HUMAN RIGHTS WATCH

TIGER CHAIRS AND CELL BOSSES

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Glossary of Terms

CCP	Chinese Communist Party
CPL	Criminal Procedure Law
EU	European Union
MPS	Ministry of Public Security
PRC	People's Republic of China
PSB	Public Security Bureau
SPP	Supreme People's Procuratorate
SPC	Supreme People's Court
UN	United Nations

Summary

In May 2010, Chinese media went into a frenzy over the case of Zhao Zuohai, a 57-year-old man who in 1999 had been convicted of murdering a neighbor. On April 30, 2010, the neighbor reappeared in their village, apparently having merely fled after a violent dispute with Zhao. Zhao, who said police torture in 1999 had led him to confess to a murder he did not commit, was released after 11 years in prison. The Zhao case is one of a number of cases of police brutality that have emerged from across China around 2009 and 2010, prompting a national outcry against such abuse.

The Chinese government adopted legal prohibitions on the mistreatment of persons in custody as early as 1979, ratified the United Nations Convention against Torture in 1988, and launched official campaigns to curb torture in the 1990s. Yet at the time of the 2009 and 2010 outcry, the use of torture and forced confessions had long been endemic to China's criminal justice system. Even Chinese officials had characterized torture in detention as "common," "serious," and "nationwide." It has received attention at the United Nations, by Chinese legal scholars, and in reports of Chinese and international nongovernmental organizations.

Following the 2009 cases, the government announced various measures to curb torture as well as convictions based on evidence wrongfully obtained. The measures included legislative and regulatory reforms, such as prohibitions on using detainee "cell bosses" to manage other detainees, and practical steps such as erecting physical barriers to separate police from criminal suspects and videotaping some interrogations.

In 2012, the National People's Congress revised the country's Criminal Procedure Law to require law enforcement officials to improve access to legal counsel for suspects and to exclude suspects' confessions and written statements obtained through torture. The Ministry of Public Security, the agency in charge of the police, claims that the use of coerced confessions decreased 87 percent in 2012, that cell bosses who abuse fellow suspects are "things of the past," and that deaths in custody reached a "historic low" in 2013. Some Chinese legal scholars contend that, due to these efforts, torture is "gradually being curbed" at least for ordinary, non-political criminal defendants.

This report— based on Human Rights Watch analysis of hundreds of newly published court verdicts from across the country and interviews with 48 recent detainees, family members, lawyers, and former officials—shows that the measures adopted between 2009 and 2013 have not gone far enough.

The detainees and defense lawyers we spoke with said that some police officers deliberately thwart the new protections by taking detainees from official detention facilities or use torture methods that leave no visible injuries. In other cases, procurators and judges ignore clear evidence of mistreatment, rendering China's new "exclusionary rule"—which prohibits the use of evidence directly obtained through torture—of no help. Out of 432 court verdicts from early 2014 examined by Human Rights Watch in which suspects alleged torture, only 23 resulted in evidence being thrown out by the court; none led to acquittal of the defendant.

While measures such as the exclusionary rule and videotaped interrogations are positive, they are being grafted onto a criminal justice system that still affords the police enormous power over the judiciary and offers police numerous opportunities to abuse suspects. For example, the Ministry of Public Security operates the detention centers, not the Ministry of Justice, permitting police unlimited and unsupervised access to detainees. Lawyers cannot be present during interrogations and suspects have no right to remain silent, violating their right against self-incrimination. Procurators and judges rarely question or challenge police conduct, and internal oversight mechanisms remain weak. According to academic sources, only a minority of criminal suspects have defense lawyers.

Absent more fundamental reforms in the Chinese criminal justice system that empower defense lawyers, the judiciary, and independent monitors, the elimination of routine torture and ill-treatment is unlikely.

In 2014, the reversal of two verdicts by appeals courts brought positive outcomes, but more than anything the reversals demonstrated the entrenched failings of the existing system. In a landmark case, a court acquitted Nian Bin who spent eight years on death row for the murder of two children based on his confession obtained through torture. In another case, a court in Inner Mongolia issued a posthumous exoneration of Huugjilt, an ethnic Mongolian teenager executed in 1996 for rape and murder also based on a confession obtained through torture. In both cases, the internal mechanisms responsible

for police oversight—police internal supervision units, the procuratorate, and the courts—missed or ignored the use of torture to obtain convictions.

If China's leadership is genuinely committed to legal reform and to addressing growing public frustration over miscarriages of justice, it should move swiftly to ensure that lawyers are present during police interrogations, adopt legislation guaranteeing suspects' right to remain silent, and establish an independent commission to receive and investigate complaints of police abuse. It should also go beyond measures adopted since 2009, which were modifications to a fundamentally abusive system, and instead make systemic changes that strengthen the procuratorate and the judiciary relative to the police. Such reforms should include transferring responsibility for detention facilities to the Ministry of Justice, which currently oversees prisons, and freeing the judiciary from Party control. Allowing a visit by the UN special rapporteur on torture would be a serious indication of commitment to reform.

China's November 2015 review before the UN Committee against Torture affords the Chinese government an important opportunity to demonstrate its commitment to vigorously implementing existing laws, and to making key improvements to eradicate torture and ill-treatment of detainees. Failure to do so will raise larger questions about the government's willingness to bring reforms to improve public confidence in the country's judicial system.

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A central component of the research for this report was our search of a large database of Chinese court verdicts—made possible by a Supreme People's Court (SPC) decision requiring all courts to post decisions online starting January 1, 2014—and our analysis of the resulting subset of verdicts in which suspects alleged police torture. We searched all of the roughly 158,000 verdicts published on the SPC website between January 1, 2014, and April 30, 2014. As noted above, a total of 432 verdicts referenced torture allegations and judges excluded confessions in only 23 cases.

Further analysis of the 432 verdicts shows that very few judges investigated torture allegations in any detail. Thirty-two verdicts mention suspects' alleged torture and then say nothing further about it. In the remaining 400 verdicts, judges addressed the torture

claims, but most often relied solely on documentary evidence (247 of the 400) or on the existing case record with no additional evidentiary sources (118 of the 400). In only 35 verdicts is there any mention of live witness testimony and in every instance those witnesses were police officers; there is no sign that defense witnesses or medical or forensic experts were allowed to testify in relation to a torture claim.

Our analysis of court cases and interviews with former detainees show that police torture and ill-treatment of suspects in pre-trial detention remains a serious concern. Former detainees described physical and psychological torture during police interrogations, including being hung by the wrists, being beaten with police batons or other objects, and prolonged sleep deprivation.

Some said they were restrained for days in so-called "tiger chairs" (used to immobilize suspects during interrogations), handcuffs, or leg irons; one convicted prisoner awaiting review of his death sentence had been handcuffed and shackled for eight years. Some detainees spoke about abuses at the hands of "cell bosses," fellow detainees used by detention center police as de facto managers of each multi-person cell. In some cases, the abuse resulted in death or permanent physical or mental disabilities. Most suspects who complained of torture to the authorities had been accused of common crimes such as theft. Interviewees said torture is particularly severe in major cases with multiple suspects, such as in organized or triad-related crimes.

In most of the cases we examined, police used torture and other ill-treatment to elicit confessions on which convictions could be secured. Abuses were facilitated by suspects' lack of access to lawyers, family members, and doctors not beholden to the police.

Former detainees and relatives described the difficulty of retaining lawyers willing to challenge the police in court over allegations of mistreatment. In addition, many told Human Rights Watch that medical personnel who have the opportunity to report apparent torture or ill-treatment do not do so, denying detainees a critical source to validate their allegations. Videotaped interrogations are routinely manipulated, such as by first torturing the suspects and then taping the confession, further weakening suspects' claims of ill-treatment. Police use of torture outside detention centers means that detainees often live in terror of being taken from the centers, whether for purported transfers to another facility or for any other reason.

As noted above, the exclusionary rule, one of the most important protections established to protect detainees from torture, has also proved to be of limited utility thus far. Lawyers told Human Rights Watch they welcome the rule insofar as it provides an opportunity to challenge police behavior in legal proceedings. However, in practice procurators and judges too often ignore their requests, often providing no reason for doing so, or give them only perfunctory consideration without seeking evidence to corroborate detainees' torture claims.

Judges often evaluate torture claims solely on the basis of documentary evidence that is either produced or controlled by the police and, unlike with live witnesses, is not subject to cross-examination. In the court verdicts Human Rights Watch analyzed, not a single defense witness or expert witness testified regarding the torture claims. Although the exclusionary rule places the burden of proof on the procuratorate to demonstrate that the police obtained evidence legally, judges often continue to expect detainees to prove that torture had taken place.

The extraordinary power of the police is reflected in the pervasive lack of accountability for police abuse, recent reforms notwithstanding. Those whom Human Rights Watch interviewed—including a former judge and a former police officer—agreed that mechanisms to supervise the police are inadequate, and that police officers are rarely held legally accountable for abuse. Among the SPC verdict database cases we found only one prosecution of three police officers responsible for torture, but none served jail time. The lack of prosecutions in turn means that compensation or rehabilitation for victims is especially difficult to obtain. Former detainees who had tried to press claims for compensation said that police at most offered them some money in exchange for their silence, and that it is very difficult to access formal state compensation. Detainees' efforts to seek accountability have produced few positive results and in some cases have even led to further punishment.

Finally, while this report focuses on the mistreatment of ordinary criminal suspects in custody, the torture and ill-treatment of those detained for political reasons remains a severe problem. Political prisoners such as Gao Zhisheng, Guo Feixiong, Hada, Cao Shunli, and countless others have suffered repeated torture and other abuses at the hands of police and cell bosses under police control to punish them for their activism and to deter others from challenging the state. They have experienced much of what is described in this report and often worse.

Key Recommendations

- Transfer the power to manage detention centers from the Ministry of Public Security to the Ministry of Justice;
- Ensure that anyone taken into police custody be promptly brought before a judge, normally within 48 hours of being apprehended;
- Revise the Criminal Procedure Law to ensure that suspects may have lawyers present during any police questioning and interrogations, and stipulate suspects' right to remain silent during questioning;
- Establish an independent Civilian Police Commission with power to conduct investigations with respect to alleged police misconduct, including deaths in custody and police abuse;
- Amend the Detention Center Regulations to allow suspects to receive visits, phone calls, and letters from families without prior detention center approval;
- Ensure that suspects have access to doctors not beholden to the police, and train doctors and psychiatrists who work with detention centers to recognize evidence of torture and other mistreatment, both physical and psychological.

Methodology

Research for this report was conducted by Human Rights Watch researchers in interviews and document reviews conducted between February and September 2014, and in follow-up research through March 2015. As detailed below, the research included our analysis of 432 Chinese court verdicts addressing detainee torture claims comes from a pool of 158,000 verdicts from the first four months of 2014, as well as Chinese media accounts of detainee abuse cases from the same period.

The scope of this research was necessarily limited by constraints imposed by the Chinese government. The government is hostile to research by international human rights organizations, and strictly limits the activities of domestic civil society organizations on a variety of subjects, particularly those related to human rights violations. This study was conducted during one of the most serious crackdowns on human rights in recent years.

Over the past two decades, a small number of diplomats, United Nations officials, members of the National People's Congress and its local counterparts, and selected members of the Chinese public have been allowed access to China's detention centers. These visits have provided invaluable information, but the government strictly controls the visits and only sporadically grants them. Human Rights Watch did not have access to detention centers and relied on the corroborated accounts of others.

Research for this report included interviews with 48 former detainees, family members of detainees, lawyers, a former judge, a former police officer, academics, and members of international and domestic nongovernmental organizations. Among these, 18 were conducted with former detainees, nearly all of them criminal suspects who have no known history of political dissent. We cross-checked individual accounts through interviews with co-defendants, other detainees, and family members, as well as through examination of medical and detention records and official media reports about the cases where available.

The names and identifying details of many of those with whom we spoke have been withheld to protect them from government reprisal. All names of detainees, their family members, and lawyers used in the report are pseudonyms. All those we interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would

be used. All interviewees provided oral consent to be interviewed. All were informed that they could decline to answer questions or could end the interview at any time. No financial or other incentives were provided to individuals in exchange for their interviews. All interviews were conducted in Mandarin except those with international experts.

Human Rights Watch sent letters to four government departments with questions related to the report (see Appendix I). Human Rights Watch has not received any response to them at the time of publication.

As noted above, a central part of the research was our search of a large database of Chinese court verdicts—made possible by a Supreme People's Court (SPC) decision requiring all courts to post decisions online starting January 1, 2014—and our analysis of the resulting subset of verdicts mentioning detainee torture claims (see Appendix II).[1] We looked at all verdicts in the SPC database from the period January 1, 2014, to April 30, 2014.

Of about 158,000 criminal court verdicts available in the database for that period, Human Rights Watch found a total of 432 in which criminal suspects alleged torture. We also found one verdict in which three police officers were put on trial for torture and 45 decisions in which 50 detained criminal suspects were held legally accountable for abusing detainees. The searched terms we used included "torture to extract confession" (*xingxun bigong* 刑讯逼供), "using violence to obtain evidence" (*baoli quzheng* 暴力取证), "abuse of supervisees" (*nuedai beijianguanren* 虐待被监管人), "intentional injury" (*guyi shanghai* 故意伤害) and "same cell" (*tongjianshi* 同监室), and "damaging orderly detention" (*pohuai jianguan zhixu* 破坏监管秩序).[2]

[1] The SPC court verdict database is available at: www.court.gov.cn/zgcpwsw/.

[2] According to the Chinese government in its fifth report to the UN Committee against Torture, officials guilty of the crime of torture are convicted under the crimes of "torture to extract confession," "using violence to obtain evidence," and "abuse of supervisees." It is less clear from official reports what crimes cell bosses are convicted of, but the Supreme People's Procuratorate noted the crime of "damaging orderly detention" in its 2011 annual work report and, in a number of cases reported in the media, cell bosses were investigated or convicted for "intentional injury." But because most cases of "intentional injury" do not involve violence in detention centers, we used the additional key word "same cell" in searching for cases involving violence between detainees. See Government of China, Fifth Periodic Report to the Committee against Torture, CAT/C/CHN/5, April 3, 2014, para. 74; "Interpreting the Supreme People's Procuratorate Work Report (最高人民检察院工作报告解读)," *the Procuratorate Daily,* March 12, 2011, http://news.163.com/11/0312/08/6UUDIDNR00014AEE.html (accessed January 7, 2015); "A Sequel to the 'RMB 900,000 hush money incident': Many Cell Bosses Participated in the Beating (90 万封口费事件"续：多名牢头狱霸参与殴打), *Beijing Youth Daily*, March 19, 2014, http://news.xinhuanet.com/legal/2014-03/19/c_126285316.htm (accessed January 7, 2015); Wang Hongwei, "Jiaozuo Juvenile Detainee Died after Abuse by Cell Boss; Victim was Thrown Cold Water and Had a Fan Fanning Him in Winter (焦作一狱霸虐亡少年犯 冬天往人身上浇冷水扇风)," Dahe Net, February 3, 2010, http://www.baojinews.com:8080/system/_owners/baojinews/_publish/_info/content_154332.htm (accessed January 7, 2015).

While these verdicts provide a glimpse into how Chinese courts make decisions regarding allegations of torture, the sample analyzed by Human Rights Watch ("the dataset") almost certainly does not include all torture cases from that time period. The SPC decision regarding posting verdicts online provides exemptions for cases that involve state secrets or personal privacy, and cases that are otherwise "not suitable for making public," which gives the courts wide latitude to withhold information.[3] Certain cases, such as major corruption cases involving higher level officials, seem to be missing from the SPC database.[4] In addition, many torture allegations made in court may not be recorded in verdicts, and, of course, some detainees who have been abused likely do not even raise the issue in court.

Secondary sources Human Rights Watch consulted include Chinese government documents, laws, and policies; reports from domestic and international nongovernmental organizations; UN documents on torture in China; interviews with officials from foreign governments and international organizations working on issues pertaining to torture, forced labor, and police abuse; news articles from Chinese and international media; and writings by Chinese and foreign academic experts on police abuse.

This report does not address abuses taking place outside of official criminal proceedings or those committed by forces other than that of the police under the Ministry of Public Security (MPS). It does not address abuses in administrative detention, arbitrary detention or imprisonment, or abuses by the procuratorate.[5] It does not focus on the treatment of political suspects held on state security charges. It also does not focus on police abuse in Xinjiang or Tibet, where torture has been particularly severe, as it is especially difficult to access criminal suspects there without putting them at risk. The report does address the conditions of death row inmates and those sentenced to short sentences, as they are held with criminal suspects and face similar conditions in pre-trial detention centers controlled by police.

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[3] Provisions of the Supreme People's Court on Making Verdicts Available on the Internet (最高人民法院关于人民法院在互联网公布裁判文书的规定), *Supreme People's Court*, effective since January 1, 2014, http://www.chinacourt.org/law/detail/2013/11/id/147242.shtml.

[4] Wang Lina and Chen Jing, "Whose Corruption Cases Are Exposed Publicly? (谁的贿案在公"晒")," *Caijing Magazine*, July 14, 2014, http://magazine.caijing.com.cn/2014-07-14/114329332.html (accessed January 7, 2015).

[5] The procuratorate (检察院) is part of China's judicial system that is responsible for both prosecution and investigation of crimes. Lower levels people's procuratorates are led by the Supreme People's Procuratorate and procurators (检察官) are officers in the procuratorate.

I. Torture in China

The Chinese government has taken some steps, including strengthened legal and procedural protections, which if rigorously implemented would to some extent mitigate torture and other ill-treatment of detainees. Yet as several UN reviews have shown, few fundamental changes have actually been made.

Findings of the UN Committee against Torture

The United Nations Committee against Torture, the international expert body responsible for monitoring state compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention against Torture"), has reviewed China's record four times since 1988.[6] Together with the recommendations by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, who visited China in 2005, independent UN mechanisms and officials have made many recommendations to the Chinese government to address the problem (see Appendix III). While the Chinese government has made some progress implementing a number of these recommendations, it has yet to implement most of them, which would involve more sweeping and fundamental changes to the justice system, such as empowering the defense vis-à-vis the prosecution, and changing the power relationships among the police, the procuratorate, and the courts.

In its most recent review of China in 2008, the Committee against Torture concluded that "notwithstanding the State party's efforts to address the practice of torture and related problems in the criminal justice system," it remained "deeply concerned about the continued allegations…of routine and widespread use of torture and ill-treatment of suspects in police custody." In a written response to the Committee's concluding comments, the government defended its efforts, stating it has worked "conscientiously" and "unceasingly" to combat torture and these measures have "obtained notable results."[7]

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[6] UN Committee against Torture, Concluding Observations and Recommendations to China, A/48/44(SUPP) paras. 387-429, January 1, 1993; UN Committee against Torture, Concluding Observations and Recommendations to China, A/51/44(SUPP) paras. 138-150, January 1, 1996; UN Committee against Torture, Concluding Observations and Recommendations to China, CAT A/55/44 (2000) paras. 123-130, January 1, 2000; UN Committee against Torture, Concluding Observations and Recommendations to China, CAT/C/CHN/CO/4, December 12, 2008.

[7] Government of China, Comments to the Concluding Observations and Recommendations of the Committee against Torture, CAT/C/CHN/CO/4/ADD.1, December 17, 2008.

China will appear again before the Committee against Torture in November 2015.

Efforts to End Torture and Coerced Confessions

The People's Republic of China's first Criminal Law, promulgated in 1979, imposed criminal penalties for coercing confessions. Through the 1980s, economic reforms and greater openness led to an explosion of crimes. The government's slogan of "strictly prohibit[ing] coerced confessions" became largely meaningless as authorities staged crime crackdowns that focused on results rather than following procedures.[8]

In the 1990s, the government undertook periodic campaigns that included raising police standards in criminal investigations and strengthening internal supervision and penalties for torture, but without sufficient political will or procedural guarantees, these efforts had almost no impact.[9] Since the 2000s, concerns over wrongful convictions have been regularly featured in the speeches of top leaders, and authorities have enacted legislative and regulatory measures to combat the use of torture to coerce confessions.

During the two most recent revisions of the Criminal Procedure Law, in 1996 and 2012, the government made changes aimed at curtailing the use of torture to extract confessions.[10] During the 1996 revision, it reduced the importance of confessions as criminal evidence.[11] In 2010, the case of Zhao Zuohai, which caused widespread public outrage, prompted embarrassed Chinese law enforcement authorities and the judiciary to promulgate a joint notice in 2010 with two sets of rules, one on the exclusion of

[8] Chen Ruchao (陈如超), "Government's Management of Coerced Confession: 1979 – 2013 (刑讯逼供的国家治理: 1979—2013)," *China Legal Science* (中国法学), vol. 5 (2014).

[9] Ibid.

[10] The Criminal Procedure Law was passed by the National People's Congress in March 2012 and went into effect on January 1, 2013. There are detailed implementing regulations and judicial interpretation of the law, which include: Trial Rules for the People's Procuratorate on Criminal Procedures (人民检察院刑事诉讼规则[试行]), *Supreme People's Procuratorate,* No.2 of 2012; Provisions on Procedures in the Handling of Criminal Cases by Public Security Organs (公安机关办理刑事案件程序规定), *MPS,* No.127 of 2012; Supreme People's Court Judicial Interpretation on the Criminal Procedure Law of the People's Republic of China (最高人民法院关于使用《中华人民共和国刑事诉讼法》的解释), *Supreme People's Court*, 2013; and Rules by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and Others on Questions Regarding the Implementation of Criminal Procedures Law (最高人民法院、最高人民检察院、公安部等关于实施刑事诉讼法若干问题的规定), Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, Ministry of Justice and Commission of Legislative Affairs of the National People's Congress Standing Committee, (2012).

[11] Ira Belkin, "China's Torturous Path Toward Ending Torture in Criminal Investigations," *Columbia Journal of Asian Law,* Vol. 24 No.2 (2011), p.283.

illegally obtained evidence, another on evidence used in death penalty cases.[12] The former—known as the exclusionary rule—was codified in the 2012 revision of the Criminal Procedure Law.

The exclusionary rule provides that suspects' confessions and witness statements obtained through "violence, threats and other illegal means" should be excluded from evidence and cannot be used as a basis for "recommendations on prosecution, procurator decisions, or adjudication."[13] It allows for a pretrial process in which the defense may challenge confessions, outlines procedures and requirements for excluding the confessions, and states that police officers may be compelled to appear in court to give in-court testimony.[14] In addition to the exclusionary rule, the MPS has since 2010, also supported the videotaping of police interrogations and currently requires videotapes for cases involving capital offenses, life imprisonment, and "other major crimes."[15] The MPS announced six months after the 2012 revisions came into effect that there had been an 87 percent drop in coerced confessions nationwide.[16]

The Chinese exclusionary rule notably does not incorporate the "fruit of the poisonous tree" doctrine. This doctrine, which the UN special rapporteur on torture considers to be part of international law, extends the rule beyond confessions obtained from torture and ill-treatment to "all other pieces of evidence subsequently obtained through legal means, but which originated in an act of torture."[17]

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[12] Regulations on the Review of Evidences in the Handling of Death Penalty Cases (关于办理死刑案件审查判断证据若干问题的规定),SPC, SPP, MPS, the Ministry of State Security and the Ministry of Justice, 2010; Regulations on the Exclusion of Illegal Evidences in the Handling of Criminal Cases (关于办理刑事案件排除非法证据若干问题的规定), SPC, SPP, MPS, the Ministry of State Security and the Ministry of Justice, 2010.

[13] Criminal Procedure Law (CPL), art. 54.

[14] Criminal Procedure Law (CPL), arts. 54-8; Supreme People's Court Judicial Interpretation on the Criminal Procedure Law of the People's Republic of China (最高人民法院关于使用《中华人民共和国刑事诉讼法》的解释), *SPC*, 2013, arts. 95-103 (SPC Judicial Interpretation on the CPL).

[15] CPL, art. 121; Belkin, "China's Tortuous Path toward ending torture in Criminal investigations," *Columbia Journal of Asian Law*, p. 287.

[16] "Coerced Confessions Has Reduced by 87 percent Nationally in the Past Year (全国刑讯逼供案件去年下降 87%)," *Shanghai Evening Post (新闻晚报),* June 27, 2014, http://news.sina.com.cn/c/2013-06-27/132027513471.shtml (accessed March 21, 2014).

[17] UN Office of the High Commissioner for Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (Report of the Special Rapporteur on Torture), April 10, 2014, A/HRC/25/60, para. 29; citing *Cabrera García and Montiel Flores v. México*, Inter-American Court of Human Rights, Series C, No 220, judgement of November 26, 2010, para. 167 (including evidence obtained under duress). According to the special rapporteur, "There is no doubt that this includes real evidence obtained as a result of ill-treatment but falling short of torture. Report of the Special Rapporteur on torture, para. 29; citing Human Rights Committee, General Comment No. 32, para. 6; see

Efforts to Combat Deaths in Custody and Cell Bosses

In February 2009, the Chinese media reported that Li Qiaoming, a 24-year-old criminal suspect in Yunnan province, had died from fatal brain trauma. Authorities initially claimed that he had died during a jailhouse game of "hide-and-seek" (*duomaomao* 躲猫猫). But after details of the case spread over the Internet, they acknowledged that three fellow inmates had beaten Li to death. Following this and other cases of severe abuses against detainees being reported in the media, the Supreme People's Procuratorate and the MPS adopted new measures to improve practices in detention centers.[18]

The MPS says these measures have been in use since 2009, and they include surveillance cameras in detainee living quarters that can be viewed in real time by procurators on duty in detention centers, alarms in cells so that bullied detainees can report abuses to guards, physical barriers in interrogation rooms separating police officers and suspects, cooperation with local hospitals to provide better health care to suspects, and physical check-ups before suspects can be admitted in detention centers, among others.[19] The MPS has also "prohibited the use of detainees in management"—a euphemism for cell bosses—and instead has stated that "all the activities of detainees" should be "implemented by the police directly."[20] The MPS claims that since the end of 2011 it has hired "special supervisors"—individuals outside of the police system—to carry out periodic, unannounced visits to 70 percent of its detention centers to check on conditions.[21]

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also African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, section N, para. 6 (d) (i).

[18] Ten Rules to Prevent and Combat "Cell Bosses" in Detention Centers(看守所防范和打击"牢头狱霸"十条规定), the Ministry of Public Security Detention Management Bureau, 2009; National Program for Inspecting the Enforcement of Regulations of Detention Center (全国看守所监管执法专项检查方案), *MPS and SPP*, 2009.

[19] Li Li (李丽), "MPS: Detention Centers Have to be Publicly Monitored by Society (公安部:看守所要开放接受社会监督), *China Youth Daily (中国青年报)*, March 8, 2010, http://news.163.com/10/0308/07/6183V24G000146BD.html (accessed January 8, 2015); The Ministry of Public Security Detention Management Bureau, "The Ministry of Public Security Detention Management Bureau Makes Public a Comprehensive Picture of its Recent Work For the First Time, (公安部监管局首次通过媒体全面系统公布近年来全国公安监管工作发展全貌), August 16, 2011, http://www.mps.gov.cn/n16/n1252/n1777/n2497/2897196.html (accessed June 13, 2014); Huang Xiuli (黄秀丽), "Officials Analyze Deaths in Custody: Mostly Due to Coerced Confessions (官员分析看守所非正常死亡原因：多为刑讯逼供)," *Southern Weekend* (南方周末), June 10, 2010, http://news.sina.com.cn/c/sd/2010-06-10/114920450512.shtml (accessed September 3, 2014).

[20] Supervision Bureau, MPS, "The MPS Supervision Bureau Makes Public a Comprehensive Picture of Recent MPS Supervisory Work For the First Time, (公安部监管局首次通过媒体全面系统公布近年来全国公安监管工作发展全貌), August 16, 2011 (accessed June 13, 2014), http://www.mps.gov.cn/n16/n1252/n1777/n2497/2897196.html.

[21] Shen Yaxin (申亚欣), "the Ministry of Public Security Detention Management Bureau: Over 70 Percent of All Detention Centers Have Opened up to the Public (公安部监所管理局：超 70%看守所实现对社会开放), People.com.cn (人民网), March 28, 2012, http://world.chinanews.com/fz/2012/03-28/3779506.shtml (accessed September 3, 2014).

Authorities also staged a campaign against cell bosses, including by seeking criminal charges against 36 cell bosses and disciplinary actions against 166 police officers.[22] In March 2010, a year after the campaign's launch, the MPS announced that there had been no deaths in custody over the preceding year for which cell bosses were responsible.[23]

In May 2012 the MPS announced that it was revising the 1990 Detention Center Regulations and drafting a law to replace it to address some of the legal loopholes enabling the abuse of criminal suspects. The draft has not yet been made public, but the Chinese domestic press has reported on some aspects of it. One key issue is which ministry should have the power to manage detention centers. Scholars have advocated that they be transferred to a neutral party to avoid police abuse.[24] But the MPS is reportedly reluctant to give up control over detention centers because of the information it is said to obtain by covertly monitoring suspects or through informants.[25] About 12.5 percent of all crimes solved by the police are said to have been discovered this way.[26] In 2009, the MPS responded to criticisms of its management of detention centers by vesting leadership of crime investigations and management of detention centers in two different local police vice chiefs.[27]

[22] Li, "MPS: Detention Centers Have to be Publicly Monitored by Society," *China Youth Daily*.

[23] Ibid.

[24] Detention centers and prisons were under the management of the Ministry of Justice at the beginning of the rule of the Chinese Communist Party, but police took over them in 1950 during the Campaign to Suppress Counterrevolutionaries. Management of prisons was transferred back to the Ministry of Justice in 1983 following the end of the Cultural Revolution, but management of detention centers was not. See "Instructions on the Transferal of Prisons, Detention Centers and Labor Reform Team to the Leadership of the MPS (关于监狱、看守所和劳动改造队移转归公安部门领导的指示)," Ministry of Justice and the MPS, No.283, 1950; see also, Huang, "Officials Analyze Deaths in Custody: Mostly Due to Coerced Confessions," *Southern Weekend.*

[25] Gu Fusheng and Li Binjie, *300 FAQ on Police Law Enforcement in Detention Centers (看守所民警执法执勤工作规范 300 问)* (China Legal Publishing House [中国法制出版社]), p. 59; "MPS to Draft Detention Center Law in Attempt to End Hide and Seek Deaths in Custody (公安部起草看守所法欲终结躲猫猫死等事件)", *the New Express Daily (新快报*), May 15, 2014, http://news.sina.com.cn/c/2014-05-15/053630138178.shtml (accessed September 3, 2014).

[26] Xu Xiaotong (徐霄桐), "The MPS is Drafting the Detention Center Law, Which May End Coerced Confessions and Cell Bosses," (公安部正起草看守所法 刑讯逼供牢头狱霸等或将终结)," *China Youth Daily*, May 14, 2014, http://gd.people.com.cn/n/2014/0514/c123932-21207585.html (accessed May 15, 2014).

[27] "MPS to Draft Detention Center Law in Attempt to End Hide and Seek Deaths in Custody, *the New Express Daily*.

Criminal Procedures and Time Limits

Once the police identify criminal suspects, they can place the suspects under five types of coercive measures. Police can summon suspects (*juchuan* 拘传),[28] put them under criminal detention (*xingshi juliu* 刑事拘留), formally arrest them (*daibu* 逮捕), subject them to residential surveillance (*jianshi juzhu* 监视居住), or allow them to be released on bail pending trial (*qubao houshen* 取保候审).[29]

The specific process and time it takes for a suspect to go through the criminal detention system varies considerably. At each step of the criminal process, the Criminal Procedure Law allows the police to extend the deadline under certain circumstances, such as if the suspect has provided no identification information, or if police discover new crimes. There are no safeguards in the law to prevent the police from repeatedly manipulating these procedural rules and detain a suspect indefinitely.

Typically, after the police first summon a suspect, they can hold them for up to 24 hours before formal criminal detention. Suspects must then be transferred to a detention center within 24 hours after formal detention (but as discussed in Chapter IV below, the period before suspects arrive at a detention center can be further extended). From the day suspects are formally detained, police have up to 37 days, during which they can subject suspects to repeated instances of incommunicado interrogation, before the procuratorate approves their arrests.[30] It can then take months and sometimes years before the police finish their investigation and the procurator decides to prosecute the suspect.[31] If there is an indictment by the procurator, the suspect is put on trial, and, if convicted, can appeal and be given a second trial. Once the convicted defendant exhausts avenues for or abandons their appeal, they are transferred from the detention center to a prison. Only if the defendant's sentence is less than three months, or if they are on death row, will they remain at the detention center.

