

# Torture in China

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## Abstract

Torture and inhuman and degrading treatment of persons by state functionaries in China is documented by both international and domestic sources as being fairly widespread. It takes place in pre-trial detention as well as in prisons and labor camps. Its roots are to be found firstly in a weak legal system; the fair trial guarantees are still not observed in the Chinese legal system and the courts are not sufficiently independent from political and economic interests. Secondly, a tradition of coercion and uncontested bureaucratic power, inherited from communist and imperial times, is still alive. Thirdly, China lacks efficient monitoring mechanisms, like complaints boards and a free press. The legislation prohibiting torture is relatively clear, compared to so many other countries, but a huge gap between black-letter-law and practice mar all parts of Chinese society, including the legal procedural system. There are efforts taken by public authorities, legal professionals and activists to combat the use of torture, but these are met with opposition and inertia, especially from the police system, and there is still a long way to go.

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## Introduction

In April 1998 police officer Du Peiwu from the Southern provincial capital of Kunming in China was charged with murdering his wife and her lover, both police officers like himself. He denied the accusation but was subjected to 21 days of sleep deprivation, beatings, manacled and uninterrupted interrogation and then he admitted his guilt. In February 1999 he was sentenced to death but the court of appeal commuted the sentence to death with two years suspense.<sup>1</sup> In June 2000 a gang of people were arrested and admitted to having murdered Du's wife and her lover, along with having committed several other serious crimes. Du Peiwu was released after 26 months in prison and was granted back wages of 38,500 Yuan (approximately \$4,800 USD) by the local government. After being released Mr. Du suffered terrible headaches and doctors said his brain had been damaged. The two police officers held responsible for the torture were charged in court and given suspended sentences of 18 and 12 months in prison, respectively, and it was reported that they no longer held posts in the criminal defence department in the local police district.<sup>2</sup>

This case is, sadly enough, far from unique in the Chinese legal system and it exhibits certain characteristics common to many torture cases in China. The special

thing about it is that it was published in the media and triggered a debate on miscarriages of justice, which continues with more and more vigor until the present day. Ill-treatment or torture of persons in state custody in China takes place in detention facilities during the pre-trial phase for the sake of extracting a confession and in prisons, notably in Xinjiang and Tibet; it is not especially related to suspects of thought crimes or dissident activities<sup>3</sup> but is used as a “regular” way of solving cases and a way of disciplining inalcitrant inmates. If for some reason a case is exposed the perpetrators are given very light punishments, as in the case referred to above.

### Documentation

For obvious reasons it is not possible to judge the extent of the problem, even though official statistics quote the (extremely low) number of cases brought to trial and the number of persons convicted of torture or ill-treatment of detainees and inmates.<sup>4</sup> The fourth report from the Chinese government to the Committee Against Torture (CAT) states that concerning extortion of confessions, the number of sentences fell from 143 cases convicting 178 persons in 1999 to 53 cases convicting 82 persons in 2004.<sup>5</sup> These figures have to be compared to the total number of cases in the legal system which is more than 5 million per year.<sup>6</sup> According to official statistics, the number of people who have received state compensation in 2003 – of all kinds, not necessarily in torture cases – is a little more than 1,000.<sup>7</sup>

In November to December 2005, UN Special Rapporteur (SR) on torture and other cruel, inhuman or degrading treatment or punishment, Professor Manfred Nowak, visited China as the first SR on torture to do so. In preceding years negotiations on such a visit had failed to produce a result as

the Chinese government would not comply with the rules of the UN system concerning unhindered access to all detention facilities, etc. The SR report was published 10 March 2006 with the conclusion that “the Special Rapporteur believes that torture remains widespread in China”.<sup>8</sup> At the same time the report takes notice of the willingness of the Government to address the problem and undertake measures to combat torture and ill-treatment and expresses the opinion that the use of torture has declined in recent years. Along the same lines the 2006 report from Amnesty International says that “Torture and ill-treatment continued to be reported in a wide variety of state institutions”<sup>9</sup> and other international organizations as well as academic research have pointed to an unacceptably high rate of miscarriages of justice in the Chinese legal system.<sup>10</sup>

The international community, or key institutions in it, thus finds it documented that torture is widespread in China. Within the country itself the political leadership, the academia and the public admits to an unacceptable prevalence of ill-treatment of detainees, especially with the aim of extracting confessions. Several international cooperation projects have addressed the issue. Since 1998, the Danish Institute for Human Rights has cooperated with Chinese academic institutions on torture prevention, funded by the Danish Ministry of Foreign Affairs. Lately the European Union has funded a three year program with the aim of collecting data on the overall situation of forced confessions and exploring practical models of torture prevention in China and elsewhere.<sup>11</sup> The Chinese government acknowledges the problem and expresses its willingness to address it, not only by engaging in international cooperation but also through law reform and institutional measures.

