

A Survey on the Rights Protection of Pretrial Detainees in China

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Introduction

The United Nations Committee against Torture attached great attention to the rights protection of the pretrial detainees. According to Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, “the Convention”), 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.

Efforts and Progress Achieved in China

As a developing country ratified the Convention, China spared great efforts in safeguarding the rights of individuals under detention before a trial. Since 2009, China has already constructed two sets of national human rights action plan and published at least five white papers concerning progress of human rights and judicial reform in China, all of which paid great importance to the protection of rights of the pretrial detainees. Such analysis demonstrates that in China legislation regulating the rights of detainees contains provisions potentially in line with international standards.

1. National Human Rights Action Plan and relevant Assessment Report

(1) National Human Rights Action Plan of China (2009-2010)

According to the Information Office of the State Council of the People's Republic of China, the national human rights action plan attached great attention of the rights of detainees. It is said that the state would improve the legislation concerning prison management and take effective measures to ensure detainees' rights and humanitarian treatment. The state will make efforts to improve the laws, regulations, policies and measures related to the protection of detainees' rights and humanitarian treatment.

In accordance with the law, the state strictly carries out every procedure in the execution of criminal punishment, such as taking a convict into custody, commutation, parole, temporary serving of a sentence outside prison and release from prison. The procedures for law enforcement shall be further standardized, so as to ensure that they

are rigorous and detailed, and that the legal documents and warrants provided at every stage of law enforcement are authentic, properly kept and documented in files.

The state is improving the system of accountability, the system of publication, the system of performance evaluation and examination, and the system of investigating wrongdoing in law enforcement in prisons and detention houses; it is establishing a supervisory system and a power-restraint mechanism for law enforcement, and intensifying investigation into illegal activities committed during law enforcement and punishing those who are held accountable.

Effective measures shall be taken to prohibit such acts as corporal punishment, abuse, insult of detainees or the extraction of confessions by torture. All interrogation rooms must impose a physical separation between detainees and interrogators. The state establishes and promotes the system of conducting a physical examination of detainees before and after an interrogation.

The state is further improving the system of treatment for detainees. The rules regarding detainees' correspondence, meeting with people, entertainment, and family visits shall be improved. The state is improving the sanitation management system for detainees as well as their medical treatment, and promoting standardized management of detainees' life and health care. The state will pay attention to individualized education and correction of detainees, popularizing and intensifying education concerning mental health and psychological counseling. More funds will be made available to improve the environment and conditions for detainees in prisons and detention houses, and to help cover the expenses for daily supplies, overhead, the purchase and wear and tear of equipment, maintenance and other expenditures.

The state is improving an open system of law enforcement in prisons and detention houses by making public detainees' rights as well as the law-enforcement standards and procedures to detainees, their families and society at large. Supervision is effectively carried out over law-enforcement activities in prisons and detention houses by providing complaint services (letter boxes or telephone numbers), directly meeting leaders of prisons or detention houses, or hiring public supervisors.

The state is intensifying real-time supervision conducted by the people's procuratorate on law enforcement in prisons and detention houses. For detainees' convenience, complaint letter boxes are set up in their cells, and a detainee may meet the procurator stationed in a prison or detention house by appointment, if the former feels he has been abused and wants to make a complaint.

(2) Assessment Report on the National Human Rights Action Plan of China (2009-2010)

Laws and regulations to guarantee detainees' rights have been further improved. In May 2009 the Ministry of Public Security promulgated the Ten Provisions on Preventing and Cracking Down on Bullies in Detention Houses, Notice on the

Concentration of Female Detainees for Management in Detention Houses, and other regulatory documents. These documents improved the system of categorized detention and management of detainees, the system of transitional management of new detainees and informing them of their legitimate rights, and the system allowing detainees to report abuse to the police.

In December 2009 the Ministry of Public Security and the Ministry of Health jointly issued the Notice on Effectively Strengthening and Improving Medical and Health Work in Places Under the Surveillance and Control of Public Security Organs to consolidate the building of medical institutions in these places. The Construction Standards for Prisons, which came into effect in December 2010, further regulates the management of prisons and the construction of facilities in prisons. An open system of supervision and law enforcement has been basically established. Detention houses have set up reception rooms and complaint boxes, and publicized the names of police officers and systems and procedures for supervision and law enforcement.

