prisoners and shall not withhold them.”

(d) Article 46 of the Rules on Custody Houses stipulates that: “custody houses should submit without delay petitions for appeal of the inmates and should not obstruct their submission or withhold them. Written accusations and materials exposing illegal actions of judicial personnel prepared by the inmates should be submitted to the people’s procuratorates without delay.”

114. In order to facilitate the filing of accusations and appeals by the general public and to improve accountability and efficiency of the procuratorial staff, the Supreme People’s Procuratorate on 1 July 2003 issued Rules (Trial) of the People’s Procuratorate on the Implementation of a First-link Responsibility System. The Rules stipulate that the first-link responsibility system means that the people’s procuratorates should handle accusations and appeals within their mandates in a timely fashion and with clearly defined internal division of work and lines of responsibilities. The system aims to solve accusations and appeals, including cases of the use of torture to extort confessions and the use of violence to extort testimony from witnesses, on the first instance of accepting and handling them.

115. The Criteria for Serious and Especially Serious Cases contain stipulations on cases of violations of citizens’ rights of person and democratic rights by personnel of state organs, including cases of the use of torture to extort confessions, the use of violence to extort testimony from witnesses and the maltreatment of inmates. These stipulations constitute one of the bases for the investigation and handling of torture cases (see also Paragraph 14 and Paragraph 57).

116. The people’s courts hold trials on public prosecution cases of torture filed by the people’s procuratorates in a prompt and just fashion. The whole judicial process can achieve the goals of open trials, law-binding procedures and fair judgments.

117. Since 1999, when China submitted the third report, the procuratorates have investigated and handled a batch of criminal cases of human rights violations involving torture by personnel of state organs. In general, the total number of such cases is on the decline, a trend supported by the following statistics.

(a)	1999:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	178
(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	3
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	0
(b)	2000:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	121
(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	1
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	3
(c)	2001:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	81
(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	3
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	34
(d)	2002:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	44
(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	2
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	18
(e)	2003:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	60

(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	2
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	27
(f)	2004:	
(i)	No. of people sentenced on account of the use of torture to extort confession:	82
(ii)	No. of people sentenced on account of the use of violence to extort testimony from witnesses:	2
(iii)	No. of people sentenced on account of criminal charges on maltreatment of inmates:	40

#### **Article 14**

118. Paragraphs 45-53 of the second report of China and Paragraph 50 of the third report remain effective.

119. Upon conclusion of the cases of violations of human rights of citizens by personnel of state organs by abusing their power, all victims who conform to stipulations of the State Compensation Law have received compensation from the state.

120. Article 5 of the Measures on Administrative Compensation and Criminal Compensation by Judicial and Administrative Bodies provides that criminal compensation will be made in the following cases of violations of citizens' rights of person by prison institutions and their staff when carrying out their duties and using their power: the use of torture to extort confessions or corporal punishment, maltreatment of inmates, causing bodily harm or death; beating or instigating and condoning others to beat inmates, causing serious consequences; humiliation of inmates, causing serious consequences; unjustified refusal to release inmates who have served the full term of their sentence; illegal use of weapons, police instruments and devices, causing bodily harm or death of citizens; other illegal acts, causing bodily harm or death of inmates.

#### **Article 15**

121. Paragraphs 120-122 of the supplementary report, Paragraph 55 of the second report and Paragraph 52 of the third report of China remain effective.

122. According to Chinese law, no statements ascertained to have been obtained by means of extortion should be used in the litigation process. No evidence obtained by illegal means should be used as the basis for conviction. Article 43 of the Code of Criminal Procedure stipulates: "Judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the criminal suspect's or 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.”

123. Article 181 of the Procedural Provisions for the Handling of Criminal Cases by Public Security Organs stipulates: “During interrogations, the statements and explanations of the suspects should be carefully listened to; the use of torture to extort confessions or the use of threats, enticement, cheating and other illegal means to obtain confessions are strictly prohibited.” Article 26 of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs stipulates: “Public security organs must strictly follow legal procedures in collecting evidence that can prove whether a suspect has violated the law and identify the gravity of the violations. The use of torture to extort confessions or the use of threats, enticement, cheating and other illegal means to obtain evidence are strictly prohibited.”

