

Combating Torture in Chinese Criminal Proceedings: Opportunities and Challenges

By Zhiyuan Guo¹

Abstract: Torture used to be prevalent in China's criminal investigations and detention facilities. The People's Republic of China has made great efforts to prevent torture in criminal proceedings since it ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1988. However, the anti-torture legislation did not make much progress until 2010 when the Exclusionary Rules of Illegally Obtained Evidence was enacted, and a systematic reform was conducted through the 2012 Criminal Procedure Law Amendment two years later. Since then, China has achieved enormous accomplishment in preventing torture in criminal proceedings. This paper overviews the legislative and judicial measures China has been taking to prevent police torture in Part I. Part II is devoted to a comparison between China's preventive measures and the international standards on combating torture set out in the UNCAT and other treaties. Part III analyzes opportunities and challenges China is facing to improve the prevention of police torture. The author will argue that most of the Chinese legislative measures are indirect preventions, that is, preventing police torture through prosecution and sanction of the perpetrators or excluding the contaminated evidence. These measures are effective in avoiding the repetition of torturous conduct in criminal proceedings. However, it is more important to create an environment where torture is not likely to occur. Direct preventions such as training, education and regular monitoring needs to be enhanced to eradicate the root causes that lead to torture.

Keywords: torture, police interrogation, China, indirect prevention, direct prevention, UNCAT

As the prohibition of torture is recognized as a peremptory norm of international law, a further obligation to prevent torture and other forms of ill-treatment has become a critical component of many international treaties. According to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), “[e]ach State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction.”² The Republic of China (hereinafter as China) has ratified UNCAT in 1988, and it's a duty for Chinese government to prevent torture and “other acts of cruel, inhuman or degrading treatment or punishment.”³ This paper overviews the legislative and judicial measures China has been taking to prevent police torture in Part I. Part II is devoted to a comparison between China's preventive measures and the international standards on combating police torture set out in the UNCAT and other treaties. Part III analyzes opportunities and challenges China is facing to improve the prevention of police torture. The

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² The United Nations Convention against Torture (1984), Article 2.1. available at [OHCHR | Convention against Torture](#).

³ The United Nations Convention against Torture (1984), Article 16. available at [OHCHR | Convention against Torture](#).

author will argue that most of the Chinese legislative measures are indirect preventions, that is, preventing police torture through prosecution and sanction of the perpetrators or excluding the contaminated evidence. These measures are effective in avoiding the repetition of torturous conduct in criminal proceedings. However, it is more important to create an environment where torture is not likely to occur. Direct preventions such as training, education and regular monitoring needs to be enhanced to eradicate the root causes that lead to torture.

I. Legal Framework of Torture Prevention in Chinese Criminal Proceedings

Torture is a prevalent and long-term problem in criminal justice system in every jurisdiction, and China is no exception. The prohibition of torture has long been a focus of Chinese legislation; a comprehensive legal framework of torture prohibition and prevention has been developed in China over the past few decades. Having ratified UNCAT in 1988, China has taken legislative measures to integrate the international human rights standards into domestic laws. This section overviews the legal framework of torture prevention in China, especially in criminal proceedings.

First, acts of torture and ill-treatment are made criminal offences under Chinese criminal law. Two offences are regarded as related to prohibition and prevention of torture. One is extorting confession by torture,⁴ the other is ill-treating detainees.⁵ Both offences involve use of torture or ill-treatment by police officers, prosecutors, or correctional facility personnel. Both offences impose criminal penalties to punish the perpetrators according to the severity of crime. Although the normal penalty is up to three years in prison, the offenders could be punished more severely if the case has aggregating circumstances such as serious injuries causing the victims to be disabled or dead. It is noteworthy that only those acts of torture reaching a certain seriousness constitute the crime of torture and should be punished by criminal law. However, acts of minor torture are similarly prohibited and should be prevented. They are governed by other laws than the criminal law.

Secondly, the prohibition of torture has long been emphasized in Chinese criminal procedure law. The first Criminal Procedure Law (hereinafter CPL), enacted in 1979, contained a black letter rule against torture, which states: “The use of torture or extortion to obtain a confession and the use of threats, inducement, deception, or other illegal means to collect evidence is strictly prohibited (...),” and this rule has been retained in Chinese CPL after three rounds of amendments. This suggests that Chinese legislature holds a steady negative attitude towards torture. Any acts of torture or ill-treatment is strictly prohibited in Chinese criminal proceedings.

