



NO END IN SIGHT

TORTURE AND FORCED
CONFESSIONS IN CHINA

AMNESTY
INTERNATIONAL



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EXECUTIVE SUMMARY

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) have long been prevalent in all situations where authorities deprive individuals of their liberty in China. The Chinese government itself has acknowledged the extent of the problem and has increased attempts to address it. Over the past five years, the government has introduced a number of measures to curb the use of torture in the criminal justice system, including regulations, law amendments, judicial opinions and procedural rules, which it claims have been successful in curbing torture. This report examines what real impact these efforts have had in stopping the use of torture so far, in particular the use of torture and other ill-treatment to extract forced “confessions”.

Though China ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1988, it has failed to bring domestic legislation in line with the obligations of the treaty. The Committee Against Torture (CAT), the expert UN body charged with overseeing the treaty’s implementation, has repeatedly raised concerns about a number of issues in China including: the lack of a definition of torture in domestic laws that accords with that of UNCAT; exclusion at trial of evidence obtained through torture and other ill-treatment; arbitrary detention where there is a high probability of torture and other ill-treatment; torture and other ill-treatment of human rights defenders; and the lack of independence of judges and lawyers. The UN Special Rapporteur on torture, who visited the country in 2005, addressed similar concerns in recommendations to the Chinese government.

A fundamental problem remains in that the public security, China’s police authority, still wields too much power within the judicial system and that as a result few perpetrators of torture are held to account. But in the short and medium term, the deep rooted practices of the criminal justice system may prove the greatest hurdle in authorities’ efforts to eradicate the practice of extracting forced “confessions”. The system still overly relies on “confessions” as the basis of most convictions, providing an almost irresistible incentive for law enforcement agencies to obtain them by any means necessary. This, in turn, considerably increases the risk of miscarriages of justice and wrongful convictions.

Lawyers are integral to any serious effort to curb torture, especially in the criminal justice system. They can play a critical role in preventing torture if they are allowed to meet their clients in detention. Lawyers can be a driving force to ensure that fair trial standards are met and they are almost indispensable for individuals to be able to seek redress for human rights violations.

Despite their weak institutional status—there are no independent lawyers’ organizations in China—Chinese lawyers have been at the forefront of efforts to raise claims of torture in court and to seek accountability for torture and other ill-treatment. Yet, they face extraordinary difficulties operating in the Chinese criminal justice system, particularly when they take on cases involving government accountability and sensitive issues such as torture, but also corruption, religious freedom and freedom of expression. Worse still, since 2006 the most active human rights lawyers have increasingly become targets of government crackdowns, and face disbarment and harassment at the hands of authorities. As this report details, a number of them have themselves become victims of torture.

The first part of this report presents the experience of lawyers who have attempted to raise their clients’

claims of torture and to have forced “confessions” and other illegally obtained evidence excluded in court proceedings. Some of these lawyers are well-known for “rights defense” work but others taking up criminal cases have found their clients claim they have been tortured in detention by or on orders of security personnel and police.

The second part of the report reviews the factors that allow the practice of torture to continue, namely shortcomings in domestic law, systemic problems in the criminal justice system and difficulties in implementation of rules and procedures in the face of entrenched practices.

The third part looks at the courts’ handling of allegations of torture through the review of several hundred cases whose verdicts have been made available by the Supreme People’s Court since January 2014.

For this report, Amnesty International spoke with 37 lawyers practicing in various locations in China including: Beijing, Guangzhou, Shenzhen, Chongqing, and provinces of Shandong, Henan, Heilongjiang, Zhejiang, Shaanxi, Sichuan, Hunan and Hubei as well as several academics specializing in Chinese law. The interviews with lawyers took place from June to September 2015. In some cases, the lawyers’ names or other identifying details have been changed to mitigate risk of reprisals and interference in their legal work.

The lawyers interviewed spoke about the cases they have handled in which their clients were subjected to torture or other ill-treatment in pre-trial detention and detention outside official facilities at the hands of authorities and other detainees. These cases have occurred in the last five years, after 2010 when the new wave of regulations and laws began to appear. The forms of torture and other ill-treatment described include: beatings by law enforcement officers or by other detainees with the law enforcement officers’ knowledge or orders; long periods of being handcuffed and leg-cuffed and bound to torture tools like tiger benches - where the individual’s legs are tightly bound to a bench, and bricks are gradually added under the victim’s feet, forcing the legs to bend backwards - and iron chairs; long periods of sleep deprivation; not being given enough food and water; being forced to recite the rules of the detention facilities; and not being given adequate medical treatment.

The lawyers expressed frustration at their inability to get claims of torture raised in court proceedings, to obtain genuine investigations by the procuratorate, the state prosecution, and to get illegally obtained evidence excluded in court. Many of them mentioned the difficulties they had finding enough evidence to prove torture. The burden of proof both in international law and China’s domestic law rests with the procuratorate but practice in China reflects a different reality. While exclusion of illegal evidence has been dealt with in the new regulations and procedures issued by the authorities in the last five years, they have not had an appreciable impact on actually keeping this evidence out of the courtroom, due to legislative, systemic and implementation shortcomings.

Amnesty International also analyzed cases from the verdict database of the Supreme People’s Court, which, since January 2014, has been collecting basic-level to provincial-level court decisions from around the country. Starting with the more than 127,000 first-instance verdicts, second-instance appellate decisions and other criminal court documents for the nine-month period from January to September 2015, Amnesty carried out a keyword search for the phrase “extraction of confession through torture” (*xingxun bigong*), retrieving 1,898 court decisions that make mention of the phrase. Of these, Amnesty selected 590 first- and second-instance court decisions for in-depth analysis in order to identify any patterns in the ways that Chinese courts deal with torture claims. Among the 590

decisions, the courts upheld motions to suppress the confessions in only 16 cases. Only one of these 16 cases resulted in acquittal, with the rest ending in conviction on the basis of other evidence.

Extracting “confessions” through torture is a serious human rights issue which the Chinese government needs to continue to address, by further bringing its domestic legal restrictions on prevention and prohibition of torture into line with international law and standards, in particular the Convention against Torture, which binds China legally as a state party. In addition, other improvements in the legal system and improved implementation of these laws and standards are needed to effectively eradicate torture and other ill-treatment. Specific recommendations include:

- Bring Chinese law into line with the absolute prohibition against torture and other ill-treatment under international law;
- Ensure in law, policy and practice that no one is subjected to torture or other ill-treatment;
- Ensure that no statement obtained under torture or other ill-treatment is invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was made;
- Abolish all forms of administrative detention, close down all places of detention which deprive individuals of their liberty arbitrarily or in violation of the right to fair trial, to judicial oversight and other safeguards against torture and other ill-treatment;
- Ratify the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and take immediate steps to create independent, professional, well-resourced National Preventive Mechanisms with unfettered access to all places where people are deprived of liberty and to all such people as provided in that Protocol.

SUPPRESSION OF LAWYERS WHO EXPOSE TORTURE AND OTHER ILL-TREATMENT

“I know from personal experience how widespread torture is in China’s current law-enforcement environment. I hope one day to see torture classified in China as a crime against humanity.”

Lawyer Yu Wensheng, 2015

Lawyers play a crucial role in the criminal justice system in ensuring that due process and fair trial rights are followed and also in seeking redress when these rights are violated. An independent and active legal profession is needed to ensure that all defendants have adequate representation in legal proceedings and lawyers should not be hindered as they carry out their legitimate work in defending their clients.

Increasingly in China lawyers are finding their attempts to assist clients in seeking redress for human rights violations labelled as “disruptive” and “harmful” to the system and public stability. These lawyers face threats, harassment, disbarment and even arbitrary detention and torture and other ill-treatment. Many of the lawyers who take on “sensitive cases” – cases where defendants are often confronting government actions or policies directly, frequently involving human rights and garnering intensified government attention – proudly label themselves “rights defence lawyers” while others would not classify themselves as such but find they are likewise targeted by the government for their work anyway. Some of the lawyers have fallen into these cases by chance, initially defending clients who then suffer human rights violations during the legal process and they subsequently try to raise these claims, while others who have become specialized in seeking redress for human rights violations are sought out by clients for this expertise.

Between June and September 2015, Amnesty International interviewed 37 lawyers and legal practitioners who are actively involved in raising human rights violations through the courts and in particular have attempted to raise claims of torture and other ill-treatment in the criminal justice system and sought redress for the same. In an attempt to see what impact recent legal amendments and procedural remedies for the exclusion of illegal evidence have had on eliminating the practice of torture and other-ill treatment and on the ability of lawyers and defendants to seek redress for the practice, we looked at legal proceedings and cases in the time frame from 2010 to 2015 when various

new provisions came into effect, including procedural rules in 2010, Criminal Procedure Law (CPL) revisions in 2012 and even more recent regulations and judicial interpretations meant to further strengthen the prohibition of extraction of confessions through torture.

The lawyers described their own experiences when trying to carry out their work and the difficulties they often faced in raising claims of torture and other ill-treatment, getting these claims heard, and ultimately achieving justice for their clients. They often expressed their frustration with the system they feel is not adequately addressing torture and implementing existing prohibitions. Many related stories of torture their clients suffered in detention centres and unofficial detention facilities including black jails – torture and other ill-treatment often at the hands of police or the procuratorate or other detainees on orders of officials.

They almost uniformly concur that the extraction of confessions through torture remains widespread in pre-trial detention, in particular in cases considered politically sensitive by the government, where officials are detained for alleged corruption charges and cases involving religious activities, including Falun Gong practitioners. However the lawyers also gave accounts of torture and forced “confessions” in other criminal and fraud cases as well.

Most chilling is the harassment and torture and ill-treatment the lawyers themselves faced as the authorities tried to dissuade them from investigating torture claims, seeking redress and otherwise carrying out their work. This seems a calculated efforts by authorities to dissuade lawyers from taking up such cases and could have an extremely negative impact on individuals who are trying to exercise their rights to fair trial and to be free from arbitrary detention, torture and other ill-treatment and a range of other human rights violations.

LAWYERS FACE TORTURE, ILL-TREATMENT AND HARASSMENT

Whether they are harassed as they try to defend their clients or face reprisals for their overall work, lawyers recount beatings at the hands of officials and unidentified individuals, threats and frequent interference with their law practice, including denial of licenses to practice and closure of their law firms. Of the 37 lawyers interviewed, 10 experienced torture or other ill-treatment themselves. While such actions clearly violate the absolute prohibition against torture in international law, and in many instance also violate Chinese domestic law, perhaps the main goal of authorities in these instances is to stop these lawyers from pursuing cases seen as challenging the government and instil fear to prevent other lawyers from handling such cases in the future. The effect is a severe limitation on access to justice for those individuals trying to seek remedies for human rights violations in China. In its reply to CAT’s List of Issues 2015, the Chinese government asserted that “China has always encouraged and supported lawyers in performing their duties in accordance with the law and engaging in professional practice in accordance with law” and denied any “retaliation” against lawyers who are engaged in normal professional practice.¹

¹ China’s reply to CAT’s List of Issues 2015 (China’s reply to CAT’s List of Issues 2015), UN Doc. CAT/C/CHN/Q/5/Add.2, 1 October 2015, para4.3. English translation is available at Human Rights in China: <http://www.hrichina.org/en/responses-peoples-republic-china-committee-against-tortures-list-issues-loi>, accessed 29 October 2015.

In several accounts, lawyers were attempting to investigate claims of torture for their clients when they themselves became victims of torture. Beijing lawyer **Zhang Keke** said that he was arbitrarily detained for 24 hours on 13 May 2013, when he followed lawyers Jiang Tianyong, Tang Jitian and several others to investigate the Er'ehu Legal Education Centre, in Ziyang city, Sichuan province, where a large number of Falun Gong practitioners and petitioners were being detained.² When the lawyers tried to visit the centre, they were beaten up by the police and later taken to the local police station. Zhang Keke was questioned by two police officers who threatened to suspend his legal practice and to beat him up again. He was taken to an unofficial police interrogation location (*ban'an jidi*) in Ziyang city for further interrogation after he refused to answer the questions to the satisfaction of police. He was not allowed to sleep for the whole night and was questioned for eight consecutive hours.

Tang Jitian, a former prosecutor and lawyer in Beijing, told Amnesty International that he had experienced a number of cases involving “confessions” extracted through torture during his roles as a prosecutor and a lawyer and he, himself, also experienced torture or other ill-treatment in 2011 and 2014.³ In 2011, during the “Jasmine Revolution” in China, – public assemblies in over a dozen cities inspired by protests in Tunisia – he was hooded, taken away and detained in a Beijing suburb for 18 days from 16 February to 5 March, during which time he contracted tuberculosis. In March 2014, together with three other lawyers – Jiang Tianyong, Wang Cheng and Zhang Junjie – Tang Jitian went to investigate a “black jail” in Jianganjiang, but they were detained by the local Daxing District Public Security Bureau.⁴

“During the detention, I was first strapped to an iron chair, slapped in the face, kicked on my legs, and hit so hard over the head with a plastic bottle filled with water that I passed out.”

Tang Jitian was later hooded and handcuffed behind his back and suspended off the ground by his wrists, while police beat him. The other three lawyers were also allegedly tortured.⁵

In another case, Hunan lawyer **Cai Ying** was detained for 87 days in 2012 by the Yiyang Procuratorate and the local political and legal committee in Hunan province. Cai claimed he was detained because he sued Bu Xuemei, the head of the case filing division at Yiyang Intermediate People's Court, for interfering with his lawyers' practice.⁶ He was detained in the basement of Yuanjiang City

² Amnesty International interview with Zhang Keke on 19 August 2015. Unless otherwise noted, all translations to English for this report have been prepared by Amnesty International.

³ Amnesty International interview with Tang Jitian on 25 June 2015.

⁴ Amnesty International, *China's Trade in the Tools of Torture and Repression*, Index: ASA 17/042/2014, 2014; <https://www.amnesty.org/en/documents/asa17/042/2014/en/>, p22; Amnesty International interview with Tang Jitian, July 2014; A lengthy description of Tang Jitian's torture session can be found at Boxun, April 13 2014, www.peacehall.com/news/gb/china/2014/05/201405060031.shtml#.U5cSr_lWOM; English translation is available at Siweiluozi's Blog, www.siweiluozi.net/2014/05/tang-jitian-recounts-torture-and.html; see also Amnesty International calls for an investigation into the allegations of torture of four lawyers in China, Index: ASA 17/20/2014, 8 April 2014, available at <https://www.amnesty.org/en/documents/ASA17/020/2014/en/>.

⁵ Siweiluozi's Blog, Zhang Junjie's account, 24 March 2014, <http://www.siweiluozi.net/2014/03/zhang-junjies-account-part-two.html>, accessed 28 October 2015.

⁶ Amnesty International interview with Cai Ying on 30 June 2015.

