

TORTURE IN TIBET

A Report Submitted To The

**UNITED NATIONS
COMMITTEE AGAINST TORTURE**

On

**VIOLATIONS BY THE PEOPLE'S REPUBLIC OF CHINA
AGAINST THE PEOPLE OF TIBET**

Submitted By

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April 2000

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EXECUTIVE SUMMARY

This report evaluates China's compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Torture Convention)¹ with respect to Tibet. It concludes that China continues to engage in widespread and systematic violations of the Torture Convention in Tibet. China has also failed to make genuine progress in the areas of concern noted by this Committee in its 1996 Concluding Observations.²

The report first appraises China's compliance with the central provisions of the Torture Convention. Notwithstanding the entry into force of China's revised Criminal Code and Criminal Procedure Law,³ police, prison guards, and other security officials routinely torture Tibetan detainees, particularly those held for political crimes.⁴ In practice, most of these perpetrators enjoy impunity for their acts. The widespread use of torture in Tibet is corroborated by numerous reports based on interviews with Tibetan refugees who suffered torture.

China's submission exhaustively sets forth purported legislative improvements enacted by its 1997 revisions to the Chinese Criminal Code and Criminal Procedure Law of 1979. These amendments, however, remain inadequate to deter, punish and redress acts of torture. More critically, China's focus on nominal legislative change betrays its tacit recognition that the practical reality in Tibet remains largely unchanged: torture continues to be an instrument of state control in Tibet, and Tibet's lack of a genuinely independent judiciary facilitates the ongoing commission of, and impunity for, acts in violation of the Torture Convention. Although China's new criminal laws represent potentially important steps towards fulfilling its obligations under the Torture Convention, "these amendments do not yet appear to have had any impact on the legal or judicial procedures relating to political 'crime' and imprisonment in Tibet."⁵

China's Third Periodic Report also fails to address the possibility of withdrawing its reservation to article 20 of the Torture Convention or recognizing this Committee's competence, under articles 21 and 22, to receive communications from, respectively, other states party and individuals who claim to be victims of torture. This is consistent with China's persistent attempts to preclude international scrutiny of its human rights record in Tibet. China absolutely forbids human rights monitoring in Tibet and prohibits access to prisons even by humanitarian agencies, such as the International Committee of the Red Cross.

The report concludes with recommendations for ameliorating the circumstances that permit the pervasive use of torture in Tibet. In particular, it urges this Committee to recommend that China provide independent human rights monitors with access to prisons and detention centers in Tibet where torture occurs, enhance the human rights training of its judicial officers and security personnel, and strengthen mechanisms to promote accountability and punishment for officials who perpetrate acts of torture.

I. INTRODUCTION

The Tibetan Government In Exile (TGIE) is honored to submit this report to the Committee Against Torture. Our report provides additional data to facilitate the Committee's appraisal of China's compliance with the Torture Convention relative to Tibet. In it, we emphasize the special circumstances that render Tibetans particularly susceptible to torture.

Tibet consists of three provinces: U-Tsang, Kham and Amdo. The Chinese Communist authorities subdivided our country into eight "autonomous" regions in order to break up our country and facilitate control of our people. Amdo and most of Kham have been incorporated into neighboring Qinghai, Gansu, Sichuan and Yunnan provinces. The Chinese authorities consider only U-Tsang and parts of western Kham to be Tibet, referring to this portion as the Tibet Autonomous Region (TAR). We refer to the whole of Tibet as it is known and recognized by our government and the people of Tibet.

TGIE urges the Committee to consider the widespread and systematic use of torture in Tibet in the context of China's illegal invasion of Tibet in 1949, its division of historical Tibetan territory, and its failure to accord Tibetans their right to self-determination. Extensive studies by the International Commission of Jurists (ICJ), and a number of preeminent international legal scholars affirm that Tibet was a sovereign nation when the People's Liberation Army of China invaded in 1949.⁶ This act of aggression therefore violated international law, and Tibet currently remains a *de jure* state under illegal foreign occupation.⁷

The people of Tibet have struggled against the illegal occupation of our country since the invasion by the People's Republic of China in 1949. By 1979, more than 1.2 million brave Tibetans had died as a direct result of this occupation. Now, over fifty years have passed since our people fell under foreign rule.

Torture Convention violations in Tibet almost invariably represent China's continuing use of torture as an instrument of political control. Tibetans throughout Tibet remain at a special risk of torture for expressing political dissent and, in particular, for attempting to exercise their right as a people to self-determination.⁸ We ask the Committee to recall that the United Nations General Assembly has recognized the Tibetan people's right to self-determination.⁹ TGIE therefore urges the Committee to give full legal weight to the Tibetan people's right to self-determination as it assesses China's compliance with the Torture Convention in occupied Tibet. China's failure to honor this right is a principal cause of the high incidence of torture in Tibet.

