

# Tibet Advocacy Coalition Submission

Report for Submission to the UN Committee Against Torture for Consideration of the Sixth Report of the People's Republic of China on its Implementation of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Joint Report Submitted on 26 October 2015

Preparation and co-authoring of this submission has been undertaken jointly by a coalition of Boston University's Asylum & Human Rights Program, Tibet Advocacy Coalition [International Tibet Network, Students for a Free Tibet, Tibet Justice Center] with the support of the Southern Mongolian Human Rights Information Center and World Uyghur Congress.

175 International Tibet Network Member Groups from over 50 countries are signatories to the report.

A full list of all supporting Member Groups can be found at <http://tibetnetwork.org/?p=11111>



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## I. EXECUTIVE SUMMARY

1. Since 2008 when the People's Republic of China ("China") was last reviewed under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("the Convention"), torture by government authorities has increased. Deaths of detainees in Chinese prisons have caused alarm to be raised over China's disregard for its obligations under the Convention, particularly towards Tibetans, Uyghurs, and Southern Mongolians, who are at increased risk of torture and cruel, inhuman, or degrading treatment in prison facilities. This problem is especially acute among the Tibetan population. In 2014, at least four Tibetans died as a result of torture endured in prison.<sup>1</sup> In July 2015, despite repeated requests by family members and public petitions calling for his release, Tenzin Delek Rinpoche, a high-profile Tibetan monk, died in detention amid reports of health complications stemming from torture.<sup>2</sup>
2. Torture by Chinese authorities is systemic. Of particular concern—and the focus of this Report—is the widespread use of torture on the most vulnerable individuals in the Chinese political and social system:<sup>3</sup> those groups considered by the Chinese government to be ethnic and religious minorities.<sup>4</sup> In recent years, increasing government restrictions on freedom of movement, expression, and association have incorporated the use of torture to curb dissent.<sup>5</sup> In March 2008, peaceful protests by Tibetans prompted violent backlash from Chinese authorities. And in 2009, political unrest in the Uyghur Autonomous Region of Xinjiang ("XUAR"), also known as East Turkestan, was followed by widespread violence, often wrongly characterized as terrorist activity, which prompted officials to crack down on the Uyghur population within the region.<sup>6</sup>
3. This Report provides evidence that China's dissemination of laws and policies targeting Tibetans, Uyghurs, and Southern Mongolians has led to widespread, systematic torture, which has proceeded with impunity. While China claims to comply with the Convention through passage of laws prohibiting torture, China has in fact failed to implement those laws, and routinely fails to comply with the prohibition against torture in practice.<sup>7</sup>
4. China violates **Article 2.1**, which requires effective legislative, administrative, or judicial measures to prevent acts of torture. Despite legal and policy changes, China's repressive public security apparatus continues to use torture against Tibetans, Uyghurs, and Southern Mongolians. **We recommend that China take every reasonable step to legislate clearly on torture at national and regional levels, and prohibit all forms of torture, under any circumstances, including both physical and psychological torture, in order to bring legislation in line with international legal standards.**
5. China violates **Article 4.1**, which requires that all forms of torture be punished under state law. The trial of Karma Samdrup demonstrates that Chinese authorities used torture one month after it was banned by the Criminal Procedure Law. Acts of torture against other Tibetans suggest that it is a common practice accepted by officials and not a punishable offense. **We recommend that China take every reasonable step to implement monitoring and accountability mechanisms to**

<sup>1</sup> TIBETAN CTR. FOR HUMAN RIGHTS & DEMOCRACY, ANNUAL REPORT 14 (2014), <http://www.tchrd.org/2015/02/annual-report-2014-human-rights-situation-in-tibet>.

<sup>2</sup> Patrick Boehler, *Tenzin Delek Rinpoche, Tibetan Religious Leader, Dies in Chinese Custody*, N.Y. TIMES (July 13, 2015), <http://www.nytimes.com/2015/07/14/world/asia/tenzin-delek-rinpoche-tibetan-religious-leader-dies-in-chinese-custody.html>.

<sup>3</sup> See U.S. DEPT. OF STATE, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2014 HUMAN RIGHTS REPORT 5.

<sup>4</sup> China refers to Tibetans, Uyghurs, and Southern Mongolians as "ethnic minorities." However, despite China's invasion and occupation of Tibet in 1951, the Tibetan State was not "legally incorporated" into China. See Tibet Justice Center, *The Case Concerning Tibet, Tibet's Sovereignty and the Tibetan People's Right to Self Determination*, Feb. 13, 2013, at 52 (stating that "[n]o sufficient legal grounds exist to support the contention that after 1951 the Tibetan State ceased to exist and was legally incorporated into [China]. The State of Tibet still exists as an independent legal entity, with a legitimate Government-in-Exile in Dharamsala, to represent it. That government and the people of Tibet, consequently, have the right to resume the exercise of sovereignty over their own territory, free from the interference of other States.").

<sup>5</sup> U.S. DEPT. OF STATE, *supra* note 3, at 2.

<sup>6</sup> See *id.* at 1.

<sup>7</sup> See generally Sixth Rep. of the People's Republic of China on its Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. CAT/C/CHN/5 (2014) [hereinafter *Sixth Report*].

**prevent the use of torture, and to prosecute any persons alleged or suspected of engaging in torture.**

6. China violates **Articles 10.1 and 10.2**, which require that training programs incorporate education on human rights protections. China's systematic use of torture against Tibetans, Uyghurs, and Southern Mongolians demonstrates that China's rules and instructions do not make it clear that torture is not permitted under any circumstances. **We recommend that China take every reasonable step to implement measures to ensure that every member of China's security and prison personnel are educated on the prohibition of acts of torture, and on the legal consequences of carrying out acts of torture.**
7. China violates **Article 11** by failing to perform adequate, systematic review of those procedures that enable torture. While China claims to have instituted various reforms, such changes in law have not yielded changes in practice. China continues to deny families and monitoring groups access to prison facilities, and continues to ignore requirements for review of prisoner healthcare. **We recommend that China implement systematic, effective review of detention facilities, including instituting effective review of healthcare practices within Chinese prisons and authorizing families to visit prisons.**
8. China's failure to investigate torture claims violates **Article 12**. Despite passing a series of laws requiring investigation, China has failed to investigate credible claims of torture at the hands of authorities. China accepts evidence induced by torture, including coerced confessions, and also allows officials to avoid full culpability by releasing prisoners on medical parole before they die from torture-related health complications. **We recommend that China take steps to ensure thorough investigation of all suspected acts of torture, including investigating deaths resulting from torture, issuing investigative reports to the public, and, where confessions have resulted in convictions, encouraging review of all trials under internationally-accepted due process standards.**

## II. INTRODUCTION

9. Tibet Advocacy Coalition<sup>8</sup> ("the Coalition") welcomes the opportunity to submit this Report to the Committee Against Torture ("the Committee") in support of its review of Chinese compliance with the Convention.
10. The Coalition is an alliance of advocacy groups that raises global awareness of Tibetan issues. The Coalition advocates for Tibetan political prisoners and condemns Tibetan human rights violations, such as infringements of freedom of speech, religion, and culture. The Coalition also facilitates input from other advocacy groups; in this case Southern Mongolian Human Rights Information Center and World Uyghur Congress. Furthermore, 180 Tibet-related organizations are signatories to the Report.
11. This Report focuses on particular aspects of China's systematic practice of torture in violation of the Convention; that is, the laws and policies that target or disproportionately affect particular groups for torture and cruel treatment. This Report demonstrates that China's policies of discrimination against Tibetans, Uyghurs, and Southern Mongolians allow or permit the routine use of torture when members of these groups are arrested, detained, tried, and imprisoned.
12. Since the 1950s, Tibetan resistance to occupation by China has been viewed as a threat to Chinese unity.<sup>9</sup> Chinese officials have continuously resorted to detention and torture to combat what it terms

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<sup>8</sup> Tibet Advocacy Coalition's lead organizations are International Tibet Network, Students for a Free Tibet, and Tibet Justice Center. International Tibet Network is a coalition of more than 180 Tibet organizations, campaigning for an end to human rights violations in Tibet and restoring rights to the Tibetan people. Students for a Free Tibet works in solidarity with the Tibetan people in their struggle for freedom. Tibet Justice Center is a legal committee of lawyers and academics who advocate for the Tibetan people's human rights, including self-determination. <http://tibetnetwork.org/portfolio-items/tibet-advocacy-coalition/>.