Procuratorate in Hunan and in a guesthouse. During detention, he suffered various kinds of torture every day, including having to undergo questioning while forced to sit on a “hanging restraint chair” (*diaodiaoyi*) – where the feet of the person cannot touch the ground; the person’s back cannot lean on the back of the chair; the chest is tied to a board and the hands are cuffed to the board, making his upper and lower body unmovable. **Cai Ying** recalled:

“During that period, I was forced to sit on the *diaodiaoyi* for at least 12 hours every day, sometimes one or two full days and the longest time was five full days.”



“I was forced to sit on the *diaodiaoyi* for at least 12 hours every day”

Artist impression of ‘hanging restraint chair’ (*diaodiaoyi*)

The torture described by these lawyers is unfortunately no different from the various types of torture they say their clients also experience. **Yu Wensheng**, a lawyer with Daoheng Law Firm in Beijing, was arrested on 13 October 2014 and detained for 99 days by the Daxing Public Security Bureau in Beijing.⁷ He told Amnesty International that during detention, he was tortured, detained together with death row inmates for 61 days and questioned approximately 200 times. He was refused access to a lawyer while 10 public security officers were assigned to question him in three shifts every day. At the beginning, the officers only abused him verbally. Later, they handcuffed him with his hands bound behind the back of the iron chair. He felt that his body’s muscles and bone joints were completely

⁷ Amnesty international interview with Yu Wensheng on 3 July 2015.

stretched.

“My hands were swollen and I felt so much pain that I didn’t want to live. The two police officers repeatedly yanked the handcuffs. I screamed every time they pulled them.”



Artist impression of an ‘iron chair’

The police officers told **Yu Wensheng** that they would not kill him but would make him really miserable.

“I know from personal experience how widespread torture is in China’s current law -enforcement environment. I hope one day to see torture classified in China as a crime against humanity.”

The Chinese government in its reply to CAT’s List of Issues 2015, denied that **Yu Wensheng** was “maltreated” but provided no further information.⁸

In March 2011, during the “Jasmine Revolution”, Guangzhou lawyer **Liu Zhengqing** was detained by state security police officers in Guangzhou and later placed under “residential surveillance” in a remote location.⁹ He recalled that it was more unbearable to be placed in “residential surveillance”

⁸ China’s reply to CAT’s List of Issues 2015, para4.3.

⁹ Amnesty International interview with Liu Zhengqing on 20 August 2015.

than in the detention centre:

“[In residential surveillance] they can torture you and nobody knows. In the detention centre, at least there are people you can talk to. While in residential surveillance, nobody talks to you. You have no idea what is happening outside.”

Liu Zhengqing added that he was not allowed to read any books or watch the television but was subjected to repeated interrogations by police officers and was exposed to bright light over his bed at night. “It just makes you feel like you’re having a mental breakdown,” he said.

While the torture and other ill-treatment of lawyers is not a new phenomenon - for instance Amnesty International documented such cases in 2009 and 2011 reports on China’s human rights lawyers - the occurrences seems to be on the rise.¹⁰ In July 2015, the Chinese authorities launched a massive crackdown on human rights lawyers and activists across the country, including in Beijing, Guangzhou and Shanghai.

The campaign began in the early hours of 9 July, when human rights lawyer **Wang Yu** went missing after sending a text message to friends saying that her internet and electricity had been cut off and people were trying to break into her home. On the afternoon of 10 July, hundreds of lawyers and activists across the country were interrogated or detained by state security forces and many offices and homes were raided. Among those affected were prominent human rights lawyers **Zhou Shifeng, Wang Yu, Sui Muqing, Li Heping and Wang Quanzhang**. An article published on 12 July in The People’s Daily, an official newspaper of the Chinese Communist Party, presented the government’s narrative of the operation, stating that the Ministry of Public Security had launched an operation to destroy a “major criminal gang” that was using the Fengrui Law firm in Beijing to draw attention to “sensitive cases”. The article also claimed to expose the “severe harm” that a group of “rights defence” lawyers had brought to society by disturbing social order.¹¹

As of 13 October 2015, a total of 248 lawyers and activists have been targeted in the crackdown, and among them 28 remain missing or in police custody. At least twelve have been detained on state security charges and are being held in “residential surveillance in a designated place”, a particularly troubling form of detention in which detainees can be held at an undisclosed location for up to six months with no contact with the outside world, increasing the risk of torture and other ill-treatment.

Despite the government’s claims that police are simply carrying out a criminal investigation of a law firm that was operating a “criminal gang”, the wide scope of the actions and the on-going restrictions on rights defence lawyers and associated activists point to a much broader crackdown on the legal profession and dissent.

¹⁰ Amnesty International, *Breaking the law: Crackdown on human rights lawyers and legal activists in China*, Index: ASA 17/042/2009, August 2009, www.amnesty.org/en/documents/ASA17/042/2009/en/; and *Against the law: Crackdown on China’s human rights lawyers deepens*, Index: ASA 17/018/2011, June 2011, <https://www.amnesty.org/en/documents/ASA17/018/2011/en/>.

¹¹ For a detailed list of names, please refer to “Latest information on crackdown against lawyers and activists”, <https://www.amnesty.org/press-releases/2015/08/china-list-of-lawyers-and-activists-targeted/>.

TORTURE AND OTHER ILL-TREATMENT OF DEFENDANTS

Amnesty International has documented cases of torture and other ill-treatment since 2010 both as means of punishment and to extract confessions.¹² Sixteen of the 37 lawyers interviewed for this report also described torture reported by their clients either to extract “confessions” and other evidence or as punishment for detainees sometimes carried out by officials and sometimes by fellow inmates likely at the instigation of officials. Many of the lawyers’ clients were involved in “sensitive cases” – petitioners, religious practitioners, or activists charged with the offences of “inciting subversion of state power” or “picking quarrels and provoking troubles” due to their activism – but others were charged with crimes that would not necessarily garner political attention. Beijing lawyer **Wu Hongwei** described various kinds of torture to which his clients have been subjected including cases of religious practitioners but also regular criminal cases.¹³

TORTURE AND OTHER ILL-TREATMENT IN PRE-TRIAL DETENTION AND DETENTION IN UNOFFICIAL FACILITIES

Torture and other ill-treatment are used in the Chinese criminal justice system to achieve two main goals: one to extract confessions and obtain other evidence to be used in criminal prosecution or to inflict punishment. The use of torture to extract confessions has been widely reported by media, academics and human rights organizations.¹⁴ It is also recognized by the Chinese government as a major problem, despite being prohibited under Chinese law. In 2013, Qi Qi, president of the Zhejiang Provincial Higher People’s Court and a representative of the National People’s Congress said “almost all wrongful convictions are basically related to extracting confessions through torture.”¹⁵

Shenzhen lawyer **Jiang Yuanmin** related a case involving a group of villagers that were protesting land seizures. He started providing legal assistance to the villagers from Taling village in Sanya city in Hainan Province in 2010 to fight against forced evictions by the local authorities. In December 2012, more than 20 villagers from Taling village were arrested by local police for “assembling a crowd to disturb social order” after staging a demonstration. All of the villagers detained were beaten in police custody and were then taken to the local compulsory drug rehabilitation centre. The police extracted

¹² Amnesty International, “China: Health Fears for Detainee in China”, Index: ASA 17/1676/2015, 18 May 2015, <https://www.amnesty.org/en/documents/asa17/1676/2015/en/>; Amnesty International, “China: Human Rights Activist Detained, Risks Torture: Liu Shaoming”, Index: ASA 17/1984/2015, 1 July 2015, <https://www.amnesty.org/en/documents/asa17/1984/2015/en/>; Amnesty International, “Further Information: China: Supporters of Hong Kong Protests ‘Tortured’”, Index: ASA 17/0006/2015, 12 February 2015, <https://www.amnesty.org/en/documents/asa17/0006/2015/en/>.

¹³ Amnesty International interview with Wu Hongwei on 19 August 2015.

¹⁴ Human Rights Watch, *Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China (Tiger Chairs and Cell Bosses)*, May 2015, <https://www.hrw.org/report/2015/05/13/tiger-chairs-and-cell-bosses/police-torture-criminal-suspects-china>, accessed on 23 October 2015.

¹⁵ The Beijing News, “Qi Qi, president of Zhejiang Provincial Higher People’s Court: Wrongful Convictions are Basically Related to Extracting Confessions through Torture” (浙江高院院长齐奇：冤错案件基本都与刑讯逼供有关), 12 March 2013, http://www.zj.xinhuanet.com/newscenter/focus/2013-03/12/c_114986530.htm, accessed 15 October 2015.

“confessions” from them, during 48 hours of interrogation.¹⁶

Shandong lawyer **Liu Shuqing** recounted how his client Gong Jinjun, a petitioner from Hebi city, Henan Province, claimed that police had used an electric baton to torture him in detention in November 2013, forcing him to “confess” to stabbing an individual who was hired by the local petition office to intercept petitioners. According to Gong Jinjun the torture took place during the first 18 hours of detention, and only after he had given his “confession” did police investigators begin recording their first interrogation.¹⁷

Hangzhou Lawyer **Lü Zhoubin** finds that the recorded testimonies of his clients and the evidence presented by the police are different from what his clients tell him. In one case, Hunan businessman Jia Zhijian, who was accused of fraud, reported that he was beaten up by “prison hooligans” (*yuba*) in Xihu District Detention Centre in March 2011.¹⁸ Jia Zhijian was so desperate that he says he had thought of committing suicide. He was eventually sentenced to 16 years imprisonment. He maintained that he was innocent and sent letters of complaint to various authorities. After meeting with his client a few times in 2015, **Lü Zhoubin** found many discrepancies in the evidence of the case and Jia’s testimonies.

Allegations of torture and ill-treatment frequently involve public security (police) officers, who have responsibility for investigating most criminal cases and also run China’s detention facilities. Some criminal cases – for example, cases involving official corruption or abuse of office – are investigated by officials from the procuratorate, which also has responsibility for carrying out pre-indictment review and prosecution of all criminal cases. Consequently, procuratorate personnel also find themselves the subject of torture allegations. Shandong lawyer **Liu Jinbin** said he has handled a number of cases in which the procuratorate extracted “confessions” through torture during investigation. In 2014, Wang Qiuping, the director of the development zone in Ningyuan county, Yongzhou city, Hunan province, was transferred to three different detention centres and was beaten unconscious a number of times by death row inmates at the Zhixing Detention Centre in Hunan because he refused to cooperate with the procuratorate’s interrogation.¹⁹

Regardless of who is being tortured, many of the torture methods remain similar. Beijing lawyer **Zhao Yonglin**, says that in the cases he has handled including after 2010, the kinds of torture used to extract “confessions” included: prolonged interrogation, especially before his clients were detained in official detention centres; police officers instructing other inmates to beat his clients; his clients being forced to sit on tiger benches; police beating his clients and forcing them to stand for long periods; and long interrogations at night.²⁰

TORTURE AND OTHER ILL-TREATMENT AS PUNISHMENT

Torture and other ill-treatment is frequently a form of punishment used in administrative detention

¹⁶ Amnesty International interview with Jiang Yuanmin on 20 June 2015.

¹⁷ Amnesty International interview with Liu Shuqing on 5 August 2015.

¹⁸ Amnesty International interview with Lü Zhoubin on 21 August 2015.

¹⁹ Amnesty International interview with Liu Jinbin on 15 August 2015.

²⁰ Amnesty International interview with Zhao Yonglin on 20 August 2015.

measures like “legal education centres” and facilities to detain sex-workers or drug offenders, where an element of re-education or rehabilitation is considered an integral part of the process.²¹ Among the 37 lawyers Amnesty International interviewed, four of them related examples of clients being subjected to torture and other ill-treatment as punishment or being further ill-treated as means of retaliation or “re-education.” Such retaliatory punishment was described as particularly common in cases involving religious practitioners who tried to complain about the torture or ill-treatment they faced in the detention facilities.

Similarly, complaints about conditions of detention can also incur punishment. For example, Beijing lawyer **Li Jinglin** described how in 2014 his client, Shenzhen activist Yang Mingyu (also known as Yang Lin), had his hands and feet cuffed to a bed for three days after complaining to detention centre officials about the reduction of expenditure on meals and the subsequent poor quality of food in the detention centre. **Li Jinglin** says that during this time, Yang, who was being detained on charges of “inciting subversion of state power”, was forced to eat, urinate and defecate while strapped to the bed.²²



Artist impression of torture suffered by Falun Gong practitioner

At the time he was interviewed, Guangdong lawyer **Ge Bingyuan** was representing a Falun Gong practitioner who told him about her torture in a detention centre after being formally arrested in

²¹ Amnesty International, “*Changing the Soup But Not the Medicine?*” *Abolishing Re-education Through Labour in China (Changing the Soup but not the Medicine)*, Index: ASA 17/042/2013, December 2013, <https://www.amnesty.org/en/documents/asa17/042/2013/en/>, pp18-27.

²² Amnesty International interview with Li Jinglin on 3 September 2015.

February 2015.²³ The practitioner was bound with a 50-catty (approximately 25 kg) leg-cuff for 31 days. After she was moved to another detention facility, two guards pressed her head on the floor and tied her legs. When she tried to recite some Falun Gong readings, the guards put sanitary napkins and towels in her mouth and bound them with plastic tape and detained her in a small room. She was exposed to sunlight for a long period of time and two female inmates regularly beat her. Her hands were tied to the upper part of a bunk bed, and one of her legs was tied to the lower part of the bed. She was made to stand in that position while the guards used hangers to beat her head and used plywood to beat her body. The guards put chili in her mouth. She was not allowed to use the toilet. After this she was suspended from the ceiling. She was subjected to this kind of punishment for 27 days. The guards threatened her that if she refused to “study”, they would continue to hang her from the ceiling. When she refused to “study”, the guards ordered two female inmates to stretch her arms to the back and forced her to kneel to face the wall for “confession”.

²³ Amnesty International interview with Ge Bingyuan on 1 August 2015. Ge Bingyuan, a pseudonym, is used for security reasons.

WHY TORTURE PERSISTS

“Trials are often a matter of dressing up police work. Police will stop at nothing to crack a case, and once they can get a confession the presumption of guilt carries through to the very end. Unless somebody dies, very few people are held to account for torturing others.”

Lawyer Tang Jitian, 2015

The Chinese authorities have acknowledged the problem of torture remains in the criminal justice system and have made attempts to address the problem through a number of legal initiatives over the last five years, including enacting law amendments and new regulations and drafting multiple procedural rules, judicial interpretations and other guidelines. However, the practice remains. The reasons can be grouped into three main categories. First, legal shortcomings and omissions that allow torture and other ill-treatment to go undefined, open to interpretation and fail to meet China's obligations in international law. Secondly, shortcomings inherent in the criminal justice system in China that allow for politics and power inequalities to result in discretionary and misuse of numerous laws and regulations. And finally difficulties in implementation that can either be due to genuine lack of understanding of the law, or deliberate unwillingness to enforce and abide by domestic law and regulations.

