

The Rights Practice submits this response to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to inform her report to be presented to the 52nd Session of the Human Rights Council in March 2023. This submission focuses on the duty to investigate crimes of torture in national law and practice in China.

We have drawn on our knowledge of Chinese law and practice and our experience, over two decades, working on the ground in China. We have also consulted with Chinese lawyers. China does not allow lawyers or other members of civil society to establish independent human rights organisations and discourages legal scholars and lawyers from making independent submissions to UN mandates. Since the introduction of the Overseas NGO Management Law in 2017, overseas NGOs working on human rights and criminal justice have been unable to register to work in China and The Rights Practice is obliged to work at distance.

The Rights Practice works to promote human rights (as set out in the Universal Declaration of Human Rights and subsequent UN conventions and declarations). Our mission is to build the capacity of those working for human rights. We have built a programme of work that addresses three strategic themes within China: access to justice, human rights and criminal justice, and public participation.

We are a UK registered human rights charity (England and Wales 1133616).

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“The duty to investigate crimes of torture in national law and practice”

Response to Questionnaire

The Rights Practice

(i) **Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture:**

1. There is a lack of political leadership in China to prosecute acts of torture and achieve justice for victims. The judicial system is led by the Chinese Communist Party (CCP) and party interests are an impediment to effective investigations and ensuring accountability. At the national level, the CCP tries to control and silence news of politically sensitive cases. Often involving allegations of torture or wrongful convictions the authorities fear such cases will undermine the party’s legitimacy. At the local level, the police, procuratorate and courts operate as part of the same ‘political-legal’ system and the interests of the CCP are paramount.
2. The authorities have restricted the role of lawyers and use extensive powers of censorship and a range of repressive tools towards the legal and human rights community to restrict public discussion of both specific cases and access to justice. Among lawyers, there is limited knowledge of international law or China’s treaty obligations. China does not support civil society engagement with the UN Convention Against Torture (CAT) review process. China’s latest periodic report was due on 9 December 2019.
3. Many cases of wrongful convictions alleging the use of torture came to light in the 2000s attracting both expert and public criticism. These contributed to some limited legal reforms, but since Xi Jinping became General Secretary of the CCP in 2012, the authorities have moved away from a liberal conception of the rule of law and, above all, the notion of accountability at both the domestic and international levels. Increased public concern probably contributed to the decline in the use of physical torture by the police in major cities, observed by criminal defence lawyers who have spoken with The Rights Practice. Among the general public, and to many lawyers, torture is primarily understood as physical ill treatment and is used to secure a confession. Criminal convictions in China are reliant on a confession.[[1]](#footnote-1)

