

COMMITTEE AGAINST TORTURE

OCTOBER 2015

56TH SESSION

CHRISTIAN SOLIDARITY WORLDWIDE: STAKEHOLDER SUBMISSION PEOPLE'S REPUBLIC OF CHINA

INTRODUCTION

1. Christian Solidarity Worldwide (CSW), a Christian organisation working for religious freedom through human rights in the pursuit of justice, wishes to draw the attention of the Committee Against Torture to the human rights situation in China with regards to the use of torture and other cruel, inhuman and degrading treatment or punishment, concerning both Chinese citizens inside the country and the government's repatriation of North Korean asylum seekers. CSW has been documenting rights abuses and advocating for freedom of religion or belief and other human rights for over three decades.
2. CSW's work on China includes research and analysis on the application of international law within the domestic Chinese legislative framework, restrictions on the activities of both independent (unregistered) and state sanctioned churches and church leaders, the demolition of church properties and removal of crosses on churches in Zhejiang Province, the unlawful detention and imprisonment of Christian leaders and adherents as well as the human rights defenders and lawyers that support them, and religious freedom violations against Buddhists, Muslims, Falun Gong practitioners and other religion or belief communities.
3. This submission focuses on torture and ill-treatment in extra-legal detention facilities, otherwise known as 'black jails', forced repatriation of North Korean asylum seekers, and China's legislative and legal reform concerning torture and ill-treatment; with reference to China's obligations under international law. This submission also brings several cases of torture of religious communities, individuals, and lawyers to the Committee's attention.

TORTURE AND ILL-TREATMENT IN EXTRA-LEGAL DETENTION FACILITIES (ARTICLES 1, 2, 4, 11, AND 12 OF THE CAT)

4. CSW is concerned about the existence of extra-legal detention facilities, otherwise known as 'black jails' (黑监狱), and the acts of torture and ill-treatment of detainees within them. CSW has received reports of torture and ill-treatment of individuals detained in connection with their religion or belief, as well as of human rights lawyers and religious freedom defenders. The torture methods include being forced to adopt 'stress positions', being beaten with metal objects, having pain inflicted on genitals, and psychological

torture through threats to self or family members and long periods of solitary confinement.

5. Detainees in black jails are often denied access to legal counsel and contact with friends and family, and in some cases their families are not informed of their whereabouts for days or weeks after their arrest. The majority of detainees are kept under surveillance and are subject to subjective physical and psychological abuse and violence, such as beatings, starvation, threats and intimidation. Guards and officials are known to have deprived detainees of food and sleep, inflicted abusive acts of punishment, and sought to elicit information or confessions through the use of torture. These detention facilities are often unsanitary and insufficient medical care is provided for detainees. (For information on individual cases, see below.)
6. The above practices are consistent with the definition of torture in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). If acts of torture are believed to have occurred, it is the State Party's responsibility to uphold and implement the provisions in Articles 2, 4, 11 and 12 by providing adequate domestic legislative, administrative and judicial measures in order to prevent torture, as well as effectively and systematically reviewing related policies and practices. The State Party is also responsible for swiftly and impartially investigating all allegations of torture. In addition, the existence of extra-legal detention facilities which operate in a secretive and opaque manner significantly increases the likelihood of torture and other forms of ill-treatment. As such, the very existence of such facilities and forms of detention outside the legislative framework may be considered incompatible with international law.
7. **Recommendation:** CSW echoes the concerns and requests raised by the Committee Against Torture's list of issues in relation to China's fifth periodic report, and urges the State Party to introduce a definition of torture which is compatible with Article 1 within China's criminal law. The State Party should uphold Article 11



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by systematically reviewing the treatment of persons who are subjected to any form of arrest, detention or imprisonment, and uphold Article 12 by ensuring that competent authorities promptly and impartially investigate any acts of torture. The State Party should immediately end the use of extra-legal detention facilities and extra-legal forms of detention.

