February 12, 2015

Members of the United Nations Committee against Torture
Office of the United Nations High Commissioner for Human Rights
52 rue des Pâquis
CH-1201 Geneva
Switzerland

Re: Pre-Sessional Review of China

Dear Committee Members:

We write in advance of the upcoming Committee against Torture (the “Committee”) pre-sessional review of China to highlight areas of concern that we hope will inform your consideration of the Chinese government’s compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention”). This submission discusses violations of the rights of people in China that are inconsistent with articles 1, 2, 4, 12, 13, 14, 15, and 16 of the Convention.

This submission is based on Human Rights Watch’s current research on police abuse during pre-trial detention, and on our ongoing monitoring of the human rights situation in China.

In your upcoming Committee pre-sessional review of China, Human Rights Watch urges you to question the government of China about the following key issues:

1. Definition of torture in Chinese law inconsistent with that of the Convention (articles 1 and 4)

Although the word “torture” (kuxing) exists in Chinese, the term is not used in domestic law, media reports, or in colloquial speech. Instead, the government uses the term “xingxun bigong” (or “coerced confession” 讯问逼供),” the infliction of corporal treatment or quasi-corporal treatment by judicial officers to force suspects to confess, and makes it a criminal...
offense. It also criminalizes the same behavior against detainees in institutions of confinement and against witnesses to compel testimonies.\(^7\)

The Committee has repeatedly raised concerns that these crimes related to torture in Chinese laws do not “fully compl[y] with the definition [of torture] contained in the Convention.”\(^6\) At the time of the 2008 Committee review, the relevant provisions only prohibited physical, but not mental or psychological, pain.\(^8\) The Chinese government made some progress towards addressing this problem when the Supreme People’s Court issued a judicial interpretation in 2012, which for the first time recognized the infliction of severe mental pain as an act of torture.\(^5\) But the judicial interpretation has not specified the types of behaviors that would constitute such mental pain; consequently, tactics such as prolonged sleep deprivation remain lawful.\(^6\)

The government has also not yet fully addressed the fact that the laws do not clearly prohibit the use of torture except for the purpose of extracting confessions.\(^7\) 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 those by “jail bullies.”\(^8\) The Committee should ask the government to provide an explanation about both loopholes and when it plans to close them.

\(^1\) 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.

\(^2\) Criminal Law, arts. 247 and 248; the Supreme People’s Procuratorate’s Standards on Filing Malfeasance Cases.

\(^3\) UN Committee Against Torture, “Concluding observations of the Committee against Torture: China,” CAT/C/CHN/CO/4, December 12, 2008, http://www.refworld.org/docid/496c854b2.html, para 32.

\(^4\) Ibid.

\(^5\) 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 procuratorates in lower levels which investigate official crimes, it is unclear how they handle torture complaints involving mental suffering in practice.

\(^6\) 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/201412/08/content_550984.htm?divo=0 (accessed January 7, 2015).

\(^7\) Ibid.

\(^8\) Concluding Observations of the Committee against Torture on China, para. 33.
2. Ineffective measures to prevent torture (articles 2, 13)

Human Rights Watch welcomes the positive steps the Chinese government adopted since it was last reviewed by the Committee in 2008, some of which were noted in the government's report. Those include: improvement of physical infrastructure in detention centers around 2009 following the suspicious death of a suspect; revisions to the Criminal Procedure Law in 2013 that formalized the rule of excluding confessions obtained through torture and other ill-treatment from criminal proceedings; and the abolition of the administrative detention system Re-education through Labor (RTL) in 2013.

However, under Chinese law, criminal suspects are interrogated in the absence of lawyers or the monitoring of third parties, often in locations controlled by the police including detention centers and police stations.\(^9\) Suspects are not guaranteed the right against self-incrimination by remaining silent.\(^10\) In theory suspects can appoint and meet with lawyers, but most have none.\(^11\) In addition, police are legally entitled to deny certain categories of suspects—such as those charged with terrorism, major corruption and state security charges—access to lawyers.\(^12\) Detainees also have no access to medical professionals independent of the police, and very restricted or no communication with their families, creating conditions that are conducive to the use of torture.\(^13\) New safeguards introduced in recent years that have strengthened internal monitoring mechanisms of police abuse are commendable, but they have had limited impact in preventing torture because they rely on the state to restrain and police itself. Because of the way the Chinese law enforcement system is structured—that the police, procuratorate, and the courts are required to “mutually cooperate”\(^14\) with each other to solve crimes under the leadership and coordination of the Communist Party's Political and Legal Committee at the same level—the arrangement makes it difficult for the procuratorate and the court to check police abuse.

