

**TORTURE AND ILL-TREATMENT IN TIBET: AN ASSESSMENT
OF THE PEOPLE'S REPUBLIC OF CHINA'S COMPLIANCE WITH
THE CONVENTION AGAINST TORTURE**

A REPORT SUBMITTED BY

THE TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

TO THE

COMMITTEE AGAINST TORTURE

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TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	1-2
I. INTRODUCTION.....	3
II. CONVENTION AGAINST TORTURE.....	4-10
A. CHINESE DOMESTIC LAW: ASSESSMENT OF THE PEOPLE'S REPUBLIC OF CHINA'S COMPLIANCE WITH THE CONVENTION AGAINST TORTURE	
III. TORTURE IN TIBET.....	11-16
A. HISTORICAL BACKGROUND	
B. PATTERNS OF ABUSE	
C. RECENT TORTURE IN TIBET	
1. STRIKING HARD ON POLITICAL PRISONERS	
2. DRAPCHI 1998 PROTESTS	
3. TORTURERS	
IV. EXPERT TESTIMONY.....	17-19
A. AMNESTY INTERNATIONAL	
B. HUMAN RIGHTS IN CHINA	
C. HUMAN RIGHTS WATCH	
D. INTERNATIONAL COMMISSION OF JURISTS	
E. TIBET INFORMATION NETWORK	
F. U.S. STATE DEPARTMENT	
V. CONCLUSION.....	20-22
A. RECOMMENDATIONS	
B. QUESTIONS FOR THE COMMITTEE	
VI. APPENDIX.....	23-27
1. LETTER FROM TIBETAN POLITICAL PRISONERS (1988)	
2. CASES OF TORTURE IN TIBET (1999)	

EXECUTIVE SUMMARY

This report evaluates China's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, relative to Tibet. "Tibet", as used in this report, refers to "ethnographic" Tibet and encompasses the entire plateau, including what is now referred to as the Tibetan Autonomous Region (TAR) as well as Tibetan-inhabited portions (Kham and Amdo) incorporated into the Chinese provinces of Gansu, Qinghai, Sichuan, and Yunnan. The Chinese government's references to "Tibet" include the "TAR", and omit the aforementioned Tibetan areas.

Our report is based on information gathered from Chinese government and non-governmental sources, United Nations reports, interviews with Tibetans in exile, reports from Tibet, reports from internationally recognized non-governmental organizations and governmental reports, in addition to information compiled by the Tibetan Centre for Human Rights and Democracy.

Our report begins with a review of China's compliance with the CAT (hereafter referred to as "the Convention"); reviewing the amended Criminal Law and Criminal Procedure Law of China (1997). Relying on the text of the aforementioned laws as well as relevant international law, the report evaluates the PRC's procedural and substantive compliance with its international obligations.

The report evaluates the past submissions to the Committee by the People's Republic of China (1989, 1992, 1996)¹ in accordance with Article 19 of the Convention. The concerns and recommendations of the Committee are examined and the PRC's responses to these queries are evaluated.

The report next examines the Chinese government's policies in Tibet with regard to deprivation of fundamental freedoms and human rights. The law and its application cannot be fully understood outside of the historical and current political context within Tibet and China. Challenging the PRC's assertion that torture does not exist in Tibet, the report assesses past reports of torture in Tibet, as well as the PRC's responses to these policies and incidents. The systematic and widespread use of torture in Tibet in all phases of detention is documented, including recent reports of torture. These policies and incidents are discussed in the context of the amended Criminal and Criminal Procedure Laws.

Expert testimony from governmental and non-governmental organizations documenting a consistent pattern of violations by the PRC is presented. Reports and statements regarding torture in Tibet from concerned organizations and individuals, including the UN Special Rapporteur on Torture and the UN High Commissioner for Human Rights, are noted and discussed with regard to the Chinese law and its implementation in Tibet. First person accounts are documented and a letter from Drapchi prisoners is provided as further evidence of abuses.

The report concludes that torture continues to remain systematic and widespread in Tibet; particularly affecting those engaged in 'political' activities. In areas where the Chinese laws have been amended, authorities in Tibet either devise methods to circumvent these new laws, disregard the laws, or use deficiencies in the Criminal Procedure Law and Criminal Law to continue to employ torture on a routine basis. Overall, the criminal law of China has proved resistant to the ongoing changes in China, and remains closely tied to politics and the Communist Party.

¹ UN Documents, CAT/C/7/Add.5, CAT/C/7/Add.14, CAT/C/20/Add.5. The 1992 report was a supplementary report, hereinafter referred to as, "supplementary report".

TCHRD presents three general recommendations: (1) that the PRC amends their criminal law to bring it into conformity with the Convention; (2) that the PRC impartially investigate allegations of torture in Tibet or allow international organizations unfettered access to prisons and detention centres in Tibet to do the same; (3) that the PRC cease practices which curtail the ability of Tibetans to access legal guarantees and protections as stipulated in the Convention. Finally, we ask the Committee to urge China to halt all practices that violate the rights of Tibetans detained by the PRC, and to undertake a more constructive relationship with NGO's seeking to monitor and protect the human rights of Tibetans. TCHRD presents questions for the committee to consider during its evaluation of the People's Republic of China's submission.

I. INTRODUCTION

The Tibetan Centre for Human Rights and Democracy respectfully submits this report on torture and other cruel, inhuman, or degrading treatment or punishment of Tibetans to the UN Committee Against Torture for its review during the 24th session in Geneva from May 1-19, 2000.

The Tibetan Centre for Human Rights and Democracy (TCHRD) is a non-governmental organization founded in January 1996 to monitor the human rights situation in Tibet and to promote democracy in the Tibetan community. In addition to recording testimony of Tibetan exiles, TCHRD prepares reports for submission to international bodies such as this one, and to the general public. TCHRD organizes seminars and workshops on human rights and democracy for the exiled Tibetan community and conducts campaigns for victims of human rights violations in Chinese-occupied Tibet.

This report covers the period from 1988 to 2000, beginning from the date that the Chinese government ratified the Convention.² While the fundamental freedoms and human rights of the Tibetan people are violated in many aspect of daily life, this report will only cover torture as it relates to the Convention, specifically in the following areas: during initial arrest and transport to detention facilities and police stations, during interrogation and pre-trial detention, and during imprisonment. The report will focus on policies and the implementation of criminal procedures affecting Tibetans suspected or convicted of criminal offenses.

We begin with an analysis of relevant PRC laws and Convention articles. For each of the pertinent articles of the Convention, we analyze China's assessment of their compliance, followed by our own assessment. The report gives a brief overview of torture in Tibet, including documented cases and patterns of abuse. Expert testimony from governmental and non-governmental organizations is presented. We conclude with TCHRD's recommendations and questions to the Committee.

We thank the members of the committee for encouraging the participation of NGO's in its work, especially in the form of "shadow" reports such as this one.

² The People's Republic of China signed the CAT on December 12, 1986 and ratified it on October 4, 1988.

II. ASSESSMENT OF PRC COMPLIANCE WITH THE CONVENTION

Article 1

Definition of Torture

The People's Republic of China has not fully incorporated the crime of torture into its domestic legislation in terms consistent with the Convention. This deficiency was raised by the Committee in its previous reviews of Chinese compliance in 1997³, and has yet to be satisfactorily addressed by the Chinese government. Submissions by the PRC to the Committee⁴ have been notably silent on the incomplete definition of torture within Chinese domestic legislation. In 1996, the Chinese delegation to the Committee acknowledged that the definition of torture as defined by CAT was not specifically included in domestic legislation and that China would undertake to implement such a definition. The Chinese noted that where domestic and international law conflicted (on the definition of torture), international law took precedence; although the Chinese claimed that "existing legal provisions in practice protected citizens from torture, and the provisions for punishment in the penal code were in keeping with the Convention's definition of torture."⁵ Despite these assurances, there has been no change to Chinese domestic legislation with regard to the definition of torture. There is no explicit definition, and attempts to define torture are vague and incomplete. Chinese law also fails to mention psychological torture, prohibited under the Convention.

Article 2

Confessions

Article 247 of the Criminal Law of China (Revised) stipulates that judicial workers who extort a confession from criminal suspects or defendants by torture, or who use force to extract testimony from witnesses, are to be sentenced to three years or fewer in prison or placed in criminal detention. Those causing injuries to others, physical disablement, or death are to be convicted and severely punished according to Articles 234 and 232 of this (Criminal) law. Supervisory and management personnel who order inmates to beat or physically abuse other inmates are to be severely punished. No provision is made regarding torture by these personnel (judicial, supervisory and management) unrelated to extracting a confession or testimony. There is no definition of "judicial workers", nor is there any provision to distinguish them from "supervisory and management personnel". These loopholes are of serious concern.