FORCED REPATRIATION OF NORTH KOREAN ASYLUM SEEKERS (ARTICLE 3 OF THE CAT)

8. CSW is concerned by the State Party's continued repatriation of North Korean asylum seekers, who are at high risk of persecution, torture, and in some cases extra-judicial killing or execution, if returned to North Korea. The report of the UN Commission of Inquiry (COI) on North Korea published in February 2014 found that grave human rights violations and crimes against humanity are taking place in North Korea, and are ingrained in the institutional framework of the country. North Korea has a strict culture of surveillance and propaganda which limits freedom of expression and makes independent religious practice and belief almost impossible.
9. North Koreans flee their country because of severe economic hardship, food shortages, class-based discrimination and harsh repression. However, the report of the UN COI on North Korea, paragraph 1114, estimates that tens of thousands of North Korean nationals have been repatriated. Repatriation of North Korean asylum seekers typically results in prison camp incarceration, in accordance with Article 233 of the Criminal Law of the Democratic People's Republic of Korea, which stipulates that those who 'illegally' cross the border will be subject to labour punishment, usually in political prison camps, where torture is applied systematically. Given the proximity of the State Party to North Korea and therefore the likelihood of North Koreans seeking asylum by entering the State Party's country and jurisdiction, it remains vital that North Korean asylum seekers are not repatriated, but are afforded the provisions and status as asylum seekers under the UN Refugee Convention.
10. Previously, CSW has condemned the forcible repatriation of at least 41 North Korean asylum seekers by the State Party, a decision that violates the principle of non-refoulement in Article 33(1) of the 1951 UN Refugee Convention, to which China is a party. The forcible repatriation of North Korean asylum seekers also violates Article 3 of the CAT which states that the State Party may not expel or

extradite persons to another State where there are substantial grounds to believe that they will be tortured upon repatriation; such grounds may be determined taking into account any "consistent pattern of gross, flagrant or mass violations of human rights".

11. CSW has worked closely with other organisations to document and expose the widespread and systematic use of torture in North Korea. The February 2014 COI report bears testament to the prevalence of human rights abuses in North Korea. There are therefore substantial grounds to believe that the repatriation of North Korean asylum seekers puts them at high risk of torture.
12. **Recommendation: The State Party should adhere to its obligations as outlined in Article 3 of the CAT, revising current policies and practices to end the forcible repatriation of North Koreans seeking asylum, and making every effort to protect their human rights. CSW echoes the requests and concerns raised in the Committee's list of issues in relation to the fifth periodic report of China concerning Article 3, and calls upon the State Party to explicitly adopt legislation that incorporates the prohibition of returning persons to a country where they face a high risk of torture. CSW urges the State Party to take the necessary legislative and judicial steps to establish an official national asylum procedure which is consistent with international standards, and further calls on the State Party to afford those persons who are subject to extradition adequate access to independent legal assistance throughout proceedings, including during the appeals process.**

DETENTION, ILL-TREATMENT AND TORTURE OF LAWYERS AND HUMAN RIGHTS DEFENDERS (ARTICLE 12 OF THE CAT)

13. CSW is increasingly concerned by reports of the arrest, detention, and torture in detention of lawyers and human rights defenders. CSW notes with particular concern the detention and disappearance of over 280 lawyers, activists and family members since July 2015.
14. CSW is especially concerned by the detention of lawyers who are assisting those detained in connection with the peaceful exercise of their right to freedom of religion or belief. Lawyer Gao Zhisheng, who has been arbitrarily detained, tortured, and later imprisoned on several occasions since 2006 in connection with his defence of the rights of Christians and other religious minorities in China, has recently spoken out about the torture he suffered in his most recent period of imprisonment. Mr Gao stated that he was tortured with an electric baton to his face and that he spent much of his three year sentence in solitary confinement. He also suffered from severe

malnutrition as a result of extremely limited and poor quality food while in prison.

15. CSW is concerned by the disappearance of the human rights lawyer Li Heping, a Christian who has worked on numerous cases defending Christians and other religious communities. Li Heping has been missing since 10 July 2015. CSW fears that Mr Li is being held at an extra-legal detention facility where he is at risk of torture and ill-treatment. CSW notes with concern that he has been in detention well over the 37-day maximum period of police custody, and his whereabouts are still unknown. Mr Li's wife, Wang Qiaoling, has not seen him or received word from him since he was taken from his home by two plain clothed men. CSW urges the State Party to immediately inform Mr Li's family of his whereabouts and any charges against him, and to allow him access to legal representation.