“separatist” or “splittist” sentiment among Tibetans. This can include support for the Dalai Lama, calls for political autonomy, or even support for cultural or religious freedom for the Tibetan people. Discrimination against Tibetans is evident: Tibetans are subject to a much higher rate of general detention, child detention, and torture than the ethnic Chinese.<sup>10</sup>

13. The Uyghurs, the Muslim majority population living in the XUAR, have been “the target of systematic and extensive human rights violations” by the Chinese government since 1949.<sup>11</sup> They have suffered religious, political, and cultural persecution at the hands of the Chinese government, such as restrictions on religious freedoms, limitations on use of the Uyghur language, and employment discrimination.<sup>12</sup> Prompted by what China claimed to be a Uyghur terrorist attack in the days leading up to the 2008 Beijing Olympics, China has pursued an aggressive campaign of arresting and arbitrarily detaining thousands of Uyghurs based on claims of “splittism,” terrorism, and religious extremism.<sup>13</sup> Those incarcerated are subject to unusually long prison terms as well as torture; others have died following mistreatment while in custody.<sup>14</sup>
14. Southern Mongolians living in Southern Mongolia constitute a 20% minority in a so-called “Chinese autonomous region” that is 80% ethnic Chinese.<sup>15</sup> When advocating on behalf of their rights within the region, high-profile political activists and dissidents have suffered police brutality in custody as well as debilitating (and sometimes fatal) torture in prison.<sup>16</sup>
15. China has a host of federal and local laws and policies that increase discrimination against Tibetans, Uyghurs, and Southern Mongolians. Most notably, torture victims are often incarcerated based on charges of “splittism,” “promoting separatism,” “creating social turmoil,” or “committing acts against China’s constitution.”<sup>17</sup> Such charges are codified in the Chinese Criminal Code as “Crimes of Endangering National Security” and “Crimes of Disturbing Public Order.”<sup>18</sup> For example, Article 103 of the Code reads: “Among those who organize, plot, or carry out the scheme of splitting the State or undermining unity of the country, the ringleaders and the others who commit major crimes shall be sentenced ...”<sup>19</sup> Another charge that is often used to detain Tibetans, Uyghurs, and Southern Mongolians is “illegally gathering a crowd,” which appears to derive from Article 296 of the Criminal Code.<sup>20</sup>
16. Other Chinese laws even more blatantly target Tibetans, Uyghurs, and Southern Mongolians. In response to an increasing number of self-immolations by Tibetans protesting Chinese occupation and denial of fundamental rights, the Chinese government has instituted harsh policies.<sup>21</sup> Chinese officials in Dzoegge County in Tibet have announced policies of collective punishment that threaten a self-immolator’s family, community, and monastery with criminal sanctions.<sup>22</sup> Other offenses relating

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<sup>9</sup> INT’L CAMPAIGN FOR TIBET, JAMPA: THE STORY OF RACISM IN TIBET, 5 (2001), available at [http://savetibet.de/fileadmin/user\\_upload/content/berichte/13JampaRacism.pdf](http://savetibet.de/fileadmin/user_upload/content/berichte/13JampaRacism.pdf). China defines “Tibet” as comprising only the Tibetan Autonomous Region, but Tibetans consider their homeland to include the Tibetan areas of Gansu, Qinghai, Sichuan, and Yunnan provinces.

<sup>10</sup> *Id.* at 71-73.

<sup>11</sup> Amnesty Int’l, Urgent Action: Health of Uighur Prisoner “Critical” (Sept. 20, 2012),

<http://www.amnestyusa.org/sites/default/files/uaa27112.pdf>; Tibet, Max Planck Encyclopedia of Public International Law (Oct. 23, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; Nineteen percent more Uyghurs were arrested for “endangering state security” in 2012 than in 2011 and ten percent more Uyghurs were arrested on the same charge in 2013 versus 2011. Further, it is estimated that seventy-five percent of all “endangering state security” claims in China originate in the XUAR, demonstrating the Chinese government’s increased “crackdown” on the minority group. U.S. DEPT. OF STATE, *supra* note 3, at 67.

<sup>14</sup> *Id.* at 68.

<sup>15</sup> Andrew Jacobs, *Ethnic Mongolian Dissident Released by China is Missing*, N.Y. TIMES (Dec. 13, 2010),

[http://www.nytimes.com/2010/12/14/world/asia/14china.html?\\_r=1](http://www.nytimes.com/2010/12/14/world/asia/14china.html?_r=1).

<sup>16</sup> *China Releases Veteran Mongolian Activist, Who Says He Was Tortured*, RADIO FREE ASIA (Dec. 9, 2014), <http://www.rfa.org/english/news/china/hada-12092014104722.html>; *Dissident Suffers Beatings in Detention*, RADIO FREE ASIA (Sept. 29, 2011), <http://www.rfa.org/english/news/china/beatings-09292011171220.html>.

<sup>17</sup> TIBETAN CTR. FOR HUMAN RIGHTS & DEMOCRACY, *supra* note 1, at 30.

<sup>18</sup> *Id.* at 31; The Criminal Law of the People’s Republic of China (promulgated by the Second Session of the Fifth National People’s Congress, Mar. 14, 1997, effective Oct 1., 1997), ASIANLII, at chapt. 1, 6, <http://www.asianlii.org/cn/legis/cen/laws/clotproc361/>.

<sup>19</sup> The Criminal Law of the People’s Republic of China (promulgated by the Second Session of the Fifth National People’s Congress, Mar. 14, 1997, effective Oct 1., 1997), ASIANLII, at art. 103, <http://www.asianlii.org/cn/legis/cen/laws/clotproc361/>; TIBETAN CTR. FOR HUMAN RIGHTS & DEMOCRACY, *supra* note 1, at 30.

<sup>20</sup> The Criminal Law of the People’s Republic of China (promulgated by the Second Session of the Fifth National People’s Congress, Mar. 14, 1997, effective Oct 1., 1997), ASIANLII, at art. 296, <http://www.asianlii.org/cn/legis/cen/laws/clotproc361/>; TIBETAN CTR. FOR HUMAN RIGHTS & DEMOCRACY, *supra* note 1, at 32.

<sup>21</sup> Tibetans have responded to worsening Chinese crackdowns on their freedoms by self-immolating in protest. Since February 27, 2009, 143 Tibetans have self-immolated. *Self-Immolation by Tibetans*, INT’L CAMPAIGN FOR TIBET (Sept. 9, 2015), <http://www.savetibet.org/resources/fact-sheets/self-immolations-by-tibetans/>.

<sup>22</sup> TIBETAN CTR. FOR HUMAN RIGHTS & DEMOCRACY, *supra* note 1, at 9.

to self-immolation include inciting someone to self-immolate and “greeting, offering condolences, or giving donations to the family of a self-immolator.”<sup>23</sup>

17. China has instituted other regulations to curb religious practices, such as banning people from attending Buddhist religious festivals.<sup>24</sup> Chinese authorities have also implemented a number of policies that prevent the assertion of political autonomy. For example, the “Adhering to Massline and Building Harmony” campaign instituted in Driru County requires Tibetans to fly the Chinese flag and attend re-education classes.<sup>25</sup>
18. Prominent human rights research groups have collected evidence confirming the widespread use of torture by Chinese authorities. Such groups include Human Rights Watch, Amnesty International, the Tibetan Center for Human Rights and Democracy, the Uyghur Human Rights Project, Tibet Watch, the International Campaign for Tibet, and the Southern Mongolian Human Rights Information Center. Evidence includes first-hand accounts by those imprisoned within the system, as well as testimony of family and community members. Such information is the most credible evidence available given that Chinese authorities “censor and tightly control public discourse” and also restrict access to detention centers.<sup>26</sup>

