

२००१ सन्धः हैया कुया र्सेन हा निष्ठ । स्वर्धः विष्ठ । सन्धः कुष्ठ । सन्धः कुष्ठ । सन्धः कुष्ठ । सन्धः कुष्ठः विष्ठः । सन्धः कुष्ठः । सन्धः । सन्धः । सन्धः कुष्ठः । सन्धः । सन्धः । सन्धः । सन्धः । सन्ध

联合国特别调查员就2005年中国使用酷刑和虐待的报告中有关西藏的摘录 UN SPECIAL RAPPORTEUR ON TORTURE'S 2005 CHINA MISSION REPORT: EXCERPTS ON TIBET

A report by the International Campaign for Tibet Washington, DC | Amsterdam | Berlin | Brussels www.savetibet.org

## **Excerpts on Tibet from the UN Report on Torture in China, 2006**

## The International Campaign for Tibet

www.savetibet.org



Tibetan translation by Tibetan Centre for Human Rights and Democracy <a href="https://www.tchrd.org">www.tchrd.org</a>

**Created August 2006** 

क्र्यमाम्नरमः ५३ त। वर्मे.य.श्रुठ.मृतःघर.सेष.क्र्यमा

## अष्ट्राच्यान्यात्र्यः के न्यान्यात्र्यः के न्यान्यात्र्यः के न्यान्यात्र्यः के न्यान्यात्र्यः के न्यान्यात्र्य

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## कु'द्रमाद्रद्रमा प्रदेश व्येत् माद्रसा स्रुवा हे म्रसा है पर हिन्दा है पर

## र्नेब क्षेट्र

स्रोर्-मिर्बे,जम्भु। मिर्बेर्-एव्रेजःम्लूयं,प्रंक्ष्मभःत्रांचम व्रिष्मम्ह्रीःन्। क्षेम्-स्त्मिःलेज। रेत्र-स्मभःजम्मुम् स्तुः, व्रिष्मभःज्ञेन्नम् व्रिष्मम्ह्रीः व्रिष्मभःज्ञेन्नम् व्रिष्मम्ह्रीः व्रिष्मभःज्ञेन्नम् व्रिष्मम् वर्षम् वर्षम्

चन्न सङ्ख्यान्ता। वहेन मञ्चा प्राया के विद्यापा के प्राया के का के स्वाया के के स्वाया के के स्वया के स

चिष्ठाक्ष स्वारम् स्व

स्रवसार्वेट क्रियो क्रिया क्र

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द्या देश्य त्यंत्रात्या केश्य प्राप्त क्ष्य स्वार्थ प्राप्त क्ष्य क्ष्य क्ष्य क्ष्य क्ष्य क्ष्य क्ष्य क्ष्य क्ष स्वा क्ष्य क ત્તુ. શ્રામ્ય ત્રાપ્તુ કૃષ્ઠું કૃષ્ઠુ ત્રાપ્તુ ત્રાપ્તુ કૃષ્ઠ ત્રા કૃષ્ઠ ત્રા કૃષ્ઠ ત્રા કૃષ્ઠ ત્રા કૃષ્ઠ ત્રા કૃષ્ઠ કૃષ્ઠ ત્રા કૃષ્ઠ ત્રા કૃષ્ઠ કૃષ્ઠ ત્રા કૃષ્ઠ કૃષ્ઠ ત્રા કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ ત્રા કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ્ઠ કૃષ

## 至到

- चकर छुं ज़ेर लेंग कुं कुं का हुं चा हो ता कुं चा कुं चा हुं चा चा हुं र चकर र चकर छुं ज़ेर लेंग हुं चा हुं चा चा हुं र चकर र चकर छुं ज़ेर लेंग हुं चा हुं चा हुं चा चा हुं र चकर र चकर छुं ज़ेर लेंग हुं हुं र लेंग हुं र चा हुं चा हुं र चा
- त्र ने स्थितः अर्मेष्ठ न्दर्भावात्त्र स्थान्त्र स्थान्य स्थान्त्र स्थान्य स्थान्त्र स्थान्य स्थान्त्र स्थान्त्र स्थान्त्र स्थान्त्र स्थान्त्र स्थान्त्र स्य
- भ्रास्त्रियः प्रकरं प्रकरं प्रकरं (Jinan in Shandong) इत्र 'तृर अ' त्या कुं हे 'तृत्र 'तृत् 'तृ
- ६ रेडिट यः श्लु प्रत्वामा मान्य र श्लिपमा (Shen Guofang) इन मु स्वराप्त हिम्मा विस्त्र केन मानिन प्राप्त हि श्लिप (Fan

Fanping) सूत्र। सूत्र स्वरः हुँ स्वरः स्व

- त्त्रच्या महिष्यत्व स्त्रच्या प्रेस्त्रच्या प्रति स्त्रच्या स्त्र
- त्रभाष्ट्

त अहआ ह्वेया कुया केंग्राणी अह र गार्डि र हिंगा र भेग्राय राय अहु र हुं या र भारत स्था हुं या र भारत हु या र भारत हुं या र भारत हु

## (१) इस्मार्द्रबाषुसम्बद्धाः स्वयम् भी मान्य देवा हो दाना पाय प्राप्त

- क्टर् अर्चेच राकी र वर्षेट्ट राज्य वर्ष्ट्च राज्य का स्ट्रा वर्ष्ट्च राज्य का स्ट्रा वर्ष्ट्च राज्य का स्ट्रा व के स्वा र त्री र त्री
- यह मिश्रःश्चीता मिश्रः स्विता स्व यह मिश्रः श्चीता मिश्रा स्विता स्वता स्विता स्वता स्विता स्वता स्विता स्वता स्विता स्वता स्विता स्वता स्वता

पत्र-विषयः क्ष्यां स्वायाः विषयः प्रति । श्रीयाः प्रति विषयः विषय

## (१) विसमाद्रमञ्जूषायह्रमभागुः क्रेसिमाबी

## **ঞ্চিত্ৰ:মুক্তমাৰ্থ ম**ুসা

अत्रअः श्चेताकुवार्क्षेतामण्णे वर्षे प्रश्लेव श्चेतामण्डि स्वाप्त स्व

#### কুঅ'দেন'গ্ৰী'শাৰ্ম'ইমা

#### वर्षे पश्चेति वे प्रमाद्य प्रमादि स्वाधिक विकास विकास

## अब र मर्डेन में में र्नेब रूट अब र मर्डेन यगम वर्गेमः

- हेश, मिश्रभः बटः शब्दः वाकूटं स्टा, ट्रांत्व्य क्री. क्रिंतः श्रुषः वाकूटं स्वान्त्र वाक्ष्यः व्याप्तः वाक्षयः व्याप्तः वाक्षयः विवान्त्र विवान्त्र वाक्षयः विवान्त्र वाक्षयः विवान्त्र वाक्षयः विवान्त्र विवान्त्र वाक्षयः विवान्त्र वाक्षयः विवान्त्र वाक्षयः विवान्त्र विवान्त्य
- लबा प्रक्षेत्र हो दे ह्यूशार्त क्यूर हुं दे त्या त्रा क्षेत्र ही दे त्या प्रक्षेत्र हो दे ह्यूशार्त क्यूर हुं दे त्या प्रक्षेत्र हो दे त्या क्षेत्र हे त्या क्षेत्र हो त्या क्षेत्र हो त्या क्षेत्र क्षेत्र क्षेत्र क्षेत्र क्षेत्र क्षेत्र क्षेत्र क्षेत्र हो त्या क्षेत्र हो क्षेत्र क्ष

२४८.८ग्रयश्चित्रश्चेर.त्रसूर्यकात्वर्ष्चेर.लूर्।

बया.ध्रेश.ह्य.व्यत्त्रप्त्राची व्यवस्त्रसूर्या ध्रेश.क्षेत्रप्त्रम् विष्यः विषयः विषयः

## अन्य गुर्केन प्रताने वित्र शुः सुवा अधुन्य अधुन्य प्रवित्र अधिन प्रवित्र अधिन प्रवित्र प्रवित

- १२ अष्रः मुर्चेट् 'यम्'यद्भरः मुःहि हिस्रक्षः कर् मुर्नेट 'यम्'य्यम्'यन् दिस्यक्षः विद्यक्षः मुर्ने 'यद्भरः मुर्नेट 'यम्'यद्भरः मुःहिर 'यम्'यद्भरः 'यम्'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भरः 'यम्'यद्भ
- च्चित्र क्षेत्र विकास क्षेत्र विकास क्षेत्र क्षेत्र विकास क्षेत्र क्ष

## यहैंब यत्तुर ५८ ५ प्रभु र ग्रीन ग्रीन ग्रीन ग्रीन ग्रीन प्रभु र ५८ प्रमेश प्रवेश श्रु र छ।

२० अष्ट्राचीर्च्यात्र्वेत् स्वीयात्र्यामा वर्षेना महायेषा श्यां हिया १९९५ विष्ट्राचेत्र (Criminal Procedure Law) देश देव महुन्यश्चिरा द्विश्वश्चाद्वा क्षुर दिव मावह स्पेद्राया द्वा के स्था १९९५ विष्ट्रा मावह विष्या प्रश्नित के स्वी मावह देवा विषय दिव विषय के स्वीयाद्वि के स्वीयाद्वि के स्वीया महायेषा स्वीया के स्व

#### **ই**'বৃষষ্ট্ৰ'বৃহান্ত্ৰবা

ची.त्यु.चोष्याः क्ष्याः त्यूर्यः त्यूर्यः त्यूर्यः चीयः चीयः त्यूर्यः चीयः वित्युः चीयः चित्युः चीयः चित्युः चित्रयः वित्युः चित्ययः वित्युः चित्ययः वित्युः चित्ययः वित्युः चित्ययः चि

# वहेंब चत्रुट हो द देंगेंब यदि कुं अळंब वेशयद्दा वर्गाग इत्र स्मवश्रेंच दुर चिवे केंव वर्ग

त्त्रभा क्षिण्यत्रे क्षेत्र क्षेत्र क्ष्याय विष्णा क्षेत्र क्ष्याय क्षेत्र क्ष्या क्षेत्र क्ष

## व्रिअष ग्री कें स्वयं से स्वयं प्रमुन्ग्य।

- त्म् त्रियान्ति (Criminal Procedure Law) क्रेश विष्यमा क्षेत्र प्रत्या क्षेत्र प्रत्या क्षेत्र प्रत्या क्षेत्र क्षेत्
- १० कु'र्षम्'मि'स्'विस्रस्'स्रिन्य'स्ट्रिय्य'स्ट्रिय्य'स्ट्रियंत्र्य'स्ट्रियंत्र्यंत्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्र्यंत्यंत्र्यंत्यंत्र्यंत्यंत्र्यंत्र्यंत्यंत्र्यंत्र्यंत्र्यंत्र्यंत्य

Procedure Law) केश विश्वसायक्षी स्वापाल प्राप्त का स्वापाल का

<u>ढ़ज़ॴॹढ़ॖज़ॺॱॻॖॱक़ॕॴॱय़ढ़ॱक़ॕॴॱॺक़ॺॱज़ॺॱॸऺॺॕऻ॔ॺॱय़ढ़ॱॾॗ॓ॸॱऻ</u>ॿॖॎ॓ॺॺॱॾॕॸॱय़ॱॸॸॱढ़॓ॺॱॼॺॱॺऻढ़ॺॱॻॖऀॺॱॾॗऀॱॻॸ॓ॱख़ॗॺॱॺॎॸॱख़ॱ यद्विमाग्री प्रमाप्त ५८१ वेषाण्यि रुवाकी से स्वाया विस्तराई राया विस्तराई राया र देश रुवाकी से स्वाया स्वाया महिना साम स्वाया स्वाया ८८. विभवातीचारा १८८१ प्राप्त १८८४ प्राप्त १८ શુદ'ર્સુવ'નદ'યેનશ'રેનુ'આવન'લેઅઅર્સેન્'ય'ક્અઅ'ય'રેઅએન્'રેઅ'યનવ'રેક્'યું'એન્'ય'ર્સેનઅ'યું'નન્સ્યસ્થ્ય'યા'રેક્સ્પેન્ (Criminal Law) वेश विस्तर देव स्वतः १०० वट विस्तर देन प्रमान्य प्रमान क्षेत्र प् य। दयर हगरा के प्राप्त ॱवी'यर्स्डेंब'यर्नुवा'वी'क्षेश'ळन्'र्सेवा'क्षेब'र्सेन्'यंदे'वाबस्थ'र्ख्नुवा'द्येन्नि' स्पर'र्नेब'र्ळब्' १४४ यदे'ब्रम'व्रिसस'र्वेवा'र्ग्चेन्'विय'वन्नन्'वे। चुर्याच्चरात्र विस्रयादम्यात्रेनाधिकालेयायदे नाम दिस्राद्धिताधिकाले विस्रयाद्धिताय स्तर्याच्या विस्रयाद्धिताय विस्रयाद्धित विस्रय विस्रयाद्धित विस्रयाद्धित विस्रय विस्रयाद्धित विस्रयाद्धित विस्रयाद्धित विस्रयाद्धित विस्रय विस्रयाद्धित विस्रय विस्रय विस्रय विस्यय विस्रय विस्रय विस्रय विस्रय विस्रय विस्रय विस्यय विष्यय विष्यय विष्यय विष्यय विष्यय विष्यय विष्यय विषय विष्यय विषय विषय विषय व कर. त्रुच. क्रैय. क्षेत्र. कष्टे ଶୂମ: পৃষ্ণ অষ্ট রাম 'ব্রুম 'ব'র্ম' (१९९६ Criminal Procedure Law) वेष 'विषय । वेष 'विषय । वेष 'वेष 'वेष 'वेष 'व क्षेत्रः मृतः वात्राच्यः अत् । येत्राक्षेत्रः क्षेत्रः क्षेत्रः वात्रः वात्रः वात्रः वात्रः वात्रः वात्रः वात्र सर्वि सामित्र त्रिः क्षेत्र सामित्र क्षेत्र स्वाया देवार देवार देवार देवार हिस्सा स्वाया निस्सा स्वाया देवार स

#### প্লব'ন্ধ্ৰন'ন্দা প্লৱ'বইৰ'গ্ৰী'ৰ্ঘিন'ন্দন্

४० कुःष्ठमामिः स्वित्रस्य प्रस्ति । यर्द्धस्य प्रति प्रवित्य महित्य प्रति । यर्द्धस्य प्रस्ति । यर्द्धस्य प्रस् पर्द्धस्य प्रम्भ पर्द्धस्य प्रस्ति । यर्द्धस्य प्रति प्रवित्य महित्य प्रति । यर्द्धस्य प्रस्ति । यर्द्धस्य प्रस् इतः स्वर् प्रति । वर्द्धस्य प्रस्ति । यर्द्धस्य प्रति प्रवित्य प्रस्ति । यर्द्धस्य । यर्द्धस्य प्रस्ति । यर्द्धस्य प्रस्ति । यर्द्धस्य प्रस्ति । यर्द्धस्य । यर्द्वस्य । यर्द्धस्य । यर्द्वस्य । यर्द्

**এই শার্ক্- এই শার্ক- এই** শার্ক এই বার্ক্- এর এই বার্ক্- এর এই শার্ক- এই শারক- এই শার্ক- এই শারক- এই শ

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# हेसय केन यति व नु यग्या हर नु स सुद्रा

- यान्त्रमार्थाक्षरायक्षरात्त्र। क्ष्यायक्षरात्त्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्त्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्थात्रमार्यात्रमार्थात्रमार्थात्रमार्यात्रमार्यात्रमार्यात्रमार्यात्रमार्थात्रमार्थात्रमार्यात्रम्यात्रम्यात्रमारम्यात्रम्यात्रमार्यात्रम्यात्रम्यात्रम्यात्रम्यात्रम्या
- ३० हेश्रायां १ की प्रमाणि १ प्राण्या प्रमाणि १ प्राण्या प्रमाणि १ प्राण्यां १ प्रमाणि १ प्रमाणि

## हेशयाकेदयमयाम्य हम्द्रश्युद्धा

- ५२ कु'द्रवाची'क्वे'यदे'द्रदा' वियद्वेंद्रायदा विष्ठप्रायदा विष्ठप्रायदाय विष्ठप्रायदा विष्ठप्र

# ८०१ई वर्षे प्रथम ४४ पश्च ४ पर्गे ५ छे ५ पा

टवार्क्रवाची वसाम्बर्धा प्रमुद्दे । सुदेशम्बर्धा वसम्बर्धा वह मार्जी देशमारी क्षेत्र । दे सुदेश दवार्क्क वायसाम বন্ধ্ৰু ম'ফার্শির'ব্রমেন্ট্রথ'বরি প্রা'বন্ধর' শ্রী স্ক'শ্রি মমানি কা' শুম ম' মুম বা ( ৭০০০ Legislation Law) ৭০০০ শ্রি মমা क्रूचोमा.कुषे.रेटा। श्रेचमा.यचेरा.केवा.लूटमा.मारायवीमा.मुय.कुचोमा.कुषे.की.कैषा.वामा.कुमा.मुमा.मुमा.मुमा.मुचा.मु नवर र्रेब तका र्रेन हो। टका र्रेज की तका वका तक्षुर पर्मित घर तर्रे व र्रेनेट में क्षेन विकास क्रिट क्रनाय तकार वाय तका ये। (१९४२ ॱ⋧८.तीबाश.ता.ह..धूता.डी२.शावथ। जूबा.श्री२.सूबा.ावबा.२८.उ.स्वा.ततु.शाबाशूर.।तिबा.श्री४.२८.। चक्थ.बालाशा उ.सूबा.तकुश.ता. र्मुचीमात्रपु विभयात्रचीतात्री तमात्रपास्त्रपास्त्रेमायाः स्विदास्त्रचीमायात्री अदिन्तु मीत्रदिव चार्त्यात्रास्त्रमायाः स्विमायाद्री ৡয়৻৴৻ড়ৼ৻ড়ঀয়৻ঀ৾য়ৄঀ৾৻য়৾ঢ়য়৸ঀয়৻৴ৼ৻৸৾৻য়ঀ৾ঀ৾৾৽ৼৣ৴৻৴৻৾য়ৢ৾য়ৣঀ৸৻ঢ়ৣ৾৽য়ৢঀ৸য়ৣ৾ঢ়৻য়ৼ৻য়ৼ৻য়য়৻৸য়৸৻৸য়৻৸য়৻৸য়৻৸য়য়৻৸য়য়৻৸ क्टियाञ्चेनाःश्चियायायक्टेरभेदान्तित्रमावत् हनाद्रुःक्वेनाष्ट्राःमेद्रासम्बा पर्वे यस्य क्वेन्ययस्य निस्यानित्रमानितः स्वा क्वेयान्य दियान्य पर्वे स्वयः स् १९ मार्थ वित्रः क्षेत्रं मार्थ मार्थ मार्थ वित्रः मिर्ट केर्य मार्थ मार् ढ़॓ॴॱय़ॱख़ॖढ़ॱॻऄॱॺॖॱॺॕॱढ़ॕॴॱढ़ॾॕॺॱॻॖऀॴॱऄ॔ऻ॒<u>ॸॴॱॾॕ</u>ॴॻॖऀॱॴॴड़ॺॱॾॣॕॸॱॻऻॗड़ॖॿॱॻॖॱॻऄॱॸॖॴॶॿॱॸ॓ॱॴढ़ॱऄ॔ॱॿॵॴॱॱॿॱॿऀॱॻॸॱ त्येयायत्याम्याक्त्र्याम् अस्यास्याङ्क्त्यास्य मानुका स्वताम्यास्य स्वताम्य वित्याः वित्यास्य स्वताम्य स्वताम्य ळ्य.त.प्रथा.वी.श.सॅथ.सॅंच.तपु.टज.क्र्.ज.सूंच.यावेय.संय.विय.वीय.वीय.वीय.तप्र.चीयात्र.चीयात्र .वीयात्र.वीयायाया यदे :ळंब :पंदे :द्र्येंब :देवब :विवा :वीब :घवा वार्केंद :द्र्रेंद :र्स्केंव साम :चर्च :प्या साम :वीब :यहें वा साम :वीब :यहेंव :वी :यहेंव :यहेंव :वी :यहेंव :यहेंव :वी :यहेंव :यहेंव :यहेंव :यहेंव :वी :यहेंव :य

