IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN THE PEOPLE'S REPUBLIC OF CHINA

AN NGO SUBMISSION TO THE 56TH SESSION OF THE UN COMMITTEE AGAINST TORTURE

BY

THE CHINA HUMAN RIGHTS LAWYERS CONCERN GROUP

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About CHRLCG

The China Human Rights Concern Group (CHRLCG "The Concern Group") is a non-profit organization based in Hong Kong Special Administrative Region (HKSAR). Its objective is to advocate for the protection of the human rights lawyers and legal rights defenders in China. It was established on 20 January 2007 by a group of lawyers, legislators and academics in Hong Kong. Despite their endeavors to fight for the rights of the underprivileged within the legal framework, many lawyers and legal activists in China have been subjected to tremendous political pressure and unfair treatment by the Chinese authorities. They and their families deserve more attention and support from Hong Kong and the international community. We believe that the status and rights of the lawyers must be respected before China can successfully develop constitutionalism and rule of law.

The Concern Group has prepared this briefing for the Committee against Torture to assist its consideration of China's 5th /6th periodic report under the Convention against Torture and Oher Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"). In line with the scope of our organization, this briefing is confined to mainland China and excludes the Special Administrative Regions of Hong Kong and Macau.

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SUMMARY OF RECOMMENDATIONS

Recommendations for ARTICLE 1, 4 & 13

- On definition and central mechanism

(1) Domestic criminal code and criminal procedure law be amended to incorporate specific article(s) to prohibit torture to be defined in full and comprehensive compliance with the spirit and purpose of the Convention.

(2) The setting up of an independent judicial mechanism to receive complaints of violations and non-compliance.

Recommendations for ARTICLE 2, 14

- Length of pre-arrest/ pre-trial detention & Arbitrary forms of detention

(1) Maximum length of pre-arrest detention under police power to be confined within 48 hours, as highlighted in the General Recommendations of the Special Rapporteur on Torture. (E/CN.4/2003/68, para. 26)

(2) The bail system should be reviewed for it to be fully and effectively used for purpose as listed in (1)

(3) China should provide in its criminal code the procedure of "habeas corpus" to allow detainees challenge legality of their imprisonment or the conditions in which they are made captive. This is to ensure that members of the public can have a channel to help from courts.

(4) Any intention to extend length of detention for the purpose of investigation should seek judicial approval by court. In this regard, CHRLCG sees it imperative for "grounds for extension" to be articulated and made precise to replace vague and non-legal enunciations such as "special situation", "grave or significant suspects" for instances, as in the existing CPL. (Art.89)

(5) Abolish all forms of administrative detention.

(6) Residential surveillance at home should also be replaced by the bail system which is currently grossly underused in the due process for its purpose.

Residential surveillance at designated location which is commonly manipulated and misused to resemble secret detention should be completely abolished.

The CHRLCG hence recommends that the residential surveillance, which is redundant when law already allows detention and bail, should be abolished categorically.

RECOMMENDATIONS

- On lawyers' rights to meet clients/ access to case materials and Police power

(1) Revise the language of the provisions in CPL for them to be clear, articulated and precise, allowing no space for arbitrary interpretation and manipulation of law enforcers.

(2) Reform and depoliticise the role and functions of police in the criminal procedure in order to subject the force strictly under judicial monitoring and supervision. One practical step is to reduce and subsequently remove the force's presence and impact in the Committee of Political Science and Law (Zhengfa'wei).

(3) Establish independent judicial mechanism sufficient power, resources and capacity to receive complaints against police for violation of the due process. Sanction and punitive measures should be established to hold perpetrators of torture as well as those subjecting others to the risk of torture and inhuman treatment, accountable for their actions or non-actions.

(4) Strengthen the independence of the lawyers associations at all levels to provide better assistance to lawyers in the process of compliant and seeking remedy.

RECOMMENDATIONS:

- On extral-legal detention and practice

(1) CHRLCG urges the Chinese government to investigate into the issue of black jail, and criminalise the operation and or any attempt to facilitate this type of detention.

(2) To prevent the existence of illegal detention, China should include "habeas corpus" in criminal law, which allows a detainee to challenge the legality of their imprisonment or the conditions in which they are being imprisoned. Thus, citizens would be given power to get help from courts to keep government and nay other institutions that may imprison people in check.

(3) China should provide in its criminal code the procedure of "habeas corpus" to allow detainees challenge legality of their imprisonment or the conditions in which they are made captive. This is to ensure that members of the public can have a channel to help from courts.