### III.ARTICLE 2.1

Article 2.1: *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

#### A. China’s Claims of Compliance with Article 2.1

19. Since 2005, China has promulgated a series of regulations and laws that it claims prevent the use of torture by authorities. First, China agreed to amend the Criminal Procedure Law at the Fifth Session of the Eleventh National People’s Congress on March 14, 2012.<sup>27</sup> This amendment incorporated the principles of respect for and protection of human rights. It claims to prevent torture and other cruel, inhuman, or degrading treatment or punishment in criminal procedural activities, and puts in place measures that require judicial fairness and guarantee due process rights of persons subject to criminal procedures.<sup>28</sup>
20. The Standing Committee of the State Council adopted the Regulations on Administrative Detention Facilities, which went into effect on April 1, 2012. These Regulations purport to safeguard “the rights [of detainees] to be informed of their rights, the right to sustenance and respect of their ethnic dietary customs, the right to adequate medical care and prompt care for those who are ill, and the right to meet with legal counsel.”<sup>29</sup>
21. “The Ministry of Public Security issued a revised version of the Provisions on Procedures for Handling Criminal Cases by Public Security Organs.”<sup>30</sup> These regulations stipulate that “no one may be forced to incriminate him/herself” and “the use of torture to coerce confessions is strictly prohibited.”<sup>31</sup> The procedures for the collection of evidence stipulate that “statements coerced from

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 11; *Tibet’s Driru County Under Severe New Crackdown*, TIBETAN REVIEW (Aug. 5, 2014), <http://www.tibetanreview.net/tibets-driru-county-under-severe-new-crackdown/> (citing regulations forbidding Tibetans from “participating in the ‘Great Prayer Festivals’ by crossing the national boundaries – an apparent reference to the Jul [sic] 2014 kalachakra empowerment teachings in India by the Dalai Lama – creating and spreading rumours, propagating harmful information, travelling to areas outside one’s locality to pursue religious study”).

<sup>25</sup> *Id.* at 28.

<sup>26</sup> U.S. DEPT. OF STATE, *supra* note 3, at 1.

<sup>27</sup> Criminal Procedure Law (promulgated by the Nat’l People’s Cong., July 1, 1979, rev’d March 14, 2012, effective Jan. 1, 2013), P.R.C. LAWS (China).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 6 no. 11.

<sup>30</sup> *Id.* at 7 no.16.

<sup>31</sup> *Id.* at 8 no. 16.

criminal suspects by torture or other unlawful means, as well as statements from victims or witnesses obtained by violence, threats or other unlawful means, are to be excluded.”<sup>32</sup>

22. “The Opinions of the Supreme People’s Procuratorate and the Ministry of Public Security on Several Issues concerning the People’s Procuratorates’ Legal Supervision of Criminal Detention Facilities provide that law enforcement and administrative operations of criminal detention facilities...shall be subject to the legal supervision of the procuratorial authorities.”<sup>33</sup> In an effort to strengthen its supervision and monitoring of law enforcement in prisons, China created a national program for “launching investigations, screening for hazards, and supervising the rectification of problems in such areas as sanitation, the use of police restraint equipment, [and] prison bullying...”<sup>34</sup> Further, a May 2009 circular of the Ministry of Public Security states that “people’s police inspectors may enter places of detention at any time to carry out on-site examinations of the safeguarding of detainees’ human rights in order to prevent the occurrence of violations of those rights.”<sup>35</sup>

## B. China’s Actual Compliance with Article 2.1

23. Chinese authorities have not taken reasonable steps to prevent torture to fulfill the provisions of these laws. Despite legal and policy changes, such as the Regulations on Administrative Detention Facilities (ADF), repressive Chinese authorities continue to carry out human rights violations against Tibetans, Uyghurs, and Southern Mongolians. The Chinese justice system continues to effect sustained and systematic acts of torture against Tibetans, Uyghurs, and Southern Mongolians, often to obtain confessions. The cases summarized below indicate this trend.
24. Dolma Kyab was sentenced to death (with a two year reprieve) on August 15, 2013 in a three hour-long trial for allegedly murdering his wife who self-immolated in March 2013. He was tortured to extract a confession and the due legal process required under Chinese law was not followed.<sup>36</sup> The Provisions on Procedures for Handling Criminal Cases by Public Security Organs state that “no one may be forced to incriminate him/herself.”<sup>37</sup> Although the use of torture to extract a confession is supposed to be prohibited, Tibet Watch reported that the Chinese authorities “tried to pressure Dolma Kyab into making a statement that [his wife’s] death was a suicide resulting from family problems rather than a self-immolation protest. He refused and was subsequently arrested.”<sup>38</sup> In August 2013, Dolma Kyab confessed “he strangled his wife after an argument over his ‘drinking problems’ and then set fire to her body.”<sup>39</sup> He was sentenced to death for her murder. Bhuchung Tsering, the International Campaign for Tibet (“ICT”)’s Interim President, said: “the news of this death sentence raises serious questions, particularly in such a politically-charged environment. Given the secretive nature of the detention and trial of Dolma Kyab, it appears that he may not have received a fair trial and due process.”<sup>40</sup>
25. Golog Jigme, a Tibetan monk, provided a first-hand account of China’s crackdown on Tibetan protesters to foreign media. Golog Jigme was first arrested on March 23, 2008 and detained until October 15, 2008.<sup>41</sup> He was arrested for the second time on March 2, 2009 and for the third time on September 22, 2012.<sup>42</sup> Golog Jigme was the subject of sustained and systematic torture.<sup>43</sup> According to the Sixth Report of the People’s Republic of China on its Implementation of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“the Sixth Report”), China amended the Criminal Procedure Law to “prevent torture and other cruel,

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 10 no. 24.

<sup>34</sup> *Id.* at 10 no. 27.

<sup>35</sup> *Id.* at 12 no. 33.

<sup>36</sup> *UK Calls on China to Commute Tibetan Death Sentence*, TIBET POST INT’L (Sept. 3, 2013), <http://www.thetibetpost.com/en/news/international/3611-uk-calls-on-china-to-commute-tibetan-death-sentence>; *Death Penalty for Tibetan After Death of Wife in Ngaba*, INT’L CAMPAIGN FOR TIBET (Aug. 21, 2013), <http://www.savetibet.org/death-penalty-for-tibetan-after-death-of-wife-in-ngaba/>.

<sup>37</sup> *Sixth Report*, *supra* note 7, at 8 no. 16.

<sup>38</sup> *Dzoegge County: “Maintaining Harmony and Stability,”* TIBET WATCH THEMATIC REPORT, 2 (Oct. 2013).

<sup>39</sup> *Id.*

<sup>40</sup> *Death Penalty for Tibetan After Death of Wife in Ngaba*, *supra* note 36.

<sup>41</sup> Interview by Migmar Dolma with Golog Jigme, Tibetan detainee, in Zurich, Switz. (Sept. 4, 2015).

<sup>42</sup> *Id.*

<sup>43</sup> See *id.* (stating “for one month and twenty-two days I was continuously tortured”).

inhuman, or degrading treatment or punishment in criminal procedural activities.”<sup>44</sup> While this amendment facially complies with Article 2.1, in light of Golog Jigme’s account of the torture methods to which he was subjected, it is clear that Chinese authorities continue to use torture against detainees.<sup>45</sup>

26. While serving a life sentence, Tenzin Delek Rinpoche, a highly respected Tibetan Lama renowned for welfare activities and promoting Tibetan culture, died during his thirteenth year of detainment.<sup>46</sup> In the List of Issues document submitted by the Coalition, the organizations raised concerns about Tenzin Delek Rinpoche’s treatment and the urgency of his need to be released on medical parole. Following complaints by these groups, family members, and others, China reaffirmed its adoption of Regulations on Administrative Detention Facilities, which provides detainees the right to medical care.<sup>47</sup> Tenzin Delek Rinpoche was tortured, denied medical treatment, and died in prison as a result. After seeing his body, Tenzin Delek Rinpoche’s sisters reported that “his lips and fingernails had turned black; they believed he was murdered.”<sup>48</sup> Tenzin Delek Rinpoche’s death is a tragic example of “China’s contempt for its own laws.”<sup>49</sup>
27. Another Tibetan detainee, 72-year old Yama Tsering, was tortured with an electric prod in detention in Tawu in August 2013.<sup>50</sup> Authorities detained Yama Tsering after opening fire on him and a number of unarmed protestors. Along with Yama Tsering, who sustained an arm injury and four broken ribs by the police during the protest, twenty other injured people were arrested, tortured, and denied medical attention.