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\(^9\) Ibid.; CPL, arts. 116 and 117.

\(^10\) While the law allows suspects to refuse to answer irrelevant questions and to not incriminate themselves in police interrogations, it also requires suspects to “answer truthfully” in police interrogations. CPL, arts. 50 and 118.

\(^11\) 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 because both the suspects are reluctant to hire lawyers because of cost as well as their beliefs that other means, such as bribing relevant officials, might be better alternatives; and because lawyers are reluctant to take criminal cases because they fear official retribution and prosecutions against criminal defense lawyers. There are also cases in which suspects have no means to contact lawyers because they cannot communicate directly with their families as detention centers severely restrict or bar their communication with families. 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/issuepapers/defense-lawyers-turned-defendants-zhang-jianzhong-and-the-criminal (accessed September 1, 2014).

\(^12\) CPL, art. 37.

\(^13\) 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.

\(^14\) CPL, art 7.
The Committee should ask the following questions regarding measures to prevent torture during pre-trial detention:

- 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 “a 87 percent drop in coerced confessions nationwide.” But the report did not provide the numbers of detainees who were coerced to confess. The Committee should ask the government to provide such data during pre-trial custody during the reporting period so that this claim can be evaluated.

- The Chinese government’s report claims, in paragraph 33, that “From March 2010 to the end of 2011, the Ministry of Public Security deployed a task force to collect and rectify issues of abnormal deaths of persons involved in cases in the process of law enforcement by public security authorities throughout the country... bringing about a clear decline in the number of accidents involving the safety responsibilities of law enforcement.” In 2009, official data quoted in Chinese press noted only 15 cases of deaths in custody in detention centers 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. The government should provide the number detainees who died during pre-trial custody, broken down according to causes of deaths, from 2010 to 2015 so the Committee can evaluate this claim.

  b. The government should provide the number of investigations launched and number of autopsies conducted, broken down according to causes of deaths, from 2010 to 2015.

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c. The government should provide any MPS guidelines for detention centers on the kind of documentation (for example, surveillance video footage, medical reports) that they are required to give to families to inform them of the investigation.

d. In cases of deaths in Detention Centers, 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 government taken to ensure families’ choices are respected?

• Has the government taken measures 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 or other ill-treatment?

• The state report in paragraph 30 noted that “local public security authorities have undertaken a standardizing reconstruction of the physical facilities of law enforcement ... with electronic monitoring and control equipment installed for the guidance of the people’s police in law enforcement standardization. As of the end of 2012, 90 percent of the local police stations throughout China had completed this standardizing reconstruction.” Our research suggests detainees are frequently taken out of the detention centers to evade these protections. Has the government taken measures to ensure that torture or other ill-treatment does not take place outside of these facilities?

• The government report stated in paragraph 12 that police supervisory authorities monitor and handle cases of suspected torture. The government should provide the numbers of police officers who have been disciplined as a result of monitoring by these police supervisors in the reporting period, the violations for which they are being disciplined, and the nature of the punishments they have received.

• The government report stated in paragraph 59 that persons in custody have “meeting schedules for on-site procurators” and other opportunities to meet with the procurators to make complaints about abuses. Given the close relationship
between the police and the procuratorate to “mutually cooperate” to solve crimes, and 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?

Paragraph 103 of the state report asserts that “Article 37 of the amended Criminal Procedure Law clarifies procedures for defence lawyers to meet with criminal suspects...stipulating that where a defence attorney ... requests to meet with a detained criminal suspect or defendant, the criminal detention facility shall promptly arrange such a meeting, and no later than within 48 hours.” The Committee should ask why three categories of suspects—those suspected of major corruption, terrorism and state security crimes—require police permission prior to meeting with their lawyers.

a. Improving suspects’ access to lawyers is one of the key protections against torture. But often criminal lawyers refuse to take cases involving police abuse or failed to advocate on behalf of their clients due to police pressure. 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 for “enticing” suspects to “falsify evidence” or “change their testimony contrary to facts.” The widely reported case of Li Zhuang, a lawyer who was imprisoned for helping his client to speak out about torture, reportedly deters many criminal lawyers from taking such cases.\(^8\) The Committee should ask the Chinese government to explain article 306 of the Criminal Law as well as measures it has taken to ensure that lawyers are not retaliated against for filing complaints about torture.

