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**People's Republic of China:
Briefing for the Committee
against Torture in advance of
their consideration of China's
fourth periodic report, 3-21
November 2008**



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China

People's Republic of China: Briefing for the Committee against Torture in advance of their consideration of China's fourth periodic report, 3-21 November 2008

Amnesty International has prepared this briefing for the Committee against Torture (CAT) to assist their consideration of China's fourth periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, the Convention).¹ In line with Amnesty International's current priorities for research and action, the scope of this briefing is confined to mainland China and excludes the Special Administrative Regions of Hong Kong and Macao.

Articles 1 and 4: Definition of torture and criminalization of all acts of torture

Despite recommendations made by the CAT in May 2000, which were reiterated by the Special Rapporteur on torture following his mission to China in Nov-Dec 2005, the authorities have failed to bring definitions of torture under Chinese law into line with the Convention.

- Article 247 of the Criminal Law (CL) lists several offences related to the prohibition of torture, including "torture to coerce a confession" (*xingxun bigong*) and "extorting testimony by violence" (*baoli quzheng*) however, it provides only for prosecution of "judicial officials" for these offences, and not other, broader categories of personnel. Article 248 prohibits "beating or physically ill-treating" (*ouda huozhe tifa nuedai*) detainees but only for policemen or other officers of an institution of detention or by other detainees at the instigation of these officers. Neither provision provides a catchall category of personnel thus potentially excluding from prosecution individuals who might be in a position to inflict torture or other ill-treatment.
- In addition the procuratorate, which directly investigates and prosecutes torture and other offences committed by officials, is not independent but tied

¹ See Committee against Torture, List of issues to be considered during the examination of the fourth periodic report of CHINA (CAT/C/CHN/4), UN Doc. CAT/C/CHN/Q/4, 4 August 2008.

closely to the Communist Party apparatus and its oversight. The procuratorate is under pressure to meet prosecution quotas similar to the Public Security Bureau and other police units to resolve cases which are likely to conflict with its determination to address abuses.

- Over recent years, the Chinese authorities have passed numerous regulations intended to strengthen the formal prohibition of torture as stipulated in the CL. Many of these regulations have been introduced in an effort to regulate the conduct of certain types of officials as a result of specific incidents publicized in the media. For example, in early 2008, the State Council drafted new rules aimed at preventing security guards from resorting to violence after a group of guards in Hubei province beat a man to death who had videotaped them while they beat up a group of protesters.²
- In July 2006, the Supreme People's Procuratorate (SPP) introduced a number of new categories of offences relating to torture and 'dereliction of duty', including beating, binding, freezing, starving, exposing suspects to severe weather, severely injuring suspects and directly or indirectly ordering others to use torture. The SSP President stated that the new regulations were needed to assist prosecutors to determine exactly what kind of behaviour constituted "brutal means" or led to "serious results".³ However, they failed to prohibit other acts of torture as defined in Article 1(1) of the Convention, including the infliction of severe mental pain or suffering. By including only a specific list without providing a catchall phrase such as 'inflicting severe pain or suffering' other torture methods could fall outside the law.

Article 2: Effective measures to prevent torture

Cases and patterns of torture and other ill-treatment which Amnesty International has documented from across the country suggest that China's growing body of laws and regulations aimed at eradicating these practices are often not enforced effectively at the local level. This is due to a number of procedural and institutional weaknesses which create an environment that allows torture and other ill-treatment to flourish.

² See "China drafts rules to clean up security sector", *Reuters*, 26 February 2008.

³ "China issues new rules against torture, forced confessions", *Xinhua*, 26 July 2006.

Legal and procedural failings

The criminal justice system remains highly vulnerable to political interference. The police, procuratorate and courts are not independent and remain under the supervision of the Chinese Communist Party (CCP). Political imperatives can often affect the outcome of individual cases, including whether or not to investigate and punish alleged acts of torture or other ill-treatment. This is particularly apparent in politically-sensitive cases, including those which challenge vested interests at either the local or national level. This lack of independence also compromises the effectiveness of channels of complaint with regard to allegations of torture or other ill-treatment.

