



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

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COMMITTEE AGAINST TORTURE

Forty-first session

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Held at the Palais des Nations, Geneva, on Friday, 7 November 2008, at 10 a.m..

Chairperson: Mr. GROSSMAN

CONTENTS

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

Fourth periodic report of China; second periodic report of Hong Kong Special
Administrative Region and initial report of Macao Special Administrative Region

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The meeting was called to order at 10.5 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (*continued*)

Fourth periodic report of China (CAT/C/CHN/4; CAT/C/CHN/Q/4; CAT/C/CHN/Q/4/Add.1); second periodic report of Hong Kong Special Administrative Region (CAT/C/HKG/4; CAT/C/HKG/Q/4; CAT/C/HKG/Q/4/Add.1) and initial report of Macao Special Administrative Region (CAT/C/MAC/4; CAT/C/MAC/Q/4; CAT/C/MAC/Q/4/Add.1)

1. *At the invitation of the Chairman, the Chinese delegation took a seat at the Committee table.*

2. Mr. LI Baodong (China) said that his Government appreciated the efforts of the Committee against Torture to promote the principles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment throughout the world with a view to the complete eradication of torture, and intended to continue to support the Committee's work. The presence within the Chinese delegation of representatives of several departments of the Central Government as well as of the Governments of the Special Administrative Regions of Hong Kong and Macao bore witness to the great importance which the Chinese Government attached to dialogue with the Committee. China remained firmly opposed to torture and, since ratifying the Convention in 1988, had made unswerving efforts to improve its legislative, law enforcement and judicial frameworks so as to prohibit, prevent and punish torture in all its forms more effectively. The Chinese Government had conscientiously discharged its reporting obligations, and its fourth periodic report, drawn up in accordance with the Committee's general guidelines regarding the form and contents of periodic reports, was the fruit of extensive consultations with State authorities and non-governmental organizations. The report described the measures taken by China since the submission of its previous report (CAT/C/39/Add.2) and of progress achieved in implementing the Convention. It also bore witness to the care taken by the Chinese Government in studying and applying the suggestions formulated by the Committee in its concluding observations on China's third periodic report (A/55/44, paras. 106 to 145). His Government had also sent a detailed written reply to the Committee's list of issues.

3. In recent years, China had endeavoured to carry out a policy of rational development giving priority to the interests of the population. Parallel with its efforts to develop the economy and raise the living standards of the Chinese people, the Government remained committed to promoting the consolidation of democratic institutions, establishing the concept of rule of law and safeguarding and advancing human rights with a view to building a more harmonious society. In 2004, the Chinese Constitution had been amended to incorporate the principle of respect and protection of human rights. That principle had been reaffirmed in 2006 in the five-year plan (2006-2010) for economic and social development where, for the first time in such a document, the promotion of human rights appeared as a clear objective. The protection and promotion of human rights had become important aspects of the national development strategy. Thus, legislative, executive and judicial organs at all levels were adopting concrete measures to improve existing mechanisms, regulate the conduct of law enforcement and judicial officials, and reinforce supervision and control to ensure fair law enforcement and administration of justice.

4. Among recent initiatives taken by his Government to reinforce the protection of the interests and fundamental rights of the population, two legislative measures in particular had had a considerable impact in terms of preventing and abolishing torture. The first was the Law on Administrative Punishments for Public Order and Security, adopted on 28 August 2005 with a view to enhancing the prevention and punishment of torture in non-judicial cases. Under that Law, public security organs responsible for matters of the type in question were expressly required to adhere to the basic principles of respect for and guarantee of human rights, protection of citizens' dignity, openness and impartiality. Moreover, the provisions of the Law enhanced the regulation, control and supervision of law enforcement acts taken by public security organs and – a particularly significant innovation – established the non-admissibility of evidence obtained by illegal means, including confessions obtained by torture, intimidation or cheating. The Act provided a code of conduct for the police as well as general rules concerning the protection of human rights and the prohibition of torture and inhuman treatment. Anyone violating those regulations incurred an administrative sanction or criminal prosecution, depending on the seriousness of the case.

5. The second piece of legislation constituting noteworthy progress in the field of prevention of torture was the amended Law on Lawyers, which had been adopted in October 2007 and had come into force on 1 June 2008. The new provisions guaranteed the protection of lawyers in the exercise of their profession and enabled them to discharge their duties fully at various stages of criminal proceedings, in particular by meeting with suspects during investigation, collecting evidence and acting in their clients' defence. Thus, the legitimate rights and interests of suspects were safeguarded, the exercise of control by the Judiciary was guaranteed at all stages of the procedure, and the protection of suspects against torture and other inhuman treatment was strengthened.

6. In addition to legislative measures, the Chinese authorities, aware that the key to effective prevention lay in higher professionalism of law enforcement personnel, were also tackling the root causes of torture.. In its previous concluding observations (A/55/44, paras. 106 to 145), the Committee had recommended that China should intensify its efforts to ensure that the training received by such personnel was compatible with international standards in the field of human rights, a recommendation which his Government had taken most seriously. In 2005, a nationwide campaign had been launched among law enforcement and judicial officials to promote the concept of the rule of law, the protection of human rights, fairness and justice. People's courts, people's prosecutor's offices (procuratorates), public security organs and prison administrations had redoubled their efforts to offer professional training to their personnel, highlighting the Convention against Torture and other human rights instruments of the United Nations. They had also promoted exchanges and cooperation with United Nations agencies, human rights organizations in other countries and specialists through discussions, seminars and training courses.

7. Institution building underpinned the prevention of torture. Chinese law enforcement and judicial organs had adopted several important sets of regulations. Thus, in 2005, the Ministry of Public Security had amended the procedural provisions for the handling of administrative cases by public security organs and those for the handling of criminal cases by public security organs. It had also adopted rules on the length of detention in criminal cases applicable to public

security organs. The Supreme People's Prosecutor's Office (Procuratorate) had adopted regulations on standards for filing criminal cases against State agents for dereliction of duty and rights infringement in the exercise of their duties, as well as rules on investigation procedures in prisons and places of detention. The Ministry of Justice had adopted directives for 2006-2010 for the penitentiary police on re-education through labour and provisions expressly prohibiting certain kinds of conduct. Prevention mechanisms had been set up and consolidated at each crucial stage of law enforcement and judicial procedures.

8. Supervision and control played a key role in prevention. The law enforcement and judicial authorities had intensified their efforts to increase the transparency of their procedures and to strengthen the supervision mechanisms. The annual evaluations undertaken by the public security organs used the "veto with one vote" marking system in the event of violations such as acts of torture, -maltreatment or misuse of firearms involving death or serious injury. If a public security organ received such a veto twice in the same evaluation, its superior officers had to resign or be removed from office. Special offices had been set up by organs of the procuratorate in practically all prisons and places of detention, and a system of interviews at which detainees could, by appointment, meet representatives of that office in order to register complaints existed in many prisons.

