



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

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE 846th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 10 November 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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The meeting was called to order at 10 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/CHN/4/Corr.1;
CAT/C/CHN/Q/4; CAT/C/CHN/Q/4/Add.1) and addenda concerning the Hong Kong
Special Administrative Region (CAT/C/HKG/4; CAT/C/HKG/Q/4;
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(CAT/C/MAC/4; CAT/C/MAC/4/Corr.1 and 2; CAT/C/MAC/Q/4;
CAT/C/MAC/Q/4/Add.1) (*continued*)

1. *At the invitation of the Chairperson, the Chinese delegation took places at the Committee table.*
2. Mr. LI Baodong (China) said that the Chinese delegation had welcomed with much interest the comments and suggestions of Committee members and appreciated the Committee's constructive approach. The current dialogue with the Committee was both necessary and useful. In that context, it was important to recognize country differences in terms of culture, traditions, development levels and legal systems. During recent years, China had achieved significant progress in judicial matters and in the area of human rights and it was determined to pursue that path by strengthening cooperation and international exchange and by learning from others, particularly through the views of the Committee. It would continue to strengthen its sensitization and training activities with a view to overcoming cultural and traditional obstacles and achieving zero tolerance with regard to torture.
3. The Chinese authorities had endeavoured to provide the Committee with the fullest possible information. Much remained to be done, however, in the area of statistics. China was a developing country with only limited resources and the task was made no easier by the size of its population. It took time to achieve reform and openness, but the Government would seek to accelerate the process and improve interdepartmental coordination.
4. The Government worked with non-governmental organizations (NGOs), which played an important role in the promotion and protection of human rights. It had excellent relationships with most of them and supported their activities. It was essential to recognize, however, that complex factors were at play, including the use of violence and terror, racial hatred, public order disturbances and the subversion of legitimate governments, something which China had experienced. Under the guise of human rights, a small number of NGOs distorted facts and disseminated false information for political ends. Some lied about the situation in China by claiming that torture was commonplace, the aim being to mislead the Committee and disrupt its proceedings. The delegation had no doubt that the Committee members would demonstrate objectivity and impartiality and avoid any manipulation.
5. Chinese legislation contained no specific definition of torture. All of the elements in the definition set forth in the Convention were, however, provided for under laws covering a variety of offences. The acts of torture punishable by law also included physical and psychological suffering induced by ill-treatment. Hence, article 43 of the Code of Criminal Procedure prohibited not only torture but also the use of threat, blackmail and deception in order to obtain confessions. Under article 238 of the Criminal Code, humiliating treatment constituted an aggravating factor in the illegal deprivation of liberty. The ill-treatment mentioned in articles 247 and

248 of the Criminal Code also included humiliation, which could lead to serious mental suffering. In addition, the rules on the commencement of criminal proceedings for breach of duty and violation of rights in the course of official duties provided that gross breaches and violations that had a detrimental effect on the victim's mental health must be investigated with a view to establishing the criminal responsibility of the perpetrators. The provisions of the current legislation were therefore fully consistent with the spirit of the Convention.

6. The Chinese delegation recognized the connection between enforced disappearances and torture. Such disappearances, however, did not fall under the same international instruments or within the purview of the same bodies in the United Nations human rights system, which comprised various mechanisms, each with its own specific mandate to be respected. The Chinese Government nevertheless supported the reform undertaken to strengthen coordination among those mechanisms in the interest of promoting and protecting human rights.

7. China's historic ownership of Tibet was largely recognized by the international community. Tibet had been peacefully liberated and had undergone democratic reform in the mid-twentieth century. Bonded labour had been abolished and millions had again been able to live in freedom. The autonomy granted under the Constitution to the regions inhabited by ethnic minorities and the measures taken by the central Government to promote ethnic unity and prosperity for all had made for spectacular progress and development in Tibet. The competent authorities had been charged with investigating the incidents that had taken place in March 2008 in Lhasa and the surrounding area. Those incidents, during which 18 persons (including a baby only months old) had been killed and 382 injured, 58 of them seriously so, had been the work of separatist forces and the International Tibet Independence Movement (ITIM), which had carried out premeditated criminal acts, setting alight and looting shops, houses, schools, hospitals and other facilities. The police had been attacked, one officer had been killed and another 24 injured, 23 of them seriously. Such violence was not only a direct violation of the Criminal Code but also a gross infringement of the right to life, the right to security of person and the right to property enshrined in articles 3 and 17 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights. The security forces, acting in accordance with the law, had arrested 953 suspects in Lhasa and 362 other persons had turned themselves in. Following judicial proceedings, 69 persons had been sentenced to imprisonment for arson, theft, obstructing the duty of State officials, creating public disturbances, disrupting public order and committing acts of violence against State organs. Seven persons had been sentenced to imprisonment for treason or the illegal communication of information to persons outside the country and a further eight were awaiting a verdict. The 1,231 other suspects had been released after undergoing education measures and administrative punishments and were now leading normal lives. The security forces had acted legally and fairly and the rights and interests of the arrested persons had been duly protected. The provisions of the Criminal Code and the Code of Criminal Procedure had been strictly applied by the Lhasa People's Court and local courts. The proceedings had been public, the accused had benefited from the services of interpreters and the defence lawyers had been able to express themselves freely. The authorities had furthermore respected the principle of transparency by holding press conferences to which over 200 Chinese and foreign reporters had been invited and by receiving a number of official foreign delegations.

None of the diplomats, foreign representatives or journalists concerned had been subjected to threats or pressure by the authorities and everyone had been able to carry out their activities freely and independently. Information recently provided by certain organizations was therefore incorrect and unfounded, as were the allegations that lawyers who had attempted to defend suspects had not had their licences renewed.

8. The list of 871 names provided by Ms. Gaer had been promptly transmitted to the competent authorities, which had immediately undertaken investigations. In 200 cases, it had been impossible to identify the persons concerned; their names were unclear (in particular because of various homonyms) and no other information, such as date of birth or place of residence, had been given. The list was nevertheless taken very seriously and more extensive research would be conducted to seek out the other persons whose identity it had been possible to establish. The Committee members would be duly informed of the outcome.