Our government is aware of the most important work of this Committee. We, and Tibetan non-governmental organizations, have taken very seriously our obligations to help Tibetan political prisoners and victims of torture and to provide information useful for your work. Please know that these groups and others stand ready to provide any additional information you may request. The Tibetan Government in Exile, its Supreme Justice Commission and the Tibetan Parliament in Exile, are also prepared to provide any further information or assistance to you.

II. VIOLATIONS OF THE CONVENTION AGAINST TORTURE

A. China Has Failed To Ban All Forms Of Torture

Torture denotes “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁰ The Torture Convention obliges each state party to integrate this definition of torture into its criminal law.¹¹ But in 1996, this Committee noted with concern China’s “failure to incorporate the crime of torture into [its] domestic legal system.”¹²

In its Third Periodic Report, China contends that it redressed this deficiency through Chapters IV (Crimes of Infringing Upon the Rights of the Person and the Democratic Rights of Citizens) and VIII (Graft and Bribery) of its revised Criminal Law of 1997.¹³ The sole express reference to torture, however, is article 247, which prohibits only judicial officers from extorting confessions by torture.¹⁴ Article 248 adds that “supervisory and management personnel of prisons, detention centers, and other guard houses who beat or physically abuse their inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention.”¹⁵ Neither of these articles comes close to meeting China’s obligation to ban all forms of torture.

First, article 247, only prohibits torture to extort confessions. No article of China’s revised Criminal Code prohibits the use of torture to “punish, intimidate or coerce,” as international law requires.¹⁶ This is particularly important in Tibet, where torture is used often to punish and terrorize Tibetans. Article 247 also only applies to judicial officers, leaving many torturers untouched.

Article 248 is also flawed. It only addresses “serious” cases, but no indication is given as to what is meant by a “serious” case.¹⁷ Moreover, article 248 only applies to “supervisory and management personnel,” leaving open whether the law covers staff guards, and whether supervisors and managers will be held responsible for torture they condone committed by guards.

Finally, the law prohibits only *physical* abuse. No provision prohibits psychological torture, a particularly significant omission in view of China’s documented use of solitary confinement to punish prisoners who refuse to submit to “reeducation” and “reform.”¹⁸ Tibet Information Network (TIN) recently noted the emergence in Tibetan prisons of “long-term isolation . . . as an alternative to sentence extensions for punishing political prisoners who re-offend by staging further protests in prison.”¹⁹ While regulations technically limit solitary confinement to 15 days, in practice these limits are frequently ignored.²⁰ For instance, Jamdron and Nyima, two nuns involved in the 1997 protest in Drapchi prison at the Tibetan New Year, were placed in solitary confinement for a period of at least 15 months.²¹

Other acts of psychological torture are aimed especially at monks and nuns. These include abusing their religious beliefs and their faith in His Holiness the Dalai Lama, forcing them to disrobe in front of each other, and forcing them to drink urine.²² Victims also report

sleep and light deprivation, and exposure to loud noises.²³ There is an increasing trend towards more psychological forms of torture.²⁴

All of the other provisions that China cites are merely “relevant to combating torture.”²⁵ They together fall significantly short of the Torture Convention’s requirement that states proscribe *all* acts of torture and punish these violations with penalties that reflect their grave nature.²⁶

B. Chinese Authorities Rarely Prosecute Torturers

Article 12 of the Torture Convention requires “prompt and impartial investigation, *wherever* there is reasonable ground to believe that an act of torture has been committed.”²⁷ China’s Third Periodic Report emphasizes that officials who commit torture now face enhanced punitive measures²⁸ and that torture is “a criminal behaviour subject to investigation and prosecution.”²⁹ Yet even where authorities discover the limited forms of torture that are proscribed by China’s revised criminal law, the standards governing its investigation and prosecution stipulate that only certain cases should be pursued. Examples include where the torturer was “giving vent to personal spite,” “using torture repeatedly against one person or more than one person,” or “employing very cruel means and thus creating a widely notorious impact . . .”³⁰ By law, then, only a small subset of even those acts that do fall within the narrow scope of China’s legal definition of torture merit investigation and prosecution. This deficiency clearly violates the Convention.