9. The participation of the public also played an important part in supervision and control. The law enforcement and judicial organs were attentive to the opinion of all sectors of society, and in particular of the non-governmental organizations, expressed through the media, the Internet and via telephone hotlines and letterboxes specially provided for the purpose. In that way they were able to investigate, handle and solve certain problems in a timely manner.

10. Any complaint relating to acts of torture gave rise to a thorough investigation by the department concerned. If the complaint turned out to be well-founded, it was handled in accordance with the law. If the violation fell within the purview of criminal law, an action in a criminal court was instituted. The 2007 regulations on the punishment of civil servants of administrative organs expressly provided punishments for those who violated personal rights, e.g. by assault and battery, corporal punishment or illegal detention, the penalties ranging from a reprimand to dismissal depending on the seriousness of the offence.

11. The regulations in force, in particular those pertaining to investigations into violations committed by members of public security organs and those governing internal supervision of public security organs, has made it possible to establish a comprehensive system of supervision within those organs. From 2005 to 2007, 137 policemen had received administrative or disciplinary sanctions for extorting confessions by torture and 46 for maltreatment of detainees.

12. In July 2006, the Supreme People's Prosecutor's Office had adopted regulations on standards for filing criminal cases for dereliction of duty or infringement of rights. In that way the organs of the procuratorate had highlighted a number of cases of abuse of authority by officials. From 2006 to 2007, 258 officials had been prosecuted in 160 cases involving extortion of confessions, maltreatment of detainees and collection of evidence by force.

13. Extended detention being known to constitute a hotbed of torture, his Government had in 2003 launched a nation-wide effort aimed at establishing a

standing mechanism of supervision in that regard. That mechanism had proved effective, making it possible to reduce the number of persons in extended detention from 24 921 in 2003 to 85 in 2007. Meanwhile, regular reviews were being carried out at all levels of law enforcement and judicial organs with a view particularly to preventing the use of torture in order to extort a confession. Such control measures, associated with judicial and disciplinary punishments meted out to officials found guilty of violations and also with investigations into the responsibility of their superior officers, had resulted in a sharp fall in cases of torture. Thus, in 2006, 64 cases involving 119 officials accused of extorting confessions by torture had been brought before the courts as against 40 cases involving 82 officials in 2007, a diminishing trend which had since confirmed itself. It should be added that in cases of torture the judicial organs had acted strictly in the light of the particular circumstances of each case and had imposed punishment accordingly. Thus a policeman found guilty of violence having led to the death of a witness had been sentenced to lifelong imprisonment and had forfeited his political rights for life.

14. The eradication of torture needed time and constant effort. In order to attain that goal, his Government was resolved to continue improving its judiciary system, reinforcing its endeavours in training, prevention and punishment, and implementing all provisions of the Convention scrupulously so as to make new progress in the fight against torture. His Government was ready to work in close collaboration with the Committee, international organizations and other countries towards the realization of the Convention's objectives.

15. Since China had resumed the exercise of sovereignty over Hong Kong on July 1 1997 and over Macao on December, 1999, the Convention against Torture had become applicable to Hong Kong and Macao Special Administrative Regions on those respective dates. In accordance with the "one country, two systems" principle enshrined in their respective legislations, Hong Kong and Macao Special Administrative Regions enjoyed a high degree of autonomy in running their affairs. Each region had therefore submitted its own report on the implementation of the Convention.

16. Mr. O'NEIL (Hong Kong Special Administrative Region) reaffirmed his Government's commitment to the protection of human rights and to the full implementation of the provisions of the Convention against Torture. Human rights in the Region benefited from extensive protection not only under the common law, but also under the Basic Law, under the Hong Kong Bill of Rights Ordinance, and under other legislative measures. No law and no administrative measures could contravene the Basic Law. Article 7 of the International Covenant on Civil and Political Rights, according to which no one was to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, was entrenched in the Basic Law and was consequently applied throughout the territory. Judiciary power was independent and, through its courts, ensured the implementation of those provisions. The high level of protection of human rights thus attained had enabled Hong Kong to progress over the years towards the full implementation of the Convention's provisions and had contributed to the strengthening of the safeguards enshrined therein.

17. The new administrative procedures and legislation introduced in Hong Kong since the submission of its previous report in 2006 (CAT/C/39/Add.2) were described in the written replies to the list of issues (CAT/C/HKG/Q/Add.1), to

which the Committee was invited to refer for detailed information. Three recent measures relating to concerns expressed by the Committee needed, however, to be emphasized.

18. First, Hong Kong had, in July 2006, adopted an ordinance placing the Independent Police Complaints Council on a statutory basis. Besides setting out the Council's functions, powers and operation, the ordinance placed a statutory obligation on the police forces to comply with the Council's requirements. The Council under its new statute was expected to be brought into operation in the first half of 2009.

19. Second, the Hong Kong authorities had adopted new guidelines for the police concerning their powers to search detainees. Those guidelines, which had come into force on 1 July 2008, stipulated more stringent requirements in respect of the scope of searches that might be carried out on detainees, the procedure to be adopted, and, in particular, made it obligatory to keep a record of searches conducted. The implementation of the new guidelines was being monitored to ensure that policemen exercised due respect of the privacy and dignity of detainees when conducting searches. Serving policemen as well as new recruits received training in the obligations arising from the new guidelines.

20. Lastly, the Government had put in place mechanisms based on strict standards to ensure fairness in the procedure for screening torture complaints.

21. Mr. OLIVEIRA (Macao Special Administrative Region) expressed pleasure in submitting the initial report of the Macao Special Administrative Region on the occasion of the consideration of China's fourth periodic report on the implementation of the Convention against Torture. His Government had endeavoured, both in its report and in its written replies, to provide the fullest and most detailed information possible on subjects of special interest to the Committee, and hoped to have been successful in demonstrating that the measures adopted over the years, be it through legislation or via administrative rules and practices, gave effect to the rights recognized in the Convention and ensured the fulfilment of the obligations arising from it. Respect of fundamental rights and freedoms was deeply rooted in Macao's legal system and was cherished by Macao residents as a cornerstone of their way of living.

22. The promotion and protection of human rights and the rule of law were important priorities in Macao's policy. The greatest importance was attached to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Torture and inhuman treatment were expressly prohibited at the constitutional level and treated as distinct criminal offences in ordinary legislation. Moreover, human dignity was considered to be inalienable at all levels. Acts of torture or other cruel treatment constituted aggravating circumstances when committed in the context of certain other crimes. Some kinds of cruel treatment also constituted distinct offences, e.g. ill-treatment of minors, incapable persons or one's spouse, coercion, arbitrary medical or surgical intervention or treatment, etc. The authorities of Macao Special Administrative Region furthered a policy aimed at preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment. All persons responsible in that sphere, whether in the creation of new legislation or the application of existing laws, were well aware of the importance of abolishing all forms of mistreatment, especially of vulnerable groups, and would continue their efforts in that direction.

