

Tibet Advocacy Coalition Submission

Follow-up Report 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 11 March 2019

Submitted in Advance of China's Reporting, due in December 2019

Prepared and co-authored by the Boston University International Human Rights Law Clinic and the
Tibet Advocacy Coalition [International Tibet Network, Students for a Free Tibet, Tibet Justice Center,
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I. EXECUTIVE SUMMARY

1. Torture by government authorities has continued since 2015, 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", "CAT"). There have been allegations of torture of detainees in Chinese prisons, with particularly widespread brutality and routine use of torture towards Tibetans and Uyghurs. The use of torture violates China's obligations under the Convention.
2. Evidence of the torture of Tibetans by State authorities highlights that its use is systemic, systematic and continues with impunity. In recent years, increasing government restrictions on freedom of movement, expression, and association have incorporated the use of torture to curb dissent. Since the start of 2019 there have been reports of torture and inhuman treatment against Tibetans. We highlight two specific cases in this submission to illustrate that torture and cruel treatment are a routine feature of Chinese repression of the Tibetan peoples' fundamental human rights.
3. While China claims to conform to the Convention Against Torture through the passage of domestic laws prohibiting torture, China has failed to comply with its international obligations or practically prevent the practice of torture against Tibetan advocates.¹
4. China violates **Article 2.1**, which requires effective legislative, administrative, or judicial measures to prevent acts of torture, by failing to eliminate arbitrary detention. China continues to deny families, lawyers, and monitoring groups access to prison facilities. China continues to ignore requirements for review of prisoner healthcare, and has repeatedly denied lawyers access to detention facilities.

Recommendation: China must implement a systematic and ongoing review programme of all detention facilities, including instituting UN review of condition within State prisons, and authorisation to families and lawyers to visit prisons without arbitrary restrictions.

5. China violates **Article 4.1**, which requires that all forms of torture be punished under State law. The experiences of Tashi Wangchuk and Choekyi for instance demonstrate that Chinese authorities use torture even though it was supposedly banned by the Criminal Procedure Law. Tibetans have continued to experience acts of torture, suggesting that it is a common and accepted practice.

Recommendation: China must utilize monitoring and accountability mechanisms to prevent the use of torture, and to prosecute any persons alleged or accused of torturing detained or imprisoned Tibetans.

6. China violates **Article 12**, which requires an investigation whenever there is an allegation of torture. Although China has passed laws which require the investigation of allegations of torture, China has failed to investigate credible claims of torture of detained and imprisoned Tibetans. Additionally, China continues to accept confessions that were coerced through torture and allows officials to avoid culpability by releasing prisoners on medical parole before they die from torture-related health conditions, as in the case of Choekyi.

Recommendation: China must take steps to ensure thorough investigation of all suspected acts of torture, including investigating deaths resulting from torture, and end the practice of using coerced confessions in courts of law.

¹See 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*].

II. INTRODUCTION

7. Tibet Advocacy Coalition (“the Coalition”) welcomes the opportunity to submit this Report to the Committee Against Torture (“the Committee”) as a follow-up of its review of China’s compliance with the Convention.
8. The Coalition is an alliance of advocacy groups that raises global awareness of Tibetan issues.² Members of the Coalition are: Tibet Justice Center (“TJC”), International Tibet Network, Students for a Free Tibet, Tibet Initiative Deutschland and Tibetan Youth Association Europe. This report is also submitted by the Boston University International Human Rights Clinic (“IHRC”), on behalf of the Tibet Advocacy Coalition global constituency.
9. This Follow-up to the Report focuses on specific instances 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 permit the routine use of torture when members of these groups are detained and imprisoned.
10. Tibetans have faced ongoing torture and cruel and degrading treatment since China’s invasion and occupation of Tibet in 1949/50. The Chinese government’s occupation of Tibet and the denial of the Tibetan people’s right to self-determination has resulted in systemic policies of arbitrary detention and torture of Tibetans who seek to protect their territorial rights and preserve their resources, ancient culture, and religion. According to Human Rights Watch, from 2013 to 2015, an estimated 479 Tibetans experienced arbitrary detention, torture, and other inhuman treatment due to their opposition to and criticism of Chinese government policies.³ China has been repeatedly criticized by UN bodies for laws and practices which permit the practices of torture and inhuman treatment of Tibetan activists.⁴
11. The prohibition of torture is one of the most fundamental norms of human rights law. Article 2 of the Convention Against Torture places obligations on States Parties to “take effective legislative, administrative, judicial and other measures to prevent acts of torture.”⁵ The Chinese government ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988.⁶ The CAT’s articles 2 and 16 incorporate an absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁷ China’s practices routinely violate this prohibition, as Chinese authorities engage in treatment causing severe pain and suffering to Tibetans who are arrested and detained in order to obtain confessions and punish activists.⁸
12. Chinese law and policy is applied to Tibetans in ways that increase opportunities for torture and inhumane treatment. Most notably, torture victims are often incarcerated based on “Crimes of Endangering National Security” and “Crimes of Disturbing Public Order.”⁹ These new measures are a part

² <https://tibetnetwork.org/portfolio-items/tibet-advocacy-coalition/> (last visited 13 Feb. 2019).