(4) Mechanism should be set up to hold accountable and penalise investigative officials adopting measures of extral-judicial nature in extraction of confession, and for intimidation. Punitive mechanism as well as complaint mechanism should be in place to ensure that officers will be abide by procedures and obligations listed under Article 23 of the Implementation Measures of the Regulation of the People's Republic of China on Jails, and such procedure should be videotaped.

(5) Criminal code should be revised to ensure the right to silence, and that entrusted lawyers should be allowed to meet their clients at any time and under any circumstances upon request without the need to receive an approval by the investigative organs.

(6) Regulate the procuratorate so that any request to file a complaint of interrogation outside detention centre ("*waiti*") or interrogation by torture would be taken up; any complaint would be concluded within 6 months upon a request is filed; a information system for a complainant to track the status and the details of the decision of a complaint and the relevant compensation.

THE SUBMISSION

ARTICLE 1, 4 & 13

DEFINITION OF TORTURE AND CRIMINALISATION OF ALL ACTS OF TORTURE

CRIMINALISATION OF ALL ACTS OF TORTURE

RIGHT TO COMPLAIN AND ATTENDED TO

1. The CHRLCG is concerned that despite the repeated criticisms for the lack of definition of torture used in the Chinese laws, the Chinese government has remained unyielding in its 5th /6th State Party Report (SPR para. 5) on the call to act.

2. Whilst Articles 50 and 54 of the Criminal Procedure Law (CPL, 2012) [1] make provisions for exclusion of evidence obtained via means of torture, torture is however is never clearly defined for that purpose.

3. The inclusion of "inflicting severe physical or mental pain or suffering on defendants" in the 2012 Judicial Interpretation (SPR para. 17), though a positive move, has remained limited as a measure to prevent torture. As it is presented, the 2012 Judicial Interpretation falls short by its being relevant only for deciding "admissibility" of evidence but not meant for criminalizing an act of torture.

4. Articles 247 and 248 of the Criminal Law (CL) prohibit torture with penalties applicable for violation. However, torture here is qualified narrowly as an act intending for "extracting confession or testimony"; carried out by judicial workers, and or staff members of prisons, detention centres and administration detention house; with consequences being "serious" or "especially serious" or "causing injuries, physical disablement" or "death". [2]

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[1] …Strictly prohibit torture for confession and to collect evidence via means of intimidation, allusion, deception and other illegal methods. No forced self-incrimination allowed.…(Art 50, CPL)
Confessions of the criminal suspects, defendants collected via illegal means, including torture; as well as testimonies of the witnesses and statements of victims collected via illegal means including violence and intimidation should be excluded. (Art 54 CPL)

[2] Judicial staff using torture to extract confession from criminal suspects or defendants, or violence to collect testimonies from witnesses shall be penalized with imprisonment or labour detention below 3 years. Stipulations in articles 234, 232 will be applied should any "disablement or death" is thereby caused. (Art.247, CL)

They do not fully address the basic elements that constitute the definition of torture as prescribed in Art. 1 of the Convention, regarding (a) nature - by public officials in its broader sense including "acquiescence and consent"; (b) purpose - including punishment, intimidation, coercion or discrimination; and (c) severity of treatment - inflicting severe physical or mental pain or suffering, not necessarily confining to "physical disablement or death".

5. CHRLCG points out that the provisions in existing Chinese laws are limited and weak for meaningful implementation. They hence cannot prevent or protect against torture. More significantly, the provisions in their current form are designed to leave perpetrators of torture grossly at large and immune from any accountability.

6. Along these lines, CHRLCG would like to draw the attention of the Committee Against Torture (the Committee) to the 34 cases contained in an online booklet for the occasion of the 2015 UN International Day in Support of Victims of Torture –"An overview of Torture Cases of Lawyers in China 2006-2015" [3] (The Overview, see Appendix as entitled) which we believes represent only tip of the iceberg.

7. These lawyers were physically assaulted, kidnapped or put in solitary confinement, often as a punishment for their insistence to take up the so-called political sensitive cases, to perform their duties; and not so much for "confession". In recent months, more cases have occurred where lawyers were taken revenge of when they pointed out irregularities in the trial procedure in the court. Lawyers such as Wang Yu, Zhang Keke, and Li Hongbin etc. have all experienced physical assaults under similar situations in recent months.

