



# Human Rights Watch Submission to the United Nations Committee against Torture During its Consideration of the Fifth Periodic Report of the People's Republic of China *November 2015*

## Introduction

This memorandum, submitted to the United Nations Committee Against Torture (“the Committee”) ahead of its upcoming review of China, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the Chinese government’s (“the government”) compliance with the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). It contains information on how China’s treatment of detainees is inconsistent with the Convention, and proposes specific recommendations that Committee members could raise with the government of China.

Human Rights Watch has closely monitored the human rights situation in China for more than two decades. In May 2015, Human Rights Watch published a 145-page report on the treatment of pretrial detainees in China’s criminal detention system (“May report”).<sup>1</sup> It was based on first-hand interviews and documentary evidence, including a government database of court verdicts, and finds that torture remains routine in these facilities. This is despite government measures adopted since the Committee’s last review of the government in 2008 (“2008 review”), which included a new “exclusionary rule” that prohibits the use of evidence directly obtained through torture and the videotaping of certain interrogations. Because the criminal justice system continues to value confessions above all other forms of evidence, and because police wield considerably greater power than the judiciary and the procuratorate, there are few ways for suspects to avoid or find redress for torture at the hands of the police.

Human Rights Watch has called on the government not only to vigorously implement existing laws, but most importantly, to carry out fundamental reforms in the system that empower defense lawyers, the judiciary, and independent monitors.

The Committee’s upcoming review takes place against the backdrop of a broader deterioration in the human rights climate in China, with significant encroachments by the government on the freedoms of expression, association and religion, as the authorities have moved to narrow the space for civil society. Since President Xi Jinping came to power in March 2013, his government has detained and imprisoned

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<sup>1</sup> Human Rights Watch, “Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China,” May 13, 2015, p.16-17.



### ***B. Right to access lawyers restricted***

Under Chinese law, suspects have no right to have lawyers present while they are interrogated in police stations and detention centers.<sup>6</sup> The government has not made any attempt at guaranteeing such access since the 2008 review.

In “crimes endangering State security” cases, it is clear that existing procedures as stated in the government’s LOI reply are inadequate in preventing officers from abusing the process to deny suspects’ rights to access their lawyers.<sup>7</sup> The government has also failed to provide actual data requested by the Committee in the LOI regarding the number of requests for approval, the number of such requests approved versus those rejected, or information on the number or outcomes of complaints regarding access to legal counsel.<sup>8</sup>

Currently, police alone have the power to deny such access, and can do so for an indefinite period of time until they decide that “circumstances impeding investigation” have “disappeared.”<sup>9</sup> There are also no effective means to challenge such decisions. Human Rights Watch has documented numerous cases in which officers refuse to let lawyers access their clients for lengthy periods of time, citing “state security” concerns. This is the case even when the detainees are not charged with state security crimes, such as when they are held on public order charges. In this recent crackdown on human rights lawyers, most detained suspects have been held without access to lawyers, raising serious concerns about torture.

Human Rights Watch’s May report documents lawyers’ reluctance to represent clients who were tortured.<sup>10</sup> That reluctance stemmed in part from a fear of being subjected to article 306 of the Criminal Law, which penalizes lawyers who “entice” suspects to “falsify evidence” or “change their testimony contrary to facts.”<sup>11</sup> The Chinese government’s LOI reply claims that the article aimed to “protect the rights of lawyers while at the same time prevent and punish illegal activities.”<sup>12</sup> It also claimed that they are “prudent” in prosecuting these cases, which must be done through special procedures. However, the government’s LOI reply fails to explain how lawyers’ rights are effectively protected, or by whom. Defense lawyers who, for example, advise a client to retract a forced confession, may find themselves the subjects of investigation under this provision, given the close cooperation of the police, the procuratorate, and judges in criminal matters.

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<sup>6</sup> The Criminal Procedure Law (刑事诉讼法, CPL), National People’s Congress, 2013, arts. 116 and 117.

<sup>7</sup> LOI reply, para.3.

<sup>8</sup> LOI, para.3.

<sup>9</sup> LOI reply, para.3.

<sup>10</sup> See Human Rights Watch, “Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China,” May 13, 2015, p.60.

<sup>11</sup> See Human Rights Watch, “Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China,” April 29, 2008, p. 55-61.

<sup>12</sup> LOI reply, para.4.