³ Relentless, *Detention and Prosecution of Tibetans under China’s “Stability Maintenance” Campaign*, HUMAN RIGHTS WATCH, published 22 May 2016, accessed 13 February 2019, <https://www.hrw.org/report/2016/05/22/relentless/detention-and-prosecution-tibetans-under-chinas-stability-maintenance#>.

⁴ See, e.g., Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Addendum, Mission to China, Comm’n on Human Rights, ¶¶ 73–76, U.N. Doc. E/CN.4/2005/6/ Add.4 (29 Dec. 2004) (providing an overview of the inconsistencies between the domestic and international standards relating to detention); Human Rights in China, State Secrets: China’s Legal Labyrinth 27 (2007) (describing the way in which Chinese legal procedures under the State secrets framework denies the right to counsel); Human Rights Council, Report of the Working Group on Arbitrary Detention (hereinafter 16th Session WGAD Report), U.N. Doc. A/HRC/16/47 (19 Jan. 2011), Annex, Revised methods of work of the Working Group (critiquing the arbitrary deprivation of liberty of those in custody).

⁵ Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (*hereinafter* CAT), entered into force 26 June 1987, 1465 U.N.T.S. 8, 5, at Art. 2.

⁶ CAT, *supra* note 5.

⁷ *Id.*, at Art. 2 and Art. 16.

⁸ As defined in CAT, “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” CAT, *supra* note 5, at Art. 1.

⁹ Relentless, *Detention and Prosecution of Tibetans under China’s “Stability Maintenance” Campaign*, HUMAN RIGHTS WATCH, published 22 May 2016, accessed 13 February 2019, <https://www.hrw.org/report/2016/05/22/relentless/detention-and-prosecution-tibetans-under-chinas-stability-maintenance#>.

of China's "stability maintenance" campaign, intended to increase State control and increase the criminalization of all forms of protest and dissent.¹⁰ These "stability maintenance" policies began in 2007, with a marked increase in surveillance of ordinary citizens.¹¹ In Tibet, these new regulations include limiting the internal movement of Tibetans and the foreign travel of rural Tibetans, as well as utilizing security measures to detect potential dissent. In order to accomplish this level of surveillance in the TAR, security units have been placed in Tibetan neighborhoods and workplaces. These measures have had a particularly repressive impact on monasteries, as police posts and monastery-specific surveillance groups have been established. Chinese courts have also been part of the process of criminalizing protests, as evidenced by Tibetans being convicted of "intentional homicide" for those involved in self-immolation or "assisting" self-immolations.¹²

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

13. The United Nations Commission on Human Rights, in reviewing China's performance under the Convention Against Torture, found that China has systematically violated the Convention obligations through the routine use of torture and abuse leading to injury and death of Tibetan criminal suspects in Chinese custody.¹³ The international nonprofit organization Freedom House recently reported that since 2012, Tibetans are more likely than other people within the Chinese state "to be subjected to long prison sentences of 10 years or more, systematic torture, and death in custody."¹⁴
14. China has drafted rules regulating the behavior of law enforcement towards people who are incarcerated, expressly prohibiting their beating, corporal punishment, or abuse.¹⁵ The Regulations on Administrative Detention Facilities ("ADF") went into effect on 1 April 2012. Article 3 of the ADF stipulates that administrative detention facilities shall guarantee the personal safety and lawful rights and interests of detained persons, and may not humiliate, corporally punish or abuse them, or incite or condone others to do so.¹⁶ Further, these laws explicitly provide that detainees' families have the right to be notified of their detention and to meet with their lawyers.¹⁷ These laws and regulations purport to prevent and protect against torture or cruel treatment under Chinese domestic law.
15. Additionally, in 2012, China amended its Criminal Procedure law, providing that a defense lawyer may meet with a suspect within 48 hours of the person's request for a meeting with counsel.¹⁸

B. China's Actual Compliance with Article 2.1

16. In its 2015 Concluding Observations on the fifth periodic report of China, the Committee against Torture "remain[ed] concerned that the excessive period of time during which public security officials may detain persons without independent supervision may increase the risk of detainees being ill-treated or even tortured."¹⁹
17. In these same Concluding Observations, the Committee called on China to reduce the maximum period of

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ UN Commission on Human Rights, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Mission to China, 10 Mar. 2006, E/CN.4/2006/6/Add.6, <http://www.unhcr.org/refworld/docid/45377b160.html>; see also UN Commission on Human Rights, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment addendum: follow-up to the recommendations made by the Special Rapporteur visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela, 18 Feb. 2008, A/HRC/7/3/Add.2, <http://www.unhcr.org/refworld/docid/47cbbf262.html>.

¹⁴ The Politburo's Commitment, Freedom House <https://www.freedomhouse.org/report/china/politburo-predicament>.

¹⁵ UN Commission on Human Rights, *supra* note 6, at Art. 3.

¹⁶ HRI China, *Detention Center Regulations for Notification of Detainees of their Rights and Obligations* [Effective 11 Dec. 2012], <https://www.hrichina.org/en/detention-center-notice-detainees-regarding-their-rights-and-responsibilities>.