# ক্রমাধ্র শূরী ক্রমাঞ্চমা

- त्राक्षा प्रमान क्ष्या क्ष्या
- अप (Working Group on Arbitrary Detention) निर्चुर याना क्रिस्त्रें के स्वार्थ क्ष्य क्ष्य

## *बु ण्रुण्य ५८ हे ग्यावेग*

यद्यः विषयः देवः स्रोत्यः त्य्येतः स्त्रीट्रः विविद्याः स्त्रः स्वयः विषयः विषयः प्रेष्टः त्य्यः विषयः प्रेष्टः विषयः स्वयः विषयः व

# अन्य गर्रेन ग्री प्यस्य न्यान माने स्वाप्त प्रमाणिक प्रमा

(Criminal Procedure Law) वेश र्ने न पति न पति कर प প্রখ र्भे दब्प प्राप्त क्षेत्र सुरा दब्ध प्राप्त प्राप्त का के किया प्राप्त का कार्य प्राप्त का प्राप्त का कार्य प्राप्त का कार्य का का कार्य का का कार्य का का कार्य का का कार्य का का कार्य का कार का कार्य Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) अन्र'न् र्रे'त्र्वेन'कु'' प्रे'प्रवेन कु'' प्राप्त <sup>\*</sup>क्षेरॱहेॱसेर्'य। से'र्क्केर्'यस्य प्रत्यायदे सब्र रामुकेर्'यर्मेन्यये रसाधिनाबर्'। सब्र रामुकेर ग्री प्यसाबसायकेया पङ्गानुसायदे । Procedure Law) वेश विस्रमारको त्युनमान्तर सन् र निर्देश के प्राथम सम्प्रमान के प्राथम सम्प्रमान सम्प्रमान सम्प विभगः हुरं की सेत्रालवा तर्र प्रविराश्चा क्रिया प्रवित्य विभाग त्रात्ति क्षेत्र क्षेत्र क्षेत्र क्षेत्र क्षेत्र 'ঈর' (Criminal Procedure Law) ঈ্প'ব্লিম্ম্প'শ্রী'র্দ্বর্কের'ট্র'ব্রন্'থ'বেল্ব'থল্'বন্ধুম'ন্নর্'শ্রী'ন্নল্'ল্ইর্'ঙ্ক্র্ম' ज्ञेब इसस्य मुंदि निवाद मुंदि मुंदि इस निवाद सम्मित स्था स्था मुंदि निवाद मुंदि । स्था मुंदि मुंदि मुंदि मुंदि मुंदि । स्था मुंदि मुंदि मुंदि । स्था मुंदि मुंदि । स्था मुंदि 'हेर्र महर्र रिवेचर्या मुर्यापति' (Criminal Procedure Law) हेर्या द्विस्ययमा पङ्गर क्वी क्वी मान्विते वा उसे समिति स्थापति । व्रिस्नमः ब्रियः । स्वरं मार्केन् प्रता यहेन् वास्तुत्वा यञ्च व्यापात्रमा ने प्रविदायना सम्बन्धः स्वरं स्वरं स ૽ૣૢૼૺૹઌઌૐૼઌઌૣૻૡૢ<u>ૻ</u>ઌૢૹઌઌ૽૽ૹઌઌ૽ૢ૾૽ૼઌૹઌ૽૽ૢૺ૽ૼઌૹઌ૽૽૽૽ૺઌૻઽઌ૽૽ઽૢ૽ૢ૾૽ૺઌ૽ૼૺઌ૽૽ૼઌઌ૽૱ઽ૮૽ૺઌ૽૽ૢૼ૱૾ૢૢૼ૱ૡ૽ૼઌૹઌઌ૽૽ૹૢ૽ૺઌ૽૽ૼઌ૽ૹઌઌૢ \_ નયદ : ह નામ 'ग्રी : क्रें न 'वें : इसमा सना 'हे म 'श्रीं के 'यह नाम 'ग्री 'नाबि : इस 'नाहिनाम 'श्री 'श्री ' 'यदि 'नाब न 'हें के 'यि 'यह न 'हें 'वें 'यस ' चि.शु.रेट.य.चेमवत.शुर.वा कुम.मह्यु.शु.रेभटमासिभम.खेय.विट.व्य.सुंचा.चेख.सभम.सिभम.तीचमन.की.सुंचा.वर्द्चमम.मास्येम वहें क क्रिंट में क्रिमावह नामा हार विषय है र क्रिंट में क्रिमावह नामा है र क्रिंट में क्रिमावह नामा है र क्रिंट में क्रि

#### শূর শৃষ্ণবা

- भर कु'क्ना'क्क' विस्रम' कु'क्नि' र्वेन् । ५० पति क्र मुक्कि प्रमाण क्रिक्ष क्र १० पति क्र मुक्कि प्रमाण क्रिक्ष क्र १० पति क्र मुक्कि प्रमाण क्रिक्ष क्र मिन क्
- न्तर र्वेष, यो त्राप्त (Law on State Compensation) कुष्य वित्र ग्री हैं स्वाप्त निव्य क्षित्र प्राप्त क्षित्र क्षित्र

## (१) अव्यान्त्रिं गुणिव्यान्त्र्रा

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- चिद्दा हुंच अक्ट्र्य क्रि.संट्र.तव्यंतायह्ं ट्यायर सूरी क्रि.संट्र अक्ट्र्य क्रि.संट्र.व्यंतायहं च्यंत्र क्रि.संट्र क्र
- त्त्रें र स्ति।

  विकार क्षेत्र क्षेत्
- ५१ मन्स्राम्सया देवुःस्रमानीसास्तर मर्डेन्दिनायविः क्रीचित्रस्यसानी । वानस्यामस्या

ঽঀৣয়ঀ৽ৼৼ৾য় য়য়ৼ৽ঀ৾৾ঌৼ৾য়ঀ৽য়

মন্ শ শ কৈন্ শেলা মাদানা	বক্ট্ৰ'ক্টা
सृ'युत्र'गु ८'तृ स्रम्भ'येत्र'या	હહ
<u> </u>	11
वित्राः हे र ने व्यवस्था	<b>ጎ</b>
র্মির-ইন্মা	હ
वर्ते, य श्रुंद, ह्यें य. श्रुं य.	ų
<b>&amp;</b> प'श्चेर'ग्री'क्ष'प'श्चे'अश्चुब'अविब्	3
শ্ৰুৰ। (AID/HIV ৰ্ব্'ম'ব্দ'। ঠিম'ৰ্ট্টুল্ম'শ্ৰী'ঠিল্ম'মী।)	3

## 

# हिंशी) विश्वी विश्व

## ५५ वान्सावासयाची नेतु स्थान ने भारत र वार्केन वार्केन स्वापन ने वास्य स्वीता

# देवु:श्रेगःगसुस्रःय। सन्दःगर्हेदःगर्हेदःस्रावन्।

য়ঀ৴৽ঀ৾৾ঽ৾৾৾৻৽ঀ৾ঢ়৾৾৻৽য়ঢ়ঀ	বঞ্চী.ঞ
क्रेमहेन्यप्राप्ता अप्रस्थानीयने प्रह्मासप्ति सेन्सा	( থ
दयार्डे वाची वारा विश्व प्राप्त के प्राप्त के कार्ट वा प्राप्त के कार्ट वा प्राप्त के कार्ट वा प्राप्त के कार्ट	ব্য
वर्सेन विर में वर्सेन सुर वा	<b>ያ</b> Ϡ
শ্রিমশ: শ্রন্ মানত দুর্নীন নিশানা ক্ষম দ্বান্দ্র শুবা শ্রন্থ	عا

र्श्चेष्ट्रायदे 'श्चेष्ठ 'विट 'वी 'यथा हो ५ 'य।	۵۶
वर्डेंब्रावट द्रावमाना ७ र विट की दें दियाय इसमा की मानु विद्या की का की दिया है का परि वर्डेंब्र के निवास	પ

स्रिक्षद्व त्रभ सूर्य हुं की सूर्य त्रभ्भ विरा स्रिक्षद्व त्रभ सूर्य दे की सूर्य त्रभ स्थिता स्रिक्षद्व त्रभ सूर्य हुं की सूर्य त्रभ स्थिता स्रिक्ष्य त्रम कुं स्वर्य के अर्थ दे दे वे त्रम सूर्य त्रभ स्था स्था सूर्य हुं स्वर्य त्रभ कुं स्वर्य त्रभ कुं

#### अब्र मर्चे प्रमाना पर्वेचि वीश्व प्रमान पर्वे की

तह्ब विश्वास्त्रिं स्वास्त्र स्वास्त् स्वास्त्र स्वास्त

- त्त्र निक्षा क्ष्या त्रात्त्र त्या विष्ण त्रात्त्र विष्ण क्ष्या क्ष्या क्ष्या क्ष्या क्ष्या क्ष्या क्ष्या क्षया क्ष्या क्
- ક્ષ્રિયાન્ને સ્ત્રાપ્ત સ્વરાસ્ત સ્વરાસ્ત સ્વરાસ સ્થાપના તાલે કે ત્રાપ્ત સામાના સુધાના સુધા સુધાના સુધાના સુધાના સુધાના સુધાના સુધાના સુધાના સુધાના સુધાના સ
- ६८ अष्ट्राचित्राची विश्व प्रति स्था कि स्था क

पत्रस्त्राचित् । द्वित्वत्त्रक्ष्याच्या क्षेत्रावयाय प्रेस्त्राव्यक्ष्या क्षेत्राव्यक्ष्या क्षेत्र क्षे

- ढ़ॖॺऻॱक़ॖॖॖॖॖऺऺ॒ऽॡ॔ॺऻॺॱय़ऀॺज़ॣॖॖॖऺऻ ढ़ॖॺऻॹॖऺॖॖॖऺॖऺॖॖॖॖॖ॑ढ़ॖॖॺॱढ़ॻॣॕढ़ॖॖॖॖ॑ज़य़॓ॱढ़ॖॺॱढ़ॖॖ॔ॺऻज़ॺॱॿॎऀॸॺऻॺॺऻॱऄऀॱढ़ॖॎॺॺॱय़ॖऀॱॿऺॺॺॱख़ऀॻय़ऄॗ॓॓ढ़ॺॻऄॖॗ॓॓ढ़ॖॺॻऄॖॖ॓॓ॷॺॻऄॖ ढ़ॖॎॺॺख़ॖऺॖॖॖ॑ॻक़ॖॖऀॱढ़ॖॖॺॱढ़ॻॣॕढ़ॖज़ॺग़ज़ऀॺऻॺॱॾऺॺॺॱख़ऀज़ॱॺॿऀॺॱॻऻॸॱज़ॖॺऻॺॱॻॾॖॖ॔ॱॿऀऻॹॺॱज़ऀॺऻॺॱज़ॺऻॻॾ॑ॸॱॿऻॺॸॱख़ऻॿॺॱॿ॓ॹॗॎॸॱऺॖॎऄॖ ढ़ॖॿॺॹढ़ॖॖऻॻक़ॖऀॱढ़ॖॖॺॱढ़ॻॣॕढ़ॖज़ॺग़ज़ऀॺऻॺॱॾऺॺॺॱख़ऀज़ॱॺॿऀॺॱॻऀॸॱज़ॖॺऻॺॱॻॾॖॖ॔ॱऀॹॿॺॱज़ऀॿऻॺॱज़ॺऻॱढ़॓ॱॺऻॿॺॱॷॺॱढ़ॖॖॖॖऺॻॱज़ ढ़ॖॿॺॹढ़ॖऻॻक़ॖऀॱढ़ॖऀॺॱढ़ॻॣॕढ़ॖॱज़ॺग़ज़ऀॺऻॺॱॾऺॺॴख़ऀढ़ॴॺऻॎऄऀॱढ़ॖॖॎॺॴढ़ॖॕढ़ॖ ढ़ॖॿॺॹढ़ॖऻॻक़ॖऀॱढ़ॖॿ॔ॺज़ढ़ॖॕॖढ़ॖॖॖॖ॔ॱज़ॴॹढ़ढ़ज़ॴज़ॿढ़ढ़ज़ॺऻॻऄ॔ॱढ़ॖॖॺॴढ़ढ़ॖढ़ज़ॴज़ॾढ़ॸॿऻढ़ॖढ़ज़ॴज़ढ़ॹढ़ॿॴढ़ढ़ॿ ढ़ॿॻॱक़ॖॖढ़ढ़ॿऻॹॱय़ऀॴॹढ़ज़ॗऻॹढ़ढ़ढ़
- त्तुः क्रुंचः क्रुंच नबरः सूर्।

  त्रुं क्रुंचः क्रुंच नबरः सूर्।

  त्रुं क्रुंचः क्रुंच नबरः सूर्।

  त्रुं क्रुंचः क्रुंच निष्णः त्रुंचः क्रुंचः निष्णः क्रुंच क्रुंचः क्

## अबर मर्डेन प्रमाना वर्गेना वयन पर्डेन कु सुराया

- ट्र्मूश्रम्थ्यः अवभ्यम्भूष्यः प्रत्यः क्षः व्यक्षः व्यवक्षः विवक्षः विवक्ष

- त्त च्राक्षेत्रःश्चः इस्रकाला विस्रका क्रूटी तातुः स्वर्धे के अप्तान्त्र क्ष्ये स्वर्धे त्र स्वर्धे के स्वर्धि के स्वर्धे स्वर्धे के स्वर्धे के स्वर्धे के स्वर्धे के स्वर्धे के स्वर्धे क
- लूर्जि स्वारास्त्रीत्वच्छं स्वाराङ्क्ष्यक्षे स्वाराङ्क्ष्यका स्वाराङ्क्ष्यक्षे स्वाराङ्क्ष्यक्ष्यक्षे स्वाराङ्क्ष्यक्ष्यक्षे स्वाराङ्क्ष्यक्ष्यक्षे स्वाराङ्क्ष्यक्ष्यक्षे स्वाराङ्क्ष्यक्षे स्वाराङ्क्षे स्वाराङ्क्ष्यक्षे स्वाराङ्क्षे स्वराङ्क्षे स्वराङ्वे स्वराङ्क्षे स्वराङ्क्यः स्वराङ्क्षे स्वराङ्क्षे स्वराङ्क्षे स्वराङ्क्षे स्वराङ्क्षे स्
- पक्ष्यात्त स्थात्रात्तात्र स्थात्तात्त्र स्थात्तात्त्र स्थात्त्र स्थात्र स्थात्त्र स्थात्र स्थात्त्र स्थात्र स्थात्त्र स्थात्र स्थात्त्र स्थात्र स्थात्त्र स्थात्य स्थात्त्र स्थात्र स्थात्त्र स्थात्य स्थात्त्र स्थात्त्र स्थात्त्र स्थात्य स्थात्य

इत्रयांत्रिमास्य प्राप्त स्वर्यास्य प्राप्त स्वर्यास्य प्राप्त स्वर्यास्य स्

- चित्र त्यंत्रमार्त्य प्रस्ति हुंत त्यात्र त्ये स्वा अव र मार्के र त्ये नियम स्व प्रस्ति मान्य प्रस्ति मान्य प्रस्ति मान्य प्रम्य प्रस्ति मान्य प्रस्ति मान्
- ५० ५ होन्यायस्य सुर् क्रियायस्य सुर क्रियायस्य (Optional Protocol to Convention against Torture) स्वरः प्रियायस्य सुर क्रियायस्य सुर क्रियायस्य स्वरः स्वरः स्वरं स

# (१) कवः श्रेनः देनः देनः वीषः रहः द्वहः वर्षेनः यद्वेनः यद्वेनः यद्वेनः वर्षः वेदः वेदः युक्तः वर्षेतः वर्षेत्रः वर्षेतः वर्षे

चित्राह्म क्रिक् के प्राप्ति । बि. प्रप्ते त्या स्वत्र स्वतः क्षेत्र क्षेत्र हित्र क्षेत्र क्

- ह्मिट हुं निश्ची व्रवायमा अर ही ने हो हो स्वाय का मोहर हिंदि निश्च के स्वय का मोहर के स्वय का माहर के स्वय का मोहर के स्वय का माहर के स्वय का
- चहिर-क्रि-र-श्रेमशत्मवीक्षमा श्रेशःकर-श्र्मश्मश्मीः विश्वस्य स्थानिक्ष्यः स्थानिक्ष्यः स्थानिक्षः स्थानिक्षेत्रः स्थानिक्षः स्
- ત્તુ વેશત્તાન્ટન ત્રામાની શતદના માં ક્રિયાની સ્થાન સ્

ह्मनायार्ट्युर्यार्थित् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम् विश्वनाम विश्वनम विश्वनम विश्वनम

७५ - इस्रेन्ययान्त्र्यान्त्र्यान्त्र्यान्त्र्यान्त्र्यान्त्र्ययान्त्र्यान्त्रयान्त्र्यान्त्रयान्त्यान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्यान्त्यान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्रयान्त्यान्त्रयान्त्रयान्त्यान्य

शुर्र्यूट्ट त्यं में भारते त्यं से किया क्षेत्रां त्यं के भाव वा स्वा से ट्रायं त्यं से ट्रायं से से त्यं के स्व क्षेत्रां वा से से त्यं के त्यं के से त्यं के त्यं के से त्यं के त्यं के से त्यं त्यं के से त्य

ૡૢૺૄ૾ૺઌ૽૱૽૾ૢ૾ૺૼૺૺૺૺ૾૾ૺૹૹૢ૽ૺૺૺ૾૱ૡ૾૱ૺઌૡૼૡૹ૽૽૱ઌૢ૽૱ઌૹૢ૽૱ૹૢઌ૱ઌ૱ૹ૾ૺ૱ૹૢઌ૱ૢ૱૱૱૱૱ ઌૢ૽ૺૡઌ૱૽૽ૺૺૺૺૺૺૺૺૺૺઌઌ૱ઌ૱ઌૡ૽ઌૹ૽૽ૺઌૹઌ૱ઌ૽૽ૺઌૹઌૹ૽૽ૺઌ૽૽ઌઌ૱ઌ૱૽૽ૺઌૢઌ૱ઌ૱૽ૺઌ૽ૺઌૢઌ૽૽૽૽ૺઌ૽૽ૺઌ૽ૺ૱૽૽ૢૺૼૺૺૺૺૺૺૺૺૺૺઌૺૡ૽ઌઌ૽ૺઌ૽ૺઌ