- In cases which are deemed politically sensitive, the authorities continue to use broad and vaguely defined provisions of the CL relating to social stability or state security as a political tool to silence dissent. Articles 102, 103, and 105 under the section Crimes of Endangering National Security of the revised CL, refer to broad and vaguely defined crimes of “splitting the State”, “undermining unity of the country”, “subverting State power”, and “overthrowing the socialist system”. According to official statistics there has been a dramatic increase in arrests and prosecutions of individuals for state security offences over the last three years. Many of those sentenced under such provisions are in fact peaceful activists detained in violation of their rights to freedom of expression. They are at high risk of torture or other ill-treatment during detention and imprisonment.
- For example, housing rights activist, **Ye Guozhu**, was sentenced to four-years in prison on charges of “picking quarrels and stirring up trouble” (Article 293(4) of the CL) after he applied for permission to hold a demonstration against forced evictions in Beijing in the run-up to the Olympic Games. According to local sources, he was suspended from the ceiling by the arms and beaten repeatedly by police in Dongcheng district detention centre, Beijing during pre-trial detention causing him serious back pain. He was also reportedly tortured while being held in Qingyuan prison, for four months in the second half of 2005, apparently because he refused to admit his ‘guilt’. This included beatings with electro-shock batons, being forced to sit upright on a hard chair for extended periods, and being forced to wear hand-cuffs and fetters which caused swelling around his wrists and ankles. Towards the end of 2006, he was also beaten with electro-shock batons by guards while being held in a different prison, Chaobai prison. He was due to be released at the end of his sentence on 26 July 2008. However, on 22 July the police telephoned his family telling them not to go and collect him from prison.

Prison authorities confirmed that Xuanwu district police had taken him away. The police later told the family that they would not release Ye Guozhu until sometime after 1 October 2008 when the Olympic Games had finished. On 9 August 2008, the police sent the family an official detention notice stating that Ye was being held at Xuanwu district police detention centre on suspicion of “gathering a crowd to disturb order in a public place”, but provided no further details and refused to give him access to a lawyer or members of his family.

- The Criminal Procedure Law (CPL) gives police broad discretion to detain suspects for long periods in pre-trial detention. Articles 69 of the CPL provides for police detention without charge for up to 14 days for ordinary criminal suspects, 37 days for some categories of suspect, and potentially indefinitely for others. Detention for investigation by the procuratorate after charge may be as long as seven months, which can be extended to nine months under certain circumstances. There is no provision under Chinese law for individuals to be brought promptly before an independent judicial authority to assess the lawfulness of the detention.
- Detainees’ access to their families and legal representatives is limited, discretionary and conditional. Under the CPL the police should inform the family of a detainee about their detention, arrest and place of detention within 24 hours, except where it “would hinder the investigation” (articles 64 and 71). However, in practice, communication with the family is frequently denied until the detainee is brought to trial or sentenced.
- Even after trial, the authorities frequently restrict family visits to those in prison, particularly if they are deemed to be “uncooperative.” **Ablikim Abdiriyim**, the son of exiled Uighur human rights activist Rebiya Kadeer, was denied access to his family for eighteen months after he was first detained in June 2006. During their 15-minute visit to Baijiahu prison, just outside Urumqi on 6 December 2007, his relatives found him to be extremely pale and weak and claimed that he had difficulty in recognising some of them. He told them he had fainted frequently and fallen into a coma on two occasions while in prison. When his family questioned the prison authorities about his health, officials apparently attributed this to a heart condition, suggesting that it could deteriorate further if he refused to “cooperate” or “admit his guilt”. Despite repeated requests from his family, the authorities have refused to grant him release on parole for hospital treatment. Ablikim Abdiriyim was sentenced to nine years in prison for “separatism” in April 2007. According to

state media sources, his legal rights were protected during the trial, the information concerning the trial was publicised three days in advance, and he confessed to the charges against him during the trial. However, his family claims that he was not given the right to legal representation of his choice, they were given no advance notice of the trial, and that any “confession” was likely to have been made under torture.