In practice, the number of investigated cases may be even smaller. In its 1997 study, for example, the ICJ did not discover a single instance of a TAR official “prosecuted in connection with allegations of torture.”³¹ While this Committee noted with approval in 1996 that China had provided evidence of “police officials prosecuted and convicted for acts of torture in China, including Tibet,”³² TGIE emphasizes that China’s 1996 report indicated only *one* prosecution in Tibet: Qiongda, police chief of Kyriong, was convicted for torturing a Tibetan woman, Danzhen Wangmu, while she was detained in January 1995. According to newspaper reports, Danzhen Wangmu suffered “injuries to the legs, buttocks, and wrists” that required 65 days of hospital treatment.³³ Qiongda was sentenced to two years in prison, but his sentence was suspended for three years.³⁴ TGIE urges this Committee to seek clarification regarding Ms. Wangmu’s present medical condition and to inquire whether Qiongda has begun to serve his prison sentence. In addition, TGIE requests the Committee to ascertain which, if any, of the reported cases of prosecution that China cites in the report under consideration involved Tibetans.³⁵

C. Torture Remains A Common Practice Against Tibetan Prisoners

The single example of prosecution for acts of torture in Tibet stands in stark contrast to the overwhelming number of reported cases.³⁶ Torture and maltreatment remain the norm for political detainees in Tibet.³⁷ According to a 1997 report by Physicians for Human Rights (PHR), 94 percent of interviewees who had been detained for political activities also suffered torture.³⁸ Even among non-political detainees, torture is far from uncommon. Fifty-eight percent of Tibetan torture victims whom PHR interviewed had been detained for non-political, and often

trivial, reasons, such as arguing with Chinese shopkeepers, neighbors or government officials.³⁹ TIN noted recently that “China’s new legislation prohibiting torture and other excesses, either for punitive or coercive reasons, has yet to mitigate the environment of maltreatment in Tibetan prisons and jails.”⁴⁰ Nor, apparently, has it mitigated the impunity with which torturers in Tibet operate. To the contrary, despite the amendments that China cites in its Third Periodic Report, the observation of Committee Member Mr. Burns, Country Rapporteur on China, during this Committee’s 1996 appraisal of China’s Second Periodic Report, continues to capture the practical reality in Tibet: “Regardless of the rules formally in force,” he noted, “*de facto* impunity did seem to exist for perpetrators of acts of torture . . .”⁴¹

A disturbing variety of torture techniques employed in Tibetan prisons and detention centers has been documented since 1996. Some of the most common are electric shocks delivered by cattle prods to the genitals, mouth, eyes, and other sensitive areas;⁴² beatings with “metal rods, sticks, pistols or rifle butts, plastic hoses filled with sand, [and] pieces of furniture;”⁴³ exposure to extreme heat or cold; and aerial suspension or restraint by rope in painful positions.⁴⁴ Other documented torture techniques include starvation, forcing victims to stare at the sun for prolonged periods, attacks by ferocious trained dogs, and sexual assaults, as well as psychological tortures, such as mock executions, forcing victims to witness others being tortured, urinating in victims’ mouths, prolonged solitary confinement, and death threats.⁴⁵

Tibetans typically suffer acts of torture at two stages in the process of detention, arrest, adjudication, and sentencing: first, during the pretrial (or pre-“administrative disposition”) period of detention, which can range from two to six months; and second, while serving time in Tibet’s prisons and “reeducation through labor” camps, or *laojiao*.⁴⁶ Many of the most egregious acts of torture occur during the former period, in which, despite article 247 of China’s revised criminal law, interrogations in an effort to elicit confessions routinely involve torture.⁴⁷ “Before they are formally ‘arrested,’ ” Jane Caple of TIN noted in her recent study of torture in Tibet, “prisoners generally undergo intense interrogation to secure confessions to be used during their trial . . .”⁴⁸

Tibetan suspects typically spend between two and six months in detention before receiving a sentence, which (apparently at the discretion of the authorities) may be delivered through either “administrative” or “judicial” channels.⁴⁹ It is during this period of interrogation that they are at the highest risk of torture, for “[t]orture is applied to extract confessions and to force prisoners to reveal the names of accomplices, organisations or foreign associates.”⁵⁰ Reports indicate that the People’s Armed Police (a branch of the military), the Public Security Bureau (the local police), and, at times, even members of the procuracy (a prosecutorial agency) and the judiciary employ torture to elicit confessions and coerce information from administrative detainees.⁵¹ TIN’s recent study of political imprisonment in Tibet affirms that “[f]ood and sometimes water are withheld at the initial stage of detention or during interrogation. Episodes of beating, shocking and painful binding are frequently repeated during interrogation and are linked to the detainee providing a satisfactory ‘confession’.”⁵²

Virtually all Tibetan political detainees face torture prior to trial or administrative disposition. According to the ICJ, one police officer from a county in the Tibetan region of