## IV. ARTICLE 4.1

Article 4.1: (1) *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.* (2) *Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.*

### A. China’s Claims of Compliance with Article 4.1

28. “In September 2010, the Supreme People’s Court issued the Guiding Opinions on Sentencing by the People’s Courts [(‘Guiding Opinions’)]...and the Opinions on Several Issues Concerning the Standardization of Sentencing Procedures [(‘Opinions’)].”<sup>51</sup>
29. These Sentencing Guidelines were intended to standardize sentencing, constrain judicial discretion in criminal cases, and provide strict guidelines for criminal judgments. “Relevant provisions of the foregoing Guiding Opinions and Opinions are applicable to crimes related to torture.”<sup>52</sup> The Guiding Opinions were supposed to prevent the use of torture in criminal sentencing and judgments.

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<sup>44</sup> *Sixth Report*, *supra* note 7, at 6 no. 9.

<sup>45</sup> See Interview with Golog Jigme, *supra* note 41 (stating “I was beaten with wooden and plastic batons, shoes, and electronic devices...Chinese officials burned my lips with a lighter...The worst method was when they put me on the iron chair...The pain is inexplicable...They turned me outwards and hung me on the chair leaving my hands and feet attached...I remember being hung on this chair from evening at 9pm until the sun rose the next day”).

<sup>46</sup> *Congressman McGovern Statement on Death of Tibetan Activist Tenzin Delek Rinpoche*, INT’L CAMPAIGN FOR TIBET (July 20, 2015),

<http://www.savetibet.org/congressman-mcGovern-statement-on-death-of-tibetan-activist-tenzin-delek-rinpoche/>.

<sup>47</sup> *Sixth Report*, *supra* note 7, at 6 no. 11.

<sup>48</sup> *Id.*

<sup>49</sup> *Congressman McGovern Statement on Death of Tibetan Activist*, *supra* note 46.

<sup>50</sup> *Tibetans Tortured After Shootings*, FREE TIBET (July 17, 2013), <http://freetibet.org/news-media/na/tibetans-tortured-after-shootings>.

<sup>51</sup> *Sixth Report*, *supra* note 7, at 12 no. 37 (stating “from October 2010 onwards, courts at all levels throughout the country have implemented comprehensive sentencing standardization reforms, regulating judicial discretion in criminal matters and unifying sentencing standards for 15 categories of common crimes, including...interference with public administration”).

<sup>52</sup> *Id.*

## B. China's Actual Compliance with Article 4.1

30. Though China claims to have issued Guiding Opinions and Opinions<sup>53</sup> that address the use of torture in detention facilities, the rise in systematic torture, and complicity or participation in torture by authorities, suggests that torture is not a punishable offense under China's criminal law.
31. Since protests broke out across Tibet in March 2008, there has been "evidence that torture has become more widespread and directed at a broader sector of society."<sup>54</sup> The increase in torture and lack of accountability for these atrocities reveals that China's claims of compliance with Article 4.1 are not credible.<sup>55</sup> In reliably attested cases of Tibetans who have been tortured to obtain confessions, or at any time during the criminal process, such as noted below, responsible authorities have not been investigated, let alone charged or tried for their involvement in torture.
32. Karma Samdrup, a prominent Tibetan environmental philanthropist, was sentenced to fifteen years in detention on June 22, 2010 for grave robbing. The fact that Karma Samdrup was not a human rights activist shows that Chinese authorities target Tibetans through routine criminal cases, not just through political dissidence. Karma Samdrup claimed that during months of interrogation "officers repeatedly beat him, ordered fellow detainees to beat him, deprived him of sleep for days on end, and drugged him with a substance that made his eyes and ears bleed" in order to extract a confession.<sup>56</sup> This trial revealed that Chinese authorities used torture in detention less than one month after it was banned on May 31, 2010. This suggests that Chinese officials do not expect to face conviction for committing torture, or are not held accountable for their abuses.<sup>57</sup>
33. Chinese authorities believe torture is necessary to extract confessions and is therefore a useful tactic. As stated earlier, Chinese authorities offered bribes to Dolma Kyab to make a statement that his wife's death was "a suicide resulting from family problems rather than a self-immolation protest."<sup>58</sup> Dolma Kyab initially refused. In August 2013, Dolma Kyab ultimately confessed to this crime and was sentenced to death. The only evidence used in this case was the confession, which rights groups attest was extracted by torture. Because the "Chinese criminal justice system places a strong emphasis on the value of confessions, investigators use any means possible...to obtain a verbal confession from a suspect."<sup>59</sup> Dolma Kyab's case reveals that, despite China's alleged compliance with Article 4 through Guiding Opinions and Opinions, these laws do not bind Chinese authorities.
34. Human Rights Watch<sup>60</sup> provides examples of how Chinese authorities deliberately thwart new protections for detainees. Chinese authorities are reported to have removed detainees from police detention centers for interrogations, and have "use[d] torture methods that leave no visible injuries."<sup>61</sup> Further, among the measures China implemented to prevent torture is the requirement that Chinese authorities videotape interrogations. However, "videotaped interrogations are routinely manipulated," and are therefore unreliable.<sup>62</sup> Finally, "procurators...and judges sometimes ignore

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<sup>53</sup> *Sixth Report*, *supra* note 7, at 21 no. 49.

<sup>54</sup> *Torture and Impunity: 29 Cases of Tibetan Political Prisoners*, INT'L CAMPAIGN FOR TIBET (Feb. 26, 2015), <http://www.savetibet.org/newsroom/torture-and-impunity-29-cases-of-tibetan-political-prisoners/>

<sup>55</sup> See *China: Torture by Police Dodges Reforms*, HUMAN RIGHTS WATCH, 2 (May 2013) ("despite several years of reform, police are torturing criminal suspects to get them to confess to crimes and courts are convicting people who confessed under torture...until suspects have lawyers at interrogations and other basic protections and until police are held accountable for abuse, these new measures are unlikely to eliminate routine torture").

<sup>56</sup> *China: Investigate Torture Allegations in Tibet Philanthropist Trial*, HUMAN RIGHTS WATCH (June 23, 2010), <https://www.hrw.org/news/2010/06/23/china-investigate-torture-allegations-tibet-philanthropist-trial>.

<sup>57</sup> *China Flouts Law on Torture Less than a Month After Law Passed*, FREE TIBET (June 25, 2010), <http://freetibet.org/news-media/pr/25062010>; see also Murray Scot Tanner, *Torture in China: Calls for Reform from Within China's Law Enforcement System*, PREPARED STATEMENT TO ACCOMPANY TESTIMONY BEFORE CONGRESSIONAL-EXECUTIVE COMMITTEE ON CHINA (July 26, 2002) (stating that "local police...bluntly insist that torture is necessary and appropriate for law enforcement"), and *China: Torture by Police Dodges Reforms*, *supra* note 55, at 3 ("among the Supreme People's Court verdict database cases, Human Rights Watch found only one prosecution of three police officers responsible for torture, but none served prison time").

<sup>58</sup> *Dzoeg County: "Maintaining Harmony and Stability"*, *supra* note 38.

<sup>59</sup> *Id.*; Ira Belkin, *China's Tortuous Path Toward Ending Torture in Criminal Investigations*, 74 COLUM. J. ASIAN L. 273, 293 (2011) (stating "the confession is still the 'king' of evidence and the fundamental way Chinese police investigate crimes, [that is] zeroing in on a suspect, obtaining a confession and gathering evidence to support the confession, has not changed").

<sup>60</sup> See *China: Torture by Police Dodges Reforms*, *supra* note 55, at 2.

<sup>61</sup> *Id.*

<sup>62</sup> See *id.* (explaining that Chinese police manipulate videotaped interrogations by not recording the full interrogation, or by removing suspects from the detention center to torture them and returning them to videotape the confession).



clear evidence of mistreatment or fail to examine the claims seriously.”<sup>63</sup> Chinese authorities are rarely held accountable for these violations, which undermines China’s compliance with Article 4.1.