⁴ Criminal Law of PRC, Article 247. “Judicial personnel who extort a confession from criminal suspects or defendants by torture, or who use force to extract testimony from witnesses, are to be sentenced to three years or fewer in prison or put under criminal detention. Those causing injuries to others, physical disablement, or death, are to be convicted and severely punished according to articles 234 and 232 of this law.”

⁵ Criminal Law of PRC, Article 248. Supervisory and management personnel of prisons, detention centers, and other guard houses who beat or physically abuse their inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention. If the case is especially serious, they are to be sentenced to three to 10 years in prison. Those causing injuries, physical disablement, or death, are to be convicted and severely punished according to article 234 and 232 of this law. Supervisory and management personnel who order inmates to beat or physically abuse other inmates are to be punished according to stipulations in the above paragraph.

Thirdly, China has established the exclusionary rules of illegally obtained evidence since 2010, making the evidence obtained by torture and other forms of ill-treatment inadmissible. The establishment of exclusionary rules is consistent with the requirement of the UNCAT, which states in its Article 15, “any evidence gathered as a result of torture must be deemed inadmissible in legal proceedings.” This provision is important because, by making such statements inadmissible in court proceedings, one of the primary goals of torture falls empty. After the Supreme People’s Court (SPC) and the Supreme People’s Procuratorate (SPP) adopted a principle of excluding illegally obtained oral evidence in their judicial interpretations implementing the 1996 CPL,⁶ China has spent over a decade to have the exclusionary rules of illegally obtained evidence enacted. The 2010 exclusionary rule merely contains 15 articles and cannot meet the practical needs when it was implemented. Therefore, a set of more detailed implementing guidelines were promulgated in 2017 (the 2017 guideline), having addressed many practical problems. A comprehensive exclusionary rule gradually took form in China. The 2010 exclusionary rule takes a strong stance against both the illegally obtained oral evidence and the illegally obtained physical evidence; it imposes the burden of proof on the prosecution and requires the standard of proof to reach a proof beyond reasonable doubt; it also creates a suppression hearing in which courts conduct investigations as to whether the evidence in question is obtained by illegal means, i.e., torture or other forms of ill-treatment. The 2017 guideline devotes quite a few articles to define the scope of illegally obtained evidence, adopting “the fruit of poisonous tree” principle with two exceptions; it summarizes the means of proof that the prosecution could rely on to satisfy the strict standard of proof; it also clarifies some procedural issues of suppression hearing.⁷ Under the 2018 Supervision Law of PRC, exclusionary rules of illegally obtained evidence also apply to the investigation of corruption cases by the supervisory commissions.⁸ This suggests acts of torture and ill-treatment is similarly prohibited in investigative activities conducted by supervisory commissions.

Fourth, the 2012 CPL adopts a series of anti-torture mechanisms, including the privilege against self-incrimination,⁹ audio or video recording of interrogations and some procedural requirements to reduce the possibility of torture and coercive confessions. The 2012 CPL makes audio or video recording mandatory for crimes punishable by death or life imprisonment or other major crimes, and optional in other cases,¹⁰ depending mostly on the availability of recording devices. To prevent torture, the law requires a prompt transfer of criminal suspects to detention centers after arrest, because most incidents are carried out in a police station. The law also

⁶ Article 61 of the 1998 Supreme People’s Court Judicial Interpretation provides, ‘It shall be strictly forbidden to use unlawful methods to obtain evidence. Any testimony of a witness, victim or defendant obtained by coercion, enticement, deception or other illegal method cannot be the basis for conviction’. Article 265 of the 1999 Supreme People’s Procuratorate Judicial Interpretation provides, ‘It is strictly forbidden to use unlawful methods to collect evidence. Statements obtained from suspects, defendants or witnesses by coercion, threats, enticement or deception or other unlawful means cannot form the basis of an accusation of a criminal offense’.

⁷ For detailed discussions, see Zhiyuan Guo (2019), *Torture and Exclusion of Evidence in China*, China Perspective, Vol.1.

⁸ Art.33, the 2018 Supervision Law of PRC, provides, ...The supervisory organ shall collect, fix, examine and use evidence in compliance with the requirements and standards for evidence in criminal trials. Evidence collected by illegal means shall be excluded in accordance with the law and shall not be taken as the basis for the disposition of cases.

