

# CHINA

## SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

LIST OF ISSUES, 54<sup>TH</sup> SESSION, 20  
APRIL-15 MAY 2015

**AMNESTY**  
INTERNATIONAL



Amnesty International Publications

First published in 2015 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2015

Index: ASA 17/005/215  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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# EXECUTIVE SUMMARY

This submission contains background information in advance of the adoption of the list of issues for China's fifth periodic report at the United Nation's (UN) Committee against Torture's (the Committee) 54<sup>th</sup> session to be held in Geneva from 20 April to 15 May 2015.

This submission and the enclosed reports outline a number of issues of concern relating to China's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), in particular in relation to Articles 1, 2, 3, 4 and 11 -16. These issues include:

- Definition of torture under Chinese Law not in line with the Convention
- Misuse of law enforcement equipment and trade in torture instruments
- Torture in administrative and unofficial detention continues after the abolition of "re-education through labour"
- Harassment and violence by unofficial personnel
- Harassment and violence against lawyers and human rights defenders
- Forced repatriation of North Korea citizens
- New amendments to Criminal Procedure Law 2013 and Criminal Law Amendment (9) (draft) fail to bring Chinese laws in line with the Convention.

The scope of this document is confined to mainland China and excludes the Special Administrative Regions of Hong Kong and Macao.

Amnesty International will submit more detailed information to the Committee prior to its consideration of the report at the 56<sup>th</sup> session.

## DEFINITION OF TORTURE AND CRIMINALIZATION OF ALL ACTS OF TORTURE (ARTICLES 1 & 4)

Despite recommendations made by the Committee in May 2000 and December 2008<sup>1</sup>, as well as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on Torture) following his mission to China in Nov-Dec 2005, the authorities have still failed to bring the definition of torture under Chinese law into line with the Convention. Over recent years, the Chinese authorities have passed numerous regulations intended to strengthen the formal prohibition of torture including amendments to the Criminal Procedure Law which came into effect on 1 January 2013, but these have not amended the definition of torture.

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

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<sup>1</sup> *Concluding observations of the Committee against Torture – China*, 12 December 2008, CAT/C/CHN/CO/4, paragraphs 32 and 33.

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 nueda*) 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.

## MISUSE OF LAW ENFORCEMENT EQUIPMENT AND TRADE IN TORTURE INSTRUMENTS (ARTICLES 2 & 16)

China has consolidated its position as a major manufacturer and exporter of a growing range of law enforcement equipment, including items the use of which inherently violates the Convention such as electric shock stun batons, spiked batons, weighted leg cuffs, thumb cuffs and rigid restraint chairs. Despite the concerns of the Special Rapporteur on Torture on the use of weighted leg cuffs after his visit to China in 2005<sup>2</sup>, and the recommendation of the Committee in 2000 to completely abolish rigid restraint chairs<sup>3</sup>, the Chinese authorities have not sought to restrict or ban the use of these torture tools.<sup>4</sup>

In addition, Amnesty International has documented the export of equipment that could be used legitimately in law enforcement but was easy to abuse in ways that violate the Convention, such as tear gas or riot control vehicles, from China without adequate controls even when there was a substantial risk of their being used to commit serious human rights violations by the receiving law enforcement agencies<sup>5</sup>.

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<sup>2</sup> *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.68.

<sup>3</sup> UN, *Conclusions and Recommendations of the Committee against Torture: United States of America*, 24th Session, 1st-19th May 2000, Report of the Committee against Torture, A/55/44. (Concluding Observations/Comments), page 32.

<sup>4</sup> Amnesty International, *China’s trade in tools of torture and repression* (AI Index ASA 17/042/2014), 23 September 2014, Chapter 1, available at <http://www.amnestyusa.org/sites/default/files/asa170422014en.pdf>

<sup>5</sup> Amnesty International, *China’s trade in tools of torture and repression* (AI Index: 17/042/2014), 23 September 2014, Chapter 3, available at <http://www.amnestyusa.org/sites/default/files/asa170422014en.pdf>

# ABOLITION OF “RE-EDUCATION THROUGH LABOUR” (RTL) (ARTICLES 2 & 16)

**Torture in administrative and unofficial detention:** Amnesty International acknowledges that the National People’s Congress officially abolished China’s RTL system, the country’s largest formal institution of administrative detention, in December 2013. However, following the abolition, the authorities continued to make extensive use of other forms of administrative detention and criminal prosecution for many of the same individuals. Alternative channels of arbitrary detention include Legal Education Centres (sometimes referred to as “brainwashing centres”), various forms of administrative detention, “black jails” (unofficial places of detention – see below), and illegal house arrest, which is illegal under even China’s own laws. Some of these even lack the legitimacy of the RTL in that they have no regulatory or legal basis.