9. The Falun Gong was not a religion but a sect, the followers of which were manipulated and spiritually controlled by its founder and master Li Hongzhi. Thus far, 2,000 lives had been lost through the Falun Gong, which was a danger to society as a whole. When its wrongdoings and lies had been denounced in China, the Falun Gong had set about spreading false information and rumours of persecution. It had even attempted to overthrow the Government and to sabotage the Beijing Olympic Games. The Chinese Government's position towards the Falun Gong was clear. The great majority of practitioners, who had been duped by the Falun Gong, were being cared for and receiving assistance aimed at helping them resume a normal life. The few members who followed instructions and took part in criminal activities were dealt with in accordance with the law. The Falun Gong had for some time claimed the existence of a concentration camp in the district of Sujiatun, where 6,000 of its followers had been detained. Individuals from foreign missions and the media had gone to the area and reported that no such camp existed. The Falun Gong had then started a rumour, which had also been disproved, that its followers were being trafficked for their organs. The Government had always applied World Health Organization guidelines and strictly prohibited all forms of trafficking in organs. Any organ donation was subject to a written report. On 1 July 2006, provisional regulations on organ transplants had been promulgated, followed in 2007 by an ordinance on transplants, the aim of which was effectively to prevent and punish any violations in that regard.

10. China attached great importance to the protection of refugees; it fulfilled its obligations under the 1951 Convention relating to the Status of Refugees and its Protocol, to which it had acceded, and respected the principle of non-refoulement. Since 1978, it had catered to almost 300,000 Indochinese refugees. Its efforts, which had significantly contributed to the maintenance of peace and stability in the region, had been recognized by the Human Rights Council and the international community. The Government had always worked in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), which had an office in China and with which it had regular high-level exchanges. The Deputy High Commissioner for Human Rights, Ms. Feller, had visited China, where she had conducted in-depth talks on a wide range of subjects. With regard to the status of North Korean migrants, the Chinese delegation recalled the definition contained in the 1951 Convention relating to the Status of Refugees, pursuant to which the term "refugee" applied to any person who, owing to well-founded fear of being

persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, was outside the country of his nationality and was unable or, owing to such fear, was unwilling to avail himself of the protection of that country. The North Korean nationals mentioned by Ms. Gaer had unlawfully entered China for economic reasons and had not requested political asylum. They were not therefore refugees in the sense of the 1951 Convention. The Democratic People's Republic of Korea had experienced serious economic difficulties and natural disasters that had prompted various individuals to cross the border illegally. China had always treated them in accordance with its domestic legislation and with international law in a humanitarian spirit. Its position was reasonable, legitimate and conducive to peace and stability in the Korean peninsula. Furthermore, its policy differed little from that of other countries which, since 11 September 2001 in particular, had controlled immigration and organized the return of illegal migrants. The Chinese authorities were currently drafting a bill on refugees, in conjunction with UNHCR.

11. Mr. ZHU Erjun (China) explained that the Chinese Constitution contained provisions on the status, rights and responsibilities, ethics and independence of judges and courts. The Law on the Organization of People's Courts, promulgated in 1979 and amended in 1983 and 2006, contained more detailed provisions still on the independence of courts. The Law on Judges, promulgated in 1995 and amended in 2001, contained additional provisions concerning the qualifications, rights, obligations, remuneration, social protection, rewards, sanctions and retirement of judges, which were fully consistent with those of the International Covenant on Civil and Political Rights and other relevant international instruments. They were also consistent with the Basic Principles on the Independence of the Judiciary, adopted in 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

12. The Chinese judicial system did not function on the basis of political imperatives. On the contrary, it operated with a view to taking full account of the general interests of society and promoting social harmony and stability, which was not inimical to the independence of people's courts and procuratorates. Nor did it in any way diminish the professionalism of judges and procurators. The principle whereby judicial organs used "evidence as the basis and the law as the rule" was rigorously applied out of respect for the rights and interests of all citizens.

13. Promulgated in 1988, the Law on the Protection of State Secrets contained clear provisions on the definition and scope of State secrets and on the relevant decision-making organs. Article 2 provided that State secrets concerned the security and interests of the State and article 9 provided for three distinct categories of State secrets on the basis of their degree of confidentiality. Such data was usually classified by the originating body or entity and any problems in that regard were dealt with by the departments responsible for keeping State secrets at the central, provincial, regional or municipal levels. Under article 96 of the Code of Criminal Procedure, when a case related to a State secret by virtue of its nature or on account of information used in pretrial procedures, the chosen defence lawyer must be duly approved by the competent authority in order to ensure that the secret was kept.

14. The issue of the death penalty was not only legal; it also involved economic, political, cultural and social considerations that were country-specific. Abolition of the death penalty should be the result of a gradual historic process. The mix of

social, material and cultural conditions was not yet at the point where China could take such a decision. That said, the death penalty was reserved for the gravest crimes and its application was strictly controlled. As a result of the new provisions on criminal procedure adopted in recent years, the human rights of those sentenced to death were better protected. Since 1 January 2007, approval of the death penalty was entrusted to the Supreme People's Court alone. The seriousness of a case was determined on the basis of its circumstances. The most serious cases that were likely to involve the heaviest penalties were referred to an intermediate people's court in the first instance. Appeals were considered by a higher people's court, the decisions of which could be reviewed by the Supreme People's Court, which systematically ruled on all death sentences. Statistics were compiled on the death penalty, the two-year suspended death penalty, life imprisonment and prison sentences of five years and over. In March of each year, they were communicated by the President of the Supreme People's Court to the National People's Congress and later made public.

