



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the fifth periodic report of China

Addendum

Information received from China on follow-up to the concluding observations*

[Date received: 24 January 2017]

Reply from the Government of China on the follow-up to the concluding observations of the United Nations Committee against Torture

1. With regard to the questions raised in the concluding observations issued by the Committee against Torture, China has already provided some explanations in the report it submitted on implementation of the treaty and also in the dialogue held with the Committee. In accordance with the follow-up actions proposed in the concluding observations (para. 61), the Government of China hereby presents its replies, respectively concerning the questions raised in paragraphs 13, 19, 23 and 31 of the concluding observations.

A. Regarding restrictions on the ability of detainees to meet with a lawyer and on notification of detention for the families of detainees (para. 13)

1. Regarding restrictions on the ability of detainees to meet with a lawyer

2. China attaches a great deal of importance to guaranteeing the right to meet with a lawyer. Legal acts and regulations such as the Criminal Procedure Law and the Lawyers Law all expressly provide for this right. Article 33 of the Criminal Procedure Law establishes that “A criminal suspect shall be entitled to entrust a defender after he/she is interrogated for the first time by an investigating organ or as of the date on which compulsive measures are taken”. Article 37 establishes that during the investigation period for crimes against State security, related to terrorist activities or involving major cases of bribery, the defence lawyer must obtain authorization from the investigating body in order to meet with a suspect. The above provisions require meetings with a lawyer to be subject to authorization only in a very few, extraordinary cases, to ensure the rights of the detainee and to protect State security and public safety and ensure an appropriate balance in the fair administration of justice. They apply only in the investigation stage. Once the possibility of

* The present document is being issued without formal editing.



obstructing the investigation or of divulging State secrets has passed, or the case has been brought to court, the respective departments must authorize meetings and promptly inform the detaining authority and the defence lawyer. In practice, investigative bodies such as the public security and procuratorial services comply strictly with the relevant provisions and carry out measures to guarantee the right to meet with a lawyer, in accordance with the law.

3. In addition, on 16 September 2015 the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice issued Provisions on the Legal Protection of Lawyers' Practising Rights, thus refining the provisions relating to the right to see a lawyer in the three types of cases mentioned above. For example, the investigating body must promptly, and in accordance with the law, consider applications for meetings filed by defence lawyers; reply in writing to defence lawyers within three days as to whether the application can be approved; and provide the defence lawyer in question with clear instructions on how to enter into contact with the responsible department and officials. When a meeting with counsel is authorized, they must issue the defence lawyer with an authorization document; when a meeting cannot be authorized because it would obstruct the investigation or because of the possibility that State secrets might be divulged, they must clearly indicate the reasons to the defence lawyer. In major cases of bribery, the investigating agency must authorize the defence lawyer to meet at least once with the suspect prior to the conclusion of the investigation.

2. Regarding alleged limitations on notification of relatives about the detention of their family members

4. There are strict rules in Chinese laws and regulations relating to the appropriate scope for notifying family members of detainees and the conditions in which such notification may be restricted. In accordance with article 83 of the Criminal Procedure Law and the Public Security Organs Procedures for Handling Criminal Cases, apart from cases where notification is impossible or situations where the defendant is suspected of crimes of undermining State security or of terrorist activities, in which notification might hinder the investigation, the detainee's family members must be notified within 24 hours of the person being placed in detention. Instruments such as the Public Security Organs Procedures for Handling Criminal Cases and the Rules for Criminal Procedure of the People's Procuratorate (for Trial Implementation) all contain clear provisions specifically defining what constitutes a hindrance to the investigation and when notification is impossible. In addition, pursuant to article 91 of the Criminal Procedure Law, if a detainee must be placed under arrest, unless notification is impossible, the person's family must be notified within 24 hours of the person being placed under arrest, and hindrance of the investigation cannot be invoked as a reason for not promptly informing the family. The above provisions are designed to ensure an appropriate balance between the guarantee of the rights of detainees and the maintenance of an effective system of criminal justice. The respective rules are only applied during the investigation stage. Once the possibility of hindrance of the investigation passes, the family of the detainee must be notified immediately of the situation in question. In judicial practice, the public security and procuratorial bodies strictly implement the relevant provisions of the Criminal Procedure Law and guarantee the right of detainees' family members to be informed of the situation, in accordance with the law.