Authorities used locations of shut down RTL camps to set up new “brainwashing centres”, in which many Falun Gong practitioners are detained. Some RTL camps have changed their names to enforced drug RTL camps or names used for other forms of administrative detention facilities. Some enforced drug RTL camps function similarly to the old RTL camps and violate the Convention in a variety of ways, including holding detainees for years without due process, harsh regimes of forced labour and torture and other ill-treatment.

“Black jails” refer to unofficial, unregulated and illegal detention centres set up in ad hoc locations such as hotels, psychiatric facilities, government premises and residential buildings. Amnesty International has documented the incarceration by the authorities of petitioners in psychiatric institutions without professional assessment, or petitioners being locked up in “black jails” located in hotels<sup>6</sup>. Reports of torture and other ill-treatment persist in all these forms of detention in China and the absence of safeguards of the rights of detainees in these punitive administrative systems place individuals at greater risk of torture and other ill-treatment.<sup>7</sup>

## HARASSMENT AND VIOLENCE

### HARASSMENT AND VIOLENCE BY UNOFFICIAL PERSONNEL (ARTICLES 1, 2, 13 & 16)

Amnesty international documented cases where authorities used hired thugs to achieve their objectives, such as forced evictions. In these cases, local authorities often collude with developers to hire thugs to intimidate, threaten and physically attack residents. Police often

<sup>6</sup> Amnesty International, “*Changing the soup but not the medicine?*”: *Abolishing Re-education Through Labour in China* (AI Index: ASA 17/04/2013), December 2013, available at <http://www.amnesty.org/en/library/asset/ASA17/042/2013/en/f7e7aec3-e4ed-4d8d-b99b-f6ff6ec860d6/asa170422013en.pdf>

<sup>7</sup> *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.73.

refuse to respond to calls for assistance. The incidents are rarely investigated and perpetrators are not brought to justice except when a case involves a particularly violent incident that receives a lot of public attention<sup>8</sup>.

Authorities also recruit thugs to take part in torturing or otherwise ill-treating criminal suspects. In August 2014, an appeal court in Harbin, Heilongjiang Province, upheld the convictions of four people charged with torture. They and three others had been found guilty by the court of first instance of torturing several criminal suspects in March 2013. Only three of the seven were police officers; the other four were “special informants” – ordinary citizens allegedly “helping” the police to investigate crimes. One of their victims died in custody after being tortured with electric shocks and beaten with a shoe.

## HARASSMENT AND VIOLENCE AGAINST LAWYERS AND HUMAN RIGHTS DEFENDERS (ARTICLES 1, 2 & 16)

**Lawyers:** Torture and other ill-treatment against lawyers remained widespread. In March 2014, authorities arbitrarily detained and tortured four lawyers who were investigating a Legal Education Centre in Jiansanjiang, Heilongjiang Province<sup>9</sup>.

Ni Yulan, who provides legal advice and practical help to victims of human rights violations, lost her license to practice law in 2002. The authorities demolished her home in 2008, arrested her several times, broke her feet and kneecaps in a police station, tortured her in custody and denied her medical treatment which resulted in her permanent disability. Police held her under detention and surveillance in violation of Chinese law between 2004 and 2006. In 2011, she was imprisoned for two years and eight months for “picking quarrels and making trouble” and “fraud”<sup>10</sup>. After her release from prison in 2013, police harassed and threatened her landlords to evict her family and forced them to live on the streets. During the Asia-Pacific Economic Cooperation meetings held in Beijing in 2014, police locked Ni Yulan and her family inside their rented house with no food and blocked diplomatic representatives from visiting them. Plainclothes policemen entered their residence and beat her husband.

On 3 November 2014, the Standing Committee of the National People’s Congress (NPC) issued Criminal Law Amendments (9) (Draft). The proposed amendment to Article 309(4) (“other conduct that seriously disrupts the order of the court”) may limit lawyers’ right to freedom of expression and threaten the ability of lawyers to carry out their professional functions, including from raising complaints of torture and other ill-treatment in court. This vague wording may further prevent lawyers from representing clients in “sensitive” political cases.