# (५) र्रेन्स्यायगानान्त्रराष्ट्रीःनाद्यसःस्रद्रश

# 

- क्र्यामान्त्रीट, क्रींतु, मुं, स्रींता, बेंसालूटी पर्ट्स्य, ता स्थान्त्रपत्ता मुं, स्थान्त्र, मिं, त्याचात, मैं ट. त्यां, त्यां, मिं, त्यां, त

#### *ষ্ট্রবাইবাইম'*ক্ড'ব্ন'ব্নর্থার্থ'ব্রারম'র্ক্তুথা

यात्रप्रदेशक्ष्यः द्वास्त्रप्री मुर्जि विवास्येष्यः प्रदेश क्षेत्रप्रेष्यः कष्यः क्षेत्रप्रेष्यः कष्यः विवादेषेत्रप्रेष्यः कष्यः कष्यः कष्यः विवादेषेत्रप्रेष्यः वि

- ૹદ્ સ્વર્સ્યા સુવાસૂના છે મારવર દ્વારા કુર્યા સુર્યા સુર્ય સુર્યા સુર્ય સુર્યા સુર્યા સુર્ય સુર્ય સુર્યા સુર્યા સુર્યા સુર્યા સુર્યા સુર્યા સુર્યા સુર્યા સ
- বৰ্ণাৰ স্থান স্থান প্ৰতিষ্ঠান ক্ৰম ক্ৰিম ক্ৰম ক্ৰিম ক

#### (७) अह्नापर्वेअअर्द्राञ्चित्रहेत्रावन

### মহ্বা'নই্মশা

 चर्याचा क्षेत्र विचान के त्रा क्षेत्र क्षेत्र

- ष्टिंज.टे. शब्द र. चोकूटे. जची. चर्डंच र. झेंच जालुच कुट्ट जटेंच चतु. चब्द म्बर्च अ. क्ष्यंज्ञ मुच्च प्राप्त कुच्च प्राप्त मुच्च मुच्च प्राप्त मुच्च प्राप्त मुच्च मुच

- ताः केताः हुँतुः विश्वभातीयभाक्षेत्रः त्रह् थः तज्ञेटः क्री. ह्यां त्राक्ष्यः क्षेत्रः त्राक्षः त्राप्ता के स्वाह्यः व्याप्ता के स्वाह्यः क्ष्यः क्षेत्रः त्राप्ता के स्वाह्यः क्ष्यः क्ष्यः क्षेत्रः क्ष्यः क्षयः क्ष्यः क्षयः क्षय

- ख्याद्या व्यवस्ति स्थान्य स्थान्त्र स्थान्य स्थान्त्र स
- न्म्यायान्ता चर्र्ष्वायाय्ववास्त्राक्ष्वाक्ष्वात्वेवात्वेवात्वेवात्वेवात्वेवात्वेव्यव्यात्वेवात्वेवात्वेवात्वे चर्चात्राप्तात्ता चर्र्ष्वायाय्वेवात्वव्यत्वव्यत्वव्यत्वव्यत्वव्यत्वव्यत्वव्यत्वव्वव्यत्वव्
- षाह्मस्या त्यूं.च.श्रुत्,चीच.श्रुंट्,ची.ह्मच.बट.ज.चक्ष.त्र्यूच.विश्व.स्थ्रीच,विश्व.स्थ्रीच,विश्व.स्थ्रीच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्राच,विश्व.स्थ्याच,विश्व.स्थ्राच,विश्व.स्थ्यच,विश्व.स्थ्यच,वि
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## अवरःमर्छिरःहेनाबःबियः दरा नातुनाबःमानेरा

- स्वरः मुर्चेन् प्रत्यास्त्रेम् क्षेत्राः स्विनः स्वरं प्रत्याः प्रस्तरः प्रत्याः स्वरः मुक्तः स्वरः स्वरः मुक्तः स्वरः स्वरः

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- वया.धेश.२४.मी.प्रिंशश.तीयोश.झैया.योध.ट्र्य.ऋथ. ३०० थट.योशता.या.युथ.प्रिंशश.क्ट्री.ता.क्षश.मी.धेश.२४.मी.धेश.४४.मी.घश.४४.मी.घश.

## र्स्याः ह्युट रचगाना त्यूचा मी स्वयश्यश्य मानमा

- अः द्रस्य स्रम्य द्राप्त क्षेत्र द्रियं देश्य विस्तर क्षेत्र क्ष
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#### র্ম্বিল'র্ন্টবা'ন্টম'ক্ড','ব্দের্ন্ত্র বাব্দির্বা

- श्रुंबा: व्रुंबा: व्रुंब

### **ক্তব**শ্বিবৃশ্বীজনাওীশনাইপ্রশাসীসেন্দ্রের্নির্মা

- चेर.कै.श्रष्ट्रशक्षकात्रांत्र्यंत्री विकायन.की.योक्षट.य.की.शुक्र.कु.ठचेशका) जा.सूर्यकाता.क्ष्य.खेर.कु.वचे.को.थेका.टे.ट्रश.ठहुब. (क्षेज.विय.की.यट्रे.ठह्यां विकायन.की.यंक्षट.य.की.विकायन.की.यंक्षट्य.चे.विवायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.यंक्ष्य.विकायकी.विकाय
- बु र्खे. १६६५ क्य. क्रूप. क्ष्म. व्रिम. व्याप. व्याप

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## सर्गःश्चिरा

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१ क्षुत्रविष्यर्द्धम्पदः प्रदर्भी (क्षुःवी १००५ विवे: त्वा ११ विवेस १५ हिम्सून प्रविदा)

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क्ष्मतातात्वर्यः दुर्ते दे क्ष्रितः १० वात्वर्यः दुर्ते कुष्या प्रत्यात्वर्यः दुर्वाः व वासामहिष्यायात्वरः स्थात्वर्यः क्ष्मात्वर्यः व वासामहिष्यायात्वरः

# वहिनासेन्यस्वावहिन्। (यदारे देवार्थे के)

त्यर इस अस्य हेर हेर स्वित पर्ट्र स्वयस हो राष्ट्र स्वयस प्रेर स्वास प्राप्त स्वया प्रमाण प्राप्त प्राप्त प्राप्त स्वया स्वया

श्चर्यार्थ्य स्ट्रियास्य प्रत्य त्रिया प्रत्य प्रत

<u> वि</u>ट.ची.लची.ता.चीकुची.झैंट.तापु.कैचल.जूची.टेट.चीकुची.झैट.तापु.चट.चटेट.झै.लची.चीकुष.ला.लची.झैचेषा.कैचका.चुटाी लची.टट.चीकुषा. त्रमार्स्रापर्यम्भात्रमार्खेनः १,५० पथमानूनी विटायर्थमामपुरायस्य भूमानुपुर्यस्य अपार्थमान्त्रमान्त्रमान्त्रमान <u> </u>दे.बेब.चें.तकुष्ट्री.विट.टें.झुं.भुँज.चेब.लूट.त.प्रटी चें.क्.तकुष्ट्री.विट.बेट.झूट.भैतब.वट.शुच.चेठ्य.बेट.शु.चेबीश.बेब.कं.तर् स्रथः रूट्टे प्रेट प्रेच्या प्राप्त चर्च्रुयं विट.र्झ.क्ष्यं यट मी.चर्च्रुयं पात्रस्थसाक्षयास्त्रीट पर्क्ष्यं पात्म स्थाने स्थाने प्राप्त का स्थान यहर र्षेन् छेर। यह्न प्रदेव अध्व क्रेन्ट्र। नर्षे श्रामि स्थिन के नर प्रेन् स्थान के नायान्य परित्र मान सम्भान र्ध्वे'मोशेट में में 'सेवश'लट अट रश्य त्येल्टी देव सेवश पश्चेर पिट येट में मोशे मोशेय पर सेव में युव प्रति में यसः र देन संदेश यो त त्वा स्थापे द्वा के ति । विष्य के ति । विषय के ति । विषय के ति । विषय के ति । विषय के ति ।  $\forall \mathsf{L}. \vec{\mathsf{L}} \mathsf{M}. \forall \mathsf{M}. \vec{\mathsf{H}} \mathsf{M}. \vec{\mathsf{L}} \mathsf{M$ ॱढ़ख़ऺ॔॔ॱऄॖऀॸ॔ॱॹॖऀॱऒऀॸऻ॓ऻॺ॓॔ॸऻऒॺॱॺॸॱॴढ़ॕॸॱऄॱक़ॕॴॱॹ॒ॸॱॺॿढ़ॱॿॖॸॱऒॱॺॊॱॿॆॺॱॺॺॸॹॢड़ॱक़ॕॴॱॿॊॱऒऀॸऻऻऻॺ॔ॸॱॺऻढ़ॱॺढ़ॸ॔ज़ॖॺॱख़ॕॸ॔ॱ सरके'य'यर्द्धेन'यदे'वर'भ्रेन'क्र''क्र्य'य'दर्ग वि'यर्देन'येदेन'के'केंक्नियर'यहेन'क्र'रुट'र्द्धेन'सूर'र्यदे'द्गाद'रया'युट'नी লূখ্নবিনা চুদ্ৰে, নাৰ্থদে অনাৰ্থা পৰা, প্ৰথাক্ত, নতু, নতু, নতু, নাইপৰা, কীৰ্ম, কীৰা, কুন, কীৰা, প্ৰধান কৰা, বি चिषायर मिल्रीयार में मिर याक्रवासे राजना है यावसन सार्य है या यह निष्ण में या पर्टें के पर्टें निष्ण में में म हें ग्रथ<sup>्</sup>विय हो न चेंदि न के ग्रथ प्रस्था सुरळ य हो स्थान स्वान प्रस्था हिन के प्रस्था सुर्थ के स्वान स्वान स्वान

## ষ্ট্রবর্ষ স্ক্রব্রের

चैतान्तराक्ष्यान्त्रियस्त्रे चेत्रात्त्र १८ क्ष्रियाचेत्र क्षेत्राचेत्र विद्यान्त्रे विद्यान्त्र स्थान्त्र विद्यान्त्र विद्यान्त्र स्थान्त्र विद्यान्त्र विद्यान्त्र स्थान्त्र विद्यान्त्र स्थान्त्र विद्यान्त्र स्थान्त्र विद्यान्त्र स्थान्त्र विद्यान्त्र स्थान्त्र स्

## यहेगासे ५ कु सर्वे

यहेना: के प्रकेट के प्रक के प्रकेट सवर है। तू. १९६० <sup>च</sup>. ११ क्र्य. ४५ ध्रेय.सं.म.सूर.उद्येर.द्यय.प्रम.श.सम्म.वरम.वर्षेत्रमा.वर्षेत्रमा. चर्चुन्नभः के खेवान्वरं की प्यते व्यह्ने न्नाय के नाय विकास के नाय के न क्वः ब्रेन् भी विचायमा अन्या अन्या के बाक्या का क्षा क्षा क्षा क्षा क्षा का क्षा का क्षा का क्षा का क्षा का कि षट बट ज्या मुक्त दि । बेरि बट स्वा हेत्र प्रता है व कि का स्वा के का स्वा कि का स्व कि का स वेब नु नु विषानु ह र्पेन के हा ने बार हे र्पे. १९७० व्या ६ दि बहा मुन्यवि पर्के बाय हु मान मुन्यवि पर्के वाय ह २००५ व्य. ४ ततुःरुषं प्रतः वीषाक्राक्त्रां सामकूवाः संक्रियः संस्थान्त्र स्थान्त्र स्थान्त्र स्थान्त्र स्थान्त ढ़ेशॱह्टॱचन्टॱचॱत्टा। हेदॱहेंन्यः १२वेंप्देंद्देद श्चेन्या हेया ह्टा हेन्या अळ्यया १८हेंन्य ह्या प्रेत्र १८ विट की हेया क्षा कि एक हा हैया है। ळद्'र्थे'निहेश'ग्री'यर 'ङ्केंब'द्यश'य'रेट्। विट'नीश'नाबश'ळ्य'नाशय'पहेंद'द्यश'शय'सूर'व। न्यु'पवि'पर्छेब'वट'नी'नाबश'सूटश'हे' ह्ये<u> र प्रमार क्र</u>म् वायर्केन विस्यायमा सम्पर्म स्वापन स्वर्म स्वित् ंभेग'इसस्यां क्वेंग'र्वेर'र्ट्ट'कुट'रेर्के.स्यां प्रतिन प् भ्रम्पर्थायर्सेन प्रमार हिन स्त्रीत कर्म । हिन प्रमार हिन किन नि प्रमार स्वाकेन स्वान स्व निवन्याक्षित्राच्याक्ष्याक्षेत्राचन्याक्ष्याच्याक्ष्याच्याक्ष्याच्याक्ष्याच्याक्ष्याच्याक्ष्याच्याक्ष्याच्याक्ष श्चेन मृतुर यार्विर क्चेन र्जेय र्थेर प्रवे ने सुयातुष प्रविद र्थेन।

# 经济及社会理事会

Distr. GENERAL E/CN.4/2006/6/Add.6 10 March 2006 CHINESE Original: ENGLISH E/CN.4/2006/6/Add.6

## 公民权利和政治权利,包括酷刑和拘留问题

# 酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题 特别报告员曼弗雷德·诺瓦克的报告

对中国的访问\*

## 内容提要

应中国政府邀请,酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别报告员于2005年11月20日至12月2日访问了中国。特别报告员感谢中国政府在他访问期间与他充分合作。本报告对中国的酷刑或虐待状况的法律和实际问题进行了研究。

特别报告员的结论是基于对法律框架、个人来文和来源广泛的书面信息和交谈的透彻分析,其中包括政府官员、非政府组织、律师、受害者和证人,以及对羁押场所的现场视察。因此,他建议该国政府采取各种措施,以履行其防止和制止酷刑行为和其他形式虐待的承诺。

尽管酷刑在减少,特别是在城市地区,但特报告员相信,酷刑在中国仍然普遍存在。他欢迎该国政府愿意承认刑事司法制度中普遍存在酷刑,近年来,在中央和省一级作出了各种努力,反对酷刑和虐待。特别报告员认为,由于这些措施,近年来酷刑做法稳步减少。

中国持续的酷刑做法有许多成因。这些因素包括促使审讯员刑讯逼供的证据规则,刑事犯罪嫌疑人在没有司法控制的情况下被警察羁押的时间过长,缺乏一种基于无罪推定的法律文化(包括缺乏有效的保持沉默的权利),和被告律师权利和手段受到限制。缺乏自我生成和/或自我维持的社会和政治机构加重了这种情况:缺乏自由和好查究的新闻界,以公民为基础的独立的人权监督组织,访问羁押场所的独立委员会,以及独立、公正和可诉诸的法院和检察院。

羁押场所的基本条件看来总体令人满意,但在同被羁押者交谈时,特别报告员对 监狱纪律之严格、恐惧和自我约束程度之明显印象深刻。

在政治罪和"劳动教养"的行政拘留制度方面,刑事司法制度及该制度十分注重使人认罪、获取口供和教育改造,这一点特别令人不安。以剥夺自由作为对和平行使言论、结社和宗教自由的制裁,加上通过强制、羞辱和惩罚的改造措施,以求被羁押者认罪和改变个性,直至摧毁其意志,这是一种不人道或有辱人格的待遇或处罚,与基于人权文化的任何民主社会的核心价值不相容。

附件

#### 特别报告员曼弗雷德·诺瓦克的报告对中国的访问

(2005年11月20日至12月2日)

#### 缩略语

CAT《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》

CDP 中国民主党

CL《刑法》

CPL《刑事诉讼法》

ICCPR 《公民权利和政治权利国际公约》

MPS 公安部

NPC 全国人民代表大会

OPCAT 《禁止酷刑公约任择议定书》

PSB 公安局

RTL 劳动教养

SPC 最高人民法院

SPP 最高人民检察院

TAR 西藏自治区

TOR 职权范围

XUAR 新疆维吾尔自治区

#### 무 言

- 1. 应中国政府的邀请,酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别报告员曼弗雷德·诺瓦克于2005年11月20日至12月2日对中国进行了访问。对中国的访问在特别报告员首次提出访问要求,近十年之后成行,访问地点包括北京;西藏自治区拉萨;新疆维吾尔自治区乌鲁木齐。在访问过程中,他考察了有关禁止酷刑和其他形式虐待的法律框架和政府行为。他还研究了政府对指称侵权事项的答复,特别是有关调查、有罪不罚和预防问题。特别报告员关于中国酷刑和虐待情况的结论以来源广泛的书面信息和交谈为基础,其中包括政府官员、非政府组织、律师、受害者本人和证人,以及对羁押场所的现场视察。
- 2. 访问的主要目的是评估有关酷刑和其他残忍、不人道或有人格的待遇或处罚的现况,促进各种预防机制,根除酷刑和虐待,并开始一个与该国政府合作的进程。
- 3. 原来还计划访问山东省济南和新疆维吾尔自治区伊宁,但由于时间有限,特别报告员不得不取消对上述地区的访问。特别报告员对此深表歉意,并感谢外交部和山东省及伊宁自治州有关领导体谅对行程最后一刻的变更。
- 4. 在北京,特别报告员会见了政府官员,包括外交部部长助理沈国放;司法部副部长范方平;公安部副部长孟宏伟;副检察长王振川。在拉萨和乌鲁木齐,特别报告员会见了西藏自治区副主席尼玛次仁,新疆维吾尔自治区副主席贾帕尔·阿比布拉和地方官员,包括外事办公室、人民法院、检察院、司法厅和公安厅的官员。
- 5. 在北京,特别报告员访问了北京市第二看守所,第二监狱(两次)和北京市女子 劳教所。在拉萨,他访问了拉萨监狱,西藏自治区监狱(也被称为"扎布奇"监狱),

和近期启用的曲水监狱。在乌鲁木齐,他访问了第一、第三和第四监狱,以及六道湾看守所。在这些场所,特别报告员会见了监狱管理人员,并私下与被监管人交谈。 6. 特别报告员还会见了民间社会知名人士,包括中华全国律师协会、北京律师协会、中国政法大学、人民大学、清华大学、北京大学、中国社会科学院和北京儿童法律研究中心。还会见了一些律师、人权维护者,学者、驻华使团和联合国驻华机构人员。

7. 本报告初稿曾于2006 年1 月3 日发给该国政府供其评论。2006 年1 月25 日,该国政府就初步报告提供了详细的评论,有关评论得到详细的研究和考虑。 8. 特别报告员对联合国驻地协调员K. Malik 先生;人权事务高级专员办事处; 以及鲁德维格 - 伯特斯曼人权研究院的N. Hughes 女士和E. McArthur 女士提供的支持表示感谢。