16. Recommendation: The State Party should promptly and impartially investigate the allegations of torture made by Gao Zhisheng, in accordance with Article 12. CSW further recommends that the State Party revise and enforce Article 22(4) of the Police Law to deliver further legal provisions aimed at the prevention of torture, and ensure that all such laws adhere to the international standards set out by the CAT. CSW calls on the State Party to promptly and impartially investigate the disappearance of Li Heping and to report on his whereabouts and any charges against him. CSW reiterates the Committee's issues on the fifth periodic report of China that the State Party should comment on and rectify immediately those cases of detention in police custody which have continued beyond the 37-day maximum period set by law.

DETENTION, ILL-TREATMENT AND TORTURE OF RELIGIOUS BELIEVERS (ARTICLES 1, 12, AND 13 OF THE CAT)

17. CSW is concerned by the detention and ill-treatment of religious believers, and the restriction of their access to legal representation and due process.

18. CSW is concerned by the ongoing detention and ill-treatment of Alimujiang (Alim) Yimiti. Mr Alim is a Uyghur Christian from the Xinjiang region, who was detained in 2008 and charged with 'suspicion of inciting people to secede from China' and 'illegally providing state secrets beyond borders'. He is currently serving 15 years' imprisonment on the charge of 'illegally providing state secrets to foreign nationals'. Several appeals at regional and national level have been rejected, and his legal defence team maintain that the charges against him are baseless and he is innocent according to Chinese law. His wife, Gulineur, has testified that he has not been allowed to see his lawyer since 2012. Additionally, Gulineur has stated that her visits have been cut from once a month to once

every three months, and there is concern about ill-treatment, since Mr Alim has visibly lost a lot of weight and is pale.

19. CSW is concerned by the case of Zhang Shaojie and his condition in detention. Mr Zhang is a church leader who was detained in November 2013, and is currently serving a 12 year sentence for fraud and 'gathering a crowd to disrupt public order'. Lawyers representing Mr Zhang have encountered various obstacles that have prevented them from meeting with their client. Lawyers, foreign journalists, church members, relatives and visiting Christians who are associated with Zhang and his case have experienced harassment, intimidation, restrictions on their freedoms, and in some cases physical attacks. CSW is concerned about the validity of Mr Zhang's charges, the obstacles related to his case, and his physical health in detention.

20. CSW is concerned by the detention, legal status and representation, condition and whereabouts of Bishop James Su Zhimin. Bishop Su was detained in October 1997 at his home in Xinji, near Shijiazhuang. Bishop Su was previously held in detention in Qingyuan, Baoding, in Hebei Province, but his current whereabouts are unknown. Previous reports sighted Bishop Su at Baoding hospital in November 2003 for an eye operation and heart problems. Approximately 20 plain-clothed officers were involved in the strict surveillance of Bishop Su during his visit to the hospital. Since Bishop Su's detention is ongoing, incommunicado, and his whereabouts and condition are unknown, CSW urges the State Party to confirm Bishop Su's location and condition, and provide for legal representation in order to ascertain whether Bishop Su is being subjected to torture, ill-treatment and illegal detention.

21. Recommendation: The State Party should verify and uphold that no actions of torture, ill-treatment, or coercion have been done to Alimujiang Yimiti, Zhang Shaojie or Bishop James Su in accordance with Article 1. Given the restrictions on access to legal representation in all these cases, CSW urges the State Party to provide the individuals with adequate and fair legal representation so that they may maintain their right to complain about allegations of torture as stipulated in Article 13. Should evidencet of torture be found, the State Party should conduct a prompt and impartial investigation, as required in Article 12. CSW urges the State Party to investigate and provide information regarding the charges brought against all the individuals, so as to determine the validity and any instance where intimidation or coercion was done to elicit a confession based on the charges brought against the defendants, which would be in violation of Article 1 of the CAT and Article 247 of the Criminal Law of the People's Republic of China.