SHORTCOMINGS IN LEGAL PROVISIONS

China has not yet complied with its international legal obligations and incorporated international law and standards on prohibition of torture into its domestic legislation. Firstly, the definition of torture in Chinese legislation still fails to include “mental pain and suffering”, although the Supreme People's Court had considered including this in its judicial interpretations. Secondly China's Criminal Law only covers the accountability of certain acts of extracting “confessions” through torture, “using violence to obtain a witness statement” and “detainee abuse” and only by “judicial officers” while other perpetrators can only be prosecuted as accessories.

INTERNATIONAL OBLIGATIONS PROHIBITING TORTURE

Article 5 of the Universal Declaration on Human Rights states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The prohibition against torture and other

cruel, inhuman or degrading treatment or punishment (other ill-treatment) is absolute. Indeed, the prohibition of torture is widely recognized as one of a relatively small number of particularly fundamental and almost immutable peremptory norms of general international law (*jus cogens* rules).²⁴ The prohibition on other ill-treatment is similarly a rule of customary international law, binding on all nations irrespective of treaty ratification.²⁵

China has been a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) since 1988 and is therefore legally bound to implement its provisions.

UNCAT provides a detailed definition of torture (Article 1), and requires states parties to take effective measures to prevent torture with no exceptions (Articles 2); to criminalize acts of torture (Article 4) and make them “punishable by appropriate penalties which take into account their grave nature” (Article 4.2). The Convention also specifically obliges states parties to prevent other acts of cruel, inhuman or degrading treatment or punishment (Article 16). UNCAT provides for international cooperation in investigating and prosecuting, including through universal jurisdiction (Articles 5-9).

In its General Comment on Article 2 of UNCAT, CAT identifies additional measures aimed at preventing torture, including:

- Establishing impartial mechanisms for inspecting and visiting places of detention and confinement;
- Videotaping all interrogations;
- Utilizing investigative procedures such as the Istanbul Protocol on measures aimed at preventing torture.²⁶

UNCAT requires that each state party “ensure that competent authorities conduct prompt and impartial investigations into allegations of torture” (Article 12) and that torture victims and their witnesses are to be protected against ill-treatment or intimidation. In addition, each state party “shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” (Article 14)

China also ratified the Convention of the Rights of the Child (UNCRC) in 1992. Article 37 provides that no child may be subjected to torture or other ill-treatment; that no child may be deprived of his

²⁴ See for instance International Court of Justice, [Questions Relating to the Obligation to Prosecute or Extradite \(Belgium v Senegal\)](#), Judgment of 20 July 2012, para99; UN General Assembly resolution 66/150, third preambular paragraph; [Prosecutor v Furundzija](#) (IT-95-17/1), International Tribunal for Former Yugoslavia (1998) paras153-157.

²⁵ See for instance [Case Concerning Ahmadou Sadio Diallo, Guinea v the Democratic Republic of the Congo](#), International Court of Justice, Judgement of 30 November 2010, para87.

²⁶ *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, a set of international guidelines used in assessing individuals who allege torture or ill-treatment, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>, accessed 28 October 2015.

or her liberty lawfully or arbitrarily; that every child deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age; that every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

China signed the International Covenant on Civil and Political Rights (ICCPR) in 1998 and has repeatedly stated its intention to ratify the treaty. Under the ICCPR Article 7, freedom from torture and other ill-treatment must be protected and as outlined in Article 4.1, protected even “in time of emergency which threatens the life of the nation.” The ICCPR also requires that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person (Article 10).

FAILURE TO FULLY ADOPT RECOMMENDATIONS BY UN BODIES

Since China’s ratification of the UNCAT, the UN Committee against Torture (CAT), the expert body charged with overseeing the implementation of the Convention, has repeatedly raised several major concerns regarding China’s failure to comply with UNCAT. In its Concluding Observations in 2008, CAT commented that it:

“remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings”.²⁷

CAT also expressed concerns about the lack of legal safeguards of detainees, including detaining suspects for up to 37 days or in some cases longer periods without charge and failing to bring detainees promptly before a judge; no systematic registration and record of detainees in pre-trial detention; restricted access to lawyers, independent doctors and family members during detention; continued reliance on confessions as evidence for prosecution, which expose the detainees to risk of torture or other ill-treatment; the lack of an effective independent mechanism to monitor the situation of detainees; arbitrary detention where there would be high probability of torture and other ill-treatment; torture and other ill-treatment of human rights defenders, the lack of a comprehensive definition of torture in its domestic laws and failure to exclude illegal evidence obtained through torture.

China will be reviewed by CAT for the fifth time in November 2015. In the *List of Issues in relation to the fifth periodic report of China* (List of Issues 2015), the Committee raised questions on a number of issues concerning torture in China. For instance the List of Issues 2015 acknowledged the abolition of the Re-education Through Labour system (RTL) (*laodong jiaoyang* or *laojiao*) in December 2013 and asked China to provide follow-up information on other forms of administrative detention and to provide information and comment on the “legal education centres”; Compulsory Drug Treatment Centres; measures taken to monitor and oversee state security personnel who may conduct arrests and impose administrative detention in accordance with the CPL; and the so-called *shuanggui* (also known as “*lianggui*”) - “double-regulation” – a measure for detention and investigation under the internal

²⁷ *Concluding observations of the Committee against Torture – China*, 12 December 2008, (Concluding observations 2008), CAT/C/CHN/CO/4, para 11, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf>, accessed 2 June 2015.

Communist Party disciplinary system.²⁸ In its Concluding Observations in 2008, the Committee had expressed concern about the use of all forms of administrative detention, including RTL, as it pointed out that individuals detained in these facilities have “never had their case tried in court, nor the possibility of challenging their administrative detention” and the Committee was also concerned about the Chinese government’s failure to investigate allegations of torture and other ill-treatment.²⁹

Although RTL was abolished, Amnesty International has documented that torture or other ill-treatment are still pervasive in other forms of administrative detention facilities, for example, “legal education centres”, psychiatric centres and “black jails” – unrecognized and unofficial detention facilities set up in a wide, seemingly random, variety of places including hotels, mental hospitals, drug rehabilitation centres, nursing homes, government offices, residential and abandoned buildings - which means the Committee’s concerns are still valid.³⁰

In the List of Issues 2015, the Committee also asked the Chinese government to provide information about the outcomes of investigations and the penalties imposed on the perpetrators in several cases of torture of human rights lawyers and human rights defenders.³¹ Amnesty International highlighted several of these cases in its submission to the Committee, including: four lawyers - Tang Jitian, Jiang Tianyong, Wang Cheng and Zhang Junjie, who were arbitrarily detained and tortured while they were investigating a “legal education centre” in the Jiansanjiang Agricultural Reclamation Area of Heilongjiang Province in late March 2014; Hunan labour activist Li Wangyang, who was found dead in hospital on 6 June 2012 soon after he was released from prison; and Cao Shunli, who was detained in September 2013 and eventually died from organ failure in a Beijing hospital in March 2014 after being denied adequate medical care in detention.³²

In its reply to CAT’s List of Issues 2015, China denied that Tang Jitian and the other three lawyers were “beaten and tortured” while in detention but did not elaborate on any investigation that was made into the allegations of torture and ill-treatment. The Chinese government claimed that Li Wangyang “had committed suicide” following an investigation, without disclosing any further details about the investigation, and claimed that Li Wangyang’s family was informed by the local public security about the forensic evaluation opinion and the findings of the investigation and the family “accepted” the result. In the reply, China also claimed that during Cao Shunli’s detention and in the

²⁸ *List of Issues in relation to the fifth periodic report of China*, UN Committee against Torture, May 2015, (List of Issues 2015), CAT/C/CHN/Q/5/Add.1, para17.
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN%2fQ%2f5%2fAdd.1&Lang=en, accessed 23 October 2015.

²⁹ *Concluding observations of the Committee against Torture – China*, 12 December 2008, (Concluding observations 2008), CAT/C/CHN/CO/4, para 13,
<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf>, accessed 2 June 2015.

³⁰ Amnesty International, *Changing the Soup But Not the Medicine*.

³¹ List of Issues 2015, paras4(c) and 15(d).

³² Amnesty International, *Submission on List of Issues to the United Nations Committee against Torture for China’s fifth periodic report at the United Nations Committee Against Torture’s 54th session* (AI Submission on List of Issues 2015), Index: ASA 17/005/2015
<https://www.amnesty.org/download/Documents/ASA1700052015ENGLISH.pdf>, accessed 3 June 2015.

course of her illness, her “lawful rights and interests were ensured in accordance with the law, including timely medical treatment, retaining a lawyer, and visits from family.”³³

In the List of Issue 2015, CAT repeated its concern about the lack of a comprehensive definition of torture in Chinese law in line with Article 1 of UNCAT, an issue raised in previous concluding observations in May 2000 and December 2008 as well as by successive Special Rapporteurs.

Article 15 of the UNCAT obliges states parties to “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” And while there are domestic laws and regulations prohibiting the extraction of “confessions” through torture and for the exclusion of these “confessions” at trial except as evidence in claims of torture, such as Article 50 of China’s amended CPL and Article 247 of China’s Criminal Law (CL), Article 54 of the CPL, however, provides that:

“If any physical or documentary evidence is not gathered under the statutory procedure, which may seriously affect justice, correction or justification shall be provided; otherwise, such evidence shall be excluded.”

This provision could allow illegally obtained physical or documentary evidence to be raised in court if undefined “correction” or “justification” is provided. The Committee also asked China to provide information on all instances in which Article 54 of the CPL was invoked and the outcome of each instance.³⁴ In addition, there is nothing that prevents information obtained through a statement extracted through torture becoming the basis for obtaining other evidence (physical, witness statement, etc.) that will not be considered tainted even if the original confession is excluded. That secondary evidence will not be considered “illegally obtained” and therefore does not fall under Article 54.

In addition to the Committee’s review, the UN Human Rights Council appoints the UN Special Rapporteur on torture, who has a mandate to examine questions related to torture in all countries, irrespective of UNCAT ratification. One of the ways in which this mandate is carried out is through fact-finding visits upon invitation from a host country. In December 2005, Manfred Nowak was the last Special Rapporteur on torture to receive an invitation to visit China in order to examine its legal framework and government activities.

Many of the observations and findings in the report written by former Special Rapporteur on torture, Manfred Nowak, after his mission to China in 2005 are still pertinent today.³⁵ The Special Rapporteur at that time noted that in the alleged torture cases he and his predecessors reported, the methods of torture included: beatings with sticks and batons, use of electronic batons, guard-instructed or permitted beatings by fellow prisoners, use of handcuffs or ankle fetters for extended periods, exposure to extreme conditions of heat or cold, being forced to maintain uncomfortable positions, such as sitting,

³³ China’s reply to CAT’s List of Issues 2015, paras 4.3 and 15

³⁴ List of Issues 2015, para 31.

³⁵ *Mission to China: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (Manfred Nowak’s Mission to China Report), UN Doc. E/CN.4/2006/6/Add.6, 10 March 2006, <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/6/Add.6>, accessed 20 October 2015.

squatting, lying down, or standing for long periods of time, deprivation of sleep, food or water, denial of medical treatment, and the use of “tiger benches”. Many of these methods are still being used, as can be seen in the accounts from lawyers and victims interviewed by Amnesty International for this report.³⁶

The Special Rapporteur on Torture also pointed out that Chinese domestic legislation lacked any explicit definition of torture, even though several articles do reflect some basic elements of the definition of torture in UNCAT³⁷. He also noted that Article 94 of China’s Criminal Law defines “judicial officers” as “persons who exercise the functions of investigation, prosecution, adjudication, and supervision or control” thus “leaving room for uncertainty as to whether those hired temporarily or seconded from non-judicial departments to assist in investigations can be prosecuted for these offences.”³⁸

INADEQUATE DEFINITION OF WHAT CONSTITUTE TORTURE UNDER CHINESE LAW

Ever since 1979, when China introduced the CPL, the focus of anti-torture provisions has mainly been the practice of “extracting confessions through torture” (*xingxun bigong*). Strict prohibition of this practice and the collection of evidence by threat, enticement, deceit or other unlawful means appear in CPL provisions governing the collection and use of evidence.³⁹ A prohibition against extracting confessions through torture, or against corporal punishment or ill-treatment of criminal suspects has been part of the Police Law of the People’s Republic of China (Police Law) since 1995, under which police officers and prosecutors are subject to suspension or dismissal for committing such acts.⁴⁰ If coercion of a confession through torture is found to meet the criteria for criminal liability, according to Article 55 of CPL, procuratorial authorities must launch criminal investigations under Article 247 of the CL, which stipulates the punishment of judicial officials for up to three years’ imprisonment for extorting confession of a criminal suspect or using force to extract testimony from a witness.⁴¹

Yet no national law has attempted to define or enumerate what sorts of acts fall under the category of “torture”. The CL and the CPL still have not included mental torture in the definition of torture. The absence of a clear definition of torture in Chinese law, one that encompasses mental torture as required by article 1 of UNCAT, is a serious problem that has been identified not only by CAT and by the UN Special Rapporteur on torture but also by lawyers themselves as a problem they encounter as

³⁶ Manfred Nowak’s Mission to China report, para45.

³⁷ Manfred Nowak’s Mission to China report, para15.

³⁸ Manfred Nowak’s Mission to China report, para16.

³⁹ Criminal Procedure Law (CPL), Art50, <http://www.lawinfochina.com/display.aspx?lib=law&id=9247&CGid=>, accessed 4 May 2015.

⁴⁰ *Police Law (PL)*, Art22, <http://www.lawinfochina.com/Display.aspx?lib=law&CGid=10945>, accessed 8 May 2015.

⁴¹ *People’s Republic of China Criminal Law (CL)*, adopted by the Second Session of the Fifth National People’s Congress (NPC) in 1979 and amended by the Fifth Session of the Eighth NPC in 1997, the ninth amendment to the Criminal Law was promulgated by the Standing Committee of the NPC on 29 August 2015 and entered into force on 1 November 2015. Art.247, <http://lawinfochina.com/display.aspx?id=354&lib=law>, accessed 7 May 2015.

they attempt to represent their clients who allege torture and other ill-treatment. Shandong lawyer **Xi Xiangdong** believes the level of physical violence has changed but altered forms of extracting confession through torture still exist, such as prolonged interrogation, not providing criminal suspects with any or enough food, putting the suspects in cold rooms or exposing them to sunlight for a long period.⁴²

Tianjin Lawyer **Ma Wei** says that his clients who complain about being subjected to torture in detention usually said that police officers punched, kicked or beat them up with plastic bottles filled with water and since this is not considered as “serious” torture, the procuratorate will not investigate these claims and the court will not in these instances initiate the procedure to exclude illegal evidence.⁴³ **Teng Biao**, a former Beijing human rights lawyer said that “generally speaking, people would not consider it torture if someone is not beaten by electric baton, so it is related to awareness about what constitutes torture and other ill-treatment”.⁴⁴

It is difficult to determine if the clients are under the impression that this type of ill-treatment is not defined as torture or whether they are repeating what they are told by procuratorate or judicial personnel. However, it should be emphasized that under the definition of torture in international law, torture includes severe or sustained use of “simple” means such as beatings, and there is no requirement that the methods used be sophisticated or complex and use of methods that leave fewer marks still constitutes torture.