⁹ Art.50, 2012 CPL.

¹⁰ Art. 121 2012 CPL; Art. 123 2018 CPL.

requires interrogation be conducted within a detention center once the suspect has been formally detained, because clear rules and strict supervision over detention centers have made it more difficult to torture suspects in detention.

Fifth, Chinese legislation established universal jurisdiction for crime of torture. The SPC interpretations state in its Article 12, “For crimes governed by international treaties either concluded or acceded to by the People's Republic of China, and over which the People's Republic of China exercises jurisdiction within the scope of carrying out its obligations pursuant to such treaties, the people's court where a defendant was apprehended, embarked or landed has jurisdiction.” Chinese legislation also recognized the principle of non-refoulement, which requires States to not expel, return or extradite a person to another State if there are “substantial grounds” for believing that the person would be in danger of being subjected to torture. The Article 8 of Extradition Law of PRC states, “the request for extradition made by a foreign state to the People's Republic of China shall be rejected if: ... 7) the person sought has been or will probably be subjected to torture or other cruel, inhuman or humiliating treatment or punishment in the Requesting State...”

II. China's Torture Prevention Strategies in Relation to the International Standards

Although China has made great effort to build a comprehensive legal framework of torture prevention, there is still huge gap between China's torture prevention strategies and the international standards formulated in international treaties such as the UNCAT. This part examines what strategies are missing from China compared to the international standards.

The Universal Declaration of Human Rights (UDHR) states in its Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” It also says that people have the right to “an effective remedy” if their rights are violated. Because the UDHR is proclaimed as a common standard of achievements for all peoples and all nations, China must follow the corresponding obligations as a member state of the United Nations. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that no person “shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10 states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The Covenant provides that anyone claiming that their rights have been violated shall have an effective legal remedy. The Covenant establishes the Human Rights Committee, which not only monitors the implementation of the rights set out in the treaty by examining the reports of States parties, as well as individual communications/complaints received under the treaty's Optional Protocol, but also provide important interpretive guidance on the obligations and rights set out in the Covenant through its jurisprudence, general comments and concluding. China has signed ICCPR with the intention of joining it in 1998 but has not ratified the Covenant until now.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is the most comprehensive international treaty dealing with torture. China has ratified the UNCAT and tried to integrate it into the domestic laws; it has also ratified several other international human rights treaties containing similar prohibitions of torture

and other ill-treatment such as the Convention on the Rights of the Child (Art.37) and the Convention on the Rights of Persons with Disabilities (Art.15).

However, on the one hand, China made reservations for Article 20 and Article 30(1) of UNCAT, trying to avoid the various monitoring mechanisms. On the other hand, there are still some institutions required by UNCAT that China has not adopted, not to mention the soft laws in relation to the prohibition of torture and deprivation of liberty. For those institutions China has adopted, some are not strictly implemented in practice due to various problems. China has taken torture seriously over the past few years but has not paid due attention to other forms of ill-treatment. The exclusionary rule of illegally obtained evidence has started to include other illegal means except torture, but their exclusion is discretionary rather than mandatory. Empirical data shows that the focus of exclusion of illegally obtained evidence is on coercive confession, which means that the implementation of China's exclusionary rules of illegally obtained evidence is primarily targeted classic torture, ill-treatment in other forms has not gained due attention yet.

First, according to UNCAT and other international treaties, “no exceptional circumstances whatsoever” can justify torture. This includes war or the threat of war, political instability, combating terrorism or any other emergency. Orders from a superior officer are also not a justification for torture. However, providing the prohibition of torture in criminal procedure law rather than constitutional law, China has not made it clear that no exceptional circumstance including an order from a superior may be invoked to justify torture. In another word, China does not emphasize that no derogation is allowed regarding the right not to be subjected to torture and other forms of ill-treatment.

Secondly, there are insufficient legal safeguards for persons deprived of their liberty in China. When persons were deprived of their liberty, the risk of torture or other forms of ill-treatment usually increases. For this reason, thorough protection of legal rights for persons at the initial period of arrest and during police custody, in particular incommunicado detention is extremely important. Under Chinese criminal procedure law, the suspects enjoy the right to have family members, or a third party (such as affiliated institution) informed of their whereabouts following their arrest, but the police can exempt the notification duty in exceptional circumstances.¹¹ Although the legal interpretations has listed some of the exceptional circumstances,¹² it is still at the discretion of police to fulfil the notification obligation or not.