15. Mr. LI Shouwei (China) said that if State officials violated the law in the course of their duties, including by committing acts of torture and violating the legitimate rights and interests of citizens, such as the right to liberty, the right to life and the right to health, the State was under obligation to compensate the victims without delay. The Law on Compensation contained specific provisions on the scope of, procedure for and amount of compensation. Under that Law, victims of acts of torture who were physically injured could seek reimbursement of medical expenses and be compensated for loss of income resulting from incapacity to work. Compensation was also payable for full or partial incapacity to work. In the case of death, compensation was paid and funeral expenses reimbursed. A subsistence allowance was additionally payable to the carers (parents or children) of the deceased person if they were unable to work. The provisions of the above-mentioned laws also naturally covered compensation for moral damage and for the rehabilitation of torture victims. The Law on Compensation was being amended; at the end of October 2006, the Standing Committee of the Chinese National People's Congress had completed the first reading of a draft amendment aimed at streamlining compensation claims that might be brought against the State, optimizing compensation procedures and strengthening the obligations of State organs relating to the burden of proof in such cases. Concerning the amount of compensation, the draft amendment stated that compensation covered all justified costs, particularly those incurred for rehabilitation and medical care. Ample compensation was paid for any moral damage.

16. With regard to contradictions between the Law on Lawyers and the Code of Criminal Procedure, it should be stressed that the Chinese Constitution and the Law on Legislation contained a set of rules that clearly established hierarchy. In particular, it was provided that new laws took precedence over older laws and that special laws took precedence over general laws. It was true that the link between the new Law on Lawyers and the Code of Criminal Procedure was a subject of debate in legal circles, including among academics, and in society at large. Opinions admittedly differed concerning the precise scope and application of the Law on Lawyers. The Chinese authorities, however, were looking into the problem and endeavouring to find an appropriate solution.

17. Mr. WANG Guanghui (China), referring to Chinese procurators and their status and remit, agreed that they differed from those in other countries by virtue of their

status and substantial functions. In accordance with the Constitution, procuratorates were State organs charged with overseeing the discharge of judicial functions. Like courts, they stemmed from the National People's Congress, to which they were accountable. Procuratorates functioned independently and were not open to interference by administrative bodies, public organizations or individuals. Their functions, which were far-reaching, notably consisted of overseeing investigations, proceedings and the enforcement of sentences - functions which were directly related to the protection of human rights and the prevention and punishment of acts of torture. More specifically, as independent monitoring bodies, they were competent to receive complaints from individuals concerning acts of torture and to give opinions on investigations into acts of torture and other violations of rights perpetrated within the framework of criminal investigations, as well as on the means of punishing those violations. Procurators were also competent to investigate violations of human and democratic rights by State officials and to prosecute acts of torture. They were furthermore charged with ensuring respect for the rights of persons deprived of liberty in prison institutions, detention centres, "re-education through labour" (RTL) facilities and juvenile detention centres. They could investigate, address and resolve all problems arising from human rights violations and acts of torture.

18. In accordance with the oversight function clearly conferred on them by the Constitution and the Code of Criminal Procedure, people's procuratorates could sanction the arrest of suspects. In China, people's courts and people's procuratorates were judicial bodies and, insofar as any arrest constituted a restriction on freedom, it was their job as such to decide on the application of such a measure. Under the Code of Criminal Procedure, if the investigating body wished to arrest a suspect, it was required to refer the case for the consideration of the procurator, who was competent to decide as to whether the person concerned should be arrested. In most cases, that procedure was followed. In two specific instances, however, the power of arrest was exercised by people's courts: when the defendant was a party in proceedings brought by an individual or when it was necessary to arrest the defendant once criminal proceedings had commenced. Concerning the qualifications and political status of procurators, in accordance with the relevant legislation, procurators-general were elected by the National People's Congress and procurators were appointed by the National People's Congress at the proposal of procurators-general. Procurators were protected against all interference by administrative bodies, public organizations and individuals and they could not be removed from office or sanctioned except in accordance with the procedures prescribed by law. Procurators were under no obligation to be Communist Party members; hence, the current Deputy Procurator-General, Mr. Jiang Jian-chu was not a member.

19. Concerning the distinction made by judicial bodies between acts of torture constituting minor, serious or particularly serious offences, all acts of torture were prohibited and punished under Chinese law. Given its cultural and legal specificity, however, China believed that minor offences were part of administrative law and should consequently be subject to administrative punishment. The rules of the Supreme People's Court were designed to ensure that a criminal court examined cases where suspects had committed acts which were characterized as crimes, thus requiring investigation and leading, as necessary, to the assignment of criminal responsibility. In Chinese law, that procedure was consistent with the principle of

proportionality. As a matter of fact, the practice was that procuratorates carried out the preliminary investigation when complaints and information concerning acts of torture were referred to them. Only cases that were sufficiently substantiated would then be registered, investigated and prosecuted if criminal responsibility was assigned. In the case of relatively minor offences with less serious consequences, the procuratorate would make recommendations to the competent departments with a view to the imposition of disciplinary and administrative punishments.

20. Mr. LI Baodong (China), with reference to the training of police officers, court staff and medical personnel, said that 800 training courses had been run since 2004 under the supervision of the department of the Supreme People's Procuratorate responsible for monitoring prisons and detention facilities and that 900 prison service officers had participated in international exchange programmes. China attached particular importance to on-the-job training: all procurators benefited from a minimum of 15 days of annual training organized according to level of responsibility. Training for procurators-general was provided by the departments of the Supreme People's Procuratorate, whereas at the local level, training was provided by the departments responsible for cases involving misconduct and violations of rights in connection with acts of torture and by the department responsible for monitoring penitentiaries and prison institutions. Over 25,000 procurators working in those departments received annual training on the prohibition of torture, on the penalties incurred by perpetrators of acts of torture and on protection of the human rights of detainees and prisoners. Procurators attached to other departments of the Supreme People's Procuratorate also received annual training in human rights protection. Bearing in mind the limited resources of the Supreme People's Procuratorate, the fact that 900 persons had taken part in exchange and cooperation programmes in the field of international justice was already a sign of considerable progress. In order to make the most of such international exchange programmes, the department of the Supreme People's Procuratorate responsible for monitoring penitentiaries and prison institutions had produced a compendium of the discussions on human rights protection conducted at the time by Chinese representatives and foreign experts, which now formed an integral part of training programme manuals.

