

Challenges and Problems on Chinese Work against Torture

**For Examination of the State Report of the People's Republic of China on
41st Session of the Committee Against Torture**

By the China Society for Human Rights Studies

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1. The China Society for Human Rights Studies (CSHRS) founded in January 1993 is the largest national non-governmental organization in the field of human rights studies in China. It is a member of the United Nations Conference of Non-governmental Organizations, which enjoys a special consultative status with the United Nations Economic and Social Council. It is included in the World Directory of Human Rights Research and Training Institutions compiled by the United Nations Educational, Scientific, and Cultural Organization. The activities and tasks of the CSHRS are: studying the theories, history and status of human rights in China and overseas; popularizing and publicizing human rights knowledge; engaging in relevant international exchanges and cooperation; and promoting the healthy development of human rights in China and the world as a whole.
2. CSHRS persistently insists the stance against torture and other cruel, inhuman or degrading treatment or punishment (hereafter “torture”) according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter “the Convention”). For a long time, CSHRS unites universities, academic institutions and other NGOs and raises criticism, opinions and proposals to the governmental and judicial organs in order to promote the sustainable achievement and progress in this regard.
3. CSHRS holds that torture is serious violation of basic human rights and human being dignity which is intolerable under modern civilization and rule of law. Though there is extensive awareness and many measures to stop it, torture still exists in some areas and some organs in China and needs our unremitting efforts to prevent, prohibit and punish the conduct of torture. CAT is one of the significant UN human rights treaties and consequently constitutes part of the important content of our human rights studies and activities.

I. Problem of Legal Framework of Chinese Law Against Torture

4. China has established its domestic legal framework against torture.
5. Article 37 of the Chinese Constitutional law provides that: “The freedom of person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.” This provision concerning anti-torture in Constitutional law is justification for other anti-torture legislation and judicial practices.

6. There are seven crimes related to torture in the Chinese Criminal Law as follows, the crime of unlawful detention, the crime of illegal search, the crime of retaliation and frame-ups, the crime of extorting a confession by force, the crime of extracting testimony from witness by violence, the crime of abuse of inmates, and the crime of abuse of subordinates.
7. Article 12 of Chinese criminal procedure law establishes the principle that no person shall be found guilty without being judged as such by a People's Court according to law. Article 43 strictly forbids prosecution of crime by torture in the criminal procedure. Both article 61 in the Interpretation of the Supreme People's Court on Some Issues Concerning the Implementation of Criminal Procedure Law of the People's Republic of China and article 265 in the Rules of Criminal Procedure of the People's Procuratorate reaffirm the above provisions and further establish the illegal evidence exclusion rules.
8. In addition to the substantive law and procedure law mentioned above, Police Law, Judges Law, Public Procurators Law, State Security Law and Prison Law have special provisions regarding the prohibition of torture so as to safeguard the human rights of all citizens. State Compensation Law makes provisions of the state compensation to the victims of torture. These provisions further enhance the tight legal system for the anti-torture at maximum.
9. CSHRS is of the view that though the domestic legal framework has been established, some of the relevant rules are abstract, without clear definition and sound implementation mechanism. So, it is necessary to improve and develop the legislation with reference to the CAT and according to Chinese realities of social development.
10. Meanwhile, enforcement of the laws is also very significant. Legislation or policy making itself cannot resolve the problem completely. Implementation and supervision of the laws should be emphasized.
11. On the international law, CAT is the most important legal source. During recent years, plentiful research achievements have been made. Monographs¹ and doctoral papers² on CAT are published. CAT is incorporated into the teaching content in law school of universities, and on training courses for governmental and judicial officials. CSHRS has organized seminars and training meetings together with China Law Society and China Prison Studies Society for the police and criminal law enforcement officials of departments of justice for several times, in order to promote awareness and education concerned. Many international and domestic

¹ For example, Chen Yunsheng, *Walking toward Human rights and Rule of Law: Studies on Prohibition of Torture*, in Chinese, published by Publishing House of Chinese Academy of Social Sciences, in 2003.