## V. ARTICLES 10.1 and 10.2

Article 10.1: *Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*

Article 10.2: *Each State party shall include this prohibition in the rules or instructions issued in regard to the duties and function of any such person.*

### A. China’s Claims of Compliance with Article 10.1 and 10.2

35. China claims to “attach importance to educating and propagandizing State civil servants [including public security] about the prohibition of torture.”<sup>64</sup> The Ministry of Public Security has “held video conferences for people’s public security police throughout the country on the concept of respecting and guaranteeing human rights.”<sup>65</sup> “Local public security organs continue to strengthen the law enforcement philosophy of respecting and guaranteeing human rights by means of intensive training.”<sup>66</sup>

36. Following the amendment of the Criminal Procedure Law, the “Ministry of Public Security issued an implementation notice requiring all public security organs at every level to immediately implement the Law’s provisions regarding the principle of respect for and guaranteeing of human rights, and that of not forcing any person to incriminate him or herself...”<sup>67</sup>

37. In its Report, China claims it “is strengthening the education and training of people’s prison police with regard to the prohibition of torture.”<sup>68</sup> It mandates education and training programs that incorporate content on the protection of human rights.

### B. China’s Actual Compliance with Article 10.1 and 10.2

38. Despite China’s alleged implementation of education and training programs emphasizing human rights, the sustained and systematic torture of detained Tibetans, Uyghurs, and Southern Mongolians demonstrates that “education and information regarding the prohibition against torture are not adequate.”<sup>69</sup> This raises questions about the content of these programs and actual implementation and enforcement of the ADF Regulations.

39. China consistently “suppresses political, cultural, religious, and socio-economic rights” of Tibetans, Uyghurs, and Southern Mongolians in order to thwart “separatist sentiment.”<sup>70</sup> Systematic violations of these rights continue “as... shown during China’s... brutal crackdowns on protests of 2008 in

<sup>63</sup> See *id.* at 2-3 (“Human Rights Watch searched approximately 158,000 [Chinese court] verdicts [in which suspects alleged torture] published on the [Supreme People’s Court’s] website between January 1 and April 30, 2014...A total of 432 verdicts referenced torture allegations, but only 23 resulted in the court throwing out evidence.”).

<sup>64</sup> *Sixth Report*, *supra* note 7, at 21 no. 49.

<sup>65</sup> *Id.* at 22 no. 52.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 22 no. 54.

<sup>68</sup> *Id.* at 22 no. 55.

<sup>69</sup> LENE WENDLAND, ASS’N FOR THE PREVENTION OF TORTURE, A HANDBOOK ON STATE OBLIGATIONS UNDER THE UN CONVENTION AGAINST TORTURE 49 (2002).

<sup>70</sup> *World Report 2014: China*, HUMAN RIGHTS WATCH, 8 (January 2014), [https://www.hrw.org/sites/default/files/related\\_material/china\\_7.pdf](https://www.hrw.org/sites/default/files/related_material/china_7.pdf); *World Directory of Minorities and Indigenous Peoples – China: Overview*, UN REFUGEE AGENCY (Oct. 5, 2015, 08:59 GMT), <http://www.refworld.org/docid/4954ce5b23.html> (stating that “freedom of religious expression and association remained highly circumscribed, with the enforcement of new rules for Tibetan Buddhists, surveillance and execution of Uyghurs, and persecution of Christians”).

Tibet, 2009 in East Turkestan, and 2011 in Southern Mongolia.”<sup>71</sup> Chinese authorities justify their actions by correlating the religious activities of Tibetans, Uyghurs, and Southern Mongolians with terrorism. Authorities “crack down... brutally on unsanctioned religious activities, especially those of groups that are deemed to be a threat to the authority of the Communist Party or are linked with ‘separatist’ or ‘terrorist threats.’”<sup>72</sup> Tens of thousands of “Christians, Tibetans, and Uyghurs are believed to be in prison or extrajudicial forms of detention for their political or religious views.”<sup>73</sup> The increase in arbitrary detentions and ill treatment of detainees proves Chinese authorities may conduct torture with impunity.

40. Hada, a Mongol activist, was tried in 1996 and sentenced to fifteen years for “separatism, spying, and supporting the Southern Mongolian Democratic Alliance,” and then sentenced to four more years in “black jail.”<sup>74</sup> During his nineteen years of imprisonment and detention, Hada was subjected to cruel torture and inhumane treatment by prison authorities.<sup>75</sup> Torture is consistently used for the purpose of extracting confessions, and so it is evident that China’s rules and instructions with respect to Article 10.2 do not “make it absolutely clear that torture and acts of cruel, inhuman, or degrading treatment are not permitted under any circumstances.”<sup>76</sup>

## VI. ARTICLE 11

Article 11: *Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.*

### China’s Claims of Compliance with Article 11

41. In its most recent submission to the Committee, China claims it has implemented “effective oversight and safeguard mechanisms” to prevent torture, such as encouraging public opinion and enabling review by community actors and the families of prisoners.<sup>77</sup> China also claims that, since 2009, the Ministry of Public Security has increasingly opened prisons to the public to welcome public opinion and to encourage meetings with prison officials, family members, and legal counsel.<sup>78</sup> China asserts that criminal detention facilities are strictly monitored, pointing to a policy for reviewing prisoner healthcare that requires documentation of health status and prompt medical attention for sick prisoners.<sup>79</sup> Finally, China notes that in January 2001, police attachés representing the diplomatic and consular missions of forty-seven countries issued positive reports after visiting two major prisons, the Beijing Nos. 1 and 2 Criminal Detention Centers.<sup>80</sup>

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<sup>71</sup> UNPO Urges Ban Ki-Moon to Speak Up for the Rights of Mongolians, Tibetans, and Uyghurs, UNREPRESENTED NATIONS AND PEOPLES ORG. (July 18, 2012), <http://unpo.org/article/14580> (stating that these brutal crackdowns resulted in high numbers of arbitrary detentions, prison sentences, and enforced disappearances).

<sup>72</sup> UN REFUGEE AGENCY, *supra* note 70 (stating that “Chinese authorities have cracked down heavily and unrelentingly on” Muslim Uyghurs and that “[t]hey continue to receive long prison terms and to be executed for separatist or terrorist activities”); *China*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2014/china> (“In March [2013], 20 Uyghurs were sentenced to prison terms of up to 15 years on charges of ‘inciting splittism’ or engaging in ‘terrorist’ communications.”).

<sup>73</sup> *Id.* (stating “complete figures are unavailable”).

<sup>74</sup> Ben Blanchard, *Long-Jailed Chinese Dissident Says Was Tortured in Jail*, REUTERS (Dec. 15, 2014, 3:59 am), <http://www.reuters.com/article/2014/12/15/us-china-rights-idUSKBN0JT0RG20141215>; see also *China: Secret “Black Jails” Hide Severe Rights Abuses*, HUMAN RIGHTS WATCH, (Nov. 11, 2009) (defining black jails as “secret, unlawful detention facilities [where] state agents violate detainees’ rights with impunity... Detainees are usually petitioners [detained for] seeking redress for abuses [including] police torture.”).

<sup>75</sup> Southern Mongolian Human Rights Information Center, “Cases of Torture in Southern Mongolia,” 1 (2015) (stating methods of torture included “sleep deprivation, prolonged periods of forced labor, denial of adequate food and drink, solitary confinement, and intentional food poisoning”).

<sup>76</sup> WENDLAND, *supra* note 69, at 50.

<sup>77</sup> *Sixth Report*, *supra* note 7, at 23 no. 57.

<sup>78</sup> *Id.* at 25 no. 64.

<sup>79</sup> *Id.* at 24 no. 61.

<sup>80</sup> *Id.* at 25 no. 67.

