

‘When their voices are stifled, our work for human rights is also a victim’: Barriers to Participation and Risk of Reprisals Faced by Human Rights Defenders in China

Report submitted to the UN Committee against Torture ahead of its review of the 5th and 6th periodic reports from the Government of the People’s Republic of China regarding implementation of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment

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“The United Nations could not do its invaluable work for human rights without those who cooperate with us. When people who cooperate with the United Nations are targeted for reprisals, we are all less secure. When their voices are stifled, our work for human rights is also a victim.”
UN Secretary-General Ban Ki-moon, 2011 remarks at a high-level panel discussion on ‘Stopping reprisals for cooperating with the UN in the field of human rights – a priority for all’

I. OVERVIEW

ISHR offers this submission with the intention of providing the Committee against Torture with information on the environment in which human rights defenders seek to engage on issues related to the prevention of, and accountability for, torture and other cruel, inhumane or degrading treatment or punishment (CID). It will discuss barriers to full access to and participation of independent Chinese civil society in the UN treaty bodies, and specific cases of reprisals, or possible reprisals, at the national and international level against Chinese human rights defenders and organisations. Finally, the submission concludes with a set of proposed questions to the Government delegation, and a set of proposed recommendations for concluding observations. These are specifically designed to respond to the most recent materials published by the Committee in regard to both this specific review and its broader efforts to enhance working methods¹.

This submission does not intend to provide a comprehensive or exhaustive list of the concerns of grassroots human rights defenders related to China’s implementation of the Convention against Torture. We strongly urge the Committee to take into particular consideration reports offered by credible, independent non-governmental organisations and networks of human rights defenders based in China, as well as operating from outside the country.

ISHR regularly engages with the UN human rights mechanisms, individually and systemically, in order to promote more coherent and coordinated approaches to improving accessibility and participation of human rights defenders; to strengthening the response of UN mechanisms to allegations of reprisals; and to pursuing consistent follow-up with concerned States that prioritises issues of transparency, accountability, and guarantees of non-recurrence. After several years’ experience working with defenders in challenging environments with documented trends of harassment and intimidation as well as restrictive legislation, ISHR wishes to emphasise that engagement with the UN is a unique and invaluable avenue for the exercise of fundamental freedoms, in particular freedoms of expression and opinion, association, and peaceful assembly.

II. BACKGROUND: A LEGAL AND MORAL OBLIGATION TO ENSURE SAFE ACCESS TO UN HUMAN RIGHTS MECHANISMS

The views and experiences of civil society are essential for the effective functioning of the UN human rights system, including the treaty bodies. Their knowledge and expertise contribute to more informed and empowered decision-making, while their participation enhances accountability and transparency. As a result, the outcomes of decisions at the multilateral level are better able to be used by organisations on the ground to effect concrete change, and those local actors see increased confidence in the UN system. However, when individuals and organisations avail themselves of the

¹ This includes the 2008 Concluding Observations on China; the 2013 State Party report by China (available in English 3 April 2014); the 2015 List of Issues; the CAT Committee reprisals policy (published 4 September 2015); the CAT Committee guidelines for follow-up to concluding observations (published 17 September 2015); and the State Party response to the List of Issues, available online 4 October 2015 (translations by ISHR).

UN system to increase pressure on and scrutiny of their governments, their efforts are met in some cases with resistance and backlash.

International law provides for a right to unhindered access to and communication with international bodies with general or specific competence to receive and consider communications on matters of human rights and fundamental freedoms. This right is derived from the human rights to freedom of expression, association, and movement contained in international human rights instruments and in customary international law. The right to be free from intimidation and reprisals that threaten an individual's life or physical liberty is also an aspect of the protection afforded by other international human rights, such as freedom from arbitrary arrest, detention or deprivation of liberty; torture; cruel, inhuman and degrading treatment; and arbitrary deprivation of life.

The Declaration on Human Rights Defenders explicitly recognizes the right to unhindered access to and communication with international bodies, and to be protected in doing so².