23. Mandatory training in human rights was dispensed to police officers, prison staff and other law enforcement officials. A commission for disciplinary control of the security forces and services of Macao had been set up in 2005. Its aim being to ensure that the personnel concerned respected the law and fundamental rights, it was empowered to receive complaints lodged by citizens against members of the forces and security services accused of having infringed the law or violated basic rights in the exercise of their duties.

24. In accordance with the laws and practices in force in Macao, everything was being done to ensure that the physical and psychological integrity of prisoners and other confined persons was respected under all circumstances. The provisions governing custodial measures were based on the principle that any detained person remained entitled to his or her fundamental rights, subject, where applicable, to the limitations inherent in the sentence passed. The conditions of detention – accommodation, clothing, hygiene and food – were such as to safeguard the health and dignity of the detainees, who also had contacts with the outside world, being allowed to receive visits and to send correspondence.

25. With a view to the implementation of the Convention relating to the Status of Refugees and the Protocol relating thereto, Macao Special Administrative Region had adopted Law No. 1/2004, which established the legal framework for the recognition and loss of refugee status. The Law guaranteed conditions of dignity to the applicant throughout the procedure from the appraisal of the application's admissibility to the final decision. It also ensured that applicants who had been victims of torture, rape or other physical or sexual abuses received special attention and were monitored by the Macao's Institute of Social Protection or by humanitarian entities. The Law, which was fully in conformity with the principle of *non-refoulement*, recognized the right of any person having refugee status to reside in Macao throughout the period of validity of such status and conferred upon any request for asylum submitted the effect of suspending any administrative procedure instituted against the applicant or his/her family dependents on account of his/her entry into the territory of Macao. A Commission for Refugees had been set up under Law 1/2004. If a person seeking refugee status claimed to have been or to risk being tortured or maltreated, the Commission, in cooperation with UNHCR, examined the claim in the light of international law criteria to which the internal law directly referred. UNHCR was entitled to take direct part in the application process and freely to contact asylum seekers, as well as persons whose refugee status had been recognized, in order to offer them such support as it deemed necessary. Moreover, all decisions relating to requests for asylum had to be notified to UNHCR.

26. Human trafficking was another area of special concern to Macao Special Administrative Region. Law 6/2008 on the fight against trafficking in persons contained an enlarged definition of that crime in accordance with the most modern international instruments, allowed for the extension of Macao's criminal jurisdiction, and established a comprehensive scheme for the protection of victims. A Commission had also been set up to follow up the implementation of dissuasive measures against trafficking in human beings. Lastly, with regard to the struggle against terrorism and the financing thereof, a new law as well as several preventive measures had been adopted, care being taken to keep an appropriate balance between the need to guarantee the security of persons and the respect of human rights.

27. The Government of Macao Special Administrative Region considered the effective and independent international monitoring of compliance with international human rights standards to be indispensable. The work of the Committee and its conclusions were seen as an essential step in enabling it further to improve its implementation of fundamental rights and freedoms..

28. Ms. GAER (Rapporteur for China) thanked the Government of China and the Governments of Hong Kong and Macao Special Administrative Regions for their detailed reports and their written responses to the list of issues, submitted in English, for which the Committee was grateful. It had to be pointed out that China was being reviewed by the Committee for the fourth time, and that most of the issues raised were ones already brought up in previous reviews. Yet a significant part of the information requested by the Committee did not appear in the documents submitted by the State party.

29. Some fundamental issues - such as the pervasive nature of torture in the criminal justice system, the gap between the authorities' verbal commitment to reform the system and the reality, or efforts to minimise situations that gave rise to acts of torture or to provide legal safeguards - were not taken up. Certain problems raised by the Committee were even dismissed as "groundless", or beyond the competence of the Convention or the obligations of the Government. In a particular case, the State party went so far as to claim that because China had not made the declaration provided in article 22 of the Convention, the Committee was not entitled to submit individual cases to it within the framework of the consideration of periodic reports under article 19. The Committee raised individual cases in reviewing the reports of all States parties and it did not intend to modify its practice in that regard solely for China, from whom it had often requested a list of detainees' names, in vain. The Committee had practically never received any information about the specifics of the cases or the whereabouts or condition of health of the people in question.

30. In connection with article 1 of the Convention, she requested the Chinese delegation to supply additional information on certain points which the definition of torture at present given in Chinese domestic law did not cover in a satisfactory manner, such as discrimination and mental suffering, in particular when inflicted by an agent of the police or any other person acting in an official capacity or at the instigation or with the express or tacit consent of such a person.

31. With regard to article 2 of the Convention, the Committee appreciated the information on laws for the prevention of torture promulgated by the State party since the consideration of its third periodic report in 2000 (CAT/C/32/Add.2), but deplored the dearth of statistical data, which gave rise to doubts as to the effective implementation of the Convention. In particular, it would wish to know the number of detainees and of complaints, the number of punishments meted out, the whereabouts of detainees, the number of persons executed or awaiting execution, that of persons placed in psychiatric establishments, the legal follow-up of complaints or the number of refugees or immigrants recognized as such, the conditions of detention and state of health of detainees, the number of persons punished for having committed serious acts of violence in connection with the population policy, the follow-up given to complaints from the families of victims of the Tiananmen demonstrations, and the number of cases declared non-receivable on the grounds that proof had been obtained by torture or constraint. The Committee

would also wish to see statistics of violent acts among detainees, deaths in detention and condemnations for trafficking, and to know the number of complaints relating to acts of violence perpetrated within the framework of investigations relating to terrorism in particular. The absence of statistics was not a new fact, as the Committee had already noted the dearth of such information in its concluding observations adopted following the consideration of China's third periodic report (A/55/44, paras. 106 to 145). Would the delegation explain the reason for the absence of the requested statistics?

32. Data on detention of persons from ethnic minorities were also lacking, as were those on the prominent events of 2008 – the March protests by Tibetans which had reportedly led to 18 deaths. The State party had failed to provide a list of all persons detained in the context of those incidents, as requested by the Committee under point 2(b) of the list of issues, or to indicate the whereabouts of those persons or the punishments to which they had been sentenced. It had confined itself to stating that 953 persons had been “detained”, that 362 had “surrendered” and that 42 had been “convicted”, whereas according to the Congressional Executive Commission on China 4434 Tibetans had been arrested and 1249 others had disappeared and several NGOs had published detailed lists of 200 to over 800 Tibetans still missing. Presenting the Chinese delegation with a list of 817 names submitted by a Tibetan group, she asked whether the persons concerned had been detained or released, or whether they had died, recalling that unacknowledged detention or disappearance increased the risk of torture..