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<sup>8</sup> Amnesty International, *Standing Their Ground: Thousands face violent eviction in China* (AI Index: ASA 17/ 001/2012), October 2013, available at [http://www.amnestyusa.org/sites/default/files/standing\\_their\\_ground\\_asa\\_17\\_001\\_2012\\_web\\_email.pdf](http://www.amnestyusa.org/sites/default/files/standing_their_ground_asa_17_001_2012_web_email.pdf)

<sup>9</sup> See further *Amnesty International calls for an investigation in to the allegations of torture of four lawyers in China* (AI Index: ASA 17/020/2014), 8 April 2014, available at <http://www.amnesty.org/en/library/asset/ASA17/020/2014/en/d3a4a9e4-8208-40a4-a4f2-e6383c354956/asa170202014en.pdf>

<sup>10</sup> Amnesty International, *Further information on UA 117/11 – China – Chinese housing activists’ sentences upheld* (AI Index: ASA 17/025/2012), 27 July 2012, available at <https://www.amnesty.se/upload/apps/webactions/urgentaction/2012/07/28/31702512.pdf>, and Amnesty International, *China: Further information: Housing rights activist Ni Yulan released*, (AI Index: ASA 17/034/2013) 8 October 2103, available at <http://www.amnesty.org/en/library/asset/ASA17/034/2013/en/8eed3e09-c46a-46e0-993d-d35c4a104b90/asa170342013en.pdf>.

**Defenders:** Human rights defenders continued to risk harassment, arbitrary detention, imprisonment, and torture and other ill-treatment for their peaceful human rights work.

Cao Shunli died from organ failure in a hospital in March 2014 after being denied adequate medical care in detention. She had been detained at a Beijing airport in September 2013 when on her way to a human rights training in Switzerland<sup>11</sup>. She had led attempts to allow activists to contribute to China's national human rights report ahead of the country's Universal Periodic Review.

Veteran dissident and labour rights activist Li Wangyang was found dead in hospital on 6 June 2012, just days after a media interview aired in Hong Kong, in which he spoke about being tortured during previous detentions. The authorities claimed he committed suicide by hanging himself; however, Li Wangyang was blind, deaf and unable to walk without assistance as a result of being tortured when he was first jailed after the 1989 Tiananmen crackdown. Amnesty International has called for an independent investigation into the circumstances of his death.

## FORCED REPATRIATION OF NORTH KOREA CITIZENS (ARTICLE 3)

Amnesty International is concerned that a group of approximately 29 people, including a one-year-old baby, were forcibly returned to the Democratic People's Republic of Korea (DPRK) in early August 2014 after being detained in China. Amnesty International has not been able to obtain further information on these individuals and their fate upon their return to DPRK. However, forcibly repatriated individuals are often subject to arbitrary detention and imprisonment, forced labour, torture and other ill-treatment, and in some cases execution. Further, the report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea released in 2014 found that repatriated women were subject to degrading treatment which may amount to torture, including forced abortions at detention facilities.<sup>12</sup>

<sup>11</sup> Amnesty International, "*Fear of cover-up as Cao Shunli's body goes missing*" Press Release, 26 March 2014, available at <http://www.amnesty.org/en/news/china-fear-cover-cao-shunli-s-body-goes-missing-2014-03-26>.

<sup>12</sup> Amnesty International, "*China: Families face forcible return to North Korea*" Urgent Action 28 July 2014, (AI Index: ASA 17/039/2014), available at <http://www.amnesty.org/en/library/asset/ASA17/039/2014/en/09d08c88-057f-4a98-bdb6-22f8737e43d1/asa170392014en.html>

# CRIMINAL PROCEDURE LAW (CPL 2013) AND CRIMINAL LAW AMENDMENT (9) (DRAFT) (ARTICLES 11-15)

## REVIEW OF INTERROGATION RULES, INSTRUCTIONS, METHODS AND PRACTICES FOR CUSTODY AND TREATMENT OF PERSONS ARRESTED OR DETAINED (ARTICLE 11)

**CPL 2013:** The amended CPL came into force on 1 January 2013. While the amendments took a positive step in providing for suspects to have access to legal advice and to be informed of this right earlier in the criminal process, they also removed critical protections, including full rights of notification and access to legal counsel, from some detainees, especially when they are charged with “endangering state security” or “terrorism”. The absence of an explicit provision of the right to access legal counsel during police interrogation and the provision in the amended CPL maintained from the previous law, which allows interrogation of suspects and defendants to begin before the latter may have been able to contact or gain access to a lawyer, increases the risk of self-incrimination and forced “confessions” in violation of Article 15.