- Provisions on access to lawyers continue to fall short of international standards. Article 96 of the CPL provides that a suspect "may appoint a lawyer to provide legal advice or to file petitions and complaints on his behalf" **after** the first session of interrogation by the "investigative organ", or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law ("compulsory measures"). Lawyers “may” meet the suspect in custody “to enquire about the case”, but police investigators may also be present at such meetings. The use of such vague language means that in practice detainees are required to obtain permission from the police before gaining access to a lawyer. In cases "involving state secrets" prior approval of the police is required before a lawyer is appointed or any meeting between lawyer and client takes place. The vague and potentially all-encompassing definition of "state secrets" has meant that this provision has been heavily used to deny access to legal representation and to hold trials *in camera*. Detainees are not entitled to “free legal assistance” until 10 days before the trial, and this only applies to some categories of such persons.
- Draft amendments to the Lawyers Law adopted by the Standing Committee of the National People’s Congress in October 2007 appear to be aimed at strengthening the ability of lawyers in general to meet with clients and obtain evidence on their cases. Among other things, the amendment gives lawyers the right to meet criminal suspects after the initial interrogation by police (apart from cases involving “state secrets”), and the right not to be monitored during meetings with clients. The amendment also specifies that remarks made by defence lawyers in court cannot lead to prosecution, provided they do not “threaten national security or slander others.”⁴ While several Chinese lawyers have welcomed the amendments as a step in the right direction, they still fall short of international standards. The exceptions to the right to prompt access to a lawyer and the failure to allow a lawyer to be present during all interviews may limit lawyers’ ability to report torture or other ill-treatment of their clients. Others have noted conflicts between the Lawyers’ Law and other laws,

⁴ See ‘China amends law to make life easier for lawyers’, 29 October 2007, available on Supreme People’s Court website at <http://en.chinacourt.org/public/detail.php?id=4226> and ‘China to amend law to help lawyers obtain evidence, open firms’, *Xinhua*, 24 June 2007.

including Article 96 of the CPL which gives police the right to be present during meetings with lawyers and clients.

The use of forms of detention without trial

The authorities increasingly appear to be using forms of “residential surveillance” (house arrest) in an attempt to curb the activities of human rights defenders. While the CPL lists “residential surveillance” as one of a number of measures that may be used by police against criminal suspects, in practice activists are rarely shown any official notice explaining the reasons for their detention as is provided for in Article 64 of the CPL and periods often exceed the maximum limit of six months as prescribed by Article 58 of the CPL. During this time, detainees have no right of access to a judge to challenge the grounds of their detention, except in circumstances where the length of detention has exceeded the legal time limit of six months. It is extremely difficult to mount such a challenge, particularly if the police provide no legal documents at the outset of detention.

- Blind activist and legal adviser, **Chen Guangcheng**, was held under house arrest for almost one year before being brought to trial on 18 August 2006 for “damaging public property and gathering people to block traffic”. He was never given a formal notice explaining the reasons or circumstances of his detention. During this period he was frequently beaten by police for attempting to leave his home without permission. Members of Chen Guangcheng’s family and his own defence lawyers were also subjected to beatings, harassment and intimidation. Following his trial, he was sentenced to four-years-and-three-months in prison. According to local sources, he was severely kicked and beaten by fellow inmates on the orders of prison guards on 16 June 2007 after he refused to have his head shaved. Prison authorities also denied him access to Braille reading materials and a radio. Prior to his detention, Chen Guangcheng had been assisting Linyi villagers in a lawsuit against local authorities who had carried out a campaign of forced sterilizations and abortions in pursuit of birth quotas which reportedly affected thousands of local women.
- **Gao Zhisheng**, a defence lawyer and rights activist, was convicted of “inciting subversion” in December 2006, in connection with his activism, including his organization of a hunger-strike protest in Beijing in February 2006 to draw attention to the plight of several other activists who had been subjected to human rights violations. The authorities had already suspended the operations of his law firm and revoked his law licence in late 2005 after he published an

open letter calling for religious freedom and an end to the “barbaric” persecution of the Falun Gong practitioners. Unusually, the court ruled that his three-year prison sentence should be suspended for five years, meaning that he would not be imprisoned unless he commits criminal offences during the five year period. Following his “release” on 22 December 2006, Gao Zhisheng was reunited with his family, but they all remained under tight police surveillance. In April 2007, Gao Zhisheng claimed to other activists that he had been ill-treated during his four months in formal police custody, including being handcuffed and forced to sit in an iron chair or cross-legged for extended periods, and having bright lights shone on him. Gao Zhisheng was taken away from his home to an unknown location by at least ten men, believed to be police officers in plain clothes, on 22 September 2007. This appeared to be linked to an open letter he had addressed to the U.S. Congress asking them to expose what he called “China’s ongoing human rights disaster” and criticizing China’s hosting of the Olympics. Eyewitnesses reported that the men beat and kicked him when they took him away. No further information emerged about his situation until he telephoned a fellow activist, Hu Jia, apparently under duress on 28 October 2007, saying that he had been in Shaanxi and Shanxi provinces and telling Hu Jia not to try to visit his family. There are serious concerns that Gao Zhisheng was subjected to torture or other ill-treatment by those who had abducted him. A friend who was able to visit him secretly in mid-December 2007 reported that he had been brought back home in early November 2007, adding that he looked thin and tired and appeared to be in poor health. Since then, no further reliable reports have emerged on his condition.