To this day, the most detailed attempts to define torture have come in the form of legal interpretations. For example, in 1999 the Supreme People’s Procuratorate (SPP) issued a set of criminal investigation standards specifying that “torture” in the context of “extraction of confessions through torture” could mean either the infliction of direct bodily punishment (*rouxing*) or indirect forms of physical punishment (*bianxiang rouxing*) associated with various forms of ill-treatment that were left unspecified.⁴⁵

These two vague categories were given more elaboration when the prosecutorial standards were updated by the SPP in 2006. The revised standards – which are still in force – make reference to “cruel methods” (*elie shouduan*) such as beating, tying up or unlawful use of restraints as examples of direct bodily punishment and the use of cold, hunger, exposure (*shai*) or heat (*kao*) in ways that result in “serious damage to the physical health of the suspect or defendant” as examples of “indirect physical punishment” but do not provide an exhaustive list.⁴⁶ This clear focus on the physical

⁴² Amnesty International interview with Xi Xiangdong on 25 August 2015.

⁴³ Amnesty International interview with Ma Wei on 25 August 2015.

⁴⁴ Amnesty International interview with Teng Biao on 26 August 2015.

⁴⁵ 关于人民检察院直接受理立案侦查案件立案标准的规定(试行), “Rules for Standards on the People’s Procuratorate Directly Accepting, Filing, and Investigating a Case”, <http://www.spp.gov.cn/site2006/2006-02-22/00024-104.html>, accessed 1 October 2015.

⁴⁶ 最高人民检察院关于渎职侵权犯罪案件立案标准的规定, “Provisions of the Supreme People’s Procuratorate on the Criteria for Opening Cases of Malfeasance and Infringement Crimes”, <http://www.spp.gov.cn/site2006/2007-03-01/0026912477.html>, accessed on 1 October 2015. English translation is available at <http://en.pkulaw.cn/display.aspx?cgid=78161&lib=law>, accessed 1 October 2015.

consequences of torture fails to encompass the infliction of “mental pain and suffering” as required by UNCAT.

Since the revision of the CPL in 2012, the SPP has introduced a slightly different definition of torture that acknowledges mental pain and suffering, albeit only as a result of physical “punishment”. In the SPP’s (Provisional) Criminal Procedural Regulations for the People’s Procuratorates, which serves as the procedural rules governing how procurators apply the provisions of the CPL, Article 65 defines torture as the “use of direct bodily punishment (*rouxing*) or indirect physical punishment (*bianxiang rouxing*) that causes a criminal suspect to suffer severe pain or suffering, either physically or mentally”.⁴⁷ For its part, the Supreme People’s Court (SPC) has given an even fuller definition of torture in its own interpretation regarding the application of the CPL, including direct bodily punishment, indirect physical punishment and “use of other methods that cause the defendant to suffer severe pain or suffering, either physically or mentally”.⁴⁸

By adding reference to “severe pain or suffering, either physically or mentally,” both of these definitions incorporates language from Article 1 of UNCAT, and it is evident that compliance with Article 1 has been a consideration as China’s norms regarding torture have undergone elaboration in recent years. The “Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases” broke ground as China’s first exclusionary rules when they were issued jointly by the SPC, SPP, Ministry of Public Security, Ministry of State Security and Ministry of Justice in 2010 and formed the basis for the exclusionary provisions added to the CPL in 2012. Reviewing the discussions and debates that preceded the formulation of these provisions, judges from the SPC revealed in an article that one proposal under consideration at the time would have defined torture (in the context of extracting confessions through torture) to include methods producing “severe physical pain” (*julie tengtong*) or a “high degree of [mental] suffering” (*gaodu tongku*) or loss of consciousness – a proposal identified as having been formulated in reference to Article 1 of the UNCAT. This proposal was ultimately not adopted, the judges explain, out of concern that “severe physical pain” and “high degree of [mental] suffering” were both too abstract and would give rise to disputes in practice, though they also noted that it was separately decided to delete reference to specific examples of “indirect physical punishment” because it would be “inappropriate” to include them in the provisions.⁴⁹

According to press reports, in 2014 the SPC began drafting new rules on exclusion of illegal evidence.

⁴⁷ 人民检察院刑事诉讼规则（试行），“People’s Procuratorate Criminal Procedural Regulation (trial version)”, issued on 16 October 2012 and effective on 1 January 2013, http://www.spp.gov.cn/flfg/gfwj/201212/t20121228_52197.shtml, English translation is available at New York University School of Law’s US-Asia Law Institute: <http://usali.org/wp-content/uploads/2013/08/IBJ-Translation-SPP-Regs1.pdf>, accessed 1 October 2015.

⁴⁸ Supreme People’s Court (SPC) Interpretation on the Application of the CPL, issued on 5 November 2012 and came into force on 1 January 2013, <http://www.court.gov.cn/fabu-xiangqing-4937.html>, accessed on 13 May 2015. See translation by New York University School of Law’s U.S.-Asia Law Institute and the Danish Institute For Human Rights at: <http://usali.org/wp-content/uploads/2013/09/20130523-SPC-JI-Column-Format.pdf>, Art.95, accessed 10 August 2015.

⁴⁹ 《关于办理刑事案件排除非法证据若干问题的规定》的理解与适用, (Guiding Opinions and Application of ‘Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases’), <http://www.court.gov.cn/shenpan-xiangqing-6618.html>, accessed 21 May 2015.

Fan Chongyi, honorary director of the Procedural Law Institute of China University of Political Science and Law suggested that the SPC may consider expanding the grounds on which confessions may be deemed to be obtained illegally to include things like interrogation to the point of exhaustion (*pilao shenxun*), repeated interrogation or other forms of mental ill-treatment.⁵⁰ As things currently stand, however, neither of the definitions offered in the existing SPP and SPC interpretations is compliant with that definition in full. The definition in the SPC's interpretation on the application of the CPL is the broadest, but it appears to apply primarily to questions regarding exclusion of evidence, rather than criminal responsibility. Likewise, it is unclear whether the SPP's definition of torture in its procedural regulations regarding evidence exclusion also serves as the standard for prosecuting criminal liability under Article 247 of the CL. The lack of a clear definition of torture in either the CL or the CPL, and the existence of several competing definitions with limited scope, demonstrates the urgent need for a unified, comprehensive legal framework regarding torture, including a definition that follows that of Article 1(1) of UNCAT and that would apply universally to all institutions, individuals and circumstances.

LACK OF ACCOUNTABILITY FOR ACTS OF TORTURE

Article 247 of CL covers two separate offences related to torture: "extracting confessions through torture" and "using violence to obtain a witness statement." In order to constitute either offence, the CL requires that the relevant acts of torture be carried out with the goal of compelling a confession or witness statement and, in that connection, refers only to acts carried out by "judicial officers" (*sifa gongzuo ren*) as possible offenders. As defined by Article 94 of CL, "judicial officers" includes "persons engaged in the functions of investigating, prosecuting, adjudicating or supervising and controlling offenders". As a matter of practice, this includes public security and state security police, procurators and court personnel authorized to interrogate or exercise custody over criminal suspects or defendants. Anyone not covered by the category of "judicial officers" can only be prosecuted under Article 247 as accessories (*gongfan*).⁵¹

The maximum penalty for individuals convicted of either offence under Article 247 is three years in prison. If the torture or abuse results in disability or death, heavier sentences up to and including the death penalty may be imposed in line with the penalties for intentional injury (Article 234 of CL) and intentional homicide (Article 232 of CL).

A similar situation applies to Article 248 of CL, which deals with "detainee abuse" (*nuedai bei jianguan ren*). Article 248 reads in part:

"Supervisory and management personnel of prisons, detention centres, and other guard houses who beat or physically abuse their inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention. If the case is especially serious, they are to be sentenced to three to 10 years in prison."⁵²

⁵⁰ Legal Evening News, 最高法将细化非法证据排除规则 专家称骗出的不算, (SPC Will Deliver Details about Rules of Excluding Illegal Evidence, Experts Say Obtaining Evidence Through Deception Will Also Be Excluded), 10 December 2014, <http://news.qq.com/a/20141210/042914.htm>, accessed 26 October 2015.

⁵¹ CL Arts 27 & 28.

⁵² CL Art 248.

Article 248 makes no attempt to define or provide examples of “abuse”. There is, however, a provision to cover the phenomenon of detainee-on-detainee violence carried out under order from supervisory personnel:

“Supervisory and management personnel who order inmates to beat or physically abuse other inmates are to be punished according to stipulations in the above paragraph.”⁵³

As Amnesty and other human rights organizations have documented previously, the use of fellow detainees to carry out torture on orders from police and other supervisory personnel is common in detention in China.⁵⁴ Lawyers report that they and their clients are often beaten by fellow inmates. According to Shandong lawyer **Shu Xiangxin**, his clients mainly complain about being beaten up by cell bosses (*laotou*) in detention facilities rather than by police officers, although his clients believe that such beatings are carried out under instructions from police.⁵⁵ In 2014, Zhang Lanmei, a petitioner in Xiancheng city, Henan province, who was accused of blackmailing police officers and a judge, and in 2015, Guo Hongwei, a petitioner in Siping city, Jilin province, who was accused of blackmailing public security bureau officials, both reported “admitting” offences after being beaten up by “cell bosses” in the detention centres where they were being held. **Shu Xiangxin** says that the beatings left Zhang Lanmei in a very fragile mental state, while Guo Hongwei suffered serious bleeding as a result. “They guess that the ‘cell bosses’ were instructed by the police but they only guess,” Shu explains, adding that the “cell bosses” were moved to other cells after the incidents.

While still rare, the media does report on the occasional case of torture and of perpetrators being brought to justice. And the cases can involve official personnel as well as others as demonstrated in a case highlighted in Amnesty International’s Annual Report 2014/2015. A court in Harbin, Heilongjiang Province, in May 2014 found seven individuals guilty of torturing several criminal suspects in March 2013. Only three of the seven were police officers; the other four were “special informants” – civilians allegedly “helping” the police to investigate crimes. One of their victims died in custody after being tortured with electric shocks and beaten with a shoe. The seven were sentenced to between one year suspended prison sentence and two-and-a-half years’ imprisonment. The light sentences imposed on the defendants attracted controversy and criticism, especially since one of the victims died.⁵⁶

To conclude, there is little legislation criminalizing torture as such, and anti-torture legislation is mostly confined to the prohibition of obtaining “confessions” or other purported evidence through torture. Torture is not defined in accordance with Article 1(1) of the Convention against Torture, which

⁵³ CL Art248.

⁵⁴ Amnesty International, *Briefing on China’s Criminal Procedure Law: In line with international standards?* (Briefing on CPL 2013), Index: 17/021/2013, July 2103, <https://www.amnesty.org/en/documents/ASA17/021/2013/en/>, and Human Rights Watch, *Tiger Chairs and Cell Bosses*.

⁵⁵ Amnesty International interview with Shu Xiangxin on 14 August 2015.

⁵⁶ Dui Hua Foundation Human Rights Journal, “*Torture in Harbin Drug Cases Met with Little Punishment*”, 2 October 2014, <http://www.duihuahrjournal.org/2014/10/torture-in-harbin-drug-cases-met-with.html>, accessed 26 October 2015.

is binding on China. Instead, there are several, overlapping definitions creating a confused picture.

SYSTEMIC ISSUES AFFECTING PROHIBITIONS ON TORTURE

Though Chinese political leaders and law enforcement officials appear to recognize torture's harmful impact, particularly its potential to produce wrongful convictions and other miscarriages of justice, repeated efforts to amend laws and regulations on its prohibition have proven ineffective at wiping out the practice of torture. There are many systemic factors that prevent prohibitions from having a greater impact. Power imbalance and a lack of effective checks and balances among law-enforcement and judicial bodies, which actively cooperate in cases which are considered politically important or sensitive by the government, negatively impacts attempts by lawyers and defendants to raise claims of torture and seek redress. Regulations and other legal provisions allow police and other interrogators a degree of discretion to detain certain individuals for extended periods of time, which increases the risk of torture and other ill-treatment. The misuse of certain criminal offences and regulations have also become standard methods to harass, torture, intimidate and arbitrarily detain individuals who are seen as threats to the state and social stability.

LACK OF JUDICIAL INDEPENDENCE AND CONTINUED DOMINANCE OF THE POLICE

China's Constitution calls upon the country's courts and procuratorates to exercise their respective powers independently. In fact, however, courts, procuratorates and public security organs are routinely "coordinated" under the direction of the "political and legal committee" (*zhengfa weiyuanhui*) under the local committees of the Chinese Communist Party.

In China's reply to CAT's List of Issues 2015, it claimed that in terms of combatting torture, the primary responsibilities of the "political and legal committee" are:

"to lead the handling of matters in accordance with the law, and safeguard the correct and integrated implementation of the *Constitution* and laws by means of: coordinating the work of judicial organs, supervising and urging the performance of duties in accordance with the law, and creating an environment for the impartial administration of justice."⁵⁷

The Chinese government also claimed in the reply that the "political and legal committee" "does not participate in direct investigations" and "does not put forward specific opinions on the admission of evidence, determination of facts, or judicial decisions."

But when leadership of these committees is in the hands of public security officials or there is some other strong interest in securing a conviction, it can lead to claims of torture simply being ignored and in practice can direct the outcome of a particular case. This level of influence by an organ that is not formally part of the judicial system can easily turn into interference and contributes to the lack of checks and balances among the different components of the system.

"Since the establishment of the PRC, the police have been the most powerful organ in the criminal process and the courts' role has been marginal. In this police-centric system, the court cannot be effective in vetoing a police decision," said **Fu Hualing**, a law professor and a criminal justice expert at the University of Hong Kong, adding that although the amended CPL introduced the exclusionary

⁵⁷ China's reply to CAT's List of Issues 2015, para 28.1

rules, the power structure has not changed:

“The court has not been able to apply the exclusionary rules effectively. Part of the reason is the lack of experience. Judges do not have the know-how and there does not seem to be any systematic training. A larger problem is still the power of the police.”⁵⁸

The majority of lawyers interviewed for this report cite the lack of judicial independence and the pre-eminent power of the public security agencies as one of the main obstacles in seeking justice for claims of torture.