Amdo testified that “100% of detainees are tortured,” and “Amdo Sangye, 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 [was] not beaten by the police, and when the defendant is a Tibetan political prisoner, the beating is much worse.’”⁵³ Caple’s recent report recounts the example of Yungdrug, a 25-year old artist apprehended without charge for painting portraits of the Dalai Lama. Yungdrug suffered torture while detained for 58 days at the Gutsa detention centre. Upon release, he was discovered in a public toilet in a severe state of shock.⁵⁴ Recent research conducted by the International Committee of Lawyers for Tibet suggests that, despite their age, children suffer similar treatment.⁵⁵ One interviewee, for example, a 12-year-old girl who was detained at a local police station for carrying a friend’s religious writings to her home town of Lhokga, described being beaten with sticks and shocked with cattle prods during interrogation.⁵⁶

Tibetans also suffer torture while serving sentences in China’s prisons and “reform through labor” camps. Routine forms of torture in prison include hard labor, the forced extraction of blood,⁵⁷ inadequate and unhygienic food and water, and “forced exertion.” According to TIN, “forced exertion” has now been systematically imposed at Drapchi and Trisam, where many Tibetan political prisoners serve their sentences:⁵⁸

[V]irtually all political prisoners except the very old or infirm must participate. In two daily shifts of three hours each, PAP [People’s Armed Police] personnel conduct what they refer to as “training.” Prisoners, usually in a weakened and unhealthy state, are overtaxed by the martial regimen. Collapse is reportedly common and an attempt by one prisoner to aid another will lead to a beating.⁵⁹

These forms of torture apply generally to all detainees. But prison personnel at times single out Tibetan monks and nuns for forms of psychological torture designed to humiliate and degrade them on the basis of their religious beliefs. Some, for example, described being forced to carry human feces on their backs over a *thanka* (a sacred Tibetan religious painting).⁶⁰ And nuns, in particular, suffer rape and sexual abuse intended to cause severe psychological trauma.⁶¹

Tibetans who express political dissent in prison — for example, support for the Dalai Lama, demands for independence and improved human rights, or the recital of Tibetan nationalist slogans — also suffer torture and abuse. “Without any known exception, punishment for prison protest has included sustained or repeated beating, electric shocks and solitary confinement.”⁶² This is particularly troubling in view of the recent rise in prison demonstrations, particularly in Drapchi.⁶³ This escalation of protests, in turn, is largely attributable to “prisoners’ feelings of frustration, anger and resentment as prison authorities step up attempts to compel them to abandon and denounce the beliefs which motivated them to carry out the protests which earned them imprisonment in the first place.”⁶⁴ China’s suppression of the Tibetan people’s right to self-determination — here manifest in its avowed policy of “reforming” Tibetan political prisoners — thus directly motivates the protests to which security and military personnel respond systematically with acts that violate the Torture Convention.

D. Torture Is Increasingly Leading To Deaths Of Tibetan Prisoners

Reports since 1996 have also documented a disturbing rise in the number of Tibetans who have died as a result of torture inflicted on them while in detention.⁶⁵ Based solely upon data that evinces a direct link between abuses in detention and subsequent death, TIN found that 32 political detainees died from maltreatment since September 1997.⁶⁶

Jampel Thinley, a monk detained for plastering “counter-revolutionary” posters on a monastery, died four hours after his release. By his own account, he suffered nine days of torture during which time he received neither food nor water.⁶⁷ Yeshe Samten, who served a two year “reeducation through labor” sentence for his alleged role in the 1996 upheavals at Ganden monastery, suffered beatings both at Trisam and, prior to sentencing, at the Gutsa PSB (Public Security Bureau) Detention Centre. “By the end of his sentence, he was unable to walk without crutches and he died six days after his release.”⁶⁸

On May 1, 1998, after Tibetan prisoners at Drapchi received word that a European Union delegation would visit shortly, prisoners demonstrated and shouted slogans in support of an independent Tibet and the Dalai Lama. Those who participated suffered beatings. After some took part in a subsequent protest on May 4, they were subjected to severe torture that caused the death of at least five nuns and three monks.⁶⁹ (This incident, brought to the attention of the EU delegation by TIN after its visit, led U.N. High Commissioner for Human Rights Mary Robinson to decline a visit to Drapchi prison during her September 1998 visit due to her concern about the potential repercussions for prisoners.⁷⁰)

TIN estimates that 1 of every 20 female and 1 of every 40 male detainees in Drapchi will not survive the consequences of imprisonment. At least ten prisoners died at Drapchi during 1998.⁷¹ These figures, moreover, are likely underinclusive, since standard practice is to release or hospitalize tortured prisoners who appear close to death in an effort to insulate prison authorities from blame.⁷² “When a political prisoner dies,” Caple notes, “the official line usually taken is that the individual committed suicide or that they had a serious medical condition unrelated to prison conditions. . . . There is also evidence of the coercion of family members to certify that death was caused by suicide.”⁷³

Inquiries about deaths in custody have yielded either denial of the prisoners’ existence or of their death.⁷⁴ Tashi Tsing, for example, who was arrested after an aborted attempt to raise the Tibetan national flag at Potala Square during the Minority Games held in Lhasa on August 26, 1999, had his head smashed into ground, causing severe injuries to his skull. After his death at a police hospital was documented in early October, Xu Mingyang, executive vice-chairman of the TAR, claimed that Tashi Tsing “is still alive and has confessed all his criminal activities, showing a willingness to correct himself.”⁷⁵ But, to date, China has provided no evidence that Tashi Tsing remains alive or of his present condition. We request that the Committee ask China to provide evidence of his present condition.