Criminal suspects in China are entitled to retain a defense lawyer since the day they are arrested or taken other compulsory measures.¹³ However, they are not entitled to have the lawyer

¹¹ Art.85, 2018 CPL, when detaining a person, a public security authority must produce a detention warrant. After a person is detained, the detainee shall be immediately transferred to a jail for custody, no later than 24 hours thereafter. The family of a detainee shall be notified within 24 hours after detention, unless such notification is impossible, or such notification may obstruct criminal investigation in a case regarding compromising national security or terrorist activities. However, once such a situation that obstructs criminal investigation disappears, the family of the detainee shall be immediately notified.

¹² Provisions on the Procedures for Handling Criminal Cases by Public Security Organs (An administrative interpretation issued by the Ministry of Public Security on implementing the 2018 CPL) make detailed provision on circumstances where “such notification is possible” (Art.113) and circumstances where “such notification may obstruct criminal investigation” (Art.127).

¹³ Art.34, 2018 CPL.

present during interrogation.¹⁴ As a monitoring mechanism, the audio or video recording of interrogations are considered an alternative to the on-site lawyer during interrogation.

While the privilege against self-incrimination is accepted as part of the Chinese criminal procedure law, suspects continue to be denied the right to remain silent during police interrogation. Chinese legal academics and, to a lesser degree, legal reformers, have struggled for the right to remain silent for years, but the police strongly object to this reform due to concerns that the right to silence will make clear confession impossible, leading to a significant weakening of police effectiveness in criminal investigation and crime prevention. For the same reason, the Chinese criminal procedure law obliges suspects to answer questions truthfully,¹⁵ which contradicts the privilege against self-incrimination.

It is a widely recognized right for a detainee to be brought before a magistrate or judge within a reasonable period of time. Under Chinese CPL, when a suspect is arrested, the police can keep him/her in custody for up to 37 days before the procuratorates examine and approve the formal detention.¹⁶ As many Chinese academics criticized, even three days can not be regarded as “a reasonable period of time”, not to mention seven days as the regular time limit and 37 days as the exceptional time limit.

Chinese suspects enjoy the right to challenge the legality of their detention. According to Article 97 of the 2018 CPL, “A criminal suspect or defendant or his or her legal representative, close relative, or defender shall have the right to apply for modifying a compulsory measure. A people's court, people's procuratorate, or public security authority shall make a decision within three days after receiving such an application; and, if a disapproval decision is made, the applicant shall be informed of the decision and reasons for disapproval.” However, many suspects do not access to the assistance of defense lawyers thus cannot exercise this right effectively.

Chinese suspects do have access to a medical doctor during detention, but not of their own choosing. Compared to western jurisdiction, Chinese detention facilities are especially lack of psychiatric or psychological professionals, which detainees are often in great need. When the detainees have mental health problems or developed mental health issues during the detention, the detention facilities would invite psychiatrists or psychologists to visit the potential patients. However, regular mental health professionals are usually not available in most Chinese detention facilities. Detainees with severe mental illness must be removed from regular detention facilities and transferred to specialized mental hospitals.

¹⁴ Pilot projects on lawyer presence during interrogation have been conducted by some Chinese scholars in the first decade of new millennia, but this institution was not adopted due to resistance from the police.

¹⁵ Art.120, 2018 CPL, ...The criminal suspect shall truthfully answer the questions of the investigators but have the right to refuse to answer questions irrelevant to the case....

¹⁶ Article 91, the 2018 CPL, when a detainee needs to be arrested, a public security authority shall, within three days after detention, file an arrest request with the people's procuratorate for examination and approval. Under special circumstances, the time limit for filing such a request may be extended for one to four days.

For a person strongly suspected of committing crimes from place to place, repeatedly, or in a gang, the time limit for filing an arrest request for examination and approval may be extended to 30 days.

A people's procuratorate shall make a decision to approve or disapprove an arrest within seven days after receiving a written request for approval of arrest from a public security authority.....