#### 一、事实调查的特定情况

- 9. 特别报告员谨此对中国政府、特别是外交部表现出的专业水平、合作精神和共同致力于访问团的目标深表赞赏。以沈永祥博士为首的外交部小组全程陪同特别报告员,出席正式会见和访问羁押场所。特别报告员盛赞外交部作出了极大的努力,确保访问尽可能顺利进行,其职权范围原则上得到尊重。与在押人员的所有会见均在特别报告员指定的地点私下进行。与任何特定个人的会见或交谈要求,以及对任何特定羁押场所的访问要求,从未遭到过拒绝。狱方工作人员普遍持合作态度,并帮助特别报告员会见其名单上的在押人员,甚至那些被转到他处的人员。
- 10. 但是,特别报告员不得不指出,安全和情报官员试图阻挠或限制其事实调查 努力,特别是在访问之初,特别报告员一行在北京的饭店及其附近被跟踪。而且,在 访问期间,若干据称受害者及其家庭成员、律师和人权维护者遭到保安人员恫吓、受 到警方监视、被嘱咐不得会见特别报告员、或被实际阻止与他见面。
- 11. 狱方官员以工作时间为由限制交谈,从而限制了访问的场所数目和交谈的在押人员人数。还阻止特别报告员及其工作人员将摄影和电子器具带入监狱。而且,(与其先前的国别访问不同),特别报告员无法从有关主管部门取得可由其自行访问羁押场所的授权函,而是由外交部官员陪同访问羁押场所,以确保出入不受限制。鉴于通常提前约一个小时通知有关主管部门,从严格意义上讲,访问不能被视为"未经通知"。尽管如此,在人权委员会特别程序过去访问中国所采用的方法基础上,有关做法已大有改进。
- 12. 在此情况下,并考虑到中国幅员辽阔,情况复杂,以及访问时间有限,特别报告员承认,就中国的酷刑和虐待情况得出一套完整的调查结果和结论受到各种局限。因此,他的结论还吸收了访问前进行的交谈,以及通过有关任务授权的个人来文程序及各种非政府来源和其他来源收到的资料。

#### 二、法律和组织框架

#### 国际一级

13. 中国是七项主要国际人权条约中五项条约的缔约国。其中下列公约明确禁止酷刑和虐待:《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》(《禁止酷刑公约》)和《儿童权利公约》。中国不承认禁止酷刑委员会根据《禁止酷刑公约》第22 条受理个人申诉的权限。而且,中国宣布,中国并不认为其受《禁止酷刑公约》第20 条和第30 条第1 款的约束。中国已签署并正准备批准《公民权利和政治权利国际公约》。

#### 国家一级

#### 关于人权的宪法修订

14. 2004 年3 月14 日,全国人民代表大会(全国人大)修订了《宪法》,增加了"国家尊重和保障人权"的规定,有史以来首次规定对人权实行宪法保护。特别报告员得知,在这一决定作出之后,为了与《宪法》新规定保持一致,全国人大常务委员会正在对《刑法》、《刑事诉讼法》和行政拘留的法律制度进行审议。 酷刑的定义和禁止酷刑

15. 尽管中国国内立法中没有关于酷刑的明确定义,但《刑法》的一些条款反映了《禁止酷刑公约》酷刑定义的基本内容,禁止:司法工作人员刑讯逼供(第二百四十七条);司法工作人员使用暴力逼取证人证言(第二百四十七条);监狱、拘留所、看守所等监管机构的监管人员对被监管人进行殴打或者体罚虐待以及指使被监管人殴打或者体罚虐待其他被监管人(第二百四十八条)。《刑法》还列出了与禁止酷刑和其他形式虐待有关的一些其他罪行。

16. 但是,中国的立法没有按照《禁止酷刑公约》第4条的要求,充分反映其第 1条所列酷刑定义的所有方面。修订的《刑法》第九十四条将"司法工作人员"界定为 "指有侦查、检察、审判、监管职责的工作人员",从而在是否可就这些罪行起诉临时雇用的或非司法部门推荐的协助刑侦工作的人员方面留下了不确定性。此外,最高人民检察院直接受理立案侦查所有酷刑案件,将《刑法》第二百四十七条的适用进一步限于:手段残忍、影响恶劣;致人自杀或者精神失常;造成冤、假、错案;3次以上或者对3人以上进行刑讯逼供;授意、指使、强迫他人刑讯逼供。在同一规定中,最高人民检察院将第二百四十八条之下的起诉限于:造成被监管人轻伤;致使被监管人自杀、精神失常或其他严重后果;对被监管人3人以上或3次以上实施殴打、体罚虐待;手段残忍、影响恶劣;或指使被监管人殴打、体罚虐待其他被监管人,具有上述情形之一的。

17. 《刑法》没有明确反映《禁止酷刑公约》第1条所界定的下列酷刑内容:精神上的酷刑,直接涉及公职人员或在其唆使、同意或默许下以官方身份行使职权的其他人;行为的实施是为了某种具体目的,如得到招供、获得情报、处罚、恫吓或歧视。

#### 将酷刑行为和其他形式虐待定为刑事罪

18.《刑法》第二百四十七条和第二百四十八条规定,酷刑行为为刑事犯罪。 补充《刑法》的其他规定 包括《人民警察使用警械和武器条例》最高人民法院也 颁布了《人民法院审判人员违法审判责任追究办法》和一套《人民法院审判纪律处分 办法》。《公安机关办理刑事案件程序规定》旨在保障正确实施《刑事诉讼 法》,其中载有许多对被羁押者的保障措施。

19. 但是,《公安机关人民警察执法过错责任追究规定》和其他条例中规定, "法律规定不明确或者有关司法解释不一致;因不能预见或无法抗拒的原因致使错误 发生;执行上级命令;按照办案协作规定协助办案的,不追究'过错'的责任,包括 刑讯逼供和暴力取证"。

#### 逮捕和候审羁押期间的保障

20. 《刑事诉讼法》于1996 年修订 , 以便除其他外强化反对酷刑的保障措施,该法得到1998年一份全面解释若干敏感和有争议问题的文件的补充。 拘留通知

21. 《刑事诉讼法》第六十四条和第七十一条规定,拘留或逮捕后,应当把被拘

留或逮捕的原因和羁押的处所,在二十四小时内通知被拘留人或被逮捕人的家属或者他的所在单位。但是,在有碍侦查或者无法通知的情形下,对这一保障可加以限制。 《公安机关办理刑事案件程序规定》第一百零八条也规定,在特定情况下,可暂不予通知。

#### 有权被告知逮捕的理由和羁押期间的应有权利

22. 《公安机关办理刑事案件程序规定》第三十六条规定,公安机关在对犯罪嫌 疑人依法进行第一次讯问后或者采取强制措施之日起,应当告知犯罪嫌疑人有权聘请 律师,并记录在案。

#### 获得法律代表

23.《刑事诉讼法》第九十六条规定,在第一次询问后,可以聘请律师,但却不能立即查阅公安案件档案。20律师在刑事案件中的作用也编入了《律师法》。《关于刑事诉讼法实施中若干问题的规定》第11条规定,律师提出会见犯罪嫌疑人的,应当在四十八小时内安排会见。但是,对于组织、领导、参加黑社会性质组织罪、组织、领导、参加恐怖活动组织罪或者走私犯罪、毒品犯罪、贪污贿赂犯罪等重大复杂的两人以上的共同犯罪案件,律师提出会见犯罪嫌疑人的,应当在五日内安排会见。

24. 尽管中国法律保障聘请律师,但这一保障实际上受到严重限制,特别是在涉及国家秘密的案件中,因为根据《刑事诉讼法》第九十六条,律师必须经过侦查机关批准。《刑事诉讼法》和其他法规都没有提供这一概念的明确定义。《保守国家秘密法》第八条第(六)款还规定,追查刑事犯罪中的所有细节均应作为"国家秘密"保守。《公安工作中国家秘密及其密级具体范围的规定》中也规定,正在侦察的刑事案件的具体情节均应被视为"国家秘密"。由于没有任何法律提供关于"国家秘密"的明确定义,特别报告员尤其关注在案件涉及国家安全或国家秘密时,由公安部门、监狱管理部门或检察院颁布的规章限制辩护权的情况,在此之前,任意拘留问题工作组在2004年的访问之后对此问题曾表示担心。

25.除了要获得许可的要求之外,律师和被告还面临由于公安部门和检察院颁布的规则和条例—进一步限制会见律师的权利—而引起的、或由个别刑侦人员—他们可以独立地阻碍律师会见委托人—而引起的另外一系列障碍。特别报告员与之交谈的一些辩护律师和著名的法律学者称,律师和被监管人之间的会见受到主管部门的密切监视,并常常有严格的时间限制,律师几乎不能从检方获得必要的资料,那些为其委托人辩护过于有力的律师可能被拘留并以各种罪名定罪。确实,根据《刑法》第三百零六条,律师可因毁灭、伪造证据,威胁、引诱证人改变证言或者作伪证,被处以七年以下有期徒刑。第三十八条补充了这一规定,将"干扰司法机关诉讼活动"定为罪行。这一所谓"达摩克利斯剑"可被用来刁难、恫吓和处罚律师。在这种情形下,例如,建议委托人推翻被迫招供的任何律师都可能被起诉。最后,证人很少出庭,一般由检方宣读其证言,从而剥夺了被告根据1996年修订的《刑事诉讼法》询问证人的机会。证据规则尚未发展完全,非法获得的证据在实际中常常被接纳。

#### 获得医疗检查和照料

26. 中国的法律以及监狱和羁押场所的规章相当全面地涵盖了被羁押者的医疗问题,但没有任何规定确定在押犯获得独立医疗检查的权利。

#### 获得人身保护的权利

27. 国内立法没有规定任何类似于人身保护制度的程序,也没有任何其他的法律 手段,供被羁押者用以在法院质疑关于候审羁押的决定。嫌疑人、被告、律师和亲属 最多可在发现其羁押超过时限之时要求释放嫌疑人或被告(《刑事诉讼法》第七十五 条)。

#### 未经起诉的羁押期限

- 28. 有三类候审拘押,和两类非拘押候审限制。
- 29. 候审拘押包括拘传——公安部门、检察院和法院用以强制嫌疑人接受询问的一种措施,时间最长为12 个小时。28 另一种候审拘押的形式为刑事拘留,第三种为逮捕。
- 30. 未经起诉或司法审查的其他候审限制的形式包括监视居住和取保候审。根据 《刑事诉讼法》第五十七条,被监视居住者,未经批准不得离开住处或指定居所,不 得会见他人。对《刑事诉讼法》的解释将监视居住的时限延长到三年。

#### 起诉后的侦察羁押期限

- 31. 根据《刑事诉讼法》,一旦检察院正式批捕,在侦查期间,嫌疑人最多共计可被羁押七个月,或在发现"新罪行"的特殊情况下,被无限期羁押。此外,在检察院要求进行补充调查的案件中,在逮捕后侦察羁押期结束之后至提出起诉书之前,嫌疑人另外共计可被羁押六个半月。
- 32. 中国告知特别报告员,公检法部门高度重视并采取有力措施在全国纠正并防止超期羁押问题。

#### 劳动教养

33. 劳动教养是行政拘留的一种。劳动教养制度目前没有法律依据;而有关规范框架由一些有违于2000 年《立法法》的行政规章拼凑而成,《立法法》规定,涉及剥夺中国公民自由的事项,只有全国人大及在某些情况下其常务委员会才可立法。1982 年的《劳动教养试行办法》第十条列出了六类不够刑事处分的轻微犯罪的人:反革命分子、反党反社会主义分子;结伙杀人、抢劫、强奸、放火等犯罪团伙中,不够刑事处分的;有流氓、卖淫、盗窃、诈骗等违法犯罪行为,不够刑事处分的;聚众斗殴、寻衅滋事、煽动闹事的;有工作岗位,长期拒绝劳动,破坏劳动纪律,而又不断无理取闹,扰乱生产秩序、工作秩序、教学科研秩序和生活秩序的;和教唆他人违法犯罪的。劳动教养期限确定为一至三年,并可延长一年。38 送交劳动教养的决定应由民政、公安和劳动部门的官员组成的管理委员会作出。但实际上是公安部门官员主导决策进程。

#### 政治罪

34. 尽管1997 年中国《刑法》取消了"反革命罪"和"流氓罪",但却代之以同样模糊的罪名,如"危害国家安全罪",适用于一系列广泛的罪行(第一百零二条至第一百二十三条)、"分裂国家、破坏国家统一"(第一百零三条)、"武装叛乱或者武装暴乱"(第一百零四条)、"颠覆国家政权、推翻社会主义制度"(第一百零五条)、"间谍"(第一百一十条),和"为境外的人员窃取、刺探、收买、非法提供国家秘密或者情报"(第一百一十一条)。这些罪行定义含糊,因而可能被滥用,特别是在涉及宗教、言论和结社自由权方面。

35. 在关于2004 年访问中国的报告中,任意拘留问题工作组对刑事立法中有诸如"扰乱社会秩序"、"危害国家安全"、"破坏国家统一和完整"、"扰乱公共秩序"、"影响国家安全"等如此模糊、不确切或笼统的内容表示了关注。工作组建议,以确切的用语界定这些罪行,并在刑法中规定一项例外,即:行使《世界人权宣言》所保障的基本权利的和平活动不被视为犯罪。至今为止,这项建议尚未落实。

#### 申诉和调查

36. 关于被监管人申诉权利的法律规定包括:中国《宪法》第四十一条第(2)款,其中规定"对于公民的申诉、控告或者检举,有关国家机关必须查清事实,负责处理。任何人不得压制和打击报复";《监狱法》第二十二条;《拘留条例》第四十六条;《公安机关办理刑事案件程序规定》第一百五十三条;和《刑法》第二百五十四条。根据《刑事诉讼法》第十八条,最高人民检察院是负责侦查和起诉国家机关工作人员犯罪的机关(见《刑事诉讼法》第十八条)。

#### 使用以酷刑取得的供述和供词

37. 《刑事诉讼法》第四十三条规定"严禁刑讯逼供和以威胁、引诱、欺骗以及其他非法的方法收集证据"。但是,《刑事诉讼法》并未根据《禁止酷刑公约》第15条的要求,明确禁止在法院使用以酷刑取得的供述为证据。在1998年9月8日《关于执行〈中华人民共和国刑事诉讼法〉若干问题的解释》中,最高人民法院规定,采用刑讯逼供取得的供述,不能作为定案的根据。在1999年1月18日关于实施《刑事诉讼法》的规则中,最高人民法院规定:"以刑讯逼供或者威胁、引诱、欺骗等非法的方法收集的犯罪嫌疑人供述、被害人陈述、证人证言,不能作为指控犯罪的根据"。因此,尽管此种供述不能作为指控和定罪的根据,但最高人民法院的决定并未排除在司法诉讼中予以采纳。而且,最高人民法院的规则仅对司法机关有约束力,不适用于行政机关。

#### 赔 偿

38. 中国《宪法》第四十一条规定,由于国家机关和国家工作人员侵犯公民权利 而受到损失的人,有依照法律规定取得赔偿的权利。《国家赔偿法》第三条和第十五 条进一步规定了取得赔偿的权利。

39. 但是,《国家赔偿法》第十七条第(一)款规定,"因公民自己故意作虚伪供述,或者伪造其他有罪证据"被羁押或者被判处刑罚的,国家不承担赔偿责任。

三、酷刑和虐待的情况

#### 对特别报告员来文的分析

- 40. 特别报告员忆及,在过去几年,其历届前任收到了关于在中国施行酷刑和其他形式虐待的许多严重指控,并已将其转交中国政府请其发表意见。他告戒说,此种资料并不一定举例说明了某国的酷刑和虐待情况,但却可以反映提请特别报告员注意的信息情况。不过,就一段时间所收到的指控的数量和内容的一致性来看,也有可能说明问题。
- 41. 自2000 年以来,特别报告员及其历届前任向中国政府报告了314 起所称酷刑案件。这些案件涉及1160 多人。过去五年间,特别报告员收到了中国政府就90起案件作出的52项答复。

42. 下表说明了指控的酷刑和虐待的类型。

#### 表 1

#### 指控的酷刑受害者

法轮功练习者 66

维吾尔人 11

性工作者8

西藏人 6

人权维护者 5

持不同政见者 2

其他人(艾滋病毒感染者/艾滋病患者和宗教团体成员)2

43. 下表说明了指控的酷刑和虐待发生地点。

#### 表 2

#### 指控的酷刑发生地点

看守所 27

劳教所 25

派出所 17

精神病院(安康院)8

公共场所 5

其他(警方转押、计划生育办公室、军营、私人住宅) 18

44. 下表说明了指称犯罪者的类型。

#### 表 3

#### 指称犯罪者的类型

警察和其他公安人员 47

劳教所看管人员 21

监狱看管人员 13

看守所看管人员7

精神病院(安康院)工作人员 7

受拘留所看管人员教唆或默许的同室犯人 5

45. 所指控的酷刑方法包括:棍棒殴打,使用电警棍,烟头灼烧,蒙头/蒙眼睛,在看守指使或允许下由同室犯人殴打,长期使用手铐或脚镣(包括关禁闭或专门关押地方),闷到水塘或污水中,置于极热和极冷环境中,被迫保持不适姿势,如长期坐、蹲、躺、站,有时候肢下垫上物体,不许睡觉、吃饭、喝水;长期关禁闭;不予治疗,不给药物;高强度劳役,用手铐悬吊。在一些情况下,酷刑方法有特定叫法,如"老虎凳",强迫人坐在离地面几厘米高的小板凳上不得动弹;"坐飞机",强迫人弯腰,双腿直立、并拢,双臂高高举起;"累死老鹰",强迫人站在高板凳上被打,直至筋疲力尽。根据访问期间收到的信息,特别报告员确认,这些酷刑方法,有许多在中国采用过。

#### 为反酷刑所做的努力

46. 近年来,在中国国内,尤其是在2005 年一些突出的错判案被媒体爆光之后,酷刑问题已成为公众所关注和辩论的一个主题。官员与学者更加愿意承认中国的酷刑问题,这是一大进步。中国的学者和新闻工作者越来越多地发表详细的批评文章,抨击中国的酷刑做法和刑事司法制度中的有关问题,包括调查不力、警方缺乏专业精神,和酷刑逼供。中国的官员和分析家将酷刑问题描绘为在基层组织中"十分

普遍","根深蒂固",是一"痼疾",是实践中"难以杜绝的"一个"恶瘤",逼供"在中国许多地方是普遍现象,因为警方时常受到来自上面的巨大压力,要求其侦破刑事案"。

47. 以下事实可以确认政府愿意承认普遍存在酷刑现象,即1997 年下半年,最高人民检察院发表了一份题为"刑讯逼供罪"的报告,其中列入了中国第一次公布的有关刑讯逼供刑事案件的官方统计数字。根据该报告,1979 年至1989 年期间,每年平均发生364 起案件,在1990 年代,多数年份每年此类案件达到400 起,报告还承认在1993 至1994 年两年期间内,有241人被拷打致死。

49. 除了中央一级的主动行动之外,一些地方也采取了若干令人振奋的行动。浙 江省公安厅颁布了关于刑讯逼供问题的条例,规定如果出现两起以上刑讯逼供案,导 致人员受伤,执法不公或治安问题,该地区公安局长将引咎辞职。2005 年4 月中旬, 四川省执法和司法机关下发了联合意见,禁止使用非法获得的证据,并要求法院在警 方无法对所指控的威吓提出合理的解释或拒绝对这一指控进行调查时,可排除威吓证 词或口供。在2005 年12 月访问结束之后,特别报告员获悉,河北省检察院、高等法 院和公安厅下发了联合意见,禁止对刑事犯罪嫌疑人使用酷刑获得的证据。57 湖北省 检察院、高等法院、司法厅、公安厅和国家安全局还联合颁发了刑事证据条例,包括 禁止使用酷刑获得的证词。