E. The Absence Of An Independent Judiciary And Due Process Safeguards Contribute To Torture Against Tibetans

The absence of an independent judiciary and China's failure to protect Tibetans' legal rights to a fair process contribute significantly to the continuing pervasiveness of torture in Tibet. The Committee emphasized in 1996 that administrative detention often leads to violations of the Torture Convention because the vast majority of acts of torture worldwide occur during this period.⁷⁶ China's Third Periodic Report asserts that the revised Criminal Procedure Law of 1997 provides for “[a]bolition of the system of detention for interrogation.”⁷⁷ This claim, if verified, would indeed reflect significant progress. But it appears that China's previous criminal procedure, which permitted administrative “shelter and investigation,” has merely been replaced by a new form of “judicial” administrative detention.⁷⁸ Under the amended Criminal Procedure Law, suspects still may be detained for 44 days before formal arrest.⁷⁹ In practice, this period is often extended. Extensions are authorized legally for “major and complicated cases,” as well as for cases “involving a broad spectrum of crimes for which evidence is difficult to obtain.”⁸⁰

With respect to the independence of the judiciary, the letter of the law diverges substantially from documented practice. For example, China details several recent steps towards improving the education and training of the judiciary. It now publishes and distributes to judges a pamphlet detailing the “13 banned practices,” including the extortion of confessions by torture. It has also “initiated a nationwide campaign of education and rectification . . . with a view to establishing a team of judicial personnel who are fair, decent, professionally competent and strictly disciplined”⁸¹ The U.S. State Department noted, however, that most judges in Tibet still have “little or no legal training.”⁸² Judges generally must be nominated by the Chinese Communist Party (CCP), which then supervises their work and is empowered to intervene in “sensitive cases, especially those of a political nature. . . .”⁸³ Similarly, while China claims that open trials are institutionalized in Tibet,⁸⁴ in fact, court appearances, if any, are brief and, particularly for suspects accused of crimes against “state security,” held in closed proceedings.⁸⁵ In 41 percent of 1600 cases that TIN analyzed, Tibetan political prisoners received no legal process (i.e., neither “administrative” nor “judicial”) at all.⁸⁶ The stipulated right of appeal is likewise purely nominal. “No Tibetan is yet known to have mounted a successful defence against any politically nuanced charge, nor is an appeal against conviction known to have been successful.”⁸⁷

III. CONCLUSION AND RECOMMENDATIONS

Torture remains a widespread and systematic instrument of Chinese political repression in Tibet. Due to the overwhelming number of Tibetan refugees arriving in Nepal and India who have been victims of torture (and continue to suffer its traumatic psychological and physical effects), TGIE in 1995 established a Torture Victim's Rehabilitation Centre in Dharamsala, under the supervision of the TGIE Department of Health. The Centre provides medical and psychological treatment and social support for victims of torture. It also trains health personnel in the exile settlements on how to care for torture victims. The Centre will remain at the Committee's disposal to provide further information on Tibetan torture victims.

The “special environment that exists in Tibet,” in particular its status as a *de facto* colony of China and the ongoing denial of the Tibetan people's right to self-determination, creates conditions that place Tibetans at grave risk of torture. TGIE therefore urges the Committee to

scrutinize China's compliance with the Torture Convention with particular attention to Tibet and submits the following recommendations for its consideration in order to end the use of torture in Tibet:

- China should withdraw its reservation to article 20 of the Torture Convention and permit the Committee to investigate the widespread allegations of torture in Tibet, including, should this Committee deem it necessary, by a visit to Tibet;
- China should amend its laws to incorporate explicitly the Convention's definition of torture and clearly ban all forms of torture, for any reason, notwithstanding any other provision of Chinese law.
- China should establish strict and clear rules and procedures for the investigation and prosecution of the crime of torture to ensure that all persons who commit torture are prosecuted and punished.
- China should permit outside assistance in training its police, prison, and security officials, as well as for enhancing the legal training and sensitivity of the judiciary;
- China should recognize this Committee's competence, under articles 21 and 22, to receive communications from other states party and individuals alleging violations of the Torture Convention;
- China should allow independent human rights monitors access to Chinese prisons and detention centers in Tibet, where they can speak privately with detainees to ascertain the conditions and report on the incidence of torture;
- China should promote the independence of the judiciary by delinking nomination and oversight of judges from the political control of the Chinese Communist Party;
- China should amend its criminal procedure law to ensure that all suspects, particularly those accused of "political" crimes, receive prompt and competent legal representation from the moment of their apprehension;
- China should abolish administrative detention without charge, regardless of evidentiary difficulties or the "complex" nature of certain cases;
- China should abolish the administrative punishment of "reeducation through labor," which permits officials to sentence people to labor camps for up to three years without the possibility of judicial review;
- China should provide detailed information on the use of the death penalty in Tibet, separated from general statistics on the use of the death penalty in China.
- China should contribute funds to the United Nations Voluntary Fund for Torture Victims.