Evidence

The CPL (Revised) retains the prohibition on torture and other illegal means of gathering evidence⁶ (Article 43), but provides no mechanism for its exclusion. The standard for remand on appeal has been broadened (from the 1979 CPL), but the use of tainted evidence is not listed as sufficient grounds for a new trial. This omission is all the more notable because the CPL (Revised) incorporates most of the other grounds for remand enumerated in the 1994 Court Procedures. Article 191 of the CPL lists five circumstances which are grounds for revoking the

³ United Nations, Implementation of Human Rights Instruments: Report of the Committee Against Torture, Fifty Second Session, Third Committee, Item 114(A), para. 149(a), (CAT/C/SR.251, 252/Add.1 and 254), GA. Supplement No. 44 (A/51/44), 7 and 10 November 1997.

⁴ CAT/C/7/Add.14, CAT/C/20/Add.5.

⁵ United Nations Press Release, HR/CAT/96/11, Mr. Wu Jianmin, p.2, 1996.

⁶ Criminal Procedure Law (1979), Article 32.

original judgement and remanding the decision to the original court for a new adjudication. These circumstances are expressly limited to illegal circumstances occurring during the original trial, suggesting that the appeals court cannot remand on the basis of any illegal acts in the investigation or prosecution stages. This indicates that torture and other illegal, coercive measures are not grounds for a re-trial or a reversal of a conviction, unless, as stipulated in Article 191(5), "Other litigation procedures that violate legal provisions, which may have influenced the correctness of the judgement" are present.

Grounds for Dismissal

The use of illegally gathered evidence is prohibited under Article 15 of the Convention. Within the Chinese domestic legislation, there are no adequate provisions for the exclusion of this type of evidence, nor laws which mandate dismissal of cases which include the aforementioned type of evidence. Within Chinese law, certain circumstances mandate a case being dismissed. Article 15 of the CPL (Revised), lists the six circumstances in which criminal investigations shall be squashed. There is no mention of torture or other forms of ill-treatment as grounds for dismissal. This indicates that the use of illegally gathered evidence, by itself, is not grounds for dismissal. This exclusion further encourages the use of these means.

Access to Legal Counsel

Access to legal counsel at the earliest time of contact with authorities is paramount to deterring illegal measures against an individual suspected of criminal activities. Article 33 of the CPL stipulates that starting on the day when a public prosecution has been initiated, the suspects of crimes have the right to ask defenders to defend them. The people's procuratorate should inform suspects that they have the right to ask a defender to defend them within three days of the materials for public prosecution being received. It is only when a suit is filed, and not before, that a suspect's defender or lawyer will have full access to the evidence against his client and of the case against him (Article 36(2)). There is no legal obligation to inform suspects at any earlier stage of their right to instruct a lawyer. If a lawyer is appointed prior to a suit being filed, they are not given access to the prosecution's case or evidence until the suit is filed.

Article 96 of the CPL (Revised) stipulates that a criminal suspect may, after being first interrogated by an investigating organ, or from the day coercive measures are taken against him, retain a lawyer to offer legal advice and file a complaint or a suit on his behalf. This failure to provide access to legal counsel to persons at the earliest time of their contact with authorities, in direct violation of the internationally recognized right for legal representation during all phases of criminal investigation and detention⁷, further encourages the use of illegal coercive measures. The UN Special Rapporteur noted that, "In these circumstances, it is almost impossible for detainees to make complaints about torture."⁸ There is still, therefore, a risk of coerced confessions before a

⁷ Basic Principles on the Role of Lawyers, adopted by the eighth United Nations Congress on the Prevention of the Crime and the Treatment of Offenders, September 1990, art. 1, ("All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their right and to defend them at all stages of criminal proceedings."); art. 7. ("Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."), Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, General Assembly resolution 43/179, December 9, 1988, art. 17(1) (a detained person shall be informed of his right to counsel "promptly" after arrest.).

⁸ United Nations, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/3, Question on the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, E/CN.4/1994/31, para. 151, p.30, 1994.

suspect ever has access to a lawyer. This deficiency in the Chinese law was a concern of the Committee in its 1997 review of the Chinese report (CAT/C/20/Add.5).

Cases Involving State Security

Article 96 further curtails the right to legal representation by stipulating that in cases involving state secrets, the criminal suspect's application shall be approved by the investigative organ. The discretion that investigative authorities have with regard to legal representation in cases involving state secrets is disconcerting given the percentage of cases in Tibet that Chinese authorities classify as "involving state secrets". Many of these cases remain outside the scope of judicial review, because of the unchecked ability of the police and procuratorate to invoke it. Even in cases where defendants have access to legal counsel, personnel from the investigative organ may, "depending on the circumstances and necessities of the case" (Article 96(2)), be present during lawyer/client meetings. This stipulation, in violation of international law⁹, further inhibits victim's ability report illegal coercive measure.

Open Trials

Provisions issued by the Supreme People's Court in March 1998 explicitly call for all cases to be handled through open trials except those involving state secrets or personal property and those concerning minors. In Tibet these new measures have a negligible effect. Because the vast majority Tibetans political prisoners are charged with "endangering state security", (or "counter-revolutionary crimes" as it was referred to previous to the 1997 revisions) their trials are closed. Even more concerning is the absence of any legal process. In the last seven years, almost half of all Tibetans sentenced have had no legal process whatsoever.¹⁰ Therefore, these new rules have little effect on deterring torture and other abusive treatment during investigation and detentions.

Pre-trial Detention

The CPL (Revised) provides for a prolonged period of detention for investigation, during which time procedural safeguards to prevent acts of torture and other ill-treatment are inadequate (see above). Under the revised law, suspects can be held up to seven months (Articles 124, 126, 127) before formal charges are filed. During this initial interrogation period, suspects can be denied access to a lawyer, further infringing their rights and placing them in danger of abuse or ill-treatment.

Bail

Suspects may be detained for prolonged periods of time without bail despite Article 52 of the CPL, which entitles defendants and detained criminal suspects the rights to "apply for a guarantor to enable the suspect or a defendant to await trial out of custody". Article 39 of The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988, states that, "except in special circumstances provided by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions imposed in accordance with the law." There are no reported cases of Tibetans accused of crimes "endangering state security" being granted any form of non-custodial, pre-trial detention or release on bail.

⁹ Body of Principles on Detention., GA res. 43/179, art. 18(4) (Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.).

¹⁰ Tibet Information Network, Hostile Elements: A Study of Political imprisonment in Tibet: 1987-1998, p.55, 1998.

Administrative Sentencing

The CPL (Revised) has eliminated the administrative measure “shelter and investigation”, but the use of “re-education through labour”, a non-criminal sanction, is subject to none of the procedural constraints set out in the CPL (Revised). Administrative committees, dominated by the police, have discretion to decide on these sentences. Suspects are denied the right to counsel, to a hearing, or to a judicial determination of their case, further jeopardizing those detained in Tibet and China.

Presumption of Innocence

The presumption of innocence is fundamental to the protection of all people charged with a criminal offense from abuse and ill-treatment. Within Chinese law, there is no explicit presumption of innocence. Article 12 of the CPL (Revised) stipulates that no one shall be convicted without a verdict pronounced by a people’s court according to law. There have been claims within China that the guiding principle of “taking the facts and awaiting trial” and the required standard of proof, (CPL Article 162(1) “that the facts of the case are clear, with verified and sufficient evidence, and the defendant is found guilty according to law”) implies a presumption of innocence. These views are repudiated by provisions in the CPL which severely restrict rights implicit in the presumption of innocence. Within Chinese domestic law, there is no right to remain silent (CPL Article 93), no exclusion of illegally gathered evidence, no right not to testify against oneself (Article 155). The fact that there is no presumption of innocence encourages interrogators to assume that the suspect is guilty and to extract a confession as proof of the crime. The burden of proof continues to be placed on the defendant (Article 35), thereby contravening the presumption of innocence, which is an integral determinant in the treatment of suspects.

Orders from Superiors

Article 2(3) of the Convention stipulates that an order from a superior officer or a public authority may not be invoked as a justification of torture. The PRC’s People’s Police Law stipulates that, “A people’s policeman has the right to refuse to carry out any directive that exceeds the mandate of the people’s police as defined by the laws and regulations and, at the same time, has the right to report such a breach to a higher authority.” The purpose of this law is to prevent police personnel from citing a superior’s order as a justification for torture, but the law fails to mandate that police personnel refuse to carry out torture orders, instead granting a right of refusal.

Article 4

The Criminal and Criminal Procedure Laws of China prohibit only certain forms of torture. These laws do not penalize the use of torture to punish, intimidate or coerce, as is required under the Convention.