21. Public security personnel were also taught about human rights throughout their careers. Since 2003, public security organs applied the so-called system of the "three mandatory components", pursuant to which all police were required to undergo training on taking office, on being promoted and on performing field duties. Thus far, a total of 345,000 training courses had been run at the national level; 715,000 promoted police officers had benefited from training and field officers followed annual courses lasting a minimum of 15 days. The Convention against Torture and other relevant texts were an integral part of such training activities. Emphasis was placed on criminal law, administrative law and international human rights standards to ensure that the officers concerned knew both the substantive and the procedural rules concerning the rights of the State and the rights of individuals. In April 2008, the Ministry of Public Security, in conjunction with UNHCR, had organized an international seminar on protection of the human rights of persons deprived of liberty and on police training. Experts from the United Kingdom and South Africa had been invited to talk on the subject of the protection of human rights by the police. The seminar had provided the opportunity for

discussions on the link between international human rights standards and Chinese law.

22. Initial training courses for prison officers were regularly organized at institutes or universities, both in China and abroad. The principle of the prohibition of torture was part of the subjects taught and the training manuals contained texts on the prohibition of torture, in particular the Convention against Torture. At the end of the training, participants were provided with a copy of the Convention in Chinese, the content of which they were then able to study and master. Prison doctors were also provided with a copy of the Convention. A total of 280,000 prison doctors participated in the annual training for prison administrative staff.

23. Concerning training for doctors, it should be said that the internal rules of pretrial facilities contained strict provisions governing a doctor's performance of his duties. Doctors examined detainees by going through the headings and content of medical forms and they were required to provide and sign a written report of the results. If any traumas were noted, the doctor gathered the required information and entered it on the form, which was signed by the detainee and the persons accompanying him. A system for the medical examination of detainees had also been established. In order to ensure respect for the rights of detainees, the Ministry of Public Security frequently organized legal training courses on the prohibition of torture for directors, doctors and other competent personnel in the prison system, which had brought about a change in attitudes and behaviour. In September 2007 and June 2008, for instance, the Ministry of Public Security had, in conjunction with the International Committee of the Red Cross, organized two seminars on the monitoring and improvement of health conditions. Those seminars had led to the establishment of disease prevention mechanisms in prisons and in pretrial facilities and had promoted the prevention of torture.

24. The training for police officers, court staff and health personnel had borne fruit; it had changed some of the outmoded attitudes of police officers and court staff, for instance, and the trainees had learnt about good practices and experiences at home and abroad in the area of human rights protection. In short, the intensified training efforts had enabled China to achieve significant progress in protecting human rights and combating torture within the departments tasked with law enforcement and the administration of justice. As for the information that China prevented international organizations from disseminating international human rights instruments, it was unfounded.

25. With regard to detention conditions in China, the delegation referred the Committee to the written replies to the list of issues. It should additionally be pointed out, however, that ever since 2001, penal institutions had been built close to large and medium-sized towns so that family members could more easily visit detainees. Whether recently built, renovated or enlarged, some of those institutions boasted high-quality environments and equipment. Overall detention conditions and prisoners' cells particular had been singularly improved. On that score, China intended to make even further improvements so that, by 2010, the average cell area would measure over three square metres.

26. Concerning protection of the rights and freedoms of lawyers, the Chinese Government was well aware of the important role played by lawyers in the protection and promotion of human rights and the rule of law. The recent Law on Lawyers, moreover, attested to the wish to ensure protection of their activities and

rights. Under the Law, successful candidates in the national judicial examination who had worked in a law firm for at least one year could apply for a licence, which could be withdrawn by the competent authority in the event of a deliberate offence or a breach of conduct - a practice that was largely the same throughout the country.

27. Mr. LIU Fuchen (China) said, with reference to pretrial detention, that the Ministry of Public Security and other competent departments had set standards concerning the construction, design and location of pretrial detention centres (Kan Shou Suo), with the result that conditions had improved for those in pretrial detention; the cell area was now a minimum of 2.6 square metres and each cell was directly connected to an outside space with a minimum area of 2 square metres. China had provided information on pretrial detention in its written replies. With regard to RTL, it was a system governed by law and based on rigorous approval procedures. RTL measures were humanely applied and conferred entitlement to effective remedies. For more detailed information on the subject, the Committee members were invited to refer to paragraph 148 of the report and to the delegation's written replies. At a recent round table on human rights and the rule of law organized by China and Norway, competent Chinese experts had presented detailed information, which had been much welcomed, on their practices and on the reforms undertaken. From the legal point of view, RTL was equivalent to the security measures taken by other countries and constituted an effective means of educating and correcting repeat offenders against public security whose actions were not serious enough to warrant criminal sanctions. RTL was governed by the Decision of the State Council on re-education through labour and the Supplementary Rules of the State Council concerning re-education through labour - two texts adopted by the Standing Committee of the People's National Congress - and by a decision of the Standing Committee on the strict prohibition of prostitution. Those texts laid down specific rules on such issues and established approval bodies and procedures, as well as a monitoring mechanism. All RTL measures must fully respect the legal procedure: people's governments in all provinces, autonomous regions and municipalities directly under the central Government, as well as other large and medium-sized towns, had set up supervisory committees responsible for making a collective decision concerning the application of a lawful RTL measure, bearing in mind the nature and gravity of the case.

28. The RTL regulations were outdated and certain aspects could therefore no longer be adapted to the current situation. Consequently, in view of the recommendation made by the Committee in its earlier concluding observations (A/55/44, paras. 106 to 145), China had adopted five measures for reform of the system: legal assistance by counsel, a standardized system of hearing and investigation, a shortened decision-making process, the development of non-institutional RTL, and the strengthening of oversight. Those measures hitherto appeared to have been beneficial: more lawyers were increasingly involved in the process and their views were duly considered and taken into account, the authorities responsible for enforcing RTL punishments were monitored by procuratorates and no RTL measure usually continued for any longer than 18 months. As part of their activities to promote democracy and the rule of law, the Chinese authorities were conducting field studies and intended to adopt other measures aimed at further reforming and improving the RTL system. The Standing Committee of the National People's Congress was shortly due to consider the planned reforms.