So far, over 1,500 detention houses have been opened to the public and receive public supervision. The Supreme People's Court, Supreme People's Procuratorate and other organs have issued the Opinions on Strengthening and Regulating the Execution of Sentences Outside Prison. The system of public announcement and hearing before ruling on penalty reduction and parole is set out clearly in the Opinions, increasing transparency in the trial of such cases. In 2009 and 2010 people's courts at all levels reduced the penalties for over 1.005 million people, and released 68,000 others on parole in accordance with the law.

To prevent the extortion of confessions by torture and the infliction of corporal punishment, abuse and insult on detainees, the Ministry of Public Security stipulates that, except for special cases, all interrogation of detainees must be conducted in the interrogation rooms of detention houses. Every interrogation room must have a metal mesh as separation between detainees and interrogators, and two doors - one for the detainee and one for the interrogator - to avoid physical contact between them. Technological means, including simultaneous audio and video recording, are employed in interrogation rooms to prevent such abuses as the extortion of confessions by torture. Physical examination of detainees before and after an interrogation and when they leave and return to the detention house is conducted.

(3) National Human Rights Action Plan of China (2012-2015)

China will further strengthen supervision over criminal proceedings, punishment execution and supervision, so as to guarantee the legal rights of detainees.

-- Guaranteeing the rights and humane treatment of the inmates and improving legal stipulations concerning the management of prisons. The system of a bed for one inmate will be gradually adopted and medical care for prison inmates will be socialized so as to ensure an inmate to get timely treatment when ill.

-- Preventing unnecessary detention. After a suspect or defendant is held in custody, the related people's procuratorate should review the necessity of the detention. Once it concludes the detention is not necessary, it should advise the organ that investigates the case to release the suspect or defendant, or change the compulsory measure adopted.

-- Strengthening supervision over the time limit of criminal detention. The people's procuratorates should conduct supervision over the organs of criminal investigation to strictly implement the system of detention change, the warning and notifying system when the time limit of detention is going to expire and the accountability system for overdue imprisonment. Efforts will be made to prevent and settle cases involving prolonged detentions and urge the investigation organs to conclude cases that have long exceeded the time limit of detention.

-- Improving mechanisms to guarantee the rights of detainees. The systems of physical examination for detainees when they are taken into custody, regular body surface examinations for detainees and notification of the rights and obligations of the detainees and emergency alarming will be strictly implemented, so will the system of interrogation and remand of criminal suspects. The systems of detainees' security risk assessment, psychological intervention and investigation and handling of their complaints will be improved. So will the system of inviting special supervisors to inspect the detention houses. Regulations regarding detainees' request to see the resident procurators, meetings between detainees and resident procurators and the establishment of procurator mailboxes will be improved to prevent and investigate violations of the rights of detainees, such as physical punishment, torture and insult by people working in the detention houses.

-- Improving the system of examination and investigation in case of the death of a detainee in prisons and detention houses.

2. White Papers Concerning Human Rights Progress in China

(1) Progress in China's Human Rights in 2014

The rights of the accused, detainees and criminals are protected. In 2014 the Ministry of Public Security formulated the Regulations on Making Audio-Video Recordings by the Public Security Organs When Interrogating Criminal Suspects and the Supreme People's Procuratorate amended the Provisions on Making Synchronous Audio-Video Recordings Throughout the Entire Process of Interrogation of Duty-Related Criminal Suspects, making sure audio-video recording is used in the entire process of interrogating criminal suspects, and giving detailed provisions on the principle, method and procedure of synchronous audio-video recordings, and management and use of such audio-video recordings.

The public security, judicial and administrative departments at all levels worked together to promote the establishing of legal aid stations in detention centers, and resident lawyers from legal aid organizations provide legal consultation for the accused and detainees to protect their legitimate rights and interests. By the end of 2014, up to 1,700 legal aid stations had been set up by the legal aid organizations in detention centers across the country, and this service now covers all the detention centers in the cities of Shanghai and Chongqing, and the provinces of Anhui, Jiangxi, Hunan and Guizhou.