Torture and Punishment

Article 248 of the Criminal Law (Revised) stipulates that supervisory and management personnel of prisons, detention centers, and other guard houses who beat or physically abuse inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention. If the case is especially serious, they are to be sentenced to three to 10 years in prison. What constitutes “serious”, “especially serious”, “abuse” and “torture” is not defined or elaborated under Chinese law. It appears that no crime is committed if the case is not serious.

Standards for Investigation

Articles 136 and 189 of the Rules on Standards for Filing for Investigation Cases Directly Handled by the People's Procuratorates Involving Violations of Citizens' Democratic Rights further narrow the definition of torture and the standards for investigation and prosecution of tortures. Under Article 136, the investigation of cases of torture and other forms of ill-treatment is limited to such treatment inflicted for the purpose of coercing a statement only if additional factors are present, such as giving vent to personal spite or extracting revenge, using torture repeatedly, employing very cruel means, creating a wrongful or non-existent case, causing disability, death, insanity or suicide, or causing other serious results. Article 189 adds cases to be investigated to include; those resulting in serious wounding or death; using batons causing serious injury or death; causing insanity or suicide; repetition; causing "other serious results". Again, the terms "serious injury", "serious wounding" and "other serious results" are not defined.

Culpability and Causation

Article 233 of the Criminal Law covers "whoever negligently causes the death of another"; Article 232 deals with "whoever intentionally injures the person of another and causes a person's serious injury, if he causes a person's death or causes a person's serious deformity by badly injuring him with particularly ruthless means"; and Article 235 applies to negligent causation of injury. Upon examination of Articles 247 and 248 (of the Criminal Law), it appears that these three articles are not applicable to judicial workers and management personnel. This is another serious gap in the Chinese legislation.

Article 10

There are serious obstacles to ensuring that education and information regarding the prohibition against torture are fully included in the training of all persons who may be involved in the arrest, detention, custody, interrogation, trial, and imprisonment of an individual, as required by Article 10 of the Convention. The fundamental challenge continues to be the failure to incorporate the crime of torture into domestic legislation in terms consistent with the Convention. This failure guarantees that education and training are inadequate. Moreover, there have been reports from within China that a lack of explanation of the new laws is leading to Chinese officials enforcing the revised laws differently in different places. Xinhua News Agency reported in 1998 that, due to the lack of necessary judicial explanation, judicial workers in some areas stopped lawyers from meeting with clients.¹¹ It is critical that all levels of personnel within the judicial process are kept informed, educated and trained about the current state of domestic and international law as it affects China; and where such errors occur, there are clear avenues for appeals.

Training and Education

With a developing country as vast as China, there remain fundamental challenges, even if the PRC attempts to fully educate and train all personnel. With over 150,000 judges, an equal number of prosecutors, and nearly one million police officers¹², the task of training and educating these personnel, not only on the contemporary laws, but also on the new roles and responsibilities within the criminal justice system will remain a challenge for the foreseeable future. There is no indication that personnel in Tibet are being educated, trained, or required to incorporate the revised laws in the areas of torture and other illegal treatment.

¹¹ Xinhua news agency, Beijing, in English 1417 gmt 20 February 1998.

¹² China Law Yearbook Editorial Department, ed., at p. 859 (judges, 1992), p. 1068 (prosecutors, 1995), p. 946 (police, 1993).

Article 12, 13 & 14

Under the terms of the Convention, the Chinese government is required to investigate allegations of torture completely and impartially, and to duly punish those responsible. Citizens who have allegedly suffered torture have a right to redress and to have their case heard promptly by an impartial and by competent authority.

Right to Redress for Violations During Investigation

In order to safeguard the rights all people from torture and other cruel, inhumane, or degrading treatment, there must be effective remedies against violations of these rights. The CPL (Revised) has not improved upon the 1979 law, and in some respect has only furthered curtailed the rights of individuals seeking redress for violations of their rights. The 1979 law (Article 10(3)) stipulated that participants in criminal investigations had the right to lodge complaints against actions of the police, procuratorate, or courts who infringed on their procedural rights or personal dignity. Deficiencies in this law were that suspects and defendants had few avenues for seeking redress, and that these remedies were based on the sole discretion of officials.

The Revised CPL does not strengthen the rights of suspects to seek redress for violations of their rights. Article 75 stipulates that during the investigation stage, a suspect or defendant has the right to demand recession of coercive measures that have exceeded the legal limit. In this context, the legal limit refers to stipulated time limits for pre-trial detention. There is no provision for detention that is illegal or for seeking redress for illegal measures, including torture, which occur during this phase of detention. The 1979 law gave individuals the right to seek redress for actions that violated their personal dignity; a vague term which had few if any practical implications. The current law has removed that provision and confined redress during the investigation stage to cases of investigation which have exceeded the legal (time) limits. It is not clear what remedies or forms of redress are available to suspects who have been tortured.

Article 15

A fundamental safeguard protecting suspects from torture and other coercive measure is the inadmissibility of evidence obtained through illegal measures. Chinese domestic law does not explicitly rule out the use of this type of evidence, nor is its use grounds for a new trial, or dismissal. This deficiency in domestic legislation further encourages the use of coercive measure to gather information.

Grounds for Remand

In 1994, the Supreme People's Court (SPC) published the Special Rules on the Procedure for Handling Criminal Cases. Article 45 of these rules stipulates that statements of witnesses, victims, or defendants gathered through torture, threat, enticement, or fraud could not be used as evidence.¹³ At the same time, the SPC directed appellate tribunals to review the legality of actions at all stages of the criminal process and to remand for retrial all cases marred by the use of inadmissible evidence. The grounds for remand appear to include the use of any illegally gathered evidence, presumably evidence gathered through specific illegal methods listed in Article 45. The limitation to these guidelines continues to be the incomplete definition of torture within Chinese domestic law (See above, Article 1).

¹³ 1994 Court Procedures, *supra* note 23, art. 60.

Illegally Gathered Evidence

Articles 76 and 137(5) of the CPL stipulate that the procuratorate is responsible for raising and seeking corrections and remedies for illegal actions occurring during criminal investigations. This does not ensure that any and all evidence gathered as a result of illegal measures will be inadmissible at trial, and provides no mechanism for its exclusion. The deficiencies within the CPL with regard to illegally gathered evidence represent a failure to bring China into compliance with Article 2 (1) of the Convention. This omission further encourages the use of torture and other cruel, inhuman or degrading treatment as this illegally obtained evidence is admissible in court. The judiciary should be encouraged to oversee investigative and police processes and culture, and publicize decisions that counterbalance the unchecked power of police and public security personnel. Currently, the Chinese judiciary is not independent from the organs of government and administration and lacks the independence needed to enforce standards laid down in Chinese law.

Article 16

Other Torture

China continues to commit acts of cruel, inhuman and degrading treatment and punishment of detained Tibetans not specifically covered in the Convention's definition of torture. Since the early 1990's, the methods of torture have become less outwardly visible because the Chinese authorities in Tibet have become aware that forms of abuse which leave physical evidence are difficult deny. The use of prolonged, forced exercise and labour are standard in prisons and detention centres; regardless of the prisoner's physical condition. Deprivation of food, water, and sleep are routinely used against political prisoners, as are prolonged periods of solitary confinement and extended exposure to extreme temperatures. Acts intentionally committed to humiliate prisoners, including urinating in prisoners mouth and sexual assault of nuns are reported.

III. TORTURE IN TIBET

Reliable reports from Tibet indicate that torture continues to be systematic and widespread. The failure of the Chinese authorities to acknowledge, investigate and punish officials accused of committing the crime of torture suggests an official endorsement of these illegal practices. Torture continues in Tibet (and China) because of a lack of legal guarantees for prisoners, because of impunity extended to many torturers, inadequate legislation and the subservience of the judiciary to the Communist Party. While Chinese domestic legislation affords limited protection to individuals, there remain significant issues, both legal and institutional, that foster an environment where officials are encouraged to employ methods contravening the Convention. Independent mechanism for investigation within the established legal processes and judicial and police cultures are inadequate, if they exist at all.

HISTORICAL BACKGROUND

The Tibetan uprising of 1959 sparked the first period of harsh treatment of the Tibetans by the Chinese, including instances of torture and other cruel and degrading treatment. From 1959-1962 thousands of Tibetans were executed, imprisoned, or starved to death in prison camps. This period of atrocities has not been acknowledged by the Chinese but has come to light through first hand accounts and a secret report written and by the 10th Panchen Lama in 1962, which was smuggled out of China in 1996.¹⁴

During the period of the Cultural Revolution (1966-1979), torture was regularly applied against vast segments of the Tibetan population. Lamas, aristocrats, monks, nuns and the lay population who opposed Chinese policies in Tibet were subjected to brutal treatment; many thousands dying in prison and labour camps, and thousands more languishing for decades in detention under subhuman treatment. While the Cultural Revolution ended in China with Mao Zedong's death in 1976, the policies continued in Tibet until 1979. The Chinese acknowledge that during this period, "serious mistakes" had been committed.