¹⁷ *Id.*

¹⁸ Article 14 (3) of the Prison Law of the PRC, promulgated by the NPC standing Committee on 29 Dec. 1994, http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383784.htm

¹⁹ Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5, adopted 3 February 2016.

police custody and ensure that detained people are promptly brought in front of a judge, and either formally charged or released.²⁰

18. In the ensuing three and a half years since China's last review, China has failed to meet its obligation to end practices of arbitrary detention.
19. A large majority of those detained are charged with "endangering State security" and convicted for "leaking State secrets" and "inciting separatism, often on overbroad definitions and interpretations. For instance, in 22 May 2018, the Tibetan language activist Tashi Wangchuk was sentenced to five years in prison for "inciting separatism" for comments he had made to the *New York Times* criticizing Chinese authorities for their failure to protect and promote Tibetan culture and language.²¹
20. Further, many Tibetans who are detained and arrested in China are not allowed access to attorneys and many of their families are not informed of their detention within a reasonable time frame.²²
21. The Committee has also noted its concerns that in cases where the person detained is accused of "endangering State security," the detained person's lawyer must "obtain permission from public security investigators to meet with the suspect, and investigators may legally withhold permission for an indefinite period of time if they believe that the meeting could hinder the investigation or could result in the disclosure of State secrets."²³
22. This exception to the right to an attorney means that there is no effective guarantee that detainees will have access to a lawyer and that their relatives will be notified of their detention.
23. An example of how this impacts Tibetans is the case of Tashi Wangchuk. Tashi Wangchuk was arrested and detained for his advocacy for Tibetan language rights.²⁴ Tashi Wangchuk is a Tibetan businessman who attempted to use legal means within China's own constitution to publicly seek Tibetan language education in schools rather than Chinese, which has increasingly become the predominant language of instruction in Tibet, often being the exclusive language taught.²⁵ Tashi Wangchuk was detained on 27 January 2016 after he featured in a *New York Times* report, including a video report, that described his journey to Beijing in May 2015 to file a formal complaint against Chinese officials for failing to implement Tibetan language education.²⁶ He was charged in March 2016 with "inciting separatism", although he explicitly stated during the report that he was not calling for Tibetan independence.²⁷ His relatives were not notified of his detention until 24 March 2016;²⁸ a violation of Chinese law, which requires a detainee's family be informed of the detention within twenty-four hours.²⁹
24. Tashi was held without trial from March 2016 until 4 January 2018, and his sentence was not announced until 22 May 2018.³⁰ Tashi was only given limited access to his lawyers, Lin Qilei and Liang Xiaojun, during his pre-trial detention.³¹ Further, his lawyers reported that Tashi was tortured and suffered inhuman and degrading treatment during his first week of detention.³² Specifically, they reported that Tashi was held in a "tiger chair" for lengthy interrogation and was repeatedly beaten.³³ On 26 May 2017, five Special Procedures mandate holders "expressed serious concern" about Tashi's

²⁰ *Id.*, at 11.

²¹ A Tibetan Tried to Save His Language. China Handed Him 5 Years in Prison, *New York Times*, 22 May 2018, available at: <https://www.nytimes.com/2018/05/22/world/asia/tibetan-activist-tashi-wangchuk-sentenced.html>.

²² *Id.*

²³ Concluding observations, *supra* note 19, at 12.

²⁴ *Chinese Prosecutors Ask Court for More Time in Detained Tibetan's Case*, *THE NEW YORK TIMES*, (28 Dec. 2016) <https://mobile.nytimes.com/2016/12/28/world/asia/tashi-wangchuk-tibet-china.html>.

²⁵ *Id.*

²⁶ *China: Activist Convicted for Promoting Tibetan Language*, HUMAN RIGHTS WATCH, published 22 May 2018, accessed 13 Feb. 2019, <https://www.hrw.org/news/2018/05/22/china-activist-convicted-promoting-tibetan-language>.

²⁷ *Id.*

²⁸ *Political Prisoner Tashi Wangchuk Denied Appeal*, FREE TIBET, published 23 Aug. 2018, accessed 13 Feb. 2019 <https://www.freetibet.org/news-media/na/political-prisoner-tashi-wangchuk-denied-appeal>.

²⁹ *Id.*

³⁰ *Tibetan activist and political prisoner, Tashi Wangchuk, denied a visit with his lawyer ahead of the three-year anniversary of his detention*, STUDENTS FOR A FREE TIBET JOIN STATEMENT WITH INTERNATIONAL TIBET NETWORK AND FREE TIBET, published 18 Jan. 2019, accessed 13 Feb. 2019, <https://studentsforafreetibet.org/tibetan-activist-and-political-prisoner-tashi-wangchuk-denied-a-visit-with-his-lawyer-ahead-of-the-three-year-anniversary-of-his-detention/>.

³¹ *Political Prisoner Tashi Wangchuk Denied Appeal*, *supra* note 28.