Enjoyment of this right implies that those accessing or communicating, or attempting to access or communicate with these bodies should not face any form of reprisal for, nor be intimidated from doing so and that States have an obligation to take necessary measures to protect individuals and organisations in the exercise of this right.

III. DOMESTIC ENVIRONMENT: THREATS TO THE PRACTICE OF RIGHTS DEFENCE IN CHINA

Relevant Articles of the Convention: 2, 4, 11, 12, 16

In its list of issues, the Committee requested information regarding the introduction of a new definition of torture, compatible with article 1 of the Convention, in the proposed amendments to **the Criminal Law**³. These amendments, which were adopted on 29 August 2015, do not significantly address the Committee's recommendations⁴. To the contrary, the amendments, in concert with a range of other laws recently tabled and/or adopted, create further restrictions on the operating environments for rights defence lawyers – key actors in seeking to prevent and prosecute acts of torture or CID. The law is set to enter into force on 1 November 2015.

First, lawyers who engage in legal activism, including efforts to raise attention to miscarriage of justice, now face criminal as well as social and economic sanctions. The Committee noted this concern, highlighting a range of cases, included that of Wang Quanzhang⁵. Contempt of court has now become part of a range of efforts to 'safeguard judicial authority'⁶. Article 309 of the new Criminal Law, which determines a maximum sentence of three years for someone who 'severely disturbs the order of a court', has been amended with further details:

In any of the following circumstances disrupting courtroom order, give a sentence of up to three years imprisonment, short-term detention, controlled release or a fine:

- (1) Gathering crowds to make a racket or attack the court;

² A/RES/53/144, UN Declaration on Human Rights Defenders, Article 5(c), 9(4), and 12(2). For further information see http://www.ishr.ch/sites/default/files/article/files/isshr_submission_to_s-g_on_reprisals.pdf.

³ CAT/C/CHN/Q/5/Add.1 para. 1

⁴ CAT/C/CHN/CO/4

⁵ CAT/C/CHN/Q/5/Add.1 para. 4a

⁶ See also State party response to LOI, CAT/C/CHN/Q/5/Add.2 para 4(1), p. 6: 'Art. 37 para.2 of the Law on Lawyers clarifies that lawyers serving as defense representatives or counsel may not be legally investigated for their opinions, but speech by lawyers that endangers state security, meanly slanders others, or seriously disrupts order in the court is excluded from this protection.'

- (2) Beating judicial personnel or litigation participants;
- (3) Insulting, defaming, or threatening judicial personnel or litigation participants and not heeding the court's admonitions, seriously disrupting courtroom order;
- (4) Exhibiting conduct disrupting courtroom order such as undermining courtroom operations or stealing or destroying litigation documents or evidence, where the circumstances are serious.

If the case is serious, the sentence can range from a minimum of three years to a maximum of ten⁷.

With regard to the addition of 'insulting or defaming', the Special Rapporteur on human rights defenders has noted that human rights defenders are often accused of defamation for publishing research or releasing material that criticizes government officials or other perpetrators of abuses⁸. They are also the victims of defamation and stigmatisation. A state media article published upon the adoption of the amendments clearly singles out one rights defence firm, the Beijing Fengrui law firm, as justification for this measure, claiming that its nine lawyers had been taken under 'coercive measures' for their 'use [of the firm as] a platform to provoke trouble and disturb social order'⁹. **The Committee has in past jurisprudence recognised intimidation of or retaliation against victims and their counsel as violations under Article 13¹⁰.**

The **National Security Law** adopted by the National People's Congress Standing Committee by a unanimous vote on 1 July this year is of further concern. The law loosely defines the 'fundamental interests' of the Chinese people as including 'sovereignty, unification, territorial integrity... and sustainable development', and further adds cyberspace to the realm of 'national security'¹¹. In this way, human rights organisations have commented, any language critical of the government, especially if expressed or distributed online, could be deemed a danger to national security¹². On July 7, High Commissioner for Human Rights Zeid Ra'ad Al Hussein issued a press release calling attention to the law and encouraging the Chinese government to ensure that it 'clearly and narrowly define[s] what constitutes a threat to national security, and identifies proper mechanisms to address such threats in a proportionate manner'¹³.

