

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
1988	Articles 20 and 30	No	ICERD, ICESCR, CEDAW, CRC, CRPD

Information submitted to the Committee

State report

China submitted its 4th periodic report to the Committee against Torture (CAT) on 27 June 2007.² China last appeared before the Committee in May 2000.³ The report was due in 2004 and submitted three years later. The State report provided detailed information on new measures and progress in the implementation of the Convention. It also addressed some of the concerns raised in the previous concluding observations, and

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² CAT/C/CHN/4, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

³ www2.ohchr.org/english/bodies/cat/cats24.htm#24th

reiterated the willingness of the State to further cooperate with the Committee. In particular, the report highlighted the amendment of several articles of the Constitution and Penal Code, and the introduction of both the Extradition Law in December 2000 and the Regulations on Legal Aid in July 2003. Notably, the report did not address the events of March 2008 in the Tibetan Autonomous Region and neighbouring areas, nor did it make explicit whether the State was considering withdrawing its reservations to articles 20 and 30 of the Convention.

List of issues

After having studied the report, on 4 August 2008 the Committee provided its list of issues to the State.⁴

The issues raised by the Committee concerned firstly the introduction of effective measures to prevent torture, such as access to legal assistance and to an independent doctor for detainees. More information was requested on alleged ill-treatment of human rights defenders by the police, especially in regard to the events of March 2008. The Committee also requested more disaggregated data on the number of detainees held in the State party, and reasons for the inaction of the State in response to the Committee's previous recommendation to abolish 'Re-education Through Labour' camps (RTL). Detailed information was requested on forced disappearances, refugees and complaints mechanisms dealing with torture and ill-treatment. The State submitted its written responses in English in September 2008. It demonstrated a rather dismissive and antagonistic attitude towards the Committee's list of issues and did not fully address the questions asked therein. The Committee noted that many of the statistics requested had not been forthcoming. China reacted to this comment during the session, citing its developing country status, large population and regional disparities as reasons for the difficulties encountered in gathering accurate data.

NGO information

A number of individual NGOs,⁵ as well as a coalition of NGOs,⁶ submitted **written reports** to the Committee.⁷ The Committee's country rapporteur, Ms Gaer, observed during the session that NGO reporting indicated the prevalence of widespread torture in China.

Several NGOs, included Amnesty International, raised concerns about the use of detention without trial, family planning policies constituting torture, and extradition. Interfaith International and the Conscience Foundation touched upon the dramatic use of detention and torture of Falun Gong practitioners, including organ harvesting and the use of the RTL system. A few NGOs focused on forced labour, torture, detention and the ill-treatment of Tibetans. At the beginning of the session, the International Campaign for Tibet, Amnesty International, the China Society for Human Rights Studies, and Interfaith International gave **oral presentations** on the situation of human rights in the State.

Themes and issues

The delegation of China, the Hong Kong Special Administrative Region (SAR) and Macao SAR was led by Mr Li Baodong, Representative, Ambassador and Permanent Representative of the People's Republic of China to the United Nations Office in Geneva. He was supported by a large delegation consisting of the Deputy Solicitor General of the Hong Kong SAR Government, Mr James O'Neil, Director of the International Law Office of the Macao SAR Government Mr Jorge Costa Oliveira, and other representatives

⁴ CAT/C7CHN/Q/4, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

⁵ Amnesty International, Interfaith International, Chinese Human Rights Defenders, China Society for Human Rights Studies, Human Rights in China, International Campaign for Tibet, Free Tibet, Tibetan Centre for Human Rights and Democracy, China Human Rights Lawyers Concern Group, The Conscience Foundation.

⁶ Asia Catalyst, Human Rights Watch, International Harm Reduction Association, Unrepresented Nations and Peoples Organization, World Uyghur Congress.