³² *Tibetan activist and political prisoner, Tashi Wangchuk, denied a visit with his lawyer ahead of the three-year anniversary of his detention*, *supra* note 30.

³³ *Id.*

incommunicado detention, as well as his limited right to counsel.³⁴ Tashi Wangchuk stood trial in January 2018 for “inciting separatism”³⁵ and on 22 May 2018, he was sentenced to five years in prison.³⁶ He is still being held due to these charges.³⁷ Most recently, on 18 January 2019, Tashi’s lawyer, Lin Qilei, reported that he attempted to visit Tashi Wangchuk in Dongchuan Prison in order to discuss the filing of a new petition to the Supreme Court.³⁸ Qilei was not permitted to visit Tashi and was told that this was due to the “sensitive nature” of Tashi Wangchuk’s crime.³⁹ Further, he was told that his request to meet with Tashi needed to go via the Internal Investigations Department. Despite following this procedure, Qilei’s application was denied.⁴⁰ Since his trial, Tashi has only been allowed three family visits.⁴¹ His siblings were able to visit Tashi in November 2018, but are currently awaiting permission for a further visit.⁴²

25. Another example is the case of A-nya Sengdra, a Tibetan nomad from Kyangche township, Golok ,Amdo (Ch: Guoluo, TAP, Qinghai Province). Sengdra is well-known in the region for his efforts against local authority corruption and for accountability.⁴³ On 4 September 2018 he was arrested by the Public Security Bureau (PSB) and detained for “picking quarrels and provoking trouble” linked to his efforts to secure economic justice for a large number of Tibetan nomads.⁴⁴ Mr. Sengdra was detained in the Tibetan province of Amdo on September 4, 2018.⁴⁵ He remains held without trial in a detention center.⁴⁶

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

26. China’s National People’s Congress revised the criminal procedure law and the criminal law in 1996 and 1997 respectively, outlawing the extraction of confessions through torture.⁴⁷ Article 14 of the Prisoner Law forbids prison officials from “coercing confession by torture, physical abuse, imposing corporal punishments against imprisoned” people, and “from insulting the dignity of the imprisoned.”⁴⁸ Additionally, on 24

³⁴ Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22981>.

³⁵ Further Information: China: Tibetan Education Advocate Indicted: Tashi Wangchuk, Amnesty International, <https://www.amnesty.org/en/documents/asa17/5510/2017/en/>.

³⁶ Tashi Wangchuk’s lawyer, Liang Xiaojun, posted on Twitter at 12.10pm [Beijing] on 22 May 2018, “刚刚得到消息：扎西文色以煽动分裂国家罪被判处有期徒刑五年。Machine Translation - “Just got word, [Tashi Wangchuk] was sentenced to five years in prison for inciting secession.” <https://twitter.com/liangxiaojun/status/998778003269210114>.

³⁷ China: Activist Convicted for Promoting Tibetan Language, *supra* note 22.

³⁸ *Lawyer denied access to imprisoned Tibetan language advocate Tashi Wangchuk on eve of arrest anniversary*, INTERNATIONAL CAMPAIGN FOR TIBET, posted 23 Jan. 2019, last viewed 13 Feb. 2019, <https://www.savetibet.org/lawyer-denied-access-to-imprisoned-tibetan-language-advocate-tashi-wangchuk-on-eve-of-arrest-anniversary/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *China: Activist Convicted for Promoting Tibetan Language*, *supra* note 26.

⁴² *Political Prisoner Tashi Wangchuk Denied Appeal*, *supra* note 28.

⁴³ Tibetans Call For Release of Popular Anti-Corruption Activist Who Remains in Prolonged Detention Without Trial, Tibetan Centre For Human Rights and Democracy, published 23 Jan. 2019, <http://tchrd.org/tibetans-call-for-release-of-popular-anti-corruption-activist-who-remain-in-prolonged-detention-without-trial/>.

⁴⁴ *Id.*

⁴⁵ Local Tibetan Activist Held Without Trial, Free Tibet, published 24 Jan. 2019, <https://www.freetibet.org/news-media/na/local-tibetan-activist-held-without-trial>

⁴⁶ Tibetans Call For Release of Popular Anti-Corruption Activist, *supra* note 43.

⁴⁷ Criminal Procedure Law of the People’s Republic of China, issued July 1979, amended 17 March 1996, effective 1 January 1997, published through the Office of the High Commissioner, United Nation Human Rights on 22 November 2016, <https://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china>: Criminal Law of the PRC (1997 revision), statutes and regulations of the People’s Republic of China, 1986, Vol. I, item 790706, 18 p. , accessed and translated through the ILO.

⁴⁸ Article 14 (3) of the Prison Law of the PRC, promulgated by the NPC standing Committee on 29 Dec.1994, http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383784.htm.