As the Committee has rightly noted, there are serious concerns about the ability of a suspect of a crime involving state security. The government has replied with regard to the State Secrets Law¹⁴ but – as numerous civil society reports have noted - lack of oversight and abuses in practice occur wherever national security provisions are applied, to have the right to prompt access to a lawyer¹⁵. It is also critical that the conditions, location, and status of detention be communicated to relatives within the legal limit of 24 hours. **The increasing reliance on 'residential surveillance in a designated location', house arrest, and alternative forms of detention, including black jails,** creates vulnerabilities for defenders, as these detention practices could potentially be defined and regulated in such a way as to take advantage of loopholes in current legislation criminalising torture.

⁷ Translation by the author ; original Chinese available at http://news.xinhuanet.com/legal/2015-08/30/c_1116414724.htm

⁸ A/70/217 para. 74

⁹ http://news.xinhuanet.com/english/2015-08/29/c_134568394.htm

¹⁰ CAT/C/53/D/514/2012 para 3.6

¹¹ <https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/>

¹² <http://www.theguardian.com/world/2015/jul/01/china-national-security-law-internet-regulation-cyberspace-xi-jinping>,

¹³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16210&LangID=E>

¹⁴ CAT/C/CHN/Q/5/Add.2, para 3(1), p.3. 'According to Chinese law, public security organs must not use state secrets (*guojia jimi*) as a basis for detention of unlimited duration, and reports from which this question has been derived are untrue.'

¹⁵ CAT/C/CHN/Q/5/Add.1 para. 5

A **draft Anti-Terrorism Law** currently under consideration by the State Council vaguely defines ‘terrorism’ to include ‘thought, speech or behaviour’ that is ‘subversive’ or seeks to ‘influence national policy making’. As the Special Rapporteur on human rights defenders has noted, ‘numerous States have adopted opaque and complex sets of laws, certain provisions of which have been used to silence all forms of social and political protest and to engage in counter-terrorism activities that violate international human rights norms’¹⁶. The Committee has also recognised this as a key concern, stating that it ‘rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies’¹⁷. The Chinese authorities have thus far failed to take into consideration public comments strongly critiquing the draft Anti-Terrorism Law on the grounds that its adoption and implementation may undermine China’s obligations under the CAT.

Finally, the **draft Law on Foreign NGO Management** contains a range of problematic provisions that would constrain the independence of civil society organisations through opaque processes for approval and registration and harsh sanctions, including detention. ISHR is particularly concerned with the vague definitions of activities that can be penalised, including ‘political’ or ‘religious’ activities, ‘subversion of state power’ and ‘spreading rumors’¹⁸.

This draft legislation is a blow to the ability of rights defence lawyers to obtain funding from organisations outside the country, including much in the way of training, support for strategic litigation, and urgent legal assistance. Many rights defence lawyers must rely on external funding sources to take on ‘sensitive’ cases, including those related to torture. Some rights defence lawyers are punished for their activism and *pro bono* work through authorities’ refusal to renew bar association membership, or blacklisting by law firms worried about their political profile.

At the time of writing, at least 32 lawyers, human rights defenders, and their family members remain in detention following the ‘710 crackdown’, most held in undisclosed locations without access to family or legal counsel for over three months. When fellow lawyers sought clarification on the status of detained individuals, they were denied access to information about a client’s whereabouts or told that the nature of the allegations implicated national security concerns¹⁹. Individuals criminally detained on charges of ‘incitement to subvert state power’, for example Wang Quanzhang, can be legally excluded from the right to access a lawyer, despite facing sentences of up to 15 years in prison. For seven of the detained defenders, including Li Heping and Hu Shigen, there is no information about the charges, their location, or the type of ‘compulsory criminal measures’ to which they are subjected²⁰. The Committee in 2008 raised the case of Li Heping in relation to allegations of official government efforts to curb the work of human rights defenders.

Despite this serious, ongoing and systematic crackdown on human rights defenders and lawyers, **the Chinese government response to the List of Issues notes that in China ‘there does not exist any intimidation or reprisal by the government against its citizens’ and that it does not permit what is called retaliation against lawyers who carry out *normal* professional work (emphasis author)**²¹.