33. It was desirable that the delegation should indicate whether the lack of information on widespread and continuing violations of the Convention, and particularly on the extent and nature of those violations, was due to restrictions imposed by the laws relating to State secrets. It would appear that the State Secrets Act applied not only to the divulgence of information concerning health and population, but also to that of statistics relating to detention and the criminal justice system. Further information on the procedure governing the classification of State secrets would be welcome, especially if that procedure allowed the denial of certain legal safeguards essential to the prevention of torture, such as access to legal counsel. The delegation was invited to say whether, in its view, the possibility of having recourse to such a procedure was compatible with the provisions of the Convention, especially since retroactive classification of State secrets, while it might not be authorized by law, was actually not uncommon in practice. In that connection, she referred to the case of Zhang Enchong, a housing rights lawyer, who had faxed a copy of a news article on protests by a group of displaced residents as well as his own account of police action – two documents in the public domain never previously classified as “State secrets” – and who had been tried for “illegally providing State secrets outside the country” and had served a three-year prison sentence. Would the delegation please explain why that did not, in its view, constitute a case of retroactive classification?

34. She thanked Mr. Li Baodong for his explanations on the subject of the law on lawyers adopted in October 2007, which the Committee had received favourably in that it seemed to facilitate detainees' access to a lawyer. The law was, however, contradicted by article 96 of the 1997 Code of Criminal Procedure, which, in cases classified as “State secrets”, required detainees wishing to be assisted by counsel to apply for special authorization. The delegation was kindly requested to indicate where the two texts differed, and which of the two had precedence over the other. It

might also indicate whether there existed a clear and univocal definition of “State secrets”, who was empowered to decide whether a case should be classified as such, and at what moment that decision was taken. It could also explain why certain cases had been classified as “State secrets” while the activities preceding the arrest and detention of the suspect had not been of a confidential nature, cite an example of a case where a decision classified under “State secret” had been annulled following an appeal by a detainee against that decision, and indicate whether that had occurred frequently or not. Lastly, could the delegation please state its view of the recommendation by the China Society for Human Rights Studies urging the State party to strengthen its work on classified statistics and to promote the improvement of its investigating techniques so as to change the stereotyped thinking patterns of law enforcement officials?

35. With regard to the possibility of challenging administrative detention, she referred to the case of Zeng Jinyan, placed under house arrest while her husband Hu Jia, awarded the Sakharov human rights prize by the European Parliament in October 2008, served a 3 ½ year sentence for subversion. Zeng Jinyan having had no opportunity to challenge her *de facto* house arrest, the Committee hoped that the State party would offer assurances that she would be able to do so.

36. Turning to article 3 of the Convention, she noted that the State party indicated in its written replies that no refugee or asylum seeker had ever claimed that he or she risked being tortured on expulsion to another neighbouring country. Additional information concerning the procedure in place for determining refugee status, as well as an explanation of why the Chinese Government refused to allow UNHCR access to the border with North Korea, where the estimated number of North Korea refugees varied between 30 000 and 300 000, would be welcome. In that connection it would also be useful to know on what grounds the State party referred to all the North Korean citizens in the Chinese border area as “clandestine immigrants”- a stigmatizing description – and claimed that they did not meet the criteria for obtaining refugee status, as they were all economic migrants. Persons who left the People’s Democratic Republic of Korea were exposed to criminal prosecution if they returned to their country of origin, and thus became “real” refugees. Did the State party recognize the concept of “refugee surplus”?

37. It was to be regretted that by way of response to question 3(b) of the list of issues requesting statistics of the number and geographical origin of asylum seekers, refugees and immigrants, as well as of expulsions, extradition measures or other repatriations from Chinese territory, the Committee had received just one chart recapitulating the number of persons suspected of a criminal offence who had been returned to their country of origin between 2000 and 2008. It was desirable that the data requested should reach the Committee before the meeting scheduled for the State party’s oral replies to those questions.

38. The State party might also provide additional information on the policies and practices it had developed and put in place to ensure the implementation of article 3 of the Convention and on the policies applied in the area of cooperation and extradition within the framework of the Shanghai Cooperation Organization, and in particular the treatment of persons suspected or accused of separatism, extremism or even terrorism. It would be interesting to know the impact of that Organization’s policies on the prevention of torture and to hear how the State party ensured that the measures taken by it were compatible with the Convention.

39. It had been reported to the Committee that policemen and other law enforcement officials, especially family planning officers, often resorted to violence. Medical personnel and policemen were commonly sent to conduct searches of “illegal pregnancies” and to persuade, or more often coerce, women to have an abortion. Relatives among whom the pregnant woman went into hiding might be fined, detained, beaten or otherwise punished. It was desirable that the delegation should confirm or deny those allegations and should also comment on the case of Teng Biao, a lawyer, and Chen Guangcheng, a human rights activist, who in 2005 had given legal assistance to persons who had been the victims of violence on the part of State agents responsible for implementing the Government’s population policy in Shandong province. Chen had reportedly become the target of retaliation by officials and had been sentenced to numerous years in prison. She wondered whether an investigation was going to take place and whether Cheng would have an opportunity to appeal the verdict.

40. The Committee would also appreciate some information on the role of medical personnel in implementing sanctions regarding the State’s population policy, statistics on the number of persons sanctioned under that policy, and the results of any investigations into such cases and the prosecution and conviction of officials who had abused their authority, maltreated citizens or used violence against citizens.

41. According to information received by the Committee, a certain amount of backsliding would appear to be taking place with regard to access to legal counsel; thus, the tax now imposed on lawyers could result in their abandoning the profession. Pressure was also reported to be put on lawyers by bureaux of justice at the district level. Would the delegation please comment on those points, as well as on the case of Yang Maodong, allegedly tortured by prison authorities and brutally beaten by a fellow inmate, who was reported to have been denied access to his lawyer who had travelled more than 1 500 km to act in his defence., and of the 16 lawyers who had offered to defend some Tibetans after the events of March 2008 and had been “discouraged” from doing so – in other words, had been subjected to intimidation and threats?

42. Additional information would also be welcome on the disappearance of Bishop Su Zhimin, against whom the authorities said no coercive measures had been taken but whose whereabouts remained unknown. Some people said he had been placed in an illegal detention centre and others claimed that he was in a detention centre of the Bureau of Public Security. She wondered whether any trace of him would be found one day. She also asked for news of Genden Choekyyi Nyima, reincarnation of the Panchen Lama, who had disappeared in 1995 at the age of 6 and had not been seen by anyone since. In that connection it should be recalled that the Committee on the Rights of the Child, which had asked whether an independent observer could interview the child, had been told that neither the child nor his family wished to be disturbed or to meet anyone. Did that mean that the child was in good health and had returned to his family? If so, why did no one have the right to verify it in person?