8. While attacks might come from officials, including public security officers and court police, as in the cases of Gao Zhisheng, Cai Ying, or Cheng Hai; it is not uncommon for the assaulters to be gangers acting with the tacit consent of the officials, as in the cases of Li Yuhan and Liu Weiguo, for instances. Same applies to the instances of kidnaps and assaults, as for Teng Biao and Li Heping, to name but a few. [4]

9. As they are, the above cases could not be qualified as cases of torture since most of the assaults the lawyers encountered, be they physical or mental, in or

[3] See Appendix: An overview of Torture Cases of Lawyers in China 2006-2015

[4] ibid.

out of the detention setting, were "punishment" and or "reprisal" by the authorities consequential to their insistence in performing their professional duties – something not recognised as ground for prohibition in the existing law.

10. In fact, retaliations take place not only because of lawyers or activists trying to defend rights.

    Over the years, we see more and more incidents of them being targeted as a result of their wish to make their ordeal and experiences heard either by the UN mechanism or more generally by the international community. The plights of activist Cao Shunli and that of lawyer Gao Zhisheng epitomized the crux of issues concerned. In more recent months, the detention and accusation of lawyer Zhang Kai of "stealing, secretly collecting, purchasing, or illegally providing state secrets or intelligence to an organization, institution, or personnel outside the country" is suspected to be another case in this light.

11. It then follows that almost none of these cases could claim damage on the ground of torture, cruel, inhuman or degrading treatment. In fact, no lawsuit has by far been successfully filed against; [5] and no one has been held accountable or redress /remedy in whatever form made.

12. As noted herewith, therefore, the claim made by the Chinese government as in its current State Party Report (para.5), which refers back to "para. 38 of China's first report" [6] can only be misleading, if not deception in its most blatant form.

RECOMMENDATIONS

(3) Domestic criminal code and criminal procedure law be amended to incorporate specific article(s) to prohibit torture to be defined in full and comprehensive compliance with the spirit and purpose of the Convention.

(4) The setting up of an independent judicial mechanism to receive complaints of violations and non-compliance.

[5] With one, that of Mr. Cai Ying's, in process lately but not certain how far it can proceed.

[6] CAT/C/7/Add.5, para. 38 which reads "The act of torture defined by the Convention, which also constitutes a crime under the stipulations of the Criminal Law of the PRC, is strictly prohibited in accordance with the relevant laws of the PRC."

ARTICLE 2 & 14

EFFECTIVE MEASURES TO PREVENT TORTURE

RIGHTS TO REDRESS AND COMPENSATION

13. In China, measures to prevent acts of torture have remained minimal, if not absent. Apart from the lack of an legal definition, as discussed here above, the effectiveness of the laws meant for rights protection is further hampered in several ways;

13.1 Flaws and imperfection in the law on due process;

13.2 Failure to implement the provisions for protection;

13.3 Extra judicial detention.

Flaws and imperfection in the law on due process

14. For flaws and imperfection of the CPL, three aspects are highlighted herewith – (a) refers to the length of pre-trial detention allowed by the law, and (b) imprecision of the law, and (3) the arbitrary forms of detention that are prescribed by law but have remained arbitrary. They are deemed to bring injustice rather than justice.

15. **(a) Prolonged pre-arrest and pre-trial detention** which places suspects in the hands of police without any judicial oversight has been notoriously known as the hotbed for torture and degrading treatment to take place. While Article 89 of the CPL allows police to extend an initially 3-day prior-to-arrest detention to 30 days for suspects of "grave cases", the law also provides a period of 7 days for the procuratorate to approve an arrest.

    Articles 154, 155, 156 and 169 then go further to allow for the detention period to be accumulated to 14-3/4 months pending for trial, subjecting the suspects always to the complete and arbitrary control of the police.

16. (b) The problem is further aggravated with the **imprecision of the terms in the law**. While the law allows extension of length of detention to be made for cases that are "major", "complex", "grave" or "cannot be concluded within the time limit"; none of these terms is legally and technically defined. The power to interpret is again laid with the police. This has become a power handy to use when rights lawyers are targeted and penalised for their work.

17. (c) For the **arbitrary forms of detention**, CHRLCG would like to bring to the Committee's attention two detention types which are particularly problematic – the residential surveillance and the administrative detention.

Residential surveillance

17.1 "Residential surveillance" as one form of criminal compulsory measure is prescribed in Articles 72-77, 79 and 89 of the CPL.