### The legal basis

China signed the Convention Against Torture in October 1988 and delivered its fourth periodic report in February 2006, five years late as it was due in 2001. The various periodic reports enumerate legislative and educational measures taken against the practice of torture and demonstrate how the number of cases of forced confessions allegedly has declined. From the second report in 1995 to the third in 1999 China has revised both its Criminal Law (CL) and its Criminal Procedure Law (CPL). The principle of presumption of innocence has been established and the date for entry of a lawyer into a case has been advanced. Rules for police use of weapons have been issued, and the methods of executing death sentences have been changed, so it is now permitted to use injections instead of shooting. A practice of open trials has been codified in provisions from the Supreme People's Court. Campaigns and education of law enforcement personnel had been intensified in recent years and public security organs have set up watchdog bodies to oversee the conduct of policemen.<sup>12</sup> In the period from 1999 to 2005 China has included protection of human rights as a new paragraph 33 in the Constitution. A whole range of new laws and regulations have been adopted and entered into force: New laws on juvenile justice and extradition; regulations on legal aid; a directive on administration of urban vagrants; many circulars regulating the behavior of the police. In addition, decisions have been made on strengthening the monitoring system, etc. Education and training of law enforcement personnel have continued, also with foreign support.

Looking at laws on the books, the protection against ill-treatment at the hands of officials in the Chinese legal system is not that bad. The Constitution, which stems

from 1982 but has been amended several times, guarantees freedom of the person as well as freedom of speech, assembly, association, the press, etc. Torture is explicitly forbidden – though not defined<sup>13</sup> – in the 1997 Criminal Law article 247 and Criminal Procedure Law article 43, and can in serious cases be punished by life imprisonment or death. Already in 1989 an Administrative Litigation Law was passed which empowered people to protest against certain administrative acts.<sup>14</sup> A State Compensation Law (SCL) from 1994 enables victims of torture to claim compensation<sup>15</sup> and the 1996 Law on Administrative Penalty makes it possible to charge the perpetrators.<sup>16</sup> Furthermore, a whole range of administrative regulations, circulars and judicial interpretations have promulgated controlling the behavior of public security personnel and other involved authorities. Finally, a net of legal aid institutions is under construction within the Ministry of Justice in which (poor) victims can get legal counsel for free.<sup>17</sup>

Thus, we see that on paper many safeguards exist and even comply with the international obligations under relevant treaties, as it is also reflected in the periodic state reports. But in reality suspects and detainees in China are often without effective protection against abuse of power, most often at the hands of police officers.

### Causes

Taking for granted that the international and domestic concerns are justified, one can ask about the reason for this presumably high number of torture instances in the Chinese legal system. The root causes can be found in weaknesses in resource allocation as well as the judicial procedures, a strong tradition of coercion and re-education of deviants and the lack of monitoring mechanisms, complaints boards and other institutions,

including a free press, which could bring incidences of torture out in the open. Generally a big gap between law and practice mar Chinese society.<sup>18</sup> The establishment of a Western legal system only began three decades ago and it began almost from scratch. The Communist government had ruled society from 1949 to 1979 through a tight net of controlling institutions with few written codes. People were held in check by a household registration system, a net of neighborhood committees with a policing mandate and a work unit system responsible for all aspects of daily life.<sup>19</sup> The reform policy initiated from the beginning of the 1980s necessitated a legal system compatible with the rest of the world. An enormous amount of laws and regulations have been designed and adopted since then. But laws need to be underpinned by tradition and institutions, so it will be a long time before the new principles and concepts are integrated into the minds of Chinese citizens and the structures of Chinese society.

Seen from the socio-economic angle it must be understood that the Chinese investigative institutions are under-manned, police receive low pay and enjoy low status, and judges are still often badly trained and some do not even possess a law degree. The courts are not independent from either the party or the government. The party exerts influence over general policies but does not often interfere in individual cases, except for highly profiled political ones.<sup>20</sup> But the local government can influence court decisions for causes of local protectionism. Judges and prosecutors are appointed, paid and supervised by the people's congresses,<sup>21</sup> which might have a stake in sentences involving local interests, like economic cases against important local companies paying taxes and employing labor power in the region. Local entrepreneurs often have direct or indirect

ways of influencing local political decisions. Other internal conflicts play a part, most importantly that the Ministry of Public Security (MPS), which is responsible for the police, is a powerful organ having more weight than either the Ministry of Justice or the Supreme Court and Procuratorate. The MPS protects its own area and fights – like in all countries – for wider discretion in means of social control.