¹⁶ A/70/217 para. 37

¹⁷ CAT General Comment No. 2

¹⁸ See also <http://www.ishr.ch/news/china-amend-draft-law-foreign-ngo-management-and-ensure-space-independent-civil-society>

¹⁹ <http://www.ishr.ch/news/increased-pressure-needed-end-crackdown-china>

²⁰ <http://www.chrlawyers.hk/en/content/%E2%80%9C710-crackdown%E2%80%9D-lawyers-and-activists%E2%80%99-case-update-%EF%BC%8820151003-20151015%E2%80%99>

²¹ CAT/C/CHN/Q/5/Add.2 para 34, pg. 44. ‘The legal rights of Chinese citizens are protected in law. In China, there does not exist intimidation or harassment by the government against citizens.’ ‘中国公民的合法权利受到法律保障。中国不存在政府对公民的恐吓及报复行为.’ and Question 4(3), p. 9.

IV. FROM BEHIND THE GREAT WALL: PARTICIPATION AND SHADOW REPORTING FROM MAINLAND CHINA

Relevant Articles of the Convention: 13, 19

ISHR has consistently followed the challenges confronting human rights defenders from China who 'seek to cooperate with' the UN. This includes participation in the preparation and production of State party reports, civil society 'shadow reports', and other activities which are designed to prepare defenders to engage with the UN human rights system.

One of the principle challenges is accessing information. Over the past few months, there have been a number of cases covered by Chinese social media specific to participation in the Committee against Torture review. Two examples are covered in detail below; the key concerns in both cases, and many other similar cases, are the use of bureaucratic techniques, and ultimately reliance on 'national security' arguments, to **prevent human rights defenders from accessing government documents related to the State party report and thus, prevent them from fully and effectively participating in the review.**

The refusal to provide statistical data is particularly problematic given the Committee's need for statistical data on issues such as death in custody; redress and compensation; cases of alleged use of torture to extract confessions; and complaints alleging assault threat and harassment linked to rights defence activities²².

1. Chen Jianfang, Shanghai²³

On 1 July, Ms. Chen submitted 13 requests for information disclosure related to the Chinese government's sixth periodic report under the Convention against Torture and the 2008 Concluding Observations of the CAT Committee. Specifically, she requested information corresponding to paragraph 14 of the Concluding Observations (CAT/C/CHN/CO/4), which addressed the number of cases of government compensation for victims of torture (allegedly, 959), and the claim in paragraph 74 of the sixth periodic report regarding the 36 individuals punished for the crime of extorting confessions through torture (刑讯逼供).

She was told, to her surprise, that such information was 'written by the Ministry of Foreign Affairs in conjunction with other relevant departments... Paragraph 74 of the report, and information provided in Paragraph 14 of the Concluding Observations, were provided by the judiciary, and thus is not the purview of [this] Ministry'. As of October 6, she sought to appeal the decision by requesting the review of the Beijing Third District Court and the State Council.

According to available online sources, six other human rights defenders in Shanghai have sent similar requests; although official responses have varied slightly²⁴, none of the requests have succeeded.

2. Shen Aibin, Jiangsu²⁵

²² See, respectively, CAT/C/CHN/Q/5/Add.1 para 15, para 30, para 32, and para 34

²³ http://wqw2010.blogspot.ch/2015/10/blog-post_18.html

²⁴ Another defender received a response noting that the Supreme People's Court had provided the statistical data, and that the MFA did not have responsibility for the concrete information in the cases.

²⁵ http://wqw2010.blogspot.ch/2015/10/blog-post_41.html

Mr. Shen, a human rights defender in Wuxi in the eastern province of Jiangsu, submitted a request to the Ministry of Foreign Affairs in May 2015 for disclosure of information related to the Chinese government's report to the Committee. On 9 June, he received a reply refusing the request. Believing this to be an infringement of his legal rights as a citizen under the Open Government Law, Mr. Shen filed a request for administrative review of the decision to the State Council's Legislative Affairs Office (国务院法制办) on 24 July 2015. At the time of writing, the legally-required time limit for response (two months) had passed without a response or notice that the process would be prolonged. This directly violates the Administrative Review Law of China.