Accordingly, it is meant as a milder form of detention, targeting suspects who are pregnant, physically vulnerable, unfit for formal detention, and or those who need further investigation after the 37 days expire.[7]

17.2 The law provides that residential surveillance shall be carried out at the domicile of the suspect for a maximum period of six months, about 5 times the already controversial 30 plus 7 days formal detention.

As residential surveillance and criminal detention are two distinct forms of criminal compulsory, the law also provides the police the power to move from one to the other, i.e. to impose the 6-month residential surveillance after the 37 days of pre-arrest detention, hence allowing a pre-arrest detention of 7 months and 7 days.

17.3 Residential surveillance is therefore commonly criticised as yet another measure under the executive power of the police to impose prolonged restriction of the suspect's personal liberty and movement during the pre-arrest and pre-trial period; hence undesirable for rights protection and a just due process.

17.4 However, residential surveillance could become even more sinister, subjecting suspects to the serious risk of torture and abuses, when it is conducted "at locations designated by police" which should not be the detention centre or the premises of the investigative organs, [8] and in where, the law does not provide guidance to regulate the setting for residential

[7] 30 days for police investigation plus 7 days pending for prosecutors' decision to endorse arrest

[8] ... residential surveillance can be conducted at designated location for those without fixed domicile. Subject to the approval of the procuratorate or public security organ one level up, residential surveillance at designated location, other than the detention centre or the premises of the investigative organ, is also applicable to those suspected of committing crimes of national security, terrorist activities or serious corruption cases...(art. 73, CPL)

surveillance at designated locations meaning that it is largely at the police discretion on where and how to treat the suspect.

17.5 As a result of such provisions, suspects could easily fall preys of torture and abuses when they are kept at a police-designated location, and with the police failing to inform the family and lawyers of the suspect.

17.6 This is all the more disturbing when it comes to targeted individuals, such as dissidents, human rights defenders or lawyers representing cases of human right implications, "residential surveillance" will almost always arbitrarily take place in "designated place of residence", subjecting these individuals to complete loss of personal liberty, as well as to full control and manipulation of the law-enforcers who may summon, interrogate and abuse them any time at will.

17.7 The experiences of lawyers and activists Tang Jinling, 9 Li Tiantian, Liu Shihui and Wu Wei (aka Ye Du) in 2011; that of Xu Lin, Song Guangqiang (aka Song Ze) and Yang Zaixin in 2012; and Zhu Chengzhi and Liu Jie in 2013, tell it all for our worries. In some of these cases, victims faced torture and abuses which included being placed in a room without windows for prolonged period, intimidation, sleep deprivation and beating, etc. While Tang Jinling is still pending for sentencing after about 1.5 years of detention, he has been deprived of rights to see his family and the right to yard time.

17.8 Residential surveillance of this kind, when applied on targeted individuals, is almost always used alongside the allegations of "suspected of having committed crimes that endanger national security, public and or social order", without any of the above terms defined.

17.9 This then will allow the authorities to exercise their maximum discretionary power to extend length of detention and deprive the suspects other rights including that of meeting their lawyers, communicating with families via letters etc. (Art. 75, CPL) – putting the targeted individuals under complete

[9] Mr. Tang Jingling (唐荆陵) is a Guangzhou human rights lawyer who was subjected to residential surveillance for 5 months and 1 day in 2011. He was taken away on 31 Feb 2011 to Guangzhou Dashi Police Training Centre and from 6 Feb onwards, he was questioned by the police for more than a week. The police officers rotated every 8 hours every day and Mr. Tang was not allowed to sleep. Mr. Tang protested to them about this and said such acts amount to torture under the Convention, but the police officers replied that "this is the order from the superior". It was not until Mr. Tang was shivering all over, his hands became numb, his heart felt bad and his health was in serious danger that he was allowed to sleep for 1-2 hours a day.

control of the authorities, and more precisely that of the police and the public security organs.

17.10 The disconcerting scenario has again been evident in the recent crackdowns of lawyers which started in early July of 2015.