⁷ The NGO reports are available at www2.ohchr.org/english/bodies/cat/cats41.htm.

of the ministries of Justice, Foreign Affairs, Public Security and the Permanent Mission of the People's Republic of China in Geneva.⁸

In his introductory statement Ambassador Li Baodong provided information on the *Law on Administrative Punishments for Public Order and Security* and the amendment of the *Law on Lawyers*. The Deputy Solicitor General of the Hong Kong SAR, Mr James O'Neil, focused in his opening remarks on developments regarding the *Independent Police Complaints Council Ordinance*, whilst the Director of the International Law Office of the Macao SAR, Mr Jorge Costa Oliveira, touched upon the establishment in 2005 of the Commission for Disciplinary Control of the Security Forces and Services of Macao. The Delegation expressed its willingness to actively cooperate with the Committee; nevertheless, as noted by the country rapporteur,⁹ the representatives of China, Hong Kong SAR and Macao SAR failed to acknowledge and answer a number of issues that had already been brought up in previous reviews of CAT, including by failing to provide detailed information on specific cases.

In general, the delegation's responses to the Committee's questioning could be characterised as cursory and lacking detail. At times the delegation addressed the Committee's concerns in a dismissive manner, and often ignored specific questions and issues. The country rapporteur, Ms Gaer, made the point that China tended to respond to many of the Committee's observations with standard responses such as 'this is beyond the competence of the Committee' or 'this allegation is groundless'¹⁰ without substantively addressing the issues. Ms Gaer also pointed out that much of the data the Committee had requested was missing from China's State report and its response to the list of issues, thus raising questions about the practical implementation of the Convention. Ms Gaer, as the country rapporteur, expressed particular frustration at China's approach to the review process. For example, she underlined the worrying absence of statistics in the State's responses, and commented that this appeared to be the result of an 'inability to make them public', rather than their non-existence. She added that, as a State party for 20 years, China had an immediate obligation to stop torture. Ms Gaer also noted that China had failed to provide any information on specific cases raised by the Committee.

Prevention of torture

The country rapporteur, Ms Gaer, stressed the need to incorporate a more comprehensive definition of torture into the domestic law. She also asked the delegation whether discrimination and mental suffering could be prosecuted as torture under China's law. The delegation responded that China's law covered both physical and mental suffering. Ms Gaer advocated the need for implementing more effective measures and more general legislative provisions to prevent acts of torture. The Committee sought a precise definition of *state secret*, and an explanation of the procedure for determining what constitutes such a state secret. The interest of the Committee in this issue was due to China's extensive reliance on this concept in a number of procedures, which in the Committee's view limits the application of the Convention. The delegation justified the use of this argument as necessary for protecting the security of the State, and explained that the term was clearly defined in law.

With regard to refugees, Ms Gaer requested further information on the relationship between the State party and UNHCR,¹¹ particularly with respect to the situation of so-called 'illegal immigrants' from the Democratic People's Republic of Korea (DPRK), the refugee status determination process used by the State party, and the use of the Istanbul Protocol in asylum procedures. The Committee expressed doubts at China's assertions that no asylum seekers claimed a risk of being tortured on return to the DPRK. The delegation claimed that

⁸ Mr Xu Hong, Mr Qian Bo, Mr Liu Keqiang, Mr Wang Guanghui, Mr Liu Guoxiang, Mr Shen Yang, Ms Wang Tieli, Mr Hu Bin, Mr Li Shouwei, Mr Zhu Erjun, Mr Liu Fuchen, Ms Xu Jing, Mr Gao Jianzheng, Ms He Huixin, Mr Li Huazou, Mr Wang Wensheng, Mr Ke Yousheng, Mr Zhou Xianfeng, Ms Yang Xiaoning, Mr Liang Zhijun, Mr Kan Ka Fai Godfrey, Mrs LiuLee Hokei Apollonia, Mr Chow Wing-hang, Mr Ng Hon Wing Victor, Ms Chui Sze Man Stella, Mr Ip Peng Kin, Mr Diamantino José dos Santos, Ms Patricia Albuquerque Ferreira, Mr Ng Toi On.

⁹ Ms Felice Gaer.

¹⁰ At one point during the dialogue, the delegation suggested that the Committee should 'strictly screen' the information it receives, as some of it distorted facts with the aim of misleading the Committee.

