

CHINA

State Secrets: A Pretext for Repression

Dozens of people, including prisoners of conscience, have been detained in China on charges related to "state secrets" since a law to "protect state secrets" was introduced in 1988. Some have by now been released, but others are still jailed, including journalists.

Amnesty International is concerned that the legislation on state secrets is being used to prevent public debate of issues which have little to do with national security and to jail people for the non-violent and legitimate exercise of their right to freedom of expression and association. It is also concerned that those charged with state secrets offences face unfair judicial procedures.

Among the victims are journalists like Qi Lin, who was jailed for one year under this legislation and found himself unemployed when he was released on parole. Qi Lin, formerly assistant foreign editor with the official *Beijing Daily* (*Beijing Ribao*) and member of the Chinese Communist Party (CCP), was arrested in Beijing in July 1991 and charged with "leaking state secrets". He was sentenced in April 1992, after a series of secret hearings, to four years' imprisonment. He was accused of having provided "secret" information to a reporter for a Taiwan newspaper, and of drafting articles about it "for publication abroad". This information concerned disciplinary measures taken by the CCP authorities against Hu Jiwei, former chief editor of the official newspaper *People's Daily*, in connection with his activities during the 1989 pro-democracy movement. Hu Jiwei was also a member of the CCP and of the Standing Committee of the National People's Congress (China's parliament). The information about the disciplinary measures against him, which circulated widely among Chinese intellectuals at the time, could hardly be construed as being a "state secret". Qi Lin, who is diabetic, became seriously ill in prison. Following appeals from his family and international human rights groups, he was released "on parole for medical treatment" in June 1992. Meanwhile, he had been expelled from the CCP and dismissed from his job. Upon his release, he was unemployed and subjected to restrictions.

Legislation - a broad definition of state secrets

The meaning given to the term "state secrets" in China is very broad. It encompasses matters which would be the subject of public debates in other countries and goes far beyond what is needed to protect national security. Among the issues which are classified as state secrets, for example, are the national statistics on the number of people sentenced to death and executed every year.

The main legislation concerning state secrets is the Law of the PRC on the Protection of State Secrets, which was introduced in 1988. The law gives a general definition of state secrets as being "matters that affect the security and interests of the state". These include conventional matters of national security, such as national defence and diplomatic affairs, but also other issues, including "secrets concerning important policy decisions on state affairs", "national economy and social development secrets" and "other state secrets that the state departments on protecting state secrets have determined should be safeguarded".

This already broad definition is made even broader by another provision in the law, according to which "secrets of political parties" will also be considered to be "state secrets" if they are deemed to "affect the security and interests of the state". In China, where the affairs of the Chinese Communist Party (CCP) are intricately linked to that of the state, this effectively bans public reporting or debate of any political issue that the CCP authorities decide should not be disclosed.

The scope of "state secrets" was widened even further in 1990 when the Rules for Implementing the Law of the PRC on the Protection of State Secrets were adopted. The Rules stipulate that if the disclosure of information on certain matters resulted in a number of "consequences", this information should be classified as a state secret. Eight consequences are defined, including "endangering the consolidation and defence of the state political power", and "affecting state unification, national unity and social stability". This refers potentially to information about any political or social issue.

Under the Constitution, all citizens have the "duty" to safeguard state secrets. The 1988 state secrets law makes people legally responsible for any disclosure of state secrets, including "in private conversation", and whether the disclosure of the secret information has been done "deliberately or inadvertently". The law stipulates that punishment for disclosure of state secrets in serious cases shall be pursued under Article 186 of the Criminal Law, which provides for a maximum of seven years' imprisonment. However, under supplementary regulations to the state secrets law, which were also adopted in 1988, the punishment can be anything up to the death penalty for those who "steal, secretly gather, buy or illegally provide state secrets" to "organizations, groups or individuals outside the territory". In recent years, this clause has been used against a number of people accused of "leaking state secrets", who were sentenced to terms of 10 years' imprisonment or more.

Journalists and others accused of leaking 'state secrets'

In recent years, several Chinese journalists and people who worked for foreign newspapers or correspondents, have also been jailed on charges of "leaking state secrets" for the peaceful exercise of fundamental human rights.