124. Article 265 of the Rules of Criminal Litigation for the People’s Procuratorates clearly stipulates that confessions of suspects, statements of victims and witnesses extorted by torture or by the use of threats, enticement, cheating and other illegal means cannot be used as the basis for accusations. On 2 January 2001, the Supreme People’s Procuratorate issued the Circular on the Strict Prohibition of the Use of Confessions of Suspects Extorted by the use of Torture as the Basis for Determining Crimes. The Circular requires that all levels of the people’s procuratorates must strictly follow and implement legal stipulations on the strict prohibition of the use of torture to extort confessions and clarify rules of exclusion of illegal evidence. The Supreme People’s Procuratorate asks that all level of the people’s procuratorates strictly follow the legal stipulations and resolutely screen out suspects’ confessions and statements of victims and witnesses that are found to be obtained by illegal means. No leeway should be allowed with regard to the use of torture to extort confessions and other such illegal means of obtaining evidence.

### **Article 16**

125. Paragraphs 57-62 of China’s second report and Paragraphs 54-57 of the third report remain effective.

126. According to Chinese law, measures for the prohibition of torture equally apply to the protecting of citizens’ personal dignity from being violated. Article 39 of China’s Constitution stipulates that: “The personal dignity of citizens of the People’s Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.”

127. In 1998, the Ministry of Public Security launched a nationwide activity to create custody-houses in which there is “strict law-enforcement and civilized management”, pledging to society that criminal suspects and defendants would be managed in a civilized manner, and that they would not be beaten, mistreated by the use of corporal punishment, or have their personal dignity insulted; the basic living conditions of criminal suspects and defendants would be guaranteed, and if they were ill, then they would be treated promptly.

128. In 2000, the Ministry of Public Security carried out a special improvement of the conditions and order of custody-houses nationwide, greatly improving the conditions of institutions of confinement, and creating a good living environment for criminal suspects and defendants.

129. In 2001, the Ministry of Public Security published Regulations on the Behaviour of People's Police on Duty in Custody-houses, which explicitly required that the people's police were not to use torture to extort confessions or to use corporal punishment or cruel or degrading treatment upon those in custody; not should they beat or incite others to beat those in custody. They must respect the personal and human dignity of those in custody, and they must respect the living customs of member of ethnic minorities and foreign nationals in custody. They must not address the detainee using nicknames or other degrading or prejudiced language. Those detainees who are suffering from illness should be given treatment and appropriate care promptly.

130. In 2003, the Ministry of Public Security launched a major investigation of law-enforcement in custody-houses nationwide, investigating in particular whether there was any beating, corporal punishment or cruel treatment being used on criminal suspects and defendants, and whether there were any acts which violated the legitimate rights and interests of the same.

131. From March 2004, the Ministry of Public Security and the Supreme People's Procuratorate jointly arranged and launched an activity in custody-houses and resident procuratorial offices nationwide, which aimed to establish "model units exemplifying the ideals of strengthening supervisory law-enforcement, strengthening legal supervision, guaranteeing the smooth passage of criminal prosecution cases, and protecting the legitimate rights and interests of detainees". They required that custody-houses in all areas transmit law-enforcement concepts and firmly establish an awareness of the protection of detainees' legitimate rights and interests in accordance with the law, in order to more consciously respect and guarantee such rights as the personal dignity and health of detainees, their basic living standards, healthcare, the right to meet and to correspond, to make criticisms and recommendations to state organs and their staff, and to report to or accuse or appeal against such organs. Through this activity, they should rigorously standardize the procedures of law-enforcement and service, resolutely eliminate practices within the supervision system that run counter to the guaranteeing of human rights, establish and perfect a mechanism for the guaranteeing of detainees' legitimate rights and interests, resolutely eradicate the practice of extorting confessions through torture in custody-houses, use police instruments in strict accordance with the law, and determinedly root out the practice of using beating, corporal punishment or cruel treatment upon detainees.

132. On 15 November 2000, the Supreme People's Court passed the judicial interpretation of the Rules of the Supreme People's Court Concerning the Trial of Juvenile Criminal Cases. The said judicial interpretation clearly stipulates that, in the trial of criminal cases involving juveniles, the principles of "taking enlightenment as the dominant factor while making punishment subsidiary, and enlightenment, persuasion and reformation" must be adhered to. When hearing criminal cases involving juveniles, the provisions of the Code of Criminal Procedure relating to closed hearings should be adhered to. It should be ensured that juvenile defendants receive a defense counsel in accordance with the law, and that when opening the court for the hearing, if juvenile defendants who are less than eighteen years of age have not appointed a defense counsel, the People's Court should appoint a lawyer to take on the duty of giving legal assistance as their defense lawyer. Before a hearing begins in court, the legally