43. It would seem that the autonomy of judges and of the judiciary in general was in some jeopardy and that emphasis was no longer being placed on professionalism within the judicial apparatus. The delegation was invited to comment on that new political development, which appeared to mark a return to the past. NGOs also reported that unofficial personnel hired by the public authorities were often

responsible for attacks, harassment, intimidation, kidnapping and beatings of lawyers or petitioners. Such people, known as “retrievers”, were said to round up petitioners who travelled to the cities to seek redress for abuses by local officials and to detain them in so-called “black jails”. Could the delegation confirm the Government’s written reply to the list of issues, which consisted in a categorical denial of such unofficial personnel or unofficial places of detention, in the face of the ever-increasing number of NGO reports attesting to the existence of such persons and alleging the generalization of the above practices? Could it also provide information on the case of Duan Humin, who had died of wounds inflicted by “retrievers”, and indicate what guarantees were available to victims or detainees? More generally, the Committee would appreciate hearing whether any investigations had taken place in connection with complaints of kidnappings, harassment, or other acts of violence by personnel not employed by the State, and if so, what organ was responsible for conducting such investigations and what had been their outcome. In connection with kidnappings and disappearances, she wished to recall the names of Guo Feixiong (also known as Yang Maodong) and Li Heping.

44. It would be interesting to know whether the Chinese authorities had again reviewed the question of administrative internment and re-education through labour, as recommended by the Special Rapporteur on Torture and, earlier, by Mary Robinson, the then High Commissioner for Human Rights, and others. Could persons sentenced to administrative internment or to re-education through labour challenge the sentence before a competent organ, and did the State party envisage eliminating such punishments altogether?

45. Concluding her remarks, she recalled the poignant call by a group of United Nations human rights mandate holders for restraint and transparency in connection with the events of March 2008 in Tibet and requested the delegation to describe the role of moderation, transparency and accountability in China’s criminal justice system.

46. Ms. SVEAASS (Co-Rapporteur for China) thanked the Chinese delegation for the information provided concerning the implementation of article 10 of the Convention. The Committee welcomed the fact that policemen and procurature and court officials were receiving training on human rights in general and on the provisions of the Convention against Torture in particular. However, since nothing was said about the efficacy of such training, it was impossible to tell whether it had led to any changes of a legal or practical nature. It would be of interest to learn whether any mechanisms had been set up to punish officials who failed to respect the principles they had been taught, and what impact the training had had on the number and seriousness of cases of torture or maltreatment. It would also be useful to know whether new mechanisms had been set up to receive complaints relating to acts of torture or of cruel, inhuman or degrading treatment, and whether any measures had been taken by the State to monitor the results of the training given. Did officials who denounced abuses by their colleagues enjoy any protection? The State party reported that training was provided on the prohibition of extorting confessions by force, but information should also be provided on the efficacy of such training, and on whether officials who violated the principle of the absolute prohibition of torture were punished. Since younger men and women were apparently more sensitive to human rights issues than their elders, there was possibly a generational conflict within the administration. If such was the case, it would be interesting to hear how the problem was being tackled by the authorities.

Lastly, could the delegation provide more precise data on the number of persons benefiting from such training and on the nature of their duties?

47. States parties were also required to provide training concerning the Convention's provisions to the medical personnel of penitentiary services. In its written replies to the list of issues, China emphasized the in-service training given to such personnel as well as training concerning the right to health. Could the delegation specify whether the rules of the Manual for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), not mentioned in the delegation's presentation, were included in the training. Further, were the training programmes for prison medical officers developed by the World Medical Association (WMA) used in China? The Committee would also like to know whether the WMA's resolution on the responsibility of doctors in documenting and denouncing acts of torture and cruel, inhuman or degrading treatment had been translated into Chinese, whether the training had proved useful and whether it had resulted in any practical change: were medical examinations more thorough and medical certificates attesting to lesions more precise? What sanctions were incurred by doctors who failed to respect the rules taught as part of the training they received? The State party had spoken of its intention to spread awareness of human rights among the population at large. Yet several NGOs had been denied the possibility to conduct training programmes relating to the main international human rights instruments. Others were reported to have been stopped from distributing copies of the Universal Declaration of Human Rights. Could the delegation explain why the human rights activists Liu Zhengyou, Yoa Lifa, Zan Aizong and Zeng Jinyan, who had wanted to travel to Geneva for a training course in human rights, had not been authorized to leave China?

48. Turning to the implementation of article 11 of the Convention, she said she would begin by pointing out that the Committee did not have the time needed for a case-by-case examination of all the allegations of torture and maltreatment brought to its attention by various NGOs. If the delegation so desired, it could obtain a list of all those cases from the relevant departments of the High Commissioner's Office. The Committee would confine itself to general considerations on the treatment and rights of persons held in custody, and particularly of persons held in pre-trial detention. According to the report of the Special Rapporteur on Torture concerning his mission to China, nearly 30% of the alleged cases of torture had taken place during pre-trial detention, including nearly 20% on police premises. The Committee would appreciate the delegation's comments on the case of Mr. Mutallip Hajim, aged 38 years, who had died on police premises in Hotan in March 2008 although he had no previous medical problems. It appeared that no enquiry into the death had been held, which gave rise to the question of impunity. Did the State party propose to adopt a strategy to fight violations of the principle of the absolute prohibition of torture?

49. As to detention conditions, the Committee received with satisfaction the information provided on the floor area of cells and on the possibilities for detainees to take open-air exercise and to engage in recreational activities. However, the quality of penitentiary establishments was said to vary greatly from region to region and it would be of interest to know whether measures towards a nationwide standardisation of detention conditions were contemplated. The Committee was concerned over all forms of administrative detention, particularly detention for purposes of re-education through labour, and wondered whether China envisaged

implementing the recommendations formulated by the Committee on the conclusion of the consideration of its third periodic report (A/55/44, paras. 106-145), to the effect that all forms of administrative detention should be abolished. The system of administrative punishments opened the way to abuses in the sense that it derogated from the common law and deprived citizens of their legal guarantees..

50. In its written replies, China stressed that procedures for placing in administrative detention for purposes of re-education through labour were strictly defined by law and entailed a right of appeal. Yet it would seem that persons were detained on the basis of administrative decisions without being brought before a judge and without having had access to a lawyer. Moreover, according to certain sources of information, acts of torture were reported to have been committed in administrative detention centres. Additional information on the scope of jurisdiction of the body responsible for monitoring the legality of detention conditions in those centres would be useful, and the delegation might perhaps also indicate whether any administrative punishments had already been cancelled. So far as forced re-education was concerned, it should be stressed that the fact of obliging adepts of the Falun Gong to renounce their practices could be equivalent to a form of psychological torture within the meaning of the Convention. Furthermore, the fact that administrative detention centres were placed under the authority of the police, as well as the fact that persons detained by administrative decision did not benefit from the assistance of a lawyer, increased the risk of torture. In its written replies, the State party indicated that re-education measures were applied only in cases of law infringement. Could the delegation specify the types of law infringement concerned? It would also be of interest to know what body was responsible for settling conflicts of jurisdiction between ordinary courts and organs of administrative justice - in other words, what was the body that decided whether an ordinary or an administrative punishment was to be imposed? The State party would do well to abolish the administrative punishments system, incorporate administrative sanctions in the common law and leave it to the ordinary courts to administer justice in all cases. Lastly, it was stated in the report that the number of illegally detained persons had diminished, and that was to be welcomed. However, according to information brought to the Committee's attention, some human rights activists and members of their families were being illegally detained or kept under house arrest, and some persons were said to be detained in "black jails" (secret prisons) in Beijing.