Another challenge is accessing training. To ISHR's knowledge, numerous individuals seeking to participate in training and advocacy around the UN human rights mechanisms were prevented from doing so through direct intimidation or restrictions. In addition to these cases, it is difficult to measure the likely much-higher number of defenders who decide not to pursue opportunities for training or advocacy on the UN human rights mechanisms due to intimidation and fear of reprisal, including pressure from their family members and financial pressure related to retaliation at work.

1. In March 2015, roughly a dozen individuals seeking to travel for training and education on the UN mechanisms were prevented from doing so through acts of intimidation; denial of passports; and prevention of travel.
2. In June 2015, an activist was attacked at his home and taken to a police station in Sichuan province; his interrogation, and that of his mother, brother, and daughter, focused on his rights defence work. Officials reportedly asked whether he had participated in international human rights training; the victim believes that the harassment, intimidation, and confiscation of personal items, including his passport and personal electronic devices, was intended to dissuade him from traveling to Geneva to conduct advocacy at the UN²⁶.

As documented in ISHR's submission to the UN Secretary General on cooperation with the UN and reprisals, **prevention of participation in treaty body reviews** was a key issue ahead of the November 2014 review of China by the Committee on the Elimination of Discrimination against Women (CEDAW Committee). Authorities in Henan province prevented Wang Qiuyun, an HIV/AIDS activist, from traveling to Geneva to participate in advocacy and attend the review²⁷. According to ISHR's partners, a number of other activists 'self-censored', confiding to colleagues that they considered the risks of participation in the CEDAW review too high. Another well-known feminist activist, posted a photo to the microblog site Weibo to raise awareness of the review; she was detained shortly thereafter²⁸.

The case of **Cao Shunli** has become a rallying point for civil society in and outside of China. In September 2013, Chinese authorities prevented Cao from attending a training and conducting advocacy in Geneva ahead of the Universal Periodic Review of China. She was held incommunicado for five weeks; after finally gaining access to Cao on 30 October 2013, her lawyer filed a request for medical bail that went unacknowledged. Authorities continued to withhold adequate medical care until 17 February 2014, when Cao was taken to the hospital in critical condition – still under the supervision of public security authorities.

²⁶ <http://chinachange.org/2015/06/11/activist-interrogated-and-prevented-from-attending-human-rights-training-in-geneva/>

²⁷ https://www.washingtonpost.com/world/asia_pacific/china-bars-aids-activist-from-traveling-despite-talk-of-ending-discrimination/2014/10/23/5effbdc1-dd63-4da3-bdcc-7ff7746d6985_story.html

²⁸ http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_s-g_on_reprisals.pdf

Cao Shunli died on 14 March 2014 as a result of her mistreatment in detention. Family members were allowed to view her body briefly before it disappeared for two weeks; they noted sores, discoloration and bruises all over her body. **Allegations of torture, and calls for any transparent, impartial investigation into Cao's death, have been ignored or outright denied by authorities.** This includes concerns raised by Special Rapporteur Maina Kiai, who urged the authorities to inform him of the results of the investigations into Cao's death²⁹.

As of 15 October 2015, civil society reporting from China indicated that roughly 19 individuals – comprising lawyers, human rights defenders, and five children of human rights activists – had been prevented from leaving the country since the '710 crackdown'³⁰.

V. PREVENTING AND RESPONDING TO REPRISALS: PROTECTION AND SAFETY DURING AND AFTER THE REVIEW

Relevant Articles of the Convention: 13, 16, 19

The adoption this year of the San José Guidelines is a significant step toward a policy of response to reprisals³¹. As ISHR has previously noted, the Guidelines send an important signal to defenders that the treaty body system takes seriously the need to ensure that defenders can access and communicate safely with the treaty bodies, free from intimidation, attacks or other reprisals³². The San José Guidelines also strengthen confidence that when reprisals do occur, States will be held accountable for their actions.