Chongqing lawyer **Zheng Jianwei** told Amnesty International he believed that extracting “confessions” through torture would continue to exist as long as there is no independent court to punish and hold the perpetrators accountable. Prosecutors are not politically neutral and that affects their function of monitoring and investigating torture cases, he said.⁵⁹

Without meaningful checks and balances on the police, it was relatively easy for the law enforcement officers to get around the increased procedural protections against forced confessions, Guangzhou lawyer **Wu Kuiming** told Amnesty International:

“The public security officials are aware of the laws and regulations, but they selectively implement them and intentionally distort the meaning in implementation. And the procuratorate and the court are not independent. They are controlled by the party.”⁶⁰

Lawyer **Cai Ying** described to Amnesty International a case where the court seemingly allowed the procuratorate to ignore court orders without consequences. He filed a lawsuit seeking state compensation for his detention and torture carried out by the procuratorates of Yiyang and Yuanjiang cities. After he requested copies of documentary evidence related to his detention and interrogation supplied to the court by both procuratorates, a procurator of Yiyang city removed 34 pages of this evidence from the court records in front of the judge. Also, in clear violation of written court orders of the Yiyang Intermediate People’s Court demanding several individuals from both procuratorates appear in court, none of the individuals attended the hearing held on 18 September 2015. The court, however, took no legal action against them and allowed the case to proceed.⁶¹

Teng Biao, noted that “as the public security leads on criminal investigations and the procuratorate and the court coordinate with the public security, it is difficult to see how the laws and regulations can be effectively implemented”.⁶²

⁵⁸ Amnesty International communication exchange with Fu Hualing on 1 October 2015.

⁵⁹ Amnesty International interview with Zheng Jianwei on 30 August 2015.

⁶⁰ Amnesty International interview with Wu Kuiming on 5 July 2015.

⁶¹ Cai Ying, “关于蔡瑛律师酷刑国赔案两次质证会庭审情况反映暨投诉” (Complaints regarding the two hearings on lawyer Cai Ying’s filing for state compensation), 21 September 2015, posted on Cai Ying’s social media account, <http://www.weibo.com/p/1001603889525603570537>, accessed 28 September 2015.

⁶² Amnesty International interview with Teng Biao on 26 August 2015.

Within the criminal justice system, the public security bureaus remain the most powerful player making it difficult for defence lawyers let alone personnel from the procuratorate or the courts to carry out their work as required. Several lawyers attempting to take on alleged torture cases noted their frustration with this pre-eminent police power. Lawyer **Yu Wensheng** said:

"The public security has too much power and there is a lack of effective mechanisms to monitor the police. I am sure the public security officials are aware of the laws and regulations but they are also trying to expand their power, abusing [the provisions on] criminal detention and residential surveillance. They don't want to see their power diminish."⁶³

This idea was echoed by lawyer **Jiang Yuanmin**:

"China does not have judicial independence. Public security acts as a suppression tool of the ruling party. The procuratorate and the court are colluding with the public security. Under the dominance of the public security, it is impossible for the procuratorate and the court to rectify or recognize the public security's problems of extracting confessions through torture."⁶⁴

Lawyers also expressed their frustration with their own inability to perform their roles and their lack of power within the system. Beijing lawyer **Chen Jiangan** observes that the prosecution do not investigate allegations of extracting "confessions" through torture unless the authorities want to get rid of some public security officers, judges or prosecutors. He also points out that in real practice, the procedure of exclusion of illegal evidence has become a procedure to exclude the lawyer. "If the lawyer insists on requesting the court to exclude illegal evidence," he says, "then the lawyer will be kicked out of the courtroom."⁶⁵

A fundamental reason for the vulnerability of lawyers and the weak status of the legal profession is the lack of independent professional organizations for lawyers. The All-China Lawyers Association remains under the control of the Ministry of Justice, which is in turn under the control and supervision of the Central Political-Legal Commission of the Chinese Communist Party (CCP). In its reply to CAT's List of Issues 2015, the Chinese government claims that the Provisions on Safeguarding Lawyers' Practice Rights in Accordance with Law jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on 20 September 2015 "are the latest measures put forward for perfecting the safeguard mechanism for lawyers' practice rights".⁶⁶ However, the provisions fail to handle the fundamental problem of lack of independence of lawyers associations.

VAGUE AND DISCRETIONARY PROVISIONS

Another aspect of the legal framework relevant to torture is the widespread use of pre-trial custodial detention and the conditions under which such detention takes place. In human rights defender cases Amnesty International has documented, use of "criminal detention" (*xingshi juliu*) has become a

⁶³ Amnesty international interview with Yu Wensheng on 3 July 2015.

⁶⁴ Amnesty International interview with Jiang Yuanmin on 20 June 2015.

⁶⁵ Amnesty International interview with Chen Jiangan on 14 August 2015.

⁶⁶ China's reply to CAT's List of Issues 2015, para4.

routine practice upon initial identification of a criminal suspect, and investigators routinely use the exceptional power granted under CPL Article 89 to extend the detention period to up to 30 days before requesting approval from the procuratorate for formal arrest.⁶⁷

Within 24 hours of placing a suspect under detention, investigators are required to notify his or her family of the fact of and reason for detention, as well as the place of custody.⁶⁸ However, this requirement is waived if it is impossible to contact the family or if the case involves national security offences or terrorism and investigators believe that such notification will impede their investigation.⁶⁹

Both the frequent use of pre-trial detention and the extended duration of the detention period increase the potential for torture and other ill-treatment of detainees. Hubei lawyer **Huang Simin** handled one Falun Gong case in 2015 in which the Falun Gong practitioner was arbitrarily detained in a “legal education centre” for more than one month before the case entered the formal legal procedure.⁷⁰ The 65-year-old Falun Gong practitioner was subjected to prolonged interrogation and punished by being forced to stand under the sun in summer for a long period of time. Huang says that she repeatedly raised the issue of this ill-treatment with the court but that the presiding judge at trial only replied that there is no torture in China and refused to hear the claim. She repeatedly complained to the procuratorate about the judge’s attitude but to no avail.

The Regulations on Detention Facilities, issued by the State Council in 2012, require detention facilities to “protect the personal safety and lawful rights and interests of detainees” and prohibits “insulting, physically punishing, or maltreating detainees, or inciting or conspiring with any other person to do so”.⁷¹ To this end, procuratorial offices have been set up in detention centres to monitor the treatment of detainees and field complaints and allegations, though their actual effectiveness in this regard is difficult to verify.

Among the cases Guangzhou lawyer **Chen Jinxue** has represented, Guangdong activist Sun Desheng reported being handcuffed and leg-cuffed by detention centre officials for half a month for alleged violations of detention centre rules.⁷² **Chen Jinxue** also said that Sun was frequently beaten up by other fellow inmates. He says that Sun reportedly even banged his head against the wall in order to have a chance to complain about the beatings to the procuratorate official stationed at the detention

⁶⁷ For example, see the case of the five women activists detained in March 2015: <https://www.amnesty.org/en/latest/news/2015/03/china-drop-charges-against-five-women-detained-for-campaigning-against-sexual-harassment/>; the case of activist Wu Gan: <https://www.amnesty.org/en/documents/asa17/1831/2015/en/>; and the case of activist Liu Shaoming: <https://www.amnesty.org/en/documents/asa17/1984/2015/en/>.

⁶⁸ CPL Art73.

⁶⁹ CPL Art73.

⁷⁰ Amnesty International interview with Huang Simin on 31 August 2015.

⁷¹ 拘留所条例, “Regulation on Detention Facilities”, Order No. 614 of the State Council, 23 February 2012, Art3, http://www.gov.cn/zwqk/2012-03/01/content_2080455.htm, English translation is available at <http://en.pkulaw.cn/display.aspx?id=9279&lib=law>, accessed on 13 August 2015.

⁷² Amnesty International interview Chen Jinxue on 25 August 2015.

centre, but he was still not able to see the official and file his claim.

Allowing detainees to have access to defence counsel can help to reduce the potential for torture in detention, and in this area Chinese law has made some notable improvements. Before the recent revisions to the CPL took effect in 2013, a detainee only had the right to retain and meet with defence counsel after the case had been transferred to the procuratorate for pre-indictment review – which in many cases could be several months after initial detention.⁷³ Before that point, lawyers had a limited role to provide legal assistance in filing bail applications or complaints regarding illegal treatment. However, police enjoyed broad latitude to prevent meetings between lawyers and suspects at this stage, making it impossible for lawyers to play an effective role in protecting the rights of detainees as documented in many cases of detained human rights lawyers and activists.⁷⁴

Newly revised CPL Article 33 gives criminal suspects the right to a defence lawyer from the moment of first interrogation or placement under “compulsory measures” (*qiangzhi cuoshi*) - measures such as criminal detention or residential surveillance that involve deprivation or restriction of liberty intended to prevent an individual from causing further harm to society or obstructing the processes of criminal investigation and ensuring his or her availability for questioning or trial. The same provision requires investigators to notify suspects that they have a right to a lawyer and allows a defence lawyer to be retained on the suspect’s behalf by a family member or guardian.⁷⁵ Additional improvements include that upon a lawyer’s presentation of his or her licence to practice, proof of employment by a registered law firm and letter of appointment, a detention centre is required to arrange a meeting with a detainee “promptly” (*jishi*), and no later than within 48 hours and that meetings between lawyers and criminal suspects must not be monitored.⁷⁶

There are limited, but significant, situations in which investigators can still legally prevent lawyers from meeting with detained criminal suspects. In cases involving national security offences, terrorism or “especially major” bribery, it is necessary for lawyers to request permission from investigators before meeting a suspect.⁷⁷ Police investigators may withhold permission if they believe that a meeting might impede their investigation (defined as risk of evidence destruction or forgery, witness tampering; risk of the detainee’s self-mutilation, suicide, or flight; risk of flight or interference by other suspects; or implication of one of the suspect’s family members in the alleged crime) or that there is a risk of disclosure of state secrets.⁷⁸

⁷³ 1996 version of CPL Art33.

⁷⁴ See the case of detained lawyers July 2015: <https://www.amnesty.org/en/latest/news/2015/07/china-lawyers-targeted/>; and the cases of activists Su Changlan and Zhang Shengyu: <https://www.amnesty.org/en/latest/news/2015/09/china-release-supporters-of-hong-kong-protests/>.

⁷⁵ CPL Art33.

⁷⁶ CPL Art37.

⁷⁷ CPL Art37.

⁷⁸ Ministry of Public Security’s 公安机关办理刑事案件程序规定, (“Public Security Regulation on Procedures for Handling of Criminal Cases”), Art49, <http://www.mps.gov.cn/n16/n1282/n3493/n3823/n442421/3486957.html>, accessed on 29 October 2015.

Extended pre-trial detention and restricted access to lawyers creates substantial risk of torture and other ill-treatment for suspects being held in detention centres, but the risk grows considerably with use of the measure known as “residential surveillance in a designated location” (*zhiding jusuo jianshi juzhu*). As the name implies, residential surveillance (*jianshi juzhu*) is ordinarily meant to involve confinement of a suspect to his or her home. Under these conditions, which can include various degrees of monitoring (including the use of electronic monitoring devices),⁷⁹ the measure is intended to ensure the suspect’s availability to investigators and the criminal process without full deprivation of liberty or need to post bond. Given the more lenient conditions under residential surveillance, its time limit has been set at six months.⁸⁰

Under Article 73 of the CPL, however, investigators may designate a location for the purposes of carrying out residential surveillance when the suspect has no “fixed abode” (defined ambiguously by secondary legislation as a “legal” [*hefa*] residence in the city or county where the case is being handled⁸¹) or when the case involves national security crimes, terrorism, or “especially major” bribery and investigators believe that use of the “ordinary” form of residential surveillance might interfere with their investigation. When “residential surveillance in a designated location” is imposed, investigators are required to notify the suspect’s family within 24 hours, but the new revisions to the CPL which took effect in 2013, removed a clause suggested in the initial draft which provided that the reason and location were to be included in the notification.⁸² The CPL specifies that places of detention or dedicated case-handling facilities may not be used for the purposes of residential surveillance in a designated location,⁸³ and Ministry of Public Security’s “Public Security Regulation on Procedures for Handling of Criminal Cases” specifies only that such locations must (1) offer conditions for ordinary living and rest, (2) accommodate monitoring and management and (3) ensure security, Article 123 of the regulation specifies that notification of detention should include the reasons for and location of custody, except when there is no way to inform the detainee’s family or when it would interfere with the investigation of the crimes of endangering state security or terrorist activities.⁸⁴

Despite the requirement that a “designated location” have the conditions for “ordinary life and rest”, there is no corresponding obligation upon law-enforcement authorities to ensure that individuals held in these locations enjoy these conditions to any particular degree. In fact, compared to detention centres, these spaces are virtually unregulated and unmonitored. Suspects held under this measure on charges related to national security, terrorism, or bribery may be deprived of access to a lawyer if the authorities believe such access might impede their investigation.⁸⁵ Combined, these conditions

⁷⁹ CPL Art76.

⁸⁰ CPL Art77.

⁸¹ Ministry of Public Security’s “Public Security Regulation on Procedures for Handling of Criminal Cases”, Art108, “People’s Procuratorate Criminal Procedural Regulation (trial version)”, Art110.

⁸² CPL Art73.

⁸³ CPL Art73.

⁸⁴ Ministry of Public Security’s “Public Security Regulation on Procedures for Handling of Criminal Cases”, Art 108, “People’s Procuratorate Criminal Procedural Regulation (trial version)”, Art110.

⁸⁵ CPL Art37.

of residential surveillance in a designated location can constitute incommunicado detention and, with time enforced disappearance, and those subjected to the measure are at even greater risk of torture and other inhuman and degrading treatment than those placed in ordinary detention. In cases Amnesty International has documented and as accounts later on in this report demonstrate, those risks are not just hypothetical and suggest that part of the function of this particular measure may be to inflict physical and mental pain and suffering for the purposes of “breaking” suspects, making them more pliable and ready to produce “confessions”.⁸⁶

The incommunicado conditions of “residential surveillance in a designated location” resemble what is known about the conditions of a type of detention known as *shuanggui*, which is used as part of the Chinese Communist Party’s system of internal disciplinary investigation. *Shuanggui* refers to a pair of rules that require Party members accused of wrongdoing to appear at a designated time and a designated place for questioning – it is a highly secretive measure that reportedly relies on isolation and other interrogation techniques to produce “confessions” leading to disciplinary sanctions up to and including expulsion from the Party. Under *shuanggui*, a Party member suspected of wrongdoing can be detained indefinitely in a designated location without any contact with the outside world, including access to legal counsel. These investigations are not subject to the protections provided by the CPL and other relevant laws and regulations, although “confessions” and other case materials collected through *shuanggui* investigations may in some cases later be turned over to the procuratorate for the purposes of criminal prosecution.⁸⁷

In addition to the above laws and state regulations, Communist Party’s documents including *The 18th Central Committee of the Chinese Communist Party Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward*, which was passed on 23 October 2014 during the Committee’s 4th Plenary Session, in Section 4 also mentions strengthening judicial protection of human rights, including prevention of confessions extracted through torture and illegally acquired evidence from being used by courts.⁸⁸ However, despite all these laws, regulations, judicial interpretations and other documents which set out the restrictions on extracting confessions through torture and excluding other illegal evidence, Chinese law still does not meet international law and standards on the prohibition of torture. In addition, the implementation of the legal restrictions that are in place remains a big challenge for Chinese authorities due the lack of independence of the judiciary, effective monitoring mechanisms and the preminent power of the Public Security apparatus.