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[28] Another form of police power, *chuanhuan*, is often used by the police to effectively detain suspects though it is not considered a form of coercive measure under Chinese law. Police can *chuanhuan* a suspect for up to 12 hours but in "major or complex cases," they can do so for up to 24 hours. See *CPL*, art. 117.

[29] Mike McConville, *Criminal Justice in China: An Empirical Inquiry* (Cheltenham: Edward Elgar Publishing, 2011), p.41-42

[30] He Jiahong, " How Are Wrongful Convictions Manufactured (冤案是如何制造的)", *Caixin, December 18, 2014*, http://opinion.caixin.com/2014-12-18/100764618_5.html; Li Weiqiang, "Combing through and Reflections on Detention Legal Limits in Criminal Procedure Law (对我国刑事诉讼中羁押期限的梳理和反思)," February 2, 2015, China Lawyers Net, http://www.acla.org.cn/html/lvshiwushi/20150202/19616.html

[31] Ibid.

Few criminal suspects are given bail while awaiting trial, contrary to international standards.[32] Most suspects are held in detention centers (*kanshousuo* 看守所), for months while they await trial. These facilities are often overcrowded, have poor food and rudimentary health care.[33] Suspects have few rights under Chinese law to challenge the decision to hold them in pre-trial detention.[34]

The International Covenant on Civil and Political Rights, which China has signed but not yet ratified, states that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." It also states that those denied bail need to be tried as expeditiously as possible.[35]

State's Obligations to Prevent Torture and Other Ill-treatment

Under international law, governments have the obligation to protect all those in their custody from harm to their person and uphold the right of detainees to be held in humane conditions and treated with dignity.[36]

The Convention against Torture prohibits the use of torture, which is basically defined as the intentional infliction of pain or suffering, whether physical or mental, for the

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[32] "Translation and Commentary: Reducing Pre-trial Custodial Detention for Juvenile Suspects," *Dui Hua Foundation*, January 3, 2011, http://www.duihuahrjournal.org/2011/01/translation-and-commentary-reducing-pre.html (accessed October 27, 2014). The Chinese government has, in its revision of the Criminal Procedure Law in 2012, empowered the procuratorate to review arrests and to recommend releases or other non-custodial measures to reduce pre-trial detention rates. But the impact of this change is not currently known. See also Yao Li and Shao Shao, "A Study on Necessity Examination of the Pre-trial Custodial Detention—The Application of Article 93 of the New Criminal Procedural Law (论捕后羁押必要性审查—以新《刑事诉讼法》第 93 条为出发点)," *Science of Law*, vol. 5 (2013),

[33] Pan Yi (潘毅), "The Practical Meaning of the Review on the Necessity of Continued Detention (我国羁押必要性审查的现实意义)," *Shanxi Youth Post* (山西青年报), February 16, 2014; Sun Hao (孙皓), Research on the Rights and Treatment of Persons Held in Detention Centers, Using International Standards as Reference (看守所在押人员权利待遇研究—以国际标准为参照对象)," *Henan Social Sciences*, vol. 21 (2) (2013).

[34] Li Enshen, "Miscarriage of Justice in the Chinese Pre-trial Process: Authorities VS Suspects," *Law Asia Journal*, vol.83 (2010), p.91.

[35] International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March. 23, 1976, art. 9(3).

[36] See e.g., ICCPR, art. 6; Convention on the Rights of the Child, adopted November 20, 1989, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 6; Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Principles on Extrajudicial Executions"), E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

purpose of obtaining information or a confession, or as a punishment, by a public official or agent.[37] Also prohibited is cruel, inhuman or degrading treatment or punishment, referred to as "ill-treatment."[38]

Governments are obligated to ensure that any statement "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."[39] They are required to conduct "a prompt and impartial investigation" by "competent authorities" when they receive complaints of torture and punish "all acts of torture" in criminal law.[40] Victims of torture should be given "fair and adequate compensation" as well as physical and psychological rehabilitation.[41] Similar obligations apply in cases of ill-treatment not amounting to torture.[42]

Although the word "torture" (*kuxing* 酷刑) exists in Chinese, the term is not used in domestic law or media reports. A search on China's most popular search engine, Baidu, for "*kuxing*" brings up articles that describe the use of torture in ancient times, rather than in the contemporary era. Instead, the government uses the term "coerced confession" (*xingxun bigong* 刑讯逼供), defined as "corporal or quasi-corporal" punishment by judicial officers that "inflicts severe physical or mental pain or suffering" to force suspects to confess, and makes it a criminal offense.[43] It also criminalizes the same behavior when used against witnesses to compel testimonies, as well as corporal punishment of detainees in institutions of confinement.[44]

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[37] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention against Torture"), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Article 1 defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

[38] Convention against Torture, art. 15.

[39] Convention against Torture, art. 15.

[40] Convention against Torture , art. 4 and 12.

[41] Convention against Torture , art. 14; Convention on the Rights of Persons with Disabilities, art. 16(4).

[42] Convention against Torture , art 15; Committee against Torture, General Comment No. 2, Implementation of article 2 by States parties, U.N. Doc. CAT/C/GC/2 (2008), para. 3.

[43] Criminal Law of the People's Republic of China (中华人民共和国刑法), *National People's Congress*, adopted on July 1, 1979 (amended on March 14, 1997), art. 247; The Supreme People's Procuratorate's Standards on Filing malfeasance Cases (最高人民检察院关于渎职侵权犯罪案件立案标准的规定), *the Supreme People's Procuratorate,* effective since July 26, 2006; SPC Judicial Interpretation on the CPL , art. 95.

[44] Criminal Law, arts. 247 and 248; The Supreme People's Procuratorate's Standards on Filing Malfeasance Cases.

The UN Committee against Torture has repeatedly raised concerns that the Chinese government "has not incorporated in its domestic law a definition of torture that fully complies" with the convention's definition.[45] One of the problems was that at the time the committee last reviewed China, the law only prohibited physical, but not mental or psychological, pain.[46]

The Chinese government made some progress toward addressing this problem when the Supreme People's Court issued a judicial interpretation in 2012 that for the first time recognized the infliction of severe mental pain as an act of torture.[47] But the law does not specify the types of behaviors that would constitute such mental pain. In November 2013, the Supreme People's Court issued an opinion document that elaborated upon the types of coercion prohibited in criminal investigations, noting that the following were not permissible: "freezing, starving, shining [a spotlight on], hanging up, and fatiguing the accused."[48] However, because this document is not a judicial interpretation (guidelines to trials which are nationally enforceable), its legal status and thus its power in guiding judges' decisions are questionable. Consequently, interrogation tactics such as prolonged sleep deprivation remain lawful.[49]

The government has also yet to address the problem that the laws do not clearly prohibit the use of torture except for the purpose of extracting confessions.[50] The laws only prohibit torture by judicial officers and officers of detention facilities and do not cover torture by all "others acting in an official capacity, including those acts that result from instigation, consent or acquiescence of a public official," such as torture by cell bosses.[51] The Committee against Torture has indicated that the state has an obligation to prevent mistreatment of detainees not only by police and penitentiary officials, but also by other inmates.[52]

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[45] Committee against Torture, Concluding Observations and Recommendations to China, 2008, para. 32.

[46] Ibid.

[47] SPC Judicial Interpretation on the CPL, art. 95. However, the relevant provisions on the filing of cases involving official crimes by the Supreme People's Procuratorate, effective since 2006, refer only to physical violence and abuses and do not mention mental pain. Since it is the procurators in lower levels who investigate official crimes, it is unclear how they handle torture complaints involving mental suffering.

[48] Supreme Court's Opinion on the Establishment of a Comprehensive Working Mechanism to Prevent Miscarriages of Justice in Criminal Justice (最高人民法院关于建立健全防范形式冤假错案工作机制的意见), *Supreme People's Court*, 2013, para. 8.

[49] Although state media has reported that the SPC was drafting such a judicial interpretation on the issue, it has not been released. See Xing Shiwei, "Sleep Deprivation Proposed to be Considered as an Act of Coerced Confession (疲劳审讯拟算变相刑讯逼供)," *The Beijing News (新京报)*, December 8, 2014, http://epaper.bjnews.com.cn/html/2014-12/08/content_550984.htm?div=0 (accessed January 7, 2015).

[50] Ibid.

[51] UN Committee against Torture, Concluding observations on China, para. 33.

[52] UN Committee against Torture, Observations of the Committee against Torture on the Revision of the United Nations Standard Minimum Rules of the Treatment of Prisoners ("Observations on the UN Standard Minimum Rules"), December 16,

Chinese law also contains other significant gaps that lead to weak protections against torture and other ill-treatment. [53] Under the law, police interrogate suspects in detention centers and police stations in the absence of lawyers and other third parties.[54] While Chinese law stipulates that suspects have the right to appoint and meet with lawyers, few have the means or opportunity to seek legal counsel. There is no right to legal aid for the vast majority of suspects. As a result, most suspects have no access to lawyers.[55] Although the Chinese government introduced a provision in the revisions of the 2012 CPL that allows suspects to refuse to answer questions that incriminate themselves, the law continues to require them to "answer truthfully" in police interrogations, rendering the new provision largely meaningless and ineffective. Protections against self-incrimination do not include the right of suspects to remain silent.[56]

The UN Committee against Torture considers prompt access to a lawyer as among the "fundamental legal safeguards to prevent torture and ill treatment during detention as well as to ensure a fair legal proceeding."[57] The committee stated:

> Access to legal representation entails the prompt confidential access to and consultations in private with an independent lawyer or a counsel of the detainee's own choice, in a language he or she understands, from the moment of deprivation of liberty and throughout the detention but especially during the interrogation, investigation and questioning process. [58]

2013, CAT/C/51/4, http://www.refworld.org/docid/53429c014.html (accessed January 9, 2015), para. 13 ("States should take the necessary steps to prevent violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and by other inmates").

[53] Wei Wu and Tom Vander Beken, "Police Torture in China and its Causes: A Review of Literature," *The Australian and New Zealand Journal of Crimnology,* vol. 43 No. 3 (2010), p. 557-579. See also, Belkin, "China's Tortuous Path toward ending torture in Criminal investigations," *Columbia Journal of Asian Law*, p.278.

[54] See CPL, arts. 116 and 117.

[55] Wu and Beken, "Police Torture in China and its Causes: A Review of Literature," *The Australian and New Zealand Journal of Criminology,* p.566. The lack of legal representation is likely a reflection of suspects' reluctance to hire lawyers because of the cost; suspects' belief that other means, such as bribing relevant officials, might be better alternatives; and lawyers' reluctance to take criminal cases because they fear official retribution and prosecutions of criminal defense lawyers. See Congressional-Executive Commission on China, "Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China," http://www.cecc.gov/publications/issue-papers/defense-lawyers-turned-defendants-zhang-jianzhong-and-the-criminal (accessed September 1, 2014).

[56] CPL, arts. 50 and 118.

[57] UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 48.

[58] Ibid. art. 49. See also UN Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); principle 1.

Applicable Law on Restraints and Solitary Confinement

While police may at times use restraints on individuals in custody, international human rights standards have strict procedures and conditions for their use. The UN Standard Minimum Rules for the Treatment of Prisoners provide that instruments of restraint should only be used as strictly necessary to prevent risk of harm to individuals or others, and they are not to be used for punishment.[59] China's Detention Center Regulations make similar stipulations.[60] Both international standards and Chinese law provide that when restraints are used, there should be efforts to limit discomfort, pain, or injuries.[61]

However, China's relevant regulations allow individuals be restrained for up to fifteen days, and this period can be extended further upon authorization from the head of the PSB.[62] This contravenes international standards, which advise that the use of restraints be as short as possible, that is, minutes rather than hours or days.[63] The Committee against Torture has advised that detainees should be guaranteed their due process rights when subjected to disciplinary actions, "including to be informed in writing of the charges against them," and "to be provided a copy of any disciplinary decision," among others.[64] But Chinese detention regulations do not set out such due process protections.

The regulations also require detainees on death row—who are held in detention centers instead of prisons—to wear restraints at all times while they await execution.[65] This contravenes the comments of the UN Committee against Torture, which states that the status or legal condition of a detainee "cannot be reason to automatically impose restraints."[66]

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[59] UN Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), art. 33; UN Committee against Torture, Observations on the UN Standard Minimum Rules, arts, 36 and 37 ("The use of restraints should be avoided or applied as a measure of last resort, when all other alternatives for control have failed and for the shortest possible time, with a view to minimizing their use in all establishments and, ultimately, abandoning them… Immobilization should only be used as a last resort to prevent the risk of harm to the individual or others").

[60] Detention Center Regulations of the People's Republic of China (中华人民共和国看守所条例), *State Council*, No. 52 of 1990, art. 17.

[61] Ibid. ("The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint and staff must be trained in the use of the equipment"); MPS Notice on the Use of Restraints in Detention Centers (公安部关于看守所使用戒具问题的通知), No.38 of 1991, art.4.

[62] Implementing Methods of the Detention Center Regulations of the People's Republic of China (中华人民共和国看守所条例实施办法), *MPS*, 1991, art.20.

[63] UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 37.

[64] Ibid., para. 41.

[65] Ibid.

[66] UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 36.

China's Detention Center Regulations allow for the use of solitary confinement, called "small cell" (*xiaohao* 小号), for up to 15 days upon authorization by the head of the detention center. That form of confinement could follow "serious" cases of breaches of Detention Center Regulations, such as "spreading corrupt thoughts," "damaging public property," or getting into fights.[67] The Committee against Torture has stated that the use of solitary confinement should be prohibited for pre-trial detainees.[68]

Applicable Law on Deaths in Custody

International standards set out that all death-in-custody cases should be subjected to "thorough, prompt and impartial investigation," including those in which relatives or other reliable sources suggest unnatural death.[69] As the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions has noted, since there is a presumption of state responsibility due to the custodial setting and the government's obligation to ensure and respect the right to life, the government has to affirmatively provide evidence to rebut the presumption of state responsibility. Absent proof that it is not responsible, the government has an obligation to provide reparations to the family of the deceased.[70]

Beyond obligations to prosecute wrongful deaths, the authorities also need to take measures to prevent deaths in custody and respond effectively to the causes of death, including by ensuring proper oversight and adequate medical care to detainees.[71] Families should have access to "all information relevant to the investigation" and the government should release the results of the investigation in the form of a written report.[72] In cases in which the "established investigative procedures are inadequate because of lack of

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[67] Detention Center Regulations, art. 36; Implementing Methods of the Detention Center Regulations, arts. 47 and 48.

[68] UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 33 ("Solitary confinement should be prohibited for … pre-trial detainees.").

[69] Principles on Extrajudicial Executions, principle 9.

[70] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/61/311, September 5, 2006, para. 54; Convention against Torture, art. 13; Committee against Torture, General Comment No. 3, Implementation of article 13 by States parties, U.N. Doc. CAT/C/GC/3 (2012).

[71] New York University School of Law Center on Human Rights and Global Justice, "UN Special Rapporteur on Extrajudicial Executions Handbook," p. 2, http://www.extrajudicialexecutions.org/application/media/Handbook%20Chapter%204%20-%20Deaths%20in%20custody.pdf (accessed January 9, 2015); see also, UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 17. The committee stated that "Access to an independent doctor is of particular importance in the context of complaints and allegations on torture or ill-treatment, where there may be a need of/request for assessment and documentation of injuries or other health related consequences stemming from torture or ill-treatment, including forms of sexual violence and abuse."

[72] Principles on Extrajudicial Executions, principles 16 and 17.

expertise or impartiality" or where there are complaints from the family about these problems, the government should "pursue investigations through an independent commission of inquiry."[73]

The Chinese government issued regulations addressing deaths in custody after the string of custodial deaths in 2009.[74] According to the procedures, the police should "immediately notify" the family, and then "immediately conduct" an investigation into the cause of death. The investigation includes viewing and preserving the surveillance video of the detention cell, questioning fellow detainees, doctors, and guards, checking and preserving all related health and detention records, taking photos and videos of the body, and identifying the cause of death. Once the cause has been determined, police should notify the family and submit a report to the procuratorate. The police and the procuratorate can also order a forensic agency to carry out an autopsy, which family members and their legal representatives can attend. The procuratorate should review the police report, and conduct its own investigation in cases of "unnatural" deaths, which include deaths due to abuse but not those due to illness. The procuratorate is also empowered to conduct its own investigation if the deceased's family disagrees with or questions the results of the police investigation.[75]

Among the shortcomings in the regulations is that they do not set out parameters for how long investigations should take. They also do not require that the agency carrying out the investigation be independent or impartial. While the regulations require that police notify the family of the investigation's findings, they do not oblige the police to give the family a full report or disclose full details.[76]

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[73] Ibid., principle 11.

[74] Rules on the Handling of Deaths in Detention Centers (看守所在押人员死亡处理规定), *the Supreme People's Procuratorate, the MPS and the Ministry of Civil Affairs*, 2011.

[75] Ibid.

[76] For detailed information on investigations into torture and deaths in custody, see generally UN Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Istanbul Protocol] (2004).

Structure and Supervision of the Public Security Police

Prior to 1979, China's police force primarily functioned as a political instrument of the Chinese Communist Party (CCP) to eliminate political rivals and cement the Party's power; responding to ordinary crime was a lesser priority. Since the reforms beginning in 1979 which provided for a more open economy, common crime has soared, and the police have increasingly taken on a law enforcement role.[77]

There are five types of police in China: this report focuses on the public security police under the Ministry of Public Security (MPS), which makes up the vast majority (86 percent) of the country's two million police officers.[78] Public security police have several main duties, including the investigation of most criminal offenses, and managing the detention centers where criminal suspects are held.[79]

The MPS guides the operations of the four lower levels of public security services through drafting rules and regulations.[80] But it is local leaders—CCP committee and government officials at the same level—that fund the police force, appoint personnel including the local police chiefs, determine police salaries, and set policing priorities.[81] The CCP controls the police through its committees in each level of the public security service, and through its Political and Legal Committee (*zhengfawei* 政法委), which lead and coordinate the police, the procuratorate, and the courts on law and order matters. The strong local party-state control makes the police susceptible to local political influences.[82]

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[77] Kam C. Wong, *Chinese Policing: Theory and Reform* (New York: *Peter Lane Publishing*, 2009),p.92 and 97; Michael Dutton, *Policing Chinese Politics: A History* (Durham: *Duke University Press*, 2005), p. 68 and 255; Xuezhi Guo *China's Security State: Philosophy, Evolution, and Politics* (New York: *Cambridge University Press*, 2012), p.90; Fu Hualing, " Zhou Yongkang and the Recent Police Reform in China," *Australian & New Zealand Journal of Criminology*, vol. 38 no. 2 (2005), p.242.

[78] People's Police Law of the People's Republic of China, *National People's Congress,* 1995, art. 2; Wong, *Chinese Policing: History and Reform*, p.158. The other four police forces are the state security police under Ministry of State Security, the prison police under the Ministry of Justice, the judicial police under the People's procuratorates, and the judicial police under the People's Courts.

[79] Public security police investigate all crimes except those committed by officials including corruption, dereliction of duty and others, which are handled by the People's procuratorate, and crimes committed by the military, which are handled internally by the People's Liberation Army. See Hong Yiyi (洪奕宜), "Two million police officers nationwide take law examines, most questions are common sense and work regulations (全国 200 万民警考法 多为常识及工作规范)," *Southern Daily (南方日报)*, November 2, 2011, http://edu.163.com/11/1102/13/7HS15OKO00294IJI.html (accessed September 4, 2014).

[80] Wong, *Chinese Policing: Theory and Reform*, p. 159-160. The four levels are public security bureaus, two levels of sub-bureaus, and police stations.

[81] Ibid.; Guo, *China's Security State: Philosophy, Evolution, and Politics*, p. 90-91.

[82] Dutton, *Policing Chinese Politics*, p. 279.

The power of the police has increased substantially in recent years, particularly under the leadership of Zhou Yongkang, who was minister of public security from 2002 to 2007.[83] Zhou made police chiefs the center of local power by having them appointed as secretaries of the CCP political and legal committees.[84] He expanded the nationwide political repression or "stability maintenance" (*weiwen* 维稳) infrastructure, further empowering the police.[85] This situation began to change around 2010, when the CCP ordered separation of the roles of police chiefs and secretaries of political and legal committees at the provincial level.[86] While the MPS has been put under greater CCP control under the leadership of President Xi Jinping, it continues to be powerful.[87]

[83] Fu, "Zhou Yongkang and the Recent Police Reform in China," *Australian & New Zealand Journal of Criminology*.

[84] Dui Hua Foundation, "Taming Police Influence in Politico-Legal Committees," November 29, 2011, http://www.duihuahrjournal.org/2011/11/taming-police-influence-in-politico.html (accessed March 20, 2014).

[85] Karita Kan, "Whither Weiwen? Stability maintenance in the 18th Party Congress era," *China Perspectives* (2013), http://chinaperspectives.revues.org/6120?file=1 (accessed June 17, 2014).

[86] "Major Changes to the Situation of Public Security Bureau Secretary Also Acting as Secretary to Legal and Political Committees (政法委书记兼任公安厅局长局面开始有重大改变)," *Xinhua*, March 25, 2010, http://news.xinhuanet.com/legal/2010-03/25/content_13245075.htm (accessed October 24, 2014); "Accelerate Reforms to Legal and Political Committees to Reduce the Cases of Intervention(政法委改革加速 减少案件干预)," *the Beijing News (新京报)*, October 23 , 2014, http://www.chinanews.com/gn/2014/10-23/6707403.shtml (accessed October 24, 2014).

[87] Willy Lam, "Binding the Baton: Expanding Police Power, Improving Accountability," *the Jamestown Foundation China Brief*, vol. 13 (2013), http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=40859&no_cache=1#.VAgHofmSwqS (accessed September 4, 2014).

II. Police Abuse in Pretrial Detention

> Torture to extract confession has become an unspoken rule, it is very common.
> —Zheng Qianyang (pseudonym), former police officer, Heilongjiang province, February 2014

Chinese officials have characterized the use of torture as "nationwide," "common," and "serious,"[88] while Chinese scholars analyzing prominent cases of wrongful convictions involving capital offenses concluded that over 80 percent of these cases involved torture.[89]

Some lawyers interviewed by Human Rights Watch said the problem of torture in police interrogations has "become less serious" in non-political criminal cases because of recent legal reforms aimed at reducing torture. But other lawyers and former detainees told us that torture remains a serious problem. These variations may be due to differences of locale, prevalence of crime, varying resources available to law enforcement agencies, and other factors. The 432 allegations of torture documented in court verdicts analyzed by Human Rights Watch, however, occurred in 30 of China's 31 provinces, municipalities, and autonomous regions.[90]

Our research also shows that criminal suspects are at risk of ill-treatment in detention at times other than during interrogations. So-called cell bosses, detainees who act as de facto managers of a cell, at times mistreat or beat detainees. Police subject some detainees to the use of restraints in so-called stress positions or prolonged solitary confinement to punish them, or to force them to work long hours without pay. While

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[88] Hu Shiyou (胡石友), "On Improving The Legal System Of Strict Prohibition Of Exacting A Confession By Torture (完善"严禁刑讯逼供"法律制度——兼谈"不得被强迫自证有罪")," *Law Science Magazine*, vol. 1 (2007), p. 109-111; Wang Weiyong (王维永), "Examining the Harmfulness of Coerced Confessions from Wrongful Convictions (从冤假错案看刑讯逼供之危害), China Court Net (中国法院网), April 1, 2014, http://www.chinacourt.org/article/detail/2014/04/id/1265601.shtml (accessed September 1, 2014).

[89] Li Song and Huang Jie (李松、黄洁), "Scholars Say 80 Percent of Wrongful Convictions Involved Torture (学者称刑事错案中有八成存在刑讯逼供)," *Legal System Net* (法制网), July 11, 2011, http://www.legaldaily.com.cn/index_article/content/2011-07/08/content_2787723.htm?node=5955 (accessed September 1, 2014); Fang Pang (方鹏), "A Rational Analysis of Wrongful Death Penalties Based on the Media coverage of the 33 Death Penalties that Were Wrongfully Convicted (死刑错案的理性分析—对媒体报道的 33 戚死刑错案的实证考察)," *Commentary on Criminal Law (刑事法评论*), vol. 33(2006）; Nie Zhaowei (聂昭伟), "Causes and Countermeasures of Wrongfully Convicted Death Penalties Based on a Current Sample of 33 Cases (侦查阶段死刑错案的原因及对策—以当前一致的 33 个死刑错案为样本), *Shandong Police Academy School Journal (山东警察学院学报*), vol.3 (2007).

[90] The PRC officially has 34 provinces, municipalities, and autonomous region including Taiwan, Hong Kong, and Macau. We have not included the latter three regions in this report.

authorities say that the numbers are down, detainees continue to die in custody, in many cases allegedly due to torture and ill-treatment by police officers, guards, and fellow detainees, or prolonged lack of adequate medical attention.[91]

Physical and Psychological Abuses during Interrogations

Chinese criminal law currently prohibits infliction of severe physical or mental pain or suffering to coerce suspects to confess during police interrogations.[92] But criminal suspects who spoke to Human Rights Watch reported these methods continue to be used. They described similar methods in different provinces. Many of these methods can also be found in Chinese press reports.[93] They include:

- Being hit with hands, police batons, electric batons, hammers, iron bars;
- Kicking;
- Spraying with pain-inducing substances including chili oil (poured into one's nose or onto one's genitals);
- Exposure to sustained cold (cold water sprayed on a naked suspect in a sub-zero temperature room);
- Blinding with a hot, white light;
- Forcing individuals to maintain a stress position for prolonged periods;
- Deprivation of sleep, water, and food.

Criminal defense lawyers described some common methods of abuse. Beijing-based lawyer Shen Mingde, who focuses on procedural violations in the criminal system, told Human Rights Watch that many types of torture are used in China:

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[91] See, e.g., Yang Xu (杨旭) and Zou Meilian (邹美连), "A Suspect Died in Yunnan Yongshan County Detention Center; Official Says He Died After Police Found Him Unwell during Interrogations and Sent Him to the Hospital in a Timely Manner(云南永善县一嫌犯在看守所死亡 官方：民警讯问发现其身体不适及时送医抢救无效死亡)," *City Times* (*都市时报*), April 19, 2014, , http://society.yunnan.cn/html/2014-04/19/content_3179905.htm (accessed July 8, 2014); "Dalian Detention Center Suspect Taken to Hospital, Family Claims His Body was Injuredf (大连看守所嫌犯送医后死亡 家属称其身体有伤)," *Beijing Times (京华时报)*, May 31, 2013, http://www.cnr.cn/gundong/201305/t20130531_512712598.shtml (accessed July 8, 2014); Ding Xianming (丁先明), "Police Orders Detainees to Beat a Female Suspect (管教民警指使犯人群殴一女嫌犯)," *China Youth Daily (中国青年报)*, May 30, 2011, http://zqb.cyol.com/html/2011-05/30/nw.D110000zgqnb_20110530_3-07.htm (accessed July 8, 2014).

[92] The prohibition of the use of severe psychological suffering in coerced confession was an important step forward. Criminal Procedure Law prior to its revisions came into effect on January 1, 2013 and its related rules were vague about the definition of coerced confession and only recognized physical suffering. See for example, Wang Yi (万毅), "On the Explanation and Determination of 'Coerced Confession' in the Two Evidential Rules (论"刑讯逼供"的解释与认定——以"两个《证据规定》"的适用为中心)," *Modern Legal Studies* (现代法学), vol. 3 (2011), http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=63006 (accessed July 7, 2014).

[93] Flora Sapio, *Sovereign Power and the Law in China* (Boston: Brill, 2010), p.207-239. Sapio argues that torture is widely reported and depicted in Chinese press. But because citizens consider that victims—criminal suspects—are unlike them, there is little opposition towards torture and most citizens consider themselves safe from torture.

> There are countless [methods of torture]! For example, it's cold in northeast China, so the police take off all the person's clothes, string him up and beat him, hitting his anus and genitalia with electric batons, slap him on his face, beat, and kick him. For another example, in Loudi, Hunan, there was another typical case, in which they tied the person's hands behind his back to what we call a "tiger chair" or "iron chair" …. [T]hey also strung someone up on the window frame, made him squat for a long time without moving.[94]

A former police officer from Heilongjiang Province, who left the police force in 2011, told Human Rights Watch that the use of physical and psychological abuses by police is common:

> Almost all suspects in criminal cases have been subject to abuses like … beatings and scolding, sleep deprivation, dehydration, and threats … Basically every public security bureau has a "tiger chair," electric batons and others like that. They keep such tools [in the office].[95]

Victims and lawyers reported beatings and kickings. Wu Ying, a lawyer who has practiced for over two decades, told Human Rights Watch:

> Yes, there is torture … like using electric batons, tying their hands at the back and beatings. The cases I usually come across involve hitting anuses, genitalia, and toes with electric batons.[96]

Beijing-based lawyer Luo Chenghu described a case he handled in 2012, in which his client, a farmer charged with homicide, was tortured:

> [They] hit him with rods … for over one hour every consecutive day … he was not the only one beaten, his father and a relative were detained for over 30 days and they got beaten too.[97]

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[94] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[95] Human Rights Watch interview with Zheng Qianyang (pseudonym), a former police officer who lives in Heilongjiang Province, Feb 13, 2014

[96] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[97] Human Rights Watch interview with Luo Chenghu (pseudonym), a lawyer based in Beijing, February 11, 2014. He was describing the torture of a client charged with homicide.

Gu Daoying, who runs a gambling parlor in Zhejiang province, told Human Rights Watch that police tortured him after they took him into custody:

> [They] handcuffed both my hands and beat me, hitting and kicking was the least of it all. [One police officer] used an electric baton to hit me for six to seven hours, more than a hundred times. I fainted many times, and lost control over urination. Later he put his police baton on the floor and forced me to kneel on it for three hours.[98]

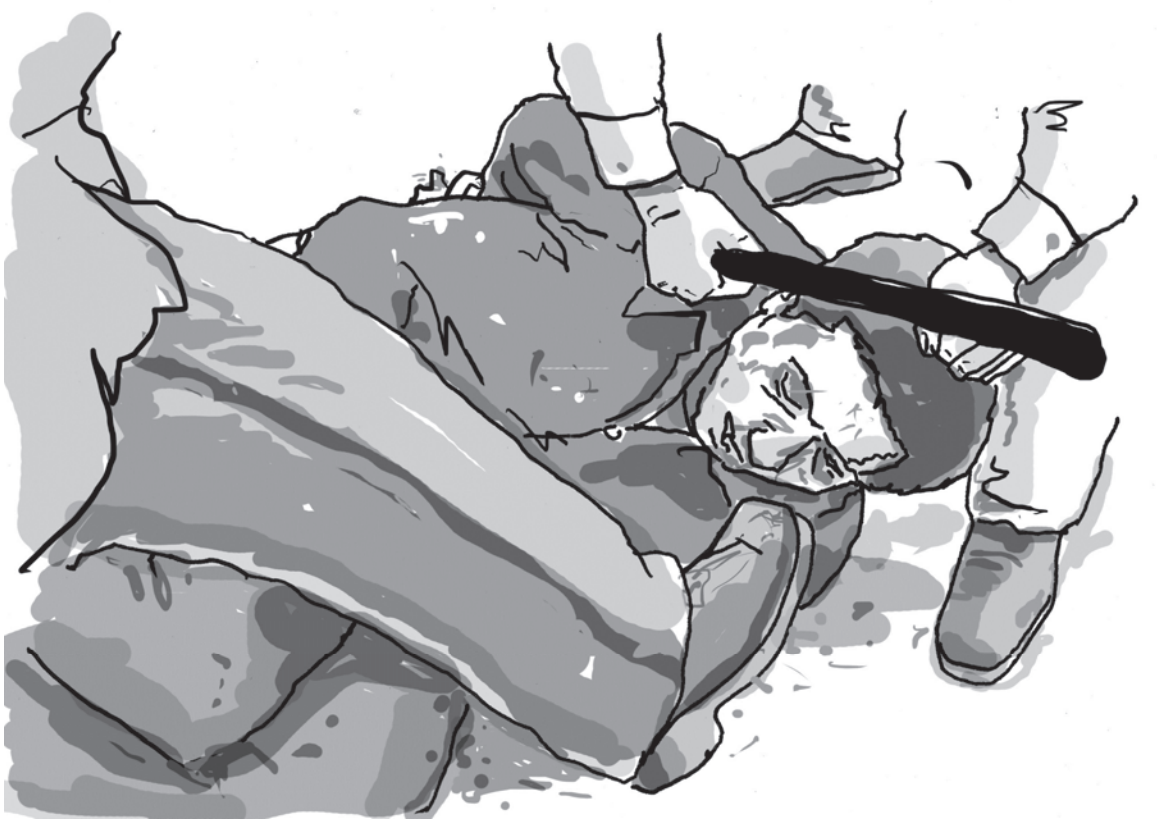

Illustration of police beating a detainee on the ground, with both of his hands in handcuffs behind his back. Human Rights Watch commissioned this and two other drawings below based on descriptions of torture and ill-treatment by former detainees and lawyers.[99] (c) 2015 Russell Christian for Human Rights Watch

[98] Human Rights Watch interview with Gu Daoying (pseudonym), a former detainee who lives in Zhejiang Province, May 22, 2014.