- The authorities continue to rely on systems of punitive administrative detention to supplement sanctions under the formal CL. These include “Re-education through Labour” (RTL, *laodong jiaoyang*) – used to punish alleged “troublemakers” or “minor offenders” with up to four years’ administrative detention without charge, trial or judicial review. A specific target for RTL has been Falun Gong practitioners since the authorities banned the movement as a “heretical organization” in 1999. Reports persist of individuals being subjected to torture or other ill-treatment in RTL facilities, particularly if they are deemed to resist efforts to “re-educate” them. The UN Special Rapporteur on torture has noted that “RTL constitutes not only a serious violation of the human rights to personal liberty, but can also be considered as a form of inhuman and degrading treatment or punishment, if not mental torture” and

has called on the authorities to abolish the practice.⁵ Police in Beijing used China's recent staging of the Olympics to extend the scope of RTL to broader categories of "offences" as a tool to "clean-up" the city in the run-up to the Games. Targets included peaceful petitioners and rights activists in Beijing.

- Rural activist, **Liu Jie**, continues to serve a term of 18 months RTL in Heilongjiang province, northeast China after she was detained in Beijing in October 2007 in connection with a public letter she had organised urging leaders at the 17th CCP Congress to introduce political and legal reforms, including a call for the abolition of RTL. On or around 22 May 2008, the authorities transferred Liu Jie from Qiqihaer RTL facility to Harbin Drug Rehabilitation Centre together with approximately 30 other inmates.⁶ Local associates of Liu Jie claim that she is not (and has never been) a drug addict and consider the transfer to be a punishment for protesting conditions of detention in Qiqihaer RTL facility. Local sources reported that facility inmates are forced to work for fourteen hours per day to make handicrafts using chemical dye, which causes headaches as well as skin and eye problems. According to local sources, detention officials tortured Liu Jie, although Amnesty International has been unable to confirm whether this happened in Qiqihaer or Harbin. For five consecutive days in May, she was forced to sit upright on a long bench (known as the 'tiger bench') with her hands tied behind her back, her thighs tied to the bench, and her feet raised off the floor on bricks. This caused injury to her legs. No investigation is known to have been carried out into these allegations.
- Chinese legal scholars and other reformists have long called for the abolition of RTL, as has Amnesty International. A law to replace RTL, known as the Illegal Behaviour Correction Law (*weifa xingwei jiaozhi fa*) remains in draft form within the National People's Congress, and there are no indications that it will be promulgated in the near future. The draft is not publicly available. Chinese legal commentary suggests that while the law contains several improvements, it will continue to fall short of international standards.⁷

⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak – Mission to China, UN Doc: E/CN.4/2006/6/Add.6, 10 March 2006, para. 64.

⁶ According to local sources, the centre is used for detaining suspected prostitutes and juvenile offenders as well as drug addicts.

⁷ For further information, see Amnesty International, *People's Republic of China: Abolishing 'Re-education through Labour' and other forms of punitive administrative detention: an*

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- In September 2007, reports emerged of secret detention centres being run on the outskirts of the capital by the Beijing liaison offices of provincial governments in China. They were reported to have been established as temporary facilities, including converted hotels, to detain petitioners before they could be forcibly returned to their hometowns. Petitioners were reportedly crowded into these facilities for days or even months with poor food and no proper sanitation facilities or health care. They were controlled by young, unofficial ‘guards’, apparently hired for the purpose, who frequently beat detainees. Local observers have reported that these secret detention centres are still in existence as of September 2008.
 - The arbitrary detention and forcible removal of petitioners from Beijing in the run-up to the Olympics resembled the previous practice of ‘Custody and Repatriation’ (C&R, *shourong qiansong*) – a system of administrative detention targeted at vagrants, migrants and others without fixed abode in the cities, which was abolished in August 2003. This abusive system, characterised by reports of torture and other ill-treatment of detainees, including arbitrary detention, beatings, extortion of money and forced labour, had been widely criticised among academics and in the Chinese media following the tragic death of Sun Zhigang, a designer from Hubei province, while he was being held in a C&R centre in Guangdong province. A subsequent official investigation found that he had died after being beaten repeatedly by other detainees at the instigation of certain members of staff at the detention centre hospital. At the time, the abolition of C&R was trumpeted in the official Chinese press as a significant step forward for human rights in China.