Outside of criminal detention, Human Rights Watch research shows that torture and ill-treatment remain common in other types of detention facilities. The use of torture is particularly pervasive in “black jails” (also known as “legal education classes” in some cases), extralegal facilities in which petitioners—people who expose and file complaints about local officials’ misconduct—and practitioners of banned religions are often held. The government refuses to acknowledge that such facilities exist let alone provide redress for those mistreated there. There have also been media and victim reports of torture in “shuanggui,” an extralegal form of detention run by the Chinese Communist Party against

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members facing disciplinary investigations. The Committee should ask the government to provide an explanation about the shuanggui facilities.

3. Impunity for perpetrators of torture (articles 6 and 12)

Police officers rarely face criminal sanctions for torturing or ill-treating suspects although the law makes such actions a criminal offense. Few of the state mechanisms—including internal police supervisors, the procuratorate, and the courts—supervise police function effectively. Few police officers appear to face serious disciplinary action, such as suspension or dismissal and at most, their superiors typically issue a reprimand and move them to posts elsewhere in the force. The procuratorate rarely prosecutes police officers for torture except in serious cases when suspects have died or acquired a disability. In those cases, the courts tend to give police officers light sentences such as probation.

The state report provides statistics of individuals convicted of three crimes related to torture from 2007 and 2011 in paragraph 74. The Committee should ask the government to provide:

1. A breakdown of these numbers according to identity (officials, detainees, or others); of the length of prison sentences; of the type of injuries sustained by the victims; and of the geographic location of these sentences.

2. Information pertaining to disciplinary actions taken, if any, against police officers for abetting “jail bullies” or detainees who were convicted of abuses in detention centers.

3. The number of complaints or reports of torture and ill-treatment received by the procuratorate organs across the country, and the number of such reports investigated during the same period.

4. The number of officials subjected to internal disciplinary actions instead of criminal sanctions for torturing and ill-treating detainees in the same period.

4. Mechanisms and measures still inadequate upon review (article 11)

The state report in paragraph 61 asserts that “criminal detention facilities throughout the country have also established documentation files on the physical health of persons in custody, to keep records of their physical condition and ensure that those with illnesses receive prompt medical care.” In practice, however, medical personnel 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 the medical personnel. Detainees’ medical records are kept within the police force and are not often included in case files, making it difficult for prosecutors, lawyers and judges to spot abusive police behavior. Another part of the problem is the lack of independence of the medical personnel—they 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. We urge the Committee to ask the government:

a. 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?

i. 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?

ii. 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 abuse?

iii. Are doctors who serve detention centers trained to identify torture and ill-treatment?

b. 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?
c. Does the National Health and Family Planning Commission have guidelines on identifying torture and ill-treatment for doctors who conduct the physical check-ups for criminal suspects?

d. Does the National Health and Family Planning Commission have a mechanism for doctors who examine criminal suspects to submit reports of police abuse?

e. Does the National Health and Family Planning Commission have a mechanism to regularly review the conduct of doctors in detention centers to ensure that they are not complicit in obscuring evidence of torture or ill-treatment?

The state report noted in paragraph 64 that,

Since 2009, the Ministry of Public Security has been promoting the opening of criminal detention facilities to the public, requiring criminal detention facilities to take account of views from all quarters, broadly accept public oversight and continuously improve and update their work, by means of convening meetings with the relatives of persons in custody and with their lawyers, inviting visits by the news media and welcoming visits by people from all walks of life.

According to the law, suspects can meet with their families in the presence of police officers after they obtain permission from the police. But in practice, detention centers severely restrict suspects’ communication with their families.

- The Committee should ask the government what measures it has taken to ensure that suspects have effective means of communication with their families while in detention, including visits, phone calls, and letters.