51. Did China envisage introducing a procedure for video-recording police interrogations of persons in police custody, when the risk of torture was at its greatest? Any measure that would ensure closer control of pre-trial detention would be particularly welcome. With regard to independent mechanisms set up to monitor the legality of detention, the Committee noted that prosecutors monitored the observance of the principle of prohibition of torture during detention. In that connection, it wondered whether those prosecutors were also empowered to monitor detention conditions in re-education centres. China stated in its written replies that in 2007, 11 135 complaints by detainees had been handled by the People's Procuratorate, a very small number considering that China's prison population amounted to 3.8 million persons. The mere fact of appointing procuratorial staff to investigate presumed acts of torture or maltreatment did not meet the obligation of States parties to ensure an impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed. In its written replies, the

State party did not provide all the requested information concerning the creation of an independent mechanism that would be responsible for promoting impartial investigations into acts of torture committed on persons in custody. The delegation could perhaps comment further on that subject.

52. The Committee had received reports of acts of particular violence against persons in custody: beatings, hitting of sensitive parts of the body, forced stripping, electric discharges and rape. It was of the utmost importance to open an investigation when there were grounds to believe that an act of torture or a serious violation of human rights had been committed. Victims of such acts should be able to inform an independent national human rights institution fully in conformity with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). The task of investigating human rights violations committed on Tiananmen Square on 4 June 1989 and of obtaining compensation for the victims of those acts or for members of their families could also be entrusted to the same body.

53. With regard to the implementation of article 13 of the Convention, the Committee had taken note of the existence of the traditional system of petitions in China but had received information to the effect that petitioners were subjected to acts of intimidation, detained in “black jails” for prolonged periods and in some cases became victims of forced disappearances. While trying to protest against the arrest of 20 petitioners and their confinement in secret prisons in Beijing, Xu Zhiyong, a senior lecturer in the faculty of law, was reported to have been arrested and beaten up by law enforcement officers. What were the State party’s comments on that point? Did it envisage taking the necessary steps to ensure the safety of petitioners, close down the “black jails” and compensate those who had been held there? Were any measures allowing petitioners access to lawyers envisaged? It would seem that at present, some lawyers refused to defend petitioners for fear of reprisals.

54. As regards the implementation of article 14 of the Convention, the Committee would like to know whether the persons whose confessions had been obtained by torture had been compensated and whether they had benefited from rehabilitation measures. As for article 16, the Committee would be glad to hear the delegation’s views on the possibility of a link between the severe measures taken against members of the Falun Gong and organ transplants. Furthermore, the Committee considered that detention on death row was equivalent to cruel, inhuman or degrading treatment within the meaning of the Convention and would wish the State party to envisage remedying the situation in that respect, and also to decide to end the disguised use of psychiatric hospitals for purposes of detention. Lastly, she asked what measures the State party was envisaging to fight extra-judiciary executions, which were reportedly practised in some parts of the country..

55. Mr. GALLEGOS CHIRIBOGA reminded the Committee that implementation of the Convention was not only a legal issue but also a social one, since it implied the adoption of a certain concept of fundamental rights and a certain type of conduct. A development in mentalities and attitudes would have to take place in order for China to move towards a system which guaranteed the three essential rights of any person held in custody: the right to contact a member of his or her family, the right to be assisted by a lawyer, and access to a doctor. In fighting impunity, the State party would also have to set up an independent human rights

monitoring mechanism responsible for looking into allegations of torture and maltreatment. Lastly, it was desirable that the State party should envisage the abolition of the death penalty, which was hardly compatible with the Convention.

56. Mr. GAYE welcomed China's political will to promote the rule of law and the considerable efforts being made in that direction. In a spirit of dialogue, mention had to be made of the effectiveness of steps taken to implement the Convention. In that regard, the Committee would like to know whether the State party envisaged abolishing certain exceptional practices such as re-education through labour and administrative detention, so that the principle of legality might be better respected. The efforts being made by the State party to provide training for those principally responsible for meting out justice – prosecutors and judges – were certainly praiseworthy, but what of the status of lawyers in China? The Committee was concerned by reports according to which lawyers were subjected to pressure and could not always freely exercise their activities. Lastly, the Committee would wish to know whether China envisaged making the declarations provided in articles 21 and 22 of the Convention.

57. Mr. MARIÑO MENÉNDEZ said that he wished to form a clearer idea of the difference between public security organs and procurators. Were they subject to the same authority? He also wished to know whether it was necessary to belong to the Communist Party in order to occupy a post within the People's Procurature, or whether the fact of being a member of that party was an advantage in obtaining such a post. Additional information would be appreciated on the means employed to ensure that the independence of judges and procurators - one of the pillars of the rule of law - was guaranteed. On the subject of forced or involuntary disappearances, the Committee thought that such facts certainly fell within the purview of the Convention; in particular, it could be argued that the families of the persons who had disappeared were victims of maltreatment within the meaning of the Convention. As for domestic violence, it involved the responsibility of States parties under the Convention when it was a systematic practice. Forced abortion certainly constituted inhuman treatment within the meaning of the Convention.

58. In paragraph 66 of the report, mention was made of "serious and especially serious cases". The fact of distinguishing between acts of torture according to their seriousness was in itself a source of legal insecurity and gave rise to problems in connection with the Convention. The information to the effect that in cases of presumed violation of State secrets the accused person's right to assistance by a lawyer became conditional also gave grounds for concern. Furthermore, it would be important to know whether it was possible to suspend measures for the expulsion of an alien to a country whether there were serious grounds to believe that he or she would be subjected to torture. Lastly, the Committee would like to know whether corporal punishment of children was prohibited in China, including in the home.

59. Ms. BELMIR welcomed the State party's efforts to give effect to the principal international human rights instruments. The information submitted showed, however, that the respective areas of law on the one hand and regulations on the other were not clearly delimited. In that connection, a number of question arose in connection with the status of the people's prosecutorate. Furthermore, the fact of distinguishing serious and especially serious cases of torture amounted to setting aside cases which nevertheless constituted violations of article 1 of the Convention. The Committee was concerned over the use of "retrievers" by the police and the

existence of places of detention which allegedly escaped State control, and would appreciate the delegation's explanations on those points. As for the bench, the State party was to be encouraged to continue the training of judges, whose professionalism was crucial to the quality with which criminal matters were handled.