December 2012, the Chinese Supreme People's Court issued an interpretation of the country's Criminal Procedure Law.⁴⁹ This ruling clarified article 54 of the Criminal Procedure law, declaring that corporal punishment or other methods of inflicting severe physical or mental pain or suffering on defendants are "illegal means such as coercion of confession by torture."⁵⁰

27. Several provisions of these sentencing guidelines are intended to regulate the use of torture. Specifically, they were intended to prevent the use of torture in both criminal sentencing and in criminal judgements.⁵¹

B. China's Actual Compliance with Article 4.1

28. The Chinese government in 2012 vowed to "enforce preventive and remedial measures to prevent extortion of confession by torture."⁵² However, the rise in systematic torture of Tibetans who are detained and imprisoned shows that torture is not a punishable offense under China's criminal law. Despite the unequivocal international legal obligations defining and outlawing acts of torture and inhuman treatment, Chinese State authorities routinely and systematically subject Tibetans to arbitrary and unlawful detention and acts of torture and inhumane treatment. The Chinese justice system continues to rely on confessions obtained through torture, in addition to inflicting torture on those within its system.⁵³ Two recent cases that exemplify this and require urgent intervention are those of Tashi Wangchuk and Choekyi, Tibetans who have been subjected to torture or cruel, inhuman, and degrading treatment following their arrests and detention.
29. Since Tashi Wangchuk's detention, multiple governments and independent United Nations human rights experts have expressed concern about his treatment and called for his immediate release.⁵⁴ In November 2018, during China's Universal Periodic Review, both the United States and United Kingdom raised Tashi Wangchuk's case.⁵⁵ Tashi Wangchuk remains in prison, has been prevented from filing an appeal, and has no recourse for the torture he has suffered.
30. The case of Tibetan monk, Choekyi, is also of the utmost concern. Choekyi spent three and a half years in a Chinese prison for wearing a t-shirt celebrating the Dalai Lama's birthday.⁵⁶ Despite his release from prison and hard labor in January 2019, Choekyi's case is also urgent because he continues to be in very ill health. Choekyi was known to have had a long-term illness before his arrest.⁵⁷ His condition is said to have deteriorated while in prison linked to maltreatment in prison and the forced labour he carried out while in detention.⁵⁸ He continues to suffer from the effects of his torture and remains under surveillance by the Chinese authorities.⁵⁹

⁴⁹ Sixth Report of the People's Republic of China on its implementation of the Convention against Torture, CAT/C/CHN/5*, 3 April 2014, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRICAqhk7yhsIEE2YuVt8GA5WKG3GEX%2BZH%2FgntH6R54gTE05xyU2ofsOkzEKzoavG4JJJOVXP9ArdKpDbclucbRVGyAwfX8fwH1og6XZvJGJjmB8Vcl.3390> Art. 2 p. 17.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Tom Phillips, China still uses medieval torture methods against opponents, *The Guardian*, 12 Nov. 2015, <https://www.theguardian.com/world/2015/nov/11/china-still-uses-medieval-torture-methods-against-opponents-amnesty>.

⁵³ China: Torture and forced confessions rampant amid systemic trampling of lawyers' rights, Amnesty International, 12 Nov. 2015, <https://www.amnesty.org/en/latest/news/2015/11/china-torture-forced-confession/>.

⁵⁴ Six UN human rights experts have called for Tashi's immediate release, condemning his continued detention. Ms. E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Ms. Karima Bennouna, Special Rapporteur in the field of cultural rights; Mr. Fernand de Varennes, Special Rapporteur on minority issues, Mr. José Antonio Guevara Bermúdez, Chair-Rapporteur of the Working Group on Arbitrary Detention, Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a joint statement condemning Tashi Wangchuk's detention and calling for his immediate release. *China: UN experts denounce the criminalization of linguistic and cultural rights advocates*, Office of the High Commissioner on Human Rights, UN, published Feb. 21 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22683&LangID=E>. Additionally, parliamentarians from France, Germany, Australia, and the European Parliament have called for Tashi's release. See *European Parliament resolution on the cases of the human rights activists Wu Gan, Xie Yang, Lee Ming-che and Tashi Wangchuk, and the Tibetan monk Choekyi*, European Parliament, published 18 Jan. 2018, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2018-0043&format=XML&language=EN>.

⁵⁵ UPR Info's Database of UPR recommendations and voluntary pledges, Recommendations Received by China, Nov. 2018 UPR cycle, https://www.upr-info.org/database/index.php?limit=0&f_SUR=36&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly.

⁵⁶ Radio Free Asia, published 27 Dec. 2012, accessed 13 Feb. 2019, <https://www.rfa.org/english/news/tibet/health-12272017131425.html>.

⁵⁷ Tibetan Political Prisoner Released, published 24 Jan. 2019, accessed 4 March 2019, <https://www.freetibet.org/news-media/na/tibetan-political-prisoner-released>.

⁵⁸ Tibetan monk faces death in prison for celebrating the Dalai Lama's birthday, *AsiaNews.it*, published Dec. 28, 2017, accessed Feb. 15, 2019, <http://www.asianews.it/news-en/Tibetan-monk-faces-death-in-prison-for-celebrating-the-Dalai-Lama's-birthday-42688.html> para 7.