## China's Actual Compliance with Article 11

42. Article 11 requires that states maintain continuous and systematic review of arrest, detention, and imprisonment procedures with the purpose of preventing torture. Read in conjunction with Article 2, which requires states to take "effective legislative, administrative, judicial, or other measures," states must ensure that their review not only exists, but also is effective in preventing torture. Therefore, if a state proposes changes that do not adequately prevent torture or that lack the requisite authority to accomplish such goals, the changes fail the requirement of review.<sup>81</sup>
43. In contrast to China's claims, China systematically denies family members access to prisoners, thereby precluding their ability to obtain information about the conditions of their loved ones, and to determine whether the system is adequately protecting their rights and those of the detainees. This is particularly apparent with regard to cases of religious discrimination in which the Chinese government appears to follow a policy of denying family access to avoid outcry. Abudkiram Abduveli, a Uyghur religious leader, has been jailed since 1993 for spreading "counterrevolutionary propaganda."<sup>82</sup> The real reason for his conviction is understood to be propagation of his Islamic beliefs. Over the course of Abudkiram Abduveli's imprisonment, Chinese authorities have repeatedly denied his family access to him. When he was diagnosed with cancer in 2011, his family received only a verbal notification, was barred from visiting him, and could only see him via videotape. In the years that followed, his family continued to be denied access as well as requests for appeal.<sup>83</sup>
44. Tenzin Delek Rinpoche, the Tibetan monk who recently died in prison, was also denied access to his family in the years leading up to his death. His family had not been allowed to visit him since November 2013, despite reports of his declining health. In the last week before his death in July 2015, two of his sisters tried to visit him, but Chinese officials repeatedly postponed the appointment until Tenzin Delek Rinpoche died.<sup>84</sup>
45. Although China claims to have implemented healthcare review mechanisms requiring prompt medical attention for detainees, such guarantees have failed on numerous occasions to prevent healthcare violations against Tibetans, Uyghurs, and Southern Mongolians held in Chinese prisons. This problem is compounded by Chinese authorities' failure to release detainees eligible for medical parole.<sup>85</sup> For example, Tenzin Delek Rinpoche developed poor health as a result of torture: he had a heart condition, high blood pressure, experienced bouts of uncontrollable shaking and unconsciousness, and walked with a cane.<sup>86</sup> In 2012, he became eligible for medical parole after serving seven years in prison following commutation of his life sentence.<sup>87</sup> Despite petitions for medical parole by his family members and international human rights groups, Tenzin Delek Rinpoche was not released<sup>88</sup> and subsequently died in prison.<sup>89</sup> While China failed to disclose the precise conditions of Tenzin Delek Rinpoche's death, the fact that he was left in detention where his medical conditions worsened and the fact that he was denied medical parole, demonstrate that China's prison healthcare reforms are inadequate.

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<sup>81</sup> WENDLAND, *supra* note 69, at 51.

<sup>82</sup> *Uyghur Religious Leader on Hunger Strike After Fifth Jail Term*, RADIO FREE ASIA (Apr. 25, 2014), <http://www.rfa.org/english/news/uyghur/hunger-04252014152239.html>.

<sup>83</sup> *Health of Uyghur Prisoner 'Critical'*, AMNESTY INT'L (Sept. 20, 2012), <http://www.amnestyusa.org/sites/default/files/uaa27112.pdf>.

<sup>84</sup> Patrick Boehler, *supra* note 2.

<sup>85</sup> Chinese laws permit prisoners to be released on medical parole if they suffer from a serious illness, are pregnant or breastfeeding, or cannot care for themselves on a daily basis. [Article 5] Article 6 of "Temporary Measures for Non-Custodial Administration," which amended China's 1990 "Measures on Prisoner Medical Parole," disallows medical parole for "serious illnesses such as high blood pressure, diabetes, and heart diseases" where there is "no immediate, short-term danger after examination." [Article 6] Per the statutory language, this exemption should not prevent someone like Tenzin Delek Rinpoche, who suffered from those enumerated illnesses, but who was visibly on the brink of death, from obtaining medical parole. See [http://www.moj.gov.cn/index/content/2014-11/28/content\\_5865320.htm?node=7337](http://www.moj.gov.cn/index/content/2014-11/28/content_5865320.htm?node=7337)

<sup>86</sup> See *Tibetan Heroes*, FREE TIBETAN HEROES, available at <http://freetibetanheroes.org/portfolio-items/tenzin-delek-rinpoche/>; *Death in Prison of Revered Tibetan Religious Leader: Armed Forces Deployed as Tibetans Express Their Grief*, INT'L CAMPAIGN FOR TIBET (July 13, 2015), <https://www.savetibet.org/death-in-prison-of-revered-tibetan-religious-leader-armed-forces-deployed-as-tibetans-express-their-grief>.

<sup>87</sup> TIBET NETWORK, TENZIN DELEK RINPOCHE: URGENT PLEA FOR MEDICAL PAROLE 2 (2015), [https://www.tibet-initiative.de/fileadmin/users/tibet-initiative/Berichte/ITN\\_TDR\\_MedicalParole\\_lores\\_TiD.pdf](https://www.tibet-initiative.de/fileadmin/users/tibet-initiative/Berichte/ITN_TDR_MedicalParole_lores_TiD.pdf).

<sup>88</sup> Article 6 of "Temporary Measures for Non-Custodial Administration" excludes medical parole for those prisoners who "will harm society if permitted medical parole" and limits parole grants to prisoners "undermining financial administrative order" or "leading, participating, harboring, [and] conniving organized crimes." [Article 6] While Chinese authorities have given no explanation for denying medical parole in the cases we mention within this Report, it is easy to see how Article 6 could create a basis for discrimination against those Tibetans, Uyghurs, and Southern Mongolians who express dissenting opinions. *Id.*

<sup>89</sup> Patrick Boehler, *supra* note 2.

46. On August 12, 2014, a group of peaceful Tibetan demonstrators in Kardze challenged the arrest of Wandak, a local leader who had spoken out against Chinese authorities placing official restrictions on a Tibetan festival and related cultural rituals.<sup>90</sup> Paramilitary troops attacked the unarmed protesters with tear gas and live ammunition.<sup>91</sup> At least ten Tibetans were seriously wounded, many of whom were immediately taken into detention. Three of the protesters died in prison after their wounds were left untreated for six to seven days and after they endured additional torture.<sup>92</sup> The deceased protestors were all relatives of Wandak: Wandak's uncle, Tsewang Gonpo (aged 60); Wandak's cousin, Yeshe (aged 42); and Wandak's brother-in-law, Jinpa Tharchin (aged 18).<sup>93</sup>
47. China's failure to provide prompt medical care also extends to Tibetans, Uyghurs, and Southern Mongolians under house arrest. Govruud Huuchinhuu is a Southern Mongolian writer who advocates for freedom of press, association, and religion and is also a member of the Southern Mongolian Democratic Alliance, a banned activist organization.<sup>94</sup> In November 2010, Chinese officials detained Govruud Huuchinhuu for encouraging the release of fellow Southern Mongolian activist, Hada. After Govruud Huuchinhuu was placed under house arrest on November 11, 2010, police officers repeatedly beat her, leaving bruising and contusions on her forehead and near her eyes.<sup>95</sup> Furthermore, in December 2010, she was admitted to the hospital under police surveillance due to a serious health condition, but was left to suffer an intense headache for more than a month before given medication to relieve the pain.<sup>96</sup>
48. Finally, China's observation that foreign police attachés were authorized to tour select Chinese prisons does not demonstrate sufficient review under Article 11. Article 11 requires "systematic" oversight, and a review that has not been implemented in fourteen years does not qualify as systematic.

## VII. ARTICLE 12

*Article 12: Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*

### China's Claims of Compliance with Article 12

49. China notes that its amended Criminal Procedure Law places high standards for investigation on the procuratorates, agencies responsible for prosecution and investigation.<sup>97</sup> Article 55 of the Law requires procuratorates to investigate any tips, accusations, or reports that illegal means were used to obtain evidence for trial proceedings; Article 56 extends this power to judges; and Article 58 asserts that courts must exclude evidence collected illegally.<sup>98</sup> China asserts that procuratorial authorities strictly enforce anti-torture policies by investigating abuse that results in injury or death to detainees.<sup>99</sup> This includes promoting fair trials and prosecuting officials who have exacted torture on prisoners.<sup>100</sup>

<sup>90</sup> *Ten Tibetans Injured After Police Open Fire in Kardze, Tibet*, INT'L CAMPAIGN FOR TIBET (Aug. 13, 2014), <http://www.savetibet.org/ten-tibetans-injured-after-police-open-fire-in-kardze-tibet>.

<sup>91</sup> *Crackdown in Kardze (August 2014)*, TIBET WATCH THEMATIC REPORT, 5 (Nov. 2014).