As of 13th November, a total of 28 rights lawyers and activists are kept in such circumstance and have remained incommunicado. None of their whereabouts is known to the outside world, despite their families and lawyers' numerous and repeated enquiries made and attempts to use the legal avenue. These lawyers and activists are: (see Appendix entitled "Summary" and that of "Illegality of the Chinese Authorities in the 7.09 crackdown")

- 15 Lawyers/ Lawyer assistants ---Wang Yu (Beijing, Fengrui Law Firm), Bao Longjun (Beijing, Wang Yu's husband), Wang Quanzhang (Beijing, Fengrui Law Firm), Liu Sixin (Beijing, Fengrui Law Firm administrative assistant), Xie Yuandong (Beijing, Fengrui Law Firm), Li Chunfu (Beijing, younger brother of lawyer Li Heping), Zhou Shifeng (Beijing, Fengrui Law Firm), Sui Muqing (Guangdong), Xie Yang (Hunan), Zhang Kai (Beijing), Huang Liqun (Beijing, Fengrui Law Firm), Liu Peng (Wenzhou Zhejiang, Zhang Kai's assistant), FangXiangui (Wenzhou Zhejiang, Zhang Kai's assistant), Zhao Wei (aka Kao La, Beijing, Li Heping's assistant), and Gao Yue (Beijing, Li Heping's assistant);
- 4 human rights defenders --- Gou Hongguo (aka Ge Ping, Tianjin), Liu Yongping (aka Lao Mu, Beijing), Hu Shigen (Beijing), and Lin Bin (Monk Wang Yun, Fujian)
- 6 Christians and clerics detained for the Wenzhou Cross-removal cases --- Huang Yizi (Wenzhou, Zhejiang), Cheng Chaohua (Wenzhou, Zhejiang), Zhang Chongzhu (Wenzhou, Zhejiang), Zhang Zhi (Wenzhou, Zhejiang), Zhou Jian (Wenzhou, Zhejiang), and Cheng Congping (Wenzhou, Zhejiang)

17.11 Adding to the distressing fact is that for no clear reason or justifications, at least 11 of these lawyers and activists have been transferred and detained in provinces/ cities which are not their normal cities/ provinces of domicile. It is suspected that the removal of them from where they normally live and work is to create an objective circumstance that they do not have fixed domicile in where they are – another criteria that allows the authorities to put them under residential surveillance "at designated location". (Art. 73, CPL)

Administrative detention

17.12 Article 4 of the CPL entrusts state public security and national security personnel with power to arrest and to conduct administrative detention, a form of arrest and detention without trial. It targets at group including prostitutes and their clients, drug addicts, political dissenters and petty criminals, who perform legal misdemeanours that are not serious enough for criminal prosecution. In the case of the public security organs, police are granted the power to detain, as a penalty, of 5 up to 20 days.

17.13 Since mechanism does not exist to countercheck power of the police and the security officials, reports of torture and inhuman treatment in such setting as a result of power abuses, sometimes causing deaths, have continued to exist; with victims being those of practitioners of religious/faiths deemed not acceptable by the Chinese authorities, families violating the one-child policy or those deemed as social deviants.

17.14 Mr. Jiang Tianyong was the defence lawyer of religious groups; he was detained and interrogated by Beijing National Security Officials for 13 hours after his visit to the United States in November 2009. On 16th February 2011, Mr. Jiang, after attending a lunch gathering and a case meeting with other lawyers, was taken away by Beijing National Security Officials to a dark room without sunlight and was forced to memorize patriotic songs and lyrics. He was also deprived of sleep for the first five days.

RECOMMENDATIONS

(7) Maximum length of pre-arrest detention under police power to be confined within 48 hours, as highlighted in the General Recommendations of the Special Rapporteur on Torture. (E/CN.4/2003/68, para. 26)

(8) The bail system should be reviewed for it to be fully and effectively used for purpose as listed in (1)

(9) China should provide in its criminal code the procedure of "habeas corpus" to allow detainees challenge legality of their imprisonment or the conditions in which they are made captive. This is to ensure that members of the public can have a channel to help from courts.

(10) Any intention to extend length of detention for the purpose of investigation should seek judicial approval by court. In this regard, CHRLCG sees it

imperative for "grounds for extension" to be articulated and made precise to replace vague and non-legal enunciations such as "special situation", "grave or significant suspects" for instances, as in the existing CPL. (Art.89)

(11) Abolish all forms of administrative detention.

(12) Residential surveillance at home should also be replaced by the bail system which is currently grossly underused in the due process for its purpose.

Residential surveillance at designated location which is commonly manipulated and misused to resemble secret detention should be completely abolished.

The CHRLCG hence recommends that the residential surveillance, which is redundant when law already allows detention and bail, should be abolished categorically.