60. She further wished to draw attention to the fact that the system of placing persons in administrative detention escaped the controls required by international human rights principles, as well as the time limits established for dealing with criminal cases. The period which could elapse before a detained suspect was brought before a judge – thirty days – could be extended to thirty-seven days, after which a further extension could be requested by the police. Ultimately, that meant that persons could be forgotten in prison although officials responsible for keeping a person in detention indefinitely exposed themselves to a seven-year prison sentence and although such sentences had in fact been passed. In some cases persons had remained in prison under pre-trial detention for more than three years before being released. Another serious ground for concern was the case of a death sentence being passed after a trial lasting only one hour.

61. Mr. KOVALEV said that he had read with interest the document distributed to Committee members in English only and entitled *China's efforts and achievements in promoting the rule of law*. He had greatly appreciated the contents of the document, but there were two passages on which further explanations would be welcome. First, the document stated that China still practised capital punishment but was pursuing a policy of reducing the number of cases in which the death penalty was imposed, and was closely monitoring the use of sentences of capital punishment in order to make sure they were passed only in the most serious cases. He wondered whether a list of such cases existed and who it was that finally decided whether a case was or was not serious enough to deserve the death penalty. Secondly, the document stated that no one could be arrested without a prosecutor's clearance or a decision to that effect by a prosecutor or a people's court. The State party therefore recognized that in certain cases persons could be arrested by decision of a prosecutor, which did not seem consistent with United Nations practice. He invited the delegation to explain who the decision to arrest was taken by a prosecutor in some cases and by a court in others.

62. The CHAIRPERSON recalled that the Committee strongly recommended that the definition of torture should appear in the text of a single law rather than in several texts. That made matters much easier for those responsible for applying the law. Yet it emerged from the State party's replies to the list of issues that Chinese law included numerous provisions, appearing in many laws, which related to torture. Moreover, all the provisions referred to related to the extortion of confessions, which was not the only object of the prohibition of torture. China had said that its laws prohibited acts which caused physical suffering as well as disguised torture. but since the matter was governed by several provisions it was difficult to form a precise idea of what acts were being referred to. It was desirable that the delegation should provide additional information in that respect, indicating, for instance, in what cases mental suffering was considered to constitute torture and whether there had been any cases where that particular point had been raised.

63. He was surprised that China should think the question of forced disappearances lay outside the purview of the Convention. Article 1 of the

Convention referred to any act by which severe pain or suffering was inflicted, and it was difficult to see how forced disappearances escaped that definition. Disappearance occasioned by persons acting in the exercise of their official duties could cause intense suffering; the victim had the impression that he or she did not exist, and felt that those who had made him/her disappear could dispose of him/her as they wished. It was desirable that the delegation should say something on the subject, the more so as, according to some reports, the State party was itself involved in forced disappearances whereas it ought to be punishing the persons participating in such acts.

64. In connection with the use of torture, the State party's report spoke of "serious or especially serious cases" defined in the light of certain criteria, such as cases leading to serious injury or mental derangement. But torture was by definition a serious crime, and no degree of seriousness could be established in respect of it. The delegation ought to explain why only cases covered by the said criteria were considered serious or especially serious.

65. With regard to the right of lawyers to speak during procedures, it emerged from the information provided that that right could be restricted where national security was involved. It would be useful if the delegation could give some examples of cases in which a lawyer's freedom of expression had been restricted for reasons connected with national security. It was difficult to understand in what way a lawyer speaking before a judge in the course of legal proceedings and not divulging any information of a military character could jeopardize national security. The concept of national security was very broad, and lack of precision in that connection could give rise to abuses. It would be useful to know whether the State party's jurisprudence had helped to define the concept more clearly.

66. In connection with the death penalty, Amnesty International had reported that at least 470 persons had been executed and at least 1860 persons had been sentenced to death in China in 2007, adding that the true figures were probably much higher. The death penalty was statutorily passed in the case of 68 offences, including some not involving the use of violence, such as embezzlement and corruption. The State party said it did not have statistics of the number of persons sentenced to death, which was puzzling and gave rise to the question whether such statistics were perhaps a State secret. However, thanks to recent procedural changes, any death sentence passed had to be considered at a high-level, which was a development the Committee could only welcome. The question of the death penalty certainly lay within the purview of the Convention's implementation, given the anguish caused to the families of those executed. Similarly, anguish was caused to families of persons under administrative detention in secret places. Lastly, he asked for further information on the subject of enforced hospitalizations. Were such measures taken by simple administrative decision or did the judicial apparatus have a say in the matter? Decisions of that kind should not, of course, be purely administrative.

67. He then invited the Committee to consider the reports of Hong Kong and Macao Special Administrative Regions.

68. Ms. GAER (Rapporteur for China) invited the Hong Kong delegation to enlarge upon the amendment to Hong Kong's definition of torture, an amendment which the Committee had already recommended when Hong Kong had been under United Kingdom jurisdiction. She also requested the delegation to respond to the allegation by the NGO Human Rights Monitor to the effect that no fair and efficient

procedure for determining refugee status existed in Hong Kong. Did the authorities propose to take any action in that regard? The delegation might also comment on the same NGO's allegation that Hong Kong was violating article 3 of the Convention by using arbitrary procedures in connection with prosecuting and detaining immigrants. Noting that no independent procedure for complaints against the police had been set up despite the Committee's recommendations over the past 13 years, she wondered whether the problem was rooted at the police level or was of a political or structural nature. Or did Hong Kong perhaps think that no such procedure was necessary?

69. Paragraph 4 of the list of issues raised the question whether the authorities of Hong Kong Special Administrative Region had jurisdiction over Chinese military personnel who might have committed an act of torture in the territory of the Region, and, if so, where such persons would be tried. She did not think the reply given answered the question fully, and invited the delegation to enlarge upon it. Another question that had been asked was whether the Hong Kong authorities had already instituted proceedings against persons in the territory of the Region who were reported to have committed acts of torture outside that territory, irrespective of the legal provisions relating to torture in force in the country concerned. The reply given was that no such case had arisen, but the Committee would like to know what would happen if such a case did arise. What jurisdictional problems would there be? For example, could a Chinese national alleged to have maltreated someone be arrested and imprisoned in Hong Kong? She thanked Hong Kong and Macao Special Administrative Regions for the ample and highly informative statistical data included in their reports. The statistics showed that the prison occupation rates in Hong Kong Special Administrative Region were very high and that the proportion of women detainees was exceptionally high (37 to 40 % as against 5 to 10 % in most countries). Accordingly, the delegation should provide information on the nature of the offences for which those persons had been placed in detention. Lastly, on the question of video-recording interrogations, it would be interesting to know if the practice had contributed towards the elimination of police violence, whether any prosecutions based on such video-recordings had already been instituted, and how long the recordings were kept.

70. Turning to Macao Special Administrative Region, she welcomed the fact that proceedings on grounds of human trafficking had been instituted for the first time, and asked whether other reforms were in progress or being planned with a view to punishing that crime.