<sup>92</sup> *Chinese Police Officer Dies After Kardze Shooting; Pregnant Wife of Tibetan Killed Commits Suicide*, INT'L CAMPAIGN FOR TIBET (Aug. 28, 2014), <http://www.savetibet.org/chinese-police-officer-dies-after-kardze-shooting-pregnant-wife-of-tibetan-killed-commits-suicide/#sthash.CLQf1kso.dpuf>.

<sup>93</sup> *Three More Detained Tibetan Protesters Die from Gunshot Wounds*, RADIO FREE ASIA (Aug. 19, 2014), <http://www.rfa.org/english/news/tibet/wounds-08192014131944.html>; *Crackdown in Kardze (August 2014)*, *supra* note 91.

<sup>94</sup> *Southern Mongolian Dissident Writer Wins Hellman/Hammett Grant*, S. MONG. HUMAN RIGHTS INFO. CTR. (Dec. 20, 2012), [http://www.smhric.org/news\\_466.htm](http://www.smhric.org/news_466.htm).

<sup>95</sup> *Dissident Suffers Beatings in Detention*, RADIO FREE ASIA (Sept. 29, 2011), <http://www.rfa.org/english/news/china/beatings-09292011171220.html>.

<sup>96</sup> *Id.*

<sup>97</sup> See *Sixth Report*, *supra* note 7, at 25 no. 69.

<sup>98</sup> Criminal Procedure Law (promulgated by Nat'l People's Cong., July 1, 1979, rev'd Mar. 14, 2012, effective Jan. 1, 2013), arts. 55, 56, 58, P.R.C. LAWS (China); *Id.* at 25-26 no. 69.

<sup>99</sup> *Id.* at 26 no. 72.

<sup>100</sup> *Id.* at 26 no. 74.

50. On December 29, 2011, the Ministry of Public Security and the Ministry of Civil Affairs promulgated the Regulations on Handling Deaths of Persons in the Custody of Criminal Detention Facilities.<sup>101</sup> China claims that this directive standardizes investigative procedures for prison deaths, assigns investigative duties to the public securities authorities and the procuratorates, and requires that the procuratorates supervise investigatory procedures handled by the public security authorities.<sup>102</sup>

## China's Actual Compliance with Article 12

51. Article 12 requires that state parties take prompt action to investigate possible incidences of torture. Promptness is key for two reasons: to ensure that the victim is free from torture as soon as possible and because evidence of torture may quickly disappear from the body. Article 12 also requires that the investigation be without bias. This includes removing individuals from the investigation who have conflicts of interest, such as motive for protecting the suspect.<sup>103</sup>
52. Although China claims that Article 56 prevents judges from giving weight to evidence obtained through torture, Tibetans, Uyghurs, and Southern Mongolians continue to be convicted on the basis of such evidence. On February 8, 2007, Ismail Semed, a Uyghur political activist, was executed after being sentenced to death for "attempting to split the motherland" and related weapons charges. The document evidencing Ismail Semed's sentencing provided only one piece of evidence supporting his conviction: testimony by two other Uyghurs who were subsequently executed by the Chinese government. Although the evidence was suspicious and could easily have been induced through torture, the court went through with both the conviction and the execution.<sup>104</sup> Another instance of Chinese courts handing down convictions based on suspect evidence is the case of Lobsang Kunchok and Lobsang Tsering, a Tibetan monk and his younger nephew.<sup>105</sup> A Chinese court convicted both men of "intentional homicide" based on allegations that they caused eight people to self-immolate. Both men confessed while in detention and presented no defenses at trial.<sup>106</sup> It is believed that Chinese authorities tortured the men to extract incriminating confessions, which resulted in the death penalty for Lobsang Kunchok and a ten-year prison sentence for Lobsang Tsering.<sup>107</sup>
53. Despite enumerating a series of procedures meant to investigate torture, China has failed to investigate officials who have been accused of torture and officials who have attempted to circumvent the system. In recent years, there has been a growing trend among Chinese prison authorities to release ill prisoners on the cusp of death, so that when those prisoners die as a result of torture, they are not found to have died in prison custody.<sup>108</sup> This is one way of avoiding the increased liability associated with prisoner death.
54. This practice is remarkably pronounced among Tibetan prisoners. In December 2014, a Tibetan social activist by the name of Tenzin Choedrak died just two days after being released from detention. When he was released, he was emaciated, had damaged kidneys, a dislocated jawbone, and was vomiting blood due to a brain injury.<sup>109</sup> In 2010, Chinese authorities detained Tibetan political activist Goshul Lobsang for protesting Chinese rule. In detention, Goshul Lobsang was shackled, severely beaten and tortured, and left outside naked during the harsh Tibetan winter.<sup>110</sup> When he was released from prison in 2013, he could not swallow food, was skeletal, and "his

<sup>101</sup> Rules on the Handling of Deaths in Detention Centers (看守所押人员死亡处理规定), the Supreme People's Procuratorate, the MPS and the Ministry of Civil Affairs, 2011.

<sup>102</sup> *Id.* at 24-25 no. 63.

<sup>103</sup> WENDLAND, *supra* note 69, at 52.

<sup>104</sup> *Uyghur Political Prisoner Executed in Urumchi*, UYGHUR HUMAN RIGHTS PROJECT (Feb. 9, 2007), <http://uhrp.org/press-releases/uyghur-political-prisoner-executed-urumchi>.

<sup>105</sup> *Tibetan Monk Sentenced to Death for "Inciting Self-Immolations"*, TIBET SOC'Y. (Jan. 31, 2013), <http://www.tibetsociety.com/content/view/365>.

<sup>106</sup> *China: Stop Sentencing Tibetans for "Inciting" Immolations*, HUMAN RIGHTS WATCH (Feb. 1, 2013), <https://www.hrw.org/news/2013/02/01/china-stop-sentencing-tibetans-inciting-immolations>.

<sup>107</sup> TIBET SOC'Y, *supra* note 105.

<sup>108</sup> Even if a successful investigation is mounted and a suspect is found guilty of torture, the maximum sentence for causing death or injury through torture is three years imprisonment. According to legal scholar Wang Ganggio, this sentence is far too lenient in comparison to corresponding sentences for intentional injury or homicide. U.S. DEPT. OF STATE, *supra* note 3, at 5.

<sup>109</sup> *Remembering the Fearless 'Ghost' Tenzin Choedrak (1981 – 2014)*, TIBETAN CTR. FOR HUMAN RIGHTS AND DEMOCRACY (Feb. 9, 2007), <http://uhrp.org/press-releases/uyghur-political-prisoner-executed-urumchi>.

<sup>110</sup> *Tortured Prisoner in Critical Condition*, FREE TIBET (Feb. 28, 2014), <http://freetibet.org/news-media/na/tortured-prisoner-critical-condition>.

chances for survival appeared dim.”<sup>111</sup> He was bedridden until he succumbed to death six months later.

55. Jamyang Jinpa, a Tibetan monk from the Labrang monastery, was detained in April 2008 after he protested before foreign journalists.<sup>112</sup> Just a month later, Chinese authorities requested that Jamyang Jinpa’s relatives collect him from prison. Jamyang Jinpa’s health had severely deteriorated: he could hardly walk or stand, had difficulty seeing and remembering things, and did not recognize his family. Jamyang Jinpa’s health continued to deteriorate and he died three years following release at the age of thirty-seven.
56. Despite regulations requiring investigation of prison deaths, Chinese officials have failed to investigate, even in cases where there was clear evidence of torture. In February 1997, Salam Kari, a Uyghur, was detained following peaceful protests in Gulja, a city in the XUAR.<sup>113</sup> Several days after his arrest, Salam Kari’s body was returned to his family. Marks on his body suggested that he died from torture, not that he committed suicide as officials insisted. Amnesty International reports that Chinese officials never investigated Salam Kari’s death.
57. Another example of Chinese unwillingness to investigate deaths caused by torture is the case of Shohret Tursun. In 2009, Shohret Tursun was detained during a time of heavy protest along with a group of forty other Uyghurs. After he died in custody, his bruised and disfigured body was released to family members. Authorities forced the family to bury him immediately, leaving no time for an autopsy or investigation into the cause of death. An eyewitness, Ershidin Israil, later released details relating to Shohret Tursun’s torture and death.<sup>114</sup> Instead of investigating Ershidin Israil’s claims, the Chinese government accused him of terrorism, forcing him to flee to Kazakhstan.<sup>115</sup> The fact that Chinese authorities did not allow investigation of Shohret Tursun’s body, intimidated a witness to the torture, and failed to give credence to that witness’s testimony, demonstrates China’s failure to investigate such crimes.
58. Chinese procuratorial authorities also circumvent the requirement to investigate deaths resulting from torture by destroying evidence. For example, Chinese authorities have cremated the bodies of Tibetans who have died in prison, precluding families from performing Tibetan Buddhist funeral rites and also from witnessing possible marks of torture. When Tenzin Delek Rinpoche died in prison in July 2015, his family requested that his body be returned for proper burial. Despite additional pressure by the U.S. State Department and the European Union, Chinese authorities did not return the body and instead performed a hasty cremation.<sup>116</sup>