29. All RTL measures could be contested, including in court. Any person against whom such a measure was applied could appeal to the people's government or, at the higher level, to the Supervisory Committee, for an administrative review of the decision. He or she could equally take the matter to court with a view to nullification or amendment of the decision. If the RTL measure was contrary to law and violated the legitimate rights of the person concerned, he or she could claim compensation under the relevant laws. In RTL institutions, the legitimate rights and interests of all, including the right to vote, freedom of religion and communication, were protected, as were the physical integrity, security and property of each person. Corporal punishments were furthermore prohibited in those institutions. Subject to authorization, persons against whom RTL measures were applied could even visit their families, take holidays and be reintegrated into their place of learning or employment. Their subsistence and medical costs were taken care of by the State. RTL institutions were supervised by a resident inspector appointed by the people's procuratorate. Lastly, the 2007 Law on Drug Control abolished RTL measures for narcotics users, who were instead subject to community-based re-education measures. Compulsory re-education measures could only be imposed on those who persisted in their behaviour. They could, however, seek an administrative review of the decision or take the case to court.

30. With regard to enforced medical treatment and automatic hospitalization, which were two separate issues, China had given detailed explanations in its written replies. Automatic hospitalization occurred in the case of persons with a severe mental illness who were in no position to give consent. The procedure was governed by rules set by the Administrative Department of Health. As for enforced medical treatment, it was a measure provided for under the Criminal Code. Mentally disabled persons who violated the provisions of the Criminal Code but who could not be held criminally responsible for their acts could be subject to such a measure. At the present time, medical treatment was forcibly administered to mentally disabled persons who had committed serious and harmful acts. In their cases, expert opinions were given by a specialist institution and by a psychiatrist. If that opinion confirmed that the person in question was not criminally liable, the body responsible for public security in the municipality concerned could accordingly decide to administer medical treatment by force to that person and either he or his legal representative could contest the decision and request a further opinion. If the second opinion confirmed that the person was not criminally liable, the medical treatment was continued. As for the allegations that psychiatric hospitals were used other than for their intended purpose, they were unfounded.

31. Ms. LIU Guoxiang (China) said that the question of the corporal punishment of children should be tackled from the perspective of justice on the one hand and of education and the family on the other. The Chinese Government had always been firmly opposed to corporal punishment. The Law on the Protection of Minors incorporated the principles of the Convention on the Rights of the Child and comprised a wide range of measures to protect the legitimate rights and interests of minors. In particular, it prohibited the use of violence in the home and corporal punishment, whether explicit or disguised, as well as other humiliating acts committed against minors by personnel in schools, nurseries and crèches. The trafficking, kidnapping, ill-treatment and sexual abuse of children were also prohibited. In hearing criminal cases involving minors or relating to the protection of the rights and interests of minors, judicial bodies were required to provide

special facilities or to appoint persons to assist the minors, as necessary. When juvenile delinquents were being questioned or when testimony of minor victims was being heard, judicial bodies were similarly required to summon the legal representatives of the minors to attend. Minor detainees and minors serving a prison sentence were segregated from adults. The competent bodies and society at large duly applied those rules.

32. Concerning China's activities in the area of family planning, the Chinese Government urged local authorities and their officers to comply strictly with the law and apply it in a civilized manner by refraining from any violation of the legitimate rights and interests of citizens. Article 19 of the Law on Population and Family Planning clearly provided that contraception should be the preferred method of family planning. Pursuant to that Law, the State was required to create the right conditions to ensure that citizens had access to safe, effective and appropriate means of contraception. The relevant departments had made substantial efforts to promote a free and enlightened choice of contraception, to run family planning activities in accordance with laws and regulations, to avoid compelling anyone to undergo surgery and to ensure that no one was illegally detained. Those who violated the laws and regulations were held both administratively and criminally accountable. While it was true that, in certain municipalities and villages, the legitimate rights and interests of citizens had sometimes been violated, those committing such abuses had been held responsible in accordance with the law. The National Population and Family Planning Commission had also ensured that its officers drew lessons from those incidents, improved their monitoring of activities and received more effective and systematic training in the rule of law and the delivery of high-quality services.

33. The treatment of petitioners had already been addressed in the written replies; the governments of the different territorial units had each established special departments to ensure that petitioners were dealt with humanely and that problems were in turn better resolved. In order to assist the population in expressing its views, China had set up a national information system for dealing effectively with cases presented by petitioners in writing or in person. Any officers or unofficial bodies with proven responsibility in the arrest, beating or detention of petitioners were severely punished. The acts of which Mr. Xu Zhiyong was a victim, a case cited by Ms. Sveaass, were not sufficiently substantiated for it to be concluded that they actually happened. If the Chinese authorities gathered any further evidence, however, the case would be duly dealt with and the perpetrators of those acts would be brought to justice. As for the Shanghai Cooperation Organization, it had effectively reinforced links among its member States and improved cooperation in political, economic, commercial, scientific, cultural, legal and other areas. Recognized and appreciated by various States, it had also promoted the maintenance of peace, security and stability in the region and there had never been any question of its implication in cases of torture.

34. The fact that China had not yet recognized the competence of the Committee, as provided for in articles 21 and 22 of the Convention, had no effect whatsoever on the manner in which it fulfilled its obligations. Its constant position was that governments were primarily responsible for the promotion and protection of human rights and that countries should strengthen dialogue in that regard while remaining mindful of national sovereignty. The Chinese Government would take into account the Committee's observations and continue to cooperate with it.

35. The CHAIRPERSON thanked the delegation for its replies and invited Committee members who wished to do so to ask further questions.

36. Ms.—GAER (Country Rapporteur) said that she gladly welcomed the information received but regretted that the delegation had tended to generalize instead of entering into the details of specific cases. She also regretted the lack of statistics, which the State party justified by its situation as a developing country. It was now almost 20 years since China had become a party to the Convention. Furthermore, contrary to other instruments affording protection to rights that were realized only gradually, such as social, economic and cultural rights, the Convention imposed on States an immediate obligation to end torture. In truth, the problem lay not so much in the lack of statistics as in the fact that they could not be published as a result of the Law on State Secrets. Article 2 of that Law, for instance, classed as confidential a large amount of the information that the Committee needed to know in order to ascertain whether the State party was meeting its obligations. It would nevertheless be useful if the delegation were at least to provide data on matters that were normally made public.