Third, most legal institutions China has adopted are not implemented well in practice. Take the exclusionary rules as an example. It is critical for the practitioners to have a clearly defined scope of illegally obtained evidence for the purpose of implementation. However, neither the 2010 exclusionary rule nor the 2012 CPL¹⁷ provided an operational definition. Article 54 of the 2012 CPL merely provides “Confessions by a suspect or a defendant extorted through torture and other illegal means should be excluded”, but it is open to interpretation for what is torture and what are the other illegal means. Judicial interpretations by the SPC and SPP have tried to give clearer guidance on “torture or other illegal means” by referring to the definition of “torture” in the UNCAT.¹⁸ For example, the SPC interpretation provides, “[T]he use of corporal punishment or disguised corporal punishment, or any other methods inflicting severe pain or suffering, physically or mentally, on the defendant so as to force him/her to make confessions against his or her will, shall be deemed “illegal means such as extortion of confessions by torture” as set out in Article 54 of the CPL”. However, without a clear definition and listings, it is hard for practitioners to understand what “disguised corporal punishment” refers to, not to mention the obscure and subjective standards for “other methods inflicting severe pain or suffering” on defendants.

The 2017 guideline spares a couple of articles trying to clarify what are illegally obtained confessions. According to these clarifications, confessions obtained through violence or disguised corporal punishments such as threats should be suppressed if the illegal means cause unbearable suffering and cause suspects or defendants to confess against their own will. These provisions actually set up three criteria for illegally obtained confessions: 1) the use of illegal means, i.e., violent methods and disguised corporal punishment. Violent methods include hitting and the unlawful use of restraints.¹⁹ Disguised corporal punishment should refer to the threat of using violence, or of seriously harming the lawful rights and interests of the person or their families.²⁰ 2) unbearable suffering. Although it is a subjective test and difficult to measure in practice, this is a threshold for the use of violence or disguised corporal punishment and will help practitioners distinguish illegal means from merely improper practice. 3) voluntariness. Both Article 2 and 3 mention “against their own will,” and this seems to adopt voluntariness as a criterion to determine whether a certain confession should be excluded. Article 4 makes it clear that any illegal restriction of physical liberty, especially unlawful confinement, constitutes illegal means deserving suppression. Unlawful restriction of physical liberty constitutes illegal means because the accused may not confess voluntarily when his/her liberty is illegally restricted, and he is under tremendous psychological pressure. Confessions obtained in such cases should also be excluded because that violates relating procedural rules.

The 2017 guideline also adopts a restricted version of the “fruit of the poisonous tree” doctrine to solve the problem of admissibility of multiple confessions. Article 5 states, “Where extortion of confessions by torture is used to make criminal suspects or defendants confess, and the criminal suspect makes subsequent repeat confessions similar to that confession because of the influence of that [prior] use of torture to extract confessions, they shall all be excluded

¹⁷ The primary contents of the 2010 exclusionary rule were incorporated into the CPL when it was amended in 2012.

¹⁸ Art. 95 SPC Judicial Interpretation; Art. 65 SPP Judicial Interpretation.

¹⁹ Art.2, the 2017 Guideline.

²⁰ Art.3, the 2017 Guideline.

together, with the following exceptions: (1) Where, during the investigation period, the investigating organs confirm, or cannot rule out, that evidence was gathered by illegal means, and they therefore change investigators; and when other investigators again conduct interrogation, give information on the procedural rights and on the legal consequences of admitting guilt, and the criminal suspect voluntarily confesses. (2) Where, during the periods of review for arrest, review for prosecution, and trial, prosecutors or adjudicators give information on procedural rights and the legal consequences of admitting guilt when conducting interrogations, and the criminal suspect or defendant voluntarily confesses. It is a great leap to adopt the “fruit of the poisonous tree” doctrine, but there is a lot of concern about the first exception. Many worry that the influence will still exist even after the replacement of interrogators.

III. Strengthening Torture Prevention Strategies in China: Challenges and Opportunities

According to when the intervention occurs and what approach is employed, torture prevention can be divided into two categories: direct prevention and indirect prevention. Direct prevention are measures taken before torture occurs to avoid it happening by reducing the risk factors and eliminating possible causes. Direct prevention measures include training, education, and regular monitoring of places of detention. Indirect prevention are measures taken after torture has occurred to avoid its repetition. Through investigation and documentation of past cases, denunciation, litigation, prosecution, and sanction of the perpetrators, as well as reparation for victims, indirect prevention aims to convince potential torturers that the “costs” of torturing are greater than any possible “benefits”. Direct prevention measures are proactive and indirect prevention measures are reactive.