⁸⁶ Amnesty International, “China: Lawyers face 15 years in jail on ‘chilling’ state security charges”, 16 July 2015, <https://www.amnesty.org/en/latest/news/2015/07/china-lawyers-16-july/>.

⁸⁷ Flora Sapio, “Shuanggui and extralegal detention in China”, *China information*, vol. 22, no. 1, 2008, pp7–37.

⁸⁸ 中共中央关于全面推进依法治国若干重大问题的决定, (The 18th Central Committee of the Chinese Communist Party Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward), <http://politics.people.com.cn/n/2014/1029/c1001-25926893.html>, accessed on 5 May 2015, English translation is available at China Copyright and Media: <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>, accessed on 5 May 2015.

ISSUES OF IMPLEMENTATION AND PRACTICE

Many of the recent legal developments have been clear attempts by authorities to strengthen the prohibition in domestic law against this practice, clearly recognizing that more needed to be done to make an impact on the actual practice. Growing public awareness of the role torture has played in wrongful convictions and deaths in detention has also spurred efforts to strengthen existing prohibitions and introduce new measures aimed at curbing the use of torture.

CONTINUED RELIANCE ON FORCED “CONFESSIONS” DESPITE THE NEW EXCLUSION RULES

The prominent Beijing lawyer **Mo Shaoping**—whose law firm has represented some of the most politically sensitive cases in the country—told Amnesty International that in practice the police continue to see confessions as a very effective form of evidence in judicial proceedings, and that the deterrents against torturing criminal suspects were not strong enough.

“The public security is obsessed with testimonies since these statements are the major evidence they can rely on. Also, the punishment and criminal liability for the perpetrators of extracting confessions through torture are not severe enough.”⁸⁹

“The system itself creates wrongful conviction” another lawyer whose firm handles many criminal cases featuring allegations of torture, **Chen Jiangan**, told Amnesty International: “It is geared towards extracting confessions through torture and various cruel and illegal means.”⁹⁰

Several lawyers told Amnesty International that laws and regulations were not sufficient on their own in reducing and eliminating extracting “confessions” through torture. **Wen Donghai**, a lawyer from Hunan told Amnesty International that “These laws entirely depend on the police to conscientiously follow them.”⁹¹

Police efforts to embrace the new rules were likely to be weaker in economically less developed areas, lawyers and academics told Amnesty International. For instance lawyer, **Liu Shuqing** acknowledged that there were some improvement in the laws and regulations, but warned that grassroots level public security officials, in particular in areas that lack resources, still relied overwhelmingly on extracting confession through torture to “break” cases.⁹²

The strengthened prohibition against obtaining confessions through torture seem especially weak in cases where the defendants belongs, or is suspected by the police to belong, to a politically sensitive category of people, such as member of the banned Falun Gong group, political dissidents, human rights lawyers or members of ethnic minorities such as Tibetans and Uighurs.⁹³

⁸⁹ Amnesty International interview with Mo Shaoping on 9 September 2015.

⁹⁰ Amnesty International interview with Chen Jiangan on 14 August 2015.

⁹¹ Amnesty International interview with Wen Donghai on 14 August 2015.

⁹² Amnesty International interview with Liu Shuqing on 5 August 2015.

⁹³ See Amnesty International, “China: further information: Uighur scholar deprived food and shackled: Ilham Tohti”, Index: ASA 17/038/2014, 27 June 2014, <https://www.amnesty.org/en/documents/asa17/038/2014/en/>, “China: Return the body of prominent Tibetan monk Tenzin Deleg Rinpoche who died in prison”, Index: ASA

According to lawyer **Tang Jitian**:

“China emphasizes that it is a dictatorship of the proletariat. It is particularly harsh on the so-called ‘enemies’ and does not consider their basic rights. Trials are often a matter of dressing up police work. Police will stop at nothing to crack [or solve] a case, and once they can get a confession the presumption of guilt carries through to the very end. Unless somebody dies, very few people are held to account for torturing others. This is particularly obvious in cases of so-called ‘enemies of the state’ – dissidents and [suppressed] religious believers.”⁹⁴

Shaanxi lawyer **Chen Pingyi** confirmed to Amnesty International that extracting “confessions” through torture remained particularly rampant in petitioners and Falun Gong cases and that very often the procuratorate did not investigate the allegation of extracting confession through torture and the court did not initiate the procedure to exclude the illegal evidence obtained through torture in such cases.⁹⁵

Guangzhou lawyer **Chen Keyun** told Amnesty International he believed torture to extract confessions was less common than before but, it is still rampant, in particular in the case of officials investigated jointly by the Chinese Communist Party’s own disciplinary system and the judiciary (often referred to as *shuanggui* cases): “In the eyes of the law enforcement officers, (the new rules) are just like toilet paper. They simply don’t care.”⁹⁶

Another lawyer, **Ran Tong**, told Amnesty International that while he believed there were now fewer cases of extracting confession through torture in ordinary cases, forced confessions still happened in cases where higher ranking officials were in position to influence or dictate the outcome of a case, especially when they were in position to influence the promotion and career of those involved in handling or adjudicating the case.⁹⁷

Even legal experts who have been involved in advising the government on legal reforms acknowledge that only sustained efforts over the long-term can lead to improvements. Professor **He Jiahong**, for instance, the director of Institute of Evidence Law and of the Centre for Common Law at Renmin University of China, told Amnesty International that it might take “another eight or ten years” before there would be better implementation of these judicial interpretations and the 2012 amendments of the Criminal Procedure Law. “This is mainly due to China’s deep-rooted culture and tradition of relying on confessions in oral evidence which has been the practice for several thousand years,” he said, noting that the exclusionary rules introduced in 2010 were historically the first ever judicial interpretations on the issues of exclusion of illegal evidence and prohibition of extortion of confessions

17/2102/2015, 14 July 2015, “Concern grows for imprisoned Tibetan monk: Karma Tsewang” Index
17/0002/2015, 22 January 2015, <https://www.amnesty.org/en/documents/asa17/0002/2015/en/>.

⁹⁴ Amnesty International interview with Tang Jitian on 25 June 2015.

⁹⁵ Amnesty International interview Chen Pingyi on 8 September 2015. Chen Pingyi, a pseudonym, is used for security reasons.

⁹⁶ Amnesty International interview with Chen Keyun on 15 August 2015.

⁹⁷ Amnesty International interview with Ran Tong on 14 August 2015.

through torture.⁹⁸

PUBLICIZED AND RECTIFIED CASES

Since 2009, a number of high-profile cases of miscarriage of justice resulting from forced “confessions” have been making their way into mainland Chinese media. In an environment of tightly controlled media, it is likely that cases that attract national interest are being reported with the approval of some governmental authorities - most likely the ones that are trying to push through judicial reforms. These reports may expose deep dysfunction in the judicial system but they also generally extol the authorities’ correction of the resulting injustices.

For example, the *Southern Metropolis Daily* in August 2015 reported the case of Liu Renwang, a villager in Lüliang city, Shanxi province, who was acquitted of the crime of killing a village official in December 2008 by the Shanxi Provincial Higher People’s Court after he spent five years appealing against his death sentence. Liu Renwang told the media that he was tortured by police to confess to the crime during detention.⁹⁹ Drawings that depict his torture show police pouring hot water over his head and an officer jabbing his sides with an electric baton while he is suspended from the ceiling by handcuffs.

Other examples include that of the Inner Mongolia Higher People’s Court’s acquitting Hugjiltu (also known as Qoysiletu) of intentional homicide due to insufficient evidence. Hugjiltu was executed in 1996 and but had said that he was “ill-treated” and forced to “confess” to the crime in police custody. Also the Shandong Provincial Higher Court announced a review of the case of Nie Shubin, who was executed in 1995 at the age of 21 for alleged rape and intentional homicide in Shijiazhuang city, Hebei province. Another man who was arrested in 2005 for three unconnected rapes and murders claimed that he was also responsible for the murder of which Nie Shubin was convicted.¹⁰⁰ Commenting on these recently reviewed cases Shenzhen lawyer **Jiang Yuanmin** said:

“From these cases, we can see that the defendants were forced to confess after being tortured. When the defendants complained to the procuratorate during preliminary hearing and to the court during trial that they were tortured to confess to the crimes, the procuratorate and the court simply ignored their claims, eventually leading to their death sentences”.¹⁰¹

PREVENTING TORTURE THROUGH EVIDENCE RULES

Until very recently, there existed no formal mechanism through which to exclude such evidence from

⁹⁸ Amnesty International interview with He Jiahong on 20 May 2015.

⁹⁹ Southern Metropolis Daily, 吕梁村民被控枪杀村官获无罪 曾遭警察逼供 (*Lüliang Villager Accused of Shooting a Villager Official to Death Acquitted, Has been Subjected to Extracting Confession Through Torture by the Police*), 6 August 2015, <http://shanxi.sina.com.cn/news/b/2015-08-06/detail-ixfsyiv7417619.shtml>, accessed 29 September 2015. See also New York Times’s report, 10 August 2015, Drawings of Police Torture Seize China’s Attention, http://www.nytimes.com/2015/08/11/world/asia/drawings-of-police-torturing-a-suspect-captivate-china.html?smid=tw-nytimes&_r=1, accessed 29 September 2015.

¹⁰⁰ Amnesty International, *Death Sentences and Executions 2014*, Index: ACT 50/0001/2015, March 2015, <https://www.amnesty.org/en/documents/act50/0001/2015/en/>.

¹⁰¹ Amnesty International interview with Jiang Yuanmin on 20 June 2015.

the criminal process. This changed in May 2010, when the SPC, SPP, Ministry of Public Security, Ministry of State Security and Ministry of Justice responded to public concerns about a series of sensational cases involving wrongful convictions on the basis of confessions obtained through torture by jointly issuing a set of two exclusionary rules commonly known as the “Two Provisions on Criminal Evidence”. These ground-breaking exclusionary rules have been incorporated into the CPL in its 2012 revision, along with some basic mechanisms intended to facilitate such exclusion.

According to the current legal framework as established in the CPL and associated rules and interpretations, illegal evidence ought to be excluded at any stage of the criminal process once it is discovered, and police, prosecutors and court officials all have corresponding obligations to do so.¹⁰² Procurators are required to investigate reports or accusations of illegally collected evidence, including confessions obtained through torture, and pursue criminal liability if a crime is found to have been committed.¹⁰³ Defendants or lawyers have the right to request that a court exclude any “illegally obtained evidence” and the defence shall provide materials for an application to exclude illegally obtained evidence.¹⁰⁴

To this end, Article 182 of the CPL was amended in 2012 to formalize pre-trial conferences between judges, prosecutors, and defendants and their counsel, at which time the defence has the opportunity to present any claims of illegal evidence, including confessions coerced through torture. Upon receiving a motion to exclude such evidence from a defendant or his or her legal counsel, which is expected to include some initial information in the form of names, locations, descriptions or other “leads”, the court is supposed to carry out a review of the motion and should convene a pre-trial conference if it finds any concerns about the legality of the methods used to obtain the evidence in question.¹⁰⁵ At this conference, the prosecution may present its own evidence regarding the legality of the evidence in question.¹⁰⁶

¹⁰² CPL Art54; Ministry of Public Security’s 公安机关办理行政案件程序规定, (“Public Security Regulation on Procedures for Handling of Administrative Cases”), Art24, <http://www.mps.gov.cn/n16/n1282/n3493/n3823/n442421/3486753.html>, accessed 11 August 2015. English translation is available at <http://chinalawtranslate.com/public-security-regulation-on-procedures-for-handling-of-administrative-cases/?lang=en>, accessed 11 August 2015.; Articles 65 and 187 of Supreme People’s Procuratorate’s, 人民检察院刑事诉讼规则（试行）, (People’s Procuratorate Criminal Procedural Regulation (trial version), Arts65 & 187, issued 16 October 2012 and effective on 1 January 2013 http://www.spp.gov.cn/flfg/gfwj/201212/t20121228_52197.shtml), English translation is available at New York University School of Law’s US-Asia Law Institute: <http://usali.org/wp-content/uploads/2013/08/IBJ-Translation-SPP-Regs1.pdf>; 最高人民法院职务犯罪侦查工作八项禁令, (Supreme People’s Procuratorate Eight Prohibitions on Violation of Law in Carrying out Duties of Investigation) , Art7, 4 August 2015 http://www.spp.gov.cn/xwfbh/wsfbt/201508/t20150806_102571_1.shtml, accessed 2 October 2015.

¹⁰³ CPL Art55.

¹⁰⁴ CPL Art56.

¹⁰⁵ Supreme People’s Court Interpretation on the Application of the People’s Republic of China Criminal Procedure Law, Art99.

¹⁰⁶ Supreme People’s Court Interpretation on the Application of the People’s Republic of China Criminal Procedure Law, Art99.

Actual review of the motion is then supposed to take place at trial, where the court can initiate an investigation into the legality of the methods used to obtain the evidence in question. According to Article 57 of the CPL, “during the investigation in court regarding whether evidence was obtained legally, the people’s procuratorate shall prove that the evidence was obtained legally.”¹⁰⁷ In other words, during this investigation the procuratorate is expected to demonstrate the legality of the relevant evidence based on the existing case file (for example, through interrogation transcripts, audio-visual recordings or medical examination records). If necessary, procurators may ask the court to summon investigators or relevant witnesses to give testimony at trial, and such witnesses are obliged to appear in court.¹⁰⁸ If, following the investigation, the court either confirms that the evidence was obtained illegally or cannot rule out that possibility, then it is required to exclude the evidence from trial.¹⁰⁹

Placing the burden of proof on the procuratorate and court in cases involving allegations of torture is welcome and in accordance with international human rights law and standards. The UN Special Rapporteur on torture has stated that:

“Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.”¹¹⁰

In order for these procedures to be effective in curbing the use of torture to obtain confessions and other evidence, victims and their advocates need first of all to be able to initiate the procedure. Here, however, lawyers and others have raised concerns about courts shifting the burden of proof back to defendants and placing other obstacles to avoid having to initiate exclusionary procedures. Many defendants go through the entire criminal process without any legal representation and may lack the ability to present a motion that will be taken seriously by the court. Several lawyers who have attempted to raise claims of torture at trial told Amnesty International that it was difficult for them to provide or obtain sufficient evidence to prove torture, which seems to reflect an understanding, or at least a practice, that runs contrary to both international and domestic law.

Xi’an lawyer **Liu Zhiqiang** told Amnesty International that even when the court started the procedure, it was seen mostly as a pro forma exercise:

“Even if the court would initiate the procedure for excluding illegal evidence, very often it merely

¹⁰⁷ CPL Art57

¹⁰⁸ CPL Art57; Supreme People’s Court Interpretation on the Application of the People’s Republic of China Criminal Procedure Law, Art101.

¹⁰⁹ CPL Art58.

¹¹⁰ Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, 17 December 2002, para26(k), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/160/49/PDF/G0216049.pdf?OpenElement>, accessed 21 October 2015.

becomes a formality that hardly ever results in the evidence actually being excluded.”¹¹¹

The lack of clear standards regarding what should trigger the process, and a widely held assumption that the defence needs to provide evidence of torture or other ill-treatment rather than the other way around, opens up the possibility that defence motions will be dismissed summarily without any, or with a perfunctory, investigation.