37. The delegation had still not clarified whether the Law on Lawyers took precedence over the Code of Criminal Procedure. Nor had it provided the information requested concerning a number of well-known persons, such as Chen Guangcheng, Ablikim Abdureyim, the Panchen Lama Gendun Choekyi Nyima and Bishop Su Zhimin. It was insufficient, moreover, simply to state that there were no secret detention facilities for petitioners; the Committee would like to have precise information on the missing petitioners named in the list of issues.

38. Concerning the troubles in Tibet, she thanked the delegation for having provided a more detailed list of missing persons but emphasized the need for an independent investigation into those events. On the question of expulsions, she would like to know which procedure it was that enabled the authorities to ensure that a person, whether a North Korean migrant or a suspect expelled in the context of mutual assistance between the member States of the Shanghai Cooperation Organization, would not be tortured in the country to which he was returned. Lastly, she wondered how the Procuratorate-General could carry out investigative functions while also overseeing its own conduct. Other countries with a mixed system of that type had changed it in order to better combat the practice of torture. Did the State party intend to do the same?

39. Ms. SVEAASS (Alternate Country Rapporteur) noted that RTL was contested by a number of Chinese jurists and judges. It appeared, however, that nothing was being done to change the practice, the constitutionality of which had been called into question by high-level experts. A bill to that effect was to have been considered by the National People's Congress in 2007, but what had become of it was unknown. Nor was anything known about oversight and appeal mechanisms. It would be interesting to know if the State party intended to authorize the inspection of RTL camps by international organizations.

40. The question of the Uighurs had not been addressed in the written replies. The Government itself had admitted that much remained to be done with regard to the social and economic rights of that minority and it might therefore be asked what the situation was concerning the rights recognized by the Convention. The detainees whose cases had been brought to the Committee's attention included Uighur activists, some of whom had been arrested simply for having translated documents

into their language. With regard to Falun Gong followers, according to the Special Rapporteur on torture, many of them were victims of torture. If the Government wished to fight that movement, which it branded as an “evil sect”, it should do so by legal means and not through torture. The right not to be tortured was an absolute right that applied to all persons, whatever acts they might have committed. Particular attention should also be devoted to the question of transplants insofar as, in addition to the allegations of a connection between the removal of organs and the repression of Falun Gong members, the establishments where such removals took place reportedly lacked the requisite medical personnel.

41. Although the events of Tiananmen Square dated back to 1989, it was not too late to investigate the matter and thus respect the right of the victims to justice and compensation. Concerning investigations into cases of torture, it would be interesting to know whether the Istanbul Protocol was used. Moreover, given that information was an essential factor in the protection of human rights, it would be useful to know whether human rights activists had been able to make preparations to celebrate such occasions as the sixtieth anniversary of the Universal Declaration of Human Rights. Lastly, the delegation should indicate the measures taken to prevent violence against women in prison and to combat trafficking in women and children, as well as comment on the allegations that a teacher named Yao Lifa had recently disappeared after being arrested by the authorities for having helped people to vote.

42. Mr. MARIÑO MENÉNDEZ remarked that the Committee’s work was complicated by the fact that the State party’s legislation included a wide range of criminal offences covering the different aspects of torture, rather than a definition of torture. In international practice and jurisprudence, enforced disappearance was classed as torture; even if a separate criminal offence was involved, the victim’s relatives still endured a form of torture. Concerning illegal migrants, the principle of non-refoulement applied not only to asylum-seekers but also to any alien who was liable to be tortured in the country to which he or she was to be returned. In that connection, it would be useful to know whether an alien threatened with expulsion could appeal and invoke that eventuality before a judicial authority and whether there was any judicial review of expulsion decisions. With regard to the Law on State Secrets, the delegation should state whether a judicial authority was involved in the decision to classify a given piece of information as confidential and whether a lawyer whose file was withdrawn under that Law was replaced.

43. Lastly, he asked whether procuratorates, which were seemingly judicial organs that functioned in parallel with the courts, could intervene in criminal proceedings that were in progress and whether a person prosecuted for torture, such as a public official, could be held both administratively and criminally responsible or whether administrative responsibility was confined to minor offences and criminal responsibility to more serious offences.

44. Mr. GALLEGOS CHIRIBOGA welcomed the fact that the Chinese Government was willing to investigate the matters brought to its attention. Indeed, it was vital that violations of the Convention did not go unpunished and that a social oversight mechanism be established to ensure that allegations of torture and ill-treatment were transparently verified.

45. Ms. BELMIR requested details of the respective remits of judges and procurators, as the apparent imbalance between the two afforded no guarantee of the independence of the justice system. With regard to the death sentence, the State

party stated that it was imposed only for the gravest of crimes. Many such cases still existed, however, and the concept of “gravity” could also be questioned in that tax evasion and embezzlement were among the offences punishable by that sentence. Lastly, clearer explanations would be welcome on the subject of pretrial detention, the duration of which was evidently still too long, and on the Law on State Secrets, the complexity of which would appear to be beyond the grasp of ordinary citizens.

46. The CHAIRPERSON emphasized that it was difficult for the Committee to appreciate the extent to which Chinese legislation covered all aspect of torture in the sense of the Convention, in particular mental torture. The simplest way of removing all ambiguity was to incorporate article 1 into the domestic law.

47. The protection of State secrets was legitimate, provided that it did not restrict the rights of citizens. The difficulty therefore lay in striking the right balance between protection and the risk of abuse. It transpired from the replies of the State party that the body from which certain information originated had the first and last say concerning its degree of confidentiality and its classification as a State secret. A decision of that nature should not be entrusted to a single body, not least an administrative body. Statistics on the enforcement of the death sentence were among the information protected in that manner. Hence, in the event that, for example, a lawyer made use of such data to demonstrate to a court that the death sentence was more frequently imposed on certain categories of person, the question arose as to whether he could be accused of violating a State secret.