It can be seen from the aforesaid introduction to Chinese legal framework of torture prevention, most mechanisms are reactive and intervene only after torture or ill-treatment has already occurred. These measures are effective in avoiding the repetition of torturous conduct in criminal proceedings. However, it is more important to create an environment where torture is not likely to occur. Direct preventions such as training, education and regular monitoring needs to be enhanced to eradicate the root causes that lead to torture. This section explores challenges and opportunities China is facing in improving both indirect prevention and direct prevention measures.

A. Improvement of indirect torture prevention measures in Chinese criminal proceedings

China has made torture a crime under criminal law, made evidence obtained by torture and other forms of ill-treatment inadmissible, provided universal jurisdiction over torturers and respected the principle of non-refoulement. However, there are still room for improvement in the detention procedure of China. As torture nearly always takes place in secret, promoting greater transparency of places of detention is a substantial step towards prevention because it removes many of the opportunities for torture to occur. In addition, there are several other procedures that can provide important safeguards and help reduce the risk of ill-treatment of persons deprived of their liberty.

First, China should adopt some measures to build up a transparent detention procedure. Persons deprived of liberty should not be held in unauthorized places of detention, because unauthorized places of detention have no procedures or records and provide no institutional protection to the detainee. After the 2012 CPL amendment, all suspects should be held in detention centers once they are arrested. It is not permissible to hold them in any other locations anymore. Keeping detainees in unauthorized places could constitute a criminal offense, illegal detention. The problem is these provisions cannot be implemented strictly. In practice, there is still concern about the neutrality of detention centers because they are affiliated with the police force in China. According to the international standards, interrogation and custody should be separated, i.e., undertaken by different bodies, because the involvement of different agencies can help protect detainees from the possibility that the conditions of their detention will be used to influence their behavior during interrogation. Some academics proposed separating the detention centers from the police and making detention facility an independent and neutral institution. This reform initiative needs to be realized in future. Police officers often tried to take the detained suspects out of the detention centers by using various pretexts such as taking the suspects to identify the crime scene while the real purpose is to circumvent the requirement of interrogating suspects within the detention center. Torture or other forms of ill-treatment cannot be avoided if interrogation is conducted in a place without monitoring. Maintaining official registers provides a crucial safeguard for detainees. China has adopted register in the 2017 guideline, requiring the detention centers to keep records of the location of detainees once they are detained.²¹ The prosecution can use detention facility registers as a proof that proper procedure has been followed when police officers check out detainees for investigation and no torture or other forms of ill-treatment are involved during the process. When there is an alleged torture, the detainee should have access to a medical examination to ascertain whether his claim is grounded. Again the 2017 guideline grant all detainees to be physically inspected by the detention center with the supervision of prosecutors.²² To keep the detention procedure transparent, a detainee must have access to both a lawyer and his family. There used to be obstacles for a defense lawyer to meet with a suspect in custody in China, but the obstacles have been removed by the 2012 CPL amendment.

Second, the interrogation should be further regulated to prevent torture. Most torture or other forms of ill-treatment occurred during interrogation. The CPL adopted an audio or video recording system to prevent torture and coercive confession during interrogation. However, the implementation of the recording is poor. Although the 2017 guideline has reiterated the

²¹ Art.13, section 1, the 2017 guideline, “Detention centers shall make a registry of persons being taken to interrogation, specifying the unit, personnel, matter, and start and stop times, as well as the criminal suspects’ name and other such information.”

²² Art.13, section 2, the 2017 guideline, “Detention centers receiving criminal suspects into custody shall conduct physical inspections. When making inspections, the people’s procuratorate’s procurators who are based in the detention centers may be present. Where the inspection discover that the criminal suspect has injuries or physical abnormalities, the detention centers shall take photographs or recordings, and have the personnel bringing them for detainment, and the criminal suspect, explain the reasons separately, have this clearly written in the physical inspection record and have the personnel delivering detainees, the person receiving them into custody, and the criminal suspects, sign and verify.”

requirement for recording,²³ the selective recording or non-recording is still prevalent in practice. In addition to supervision over interrogation, there should be some detailed and specific standards for the conduct of police interviews. The standards should address issues such as the permissible length of the interview, rest periods, the location and identity of persons to be present during the interview and interviewing a person under the influence of drugs. The interrogation standards can encourage police officials to consider what practices are appropriate and effective for their work.