Hunan lawyer **Wen Donghai** told Amnesty International that lawyers in China always have difficulty in collecting evidence of torture to extract confessions, adding that the public security and the procuratorate collude with each other to target lawyers. “Even if you have found the evidence, it is very difficult to have the evidence accepted in the judicial procedure,” he said.¹¹²

Lawyer **Ge Bingyuan** similarly told Amnesty International that allegations of “confessions” being extracted by torture are always blocked by the procuratorate: “They simply tell the lawyer that their investigation showed that the allegation had no basis whatsoever.” He added:

“Although the investigation of allegations of extracting ‘confessions’ through torture is the responsibility of the procuratorate according to legal requirements, it is difficult to effectively implement the requirements when some prosecutors themselves actually also take part in extracting confession through torture.”¹¹³

Henan lawyer **Ren Quanniu** confirmed that from his experience the court often took at face value simple statements from the police or the procuratorates that the torture allegations in the case were unfounded:

“In most cases, the court simply accepts verbal statement asserting that “extracting confessions through torture” is without basis whatsoever.”¹¹⁴

In the case of Sichuan petitioner Wen Zhonghua, handled by lawyer **Chen Jiangan**, the court did actually exclude some testimony after a request from the defence. Wen Zhonghua, together with 10 other taxi owners from Shuangliu county in Sichuan province, was accused of “illegal assembly” after they went to petition in Beijing against new business arrangements. During the trial in June 2014, Wen Zhonghua related that he was forcibly taken back from Beijing to Shuangliu county, where he was taken to a police station and held with handcuffed behind his back. A police officer then forcibly raised the handcuffs, lifting his arms and leaving him in such great pain that he could not stand. He was then tied to a “tiger bench” and beaten by a police officer with a bottle filled with water on his head and face. The police officers threatened to beat him again if he refused to sign the written testimony. **Chen Jiangan** and other lawyers representing Wen and the other taxi owners urged the court to exclude the illegal evidence obtained through torture, and the court did agree to exclude two

¹¹¹ Amnesty International interview with Liu Zhiqiang on 25 August 2015.

¹¹² Amnesty International interview with Wen Donghai on 14 August 2015.

¹¹³ Amnesty International interview with Ge Bingyuan on 1 August 2015. Ge Bingyuan, a pseudonym, is used for security reasons.

¹¹⁴ Amnesty International interview with Ren Quanniu on 14 August 2015.

written testimonies obtained through torture. However it cannot be determined what impact this had on the outcome, as the final verdict in this case is unavailable.¹¹⁵



Artist impression of the 'tiger bench'.

Some academics who specialize in the field of criminal justice and criminal procedure have similar concerns about the poor implementation of the laws and regulations but they mainly attribute the problem to lack of awareness among law enforcement officials and the need for existing laws and regulations to be further improved.

The courts reluctance to initiate or vigorously pursue procedures to exclude evidence obtained through torture is also due to their reluctance to sour critical working relationships with the police and the procuratorate in an institutional environment where the expectation is that they work alongside:

“If any evidence is found to be illegally obtained and excluded by the courts, the person who produced the evidence may assume personal responsibility and be held personally accountable – which would likely ruin the relationship between the court and other authorities” within the judicial system, **Li Li**, an expert on criminal procedure at Sun Yat-sen University's School of Law, told Amnesty

¹¹⁵ Amnesty International interview with Chen Jiangang on 14 August 2015.

International.¹¹⁶

As a result, even though judges “have wide discretion on whether to commence the exclusion procedure” they are generally reluctant to initiate such procedures, she said.

Guo Zhiyuan, professor of College of Criminal Justice and deputy director of the Center for Criminal Law and Justice at China University of Political Science and Law, an expert on exclusion of illegal evidence, told Amnesty International that the lack of implementation of relevant laws and regulations was the result of a general lack of awareness of the laws and regulations among law enforcement officers and judicial officials, in particular in lower courts, procuratorates and public security bureaus in remote areas.¹¹⁷ “The general problem is that the domestic laws on prohibition of extortion of confessions by torture have not been fully introduced to the law enforcement officials,” **Guo Zhiyuan** said. “That results in ineffective implementation of the relevant laws and regulations.”

AUDIOVISUAL RECORDING OF INTERROGATIONS

Audiovisual recordings of interrogation is widely understood to be effective in curbing use of torture or ill-treatment. Beginning with pilot projects in the mid-2000s, China began studying the use of such recording during interrogation, and expansion of the practice soon became the goal of many legal reformers.¹¹⁸ In 2007, new regulations were issued providing that investigators “may” record interrogations in cases involving a possible death sentence “based on need”.¹¹⁹ The importance of audio-visual recordings for determining the legality of a confession was first established with the “Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases” in 2010, with the requirement that prosecutors provide such materials (if available) during investigations to exclude a piece of evidence.¹²⁰

In the amended CPL that took effect in January 2013, Article 121 requires audio or video recording of interrogations in cases with the possibility of a life sentence or the death penalty, as well as “other major criminal cases”.¹²¹ In the Ministry of Public Security’s “Public Security Regulation on Procedures for Handling of Criminal Cases” covering implementation of the CPL, “other major criminal cases” is defined as “serious cases of endangering public safety or violating citizens’ personal rights that lead to death or serious injury, as well as crimes involving organized crime or serious drug offences”.¹²² For all other cases, Article 121 simply says that investigators “may” record interrogations,

¹¹⁶ Amnesty International communication exchange with Li Li on 10 September 2015.

¹¹⁷ Amnesty International interview with Guo Zhiyuan on 26 April 2015.

¹¹⁸ Oriental Outlook, *我国试点讯问制改革 刑讯逼供成诉讼中最大不公 (Our Country’s Pilot Scheme for Interrogation Reform, Extracting Confessions is the Most Unfair Factor in Litigations)*, 26 May 2005, <http://news.sina.com.cn/c/2005-05-26/13076756336.shtml>, accessed 29 October 2015.

¹¹⁹ 关于进一步严格依法办案确保办理死刑案件质量的意见, “Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases”, Art 11. http://news.xinhuanet.com/legal/2007-03/12/content_5833204.htm, accessed 29 October 2015.

¹²⁰ “Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases”, Art 7(1).

¹²¹ CPL Art 121.

¹²² Ministry of Public Security’s “Public Security Regulation on Procedures for Handling of Criminal Cases”,

but the law makes clear that recording should continue uninterrupted over the entire course of questioning and should be free of any alteration or editing.

In response to CAT's List of Issues 2015, China also claimed that all public security organs "are required to install, in all areas where cases are handled, electronic surveillance equipment that connected to a monitoring centre, thus putting the police's law enforcement activities directly under the gaze of an 'electronic eye'". It also claimed that the vast majority of regions in China have completed renovation of the case handling area to install electronic surveillance equipment. The Chinese government also further claimed that "when carrying out law enforcement activities within the case handling area, it is uniformly required that there be video surveillance and records, to firmly put an end to incidents concerning safety during law enforcement."¹²³

The expanded use of recording in criminal interrogations is a welcome step, but concerns remain about practices designed to weaken the protection promised by recording. Shanghai lawyer **Jiang Siping** expressed a common worry when he told Amnesty:

"The police could beat up a criminal suspect to threaten him to provide a written statement and then start video-recording the interrogation."¹²⁴

Jiang Siping also noted that, even if the police do video-record an interrogation, they rarely provide a copy of the recording to the defence lawyer, making it difficult for the lawyer to collect evidence and provide information about allegations of torture.¹²⁵

In its fifth periodic report to CAT, the Chinese government claimed that the public security organs "are actively deploying and launching law enforcement standardization development, regulating the law enforcement behaviour of public security and people's personnel and preventing the occurrence of such unlawful acts as extracting confessions through torture", but the report did not provide any details about how these measures are being implemented.¹²⁶ The Chinese government also claimed that the courts "carry out prompt and fair trials of cases of infringement of citizens' rights involving torture". To back up this claim, the Chinese government stated in its reply to the Committee's List of Issues 2015 that from 2008 through the first half of 2015, the SPP received 1,321 reports of extracting confession through torture and 17 reports of detainee abuse through a website dedicated to receiving allegations of wrongdoing from members of the public. During the same period, the government said 279 individuals were convicted nationwide of "extracting confessions through torture."

Art203.

¹²³ China's reply to CAT's List of Issues 2015, para32.

¹²⁴ Amnesty International interview with Jiang Siping on 20 August 2015. Jiang Weiping, a pseudonym, is used for safety concerns.

¹²⁵ CPL Art121.

¹²⁶ 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, UN Doc. CAT/C/CHN/5 (Sixth report of China on implementation of UNCAT, 2013), 3 April 2014 (originally 20 June 2013), para29.

A table in the reply provided additional information and breakdown by year.¹²⁷

Date	No. of persons convicted of extracting a confession under torture	No. of persons convicted of obtaining evidence by violence	No. of persons convicted of maltreatment of detainees
2009	60	2	26
2010	60	2	34
2011	36	1	26
2012	49	0	22
2013	32	0	32
2014	31	2	36
2015 Jan-June	11	0	19

It is difficult, however, to draw conclusions from this data about the effectiveness of recent efforts to curtail the use of torture in China, because the general decline in prosecutions for extracting confessions through torture could be attributable either to a decline in criminal incidents or to less vigorous prosecution of such cases.

¹²⁷ China's reply to CAT's List of Issues 2015, para22.

PATTERNS IN JUDICIAL HANDLING OF TORTURE CLAIMS

“Though the defendant . . . claimed that his confession of guilt was extracted by investigators through torture, he did not provide any concrete leads or relevant evidence to prove the claim. Moreover, he never raised objections to his confession of guilt regarding these facts during his time in the Feng County Detention Centre. Therefore, this court rules that [the defendant’s] confession can be used as evidence.”

Feng County People’s Court criminal verdict, 11 February 2015

In addition to reviewing domestic laws and regulations and conducting interviews with lawyers and academics on the implementation of the domestic laws on prohibition of torture and other ill-treatment and excluding illegal evidence, Amnesty International also reviewed court verdicts to see how courts in China deal with allegations of extracting “confessions” through torture during trials.

To this end, Amnesty International made use of the national online database of court documents maintained as part of the website of the Supreme People’s Court.¹²⁸ Since January 2014, this database has been collecting verdicts, judgements and other decisions from basic-level, intermediate and provincial courts from around the country and serves as a platform for promoting greater transparency of judicial work. Using the database’s search functionality, Amnesty International carried out a keyword search for the phrase “extraction of confession through torture” (*xingxun bigong*), retrieving 1,898 results from more than 127,000 first-instance verdicts, second-instance appellate decisions and other criminal-court documents for the nine-month period from January to September

¹²⁸ 中国裁判文书网, (Judicial opinions of China), <http://www.court.gov.cn/zgcpwsw>, accessed 30 September 2015.

2015.

The nature of this data set presents a number of challenges for any attempt to present a definitive or predictive account of the way torture claims are handled by the Chinese judicial system. First, though the verdict database intends to have full national coverage and is the most comprehensive resource of its kind currently available, it remains far from exhaustive. Some regions have yet to bring all of their courts online, and policies aimed at protecting state secrets and other sensitive information prohibit the publication of court documents related to significant parts of the criminal justice system - for example, cases involving national security offences or the death penalty. Second, because Chinese court decisions represent a sometimes heavily edited account of the adjudication process, they do not necessarily reveal the full extent of defence arguments, witness testimony or courtroom investigation. It is possible, in other words, that a court's handling of a torture claim was less perfunctory than what is described in the verdict. It is also worth noting that the number of motions to suppress confessions extracted through torture only hints at the prevalence of torture in the criminal justice system, as it fails to capture instances in which victims do not raise torture claims because they lack defence counsel or in which the allegations they do make are not raised by their lawyer.

In consideration of these challenges, Amnesty International opted to carry out an analysis of 590 first- and second-instance court decisions in which torture claims were raised by defendants and their lawyers at trial in order to identify some key patterns in the ways that Chinese courts deal with such claims. The primary objective was to see whether new procedures introduced to facilitate exclusion of illegal evidence are being put to use and what, if any, impact they may have on helping to curb the practice of using torture to extract confessions. From this analysis, it is possible to conclude that though Chinese courts are making use of the new procedures and showing a heightened concern with demonstrating that defendants are not being convicted on the basis of confessions extracted through torture, there remain serious problems of inconsistent implementation, perfunctory investigation of torture allegations and failure to hold perpetrators accountable for their actions.

Of the 590 court documents addressing defendant claims of confessions extracted through torture, courts upheld motions to suppress the confessions and excluded the illegal evidence obtained from the confessions in only 16 cases. Only one of these 16 cases resulted in acquittal, with the rest ending in conviction on the basis of other evidence.

The court documents offer varying levels of detail with respect to both torture allegations and the process by which courts reached their decisions about whether or not to exclude evidence. The most common reason cited by courts for rejecting a claim of torture is that the defence provided insufficient information about the details of the alleged extraction of confessions through torture. This reveals the most concerning problem in the handling of torture claims under the current procedures - namely, improper application of the burden of proof. In making explicit reference to absence of "leads or documents", courts appear to be giving particular weight to the requirement under CPL Article 56 that the defence offer some sort of showing of illegality before initiating any exclusionary procedure. But because of the way in which verdicts summarize defence arguments, it is impossible to know exactly what details, if any, the defendant or his lawyer actually provided and establish whether the court is applying the law correctly. The fact that some verdicts reject allegations of torture on the basis of failure of the defence to provide "evidence" (*zhengju*) suggests that there remains a significant risk of Article 56 being interpreted - deliberately or otherwise - as a defence responsibility to produce evidence, even, as noted, when CPL Article 57 unequivocally provides that the burden of proof is on the procuratorate.

Regardless of the interpretation of these provisions, and as also noted above, under international law and standards the burden of proof lies with the procuratorate to show that evidence was obtained lawfully and statements were provided freely, including without torture or other ill-treatment, not with the defendant to prove the allegation.

After launching an investigation into allegations that a confession was extracted through torture, the court can use a variety of evidence to reach its conclusion. Medical records are one often-cited type of evidence, serving as the deciding factor in about 25 per cent of the cases reviewed. Ordinarily, this involves comparing the records of medical examination upon intake at the detention centre with medical records from a later date in order to demonstrate the absence of physical injuries. Besides the fact that not all forms of torture or other ill-treatment can be revealed through physical examination, the available medical reports do not always correspond well to interrogation dates at issue. For example, a court in the Xinjiang Uighur Autonomous Region (XUAR) upheld a torture claim by a defendant facing theft charges in part because the prosecution only provided a medical report from intake without any additional report from after the confession in question was provided.¹²⁹

Audiovisual recordings are another important piece of evidence cited in decisions about torture claims, decisive in about 20 per cent of cases the cases reviewed. More and more interrogation facilities have been equipped with recording devices in recent years, in large part to demonstrate that confessions were obtained legally. Verdicts do not often make clear how this evidence is used at trial. At a first-instance trial at a county-level court in Hunan Province, a recording was reviewed in the presence of both the defence attorney and one of the police investigators before the court ruled to suppress the confession because it could not rule out the possibility that the confession was extracted through torture (without providing any explanation of why it reached that determination).¹³⁰ The lack of detail on how the court reviews audiovisual evidence is concerning, especially with respect to questions of whether recordings are complete or have otherwise been tampered with.