When the Criminal Law was revised in 2015, two changes put lawyers at further risk of prosecution. One is a revision to article 309 of the Criminal Law. The government's LOI reply claimed that revisions "clarified" the original provision, which read, "Whoever gathers people to stir up trouble in a court or assault the court or beats a judicial officer, thus seriously disrupting the order of the court, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined."<sup>13</sup> But the revised article actually introduced new ambiguity by replacing "thus" with the word "such as" (等), making unclear the scope of actions that could constitute the unlawful behavior of "seriously disrupting the order of the court," and opening the possibility that strong defense objections might fall into this category. The revision also expands punishment to anyone who "insults, slanders and threatens judicial officers or participants in the proceedings," an accusation often used against anyone who interrupt judges and procurators for failing to adhere to legal procedures in court.

Another problematic revision involves article 308, which originally criminalized "retaliation against witnesses." That article has now been expanded to criminalize the "revealing of information that should not be disclosed in a case that is not tried in public in accordance with law, causing the information to be publicly transmitted or other serious consequences." Under Chinese law, certain types of cases can be tried in close trials, including those involving "state secrets."<sup>14</sup> The Chinese government has long had an extremely expansive view of what constitutes a state secret, including information related to "economic and social development" as well as a catch-all "other matters" category. The result is that trials of peaceful critics can also be closed for "state secret" reasons. It is unclear what constitutes "information that should not be disclosed," and lawyers of peaceful critics in these trials are at risk of prosecution for sharing any information with the press or the public. A new set of regulations

(关于依法保障律师执业权利的规定) cited in the government's LOI reply as an improvement to the rights of lawyers also poses some new similar restrictions on lawyers.<sup>15</sup> Instead of having access to clients' case files in all cases, a right of lawyers protected in the Criminal Procedure Law and the Lawyers' Law, the new regulations now require lawyers to seek authorities' permission to get access to files that involve "state secrets."<sup>16</sup> Lawyers are also not allowed to use case files for any other purposes except for the purpose of the court case, including publishing material from them online.<sup>17</sup> Rights lawyers frequently speak to the press or publish information related to their political cases, and are likely to be constrained and put at risk by these changes.

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<sup>13</sup> This is excerpted from the official translation of the Criminal Law on the National People's Congress website, [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384075.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm) (accessed October 23, 2015).

<sup>14</sup> Others include those that involve "personal privacy," "commercial secrets," and those involving juveniles. In cases involving commercial secrets, the persons involved in the cases need to make an application to the court for a closed trial. See articles 183 and 274 of the Criminal Procedure Law.

<sup>15</sup> LOI reply, para. 4.

<sup>16</sup> Regulations Regarding the Protection of Lawyers' Right to Practice in Accordance with the Law

(关于依法保障律师执业权利的规定), 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, September 2015, art. 14.

<sup>17</sup> Ibid.

## Recommendations:

- Revise the Criminal Procedure Law (CPL) to ensure that suspects may have lawyers present during any police questioning and interrogations.
- Repeal articles in the CPL that allow suspects charged with terrorism, major corruption, or state security offenses to be denied access to lawyers during police custody.
- Revise the Criminal Law to abolish article 306 and the changes to articles 308 and 309 described above that increase the risk of prosecution of lawyers for defending their clients.

### *C. Right to access families limited and enforced disappearance*

International law requires that states guarantee suspects' right to be able to communicate with family members, including through visits, subject only to restrictions and supervision necessary to the security and order of the facility.<sup>18</sup> According to Chinese law, suspects can meet with their families in the presence of police officers after they obtain permission from the police.<sup>19</sup> But in practice, detention centers severely restrict suspects' communication with their families, thus denying suspects one of their only means to seek help about mistreatment in detention. Detention centers generally do not allow suspects to meet with family members until they are convicted and either choose not to pursue appeals or have exhausted the appeals process.<sup>20</sup> They also do not allow suspects to call their families. While letters are permissible, detention center officials often intercept those that reveal mistreatment.

In 2012, the government revised the CPL to effectively legalize enforced disappearances. As the Committee noted in the LOI, article 83 allows the police not to inform families about detainees' criminal detentions if their families cannot be contacted, or if their cases involve "endangering state security" or "terrorism," and if such notification would "impede investigation."<sup>21</sup> Police alone make that determination during the period of criminal detention, which can be up to 37 days. No effective safeguards exist to prevent disappearance under this article, and no effective remedies to challenge such a determination.