The use of unofficial personnel to monitor and harass rights activists

There are growing patterns of the use of unofficial personnel to harass, detain and in some cases assault lawyers and activists working to expose and obtain redress for human rights violations in China. The identity of the perpetrators is seldom clear, but they often appear to be local thugs, hired by the authorities. For example:

- In the two weeks leading up to the Olympic Games, the authorities stepped up their “residential surveillance” of **Yuan Weijing**, the wife of imprisoned legal activist Chen Guangcheng. She said that the number of “guards” monitoring her home had been increased from 10 to over 40 people. They forcibly prevented her from visiting her husband in prison, her family or even a dentist,

opportunity to bring the law into line with the International Covenant on Civil and Political Rights (Index: ASA 17/016/2006).

even though she was suffering from chronic toothache. Yuan Weijing has been held under surveillance in her home since September 2005. She was able to escape and go to Beijing in July 2007, but intercepted by police and forcibly returned home the next month.

- In another case, Beijing-based lawyer **Li Heping** was abducted and assaulted by a group of unidentified men on 29 September 2007. They beat him with electro-shock batons and told him he should leave Beijing or risk further attack. He was released after about eight hours. The incident occurred shortly after police had told Li Heping to leave Beijing during the 17th Communist Party Congress, held in October 2007. Li Heping had built a reputation for defending sensitive cases, including Christians arrested for unofficial house church activities, Falun Gong practitioners, and victims of forced eviction and independent writers. He had also appealed to the authorities on behalf of lawyer Gao Zhisheng.

Article 4: criminalising acts of torture – torture in the context of implementing family planning policies

Reports persist of local authorities forcing women to undergo abortions or sterilizations in pursuit of birth quotas under China's strict family planning policies. While such practices are clearly intentional, cause much suffering, and are inflicted for discriminatory reasons, officials responsible for such practices are rarely prosecuted.

- As the case of Chen Guangcheng above illustrates, domestic activists who challenge the implementation of family planning policies risk arrest and imprisonment on politically motivated charges. Since Chen's detention, other Chinese activists have attempted to investigate the extent of the abuses in Linyi city, Shandong province in 2005. They uncovered 12 cases involving arbitrary detention and forced sterilization.⁸ In September 2005, the National Population and Family Planning Commission publicly acknowledged that abuses had taken place.⁹ It reported that those responsible for the abuses had been dismissed from duty, some were under investigation and some were in detention. However, no further information has emerged about the identity of

⁸ See "Violence in enforcing family planning in Linyi, Shandong", *Chinese Human Rights Defenders*, 11 June 2005, available at: http://crd-net.org/Article/Class9/Class11/200506/20050611195219_427.html.

⁹ See "Population control abuses in Shandong confirmed", *Xinhua*, 20 September 2005

the alleged perpetrators, the nature of the investigation into the abuses, or whether anyone was prosecuted and what the outcome of these prosecutions was. Local sources have reported that many of those they believe were responsible remain in post.

- In April 2007, reports emerged of serious allegations of forced abortions inflicted on dozens of women in Baise city, Guangxi Zhuang Autonomous Region in southwest China. These were reportedly conducted under the supervision and guidance of local family planning officials. According to local sources, one woman, **Wei Linrong**, the wife of a local pastor, was forced to have an abortion at Youjiang District People's Hospital in Baise on 17-18 April 2007. She was in her seventh month of pregnancy, but the baby was her second child and regulations limit urban couples to one child. She had apparently assumed she would be allowed to keep the baby if she paid a fine. Wei Linrong was taken to the hospital by over ten family planning officials, who pushed her roughly into a car without providing any official document or explanation. At the hospital, she claims she was forced to sign a consent form, with officials threatening to sign it for her if she refused. She says she was given three injections in the lower abdomen, and the baby was stillborn in the early morning of the next day. According to her friends who were with her at the hospital, the baby's body was completely black. Wei Linrong reportedly asked to keep the body, but medical staff reportedly put it in a plastic bag and took it away. Amnesty International wrote to the Chinese authorities on 11 May 2007 detailing its concerns about Wei Linrong's case and other alleged forced abortions and calling on the authorities to conduct an immediate, independent and impartial investigation with a view to bringing those responsible to justice. The organization has not received a reply to this letter and there is no evidence that any investigation has taken place.