The Committee against Torture has a strong track record in seeking to address reprisals, including the appointment in 2012 of two rapporteurs on reprisals under Article 19, and Articles 20 and 22, respectively. The Committee's preliminary statement on reprisals emphasizes the obligations of States to 'refrain from reprisals against individuals, groups and institutions that seek to cooperate with or otherwise assist the Committee, whether by providing it with information or by communicating about the findings or actions of the Committee'³³.

The Committee's Guidelines on Reprisals (the Committee Guidelines) go one step further, adding the legal obligation of States parties under Article 13 to ensure the protection of complainants and witnesses against reprisals, and noting that in some cases reprisals themselves may constitute behaviour in contravention of other articles of the Convention³⁴. Past CAT jurisprudence has also recognised that intimidation of and reprisals against victims can constitute a violation of the Convention (see, *inter alia*, Gerasimov v. Kazakhstan)³⁵.

The **San José Guidelines** outline a set of preventive measures that Treaty Bodies can, and indeed *should*, take to prevent reprisals. These include improving methods of engaging confidentially with the Committee, including as regards the formal NGO briefing; proactively reminding States under review of their obligations to refrain from acts of intimidation or reprisals; requesting protection measures for at-risk groups within the country – and evidence of their implementation; and broadly disseminating their policy with regard to reprisals³⁶. **While the Committee's guidelines address the**

²⁹ A/HRC/30/29 Annex 1.1

³⁰ <http://wqw2010.blogspot.ch/2015/10/70919.html>

³¹ HRI/MC/2015/6

³² <http://www.ishr.ch/news/un-human-rights-monitoring-bodies-adopt-policy-combat-reprisals>

³³ CAT/C/51/3

³⁴ CAT/C/55/2

³⁵ CAT/C/48/D/433/2010

³⁶ HRI/MC/2015/6 Section B, paras 18-20

need to prevent reprisals against persons involved in country visits and the individual complaints procedure, they unfortunately do not sufficiently address the responsibility of the Committee to engage in the *prevention* of reprisals in the context of country reviews. ISHR strongly encourages the Committee to consider, for all reviews but especially for that of China, the steps they might take to prevent reprisals and minimize risks of participation for human rights defenders.

When reprisals do occur, it is especially important that the Committee be willing to speak out publicly on the case, conditional on the victim's consent. The public recognition of the violation can be very impactful, and can provide importance protective publicity, in particular when the use of other tools (country visits, follow-up interviews, further intervention of UN bodies and officials) may be limited – as in the case of China. ISHR is pleased to see the clear communication of possible Committee responses to cases, but would emphasize that keeping the victim(s), individual or organisation responsible for the inquiry informed of the status of the complaint is also important, and would contribute to confidence in and credibility of the Committee's follow-up process.

The response by the CEDAW to the case raised in Section IV of this paper could serve as a precedent for all incidents when credible allegations of intentional barriers to participation exist. In their Concluding Observations, CEDAW drew particular attention to the barriers to the active participation of NGOs, stating:

The Committee is... concerned about information on travel restriction imposed on at least one woman human rights activist who intended to brief the Committee and to observe the constructive dialogue of the State party³⁷.

The CEDAW then recommended that the Chinese government 'take all measures necessary to protect women human rights defenders, including those who have provided information to the Committee, and take steps to ensure that in the future no travel restrictions are placed on individuals or human rights defenders who wish to observe the review of subsequent reports'³⁸.

VI. PROPOSED QUESTIONS

In line with the above, ISHR proposes that the Committee include the following in its questions to the Chinese delegation:

1. Regarding the environment for rights defence and prevention of and accountability for torture in the country:
 - Please explain in detail the procedures by which charges of 'incitement to state subversion' can be appealed, and the legal, regulatory, and practical limitations placed on judicial and security officials responsible that ensure full respect for the human rights of suspects charged with such crimes.
 - Please explain how the amendments to Criminal Law Art. 309 will be implemented in full respect of freedom of speech and freedom of association and assembly, and how actions referred to by that article will be defined and reviewed on a case-by-case basis to prevent misuse and abuse.
 - With particular attention to 'residential surveillance in a designated place', please clarify whether Article 18 of the Criminal Procedure Law, and the provisions of Criminal Law Article 247, cover conduct of personnel in these locations as related to abuses that may constitute torture or CID.