## VIII. CONCLUSION

59. The prevention of torture is of primary concern to the international community. The Convention Articles stressed in this Report establish conditions with which state parties must comply to ensure the eradication of torture in their territories. Despite alleged compliance, China has embarked on a dangerous trend of perpetrating sustained and systematic torture against Tibetans, Uyghurs, and Southern Mongolians with impunity. In the absence of fundamental reforms in the Chinese criminal justice system, Tibetans, Uyghurs, and Southern Mongolians will continue to suffer acts of torture

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<sup>111</sup> *Tibetan Political Prisoner Dies After “Brutal” Torture in Jail*, RADIO FREE ASIA (Mar. 21, 2014), <http://www.rfa.org/english/news/tibet/jail-03212014142217.html>.

<sup>112</sup> *Torture Blamed for Death of Tibetan Monk, Second Death Following Protest During Foreign Reporters’ Visit to Labrang Monastery*, INT’L CAMPAIGN FOR TIBET (Apr. 4, 2011), <http://www.savetibet.org/torture-blamed-for-death-of-tibetan-monk-second-death-following-protest-during-foreign-reporters-visit-to-labrang-monastery>.

<sup>113</sup> *Protest Marks Xinjiang “Massacre,”* ALJAZEERA (Feb. 6, 2007), <http://www.aljazeera.com/news/asia-pacific/2007/02/20085251383512763.html>; Press Release, Amnesty Int’l UK, People’s Republic of China: No Justice for the Victims of the 1997 Crackdown in Gulja (Yining) (Feb. 4, 2003), <http://www.amnesty.org.uk/press-releases/peoples-republic-china-no-justice-victims-1997-crackdown-gulja-yining>.

<sup>114</sup> *Uyghur in Chinese Custody?*, RADIO FREE ASIA (May 31, 2011), <http://www.rfa.org/english/news/uyghur/deportation-05312011162319.html>.

<sup>115</sup> *Id.*

<sup>116</sup> Andrew Jacobs, *Chinese Cremate Body of Revered Tibetan Monk, Ignoring Pleas*, N.Y. TIMES (July 16, 2015), <http://www.nytimes.com/2015/07/17/world/asia/china-cremates-body-of-revered-tibetan-monk-tenzin-delek-rinpoche.html>.

motivated by China's political agenda to suppress separatist sentiment. China must take immediate action to comply with the Convention so that its policies and practices serve to protect the human rights of Tibetans, Uyghurs, and Southern Mongolians.

## IX. RECOMMENDATIONS

60. The Coalition makes the following recommendations to the Committee in its review of the Sixth Report. We make these recommendations to compel China to reform its policies and practices in conformity with the obligations of the Convention and with respect to the essential human right to be free from torture, especially as it relates to Tibetans, Uyghurs, and Southern Mongolians.
61. RECOMMENDATION 1 – INDIVIDUAL CASES. We have relied on specific instances of torture to support our claim that China engages in sustained and systematic torture of Tibetans, Uyghurs, and Southern Mongolians. These cases provide substantial evidence proving that these individuals are the victims of torturous acts. We therefore recommend that the Committee address these cases, require transparent investigations, hold Chinese authorities accountable for wrongful acts, and provide adequate compensation to the victims' families.
62. RECOMMENDATION 2 – ARTICLE 2.1. China shall take "effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction." We consider compliance with this Article a key step to ensuring the prohibition of torture across all facets of the Chinese judicial system. We therefore recommend that China legislate clearly on torture at national and regional levels and prohibit all forms of torture, under any circumstances, including both physical and psychological torture, in order to bring legislation in line with the international legal standard. China must immediately implement this legislation. We also recommend that China implement monitoring and accountability mechanisms including: providing clear materials and directives on torture prevention and prosecution to public security and prison personnel; publicly investigating incidents of torture; conducting random spot checks of detention facilities; and prosecuting officials suspected of engaging in acts of torture.
63. RECOMMENDATION 3 – ARTICLE 4.1. China shall "ensure that all acts of torture are offenses under its criminal law" and it "shall make these offenses punishable by appropriate penalties." We consider compliance with this Article imperative for deterring all public officials – police, prosecutors, and judges – from engaging in torture to extract confessions. We therefore recommend that Chinese authorities hold Chinese police officers accountable for their actions through increased prosecutions, so that they are deterred from circumventing China's prohibition of torture. Chinese authorities should launch investigations of every complaint of torture and every death in detention. To further ensure the protection of suspects prior to trial, we also recommend that China require that suspects have access to lawyers, and that these lawyers be present during interrogations. In an effort to strengthen the Chinese judicial system's internal oversight mechanism, China should deny police unsupervised access to detainees, and mandate the practice of routine, unannounced checks of detention facilities.
64. RECOMMENDATION 4 – ARTICLE 10.1 AND 10.2. China shall require that training programs incorporate education on human rights protections. We consider compliance with this Article of particular importance because there are Chinese authorities who still believe torture is necessary and appropriate for law enforcement. We therefore recommend that China implement measures to ensure that every member of China's security and prison personnel receive uniform training materials educating them on the prohibition of torture, and on the legal consequences of carrying out acts of torture. We also recommend that China perform random spot checks on training programs to ensure that anti-torture training is actually being delivered, and penalize authorities that do not deliver the training. China should also make training on anti-torture a mandatory requirement for serving within the state apparatus in Tibet, East Turkestan (XUAR), and Southern Mongolia.

65. RECOMMENDATION 5 – ARTICLE 11. Under Article 11, China must implement and maintain systematic review of the rules and procedures governing “arrest, detention, and imprisonment.” Because the right to be free from torture is a non-derogable human right, the Convention imposes a zero tolerance policy against state parties. Compliance with this Article is imperative to eradicate and prevent torture because it will compel Chinese authorities to reform their current practices of systematic torture and will force the Chinese government to make their laws less vulnerable to such infractions. We therefore recommend that China take every step possible to implement a more comprehensive and effective review system for monitoring detention facilities and the actions of Chinese authorities, especially as they relate to treatment of Tibetans, Uyghurs, and Southern Mongolians. We further recommend that China implement laws making it mandatory for prisons to allow visits by families of prisoners and to disclose information to family members relating to the health and well-being of detainees. Finally, we recommend that China conduct systematic review of the prisoner healthcare system in Chinese prisons, ensuring that prisoners receive a minimum threshold of medical care and preventing potential prisoner deaths resulting from torture.
66. RECOMMENDATION 6 – Article 12. Article 12 requires China to engage in “prompt and impartial investigation” of any suspected incident of torture. Compliance is necessary because it encourages accountability among Chinese authorities, serves as a review mechanism for existing rules and practices, and provides victims with possible redress for the torture they have suffered. We therefore recommend that China take definitive steps to ensure thorough investigation in practice of all credible, suspected acts of torture. Specifically, we recommend that China issue a public, investigative report for every prisoner death in detention and every prisoner death that occurs within two years of release from detention. Further, we recommend that China conduct thorough and public investigations into incidents of torture, and especially those incidents that resulted in death. This includes immediate investigation into the deaths of Tenzin Delek Rinpoche, Goshul Lobsang, Tenzin Choedrak, and all other Tibetans, Uyghurs, and Southern Mongolians who have died as a result of torture.