⁵⁹ *Id.*

31. Choekyi came to the attention of authorities for the T-shirt he wore that celebrated the Dalai Lama's 80th birthday, and was arrested and detained in June 2015.⁶⁰ He was accused of being part of an 'anti-Communist Party' group and arrested on a charge of conducting "separatist activities".⁶¹ Choekyi's case is not unique – in December of 2016, nine Tibetans were sentenced to prison for celebrating the Dalai Lama's birthday.⁶²
32. After being charged, Choekyi was briefly held in a prison in the Ganzi prefecture, and then sent to Sichuan's Mianyang prison to serve a four-year prison sentence.⁶³ China's severe restrictions on access to information in Tibet have made it extremely difficult to obtain information on Choekyi's treatment in prison and current wellbeing.
33. However, according to a Tibetan source speaking to Radio Free Asia on condition of anonymity,⁶⁴ Choekyi was tortured while detained in Mianyang Prison, near the Sichuan provincial capital of Chengdu, held in solitary confinement, and forced to carry out hard labor.⁶⁵ Choekyi was in poor health prior to his detention, suffering from a kidney ailment which worsened from the ill-treatment he experienced while in prison.⁶⁶ *Radio Free Asia's* anonymous source also reported that Choekyi's visitors were not allowed to bring food or medicine to him, and meetings were limited to five to ten minutes.⁶⁷
34. Choekyi was released on 18 January 2019, six months earlier than the term of his sentence, due to his failing health.⁶⁸ Despite his release, he is still being monitored by Chinese authorities. According to a source, Choekyi is not allowed to go to the hospital or see doctors without permission from the county authorities.⁶⁹ Choekyi's case requires investigation of his treatment, the arbitrary nature of his detention, and the ongoing denial of access to healthcare or doctors.
35. Both Tashi Wangchuk and Choekyi were arrested, imprisoned and tried due to their actions linked to rights of the Tibetan people. Both were detained without just cause and were subjected to torture or cruel and inhuman treatment while in Chinese prisons.
36. The trend of Tibetans being targeted by Chinese authorities in the guise of preserving national security has been ongoing.⁷⁰ In 2005, the then Special Rapporteur on Torture, Professor Manfred Nowak, visited China, touring detention centers in Beijing, Xinjiang, and Tibet.⁷¹ He noted that the practice of torture remains widespread in China, and particularly targets Tibetans.⁷² Professor Nowak received "serious allegations" of "a consistent and systemic pattern of torture related to ethnic minorities, particularly Tibetans."⁷³
37. This pattern of torture and inhuman treatment directed at Tibetans exemplifies China's increased repression and systemic violations of human rights which violates numerous commitments by China to UN mechanisms, including the CAT.
38. China is clearly not in compliance with Article 4.1.

⁶⁰ Fears For Health of Tibetan Monk Jailed For Celebrating Dalai Lama's Birthday, International Campaign for Tibet, published 30 Jan. 2019, accessed 13 Feb. 2019, <https://www.savetibet.org/fears-for-health-of-tibetan-monk-jailed-for-celebrating-dalai-lamas-birthday/>.

⁶¹ *Id.*

⁶² *Tibetans sentenced to long prison terms for involvement in Dalai Lama's 80th birthday celebration*, International Campaign for Tibet, published 15 Dec. 2016, accessed 13 Feb. 2019, <https://www.savetibet.org/tibetans-sentenced-to-long-prison-terms-for-involvement-in-dalai-lamas-80th-birthday-celebration/>.

⁶³ Fears For Health of Tibetan Monk Jailed For Celebrating Dalai Lama's Birthday, *supra* note 60.

⁶⁴ Due to severe repression of Tibetan dissidents, this is the most direct source regarding Choekyi's situation. Multiple Tibetan advocacy groups have relied on this report; namely Radio Free Asia, *supra* note 57, Asianews, *supra* note 58, and International Campaign for Tibet, *supra* notes 60, and 62.

⁶⁵ Fears For Health of Tibetan Monk, *supra* note 60.

⁶⁶ *Id.*

⁶⁷ Tibetan monk faces death in prison for celebrating the Dalai Lama's birthday, *supra* note 58.

⁶⁸ *Fears For Health of Tibetan Monk Jailed For Celebrating Dalai Lama's Birthday*, *supra* note 60.

⁶⁹ *Id.*

⁷⁰ *Torture: A growing scourge in China- Time for Action*, AMNESTY INTERNATIONAL, PRC, February 2001, AI Index: ASA 17/004/2001, pp.3 et seq.

⁷¹ *Kuxing: Torture in Tibet A Special Report*, TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, <http://home.claranet.nl/users/jvdg/savetibet/torture.pdf>, 12-13.

⁷² *Special Rapporteur on Torture highlights challenges at end of visit to China*, UNITED NATIONS PRESS RELEASE, published 2 Dec. 2005, available at <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=3463&LangID=E>.

⁷³ *Id.*; see also Kuxing, *supra* note 71, at 13.

V. 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.*

A. China's Claims of Compliance with Article 12

39. Article 55 of China's Criminal Procedure Law requires the investigation of any allegation that torture was used during a criminal proceeding.⁷⁴ The Chinese government claims that authorities investigate the injury or death of any detainee.⁷⁵

B. China's Actual Compliance with Article 12

40. Article 12 requires that State parties take prompt action to investigate possible incidences of torture. Promptness is important to ensure that the victim of torture is protected from further torture as soon as possible.