Among them are **Xi Yang**, a reporter for the Hong Kong newspaper *Ming Pao*, who was jailed for 12 years in 1994 for obtaining and publishing information deemed to constitute "state secrets", and **Bai Weiji** and his wife **Zhao Lei**, who were jailed for 10 years and six years respectively for "illegally providing state secrets" to a foreign press correspondent in Beijing.

Bai Weiji and his wife **Zhao Lei** were tried in secret by the Beijing Intermediate People's Court and sentenced on 20 May 1993 to 10 years and six years in prison respectively for "illegally providing state secrets to a foreigner". Their sentences were upheld by a higher court in July 1993. Two other people detained in connection with the case were also sentenced to shorter terms of imprisonment. Bai Weiji was detained at his home in Beijing on 5 May 1992. A former staff member at the Foreign Ministry's Information Department, he had been dismissed from his job for taking part in demonstrations during the 1989 pro-democracy movement. He was accused of passing classified documents to a former classmate, Lena Sun, who was then the Beijing correspondent for the *Washington Post*. Police raided Lena Sun's office in Beijing on 17 May 1992 and confiscated what they said were secret documents. Zhao Lei was taken into police custody on 21 April 1993, nearly one year after her husband. She was accused of having translated some of the incriminating documents passed on to Lena Sun by her husband.

According to Lena Sun, the documents were economic reports, foreign policy analyses and speeches by Chinese leaders, none of which could be considered "state secrets". They were part of "internal" publications which have a restricted circulation in China but which are accessible to many CCP members and reach a much wider audience in China. Bai Weiji and Zhao Lei were tried in secret and the authorities have never provided any evidence that the information at issue in the case concerned a legitimate matter of national security. Amnesty International considers Bai Weiji and Zhao Lei to be prisoners of conscience, jailed for the peaceful exercise of their right to freedom of opinion and association.

Xi Yang, a PRC national and reporter for the Hong Kong Newspaper *Ming Pao*, was detained in Beijing on 27 September 1993 and charged ten days later with "stealing and prying into state secrets". He was sentenced to 12 years' imprisonment in March 1994

after a secret trial. Xi Yang was accused of having obtained, in June and July 1993, "financial secrets" and other confidential information concerning the People's Bank of China from a bank employee, who was also sentenced on the same charge, and of passing this on to "a Hong Kong publication" for publication, "causing serious damages for the nation's economy".

Despite several reports on the case in the official Chinese press, the nature or extent of the damages made to the economy were never described, nor were the incriminating articles named. Some official press reports indicated that the "secret" information leaked by Xi Yang concerned the bank's plans for modifications on deposit and loan interest rates and its policy on international gold transactions. The *Ming Pao* did publish a series of articles on China's economic affairs in July 1993, one of which referred to these matters and described a plan by Vice-Premier Zhu Rongji for restructuring the People's Bank of China. According to sources in Hong Kong, most of this information had already been publicized or debated in Hong Kong.

Amnesty International is concerned about several aspects of Xi Yang's case, notably that the judicial proceedings against Xi Yang, including prolonged incommunicado detention and trial *in camera*, were unfair; that the detailed information available about the case indicates that his prosecution was politically motivated to make this an exemplary case to other journalists; and that the authorities have not demonstrated that the information he allegedly leaked posed a threat to a legitimate national security interest. Amnesty International therefore considers that Xi Yang's prosecution represents an arbitrary restriction on freedom of expression and that he is a prisoner of conscience.

Another case is that of **Gao Yu**, a well known journalist in China, who was detained in Beijing on 2 October 1993, shortly after Xi Yang's detention. Gao Yu was charged ten days later with "leaking state secrets" and sentenced on 10 November 1994 to six years' imprisonment after a series of grossly unfair judicial proceedings (see below, Unfair Trials). According to the court verdict against her, the alleged "secret" information which she was accused of leaking referred to structural reforms within state bodies and to a speech made by a Chinese leader. Gao Yu was accused of having obtained this information from two classified documents shown to her by a friend and of writing articles about it for an unspecified Hong Kong magazine during the first three months of 1993. Before her arrest, she was working as a freelance journalist and had written articles for Hong Kong publications.

Gao Yu

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In her appeal against her sentence, Gao Yu stated that the first of the incriminated documents concerned structural adjustments (such as a reform of the wage system) within state institutions, which were public knowledge in China and had already been publicized in Hong Kong by the pro-communist newspaper *Wen Wei Po*. The second document was a speech by CCP leader Jiang Zimin which referred to three "guiding ideas" by Deng Xiaoping which had become an established part of China's foreign policy over the years.