Article 73 of the 2012 CPL revisions also allows police to hold suspects in an undisclosed location for up to six months under "designated residential surveillance" if they "endanger state security" or are involved in "terrorism" or "major corruption." article 37 of the CPL also states that lawyers need to obtain permission from the police before they can meet with their clients in the above three categories. Although

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<sup>18</sup> UN Committee against Torture, Observations on the UN Standard Minimum Rules, paras. 16, 17 and 48; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, para. 19.

<sup>19</sup> Detention Center Regulations, art. 28.

<sup>20</sup> Gao Yifei and Zhang Shaosong, "Rights Discounted: Reflections on the Current State of Suspects' Access to Families (被打折的权利----未决在押人员亲属会见权现状与反思)," *Dongfang Fayan Web*, January 2, 2015, [http://www.dffyw.com/faxuejieti/ss/201501/37756\\_2.html](http://www.dffyw.com/faxuejieti/ss/201501/37756_2.html); Zhao Xiaoyan, "An Exploration of the System and Rights of Suspects' Access to Families (未决人员家属会见权制度探索)," *Legal Daily*, [http://www.legaldaily.com.cn/zfb/content/2012-01/29/content\\_3321843.htm](http://www.legaldaily.com.cn/zfb/content/2012-01/29/content_3321843.htm) (accessed April 30, 2015).

<sup>21</sup> LOI, para.3.

families in these cases have to be notified of the detention, they are not told where the suspects are held. In essence, police can hold these suspects without access to lawyers and families in an undisclosed location for up to six months, leaving them highly vulnerable to torture or ill-treatment.

**Recommendations:**

- Amend the Detention Center Regulations to allow suspects, under reasonable terms of supervision, to receive visits, phone calls, and letters from families without prior detention center approval;
- Repeal articles in the CPL that allow families of certain groups of suspects to be denied notification of their relative's detention and abolish secret detention under "designated residential surveillance."

***D. Medical personnel lack independence (Convention articles 2, 10)***

The government's LOI reply failed to respond to the Committee's question regarding safeguards that "are in place to ensure that medical personnel are able to examine victims out of the hearing and sight of police officers, and are able to report in strict confidentiality signs of torture, without fear of reprisals."<sup>22</sup> Human Rights Watch's May report finds that suspects generally report that they are unable to express concerns to doctors who examine them upon admission to the detention center without fear of being overheard or retaliated against by the officers.<sup>23</sup> The government's LOI reply that doctors can report any abuses they may encounter to the police or the procuratorate is also insufficient: neither the police's internal mechanisms for monitoring police conduct, nor the procuratorate, is independent.

The government claims in its LOI reply that all medical personnel in detention facilities have been given "anti-torture training."<sup>24</sup> It has failed to give details about such training, including whether it involves training these medical professionals to recognize evidence of torture and other mistreatment in accordance with international standards, including the Istanbul Protocol.

**Recommendations:**

- Ensure that suspects have fully confidential access to doctors who operate independently of the police and custodial authorities.
- Train doctors and psychiatrists who work with detention centers to recognize evidence of torture and other mistreatment, both physical and psychological, and require that they report torture cases to an appropriate independent authority.
- Provide a secure and anonymous system for doctors to submit reports of police abuse and take measures to prevent retaliation against doctors who make such reports.

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<sup>22</sup> LOI, para.3.

<sup>23</sup> See Human Rights Watch, "Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China," May 13, 2015, p.62-68.

<sup>24</sup> LOI reply, para.13.

- As part of their evaluation process every two years, evaluate the conduct of doctors who provide services to detention centers; doctors found complicit in obscuring evidence of torture or ill-treatment should be subject to appropriate disciplinary measures such as suspension or removal from practice.

## Deaths in custody (Convention article 11)

The government's LOI reply to the Committee's question regarding "measures taken to ensure that all instances of deaths in custody are independently and impartially investigated and that those responsible ... are prosecuted"<sup>25</sup> consists of a list of the regulations for handling deaths in custody.<sup>26</sup> However, the reply contained none of the statistical data on these deaths or concrete information regarding the outcomes of complaints, investigations, or penalties for violators of these regulations.