50. 防止酷刑的实际措施包括,在试点审讯室安装录音录像系统;在刑事侦查 和预审阶段加强律师作用,在试点警署,律师可在24 小时内介入;在设计审讯室 时,将嫌疑人与审讯人员隔离;在羁押场所和公安局附近派驻检察官,对执法人员实 行监督。

#### 反酷刑努力的成效

52. 特别报告员注意到,中国是最早批准1988 年《禁止酷刑公约》的国家之一。《公约》要求缔约国采取措施防止酷刑,并以相应的严厉处罚措施惩治一切酷刑行为。尽管中国法律禁止以酷刑手段收集证据,并规定对酷刑罪予以惩罚,但中国对酷刑的定义并没有同《禁止酷刑公约》第1 条中的国际标准完全一致。特别是没有留下具体痕迹的身体或心理酷刑,在中国很难甚至不可能受到相应惩罚(其实,中文"酷

刑"一词主要是指对身体的酷刑)。

53. 中央政府为减少酷刑做法作出了极大努力(如上文所指出),但因基层治安管理和刑事程序上固有的地方观念,阻碍有效实施中央颁布的条例、指导意见、培训、禁令等,使得这些努力收效甚微。《尽管形式上公安部统管全国公安工作,但地方党委拥有对其地区政策进行解释和执行的极大权力,包括对各自辖区公安厅的领导。这就致使警方力量因地方权力均衡和经济资源而出现地方化和半独立状态,警方对地方政治领导人负责。由于警方资金不足,薪水低微,这一状况进一步恶化,在经济条件较差的西部省份,情况尤其如此。

54. 在中国,由于缺乏有效禁止酷刑的基本程序性保障,进一步阻碍了反酷刑工作。这些保障包括:有效排除酷刑产生的供词中所取得的证据;无罪推定;有权不自证其罪;有权保持沉默;及时通知被拘留或逮捕原因;及时由外部复核拘留或逮捕;采取非拘押措施,如取保,人身保护权;及时会见律师;并有充足的时间和手段准备辩护。

55. 律师在场不仅是国际人权法所保障的一项权利,它也是防止使用酷刑的一个 重要手段。律师不仅要确保监督刑侦人员在审讯期间的行为,他们还要促使对使用酷 刑的刑侦人员提出起诉。他们也使证人能够向法院提供证据,证明口供是通过非法手 段获得的。但在中国,大多数嫌疑人在接受审讯时都没有律师在场。

56. 其他严重的缺陷是缺乏对所有羁押场所的独立监督机制和有效的申诉机制。 尽管中国的执法系统不乏内部监督机制,但必须指出的是,这些机制不具有独立性, 公众也不将其视为独立机关。这些机关包括与政府政治和人事部门共同监督各公安厅 的人员聘用、解聘、审查和晋升事宜的共产党委员会;党的纪律检查委员会各公安部 门和政府监察部;各公安厅设立的接受和调查公民申诉的"群众来信和上访办公 室";以及检察院。除了缺乏独立性以外,这些机制因迫于压力侦破案件而无解决滥 用职权问题的动机,其工作大多效率不高。工作重点似乎依然放在建立内部调查制 度上,而不是实行独立监督。近年来,公检法部门对"责任划分"的复杂制度进行了 宣传。但是,这些举措实际上将会产生什么影响,目前尚不得而知,尤其是因为这些 部门不大可能真正独立于政府机构和当局。

57. 尽管检察官的任务是对警察实施监督,并且还有部分检察官派驻在监狱和派

出所附近,但检察官担负着起诉和对警察实施监督的双重职责,这就表明它不可能主动揭露警方的玩忽职守行为,特别是如果此种起诉被看成是削弱警方的能力,使之在打击日益增多的犯罪行为的联合行动中无法履行职责的话。换言之,依赖检察官的监督是很难的,因为检察官对嫌疑人罪名成立而将其定罪的重视有可能影响其对警察和监管人员监督的能力。此外,检察官在行使监督职能的实际过程中面临多种困难,\_\_\_\_\_\_\_包括被羁押人害怕将其所受酷刑举报出来。目前申诉和监督机制效率低下,在中国偌大一个国家中申诉和起诉案件数量之小,就很能说明问题。58. 国际惯例表明,反酷刑最有效的方法就是由自我生成和/或自我维持的社会和政治机构来实施监督,这包括自由并可展开调查活动的新闻界、公民人权监督组织、独立、公正和可诉诸的法院和检察院,以及定期选举的问责制。司法监督尤其重要。如果法院系统不能依法公正独立审案并及时纠正冤屈,酷刑问题就不能得到有效控制。这一点,在警察拥有宽泛的酌处权实行逮捕和拘留并在巨大压力下结案的情形之下,尤为如此。

59. 特别报告员认为,按照《禁止酷刑公约任择议定书》的设想,建立查访所有 羁押场所的预防性制度,将会大大加强防止羁押场所内发生酷刑或虐待行为的努力。 在这方面,特别报告员敦促中国批准《任择议定书》,并建立一个真正独立的监督机制。在这一机制下,将任命查访委员会成员,查访全国各地所有关押被剥夺自由的人

## 四、因政治罪剥夺自由和强迫管教是一种 不人道和有辱人格的待遇

- 60. 刑事司法制度及其关注重点是使人认罪,获取口供和教育改造,这涉及到政治性质的犯罪时就格外令人不安。虽然许多此类犯罪在1997 年予以废除,诸如"组织反革命集团"和"反革命宣传和煽动",但在1997 年以前因这些犯罪而被判刑的"民主运动"成员和持不同政见者,至今依然在监狱长期服刑。特别报告员欢迎中国政府决定允许被判犯有这些罪行的犯人与其他犯人一样,享有获得减刑和假释的权利,并注意到法院已作出较大量的决定,对此类犯人予以减刑和提前释放。不过,犯人目前仍因反革命罪而服刑,还有数百人因"流氓罪"服刑。大多数制度都规定释放因刑法所排除的罪行而服刑的犯人。根据《公民权利和政治权利国际公约》第十五条第1款,至少应对犯人所处刑罚进行复核。释放所有因非暴力犯罪行为而监禁的反革命分子和流氓(例如,领导反革命集团,从事反革命宣传和煽动活动),将会成为中国为批准《公民权利和政治权利国际公约》所做努力的一个里程碑。
- 61. 在1997 年的改革之后,持不同政见者、新闻记者、作家、律师、人权维护者、法轮功练习者,以及西藏和维吾尔族人、语言和宗教少数群体成员,经常会因行使其言论、集会、结社或宗教自由等人权而受到起诉。他们往往因政治性质的罪行而被判处长期监禁,诸如破坏国家统一,危及国家安全、颠覆或非法向境外人士提供国家机密等罪名。虽然有许多犯人否认有过任何不法行为,在审判期间不招供(尽管经常会遭受酷刑),但是在服刑期间经过强制性教育改造之后,他们有时会改变想法。即使政治上的偏离行为和持不同政见的行为不受刑事制裁,各个目标群体,如法轮功练习者和人权维护者,也往往会因搅乱社会秩序或类似的轻罪而受到数年的行政拘留,如劳动教养。
- 62. 在向特别报告员提交了申诉书或特别报告员在羁押场所个别会见的那些因政治性质的犯罪服刑的犯人和被劳动教养的被羁押人当中,有许多人声称,他们的人身自由遭到过度、歧视性和不公正的剥夺(常常是长期剥夺),以及所受到的强制性教育改造,给他们所造成的痛苦与伤害远远大于在警方审讯期间可能遭受的身体折磨。实际上,以胁迫、屈辱和惩罚手段进行管教的这些措施,目的是改变被羁押人的人格,及至打垮他们的意志。
- 64. 特别报告员认为,中国劳动教养制度中使用的方法,以及监狱、看守所和其他社会公共机构中采用的类似方法,通常都超越了《公民权利和政治权利国际公约》第十条所规定的合法康复措施。实际上,其中一些措施涉及到《公民权利和政治权利国际公约》第七条和第十条以及《禁止酷刑公约》第1 条和第16 条所保护的人格完

整、人的尊严和人性等人权的核心。劳动教养不仅构成对人身自由这一人权的严重侵犯,也应被视为一种不人道和有辱人格的待遇或惩罚,如果不算精神折磨的话。因此,劳动教养以及监狱、看守所、宗教机构和精神病院中采取的类似强迫管教措施应予废除。

65. 享有隐私、言论、宗教、集会和结社自由等人权,是民主社会的核心所在,按照《民主白皮书》的说法,中国承诺致力于实现这一目标。根据国际人权法,政府对表达政治观点、宗教信仰、道德价值、或少数意见的干预只能在其构成煽动仇恨或暴力,或直接威胁国家或公共安全的情况下方可进行。对持非顺从意见的公民实行国家监视,并对此种"偏离的行为"用定义笼统的罪行,比如危害国家安全、破坏国家统一、颠覆国家政权,或非法向境外人士提供国家机密,处以长期监禁等严厉惩罚以及送交劳动教养,这样一种制度,似乎与建立在人权文化基础上的社会的核心价值不相符,并导致恐吓、顺从、自我检查和"恐惧的文化",从而干涉了不受不人道和有辱人格的待遇或惩处的权利。

#### 五、羁押的条件

#### 概 述

66. 特别报告员总共访问了10个羁押场所。按照通常做法,特别报告员在访问羁押场所期间同被羁押人进行了私下交谈(谈话提要载于附录2)。然而,他注意到有相当多的被羁押人不愿意与特别报告员交谈,其中有几位确实要求绝对保密。因此,附录2 所载资料并未充分反映实际情况,有关酷刑做法的相当多的资料是以秘密方式提供的。

67. 大体上,特别报告员认为,羁押场所的具体情况有所不同,但就食物、医药和卫生等基本条件而言,总体情况还是令人满意的(关于所访问的各羁押场所的拘留条件的详细定论,载列于附录2)。不过,在同被羁押人交谈过程中,特别报告员注意到有显而易见的恐惧心理。各个羁押场所中被羁押人严格的纪律约束也使他深有触动。他每次进入牢房,都发现所有被羁押人都盘腿坐在垫子上,或以类似强迫性姿势在阅读《刑法》或监狱条例。据被羁押人所提供的资料,此种强迫管教,尤其是在看守所,是每天要作的主要事情。通常是由一名同室犯人带领进行,即牢房的"组长"。犯人几乎无个人隐私可言,也没有个人娱乐时间,比如读书,等等。因政治性质的罪行而定罪的人,即使长期服刑,通常也无权工作,并且娱乐时间也极少。不允许他们信奉其宗教(比如,西藏的佛教、新疆的伊斯兰教)。

#### 与死刑有关的情况

68. 特别报告员还对与死刑有关的情况表示关切,其中包括已判死刑犯人的境遇。在北京市看守所,特别报告员在同一审判处死刑等待上诉的犯人交谈时注意到,这些犯人每天24 小时被戴上手铐和重约三公斤的脚镣,无论什么情况(包括吃饭和上厕所等)。 特别报告员认为,这样做不人道,有辱人格,对于已因判处死刑而精神紧张和痛苦的人来说,这是另一种形式的惩罚。

成)。 据报道, 2003 年3 月6 日云南省政府批准采用这种流动处决车, 2003 年云南

省所有中级法院和一家高等法院已分配到18辆此种车辆。2003年12月,据报北京最高人民法院敦促各省购置处决车,"可在判决之后将既决罪犯立即处决"。 70. 特别报告员欢迎最高人民法院计划收回对死刑案件的最后复核权。

#### 六、结论和建议

#### 结 论

71. 特别报告员真诚地感谢中国政府邀请其进行访问,并按照其职权范围为访问 提供了便利。他对中国政府愿意承认在刑事司法系统中普遍存在酷刑现象以及近年来 在中央和省级为反酷刑和虐待所作出的各种努力表示欢迎。尤其是,他注意到公安部 2004 年颁布了有关条例,禁止使用酷刑和威胁手段取得口供,最高人民检察院2005 年也宣布消除刑讯逼供将是工作的重中之重。最近为消除酷刑所作出的努力包括:在 全国范围内开展清理和纠正警察超期羁押问题;对警察进行大规模培训;在试点审讯 室安装录音录象记录系统;在试点警署,律师可在24 小时内介入;以及在羁押场所 和公安局附近派驻检察官,对执法人员实行监督。

72. 由于近年来所做的这些努力以及类似措施,酷刑行为不断减少。不过,根据特别报告员及其历届前任几年来所收到的大量指控和其他可靠的政府和非政府资料,以及特别报告员自己在访问期间所作的事实调查,他认为,尽管酷刑行为尤其在城市地区有所减少,但在中国仍然普遍存在。

73. 中国之所以依然存在酷刑行为,这里有多种因素。其中包括促使审讯者通过 酷刑手段获得口供的证据规则;在无司法管制的情况下长时间羁押刑事嫌疑人;缺乏 基于无罪推定原则的法律文化(包括缺乏有效的保持沉默权);以及被告律师的权利和 手段受到限制。

74. 由于缺乏自我生成和/或自我维持的社会政治机构,这包括有言论自由并可展 开调查活动的新闻界、独立的公民人权监督组织和独立、公正和可诉诸的法院和检察 院,致使情况更加严重。

75. 司法监督尤其重要。在中国妨碍消除酷刑行为的最大障碍之一,就是体制薄弱,司法机关缺乏独立性,这一点,在警察拥有宽泛的酌处权实行逮捕和拘留并在巨大压力下结案的情形之下,尤为如此。在中国,目前似乎也没有对羁押场所或申诉机制给予真正独立监督的机制。鉴于检察院在对嫌疑人定罪方面所起的作用,它也不被视为一个独立的监督机关。在司法官员依法受权行使作出逮捕决定的司法权力方面,检察院也不具有符合国际标准的必要的独立性。

76. 在省市一级,由于在治安管理和刑事程序上固有的"地方观念",阻碍有效 实施中央颁布的条例、指导意见、培训、禁令等,使得中央政府为减少酷刑行为所作 出的努力收效甚微。此种地方观念也妨碍有效地实施问责制和监督。

77. 在特别报告员所访问的羁押场所,基本条件,包括食物、医疗和卫生条件,总体看来是令人满意的。但是,特别报告员也强烈地感受到监狱纪律的严格性,他在与被羁押人进行交谈时,明显感到对方有恐惧心理,并实行自我约束。尤其是在看守所内本应以无罪推定原则对待的被羁押人,似乎每天有很长时间必须以固定姿势坐着,并被迫相互朗读《刑法》或监狱条例。

78. 因政治性质的罪行而定罪的人,即使长期服刑,往往也无权工作,并且娱乐时间也极少。通常不允许他们信奉其宗教。未坦白认罪的既决犯人,要接受特殊管教,并剥夺其某些权利和特权,即思想转变的犯人可享受的权利,如家人探监、打电话或减刑奖励。已判死刑犯人与候审被羁押人被关一起,并戴上脚镣,有时一天24

小时被戴上手铐。这种额外的惩处与人格完整、人的尊严和人性权利是不一致的。 79. 刑事司法制度及其关注重点是使人认罪,获取口供和教育改造,这涉及到政 治性质的犯罪时就格外令人不安,如1997 年《刑法》改革之前的"反革命罪",或 之后的"危害国家安全"罪。此外,有政治偏离行为或不同政见行为的人往往会以搅 乱社会秩序的罪名被送去劳教,或处以长达四年的行政拘留。

- 80. 许多因政治性质的犯罪服刑的犯人和受到劳教的被羁押人声称,过度、歧视性和不公正地剥夺他们的自由(常常是长期剥夺),以及强迫管教,所造成的痛苦与伤害远远大于警方审讯期间实施酷刑给身体带来的痛苦。
- 81. 特别报告员认为,把剥夺自由作为对和平行使言论、集会和宗教自由权的一种制裁,以及采取以胁迫、屈辱和惩罚手段进行管教的措施,其目的是承认有罪和改变被羁押人的人格,及至打垮他们的意志,这涉及到人格完整、人的尊严和人性等人权的核心。它构成一种不人道和有辱人格的待遇或惩处,导致顺从和"恐惧的文化",与任何建立在于人权文化基础上的民主社会的核心价值不相符。

#### 建议

82. 根据所作结论,特别报告员提出了若干建议,并希望政府结合目前所进行的 旨在消除酷刑和虐待行为的改革努力,对之加以认真考虑。

#### 对酷刑行为进行调查和起诉

- (a) 根据《禁止酷刑公约》第1条,对酷刑罪下定义应为优先事项,并根据 其严重性给予相应处罚。
- (b) 对所有涉及酷刑和虐待行为的指控,应由一独立机关进行迅速而彻底的调查,该机关不得与对据称受害人案子进行调查和起诉的机关有任何联系。
- (c) 任何因滥用职权或实施酷刑而受到起诉的政府官员,包括涉嫌共谋实施 酷刑或忽视证据的检察官和法官,均应立即停职,并对其提出起诉。
- (d) 应当就《禁止酷刑公约》第22条作出声明,承认禁止酷刑委员会有资格接受和审议声称为违犯《公约》条款行为受害者提交的来文。

#### 从刑事司法制度上予以保障,防止发生酷刑和虐待行为

- (e) 对被依法逮捕的人,在审讯员或侦查员所控制的羁押场所内的关押时间不应超过法律所规定的获得候审拘留司法授权所必要的时间,通常这一时间不应超过48 小时。之后应将他们移交由不同权力机构管辖的看守所,该看守所不得与审讯员或侦查员有任何进一步的无人监督的联系。
- (f) 《刑事诉讼法》中诉诸预审拘留的做法应当加以限制,尤其是对非暴力、未成年人或不严重的罪行,并扩大采取保候审和保证金一类的非拘留措施。
- (g) 应当有效地保证所有被羁押人有能力向一独立法院质疑拘留的合法性, 比如,通过请求人身保护诉讼。
- (h) 无律师在场并且法官未予确认的口供,不应作为证据采用。在审讯室审理期间对所有在场的人进行录音录象,这一做法应当推广到全国。
- (i) 法官和检察官应当定期询问被警察羁押的人,了解他们所受到的待遇情况,如有任何疑问(即使被告没有提出正式申诉),亦应下令进行独立的体格检查。
- (i) 《刑事诉讼法》改革应当符合《公民权利和政治权利国际公约》第十四

条关于公正审判的规定,包括做出如下规定:有权保持沉默,有权不自证其罪;有效排除酷刑取得的证据;无罪推定;及时通知被拘留或逮捕原因;迅速由外部复核拘留或逮捕;及时会见律师;有充足的时间和手段准备辩护;证人出庭和交叉询问证人;以及确保司法机关的独立性和公正性。

- (k) 检察官下令或批准逮捕的权力和对警察和看守所的监督权,应当移交独立法院。
- (I) 《刑法》第三百零六条应当予以废除,根据该条规定,任何律师,比如说,如建议当事人推翻强迫口供,就可能受到起诉。

#### 其他预防措施

- (m) 应当批准《禁止酷刑公约任择议定书》,并建立真正独立的监督机制,在这一机制下,任命查访委员会成员,查访全国各地所有羁押被剥夺自由的人的场所,委员会成员任期固定,且不得解聘。
- (n) 通过系统的培训方案和宣传运动,对一般公众、公安人员、法律专业人员和司法机构开展有关《禁止酷刑公约》原则的教育。
- (o) 对于身心受到伤害的酷刑和虐待受害人,应当给予相应的实质性补偿, 以及适当的医疗和康复。

#### 与死刑有关的情况

- (p) 对于已判死刑犯人,不应再受到戴手铐和脚镣等其他惩罚。
- (q) 应当利用最高法院收回对所有死刑案件的复核权这一契机,公布全国适用死刑的统计数据。
- (r) 应当缩小死刑范围,比如,废除经济和非暴力罪死刑。 因政治罪剥夺自由
- (s) 应当废除为执法和检察机关留有较大任意裁量权的政治罪,如"危害国家安全"、"颠覆国家政权"、"破坏国家统一"、"为境外人士提供国家机密",等等。
- (t) 应当释放所有因和平行使言论、集会、结社和宗教自由而被判处刑罚的 人,这些人是在1997 年《刑法》改革前后依据对政治罪的笼统定义而 被判刑。

#### 强迫管教

- (u) 应当废除"劳动教养"以及在监狱、看守所和精神病院的类似强迫管教做法。
- (v) 任何涉及剥夺自由的决定,必须由司法机关而不是行政机关作出。 后续行动
- (w) 特别报告员建议政府继续与有关国际组织以及联合国人权事务高级专员办事处合作,以便在就上述建议采取后续行动方面获得帮助。

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ADVANCE EDITED VERSION	Distr.
	GENERAL
	E/CN.4/2006/6/Add.6
	10 March 2006
	Original: ENGLISH

COMMISSION ON HUMAN RIGHTS Sixty-second session Item 11 (a) of the provisional agenda

# Civil and political rights, including the question of torture and detention Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Mission to China\*

#### **Summary**

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment undertook a visit to China from 20 November to 2 December 2005, at the invitation of the Government. He expresses his appreciation to the Government for the full cooperation it provided him throughout the visit. The report contains a study of the legal and factual aspects regarding the situation of torture or ill-treatment in China.

