



NO END IN SIGHT

TORTURE AND FORCED
CONFESSIONS IN CHINA

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Cover photo: An illustration of a method of torture in China © Baodiucuo

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EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Bring Chinese law into line with the absolute prohibition against torture and other ill-treatment under international law;
- Ensure in law, policy and practice that no one is subjected to torture or other ill-treatment;
- Ensure that no statement obtained under torture or other ill-treatment is invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was made;
- Abolish all forms of administrative detention, close down all places of detention which deprive individuals of their liberty arbitrarily or in violation of the right to fair trial, to judicial oversight and other safeguards against torture and other ill-treatment;

Ratify the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and take immediate steps to create independent, professional, well-resourced National Preventive Mechanisms with unfettered access to all places where people are deprived of liberty and to all such people as provided in that Protocol.

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