From 1980 until 1987, there was a period of softening of rule in Tibet, during which Chinese cadres were partially withdrawn from Tibet and Tibetans took over many positions of authority. This period ended in 1987 when independence demonstrations occurred in Lhasa and were again violently suppressed by the Chinese government.

There have been consistent reports of torture applied to Tibetans arrested during the demonstrations of the late 1980's. Groups including Physicians for Human Rights, Human Rights Watch/Asia, Amnesty International and the Tibet Information Network have documented a consistent pattern of torture and other abuses, particularly against those detained for political reasons.¹⁵

This type of treatment continues to be applied on a consistent basis to Tibetans prisoners and detainees. The International Commission of Jurists (ICJ) interviewed former police officers, judges, and detainees from Tibet and confirmed that torture in Tibet is widespread, and that

¹⁴ Tibet Information Network, *A Poisoned Arrow: The Secret Report of the 10th Panchen Lama*, London, 1997.

¹⁵ See, Asia Watch, *Merciless Repression: Human Rights in Tibet*, pp. 49-55, 1990, Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992*, pp. 36-43, TIN/Lawasia, *Defying the Dragon*, pp. 47-58, Physicians for Human Right, *The Suppression of a People: Accounts of Torture and Imprisonment in Tibet*, 1989.

torture of political detainees is general practice. A former policeman from Horthoe County in Qinghai (Amdo) reported that "100 per cent of detainees are tortured." A former judge of the Qinghai High Court in Xining told the ICJ that, "not a single case came to the court in which the defendant is not beaten by the police, and when the defendant is a Tibetan political prisoner, the beating is much worse." It is indicative of the institutional endorsement of torture that the judge noted that "it was policy to ask defendants if they had been mistreated, but that nothing could be done if they had been."¹⁶

Torture has continued throughout the 1990's. Tibetans suspected of engaging in political activities, and those resisting Chinese policies have endured the harshest treatment. It is noteworthy that a majority of reports of torture occur during arrest, interrogation and detention. Once a sentence is imposed, beatings generally cease. Only if Tibetans disobey prison regulations or protest in prison are they subjected to beatings, although practices defined by the Convention to constitute torture continue. These include use of forced exertion and labour combined with inadequate food and medical care, and the denial of visitation rights intentionally intended to inflict physiological injury.

PATTERNS OF ABUSE

According to former political prisoners, police and judicial personnel in Tibet, cases in which torture, beatings and other forms of excessive maltreatment do not occur are unusual. Torture occurs primarily during arrest, transport to detention facilities, in detention centres and prisons. Typically, suspects are beaten during arrest, and this continues in transport to a police station or detention centre. Since the late 1980's, techniques have evolved and now there is an increased effort to damage the internal organs of Tibetans, instead of abusive measures which leads outward physical evidence.

Evidence from Tibet indicates that the most severe incidents of torture occur prior to formal charges being filed. In this period, most suspects are detained incommunicado, denied visitation rights and legal representation. This period can last up to seven months (CPL Articles 124, 126, 127). Police and other security personnel take this opportunity to extract confessions, names of accomplices and other information through torture; safe in the knowledge that few people will learn of the torture, and that they are, in practical terms, immune from prosecution.

During arrest and transport to detention centres or police stations, suspects report that this initial beating is done with whatever weapons are at hand. Sticks, iron bars, plastic cords filled with sand, kicking and punching are all reported methods used against Tibetans. Suspects are held in police stations anywhere from a few hours to weeks. Torture and other coercive measure are employed in order to obtain confessions and names of accomplices or foreign associates. In police stations, methods of torture include punching and kicking, beating with sticks with nails, attack by dogs, electric shocks, and sleep deprivation. In detention centers, Tibetans can be held for several years without a judicial adjudication; either through administrative sentencing or through prolonged periods of pre-trial detention which exceed the legal limit.¹⁷

More sophisticated methods of torture are employed in detention centres indicating extensive training in methods designed to extract information. These methods include; the use of electric shocks applied to sensitive parts of the body, including, genitals, anus, face, feet, mouth and breasts; the use of handcuffs, shackle or ropes to secure prisoners in positions intended to

¹⁶ International Commission of Jurists, *Tibet: Human Rights and the Rule of Law*, p.247, 1997.

¹⁷ Articles 124, 126 and 127 of the CPL stipulate a maximum of seven months of pre-trial detention.

maximize pain; self-tightening cuffs designed to cut into the victims skin; prolonged periods of exposure to extreme temperatures; extended periods of solitary confinement; being made to adopt exhausting physical postures, including standing for hours on end; and beatings to the kidneys and genitals with a variety of instruments including sticks, iron bars and plastic cords filled with sand.¹⁸

The use of rape and sexual assault, particularly against nuns has been documented since the late 1980's. Aimed at breaking their spirit and resistance, these methods are among the most barbaric employed by Chinese authorities. In 1997, the ICJ reported that,

Nuns appear to be subjected to some of the harshest torture and ill treatment in detention centres, reform through labour camps, police stations and prisons; some young nuns have died in prison as a result of ill treatment. They are subjected to gender-specific torture, including rape by inserting electric cattle-prods into their sexual organs. Other forms of torture frequently used against women, particularly nuns include striping them naked, targeting breasts for physical ill treatment and the use of trained dogs to bite them.¹⁹

Once a sentence is passed (through judicial, administrative or other means), torture is employed through forced labour and exertion, extended periods of solitary confinement, lack of adequate food, denial of medical care, and forced blood and fluid extraction.

According to Physicians for Human Rights, the frequency of torture including psychological abuse, beatings, rape, the use of electric cattle prods, and prolonged periods of starvation suggest that torture is part of a widespread pattern of abuse. The report concluded that, the Chinese authorities in Tibet use torture as a means of political repression, punishment, and intimidation.²⁰

RECENT TORTURE IN TIBET

The continued abuse and torture of Tibetans detained and imprisoned in Tibet suggests a deliberate and systematic policy within the Chinese criminal justice and penal system. This could not be possible without a mandate from the highest levels of the PRC and CCP. It is clear that the CCP, government and judicial system are focused on the destruction of Tibetan nationalism. All other considerations, including individual rights and the rule of law can only be accommodated within this paradigm.

The prevalence of torture as a means of obtaining information and as a reprisal for political activities is alarming, especially in light of China's obligations with regard to the CAT. Seventy Tibetans are known to have died as a direct result of torture since China signed the convention in 1986.²¹ In 1999 alone, six Tibetans died due to torture. In the first two months of 2000, there

¹⁸ See, Asia Watch, *Merciless Repression: Human Rights in Tibet*, pp. 49-55, 1990, Amnesty International. *People's Republic of China: Repression in Tibet 1987-1992*, pp. 36-43, *Torture and Ill Treatment in Detention of Tibetans*, (Amnesty International), 1989, TIN/Lawasia. *Defying the Dragon*, pp. 47-58. Physicians for Human Right, *The Suppression of a People: Accounts of Torture and Imprisonment in Tibet*, 1989. *Tibetan Centre for Human Rights and Democracy, Annual report on Human Rights Violations in Tibet, 1997-1999*.

¹⁹ International Commission of Jurists, *Tibet: Human Rights and the Rule of Law*, p.249, 1997.

²⁰ Physicians for Human Rights, *Striking Hard: Torture in Tibet*, IRCT, Vol. 9, No. 1a, p.45, June 1999.

²¹ See TCHRD, *Tibet: Tightening of Control, Annual Report 1999 Human Rights Violations in Tibet*, pp. 37-44, TCHRD, *Update*, Vol. V, No. 2, February, 2000.

have been reports that Sonam Rinchen, a 29 year-old Tibet died in Drapchi Prison. It is suspected that his death was caused by abuse and lack of adequate medical care.

Juveniles are not exempt from torture and other forms of abuse. Contravening the CAT as well as the Convention on the Rights of the Child, Tibetans under the age of 18 have been beaten, held in incommunicado detention, denied visitation rights and suffered various forms of abuse. There are confirmed cases of juveniles dying as a direct result of torture and denial of adequate medical care. Sherab Ngawang was 12 years old when she was sentenced to three years' imprisonment in Trisam PSB Detention Centre. She died on 17 April 1995. As a punishment for having sung "freedom" songs with other nuns, Ngawang was beaten with electric batons and a plastic tube filled with sand. Fellow prisoners report that she was subjected to three days of solitary confinement and as a result, developed back pain and kidney problems. She also experienced a loss of memory and had difficulty eating. She died two months after her release. A more recent case is Phuntsok Legmon. Arrested on 10 March 1999 for a protest in Lhasa commemorating Tibetan Uprising Day, 16 year-old Legmom (lay name: Tseten Norbu) was sentenced on 9 July to three years by the "TAR" Intermediate People's Court. He is currently being held in Drapchi Prison. Eyewitness reports indicate he was beaten with batons and fists at the time of arrest.