3. Supervision of law enforcement personnel and relevant redress

5. China has always attached great importance to strengthening the protection of the right of detainees to see a lawyer and to notify family members. The Criminal Procedure Law establishes clear rules in these fields, both for the supervision of law enforcement personnel and for redress. The Government has also issued an Opinion on Standardization to Improve the Scope of Law Enforcement and has made progress in issuing rules for ensuring the right of lawyers to practise their profession in accordance with the law, in perfecting remedies and providing sound reporting and complaint mechanisms able to receive and check reports and provide a response. To ensure effective supervision and provide for redress, law enforcement authorities have also issued dedicated rules and taken the relevant measures. The public security bodies will hold police personnel accountable for errors committed under their responsibility, in accordance with the Public Security Organs

Regulations on Pursuing Responsibility for Policemen's Errors in Implementing the Law, as violations of the statutory procedures, including for violations involving obstruction of the right to see a lawyer or to notify family members. To provide for supervision and remedies in the event of violations of such rights, the procuratorial bodies have issued rules: the Public Security Organs Procedures for Handling Criminal Cases and the Rules for Criminal Procedure of the People's Procuratorate (for Trial Implementation), and Eight Prohibitions of the Supreme People's Procuratorate on Duty-related Crime Investigations. If procuratorial bodies or their staff violate the right of a defence lawyer to meet or communicate with persons held in custody, criminal suspects under house arrest or persons otherwise facing charges, the defence lawyer can file a complaint or press charges with a procuratorial body at the same level or may appeal to the one at the next higher level, and the procuratorial body receiving the accusation must accept it and process it, in accordance with the law. At the same time, if the people's procuratorate discovers that during its investigation a public security body was supposed to notify the family members of a suspect in detention, under arrest or under house arrest, but that it failed to do so, it must consider the circumstances and may respectively issue a rectification opinion or a notice for correction of the illegal situation. If the violation constitutes a crime, the case is transferred to the appropriate department so that it can ascertain who is criminally responsible, in accordance with the law. In addition, the Provisions on the Legal Protection of Lawyers' Practising Rights also contain articles to ensure supervision of the conduct of public officials.

B. The so-called “crackdown” against “defence lawyers” and “activists” (para. 19)

6. Lawyers are a major driving force for State governance in accordance with the law and for the construction of a socialist State governed by the rule of law. China currently has nearly 300,000 lawyers. The Government of China has always respected and protected the right of lawyers to practise and has supported their performance of their duties in accordance with the law and regulations. The Provisions on the Legal Protection of Lawyers' Practising Rights, issued in September 2015, further improved upon measures for the protection of the right of lawyers to practise, providing a remedy mechanism and a system for the investigation and supervision of cases when that right is violated. In June 2016, the Party Central Committee and the State Council also issued an Opinion on the Strengthening of the Reform of the Bar, which introduced comprehensive reforms to the entire system in which lawyers work. The Opinion set out requirements for ensuring the right of lawyers to litigate, improved the related remedy mechanisms and in practical terms protected the right of lawyers to practise and their personal rights.

7. There has been no “crackdown” by the Government of China on human rights lawyers and activists. In actual fact, there have been just a few cases of lawyers who have been held to account and subjected to sanctions because they have violated professional ethics and discipline and have gone beyond the legal and regulatory scope of the practice of their profession. They are suspected of breaking the law. No one can claim any special privileges based on the fact that he or she is a lawyer. This serves to defend the interests of the overwhelming majority of lawyers, who practise their profession in accordance with the law. It helps establish an environment conducive to their practice of the law and encourages the healthy development of the profession.

8. Regarding the case of the Fengrui law firm, which came up during the discussion, this case was tried in public between 2 and 5 August 2016, at Tianjin Intermediate People's Court No. 2. Zhou Shifeng, Zhai Yanmin, Hu Shigen and Gou Hongguo were sentenced in accordance with the law. The four all confessed and pleaded guilty, and they are currently serving their sentences, as already reported by the media. During their time in custody, their legal rights and interests were fully respected.

