

Shadow Report on the Anti-Torture Situation in China

**For Universal Periodic Review of People's Republic of China by the Human
Rights Council, United Nations**

By Institute of Law, Chinese Academy of Social Sciences

Address: 15 Shatan Beijie, Beijing 100720, P.R.CHINA

Tel.+86-10-64035493

Fax. +86-10-64014045

Beijing, P.R.China

August 31, 2008

I. Legislative Status regarding Anti-Torture in China

Since the 1990s, China has established the basic legal framework of anti-torture.

A. Provisions for anti-torture in the Substantive laws

a. The Constitutional law

Article 37 of the Chinese Constitutional law provides that: “ the freedom of person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.” This provision concerning anti-torture in Constitutional law is justification for other anti-torture legislation and judicial practices.

b. Criminal Law

There are seven crimes related to torture in the Chinese Criminal Law as follows, the crime of unlawful detention, the crime of illegal search, the crime of retaliation and frame-ups, the crime of extorting a confession by force, the crime of extracting testimony from witness by violence, the crime of abuse of inmates, and the crime of abuse of subordinates.

B. Provisions Concerning Anti-torture in the Criminal Procedural Law

Article 12 of Chinese criminal procedure law establishes the principle that no person shall be found guilty without being judged as such by a People's Court

according to law. Article 43 strictly forbids prosecution of crime by torture in the criminal procedure. Both article 61 in the Interpretation of the Supreme People's Court on Some Issues Concerning the Implementation of Criminal Procedure Law of the People's Republic of China and article 265 in the Rules of Criminal Procedure of the People's Procuratorate reaffirm the above provisions and further establish the illegal evidence exclusion rules.

In addition to the substantive law and procedure law mentioned above, Police Law, Judges Law, Public Procurators Law, State Security Law and Prison Law have special provisions regarding the prohibition of torture so as to safeguard the human rights of all citizens. State Compensation Law makes provisions of the state compensation to the victims of torture. These provisions further enhance the tight legal system for the anti-torture at maximum.

II Anti-Torture Practices in China Needs Further Improvement

Although anti-torture is clearly provided in Chinese law, torture still exists in the practices in China. Improvement of the awareness of human rights and system reform becomes inevitable channel for anti-torture in the future in China.

A. The priority of human rights protection shall be fully established

For a long time, during the process of criminal prosecution, the idea of social defense prevailed the idea of protection of human rights. The society paid more attention on finding out the substantive facts with less emphasis on respecting the rights of the defendants, which might foster the happening of torture in practices. With inclusion of the protection of human rights into the Constitution, it is expected

that more and more attention paid to the balance of the human rights protection and social defense, more emphasis on functions of the human rights protection in the course of criminal prosecution and more focus on safeguarding the right of the accused and strictly limiting the state public power. With the second revision of the Criminal Procedure Law, the principles of the presumption of innocence and not to be forced self-incrimination will be gradually established and fully implemented.

B. The principle of trial centered criminal procedure needs to be fully established.

For a long time, due to the impacts of such factors as historical tradition and the poor investigative techniques, confession of the accused played a decisive role in criminal prosecution. Excessive attention to the role of confession of the accused might lead to the happening of torture. In recent years, we have been observing that the law enforcement departments are trying to change the working model of statements centered. We recommend that in addition to establishing illegal evidence exclusion rules, we need to increase investment in investigative techniques to change the law enforcement officials' stereotyped thinking pattern, to construct the mechanism of Procedural decision, to establish the system of the separation of investigation and detention gradually and finally to realize the principle of trial centered criminal procedure.