The Tibet Information Network gives a more detailed account of torture and other abuses against juveniles and other political prisoners in their report, *Hostile Elements: A Study of Political Imprisonment in Tibet: 1987-1998*.

STRIKING HARD ON POLITICAL PRISONERS

According to TCHRD, there are currently over 600 political prisoners in Tibet. Despite Article 12 of the CPL which stipulates that, "no one shall be convicted without a verdict pronounced by a people's court according to the law", in 1997, the year that the CPL and Criminal Law became effective, 78% of political prisoners in Tibet were convicted without any judicial or administrative process. Only 17% were sentenced through the judiciary, and 5% through administrative sentences. The percentage of Tibetan political prisoners who are sentenced without any legal process, including trial and legal defense, has been increasing in recent years. Since 1993, almost 50% of Tibetan political prisoners have been sentenced under the such circumstances.²²

As noted in the review of the Chinese CPL and Criminal law (Revised), Tibetans accused of crimes of "endangering state security" are denied fundamental rights protecting them from illegal, coercive measures. Article 96 of the CPL stipulates that in cases involving state secrets, the criminal suspect's right to legal representation shall be approved by the investigative organ, and depending on the circumstances and necessities of the case, personnel from the investigative organ may be present during the lawyer's interview with the criminal suspect. In cases involving state secrets, the lawyer's interviews with the detained criminal suspect shall be first approved by the investigative organ. According to Article 11, courtroom proceedings are to be adjudicated in public, unless otherwise provided by the law. This loophole is designed to deny access to open trials for Tibetans accused of crimes endangering state security, as stipulated by provisions issued by the Supreme People's Court in March 1998.

In practice, Tibetans accused of crimes endangering state security are largely denied legal representation, or if they receive representation, these meetings are monitored. Access to open trials is non-existent. Tibetan political prisoners report having had their sentences read to them by

²² Tibet Information Network. *Hostile Elements: A Study of Political Imprisonment in Tibet*. p.55. 1998.

their jailers, with no judicial trial, or being brought before a judge and having their sentences handed-down without a trial. This denial of fundamental rights further curtails the ability of Tibetans to adequately complain and seek redress against illegal, coercive treatment. This treatment is indicative of the measures the Chinese authorities will employ to ensure that Tibetans accused of political crimes are silenced. Because of the lack of adequate safeguards, Tibetans accused of political crimes are vulnerable to torture and other coercive measures, particularly as a means to exhort a confession, gather information and as a reprisal for the alleged crime(s).

Torture was regularly perpetrated against Tibetan political prisoners from the demonstrations in the late 1980's, and continues to be applied routinely to Tibetans detained and imprisoned throughout Tibet, particularly in Drapchi Prison and Gutsa Detention Centre.²³ In 1994, the UN Special Rapporteur noted that he had continued to receive information according to which, "the torture and ill treatment of persons arrested for political reasons in Tibet was particularly pervasive. The methods of such torture reportedly include beatings, electric shocks, deprivation of food and drink, exposure to cold, handcuffing or shackling for long periods, and denial or medical treatment."²⁴

THE DRAPCHI 1998 PROTESTS

Details are still incomplete regarding the protests held in Drapchi Prison on 1 and 4 May 1998. According to Tibetans who witnessed the events, demonstrations on behalf of Tibetan freedom, support for the Dalai Lama and demanding China to improve its human rights record were held by large numbers of inmates, both political and non-political. Both demonstrations occurred during courtyard assemblies which had been arranged to allow filming of orderly, reformed prisoners, during International Labour Day on 1 May and International Youth Day on 4 May: The latter demonstration coincided with a visit by a European Union human rights delegation to the prison. According to the accounts, prison guards opened fire on prisoners demonstrating, resulting in the deaths of **Lobsang Gelek** from **Khangmar Monastery** and **Kadar** (Karma Dawa). Other prisoners were injured from gunshots, including **Tashi Lhama** who died later. Eight Tibetans died as a result of subsequent beatings and ill treatment; these include **Tashi Lhamo**, **Ngawang Choakyi**, **Dekyi Yangzom**, **Khedron Yonten**, **Lobsang Wangmo**, **Khedrub**, **Ngawang Tenkyong** and **Ngawang Tenzin**. At least 60 prisoners are believed to have been injured from beatings and gunshots and many are still in ill health. Chinese authorities at first denied reports of the demonstrations and consequent reprisals, but later told a visiting delegation from the European Democratic Union that demonstrations had occurred. The Chinese stated that, "The prison guards were so scared, and there were no policemen there, so they started firing in the air. No prisoners were harmed."²⁵ The Chinese government claimed that the deaths were a result of suicide. A member of the European delegation, Norwegian MP Borge Brende, remarked, "I think that the version of the events given by the Justice Department is very strange and quite unbelievable." No independent investigation has been made into the events of 1 and 4 May and the subsequent deaths of 10 Tibetans. Eight Tibetans are known to have received sentence extensions of up to four years as a result of the demonstrations, and a number were held in solitary confinement for months following the incidents.

²³ For a comprehensive description of conditions in Drapchi Prison and Gutsa Detention Centre. see. *Hostile Elements: A Study of Political Imprisonment in Tibet: 1987-1998*. (Tibet Information Network), pp. 62-94, 1998.

²⁴ United Nations, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/3. Question on the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. E/CN.4/1994/31, para. 149-150. p.30, 1994.

²⁵ People's Republic of China, Department of Justice (TAR)

TORTURERS

The current focus of international law, with an emphasis on rule of law continues to overlook those responsible for committing acts of torture; instead examining institutional and legal frameworks designed to protect the rights of individuals. While this approach is necessary, a multi-faceted policy is required to further guarantee protections to all persons detained or imprisoned. Only when those who commit these illegal acts are singled out and prosecuted, will the culture of impunity begin to evolve. Within China, the Party and national government dictate policy in Tibet, with the police, procuratorate and judiciary implementing these policies. While policy formulation comes from party officials, those who actively engage in illegal acts are equally responsible.

Paljor from Drapchi Prison:

Two deaths of monks imprisoned in Drapchi occurred in 1996, two months apart. Both were reported to have occurred as a result of meetings they had with a Drapchi official named as Paljor. The first was Sangye Tenphel of Khangmar Monastery, who died in May 1996. He had reportedly been beaten with a heavy Chinese bicycle pump by Paljor in July of 1995 after giving unsatisfactory responses during an appraisal of his attempts to reform his political views. A similar meeting with Paljor occurred in April of 1996, and again Sangye Tenphel was beaten. He died the following month. Post-mortem procedures discovered several broken ribs and related damage to his lungs.

One of Drapchi's most respected political prisoners, the monk Jamphel Khendrub (lay name Kalsang Thutrob) was initially detained in September 1987 and later sentenced to 18 years in April 1989 for his leading role in Drepung's "Group of Ten", which had printed wood-block tracts on democracy and human rights. He died in early July 1996, left unconscious after being called on 4 July to meet Paljor. Despite hospitalization, he did not regain consciousness and died the following day. Reports from Tibet are consistent in stating that Jamphel Khedrub was reasonably healthy when summoned by Paljor. Because he never regained consciousness after his meeting with Paljor, no further details are available.

Showo Tuhu from Drapchi Prison:

Ngawang Sungrab a monk from Drepung Monastery was shot by Chinese prison guard Showo Tuhu during a demonstration held in a courtyard in Drapchi Prison on 1 May 1998. A fellow prisoner who had some medical knowledge attempted to stop the bleeding with a piece of cloth. A few minutes later, prison guards took Ngawang Sungrab to a hospital.

IV. EXPERT TESTIMONY

The breath of information available regarding torture in Tibet provides further irrefutable proof of the continued illegal policies and practices of the PRC in Tibet. Governmental and non-governmental groups alike have documented the violent suppression of the Tibetan people. This evidence calls into question the Chinese government's claim that individuals living under its rule are afforded the protection that, under international and domestic law, they are guaranteed.

Amnesty International (AI)

The pattern of torture across China and the authorities' failure to introduce effective measures to combat it or acknowledge and impartially investigate torture allegations suggests that torture often results from institutionalized practices and official policies.²⁶

Torture and ill-treatment of detainees and prisoners held in detention centres, prisons and labour camps remained widespread, sometimes resulting in death. Prison conditions were often harsh, with inadequate food and medical care, and many prisoners suffered from serious illness as a result. Medical parole was rarely granted to political prisoners.²⁷

Human Rights in China (HRIC)

Under these rules, the investigation of cases of torture and other forms of ill-treatment is limited to such treatment inflicted for the purpose of coercing a statement only if additional factors are present, such as giving vent to personal spite or extract revenge, using torture repeatedly, employing very cruel means, creating a wrongful or non-existent case, causing disability, death, insanity or suicide or, causing other serious results.