48. With regard to the freedom of expression of lawyers and State secrets, it was true that the adoption of the new Law on Lawyers represented progress. It was a matter that also concerned other treaty bodies and mandate holders, in particular the Special Rapporteur on torture, who had noted, for example, that any lawyer who advised a client to retract forced confessions was liable to prosecution under the Law on State Secrets, the scope of which was extremely wide. Lastly, it was seen as a positive step that, in its replies, China appeared to take into account the Committee’s view that enforced disappearances were equivalent to acts of torture in the sense of the Convention.

49. Mr. LI Baodong (China) said that his delegation would endeavour to respond to the questions posed, in particular those concerning specific cases. They were very important questions and had been transmitted to the central authorities for further clarification. Once it had received the required information, the delegation would provide the Committee with more detailed replies.

50. Mr. SHE Yang (China), retracing the history of the institutions of the Dalai Lama and the Panchen Lama, said that the process of appointing the Panchen Lama, established over 200 years earlier, was accepted by all Tibetan monks. In 1995, the new Panchen Lama had been chosen in accordance with the established practice and with the strictest respect for the historic and institutional arrangements in place. The choice had been submitted to the central Government, which had given its approval. Any person who, in a departure from the historic practice and traditions, wished to designate himself as a new candidate would be contravening those rules. The new Panchen Lama was well accepted by Tibetan monks and the Tibetan population and a report on his activities was available. Concerning the disappearance of Gedhun Choekyi Nyima, the Chinese authorities had stated that a thorough investigation had been conducted. The outcome was that

Gendhun Choekyi Nyima and his family were living a normal life and should not be disturbed. The competent authorities had received no requests from his relatives and his disappearance had not been reported, leading to the conclusion that Ms. Gaer's information was incorrect.

51. Mr. LI Baodong (China), referring to the other specific cases that had been mentioned, said that several days would be needed to provide replies to the questions asked. He hoped that the Committee members could give more details of those cases to enable the Chinese authorities to carry out the serious investigations required. The delegation thanked the Committee members who had commended the efforts of the Chinese Government to implement the Convention. During the consideration of China's report, the Committee had made observations and suggestions that were fully relevant and the delegation undertook to transmit them to its Government, which would give them due consideration. Programmes would be elaborated to implement the proposals relating to medium- and long-term objectives. Concerning the technical proposals, the authorities would do their best to coordinate the activities of the departments concerned with a view to their implementation. The prohibition of torture was a delicate task that posed a number of difficulties for China, which was a developing country. It would continue to ensure implementation of the provisions of the Convention and would make significant efforts to strengthen democracy and the rule of law. It attached great importance to its relations with the Committee and would gladly welcome any future opportunity of dialogue with it.

52. The CHAIRPERSON invited the delegations of the Hong Kong and Macao Special Administrative Regions to present their replies to the questions posed by the Committee members at an earlier meeting.

53. Mr. O'NEIL (Special Administrative Region of Hong Kong) said that the Hong Kong authorities had no plans to extend to the Region the application of the 1951 Convention relating to the Status of Refugees. Given that Convention was not applicable in Hong Kong, refugee claims lodged in Hong Kong were handled by UNHCR's Hong Kong office. Screening procedures were consistent with UNHCR guidelines and, during the screening, asylum-seekers were not removed to a place where they would be subject to persecution in the context of the Convention. With regard to the allegations of arbitrary prosecution and detention of asylum-seekers and torture claimants, Hong Kong's policy was not to prosecute persons in that situation until their claims were concluded. They could, however, be prosecuted if they committed criminal offences, but no one was subjected to arbitrary detention and the power to detain was exercised only where there were justifiable grounds for doing so. As for minor torture claimants, they were treated with care, sympathy and kindness. Under the screening mechanism, they were assisted by interpreters and were given every reasonable opportunity to establish their claims. They were provided with separate accommodation and the fact that an applicant was a minor was given significant weight in favour of not detaining him.

54. Concerning the independence of the Independent Police Complaints Council (IPCC), the Government of the Hong Kong Special Administrative Region (HKSAR) had taken note of the Committee's recommendation in 2000 that Hong Kong should make continued efforts to ensure that IPCC became a statutory body, with increased competence. Enacted in July 2008, the IPCC Ordinance provided a statutory framework to that end; it provided for effective checks and balances to

ensure that all complaints against members of the police force were handled thoroughly, fairly and impartially. IPCC's independence and impartiality were further reinforced by various institutional and administrative measures, in particular the fact that public officers, including members and former members of the police force, were ineligible for appointment to the Council. Concerning the Complaints against Police Office (CAPO), it was a separate police unit responsible for the handling and investigation of complaints against members of the police force. Such investigations sought to ascertain the facts relevant to a complaint by interviewing the complainant, witnesses and the complainee and by arranging identity parades. IPCC had a wide range of powers, including that of requiring the police to investigate or reinvestigate a complaint. IPCC members and observers were also empowered to attend interviews conducted by CAPO. Hence, although IPCC did not directly investigate complaints against the police, the two-tier system provided an effective mechanism for dealing with such complaints.

55. With regard to the allegations that there had been excesses during police investigations and that complaints in that regard had not been properly investigated, comprehensive police guidelines and manuals had been developed and any police officer who exercised his powers improperly was subject to disciplinary action and, if he had contravened the law, to criminal sanction. Those sanctions had a strong deterrent effect. All police officers furthermore received full and continuous training on their duties and responsibilities.