The Ministry of Public Security has launched a special program to comprehensively improve the safety management level of detention centers and pressed ahead with professional health care services provided in detention centers to ensure that sick detainees are treated in a timely and effective manner. The Regulations on Temporarily Serving Sentences Outside Prison jointly issued by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice, and National Health and Family Planning Commission, and Opinions on Strengthening Sanitation Management in Prisons issued by the Ministry of Justice have helped to make law enforcement fairer, stricter and more civilized.

(2) Progress in China's Human Rights in 2013

China has abolished the system of reeducation through labor, and adopted multiple measures to curb the practice of extorting confessions by torture and prevent unjust, false and erroneous litigation. In order to better protect the citizens' rights to life, health and personal freedom, China has also made great efforts to guarantee food and pharmaceuticals safety, and to prevent major accidents.

With over 50 years of operation in China, the system of reeducation through labor played a positive role in protecting public security, maintaining social order, ensuring social stability, and educating and rescuing lawbreakers in certain historical circumstances. But over time its functions were gradually replaced with the implementation of laws such as the Law on Penalties for Administration of Public Security and the Law on Narcotics Control, and also with the improvements in the Criminal Law. Also, as the relevant laws became increasingly applicable in cases of reeducation through labor, the correction system played a lesser role over the years.

Since March 2013 the system has been basically suspended in China. On December 28, 2013 the Standing Committee of the NPC passed a decision on abolishing legal provisions pertaining to reeducation through labor, putting an end to the system. It was also decided that persons who were receiving reeducation through labor as prescribed by law should be released and exempted from their remaining terms.

China has improved the mechanism for preventing and rectifying unjust, false and erroneous charges, took various measures in ensuring the rights of suspects,

defendants and detainees. Measures for preventing and rectifying unjust, false and erroneous charges have been further strengthened.

In 2013 the Ministry of Public Security issued the Notice on Further Strengthening and Improving the Criminal Enforcement and Case Handling, and Effectively Preventing Unjust, False and Erroneous Charges and other related documents, in an effort to improve the system for preventing erroneous charges, reinforce supervision over law enforcement and case handling in an all-around, real-time manner that covers the whole process.

(3) Progress in China's Human Rights in 2012

China protects the rights of detainees. In 2011 the Ministry of Public Security and the Ministry of Health jointly issued the Basic Standards for Establishment of Clinics in Detention Centers to improve the accommodation, living and medical conditions of detainees.

By the end of 2012, a detainee security risk assessment and ranking mechanism had been established in 2,391 detention centers, or 89.1 percent of the national total; psychological counseling rooms for detainees had been established in 1,774 detention centers, or 66.1 percent of the national total; two-way online video meetings for inmates had been established in 1,893 detention centers, or 70.5 percent of the national total; and a complaints handling mechanism had been set up in 2,532 detention centers, or 94.3 percent of the national total. This mechanism had been employed in handling 2,633 complaints from the detainees.

In addition, guest supervisors had been hired in 2,664 detention centers, or 99.2 percent of the total. In 2012 the procuratorates raised 32,165 suggestions for correction on law-breaking activities in penalty execution and in custody.

(4) Progress in China's Human Rights in 2009

The legal rights and interests of people in detention and prison are protected by law. In 2009 the Ministry of Justice enacted and implemented the Assessment Measures for the Work on the Rehabilitation of Criminals in Prison to popularize the performance assessment system of rehabilitation work in an all-round way.

It also carried out a campaign focusing on "regulating law enforcement actions and raising the level of law enforcement" in an attempt to solve the problems in law enforcement. A rehabilitation mode of "5+1+1," namely five days of rehabilitation through labor and one day of classroom education, plus one day of rest every week has been widely adopted in prisons. Measures have been taken to ensure that prisoners' standard of living and health care levels always keep up with the country's social and economic development.

In 2009 the procuratorial organs urged the correction of the excessive detention of 337 people, and put forward rectification opinions on 22,268 cases of unlawful actions. In the same year the procuratorial organs joined hands with the public security organs in launching a special inspection of supervision and law enforcement at detention houses throughout China. This campaign discovered and punished 2,207 prisoners who bullied other inmates, and 123 of them were prosecuted for their acts involving criminal offences.