Human Rights Watch's research included interviews of family members of detainees who died in custody, and those interviews revealed that these procedures are often ignored in practice.<sup>27</sup> Family members were told by police that suspects had died of "natural causes"; in most cases, it was unclear to the family members whether investigations had been conducted at all. Chinese regulations provide that families should be consulted in the process of conducting an autopsy, and authorities "should allow" them to involve forensic experts other than those chosen by the police or the procuratorate.<sup>28</sup> However, interviewees told Human Rights Watch that they were not allowed to use forensic experts other than those appointed by the police.

### Recommendations:

- Revise the Regulations on the Management of Deaths in Custody to ensure that families have access to independent forensic experts and the power to authorize them directly and immediately to conduct autopsies.
- Ensure that police and the procuratorate investigate not only alleged physical abuse but also alleged denial of medical treatment, negligence, or delay in providing such treatment in cases of death in custody.

## Use of restraints and disciplinary procedures (Convention articles 11, 16)

The government's reply claiming that solitary confinement ("xiaohao")(小号) is used "as a management approach, not punitive measure" is patently untrue.<sup>29</sup> Article 36 of its Detention Center Regulations states that solitary confinement can be used on those detainees who "seriously violate" rules in detention centers and those who refuse to "change their ways upon education." Behaviors that warrant such

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<sup>25</sup> LOI, para. 15.

<sup>26</sup> LOI reply, para.15.

<sup>27</sup> See Human Rights Watch, "Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China," May 13, 2015, p.47-53.

<sup>28</sup> Rules on the Handling of Deaths in Detention Centers, art. 13.

<sup>29</sup> LOI reply, para.19.

confinement include, according to article 47 of the Implementing Methods of the Detention Center Regulations, “spreading corrupt thoughts” or getting into fights. These regulations state clearly that solitary confinement is used in pretrial detention facilities, and for the purpose of punishment, in contradiction to the Committee against Torture’s opinion that the use of solitary confinement should be prohibited for pre-trial detainees.<sup>30</sup> Interviewees who spoke to Human Rights Watch said that detainees who engaged in fights and who were “noisy” are punished with solitary confinement; political detainees who protested against their treatment also found themselves held in small rooms without human contact for days.<sup>31</sup>

The government’s reply also failed to note any due process rights the detainees have with regard to the use of restraints.

The government’s reply that it does not use of “tiger chairs,” but uses “interrogation chairs in line with national standards,” is misleading;<sup>32</sup> they are the same and enable torture.<sup>33</sup> According to a written statement by the Guiyang City Public Security Bureau, “the ‘tiger chair’ is in fact an ‘interrogation chair’ used by the public security.”<sup>34</sup> According to a Ministry of Public Security notice, interrogation rooms should be equipped with “special seats” for suspects that should be “secure” and “fixed to the ground” with “safety features.”<sup>35</sup> However, the notice did not give details as to the kinds of features this seat should have, the circumstances under which the chair should be used, or how long suspects can be strapped to the chair. While police have contended the chair is to protect suspects from hurting themselves or others, the relevant regulations governing police equipment and restraints do not include interrogation chairs.<sup>36</sup>

The government’s LOI reply acknowledges that inmates on death row are shackled, but it fails to note the duration of the shackling as requested by the Committee.<sup>37</sup> Death row inmates and family members who spoke to Human Rights Watch said that these suspects are shackled 24 hours a day, and since they are shackled from the moment they are convicted, they can be shackled for years while their appeals are pending. Lawyers, family members, and former death row inmates told Human Rights Watch that the

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<sup>30</sup> Principles on Extrajudicial Executions, principle 9.

<sup>31</sup> See Human Rights Watch, “Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China,” May 13, 2015, p.45-46.

<sup>32</sup> Tiger chairs, typically made of metal, are designed to immobilize suspects during interrogations. Former detainees told Human Rights Watch that they were strapped in this metal chair for hours and even days, deprived of sleep, and immobilized until their legs and buttocks were swollen.

<sup>33</sup> LOI reply, para.19.

<sup>34</sup> “Police Denies Using “Tiger Chairs” in Forcing Confession in the Triad Case of Guizhou Political Consultative Committee Member (贵州政协委员涉黑案 警方否认用“老虎凳”逼供,供”Jinqian Zaixian (金黔在线), June 20, 2012 <http://news.shm.com.cn/2012-06/20/content> (accessed April 22, 2014).