² For example, Wang Guangxian, *Theories and Practices on Prohibition of Torture from Perspective of Combination of International and Domestic Supervisions*, in Chinese, published by Shanghai People's Publishing House, in 2003.

seminars directly on CAT are also hold very often in China.³

12. There are also relevant provisions against torture in other human rights treaties such as the International Covenant on Civil and Political Rights signed by China in 1998 and the International Convention on Rights of the Child ratified by China in 1992. Relevant provisions in different human rights treaties are regarded as a whole when we conduct human rights education and awareness-raising activities.
13. As to the CAT, one important problem is that just as other international human rights treaties ratified by China, it cannot be quoted in decisions of the courts. Therefore, risks may occur as follows: (1) if the international standards cannot be sufficiently incorporated and transferred into domestic laws, they cannot be applied inside the Member State effectively; (2) it is not conducive for the judicial officers and the society to dealing with torture issue from the human rights perspective.
14. CSHRS attaches great significances to the CAT for law enforcement and judicial process in China. Domestic application of the CAT and enforcement of the Chinese domestic laws mentioned above are two interactive and supplementary processes.
15. CSHRS also pays much intention to the domestic enforcement of the CAT, including the State report submission by Chinese Government to the CAT Committee. During the drafting process, CSHRS participates actively and persuades and mobilize relevant governmental organs, judicial organs, other institutions and scholars to make their contribution.
16. As to the State reporting mechanism, the problem is that both many of the law enforcement officials and NGO persons do not know much about this mechanism. Though many of them are interested in and pay much attention to this procedure, the quality of participation is not high. So, it is urgent to strengthen the capacity building for them. They should be able to attend the drafting of the State Report effectively and adopt follow-up actions based upon the Concluding Observations adopted by the CAT Committee.
17. Though the latest Chinese State Report submitted to the CAT Committee accommodated more opinions from NGOs than before, CSHRS is of the view that there are still potentials and spaces to enlarge and deepen the participation of the NGOs.
18. Meanwhile, though the new Chinese State Report provides relatively comprehensive information concerned, to provide concrete information, CSHRS

³ For example, from August 12 to 13, 2006, Sino-Europe International Meeting on CAT and its Optional Protocol sponsored by Center for Proceeding System and Judicial Reform Studies, China People' s University and Britain-China Association was hold in Beijing. More than 100 scholars, practitioners, and judicial officials from China and abroad attended the meeting.

holds that classified statistics work should be strengthened.

II. Challenges Faced by China on Efforts against Torture

19. CSHRS is of the view that torture is not just a legal issue, but also a social issue. Fight against torture cannot be won overnight or at one go. It is a long-time task. Improvement of the awareness of human rights, system reform and institutional construction becomes an inevitable channel for prohibition of torture in the future in China.
20. The legal purpose of respect and protection of human rights shall be fully established. For a long time, during the process of criminal prosecution, the idea of social defense prevailed over the idea of protection of human rights. The society paid more attention to finding out the substantive facts with less emphasis on respecting the rights of the defendants, which might foster the occurrence of torture in practices. With inclusion of the protection of human rights into the Constitution, it is expected that more and more attention will be paid to the balance of human rights protection and social defense, more emphasis on functions of human rights protection in the course of criminal prosecution and more focus on safeguarding the rights of the accused and strictly limiting state public power. CSHRS calls that through the second revision of the Chinese Criminal Procedure Law, the principles of the presumption of innocence and not to be forced into self-incrimination will be established and fully implemented.
21. The principle of trial-centered criminal procedure needs to be fully established. For a long time, due to the impacts of such factors as historical tradition and poor investigative techniques, confession of the accused played an important role in criminal prosecution. To some extent, excessive attention to the role of confession of the accused might lead to the happening of torture. In recent years, CSHRS has witnessed that the law enforcement departments are trying to change the confession-emphasized working model. CSHRS recommends that in addition to establishing illegal evidence exclusion rules, the government should promote the improvement of investigative techniques to change the law enforcement officials' stereotyped thinking pattern, to establish the mechanism for procedural decision, to establish the system of the separation of investigation and detention gradually and finally to realize the principle of trial-centered criminal procedure.
22. CSHRS also calls for the social mechanism against torture to be established. Other than the role of the government, actors such as NGOs, media and individuals can also play very valuable roles, because prohibition of torture is to eliminate any cultural ideas or traditions which support it and to constitute social and public

pressures to keep zero tolerance of torture.

23. Once torture occurred and was exposed by media, it would result in big social resounding. Though there is extensive awareness against torture, there is still a long way to go for the fight to prohibit torture. CSHRS strongly calls that during the process of strengthening democracy and rule of law led by the government, the social actors, especially NGOs, should be mobilized to greatest extent. The work against torture should be composed of prevention, prohibition and punishment of torture, supported by joint efforts, and subject to social supervision.