The procuratorial organs and the Ministry of Justice jointly carried out a campaign to "check for possible hidden dangers of accidents and improve the safety of detention houses and prisons." As a result improvement was made in safety measures and supervision work in order to protect the legitimate rights and interests of criminals.

3. Judicial Reform in China, First Edition 2012

(1) Prohibiting and Deterring Extortion of Confessions by Torture

To improve the investigation and questioning system is a prerequisite for building the rule of law, and it is also an important method for strengthening judicial supervision and protecting the legal rights and interests of criminal suspects in accordance with the law. China is constantly improving its laws to prohibit the exacting of evidence through torture or other illegal means by judicial officials.

Banning self-incrimination. The Criminal Procedure Law amended in 2012 clearly stipulates that no person may be forced to prove his or her own guilt, and no criminal suspects or defendants may be forced to confess.

Excluding illegally obtained evidence. The Criminal Procedure Law amended in 2012 makes it clear that confessions by a suspect or a defendant obtained through extortion or other illegal means and witness's testimony and victim's statements obtained through the use of violence, threats or other illegal means should be excluded from evidence.

If physical or documentary evidence is collected in ways violating legal procedures and severely affecting judicial justice, such evidence should be excluded if no correction or justification is provided. It also stipulates the specific procedure for exclusion of such evidence. Once evidence that should be excluded is found by public security organs, people's procuratorates or people's courts during the course of investigation, prosecution review or trial, such evidence should be excluded in accordance with the law.

Improving the system of detention, taking a person into custody after arrest and interrogation. A person who has been detained must be sent to a house of detention within 24 hours. When a person is arrested, he/she must be taken into custody immediately in a house of detention, where the interrogation shall be conducted. With

advances in the IT-based law enforcement by judicial organs, interrogation, detention, court trials and activities happening in places of custody are recorded and video taped.

The practice of recording and videotaping investigation and questioning processes is widely adopted. The law explicitly states that for crimes punishable by life imprisonment or death and other serious crimes, audio or video recording of the interrogation process is mandatory. The audio or video recording should cover the entire process of the questioning and should be complete.

(2) Protecting the Right to Defense of Suspects and Defendants

The system of advocacy set up for implementing the right to defense as stipulated in China's Constitution is a basic system in China's criminal litigation. It demonstrates the respect of the state for human rights such as those to life and freedom. In recent years, China has been reforming and improving its system of advocacy, aiming to change the old conception of "stressing fighting crimes, but ignoring human rights protection" in judicial practice, and make the system of advocacy play its due role in human rights protection.

Ensuring timely defense. The Criminal Procedure Law of 1979 stated that a defendant is not entitled to appoint a defender until he/she is undergoing court trial. The amended version in 1996 stipulated that a criminal suspect is entitled to hire an attorney for legal assistance during the investigation period, and appoint a defender when the case is handed over to a prosecution organ when the investigation is concluded. And the newly amended Criminal Procedure Law of 2012 went further to specify that a criminal suspect has the right to appoint a defender at any time as of the date when he/she is interrogated for the first time or from the day on which compulsory measures are adopted against him/her. A defendant is entitled to hire a defender any time he/she wants. If a criminal suspect or defendant in custody requests the appointment of a defender, the people's court, the people's procuratorate or the public security organ should convey the message promptly, and a defender may also be appointed by his/her guardian or a close relative on his/her behalf.

Expanding the scope of legal assistance. In order to further protect the rights to defense and other relevant rights of criminal suspects and defendants, the Criminal Procedure Law amended in 2012 expanded the scope of legal assistance in criminal litigation, to make it cover the investigation and prosecution review processes as well as trials, and expanded the scope of people entitled to receive such assistance. If the criminal suspect is blind, deaf or mute, or is a minor or is a mentally ill person who has not completely lost his/her capacity to comprehend or to control his/her behavior, or if a criminal suspect may be sentenced to life imprisonment or death, but he/she has not appointed a defender, the relevant people's court, people's procuratorate or public security organ should inform the legal assistance agency to assign a defense attorney.