Failure to implement the provisions for protection

18. Despite the many defects existing, the CPL contains elements that are meant to be protective, but which fall short in effective implementation, notably as a result of the excessive and arbitrary power of the police. The violation of the due process has almost inevitably resulted in suspects/ defendants being placed in an extremely vulnerable situation subjecting to torture, abuses and ill-treatments. Along these lines, three issues of concerns are to be highlighted,
    (a) The lawyers Rights to meet with lawyers and Lawyers rights to read case-materials;
    (b) Rights for families to be notified;
    (c) Police's arbitrary and unchecked power with impunity (Qing'an case)

Rights to meet with lawyers and Lawyers rights to read case-materials

18.1 CPL provides suspects with the right to have lawyers once compulsory measures are applied (Art. 33). It also provides lawyers with the rights to meet their clients and communicate with them in writing. The request for meeting should be fulfilled within 48 hours (Art. 37); the right to read and make copies of case-related materials (Art. 38) and to obtain evidence to the advantage of the defendants (Art. 39).

18.2 However, these rights are often deprived for cases with human rights implications, often undertaken to claim civil and political rights or to

challenge miscarriage of justice and or official malpractices / malfeasances -- and hence dubbed “politically sensitive”.

18.3 For suspects/ defendants under this kind of circumstances, it is not uncommon for them to be deprived their rights to choose lawyers at will, as in the case of Zhou Shifeng. But even If they can have someone of their preference, they more than often will not be able to meet or communicate with them. Nor will their lawyers be allowed to read case-related materials.

18.4 In the Guangxi Leping case, lawyers of 4 defendants on the death row, who were strongly suspected to be victims of miscarriage of justice, waited and protested outside the court for 18 days in May 2015, pleading for their rights to read case materials. Their wish was not granted despite all efforts made.

18.5 Very often, if lawyers insisted to perform their professional duties, they would be victimised; and in their turn, became probable victims to torture.

18.6 The case of Beijing lawyer Yu Wensheng has been well-known. Yu was criminally detained by the Beijing Daxing District Public Security Bureau on 13 October 2014 with the charge of “picking quarrels and making troubles” allegedly for his support of the Umbrella Movement in Hong Kong, though some suggested that the accusation could well be made to disguise the reprisal to his insistence to see his clients and the protest he launched outside a police station just a few days prior to his arrest.

During detention, neither his family nor lawyers were allowed to meet with him. Yu Wensheng was held incommunicado for 99 days. He reported being tortured during detention and suffered hernia subsequently (video).

18.7 Another prominent series of cases drawing global attention are the lawyers and activists captured in the 7.09 crackdowns. [10]

By 13 November, 2015, and more than 4 months after the first seizure on 9 July 2015, there are still 36 lawyers, law firm staff and activists under various forms of detention (criminal detention, residential surveillance, or the unknown type), with another 4 in complete disappearance.

18.8 Only 2 out of the 36 have been allowed to meet lawyers, and 3 are known of their locations, rendering therefore the majority of them completely

[10] http://chrlawyers.hk/en/文章類型/最新消息

incommunicado, if not to count in the 4 who have simply vanished. By far, none of the lawyers has managed to obtain information about the cases from the authorities.

As noted in the repeated calls of the CHRLCG for the disclosure of the whereabouts of these lawyers, law firm staff and activities, it is always their personal safety as well as physical and mental well-beings that are worrying. [11]

On 24 September 2015, 28 lawyers who represented 15 of the detained lawyers and activists issued a statement to urge the authorities, and the police in particular to abide by law in handling the cases, after they failed in their numerous attempts to seek to fulfil their duties as lawyers. http://chrlawyers.hk/en/node/1071

Rights for families to be notified

18.9 The CPL provides that families of the suspects/ defendants be informed not later than the 24 hours after the detention applies. (Art. 83) Similar provision is made for detainees of residential surveillance of designated locations. (Art. 73)

18.10 However, among the 36 individuals still in detention, only about half of the families have received notifications of the detention of their loved ones, but still without indication of their whereabouts. The implications and possible consequences and risks that may occur to the lawyers and activists having been detained are all too obvious.

Police's arbitrary and unchecked power with impunity

18.11 In China, the public security organs are vested with extensive authority in the execution of their legal duties which in theory are subjected to many layers of supervision and monitoring, ranging from that of the National People's Congress (NPC) to regulations internal to the organs.