Testimony by investigators is another source of evidence frequently examined in exclusionary proceedings, cited as decisive in about 15 per cent of the cases reviewed. Though CPL Article 57 gives courts the power to compel investigators to appear in court to provide testimony, this power was only exercised in a handful of the cases. More often, courts refer to written affidavits from specific investigators (or even the police unit in question) stating that "no torture took place," without any indication of how that statement was verified or what steps went into arriving at that determination.

There are some cases in which the defendant claims that torture took place under *shuanggui*, the Communist Party disciplinary investigation measure that often precedes criminal investigations involving charges of graft or corruption. As *shuanggui* is a party system and not part of the criminal

¹²⁹ 新疆生产建设兵团乌鲁木齐垦区人民法院刑事判决书（2015）乌垦刑初字第2号, (Wuluke Reclamation Area People's Court criminal verdict), 12 March 2015, http://www.court.gov.cn/zqcpwsw/bt/xjcsjstbdeszjrmfy/wlkkqrmfy/xs/201504/t20150403_7267704.htm, accessed 30 September 2015.

¹³⁰ 湖南省衡南县人民法院刑事判决书（2014）南法刑初字第209号, (Hengnan County People's Court criminal verdict), 7 February 2015, http://www.court.gov.cn/zqcpwsw/hun/hnshyszjrmfy/hnxrmfy/xs/201503/t20150304_6792708.htm, accessed 30 September 2015.

procedure, the courts ruled in all these cases that there was no role for them to initiate the procedure to investigate the claims of extracting confessions through torture in these cases or exclude the evidence obtained through torture through this process. This is in clear violation of the obligations under UNCAT to investigate every report or complaint and bring those accountable to justice, as well as to exclude any statement obtained by torture (except against suspected torturers) irrespective of the identity of the perpetrators.

For example, in a second-instance trial carried out by the Chongqing Number Two Intermediate People's Court, a former local official convicted of graft and dereliction of duty alleged that inspectors had dragged him from his office to the basement of a local hotel, where they used "many types" of torture to extract his confession. In response, the court noted that the allegations involved a "lawful" investigation by the discipline inspection committee, that evidence obtained during this investigation had not been used as the basis for conviction in his case, and that the legality of discipline inspection committee procedures did not fall under the purview of Chinese people's courts. Consequently, the court denied the request to seek closed-circuit camera footage from the hotel or carry out forensic tests on clothing worn during the investigation.¹³¹

Although it is difficult to explain the low number of verdicts that mention extracting confession through torture, it may show the difficulty for lawyers to help their clients to file complaints about extracting "confessions" through torture to the procuratorate and to ask the court to initiate the procedure to exclude illegal evidence. For one thing, only 59 per cent of the torture claims in the cases under review were raised by defendants represented by a lawyer. Even when the court decision references a defence complaint of torture, the decision often fails to make clear that the court has formally initiated the procedure to exclude illegal evidence or indicate whether the procuratorate undertook specific steps to investigate the claim. Only five decisions make reference to a pre-trial conference, which under CPL Article 182 gives defence counsel the opportunity to present a formal motion to exclude illegal evidence, including confessions extracted through torture. It is difficult to say whether the failure to make use of this relatively new procedure rests more with courts' resistance or lawyers' unfamiliarity, but from Amnesty International's interviews with lawyers and victims of torture described above, lawyers often encounter substantial obstacles in trying to file complaints of torture with the procuratorate and getting courts to initiate procedures for excluding illegal evidence, especially in "sensitive" cases involving human rights activists, Falun Gong practitioners or petitioners.

Amnesty International also observed a significant number of criminal verdicts in which no complaint of torture was raised that nevertheless made note of evidence (such as audiovisual recordings) to demonstrate that the confession was provided freely without use of torture. It appears that, especially as audiovisual recording becomes more universally available, prosecutors may be including such evidence to demonstrate that evidence has been obtained lawfully in recognition of the heightened concern about torture throughout the criminal justice system and to defend against the possibility of defendants recanting at trial.

While not conclusive, the verdicts do seem to show that courts are inconsistently applying the process

¹³¹ 重庆市第二中级人民法院刑事裁定书（2015）渝二中法刑终字第 00040 号, (Chongqing Number Two Intermediate People's Court criminal decision), 8 April 2015, http://www.court.gov.cn/zqcpwsw/cq/zqsdezjrmfy/xs/201506/t20150611_8533506.htm, accessed 30 September 2015.

by which claims of extracting “confessions” through torture and excluding illegal evidence are handled. All too often the verdicts either fail to go into enough details to determine if a thorough investigation was undertaken by the procuratorate as required, or if the perfunctory wording actually demonstrate a corresponding casual treatment of the claims and approach to the procedures. At the very least, the low numbers of court rulings that confessions were extracted through torture and illegal evidence excluded does not appear to reflect the estimates of the severity of the problem as noted by practitioners in the system, leading to concerns that much torture goes on unaddressed and torture “confessions” continue to be admitted as evidence.

CONCLUSION

“We must let the authority of the Constitution and the law be safeguarded . . . guarantee that judicial power and prosecutorial power is exercised according to the law, independently and fairly, perfect judicial guarantee systems for human rights.”

[Communiqué of the 3rd Plenum of the 18th Party Congress](#), November 2013

As Amnesty International has highlighted in many places throughout this report, the Chinese government has taken several positive steps with respect to reforming its laws and legal procedures in the interest of curbing the use of torture in the country's criminal justice system. Of particular note are the introduction in 2010 of new procedures aimed at preventing the use of confessions extracted through torture and other illegal evidence at trial, which were subsequently incorporated into amendments to the CPL that took effect in 2013.

Despite these positive developments, however, it is clear that China's laws and regulations regarding torture remain deficient and incompatible with international law. The absence of a clear definition of torture in Chinese law, one that encompasses mental torture as required by Article 1 of UNCAT, is a serious problem that has been identified repeatedly by CAT and by Manfred Nowak, the former UN Special Rapporteur on torture. CAT has also repeatedly pointed out that the widespread practice of arbitrary detention and prolonged pre-trial detention in China exposes individuals to a high risk of torture and other ill-treatment.

These concerns have been substantiated through Amnesty International's interviews with mainland Chinese lawyers that have been presented in this report. Some of these lawyers have represented individuals who have been tortured or subjected to ill-treatment in unofficial detention facilities, while other lawyers have themselves even become victims of torture or ill-treatment as a result of their advocacy. Lawyers report that restrictions on their access to detainees puts those detainees at higher risk of being tortured by investigators seeking confessions. Lawyers also express frustration at the ineffectiveness of the procedures for raising allegations of torture at court, saying that the dominant position of public security in the legal system, procuratorates' dual responsibilities of prosecution and police oversight and the absence of judicial independence mean that courts rarely exclude illegal evidence obtained through torture as required by law.

Several mainland Chinese academics specializing in the field of criminal justice told Amnesty International that these failures to implement China's existing laws and regulations prohibiting

extraction of confessions through torture are due, in part, to a lack of awareness among law-enforcement officials. They also say, however, that China's legal framework concerning torture needs to be strengthened and that work on new rules is underway that promises to further clarify the standards and procedures for defining the scope of torture and excluding illegal evidence.

Based on Amnesty International's analysis of China's domestic law and its obligations to implement international law and standards, as well as interviews with Chinese lawyers and legal academics, we can conclude that, whether primarily through lack of awareness or through lack of will, the Chinese authorities are failing to implement the recent laws and regulations aimed at curbing the use of confessions extracted through torture. As a result, there has yet been very little improvement in eradicating the pervasive use of torture in the Chinese criminal justice system. In light of these findings, Amnesty International makes the following recommendations to the Chinese government.

RECOMMENDATIONS

Amnesty International recommends the Chinese government:

- **Bring Chinese law into line with the absolute prohibition against torture and other ill-treatment under international law, specifically:**
 - Amend the domestic definition of the crime of torture to ensure that it contains all elements of Article 1(1) of the Convention against Torture;
 - Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and take immediate steps to create independent, professional, well-resourced National Preventive Mechanisms with unfettered access to all places where people are deprived of liberty and to all such people as provided in that Protocol;
 - Ratify the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance, and incorporate their provisions into Chinese law;
 - Implement all recommendations made by UN mechanisms in respect to combatting torture and other ill-treatment, in particular those by the Committee against Torture and the Special Rapporteur on Torture.
- **Ensure in law, policy and practice that all individuals deprived of their liberty by the state are treated in compliance with China's obligations under international law, specifically:**
 - Ensure that individuals taken into custody are formally accounted for and are only held in officially recognized places of detention;
 - Prohibit all forms of incommunicado detention;
 - Ensure detainees have effective access to family members, lawyers, and medical care on request or as necessary;
 - Repeal articles in the Criminal Procedure Law that allow suspects charged with terrorism, major bribery or state security offenses to be subjected to up to six months of incommunicado detention under "residential surveillance in a designated location" and end all related practices;
 - Abolish all forms of administrative detention, close down all places of detention which deprive individuals of their liberty arbitrarily or in violation of the right to fair trial, to judicial oversight and other safeguards against torture and other ill-treatment;

- Ensure that individuals detained are immediately informed of the reasons for their arrest, provided with full information about their rights, and can promptly and effectively challenge their detention before an independent judicial body that has the power to order their release;
 - Ensure that all detainees are either formally charged with an internationally recognizable criminal offence and remanded by an independent court pending trials that comply with international standards or released;
 - Ensure effective monitoring of places of detention, including by granting access to places of detention to domestic and international human rights groups.
- **Institute effective safeguards against the use of statements obtained through torture and other ill-treatment in judicial proceedings, specifically:**
- Ensure that all police interrogations are video-recorded in their entirety, and that a complete copy of the interrogations be made available to the defence and the court. Take specific steps to prevent the police or other interrogating agencies from withholding, deleting or manipulating video or other records of interrogations;
 - Ensure that confessions made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in proceedings;
 - Ensure that no statement obtained under torture or other ill-treatment is invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was made.
- **Amend the Criminal Law and the Criminal Procedure Law to bring them into line with international law and standards, specifically:**
- Ensure Article 247 of the Criminal Law extends the prohibition of torture and other ill-treatment by perpetrators to all acts of torture and other ill-treatment, not only the behaviours of extracting confessions and witness testimonies;
 - Ensure Article 248 of the Criminal Law includes the prohibition of the intentional, purposeful (or discriminatory) infliction of both severe physical and mental pain or suffering on detainees;
 - Abolish article 306 of the Criminal Law, which allows prosecution of lawyers who advise a client to retract a forced “confession”;
 - Broaden Article 54 of the Criminal Procedure Law on the exclusion of illegally obtained evidence and clarify that the burden of proving that evidence was obtained legally is on the procurators.
- **In parallel, ensure that new rules on the exclusion of illegally obtained “evidence”:**
- Broaden the definition of what constitutes illegally obtained evidence to include evidence taken through exhausting interrogation sessions, intimidation, threats and other mental forms of torture or other ill-treatment in addition to physical abuse;
 - Establish clearly that once a judicial body is confronted with signs or an allegation of torture or other ill-treatment, the burden of proof rests with police and procurators to demonstrate that any statements obtained from the person concerned have been rendered freely, and are not the result of other human rights violations.
- **Strengthen the role, and safeguard the rights, of lawyers:**
- Ensure that all detainees have a legally enforceable right to legal counsel of their choice promptly following arrest and to have a lawyer present at all times during interrogation;

- Allow the development of an independent legal profession so that lawyers and legal activists are able to carry out their work without harassment, intimidation, arbitrary restrictions and fear of detention, torture and other ill-treatment or criminal prosecution;
 - Make the criteria and process for renewing lawyers' and law firms' licenses transparent and base it solely on professional qualifications and conduct, and end the policy of suspending or invalidating the licenses of such professionals for political reasons;
 - Ensure that lawyers' associations and their local branches are fully independent from the authorities and self-governing so that they can adequately represent the interests of the legal profession and actively defend lawyers facing illegitimate official sanctions, in line with international human rights law and standards, including General Comment No. 32 of the Human Rights Committee, and the United Nations Basic Principles on the Role of Lawyers;
 - Abolish statutes authorizing judicial bureaus to exercise "supervision and guidance" of lawyers associations.
- **End the practice of using restraints and other law enforcement equipment or techniques that are unnecessary or abusive:**
- Prohibit the use of abusive and unnecessary restraint techniques by law enforcement officials such as stress positions and methods that pose a substantial risk of unwarranted injury, unnecessary pain, or that constitute torture or other ill-treatment;
 - Ban the production and use of restraints with inherent effects likely to result in unwarranted injuries, torture or other ill-treatment, such as weighted leg cuffs, thumb cuffs, combination cuffs which fasten around the neck, combination handcuffs linked to leg cuffs, and restraint chairs;
 - Revise relevant regulations to bring the use of restraint techniques and other law enforcement equipment into line with international standards, in particular the UN Basic Principles on the Use of Force and Firearms, the UN Code of Conduct for Law Enforcement Officials, and the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).
- **Enable medical professionals to identify and report signs of torture and ill-treatment:**
- Ensure that suspects have access to adequate medical care;
 - Ensure that all reports of torture and other ill-treatment are promptly, impartially, independently and effectively investigated, in order to bring perpetrators to justice, including by conducting medical examinations in line with the Istanbul Protocol;
 - Explicitly require that all detainees are promptly offered medical examinations upon being taken into custody, at entry, exit, during transfers, and periodically during detention, and that the records of such examinations are made accessible to detainees and representatives of their choice;
 - Train medical professionals who work with detention centers to identify evidence of torture and other ill-treatment, both physical and mental, and enable them to report cases to an appropriate authority independent of the allegedly responsible entity;
 - Create a system for medical professionals to submit reports of human rights violations anonymously, to an appropriate authority independent of the allegedly responsible entity and take measures to prevent any negative repercussions for medical professionals who make such reports;

- Ensure that relatives of individuals who have died in detention can choose a forensic expert of their choice to conduct or take part in any forensic investigations.

- **Provide redress for victims of torture and other ill-treatment:**
 - Ensure that in all cases where persons were convicted on the basis of “confessions” extracted under torture or other ill-treatment, such convictions are immediately vacated and the persons released, or else the cases are promptly re-tried by independent civilian courts in fair proceedings that exclude such statements, and without recourse to the death penalty;
 - Provide for survivors of torture and their dependents full and prompt reparation in accordance with international law and standards, including restitution, fair and adequate financial compensation, appropriate medical care and rehabilitation, satisfaction and guarantees of non-repetition.

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