appointed representative of a juvenile defendant should be instructed to appear in court, and arrangements may also be made for a legal representative or other adult such as a close relative or teacher to meet with the juvenile defendant; in the courtroom, it is not permissible to use any police instruments upon a juvenile defendant, and a juvenile defendant may be seated when he is examined and questioned; only when responding to questions from the judge and to the pronouncement of the judge should the defendant stand. Where it is discovered that methods such as trapping into a confession, rebuking, ridiculing or threatening have been used in connection with a juvenile defendant, the judge should immediately put a stop to it. With regard to juvenile offenders who have already been imprisoned, the youth court can establish contact through a variety of means with a juvenile offenders' reformatory or other juvenile detention centre, so as to understand the situation regarding the reform of the offender, and can give assistance in the work of help, education and reform; it can also make return visits and investigations of juvenile offenders who are in the process of serving their sentence. The said judicial interpretations have a good effect in regard to effectively preventing the use of torture upon juveniles during judicial hearings and protecting the legitimate rights and interests of juveniles.

## PART II

### 2. Supplementary information provided in response to the "Conclusions and Recommendations" of the Committee's consideration of the third report

**With regard to the incorporation into China's domestic law of a definition of torture that fully complies with the definition detailed in the Convention.**

133. Paragraphs 59-64 of China's third report have already given explanations on this matter.

134. The Chinese government firmly believes that, in accordance with China's Penal Code, it is able to apply the appropriate punishment for acts of torture, including mental cruelty, according to the seriousness of the crime.

135. China's Penal Code makes different provisions for different situations involving acts of torture. For example:

(a) Article 247 provides that: "Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law."

(b) Article 248 provides that: "Any policeman or other officer of an institution of confinement like a prison, a detention house or a custody house who beats a prisoner or maltreats him by subjecting him to corporal punishment, if the circumstances are serious shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law. Any policeman or other officer who instigates a person held in

custody to beat or maltreat another person held in custody by subjecting him to corporal punishment, the policeman or officer shall be punished in accordance with the provisions of the preceding paragraph.”

136. According to the relevant judicial interpretations, the aforementioned acts include any act that calculatedly causes the victim to undergo severe corporal or mental pain or distress. In addition, China’s Penal Code stipulates that in the case of crimes such as illegal searching, illegal detention and degrading behaviour, the criminal subjects not only include people in public employment but also non-public personnel, and that where it applies to state functionaries, then a heavier punishment is given.

137. From this it can be seen that China’s laws and related legal regulations entirely cover the contents of the definition of torture contained in the Convention. The acts of torture provided for in the Convention are all prohibited under Chinese law, and severe punishment is applied in accordance with the law to all those who perpetrate such acts.

**With regard to continuing the process of reform, monitoring the uniform and effective implementation of new laws and practices and taking other measures as appropriate to this end.**

138. From the perspective of implementing the Convention, since 1999, China has taken a series of legislative, judicial and administrative measures on this account, to ensure the uniform and effective implementation of the legal system, and to obviate the problems of not proceeding according to the law and unfair law-enforcement.

139. When China amended its Constitution, it incorporated the words “human rights” for first time in the Constitution, explicitly stating that “the state respects and protects human rights.” This is a major event in the construction of China’s democratic constitutional government and civilized political culture, and it is an important milestone in the history of human rights development in China. The inclusion of human rights in the Constitution requires that judicial organs must place the principle of respect for and protection of human rights at the heart of all links in the judicial process, to ensure that the fundamental rights provided to citizens in the Constitution are not violated.

140. China’s amended Penal Code and Code of Criminal Procedure expressly stipulate such principles of criminal law as “crime and punishment are determined by the law”, “everyone is equal before the law”, “the punishment must fit the crime”, and the principle that no-one is to be judged guilty until a verdict has been given in a court of law and in accordance with the law.

141. China has formulated the Extradition Law, which provides the legal basis for a standardized extradition process, the enhancement of international cooperation in punishing crime and the protection of the legitimate rights and interests of individuals and organizations. In addition, China has also formulated other related laws, such as the Regulations on Legal Aid, the Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities, and the Law on Prevention of Juvenile Delinquency.

142. China's judicial organs have, through a series of departmental regulations and judicial interpretations, strengthened the mechanisms of internal supervision and have increased the severity of punishments for cadres who infringe discipline or the law, thus further standardizing law-enforcement activities.

143. China's public security and procuratorial organs have also established external supervision mechanisms, to receive supervision from the general public and to earnestly prevent and correct the problem of unfair law-enforcement on the part of public security and procuratorial staff.

144. "Fairness and efficiency" has become a guiding theme for the People's Courts in the 21st Century. All activities of the People's Courts must achieve the following: trials must be open, procedures legal, trial periods rigorously adhered to, judgments fair and implementation carried out according to the law. This is at the heart of "fairness and efficiency".