<sup>35</sup> “The MPS on the Issuance of ‘Rules Regarding the Settings in Places of Law Enforcement and Investigation’ (公安部关于印发《公安机关执法办案场所设置规范》的通知),” *MPS*, 2010, art. 13.

<sup>36</sup> “Regulations of the People’s Republic of China on Use of Police Implements and Arms by the People’s Police (中华人民共和国人民警察使用警械和武器条例),” *State Council*, 2014.

<sup>37</sup> LOI reply, para.37.



shackling involves both handcuffs and leg irons, and in many cases their hands and feet are shackled together, leaving them unable to stand up straight.<sup>38</sup>

### **Recommendations:**

- Amend the Detention Center Regulations to prohibit the use of solitary confinement of pretrial detainees; to ensure that detainees' due process rights are respected when subjecting them to disciplinary actions; and to establish mechanisms for lawyers and suspects to effectively challenge these actions.
- Revise the Regulations on the Use of Police Equipment and Weapons to bring the use of restraints in line with relevant international standards; prohibit the use of chains or irons as forms of restraints; and prohibit the use of chairs with built-in restraints ("tiger chairs" or "interrogation chairs") for interrogations.

### **The lack of independence of the procuratorate (Convention articles 12, 13)**

The procuratorate is, in theory, charged with supervising police conduct, and is repeatedly cited in the government's LOI reply as a safeguard against police abuse. For example, it is tasked with reviewing and approving police requests for extending the period of criminal detention, or ensuring that police do not withhold notification of families in violation with the law. But the procuratorate's "dual role" both as the supervisor of the police and of prosecutor of crimes make its independence questionable. While the government's LOI reply emphasizes that "two different departments" within the procuratorate carry out these conflicting functions "independently and objectively," it is unclear how a department within the procuratorate can exercise such independence.<sup>39</sup> The procuratorate as a whole is required under the Chinese law enforcement system to cooperate with the police and the court to solve crimes under the leadership and coordination of the CCP's Political and Legal Committee.<sup>40</sup>

### **Recommendations:**

- Establish an independent Civilian Police Commission composed of independent members with knowledge of detention facility conditions and police practices and provide adequate funding to it by law. The Commission should be empowered to conduct investigations with respect to alleged police misconduct, make unannounced visits to detention facilities, publish statistics, make public recommendations, provide compensation to victims of torture or ill-treatment, and determine demotion or suspension for officers who have engaged in misconduct and recommend to the procuratorate those who should face criminal charges.

### **Rehabilitation (Convention article 14)**

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<sup>38</sup> See Human Rights Watch, "Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China," May 13, 2015, p.42-44.

<sup>39</sup> LOI reply, para.28.

<sup>40</sup> CPL, art 7.

The LOI asked the government to provide information on “the extent to which rehabilitation programmes, including medical and psychological support, are available to victims of torture and ill-treatment, including in cases of domestic or gender-based violence and of trafficking.”<sup>41</sup> The government’s reply failed to respond to this question, except in the cases of domestic violence and trafficking women and girls.<sup>42</sup> Human Rights Watch is not aware of any rehabilitation programs run or supported by the government for victims of police abuse or torture, or any private or non-profit programs openly available for such victims.

**Recommendations:**

- The Chinese government should establish and/or allow the establishment of rehabilitation centers to treat victims of police abuse.

**No right to silence (Convention article 15)**

The government’s LOI reply that the “relevant provisions of the Criminal Procedure Law is consistent with the spirit of the right to silence” is inaccurate.<sup>43</sup> Suspects have no rights to remain silent under Chinese law. Although the Chinese government introduced a provision in the revisions of the 2012 CPL that allows suspects to refuse to answer incriminating questions, the law continues to require them to “answer truthfully” in police interrogations, rendering the new provision largely meaningless and ineffective.<sup>44</sup>

**Recommendations:**

- Revise the Criminal Procedure Law to stipulate suspects’ right to remain silent during questioning.

We look forward to the spotlight brought by the Committee’s review on China’s deeply problematic torture record, and the resulting authoritative assessment of the steps needed to address the concerns identified, as a significant contribution toward furthering urgently needed reforms.

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<sup>41</sup> LOI, para. 29.

<sup>42</sup> LOI reply, para. 29.

<sup>43</sup> LOI reply, para. 32.

<sup>44</sup> CPL, art. 118.