[99] Some of the most candid accounts of police torture emerged in the Chinese press after the 2013 fall of Bo Xilai, the Chongqing Communist Party secretary. Bo's administration had waged a "strike-black" campaign targeting corruption and organized crime, and had detained thousands of business people and government officials. Tencent News, a popular internet portal, published stylized drawings of the methods of torture used and detailed accounts of the ordeals experienced by those detained in the course of this campaign. While the widespread use of torture involving such a large number victims in a single campaign is unusual, the methods used by the police are strikingly similar to those described by interviewees in

One common method is to string up the suspect by the wrists using handcuffs or ropes, sometimes with arms tied backwards. Chen Zhongshen, from Hunan Province, described how police officers tortured him: "They handcuffed me and then hung the handcuffs on the windows, just like this, heels off the ground… the handcuffs cut into my flesh. I was hung like a dog."[100]

Illustration of a suspect hung up on the iron grill of the window. Some former detainees say they were hung by their handcuffs, which is especially painful as the handcuffs cut into the flesh. (c) 2015 Russell Christian for Human Rights Watch

this report. Tencent News depicted 10 methods of torture used in the campaign, including the "tiger chair" and individuals being hung up for hours. Tencent's information was based on media reports with interviews of victims, families, police officers, and lawyers. See Liu Chang, "Exposing Details of Torture in Chongqing: Suspects Hung up Using Hoops Affixed to the Wall ("揭重庆打黑时期刑讯逼供细节：墙钉铁环吊起审讯"), April 24, 2014, http://www.oeeee.com/html/201404/24/215148.html (accessed April 30, 2015).

[100] Human Rights Watch interview with Chen Zhongshen (pseudonym), former detainee who lives in Hunan Province, May 13, 2014.

Other suspects also reported being beaten while hung up by their wrists:

> They wrapped a cloth around my wrists then they handcuffed me, they tied a rope to the chain between the handcuffs and hung me on the pulley on the ceiling, my toes barely touching the ground. They shocked my hands with an electric baton, and they even stuck the baton into my right-hand pocket to hit my genitals. …I could not take it after about seven or eight minutes so I begged them to let me down so I could think things through.[101]

Interviewees noted that substances like chili oil are used to inflict pain or severe discomfort on suspects. Zhang Chun told Human Rights Watch: "They covered my mouth, and poured chili oil into my nostril, it ran inside and everywhere on my nose, mouth and face."[102]

Some lawyers told Human Rights Watch that police have become sophisticated in their infliction of pain of suspects, and they employ techniques that leave little or no physical trace. They describe police using towels, books, helmets, or other items to cushion the site of injury, so as to create intense pain but leave no visible marks. Lawyer Luo Chenghu told Human Rights Watch:

> Nowadays police officers beat people up with techniques. When this kid was beaten, they padded him with a thick [stack of documents], [so that the blows would] leave no [lasting], visible marks. It would be gone in under 10 days.[103]

Shanghai-based lawyer Song Sanzuo, who has been a criminal defense lawyer since 1999, said:

> The use of direct physical pain has reduced greatly, but physical pain in a disguised form has increased, like continued interrogations with the police officers taking turns to exhaust suspects, or threatening and putting mental

[101] Statement of a robbery suspect taken by Zha Guliang (pseudonym), a lawyer who lives in Shenzhen and who was interviewed by Human Rights Watch on May 3, 2014.

[102] Human Rights Watch interview with Zhang Chun (pseudonym), former detainee who lives in Hunan Province, May 13, 2014.

[103] Human Rights Watch interview with Luo Chenghu (pseudonym), a lawyer based in Beijing, February 11, 2014. He was describing the torture of a client charged with homicide.

> pressure on suspects and so on, threatening to arrest family members of suspects, all of these are illegal.[104]

The use of sleep deprivation appears to be endemic. Yu Zhenglu, who is in his 30s, told Human Rights Watch that he was strapped in an interrogation chair and prevented from sleeping for over 96 hours:

> [They] accused me of money laundering and illegally detained me for four days and four nights without food, water, or medication. I have high blood pressure…. They also didn't let me sleep for four days and four nights. The police changed shifts every four hours, and as soon as you close your eyes, they push you.[105]

Lei Xinmu, a farmer in his late 20s, described similar ill-treatment to Human Rights Watch. Lei was accused of robbery, which he said he did not commit: "I was sitting on a 'tiger chair,' and there were two spotlights on top on my head, they took turns to talk to me … they would not let me rest, I couldn't take it any longer."[106] After over 200 hours of sleep deprivation, Lei did not confess to the crime. After a few weeks of detention, police released him due to lack of evidence.

According to the Committee against Torture, sleep deprivation used to extract a confession is "impermissible,"[107] and prolonged periods of sleep deprivation constitute torture.[108]

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[104] Human Rights Watch interview with Song Sanzuo (pseudonym), a lawyer based in Shanghai, May 16, 2014.

[105] Human Rights Watch interview with Yu Zhenglu (pseudonym), a former criminal suspect who was detained in a detention center in Yunnan Province, May 22, 2014.

[106] Human Rights Watch interview with Lei Xinmu, (pseudonym), a former criminal suspect who lives in Shaanxi Province, June 9, 2014.

[107] UN Committee against Torture, "Concluding Observations and Recommendations to the Republic of Korea," U.N. Doc. A/52/44, November 13, 1996.

[108] UN Committee against Torture, "Concluding Observations and Recommendations on Japan,"

U.N. Doc. CAT/C/JPN/CO/2, supra note 11, June 28, 2013; UN Committee against Torture, "Concluding Observations and Recommendations on Cuba," U.N. Doc. CAT/C/CUB/CO/2, supra note 22, June 25, 2012.

Police Pressure to Solve Crimes

Police rely on torture and ill-treatment to obtain confessions for several reasons. The criminal system considers confessions to be the "king," or ultimate form, of evidence, and the system is arranged in ways that maximize opportunities for investigators to obtain such evidence.[109] Police are expected to extract a confession in every case, which they then use to conduct an investigation to corroborate the confession.[110]

Although the government has spent hundreds of billions of yuan in recent years for "stability maintenance" projects across the country,[111] police, particularly at the local level, often have inadequate financial or human resources to properly investigate crimes.[112] In addition, outside of major cities, police officers are often insufficiently trained and lack basic knowledge of how to conduct criminal investigations.[113] This under-resourcing for crime control makes it expedient for the police to rely on torture, which they consider the most efficient means of obtaining the necessary evidence for criminal prosecutions and convictions.

Individual officers' promotion through the ranks and other financial or material rewards are often based on assessment criteria that include clearance rates, the number of crimes solved compared to the number of crimes reported to police.[114] The requirements that officers need to reach a certain clearance rate—over 90 percent in some areas—puts tremendous pressure on officers to solve crimes.[115] The MPS prohibited the use of clearance rates in evaluations in 2011, and a number of provincial police bureaus followed this important step, but it is yet unclear how effective these formal announcements have been on police behavior.[116]

Lawyers told Human Rights Watch that police officers in charge of investigations

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[109] Belkin, "China Tortuous Path Towards Ending Torture in Criminal Investigations," *Columbia Journal of Asian Law*, p.278-9.

[110] Ibid.

[111] "The bill for public safety (公共安全账单)," *Caijing Magazine,* May 8, 2011, http://magazine.caijing.com.cn/2011-05-08/110712639.html (accessed January 8, 2015).

[112] Wu and Beken, "Police Torture in China and its Causes: A Review of Literature," *The Australian and New Zealand Journal of Criminology,* pp. 557-579. Fu, "Zhou Yongkang and the Recent Police Reform in China," *The Australian and New Zealand Journal of Criminology*, p. 241-253.

[113] Ibid.

[114] Wong, *Chinese Policing: Theory and Reform*, p. 166 and 178,

[115] "Henan Police Abolishes Crime Clearance Rate to Prevent Coerced Confessions and Wrongful Convictions (河南警方废除破案率考评指标 防范逼供冤假案)," *China News Weekly (中国新闻周刊),* November 25, 2013http://news.sina.com.cn/c/2013-11-25/110028803637.shtml (accessed June 3, 2014).

[116] Ibid.

sometimes beat suspects to get them to admit to crimes they did not commit or to testify against others as complicit in crimes. One lawyer described a father and son held separately; both were beaten and told that the other had confessed against him.[117] In some cases the suspects already had admitted to the crimes voluntarily but the police coerced them to confess to other similar crimes that the suspects insisted they did not commit. In one case, a suspect confessed quickly to a robbery and provided details and information about his fellow robbers. The suspect was then strung up and beaten while police demanded he confess to other robberies.[118]

Cases in Which Torture is Particularly Likely

Most of the cases of torture described in this report involve suspects charged with theft, drug sales, or robberies, all common crimes in China.[119] But a number of lawyers we interviewed said that torture is particularly common and severe in murder cases, triad-related crimes, and corruption cases.[120]

In recent years, the most prominent cases of torture to extract confessions reported by mainland Chinese media have involved the latter categories of crimes, such as the case of Zhao Zuohai, accused of homicide, and that of Vincent Wu, accused of triad activity. These crimes have been specifically targeted for crackdowns by the central government in recent years because they tend to attract widespread public condemnation and attention.[121] The

[117] Human Rights Watch interview with Luo Chenghu (pseudonym), a lawyer based in Beijing, February 11, 2014. He was describing the torture of a client charged with homicide.

[118] Human Rights Watch interview with Zha Guliang (pseudonym), a lawyer who lives in Shenzhen, May 3, 2014.

[119] China Law Society, The Law Yearbook of China (2012), p.1218, Table 1: A Classification of All Criminal Cases Handled by Public Security Organs in China in 2012 (表一：2012 年全國公安機關刑事案件分類統計表).

[120] Human Rights Watch interview with Chen Lihua (pseudonym), a Beijing-based lawyer, January 24, 2014.

[121] The MPS has vowed to "solve all murders" since 2004 after a series of gruesome murders in Henan and Guangdong Provinces. In 2006, the MPS initiated a nationwide campaign to "strike hard" against triads, a campaign made infamous by Chongqing Mayor Bo Xilai's high-profile campaign to "sing red and strike black," and which has continued albeit on a smaller scale elsewhere in the country targeting powerful local interests. And President Xi Jinping's anti-corruption drive since January 2013 has promised to catch both "tigers and flies." See "The MPS held a News Conference on the work on Solving Murders (公安部召开新闻发布会通报公安机关侦破命案工作相关情况)," *MPS*, May 16, 2006, http://www.mps.gov.cn/n16/n1237/n1432/n1522/127271.html (accessed June 6, 2014); "Anti-crime: 1013 Evil Cases Are Under Investigation Currently (打黑除惡：1013 起黑惡案件正在偵辦)," *People's Daily*, May 26, 2006, http://big5.china.com.cn/chinese/news/1220431.htm (accessed June 9, 2014); "Coerced Confession Still Popular after Fall of Bo Xilai (薄熙来倒台 刑讯逼供仍盛行)," *Deutsche Welle*, September 24, 2013, http://www.dw.de/%E8%96%84%E7%86%99%E6%9D%A5%E5%80%92%E5%8F%Bo-%E5%88%91%E8%AE%AF%E9%80%BC%E4%BE%9B%E4%BB%8D%E7%9B%9B%E8%A1%8C/a-17109493 (accessed July

government has clearly made a priority of murder cases; the MPS announced in 2013 that the national rate for solving murders was 95.5 percent.[122] Some cities, such as Urumqi in Xinjiang, claimed a 100 percent rate for solving murders in 2013.[123]

Lawyers we interviewed said that in these "major cases," there is political pressure coming from the top to solve them, thus further weakening any procedural protections—however limited—that otherwise might exist in Chinese criminal law for the defendants.[124]

The investigation and prosecution of such cases can create an environment especially conducive to torture and other ill-treatment, largely because officials from the procuratorate and the court are made to work together as a group (*lianhe ban'an* 联合办案).[125] Local governments set up "Special Investigation Units" (*zhuan'anzu* 专案组) involving the supposedly separate branches of police, procuratorate, the court, and the Party's Disciplinary Commission in cases involving official misconduct. Together, and under the leadership of the local Communist Party Political and Legal Committee, the units "study the case to see how to convict"[126] the suspects.

These three categories of crimes numerically make up a small proportion—about 6 percent—of the 432 allegations of torture documented in court verdicts Human Rights Watch analyzed. But the severity of the torture, and the fact that these get considerable public and media attention, means they make a disproportionately large impact on public confidence in the justice system.

8, 2014); Tania Branigan, "Xi Jinping vows to fight 'tigers' and 'flies' in anti-corruption drive," *the Guardian*, January 22, 2013 http://www.theguardian.com/world/2013/jan/22/xi-jinping-tigers-flies-corruption (accessed July 8, 2014),

[122] Li Enshu (李恩树), "Two Million Police Loyal to Their Work and Safeguarding Safety (二百万公安民警忠诚履职守护平安)," *Legal Daily,* February 28, 2013, http://webcache.googleusercontent.com/search?q=cache:UdcYoDztH9gJ:www.mps.gov.cn/n16/n1252/n916512/3706433.html+&cd=15&hl=en&ct=clnk (accessed June 6, 2014).

[123] Shi Su (石速), "Urumqi Public Security Bureau Solved 100 Percent of Murder Cases (乌鲁木齐市公安局 2013 年命案破案率 100%)," *Yaxin Net* (亚心网), January 27, 2014, http://news.iyaxin.com/content/2014-01/27/content_4400295.htm (accessed June 6, 2014); "Suzhou Police Crime Clearance Rate is 100 Percent (苏州警方首季命案破案率 100%)," *China Jiangsu Net* (中国江苏网), April 10, 2014 http://webcache.googleusercontent.com/search?q=cache:S_xQOG20Mq8J:jsnews.jschina.com.cn/system/2014/04/10/020741713.shtml+&cd=30&hl=en&ct=clnk (accessed June 6, 2014),

[124] Human Rights Watch interview with Beijing-based lawyer Ze Zhong (pseudonym), February 7, 2014.

[125] In November 2013, perhaps recognizing that the judiciary's involvement in these Special Investigation Units is problematic, the Supreme People's Court issued a notice aimed at reducing miscarriages of justice, which included a prohibition against courts being involved in working on such cases jointly with the procuratorate and the police. But the effects of this decision on actual cases are not yet clear. See Supreme Court on the Establishment of a Comprehensive Working Mechanism to Prevent Miscarriages of Justice in Criminal Justice, *Supreme People's Court*, para.23.

[126] Human Rights Watch interview with Chen Lihua (pseudonym), a Beijing-based lawyer, January 24, 2014.

Violence and Mistreatment by "Cell Bosses"

The 2009 string of deaths in detention centers, including the infamous "hide-and-seek" death of Li Qiaoming described in Chapter I of the report, generated public outrage that pushed the government to acknowledge the problem of cell bosses—detainees who organize and abuse others on behalf of detention authorities. In 2009, the Deputy Procurator-General of the SPP Jiang Jianchu acknowledged the severity of the problem in a published interview:

> We must admit that [abuse by] cell bosses have indeed been an ongoing problem for a long time. However, it is quite difficult to resolve this problem, and so I can only say that we will continue working hard to tackle the issue.[127]

In 2009, the SPP and the MPS announced a series of promising measures, including increased monitoring of detainees' living quarters to prevent violence by cell bosses.[128] In 2014, the Ministry of Public Security said the problem of cell bosses had been "effectively curbed."[129]

Yet former detainees and defense lawyers told Human Rights Watch that cell bosses continue to be commonly used as de facto managers of cells and act as the intermediaries between detainees and the police officers. Many facets of life—including where to sleep and organizing the purchase of extra food and necessities—are under the management of the cell bosses.

Former detainee Yuan Yifan, who is in his 30s and had been in a Guangzhou detention center, told Human Rights Watch that although cell bosses have new titles, they continue to function as de facto guards in detention centers:

> They are no longer called "cell bosses" but instead "persons on duty." The police only patrol twice a day, once in the morning and in the afternoon. For

[127] Li Jingrui, "The Deputy Procurator-General of the Supreme People's Procuratorate Said Cell Bosses Have Been a Problem for a Long Time (最高检副检察长称牢头狱霸问题长期存在)," March 10, 2009, http://news.sina.com.cn/c/2009-03-10/014015281580s.shtml (accessed January 8, 2015).

[128] Song Yian, "Zhao Chunguang: The Phenomenon of Cell Bosses Has been Effectively Curbed," China.com.cn (中国网), July 24, 2014, http://www.humanrights.cn/cn/zt/tbbd/49/6/t20140724_1190841.htm. (accessed April 29, 2015).

[129] Zhao Chunguang (赵春光), "We Must Not Tolerate Cell Bosses (绝不能容忍出现牢头狱霸)," *People's Net* (人民网), July 18, 2014, http://legal.people.com.cn/n/2014/0718/c42510-25300270.html.

> the rest of the day, these "persons on duty" are in charge of keeping the order and assigning duties.... These are theoretically duties of the guards, but in practice they are carried out by these "persons on duty."[130]

The level of mistreatment and abuse employed by the cell bosses varies. Wang said those in his detention center had not mistreated fellow detainees: “There are still jail bosses, but the situation is better than before. Corporal punishment and verbal abuse are still being used, but they are less harsh.”[131]

Others said physical abuse was common. Lawyer Wu Ying who spent months in a detention center in a southern province said he witnessed “simple beatings”:

> Some cell bosses … often beat others, I was abused too … the way they abuse people is to make them stand on dirty toilets, also simple beatings. Now there are surveillance cameras, hitting is less common. Sometimes you still have seven or eight people ganging up on someone.[132]

Detainee Zuo Yi said beatings were very serious in the Fujian province detention center where he was detained; a cell boss there threatened to “torture him to death slowly.” He recalled one beating:

> He [the cell boss] used a clothes hanger, [he] put [my] hands on the bed and hit them with the hanger until the fingers were broken … it continued for a long time.[133]

Cell bosses mistreat and beat fellow detainees for a variety of reasons, in some cases, they dislike particular detainees or want to extort money from them. A detainee from Henan Province, Feng Kun, told Human Rights Watch:

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[130] Human Rights Watch interview with Yuan Yifan (pseudonym), a former detainee who lives in Guangdong Province, August 27, 2014.

[131] Ibid.

[132] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[133] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

> In detention centers, if you have no connections you get beat up [by the cell boss], if you have connections you are safe and you get to share the benefits. You are fine as long as your family sends money.[134]

Another main function of cell bosses is to act as the cell's production manager in the many detention centers that require detainees to work without pay. Cell bosses divide the work among the cell's detainees and failure to work quickly enough or accomplish the individual quotas assigned appears to be one of the main reasons cell bosses abuse fellow detainees. Zuo Yi, who was detained in Fujian, told Human Rights Watch: "They bring your work in for you to do every day, you have to do whatever they told you to or they will beat you."[135]

Former detainee Tong Shenmu said cell bosses use violent mistreatment as punishment for violating cell "rules":

> Beatings [by jail bosses] are mostly related to work. But there were also instances when the jail bosses beat detainees for disobedience of their rules … they have rules about when you can use the bathroom … and if you break the rule, you would get beaten up. But most of the time you get beaten up for not doing the work.[136]

Similarly American teacher Stuart Foster, who spent months in Guangzhou's Baiyun Detention Center, told Human Rights Watch that cell bosses punished detainees who were slow in their work:

> All through the assembly process, the gang [cell bosses]—the leader with assistants appointed—would go around and hit people or whip them to spur production. Again, anyone who they deem slow would not get a smoking break that day. If they continue to be a problem … then they would be brought to the front of the cell, usually at night over work and they'd be forced to face the wall like this, down on their knees and they would receive

[134] Human Rights Watch interview with Feng Kun (pseudonym), a former detainee who was detained in Henan Province, May 14, 2014.

[135] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

[136] Human Rights Watch interview with Tong Shenmu (pseudonym), a former detainee in a detention center in Henan Province, August 26, 2014.

> hits on their heads and kicks to their ribs … they might also cut your food ration in half … those were relatively common [punishments].[137]

Detainees told Human Rights Watch that cell bosses have a close relationship with the guards, who gave them favorable treatment including extra cigarettes and warm tea. Although much of the violence and mistreatment from cell bosses appears to be part of their "management style" to instill fear and obedience among inmates, some is done on the behest of the guards.[138] Interviewees have also reported that cell bosses beat detainees to extract further confessions and information from them, either at their own initiative, or because they were instructed by the police to make the detainee "cooperate" with the investigation. Zuo Yi told Human Rights Watch:

> He [the cell boss] wanted to get credits to get his sentence reduced. He made me confess [to further crimes] and I wouldn't, that was why he abused me. Maybe also he didn't like me, those were the two reasons.[139]

Yu Zheng, a lawyer from Shanghai who has been practicing since 1992, told Human Rights Watch: "If you don't obey, they tell the cell bosses to beat you, like when you don't confess."[140]

Another Shanghai-based lawyer, Song Sanzuo, said:

> Some cell bosses are in their nature abusive; but a minority [abuses others] when instructed by the police guarding the cell. The former is common everywhere in the world—abusing newcomers, forcing them to sleep next to the toilets; the latter is when the guards want to get the suspect to cooperate, they ask the cell boss to "teach them a lesson," for their bad attitude.[141]

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[137] Human Rights Watch interview with Stuart Foster, a former detainee who was held in a detention center in Guangdong Province, June 3, 2014.

[138] An infamous example is the case of an uncle and nephew named Zhang Gaoping and Zhang Hui, who was falsely convicted and served years in prison after a cell boss and police informant provided false information that led to their conviction. See "The Case of Rape and Murder by an Uncle and Nephew in Zhejiang (浙江叔侄奸杀冤案)," *Baidu*, http://baike.baidu.com/view/10371375.htm (accessed October 31, 2014).

[139] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

[140] Human Rights Watch interview with Yu Zheng (pseudonym), a lawyer based in Shanghai, February 14, 2014.

[141] Human Rights Watch interview with Song Sanzuo (pseudonym), a lawyer based in Shanghai, May 16, 2014.

Use of Restraints and Solitary Confinement

Police officers regularly use restraints—known as the "tiger chair"—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.

Former detainee Ma Yingying told Human Rights Watch that she was strapped to this device for weeks, during which time she lost considerable weight and fainted multiple times:

> I sat on an iron chair all day, morning and night, my hands and legs were buckled. During the day I could nap on the chair, but when the cadres came, they scolded the police for letting me doze off.… I sat until my buttocks bled.[142]

Former detainee Lei Xinmu said:

> The "tiger chair" is an iron chair, its iron buckles fastened around your hands and feet. I sat on the tiger chair, and had two spotlights shining on top of my head, they took turns talking to me … and they did not let me sleep, I could not stand it … [I was buckled in the chair] for nine days and nights.[143]

[142] Human Rights Watch interview with Ma Yingying (pseudonym), a former detainee who was detained in Fujian Province, May 20, 2014.

[143] Human Rights Watch interview with Lei Xinmu, (pseudonym), a former criminal suspect who lives in Shaanxi Province, June 9, 2014.

Illustration of a suspect restrained in what the police call an “interrogation chair,” but commonly known as a “tiger chair.” Former detainees and lawyers interviewed say that police often strap suspects into these metal chairs for hours and even days, often depriving them of sleep and food, and immobilizing them until their legs and buttocks are swollen.
(c) 2015 Russell Christian for Human Rights Watch

Some police have acknowledged the use of this device, but they contend that it is used to prevent suspects from harming themselves and others. 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 authorities according to the relevant provisions of the Ministry of Public Security ... the chair is to restrain suspects for preventing them from suicides or self-injuries or against violence or attacks against interrogators.[144]

According to an MPS notice, interrogation rooms should be equipped with "special seats" for suspects that should be "secure" and "fixed to the ground" with "safety features."[145] But 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 for protecting suspects from hurting themselves or others, the relevant regulations governing police equipment and restraints do not include interrogation chairs.[146]

Detention center staff also regularly use handcuffs and leg irons on detainees.[147] Relevant regulations require that detainees on death row awaiting court review of their cases and convicted inmates awaiting execution be restrained at all times using leg irons and handcuffs, often with leg irons and handcuffs linked together, presumably to prevent escape.[148] This could mean months and sometimes even years in restraints as detainees appeal their cases.

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[144] "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)," *Jinqian Zaixian* (金黔在线), June 20, 2012 http://news.shm.com.cn/2012-06/20/content (accessed April 22, 2014).

[145] "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.

[146] "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.

[147] Chinese law allows the use of restraints in four conditions: when detainees may harm themselves or others or escape, when detainees "seriously disturb" the detention center, when they are transferred out of the detention center, and for detainees on death row pending execution.

[148] Detention Center Regulations, art. 17. See also, "Another Question Regarding the Heilongjiang Incident: How Should We Watch 'Death Row Inmates' (再问黑龙江事件：如何看管"死刑犯"？)," *Caixin Magazine (财新网)*, September 3, 2014http://opinion.caixin.com/2014-09-03/100724834.html (accessed September 4, 2014). The Committee against Torture has advised that restraints should not be used on the basis of the "status, penalty, legal condition" of an individual. UN Committee against Torture, Observations on the Standard Minimum Rules, para. 36.

One detainee convicted of homicide whose appeal of his death sentence was pending had been handcuffed and shackled in leg irons in an uncomfortable position for 24 hours a day, seven days a week for the past eight years, according to a family member:

> He lives with handcuffs and leg irons, for eight years he has lived like that. In the letters he sent, he said what he wanted the most was to "be able to put on clothes and eat on his own," but he can't. He is less than an animal, which is extremely cruel. In the detention center, he is so tightly fastened, when it is winter and so cold, he can only wrap clothes around himself. It is also difficult for him to use the toilet. He cannot straighten his body, the chains [in between handcuffs and leg irons] are very short.[149]

Long-time Beijing-based human rights lawyer Ze Zhong told Human Rights Watch:

> Prisoners with death sentences are guarded more strictly. Once the sentence is handed down, they have to wear handcuffs and leg irons … their hands and feet are shackled together, they cannot stand up straight, for usually between eight months and a year between their sentence and execution.[150]

Detention centers also use painful restraints for prolonged periods to punish detainees for bad behavior, such as fighting other detainees, and failure to obey the staff's orders or detention center rules. Former detainee Li Fang, who is in her 50s, recalled one episode in which a fellow detainee was chained for days:

> We had to sit still and were not allowed to talk. You were physically punished if you talked. There was one woman who was quite deaf, and she couldn't hear the guard, who said we were not allowed to talk. She moved and she was handcuffed to an iron bar with her hands twisted behind her, and they left her there for two to three days, even during meal times or sleep. I felt sorry for her so I held a bucket for her for when she needed to urinate or defecate.[151]

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[149] Human Rights Watch interview with Yang Jinli (pseudonym, location withheld), a family member of a criminal suspect who was on death row, Jan 24, 2013

[150] Human Rights Watch interview with Beijing-based lawyer Ze Zhong (pseudonym), February 7, 2014.

[151] Human Rights Watch interview with Li Fang (pseudonym), a former criminal suspect who was detained in Shanghai, May 12, 2014

Former detainees we interviewed all noted that this punishment is particularly uncomfortable and painful, because the leg irons are heavy and make it difficult for the detainees to move or stand to their full height, or cut into their skin. Lawyer Wu Ying, who was held in a detention center, explained:

> Handcuffs and leg irons were common when people didn't obey the detention center rules. One way was to make you wear both, it means that the handcuffs and leg irons are chained together, and they are heavy. You can't take them off even in sleep; it is uncomfortable because you can't straighten yourself.[152]

Detainees sometimes have also been chained to a stationery object in the cell, so they effectively cannot move for the period of the punishment. Former detainee Stuart Foster told Human Rights Watch that:

> In the eight months, there were four occasions [on which restraints were used], that was generally because detainees were not working and were causing disruptions like arguments and fights.... Two different inmates were chained to the floor for two weeks, which meant they were unable to go to the toilet, another inmate would bring them a bucket. When you were chained to the floor they'd cut your ration, I remember one boy that ... in the two weeks he was chained to the floor by the end he looked like he was dying of starvation.[153]

In some detention centers, detainees are required to sit in one position for hours without moving, which can be very painful. Former detainee Yuan Yifan said:

> We had to sit all day from the time we woke up to until bedtime. We couldn't even stretch our legs but we had to sit cross-legged. Except for when we did [group] exercise or during breaks, we had to sit without even changing the direction [we face]. My legs were still swollen weeks after I got out of the detention center.[154]

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[152] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[153] Human Rights Watch interview with Stuart Foster, a former detainee who was held in a detention center in Guangdong Province, June 3, 2014.

[154] Human Rights Watch interview with Yuan Yifan (pseudonym), a former detainee who lives in Guangdong Province, August 27, 2014.

Former detainee Yang Zhenling described a similar situation:

> They forbid us from lying down in bed or walking around [the cell], and we had to sit cross-legged in a certain area for at least eight hours a day. That was effectively torture, and it was painful.[155]

Detainees told Human Rights Watch that the restraint periods can be days or even weeks depending on the "mood of the guards." Zuo Yi, who now works as a driver after release from a Fujian detention center, told Human Rights Watch:

> So many of them wear handcuffs and leg irons … the amount of time is totally up to guards' mood to decide, sometimes two weeks, sometimes 8 to 10 days.[156]

Wu Ying said:

> As to how long you have to wear them, it depends on the guard's moods. In our cell one man was wearing them for two to three weeks.[157]

Several detainees said that they witnessed others subject to solitary confinement during pre-trial detention. Ma Yingying said:

> There were two women who fought. Whoever fought had to be locked up [in solitary confinement], for one or two days, it depends on how serious were the fights. The guards could decide how many days you would be detained.[158]

Tong Shenmu, a professional in his mid-30s detained for economic crimes, said it was common for detainees to be subjected to solitary confinement:

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[155] Human Rights Watch interview with Yang Zhenling (pseudonym), a former detainee based in Guangdong Province, May 26, 2014.

[156] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

[157] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[158] Human Rights Watch interview with Ma Yingying (pseudonym), a former detainee who was detained in Fujian Province, May 20, 2014.

> Many people have been locked in these small cells. Those who were loud, noisy, or crazy were locked up on their own between one and two weeks [at a time].[159]

The cells are often small, dark rooms that can barely accommodate one person. Guangzhou lawyer Chen Le told Human Rights Watch:

> My client talked about solitary confinement … it is small and dark in there, and you can't even stand up straight.[160]

Former detainee Tong Shenmu said:

> The small cell is similar to the [general] big cell. They just partition the general cell into smaller 5-meter-square cells, each with soft pads on all four sides.[161]

Shandong-based lawyer Hua Shengyu said a number of his clients were detained in these "small cells" and described the conditions there:

> [They are] detained in a very small room without sunlight or windows…they can barely lie down…in ordinary criminal cases [they are held in solitary confinement] because of their "bad attitude" or because they beat fellow detainees in the cell. It is to make them compliant again.[162]

Former detainee Li Fang described her experience in the cell:

> I was shackled to an iron chair, the so-called tiger chair. The room was about 4 square meters. I was there for one day and one night … there was no window in the room, I was totally alone.[163]

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[159] Human Rights Watch interview with Tong Shenmu (pseudonym), a former detainee in a detention center in Henan Province, August 26, 2014

[160] Human Rights Watch interview with Chen Le (pseudonym), a lawyer based in Guangdong Province, May 20, 2014.

[161] Human Rights Watch interview with Tong Shenmu (pseudonym), a former detainee in a detention center in Henan Province, August 26, 2014

[162] Human Rights Watch interview with Hua Shengyu (pseudonym), a lawyer based in Shandong Province, February 14, 2014.