³⁷ CEDAW/C/CHN/CO/7-8, para 32

³⁸ CEDAW/C/CHN/CO/7-8, para 33

2. Regarding the measures taken to ensure the ability of defenders to fully participate in the review process:
 - Please provide a detailed response on measures taken to respond to the CEDAW Concluding Observations last year, related to the ability of civil society actors to travel and participate in the review.
 - Please describe what process or procedure, if any, is in place to ensure a prompt, transparent, and detailed response to any such allegations that may arise in relation to this review.
 - Please identify the Ministry responsible for responding to questions and requests for information disclosures of the State party report and State part responses to the List of Issues.
 - Please provide the legal justification for failing to provide information used to produce the public report, in particular the statistics and other details related to the 36 officials found guilty of extracting confessions through torture³⁹.

3. Regarding the need to prevent and respond to acts of intimidation and reprisals:

It will be important that, at the outset of the review, the Committee state clearly to the Government Delegation the purpose and nature of the new Committee Guidelines, and furthermore that they situate the Committee Guidelines in the broader context of the San José Guidelines. In particular the Committee could notify the Government Delegation not to bring pressure to bear on or otherwise threaten members of civil society participating in the review.

VII. SUGGESTED RECOMMENDATIONS

“Defending and promoting human rights remains an extraordinarily dangerous activity.”

Report of the Special Rapporteur on human rights defenders, A/70/217 para 91.

Human rights defenders in China can and do play a crucial role in efforts to identify, monitor, prosecute and provide redress for torture and cruel, inhumane or degrading treatment or punishment. ISHR urges the Committee to consider in drafting its Concluding Observations how those recommendations can improve the environment for prevention of torture and how they can protect and promote the work of human rights defenders in China to play this role without fear of harassment or intimidation. In this regard, ISHR recommends that the government of China:

- Regarding the environment for rights defence and prevention of and accountability for torture in the country:
 - Ensure that lawyers and human rights defenders have a clear process to obtain information about cases that involve charges related to endangering national security, and that those lawyers and defenders are not harassed or prosecuted for providing legal assistance to persons detained and charged under legislation relating to national security⁴⁰
 - Review and repeal amendments to the Criminal Law (including Articles 306 and 309) and other relevant laws and drafts that increase criminal penalties against legitimate

³⁹ CAT/C/CHN/5 para. 74

⁴⁰ A/HRC/22/6, HRC Resolution on Human Rights Defenders, OP10(d)

activities by lawyers and defenders and, therefore, create a chilling environment for rights defence work

- Release all lawyers arbitrarily detained since 9 July 2015, and ensure prompt access of all detained defenders to their families, legal counsel, and medical professionals

- Regarding the measures taken to ensure the ability of defenders to fully participate in the review process:
 - Take steps to ensure that in no travel restrictions are placed on individuals or human rights defenders who seek to cooperate with the Committee in the context of its review and follow up procedures
 - Identify the primary authority responsible for responding to inquiries from civil society about the information provided to the Committee, and disseminate widely the process by which requests for disclosure of official information will be handled, including precise deadlines and appeal processes
 - Ensure the safe participation of independent civil society in the reporting process, in particular in relation to reporting on implementation of Concluding Observations selected for follow-up, and on voluntary implementation plans for the remaining observations⁴¹

- Regarding the need to prevent and respond to acts of intimidation and reprisals:
 - Take all measures necessary to protect human rights defenders, including those who have provided information to the Committee
 - Include in the context of the follow-up reporting to Concluding Observations specific and detailed information about alleged cases of reprisals brought to the Committee's attention
 - Take prompt action to sanction any public official engaged in behaviour that constitutes intimidation or retaliation against individuals, including human rights defenders and lawyers, for their efforts to prevent, prosecute or seek redress and compensation for acts of torture or CID

⁴¹ As per CAT/C/55/3 Paras 10 and 11.