Article 3: torture in the context of extraditions and forced returns

Chinese authorities fail to apply safeguards to ensure that those forcibly returned to other countries are not subjected to torture or other ill-treatment, in violation of their obligations under Article 3 of the Convention. This applies in particular to the large numbers of North Korean refugees who have fled to China, only to be intercepted by the Chinese police and forcibly returned to North Korea. The Chinese authorities continue to label North Koreans in China as "economic migrants" and refuse to give them access to refugee determination procedures via the Office of the United Nations High Commissioner for Refugees (UNHCR).

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- The Chinese authorities forcibly returned North Korean national **Park Yong-cho**l to North Korea in secret in October 2004. He had been serving a two-year prison sentence for his part in organising the January 2003 "Yantai boat incident", in which a group of 30 North Koreans attempted to travel on from China to South Korea by sea. He was held at Weifeng prison in Shandong province, and was expected to be released in January 2005. The 30 North Koreans were arrested in Yantai city, Shandong province, and most were then forcibly returned to North Korea. In 2004, Amnesty International received unconfirmed reports that several were sentenced to long terms in *kwalliso* (labour camps for political prisoners). Further details about their conditions of detention were unknown, but they were believed to be at high risk of torture or other ill-treatment.

The Chinese authorities have also actively engaged in operations abroad to detain and forcibly return Chinese nationals who have fled to other countries, including some who have claimed asylum or been recognized as refugees. Such returns have often been effected secretly without recourse to formal extradition procedures. Individuals forcibly returned to China from abroad are at high risk of torture and ill-treatment, particularly Uighurs and Tibetans. Reports from local sources indicate that several Tibetans and Uighurs were subjected to torture or other ill-treatment in detention after being forcibly returned. For example:

- **Husein Dzhelil** (also known as Huseyin Celil), an ethnic Uighur from the Xinjiang Uighur Autonomous Region (XUAR) of China, was detained on 27 March 2006 in Uzbekistan and forcibly returned to China at the end of June 2006. He had originally fled China in the mid-1990s after being detained in connection with political activities. He was recognised as a refugee and resettled in Canada in 2001 where he later obtained Canadian citizenship. After being forcibly returned to China, the authorities held him *incommunicado* and denied him access to Canadian consular officials. He later claimed that he had been deprived of food and sleep during the first fifteen days of detention and that the authorities threatened that he would 'disappear' and 'be buried alive' if he refused to sign an official document. The document was later used as a 'confession' although Husein Dzhelil claimed that he did not know what he had signed and that it had been extracted under torture. He was denied access to a lawyer of his choice and represented by a court-appointed lawyer at trial. He was tried on 2 February 2007 and sentenced to life imprisonment for "plotting to split the country" and "joining a terrorist organization". He requested that representatives of the Canadian consulate attend the trial but this was rejected by the authorities.

His mother, who was allowed to attend the trial, reported that after the judge read the verdict, her son shouted that everything was a lie and he did not accept anything that had been stated. His sentence was finalised on 10 July 2007 when the regional high court rejected his appeal. Amnesty International remains deeply concerned that the charges against Husein Dzhelil were politically motivated and that his conviction was the result of an unfair trial, and based on a confession that Husein Dzhelil claims was extracted through torture.

Articles 12-14 – obligation to ensure a prompt and impartial investigation into allegations of torture, right to compensation

Amnesty International continues to receive reports of deaths in custody in a variety of state institutions, including prisons, RTL facilities and police detention centres. Many of these deaths are alleged to be the result of torture or other ill-treatment in custody. According to overseas Falun Gong sources, during the course of 2007 over 100 Falun Gong practitioners died in detention or shortly after release as a result of police violence, denial of food or medical treatment and other forms of torture or ill-treatment. According to these sources, the rate of deaths in detention, or deaths shortly after release, of FLG practitioners increased in 2008. Occasional reports in the Chinese media suggest that in some instances, perpetrators are punished for such violations, but in many more cases documented by networks of Chinese human rights activists, Amnesty International and other NGOs, official investigations rarely take place and perpetrators escape with impunity. When they are ordered, investigations fail to meet the Convention's requirements of promptness and impartiality, nor are families compensated.