ii) **Regulatory frameworks:**

1. There is no overall definition of torture in Chinese criminal law that accords with Article 1 in the CAT. There are a number of acts prohibited by the criminal law which may be considered torture. The act of ‘coerced confession’ (*xingxun bigong*), sometimes translated as the ‘extraction of confessions by torture’ (see China Law Translate) is the term most frequently used to refer to torture. It can be punished under article 247 of the Criminal Law.[[2]](#footnote-2) In a commentary, the China Court website describes ‘coerced confessions’ as including physical punishment and mental suffering.[[3]](#footnote-3) The 2012 amendment to the Chinese Criminal Procedure Law (CPL) prohibited the use of ‘coerced confessions’ as evidence (articles 52 and 53). However, the 2021 Supreme People’s Court interpretation of the Criminal Procedure Law does not make an explicit reference to mental suffering in its prohibition of coerced confessions. Article 123 of the interpretation prohibits the use of violence, threats and unlawful detention to secure confessions. [[4]](#footnote-4) Because of the lack of an explicit prohibition on mental suffering, lawyers in China are unclear whether ‘psychological coercion’ (*xinli qiangzhi*) can be cited in applications to exclude evidence as a result of a coerced confession.
2. Article 248 makes it a criminal offence to physically abuse a person in detention, referring to persons detained in prison, detention facilities (*juliusuo* and *kanshousuo*) and other ‘supervised’ facilities. *Kuxing* (酷刑 cruelty, torture), a generic term used to refer to torture, does not appear in Chinese law.
3. In their 2016 Concluding Observations, following the review of China under CAT, the Committee expressed concern that prohibited acts are generally limited to using coercion to extract confessions from defendants or using violence to secure statements from witnesses. The prohibition does not necessarily include all acts of torture perpetrated by public officials or persons acting in an official capacity. The Committee also notes that Article 248 limits the scope of ill treatment of detainees to those in institutions of confinement and does not include the imposition of mental suffering.[[5]](#footnote-5)
4. Under article 247 of the Criminal Law, coerced confessions or the use of violence to secure evidence from witnesses can be punished by a prison term of three years or less. Where the act results in injury or death it can be punished more heavily under article 232 (intentional homicide) or article 234 (intentional harm). ‘Serious offences’ under article 248 can be sentenced to three years’ detention or less whereas offences that are ‘particularly serious’ can attract a sentence of three to ten years. Where a detainee is injured or dies the offence can be sentenced under article 232 or article 234. Sentences under article 234 can range from probation to the death sentence depending on the severity of the injury and whether the victim died. Sentences for intentional homicide range from three years to life imprisonment or the death penalty.
5. The 2012 CPL revision requires audio or video recording of interrogations in major criminal cases (Art. 123). Although the law requires audio or video recording of the entire process lawyers have reported to The Rights Practice that interviews are sometimes only recorded once the suspect or defendant provides a satisfactory response. Lawyers are not allowed to be present during police interviews.
6. Most pre-trial detention takes place in a *kanshousuo* or detention centre. These facilities are governed by the 1990 State Council Regulations of the Criminal Detention Centres of the People’s Republic of China. A 2017 draft Detention Centre Law fails to address the risk of torture or prohibit fatigue interrogations or the use of restraining chairs (“tiger chairs”) during police interrogations.[[6]](#footnote-6) It is unclear whether the draft will be revised and when the final version will be submitted for approval. Under article 150 of the 2013 Public Security Organ Procedures for Handling Criminal Cases, detention facilities are required to conduct a health and body inspection as part of the admission procedures for detainees.[[7]](#footnote-7) Lawyers have reported that the physical inspection of detainees on admission has helped reduce the removal of suspects from the detention centre during the investigation process; detainees are known to be at high risk of ill treatment when taken outside official detention facilities.
7. Criminal investigators in China have powers to use coercive measures that entail deprivation of liberty in informal facilities that are unregulated. Extralegal measures include the use of “residential surveillance in a designated location” (RSDL) and *liuzhi*. RSDL is authorised by the criminal procedure law (article 75) for suspects facing national security or terrorism charges. It can also be used where detainees who qualify for the less onerous residential surveillance (normally a form of house arrest) do not have a fixed residence. RSDL is not permitted to take place in a detention or ‘special case-handling’ facility. Detainees have no access to a lawyer, to family members and no judicial authority approves their detention. The Committee against Torture has called for abolition of the measure which they describe as a type of incommunicado detention.[[8]](#footnote-8) There are inadequate measures in place to prevent ill treatment and numerous reports of the use of physical and mental torture during RSDL have been made public. The period in RSDL is limited to six months following which detainees are generally transferred to a *kanshousuo* and formally arrested and prosecuted. The purpose of RSDL is clearly to assist the police with their investigations by placing detainees under immense physical and psychological pressure to provide information and a confession.
8. *Liuzhi* (retention in custody) was introduced following the establishment of the National Supervisory Commission in 2018 and the Supervision Law.[[9]](#footnote-9) The measure can be used for persons under investigation for corruption. It replaces the previously extralegal system of *shuanggui* which targeted CCP members. *Liuzhi* is broader in its scope having powers to investigate all public employees and ‘relevant personnel’. Like RSDL *liuzhi* can hold detainees up to six months and detainees have no access to legal assistance. *Liuzhi* also takes place in unregulated facilities with no independent oversight.