71. Ms. SVEAASS (Co-Rapporteur for China), referring first to the question of determination of refugee status in Hong Kong Special Administrative Region, inquired whether the application of the 1951 Refugee Convention would be extended to the said Region. Various reports giving rise to concern over the situation of unaccompanied minors in Hong Kong had come to her notice and she would wish to have more information on that point, and in particular on the case of A.K., a young person who had been detained at the airport for a prolonged period of time. What were the intentions of Hong Kong Special Administrative Region as regards unaccompanied minors seeking asylum?

72. The delegation had said that the Independent Police Complaints Council had been placed on a statutory basis. It would be important to know whether that body would constitute an independent mechanism within the meaning of the Paris Principles. It was stated in the written replies that a new independent body would be

needless in view of the existence of the Equal Opportunities Commission; yet it was precisely the Equal Opportunities Commission that strongly recommended the setting up of such a body. The delegation could perhaps provide some additional information on the operation of the Independent Police Complaints Council and on the role of the Police Complaints Bureau, particularly in connection with the monitoring of allegations of police exactions. Referring to the new guidelines on searching of detained persons which the police was required to apply from 1 July 2008, she wondered whether those guidelines were distinct from the Handbook of applicable procedures and instructions given to the police. It had been alleged that searching of naked persons were still practised and that, although searching was subject to strict procedural rules, those rules were not always followed. She wondered whether the new guidelines were being respected and whether they were contributing towards improving the situation. It would also be interesting to know what consequences were incurred by persons who did not comply with the guidelines. On the subject of establishments for minors, there had been reports of cases where minors in such establishments had been very roughly handled. A boy had committed suicide in one such establishment ten years previously, and although an investigation had revealed that he had been the victim of rough treatment, the investigation had not been pursued any further. Lastly, referring to human trafficking, she said it would be useful to hear what measures had been taken to prevent and punish that crime and to compensate, assist and rehabilitate the victims.

73. Turning to Macao Special Administrative Region, she requested information on the training of health personnel in matters relating to torture and, in particular, to the detection of cases of torture, and stressed the usefulness of the Istanbul Protocol on those issues, which should be included in all training programmes for such personnel. She further requested additional information on training in non-coercive interrogation techniques, and asked whether audio-taping of interrogations had changed the way in which interrogations were conducted. In its replies, Macao Special Administrative Region indicated that solitary confinement could be imposed for a period of up to one month. Additional information on regulations governing solitary confinement would be desirable. It also emerged from the written replies that a month's solitary confinement could be imposed on minors aged from 12 to 16 years, which appeared excessive. She would wish to know how often such measures were applied and recalled that the Committee had, in connection with the consideration of other countries' reports, expressed the view that minors under 18 should not be placed in solitary confinement.

74. Noting that immigrants whose situation was irregular could be placed in special holding centres for up to sixty days, she asked whether, in view of the fact that the 1951 Refugees Convention had been extended to Macao, those centres were subject to inspection and whether the United Nations High Commissioner for Refugees could visit them. On another point, she recalled that the Committee in its list of issues had asked Macao Special Administrative Region for data on the number of complaints emanating from detained persons. The answer had been that such data were not available, and neither were those concerning compensation paid to victims. Yet it would be important to provide data of that type, thus making it possible to determine whether a mechanism whereby victims of torture could obtain compensation existed and to assess that mechanism's efficacy.

75. Ms. BELMIR, referring to the report of Macao Special Administrative Region, reiterated what she had already said in connection with the interpretation of articles

232, 234 and 236 of the Criminal Code relating to the aggravated offence of torture. She shared the concern of the Committee on the Rights of the Child concerning the age of criminal majority of children in conflict with the law, which was only 10 years, and stressed that the obligations of judges as regards the protection of children in conflict with the law had to be reinforced, especially as there was no reparatory justice for minors. Turning to Hong Kong Special Administrative Region, she expressed concern at the fact that cases relating to police exactions were investigated by the police itself and that the Independent Police Complaints Council could not ensure that such complaints should be investigated properly.

76. Mr. MARIÑO MENÉNDEZ said he supposed that the protection of asylum seekers and the determination of refugee status in Hong Kong were governed by the 1951 Convention on Refugees and that the Convention against Torture was taken into account as regards the principle of *non-refoulement*. The same applied to China and Macao Special Administrative Region. Yet he understood that a court of first instance in Hong Kong had found that the principle of *non-refoulement* could be waived. It was essential that practice in that area should conform to the principles enshrined in the Convention. He wondered whether any form of cooperation existed between the People's Republic of China and Hong Kong Special Administrative Region, as distinct entities, in the field of prevention and punishment of torture.

77. The CHAIRPERSON, recalling that the Committee in its concluding observations of May 2000 had expressed concern at the fact that under an ordinance of Hong Kong Special Administrative Region any person accused of the offence of torture could claim in his/her defence that he/she had an authorization, a justification or a legitimate excuse for such conduct, invited the delegation to inform the Committee of measures taken to bring Hong Kong legislation into line with the Convention and to state whether any new factors had emerged in connection with the question of the definition of a public official. No Hong Kong policeman or State agent had been prosecuted, although according to a number of allegations some of them were making excessive use of force and committing acts of violence. It emerged from the parallel report of the Equal Opportunities Commission, 2008, that in order for judicial prosecution for torture to be initiated there had to be sufficient factors suggesting that acts of torture had indeed been committed. Since torture was not usually committed in front of witnesses, it would be interesting to know what kind of proof was required in such cases. It would also be useful if the delegation could provide information on measures taken to improve investigation procedures and proof-collecting techniques. With regard to the situation of asylum seekers in Hong Kong, he referred to a paper alleging that such persons were often subjected to maltreatment, and requested the delegation to say what measures had been taken to remedy that problem. On the subject of sex workers, the Equal Opportunities Commission had recommended in 2008 that clear guidelines should be issued to govern the conduct of law enforcement forces in their respect, and that a mechanism enabling such workers to lodge complaints should be set up. Comments on that point would be welcome.

78. It was a known fact that violence within the family could fall within the ambit of the Convention when it was generalized. It was also known that the State party's legal system did not allow victims to obtain compensation or that the State remained passive in face of the problem. Although Hong Kong Special Administrative Region had taken steps to fight the phenomenon, it could do still more. He referred to the case of Tim Sui Wai who, in 2004, had been killed by her companion, together with

her two children, although she had sought assistance from a social worker, had alerted the police and had taken refuge in a shelter. In Macao Special Administrative Region, violence within the family had been on the rise for several years, and he asked that steps the Government had taken in the matter. He also noted that prostitution was legal in Macao and was common there, which could contribute towards the phenomenon of human trafficking. In that connection he recalled that the Committee had often expressed concern over that issue, which could, to some extent, fall within the ambit of the Convention.

79. Mr. LI Baodong (China) said that his delegation had listened with attention to the comments and suggestions formulated by members of the Committee, would study them with care and would be happy to continue the constructive dialogue which had been initiated.

The meeting rose at 1.05 p.m.