The Special Rapporteur bases his finding on a thorough analysis of the legal framework, individual communications and on written information from and interviews with a wide array of sources, including Government officials, non-governmental organizations, lawyers, victims and witnesses, as well as from onsite inspections of detention facilities. Accordingly, he recommends a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

Though on the decline, particularly in urban areas, the Special Rapporteur believes that torture remains widespread in China. He welcomes the willingness of the Government to acknowledge the pervasiveness of torture in the criminal justice system and the various efforts undertaken in recent years at the central and provincial levels to combat torture and ill-treatment. In the opinion of the Special Rapporteur, these measures have contributed to a steady decline of torture practices over recent years.

Many factors contribute to the continuing practice of torture in China. They include rules of evidence that create incentives for interrogators to obtain confessions through torture, the excessive length of time that criminal suspects are held in police custody without judicial control, the absence of a legal culture based on the presumption of innocence (including the absence of an effective right to remain silent), and restricted rights and access of defence counsel. The situation is aggravated by the lack of self-generating and/or self-sustaining social and political institutions including: a free and investigatory press, citizen-based independent human rights monitoring organizations, independent commissions visiting places of detention, and independent, fair and accessible courts and prosecutors.

While the basic conditions in the detention facilities seem to be generally satisfactory, the Special Rapporteur was struck by the strictness of prison discipline and a palpable level of fear and self-censorship when talking to detainees.

The criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes and the administrative detention system of "Re-education through Labour". The combination of deprivation of liberty as a sanction for the peaceful exercise of

<sup>\*</sup> The summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission and in Chinese. The appendices are available in English only and are circulated as received.

freedom of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment, which is incompatible with the core values of any democratic society based upon a culture of human rights.

#### Introduction

- 1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a mission to China from 20 November to 2 December 2005, at the invitation of the Government. The mission to China, which included visits to Beijing; Lhasa, Tibet Autonomous Region (TAR); and Urumqi, Xinjiang Uighur Autonomous Region (XUAR), materialized nearly 10 years after the initial request for a visit from the Special Rapporteur. Over the course of the visit, he examined the legal framework and governmental activities relating to the prohibition of torture and other forms of ill-treatment. He also examined the response of the Government to allegations of violations, particularly in relation to inquiry, impunity and prevention. The Special Rapporteur has based his findings on the situation of torture and ill-treatment in China on written information from and interviews with a wide array of sources, including Government officials, non-governmental organizations, lawyers, victims themselves, and witnesses, as well as from on-site inspections of detention facilities.
- 2. The main purposes of the visit were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment, to promote preventive mechanisms to eradicate torture and ill-treatment, and to begin a process of cooperation with the Government.
- 3. While visits were also planned for Jinan in Shandong Province and Yining in the XUAR, the Special Rapporteur sincerely regrets that he had to cancel these visits owing to time constraints, and expresses his gratitude to the Ministry of Foreign Affairs and the respective leaderships of Shandong Province and Yining Autonomous Prefecture for accommodating these last-minute changes to the programme.
- 4. While in Beijing, the Special Rapporteur met with officials of the Government, including Assistant Foreign Minister Shen Guofang; Vice-Minister of Justice Fan Fangping; Vice-Minister of Public Security Meng Hongwei; and Deputy Procurator-General Wang Zhenchuan. In Lhasa and Urumqi, the Special Rapporteur met with the Vice-Chairman of the Tibet Autonomous Region, Nima Cering, the Vice-Chairman of Xinjiang Uighur Autonomous Region, Jiapar Abibula, and with local officials, including from the Office of Foreign Affairs, the People's Court, the Procuratorate, and the Departments of Justice and Public Security.
- 5. In Beijing, the Special Rapporteur visited No. 2 Municipal Detention Centre, Prison No. 2 (twice) and the Municipal Women's Re-education through Labour (RTL) Facility. In Lhasa he visited Lhasa Prison, Tibet Autonomous Region Prison (also known as Drapchi Prison), and the recently opened Qushui Prison. In Urumqi, he visited Prisons No. 1, No. 3, and No. 4, as well as the Liu Dao Wan Detention Centre. In all facilities, the Special Rapporteur met with prison management and interviewed detainees in private.
- 6. The Special Rapporteur also met with prominent members of civil society, including the All China Lawyers' Association, the Beijing Lawyers' Association, China University for Political Science and Law, Renmin University, Tsinghua University, Beijing University, the Chinese Academy of Social Sciences and the Beijing Child Legal and Research Centre. Meetings were also held with individual lawyers, human rights defenders, academics, and members of the diplomatic corps and United Nations Country Team.
- 7. A preliminary version of this report was sent on 3 January 2006 to the Government for comments. On 25 January 2006 the Government provided detailed comments on the preliminary report, which have been carefully studied and taken into account.
- 8. The Special Rapporteur extends his appreciation for the support provided to him by the United Nations Resident Coordinator, Mr. K. Malik; the Office of the High Commissioner for Human Rights; and Ms. N. Hughes and Ms. E. McArthur, of the Ludwig Boltzmann Institute of Human Rights.

#### I. PARTICULAR CIRCUMSTANCES OF FACT-FINDING

9. The Special Rapporteur wishes to express his deep appreciation to the Government, and in particular the Ministry of Foreign Affairs, for its professionalism, cooperation and shared commitment to the objectives of the mission. The Ministry of Foreign Affairs team, headed by Dr. Shen Yongxiang, accompanied the Special Rapporteur throughout the visit to official meetings and detention facilities. The Special Rapporteur credits the Ministry for its great efforts in ensuring that the mission proceeded as smoothly as possible and that his terms of reference (TOR) were in principle respected. All meetings with detainees were carried out in privacy and in locations designated by the Special Rapporteur. No request for a meeting or interviewing of a particular individual nor for a visit to any particular detention centre was

refused. Prison staff were generally cooperative and helped the Special Rapporteur meet with prisoners on his list, even those who had been transferred to different facilities.

- 10. The Special Rapporteur feels, however, compelled to point out that security and intelligence officials attempted to obstruct or restrict his attempts at fact-finding, particularly at the outset of the visit when his team was followed in their Beijing hotel and its vicinity. Furthermore, during the visit a number of alleged victims and family members, lawyers and human rights defenders were intimidated by security personnel, placed under police surveillance, instructed not to meet the Special Rapporteur, or were physically prevented from meeting with him.
- 11. Prison officials restricted interviews to their own working hours, which limited the number of facilities visited and detainees interviewed. The Special Rapporteur and his team were also prevented from bringing photographic or electronic equipment into prisons. Furthermore, as the Special Rapporteur was unable to obtain a letter of authorization from the relevant authorities to visit detention centres alone (in contrast to his previous country visits), officials from the Ministry of Foreign Affairs accompanied him to detention centres to ensure unrestricted access. As the authorities were generally informed approximately an hour in advance, the visits could not be considered to have been strictly "unannounced". Nonetheless, this practice significantly improves upon the modalities employed in previous visits to China of the special procedures of the Commission on Human Rights.
- 12. Under these conditions, and taking into account the size and complexity of China as well as the limited duration of the mission, the Special Rapporteur acknowledges the limitations in drawing up a comprehensive set of findings and conclusions on the situation of torture and ill-treatment in China. His conclusions therefore also draw upon interviews conducted before his visit, as well as on information received through the mandate's individual communication procedures and from various non-governmental and other sources.

#### II. LEGAL AND ORGANIZATIONAL FRAMEWORK

#### International level

13. China is a party to five of the seven major international human rights treaties. Of these, the following expressly prohibit torture and ill-treatment: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). The competence of the Committee against Torture to receive individual complaints has not been recognized by China under article 22 of CAT. Further, China has declared that it does not consider itself bound by articles 20 and 30, paragraph 1, of CAT. China has signed and is preparing to ratify the International Covenant on Civil and Political Rights (ICCPR).

#### **National level**

#### Constitutional amendment on human rights

14. On 14 March 2004, the National People's Congress (NPC) amended the Constitution to add the provision, "The State respects and safeguards human rights", providing for the first time in its history a constitutional protection of human rights. The Special Rapporteur was informed that, as a consequence of this decision, the Criminal Law (CL), the Criminal Procedure Law (CPL) and the framework governing administrative detention are under consideration by the NPC Standing Committee in order to bring them into line with the new provisions of the Constitution.

#### Definition and prohibition of torture

- 15. While there is no explicit definition of torture in Chinese domestic legislation, basic elements of the definition of torture under CAT are reflected in several provisions of the Criminal Law (CL) which prohibit: extortion of a confession under torture by a judicial officer (*xingxun bigong*) (art. 247); extraction of testimony by the use of force by a judicial officer (*baoli quzheng*) (art. 247); physical abuse of inmates as well as instigation of detainee-on-detainee violence by a policeman or other officer of an institution of confinement like a prison, a detention house or a custody house (art. 248). The CL also lists several other offences related to the prohibition of torture and other forms of ill-treatment.
- 16. However, Chinese legislation does not fully reflect all aspects of the definition of torture as outlined in article 1 of CAT and as required by its article 4. Article 94 of the revised CL defines "judicial officers" as "persons who exercise the functions of investigation, prosecution, adjudication and supervision or control"

leaving room for uncertainty as to whether those hired temporarily, or seconded from non-judicial departments to assist in criminal investigations can be prosecuted for these offences. In addition, the Supreme People's Procuratorate (SPP), which directly handles all investigations of torture, further restricted the application of article 247 of the CL to: cruel methods or evil impact; resulting in suicide or mental disorder; causing unjust, false or erroneous cases; coercing confessions/extorting testimony by violence more than three times or against more than three people; or instigating, instructing or forcing others to coerce confessions/extract testimony by violence. In the same decision, the SPP held that prosecution under article 248 was limited to causing injury (qingshang) to the detained person; instigating the suicide of the detained person or mental disorder or other serious consequences; beating or corporally punishing and maltreating more than three times or more than three detainees; using cruel methods (canren shouduan), having an evil impact; or instigating detainees to beat, corporally punish or maltreat other detainees involving the above.

17. The CL does not clearly reflect the following elements of torture as defined in article 1 of CAT: mental torture; the involvement of a public official directly or at the instigation or consent or with the acquiescence of a public official or another person acting in an official capacity; and infliction of the act for a specific purpose, such as extracting a confession, obtaining information, punishment, intimidation, discrimination.

#### Penalization of acts of torture and other forms of ill-treatment

- 18. The penalization of acts of torture is stipulated in articles 247 and 248 of the CL. Other regulations complement the CL, including the Regulations on the Use of Police Instruments and Weapons by the People's Police. The Supreme People's Court (SPC) has also issued Measures concerning the Punishment of Judicial Personnel of the People's Court Who Break the Law during Trials, and a set of Disciplinary Measures Concerning Judicial Personnel of the People's Court. The Rules on the Handling of Criminal Cases by Public Security Authorities aim at ensuring a correct implementation of the Criminal Procedure Law and contain a number of safeguards for detainees.
- 19. However, the Public Security Organs Regulations on Pursuing Responsibility for Policemen's Errors in Implementing the Law and other regulations stipulate that "responsibility for 'errors', including forcing confessions (*bigong*) or testimony, will not be pursued where the law is unclear or judicial interpretations inconsistent; where the errors are made as a result of unforeseen or irresistible reasons; where the policeman was carrying out an order from a superior; or where the policeman was handling a case according to regulations on cooperation with other units".

#### Safeguards during arrest and pretrial detention

20. The Criminal Procedure Law (CPL) was revised in 1996 with a view to, inter alia, strengthening guarantees against torture and was supplemented in 1998 by a document on the comprehensive interpretation of certain sensitive and controversial issues.

#### Notification of custody

21. Articles 64 and 71 of the CPL stipulate that, in case of detention or arrest, the detained or arrested person's family or work unit must be informed of the reason for the detention or arrest and the whereabouts within 24 hours. However, this safeguard may be limited in cases of possible impediment to investigation or impossibility to notify. Rule 108 of the Rules on the Handling of Criminal Cases by Public Security Authorities also stipulates that detention notification may be withheld in certain cases.

Right to be informed of the reasons for the arrest and on the rights entitled to while in custody 22. Rule 36 of the Rules on the Handling of Criminal Cases by Public Security Authorities stipulates that, from the day a criminal suspect is first interrogated or subject to compulsory measures by a public security authority, he/she must be informed on record of his/her rights to engage a lawyer.

#### Access to legal representatives

23. Article 96 of the CPL provides that access by a lawyer is possible following the first interrogation, but not immediate access to the public security case file. The role of the lawyers in criminal cases is also codified in the Lawyers Law. Rule 11 of the Rules concerning Several Issues Encountered in the Implementation of the CPL provides that a visit with a suspect requested by a lawyer must be arranged within 48 hours. However, in the case of detainees suspected of being organizers, leaders or members of a criminal ring, terrorist movements or smuggling, drug-dealing or embezzlement conspiracy involving more than two accomplices, a visit request by his lawyer must be arranged within five days.

- 24. Although access to a lawyer is guaranteed by Chinese legislation, this safeguard is seriously limited in practice and particularly in cases where a State secret is involved, as lawyers must obtain approval of the investigating organ pursuant to article 96 of CPL. Neither the CPL nor other regulations provide a clear-cut definition of this concept. Article 8 (6) of the Law on Preservation of State Secrets also stipulates that details of the investigation of crimes are to be protected as "State secrets". The Rules on State Secrets and Detailed Classification Levels for Issues in Public Security Work also state that all details of criminal cases under investigation should be considered "State secrets". As no law provides a clear definition of "State secrets", the Special Rapporteur is particularly concerned about the restriction on the right to defence imposed by regulations issued by public security departments, prison administrations or prosecutors when a case involves national security or State secrets, following on the concern expressed by the Working Group on Arbitrary Detention after its 2004 visit.
- 25. In addition to the requirement to obtain permission, lawyers and defendants face another series of obstacles triggered either by rules and regulations issued by public security departments and prosecutors which impose further restrictions on the access to lawyers, or by individual crime investigators who can independently prevent lawyers from meeting with their clients. Several defence lawyers, as well as leading legal academics interviewed by the Special Rapporteur, claimed that meetings between lawyers and detainees were closely supervised by the authorities and were often subjected to strict time limits, that lawyers could hardly obtain the necessary information from the prosecution, that lawyers who have too vigorously defended their clients can be detained and convicted of various crimes. Indeed, under article 306 of the CL, lawyers can be sentenced to up to seven years' imprisonment for destroying or fabricating evidence, forcing or inciting a witness to change his or her testimony or committing perjury. Article 38 adds to this provision by making "interfering with the proceedings before judicial organs" an offence. This "sword of Damocles", as it is known, can be invoked to harass, intimidate and sanction lawyers. Under it, any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution. Finally, witnesses rarely appear in court, and the prosecution generally reads out their statements, depriving the accused of the opportunity to cross-examine them, as per the 1996 CPL revision. Rules of evidence are rudimentary, and illegally obtained evidence is often admitted in practice.

#### Access to medical examination and care

26. While Chinese law and prison and detention centre regulations cover medical attention for detainees quite comprehensively, none of the provisions establish prisoners' rights to independent medical examinations.

#### Right to habeas corpus

27. Domestic legislation does not provide for any process similar to the system of habeas corpus or any other legal recourse for imprisoned persons to challenge decisions on pretrial detention before a court. At the most, suspects, defendants, lawyers and relatives may request the release of suspects or defendants upon finding that their detention has exceeded time limits (article 75 of the CPL).

#### Length of detention without charge

- 28. There are three types of custodial pretrial detention and two types of non-custodial pretrial restriction.
- 29. Custodial detention includes coercive summons (*juchuan*), a measure by which public security departments, prosecutors and courts may forcibly take in a suspect for questioning for a period of up to 12 hours. Another form of custodial detention is criminal detention (*juliu*), and the third is arrest (*daibu*).
- 30. Other forms of pretrial restriction without charge or judicial review include supervised residence (*jianshi juzhu*), and taking a guarantee and awaiting trial (*qubao houshen*). Pursuant to article 57 of the CPL, those subjected to supervised residence are forbidden to leave their home or their designated place of residence or meet other persons without permission. Interpretations of the CPL have extended the period of supervised residence to up to three years.

#### Length of detention for investigation after charge

31. According to the CPL, once the procuratorate has approved a formal arrest, a suspect may be held for up to a total of seven months in investigative detention or, in the exceptional case of the discovery of "new crimes", indefinitely. In addition, the suspect could be held in detention for a total of an additional six and a half months after the initial post-arrest investigative detention period has ended and before an

indictment is issued in the case where the procuratorate requests supplementary investigations to be carried out.

32. The Special Rapporteur has been informed by China that the public security, procuratorial, and court departments place a high level of importance on and have taken strong measures to rectify and prevent the problem of extended custody in China.

#### Re-education through Labour

33. Re-education through Labour (RTL) is one type of administrative detention. There is no law underpinning the system of RTL; rather, the regulatory framework is comprised of a patchwork of administrative regulations contrary to the 2000 Legislation Law, which states that only the National People's Congress, and in some cases its Standing Committee, can pass legislation on matters relating to the deprivation of liberty of Chinese citizens. According to article 10 of the 1982 Regulations, six categories of petty offenders are identified as not deserving criminal sanctions: counter-revolutionaries or elements who oppose the Communist Party or socialism; those who commit minor offences relating to group crimes of murder, robbery, rape or arson; those who commit minor offences such as hooliganism, prostitution, theft, or fraud; those who gather together to fight, disturb social order, or instigate turmoil; those who have a job but repeatedly refuse to work, and disrupt labour discipline, complain endlessly, as well as disrupt the production order, work order, school and research institute order and people's normal life; and those who instigate others to commit crimes. Terms for RTL are fixed at between one and three years with the possibility of an extension of one year. Decisions on RTL are supposed to be taken by an Administrative Committee comprised of officials from the bureaux of civil affairs, public security and labour. In practice, however, public security officials dominate the decision-making process.