#### *Legal system*

From the more judicial angle the use of torture can remain without consequences because the role of the defence side in the trial procedure is still rather weak. Suspects are often not told of their rights to have a defence lawyer; and the courts are only obliged to appoint a defence lawyer for free if the suspect is minor, handicapped or charged with a death penalty crime. In other cases the defendant must hire a lawyer at his or her own expense; can defend him/herself, or get another person to defend him/her. Revisions to the CPL in 1997 moved forward the point of intervention of a lawyer in a case, so he or she can now enter from the day the suspect is first interrogated or subject to compulsory measures. But the lawyer is seldom allowed to speak in private with the client as interrogations are overseen by one or more policemen; and the lawyer has to ask the prosecutor to provide the files of the case and can only get what the prosecutor wants to disclose to him or her.<sup>22</sup> Lawyers are threatened of being charged with falsifying evidence if the client changes his statement after having met with him or her.<sup>23</sup> Article 306 of the CL on “assisting parties concerned in destroying, falsifying evidence, threatening, luring witnesses to contravene facts, change their testimony or make false testimony” are used to punish lawyers whose clients withdraw a confession.

The status of lawyers as a profession is low. In general they are regarded with suspicion as they defend (understood as collude with) criminals and are thought to earn a lot of money, while the salaries of prosecutors and judges follow government rules and therefore are restricted.<sup>25</sup>

Other problems emerge during the trial which also affect the possibilities of staging a proper defence. Witnesses seldom appear in court; only in around 10% of all trials does the witness appear to be questioned by the judge or the lawyer. The witness testimony is normally read aloud by the prosecutor, so the defence lawyer is unable to probe deeper into the statement made by a witness. Prosecutors claim they are unable to make witnesses appear in court because they dislike being associated with legal proceedings or are not willing to risk a day's income to go to the courtroom.

A third factor concerns the collection of evidence. Confessions extracted through torture are generally used as valid evidence, though the practice is strictly forbidden in article 43 of the CPL, as mentioned above. In Chinese legal circles there has for some time been a heated debate on the subject of the admissibility of illegally obtained evidence, especially on whether it could be acceptable to use illegally obtained evidence if other evidence supports it. The term illegally obtained evidence includes extortion of confessions by torture, but also search without a warrant, etc.<sup>26</sup> Doubt about whether to accept illegally obtained evidence can lead judges to the conclusion that confessions under duress is valid in the courtroom.

A fourth problem often mentioned in relation to torture is the presumption of innocence, related to the right to remain silent. Chinese law stipulates that a person shall not be deemed guilty without being judged as such by the court (CPL, article 12),

amounting to the principle of presumption of innocence contained in Western legal systems. The principle implies that the burden of proof is in the hands of the prosecution and in Western systems the suspect is not obliged to help providing the proof through the provisions in Western laws on the right to remain silent. According to the Chinese CPL article 93, however, a suspect "shall answer the investigator's questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case". Thus the suspect has to answer questions relevant to the case truthfully and he can be punished if he does not do so. The suspect is obliged to help the public prosecutor prove the charges against him/herself. This provision is regarded by legal scholars as contributing to the risks of using torture to obtain a confession and it is generally recommended that the right to silence shall be incorporated in the soon-to-come revisions of the CPL.<sup>27</sup>

#### *Tradition*

Besides these procedural weaknesses in safeguarding the right to liberty and security of the person, another possible factor is that the basic thinking on rule of law and the fair trial principles contained in the international standards are not ingrained in the minds of neither the legal personnel nor the population at large. One could say they are "naturally" not ingrained as the view on crime and criminals in the Chinese traditions – the imperial and the communist legacies reinforce each other on this point – was dominated by the idea of reforming (or in reality forcing individuals into conforming to the social norm), be it as the emperor's subject or as a communist comrade. A few decades ago suspects were viewed as guilty, the moment they came into contact with the authorities, and convicts were meant to be

transformed by group pressure, education, families and through collective labor.<sup>28</sup> The stress on coercion and transformation of the individual lends legitimacy to a culture of violence conducive to torture, as Manfred Nowak also points out in his report summary. The report refers to political prisoners, but in the view of this author the analysis goes just as much for other suspects and convicts: "The combination of deprivation of liberty ... with measures of re-education through coercion, humiliation and punishment aimed at the admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment, which is incompatible with the core values of any democratic society based upon a culture of human rights."<sup>29</sup>