¹¹ In particular, the Committee asked why the UN High Commissioner for Refugees was not allowed access to the area bordering the Democratic People's Republic of Korea. There was no response to this question.

competent authorities were currently considering legislative amendments to the laws on refugees. It added that, as party to the relevant refugee law mechanisms, China fulfilled its obligations, including on *non-refoulement*. Furthermore, the delegation characterised China's cooperation with the UNHCR as 'good'. It reiterated its view that those fleeing the DPRK entered China for economic reasons, and had no legitimate claims for political asylum. In its concluding observations the Committee recommended the State party to include in its legislation an adequate definition of torture and to review the law on State secrets to ensure compliance with the provisions of the Convention. Furthermore, the Committee, in light of the high number of DPRK citizens crossing into China, requested the Government not to expel, extradite or return a person to a State where he or she could be subjected to torture.

Ill-treatment and torture by police

Regarding the events of March 2008 in the Tibetan Autonomous Region, the Committee highlighted the lack of sufficient details and statistics on the number of people arrested/still detained/disappeared as a consequence of the protests. The delegation responded that the information provided by NGOs was groundless and that public security forces had acted according to the law, as the protests involved Tibetan independence forces who were organising criminal activities against the Chinese authorities. China had, according to the delegation, investigated the matter quickly, and had found that 'grave violent crimes' had been committed by 'separatist forces' to 'harm ethnic unity'. The delegation insisted that the authorities had abided by the law (and the Convention) in reacting to the disturbances.

Concerning the arrests of Falun Gong practitioners and their alleged torture by the police forces, which in some cases had reportedly led to the deaths of detainees, the delegation denied the assertions, accusing Falun Gong (in its view, an 'evil cult against society, science and humanity') of endangering society in an attempt to instigate the overthrow of the Chinese Government. The delegation also dismissed as sheer fabrication other information pertaining to China's treatment of Falun Gong practitioners, including their detention in concentration camps, and the transplant of organs from prisoners. In its concluding observations the Committee recommended that the State party conduct impartial and effective investigations into the reported excessive use of force, including against monks, and the cases of death during the demonstrations of March 2008 in the Tibetan Autonomous region. Furthermore the Committee requested the Government of China to conduct investigations and take adequate measures regarding claims that Falun Gong practitioners had been subjected to torture and used for organ transplants.

Conditions in detention

The co-rapporteur, Ms Nora Sveaass, expressed concern about human rights abuses taking place in detention and pre-detention facilities. She stated that 30% of the alleged cases of torture occurred in pre-trial detention centres, and 20% in police stations. Furthermore, despite previous recommendations of the Committee, the *Re-education-through-Labour* system was still in place and scant information was provided on the so-called *black jails* where petitioners were held, and on the measures taken to reform those detention facilities in order to comply with international standards. The Committee sought more details on the possibilities for persons sentenced to work in the RTL system to appeal such decisions. The delegation reaffirmed China's position that there was a clear legal basis for the RTL system, and reassured the Committee that the period of detention in the RTL system did not exceed one and a half years. The delegation drew parallels between the RTL and methods applied in other countries to re-educate those who repeatedly violated the law. It also reported that the system had been reformed, to improve oversight and access to the legal system. In its concluding observations the Committee recommended the abolition of all forms of administrative detention and the provision of more information on safeguards to prevent torture and ill-treatment in RTL facilities.

Independence of the justice system

The country rapporteur and Ms Belmir expressed concerns about reports from NGOs concerning lawyers who were threatened, harassed or held in detention for giving legal assistance to petitioners or for investigating cases of violence and abuse of power by police, including in the forceful implementation of family planning

policies. The delegation maintained that the independence of lawyers and the justice system was absolute and referred to the existence of constitutional provisions pertaining to the rights, responsibilities and independence of judges. In its concluding observations the Committee recommended that the State party abolish any legal provisions which undermine the independence of lawyers, and to investigate and take action against perpetrators of attacks and acts of intimidation against lawyers and petitioners.

Training and education on human rights

The co-rapporteur raised the issue of the lack of statistics and detailed information to evaluate the effectiveness of human rights training. The Committee sought information on the number and positions of persons benefiting from training, and on the possibility of training medical personnel to detect torture. The delegation advised that 25,000 procurators had received relevant training, and stressed that these training activities were helping to change the old mentality. In its concluding observations the Committee recommended that the State party intensify and expand existing training programs, including with NGOs, on the prohibition of torture, and to integrate the 1999 Istanbul Protocol in such training.