iii) **Elements of human rights-compliant investigations and prosecutions:**

1. It is not possible to conduct independent and impartial investigations into allegations of torture in China due to the pervasive influence of the CCP throughout the criminal justice institutions. The police exercise complete power over the criminal investigation process.[[10]](#footnote-10) The National Supervision Commission is a co-equal branch of government with the judiciary and the procuratorate. *Liuzhi* cases are not subject to supervision by the courts or the procuratorate.
2. Investigations initiated by the procuratorate may proceed promptly if there is a political interest in handling them in a timely manner. Allegations of torture raised by actors outside the judicial system face obstacles in being accepted for investigation.
3. China has shown little political will in facilitating adequate and effective investigations. The Human Rights Action Plan of China (2021-25) restates the prohibition on extracting confessions by torture, but does not acknowledge any problems or propose new measures.[[11]](#footnote-11) The Plan claims that all records relating to law enforcement are recorded and are under “closed-loop management” implying records can be reviewed. However, where all elements of law enforcement come under CCP authority there is no incentive to conduct politically inconvenient investigations into allegations of torture.
4. There is a lack of transparency in the judicial process. Lawyers are hampered in their representation of clients by the existence of secondary files which are inaccessible to non-court personnel without the approval of the leadership of a court.[[12]](#footnote-12) A keyword search for the term ‘coerced confession’ in the China Judgements Online database reveals 17,180 cases in past five years (2017 to 2021). Although many cases include allegations of coerced confession by the defence, in other instances the court is confirming that no coerced confession took place. The search term ‘coerced confession crime’ produced 89 cases. A review of many of these cases uncovered allegations of coerced confessions during criminal investigations, but these allegations were generally not supported by any details of the alleged acts making further investigations difficult and impeding expert and public understanding of how torture is used in China. Our online search failed to reveal any cases for the crime of coerced confession from the Xinjiang Uyghur Autonomous Region despite the very high number of criminal prosecutions in the region in recent years.[[13]](#footnote-13)
5. The Human Rights Action Plan confirms that “corporal punishment, torture, abuse and beating of criminals or connivance in beating of criminals by a third party are strictly banned.”[[14]](#footnote-14) The Plan promises that prisoners who abuse other inmates will be severely punished, but is silent on the investigation of prison and other public officials. There is an undertaking to improve medical and health care facilities in prisons. The Plan, however, provides no progress indicators and has no binding authority on the government.
6. The State Compensation Law provides entitlement to state compensation where legal rights have been infringed by the state. With respect to criminal proceedings the law does not provide compensation for ill treatment, but only the unlawful deprivation of liberty where the detainee was found not guilty or the case was dropped. There is inconsistent decision making by judges on the question whether RSDL is eligible for compensation. In a case known to The Rights Practice, a torture survivor and former detainee under RSDL, against whom charges were dropped, had his claim for compensation rejected on the grounds that RSDL was not within the scope of the law.

**(iv) Mechanisms/institutions/entities involved in complaints, investigations and prosecution:**

1. The procuratorate have responsibility to monitor the lawfulness and conditions of detention. They are also able to initiate an investigation into allegations of extortion of ‘confessions by torture’ (CPL Art.19). A similar allegation can be made by the defendant or defence counsel as part of the exclusion of evidence rules under the CPL. Applications to exclude illegal evidence should be made at the pre-trial hearing. Prosecutions for torture may be made for the crime of coerced confessions (CL Art.247) and in more serious cases for intentional homicide (CL Art.232) or intentional harm (CL Art.234). In our review of 50 online cases our researcher found just one case where a criminal suspect made a complaint of coerced confession to the procuratorate in the *kanshousuo*.
2. Many lawyers have told The Rights Practice that it is extremely difficult to file complaints of torture without compelling physical evidence of injury. Lawyers provide representation in only a small proportion of criminal cases. Both lawyers and detainees generally have a poor understanding of the type of acts which may be considered torture, particularly acts which leave no obvious physical trace such as fatigue interrogations. The extensive use of extralegal detention facilities during RSDL and *liuzhi* makes the collection of evidence of torture extremely difficult.
3. Legal scholars have shared with The Rights Practice the legal and practical difficulties for convicted prisoners to raise allegations of torture during the pre-trial investigations by the police. Prison management recognises that many prisoners complain of miscarriages of justice due to coerced confessions, but there is no legal mechanism to facilitate prisoners bringing such cases to the attention of the procuratorate or the courts. Moreover, lawyers generally do not have access to convicted prisoners and no legal aid is available following sentencing.
4. In a random sample of 50 cases (2017-2021 China Judgements Online) that include allegations of coerced confessions, our researcher identified one case that led to a conviction for homicide and a five-and-a-half-year prison sentence for the perpetrator. The majority of cases did not result in a criminal punishment. In one case we reviewed, a police officer found guilty of a coerced confession, resulting in an unsafe conviction, avoided a criminal penalty because, according to the court judgement, he admitted the offence, provided compensation and the victim forgave him. The majority of defendants charged with coerced confession are police officers and associates, procurators are also found among those charged.

 **(v) Victim participation and protection:**

1. With the political will to undertake investigations lacking there is also little or no sensitivity to involving and protecting torture victims in the process. Awareness raising could come from civil society and international engagement, but neither approach is feasible in the current political climate.