9. As for the amendment of the offence of disruption of order in court, when opinions were solicited from the public for the first discussion of the draft of Amendment IX to the Criminal Law, the term “conduct causing other serious disruptions of order in court” was used; it was subsequently discussed on numerous occasions and then reworded more clearly

as “conduct involving the destruction of court facilities or plundering, damaging or destroying litigation documentation or evidence, when the circumstances are serious”. This amendment is intended to avoid the abusive use or interpretation of “serious disruption of order in court”. It in no way specifically targets any group. It defends the authority of the justice system and guarantees the normal conduct of legal action, ensuring the personal safety of participants in legal action, including lawyers.

C. Independence of investigations of torture allegations (para. 23)

10. The Chinese Constitution clearly stipulates that the people’s procuratorates are State organs for legal supervision and that, in accordance with the law and regulations, they shall independently exercise their procuratorial power and shall not be subjected to interference from administrative bodies, public organizations or individuals. Under Chinese law, in addition to their functions as prosecutors, the procuratorial bodies are also responsible for initiating investigations into situations such as abusive interrogations and coerced confessions, the forced extraction of evidence and ill-treatment of persons in custody. The people’s procuratorates are not subordinate to the public security organs. During inquiries into allegations of torture by the public security police, they are able to ensure the independence of the investigation. While public procurators’ offices have both prosecution and investigative powers, within their structures, the prosecution and investigation functions are not performed by the same departments. They are thus able to ensure that oversight is both independent and fair when they carry out investigations of torture. At the same time, the Government of China is implementing pilot reforms of the national supervisory system.

11. As for the main responsibilities of the Chinese Communist Party Politics and Law Committees, those bodies carry out such tasks as coordinating the functions of the various organs, supervising and urging the performance of duties in accordance with the law and establishing appropriate conditions for the proper administration of justice. Their support allows the trial courts and procuratorial bodies to exercise their power to conduct trials and carry out procuratorial duties independently and fairly. They do not coordinate individual cases, nor do they issue specific opinions on the actual evidence or testimony in a case, or as to whether a sentence is appropriate.

12. Regarding the number of torture investigations, immediate suspension from duty and holding of persons suspected of torture to account, and the reception of appropriate redress by victims, the Government of China has already provided the relevant information in its response to the list of issues submitted prior to consideration of the report (for details, see CAT/C/CHN/Q/5/Add.2).

D. Regarding the Law on Guarding State Secrets, the declassification of information related to torture and the provision of relevant data (para. 31)

13. Under the relevant provisions of the Law on Guarding State Secrets, information relating to torture does not fall within the scope of State secrets. Therefore, such information is not the subject of any declassification issues. If the case itself involves State secrets, information may only be declassified if either the period of secrecy established by the Law on Guarding State Secrets elapses or the conditions for declassification are fulfilled. This is based upon the need to ensure State security and public safety and is common practice in all countries of the world.

14. In the material in its response to the list of issues submitted prior to consideration of the report, the Government of China already provided some information on the number of people in custody and data about cases of torture brought to court and tried. However, owing to the country’s vast size, large population and uneven level of development among regions, and the fact that human and other resources are limited, the statistics produced by the regions are of different calibres. It is thus difficult in a short time frame to collect and synthesize detailed, analytical data. We will carefully study the recommendations of the

Committee so as to improve the capacity and level of production of statistical data as quickly as possible.

15. The Government of China attaches great importance to public access to information and has already adopted practical measures to guarantee the right of citizens to be informed about State and public affairs, fully making use of government data to serve their activities in production and in their lives and inform their decisions relating to social and financial questions. The Regulation on the Disclosure of Government Information establishes that if citizens, legal persons or other organizations believe an administrative body has infringed upon their legal rights in its specific work related to the disclosure of government information, they are entitled to request an administrative review or to file an administrative legal action against it.

16. In conclusion, the Government of China hopes that the information provided above can help the Committee comprehensively and objectively understand its efforts and developments in combating torture. The Government will also continue, on the basis of equality and mutual respect, to develop its cooperation and exchange of information with the Committee and will continuously improve its capacity to combat torture and to raise the level of its activities in this field.