#### Political crimes

- 34. While the crimes of "counter-revolution" and "hooliganism" were removed from China's CL in 1997, they were replaced with equally vague crimes such as "endangering national security" which is applied to a broad range of offences (arts. 102-123), "splitting the State or undermining the unity of the country" (art. 103), "armed rebellion or armed riot" (art. 104), "subverting the State power or overthrowing the socialist system" (art. 105), "espionage" (art. 110) and "stealing, spying, buying or unlawfully supplying State secrets or intelligence to individuals outside the territory of China" (art. 111). The vague definition of these crimes leaves their application open to abuse particularly of the rights to freedom of religion, speech, and assembly.
- 35. In the report of its 2004 visit to China, the Working Group on Arbitrary Detention expressed concern regarding definitions in criminal law legislation having such vague, imprecise or sweeping elements like "disrupting social order", "endangering national security", "violating the unity and integrity of the State", "subverting public order", "affecting national security" and the like. The Working Group recommended that these crimes be defined in precise terms and an exception be introduced into the CL to the effect that the peaceful activity in the exercise of the fundamental rights guaranteed by the Universal Declaration of Human Rights not be considered criminal. To date, this recommendation has not been implemented.

#### Complaints and investigation

36. Legal provisions dealing with the right of detainees to make a complaint include: article 41 (2) of the Chinese Constitution which states: "In case of complaints, charges, or exposures made by citizens, the State organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them"; article 22 of the Prison Law; article 46 of the Regulations on Detention; article 153 of the Regulations on the Procedures of Public Security Organs in Handling Criminal Cases; and article 254 of the CL. According to article 18 of the CPL, the SPP is the mechanism responsible for investigating and prosecuting crimes committed by State functionaries (see article 18 of the CPL).

#### Use of confessions and statements extracted through torture

37. Article 43 of the CPL stipulates that "it shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means". However, the CPL does not explicitly prohibit the use of confessions extracted through torture as evidence before the courts as required by article 15 of CAT. In the Decision on Specific Issues in the Implementation of the CPL of 8 September 1998, the SPC held that confessions under torture could not become the basis for determining a case (buneng zuowi ding'an de genju). In the Rules on implementing the CPL, of 18 January 1999, the Supreme People's Court held: "Criminal suspects' confessions, victims' statements, and witness testimonies

collected through torture to extract a confession (*xingxun bigong*), or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge (*buneng zuowei zhikong fanzui de genzhu*)". Therefore, while such confessions shall not form the basis for charges and convictions, the SPC decision does not exclude their admissibility in judicial proceedings. Further, the SPC Rules are only binding for judicial organs and do not apply to administrative organs. *Compensation* 

- 38. Article 41 of the Chinese Constitution provides that citizens who have suffered losses through infringement of their civil rights by any State organ or functionary have the right to compensation in accordance with the law. The right to compensation is further developed in articles 3 and 15 of the Law on State Compensation.
- 39. However, article 17.1 of the Law on State Compensation stipulates that those detained or sentenced to criminal punishment who "intentionally fabricate confessions or falsify other evidence of guilt" will not be granted compensation by the State.

#### III. THE SITUATION OF TORTURE AND ILL-TREATMENT

#### Analysis of communications of the Special Rapporteur

- 40. The Special Rapporteur recalls that over the last several years his predecessors have received a number of serious allegations related to torture and other forms of ill-treatment in China, which have been submitted to the Government for its comments. He cautions that such information does not necessarily illustrate the state of torture and ill-treatment in a given country, but rather reflects the state of information brought to the attention of the Special Rapporteur. Nevertheless, over a period of time, the number and consistency of the allegations received may be informative.
- 41. Since 2000, the Special Rapporteur and his predecessors have reported 314 cases of alleged torture to the Government of China. These cases represent well over 1,160 individuals. Over the past five years, the Special Rapporteur has received 52 responses from the Government of China relating to a total of 90 cases.
- 42. The following table indicates the typology of the victims of alleged torture and ill-treatment.

Table 1 Victims of alleged torture

Victims	Percentage
Falun Gong practitioners	66
Uighurs	11
Sex workers	8
Tibetans	6
Human rights defenders	5
Political dissidents	2
Other (persons infected with HIV/AIDS and members	2
of religious groups)	

43. The following table indicates the locations where alleged torture and ill-treatment took place.

Table 2 Locations of alleged torture

<u> </u>	
Places	Percentage
Pretrial detention centres	27
Re-education through labour (RTL) camps	25
Police stations	17
Psychiatric hospitals (ankang)	8
Public places	5
Other (police transit, birth control offices, army	18
barracks, private residences)	

44. The following table indicates the typology of the alleged perpetrators.

Table 3
Typology of alleged perpetrators

Perpetrators	Percentage
Police and other public security officers	47
RTL staff	21
Prison staff	13
Pretrial detention centre staff	7
Psychiatric hospital (ankang) staff	7
Fellow prisoners at the instigation or acquiescence of	5
detention facility staff	

45. The methods of torture alleged include, among others: beatings with sticks and batons; use of electric shock batons; cigarette burns; hooding/blindfolding; guard-instructed or permitted beatings by fellow prisoners; use of handcuffs or ankle fetters for extended periods (including in solitary confinement or secure holding areas); submersion in pits of water or sewage; exposure to conditions of extreme heat or cold; being forced to maintain uncomfortable positions, such as sitting, squatting, lying down, or standing for long periods of time, sometimes with objects held under arms; deprivation of sleep, food or water; prolonged solitary confinement; denial of medical treatment and medication; hard labour; and suspension from overhead fixtures with handcuffs. In several cases, the techniques employed have been given particular terminologies, such as the "tiger bench", where one is forced to sit motionless on a tiny stool a few centimetres off the ground; "reversing an airplane", where one is forced to bend over while holding legs straight, feet close together and arms lifted high; or "exhausting an eagle", where one is forced to stand on a tall stool and subjected to beatings until exhaustion. Several of these forms of torture have been corroborated by studies carried out by Chinese academics. On the basis of the information he received during his mission, the Special Rapporteur confirms that many of these methods of torture have been used in China.

#### Efforts to combat torture

- 46. In recent years, the issue of torture has become a subject of public concern and debate within China, particularly after several prominent wrongful-conviction cases came to light in 2005. The growing willingness of officials and scholars to acknowledge China's torture problem is a significant step forward. Chinese scholars and journalists are increasingly publishing detailed critiques on the practice of torture in China and related problems in the criminal justice system, including weak investigations, lack of professionalism in the police, and confessions extorted by torture. Chinese officials and analysts have characterized the torture problem as "widespread" in basic level organs; "deeply entrenched", a "stubborn illness", and a "malignant tumour" that "is difficult to stop" in practice, with forced confessions characterized as "common in many places in China because the police are often under great pressure from above to solve criminal cases".
- 47. The Government's willingness to acknowledge the pervasiveness of torture was confirmed when the Supreme People's Procuratorate published *The Crime of Tortured Confession (Xingxun Bigong Zui)* in late 1997, including China's first public official statistics on criminal cases of tortured confession reporting an average of 364 cases per year between 1979 and 1989, upward of 400 cases per year for most years in the 1990s, and the admission that 241 persons had been tortured to death over the two-year period 1993-1994.
- 48. Following on from its recognition of the problem, the Government has undertaken a number of measures to tackle torture, in particular the SPC, the SPP and the Ministry of Public Security (MPS). In August 2003, the Minister of Public Security, Zhou Yongkang, issued a set of unified regulations on the standardization of law enforcement procedures for public security institutions entitled "Regulations on the Procedures for Handling Administrative Cases", including procedures defining police powers in respect of time limits for confiscation of property, legal means for gathering evidence, time limits on investigation and examination of suspects, etc. In 2004, the Ministry issued regulations prohibiting the use of torture and threats to gain confessions and initiated a nationwide campaign to improve policemen's criminal investigation capacity. In the same year, the SPP launched a nationwide campaign to crack down on officials who abuse their powers. The SPP announced in 2005 that eliminating interrogation through torture was a priority of its work agenda and has instructed procurators that confessions obtained as a result of torture cannot form a basis for the formal approval of arrests and that prosecutors must work to eliminate illegally obtained evidence.

- 49. In addition to initiatives at the central level, several promising initiatives have been taken in several parts of the country. The Zhejiang provincial Public Security Department issued regulations on forced confessions stating that local police chiefs will be expected to resign in any district where there are more than two cases of forced confessions resulting in injuries, miscarriages of justice or public order problems. In mid-April 2005, Sichuan law enforcement and judicial authorities issued a joint opinion prohibiting the use of illegally obtained evidence, and requiring courts to exclude coerced statements and confessions if police cannot provide a rational explanation of the alleged coercion or refuse to investigate allegations of abuse. Following the Special Rapporteur's December 2005 visit, he learned that the Hebei provincial procuratorate, high court, and public security bureau issued a joint opinion prohibiting the use of torture to obtain evidence against a criminal suspect. As well, the Hubei provincial procuratorate, high court, justice department, public security bureau and State security bureau together issued regulations on criminal evidence, including the prohibition of the use of testimonies acquired through torture.
- 50. Practical measures to combat torture have included piloting systems of audio and video recording in interrogation rooms, strengthening representation during the investigative and pretrial phase of the criminal process by placing lawyers on a 24-hour basis in pilot police stations, designing interrogation rooms which separate suspects from interrogators, and placing resident procurators in places of detention and near public security bureaux to supervise law enforcement personnel.
- 51. The Special Rapporteur also observes positive developments at the legislative level, including the planned reform of several laws relevant to the criminal procedure, which he hopes will bring Chinese legislation into greater conformity with international norms, particularly the fair trial standards contained in the International Covenant on Civil and Political Rights (ICCPR) which China signed in 1998 and is preparing to ratify. He also welcomes the resumption by the Supreme People's Court (SPC) of its authority to review all death penalty cases, particularly given the fact that the quality of the judiciary increases as one ascends the hierarchy. The Special Rapporteur suggests that China might use the opportunity of this important event to increase transparency regarding the number of death sentences in the country, as well as to consider legislation that would allow direct petitioning to the SPC in cases where individuals do not feel that they were provided with adequate relief by lower courts in cases involving the use of torture, access to counsel, etc.

#### Effectiveness of efforts to combat torture

- 52. The Special Rapporteur notes that China was among the first States to ratify the Convention against Torture (CAT) in 1988, which requires States parties to take measures for the prevention of torture and to punish every act of torture with appropriately serious penalties. Although Chinese law prohibits gathering evidence through torture and provides for punishment of those guilty of torture, the Chinese definition of torture does not fully correspond to the international standard contained in article 1 of CAT. In particular, physical or psychological torture that leaves no physical trace is difficult if not impossible to punish with appropriate penalties in China (indeed, the Chinese word for torture, *kuxing*, principally connotes physical torture).
- 53. Although the central Government has made significant efforts to reduce the practice of torture (as noted above), the effectiveness of these efforts is significantly hampered by the degree of localism inherent in policing and criminal procedure at the grass-roots level, which impedes the effective implementation of central regulations, guidance, training, prohibitions, etc. Although the Ministry of Public Security formally exercises leadership over nationwide public security work, local Party Committees enjoy substantial authority to interpret and implement policy in their regions including by exercising leadership over respective Public Security Bureaux (PSBs). This results in localized and semi-autonomous police forces shaped by local power balances and economic resources, with accountability to local political leaders. This situation is aggravated by problems of underfunding and poor remuneration for police, particularly in the more economically disadvantaged western provinces.
- 54. Combating torture in China is further impeded by the absence of essential procedural safeguards necessary to make its prohibition effective, including: the effective exclusion of evidence from statements established to be made as a result of torture; the presumption of innocence; the privilege against self-incrimination; the right to remain silent; timely notice of reasons for detention or arrest; prompt external review of detention or arrest; granting of non-custodial measures, such as bail; the right of habeas corpus; timely access to counsel; and adequate time and facilities to prepare a defence.

- The presence of a lawyer is not only a right guaranteed under international human rights law but also an important means to prevent the use of torture. Not only do lawyers ensure supervision of investigators' behaviour during interrogation, but they facilitate prosecution of investigators who have utilized torture. They also enable witnesses to provide evidence to court that statements were acquired through illegal means. Yet in China, most suspects are interrogated without lawyers.
- Other serious shortcomings are the lack of an independent monitoring mechanism of all places of detention and a functional complaints mechanism. While there is no shortage of internal oversight mechanisms in China's law enforcement system, it must be noted that these are not independent, nor are they publicly perceived as independent. These include the Communist Party Committee that, along with Government's political and personnel departments, oversees hiring, firing, review and promotion in every Public Security Bureau department; the public security branches of the Party's Discipline Inspection Committee and the Government's Ministry of Supervision; the "Masses Letters and Visits Office" that accept and investigate citizens' complaints within each Public Security Bureau department; and the Procurators. In addition to their lack of independence, these mechanisms are largely ineffective due to the fact that the pressure to crack cases is larger than the incentive to address abuses. Yet priority seems to still be placed on developing systems for internal investigation as opposed to independent monitoring. Complex systems for "allocating responsibility" have been publicized in the police, procuratorate and courts in recent years. It is still unclear what impact these will have in practice, particularly as they will be unlikely to exercise genuine independence from Government institutions and authorities.
- 57. While procurators, some of whom are resident in prisons and near police stations, are mandated to monitor police, the procuratorate's dual functions of prosecution and police oversight means that it is unlikely to proactively uncover police malpractice, especially if such actions are seen as undermining the police's ability to perform in their joint endeavour to crack down on growing crime. In other words, it is difficult to rely on the vigilance of procurators whose interest in convicting suspects as charged might compromise their ability to oversee the police and prison guards. In addition, procurators encounter substantial difficulties in practice to exercise their supervisory role, including because detainees are afraid to report instances of torture to them. The inefficiency of current complaint and oversight mechanisms is clear from the paucity of complaints and prosecutions in a country the size of China.
- 58. International practice has shown that the most effective way to fight torture is through self-generating and/or self-sustaining social and political institutions including: a free and investigatory press, citizen-based human rights monitoring organizations, independent, fair and accessible courts and prosecutors, and the accountability that comes through regular elections. Judicial oversight is particularly important. Without a court system that judges cases fairly and independently according to law, thereby redressing grievances in a timely manner, the problem of torture cannot be brought under effective control, particularly in a context where police exercise wide discretion in matters of arrest and detention and are under great pressure to solve cases.
- 59. The Special Rapporteur is of the opinion that the establishment of a system of preventive visits to all places of detention as envisaged by the Optional Protocol to the Convention against Torture (OPCAT) would greatly enhance efforts to prevent torture or ill-treatment from occurring within places of detention. In this regard, the Special Rapporteur urges China to ratify the Optional Protocol and to establish a truly independent monitoring mechanism, where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal, to visit all places where persons are deprived of their liberty throughout the country.

# iv. DEPRIVATION OF LIBERTY FOR POLITICAL CRIMES AND FORCED RE-EDUCATION AS A FORM OF INHUMAN OR DEGRADING TREATMENT

60. The criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes. Although many such crimes, such as "organizing a counter-revolutionary group" and "counter-revolutionary propaganda and incitement" were abolished in 1997, members of the "democracy movement" and political dissidents who were sentenced before 1997 for these crimes are still serving long prison sentences today. The Special Rapporteur welcomes the decision of the Government of China to grant prisoners convicted of these crimes the same access to sentence reduction and parole as other prisoners, and notes the relatively large number of sentence reductions and early releases granted to such prisoners. However, prisoners are still serving sentences for counter-revolution, and several hundred more are serving sentences for "hooliganism". Most

systems provide for the release of prisoners serving sentences for a crime that is removed from the criminal law. Article 15, paragraph 1, of ICCPR suggests that, at a minimum, reviews of the prisoners' sentences should be carried out. Release of all counter-revolutionaries and hooligans imprisoned for non-violent related offences (e.g. leading a counter-revolutionary group, engaging in counter-revolutionary propaganda and incitement) would be a milestone in China's effort to ratify the ICCPR.

- 61. After the 1997 changes, political dissidents, journalists, writers, lawyers, human rights defenders, Falun Gong practitioners, and members of the Tibetan and Uighur ethnic, linguistic and religious minorities were often prosecuted as a result of having exercised their human rights to freedom of speech, assembly, association or religion. They are often sentenced to long prison terms for political crimes such as endangering national security through undermining the unity of the country, subversion or unlawfully supplying State secrets to individuals outside the country. Although many of these prisoners deny having committed any wrongful act and, therefore, do not confess during trial (often despite undergoing torture), they sometimes change their mind after having been subjected to forced re-education while serving their prison sentences. If politically deviant and dissident behaviour is not subjected to criminal sanctions, the respective target groups, such as Falun Gong practitioners and human rights defenders, are often subjected to years of administrative detention, such as RTL, for having disturbed the social order or similar petty offences.
- 62. Many prisoners serving sentences for political crimes and detainees subjected to RTL who submitted complaints to the Special Rapporteur or whom he personally met in detention, claimed that the disproportionate, discriminatory and unjust deprivation of personal liberty (often for a very long period of time) together with the forced re-education system to which they were subjected caused more severe pain and suffering than the physical torture they might have endured during interrogation by the police. Indeed, some of these measures of re-education through coercion, humiliation and punishment aim at altering the personality of detainees up to the point of even breaking their will.
- 63. In response to the Special Rapporteur's characterization of forced re-education as a form of inhuman or degrading treatment, the Chinese authorities advanced several arguments in written comments of 25 January 2006 on the preliminary draft report, including that re-education is premised on helping detainees re-enter society and that since many detainees "are led to a life of crime because they love leisure and hate labour and resort to illegal means to gain others' property", prisons and re-education through labour facilities organize appropriate work "in order to cultivate abilities and habits of self-reliance and prevent problems such as poor mental health because they have nothing to do". Furthermore, the Special Rapporteur was informed that, in order to further enforce the law in a civilized manner, China's Ministry of Justice Prison Bureau has begun training psychotherapists in the prison system with national professional accreditation in order to prevent and eliminate torture of prison inmates. According to China, "at present nearly 90 per cent of China's prisons have begun this work and more than 1,000 prison system psychotherapists have already been trained".
- 64. In the opinion of the Special Rapporteur, methods used in the system of RTL in China, and similar methods of re-education in prisons, pretrial detention centres, and other institutions often go beyond legitimate rehabilitation measures provided for in article 10 of the ICCPR. Indeed, some of these measures strike at the very core of the human right to personal integrity, dignity and humanity, as protected by articles 7 and 10 of the ICCPR, as well as articles 1 and 16 of the CAT. RTL constitutes not only a serious violation of the human right to personal liberty, but can also be considered as a form of inhuman and degrading treatment or punishment, if not mental torture. RTL and similar measures of forced re-education in prisons, pretrial detention centres, religious institutions and psychiatric hospitals should therefore be abolished.
- 65. The human rights to privacy, freedom of expression, religion, assembly and association lie at the very heart of a democratic society, which, according to its White Paper on Democracy, China has committed itself to achieve. Under international human rights law, Governments can only interfere with the expression of political opinions, religious convictions, moral values or minority views when they constitute incitement to hatred or violence or a direct threat to national security or public safety in the country. A system of State surveillance of citizens with non-conformist views and with severe punishments for such "deviant behaviour", such as long-term prison sentences for vaguely defined crimes, including endangering national security, undermining the unity of the country, subverting State power, or unlawfully supplying State secrets to individuals outside the territory, as well as subjecting them to RTL, seems to be incompatible with the core values of a society based upon a culture of human rights and leads to

intimidation, submissiveness, self-censorship and a "culture of fear", which in turn interferes with the right not to be subjected to inhuman and degrading treatment or punishment.