- **Yu Zhou**, a well-known folk singer, graduate of Beijing University, and reportedly a Falun Gong practitioner, was arrested in Tongzhou District, Beijing, on 26 January 2008, along with his wife, Xu Na, a poet and painter. On 6 February 2008, the authorities notified the family to come to the Qinghe District Emergency Centre, where they learned that Yu Zhou had already died. A family member recounted how his body was covered by a white sheet, and only his eyes were visible. The family was told that Yu had died from either diabetes or from a hunger strike, although he had been perfectly healthy at the time of his arrest. The staff at the Emergency Centre refused the family's request to view the body and for an autopsy to be performed and the authorities refused to hand over Yu's body to the family. Xu Na, who was imprisoned from 2001 to 2006 for her adherence to Falun Gong, is reported to remain in custody, at risk of ill-treatment and long-term detention.

- **Paltsal Kyab**, a Tibetan from Sichuan province, died on 26 May 2008, five weeks after he was detained by police in connection with protests which had taken place in and around Tibet since mid-March 2008. According to eyewitnesses, severe injuries to his body suggest that he died as a result of being tortured in police custody. Aged around 45, Paltsal Kyab had been present at a protest march on 17 March 2008 in Charo township in Ngaba (Ch: Aba) county, a Tibetan-populated area of Sichuan province. The protest involved around 100 young people who wanted to draw attention to long-standing grievances held by many Tibetans against official Chinese policies, and urge greater attention from the United Nations and the international media. The protest turned violent with some demonstrators setting fire to a government building. According to witnesses, Paltsal Kyab did not take part in the violence, but tried to persuade the protesters to demonstrate peacefully in line with the Dalai Lama's principle of non-violence. A few days later, Paltsal Kyab heard the police had included his name on a "wanted list". Fearing he would not be believed if he turned himself in, he decided to leave town to visit his uncle who was terminally ill. During this time, police reportedly threatened, intimidated and assaulted members of his family, including his 14-year-old son who was briefly detained by police, to try to find out where Paltsal Kyab had gone. When he returned home Paltsal Kyab decided to voluntarily give himself up to the police based on an official announcement that those that surrendered voluntarily would be treated leniently. Police detained him on arrival at Charo police station on 17 or 18 April 2008. They transferred him to Ngaba police detention centre on 27 April 2008. His family was not able to meet him in detention and had no news of his situation until 26 May 2008 when two Charo township leaders came to Paltsal Kyab's home to inform his family of his death. When family representatives went to claim his body, police told them that he had died of an illness, claiming that they had taken him to hospital twice for treatment for kidney and stomach problems. His relatives claim that he was healthy when he was first detained with no history of major health problems. According to witnesses who saw his body: the front of his body was bruised and covered with blisters from burns; his back was also bruised without a single area of natural skin tone; bruising was also evident on his wrists, elbow joints, just below his shoulders, his biceps and forearms. After deciding not to press claims for an autopsy on grounds that he had already suffered enough, his family gave Paltsal Kyab a traditional Tibetan sky burial (offering to wild birds after dismemberment). Those present claim that during the burial they discovered further internal injuries to his right kidney, gallbladder and liver. According to his relatives, to date there has been no official investigation into his death