Several factors hampering the implementation of existing Chinese legal standards on torture, such as: political control of the judiciary; admissibility in courts of evidence obtained through torture; the practice of holding defendants incommunicado without access to family or lawyers before trial and the widespread use of administrative detention.²⁸

Human Rights Watch (World Report 1999 and 2000)

Prison conditions in Tibet remained substandard. In February 1999, the official Chinese news agency (Xinhua) acknowledged that "quasi-military" training for staff and prisoners had been carried out in Drapchi Prison to "improve police officers' managerial ability and enhance prisoners' discipline and awareness of the law." The use of torture continued, sometimes resulting in death. **Legshe Tsoglam**, a Nalanda monk who resisted reeducation, died in April, several days after his release from Gutsa Detention Centre. A Ganden monk, **Ngawang Jinpa**, died two months after serving his full four-year term, and Norbu, also from Nalanda, died almost three years after severe prison beatings damaged his kidneys. All three were in their early twenties. **Ngawang Sangdrol**, a 23 year-old nun, severely beaten after a protest in Drapchi Prison in May 1998, had her original three-year sentence extended for a third time to a total of 21 years.

At least ten and possibly twelve prisoners died following two protests in Drapchi Prison in Lhasa in May 1998. The first protest took place on May 1, the second protest took place on May 4, on a

²⁶ Amnesty International, *China: No One is Safe: Political Repression and Abuse of Power in the 1990s*, London, 1996, p. 78.

²⁷ Amnesty International, *Amnesty International Report: 1998*, London, 1998, pp.130-132.

²⁸ Human Rights in China, *Words Without Substance: The Implementation of the Convention Against Torture in the People's Republic of China*, New York, 1996, pp. 1, 9-10.

day of a visit to the prison by ministers from the E.U. troika countries. During both protests, prisoners shouted slogans in support of independence and the Dalai Lama. In the weeks following the E.U. visit scores of prisoners were interrogated, beaten and placed in solitary confinement. Some of the prisoners were reported to have died in early June. Two reportedly were killed by gunfire during one of the protests, while the others were said to have died from beatings. Authorities in Tibet maintain that many of the deaths were suicides. Details of retaliation against prisoners involved in an earlier protest during the visit of the UN Working Group on Arbitrary Detention in October 1997 became known in 1998. Three prisoners who shouted political slogans reportedly were beaten and held in solitary confinement for a lengthy period before having their prison terms extended between three and ten years. Prison conditions in Tibet, as in China, were said to be poor, frequently resulting in prisoners ill-health. Some prisoners were also believed to have died as a result of punishment.

International Commission of Jurists (ICJ)

China's Criminal Law and Criminal Procedure Law prohibit only certain forms of torture, not penalizing the use of torture to punish, intimidate or coerce as required under international law. Chinese laws also fail to mention psychological torture, prohibited under the Torture Convention. The crime of torture is further narrowed and defined by standards elaborated for investigation and prosecution of tortures. Members of quasi-governmental bodies involved in torture practices fall outside the purview of these rules. ICJ interviews in India with former policemen, judges and detainees in Tibet confirmed that torture is widespread in Tibet, and that torture of political detainees is general practice.

Torture is applied in order to extract confessions and to force prisoners to reveal names of accomplices, organizations or foreign associates. The documented varieties of torture against Tibetans include beatings with a variety of instruments, such as sticks and iron bars, shocks applied to sensitive parts of the body, including genitals and mouth, with electric cattle prods, hanging by the arms twisted behind the back, exposure to cold water or cold temperatures and long periods of solitary confinement.²⁹

Tibet Information Network (TIN)

China is developing a legal structure that, at least superficially, is aimed at meeting international norms and appeasing political and business leaders in developed nations who depend on the rule of law. There is no evidence that any of these reforms are being implemented in Tibetan areas. For people known to be in detention (in Tibet), TIN has no information indicating legal process for 43%. Administrative sentencing has been imposed on 4% and judicial procedure has been applied to 53%. The prevalence of judicial procedures has not benefited political prisoners in terms of "rule of law". No successful defense has been undertaken, nor has there been a successful appeal.³⁰

The rate at which Tibetan political prisoners are dying under detention or as a demonstrable result of detention shortly after release is increasing. . . Female political prisoners, particularly those held at Lhasa's Drapchi Prison, are at greatest risk. . . The death rate is about 5%, or approximately 1 in 20. Drapchi's male political prisoners have died at a rate of about 1 in 40 in the 1987 to 1998 period. TIN also reports the severe beatings of several nuns serving long prison sentences including Ngawang Sangdrol, Ngawang Choezon, and Puntsog Nyidron.

²⁹ International Commission of Jurists, *Tibet: Human Rights and the Rule of Law*, 1998, pp.244-48.

³⁰ Tibet Information Network, Marshall D. Steve, *Hostile Elements: A Study of Political Imprisonment in Tibet: 1987-1998*, London, 1999, pp. 82-96.

US State Department (World Report on Human Rights 1999 and 2000)

According to credible reports, Chinese government authorities continued to commit serious abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetan nationals for peacefully expressing their political views. There were reports of imprisonment and abuse or torture of monks and nuns accused of political activism, the death of prisoners, and the closure of several monasteries. There are reports that the rate at which Tibetan political prisoners are dying in detention or soon after their release, demonstrably as a result of treatment in detention, is increasing.

Legal safeguards for ethnic Tibetans detained or imprisoned are the same as those in the rest of China and are inadequate in design and implementation. . . Trials are brief and closed. Lack of independent access to prisoners makes it difficult to assess the extent and severity of abuses and the number of Tibetan prisoners. There are many credible reports that prisoners are tortured, beaten, and otherwise mistreated. Authorities reportedly use beatings, electric shocks, suspension in painful positions, and other forms of torture or abuses.

V. CONCLUSION

The consistent and indisputable prevalence of torture in Tibet, combined with the denial and lack of independent investigation into allegations of abuse remain areas of paramount concern to the Tibetan people and the international community. The fundamental challenge in the realization of human rights in general, and the implementation of the Convention Against Torture in particular remains political. While deficiencies remain in Chinese domestic legislation, without policies and practices that promote the rule of law and international standards and norms of behavior, these illegal practices will continue.

Even more troubling than the deficiencies in the Revised CPL and Criminal Laws of China is the continued disregard for the rule of law by Chinese authorities in Tibet. Political considerations over ride procedural guidelines, and in the process, domestic and international law are violated. Article 2(2) of the CAT stipulates that no exceptional circumstances whatsoever, including internal instability or any other public emergency, may be invoked as a justification of torture. Despite these obligations, the Chinese continue to promote stability through suppression of Tibetan nationalism as an overriding priority in Tibet.

China's new legislation prohibiting torture and other forms of ill-treatment as a means of obtaining evidence or for punitive or coercive purposes has yet to mitigate the prevalence of maltreatment of detained Tibetans. In 1990, the Tibet Information Network and Lawasia listed several factors encouraging the continued use of torture in Tibet. Among these was, "merciless repression", the policy of suppressing all activities linked to Tibetan nationalism. The report quotes China's official Xinhua news service, "Stability takes precedence over everything else."³¹ At the time, it was declared that the Tibetan independence movement was to be ruthlessly crushed. All acts that were viewed as showing support were characterized as "counter-revolutionary". Tin/Lawasia noted that, "this policy encouraged officials in the prison-judicial system to treat political prisoners as beyond the protection of even the most basic legal safeguards set out in China's criminal legislation."³² When comparing the importance of the rule of law with repression of Tibetan nationalism, the Chinese government's position is clear. In a 1988 national meeting of procuratorates, delegates qualified their call for "legal punishment for some police officers who extort confessions by torture", by pointing out that "policemen's enthusiasm to combat criminals should not be dampened and their right for self-defense should be protected."³³ The differences between ten years ago and today in terms of rule of law and practical protections afforded Tibetans accused of political crimes are negligible.

The Tibetan Centre for Human Rights and Democracy is deeply troubled by reports concerning treatment of Tibetans in jails, prisons and detention centres. Chinese laws must conform to international norms, particularly when the Chinese government is bound by International Covenants. We hope that the information in this report is helpful to the Committee in their evaluation of the Chinese compliance with the Convention and that progress is made in the areas of the protection of Tibetans from torture and other cruel, inhumane and degrading treatment or punishment.