#### V. CONDITIONS IN DETENTION

#### In general

- 66. The Special Rapporteur visited a total of 10 detention facilities. As is the usual practice, during visits to places of detention, the Special Rapporteur held private interviews with detainees (summaries of which are included in appendix 2). However, he observed that a considerable number of detainees that were approached for interviews did not express a willingness to speak with the Special Rapporteur, and several of those who did requested absolute confidentiality. Consequently, the information contained in appendix 2 does not reflect the full situation, as a significant amount of the information on torture practices was received in confidence.
- 67. In general, the Special Rapporteur found that although the specific conditions of the facilities varied, in terms of basic conditions, such as food, medicine and hygiene, they were generally satisfactory (detailed findings on conditions in detention are listed for each facility visited in appendix 2). However, the Special Rapporteur noticed a palpable level of fear when talking to detainees. He also was struck by the strict level of discipline exerted on detainees in different facilities. Time and again, he entered cells and found all detainees sitting cross-legged on a mattress or in similar forced positions reading the CL or prison rules. According to information provided by detainees, such forced re-education, in particular in pretrial detention centres, goes on for most of the day. It is usually conducted on the order of one of the fellow detainees who is considered "chief" of the cell. There is very little privacy and opportunity for individual recreation, such as reading a book, etc. Even when serving long prison sentences, persons convicted of political offences usually have no right to work and very little time for recreation. They are not allowed to practise their religion (e.g. Buddhism in Tibet, Islam in Xinjiang).

#### Circumstances surrounding capital punishment

- 68. The Special Rapporteur is also concerned about the circumstances surrounding the death penalty, including the situation of prisoners on death row. At the Beijing Municipality Detention Centre, where the Special Rapporteur spoke with prisoners sentenced to death at first instance awaiting appeal, he noted that these prisoners were handcuffed and shackled with leg irons weighing approximately 3 kg, 24 hours per day and in all circumstances (i.e. including during meals, visits to the toilet, etc). In the opinion of the Special Rapporteur this practice is inhuman and degrading and serves only as an additional form of punishment of someone already subjected to the stress and grief associated with having been sentenced to death.
- 69. The Special Rapporteur wishes to express concern at the high number of crimes for which the death penalty can be applied, and the lack of official statistics on the application of the death penalty, which contributes to the perception of secrecy. He encourages the Government to both narrow its scope and to be more transparent towards family members and the public at large regarding its use, including by making statistics on the death penalty public information. The Special Rapporteur notes allegations that some provincial authorities are introducing mobile execution vans (converted 24-seater buses) manufactured by a State-owned company. These mobile execution vans were reportedly approved by Yunnan Provincial authorities on 6 March 2003, and 18 such vans were distributed to all intermediate courts and one high court in Yunnan Province in 2003. In December 2003, the SPC in Beijing reportedly urged all provinces to acquire execution vans "that can put to death convicted criminals immediately after sentencing".
- 70. The Special Rapporteur welcomes the anticipated recovery by the Supreme People's Court of responsibility for final approval of the death penalty.

#### VI. CONCLUSIONS AND RECOMMENDATIONS

#### **Conclusions**

71. The Special Rapporteur wishes to express his sincere gratitude to the Government of China for having invited him and for having facilitated his mission in general accordance with his terms of reference. He welcomes the Government's willingness to acknowledge the pervasiveness of torture in the criminal justice system and various efforts undertaken in recent years at the central and the provincial level to

combat torture and ill-treatment. In particular, he notes the 2004 regulations issued by the Ministry of Public Security prohibiting the use of torture and threats to gain confessions and the announcement by the Supreme People's Procuratorate in 2005 that eliminating interrogation through torture was a priority of its work agenda. Recent efforts to eradicate torture include a nationwide campaign to clear up and rectify extended police custody, large-scale training of the police, piloting systems of audio and video recording in interrogation rooms, placing lawyers on a 24-hour basis in pilot police stations and establishing resident procurators in places of detention and near public security bureaux to supervise law enforcement personnel.

- 72. These and similar measures have contributed to a steady decline of torture practices over recent years. Nevertheless, on the basis of a considerable number of allegations that he and his predecessors received over the years, as well as other reliable governmental and non-governmental information and his own fact-finding during the mission, the Special Rapporteur believes that torture, though on the decline particularly in urban areas, remains widespread in China.
- 73. Many factors contribute to the continuing practice of torture in China. They include rules of evidence that create incentives for interrogators to obtain confessions through torture, the excessive length of time that criminal suspects are held in police custody without judicial control, the absence of a legal culture based on the presumption of innocence (including the absence of an effective right to remain silent); and restricted rights and access of defence counsel.
- 74. The situation is aggravated by the lack of self-generating and/or self-sustaining social and political institutions including: a free and investigatory press, citizen-based independent human rights monitoring organizations, and independent, fair and accessible courts and prosecutors.
- 75. Judicial oversight is particularly important. One of the largest overall obstacles to eliminating torture in China is the institutional weakness and lack of independence of the judiciary, particularly in a context where police exercise wide discretion in matters of arrest and detention and are under great pressure to solve cases. Nor do there seem to currently be any truly independent monitoring mechanisms of places of detention or complaints mechanisms in China. The procuratorate is not perceived as an independent monitoring organ given its role in convicting suspects. Nor does the procuratorate have the requisite independence to meet the international criteria of a judicial officer authorized by law to exercise judicial power to take decisions on arrest.
- 76. At the provincial and municipal levels, the efforts of the central Government to reduce the practice of torture are significantly hampered by the degree of "localism" inherent in policing and criminal procedure, impeding the effective implementation of central regulations, guidance, training, prohibitions, etc. Such localism also impedes effective accountability and oversight.
- 77. The basic conditions in the detention facilities visited by the Special Rapporteur including food, medical care and hygienic conditions, seem to be generally satisfactory. But the Special Rapporteur was struck by the strictness of prison discipline and a palpable level of fear and self-censorship when talking to detainees. Detainees, particularly in pretrial detention facilities where they should enjoy the presumption of innocence, seem to spend many hours a day sitting in a fixed position and being forced to read to each other the Criminal Law or prison rules.
- 78. Even when serving long prison sentences, persons convicted of political crimes often have no right to work and very little time for recreation. They are usually not allowed to practise their religion. Convicted prisoners who have not confessed to their crimes are put under special education systems and are deprived of certain rights and privileges which converted prisoners enjoy, such as family visits, access to a telephone or the incentive of reduced sentences. Prisoners on death row are mixed with pretrial detainees and shackled with leg irons and sometimes also handcuffed for 24 hours a day. Such additional punishment is not compatible with the right to personal integrity, dignity and humanity.
- 79. The criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes, such as "counter-revolutionary crimes" before the 1997 CL reform, or crimes "endangering national security" thereafter. In addition, persons with politically deviant or dissident behaviour are often subjected to Re-education through Labour and other administrative detention for up to four years for having disturbed the social order.

- 80. Many prisoners serving sentences for political crimes and detainees subjected to RTL claimed that the disproportionate, discriminatory and unjust deprivation of liberty, together with the forced re-education, caused more severe pain or suffering than the physical torture during police interrogation.
- 81. In the opinion of the Special Rapporteur, the combination of deprivation of liberty as a sanction for the peaceful exercise of freedom of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at admission of culpability and altering the personality of detainees up to the point of even breaking their will, strike at the very core of the human right to personal integrity, dignity and humanity. It constitutes a form of inhuman and degrading treatment or punishment leading to submissiveness and a "culture of fear", which is incompatible with the core values of any democratic society based upon a culture of human rights.

#### Recommendations

82. On the basis of his conclusions, the Special Rapporteur puts forward a number of recommendations and expresses his hope that the Government will take them into account in the context of ongoing reform efforts aimed at the eradication of torture and ill-treatment.

#### Investigation and prosecution of torture

- (a) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.
- (b) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.
- (c) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty pending trial, and prosecuted.
- (d) The declaration should be made with respect to article 22 of CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.

  Prevention of torture and ill-treatment through safeguards in the criminal justice system
- (e) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pretrial detention, which normally should not exceed a period of 48 hours. After this period they should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators is permitted.
- (f) Recourse to pretrial detention in the Criminal Procedure Law should be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.
- (g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.
- (h) Confessions made without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence. Video and audio taping of all persons present during proceedings in interrogation rooms should be expanded throughout the country.
- (i) Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint from the defendant), order an independent medical examination.
- (j) The reform of the CPL should conform to fair trial provisions, as guaranteed in article 14 of ICCPR, including the following: the right to remain silent and the privilege against self-incrimination; the effective exclusion of evidence extracted through torture; the presumption of innocence; timely notice of reasons for detention or arrest; prompt external review of detention or arrest; timely access to counsel; adequate time

and facilities to prepare a defence; appearance and cross-examination of witnesses; and ensuring the independence and impartiality of the judiciary.

- (k) The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts.
- (I) Section 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution should be abolished.

#### Other measures of prevention

- (m) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism be established where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal to visit all places where persons are deprived of their liberty throughout the country.
- (n) Systematic training programmes and awareness-raising campaigns should be carried out on the principles of the Convention against Torture for the public at large, public security personnel, legal professionals and the judiciary.
- (o) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.

#### Circumstances surrounding capital punishment

- (p) Death row prisoners should not be subjected to additional punishment such as being handcuffed and shackled.
- (q) The restoration of Supreme Court review for all death sentences should be utilized as an opportunity to publish national statistics on the application of the death penalty.
- (r) The scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes.

#### Deprivation of liberty for political crimes

- (s) Political crimes that leave large discretion to law enforcement and prosecution authorities such as "endangering national security", "subverting State power", "undermining the unity of the country", "supplying of State secrets to individuals abroad", etc. should be abolished.
- (t) All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.

  Forced re-education
- (u) "Re-education through Labour" and similar forms of forced re-education in prisons, pretrial detention centres and psychiatric hospitals should be abolished.
- (v) Any decision regarding deprivation of liberty must be made by a judicial and not administrative organ. Follow-up
- (w) The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the Office of the United Nations High Commissioner for Human Rights, for assistance in the follow-up to the above recommendations.

## **Appendix 2**

#### Places of detention - Individual cases

- B. Lhasa, Tibet Autonomous Region
- IV. Lhasa Prison No. 1 (Visited on 26 November 2005)
- 13. The prison has a male prison population of 800 detainees of which approximately 70% are Tibetan, 20% are Han Chinese and 10% belong to other ethnic groups. General conditions were satisfactory and inmates can work by weaving Tibetan mats, planting flowers and fixing cars. In terms of solitary confinement, the Special Rapporteur noted that the cells measured 4m x 8m, with a large window and concrete floor. He was told that a detainee can spend between one and 15 days in solitary confinement. The Special Rapporteur was not given access to any prison registers as the relevant Officer was not present.
- 14. The first set of prisoners that the Special Rapporteur approached for an interview all declined the opportunity to speak with him. After lengthy assurances, one prisoner was willing to speak openly with the Special Rapporteur.
- 15. **Tseren Puntso**, aged 23. On 13 July 2002 at his business, he was arrested in connection with the homicide of a person who died as a result of a fight the previous day. He confessed immediately at the police station and was detained at the Shikaze Pretrial Detention Centre until January 2003, when he was transferred to Lhasa Prison to serve a seven-year sentence, which has been reduced to six. From this time until April 2003 he was held in the section known as the "Team for New Prisoners", where new arrivals undergo education on prison rules. He indicated that he has not been ill-treated. In the summer time he carries out basic mechanical repairs. Recreation includes basketball games in the main court of the prison. Tibetan, Chinese and mathematics are taught at the prison.
- V. Tibet Autonomous Region Prison, also known as Drapchi Prison (Visited on 27 November 2005)
- The prison, sometimes referred to as Drapchi Prison, has a mixed population of approximately 900 16. inmates of which 7 to 8% are women. The Special Rapporteur was informed that virtually all of the detainees have confessed to their crimes, and that a strong emphasis on education is placed on those who have not yet confessed. He was told that there had been a sharp decrease in solitary confinement cases, with only one such case since 2003 where the person concerned wanted to commit suicide. There are 10 isolation cells, the tenth cell is padded and designed especially for detainees with suicidal tendencies. All have a window in the roof with direct sunlight and also a surveillance camera. The Special Rapporteur was also provided with a list of 15 names of detainees who had died in custody - one related to suicide and the other 14 due to illness. While no detainee interviewed in TAR prison claimed to have been tortured or ill treated during detention there, the Special Rapporteur received reports from former TAR prisoners held in other facilities, who reported being bound and beaten with a sand-filled plastic stick, as well as reports of being beaten with electroshock batons. Although high level officials of TAR had informed the Special Rapporteur that all prisoners who had received a sentence of more than 10 years were serving their sentence in the TAR prison, he found out only during his visit to the TAR prison that most of the prisoners that the Special Rapporteur wished to interview had in fact been moved on 12 April 2005 to the newly established Qushui prison, the existence of which had not been mentioned at all during the briefing with the TAR officials.
- 17. The Special Rapporteur requested to meet with a number of prisoners but was told only after a considerable delay that these individuals had been transferred in April 2005 to a newly established facility, Qushui Prison. Detainees interviewed at Drapchi prison requested absolute confidentiality.
- VI. **Qushui Prison** (Visited on 27 November 2005)
- 18. Qushui prison is a new prison which was opened in April 2005. It has a male prison population of over 300. It is to this prison that a large number of former TAR prison detainees were transferred as part of its reorganization. The Special Rapporteur was informed that Qushui prison is for very serious crimes (i.e. sentences of over 15 years), and holds the principal criminal actors while accessories are held in Drapchi.

The Special Rapporteur was particularly concerned by reports that Tibetan monks held in this prison are not allowed to pray and that in some cases are only allowed outside of their cells for 20 minutes per day. Concern was also expressed by reports that prisoners cannot work nor exercise and that they have nothing to read. Prisoners complained about the food, the extreme temperatures experienced in the cells during the summer and winter months and a general feeling of weakness due to lack of exercise. Prisoners transferred from Drapchi stated that basic conditions were better in Drapchi. In particular, that the prison lacks proper work and recreation facilities for long term prisoners. The Special Rapporteur recommends that in general: prisoners are provided with recreational activities; are allowed to conduct religious worship; the temperature is adequately controlled, particularly in summer and winter months; and that the quality of food is improved.

- 19. Due to time constraints (late arrival from Drapchi prison, strict working hours of prison staff), the Special Rapporteur was able to interview only 3 out of a list of 10 prisoners whom he had wished to see.
- Jigme Tenzin (Bangri Tsamtrul Rinpoche), aged 43, a lama and founder of an orphanage, was arrested in August 1999 and later convicted of inciting splittism and sentenced to 15 years and seven months imprisonment in a closed hearing by Lhasa Municipal Intermediate People's Court in September 2000. His sentencing document lists evidence against him that includes meeting the Dalai Lama, accepting a donation for the home from a foundation in India, and a business relationship with a Tibetan contractor who lowered a Chinese flag and attempted to blow himself up in front of the Potala Palace in Lhasa in August 1999. He acknowledged meeting the Dalai Lama, accepting the contribution, and knowing the contractor, but he denied the charges against him and rejected the court's portrayal of events. He told the Special Rapporteur that the first five days of his detention was the most difficult period as he was continuously interrogated night and day. He was held handcuffed with one hand behind his shoulder and the other around his waist, and empty bottles were put in the spaces between his arms. His legs were fettered, he was hooded and made to kneel on a low stool for 1.5 hours. The room where he was held was dark and dirty and without natural sunlight. Regular interrogations continued over the following three months. Most of the time he was wearing handcuffs and shackles, even when eating and sleeping. Because of this and because he was afraid it was often hard to sleep. The police wanted him to confess for the flag incident, as well as to having established the children's home for political purposes. He was moved to Gutsa for one year and then to Drapchi. In Gutsa he stayed together with either three to five persons in a room which had a monitoring device. In his section there were only "political prisoners". After 2000 his treatment improved. He had access to a television, water when he wanted it, and had longer free time. He was provided educational classes regarding the status of Tibet. After these classes he confessed as he did not want to spend his "whole life" in prison, having already spent six years in prison. He complains of heart disease and gall stones, for which he mostly treats with family-provided medication. His family visits him once a month. He has no right to telephone but he can send letters to his wife. He complained of monotony and boredom, having to spend most of his time in his room and not being allowed to pray. He told the Special Rapporteur that the most serious criminals are locked up most of the time. He can, however, go outside in the morning until noon. Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.
- 20. **Lobsang Tsuitrim**, aged 29, a monk. He was first detained on 8 November 1995. During interrogations he was shocked with an electric baton all over his body, including on the face. In one incident in Drapchi, on 4 May 1998, his arms and legs were tied together and he was beaten with a stick (plastic with sand inside) in connection with a disagreement concerning the raising of flags. Since then he has not been subjected to ill treatment, and is expected to be released in 2009. He pointed out that the conditions at Drapchi were better than in Quishui Prison: the food is worse; he only has 20 minutes of free time outside his cell a day; the temperatures inside in the summers are hot and very cold in the winter. In either Drapchi or Qushui Prisons, he complained of boredom: the prisoners must sit in their cells, they cannot pray though many are devoutly religious, nor can they work, practice sports, or have access to reading material. Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.
- 21. **Jigme Gyatsu**. On 30 March 1996, he was arrested and beaten by the criminal investigation team. He was subsequently sentenced to 15 years imprisonment and 5 years deprivation of political rights on 25 November 1996 by Lhasa Municipal Intermediate People's Court for the crime of endangering national security in connection with establishing an illegal organization. He told the Special Rapporteur that the ill

treatment was worst in Gutsa, where he stayed for one year and one month. Since the persons he was charged together with had already confessed, he also decided to confess. He then was transferred to Drapchi Prison in April 1997. In one incident in March 2004, he yelled out, "Long live the Dalai Lama," for which he was kicked and beaten, including with electric batons. The electric batons were used on his back and chest with painful effect, and ceased once the Chief of Police came and stopped it. After this incident his sentence was extended for an additional two years. He recalled that the general conditions in Drapchi were better than in Quishi Prison: better food, the cells were better lit and ventilated, and the temperatures inside were not as extreme in summers and winters. He can spend 3.5 hours per day outside of his cell. Since he has been convicted of a political crime, possibly on the basis of information extracted by torture, the Special Rapporteur appeals to the Government that he be released.



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