41. Tibetans continue to experience torture while they are detained or imprisoned without proper investigation. Both Choekyi and Tashi Wangchuk report having experienced torture while detained.⁷⁶

42. Further, Tibetan prisoners are also being released when they are near death, so that when they die they will not do so in police custody. This is a way of further avoiding liability for the death of a detainee or prisoner. Choekyi, who is in failing health and experiencing kidney damage due to torture he experienced in detention was released early from prison for this reason.⁷⁷

43. In 2015, TAC submitted information to the Committee regarding Tibetan survivors of torture and requested more information on their cases. These specific instances reveal a pattern of torturing Tibetan detainees and prisoners, in violation of China's commitments under the CAT. These cases are summarized below.

- Dolma Kyab, a Tibetan writer and teacher, was arrested in 2005 and was tortured to extract a false confession.⁷⁸ He was released in 2015, and the Chinese government has not investigated his allegations of having been tortured while in prison.⁷⁹
- Jigme Guri, a Tibetan monk, was detained on 20 August 2011, and was charged with "splittism" on 1 January 2012.⁸⁰ Jigme Guri reported that he was tortured while detained, including being beaten until he was unconscious.⁸¹ He was detained for three years before his August 2014 trial.⁸² After serving two additional years in prison, Jigme Guri was released on 26 October 2016.⁸³
- Golog Jigme, a Tibetan social worker and filmmaker was arrested in 2008 for his work on a documentary about Tibet.⁸⁴ He was released and subsequently re-arrested twice more in 2008.⁸⁵ Golog Jigme said that while he was in Chinese prisons, he was brutally tortured, experiencing broken ribs and damaged knees.⁸⁶ Golog Jigme, fearing for his life, escaped

⁷⁴ Criminal Procedure Law (promulgated by Nat'l People's Cong., 1 July 1979, rev'd 14 Mar. 2012, effective 1 Jan. 2013), Arts. 55, 56, 58, P.R.C. Laws.

⁷⁵ *Id.*

⁷⁶ *Tibetan activist and political prisoner, Tashi Wangchuk, denied a visit with his lawyer ahead of the three-year anniversary of his detention*, supra note 21; *Tibetan Monk Who Celebrated Dalai Lama's Birthday Now in Failing Health in Prison*, supra note 70.

⁷⁷ *Tibetan Monk Who Celebrated Dalai Lama's Birthday Now in Failing Health in Prison*, supra note 70.

⁷⁸ UK Calls on China to Commute Tibetan Death Sentence, The Tibet Post International (3 Sep. 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, International Campaign for Tibet (21 Aug. 2013),

<http://www.savetibet.org/death-penalty-for-tibetan-after-death-of-wife-in-ngaba/>.

⁷⁹ "China: Dolma Kyab Released yet Indicates Chinese Repression of Tibetan Free Speech". PEN AMERICA. 8 Oct. 2015,

<https://pen.org/press-release/china-dolma-kyab-released-yet-indicates-chinese-repression-of-tibetan-free-speech/>.

⁸⁰ Jigme Guri, International Tibet Network, <http://freetibetanheroes.org/jigme-guri/>

⁸¹ *Id.*

⁸² Jigme Guri Released From Prison, Free Tibet, published 27 Oct. 2016, <https://freetibet.org/news-media/na/jigme-guri-released-prison>.

⁸³ *Id.*

⁸⁴ Golog Jigme Speaks About His Arrest and Escape from Chinese Prison, Central Tibetan Administration, published 28 May 2014,

<https://tinet.net/2014/05/golog-jigme-speaks-about-his-arrest-and-escape-from-chinese-prison/>.

⁸⁵ *Id.*

⁸⁶ *Id.*

from prison and made his way to India.⁸⁷

- Tenzin Delek Rinpoche, a Tibetan lama, was arrested on charges of encouraging separatism.⁸⁸ His trial was held in secret and he was sentenced to twenty years in prison.⁸⁹ His family reported that he was tortured while in prison, and walked with the use of a cane, due to the lasting effects of this torture.⁹⁰ The Chinese government denied numerous requests for his medical parole.⁹¹ Tenzin Delek died in prison on 12 July 2015.⁹² His body was cremated without an autopsy, despite Tibetan and international calls for an investigation into his death.⁹³
- In 2013, Tibetan Yama Tsering and 20 other people were arrested and tortured with an electrical prod.⁹⁴ After police opened fire on unarmed protesters, the protesters were detained and tortured by the police.⁹⁵
- Khenpo Kartse, a Buddhist Abbot, was arrested in December 2013, for allegedly “endangering state security”.⁹⁶ During his two-and-a-half-year prison sentence, there were growing concerns for his health, as he was not given adequate food.⁹⁷ Khenpo Kartse was allegedly coughing up blood while detained, and was not allowed medical treatment.⁹⁸
- Jamyang Jinpa, a 37-year-old Tibetan monk, died on 3 April 2011, after suffering severe torture while in Chinese detention.⁹⁹

VI. CONCLUSION

44. China’s failure to offer full protections to detainees and prevent torture violates the CAT. Despite passing a series of laws which purport to offer protections against torture, China has failed to investigate credible claims of torture of Tibetans who are in prisons and detention facilities. China has continued to accept evidence induced by torture as valid in courts of law, and has continued to allow officials to avoid culpability by releasing prisoners on medical parole before they die in prison from torture-related health complications, as in the case of Choekyi.