³¹ Xinhua, special commentary about Tibet, 30/4/90, in SWB, 1/5/90

³² TIN/Lawasia, *Defying the Dragon: China and Human rights in Tibet*, p.54, 1990.

³³ Xinhua, in English, 7/9/88, in FBIS, 8/9/88, p.21

RECOMMENDATIONS

- Urge the Chinese government to incorporate the crime of torture into their domestic legislation in terms consistent with the Convention.
- China should be asked why psychological torture is not incorporated into the Chinese Criminal Law.
- China should be asked to describe the practical steps it is taking to halt torture and other abuses of Tibetans detained and imprisoned. China should be asked to explain the continued use of torture in all phases of detention in Tibet.
- China should be asked to describe the mechanisms it uses to monitor its prisons, detention centres and police stations for human rights abuses.
- Work with the Chinese government to provide resources for the training and education of all persons involved in the criminal process in China.
- Urge the Chinese government to conduct a full and impartial investigation into the events of 1 and 4 May 1998 and the subsequent reprisal against prisoners involved in the demonstrations.
- China should be asked to describe the steps it takes to impartially investigate accusations of torture and other cruel, inhumane or degrading treatment or punishment.
- Urge the Chinese government to cease all activities that violate the rights of detained Tibetans.
- Urge the Chinese government to explicitly outlaw the use of evidence obtained through the use of torture and other illegal measures.
- Urge the Chinese government to guarantee access to legal representation for all persons suspected of committing a criminal activity at their earliest contact with authorities.
- Urge the Chinese government to allow all persons suspected of committing a crime to have private consultations with a legal representative.
- Allow international bodies unfettered inspection of prisons and detention centres in Tibet, including the UN Special Rapporteur on Torture and the International Committee for the Red Cross.
- Urge the Chinese government to engage in a more co-operative dialogue with organisations working to protect the rights of Tibetans.
- The Chinese government should ratify the ICCPR to further strengthen the legal protection for its citizens.

QUESTIONS FOR THE COMMITTEE

- What measures can be taken to strengthen the Chinese judicial and penal systems?
- What steps are being taken to incorporate the crime of torture, as defined in the Convention into Chinese legislation?
- What measures can be taken to increase the impartiality of investigations into allegations of torture?
- In light of the Chinese denial of the existence of torture and their failure to incorporate the crime fully into their domestic legislation, what further mechanisms and incentives can be brought to encouraged compliance with the Convention?
- What are the reasons that in the “TAR”, prison authorities are under the authority of the PSB and not the Ministry of Justice as in the rest of China?
- What steps is the PRC going to take to bring their domestic legislation into compliance with the Convention, and what measure can be made to bridge the gap between protection for detained Tibetans in law and practice?

APPENDIX 1

Extract of a letter sent by political prisoner from Tibet on 10 August 1988 describing the situation in Gutsa Prison.

As of March 5, 1988.

At Gutsa Prison there were 400 prisoners including monks and nuns. The majority of the prisoners had fractured legs, wrists dislocated and ribs broken as a result of inhuman torture.

In addition to these, many injuries have resulted due to the application of electric shock rods, sticks and physical mishandling. About 98 per cent of the prisoners have sustained injuries because of brutal treatment.

Prisoners were admitted in a state of unconsciousness in different hospital from all sections of society.

No. of patients in serious condition	Area/Location	Name of the hospital
Nine monks	Jokhang Temple	Men-tse-khang
Twelve Monks Norbulingkha	Drepung, Gaden and Nechung Monasteries	Worker's Hospital,
Four to five dead	Kha	Kin-yal Yü-yen (Public Security Hospital)

In between March 5th and March 25th 1988 about 200 people were imprisoned.

APPENDIX 2

RECENT CASES OF TORTURE IN TIBET

Deaths due to Torture:

- **Sonam Wangdu**, alias 'Shugden', a 44 year-old trader died in late March 1999 at his residence in Lhasa. He died as a result of torture and maltreatment he suffered while detained in Gutsa Detention Centre and Drapchi Prison. Sonam Wangdu was arrested in April 1988 for alleged involvement in the killing of Chinese policemen during a violent crackdown of a Tibetan demonstration on 5 March 1988. He was initially detained in Gutsa Detention Centre. There he was severely tortured and this resulted in permanent internal injury. His kidney was damaged and his back-bone was broken. Consequently, he suffered urinary damage and the lower part of his body was in a paraplegic state. In 1993, when he was released from Drapchi Prison on medical parole, the lower part of his body remained incontinent. He had to remain in a wheelchair, with a plastic tube used to drain his urine. According to a former political prisoner Bhagdro, Sonam Wangdu was beaten with electric cattle prods and his legs and feet were manacled for a period of six months. He was kept suspended from a tree for five days, and put in solitary confinement for one week. He had his head forced into a bucketful of water and had blood forcibly extracted from him. Sonam Wangdu's life sentence was preceded by almost one year of pre-trial detention at Gutsa Detention Centre, during which time he was constantly tortured as officers tried to force him to confess to the killing of a Chinese policeman. On 17 October 1989, Sonam Wangdu was taken to the heavily guarded Armed Police Force headquarters, located below Chakpori Hill in Lhasa, for trial. During the trial, Wangdu was asked to confess to the crime. His plea of not guilty so enraged the Chinese police, who had tortured them for almost a year, that they started beating the accused in full view of the court. Sonam Wangdu started vomiting blood. "They put a gun to his temple and took him back to Gutsa," stated Bhagdro, who recalled that by the end of the day he was semi-conscious. Bhagdro now lives in Dharamsala, India.
- One of the most recent cases of torture in Tibet is **Tashi Tsering** who died in the first week of October 1999. He died due to beatings sustained at the time of his arrest and transport to a detention facility. Tashi Tsering was arrested when he attempted to lower a Chinese flag and replace it with a Tibetan flag on 26 August 1999 in front of the Potala Palace during the Minority Games in Lhasa. He reportedly had an explosive device attached to his body which failed to explode due to wet weather. People's Armed Police (PAP) personnel reportedly confronted Tsering and smashed his head frequently to the ground, causing heavy bleeding. While the PAP was driving him to a detention centre, they beat Tsering and as a result his arm was broken or dislocated. He was immediately moved to a hospital for treatment, but was unable to recover from his injuries. Unconfirmed reports indicate that the PAP attempted to bring him to a detention centre, but due to his condition, personnel at the detention centre refused him admittance.

Forced Labour and Forced Exercise:

- **Ngawang Jinpa**, also known as Lobsang Dawa, from Gaden Monastery was arrested for participating in a protest at Gaden Monastery on 6 May 1996. He was detained at Gutsa Detention Centre for eight months where he was severely beaten. According to Legshe Drugdrak, a Nalanda monk from Phenpo County who shared a prison cell with Jinpa, "when Ngawang first arrived in Drapchi he was in a very weak condition. Despite this, the prison officials continued to torture him and forced him to work". In March 1999, Jinpa's health grew so poor that the officials took him to "TAR" Military Hospital near Sera Monastery, where he was diagnosed with brain damage. The doctors extracted fluid from his spine, a painful procedure that is performed to treat elevated intra-cranial pressure, a condition that can result from repeated blows on the head. His condition was so hopeless that the Chinese authorities released him on medical parole on 14 March 1999. Jinpa later died in his hometown in Phenpo County on 20 May 1999. He was 31 years old at the time of death.
- **Phuntsok Gyaltzen**, a Buddhist monk serving a 12 year prison sentence in Drapchi Prison in Lhasa, was reportedly seriously ill and incapacitated, suffering from liver and stomach ailments as a result of

sustained beatings received in the prison. Despite the state of his health, he was allegedly being forced to perform prison labour, such as digging, emptying toilets and cultivating vegetables. He was said to be in need of urgent medical attention.