**(vi) Complex investigations:**

1. N/A

**(vii) Evidence collection and innovation:**

1. The collection of evidence of torture is highly problematic and there is no comprehensive law on evidence. Forensic medical evidence must be authenticated to be used in court, but there are no nationally applicable standards for validating reports and expert opinions. The defence can initiate a private forensic examination and submit it as evidence which the court may consider although it cannot be authenticated. Due to a lack of adequate legislation and training the procuratorate and courts generally lack the expertise to assess the reliability of evidence.
2. In 2012, TRP initiated a project to introduce the Istanbul Protocol to legal scholars and lawyers. Discussions revealed very low levels of knowledge and a lack of political interest to promote relevant knowledge and expertise. Increased repression of civil society made it increasingly difficult for Chinese scholars and lawyers to engage with international experts and promote reform measures at home.
1. Mou, Yu. *The Construction of Guilt in China: an empirical account of routine Chinese injustice,* Hart Publishing, 2020, p48. [↑](#footnote-ref-1)
2. The Chinese criminal law has been amended 11 times, most recently in March 2021. China Law Translate (https://www.chinalawtranslate.com/en/) provides unofficial translations and commentary on many areas of Chinese law. Most of the laws cited in this submission can be found on this website. [↑](#footnote-ref-2)
3. China Court Online. “浅论刑讯逼供的危害、成因及预防.” 6 January 2014. https://www.chinacourt.org/article/detail/2014/01/id/1172702.shtml (Chinese) [↑](#footnote-ref-3)
4. The Supreme People’s Court of the People’s Republic of China. “最高人民法院关于适用《中华人民共和国刑事诉讼法》的解释.” 4 February 2021. <https://www.court.gov.cn/zixun-xiangqing-286491.html> (Chinese)

China Law Translate, *Interpretation on the Application of the “Criminal Procedure Law of the PRC”*, https://www.chinalawtranslate.com/en/spccplinterp2021/ [↑](#footnote-ref-4)
5. Committee against Torture. Concluding Observations on the fifth periodic report of China. 3 February 2016. https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2 [↑](#footnote-ref-5)
6. The Rights Practice, *Background brief on China’s draft Detention Centre Law*, 2017, https://www.rights-practice.org/Handlers/Download.ashx?IDMF=b46bb69f-9c4d-4ea8-a4bb-96ff882ead45 [↑](#footnote-ref-6)
7. People's Republic of China Public Security Department Order No. 127. “Public Security Organ Procedures for Handling Criminal Cases. 26 December 2012. Unofficial English translation at China Law Translate

https://www.chinalawtranslate.com/en/public-security-organ-procedures-for-handling-criminal-cases/ [↑](#footnote-ref-7)
8. Committee against Torture. Concluding Observations on the fifth periodic report of China. 3 February 2016. https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2 Para.15 [↑](#footnote-ref-8)
9. Supervision Law of the People’s Republic of China. 20 March 2018. Unofficial English translation at China Law Translatehttps://www.chinalawtranslate.com/en/supervision-law-of-the-prc-2018/ [↑](#footnote-ref-9)
10. Mou, Yu. *The Construction of Guilt in China: an empirical account of routine Chinese injustice,* Hart Publishing, 2020, p49 [↑](#footnote-ref-10)
11. State Council Information Office, The People’s Republic of China. “Full Text: Human Rights Action Plan of China (2021-2025).” 9 September 2021. http://english.scio.gov.cn/scionews/2021-09/09/content\_77742681.htm [↑](#footnote-ref-11)
12. Finder, Susan. “China's Translucent Judicial Transparency”. 18 October, 2018. in: *Transparency Challenges Facing China* (2018), Peking University School of Transnational Law Research Paper, Available at SSRN: https://ssrn.com/abstract=3344466. pp. 145 [↑](#footnote-ref-12)
13. The Rights Practice, *(Ab)use of Law: Criminal proceedings in Xinjiang*, 2022, https://www.rights-practice.org/Handlers/Download.ashx?IDMF=40ed56e9-ce5e-45d4-883f-39c81a18aad5 [↑](#footnote-ref-13)
14. State Council Information Office, The People’s Republic of China. “Full Text: Human Rights Action Plan of China (2021-2025).” 9 September 2021. http://english.scio.gov.cn/scionews/2021-09/09/content\_77742681.htm [↑](#footnote-ref-14)