Recommendation: China take steps to ensure thorough investigation of all suspected acts of torture, including investigating deaths resulting from torture, ending the practice of accepting confessions made under duress, and investigating situations where prisoners are released on medical parole.

45. The prevention of torture is fundamentally important. The Convention Against Torture establishes protections for individuals with which State parties must comply. Although China has alleged its compliance with the CAT, in reality, China has instigated ongoing and systemic torture against Tibetans that has not been adequately investigated, prevented, or punished. Without greater oversight, reform of the Chinese Criminal Code, and administrative deterrence, Tibetans will continue to experience torture

⁸⁷ *Id.*

⁸⁸ Human Rights Watch Trials of a Tibetan Monk; The Case of Tenzin Delek Vol(16) 1c (Feb 2004)

<https://www.hrw.org/report/2004/02/08/trials-tibetan-monk/case-tenzin-delek>.

⁸⁹ *Id.*

⁹⁰ Patrick Bohler, *Tenzin Delek Rinpoche, Tibetan Religious Leader, Dies In Chinese Custody*, The New York Times, 13 July 2015.

<https://www.nytimes.com/2015/07/14/world/asia/tenzin-delek-rinpoche-tibetan-religious-leader-dies-in-chinese-custody.html>

⁹¹ *Id.*

⁹² *China Cremates Prominent Tibetan Monk Against Family's Wishes*, Reuters. 17 July 2015. Chinese authorities cremated the body of a prominent Tibetan monk, denying family members custody of his remains amid suspicions over the cause of his death.

⁹³ *Id.*

⁹⁴ Tibetans Tortured After Shootings, Free Tibet, 17 July 2013, <https://freetibet.org/news-media/na/tibetans-tortured-after-shootings>.

⁹⁵ *Id.*

⁹⁶ Respected Tibetan Monk Khenpo Kartse released from prison at end of sentence, International Campaign for Tibet, 18 July 2016,

<https://www.savetibet.org/respected-tibetan-monk-khenpo-kartse-released-from-prison-at-end-of-sentence/>.

⁹⁷ *Id.*

⁹⁸ Michelle Arrous, Jailed Tibetan Leader Khenpo Kartse in ‘Very Poor Health’, Time, 12 March 2014,

<http://time.com/20959/kartse-jailed-tibetan-poor-health/>.

⁹⁹ International Campaign for Tibet, Torture blamed for death of Tibetan monk, second death following protest during foreign reporters’ visit to Labrang monastery, (4 April 2011),

<http://www.savetibet.org/torture-blamed-for-death-of-tibetan-monk-second-death-following-protest-during-foreign-reporters-visit-to-labrang-monastery/>.

when they are arrested and detained. China must be encouraged to take immediate action to come into true compliance with the convention.

VII. RECOMMENDATIONS

46. The Coalition makes the following recommendations to the Committee in this follow-up to the Committee's Concluding Observations on China. We urge the Committee to insist on reform of the Chinese Criminal Code as well as Chinese policy to prevent the type of torture and inhuman treatment experienced by Tibetans in recent years.
47. **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. These specific individuals have suffered torture and inhuman treatment. We recommend that the Committee address these cases, hold Chinese authorities accountable for wrongful acts, and provide adequate compensation to the victims' families.
48. **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 vital aspect of ensuring the prohibition of torture in China. We therefore recommend that China legislate clearly on torture at national and regional levels and prohibit all forms of torture, under any circumstances, without an exception for cases which "endanger State security," in order to bring legislation in line with the international legal standard.** China must immediately implement this legislation.
49. **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 therefore recommend that Chinese authorities hold Chinese police and prison officers accountable for their actions through 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 be required to provide all suspects with access to lawyers, and that these lawyers be present during interrogations.
50. **RECOMMENDATION 4 – 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 therefore recommend that Chinese authorities ensure that all custodial deaths, disappearances, allegations of torture and ill-treatment and reported use of excessive force against persons in Tibet¹⁰⁰, are promptly, impartially and effectively investigated by an independent mechanism.
51. **RECOMMENDATION 5 – 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. On February 9, 2015, in advance of the most recent review session of China, TAC and BU-IHR submitted information for consideration for the list of issues for the Committee. This included a request for more information regarding how the Chinese authorities responded to the deaths of ex-prisoners Tenzin Choedrak, Jamyang Jinpa and Goshul Lobsang. In the alternative we requested an investigation of these deaths, due to concern these ex-prisoners died as a result of torture. We again raise these concerns and request more information, as none of the recommendations have been fulfilled.

¹⁰⁰ The Autonomous Region of Tibet and neighboring Tibetan prefectures under the current Chinese state.