Gao Yu's appeal was rejected and the original verdict and sentence against her were upheld in December 1994. The court verdict against her provides no evidence that the information she was accused of leaking concerned matters of national security. Amnesty International believes that Gao Yu is a prisoner of conscience jailed solely for the peaceful exercise of her right to freedom of expression.

Many other types of people have been detained under the state secrets legislation. In 1992, 11 seamen were arbitrarily detained in Tianjin, three of whom were later charged with "leaking state secrets". The charge was related to a successful wages and work dispute that the seamen had led against a foreign employer while on a cargo vessel abroad. The reason for the charge was apparently that the seamen had revealed the amount of their wages to a "foreign organization", the International Transport Workers Federation, which had helped them during the wage dispute. A court in Tianjin acquitted them of the charge in January 1995, but the local procuracy apparently

appealed against the acquittal, and a decision on the appeal was still pending in mid-1995.

Bao Tong is the highest ranking CCP official to have been sentenced on charges of "leaking state secrets" since 1989. Before his arrest Bao Tong was a close assistant of the former CCP Secretary General, Zhao Ziyang. The latter was forced to resign shortly before the imposition of martial law in Beijing on 20 May 1989 and was later placed under virtual house arrest. Bao Tong was arrested shortly after, on 28 May 1989. He was then a member of the CCP Central Committee (CCPCC) and Director of the CCPCC Research Centre for Reform of the Political Structure. Within the centre, he had reportedly initiated a draft scheme for political reform, which was opposed by anti-reform elements in the CCP leadership.

The sentence passed on Bao Tong, more than three years after his arrest, appears to have been an act of political retribution rather than proper implementation of the state secrets law. Indeed, he was charged only in 1992, after spending one year in detention followed by 18 months under house arrest, and the decision to charge and sentence him, rather than end his detention, is reported to have been taken by the CCP leadership.

Following his arrest in May 1989, Bao Tong was held for a year in solitary confinement at Qincheng prison, then released into house arrest in May 1990. On 21 January 1992 he was rearrested at his home and charged with "counter-revolutionary incitement" and "leaking state secrets". He was sentenced on 21 July 1992 to a seven-year prison term after a closed trial. According to the court verdict, the charge that he "leaked state secrets" was based solely on a private conversation he had with another senior CCP official on the evening of 17 May 1989. The verdict gives no indication of the nature of the "important state secret situation" which Bao Tong allegedly leaked to this colleague, but information from other sources indicates this was related to the impending declaration of martial law and the resignation of Zhao Ziyang as CCP Secretary General, both of which were made public on 20 May 1989. The other charge against Bao Tong, "counter-revolutionary propaganda and incitement", was based on the accusation that he indicated agreement to having the transcript of part of a private conversation with a senior official on 20 May 1989 made available to others.

Bao Tong, now aged 62, has been in poor health since his arrest in 1989 and has undergone five operations for polyps in his colon. Repeated petitions by his family for his release on bail for medical treatment have been denied. Amnesty International considers Bao Tong to be a prisoner of conscience. He is due for release in May 1996.

The case of **Harry Wu**, who was expelled from China shortly after being sentenced in 1995, received international attention. Harry Wu, a Chinese human rights activist who

is a citizen of the USA, was arrested in June 1995 when trying to enter China and held incommunicado for over three weeks accused of state secrets offences. On 24 August 1995, the Wuhan city Intermediate People's Court sentenced him to 15 years' imprisonment for "stealing state secrets" and "posing as a state functionary" on a previous visit to China, during which he had gathered information about human rights issues. The court also sentenced him to expulsion, which was carried out a few hours later.

Unfair trials

Under Chinese law, state secrets cases are tried *in camera* (Article 111, Criminal Procedure Law). This has been put into practice in all the "state secrets" trials about which Amnesty International has received information. This practice, in itself, contravenes international standards for fair trial. In addition, the verdict in such cases has frequently been passed in secret, in contravention of China's own law which provides that the verdict is to be announced in public "in all cases" (Article 121, Criminal Procedure Law).