[163] Human Rights Watch interview with Li Fang (pseudonym), a former criminal suspect who was detained in Shanghai, May 12, 2014

Detainees told Human Rights Watch that these punishments are imposed in an arbitrary manner. Lawyers noted that there is no formal way to effectively challenge these disciplinary actions. Detainee Li Fang told Human Rights Watch that few dare to challenge the guards on their arbitrary punishment:

> There is no legal basis for any of these punishments, there is no standard procedure. They can ask you to do anything, and you wouldn't dare to disobey.[164]

Deaths in Custody

> [T]here are three most common causes of unnatural deaths [in detention]: First, forced confessions through torture…. The second is violence against the suspect inside detention centers as [police] try to solve the case…. The third is giving management power to cell bosses.
> —Former Director of the Ministry of Public Security's Bureau of Detention Administration, in a media interview, Beijing, June 10, 2010[165]

While Chinese regulations outline a set of procedures for handling deaths in custody—including viewing the detention center's surveillance video, questioning fellow detainees, doctors, and guards, and an optional autopsy—how authorities actually handle deaths in custody appears to vary considerably.

Human Rights Watch interviewed family members of four detainees who had died in custody and all said they were told by the police that their family members had died of "natural causes"; in most cases, it was unclear to them whether investigations had been conducted.

Bai Qingzuo, father of a 17-year-old who died days after a month in custody in a detention center in northwestern China, said the authorities did not conduct an investigation into his son's death:

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[164] Human Rights Watch interview with Li Fang (pseudonym), a former criminal suspect who was detained in Shanghai, May 12, 2014

[165] Huang, "Officials Analyze Deaths in Custody: Mostly Due to Coerced Confessions," *Southern Weekend*.

> There was no investigation.... They said he died from tuberculosis, a natural cause. They didn't give me any explanation, they just told me to settle the matter privately with compensation.[166]

In Bai's son's case, police appear to have relied on a common tactic: releasing a fatally ill prisoner on medical bail, which relieves the police of responsibilities as outlined in the relevant regulations to conduct an investigation or notify their superiors about a death in custody. While Bai's son died in a hospital outside the detention center, there is strong evidence, described below, that authorities had neglected his condition until it was too late.

Jiang Yiguo, the daughter of a detainee in her 60s, said it was unclear if the police conducted an investigation into her mother's death:

> I don't know if they have done any investigation. [I only read in] the forensics report [which they gave us] that the forensic examiner asked the detention center doctor a few questions out of formality.[167]

Ao Ming, the son of a detainee in his late 60s told Human Rights Watch that he was kept in the dark by the police about his father's death:

> What investigation? They didn't investigate!... They didn't give us any information, just told us to sign to approve for his cremation.[168]

When families asked to see the standard surveillance video meant to be taken of all detainees in their living quarters, police did not allow them to watch all the surveillance footage. Jiang Yiguo told Human Rights Watch:

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[166] Human Rights Watch interview with Bai Qingzuo (pseudonym), father of a 17-year-old detainee who died days after he was released from a detention center in northwestern China, September 12, 2014.

[167] Human Rights Watch interview with Jiang Yiguo (pseudonym), daughter of detainee in central China who died in custody, September 10, 2014.

[168] Human Rights Watch interview with Ao Ming (pseudonym), son of a detainee in a southern province who died in custody, September 17, 2014

> They only let us watch the beginning and the end of the surveillance video in the detention center, and didn't show us the middle. They said that they have regulations and we are not allowed to see the whole video.[169]

Ao Ming said:

> They let us watch the surveillance video of the 30 minutes before he died. I saw that he couldn't walk properly. I told the police that I want to see more video footage, but they said I could only view them upon application. But they said family members cannot make that application, only our lawyers can. But the police threatened our lawyer [and he then quit], so how were we supposed to make an application [to see the video]?[170]

Xiao Li, daughter of a detainee in his 40s, told Human Rights Watch that the detention center showed her a video of her father, which showed signs of abuse by a fellow detainee suspected to be a cell boss, but it refused to give her footage of the area where he was beaten:

> At the beginning they said there was no camera in that area. But eventually we went into the detention center, we saw … that there was a camera there but it had been ripped out, and a smaller one that would have monitored my father. I found the camera but they wouldn't show us the videos. After we pointed that out, they changed their words and said, "That's right, we didn't save the videos [you want]."[171]

All of the families told Human Rights Watch that authorities conducted autopsies on the bodies either on the authorities' own initiative or following the families' requests, but two families said they had been reluctant to authorize autopsies because they distrusted the police to conduct them impartially.

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[169] Human Rights Watch interview with Jiang Yiguo (pseudonym), daughter of a detainee in central China who died in custody, September 10, 2014.

[170] Human Rights Watch interview with Ao Ming (pseudonym), son of a detainee in a southern province who died in custody, September 17, 2014

[171] Human Rights Watch interview with Xiao Li (pseudonym), daughter of a detainee in a northern province who died in custody, April 4, 2014.

Forensic experts are controlled by the state and they have to be registered and managed by the Ministry of Justice, but the Public Security Bureaus have their own forensic department and experts.[172] In cases of deaths in custody, according to the relevant regulations, the police and the procuratorate can order autopsies from these experts.[173] Families should be consulted in this process, and if they wish to seek forensic experts other than those chosen by the police or the procuratorate, the authorities "should allow" them.[174] However, Ao Ming told Human Rights Watch that they were not allowed to use forensic experts other than those appointed by the police:

> It was the police who found the forensic specialists. We wanted to find one ourselves, but they wouldn't let us. They said because it happened in the detention center, you can't apply for the forensic examination yourself. If they didn't let us how do we have the power to get another forensic examination? We wanted to find a university in the neighboring province to do the autopsy, but [the police] said no. They said they have to arrange this, and that it must be [done locally]. We didn't have any choice.[175]

Xiao Li also said they fought with the police about having an autopsy done, but failed:

> We applied to the local procuratorate to have the autopsy done at a medical university in the provincial capital. But the procuratorate replied that the application was not accepted and we had to apply directly to the university. So we did, but we were then told that relatives were not allowed to apply directly on their own. The university said only the Public Security Bureau or the procuratorate can make the application to conduct the autopsy.[176]

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[172] Chen Yongsheng (陈永生), "Further Reforms to China's Judicial Appraisal System; From the Perspective of the Establishment of Accreditation Bodies in Investigative Authorities (中国司法鉴定体制的进一步改革—以侦查机关鉴定机构的设置为中心)," *Tsinghua Law Review*, Vol.3 No.4 (2009); Guo Hua (郭华), "Problems and Solutions to Reform of Forensic Expert System in China (我国司法鉴定制度改革的困境与出路), *Tribune of Political Science and Law（Journal of China University of Political Science and Law）*, 2009, Issue 6, p.159-167

[173] Rules on the Handling of Deaths in Detention Centers, art. 13.

[174] Ibid.

[175] Human Rights Watch interview with Ao Ming (pseudonym), son of a detainee in a southern province who died in custody, September 17, 2014

[176] Human Rights Watch interview with Xiao Li (pseudonym), daughter of a detainee in a northern province who died in custody, April 4, 2014.

Because families cannot choose who conducts the autopsies, some want to videotape the autopsy so they can send it to other experts. The relevant Chinese regulations say families can be present at the autopsy, but are silent on whether they can document them.[177] Two family members told Human Rights Watch that police refused their request to obtain photos or videos of the autopsy.

Bai Qingzuo said he was reluctant to agree to an autopsy, which was carried out by forensic experts employed in a local university and appointed by the police. He eventually relented, but on the condition that he be given a video of the autopsy. They did not give it to him:

> I told them we have two conditions. First, there must be a video. Second, they have to examine his external wounds.... The report [that came out] said all the organs were fine but they didn't mention the wounds.... They also didn't give me a copy of the video.[178]

Similarly, police showed Xiao Li a copy of the autopsy video and pictures, but did not allow her to make copies of them:

> The end [of the autopsy report] said over 50 photos were attached, so we asked the Public Security Bureau for the photos. The Bureau said the photos were with the procuratorate, but the procuratorate said the police had the photos. They went back and forth like that. Then the political and legal committee at the Bureau said, fine, they would let us see the pictures, but we could only view them within their sight. They didn't let relatives in to watch the autopsy performed and only showed us the autopsy video. But they didn't allow us get a copy of the video either.[179]

Because family members cannot obtain this kind of information or evidence, it is virtually impossible for them to press for redress, including criminal prosecution of the police

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[177] Rules on the Handling of Deaths in Detention Centers, art. 12.

[178] Human Rights Watch interview with Bai Qingzuo (pseudonym), father of a 17-year-old detainee who died days after he was released from a detention center in northwestern China, September 12, 2014.

[179] Human Rights Watch interview with Xiao Li (pseudonym), daughter of a detainee in a northern province who died in custody, April 4, 2014.

officers believed responsible for the deaths. Under relevant laws and regulations, police can be held criminally or financially responsible if detainees die as a result of physical violence in detention.[180]

A detention center told Xiao Li that her father had died of a sudden heart attack, even though there was evidence of physical violence:

> In the surveillance video [shown to me], I saw a detainee who looked like a cell boss pulling my dad off his bed and out to the yard, where I think he beat my father.... Afterwards the video showed that my father kept touching one side of his head and seemed to be unwell.... When I saw his body afterwards, [the morgue] already had dressed him and put make-up on. So I did not see any blood, but I could feel that one side of his skull had gone soft.[181]

In two other cases, police denied any responsibility even though there were signs of neglect and denial of adequate medical attention while in detention. Bai Qingzuo said his son suffered for days from increasingly itchy, painful red patches on the legs and face, but the detention center did not attend to him or send him to the hospital until just before his death. They released him after they sent him to the hospital, where he died only a few days afterwards:

> They didn't treat him the whole time. When I brought him to the hospital, I even called the doctor at the detention center and asked him if he'd given him any medicine. The doctor said no, that all he had gotten were some anti-inflammatory drugs.[182]

After Bai's son's death, the police said that he had died of tuberculosis. However, neither the police nor the procuratorate initiated an investigation, and that since his son "died from natural causes," they said they were "not liable for the death."

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[180] Rules on the Handling of Deaths in Detention Centers, art.28; State Compensation Law, art.3.

[181] Human Rights Watch interview with Xiao Li (pseudonym), daughter of a detainee in a northern province who died in custody, April 4, 2014.

[182] Human Rights Watch interview with Bai Qingzuo (pseudonym), father of a 17-year-old detainee who died days after he was released from a detention center in northwestern China, September 12, 2014.

"Abnormal deaths" in custody, such as when suspects die after beatings by fellow detainees, have been at the center of media attention in China. It is difficult to ascertain how many deaths like these take place each year, as the MPS is the only agency that publishes statistics. In 2009, official data noted only 15 cases of deaths in custody due to "unnatural causes," and subsequent reports by the MPS state that both the numbers of unnatural and "natural" deaths dropped consecutively in 2010 and 2011.[183] The MPS claims that deaths in detention centers dropped to a historical low in 2013.[184]

[183] "The Supreme People's Procuratorate: 15 Cases of Deaths in Custody Were Received This Year (最高檢：今年接到在押者非正常死亡報告 15 人)," *People's Net* (人民網), April 19, 2014, http://politics.people.com.cn/BIG5/1026/9153861.html (accessed July 8, 2014); Zhao Chunguang (赵春光), "Insist on Protecting Criminal Proceedings and Protecting Human Rights: Innovations in National Management Mechanism in Detention Center Have Achieved Remarkable Results (坚持保障刑事诉讼与保障人权并重——全国看守所管理机制创新取得显著成效), *Legal Daily*, March 7, 2012 http://www.legaldaily.com.cn/Frontier_of_law/content/2012-03/07/content_3405904.htm?node=33424 (accessed July 8, 2014).

[184] "Unnatural Deaths in Custody in Detention Centers Have Fallen to a Historical Low in 2013 (2013 年全国看守所非正常死亡率达历史最低水平)," *People's Net* (人民网), July 18, 2014, http://news.163.com/14/0718/14/A1EMC7K200014JB6.html (accessed September 15, 2014).

A Recent Press Report of a Suspicious Death While in Custody

Press reports of suspicious deaths while in custody continue to be published regularly in recent years.[185] The case below, which alleges the involvement of cell bosses, is taken from Chinese press accounts.

In December 2013, Mo Youwen, 38, was taken into custody for allegations of theft to a county detention center in Guangxi, where he died 39 days later. Initially, the local Public Security Bureau and doctors at the hospital who had treated Mo insisted that he had died of "a sudden illness": leukemia. Yet Mo's family saw his body and said it was covered with injuries and bruises. The police offered the family 900,000 RMB (about US$150,000) as compensation on the condition that the family not publicly discuss the case.[186] The family's suspicions of ill-treatment grew when they saw the hospital records, which noted external injuries.

The *Beijing Youth Daily* quoted anonymous sources saying that Mo died after being beaten by cell bosses for more than two weeks, all within view of the watchful surveillance camera in the cells. It was not the first time Mo was badly beaten either—earlier, he had been transferred out of his first cell after he was beaten by other detainees, and it was in this second cell that he was beaten to death. Ironically, the procuratorial office of the detention center in which Mo died was given awards by the SPP in 2007 and in 2011 for its excellence in ensuring a safe detention environment.[187] After the press reports, the local procuratorate promised to investigate the case, but at this writing, the results of this investigation have not been made public and there is no publicly available evidence that anyone has been held accountable.[188]

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[185] See for example "Beijing Detention Centers Pays RMB 50,000 Assistance Payment to Prisoners on Death Row who Allegedly Was Killed by a Fellow Detainee (北京在押死囚疑被同监者打死 看守所付 5 万救助金)," *Oriental Morning Post (东方早报)*, March 29, 2014 , http://news.qq.com/a/20140329/010400.htm (accessed October 27, 2014); Chen Jiesheng (陈杰生) and Zheng Hong (张弘), "Police Said Man's Death in Detention Center Was Sudden, But Family Is Suspicious (男子看守所内死亡 警方称猝死遭家属质疑)," *Southern Metropolis Daily (南方都市报)*, July 25, 2014http://news.sina.com.cn/s/2014-07-25/053930576157.shtml (accessed October 27, 2014); Wang Jian (王健), "Guangxi Yulin: Suspect Died after Five Days of Detention, His Chest Has Greenish Bruises and His Legs and Arms are Injured (广西玉林：嫌犯被拘 5 天死亡 胸口发青手脚有伤), July 4, 2014, http://i.ifeng.com/news/sharenews.f?aid=85657655 (accessed July 17, 2014).

[186] "Detainee Died after Beaten to Death by Cell Boss (在押嫌犯疑遭"牢头"殴打身亡)," *Beijing Youth Daily (北京青年报)*, February 24, 2014, http://epaper.ynet.com/html/2014-02/24/content_42395.htm?div=-1 (accessed June 13, 2014).

[187] "A Sequel to the 'RMB 900,000 hush money incident' (90 万封口费事件"续), *Beijing Youth Daily*, March 19, 2014, http://news.xinhuanet.com/legal/2014-03/19/c_126285316.htm (accessed January 7, 2015).

[188] "Follow-up on the Case of Suspect Beaten in Custody in Yangshuo, Guangxi Province: Guilin Prosecutors Involved in the Investigation (广西阳朔在押嫌犯被打死追踪：桂林检方介入调查), *Beijing Youth Daily (*北京青年报), February 26, 2014, http://gx.sina.com.cn/news/gx/2014-02-26/143910667.html (accessed June 13, 2014).

III. Access to Lawyers, Relatives, and Medical Care

Prompt access to independent lawyers and doctors, as well as the right to be visited by or correspond with family members, are basic rights of detainees and are critical to the prevention of torture and ill-treatment. In general, detainees should have the rights to legal counsel of their own choosing, to "prompt access" to an independent physician, and 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.[189]

These rights are often denied in China. Under Chinese law, suspects have no right to have lawyers present while they are interrogated in police stations and detention centers.[190] Suspects are not guaranteed the right against self-incrimination (being allowed to remain silent during interrogations).[191] They can appoint and meet with lawyers, but the practical bars to hiring effective counsel are considerable and free legal counsel is not guaranteed.[192] In addition, police are legally entitled to deny access to lawyers to suspects charged with terrorism, major corruption crimes, and state security offenses.[193] Detainees also have no access to medical professionals independent from the police, and very restricted or no communication with their families, creating conditions that are conducive to the use of torture.[194]

Safeguards introduced in recent years, including the video recording of criminal interrogations and mandatory physical examination upon arrival at the detention center,

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[189] 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.

[190] CPL, arts. 116 and 117.

[191] While the law allows suspects to refuse to answer irrelevant questions and to incriminate themselves in police interrogations, it also requires suspects to "answer truthfully" in police interrogations. CPL, arts. 50 and 118.

[192] Wu and Beken, "Police Torture in China and its Causes: A Review of Literature," *The Australian and New Zealand Journal of Crimnology,* p.566. The lack of legal representation is likely a reflection of suspects' reluctance to hire lawyers because of the cost; suspects' belief that other means, such as bribing relevant officials, might be better alternatives; and lawyers' reluctance to take criminal cases because they fear official retribution and prosecutions of criminal defense lawyers. See Congressional-Executive Commission on China, "Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China," http://www.cecc.gov/publications/issue-papers/defense-lawyers-turned-defendants-zhang-jianzhong-and-the-criminal (accessed September 1, 2014).

[193] CPL, art. 37.

[194] The use of incommunicado detention is considered to raise the risk of torture and ill-treatment and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture. Although international standards do not prohibit incommunicado detention, international standards and expert bodies have stated that it should be restricted to very short periods of time and in very exceptional circumstances.

could prevent torture if effectively implemented. But they have had a limited impact because they rely on the state to restrain and police itself. While the "exclusionary rule"—the exclusion from trial of statements obtained through torture—which should provide lawyers opportunities to challenge such evidence in criminal proceedings, has proven to be too weak a tool.

Access to Lawyers

Academic and official sources estimate that 70 to 90 percent of criminal defendants in China have no lawyers, typically because defendants are often too poor to hire them or are discouraged from doing so by the police. [195] Legal representation and legal aid are compulsory for those accused of crimes that might lead to life imprisonment or the death penalty, or to juvenile suspects and those with disabilities.[196] While others can apply for legal aid, such assistance is not guaranteed, as required by international law.[197] In a positive move, the Chinese government has piloted a "duty lawyer" system in some detention centers since 2006 to improve legal access, though it is unclear if and when the scheme will be adopted nationally.[198]

For the minority of defendants who can afford lawyers, the next hurdle is being able to contact a lawyer to request legal representation while in police custody. Under the Criminal Procedure Law, suspects have the right to appoint lawyers as soon as they are first interrogated or held under any of the compulsory measures of the police (summons, bail

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[195] There are no national statistics regarding legal representation, although Chinese legal scholars and officials generally agree that the rate is low and less than 30 percent. See Sida Liu, Terence Halliday, "Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law, Law and Social Inquiry," Vol.34, Issue 4, 2009, p. 937, http://lexglobal.org/files/Recursivity%20in%20Legal%20Change.pdf and Ira Belkin, "China Tortuous Path Towards Ending Torture in Criminal Investigations," p. 281. A former chief procurator in Beijing, said only 2.5 percent of defendants have lawyers. "Mu Ping: Lawyers Handled Only 2.5 percent of the 20,000 Criminal Cases (慕平：两万刑诉案 律师仅代理 2.5%)," *Beijing News,* March 9, 2012. A former president of the All-China Lawyers Association, China's official lawyers' association, estimated that less than 30 percent of criminal cases were represented by lawyers. Zhu Lei, "Committee Member Wang Ning Recommends Increasing Participation of Lawyers in Criminal Cases (于宁委员:建议提高刑案律师参与率)," *Legal Daily,* March 12, 2012.

[196] CPL, art. 34 and 267.

[197] ICCPR, art. 14(3)(b).

[198] Liu Rong, "18 cities pilot 'fast-track' program in criminal cases: theft, dangerous driving can be tried in simplified trial (18 城试点刑事案件速裁程序：盗窃、危险驾驶可简化庭审)," *People's Net*, http://npc.people.com.cn/n/2014/0623/c14576-25188320.html (accessed March 25, 2015); Zhao Lei, "Delivering Eight Years of Legal Aid, Duty Lawyers Reflect Justice and Warmth in the Legal System (8 年法援律师值班映射司法公正和法律温暖)," *Henan Legal Daily,* December 11, 2014, http://roll.sohu.com/20141211/n406842837.shtml; "Shanghai Creates Legal Aid Duty Lawyer Workshop System in Detention Centers (上海开创看守所法律援助值班律师工作室制度)," *CRI Online*, August 27, 2014, http://www.humanrights.cn/cn/zt/tbbd/49/5/t20140827_1198072.htm (accessed March 25, 2015).

pending trial, residential surveillance, detention, or arrest).[199] Police should then convey this request to the lawyer "in a timely manner."[200]

Former detainees and defense lawyers Human Rights Watch spoke with, however, said that police often fail to pass on these requests and, in two cases we examined, suspects said they suffered retaliation for making them.

Cao Zuowei, a worker accused of theft, said police ignored him when he said he wanted to hire a lawyer:

> I said I wanted to hire a lawyer to sue you. They said, "Hire a lawyer? You think this is Hong Kong? This is the US?... If you don't obey I'll make you obey." As he was saying this he was kicking and hitting me.[201]

Beijing-based lawyer Lu Qinghua said that in a case he handled, police started beating his client when the client asked for a lawyer:

> He saw the rights of suspects [pre-printed] on the police record of his statement. So when he saw them he asked to hire a lawyer. Just because of this request, the police started beating him, slapping and kicking him. After beating him for a while, they handcuffed him onto the window frame, his feet barely touching the ground for almost an hour, his hands turned black and that is when he "confessed."[202]

Defense lawyers told Human Rights Watch that access to non-political criminal suspects improved after revisions to the Criminal Procedure Law in 2012. Under the revisions, lawyers have access to suspects upon presentation of "three documents"—their lawyer's license, a letter authorizing them to represent the suspect, and a letter from their law firm.[203] But lawyers have also complained about long waiting times because of a shortage

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[199] CPL, art. 33.

[200] Ibid.

[201] Human Rights Watch interview with Cao Zuowei (pseudonym), a former suspect who was detained in Hunan Province, May 17, 2014.

[202] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

[203] CPL, art. 37. In the first month after these revisions became effective, the MPS says there was a 30 percent increase in lawyers' visit to detention centers. But lawyers have reported new hurdles to seeing their clients such as arbitrary rules by local police and lack of adequate meeting rooms. See Wang Feng (王峰), "First Anniversary of the 'Clinical Practice' of the Criminal Procedure Law

of meeting rooms for lawyers, additional requirements for documents not required by the law, excuses by the police that presiding officers must be present, and other obstacles to meeting their clients in some detention centers.[204]

Pursuant to the 2012 revisions, moreover, those charged with terrorism, state security crimes, and major corruption charges (involving over 500,000 RMB [$82,000] in bribes), cannot meet with lawyers without police approval.[205] These same suspects can also be held in a secret location outside of official detention centers for up to six months, creating conditions rife for torture and ill-treatment.[206] Lawyers have also complained that the authorities have abused this exception to legal access even when it is not clear that the case falls into one of the three categories. According to a state press report:

> Beijing lawyer Gong Zhifang handled a case involving "unlawful transfer and sale of land use rights"… until the client was released on bail, Gong was unable to meet her. The detention center's reason was, "we were notified by the investigative unit, that this case belongs to 'the three categories.'" But [the authorities] never said which of the three categories of crimes the case falls under.[207]

Officials charged with corruption are often denied access to lawyers even though the total amount involved is well below the threshold that would qualify the case as one involving "major corruption."[208] In a survey cited in the official press, only 30 percent of corruption suspects are allowed legal access.[209] In one 2013 case, for example:

(新刑诉法"临床"一周年, 21 世纪经济报道), *21st Central Business Herald (21 世纪经济报道),* March 15, 2014, http://jingji.21cbh.com/2014/3-15/oNMDA2NTFfMTA5NzcoNA.html.

[204] Beijing Shangquan Law Firm (北京市尚权律师事务所), "2013 Research Report on the Implementation of the New Criminal Procedure Law (新刑诉法实施状况调研报告[2013 年]," March 7, 2013, http://shangquan.fyfz.cn/b/795789 (accessed September 18, 2014).

[205] CPL, art.37.

[206] Although police are required to notify families of suspects accused of these crimes within 24 hours of subjecting them to designated residential surveillance, they are not required to notify the families the locations where the suspects are held. CPL, art. 73.

[207] Wang Feng, "First Anniversary of the 'Clinical Practice' of the Criminal Procedure Law," *21st Central Business Herald*.

[208] Ibid.;"Lawyers Can Meet Suspects Anytime One Year After Implementation of Criminal Procedure Law (新刑事诉讼法实施一年律师"想见即见)," *People's Daily (人民日报*), March 9, 2014, http://news.jcrb.com/jxsw/201403/t20140319_1351188.html (accessed September 18, 2014).

[209] Guo Mengchao (过孟超) and Peng Xinhua (彭新华), "There is Still Room for Improvement in Implementing Lawyers' Right to Meet with Clients (落实律师会见权还有提升空间)," *the Procuratorate Daily*, December 6, 2013, http://newspaper.jcrb.com/html/2013-12/06/content_147363.htm (accessed September 18, 2014).

> [L]awyer Wang Yalin accepted the bribery case against the acting director of the bidding office of Wuhu County. His client was an assistant section chief, and was suspected of having received bribes of over 100,000RMB [$15,900], but because it was considered to have a significant impact in his area, it was listed as a "major corruption case."[210]

A number of detainees who had access to lawyers told Human Rights Watch that the lawyers they hired refuse to take cases involving police abuse or failed to advocate on behalf of their clients due to police pressure. Bai Qingzuo told Human Rights Watch:

> I went to hire lawyers, but as soon as they heard that my case involves death in custody, and that it involves the police, no one dared to take it.[211]

Another family member of a victim, Yang Jinli, said she also had a hard time finding lawyers who dared to challenge the police:

> The lawyer we hired for the first instance trial was a local lawyer, he was not brave enough to take on the authorities. We let him go in the end, because we found him problematic. We changed lawyers, but this one was the same, he didn't dare to fight for the rights of the defendant.[212]

Ao Ming, son of a detainee who died in custody, told Human Rights Watch:

> We hired a lawyer at the time.... The PSB threatened him and said "If you don't back off from this case, you won't ever be allowed to do your business here."[213]

A lawyer explained why fellow lawyers are afraid of confronting the authorities on police abuse:

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[210] Beijing Shangquan, 2013 Research Report on the Implementation of the New Criminal Procedure Law .

[211] Human Rights Watch interview with Bai Qingzuo (pseudonym), father of a 17-year-old detainee who died days after he was released from a detention center in northwestern China, September 12, 2014.

[212] Human Rights Watch interview with Yang Jinli (pseudonym, location withheld), a family member of a criminal suspect who was on death row, Jan 24, 2013

[213] Human Rights Watch interview with Ao Ming (pseudonym), son of a detainee in a southern province who died in custody, September 17, 2014

> It depends on the lawyers—many don't dare to represent clients who file [torture] complaints. Because this can offend the authorities, and if you offend them, and afterwards you need their help in your work, what are you going to do? Beggars can't be choosers.[214]

In addition to fears of offending the authorities, there are also legal consequences for lawyers challenging the police on torture. Article 306 of the Criminal Law penalizes lawyers who "entice" suspects to "falsify evidence" or "change their testimony contrary to facts."[215] The widely reported case of Li Zhuang, a lawyer who was imprisoned for helping his client to speak out about torture, reportedly has deterred many criminal lawyers from taking such cases.[216]

Access to Family Members

The police are required to notify family members within 24 hours of criminal detention, residential surveillance, or formal arrest.[217] Access to families is critical: often it is a detainee's only means of hiring a lawyer, and for those who do not have lawyers it is the only way of alerting people outside the detention center that they are being mistreated. According to the law, suspects can meet with their families in the presence of police officers after they obtain permission from the police.[218] But in practice, detention centers severely restrict suspects' communication with their families. Academics and lawyers report that detention centers 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.[219] Detention centers typically do not allow suspects to call their families, according to interviewees.

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[214] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[215] See Human Rights Watch, "Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China," April 29, 2008, p. 55-61.

[216] Liu Jianyong, "Troubles that come from nowhere (飞来横祸)," *Legal Weekly,* December 31, 2013, http://www.legalweekly.cn/index.php/Index/article/id/1790 (accessed May 21, 2014).

[217] There are exceptions to this 24-hour rule of notifying families. Police do not have to notify families of suspects accused of two categories of crimes: endangering state secrets and terrorism for up to 37 days in the case of criminal detention.

[218] Detention Center Regulations, art. 28.

[219] 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; 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 (accessed April 30, 2015).

Several suspects told Human Rights Watch that the police failed to notify their families of their detention or notified them days after they were first taken into custody.[220] Yu Zhenglu said police did not notify his family at all when he was in detention for 20 days:

> No, after I came out I asked my family, they didn't even know where I'd gone. It was like I just disappeared into thin air.[221]

Chen Zhongshen told Human Rights Watch that police did not notify his family for the entire month he spent in custody:

> My family did not receive any [notice], the detention center didn't contact my family, they didn't even let them send clothes to me. My family [learned about my detention] after other suspects who were released went and told them.[222]

Often the only way to reach one's family is through letters, but guards or cell bosses at detention centers often intercept letters, exposing mistreatment in detention. Zuo Yi told Human Rights Watch that his letters never reached his family:

> I could hire lawyers, but I couldn't send any letters out. This is because the letters have to go through the cell bosses to the guards. My letters didn't go through. I suspect they were never sent, because after I was released, [my family] told me they didn't receive any.[223]

Li Fang, who was held in Shanghai, told Human Rights Watch that she was unable to write or otherwise communicate with her family:

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[220] See also, "Thief's Body Floated in a Fish Pond after Release from Custody (小偷被拘留 获释后漂尸鱼塘), *Chutian Dushibao (楚天都市报)*, June 16, 2014, http://www.aiweibang.com/yuedu/715407.html (accessed September 18, 2014); Henan Zhoukou Government Responds to Family of Suspect who Vomitted to Death, but Family Remains Suspicious of Torture (河南周口回应嫌疑人呕吐死 家属仍质疑刑讯逼供)," May 24, 2012, http://www.chinanews.com/fz/2012/05-24/3912501.shtml (accessed September 18, 2014).

[221] Human Rights Watch interview with Yu Zhenglu (pseudonym), a former criminal suspect who was detained in a detention center in Yunnan Province, May 22, 2014.

[222] Human Rights Watch interview with Chen Zhongshen (pseudonym), former detainee who lives in Hunan Province, May 13, 2014.

[223] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

> I have never contacted my family. They didn't allow family visits, and they didn't let us write letters. A few people can write to their families—if they admit their guilt then the guards let them write. They can write once every month. You can't use the phone.[224]

Xiao Li said she had no direct contact with her father, who later died in custody, making it very difficult for her to find out what happened to him in detention, and whether he may have been abused:

> I couldn't contact him, they wouldn't let us meet him…no phone calls either. After he was sentenced, I went and looked for people who worked in the detention center, asking them if I can call my father or visit him, but they didn't let us. We couldn't write letters to him either … earlier I wrote him a letter but it wasn't given to him.[225]

Access to Adequate Medical Treatment

Detainees have rights to independent medical examinations upon detention and upon request, according to international standards; these are key safeguards against torture and mistreatment.[226] In China, detention centers are required to allow medical workers to give detainees a physical check-up before admitting them to the facilities, as well as before their departure, and Chinese regulations allow ill or injured suspects in detention access to medical treatment.[227] Through these interactions with medical workers during their detention, suspects should be offered a degree of protection from abuse.

The purpose of the initial exam, according to the regulations, is to screen out from detention centers detainees who have psychosocial disabilities, infectious diseases, those who are pregnant or breastfeeding, those who are too ill or too old, those who are

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[224] Human Rights Watch interview with Li Fang (pseudonym), a former criminal suspect who was detained in Shanghai, May 12, 2014

[225] Human Rights Watch interview with Xiao Li (pseudonym), daughter of a detainee in a northern province who died in custody, April 4, 2014.

[226] UN Committee against Torture, Observations on the UN Standard Minimum Rules, para. 16.

[227] According to a MPS notice, the physical check-up prior to admission should include a blood pressure test, blood tests, ECG, ultrasound, and chest X-ray, and medical staff should ask the detainees about their physical health, past illnesses, allergies, and family medical history. See Notice of the MPS on Standardizing and Strengthening of Management of Detention Centers to Ensure the Health of Persons in Custody (关于规范和加强看守所管理确保在押人员身体健康的通知), *MPS*, 2010.

injured or whose disabilities make them unable to care for themselves, and those whose continued detention can endanger their lives.[228] The regulations do not require doctors to check for signs of torture and abuse, but the examination should provide an opportunity for doctors to note such signs.