[11] http://www.chrlawyers.hk/en/content/press-releaseover-50-world-wide-civil-society-organizations-signed-joint-statement-support

18.12 For its part, the CPL on paper also envisions a due process with check and balance, notably in its Articles 3 and 7.

18.13 However, in practice, police's power has remained largely unchecked.

18.14 This is inevitably so in so far as the central authorities continue to rely on them for repressive means in resolving social and political grievances. It has becomes more tangibly so as the country enhances its campaigns for "social stability" to become one that calls for safeguarding "national security", alluding grassroots discontents with foreign conspiracy, which needs to be purged.

18.15 When it comes to the criminal due process, the powers that are enjoyed by the public security organs -- to which the police form part -- include not only enforcement but also administrative jurisdiction often exercised at their discretion. Among others are the "five criminal compulsory measures" and the "administrative detention" as discussed here-above.

18.16 More disturbingly, public security officers and police are often reported as the first perpetrators in violating rights provided in the criminal due process, especially that of the human rights defenders and their lawyer. This is so largely because (a) of their position as the gatekeeper in such legal process but also (b) of the substantial amount of discretionary power they are entitled to in so far as laws are written in an imprecise manner – as illustrated in the discussion made in paragraphs 15 and 16 here above and or on Articles 70, 75, 79 and 89, for instances, of the CPL.

And probably even more disturbingly is that police can often stay unaccountable and immune from their violations and or arbitrary use of power.

18.17 The Qing'an case in May 2015, in which a petitioner Xu Chunhe was shot dead by a train station police in the Qing'an county of Heilongjiang, tells it all.

The case was closed within days with the police claiming it "lawful killing". However, Wu Gan, paralegal from Beijing Fengrui Law Firm, soon discovered a video which challenged the police's claim of violence on the part of Xu. What happened thereafter was rather dramatic.

Several human rights defenders then came to render support to Xu's elderly mother but were all detained by the police. Two rights lawyers who came in support of the HRDs were also detained, and given administrative detention.

When five more lawyers came to rescue their two fellowmen, they too were detained. [12]

As the news spread, human rights lawyers across the country were prepared to travel to Qing'an in groups. The pressure that mounted prompted the police to release all the 7 lawyers, a move that was deemed by many as unprecedented on the part of the police.

However, Wu Gan, the whistle-blower, was soon arrested and he has been detained till now incommunicado except for the time he was made to self-incriminate in front of the audience across the country on the official media CCTV.

In response to the earlier detention of the two batches of lawyers, the human rights lawyers group in China issued and a joint online statement to call for the setting up of a task force by the NPC to investigate into the possible misfeasance and power abuse of the police in Qing'an.

The petition was co-signed by over 700 lawyers and legal academics across the country within a matter of days in June – a first time record for the legal professionals in the country.

When the 7.09 crackdowns took place in July, many were quick to realise that many of the lawyers seized, detained or summoned had signed the petition.

To date, there has no known follow-up or investigation into the Qing'an case of shooting.

19. The CHRLCG notes that without an independent mechanism to effectively monitor the power of the police and to sanction malpractices, the newly released "Regulations about protecting lawyers rights to practice according to law" (September 2015) will end just like another batch of rhetoric to stay rotten in time.

[12] The CHRLCG issued two statements in response to the detentions of the two batches of lawyers http://chrlawyers.hk/en/content/statement-china-human-rights-lawyers-concern-group-about-lawyer-you-feizhu-be-detained-15, http://chrlawyers.hk/en/content/urgent-statement-china-human-rights-lawyers-concern-group-about-illegal-detention-5-lawyers

RECOMMENDATIONS

(5) Revise the language of the provisions in CPL for them to be clear, articulated and precise, allowing no space for arbitrary interpretation and manipulation of law enforcers.

(6) Reform and depoliticise the role and functions of police in the criminal procedure in order to subject the force strictly under judicial monitoring and supervision. One practical step is to reduce and subsequently remove the force's presence and impact in the Committee of Political Science and Law (Zhengfa'wei).

(7) Establish independent judicial mechanism sufficient power, resources and capacity to receive complaints against police for violation of the due process. Sanction and punitive measures should be established to hold perpetrators of torture as well as those subjecting others to the risk of torture and inhuman treatment, accountable for their actions or non-actions.

(8) Strengthen the independence of the lawyers associations at all levels to provide better assistance to lawyers in the process of compliant and seeking remedy.