- China should publicize the Convention in Tibet through various education programs.
- China should publish the Committee's Concluding Observations in Tibet in both the Tibetan and Chinese languages.
- China should enter into direct negotiations without preconditions with His Holiness the Dalai Lama and the Tibetan Government in Exile to reach an amicable and peaceful solution to the Tibetan question and to protect and promote the rights of the Tibetan people.⁸⁸

We also request that the Committee consider undertaking the following initiatives within the United Nations system:

- In light of the unique situation of Tibet and the credible allegations of violations in all areas of human rights protections, the Committee should consider requesting the reporting bodies established under treaties to which China is a State Party to organize a special task force on Tibet.
- The Committee should consider requesting the reporting bodies of Conventions ratified by China to join it in seeking an advisory opinion of the International Court of Justice regarding the legal status of Tibet in the context of their mandates.
- The Committee should invite the Special Rapporteur on Torture to participate in the Committee's deliberations on China's Third Periodic Report.

Notes

12/17/01

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, *entered into force*, June 26, 1997, G.A. Res. 39/46 (Annex), U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985).

² *Concluding Observations of the Committee Against Torture*, Sept. 9, 1996, paras. 138-50, U.N. Doc. A/51/44 (1996) [hereafter 1996 *Concluding Observations*].

³ China's revisions to its 1979 Criminal Procedure Law and Criminal Code entered into force on, respectively, January 1, 1997 and October 1, 1997. *See TIBET INFORMATION NETWORK, HOSTILE ELEMENTS: A STUDY OF POLITICAL IMPRISONMENT IN TIBET: 1987-1998*, at 6 (1999) [hereafter TIN];

⁴ China's revised Criminal Procedure Law substitutes the crimes of "endangering state security," "subversion," and "attempts to overthrow the state" for the prior crime of "counter-revolutionary" activity. But in practice, "the underlying content of the law has remained intact and there is little evidence to suggest that the move is anything more than an attempt to bring criminal definition in line with international norms." *Id.* at 6 (1999) Most pertinent to Tibet are articles 102 to 106, which redefine and expand the scope of crimes against the security of the state, the new practical equivalent of "counter-revolutionary" crimes. *See id.* at 7. China forbids formal inquiry into the charges brought against political prisoners, but of the 114 Tibetans about whom TIN managed to obtain legal documentation, 83 were charged with "counter-revolutionary" crimes. *See id.* at 40. *See generally HUMAN RIGHTS IN CHINA & HUMAN RIGHTS WATCH/ASIA, CHINA: WHOSE SECURITY? "STATE SECURITY" IN CHINA'S NEW CRIMINAL CODE* (1997). Article 103 of the new Criminal Code is devoted expressly to crimes of "splittism," a provision "clearly aimed at pro-independence movements and activists in restive ethnic minority regions such as Tibet, Xinjiang and Inner Mongolia." *Id.* at 17.

⁵ TIN at 8.

⁶ *See generally INTERNATIONAL COMMITTEE OF LAWYERS FOR TIBET, TIBET'S SOVEREIGNTY AND THE TIBETAN PEOPLE'S RIGHT TO SELF DETERMINATION* (1998); INTERNATIONAL COMMISSION OF JURISTS, TIBET: HUMAN RIGHTS AND THE RULE OF LAW (1997) [hereafter ICJ]; WARREN SMITH, TIBETAN NATION (1996); Dawa Norbu, *Selldetermination in the Post-Soviet Era: A Case Study of Tibet*, 34, 3 J. Int'l Stud. 237 (1997). *See also Tibet: The Position in International Law*, Report of the Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet, London, Jan. 6-10, 1993 (McCorquodale, et al., eds. 1994), at 147.

⁷ *See IAN BROWNIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 78 (5th ed. 1998) (affirming that "illegal occupation cannot of itself terminate statehood").