In practice, however, former detainees and defense lawyers told Human Rights Watch that medical workers—whether at hospitals or at the detention centers—do not ask suspects about obvious evidence of physical abuse and the presence of police at the examinations makes it difficult for suspects themselves to raise the subject with medical workers.

Gu Daoying told Human Rights Watch that the doctor ignored his injuries:

> At the time I had a few small injuries from the electric batons but [the doctor] made no record of them, of course he saw them. [The doctors] all belong to the police system. I was scared when I got sent there so I didn't say anything [about torture].[229]

Shanghai-based lawyer Yu Zheng told Human Rights Watch:

> Detention centers are guarded by the police themselves. If someone has visible injuries, they will go away in a few days, unless it is more serious and [detainees] have to be taken to the hospital, but even in this case they would not write it down [in the physical record].[230]

Lawyers told Human Rights Watch that police officers guarding the detention centers are often wary of receiving suspects who are more seriously injured or ill, possibly for fear that they might die in those facilities and thus bear responsibility for their treatment. But those who have been tortured are sometimes admitted. Beijing-based lawyer Luo Chenghu told Human Rights Watch that after the investigative police had a discussion with the police responsible for the detention of his client, the detention center admitted the client even though he had injuries from torture:

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[228] Ibid.

[229] Human Rights Watch interview with Gu Daoying (pseudonym), a former detainee who lives in Zhejiang Province, May 22, 2014.

[230] Human Rights Watch interview with Yu Zheng (pseudonym), a lawyer based in Shanghai, February 14, 2014.

> My clients told me that the detention center [guards] asked [the investigative police], "What do we do about these injuries?" But because they are all police, they didn't record anything before admitting him to the detention center.[231]

Suspects are reluctant to tell medical workers about torture because they do not consider that the workers independent of the police. The medical workers are either stationed in the detention center, in which case they are MPS employees or police officers, or, increasingly, they are doctors in designated local hospitals that often have contractual or close relationships with the detention center.[232] A number of suspects said police officers were standing right next to them while they were undergoing the physical check-up, such that if suspects chose to raise their abuse with the doctor they would simultaneously be challenging the police.

Ma Yingying, a former detainee who was subjected to days in the "tiger chair" and sleep deprivation told Human Rights Watch: "The police were always around, you can't talk. Talk to the doctor? No way, you get beaten if you talk."[233]

Another former detainee told Human Rights Watch:

> There was a physical exam at the county hospital. They checked my blood pressure, did some blood tests, and so on. The police officer was right next to the doctors. What use is there to tell [the doctor about the torture]? The doctors don't care.[234]

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[231] Human Rights Watch interview with Luo Chenghu (pseudonym), a lawyer based in Beijing, February 11, 2014.

[232] Gao Yifei and Zhang Shaosong, "The Socialized Reforms of the Provision of Medical Services in China's Detention Centers (中国看守所的医疗社会化改革)," *Yunnan Faxue,* vol. 6 (2014); *http*://xbxsf.nwupl.cn/Article/llqy/201502/19580.html. See also, Wuhu Number 1 People's Hospital, "Our Hospital Has Become the Designated Medical Institution for Wuhu City Detention Center and Detention House (我院成为芜湖市看守所、芜湖市拘留所定点医疗机构),April 22, 2014, http://webcache.googleusercontent.com/search?q=cache:x3dkEt26cgwJ:www.whfph.com/_d276448897.htm+&cd=2&hl=en&ct=clnk (accessed July 17, 2014); Nanhai District Detention Center, "Public Notice Seeking Designated Hospitals to Conduct Five Items of Physical Examination for Detainees in the Detention Center(南海区看守所, 看守所收押人员五项体检项目定点医院公告)," http://www.projectbidding.cn/zbxx/zbgg/2013/06/09090135966155.html (accessed July 17, 2014); "Procurament Notice: Detention Facilities under the Guangzhou Municipal Public Security Bureau Are Now Procuring Medical Services from Society (广州市公安局直属监管场所医疗社会化采购), *Guangzhou City Public Security Bureau*, July 16, 2014, http://www.gzg2b.gov.cn/Sites/_Layouts/ApplicationPages/News/NewsDetail___id$1$59064b38-344e-40e7-bb8f-d86f50246e04.html (accessed July 18, 2014).

[233] Human Rights Watch interview with Ma Yingying (pseudonym), who was detained in Fujian Province, May 20, 2014.

[234] Human Rights Watch interview with Yu Zhenglu (pseudonym), a former criminal suspect who was detained in a detention center in Yunnan Province, May 22, 2014.

Some lawyers we interviewed said that their clients were forced by the investigating officers to say that their injuries were self-inflicted. Shen Mingde, a lawyer based in Beijing, said:

> For example in this one case in Guizhou, the person was beaten so badly that he couldn't stand up … [the police] made the defendant say that he injured himself … and later, during the [court] procedure [examining the need to] exclude illegal evidence, [the procuratorate] presented health records that stated that he was not injured.[235]

Detainees also told Human Rights Watch of their suspicion that investigative police officers pressure medical staff to change their medical evaluations so that detainees pass the test and are admitted into detention centers. Chen Zhongshen, who was subjected to the "tiger chair" for 47 hours and who is in poor health, told Human Rights Watch:

> They measured my blood pressure, and found that it was very high, but when the police officer saw it he pulled the doctor aside, [I don't know] what he said, I couldn't hear it. When the doctor came back, he did it again, and the result was that my blood pressure was not very high, and it wasn't too low, so I passed the physical. Later, in the detention center there was another check-up, and my blood pressure was 220. The director shouted at the doctors: why didn't you find that out? What if he died?[236]

Defense lawyers told Human Rights Watch that detainees' medical reports, which could give clues about abuses and trigger legal protections, are often not included in case files. Consequently the report is not available to the procurator, judge, or defense lawyers for examination. Lawyers can ask the judge to request the records, but such requests might not be granted. Shanghai-based lawyer Song Sanzuo said:

> Usually there is no health exam report, you can't get your hands on it. Only when the judge asks for it then you can see it, but often the judges don't.[237]

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[235] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[236] Human Rights Watch interview with Chen Zhongshen (pseudonym), former detainee who lives in Hunan Province, May 13, 2014.

[237] Human Rights Watch interview with Song Sanzuo (pseudonym), a lawyer based in Shanghai, May 16, 2014.

Beijing-based lawyer Ze Zhong said:

> There are physical check-ups, but the records aren't included in the case file. The lawyers can't see it, the judges can't see it, and the procuratorate doesn't ask for it … most of the time the judges won't … request it.[238]

Beijing-based lawyer Xiao Guosheng, who has over 10 years of experience as a criminal defense lawyer, recalled that in one case the judge specifically requested the medical report but the police refused to hand it over:

> Even the judge went there himself, but the police refused to provide it. He said we need to talk to the police chief and only after he signed for it, then they can provide it.… We went to the detention center to request the document, but they told us that the file was gone, it couldn't be found, and so they didn't give it to us.[239]

When the police officers hand over a medical report to the court, it is not necessarily useful. Lawyer Yu Zheng told Human Rights Watch that the health records do not truthfully record the physical state of the suspects at admission: "Even if you are injured, they will either say it is self-inflicted or leave it blank."[240]

Lawyer Ze Zhong noted the same problem:

> Even if there was serious torture, how do the police solve this problem? They make the police guards write something saying the defendant hurt himself or it was an accident. When you ask, the procuratorate pushes [the responsibility] to the police, and the police respond with a statement [asserting there was no torture].[241]

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[238] Human Rights Watch interview with Beijing-based lawyer Ze Zhong (pseudonym), February 7, 2014.

[239] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, January 23, 2014.

[240] Human Rights Watch interview with Yu Zheng (pseudonym), a lawyer based in Shanghai, February 14, 2014.

[241] Human Rights Watch interview with Beijing-based lawyer Ze Zhong (pseudonym), February 7, 2014.

A number of former detainees said medical care provided by the detention centers is rudimentary at best, while two relatives of detainees alleged that their family members died after a combination of prolonged neglect and denial of medical care in detention (see "Deaths in Custody," above). The problem of inadequate health care is also exemplified by cases of activists who died or became very ill in detention. The most prominent case was the death of activist Cao Shunli in March 2014, who died after the authorities had denied her access to adequate health care for several months while she was seriously ill in detention.[242]

Official reports have acknowledged that medical care in many detention centers is still inadequate, despite new official measures to improve its standards such as the engagement of local hospitals' medical services.[243] In a review of medical care provision in one Guangzhou detention center, a procuratorate staff member wrote that it lacked "qualified medical staff" and staff with "the ability to treat detainees."[244]

If detainees are seriously ill, detention centers are supposed to send them to outside hospitals designated by the detention center.[245] But two former detainees told Human Rights Watch that they knew of instances where detention center staff refused to let detainees go to hospitals outside the detention center. Li Fang recalled one incident when a fellow detainee seemed seriously ill but was not sent to the hospital:

> There was one detainee, she fainted. At the beginning they thought she was pretending [to be ill], but later they let her sleep during the day … but they didn't let her go to the hospital.[246]

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[242] Cao suffered from tuberculosis in both lungs, liver ascites, uterine fibroids, and cysts. Cao was detained for trying to participate in the 2013 UN Human Rights Universal Periodic Review of China, and died days after being transferred to a hospital by Beijing authorities. See Sophie Richardson (Human Rights Watch), "China Wrongs a Rights Defender" commentary, *the Wall Street Journal, March* 3 , 2014; Chinese Human Rights Defenders, "Cao Shunli Suffers from a Variety of Serious Untreated Diseases; Her Case Transferred to the Procuratorate(曹顺利身患多种严重疾病得不到医治，案件移交到检察院)," December 21, 2013, http://wqw2010.blogspot.com/2013/12/blog-post_1972.html (accessed December 11, 2014).

[243]Notice on Strengthening and Improving Medical and Health Provision in Facilities Supervised by the Public Security Organs (关于切实加强和改进公安监管场所医疗卫生工作的通知), *MPS and Ministry of Health,* 2009.

[244] Jiang Xianghui (江湘辉), "Investigation Report on the Management of Medical and Health in Detention Centers (关于看守所医疗卫生管理情况的调研报告)," *Legal System and* Society (法制与社会), vol. 29 (2012), p. 210-214.

[245] Detention Center Regulations, art. 26, Implementing Methods of the Detention Center Regulations of the People's Republic of China, art. 31.

[246] Human Rights Watch interview with Li Fang (pseudonym), a former criminal suspect who was detained in Shanghai, May 12, 2014.

Feng Kun told Human Rights Watch that in a detention center in Henan Province:

> Only if you are very seriously ill can you see a doctor.... There was one detainee who was in so much pain he couldn't stand it, he tried to kill himself by hitting his head against the wall. Only then did they send him to the hospital.[247]

[247] Human Rights Watch interview with Feng Kun (pseudonym), a former detainee who was detained in Henan Province, May 14, 2014.

IV. Protection from Abuse

In recent years the Chinese government has adopted measures—including the video recording of interrogations and the use of iron bars to separate suspects and police officers—to reduce torture and ill-treatment of detainees. While this has likely had a positive impact in some places, there is also evidence police have adapted by evading the new measures.

Video Recording

The Chinese government and Chinese legal scholars highlight the 2010 requirement to video record criminal interrogations as one of the most promising means of preventing torture during criminal interrogations.[248] Legal scholars who had studied torture prevention in other countries were leading proponents of the measure, and the procuratorate introduced the practice to cut down on abuses.[249]

According to the Criminal Procedure Law, interrogations of suspects who might be sentenced to death or life imprisonment and "other major crimes" must be videotaped.[250] The Ministry of Public Security further defines "other major crimes" as those that cause "serious injury or death," "endanger public safety," or "seriously violate citizens' personal rights," as well as triad-related crimes and serious drug-related crimes.[251] The videotaping should be a "complete"[252] recording of each interrogation, and should not be edited.[253] Most interrogation rooms in detention centers and police stations are outfitted with video

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[248] Belkin, "China Tortuous Path Towards Ending Torture in Criminal Investigations," *Columbia Journal of Asian Law*, p. 286.

[249] Du Meng, "Three Aspects of the Draft Amendments to the Criminal Procedure Law Prohibits Torture (刑诉法修正案草案三方面规定严禁刑讯逼供)," Legal Daily (法制日报), http://www.legalinfo.gov.cn/pfkt/content/2011-09/19/content_2971517.htm (accessed July 18, 2014); "The new Criminal Procedure Law to Curb Coerced Confession; Illegal Evidence Would Become Trash (新刑诉法以制度遏制刑讯逼供 非法证据变"废纸"),"*Legal Daily (法制日报),* March 26, 2012, http://www.zzrd.gov.cn/html/news/7/2012-03/26/3950.html (accessed July 18, 2014); Li Kenan (李克难), "Dilemmas in Videotaping Criminal Interrogations(大陆刑事讯问录像困局)," *Phoenix Weekly (凤凰周刊)*, January 8, 2014, http://www.21ccom.net/articles/sxwh/fzqy/2014/0120/99279.html (accessed February 12, 2014); Belkin, "China Tortuous Path Towards Ending Torture in Criminal Investigations," *Columbia Journal of Asian Law*, p. 286.

[250] CPL, art. 121.

[251] Provisions on Procedures in the Handling of Criminal Cases by Public Security Organs (公安机关办理刑事案件程序规定), *MPS,* No.127 of 2012, art. 203.

[252] CPL, art. 121.

[253] Provisions on Procedures in the Handling of Criminal Cases by Public Security Organs , art. 203; Regulations on the Management and Usage of Law Enforcement and Investigation Facilities (公安机关执法办案场所办案区使用管理规定), *MPS,* 2010, art. 20.

equipment.[254] The Criminal Procedure Law only states that police "can" videotape interrogations of other crimes; there is no requirement to do so.[255]

Two of the former detainees we spoke with fell within the videotaping rule, but their interrogations were not videotaped. In both cases, the interrogations took place outside the detention center, where there were no capabilities for videotaping. In other cases, where videotaping is optional, former detainees told Human Rights Watch that their interrogations were not videotaped either. Yu Zhenglu, accused of economic crimes, told Human Rights Watch:

> They didn't follow the regular procedure of taking me to the detention center, they didn't videotape [the interrogation] either.[256]

Similarly, Gu Daoying, detained for alleged gambling, said he was not videotaped:

> They beat me in the [public security] office! According to the law, [videotaping] should take place in the interrogation room. Since we weren't in the interrogation room, there was no videotaping.[257]

Lawyer Shen Mingde said the selective videotaping of interrogations render the requirement meaningless:

> They videotape the confessions selectively … then it is meaningless … there was no recording when they took him out [of the detention center].[258]

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[254] "Ministry of Public Security: Forced Confession Cases Dropped 87 Percent in the Past Year; Assaults on Police Officers Occur Regularly (公安部：刑讯逼供案去年降 87% 暴力袭警时有发生)," *People's Net* and *Beijing News* (人民网-新京报), June 27, 2013, http://www.chinacourt.org/article/detail/2013/06/id/1018713.shtml (accessed December 18, 2013).

[255] According to a legal scholar, Professor Chen Yongsheng at Beijing University, during the revisions of the CPL in 2012, legislators had hoped that to require that all criminal cases be videotaped, but the proposal was rejected by the Ministry of Public Security and the final version is a compromise between the two positions, cited in Li Kenan, "Dilemmas in Videotaping Criminal Interrogations," *Phoenix Weekly*.

[256] Human Rights Watch interview with Yu Zhenglu (pseudonym), a former criminal suspect who was detained in a detention center in Yunnan Province, May 22, 2014.

[257] Human Rights Watch interview with Gu Daoying (pseudonym), a former detainee who lives in Zhejiang Province, May 22, 2014.

[258] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

A few lawyers said police officers often first torture or abuse the suspects, then videotape the confession. Xie Yongping, who is currently in detention, told his lawyer what happened after he was beaten:

> The four officers came in … and they input the prepared materials in the computer. One officer asked me to read aloud the materials on the computer screen … one operated the computer, and a female officer videotaped the process. It was in this way, on the verge of a mental breakdown, that I coordinated with them to create the evidence they needed.[259]

Lawyer Lu Qinghua said:

> Interrogation rooms in police stations have surveillance cameras, but not all of them. They first bring people to the rooms without cameras, and after they confess, they'd bring them to rooms with videotaping equipment.[260]

A procurator from Tianjin municipality acknowledged that videotaping does not necessarily solve the problem of torture at the hands of the police:

> Even if interrogations are videotaped, it doesn't mean there won't be forced confessions through torture. This is because there are many ways to bypass the regulation, such as beating the defendant into submission before videotaping. [261]

In addition, suspects and lawyers say that the full interrogation video is often not presented in court. Lawyer Luo Chenghu said:

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[259] Zhang Lei, "In Zhangzhou Zhangpu Triad Case, Appellant Xie Yongping Narrates Torture in a 'Special Investigation Room' in Zhangpu County Detention Center During the Second Instance Trial (漳州漳浦黑社会案二审上诉人谢永平法庭陈述在漳浦县看守所"特审室"受到刑讯逼供的经过)," post to "Beijing Lawyer Zhang Lei's Blog," January 20, 2014, http://blog.sina.com.cn/s/blog_6386956701o1gxzh.html(accessed January 12, 2015).

[260] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

[261] Wu Yanwu (吴燕武), "Practice Thoughts on Procurator's Work on Exclusion of Illegal Evidence from the Perspective of the Exclusionary Rule (公诉人进行非法证据排除工作的实务思考——以排除刑讯逼供取得口供为视角)," *Beijing Procuratorate Net* (北京检察网), January 28, 2013, http://www.bjjc.gov.cn/bjoweb/minfo/view.jsp?DMKID=240&ZLMBH=0&XXBH=34324 (accessed July 2, 2014).

> We asked for the videotapes in court. He was videotaped 10 times, but they showed only three or four of the [clips] … each [clip] was incomplete.[262]

In another case, the procurator tried to make the case that the suspect had not been beaten by showing only parts of the interrogation without such abuse. The detainee's sister told Human Rights Watch:

> The procurator … said [to my brother], "Did they beat you in this video?" My brother said, "Why you don't show the video of when I was beaten?" [The procurator], "But they didn't beat you at this time [of the video], right?"[263]

Chen Yongsheng, an expert in criminal procedure law in Beijing University, believes that selectively presenting videotapes that do not depict abuses is common.[264] He wrote:

> Currently, the People's procuratorate usually only sends one video segment to the court per case … generally [the procuratorate] picks the segment with the most rule-abiding [conduct].

A former judge also expressed skepticism about partial videotapes of interrogations:

> If the video shows the interrogation between 3 and 3:30, you still don't know what happened before then. You are doubtful, you wonder if they have been rehearsed.[265]

Selective videotaping and excerpting of videotapes in court can have a negative impact. Chen Ruchao, a criminal justice scholar at Southwest University of Political Science and Law, wrote in 2014:

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[262] Human Rights Watch interview with Luo Chenghu (pseudonym), a lawyer based in Beijing, February 11, 2014. He was describing the torture of a client charged with homicide.

[263] Human Rights Watch interview with Yang Jinli (pseudonym, location withheld), a family member of a criminal suspect who was on death row, January 24, 2013

[264] Li Kenan, "Dilemmas in Videotaping Criminal Interrogations," *Phoenix Weekly*.

[265] Human Rights Watch interview with Ran Sheng (pseudonym), a former judge who used to work in Sichuan Province, March 25, 2014.

> When the prosecution selectively plays the video clips in court … not only does this fail to curb coerced confession, the selected content becomes the best evidence to prove that the suspect made the confession voluntarily, and it becomes an amulet for the investigators who had tortured.[266]

This echoes some of the court verdicts that cite defendants' "serenity" in video recordings as evidence that the alleged torture did not take place:

> According to the court's investigation, the simultaneous video recording shows that defendant Deng Yong-ping spoke at a normal pace, looked calm and gave a natural, coherent confession. Therefore, it can be concluded that Deng confessed voluntarily and there is no sign of forced confession through the use of torture.[267]

Lawyers also told us that in some cases police refused to hand over videos, edited them before releasing them, or "lost" them. Lawyer Chen Lihua, who has worked for nearly two decades as a criminal defense lawyer, told Human Rights Watch:

> In theory, yes [there is the videotape], but [the police] can refuse to hand it over, or only submit it after editing the footage.[268]

Former detainee Ma Yingying, whose interrogation was not videotaped even though her case falls under the rule, said police made up excuses when she and other defendants asked that videotapes of their interrogations be shown in court:

> We requested [that the videotape be shown], he said the camera was broken, and [even if there was a tape] it would be stored for only 20 days.[269]

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[266] Chen Ruchao (陈如超), "Government's Management of Coerced Confession: 1979 – 2013 (刑讯逼供的国家治理: 1979 -- 2013)," *China Legal Science* (中国法学), vol. 5 (2014).

[267] *Deng Yongping's First Instance Criminal Verdict on the Crime of Theft (邓永平犯盗窃罪一审刑事判决书)*, The Shunde District People's Court in Foshan City, Guangdong Province (广东省佛山市顺德区人民法院), Foshun Court Criminal Case No. 2519 (First Instance) (佛顺法刑初字第 2519 号),2013.

[268] Human Rights Watch interview with Chen Lihua (pseudonym), a Beijing-based lawyer, January 24, 2014.

[269] Human Rights Watch interview with Ma Yingying (pseudonym), a former detainee who was detained in Fujian Province, May 20, 2014.

Under Chinese law, the defense has no power to compel the police or the procuratorate to give them access to videotapes or have them shown in court.[270] The lawyers can ask the court to make a request for this evidence, but in some cases, judges also are unwilling to compel the police to present videos or challenge or investigate police claims that videotapes are unavailable. Lawyer Zhang Lei noted that in one case:

> The court responded to our request for the interrogation videotape [by saying it had] requested it from the detention center, but the detention center issued a statement explaining that the videotapes were only kept for 15 days. [The court accepted at face value the claim that] the videotape requested by the defense was no longer available.[271]

How Police Thwart Legal Protections against Torture and Ill-treatment

Lawyers told Human Rights Watch that some police have found ways to sidestep protections against torture and ill-treatment, including by interrogating suspects before they are taken to official detention centers or by removing suspects from them. Indeed, all but one of the detainees we interviewed for this report said the alleged mistreatment took place outside of official detention centers. Shenzhen-based lawyer Zha Guliang told Human Rights Watch:

> After the detention centers were upgraded, interrogators and suspects were separated by an iron fence, so generally speaking, torture cannot happen. That means coerced confessions usually happen within 48 hours, before the police send you to detention centers.[272]

Lawyer Xiao Guosheng said that coerced confessions "do not happen at detention centers, where … our country has a rather comprehensive monitoring system. So if you conduct interrogation in there, it would be difficult to torture to extract confession under surveillance."[273]

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[270] Li Kenan, "Dilemmas in Videotaping Criminal Interrogations," *Phoenix Weekly*.

[271] Zhang Lei, "A Journal on Shuangfeng, Chapter 14 (双峰记[十四])," post to "Beijing Lawyer Zhang Lei's Blog," December 21, 2012, http://blog.sina.com.cn/s/blog_63869567010195wh.html (accessed April 24, 2014).

[272] Human Rights Watch interview with Zha Guliang (pseudonym), a lawyer who lives in Shenzhen, May 3, 2014.

[273] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, January 23, 2014.

Procurator Wu Yanwu acknowledged the problem in an article: "The period between when suspects are apprehended and when they are taken to a detention center is a period with high incidence of torture."[274]

Police often hold suspects in the office of the police responsible for criminal investigations (*xingjing dadui,* 刑警大队, or *zhencha dadui,* 侦查大队), which might be in the same compound as the detention center. Suspects are sometimes also held in police stations (*paichusuo* 派出所), hostels, and other police-controlled facilities such as drug rehabilitation centers. Most of these facilities, unlike detention centers, are not equipped with the infrastructure designed to prevent torture during police interrogations. Lawyer Lu Qinghua told Human Rights Watch:

> Usually, coerced confessions take place when they take suspects out of detention centers, like in certain rooms in police stations or in the offices of public security bureaus.[275]

Chinese criminal law requires suspects to be transferred to a detention center within 24 hours after they are put under formal detention. However, suspects can be held in police custody for many hours before they are put under formal detention. Police can delay formal detention in various ways, including by issuing a *chuanhuan* (传唤), a form of non-coercive summons under the Criminal Procedure Law that effectively allows the police to hold suspects for an additional 24 hours, and through a form of administrative detention known as *liuzhi pancha* (留置盘查)[276] under the Police Law that allows police to hold suspects for another 48 hours. Lawyer Yu Zheng told Human Rights Watch just how flexible the law is regarding this period:

> It doesn't matter if [the police] summoned you or not, or perhaps it was an unofficial summons. The police hold great power in our country.… The police can also hold you for investigation [*liuzhi pancha*], or keep you as a witness without a deadline. We saw a case like this in Guangzhou—they first questioned someone as a witness for days until the person couldn't

[274] Wu Yanwu, "Practice Thoughts on Procurator's Work on Exclusion of Illegal Evidence from the Perspective of the Exclusionary Rule," Beijing Procuratorate Net, January 28, 2013.

[275] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

[276] Police Law, art. 9.

> take it anymore, then they issued a summons. Because police power has no restrictions, they have many ways to go about this.[277]

Regardless of the procedures applied, lawyer Ze Zhong told Human Rights Watch that police sometimes do not actually follow them:

> Usually it [forced confession] happens prior to [being sent to] detention centers, the length of detention varies. I have someone who was not sent to the detention center for three days … according to procedures, suspects should be taken to a detention center within 24 hours [after formal detention], but sometimes the procedures aren't followed.[278]

Former detainee Lei Xinmu said he was not transferred to a detention center until days after the legal limit:

> I was sitting on a "tiger chair," and there were two spotlights aimed on my head. They took turns to talk to me…. They would not let me rest, I couldn't take it any longer…. I was taken to the detention center only after 9 days and 9 nights.[279]

Police can also falsify the records so that it appears all has been done according to procedures. Lawyer Chen Ao said:

> [The police] put [the suspect] in a hostel … and later they forged the documents saying he was taken to the detention center.[280]

Under the Criminal Procedure Law, once a suspect is detained in an official detention center, he or she can only be interrogated in the center.[281] But criminal investigators have used various methods to circumvent this requirement, for example by transferring

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[277] Human Rights Watch interview with Yu Zheng (pseudonym), a lawyer based in Shanghai, February 14, 2014.

[278] Human Rights Watch interview with Beijing-based lawyer Ze Zhong (pseudonym), February 7, 2014.

[279] Human Rights Watch interview with Lei Xinmu, (pseudonym), a former criminal suspect who lives in Shaanxi Province, June 9, 2014.

[280] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[281] CPL, art. 116.

suspects between detention centers and using the time between for torture, or by taking suspects out of detention centers to purportedly "identify the crime scene." Chinese laws and regulations have no rules regarding the former and allow police to do the latter "when necessary."[282] There are few requirements for taking suspects to "identify the crime scene" except that at least two police officers be present and that the officers first obtain permission from their superiors.[283] The law also does not mandate that defense counsel be present when suspects are taken out to identify crime scenes.

Lawyer Xiao Guosheng told Human Rights Watch that suspects are often taken out of detention centers and then forced to confess:

> The way they do it is to take suspects to "identify the scene," a procedure stated in the Criminal Procedure Law.... This process requires approval by the deputy police chief in charge of investigations. But they don't take the defendant to identify anything; he is taken to the investigation office where there is no surveillance equipment and it is here that they coerce the suspect to confess.[284]

Lawyer Wu Ying told Human Rights Watch that where he was held in a detention center, there was widespread fear among fellow detainees about being taken out and tortured:

> Taking the defendant out is the main method [of coercing confessions]. Everyone gets very scared when they know it's their turn to be "taken out." They said they had to wear helmets as well as handcuffs and leg irons [out there]. I wondered, why the helmets? They said it was to prevent them from committing suicide.[285]

There are official acknowledgments that police take advantage of this legal loophole. A vice chief procurator responsible for overseeing detention facilities in Zhejiang Province wrote:

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[282] CPL, art. 48(7); Provisions on Procedures in the Handling of Criminal Cases by Public Security Organs, arts.249 to 253.

[283] Provisions on Procedures in the Handling of Criminal Cases by Public Security Organs, art. 250.

[284] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, Jan 23, 2014.

[285] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

> In investigative work, it is a practical necessity to take suspects out of detention centers after they have been detained or arrested, in order to identify the scene, recover stolen goods, or other reasons. But this also provides time and conditions for illegal investigative behaviors including coerced confessions.[286]

The Exclusionary Rule

> More and more lawyers have requested the procedure [to exclude illegal evidence], and more and more courts have initiated it, but most are just going through the motions…. The impact of this procedure is very limited. In many cases, police write a few words saying the suspect had not been tortured to extract a confession, then [the procedure] is done.
> —Lawyer Song Sanzuo, Shanghai, May 2014 on the exclusionary rule

China's procedure to exclude evidence obtained through "illegal" means in criminal proceedings is a positive step towards preventing torture and other ill-treatment.[287] According to the rule, the police, the procuratorate, and the court all have responsibilities to exclude such evidence if it is found during any phase of legal proceedings.[288]

In theory the procurator has to "investigate and verify the accusations."[289] Confessions or witness statements obtained illegally should be excluded. The procuratorate should seek an explanation from the investigators for documentary or physical evidence obtained illegally, and exclude such evidence when it cannot be corrected or be given a reasonable explanation.[290] After exclusion, if the remaining evidence cannot prove the crime, then the

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[286] "There Should be Strengthened Supervision over Taking Detainees out of Detention Centers (提押出所需加强检察监督)," *Procuratorate Daily*, April 28, 2014, http://newspaper.jcrb.com/html/2014-04/28/content_157904.htm (accessed June 11, 2014)

[287] Under article 15 of the Convention against Torture, it is the state's responsibility to ensure that any statement obtained through torture not "be invoked as evidence in any proceedings."

[288] CPL, art. 54(2).

[289] CPL, art. 55.

[290] Trial Rules for the People's Procuratorate on Criminal Procedures (人民检察院刑事诉讼规则[试行]), *Supreme People's Procuratorate,* No.2 of 2012, art. 66.

procuratorate should either reject the police's request for arrest or prosecution, or send the case back for supplementary investigation.[291]

The procuratorate is also required to initiate a criminal prosecution against the police for any illegal behavior found.[292] Procurators can investigate the claim through questioning suspects, the investigators, witnesses, or defense lawyers; obtaining statements, a video recording of the interrogation, or suspects' health records in detention; and conducting medical evaluations.[293]

Former detainees and defense lawyers told Human Rights Watch, however, that the procedure often does not work as intended. Too often, procurators refuse or fail to follow-up when allegations of torture are made, even though the burden of proving that evidence has been obtained legally falls upon the procuratorate.

Former detainee Gu Daoying said that when he raised the issue of torture, the procurator simply ignored his complaint: "I saw the procurator during the review stage. I said I was hit with electric batons, but he didn't say anything."[294]

Lawyer Lu Qinghua said the procurator in his client's case was more explicit in refusing to look into the torture allegation: "My client told [the procurator] about being tortured to confess, but [the procurator] said, 'This isn't my problem.'"[295]

Ma Yingying said the procurator responsible for her case did not intervene even when he witnessed her abuse by the police.

> Seven or eight police officers accompanied me to [another room in] the detention center, while, another five or six stood behind the procurator. The deposition was prepared in advance and the procurator said: "[The facts are] what you said in there." So I told him what I said in there was not true.

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[291] Ibid., art. 67.

[292] CPL, art. 55.

[293] Trial Rules for the People's Procuratorate on Criminal Procedures, art. 70.

[294] Human Rights Watch interview with Gu Daoying (pseudonym), a former detainee who lives in Zhejiang Province, May 22, 2014.

[295] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

> The police officer standing behind me then hit me on the head…. The procurator didn't say anything.[296]

Some lawyers also told Human Rights Watch that after they had written to the procuratorate complaining about torture of their clients, the procuratorate would on some occasions provide a brief written reply simply saying there was no torture without giving any details. And sometimes such replies were not even provided, as lawyer Lu Xiangming noted:

> Generally speaking there aren't any [written replies]…. They may give you one, or they may not. If they do reply, they usually write something like, "After investigations, there does not exist the phenomenon of torture." That's it.[297]

Lawyer Shen Mingde said:

> The procuratorate gave no response. We sent a written [complaint] to the public security bureau and there was no response. When they saw us face to face, they'd say, "We'll investigate," but then they didn't respond. There has never been one case [I have dealt with or heard of] in which the procuratorate admits to finding torture.[298]

Although the procurator never acknowledged the use of torture, in two cases lawyers managed to have some impact on the procurators' handling of the cases. Lawyer Lu Xiangming told Human Rights Watch:

> [In one case], there were [procedural] flaws and torture. The procurator thought we had a point, and so he let [my client] be released on bail. The case stopped at the procuratorate and the evidence didn't get used [against the defendant].[299]

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[296] Human Rights Watch interview with Ma Yingying (pseudonym), a former detainee who was detained in Fujian Province, May 20, 2014.

