

**China's Comments in response to *the Draft Revised General
Comment on the implementation of article 3 of the Convention
against Torture in the context of article 22***

We note that the Committee against Torture (hereinafter referred to as the Committee) has recently published on its website *the Draft Revised General Comment on the implementation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter referred to as the Convention) *in the context of article 22*, and invites States Parties and other stakeholders to provide comments.

We take note that the Committee has not been authorized by the Convention to make general comments in the nature of interpretation of the Convention. Article 19, which contains the only explicit provision on general comments in the Convention, provides that general comments should be made on the reports submitted by States Parties on the measures they have taken to give effect to their undertakings under the Convention. We also note that the Committee acknowledges in rule 74 of *the Rules of Procedure* that general comments are aimed at promoting further implementation of the Convention or assisting States Parties in fulfilling their obligations. Therefore, we are of the view that in making general comments, the Committee should bear in mind its scope of mandate under the Convention, ensure the general comments are consistent with the original intention of the Convention, avoid liberal interpretation of Convention provisions and avert imposing extra obligations on States Parties. The Committee should widely seek and take

inputs from all stakeholders, especially from States Parties. The Committee should adopt a very cautious approach when States Parties have major reservations regarding the proposed general comments.

We would like to provide the following initial response to the Draft General Comment:

1. Differences between torture and other cruel, inhuman or degrading treatment or punishment (draft paragraphs 16 and 29): Articles 1 and 16 of the Convention explicitly distinguish them into separate categories. Paragraph 1 of article 16 further provides that the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. Other articles concerning obligations against torture do not explicitly state that they apply to other forms of cruel, inhuman or degrading treatment or punishment. Therefore, according to the Convention, the scope and extent of the State Parties' obligations against torture are not entirely the same as their obligations against other forms of cruel, inhuman or degrading treatment or punishment, and they should not be mixed up. According to article 3 of the Convention, the principle of "non-refoulement" applies only where " there are substantial grounds for believing that he would be in danger of being subjected to torture ". Such provision shall not be arbitrarily expanded to other cruel, inhuman or degrading treatment or punishment, otherwise it is kind of imposing extra obligations on States Parties. So we would like to see the deletion of paragraphs 16 and 29 of the Draft General Comment.

2. Diplomatic assurances (draft paragraph 20): Between Requesting and Requested States of different judicial systems, it is a well-established international practice that the Requesting State for extradition and deportation offers the Requested State an assurance that the person to be extradited or deported will enjoy sufficient human rights protection and will not be tortured in any event. This is an arrangement made for the purpose of improving mutual trust and facilitating extradition and deportation cooperation so as to fight against transnational crime. The assertion in the Draft suggesting diplomatic assurances violate the principle of “non-refoulement” lacks support from the Convention or from state practice. We suggest the Draft General Comment should be modified here.

3. Article 3 of the Convention and extradition treaties (draft paragraph 24): It has been a widely-accepted international practice to specify in extradition treaties that torture is one of the grounds for mandatory refusal. There is no contradiction between extradition treaties and the Convention. Considering paragraph 24 is essentially of no practical value, we suggest that it should be deleted.

4. Situations that States Parties should consider before deporting (draft paragraph 30): According to article 1 of the Convention, torture under the Convention could only be perpetrated by a public official or other person acting in an official capacity, and it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Consequently, harm made by private individuals, or lawful sanctions including death penalty are not torture under the Convention. Many contents in draft paragraph 30 of the Draft General Comment, including sub-paragraphs (c), (k), (m) and (n) have

overstepped the Convention. Moreover, it is contrary to the principle of sovereign equality for sub-paragraph (d) to allow one country to judge the legal system of another. We suggest the deletion of these five sub-paragraphs. Furthermore, we suggest taking into consideration the legislation, prevention mechanism and remedial measures that the Requesting State has in place to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment when making the decision on whether or not to deport a person.

5. Interim Measures of Protection (draft paragraphs 38 and 39): We are of the view that the Committee is not explicitly authorized by the Convention to request interim measures of protection. In addition, all functions of the Committee, as authorized by the Convention, are of the nature of recommendations. Therefore, the "request" made by the Committee to State Parties for interim measures of protection shall also be recommendations in nature. We suggest this paragraph be modified accordingly.

6. Sources of information for consideration of communications (draft paragraph 46): While attaching great importance to the role of civil society, including non-governmental organizations, in promoting and protecting human rights, we maintain that the participation of NGOs in the deliberations of treaty bodies ought to stay in line with ECOSOC Resolution 1996/31 and other relevant UN norms and regulations. Treaty bodies should attach importance to the information provided by the governments of States Parties and have a duty to examine information submitted by other organizations and individuals for truthfulness and reliability, so as to ensure comprehensive, objective and impartial evaluation of the implementation of the Convention by States Parties. We suggest the second sentence of paragraph 46 be replaced

by "the Committee may also consult United Nations sources of information as well as other authentic and reliable sources which are in conformity with ECOSOC Resolution 1996/31 and other relevant UN norms and regulations".