Stressing witness's duty to testify in court. Witness testimony in court is crucial to improving the quality of a court trial. In order to have more witnesses testify in court, the Criminal Procedure Law amended in 2012 defines the scope of witness appearance at a court and sets up an assistance mechanism for their appearance at court. It stipulates that if the prosecutor and the defender disagree upon the testimony of a witness that bear significantly on sentencing, the witness should attend the court. A witness should be compensated for transportation, accommodation and meal expenses related to his/her court duties by the government. The employer of the witness may not reduce or reduce in disguise the witness's remuneration, bonuses or other social benefits in the period he/she is absent from work providing testimony.

Room of Further Improvement for China

1. Limitations on the Elements of the Pre-trial Detention

Internationally accepted human rights standards, especially international criminal human rights norms, help protect the individuals from arbitrary detention in the context of domestic criminal justice. But most of the law enforcement authorities and the general public in China lack of human right education and therefore also lack of the knowledge and understanding the essence of the right to liberty in the criminal justice.

While it is laudable that the criminal procedure law in China is gradually in place and trying to require liberty deprivations to be made in accordance with a procedure prescribed law, the underlying ideologies safeguarding the fundamental right of liberty for suspects have not been widely aware and accepted within society due to the persisting of the pre-existing dominant ideologies. Particularly, the principles of fair trial and the presumption of innocence have not yet been genuinely accepted in China.

A mentality of “protecting the interests of the majority of people is the maximum impartiality” is actually a deep-rooted legal tradition in practice instead. It is likely that the gap between the law and practice will actually grow wider in China’s criminal justice system if the legal culture in the society has not been well-developed.

2. Rare Use of Alternative Preventive Measures

In practice, there is a common view in the Chinese criminal justice regarding that suspects concerned should passively sacrifice their personal freedom to wait for the postponed completion of work by law enforcement authorities that should have been completed in time. Therefore, there is no intentions or even in passing considerations concerning the possibility of applying other preventive measures, such as bail or release under residential surveillance, to secure the conduct of the trial in the law and practice.

3. Little Separation between Detention and Arrest

Pre-trial detention is seen as the safest option to control criminal suspects and defendants during the early stages of a criminal trial. Hence, the legal system in the PRC does not make a distinction between arrest and detention, and detention is considered the inevitable result of an arrest. Generally, an arrest follows initial criminal (pre-arrest) detention, and, very often, it is simply its continuation.

Therefore, the arrest mostly means certain period of custodial detention. Detention House Rules of China stipulates that the accused should be detained in the detention house governed by the police.¹⁰¹ This makes the accused to become the object for detection and inquisition, and be totally controlled by the detection organs. To meet the needs of their own work, the compulsory measure, especially detention and arrest, is widely used to limit suspects' liberty more than the factual requirements of the situation in case would call for. Arrest is the most severe custodial detention in the compulsory measures of criminal proceedings, which not only deprives the personal liberty of the suspect at the time when the action conducts but usually also keeps them in the custody till the court's judgment came into effect.

4. Have Yet to Accede to the Optional Protocol of CAT

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 and entered into force on 22 June 2006.

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. According to the latest data, there are at least 79 state parties and 16 additional states signatories worldwide, it is really embarrassing that China, the world's most populous country, have not yet acceded to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Conclusion

As a developing and the most populous country across the globe, China has taken concrete steps in safeguarding the rights of those under detention and, as a result, encouraging progress and significant improvement were achieved attributed to the concerted efforts of the national legislative, judicial and administrative departments.

On the downside, there are still room for further improvement and potential progress space calls for China to take steadfast measures to eradicate those obstacles which pose threats to the undertaking of safeguarding the pretrial detainees free from torture and other forms degrading and inhuman treatment.

China has been embracing international cooperation in the international arena for nearly forty years and promising progress has been made in terms of economy. However, progress in the administrative and judicial sectors are much slower as opposed to the economic development. It is in this sense that we strongly suggest China accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible, thus making further improvements in the rights protection of pretrial detainees in light of international standards.