[297] Human Rights Watch interview with Beijing-based lawyer Lu Xiangming (pseudonym), January 22, 2014.

[298] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[299] Human Rights Watch interview with Beijing-based lawyer Lu Xiangming (pseudonym), January 22, 2014.

Similarly, lawyer Shen Mingde said:

> In the case in Jilin, the confession wasn't clearly excluded. The procuratorate just did not present it as prosecution evidence.[300]

Defendants and their lawyers can request that the court initiate the evidence exclusion procedure either during the trial, or before it starts, in a pretrial hearing.[301] They first have to provide "relevant clues or materials,"[302] and the court then initiates an investigation, during which the procuratorate has to provide evidence to prove that the police acted legally.[303] In cases where the evidence does not establish that police acted legally, the procuratorate can ask the court to have investigators appear in court; the court can also ask police to testify directly and police "should" appear in court following the request.[304] If the court concludes that the evidence was obtained illegally, or that it cannot exclude such a possibility, then the evidence should be excluded.[305]

Chinese defense lawyers believe this rule should provide a tool and platform for them to advocate for their clients who were tortured. But they say that in some cases the judges continue to ignore their torture claims without explanation. Lawyer Xiao Guosheng said:

> We asked [the court] to start the procedure to exclude illegal evidence, but the judge didn't, and he did not say why. So we left the court in protest and complained … there was no reaction. [306]

Lawyers we interviewed agreed that, in general, the rule has made it harder for judges to simply brush off torture allegations, but said that judges still do not seem to examine the allegations seriously.

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[300] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[301] SPC Judicial Interpretation on the CPL , art. 99.

[302] CPL, art. 56.

[303] CPL art. 57(1).

[304] CPL, art. 57(2).

[305] CPL, art. 58.

[306] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, Jan 23, 2014.

Analysis of the SPC Court Verdict Database

As noted above, our search of all Chinese criminal court verdicts published on the SPC website during the first four months of 2014, some 158,000 in total, turned up 432 verdicts in which suspects alleged police torture. The defendants were convicted in all 432 cases, and judges excluded confessions in only 23 cases (6 percent of the verdicts) due to concerns over police torture. And even in those 23 cases, the defendants were convicted.

Analysis of the 432 verdicts shows that 32 mention suspects alleged torture and then say nothing further about it. In the remaining 400 verdicts, judges address the torture claims at least briefly.

In that latter group of 400 verdicts, a majority of decisions (247 cases, or 62 percent, see Appendix II, Table II) relied only on documentary evidence, which is not unusual given that most trials in China have no live witnesses.[307] Only 35 of the verdicts (9 percent) mention any live witnesses and in every case the live witnesses were police officers. There is no sign that defense witnesses or medical or forensic experts were allowed to testify in relation to a torture claim in any of the cases. In the remaining 118 verdicts (30 percent), neither documentary evidence nor witness testimony is mentioned.

Further analysis of the verdicts shows the forms of documentary evidence judges most often relied on. They include physical examination records (208 cases or 52 percent); written statements by police officers who investigated the case or guarded the detention cell (132 cases or 33 percent); videotaped recordings of interrogations (97 cases or 24 percent); and, much more rarely, written statements from fellow detainees (9 cases or 2 percent). As noted above, however, such documentary evidence is either produced by the police or is highly susceptible to manipulation by the police.

Xie Ying, sister of a detainee who was later convicted, criticized the use of police officers' written statements:

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[307] Less than 5 percent of trials in China involve live witnesses. See Ira Belkin, "China's Criminal Justice System: A Work in Progress," *Washington Journal of Modern China*, vol. 6 No.2 (2000), p.20, http://www.law.yale.edu/documents/pdf/Chinas_Criminal_Justice_System.pdf.

> I think this is so laughable. You public security people beat and injured our people and then you write something saying you didn't beat people up, and the court believes it…. So you kill someone, and then write something proving you didn't. Do courts then necessarily believe you?[308]

Guangdong-based lawyer Zhang Rong also said that in the cases he handled the documentary evidence presented by the procurator was not credible:

> During the trial, the procurator in court will give a lot of evidence to show that they did not extract a confession through torture. They also pretend not to see the defendant's bruises … [and] there is no record of torture in the procuratorate's physical examination reports.[309]

Many judges seem to be satisfied with documentary evidence even when it is inadequate to rule out the possibility of torture. For example, in a case in which a defendant alleged that police tortured him and broke his left thumb, the verdict cited a medical record from the detention center that did not record any injury as the sole evidence to rule out ill-treatment. In another case, the defendant said he had injuries to his right wrist and thigh, but the court cited medical records and statements by detention center guards stating that his injuries occurred during his arrest.

As noted above, in 118 of the 400 verdicts, neither documentary evidence nor witnesses are mentioned. In some cases, the judges appear to have made their decisions based on record as it existed, often ruling out torture without any effort to seek evidence corroborating or refuting the claims. The verdict cited below is a typical example:

> Upon investigation, [the court finds that] defendant Wang Pengzhang confessed to the main facts of the case during the investigation stage, and that the other defendants' confessions and witness statements corroborate Wang Pengzhang's confession; the facts [establishing] the extortion crime

[308] Human Rights Watch interview with Xie Ying (pseudonym, location withheld), sister of a criminal suspect (he was later convicted and is now in prison), April 14, 2014.

[309] Human Rights Watch interview with Zhang Rong (pseudonym), a lawyer based in Guangdong Province, January 22, 2014.

> are clear. Wang Pengzhang's defense that his testimony was obtained through torture has no basis, and his defense cannot be established.[310]

Another common reason for rejecting a torture claim is that the suspect did not provide the court with "sufficient clues" or "sufficient evidence." According to the rule, judges can refuse to initiate the procedure if the defense has not provided "relevant clues." While a defendant needs to set out a basic allegation of torture, providing some information, the law is unclear as to how much evidence is sufficient to warrant an investigation, though it gives examples of the kinds of information needed, such as the time and location of torture.[311]

Lawyer Lu Qinghua told Human Rights Watch:

> The judge said that you didn't provide obvious clues to torture, the court will not examine it.... The court's idea is based on an outdated way of thinking: the person who alleges it has to provide the evidence. You say you were tortured? What evidence do you have?... At one trial, the defendant ... had had his teeth knocked out, and yet the court did not start the procedure.[312]

The exclusionary rule requires that, once the procedure is initiated, the burden of proof to prove that police acted legally in obtaining evidence falls on the procuratorate. But analysis of the court verdicts suggest that in many cases, judges still expect the suspect or the defense to prove that torture had taken place:

> The two defendants said they did not commit the first four criminal acts as charged in the indictment, and that they were forced to confess through torture. Because they cannot provide evidence, and there is evidence that proves that the two defendants committed the robberies on June 5 and 6, 2013, the court will not accept this defense opinion.[313]

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[310] Zhou *Wanrong's Verdict (周万荣判决书)*, the Wuwei City Intermediate People's Court in Gansu Province (甘肃省武威市中级人民法院), Wuwei City Intermediate People's Court Case No.7 (second instance) (武中刑终字第 7 号), 2014.

[311] "Margaret K. Lewis, "Controlling Abuse to Maintain Control: the Exclusionary rule in China," *New York University Journal of International Law and Politics,* vol. 43 (2011), p.654.

[312] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

[313] First Instance Verdict of the Robbery Case against Lü guang and Chen Guanxu (吕广富、陈观旭抢夺罪一案一审刑事判决书), the Xiangtan City Yuetang District People's Court in Hunan Province (湖南省湘潭市岳塘区人民法院), Yuetang District Basic People's Court Case No.329 (岳刑初字第 329 号), 2014.

Fu Hualing, a Chinese legal scholar, told Human Rights Watch that in practice it remains unclear who has the burden of proof:

> In practice, [the question is], who has the responsibility to provide evidence? Is it to prove that there is torture or is it to prove there is no torture? Who is responsible? It is the victim who said he was tortured, or the police who said he didn't [torture the suspect]? Right now, it is whoever said he was tortured, that person must provide proof.[314]

The exclusionary rule does not explicitly require the court to order a medical evaluation of the victim, or to call in a medical expert to testify, though the judge can make such a decision in criminal trials.[315] Xie Ying, sister of a criminal suspect, said her brother's request for a medical evaluation was ignored by the judges:

> He was shouting, requesting that a forensic examination be done; he also showed the judge his injuries and scars, but the judge did not pay attention. I think he [the judge] said something like, we'll talk about that later, and then just ignored him.[316]

Lawyer Mao Renrong also said judges ignored him when he requested medical evaluations for clients:

> I have tried making such requests, but the court never agreed to them. They either don't respond, or they ask the procurator to show a written explanation. The suspect is a living being! Has he been tortured or not? You can tell through examining him, right? Why would you present a piece of paper to "prove" that he was not tortured?[317]

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[314] Human Rights Watch interview with Fu Hualing, a scholar of Chinese criminal justice based in Hong Kong, February 19, 2014.

[315] Liu Chang (刘长) and Zhou Nan (周楠), "China-Style Expert Witnesses in Court Trials as Authorities No Longer Monopolizes Forensic Appraisal (中国式专家证人出庭; 公家不再垄断司法鉴定话语权)," *Southern Weekend,* July 4, 2013, http://www.infzm.com/content/92056 (accessed January 13, 2015).

[316] Human Rights Watch interview with Xie Ying (pseudonym, location withheld), sister of a criminal suspect (he was later convicted and is now in prison), April 14, 2014.

[317] Human Rights Watch interview with Mao Renrong (pseudonym), a lawyer based in Beijing, October 30, 2014.

Revisions to the Criminal Procedure Law empower the defense in this regard, by allowing them to make an application for "expert witnesses" to testify in court.[318] But it remains up to judges to approve such requests, while few forensic experts are willing to testify against the police.[319]

Lawyers have also told Human Rights Watch that judges sometimes did not even give them reasons for not excluding confessions. Lawyer Xiao Guosheng, from Beijing, told Human Rights Watch:

> We requested [the procedure] during the trial ... [the judge] said he would adjourn the court to investigate, then when he reconvened the trial he said there was no such [torture], that the defense's request to exclude illegally obtained evidence could not be established. In just one sentence he dismissed the lawyers' application.[320]

Lawyer Chen Lihua, from Beijing, concurred:

> Last year, we went through the procedure. Then the judge said he wouldn't make a conclusion [right away].... At the verdict hearing this year, they did not adopt [our argument].... Nobody gives you an explanation why [it was not excluded].[321]

Former judge Ran Sheng told Human Rights Watch that judges are in a difficult position in applying the exclusionary rule because they are bound by law and practice to trust and work with the police and the procuratorate:

> According to the Criminal Procedure Law, the relationship between the police, the procuratorate, and the court is first, cooperate with each other, and then, restrain each other. The starting point for the court is that the three agencies have a relationship of trust.... So you believe [the police] unless the suspect has evidence

[318] Liu and Zhou, "China-Style Expert Witnesses in Court Trials as Authorities No Longer Monopolizes Forensic Appraisal," *Southern Weekend.*

[319] Ibid.

[320] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, Jan 23, 2014.

[321] Human Rights Watch interview with Chen Lihua (pseudonym), a Beijing-based lawyer, January 24, 2014.

to prove otherwise, for example, if the medical reports say otherwise, or if the lawyer presents written statements from other defendants who said they witnessed torture. Sometimes you have doubts about the truth of the police statement but the premise is that the police wouldn't have made it up.[322]

A case described by lawyer Xiao Guosheng demonstrates how difficult it is to get a confession excluded, even where there is considerable evidence in support of the defense's torture claims:

> We requested [that the court initiate] the exclusion procedure and for witnesses to appear in court … [f]our suspects … were held in the same cell as my client and [could] testify to how my defendant looked before he was taken out [of the detention center] and how he looked when he was returned.… We thought this was sufficient to prove there was torture. They all testified in court, and we, the procurator, and the judge all cross-examined them. The judge also asked questions, even in greater detail than we did.
>
> We received the physical examination record only just before the trial opened at the intermediate people's court. The judge at the first instance hearing had not managed to obtain a copy earlier.… The record says he had injuries on his wrists, but it added that they "may be the result of self-injury." My client showed the judge his wrist injuries. The judge didn't comment on it directly at the time, but said, "We need to study this further."
>
> [At the end], the verdict states that so-and-so testified that the defendant was taken out [of the detention center] in good physical health and returned with injuries from such and such places. But you cannot rule out that the defendant had not inflicted these wounds himself. In other words, because these witnesses weren't there at the scene [of torture], you can't prove that the injuries were made by public security organs.[323]

[322] Human Rights Watch interview with Ran Sheng (pseudonym), a former judge who used to work in Sichuan Province, March 25, 2014.

[323] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, Jan 23, 2014.

Chinese law does not incorporate the "fruit of the poisonous tree" doctrine, according to which all evidence obtained as a result of torture or other ill-treatment—not only the information directly obtained through torture—is barred from being used in criminal proceedings. In the Chinese criminal system, even when a confession is excluded, other evidence derived from leads generated by the tainted confession, including similarly worded confessions recorded after torture, may be admitted in the proceedings. [324] Lawyer Lu Qinghua told Human Rights Watch:

> Even if the judge excludes illegally obtained evidence, these statements lead to other evidence, testimony of witnesses, physical evidence, and so on.... [I]f the procuratorate offers 10 pieces of evidence, and one is ruled out, the other nine are still adopted and the court would still find [the defendant] guilty.[325]

Former judge Ran Sheng also acknowledged this important caveat to the exclusionary rule:

> [E]ven if you exclude one piece of evidence, the other pieces would still be admitted. The police would tell the suspect [in subsequent interrogations], "well, you've already said that you did it, why don't you admit it?"[326]

As a result, successful exclusion of evidence obtained through torture often does not make a difference in the outcome of the case. Former judge Ran Sheng described to Human Rights Watch one of such cases:

> There was one manslaughter case.... There were two suspects, and one of them said he wasn't the main culprit, that it wasn't his idea. Then the procuratorate said, "But you admitted it in your confession." [The suspect replied that police] had beat him up and [planted evidence], that the blood they "found" at the crime scene, as noted in the forensic record, had been drawn from him. And we looked [at his arm] and there was a wound from

[324] Under US law and other jurisdictions, such evidence is excluded under the doctrine known as the "fruit of the poisonous tree." See Nardone v. United States, 308 U.S. 338 (1939) (opinion of Justice Frankfurter).

[325] Human Rights Watch interview with Lu Qinghua (pseudonym), a Beijing-based lawyer, April 17, 2014.

[326] Human Rights Watch interview with Ran Sheng (pseudonym), a former judge who used to work in Sichuan Province, March 25, 2014.

> drawing blood. So we excluded that confession, but there was no real impact on the case really. He was still sentenced to death.[327]

Judges only extremely rarely hand down not guilty verdicts. In 2013, only 825 people were found not guilty in China out of an estimated 1,160,000 verdicts—an acquittal rate of 0.07 percent.[328] None of the lawyers we interviewed said that any clients had been acquitted because evidence obtained through torture was excluded, though one, Lu Xiangming, said his client was released after his case was dismissed:

> In an assault case, the court told the procurator that there were problems with the evidence, and that, if he did not deal with it, the court would render a not-guilty verdict. So there are good judges like that. The procurators also found problems with the evidence in this case, plus there was torture, and so the case was dismissed and the person released.[329]

Ran Sheng explains why acquittals are so rare:

> If the court really wants to acquit the defendant, the court's adjudication committee gets the police and the procuratorate together to get them psychologically prepared for what the court is thinking and why it thinks that way. If the police are okay with it, the procuratorate usually withdraws the prosecution and there wouldn't be a verdict. Because if there is an acquittal, it means acknowledging that the police wrongly arrested someone, that the procuratorate wrongly indicted someone, and that there will be a need for state compensation.[330]

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[327] Ibid.

[328] "China has 99.93 percent conviction rate: top court," *Agence France-Presse*, March 10, 2014, http://www.globalpost.com/dispatch/news/afp/140310/china-has-9993-percent-conviction-rate-top-court (accessed July 14, 2014).

[329] Human Rights Watch interview with Beijing-based lawyer Lu Xiangming (pseudonym), January 22, 2014.

[330] Human Rights Watch interview with Ran Sheng (pseudonym), a former judge who used to work in Sichuan Province, March 25, 2014.

As a number of legal scholars have pointed out, the exclusionary rule is aimed at reducing wrongful convictions rather than torture per se.[331] According to legal scholar Ira Belkin, the rule at best:

> [I]s intended to exclude only false confessions that were obtained unlawfully. A defendant who succeeds in persuading a court that his confession was coerced must still answer the court's questions about his guilt or innocence … the rule may provide a remedy for a defendant who recants his confession. For the defendant who was tortured before giving a true confession, however, there will be no relief.[332]

Because China's exclusionary rule still permits coercion to help identify other evidence, police continue to use torture to extract confessions, so it has little to no impact on the outcome of cases. Overall, the rule's impact on police behavior is limited.

[331] Margaret K. Lewis, Controlling Abuse to maintain control: the Exclusionary Rule in China, January 2010, p.38.

[332] Belkin, "China's Tortuous Path toward ending torture in Criminal investigations," *Columbia Journal of Asian Law*, p. 291.

V. Lack of Accountability

> We all knew that torture to extract confessions was wrong, but the laws aren't being enforced. If torture to extract confessions is not punished, how can the law be implemented?
> —Zheng Qianyang, former police officer, Liaoning Province, February 2014

> I did make complaints! I complained many times, I complained to the procurator and to everyone who I can complain to! They didn't deal with it, there was no response at all.
> —Yu Zhenglu, former criminal suspect, Yunnan Province, May 2014

Police abuse is a function of unchecked power. Police alone make all of the initial decisions to deprive suspects of their liberty and have broad authority to extend detentions within certain, fairly flexible, legal limits. Police also control the facilities in which suspects are held.

While China's government recently has adopted some measures to address abuses in criminal detention, it has not made a comparable effort to pursue greater accountability for those who abuse suspects. Police officers rarely face criminal sanctions for torturing or ill-treating suspects, although the law makes such behavior a criminal offense. Few even seem to face serious disciplinary action, such as suspension or dismissal. At most, their superiors issue a reprimand and move them to posts elsewhere in the force. Human Rights Watch interviews and our search and analysis of the SPC verdict database show that there is little response from internal police supervisors and the procuratorate, the agencies responsible for supervising police conduct and investigating police abuse, when those who have been mistreated in detention try to file complaints.

Mechanisms that should hold police accountable regularly fail to do so. The procuratorate almost never prosecute police officers for torture except in cases when suspects have died or become disabled.[333] Even in those cases, the courts tend to give police officers light

[333] See also Wu Danhong (吴丹红), "Roles, Contexts and Social Tolerance—Torture from the Perspective of Sociology (角色、情境与社会容忍——法社会学视野中的刑讯逼供)," *Peking University Law Journal* (中外法学), vol. 2 (2006).

sentences. It is also very difficult for victims to obtain official compensation, and on the rare occasions when compensation is forthcoming, the amount tends to be low. In many cases, victims of torture and their families say that authorities ignore them and repeatedly shift blame to other agencies when they seek compensation or accountability; in some instances, they say they are harassed or threatened to stay silent.

The Chinese law enforcement system is structured in ways that require the police, the procuratorate, and the court to "mutually cooperate" with each other to solve crimes under the leadership and coordination of the CCP's Political and Legal Committee at the same level.[334] This is especially true in political cases and during campaigns targeting particular types of crime. Because the procuratorate and the courts are required to cooperate with the police, which is more powerful than they are, under the leadership of the CCP Political and Legal Committee, it is difficult for them to check police abuse.[335] The reluctance to hold police officers accountable is also likely because police play an important role in enabling the CCP to retain its grip on power.[336]

In October 2014, the government announced at an important annual Party meeting that it would establish a "life-long accountability mechanism" to hold accountable cadres whose decisions have led to "serious mistakes."[337] The authorities appeared to be showing determination to implement the policy two months later. Two days after the Inner Mongolian High Court posthumously acquitted Hugjiltu, a teenager executed in 1996 for murder and rape, the provincial procuracy arrested the vice police chief who had presided over the case.[338] It is unclear whether this decision will make an impact on other less prominent cases in the future.

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[334] CPL, art 7.

[335] There have been some recent efforts to increase judges' independence, notably by transferring power to hire and promote judges from the local levels where judges are based to the provincial level. But as local interests can continue to influence judges' decisions through other means, the actual impact of these reforms on judicial independence is likely limited. The Chinese Communist Party has also called for less interference in court cases by these committees, but so far the impact of these efforts are not known. See Song Shijing (宋识径) and Zuo Yanyan (左燕燕), "Reforms to the Political and Legal Committee are Accelerating as They Reduce Interference in Cases (政法委改革加速 减少案件干预)," *Beijing News (新京报)*, October 23, 2014, http://www.chinanews.com/gn/2014/10-23/6707403.shtml (accessed October 28, 2014).

[336] Fu, "Zhou Yongkang and the Recent Police Reform in China," *Australian & New Zealand Journal of Criminology*.

[337] Chinese Communist Party Central Committee Decision on Several Major Issues to Advance the Rule of Law (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 Communist Party of China Central Committee, the fourth plenary session, October 28, 2014, Chapter 3.

[338] Luo Jingyun, "Feng Zhiming's Suspected Crime May Not be Limited to Coerced Confession (冯志明涉嫌罪名或不止于刑讯逼供)," *Tencent News*, December 31, 2014, http://news.qq.com/a/20141231/035569.htm (accessed January 13, 2015).

Internal Police Supervision and the Procuratorate

On paper, China's police are subject to the supervision of a number of government bodies and agencies. Within the police force, their conduct is monitored by what are called "internal supervision police" and police legal departments; outside of the force, they are scrutinized by the procuratorate, the National People's Congress, and the Ministry of Supervision and their counterpart institutions at lower administrative levels.[339] Any Chinese citizen or organization can report police abuse to these agencies, which according to the Police Law should conduct "timely investigations" and then inform the complainant of the results.[340]

These supervisory bodies can impose administrative sanctions such as warnings, demotions, and even detention, as well as recommend that police units rectify wrongdoing. In addition, the procuratorate can initiate criminal prosecution against offending police officers and is the main body that handles investigation of torture.[341]

Each agency has protocols to monitor police behavior and prevent torture. The internal police supervisors, for example, have authority to conduct on-site supervision as police officers interrogate suspects; conduct spot checks in detention centers; and, in certain police bureaus, monitor police officers through a real-time "audiovisual surveillance system."[342] Police supervisors can suspend or order officers detained (upon approval from the police chief responsible for supervision), recommend the demotion or dismissal of offending officers, and refer cases to the procuratorate for prosecution.[343]

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[339] Jiangxi Police Recruitment Exams: Key Points of People's Police Professional Knowledge (江西招警考试《人民警察专业基础知识》知识点（30）), *Jiangxi Civil Servants Examination Net* (江西公务员考试资讯网), June 20, 2013, http://www.jxgwyks.org/jczs/qt/201306/20-7924.html (accessed July 21, 2014).

[340] Police Law, arts 42, 46, and 47.

[341] Liqun Cao et al. ed., *The Routledge Handbook of Chinese* Criminology (New York: Routledge, 2014),p.72; the Supervising Regulations of the Public Security Organs(公安机关督察条例), *State Council*, No. 220 of 2014,http://www.gov.cn/zwgk/2011-09/08/content_1943257.htm (accessed October 28, 2014).

[342] "Huangshi Full Unleashes the Functions of Supervisor Police in Protecting Safety in Law Enforcement by Comprehensively Achieving Online Inspection of Police through Videos" (黄石充分发挥督察职能保障执法安全 实现全警音视频网上督察), MPS *Police Supervision Bureau* (公安部警务督察局), November 18, 2013, http://www.mps.gov.cn/n16/n1978875/n1978922/3941020.html (accessed July 21, 2014); Li, "MPS: Detention Centers Have to be Publicly Monitored by Society," *China Youth Daily*; Ling Qing (凌青), "Legal Analysis of Coerced Confession (刑讯逼供之法律探析)," Changqing County People's Procuratorate (长兴县人民检察院), May 14, 2012, http://www.huzhoucx.jcy.gov.cn/fxyd/llyj/201205/t20120514_861316.shtml (accessed July 21, 2014).

[343] The Supervising Regulations of the Public Security Organs, arts. 10, 11, 12, and 13.

Former detainees who spoke to Human Rights Watch said that none of these supervisory mechanisms worked in their cases. Although the state media has recently highlighted a case of a procurator who helped overturn wrongful convictions, such cases appear to be unusual.[344]

Suspects can complain to the procurator in charge of their case when the latter meets with them before approving arrests. Suspects can request a meeting with another procurator (called the "procurator stationed in the detention center") in the detention center concerning torture and ill-treatment in detention. But former detainees we spoke with said either that they had not been aware that there were procurators stationed in the detention centers, or that they did not request meetings with them as doing so required the approval of the cell boss or guards.

Yu Zhenglu, who was tortured and spent 20 days in a detention center in 2012, told Human Rights Watch: "I didn't see the procurator stationed in the detention center. I didn't know there was one."[345]

Another detainee, Zuo Yi, who was severely abused by a cell boss during his detention in a Fujian detention center, said:

> I knew there was a procurator stationed in the detention center, but I didn't know that until the end. Others talked about *"zhujiande"* [a shorthand for *"zhusuo jianchaguan* (驻所检察官)," procurators stationed in the detention centers] but I didn't know what it meant.... In the end, I thought about

[344] "Rectifying the Case of Zhejiang Uncle and Nephew Wrongful Conviction, Zhang Biao and Other Procurators Receive Awards (纠正"浙江叔侄错案" 张飚等三检察官立功)," *Legal Daily,* June 4, 2013, http://www.legaldaily.com.cn/index_article/content/2013-06/04/content_4530366.htm (accessed January 13, 2015). In this case, procurator Zhang Biao told the press that the process of rectifying the wrongful conviction was "very difficult." See Xing Shiwei, "The Unsung Hero of the Case of Zhejiang Uncle and Nephew Wrongful Conviction: We Need to Solve the Problem of Police, Procuratorate and the Court Having a Too Cozy Relationship ("叔侄冤案"幕后英雄：要解决"公检法三家走太近")," *Beijing News,* April 8, 2014, http://dailynews.sina.com/bg/chn/chnpolitics/phoenixtv/20140408/12205620888.html (accessed April 16, 2015). Except for this one case, all other prominent cases of overturned wrongful convictions were the results of factors other than efforts by procurators. In these other cases, the cases were overturned because the "victims" who were thought to be murdered re-appeared after many years, or because the real culprit got detained for some other cases and confessed to the crime. See Wang Hong, "Expert: Main Ways of Discovering Wrongful Convictions Are When the 'Victims' Return or When the Real Culprit Is Caught (专家："亡者归来"和真凶落网成冤案主要发现途径)," October 10, 2013, http://news.163.com/13/1010/13/9AR2MO5P0001124J.html (accessed April 16, 2015).

[345] Human Rights Watch interview with Yu Zhenglu (pseudonym), a former criminal suspect who was detained in a detention center in Yunnan Province, May 22, 2014.

> making a compliant but I never got to see him. I didn't know how to meet him. If I told the guard about this, he would definitely punish me.[346]

Former detainee and lawyer Wu Ying told Human Rights Watch:

> There was a procurator stationed in the detention center, there was a sign for it, but suspects don't know how it works. Also you need to get them make an appointment to see you. The question is if I am going to complain about you, how can I trust you to arrange the meeting?[347]

Procurators stationed in the detention centers, who tend to identify with the police officers at the detention centers and "turn a blind eye" to police infractions, are generally ineffective in checking police abuse.[348] In some detention centers, the procuratorate has also provided complaint boxes, but those were seen by some as ineffective. Detainee Feng Kun said:

> The complaint mailbox was very far away, and it would not open, there was no opportunity to use it.[349]

Former detainees also said that public security bureaus and internal supervision police failed to investigate their claims after they submitted complaints alleging police abuse. After Lei Xinmu was released, for example, he made complaints to all the supervisory departments about being tied to a "tiger chair" for days, but said he got only perfunctory answers:

> They [police officers] said they couldn't handle the case themselves and asked me to contact the cadres at the police bureau and the police chief. [But] I couldn't get in touch with them. The internal inspector of the police

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[346] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

[347] Human Rights Watch interview with lawyer and former detainee Wu Ying (pseudonym), May 14, 2014.

[348] Wei Jianwen (魏建文), "Inspection and Supervision of Detention Facilities: Problems and Countermeasures(监所检察监督的问题与对策探析)," *Journal of Southwest University of Political Science and Law* (西南政法大学学报),vol.4 (2012). See also, Li and Huang, "Scholars Say 80 Percent of Wrongful Convictions Involved Torture, *Legal Daily*.

[349] Human Rights Watch interview with Feng Kun (pseudonym), a former detainee who was detained in Henan Province, May 14, 2014.

> telephoned me saying that the entire procedure [of my police interrogations] was legal, and they didn't take any action.[350]

Lawyer Xiao Guosheng told Human Rights Watch:

> The police supervisors are part of the police, so the results [of our complaints] are usually not so good. Usually they tell us, "We'll investigate," and then there are no results.[351]

Several former detainees we spoke with said supervisory agencies met their complaints with silence. According to lawyer Shen Mingde, who has been trying to seek accountability for Chen Huiliang, who became physically disabled as a result of police torture:

> It is lost like a stone in the sea, they didn't pursue accountability, there was no response. We sought to pursue criminal responsibility and we reported the case to the procuratorate, but they haven't responded. There has been no response from the procuratorate, no response after we filed a report to the police bureau. They told us when we met that they'd study the case, but they never got back to us.[352]

Cao Zuowei, who was hung up and beaten, said he complained to the police supervisors but there was no follow-up investigation of his case:

> I went to the city public security bureau, they didn't do much. They did some superficial things, like registration [of the complaint], but they didn't do much.[353]

Bai Qingzuo said he had repeatedly contacted these agencies but had had no response from them:

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[350] Human Rights Watch interview with Lei Xinmu, (pseudonym), a former criminal suspect who lives in Shaanxi Province, June 9, 2014.

[351] Human Rights Watch interview with Xiao Guosheng (pseudonym), a lawyer based in Beijing, Jan 23, 2014.

[352] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[353] Human Rights Watch interview with Cao Zuowei (pseudonym), a former suspect who was detained in Hunan Province, May 17, 2014.

> I gave all this evidence to the public security bureau, but they didn't give me any response. I have also lodged a complaint with the procuratorate, which didn't respond either. They said they would investigate the matter, but haven't given me a reply since then.[354]

Former detainees and their family members also expressed frustration that supervising agencies kept shifting the responsibility to other agencies to investigate abuses, and said that after spending considerable effort going to various authorities, they still have no answers. Jiang Yiguo told Human Rights Watch:

> We went … to the procuratorate who told us they had told the county police to investigate the matter, so we should wait for updates. We didn't hear anything after waiting for a long time, so we went again. Then they told us, "You can go to the city's procuratorate." But when we went to the city's procuratorate, they asked us to go to the provincial procuratorate, who then told us to go [back] to the county police.[355]

Others, like Gu Daoying, who was beaten with electric baton for hours, said the supervising agencies responded but said the matter should be resolved "privately":

> I complained right after being released. I went to the higher level police station and procuratorate complaining about the illegal acts of the police in-charge of the investigations. They knew all about it and they told me it was all in the past, we should just work it out privately. There was no documentation. The police compensated me with some cash. There has been no response from the procuratorate.[356]

In some cases the answers from the procuratorate are simply not credible. The procurator told Chen Aomin, the wife of a former suspect whose torture left him unable to walk

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[354] Human Rights Watch interview with Bai Qingzuo (pseudonym), father of a 17-year-old detainee who died days after he was released from a detention center in northwestern China, September 12, 2014.

[355] Human Rights Watch interview with Jiang Yiguo (pseudonym), daughter of detainee in central China who died in custody, September 10, 2014.