⁸ *See International Covenant on Economic, Social, and Cultural Rights*, Dec. 16, 1966, *entered into force*, Jan. 3, 1976, 993 U.N.T.S. 3, art. 1(1); *International Covenant on Civil and Political Rights*, Dec. 16, 1966, *entered into force*, Mar. 23, 1976, 993 U.N.T.S. 171, art 1(1).

⁹ See, e.g., G.A. Res. 1732 (XVI) of 20 December 1961: “The General Assembly . . . solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental rights and freedoms, including their right to self-determination.” We note that the most recent General Assembly resolution (Resolution 2079 (XX) of 1965) “affirms” resolution 1732.

¹⁰ Torture Convention, art. 1(1).

¹¹ See *id.*, art. 4

¹² 1996 *Concluding Observations*, para. 149(a).

¹³ *Third Periodic Report of the People’s Republic of China on Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Sept. 19, 1999, U.N. Doc. CAT/C/39/Add.2 (future), paras. 59-64 [hereafter *Third Periodic Report*]

¹⁴ The revised criminal law, according to the China’s submission, introduces a new provision that bars “the use of torture against witnesses to extract testimony.” *Third Periodic Report*, para. 14(a). But this does not alter the narrow legislative definition of torture in China’s Criminal Code, which continues to define torture only in terms of acts used to elicit information; the Torture Convention’s definition contemplates a considerably broader variety of purposes for which the use of torture is proscribed.

¹⁵ Criminal Law of the People’s Republic of China, Adopted by the Second Session of the Fifth National People’s Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People’s Congress on March 14, 1997, art. 247 [hereafter 1997 Criminal Code].

¹⁶ ICJ at 244.

¹⁷ See Jane Caple, *Torture in Tibet*, in TIN, Vol. 9, No. 1(a) (June 1999), at 6.

¹⁸ See HUMAN RIGHTS IN CHINA, WORDS WITHOUT SUBSTANCE: THE IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE IN THE PEOPLE’S REPUBLIC OF CHINA 8 (1996) [hereafter HRIC].

¹⁹ TIN at 84.

²⁰ HRIC at 9; see also Caple at 2. (“Placing prisoners in solitary confinement for extensive periods of time is a very common practice and there are reports of cases where this has resulted in a deterioration of mental health and damage to eyesight.”).

²¹ TIN at 84.

²² Interview with Mr. Kalsang Phuntsok, Director of the TGIE’s Torture Victim’s Rehabilitation Centre in Dharamsala, December 1999.

²³ *Id.*

²⁴ *Id.*

²⁵ *Third Periodic Report*, para. 63.

²⁶ Torture Convention, art. 4(1)-(2).

²⁷ Torture Convention, art. 12.

²⁸ See, e.g., *Third Periodic Report*, paras. 14(b)-(d).

²⁹ *Id.*, para. 47.

³⁰ HRIC at 9, citing *Rules on Standards for Filing for Investigation Cases Directly Handled by the People’s Procuratorate Involving Violations of Citizens Democratic Rights, Personal Rights or Dereliction of Duty* (1990). See also ICJ at 245 (noting that “[m]embers of quasi-governmental bodies involved in torture practices fall outside the purview of these rules”).

³¹ ICJ at 254.

³² 1996 *Concluding Observations*, para. 143.

³³ See Tibet Bureau, News Update, U.N. Committee Scrutinizes China, May 20, 1996, at 2.

³⁴ See *id.*

³⁵ See *Third Periodic Report*, paras. 37-40.

³⁶ See, e.g., *Report of Mr. Rodley, U.N. Special Rapporteur for Torture and Other Cruel, Inhuman or Degrading Treatment or punishment*, U.N. Doc. E/CN.4/1996/35/Add. 1, at paras. 102-27.

³⁷ China denies that political prisoners exist in China. But as TIN’s recent study indicates, this official contention “rests largely on the assertion that the Criminal Code does not use the term ‘political crime.’”

³⁸ PHYSICIANS FOR HUMAN RIGHTS, STRIKING HARD: TORTURE IN TIBET 12 (1997) [hereafter PHR]; see also TIN at 82 (“Most political detainees experience, at the least, an initial beating.”).

³⁹ *Id.*

⁴⁰ TIN at 13.

⁴¹ *Summary Record of the 251st Meeting: China.* 05/06/96, U.N. Doc. CAT/C/SR.251 (1996), para. 12 [hereafter *Summary Record*, May 6, 1996].

⁴² See PHR at 13; *see also* TIN at 82.

⁴³ *Id.*

⁴⁴ See, e.g., TIBETAN CENTRE FOR HUMAN RIGHTS & DEMOCRACY, TALES OF TERROR: TORTURE IN TIBET 6-7 (1999) [hereafter TCHRD];

⁴⁵ See TCHRD at 14-17; *see also* PHR, Table 3, Characteristics of Torture Survivors Interviewed (cataloguing the forms of torture and abuse to which Tibetan victims reported being subjected).