Article 11 of the UNCAT provides, “States parties are required to keep under systematic review interrogation rules, instructions, methods and practices, as well as custody procedures.” China should reform its interrogation rules and detention procedures by reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Third, China’s indirect prevention measures focus more on the punishment of torturers than on the Reparation for victims. The UNCAT provides that victims of torture have the right to complain and to have their case investigated promptly and impartially (article 13), as well as to receive redress and adequate compensation (article 14). This also includes the right to rehabilitation that is as full as possible. China should take measures to provide full and effective reparation with victims of torture and ill-treatment, including financial compensation, rehabilitation and satisfaction such as a public apology, an official declaration to restore dignity of victim, or a commemoration and tribute to victims.

Last but not least, as mentioned in previous section, although China’s anti-torture campaign has started to include a broader scope of ill-treatment except the classic form of torture. The practice is still struggling to prevent torture instead of other forms of ill-treatment. The scope of other forms of ill-treatment is not clear enough for implementation. According to the Committee against Torture communication, “Any act that falls short of the definition of torture because it lacks one or more of the criteria may still be covered under the prohibition outlined in article 16 of the Convention against Torture.”²⁴ Chinese legislature should clarify the clear scope or even make a detailed list of such ill-treatment in the future.

B. Adopting direct torture prevention measures in China.

Direct prevention measures include training, education and regular visits to the places of detention. These measures are taken to prevent torture from occurring by reducing risk of torture or eradicating the root cause of torture and other ill-treatment. They are proactive measures and thus more effective for the purpose of torture prevention. However, China has not paid due attention to develop direct prevention measures. In addition to improve and strictly implement the indirect prevention measures, China should consider adopting direct prevention measures step by step soon.

²³ Art. 11, the 2017 guideline, “Where an audiovisual recording is made of the interrogation process, it shall be without interruptions and with its integrity preserved, it must not be selectively recorded and must not be spliced or edited.”

²⁴ See *Kostadin Nikolov Keremedchiv v. Bulgaria*, Committee against Torture, Communication 257/2004, views adopted on 11 November 2008.

First, Chinese government should provide professional training programs for public officials. According to the UNCAT, States parties have a duty to ensure that information on the prohibition and prevention of torture is included in training programs for law enforcement and other public officials. All personnel involved in the arrest, interrogation and detention of persons should receive training on human rights and, in particular, on the absolute prohibition of torture. Training public officials is a critical strategy to help prevent torture and ill-treatment of persons deprived of their liberty.

Secondly, China should enhance the public awareness of anti-torture campaign. Educating the general public about the prohibition and prevention of torture is also an important preventive action. Social and cultural environment is an equally important factor as political environment to prevent torture. Where there is a culture of violence, or high public support to “get tough” on crime, the risk of torture occurring is also increased. Therefore, education of the public can help create a social context with less tolerance of torture and help prevent torture in the long run.

Third, China should adopt the regular visits mechanism to places of detention. The Optional Protocol to the UNCAT, which was adopted by the United Nations General Assembly in December 2002 and came into force in June 2006, establishes a system of regular visits to all places of detention. It means independent bodies can enter places of detention at any time to analyze the overall functioning of places of detention and provide constructive recommendations aimed at improving the treatment and conditions of detained persons. Although China has not ratified this optional protocol, it should adopt the mechanism, because compared to internal administrative control mechanisms, regular visit to places of detention is a type of external control mechanism, and it helps prevent a culture of secrecy from developing and provides an important safeguard for persons deprived of their liberty. Some Chinese academics have conducted a pilot project on adopting the regular and unannounced visits to all places of detention by independent monitoring bodies in 2006. The project has produced some positive outcome.²⁵ Unfortunately, it failed to make into the legislation. To strengthen the torture prevention strategies, China should adopt this mechanism in the long run.

²⁵ Chen Weidong(陈卫东) (2009) , Jiya changsuo xunshi zhidu yanjiu baogao (羁押场所巡视制度研究报告) [Research Report on Regular Visits to Places of Detention], Chinese Journal of Law, Vol.6, pp.3-36.