**Criminal Law Amendments (9) (draft):** The Standing Committee of the National People’s Congress issued the Criminal Law Amendments (9) (draft) on 3 November 2014. It is expected that these new amendments will be finalized sometime in the spring of 2015, or 2016.

Provisions of the draft amendments with regard to “maintaining public security” and “punishing the crimes of terrorism and extremism” use terms that are imprecise and overbroad in scope. The vaguely defined terms “terrorism” and “extremism” are open to subjective interpretation and increase the possibility of arbitrary or discriminatory arrests, prosecution and conviction.

Amnesty International has documented the frequent practice of using laws criminalizing acts of “terrorism”, “extremism” and “endangering public order” to punish individuals for exercising their human rights. Individuals have been sentenced to imprisonment for their writings and other ways of peacefully exercising of their rights on charges of “inciting subversion of state power”, sometimes with articles published on domestic or overseas websites, or lectures given, cited as evidence. The crime of “splitting the state”, one of the crimes listed under the category of crimes “endangering state security”, has also been used to punish people belonging to ethnic minorities, including ethnic Uighurs, Tibetans and Mongolians, for peacefully exercising their freedom of expression and right to enjoy their culture.

## EXCLUSION OF ILLEGAL EVIDENCE UNDER CPL 2013 (ARTICLE 15)

New Article 54 of the amended CPL provides that “confession by a suspect or a defendant obtained through torture and extortion and other illegal means and witness testimonies and victim statements obtained through the use of violence, threats and other illegal means should be excluded.” However, it allows illegally gathered physical and documentary evidence to be admitted if “justifications” can be provided. Therefore, if police “justify” having obtained physical or other “evidence” through torture or other ill-treatment on the grounds that it provides critical evidence proving a suspect’s guilt, then that piece of evidence could, under the current law, be admitted.

## DEATH PENALTY FOLLOWING UNFAIR TRIAL (ARTICLES 1 & 15)

The CPL 2013 provides some clarification with regard to the Supreme People’s Court’s final review of death penalty sentence. However, the measure does not bring detainees’ rights of trial proceeding into full conformity with international human rights standards. They are particularly insufficient given that in China forced confessions in pre-trial detention are commonplace, and lead frequently to miscarriage of justice with particularly grievous consequences for people facing the death penalty.

For example, in the case of Nian Bin, the High Court in Fujian Province overturned the death sentence and released him in August 2014. Food stall owner Nian Bin had originally been sentenced to death in 2008, despite his claim that he had confessed under torture<sup>13</sup>.

Similarly, the Inner Mongolia People’s Court rescinded its original guilty verdict, in the case of Hujjiltu in December 2014.<sup>14</sup> Authorities interrogated the Inner-Mongolian teenager for 48 hours, after which he confessed to having raped and choked a woman in the toilet of a textile factory, the state-run China Daily newspaper reported in November 2014.<sup>15</sup> Hujjiltu was convicted of the crime and executed in 1996.

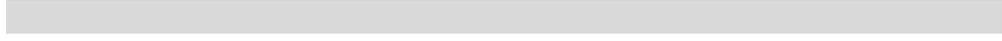
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<sup>13</sup> Amnesty International, “China: Death row inmate freed after six years of trials and appeals” Press Release, 22 August 2014, available at <http://www.amnesty.org/en/for-media/press-releases/china-death-row-inmate-freed-after-six-years-trials-and-appeals-2014-08-22>

<sup>14</sup> DailyMail Online, “Executed Chinese teenager found innocent 18 years on”, 15 December 2014 available at <http://www.dailymail.co.uk/wires/afp/article-2874152/Executed-Chinese-teenager-innocent-18-years-on.html>

<sup>15</sup> China Daily “Hitherto unknown facts revealed in 1996 murder retrial”, 20 November 2014, available at [http://www.chinadaily.com.cn/china/2014-11/20/content\\_18949656.htm](http://www.chinadaily.com.cn/china/2014-11/20/content_18949656.htm); Caixin Online, “Executed teen found innocent 18 years later”.15 December 2014, available at <http://english.caixin.com/2014-12-15/100763290.html>.

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List of issues: submission to the UN Committee against Torture



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