Torture in Detention and Denial of Medical Care:

- **Norbu**, a 22 year-old monk from Nalanda Monastery was arrested on 25 February 1995, after a crack-down at Nalanda Monastery following resistance to a "re-education campaign" conducted by "work-team" members. In Gutsa Detention Centre during interrogation, PSB officials accused him of hiding documents and brutally beat him. He was released in February of 1996 on medical parole, though during detention he was denied medical attention. Norbu's family did everything possible to help him recuperate. For a period he was admitted to the "TAR" People's Hospital. His treatment expenses were a drain on the family's resource, while his health never improved. Norbu died in March 1999, almost three years after his release from Gutsa Detention Centre.
- **Phuntsok**, a former political prisoners, spent two years in Drapchi Prison from 1995 to 1997. He died two years after his release at his residence on 2 September 1999. The cause of his death is known to be liver failure, which was reportedly caused by ill-treatment while in prison. Phuntsok was released after completing his prison term in September 1997. At the time of his release, he reportedly suffered from liver infection. During his last two years he reportedly sought medical treatment but failed to recover. Phuntsok was arrested on 9 September 1995, when security officials found "pro-independence" documents in his home. Phuntsok is a former monk of North Tak-lung Monastery from Lhasa.
- Twenty-one year old **Legshe Tsoglam** was detained at Gutsa Detention Centre in early April of 1999 after refusing to co-operate with a "patriotic education campaign" at Nalanda Monastery, approximately 25 km north of Lhasa. According to a reliable source now in exile, Legshe Tsoglam was severely beaten when he was taken into detention. As a result he became "ill and weak". He died on 12 April 1999, just a few days after his release.
- In late 1998, one of Tibet's most well-known activists, **Hor Lobsang Tsundue** died in Drepung Monastery, Lhasa. Lobsang Tsundue had served 21 years and nine months in prison. Former inmates claimed that Lobsang Tsundue suffered immensely from torture in the prison. He was kept in solitary confinement more than five times, once for more than six weeks. In 1991, Hor Lobsang fell unconscious after he was hit hard on his back with rifle butts by People's Armed Police officials. His health continued to be affected by the treatment he endured while in prison until the time of his death.
- **Lhadar**, a 25 year-old political prisoner died in late August 1993 in Lithang PSB Detention Centre. According to Jamyang Dhondup who arrived in Dharamsala, India in January 1999, Lhadar was arrested on 20 August 1993 for distributing posters calling for the independence of Tibet near his monastery in Lithang County. Lhadar was reportedly severely tortured by prison officials. He died in the detention centre within a month of his arrest. His arms and legs were manacled at the time of his death. Refugees from Lithang in 1994 stated that, "for two days, Tibetans refused to take custody of Lhadar's corpse from the prison because the Chinese authorities refused to give satisfactory explanation for his sudden death." According to them, there seemed little doubt in their minds that Chinese police were "totally responsible" for Lhadar's death.
- **Sangye Tenphel**, lay name Lobsang Geleg, a 21 year-old monk from Khangmar Monastery died in custody on 6 May 1996 in Drapchi Prison. He was reportedly tortured and denied medical care, which directly lead to his death. On one occasion he was summoned to the prison office and subjected to interrogations regarding a hunger strike he and other inmates had staged for the release of three other prisoners being kept in solitary confinement. Sangye Tenphel was beaten over his entire body. He was held from both his arms by two men and struck on the head several times with a stick. Inmates from Drapchi later saw him staggering towards his cell. Not long after, he started to have health complications. When he was taken to the doctor at the prison hospital, he was told he had no health problems and given no medication. However, his health deteriorated to such an extent that for almost a week he lay immobile on his bed. Finally, he was allowed to visit the PSB hospital on 5 May 1996. He

died the next day. His body was not handed over to his relatives, but with the help of prisoners, was taken to Sera cremation grounds located in the north of Lhasa. On 9 May 1996, Phuntsok the chief warden of Drapchi Prison announced that Sangye Tenphel had died as result of a brain haemorrhage.

- **Lobsang Tenzin**, a 33 year-old former student of Tibet University was initially sentenced to death with a suspension of two years in 1988. However, due to strong international pressure this was commuted to a life sentence in March 1991. He was subjected to severe beatings after he took part in political protests while in detention, including an incident in which he was involved in attempting to pass a letter at Drapchi Prison to the visiting US Ambassador, James Lilley, in 1991. He was transferred to Powo Tramo Prison following the incident, where he was reportedly forced to carry out hard labour despite his poor health. According to a source who had seen Lobsang Tenzin while at Powo Tramo, "Lobsang cannot stand upright and is unable to carry out prison labour duties. The deterioration in his health is due to the effects of torture, poor prison conditions and lack of medical attention". Tenzin was arrested on 5 March 1988 for participating in a political demonstration.
- **Chimey Rinzin**, a 23 year old, was arrested in 1997 in lieu of his father, who had been absconding after being accused of murdering a Chinese man. Prison officials, hoping that his father would turn himself in to rescue his son, arrested Rinzin. He was held in Ngaba Prison. He was tortured when he failed to disclose the whereabouts of his father. When he was released, his health had deteriorated due to internal injuries and an hour later he died still within the prison compound in April of 1997. After his death, his fellow inmates sent a message to his family members, but prison officials refused to release Rinzin's body.
- **Gyaye Phunstok** from Gyaye village in Chabcha County, Tsolho Tibetan Autonomous Prefecture was sentenced to six years' imprisonment in July of 1999. He was reportedly released on medical parole between July and August of 1999 after being tortured during interrogation. The Qinghai Public Security Bureau (PSB) arrested Gyaye Phuntsok in August of 1998. Recent information indicates that Phuntsok was interrogated for eight days after his arrest. Throughout this time he was kept standing and was denied food and sleep. After this harsh treatment, his feet swelled and he had to use crutches to walk. He was denied medical treatment. It is reported that his family has incurred all medical expenses resulting from his maltreatment while in prison. Even after his release he has been kept under strict surveillance and restricted from leaving Qinghai by the Tsolho PSB. He has reportedly been admitted to the Chabcha People's Hospital.
- **Ngawang Sangdrol** was first arrested when she was only ten years old in 1987 for participating in a peaceful demonstration and was detained for 15 days. Sangdrol was arrested the third time at the age of 15 and sentenced to three years on 17 June 1992 and transferred to Drapchi Prison. On 8 October 1993, her sentence was extended by six years for "spreading counter-revolutionary propaganda." Her crimes included singing and recording songs, and smuggling them out of the prison. On 30 November 1995, the United Nations Working Group on Arbitrary Detention ruled that the continuing detention of Ngawang Sangdrol was arbitrary. In July 1996, her imprisonment was extended by eight years for shouting "Free Tibet" while she and other nuns were made to stand in the rain as punishment for failing to clean their prison cells. In October of 1999, the Intermediate Municipal Court of Lhasa extended her sentence to an additional four years for her involvement in the May 1998 Drapchi protest, bringing her total sentence to 21 years. Reports indicate that Ngawang Sangdrol and another nun, Ngawang Choezom from Chubsang Nunnery have been subjected to harsh treatment and placed in solitary confinement for extended periods of time for their role in the May 1998 Drapchi protests.

Ngawang's condition has deteriorated due to severe torture and her right leg has been seriously injured. Reports in August 1996 said that Ngawang Sangdrol was being held in dark, windowless confinement at Drapchi Prison and receiving small amounts of food only twice a day and was manifesting signs of mal-nourishment. Ngawang's prison mate, Lobsang Dolma, who spent five years in Drapchi Prison with her, reported that she has had longstanding kidney problems, but has received inadequate treatment. In addition, she has been made to do work while ill.

- **Ngawang Kyonmey**, a 28 year-old monk from Drepung Monastery, originally from Toelung Dechen County was arrested in early September of 1998 on suspicion of conspiring to hand over a letter to Mary Robinson, UN High Commissioner for Human Rights, who visited Tibet in October of 1998. He is reported to be held in Gutsa Detention Centre, although the charges against him have not been filed. Unofficial reports indicate that Kyonmey's body reveals the distinct marks of severe beatings, which evidently took place during interrogation by prison officials who used violence and torture to obtain names of other Tibetans allegedly involved in the preparation of the letter.
- **Kalden**, a 34 year-old monk from Dagkar Tral-Zong Monastery was arrested in December of 1998 and detained for six months in Xining Prison. He was reportedly released on medical parole with broken ribs in May of 1999. "Kalden presently is undergoing medical treatment in Tsolho Tibetan Hospital", reports Tsultrim, a 22 year-old monk from same monastery who arrived in Dharamsala, India on 18 October 1999. He was arrested on charges of donating a sum of 18,000 yuan to the Tibetan Government-in-Exile. Tsultrim stated that "while in prison he received severe beatings during interrogation. Prior to his arrest, Kalden was healthy and well built; however, after his return from prison he appeared weak and feeble with two broken ribs. He now walks with the aid of crutches." In addition, Kalden was reportedly severely beaten with an electric baton and indiscriminately kicked and punched, resulting in the aforementioned injuries. For five days he was deprived of water and sleep. The authorities released Kalden, possibly for the fear of his death while in detention. He is currently being treated in Tsolho Medical Hospital.
- **Yonten Tharchin**, 27 years old of Baku town in Thurde County, Qinghai Province was detained for six months in Tsolho Prison after he was found to have brought cassettes of the Dalai Lama's speeches from India to Tibet. Tharchin was returning to Tibet after he stayed for five years in India. While in Tsolho Prison, which is in Qinghai Province, he was tortured and forced to stand facing a wall with his hands stretched upwards while his arm-pit hair was pulled hard. Once he was badly beaten after he was found reciting prayers in his prison cell, and prison guards warned him that "this is not the place for you to recite prayers." His current condition is unknown.