Extra Judicial detention and practice

20. The CHRLCG is concerned that arbitrary forms of detention and practices that are being used outside the law, rendering suspects in great risks of torture and abuses. Referred herewith are the form of extra-legal detention (a) often known as "black jail"; and (b) the practice of "Weiti", usually done outside of the formal detention facilities.

21. Although it has always existed as an extra-legal detention, **black jail** as one form of extra-legal detention has developed rapidly to penalise and harness the often unwavering petitioners, political dissents and followers of unofficial faiths; replacing the re-education through labour system that was closed down in 2013.

21.1 With their being unofficial, unregulated and illegal, often in ad hoc locations such as hotels, psychiatric facilities, government premises and residential buildings, it is difficult to monitor or document the exact situation of their operation.

21.2 While the government has never admitted its existence, these detention facilities are often operated by government officials or official-endorsed hired guards and run in properties owned or leased by the government.

21.3 In the absence of any minimal standard and or guidelines as code of practice and or that of any basic requirement for the venue set up and facilities, detainees are often deprived of fundamental legal safeguards and are subject to mistreatment and poor detention conditions. Moreover, these detentions are often set up in secret locations; detainees are incommunicado, without access to lawyers and lack due process. Thus, they are prone to torture and inhumane treatment, including physical and sexual assaults, sleep and food deprivation and solitary confinement. Moreover, there is a lack of adequate medical treatment for the injured and sick in these facilities; the detention environment is often crowded and unsanitary.

21.4 Existing information indicates that most of the detainees in this kind of setting are either followers of different faiths not recognised by the authorities, such as FLG and family church, or petitioners.

22. According to Article 23 of the Implementation Measures of the Regulation of the People's Republic of China on Jails, a detainee could only be taken out of custody when an investigation requires identification procedure of offender or evidence or recovery of stolen articles. Nonetheless, there were reports of cases where detainees were temporarily taken outside of the detention centres, usually in the middle of the nights, for interrogation using the reason of transfer of detention location or other excuses. It is known as **Weiti**, meaning literally **"interrogation outside".** Since interrogation outside the formal detention setting is not audiotaped or videotaped, torture is often used to force detainee into a false confession. Some detainees would be taken back to the detention centres for videotaped interrogation only after they express the will to confess during the illegal interrogation.

In these cases, authorised lawyers were often refused a meeting with the detainee. When a detainee or his or her lawyer requested to file a complaint with the procuratorate, the requests were often rejected or the complaints were unsuccessful. Victims often face huge difficulty in receiving compensation.

RECOMMENDATIONS:

(7) CHRLCG urges the Chinese government to investigate into the issue of black jail, and criminalise the operation and or any attempt to facilitate this type of detention.

(8) To prevent the existence of illegal detention, China should include "habeas corpus" in criminal law, which allows a detainee to challenge the legality of their imprisonment or the conditions in which they are being imprisoned. Thus, citizens would be given power to get help from courts to keep government and nay other institutions that may imprison people in check.

(9) China should provide in its criminal code the procedure of "habeas corpus" to allow detainees challenge legality of their imprisonment or the conditions in which they are made captive. This is to ensure that members of the public can have a channel to help from courts.

(10) Mechanism should be set up to hold accountable and penalise investigative officials adopting measures of extral-judicial nature in extraction of confession, and for intimidation. Punitive mechanism as well as complaint mechanism should be in place to ensure that officers will be abide by procedures and obligations listed under Article 23 of the Implementation Measures of the Regulation of the People's Republic of China on Jails, and such procedure should be videotaped.

(11) Criminal code should be revised to ensure the right to silence, and that entrusted lawyers should be allowed to meet their clients at any time and under any circumstances upon request without the need to receive an approval by the investigative organs.

(12) Regulate the procuratorate so that any request to file a complaint of interrogation outside detention centre ("*waiti*") or interrogation by torture would be taken up; any complaint would be concluded within 6 months upon a request is filed; a information system for a complainant to track the status and the details of the decision of a complaint and the relevant compensation.

Appendix

1. An Overview of Torture Cases of Lawyers in China (2006-2015) for the occasion of the 2015 "United Nations International Day in Support of Victims of Torture".

   http://www.chrlawyers.hk/en/content/china-human-rights-lawyers-concern-group-united-nations-international-day-support-victims

2. Summary of Cases Updates for the 7.09 Crackdowns
3. Legal Irregularities noted in the 7.09 Crackdowns ©