5. No or inadequate compensation for victims of torture (article 14)
Torture victims can apply for compensation under the Law of State Compensation. But there are many challenges to obtaining compensation, for example, having to prove torture and that certain government officials were responsible for it. Even if in the rare cases in which authorities acknowledge responsibility, state compensation is only available to those who have physical injuries. Those who have no physical injuries may still be eligible for state compensation for lost work days if they were illegally or wrongfully detained. But the amount of compensation for that is small, as it is calculated on the factor of average work wage of the year across the country. The difficulty of accessing state compensation for torture victims is often noted in official press reports. The Committee should ask the Chinese government:

- **How many applications for state compensation for torture and abuse in pre-trial detention and detention centers has the Supreme People’s Court received during the reporting period? How many of the applicants received compensation, and how much was the average compensation for each victim?**

- **Does the government have a rehabilitation program to treat detainees who have been tortured or ill-treated?**

- **Does the National Health and Family Planning Commission provide or facilitate training to doctors, psychiatrists, and psychologists so they provide rehabilitation services to torture victims?**

6. **New exclusionary rule lacks effectiveness (article 15)**

One of the most important protections established recently in China to protect detainees from torture—the exclusionary rule—has also proved to be of limited utility thus far, according to Human Rights Watch’s research. Some procurators and judges ignore the defense lawyers’ requests to initiate the procedure to evaluate torture claims, and often

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26 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). Those who were beaten or abused by government officials, or those instructed by them, and whose abuse led to injury or death are entitled to such compensation. These victims 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.

provide no reason for doing so. In other cases, the requests have been given only perfunctory consideration. Judges often evaluate torture claims on the basis of documentary evidence alone, evidence that is either produced or controlled by the police and cannot be cross-examined in court unlike live witnesses. Few defense witnesses or expert witnesses testify regarding torture claims. Although the exclusionary rule places the burden of proof on police to demonstrate that they obtained evidence legally, in reality judges continue to expect detainees to prove that torture had taken place.

Regarding the procedure to exclude evidence illegally obtained in criminal cases, the Committee should ask the government:

- **What measures have been taken to ensure that procurators and judges do not ignore or unjustifiably refuse requests by the defendants to initiate the procedures?**

- **What guidelines exist regarding the amount or type of evidence that would be deemed sufficient for the procurators and judges to rule out the possibility of torture, to ensure that the procurators and judges examine these claims seriously?**

- **What guidelines exist regarding the use of medical “expert witnesses” to testify in court during the exclusionary procedures and how many such experts have appeared in trials when the court examined suspects’ torture claims since 2013?**

- **To provide statistics on the number of requests to initiate the exclusionary rule, the number of such requests granted, the number of confessions or statements excluded due to concerns over torture, and the number of defendants acquitted in these cases due to torture.**

- **A joint document is reportedly being drafted by the Supreme People’s Court, the Ministry of Justice, the Ministry of Public Security, the Supreme People’s Procuratorate, and the Ministry of State Security that explains the**
procedure of exclusion of illegally obtained evidence. The Committee should ask the government to make public a copy of the proposed document for public discussion.

7. Cruel, inhuman or degrading treatment sanctioned under Chinese law and regularly practiced (article 16)

Police officers regularly use restraints—which victims call the “tiger chair”—to immobilize suspects during interrogations of suspects for hours or even days, often as a means to coerce confessions. Detention center staff regularly use handcuffs, leg irons, or both on detainees. China’s relevant regulations allow individuals be restrained up to two weeks, and this period can be extended further upon authorization from the Public Security Bureau (PSB) or the head of the PSB. This contravenes proposed international standards, which provide that the use of restraints be a last resort to prevent the risk of harm to the individual or others and used as short as possible, that is, minutes rather than hours or days. Relevant regulations require that detainees on death row awaiting court review and execution be restrained using leg irons and handcuffs, often with leg irons and handcuffs linked together presumably to prevent escape. China’s Detention Center Regulations allow for the use of solitary confinement, called “small cell” (xiaohao), for up to 15 days upon authorization by the head of the detention center. The Committee should ask the government on its use of restraints and solitary confinement in pretrial detention:

- According to the Ministry of Public Security 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),” police 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

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23 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.

24 “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, 2019, art.20.


circumstances under which the chair should be used, or how long can suspects be strapped to the chair.

a) Does the MPS have further guidelines on the use of these interrogation chairs, known as “tiger chairs” by detainees?

b) Do criminal suspects and death row inmates in detention centers have any due process rights for disciplinary actions including the use of restraints and solitary confinement?

c) Are detainees informed in writing of the charges against them or provided a copy of the disciplinary decision, as required under international law?

d) What are the complaint procedures for detainees subjected to these disciplinary measures?

We hope you will find the comments in this letter useful and would welcome an opportunity to discuss them further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Yours sincerely,

Sophie Richardson
China Director
Asia Division