Another point is that Chinese police have for many years partly operated on the basis of a campaign-like tradition, where certain crimes are singled out for special focus for a certain period of time. The campaigns are called 'strike hard' campaigns and they have been launched at irregular intervals since 1983. During a campaign the political leadership will set targets for number of arrests, sentences and executions and the results are publicized with great fanfare in the media. The intense atmosphere in the police corps and the set targets during such a campaign makes miscarriages of justice more likely to appear than during more quiet periods.

#### *Monitoring mechanisms*

On top of weaknesses in criminal procedures and a tradition of coercion, the lack of real monitoring mechanisms adds to the possibilities of torturing persons in custody and getting away with it. Media coverage today is much more varied and dynamic than the boring hallelujah stories of People's Daily during the Mao period, but still there is no

truly free press in China. Problems can be brought to light and can also in special instances lead to policy changes, but the norm is that in the end the Party decides what people shall know and what they shall not be told. As an exception, there is a very special and famous case from 2003 where a migrant worker was beaten to death in a detention centre under a so called "custody and repatriation system" used to round up vagrants and send them back to their places of origin. The system concealed a whole range of abusive and corruptive practices. A paper in South China reported the story of the death in custody against the order of the provincial censorship and the story created so strong a public reaction that the central government decided to abolish the whole system.<sup>30</sup> A new more "service-minded" system was set up for repatriating unemployed peasants from cities. Various other avenues of complaining exist; all public institutions have the so called letters and visits offices, where everyone can go and lodge a complaint. Regulations from 2003 oblige local governments to set up local legal aid centers where poor people can be advised for free and even get a defence lawyer in a criminal case if they meet certain criteria. Universities, law firms and social organizations, like the Women's Federation, run clinics and groups where individuals can enter from the street and protest over ill-treatment. Finally, cases can simply be reported to the police for prosecution. But the mechanisms are not effective and resources are scarce. The letter and visits offices only have the mandate to forward complaints to other relevant organs, but do not have the ability to follow up on the cases. The legal aid centers are not well known, the criteria for getting a case accepted are too strict and the lawyers on duty there are of low quality as it is a legal obligation for them to have a few pro bono cases per year.

If they do not obey their licenses will not be renewed. Non-governmental organizations do a proper job but they are short of funds and qualified personnel. The basic problem is, on the one hand, that the state invests too little – both money and political muscle – in establishing effective mechanisms to report torture cases and obtain remedies. On the other hand the state restricts reporting and monitoring by other actors for political reasons or for reasons that are grounded in local protectionism.

### Conclusion

Like anywhere else in the world the use of torture in China is no new phenomenon; it is rooted in an imperial and communist tradition of rule by man or rule *by* law, i.e. where law is used as a weapon by the ruler against his people, not rule *of* law. During the recent decades enormous social and economic changes have taken place. The whole structure of society has been torn apart and is in the process of being re-assembled in a new form, meaning the old power structures are disappearing and new ones are emerging. The process is basically one of *individualization*. At the economic, social, spiritual and legal levels the freedom of the individual vis-a-vis the state has greatly expanded, creating a necessity to regularize new social relations, in short to make laws and make laws work. Laws are, and have been, made in abundance, with the aim of putting an end to prevailing practices of torture, but this is not enough. Making people obey the laws is much more difficult.

Torture and inhuman and degrading treatment of persons by state functionaries is documented by both international and domestic sources as being fairly widespread. It takes place in pre-trial detention as well as in prisons and labor camps. Its roots are to be found in a weak legal system, a tradition

of violence and a lack of efficient monitoring mechanisms. Efforts to combat the use of torture have been taken by public authorities, legal professionals and activists, but these are met with opposition and inertia, and there is still a long way to go.