[356] Human Rights Watch interview with Gu Daoying (pseudonym), a former detainee who lives in Zhejiang Province, May 22, 2014.

without crutches and with hearing and mental concentration impairments, that the torture was "just a small issue":

> I complained to the procuratorate [about my husband's torture in detention]. They said you don't have any evidence. I said I do. My husband was fine when he went in and now he is like this, who beat him? Isn't this evidence? Do you want me to get the evidence right there at the scene? How on earth do I get that evidence? The procuratorate said, well, then there was nothing they can do. The provincial procuratorate was even worse. They said to me, "It might be a big deal for you that your husband was beaten up, but for us this was just a small issue." I said, "Would it only be a big deal if he died?" They said, "Yes, that's correct."[357]

Xie Ying, another family member of a detainee who was later convicted on the basis of a confession elicited through torture and who has become paralyzed as a result of the torture, told Human Rights Watch that they complained to many government agencies but none looked into the case:

> We have been sending letters for three years but no one ever responded.... When we petitioned, the local police intercepted us.... At the time, to rid themselves of responsibilities, the judiciary said to me, "I want to handle the case properly too but there's nothing we can do about the local Political and Legal Committee" ... I have been to the police hotline and [complaint] windows, but they are all bribed, they are so rotten thoroughly.... I have asked the procuratorate to uncover the use of torture to extract confession.... He said, "You said [mistreatment left him] disabled, but I didn't see it. How am I going to intervene? I can't help you." I got angry at him and said, "The job of the procuratorate is to supervise courts, don't you know the law?"[358]

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[357] Human Rights Watch interview with Chen Aomin (pseudonym), wife of a former criminal suspect in Fujian Province who is now released, May 5, 2014

[358] Human Rights Watch interview with Xie Ying (pseudonym, location withheld), sister of a criminal suspect (he was later convicted and is now in prison), April 14, 2014.

These statements are consistent with a 2006 study by Chinese legal scholar Wu Danhong, whose interviews with procurators revealed a great reluctance to prosecute torture perpetrators:

> When the procurator's office receives evidence of forced confession, they will first check if there is any serious consequence that causes disability or death. If not, they generally do not make public the findings, unless the conviction is wrong. Next they look at whether the case is really solved and whether the suspect committed the crime. If they did, the fact that the suspect was tortured would not have any impact on their being prosecuted. Finally, in serious cases of coerced confession, the Political and Legal Committee usually coordinates them. They decide whether to file the case. In many cases, [the police] are given administrative sanctions; even if the cases reach the level of criminal liability, as long as [the officers] plead guilty and show repentance, they will not be prosecuted.[359]

In addition, procurators told Wu that even in cases in which they took steps to investigate abuses, resistance from the police is strong:

> According to a procurator, when he handled a serious case of forced confession, certain leaders at the Bureau of Public Security did not cooperate with the procuratorate's investigation. The entire police unit even rode their motorbikes to the procuratorate to "protest" and ask for their colleague to be released. When investigating the case of Huang Shu-hong, the task force met many challenges that cause them to "spend more than a year to process a case of forced confession that could have taken 7 days to complete." [360]

[359] Wu, Danhong, "Roles, Contexts and Social Tolerance—Torture from the Perspective of Sociology," *Peking University Law Journal.*

[360] Ibid.

The failure of Chinese agencies to effectively supervise police conduct can be seen in a 2009 Fujian Province case, in which a local police chief was transferred, rather than dismissed, demoted, or prosecuted, for a serious case of abuse under his command.

Suspect Chen Huiliang alleged that police officers held him for six months in 2007 and 2008 in an illegal detention facility at the Longhai City Public Security Bureau. He said that police officers tortured him by depriving him of sleep, tying him to a "tiger chair" for a total of 51 days, beating him with police batons, and using an assortment of tools including shackles and rods to wring his thighs. Chen lost the use of one leg and suffered from injuries to spinal nerves, according to official records.[361]

The Ministry of Public Security's Police Supervision Committee, after receiving Chen's wife's complaint, issued an internal police circular acknowledging that while there were "problems" in the way this case was handled, including detaining the suspect in an illegal location for 138 days and tying him to an interrogation chair for 20 days, it found "no torture to extract confession."[362] The committee sent the circular to public security bureaus across the country, cautioning police officers that they must "enforce the law justly and in a civilized manner."

The police chief with command responsibility over the officers responsible for the alleged torture, Lin Shunde, was merely transferred to another police bureau in Zhangpu County. In Zhangpu County, suspects in a triad-related case in 2012 alleged that Lin had again established illegal detention facilities at the police bureau, and tortured them to confess.

Scholars have criticized internal police supervision as largely unsuccessful, with supervision conducted without "sufficient competency or professionalism" and the teams "grossly understaffed, undertrained, and inadequately resourced."[363]

[361] Record of Medical Bail Granted to Criminal, Fujian Quanzhou Prison, Case No. 10, September 23, 2011, http://ww2.sinaimg.cn/mw1024/e45a6297jw1eg3d8dl19fj20kooqsadb.jpg (accessed January 12, 2015).

[362] Notice about Longhai Public Security Bureau in Violation of the Law in the Handling of a Case (关于福建省龙海市公安局在办理一起案件过程中存在违反法律规定问题的通报), MPS Supervision Committee (公安部督查委员会), Case No. 7, March 19, 2009, http://ww3.sinaimg.cn/bmiddle/e45a6297jw1eg3d9rtbkmj20hs722e81.jpg (accessed January 12, 2015).

[363] Wong, Kam C. *Police Reform in China* (New York: CRC Press, 2011), p. 333-34.

Impunity for Perpetrators

> Our superiors know about it, they all tolerate torture. The many years I have been a police officer, there has not been one police officer who has been punished for extracting confessions through torture. The cadres do not care or ask about the use of torture; if someone complains those lower down can plead with the superiors.
> —Zheng Qianyang, a former police officer, February 2014

Lawyers and legal scholars told Human Rights Watch that police officers are rarely held legally responsible for torture. Lawyer Song Sanzuo told Human Rights Watch:

> Accountability is impossible. At most the police officers would be demoted. Very rarely would police officers be punished.[364]

Lawyer Yu Zheng said perpetrators are punished only when the torture leads to serious injury or death:

> Unless you've killed the person, or caused them serious injury, few ever go to prison.[365]

Lawyer Gu Geng said that even when officers are imprisoned they tend to get off with very light sentences:

> According to the law, it is considered a crime when the police use torture. However, in practice it is rare that police officers are held accountable. Even if they are, the punishment tends to be very light. For example, if a police officer beats a suspect to death, he will only be sentenced to five or six years at most. The punishment [for killing the suspect] can even be as light as simply being discharged from office or given administrative punishment.[366]

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[364] Human Rights Watch interview with Song Sanzuo (pseudonym), a lawyer based in Shanghai, May 16, 2014.

[365] Human Rights Watch interview with Yu Zheng (pseudonym), a lawyer based in Shanghai, Feb 14, 2014.

[366] Human Rights Watch interview with Gu Geng (pseudonym), a legal scholar and former lawyer who now lives in the United States, Jan 19, 2014.

As noted above, many suspects we spoke with also said that the police officers responsible for mistreating them have not faced prosecution; at most the officers have been demoted. Former detainee Cao Zuowei, who was hung up and beaten, told Human Rights Watch: "The head of the PSB told me they've moved the deputy police chief to a patrol post, but I don't know the details."[367]

Even among the most prominent cases of wrongful convictions—most of them the result of torture—few officers have been held legally accountable. In six such cases analyzed in a Chinese press article in which suspects were released after years of imprisonment, officers were punished in only two cases.[368] And the officers were merely "disciplined" and faced no criminal punishments. The head of the Zhejiang Provincial High Court said this was because the officers did not intend to do wrong.[369]

A few former detainees or their relatives told Human Rights Watch that the officers involved in their cases were actually promoted. Chen Aomin, whose husband was physically disabled due to torture, told Human Rights Watch:

> They were going to promote one of the officers, but I went to report him, and as a result he didn't get promoted … but then after a couple of years, the other two [officers involved in the torture] were promoted. I went to report them again, but the police still promoted them.... Not only were they not punished they were twice promoted.[370]

Xie Ying said officers whose torture left her brother disabled have been promoted for "solving" the case:

> Because of my brother's case some people have been promoted. For example, the head of the city's PSB was moved to the provincial level.... The

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[367] Human Rights Watch interview with Cao Zuowei (pseudonym), a former suspect who was detained in Hunan Province, May 17, 2014.

[368] Zhu Yanli (朱艳丽), "Why it is Difficult to Seek Responsibility for Wrongful Cases (冤案追责何以难追到底)," *Bandao Dushibao (半岛都市报)* (Qingdao), May 15, 2014, http://news.163.com/14/0515/11/9S9JU44V00014Q4P.html (accessed October 27, 2014).

[369] Ibid.

[370] Human Rights Watch interview with Chen Aomin (pseudonym), wife of a former criminal suspect in Fujian Province who is now released, May 5, 2014

> head of the procuratorate even praised him, and said that he withstood media pressure, making my brother's case into a case "set in stone." They all have been promoted.[371]

In a 2011 report to the UN Committee against Torture, the Chinese government said a total of 63 individuals were convicted for "torture to extract confession,"[372] "using violence to obtain evidence,"[373] and "abuse of supervisees," though it is unclear how many of them were police officers.[374]

Findings from Publicly Available Information

Our search of all Chinese court verdicts published on the SPC website during the first four months of 2014 found only one case in which police officers were convicted for abusing criminal suspects. In that case, a Liaoning court convicted three police officers of "intentional injury." According to the verdict, the officers "violently beat" the suspect while holding him in a vehicle, then brought him back to an interrogation room where they continued to beat him with electric batons. The suspect repeatedly complained of stomach pain, but was not sent to the hospital until 11 hours later, where he was diagnosed with a ruptured spleen and severe bleeding that endangered his life. All three were convicted, but none served prison terms: two had three-year probations while the third was exempted from criminal punishment. [375]

We also analyzed press accounts over that same period, looking for cases in which police were reported to have been held accountable for torture. We focused on three official Chinese newspapers—*Legal Daily*, a newspaper published by the CCP's Political and Legal Committee and managed by the Ministry of Justice; *Procuratorate Daily*, a newspaper published by the Supreme People's Procuratorate (SPP); and the *People's Police Daily*—searching for "police officer" (*jingcha* 警察), "verdict" (*xuanpan* 宣判) and three official

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[371] Human Rights Watch interview with Xie Ying (pseudonym, location withheld), sister of a criminal suspect (he was later convicted and is now in prison), April 14, 2014.

[372] Criminal Law, art. 247.

[373] Criminal Law, art. 247.

[374] In 2010, 60 were convicted of "torture to extract confession," 2 for "using violence to obtain evidence," 34 for "abuse of supervisees"; in 2011, 36 were convicted of "torture to extract confession," 1 for "using violence to obtain evidence," 26 for "abuse of supervisees." Government of China, Fifth Periodic Report to the Committee against Torture, para.74.

[375] The Second-Instance Verdict on the Criminal Case of Intentional Injury of Qian Jiang and Wang Jie (钱江、王杰等故意伤害罪二审刑事裁定书), Shenyang City Intermediate People's Court of Liaoning Province (辽宁省沈阳市中级人民法院), Shenyang City Intermediate People's Court Criminal Case No.62 (Final Hearing) (沈中刑二终字第 62 号), 2014.

terms used to describe torture and abuses (which translate as "torture to extract confession," "abuse of detainees," and "use of violence to obtain evidence").[376] We found dozens of articles referencing police abuse of detainees, but no articles reporting that police were held accountable.

During this same four-month period, however, authorities repeatedly took action against acts of violence perpetrated by detainees. Human Rights Watch's verdict search between January 1 and April 30, 2014 found 45 decisions in which 50 criminal suspects were convicted of the crimes of "intentional injury," "damaging orderly detention," or fighting with other detainees in detention centers. Most involved brawls between detainees, but in at least 10 cases the verdicts suggested that the penalized individuals were serving in managerial or supervisory roles within the detention center at the time of the incident, presumably at the behest of the guards. Nearly all involved beatings of detainees that resulted in "light injuries" but in one case the victim died and in another the victim was badly injured. Five of these 10 cases stemmed from cell bosses' dissatisfaction with the victim's work in performing forced labor. In three cases the cell bosses punished the victims for some disciplinary transgression, and in one case a police officer repeatedly instructed cell bosses to beat a victim for making complaints.[377] The perpetrators in these 10 cases received between eight months and three years in prison.

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[376] These three papers were selected because press stories on torture are most frequently reported in media controlled by law enforcement agencies in China. See Sapio, *Sovereign Power,* p. 207-240.

[377] These 10 cases were addressed in 15 court verdicts: *First Instance Criminal Verdict of Intentional Injury of Ma Wei*, Ningxia Hui Autonomous Region Guyuan City Yuanzhou District People's Court, First Instance Criminal Case No.346 (原刑初字第 346 号), 2013; *First Instance Criminal Verdict of Intentional Injury of He Zhijun*, Ningxia Hui Autonomous Region Guyuan City Yuanzhou District People's Court, First Instance Criminal Case No.347 (First Instance) (原刑初字第 347 号), 2013; *First Instance Criminal Verdict of Intentional Injury of Ma Xiaodong*, Ningxia Hui Autonomous Region Guyuan City Yuanzhou District People's Court, First Instance Criminal Case No.348 (原刑初字第 348 号), 2013; *First Instance Criminal Verdict of Intentional Injury of Mamu Hamai*, Ningxia Hui Autonomous Region Guyuan City Yuanzhou District People's Court, First Instance Criminal Case No.349 (原刑初字第 349 号), 2013; *Second Instance Criminal Verdict of Intentional Injury of Yin Qinlin*, Hunan Yueyang City Intermediate People's Court, Final Instance Criminal Case No.82 (岳中刑一终字第 82 号); *Criminal Verdict of First Instance of Intentional Injury of Gao*, Sichuan Gao County People's Court, First instance Criminal Case No.1, (宜高刑初字第 1 号), 2014 ; *Criminal Verdict of First Instance of Creating Disturbances of Eight People Including Liu* Dongzhen, Hebei Zaoqiang County People's Court, First Instance Criminal Case No.8, (枣刑初字第 8 号), 2014; *Criminal Verdict of First Instance of Intentional Injury of Wang Pang and Bai*, Hebei Zaoqiang County People's Court, First Instance Criminal Case No.10 (枣刑初字第 10 号), 2014; *Criminal Verdict of First Instance of Intentional Injury of Xing*, Hebei Zaoqiang County People's Court, First Instance Criminal Case No.27 (枣刑初字第 27 号), 2014; *Criminal Verdict of Second Instance of Traffic Accident and Intentional Injury of Han*, Hebei Cangzhou City Intermediate People's Court, Final Instance Criminal Case No.94 (沧刑终字第 94 号), 2014; *Criminal Verdict of First Instance of Intentional Injury of Chen*, Fujian Futian City Hanjiang District People's Court, First Instance Criminal Case No.68 (涵刑初字第 68 号); *Criminal Verdict of First Instance of Intentional Injury of Chen Yukun, Guangzhou Chaozhou City Chao'an District People's Court,* First Instance Criminal Case No.10 (潮安法刑初字第 10 号), 2014; *Criminal Verdict of First Instance of Intentional Injury of Cai Yang and Zhang Qingquan,* Fujian Putian City Licheng District People's Court, First Instance Criminal Case No.115 (荔刑初字第 115 号), 2014; *Criminal Verdict of Second Instance of Damaging Orderly Detention of Huang An'bang and Gong,* Fujian Ningde City Intermediate People's Court, Final

While it is promising that a number of suspects were convicted for beating fellow detainees, perhaps indicating increasing resolve by authorities to take action against cell bosses since 2009, in none of the cases were police officers held accountable for using or tolerating cell bosses. As noted above, former detainees told Human Rights Watch that there is little redress for violence by cell bosses: detainees who complain about such abuses to the guards are moved to another cell, ignored, or worse still, punished; but the cell bosses are not punished.

Zuo Yi, who was severely abused by a cell boss for over a year in detention, told Human Rights Watch that the guard did not respond even when the cell boss openly acknowledged that he had beat Zuo:

> The guard came in and asked, "Who hit him?" The cell boss said it was him, and the guard said nothing. He didn't ask me to make a statement or explain anything. There was no investigation.[378]

Lack of Compensation and Rehabilitation for Victims

Torture victims can apply for compensation under the Law of State Compensation.[379] The law, effective since January 1995, was amended in 2010 and in 2012 to improve victims' access to compensation from the government.[380] In theory, it compensates victims of police abuse that result in physical injury, disability, or death, as determined by forensic experts. None of the detainees or their family members interviewed by Human Rights Watch, however, said they had received state compensation.

Instance Criminal Case No.4 (宁刑终字第 4 号), 2014; *Criminal Verdict of First Instance of Organizing Gambling Venue, Sheltering Others to Abuse Drugs and Intentional Injury against Huang Zhihai and Organizing Gambling Venue against Wang Gengqing, Yao Jianfan, Guo Songhong, Guo Shaoying, Zhuang Yuelan*, Shandong City Chaoyang District People's Court, First Instance Criminal Case No.39 (汕阳法刑二初字第 39 号), 2014.

[378] Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

[379] State Compensation Law of the People's Republic of China (中华人民共和国国家赔偿法), *Standing Committee of the National People's Congress,* adopted on May 12, 1994 199 (amended on April 29, 2010 and on October 26, 2012). Victims are only entitled to compensation if they were beaten or abused by government officials, or those instructed by them, and suffered injury or death as a result. Such individuals are entitled to expenses related to medical treatment and care, as well as loss of work hours; those who became disabled get additional disability compensation depending on the level of disability; and a living allowance for those who are so severely disabled that they cannot work. Families of those killed by torture are eligible to death compensation, funeral expenses and living allowance. Loss of work hours and disability and death compensations are capped at a certain factor of the national average wage, while living expenses are the same as the minimum living allowance at the local level given out to families earning under a certain minimum income. In serious cases, victims are also given compensation for psychological harm, but the amount is unspecified.

[380] Jiang Bixin, "Several Issues that Should be Focused on and Grasped in the Application of the Revised " State Compensation Law" (适用修改后的《国家赔偿法》应当着重把握的若干问题)," *Falu Shiyong Vol. 6,* 2011, http://www.pkulaw.com/fulltext_form.aspx?Gid=1510112859&Db=qikan. (accessed April 29, 2015)

The first challenge in claiming compensation is proving police responsibility for one's injuries. Because the court, procuratorate, and police rarely acknowledge that torture has taken place, it is difficult for victims to claim compensation. Lawyer Shen Mingde told Human Rights Watch: "The problem is there has to be first an [official] acknowledgement of coerced confession before there can be compensation."[381] As noted above, detainees face extreme obstacles to obtaining and retaining evidence of abuse; judges and procurators, who have the capacity to seek out the truth, rarely do so.

Our search of court verdicts from early 2014 shows that many applications seeking state compensation for injuries and disability caused by torture during pre-trial detention are turned down on the grounds that applicants did not prove that police used torture.

> Complainant Zhu Haibo claims that as a result of torture by Public Security Bureau staff, he suffers from frostbite in his bones as well as disability, but Zhu did not provide the relevant evidence.... Complainant Zhu Haibo's reasons and his complaints cannot be established.[382]

> Medical records from Zhejiang Prison Hospital and Hangzhou City Red Cross Hospital did not record external injuries during general physical check-up when Yang Jinhui was admitted [in the hospital for treatment of diseases].... These facts combined with other evidence collected in the case file cannot confirm that the Public Security Bureau tortured or abused Yang Jinhui during detention.... In summary, Yang Jinhui does not have sufficient basis to claim compensation from Yiwu Detention Center and Yiwu Public Security Bureau for injuries caused by the use of torture to extract confession and abuse.[383]

Even in the rare cases in which authorities acknowledge responsibility for abuse, state compensation is only available to those who have physical injuries. Lawyer Zhang Rong told Human Rights Watch:

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[381] Human Rights Watch interview with Shen Mingde (pseudonym), a lawyer based in Beijing, April 3, 2014.

[382] Written Decision on the Review of Zhu Haibo's Complaint Regarding His Application for Compensation for Unlawful Detention by the Xing'an Public Security Bureau in Guangxi Zhuang Autonomous Region (朱海波申请广西壮族自治区兴安县公安局违法拘留赔偿申诉审查决定书), SPC, Peijianzi No.107 (赔监字第 107 号), 2013

[383] Written Decision on Yang Jinhui's Application for Compensation (杨金辉申请赔偿决定书), Jinhua City Intermediate People's Court of Zhejiang Province (浙江省金华市中级人民法院), Zhejinfaweipeizi No.1 (浙金法委赔字第 1 号), 2013.

> If you do not reach the [official] levels of disability, you may not be compensated. The police are now very skillful at torture, they do not immediately cause disability.[384]

Those who have no physical injuries may still be eligible for state compensation for lost work days if, in addition to being physically abused, they were illegally or wrongfully detained. But lawyer Mao Renrong pointed out that such rulings are rare:

> State compensation is usually given only to those who have been acquitted for wrongful convictions, those usually have no problem accessing it. But [even in those cases] they compensate you only for the time you spent in detention, not for the torture itself.… They still don't acknowledge that torture has taken place.[385]

The amount of compensation for lost days of work is small, calculated based on average annual wages across the country. Lawyer Zhang Rong said:

> You can seek state compensation [for lost work hours], which is calculated by multiplying the number of days you were detained by the average wage, but the amount is relatively small.[386]

In 2013, the Chinese government gave out a total of RMB 87.4 million (US$14.2 million) in 2,045 cases, but it is unclear what portion went to survivors of torture in pre-trial detention.[387] Victims and their families and Chinese media have criticized the low levels of compensation and the basis for calculating it.[388] One scholar at Shandong University of Political Science and Law wrote:

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[384] Human Rights Watch interview with Zhang Rong (pseudonym), a lawyer based in Guangdong Province, Jan 22, 2014.

[385] Human Rights Watch interview with Mao Renrong (pseudonym), a lawyer based in Beijing, October 30, 2014.

[386] Human Rights Watch interview with Zhang Rong (pseudonym), a lawyer based in Guangdong Province, Jan 22, 2014.

[387] Li Jing (李婧), "SPC: The Court Concluded 2045 Cases of State Compensation Cases Last Year (最高法：去年全国法院审结国家赔偿案 2045 件)," *People's Net* (人民网), March 10, 2014, http://www.chinacourt.org/article/detail/2014/03/id/1227247.shtml (accessed August 6, 2014).

[388] See "Zhao Zuohai Abandons Other Claims: How Ever Much the Government Gives, I Will Take It (赵作海放弃其他赔偿请求：政府给多少 我要多少)," *Beijing News (新京报)*, May 14, 2010, http://news.shangdu.com/101/2010/05/14/2010-05-14_438453_101.shtml (accessed August 6, 2014); "The Media Claims that Zhao Zuohai's 650,000 RMB State Compensation is Too Little (媒体称赵作海所获 65 万国家赔偿太低太寒碜)," *Global Times,* May 14, 2010, http://news.shangdu.com/107/2010/05/14/2010-05-14_438440_107.shtml (accessed August 6, 2014); "Three in Anhui

> When torture is used and harms a person, just compensating the victim on the basis of the average daily wage of the previous year underestimates a person's value … the use of torture to extract confession … results in not only bodily harm and pain on the victim, but it also seriously impact their quality of life, as well as enormous mental suffering for them and their families … and yet according to compensation standards, the victim is only entitled to dozens of RMB every day; [the compensation] is very disproportional to the enormous mental pain and injury to the victims and their families.[389]

Even the Supreme People's Court acknowledges that the amount of compensation is lower than it should be. According to a spokesperson of the SPC:

> By all means, there is a certain gap between the current compensation standards and the pains of those who suffer injustices as well as the public's expectations. As the Supreme People's Court, we give high importance to the people's demands [...] and commit to ensuring maximum protection of the applicant's legitimate rights and interests within the legal boundaries.[390]

Victims and families of victims told Human Rights Watch they have not received official acknowledgment of police abuse or been provided with state compensation. Instead, the police in several instances have offered them "humanitarian aid," a lump sum, or promised to pay for medical expenses. Typically this is paid out by the police bureau or the individual officer's own personal account, and is explicitly in exchange for a victim's silence. Interviewees told of being given between 20,000RMB ($3200) and 50,000 RMB ($8100) by the police.

Cao Zuowei told Human Rights Watch that after he was hung up and beaten, the local leaders tried to prevent him from seeking accountability by offering him money:

Given 600,000 RMB in State Compensation after 8 Years of Wrongful Imprisonment for Murder; They Are Unhappy and Will Appeal (安徽 3 人被控杀人坐 8 年冤狱 不满国家赔 60 万将复议)," *Jinghua Times (京华时报)*, May 24, 2014, http://news.163.com/14/0524/01/9SVMG5T500014AED.html (accessed August 6, 2014).

[389] Zhang Chuanwei (张传伟), "The Defects of the State Compensation System and Its Reconstruction from the Perspective of Cases that Involve Torture (从刑讯逼供看刑事赔偿制度之缺陷与制度重构)," *Law Science Magazine (*法学杂志), vol. 6 (2008).

[390] Li, "SPC: The Court Concluded 2045 Cases of State Compensation Cases Last Year," People's Net.

> The Party Secretary came himself, but in the end he only gave me RMB20,000. I still don't know what happened. They didn't give me any documents saying they did wrong. Afterwards … they wrote a statement saying I didn't suffer any bodily or property damage [in the police station] and asked me to copy and sign it.[391]

Chen Aomin told Human Rights Watch of a similar cash-for-silence offer made to her husband:

> Perhaps they were afraid that we'd go online and complain. They wanted us to sign an agreement, which says that after his return, we cannot use the Internet to appeal our case. They let us choose one of the local hospitals.… The police would pay [the hospital] directly [for treatment], and then there is RMB50,000 on top of this, and after half a year they would evaluate our situation and compensate us depending on his level of disability.… But until now we haven't taken one cent from them … [because] the hospitals would not take him, the hospital said his leg has been left untreated too long, and now they cannot treat him. [392]

Victims have also complained that, even in cases in which money has been promised to them, the police resist paying the full amount. Cao Zuowei told Human Rights Watch:

> After I revealed the case on the Internet, [the police] sent me to the hospital this year to do some rehabilitative treatment. I have been evaluated as Level 7 [light to medium level] disability. They gave me money for treatment, but recently they didn't. It's been over 10 days, they still haven't. What should ordinary people like us do?[393]

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[391] Human Rights Watch interview with Cao Zuowei (pseudonym), a former suspect who was detained in Hunan Province, May 17, 2014.

[392] Human Rights Watch interview with Chen Aomin (pseudonym), wife of a former criminal suspect in Fujian Province who is now released, May 5, 2014.

[393] Human Rights Watch interview with Cao Zuowei (pseudonym), a former suspect who was detained in Hunan Province, May 17, 2014.

Zuo Yi, who suffered permanent injury from the abuses of a cell boss, said the procurator reneged on compensation he had promised:

> I went to talk to the head of the procuratorate after being released and he said that I would be compensated. But my request has been repeatedly ignored after the head was relocated.[394]

In some cases, victims and their families complain that they have endured retaliation for seeking accountability, compensation, or simply an acknowledgement that torture had taken place. Former detainee Zhang Chun told Human Rights Watch:

> They didn't [give me compensation]. They kept threatening me … I have injuries all over: hands, feet, nerves in the lower body.… There's nothing to be done.… I don't have much hope, I just hope to get clarity on this.[395]

Yang Jinli, like some of the interviewees, had tried petitioning the authorities, and was briefly detained for doing so:

> I've gone to Beijing to petition. Every time I go I have to go a roundabout way, [or else] surely I'd be intercepted [by officials]. Also my phone has 24-hour surveillance. Am I a criminal?[396]

Chen Aomin told Human Rights Watch:

> I went once to Beijing to petition [about my husband's torture], [but] I was taken into custody and sent back. Afterwards I didn't go anymore. [397]

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394 Human Rights Watch interview with Zuo Yi (pseudonym), a former detainee who was detained in Fujian Province, April 11, 2014.

395 Human Rights Watch interview with Zhang Chun (pseudonym), former detainee who lives in Hunan Province, May 13, 2014.

396 Human Rights Watch interview with Yang Jinli (pseudonym, location withheld), a family member of a criminal suspect who was on death row, Jan 24, 2013

397 Human Rights Watch interview with Chen Aomin (pseudonym), wife of a former criminal suspect in Fujian Province who is now released, May 5, 2014

VI. Recommendations

The Chinese government should demonstrate its commitment to eradicating torture and ill-treatment in detention by immediately issuing an invitation to the UN Special Rapporteur on Torture and the UN Office of the High Commissioner for Human Rights to conduct independent investigations into the treatment of detainees in police custody in China. Their findings would contribute to the review of China's record under the Convention against Torture in November 2015 and help provide a roadmap for further reforms aimed at eliminating abusive police behavior.

The National People's Congress

- Transfer the power to manage detention centers from the Ministry of Public Security to the Ministry of Justice.
- Revise the Criminal Procedure Law to:
    - Ensure that suspects may have lawyers present during any police questioning and interrogations;
    - Stipulate suspects' right to remain silent during questioning;
    - Adopt the "fruit of the poisonous tree" doctrine with respect to the exclusionary rule;
    - Ensure that anyone taken into police custody be promptly brought before a judge, normally within 48 hours of being apprehended, as is required in Hong Kong and many other jurisdictions;
    - Mandate that all interrogations of suspects and witnesses to be used in proceedings be videotaped in their entirety, and that a complete copy of the interrogations be made available to the defense and the court;
    - Mandate that police conduct criminal interrogations only in rooms designated for interrogation in detention centers and police stations;
    - Mandate that lawyers be allowed to accompany suspects when they are taken out of detention centers to identify a crime scene or for other purposes;
    - Expressly permit witnesses to appear in court during proceedings to determine whether confessions ought to be excluded as evidence due to

alleged torture. Possible witnesses should include independent forensic experts, fellow detainees, doctors in contact with the suspects, and police officers involved in investigations and custody of the detainee;

- Repeal articles that allow suspects charged with terrorism, major corruption, or state security offenses to be subjected to six months of secret detention without lawyers under "designated residential surveillance."

- Establish an independent Civilian Police Commission ("Commission") composed of independent members with knowledge of detention facility conditions and police practices and provide adequate funding to it by law. Members should include human rights advocates, defense lawyers, and former detainees, as well as policing experts and others considered necessary for the Commission's work. Members should be protected from personal liability for acts performed in good faith.
- The Commission should be empowered to:
    - Conduct investigations with respect to alleged police misconduct, including deaths in custody and police abuse; 2) conduct inquiries, on its own initiative, concerning complaints made about the policies or practices of the police force or about the behavior of individual police officers; 3) make unannounced visits to all official and unofficial detention centers to speak with individual detainees in private; 4) publish statistics with respect to police practices, such as complaints filed and acted upon; 5) make public recommendations with respect to the policies or practices of the police to the Ministry of Public Security, the Supreme People's Procuratorate, and the Ministry of Justice; and 6) provide compensation to victims of torture or ill-treatment.
    - Determine on clear and convincing evidence, after holding hearings with witnesses, that a police officer who has engaged in or overseen misconduct, be demoted, suspended with or without pay for a specified period, or removed. Such decisions should be subject to appeal before an appropriate court. The Commission should also be able to recommend to the procuratorate that the officer face criminal charges.

- Revise the State Compensation Law to:
    - Ensure that the government compensates families for deaths, injuries, and disabilities found to be the result not only of physical abuse but also of negligence, or denial or delay of medical treatment;
    - Create guidelines with input from independent experts on compensation for psychological damages that result from police abuse.
- Revise the Criminal Law to:
    - Abolish article 306, which allows prosecution of lawyers who advise a client to retract a forced confession;
    - Adopt a definition of torture that fully comports with the definition of torture and "other cruel, inhuman or degrading treatment or punishment" in the Convention against Torture.

The Ministry of Public Security

- Improve suspects' access to legal counsel by:
    - Reviewing lawyers' access to criminal suspects in detention centers across the country and taking measures to remove all remaining barriers to legal access;
    - Immediately disciplining any police and detention center staff who obstruct access to legal counsel;
    - Establishing a system of duty lawyers in all detention centers and ensuring all detainees are informed on arrival at the detention center of such services.
- Amend the Detention Center Regulations to:
    - Abolish the use of forced labor in detention centers;
    - Prohibit the use of detainees – "cell bosses" – in the management of other detainees;
    - Allow suspects to receive visits, phone calls, and letters from families without prior detention center approval, subject to necessary safeguards to maintain safety and security in these facilities;
    - Prohibit the use of solitary confinement of pretrial detainees;

- Ensure that detainees' due process rights are respected when subjecting them to disciplinary actions, including to be informed in writing of the charges against them and to be provided a copy of any disciplinary decision;
- Establish mechanisms for lawyers and suspects to effectively challenge disciplinary actions;
- Ensure that detainees are informed, upon admission to detention centers, of their right to meet with duty lawyers. Before a system of duty lawyers is operational, ensure detainees have regular access to procurators stationed in the detention centers;
- Mandate that doctors record all indications of torture and other mistreatment during physical examinations conducted before detainees are admitted to detention centers;
- Ensure that police officers are not present during doctors' examination of suspects;
- Include a copy of the physical examination report in suspects' case files.