⁴⁶ See TCHRD at 2.

⁴⁷ See *id.*; *see also* Caple at 3 (“Torture is routinely used in Tibet as a method to extort confessions and to gain information.”).

⁴⁸ Caple at 3; *see also* TCHRD at 2.

⁴⁹ See TCHRD at 2. Judicial personnel may impose life imprisonment as well as the death penalty, whereas “an administrative tribunal can impose a sentence of up to three years (extendible for a year) of ‘re-education through labour,’ known as ‘laojiao.’” *Id.*

⁵⁰ ICJ at 248.

⁵¹ See TCHRD at 2.

⁵² TIN at 82.

⁵³ ICJ at 247.

⁵⁴ See Caple at 3.

⁵⁵ See also ICJ at 252 (noting that “[m]inors detained in prisons and detention facilities in Tibet are not exempt from torture”).

⁵⁶ ICLT interview, Oct. 31, 1999 (anonymous).

⁵⁷ See TCHRD at 6; PHR at 13.

⁵⁸ See TIN at 83; *see also* U.S. Department of State, *China Country Report on Human Rights Practices for 1999* (Feb. 2000) (recounting that the warden of Drapchi informed a delegation of religious leaders in February 1998 that 90 per cent of the monks and nuns detained were incarcerated for “crimes against national security”).

⁵⁹ TIN at 84.

⁶⁰ See TCHRD AT 6.

⁶¹ See INTERNATIONAL COMMITTEE OF LAWYERS FOR TIBET, VIOLENCE AND DISCRIMINATION AGAINST TIBETAN WOMEN 9 (1998).

⁶² TIN at 84.

⁶³ See generally TIN at 78-82 (surveying the causes and effects of at least five protests and demonstrations that have occurred in Tibetan prisons since 1996); *see also* U.S. Department of State, *China Country Report on Human Rights Practices for 1999* (Feb. 2000) (noting credible reports that “political prisoners who resisted political reeducation imposed by prison authorities, particularly demands to denounce the Dalai Lama and accept Gyaltzen Norbu, the boy recognized by the [PRC] Government as the Panchen Lama, also were beaten”).

⁶⁴ *Id.* at 78.

⁶⁵ See, e.g., TIN at 3; TCHRD at 9-13.

⁶⁶ TIN at 12.

⁶⁷ See TCHRD at 9.

⁶⁸ TIN at 13.

⁶⁹ See Caple at 4.

⁷⁰ *Id.*

⁷¹ See TIN at 3. Repeated acts of physical and mental torture have also driven a number of Tibetan detainees to commit suicide. *See* TCHRD at 24.

⁷² See TCHRD at 9.

⁷³ Caple at 5.

⁷⁴ See *id.*

⁷⁵ See Tibetan Centre for Human Rights and Democracy, Press Statement, *Human Rights Group Demands China to Produce Tashi Tsering*, Oct. 26, 1999.

⁷⁶ *Summary Record*, May 6, 1996, para. 18 (Statement of Mr. Burns, Country Rapporteur).

⁷⁷ *Third Periodic Report*, para. 7(a).

⁷⁸ See TIN at 7.

⁷⁹ See Caple at 3; TIN at 7. This new 44-day “limit” on judicial detention without charge is “an extension from the ten days allowed under the 1979 Law and longer than the international norm.” *Id.*

⁸⁰ TIN at 7-8.

⁸¹ Third Period Report, para. 10.

⁸² U.S. Department of State, *China Country Report on Human Rights Practices for 1999* (Feb. 2000).

⁸³ HRIC at 5.

⁸⁴ Third Periodic Report, art. 10(d).

⁸⁵ See TIN at 51. While China’s Third Periodic Report mechanically details the new provisions that allegedly ensure greater access to legal counsel, *see* paras. 70-80, no reports indicate that these stipulated “rights” have been implemented; indeed, because the right to legal counsel only attaches upon formal “arrest” (and, in practice, rarely can be exercised even then), political prisoners frequently suffer months of informal “investigation” by PSB and PAP security without visits by either lawyers or family members. See TIN at 50; *see also* U.S. Department of State, *China Country Report on Human Rights Practices for 1999* (Feb. 2000) (noting that “[l]egal safeguards for ethnic Tibetans detained or imprisoned are the same as those in the rest of China and are inadequate in design and implementation”).

⁸⁶ See TIN AT 51.

⁸⁷ *Id.* at 8.

⁸⁸ Regarding negotiations, our government would like to inform the Committee of the following statement of United Nations High Commissioner for Human Rights Mary Robinson, made at her press conference 15 September 1998 in Beijing: “It would be very important before the end of this millennium if the Dalai Lama would have a meeting with the president of modern China.”