Hong Kong SAR

The main issues discussed during the session regarding the Hong Kong SAR included the absence of an independent mechanism to deal with complaints procedures. In response to this point, the delegation offered a commitment to establish a statutory body. A number of concerns were also expressed in relation to searches of detainees by police officials. The delegation assured the Committee that more invasive searches were used only in exceptional cases, and that a new set of revised guidelines had been introduced in response to this issue. Ms Gaer also expressed concern about the extent of implementation of article 3 of the Convention (on *non-refoulement*) in the Hong Kong SAR. The Committee, in its concluding observations, recommended that the Hong Kong SAR incorporate the provisions contained in article 3 of the Convention under the *Crimes (Torture) Ordinance*; and that it establish precise guidelines regulating strip searches, and seek alternative methods to the body cavity search for screening prisoners. Furthermore the Committee recommended that the Hong Kong SAR establish an independent mechanism to receive and investigate complaints on police misconduct.

Macao SAR

The co-rapporteur asked the representatives of the Macao SAR whether any progress had been made regarding the investigation of several cases of trafficking in persons. The delegation specified that 11 cases were currently under investigation, although no specific details were given. Furthermore, the Committee requested information on the conditions, and protection of rights, of illegal immigrants detained in prison. The delegation claimed that the latter were held in police stations for up to 48 hours or in special detention facilities for up to 16 days. Separately, the Committee expressed concern about the increase in domestic violence and sought further details on the measures taken to deal with this problem. In its concluding observations the Committee recommended that the Macao SAR continue to take measures to combat trafficking in persons, notably women and children.

Other issues

NGOs and Human Rights Defenders: Ms Sveaass expressed concern about the status of NGOs and human rights defenders and their freedoms, and about the absence of an independent mechanism for monitoring places of detention and psychiatric hospitals.

Death Penalty and Extrajudicial Killings: Mr Kovalev commented on the extensive use of the former and on the worryingly increasing practice of the latter, especially in certain provinces. He noted that the death penalty could only be applied in the 'most serious situations' and asked how this threshold was determined.

The delegation made the point that this issue was not just a legal one, but was also influenced by public opinion. The abolition of the death penalty would, according to the delegation, be a 'gradual historic process', and the conditions were not yet right. In China, it was the People's Court which determined whether crimes were serious enough to warrant the death penalty. In its concluding observations the Committee recommended that the State Party review its legislation to restrict the application of the death penalty, and provide specific data on cases when the death penalty is applied.

Corporal Punishment of Children: the Committee requested more information on legal provisions aiming to protect children from violence in the public and domestic spheres, and in relation to the separation of children from adults in places of detention.

Forced abortions: the Committee expressed concern about the efforts of State officials to coerce women into having abortions, on the pretext of these being 'illegal pregnancies' contrary to China's family planning policies. The delegation maintained that the central Government urged local authorities to abide by the law, and promoted safe contraceptive measures. There had been some violations, but those responsible had been held accountable. The Committee in its concluding observations recommended that the State party implement the population policy in full compliance with the relevant provisions of the Convention.

Treatment of Uighurs: the Committee raised the issue of the alleged denial of cultural and social rights with respect to the Uighur minority. China did not respond to this concern during the session. The Committee in its concluding observations requested the State party to ensure the protection of ethnic minorities from discrimination.

Enforced Disappearances: In response to the Committee's questions about enforced disappearances, China appeared to suggest that this issue was beyond the remit of the Committee. The delegation, while acknowledging that enforced disappearances should indeed be prohibited, stressed that international human rights instruments placed the issue of enforced disappearances and torture in different 'categories'. It added, rather ambiguously, that 'reform' was needed to strengthen the human rights mechanisms. The Committee maintained that the two issues, while different, significantly overlapped.

Conclusions and next steps

At the end of the session the Chairperson of the Committee, Mr Grossman, stressed the ongoing and interactive nature of the dialogue between the Committee and the State party. He thanked the delegation for its participation, but called for a strengthening of efforts to eradicate the use of torture within the country.

The head of delegation thanked the Committee for its comments and questions and committed to comply with the obligations set out in the Convention.

In its concluding observations the Committee welcomed the ongoing reform of the State party's legal framework in order to reach full compliance with the obligations set out by the Convention. The Committee also noted with appreciation that China had invited and received a visit from the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The State was invited to submit its next periodic report by 21 November 2012.

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