145. China will continue to deepen its reforms, perfect its legislation, standardize its law-enforcement, and sincerely carry out the duties of the Convention.

**With regard to abolishing the requirement of applying for permission before a suspect can have access for any reason to a lawyer whilst in custody.**

146. According to the related provisions of China's Code of Criminal Procedure, excepting cases involving state secrets, criminal suspects and defendants in custody do not need to apply for permission in order to get the help of a lawyer. Article 96 of China's Code of Criminal Procedure provides that: "A criminal suspect may, after the first interrogation by the investigatory organ or from the day of the compulsory measures to be taken, retain a lawyer to provide him/her with legal consultancy or act on his/her behalf to make petition or complaints. The lawyer retained by the arrested criminal suspect may apply for the suspect for bailing out for summons."

147. In cases which involve state secrets, the retaining of a lawyer by the criminal suspect should go through the approval of the investigatory organ. This is principally done in consideration of guaranteeing the smooth passage of criminal litigation, ensuring that the state secrets in question are not divulged, and protecting national security. The law makes clear provisions with regard to the scope of cases involving state secrets, which is strictly controlled in accordance with the law. In practice, these cases are very few in number, and after having gone through approval, the criminal suspect may still retain a lawyer, whilst the same lawyer can meet with the criminal suspect in custody. The rights of the criminal suspect to get the help of a lawyer are not therefore subject to any substantive restrictions at all.

**With regard to abolishing all forms of administrative detention, in accordance with the relevant international standards.**

148. In the criminal law of many countries, there are provisions not only for felonies and misdemeanours, but also for a large number of police offences. However, owing to differences in legal culture and legal traditions, in Chinese criminal law, there is no provision for police offences. Offences similar to police offences in foreign criminal law are regulated in Chinese law as administrative illegal acts, and administrative penalties are given in forms such as warnings, fines, or administrative detention.

149. Chinese law has strict provisions in respect of procedures for administrative penalties. Article 8 of the Law on Legislation stipulates that compulsory measures and penalties that restrict personal freedom can only be standardized through formulated laws and not through the form of legal regulations or rules. Article 9 of the Law on Administrative Penalty stipulates: “Administrative penalty involving restriction of freedom of person shall only be created by law.” Article 16 stipulates: “The power of administrative penalty involving restriction of freedom of person shall only be exercised by the public security organs.” Article 30 stipulates: “Where citizens, legal persons or other organizations violate administrative order and should be given administrative penalty according to the law, administrative organs must ascertain the facts; if the facts about the violations are not clear, no administrative penalty shall be imposed.” Article 31 stipulates: “Before deciding to impose administrative penalties, administrative organs shall notify the parties of the facts, grounds and basis according to which the administrative penalties are to be decided on and shall notify the parties of the rights that they enjoy in accordance with the law.” Article 32 stipulates: “The parties shall have the right to state their cases and to defend themselves. Administrative organs shall fully heed the opinions of the parties and shall reexamine the facts, grounds and evidence put forward by the parties; if the facts, grounds and evidence put forward by the parties are established, the administrative organs shall accept them. Administrative organs shall not impose heavier penalties on the parties just because the parties have tried to defend themselves.” Article 38 stipulates: “After an investigation has been concluded, leading members of an administrative organ shall examine the results of the investigation and make the following decisions in light of different circumstances:

(a) to impose administrative penalty where an illegal act has really been committed and for which administrative penalty should be imposed, in light of the seriousness and the specific circumstances of the case;

(b) to impose no administrative penalty where an illegal act is minor and may be exempted from administrative penalty according to law;

(c) to impose no administrative penalty where the facts about an illegal act are not established; or

(d) to transfer the case to a judicial organ where an illegal act constitutes a crime. Before imposing a heavier administrative penalty for an illegal act which is of a complicated or grave nature, the leading members of an administrative organ shall make a collective decision through discussion.” If the decision on administrative penalty is not accepted, then an administrative prosecution may be brought.

**With regard to ensuring the prompt, thorough, effective and impartial investigation of all allegations of torture.**

150. See Paragraphs 86-101 of this report on the situation in regard to Article 12 of the Convention.

**With regard to continuing and intensifying efforts to provide training courses on international human rights standards for law enforcement officers.**

151. See Paragraphs 86-101 of this report on the situation in regard to Articles 10 to 11 of the Convention.

**Appendices:**

Constitution of the People's Republic of China, Article 33

Penal Code of the People's Republic of China

Code of Criminal Procedure of the People's Republic of China

Extradition Law of the People's Republic of China

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