### Notes

1. A special Chinese penalty, where a death sentence is only carried out if the convict commits new crimes or does not behave well in prison during the two years following the verdict. In practice very few of those receiving this sentence are executed.
2. The case is reported in South China Morning Post, 6 August 2001.
3. Political crimes do not exist as a category in the Chinese Criminal Law, but it is a well-known fact that critics of the government can be given long prison terms for peaceful exercise of freedom of speech, assembly, etc. They are often charged with crimes of “endangering state security” or “disturbing public order”, etc. There has been a tendency in human rights reporting to focus on the plight of the comparatively few dissidents suffering ill-treatment and enduring long term imprisonment and pay less attention to the many “ordinary” suspects or criminals being treated inhumanely. See e.g. Dikötter F, Crime and Punishment in Post-Liberation China: The Prisoners of a Beijing Gaoi in the 1950s. The China Quarterly 1997; 149: 159.
4. CAT/C/CHI/4. Chinese version of fourth periodic report to CAT, submitted in February 2006. At the time of writing no English version has been processed.
5. Chinese version of fourth periodic report, pages 36-40.
6. Of these 4,5 million are civil cases and around 600,000 are criminal cases. Law Yearbook of China, 2004: 1054.
7. Law Yearbook of China, 2004: 1055.
8. E/CN.4/2006/6/Add.6, page 2.
9. Amnesty International Report 2006, page 90.
10. Seymour JD, Anderson R (eds). New Ghosts Old Ghosts. Prisons and Labor Reform Camps in China. Armonk, NY: M.E. Sharpe, 1998. See also Washington Post Foreign Service, 14 June 2001, page A01 and website of Human Rights in China, a rights group based in New York, www.hrichina.org.
11. For details see website of Great Britain-China Centre, London, www.gbcc.org.uk.
12. CAT/C/39/Add.2, pages 6-8.

13. In the third periodic report, pt 59, the Chinese government declares that "The relevant stipulations of the Criminal Law fully cover the definition of 'torture' as given in article 1 of the Convention", and continues in pt 64 that "... Chinese law defines a practitioner of torture in an even broader sense than the Convention", CAT/C/39/Add.2, pages 19 and 20. The Committee Against Torture nevertheless recommends in its Concluding Observations to the third periodic report (9 May 2000) that China incorporate a definition of torture into its domestic law. As a response the same points as the above mentioned are repeated by the Chinese government in the fourth report pt. 125-129.
14. O'Brien KJ, Li LJ. Suing the local state: Administrative Litigation in Rural China. *The China Journal* 2004;51: 75-95.
15. Law of the PRC on State Compensation, article 15, 4.
16. For an overview of Chinese legal sources, see chapter 3 in Wei Luo, *Chinese Law and Legal Research*. Buffalo, New York: William S. Hein & Co.: 105-140.
17. Francis R. *Legal Aid in China: An Analysis of the Development of Policy*. *Civil Justice Quarterly* 2004;3: 169-86.
18. Diamant NJ, (a.o.)(eds). *Engaging the Law in China. State, Society, and Possibilities for Justice*. Stanford, California: Stanford University Press 2005: 18.
19. Dutton M. "The Basic Character of Crime in Contemporary China". *The China Quarterly* 1997; 149: 160-77.
20. Peerenboom P. *Chinese Long March towards Rule of Law*. Cambridge: Cambridge University Press 1996: Chapter 5.
21. The People's Congress is the legislative body at the local level. See Almen O. *Authoritarianism Constrained: The role of local people's congresses in China*. Ph.d thesis at Göteborg University, 2005.
22. Information gained by the author through participation in international cooperation projects on torture prevention in China since 1998.
23. Cai, YS, and Yang, SC. 2005. "State power and unbalanced legal development in China." *Journal of Contemporary China* 14(42): 117-34.
24. Xiao Y. Scrapping Article 306 would make law fairer. *China Daily* 2004; 04.12: page 6.
25. Result from still unpublished survey, Guangzhou Human Rights Research Centre, April 2006.
26. For an overview of the discussion see Xiong QH. Prohibition of torture and exclusion of illegally obtained evidence. In: Kjaerum, M (a.o.)(eds). *How to eradicate torture. A Sino-Danish joint research on the prevention of torture*. Beijing: Social Sciences Documentation Publishing House, 2003: 792-807.
27. Wang MY. Right to silence and prohibition of extorting confession by torture. In: Kjaerum, M (a.o.)(eds.), *How to eradicate torture. A Sino-Danish joint research on the prevention of torture*. Beijing: Social Sciences documentation Publishing House, 2003: 781-791.
28. Seymour JD, Anderson R (eds). *New Ghosts Old Ghosts. Prisons and Labor Reform Camps in China*. Armonk, NY: M.E. Sharpe, 1998: page 217. Fu HL. Re-education through Labour in Historical Perspective. *The China Quarterly* 2005; 184: 811.
29. E/CN.4/2006/6/Add.6, page 2.
30. Sun Zhigang's brutal killers sentenced. *China Daily* 2003; 6 October: 1.