- Shanghai-based housing rights activist, **Chen Xiaoming**, died shortly after being released from prison on medical parole. Chen, who suffered from a pre-existing chronic illness, was reportedly stripped naked, physically abused and held at an unknown secret location for eight months while in police custody. He was sentenced to two years in prison by the Shanghai No.1 Intermediate People's Court in January 2007 for "disturbing court order" in connection with his presence at a hearing for another petitioner. His family was denied access to him for 14 months after he was first detained. When they were eventually allowed to meet with him in prison on 2 April 2007, they found him weak and emaciated with barely enough energy to speak. Guards monitoring the visit interrupted him when he tried to discuss his health situation, preventing his family from learning the details. They made several requests for him to be released on medical parole or to be allowed to provide him with medicine, but were either refused or given no official response. Detention centre guards eventually sent him to hospital on 29 June 2007 when, according to his family, he was even weaker, vomiting blood, and unable to speak. He died of a massive haemorrhage on 1 July 2007.¹⁰ Since then, members of his family have petitioned several government departments and courts in Shanghai to investigate the circumstances surrounding his death, but have not received any positive response. Chen Xiaoming was one of seven Chinese activists honoured with the 2006 Housing Rights Defender Award by the Centre on Housing Rights and Evictions based in Geneva.
- Land rights activist, **Yang Chunlin**, was denied access to his family for almost a whole year following his detention on 6 July 2007 after he spearheaded a petition campaign under the banner "We don't want the Olympics; we want human rights." He was held at Heitong police station, Jiamusi city, Heilongjiang province and formally charged with 'inciting subversion' on 3 August 2007. He was denied access to lawyers for several weeks on grounds that his case apparently involved "state secrets", although this was not repeated in charges leveled at the time of trial. Reports emerged that Yang Chunlin had been tortured in police detention. For six days in early August and one day in September 2007, his arms and legs were reportedly stretched and chained to the four corners of an iron bed so that he could not move. He was forced to eat, drink, urinate and defecate in that position. He was also reportedly forced to watch other detainees being subjected to similar treatment and to clean up their excretions. He was tried by the Jiamusi Intermediate People's Court on 19 February 2008, but was not given any opportunity to

¹⁰ For further information, see "Petitioner Chen Xiaoming Dies under Belated Medical Parole", *Human Rights in China*, 12 July 2007.

raise the torture allegations in court. Appearing in court with his feet shackled to his chair, he pleaded not guilty to the subversion charges. On 24 March 2008, the court delivered its verdict, finding him guilty of ‘inciting subversion’ and sentencing him to five years in prison. Court police reportedly beat him several times with electro-shock batons when he tried to speak to members of his family who attended the sentencing hearing. When a member of his family complained about the beating, a court official apparently stated that it had been authorized by the court as a punishment for challenging the power of the state. During a meeting with his lawyers on 28 March 2008, Yang said he was also beaten by detention centre guards on 5 March 2008 after he had criticized the conduct of some prison officials. This caused damage to his eye, apparently delaying the announcement of the verdict until 24 March when visible evidence of the injury had disappeared. He was only able to have his first meeting with members of his family on 10 July 2008, one year after he was first detained by the police.

Article 15 – exclusion of evidence obtained through torture from any proceedings

The CPL does not explicitly prohibit the use of confessions obtained through torture or other ill-treatment as evidence before the courts as required by the Convention. While revision of the law has been discussed, within China’s legislature, the National People’s Congress to date, no new law has been introduced and a draft has not been made public. Over the years since the CPL was last revised in 1997, the Supreme People’s Court has issued several decisions aimed at ending the use of torture and other ill-treatment by police to extract confessions. These have clarified that confessions obtained under torture cannot “become the basis for determining the case”¹¹ or “the basis for a criminal charge”¹², or most recently “the foundation of a conviction”.¹³ However, these decisions still fall short of requirements under the Convention to ensure that no statement established to have been obtained by torture is invoked as evidence in any proceedings. In several recent cases documented by Amnesty International, courts have ignored allegations made by defendants that they were subjected to torture or other ill-treatment in police custody. For example:

- **Yang Maodong** (also know as Guo Feixiong) was reportedly convicted of “illegal business activity” based on a confession obtained through torture. According

¹¹ SPC Decision on Specific Issues for the Implementation of the CPL, 8 September 1998

¹² SPC Rules on Implementing the CPL, 18 January 1999.

¹³ SPC Regulations on the further strengthening of criminal trials, 18 September 2007.

to local unofficial sources, Yang claims to have been deprived of sleep for seven nights, beaten and tied down for 40 days in custody in Guangzhou No. 1 detention centre, Guangdong Province, southern China, between 14 September 2006 and 26 December 2006. On the night of 19 January, he was transferred to Shenyang city, Liaoning province, northern China to "facilitate investigation", where he also says he was tortured in unknown locations by police who strapped him down onto a so-called "tiger bench" for four hours, hit him with an electric prod in arms and legs and genitals while hung from the ceiling by his arms and legs, and slapped him until his face was swollen. He claims he attempted suicide the following day. Yang Maodong is best known for providing legal assistance to villagers in Taishi, Guangdong province, as they sought to remove the allegedly corrupt village leader from office in 2005. He has previously been detained, kept under house arrest and beaten by the police for his activities in support of the Taishi villagers. Although the charges against him relate to his business activities, he says that police questioning has focused largely on the events in Taishi in 2005, which the police claim "endangered public security".