56. The new guidelines on searching detainees, which took effect on 1 July 2008, aimed specifically to ensure that searches were conducted in a manner that respected the dignity of the subject and minimized embarrassment. In particular, searches had to be conducted by police officers of the same sex as the person being searched, only officers of the same gender could be present when a search was conducted and the scope of a search was determined on a case-by-case basis, with regard to the prevailing circumstances. Three levels of search had been distinguished: non-removal of clothing; removal of some clothing; and removal of underwear. The latter took place only in circumstances with strong justification and only if the detainee had been informed of those rules. Details concerning the searches conducted were recorded and audited by the supervisory officers to ensure full compliance with those new procedures. As for asylum-seekers and torture claimants in detention for other reasons, they were searched on admission to a detention area or on subsequent re-entry after removal from that area to ensure that they were not in possession of any dangerous implement that could be used to injure themselves or other persons or to effect an escape. Guidelines had been developed to ensure that each search was conducted with due regard for the person being searched. A written record of each search was also kept. Persons aggrieved by the searches could lodge complaints with the Immigration Department or through various other channels. Such complaints were investigated and action taken as appropriate. Lastly, concerning the humane treatment of sex workers, in late 2007 the police had reviewed their guidelines for controlling the conduct of police officers engaging in anti-vice operations.

57. Mr. COSTA OLIVEIRA (Macao Special Administrative Region), with reference to trafficking in human beings, said that the first prosecution on that ground had taken place under the previous law. No prosecutions had yet taken place under the new legislation. Between 26 June and 22 September 2008, however, the police had commenced 11 investigations, on conclusion of which it would be

decided whether any prosecutions would ensue. Concerning the detention and expulsion of illegal migrants, expulsion measures were taken only against persons with illegal status and not, for example, against those persons with legal status who engaged in illegal activities. All expulsions included a ban on entry to the Macao Special Administrative Region (MSAR) for a certain period of time. No appeals had ever been made against an expulsion order, but a number of bans on entry to the territory - which could be imposed for various reasons - had been the subject of appeal. Illegal migrants could be detained in a police station for up to 48 hours or in a special detention centre for up to 60 days. In practice, however, as no such centres had yet been constructed, illegal migrants were released if they had not appeared before a judge within the 48-hour period prescribed by law, which explained why the expulsion procedure was often so fast.

58. With regard to the age of criminal liability and the claim that minors were subject to the same treatment or regime as adults, there was apparently a misunderstanding. As stated in paragraphs 131 *et seq.* of the replies to the list of issues, minors under 16 years of age were placed in an institution for minors and not in prison. Similarly, they were tried by a special minors' court and not by an ordinary court. The age of criminal liability remained at 16 years.

59. One question had been whether the growing number of cases of violence against women had led to additional prosecutions for such incidents. The authorities had no specific data on prosecutions in that regard, as the data gathered was based on the type of crime involved - bodily injury, for example - and no distinction was made between domestic violence and other cases of violence. The Government had nevertheless taken preventive measures in that regard and had strengthened its support of local NGOs working on that problem, with which it conducted awareness-raising campaigns. Furthermore, the Social Welfare Institute offered assistance and advice to the persons concerned and the capacity for catering to refugees had grown. The Government was nevertheless aware of the need to adopt an integrated approach to the problem and was currently developing legislation provisions to that end.

60. Ms. GAER (Country Rapporteur) continued to ponder the definition of torture. On the subject of refugees, she said that the Committee was not concerned with the implementation of the Convention relating to the Status of Refugees but focused its attention on the matter of compliance with the obligation under article 3 of the Convention against Torture not to return a person to another State where he would be in danger of being subjected to torture. Not enough information was yet available to convince her fully that the article was applicable to and applied in Hong Kong; apparently, only the provisions of the International Covenant on Civil and Political Rights were applicable and not article 3 of the Convention. She therefore wished to know what the exact situation was. Of equal concern was the matter of an independent procedure for complaints against the police, in which regard she had welcomed with interest the details provided. Lastly, she was struck by the significant differences between the nature of the questions raised by the Committee concerning HKSAR and MSAR and those raised concerning the People's Republic of China. China had made laudable amendments to its legislation and taken effective measures to promote the prevention of torture and to punish acts of torture. The Committee nevertheless remained deeply concerned by certain practices reported in the Chinese press and by the unjustified convictions, the lack of rigorous investigation, the lack of professionalism in the police and the persistent use of

confessions obtained through torture. In the case of HKSAR and MSAR, the Committee's concerns related to transparency, accountability and the independent monitoring of police activities. With regard to China, a number of fundamental problems remained, which detracted from the effectiveness of the very positive measures otherwise taken; those problems related to the practice of invoking the Law on State Secrets, which was vague in substance and wide in scope, the harassment and intimidation of lawyers, the use of personnel who were not required to account for their actions, the absence of a mechanism for public monitoring of places of detention or an independent body empowered to visit such places and lastly, the lack of thorough and impartial investigations.

61. Ms. SVEAASS (Alternate Country Rapporteur), addressing the delegates from Hong Kong and Macao, said that it would be essential in future to focus on the matter of assistance for women and child victims of human trafficking. Concerning use of the Istanbul Protocol by medical personnel, to which she attached great importance, she wished to know to what extent it was used in the context of asylum procedures. In addition, could the Hong Kong delegation explain why there were no plans to apply the Convention relating to the Status of Refugees? The replies provided on the asylum procedure were interesting, but it would be desirable in future for the question to be addressed in more depth. The Macao delegation had confirmed the information contained in its written replies concerning the detention of minors and it was to be hoped that the provisions on placing minors in isolation would be amended. Lastly, with regard to the mechanism for monitoring police activities established by HKSAR, in particular IPCC, she wished to know whether the latter, when it became a statutory body, would have extensive investigation powers, whether it would be empowered to make legal or binding recommendations and be provided with adequate human resources.

62. Mr. O'NEIL (Hong Kong Special Administrative Region) said that the replies provided by his delegation highlighted a number of positive facts and expressed the hope that the Committee would take them into account.

63. Mr. COSTA OLIVEIRA (Macao Special Administrative Region) said that his delegation had not addressed the question of the detention of minors and the relevant law in detail because it had not had the impression that the latter had been deemed inadequate. It had taken note of the comments and concerns expressed by the Committee in that regard and would convey them to the Government.

64. The CHAIRPERSON thanked the delegation for the replies it had provided.

65. *The Chinese delegation withdrew.*

The meeting rose at 1.15 p.m.