The case of Gao Yu is one example (see above for details of her case). Her sentence was passed at a secret court hearing in November 1994: neither her husband nor her lawyers were notified in advance of the hearing, as required by Chinese law. They only heard about it after it was over, and were not given details about it. Gao Yu wrote the following words shortly after she was sentenced:

"Our government never admits that it holds political prisoners... Today you shame our country once again by sentencing me to jail for a six-year fixed-term of imprisonment plus depriving me of political rights for one subsequent year...

This sentence can devastate my health but not my spirit... Before I step through the prison gates with my ruined body, I would like to say that I believe that history will prove my innocence and it will not be necessary to wait one hundred years for its judgement..."¹

All the evidence suggests that Gao Yu had been condemned long before her trial. Her case went through a series of grossly unfair judicial proceedings. Prior to the

¹ Extract from Gao Yu's statement in an appeal against her sentence, 23 December 1994, translated from China -- "Leaking state secrets": the case of Gao Yu, Human Rights Watch/Human Rights in China, Vol.7, No.8, June 1995.

announcement of the verdict, Gao Yu was brought to trial three times in 1994. Each time the court found that the evidence against her "still needed to be verified" -- which means that the prosecution evidence was insufficient to convict her. Instead of acquitting her, however, the court on three occasions returned her case to the Beijing procuracy "for supplementary investigation and verification". Throughout these proceedings, the court ignored the information and arguments presented by the defence, which challenged the validity of the evidence against Gao Yu.²

Gao Yu's case is not unusual. The procedure used by the court in her case - sending the case back to the procuracy "for supplementary investigation" until the prosecution evidence against her was "complete" - has been invoked in other political cases, including those of people charged with "state secrets" offences, such as Xi Yang, whose case is described above. This procedure, which is provided for under Article 123 of China's Criminal Procedure Law, is often used by the courts to prejudice the rights of the defence.

This is only one aspect of the unfairness of political trials in China. In political cases, the outcome of trials is invariably determined by the political authorities, and the verdict is usually decided before the trial, according to a practice which is widely known in China as "verdict first, trial second"³.

Even when there is no interference by political authorities, trials are often a mere formality. In the overwhelming majority of cases known to Amnesty International, court verdicts are almost verbatim reproductions of the indictments presented by prosecutors and take virtually no account of the defence.

In all cases, the right to defence is severely limited and the procedures for trial fall far short of international standards for fair trial. There is no presumption of innocence in Chinese law and the burden of proof is on the defence. Defendants who are brought to trial have usually spent months detained incommunicado, subjected to pressure by the investigating authorities and without access to a lawyer. Detainees can seek the assistance of a lawyer only once a court has decided to try the case -- usually months after arrest.

² For further details, see *Human Rights Watch/Human Rights in China*, Vol. 7, No. 8, 1995, and Amnesty International's report, *China: Journalist Gao Yu jailed for six years after a secret trial* (ASA 17/36/94), November 1994.

³ See Amnesty International's report, *China: The Massacre of June 1989 and its Aftermath*, AI INDEX: ASA 17/09/90, April 1990, pp.50-53.

In practice, the right of lawyers to meet detainees and the power to challenge the findings of the prosecution are themselves limited. Defence lawyers have access only to a part of the file concerning a defendant. They usually cannot confront prosecution witnesses and are effectively barred from challenging the validity of the charges. They are rarely allowed to call defence witnesses to testify in court, although witnesses can in theory be called.

Moreover, not all defendants have the assistance of a lawyer during their trial; they may not know of their right to have one or may believe it is futile. For example, Xi Yang (see above, page 3-4) had no defence lawyer at his trial. Chinese official sources claimed that he had declined the assistance of a lawyer, but since no independent source had access to Xi Yang during the months preceding his trial, this claim has not been substantiated.

Conclusions and recommendations

Amnesty International believes that the legislation on state secrets is inherently arbitrary and that it is being used to restrict freedom of expression and to jail people for the non-violent exercise of fundamental human rights. It is also concerned that those prosecuted and sentenced on state secrets charges are denied fair trial process.

Amnesty International calls on the Chinese authorities to:

- review and amend all legislation related to state secrets, in line with international standards, to ensure that its provisions can no longer be used to arbitrarily detain or imprison people for the peaceful exercise of their fundamental human rights, and that it conforms to international standards for fair trial;
- release immediately and unconditionally all prisoners of conscience arbitrarily detained or imprisoned on state secrets charges, in accordance with international standards;
- review the cases of all political prisoners tried on state secret charges, and grant them a new fair and open trial in accordance with international standards, or release them.