- 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;
  - Prohibit the use of chairs with built-in restraints ("tiger chairs") for interrogations;
  - Restraints should be used only as necessary and for as short a time as possible. When used, any resulting discomfort, pain, or injuries should be mitigated, and the prolonged use of restraints should be prohibited.
- 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 families have a complete video recording of the autopsy and copies of other relevant information including photos and medical records;
  - 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.

The Ministry of Health

- Directly fund hospitals to provide medical examinations and treatment for detainees in detention centers;
- Ensure that suspects have access to doctors not beholden to the police;
- 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 authority independent of the allegedly responsible entity;
- Provide a secure and anonymous system for doctors to submit reports of police abuse to an appropriate authority independent of the allegedly responsible entity and take measures to prevent retaliation against doctors who make such reports;
- As part of their bi-yearly evaluation process, 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 by suspending them or barring them from practice.

The Supreme People's Court

- Amend its official judicial interpretation of the Criminal Procedure Law to:
    - Clarify the requirements for initiating an investigation of torture claims, and ensure that the requirements are consistent with international standards;

The Supreme People's Procuratorate

- Review the procuratorate's performance to date in implementing revisions to the Criminal Procedure Law in 2012 that empowered the procuratorate to review arrests and to recommend releases or other non-custodial measures, and take steps to further lower the pre-trial detention rate;
- Publish statistics regarding complaints of torture and ill-treatment the procuratorate has received, and of the numbers of police officers investigated, disciplined, or prosecuted for such violations.

The Ministry of Justice

- Ensure that lawyers are not retaliated against for filing complaints about the torture of clients during criminal proceedings;
- Ensure that families' choices in the selection of forensic experts to investigate the deaths in detention of their relatives are respected and that they are able to participate fully in the investigations;
- Empower forensic experts to directly accept families' requests to investigate the deaths in detention and take measures to prevent retaliation against those who do so;
- Promote the independence of lawyers, for example by allowing lawyers to establish independent lawyers' associations.

Governments and International Bodies Funding Chinese Legal Reform, Security Sector Training Projects, or Projects that Involve Detention Centers and Detainees in China, including Australia, Canada, the European Union, France, Germany, Japan, Norway, and the United Kingdom

- Express strong concern to Chinese officials about police abuse and urge them to build on recent commitments to curb torture and wrongful convictions by adopting and implementing the recommendations above;
- Ensure that no participants in their programs are credibly alleged to have engaged in torture or ill-treatment of detainees;
- Make information about the projects publicly available on the Internet, which should include descriptions and curriculum of the projects, lists of participants, and periodic progress reports;
- Make the human rights of criminal detainees, particularly the prohibitions against torture and ill-treatment, a central dimension in these projects;
- Training with law enforcement personnel should include not just police but also judges, procurators, and physicians. With respect to mistreatment in detention, the training should use the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (known as the "Istanbul Protocol") as well as Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (known as the "Minnesota Protocol").

The European Union and its Member States, Utilizing the EU's "Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"

- Help establish safe complaint channels for both victims and police whistle-blowers to report abuses.

Appendix I: Letters to the Chinese Government

March 18 2015

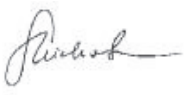
Minister Ms Wu Ai Ying
Vice-Minister Mr. Zhang Sujun
Ministry of Justice
10 Chaoyangmen Nandajie
Beijing 100020
Fax: : +86 10 65153439

Copy to:
Mr. Meng Jianzhu
Secretary of Central Politics and Law Commission
14 Beichizi Street
Dongcheng District,
Beijing 100814

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We are currently preparing a report on torture and other ill-treatment of criminal suspects in pre-trial detention, with a focus on the extent to which the Chinese government has complied with domestic law and fulfilled its obligations under the Convention against Torture and other international instruments.

As the Ministry of Justice issues regulations on the administration of justice, manages lawyers and forensic experts, who play important roles in the prevention and investigation of custodial abuse, we would appreciate your responses to the questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by April 14, 2015, sent to Sophie Richardson, China director, by email to richars@hrw.org, or by fax to 1-202-612-4333.

Thank you for your attention to this matter, and we look forward to hearing from you.



Sincerely,
Sophie Richardson
China Director, Human Rights Watch

Questions:

1. Has the Ministry of Justice conducted research into the effectiveness of the procedure to exclude illegally-obtained evidence since 2010, when it was introduced in regulations that the Ministry participated in drafting? For example, does the Ministry have statistics on the number of requests to initiate the exclusionary rule, the number of such requests granted, and the number of defendants acquitted in cases in which evidence was excluded? We would appreciate your sharing this information.

2. Chinese media reported in December 2014 that the Supreme People's Court, together with the Ministry of Justice, the Ministry of Public Security, the Supreme People's Procuratorate, and the Ministry of State Security, have jointly drafted a judicial interpretation that elaborates upon the kinds of behavior that would be considered illegal during criminal interrogations.[398] These will serve as guidelines for judges and procurators when making decisions to exclude illegally-obtained evidences. We would appreciate it if the draft be made public as soon as possible.

    a. Does the Ministry of Justice plan to, in this judicial interpretation or in other documents, introduce new regulations or guidelines to:

        i. Further specify the conditions under which procurators and judges initiate the procedure, so that they do not ignore or unjustifiably refuse such requests from the defendants or their lawyers?

        ii. What is the legal standard for rejecting a claim of torture or other ill-treatment?

        iii. Specify the role of medical "expert witnesses" to testify in court during the exclusionary procedures?

3. According to the Rules on the Handling of Deaths in Detention Centers, families should be consulted in the selection of forensic experts to investigate the deaths in detention of their relatives. If families wish to seek experts other than those chosen by the police or the procuratorate, the authorities "should allow" them. What measures has the Ministry taken to ensure families' choices are respected and are able to participate fully in the investigations? What measures has the Ministry taken to discipline those forensic experts who refuse families' requests to investigate the deaths?

[398] Supreme People's Court: Proposal to Consider Sleep Deprivation in Interrogations as a Form of Coerced Confessions (最高法：疲劳审讯拟算变相刑讯逼供)," December 8, 2014, http://news.xinhuanet.com/yuqing/2014-12/08/c_127286219.htm (accessed February 10, 2015).

4. In the course of our research, some lawyers expressed to us concerns about retaliation against them for filing complaints about torture of clients during criminal proceedings. What measures has the Ministry taken to ensure that lawyers, whose ability to practice is regulated by the Ministry, do not suffer such harassment?

5. On August 14, 2014, Radio Free Asia and Chinese Human Rights Defenders reported on the case of Cai Ying (蔡瑛), a lawyer in Hunan Province. According to the article, Cai had tried to defend his client, Xiao Yifei (肖疑飞), who had complained about being tortured while under *shuanggui*. In response, the Hunan Provincial Bureau of Justice reportedly threatened to fail Cai in his 2014 performance evaluation. We would appreciate it if the Ministry can explain why lawyer Cai has been retaliated against for his advocacy on behalf of his client, and whether any official in the Hunan Provincial Bureau of Justice has faced disciplinary actions for doing so.

March 18, 2015

Zhou Qiang, President and Chief Justice
Supreme People's Court
Dongjiaominxiang
Dongcheng District,
Beijing 100745
Fax: +86 10 65292345

Copy to:
Mr. Meng Jianzhu
Secretary of Central Politics and Law Commission
14 Beichizi Street
Dongcheng District,
Beijing 100814

Dear President and Chief Justice Zhou Qiang,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We are currently preparing a report on torture and other ill-treatment of criminal suspects in pre-trial detention, with a focus on the extent to which the Chinese government has complied with domestic law and fulfilled its obligations under the Convention against Torture and other international instruments.

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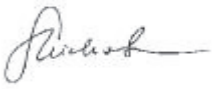

Sophie Richardson
China Director
Human Rights Watch

Questions:

On the "exclusionary rule":

1. Chinese media reported in December 2014 that the Supreme People's Court, together with the Ministry of Justice, the Ministry of Public Security, the Supreme People's Procuratorate, and the Ministry of State Security have jointly drafted a judicial interpretation that elaborates upon the kinds of behavior that would be considered illegal during criminal interrogations. These will serve as guidelines for judges and procurators when making decisions to exclude illegally-obtained evidences. We would appreciate it if the draft judicial interpretation can be made public as soon as possible.
2. Has the Ministry of Justice conducted research into the effectiveness of the procedure to exclude illegally obtained evidence since the rule was included in the Criminal Procedure Law since January 2013?
3. According to the procedure to exclude evidence obtained through "illegal" means, the defense first has to provide "relevant clues or materials" before the court initiates an investigation of the coerced confession claim. Are there any guidelines regarding any legal standard as to the sufficiency of information that is needed for the court to initiate the procedures? Has the Supreme People's Court taken measures to ensure that judges do not ignore or unjustifiably refuse requests by the defendants to initiate the procedures?
4. What is the legal standard for rejecting a claim of torture or other ill-treatment?
5. Does the Supreme People's Court have guidelines for judges to evaluate suspects' claims that they were tortured or ill-treated by means that do not leave physical marks, such as prolonged sleep deprivation?
6. Are there any guidelines regarding the use of medical or psychological "expert witnesses" to testify in court during the exclusionary procedures? How many such experts have appeared in trials when the court examined suspects' torture claims since 2013?
7. Can the Supreme People's Court provide statistics on the number of requests to initiate the exclusionary rule, the number of such requests granted, and the number of defendants acquitted when the rule has been invoked?
8. How many judges have been disciplined for ignoring or mishandling suspects' claims of torture or ill-treatment since 2013?

On state compensation:

9. How many applications for state compensation for torture and abuse in pre-trial detention and detention centers has the Supreme People's Court received between 2010 and 2015? How many of them received compensation, and how much on average was awarded to each victim?

March 18, 2015

Cao Jianming, Procurator-General
Supreme People's Procuratorate
147 Beiheyan Street
Dongcheng District,
Beijing 100726
Email: iaaca2006@yahoo.com.cn
Fax: +86 10 65200203

Copy to:
Mr. Meng Jianzhu
Secretary of Central Politics and Law Commission
14 Beichizi Street
Dongcheng District,
Beijing 100814

Dear Procurator-General Cao Jianming:

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We are currently preparing a report on torture and other ill-treatment of criminal suspects in pre-trial detention, with a focus on the extent to which the Chinese government has complied with domestic law and fulfilled its obligations under the Convention against Torture and other international instruments.

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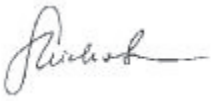

Sophie Richardson
China Director
Human Rights Watch

Questions:

1. Given the close relationship between the police and the procuratorate to "mutually cooperate" to solve crimes, and the fact that the police guarding the detention centers share facilities with the on-site procurators, how does the government ensure the independence and impartiality of procurators when handling complaints against police officers?
2. How many complaints or reports of torture and ill-treatment have the procuratorate organs across the country received between 2010 and 2015? How many of these complaints have been investigated?
3. How many officials and other individuals have been disciplined or prosecuted by the procuratorate for torturing or ill-treating detainees in pre-trial detention or held in detention centers between 2010 and 2015?
    a. Can you provide a breakdown of these numbers according to identity (officials, detainees, or others); the type of abuse; and the types of punishment given (for example, dismissal or imprisonment)?
    b. Of the officers prosecuted, how many were convicted?
    c. Among the "cell bosses" or abusive detainees who were convicted, what, if any, disciplinary actions were taken against police officers for abetting such abuses in detention centers?
4. How many prosecutors have been disciplined for ignoring or mishandling suspects' claims of torture or ill-treatment between 2010 and 2015?
5. What kind of measures has the Supreme People's Procuratorate taken to ensure that procurators do not ignore or unjustifiably refuse requests by the defendants to initiate the procedures to exclude evidence obtained through torture?
6. Does the Supreme People's Procuratorate have guidelines regarding the amount or type of evidence that would be deemed sufficient for the procurators to rule out the possibility of torture, to ensure that the procurators examine these claims seriously?
7. Can the Supreme People's Procuratorate provides statistics on the number of requests to initiate the exclusionary rule, the number of such requests granted, and the number of defendants acquitted when evidence was excluded?
8. What are the guidelines and procedures are there for on-site procurators to ensure there is no torture and ill-treatment in detention centers?
    a. How often do on-site procurators meet with detainees?
    b. How do detainees request a meeting with the on-site procurators?

c. What measures exist to ensure that detainees are aware of on-site procurators, and that detainees can submit complaints to them? What measures protect detainees who file such complaints from abuse from detention center staff members?

March 13, 2015

Mr. Guo Shengkun, Minister
Mr. Yang Huanning, Vice-Minister
Ministry of Public Security
No. 14 East Chang'an Avenue
Dongcheng District,
Beijing 100741
Fax: +86 10 66262550

Copy to:
Mr. Meng Jianzhu
Secretary of Central Politics and Law Commission
14 Beichizi Street
Dongcheng District,
Beijing 100814

Dear Minister Guo Shengkun and Vice-Minister Yang Huanning,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We are currently preparing a report on torture and other ill-treatment of criminal suspects in pre-trial detention, with a focus on the extent to which the Chinese government has complied with domestic law and fulfilled its obligations under the Convention against Torture and other international instruments.

We would appreciate your responses to the questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and look forward to your response. In light of our publishing schedule, we would be grateful to receive your response by March 31, 2015, sent to Sophie Richardson, China director, by email to richars@hrw.org, or by fax to 1-202-612-4333.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson
China Director
Human Rights Watch

QUESTIONS:

General

1. According to the relevant rules (中华人民共和国看守所条例实施办法)), suspects can meet with their families in the presence of police officers, as well as write to their families, after they obtain permission from the police. Can the Ministry explain why, given these rules, detainees have told Human Rights Watch that their communication with their families is severely restricted in practice? What measures has the Ministry taken to ensure that suspects have effective means of communication with their families while in detention, including visits, phone calls and letters?
2. Under the Criminal Procedure Law (CPL), lawyers have access to suspects upon presentation of "three documents."[399] But lawyers have complained about continued obstacles, such as additional requirements for documents not required by law, and various excuses by the police. Some suspects have also reported that police fail to pass on their requests for lawyers, a problem compounded by restricted access to families. What measures has the Ministry taken to address these continued obstacles to access to lawyers?
3. According to the Criminal Procedure Law, interrogations of suspects who might be sentenced to death or life imprisonment and "other major crimes" must be videotaped.[400] What measures has the Ministry taken to ensure that the police fulfill the requirement to make audio or visual recordings of all interrogations, and how it safeguards against police selectively recording only interrogation sessions that do not involve torture?
4. What measures has the ministry taken to ensure that torture does not take place outside of these facilities? Our research found that detainees are frequently taken out of the detention centers to evade these protections.
5. What specific measures has the ministry taken to prevent torture and other ill-treatment that do not leave physical marks, such as prolonged sleep deprivation?
6. According to press reports in June 2014, the new Detention Center Law to replace the 1995 Detention Center Regulations has already been drafted, but it has not yet been made public. We would appreciate it if the draft law can be made public as soon as possible.

Statistics

7. The Ministry of Public Security (MPS) announced in June 2013 that six months after the Criminal Procedure Law revisions came into effect, that there was "an 87 percent drop in

[399] CPL, art. 37. In the first month after these revisions became effective, the MPS says there was a 30 percent increase in lawyers' visit to detention centers. But lawyers have reported new hurdles to seeing their clients such as arbitrary rules by local police and lack of adequate meeting rooms. See Wang Feng (王峰), "First Anniversary of the 'Clinical Practice' of the Criminal Procedure Law (新刑诉法"临床"一周年, 21 世纪经济报道), *21st Central Business Herald (21 世纪经济报道),* March 15, 2014, http://jingji.21cbh.com/2014/3-15/0NMDA2NTFfMTA5NzcoNA.html.

[400] CPL, art. 121.

coerced confessions nationwide."[401] But the report did not provide the number of detainees who were coerced to confess. We would appreciate it if you could provide such data during pre-trial custody from 2010 to 2015.

8. During the 2009 campaign against "cell bosses" (often abusive inmates used by detention center police as de facto managers of the cell), the state press reported that criminal charges were sought for 36 cell bosses and disciplinary actions were taken against 166 police officers. Could you please provide us with the number of cell bosses and police officers punished for abusing detainees or for abetting such abuses in detention centers between 2010 and 2015?

9. In 2009, official data noted 15 cases of deaths in custody due to "unnatural causes," and subsequent reports by the MPS state that both the numbers of unnatural and "natural" deaths dropped consecutively in 2010 and 2011. The MPS said that deaths in detention centers dropped to a historical low in 2013.

    a. We would appreciate it if you can provide the number detainees who died during pre-trial custody between 2010 and 2015, broken down according to causes of deaths.

    b. Can you provide us the number of investigations launched and number of autopsies conducted during the same period, broken down according to causes of deaths.

Use of Restraints and Disciplinary Actions

10. According to the MPS notice Rules Regarding the Settings in Places of Law Enforcement and Investigation (公安机关执法办案场所设置规范)), interrogation rooms should be equipped with "special seats" for suspects that should be "secure" and "fixed to the ground" with "safety features." But 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 can suspects be confined to the chair. Does the MPS have further guidelines on the use of these interrogation chairs?

11. Regarding the criminal suspects and death row inmates who are subject to disciplinary actions, including the use of restraints and solitary confinement:

    a. What due process rights exist for these disciplinary actions?

    b. Are the suspects or inmates informed in writing of the disciplinary actions against them or provided a copy of the disciplinary decision, as set out under international law?

    c. What are the complaint procedures for suspects subjected to these disciplinary measures?

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[401] "Coerced Confessions Has Reduced by 87 percent Nationally in the Past Year (全国刑讯逼供案件去年下降 87%)," *Shanghai Evening Post (新闻晚报),* June 27, 2014, http://news.sina.com.cn/c/2013-06-27/132027513471.shtml (accessed March 21, 2014).

Deaths in Custody

12. When detainees died during pre-trial custody or in a detention center, what kind of documentation (for example, surveillance video footage, medical reports) are detention centers required to give to their families to inform them of the investigation?

13. In cases of deaths in custody, according to the Rules on the Handling of Deaths in Detention Centers, families should be consulted in this process of seeking forensic experts to investigate the deaths, and if they wish to seek experts other than those chosen by the police or the procuratorate, the authorities "should allow" them. What measures has the MPS taken to ensure families' choices are respected?

Medical and Healthcare Services

14. Among China's 2700 detention centers, how many have their medical services provided by staff paid for by the MPS, and how many are services provided by medical facilities not under the MPS?
    a. For the latter, what is the relationship between the public security organs and the medical service providers? Are they contractors of the detention centers? Who pays for their services?
    b. What kinds of measures has the Ministry adopted to ensure that doctors conducting physical check-ups of detainees are independent from the police?
    c. What kinds of guidelines exist for doctors while conducting the physical check-ups for suspects to ensure they can identify and note instances of torture and ill-treatment?
    d. Are doctors who serve detention centers trained to identify torture and ill-treatment?

15. Are detention centers required to include physical health records of detainees during pre-trial detention in suspects' case files? Do procurators, judges and lawyers have access to them?

Supervision, Accountability, and Compensation

16. What is the role of the internal police supervisors in prevention of torture and ill-treatment in pre-trial detention?

17. How many police officers have been disciplined as a result of monitoring by these police supervisors? What are the violations for which they are being disciplined? What kind of punishments have they received? How many detention centers have "duty lawyers"? Please explain their work in those centers where they are present, particularly the ways in which the lawyers make themselves available to detainees. Does the Ministry have information to show that their presence has reduced torture and ill-treatment in detention centers?

18. Between 2011 and 2015, how many police officers were subjected to internal disciplinary actions and criminal sanctions for torturing and ill-treating detainees?

19. Between 2011 and 2015, how many individuals or their families have been compensated for torture and ill-treatment during pre-trial detention?

20. Does the MPS have a rehabilitation program to treat detainees who have been tortured or ill-treated?

Appendix II: Analysis of Court Verdicts

TABLE I

Torture Allegations Noted in Court Verdicts According to Province, Based on a Total of 432 Cases, between January 1 and April 30, 2014

PROVINCE	COUNT	% OF CASES
Guangdong	67	16
Hunan	45	10
Henan	31	7
Jiangsu	29	7
Sichuan	27	6
Zhejiang	26	6
Shandong	25	6
Anhui	22	5
Liaoning	19	4
Guangxi	18	4
Fujian	24	6
Guizhou	16	4
Hubei	15	3
Hebei	10	2
Gansu	7	2
Heilongjiang	7	2
Shanxi	7	2
Jilin	6	1
Hainan	4	1
Jiangxi	4	1
Shanghai	4	1
Beijing	3	1
Ningxia	3	1
Qinghai	3	1
Chongqing	2	0
Inner Mongolia	2	0
Shaanxi	2	0
Yunnan	2	0
Xinjiang	1	0
Unknown	1	0
Tibet	0	0

Source: SPC court verdict database (www.court.gov.cn/zgcpwsw/).

TABLE II

Type of Evidence Cited in the Court Verdicts in Which Suspects Made Torture Allegations, Based on a Total of 432 Cases, between January 1 and April 30, 2014.

EVIDENCE	COUNT	% OF TORTURE CASES
Medical reports	208	52
Written pre-trial statement from police	132	33
Videotape recording	97	24
Written pre-trial statements from fellow detainees	9	2
Police testified in court	35	9
Experts testified in court	0	0
Defense witnesses testified in court	0	0
No documentary evidence or witness	118	30
Documentary evidence only, no witness	247	62
Court excluded evidence gained by torture	23	6
Court acquitted suspects	0	0

Source: SPC court verdict database (www.court.gov.cn/zgcpwsw/).

Appendix III: Selected Recommendations by UN Mechanisms

RECOMMENDATIONS BY UN MECHANISMS	YEAR RECOMMENDATIONS WERE FIRST MADE	RECOMMENDATIONS ADOPTED BY CHINESE GOVERNMENT?	DETAILS OF CHINESE GOVERNMENT ACTIONS
Initiate criminal proceedings against perpetrators of torture and punish all acts of torture through appropriate penalties.[402]	1990	Rarely	Very few officers are held legally accountable; even fewer are given appropriate punishments.
Ensure "prompt and regular" access to all fundamental legal safeguards including family, lawyers, and qualified and doctors.[403]	1993	Mixed results	The Chinese government has made some progress facilitating lawyers' access to non-political suspects but there are still significant obstacles, as detailed in the main text of this report above. Despite recent legal reforms, moreover, Chinese law requires that three types of suspects—those involved in terrorism, major corruption cases, and state security crimes—have police permission before meeting with lawyers.
Guarantee medical examination of detainees by qualified and independent doctors immediately after arrest, periodically during detention, and prior to release.[404]	1993	Partial	Detention Center Regulations effective since 1990 require that detainees be examined by doctors before they are admitted to detention centers, which can be many hours after they were first apprehended. Detainees are also given medical examinations during detention. However, the doctors who conduct these exams have close relationships with the police.
Take appropriate measures to ensure judicial independence.[405]	1996	No	The judiciary is not independent and it is required to work with the police and the procuratorate in criminal cases.
Incorporate in domestic law a definition of torture that conforms to the convention.[406]	2000	Partial	After the Criminal Procedure Law was revised in 2012, the Supreme People's Court issued a judicial interpretation recognizing that severe

[402] Committee Against Torture (CAT) A/45/44 paras. 471-502.

[403] Committee Against Torture (CAT) A/48/44(SUPP) paras. 387-429.

[404] Committee Against Torture (CAT) A/48/44(SUPP) paras. 387-429.

[405] Committee Against Torture (CAT) A/51/44(SUPP) paras. 138-150.

RECOMMENDATIONS BY UN MECHANISMS	YEAR RECOMMENDATIONS WERE FIRST MADE	RECOMMENDATIONS ADOPTED BY CHINESE GOVERNMENT?	DETAILS OF CHINESE GOVERNMENT ACTIONS
			psychological pain can constitute torture. But Chinese law still does not recognize that not only judicial officials but all individuals acting on behalf of the state can commit torture.
Exclude statements made under torture as evidence in legal proceedings.[407]	2006	Partial	The government incorporated the "exclusionary rule" when it revised the CPL, which became effective in January 2013. But the rule so far has not been effective.
Separation between authorities responsible for interrogation and those responsible for detention.[408]	1993	No	The police are responsible for both interrogations and detention.
Establish an independent monitoring mechanisms of all places of detention[409]	2006	No	The procuratorate monitors detention centers but it lacks independence from the police.
Ensure prompt, thorough, effective and impartial investigation of all allegations of torture[410]	2000	Rarely	Occasionally, high profile cases of torture are investigated, but most allegations of torture are not.
Ensure that all instances of deaths in custody are independently investigated and those responsible prosecuted.[411]	2008	Rarely	Occasionally, high-profile cases of deaths in custody are investigated, but most are not.
Establish rehabilitation centers for victims.[412]	2008	No	
Ensure that adequate compensation is provided to victims, including medical and psychological	2008	No	Although some victims report that police give them some money or reimburse them for medical treatment, such compensation is not

[406] Committee Against Torture (CAT) A/55/44(SUPP) paras. 106-145

[407] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6

[408] Committee Against Torture (CAT) A/48/44(SUPP) paras. 387-429.

[409] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[410] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[411] Committee Against Torture (CAT) CAT/C/CHN/CO/4.

[412] Committee Against Torture (CAT) CAT/C/CHN/CO/4.

RECOMMENDATIONS BY UN MECHANISMS	YEAR RECOMMENDATIONS WERE FIRST MADE	RECOMMENDATIONS ADOPTED BY CHINESE GOVERNMENT?	DETAILS OF CHINESE GOVERNMENT ACTIONS
assistance.[413]			official or adequate.
Ensure international human rights training to law enforcement officers and training to medical personnel to detect signs of torture.[414]	2008	Limited	Although the Chinese government claims in its fifth periodic report to the Committee against Torture that it conducts legal training for its law enforcement officials, it is unclear if these trainings include content on international human rights.
The government should recognize the competence of the Committee against Torture to receive complaints of torture from individuals and ratify the Optional Protocol to the convention[415]	2006	No	
Restrict the use of pretrial detention and empower detainees to challenge the lawfulness of their detention before an independent court.[416]	2006	Limited	The Chinese government has put in place a mechanism for the procuratorate to review the need for pretrial detention when it reviews arrests, but so far there is little evidence that this new power has led to restricted use of pretrial detention.
Mandate lawyers' presence in interrogations and videotaped interrogations.[417]	2006	Partial	The Chinese government mandates the video recording of interrogations of certain types of crime.
Judges and procurators routinely meet with individuals in police custody inquiring about their treatment.[418]	2006	Limited	Procurators meet with detainees when approving arrests; procurators who are stationed in and supervise detention centers are available to receive detainees' complaints.
Include the right to remain silent and the privilege	2006	Partial	The government prohibited self-incrimination in revisions to the

[413] Committee Against Torture (CAT) CAT/C/CHN/CO/4.

[414] Concluding observations of the Committee against Torture on China (1993), CAT/ A/48/44 (1993) paras. 427-428; Concluding observations of the Committee against Torture on China (1996), CAT A/51/44 (1996); CAT A/55/44 (2000) paras. 123-130; Concluding observations of the Committee against Torture (2008), December 12, 2008, CAT/C/CHN/CO/4.

[415] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[416] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[417] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[418] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

RECOMMENDATIONS BY UN MECHANISMS	YEAR RECOMMENDATIONS WERE FIRST MADE	RECOMMENDATIONS ADOPTED BY CHINESE GOVERNMENT?	DETAILS OF CHINESE GOVERNMENT ACTIONS
against self-incrimination in the law.[419]			Criminal Procedure Law, effective since January 2013, but Chinese law still requires suspects to answer interrogators' questions "truthfully." The law does not guarantee the right to remain silent.
Remove the power to order or approve arrest and the power to supervise police and detention facilities from the procuratorate to independent courts.[420]	2006	No	
Abolish article 306 of the Criminal Law that allows prosecution of lawyers who counsel a client to repudiate a forced confession.[421]	2006	No	
Reducing the scope of death penalty.[422]	2006	Partial	The government has reduced the number of crimes eligible for the death penalty from 68 to 55 in 2011, and it is expected to remove another nine crimes in revisions to the Criminal Law expected to be passed in 2015. The vast majority of these crimes are not violent.
Ensure that death row inmates are not subjected to additional punishments such as handcuffs and shackles.[423]	2006	No	

[419] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[420] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[421] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[422] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

[423] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak E/CN.4/2006/6/Add.6.

Appendix IV: Timeline of Chinese Government's Actions on Torture

1979	China's legislature passes the first Criminal Code and Criminal Procedure Law prohibiting coerced confessions.
1988	China ratifies the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
1990	China promulgates Detention Center Regulations.
1998	China signs but has yet to ratify the International Covenant on Civil and Political Rights.
2001	The SPP issues a notice calling on procuratorates at all levels to exclude coerced confessions in criminal proceedings.
2008	The SPP begins to require that procurators videotape interrogations.
2009	The death of detainee Li Qiaoming causes outrage in China after police report that he died after playing "hide-and-seek" with other detainees. China cracks down on inmate and cell boss violence by pledging better monitoring of detainees' living quarters.
2010	The case of Zhao Zuohai, a man wrongfully convicted of murder and imprisoned for 11 years on the basis of a confession coerced through severe torture, is exposed. Police start implementing the videotaping of interrogations. The MPS, the SPP, and the SPC issue rules to exclude evidence obtained through coerced confessions.
2012	The Chinese government passes amendments to the CPL in March 2012 to incorporate the exclusionary rule and to prohibit self-incrimination. But the CPL also requires that three categories of suspects obtain police permission before they can have access to lawyers.
2013	The Supreme People's Court issues a judicial interpretation following the revisions to Criminal Procedure Law, recognizing severe mental pain as torture.

Acknowledgments

This report was written, researched, and edited by Human Rights Watch's China team and reviewed and edited by Shantha Rau Barriga, disability rights director; Joseph Amon, health and human rights director; James Ross, legal and policy director; and Joseph Saunders, deputy program director. Brian Root, quantitative analyst, also provided support.

This report was also reviewed by two experts outside of Human Rights Watch who do not wish to be named.

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Human Rights Watch is grateful to the former detainees and family members who took the time to speak with us, and to the lawyers, government officials, and other experts we interviewed for this report.

After cases of police brutality against criminal suspects emerged in 2009 and 2010, China's government announced new measures to curb torture and wrongful convictions. These included restrictions on the conduct of interrogations and prohibitions on using detainee "cell bosses" to oversee other detainees. The Ministry of Public Security claims that the use of coerced confessions has dropped significantly as a result of the reforms.

Tiger Chairs and Cell Bosses— based primarily on an analysis of hundreds of newly published court decisions and interviews with recent detainees, family members, lawyers, and former officials—finds that the measures adopted between 2009 and 2013 have not gone nearly far enough to fully address abusive interrogations.

Some police officers deliberately thwart the new protections by taking detainees from official detention facilities or by using torture methods that leave no visible injuries. Procurators and judges may ignore clear evidence of mistreatment, rendering China's new "exclusionary rule"—which prohibits the use of evidence directly obtained through torture—of little benefit.

Police torture of suspects in pre-trial detention remains a serious concern. Former detainees described physical and psychological torture, including being forced to spend days shackled to a "tiger chair," hung by the wrists, and deprived of sleep for prolonged periods.

While measures adopted since 2009 appear to have reduced certain abuses, they are being grafted onto a criminal justice system that still offers police numerous opportunities to abuse suspects and affords the police enormous power to resist any judicial supervision. Absent more fundamental reforms in the Chinese criminal justice system that empower defense lawyers, the judiciary, and independent monitors, the elimination of routine torture and ill-treatment is unlikely.

(above) A police officer guards a corridor that is forbidden for visiting journalists to see during a government-organized tour of the Number One Detention Center in Beijing, October 25, 2012.

(front cover) A "tiger chair" specially designed to restrain detainees. Former detainees say that police often strap them into these metal chairs for hours and even days, depriving detainees of sleep, and immobilizing them until their legs and buttocks were swollen.

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