

CHINA

SUBMISSION TO THE NPC
STANDING COMMITTEE'S
LEGISLATIVE AFFAIRS
COMMISSION ON THE
CRIMINAL LAW
AMENDMENTS (9)
(SECOND DRAFT)

AMNESTY
INTERNATIONAL



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**AMNESTY
INTERNATIONAL**



Amnesty International submits the following comments on the People's Republic of China (PRC) Criminal Law Amendments (9) (Second Draft) (hereafter Draft Amendments), issued by the Standing Committee of the National People's Congress (NPC) on 6 July 2015 after revisions based on feedback received after the first draft was made open for public consultation which ended on 3 December 2014.¹

As part of its work, Amnesty International promotes the adoption of legal instruments that protect internationally recognized human rights. This brief submission contains Amnesty International's continued concerns about selected provisions of the Draft Amendments, which appear in their present form to be incompatible with China's international human rights obligations, whether embodied in treaties and other instruments, or under customary international law.² Amnesty International hopes that these comments will ultimately contribute to the enhancement of the protection of human rights in China.

While the Draft Amendments propose a number of positive steps for China's Criminal Law, such as reducing the number of crimes punishable by the death penalty, our organization has serious concerns about other proposed amendments, such as the addition to Articles 286(a) and 287, and of Articles 290(3), 290(4) and 291(2), which would further restrict freedom of expression in general, as well as Article 309(3 and 4) which would affect lawyers' right to exercise professional functions and freedom of expression.

Some Draft Amendments do little to bring China closer to compliance with international human rights law and standards, including those considered customary international law, binding on all states whether or not they have ratified relevant treaties, and may, if adopted without changes, even bring about an overall set-back to the protection of human rights within the criminal justice process in China. In some areas, serious concerns with vague and overbroad wording is exacerbated by introducing new crimes related to concepts that are proven open to misuse.

As a general observation, the effectiveness of criminal laws in protecting rights is in any case dependent on a broader institutional framework within which the laws operate. One key component of this is an independent and impartial judiciary.³ It ensures that the interests of justice and the requirements of fairness and the rule of law are served in a broad sense,

¹ *People's Republic of China Criminal Law Amendments (9) (Second Draft)*, 《(稿草案二次审议) (九) 中华人民共和国刑法修正案》, http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-07/06/content_1941116.htm, accessed 1 August 2015.

² Amnesty International, *China - List of issues: Submission to the UN Committee against Torture* (Index: ASA 17/005/215), February 2015, <https://www.amnesty.org/en/documents/asa17/0005/2015/en/>, accessed 1 August 2015.

³ See Article 10 UDHR and Article 14 ICCPR. See also the Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>, accessed 3 August 2015

including preventing abuse of power by executive authorities at all levels and other political influences over law enforcement and justice. The UN Human Rights Committee, the body mandated with interpreting the International Covenant on Civil and Political Rights (ICCPR), has stated that the requirement of independence, among other things, refers to the actual independence of the judiciary from the executive.⁴

An independent and impartial judiciary, in turn, relies on adequate checks and balances within the political system more broadly, as well as independence of individual judges within their own courts, a strong code of professional ethics that sets standards of professional conduct for all members of the judicial profession, and adequate financial and human resources within the judicial system. Unfortunately, serious obstacles continue to undermine the conditions for the independence and impartiality of the judiciary in China.⁵

Moreover, the effectiveness of any changes to the statute depends on how the law is subsequently applied and implemented. Vague and overbroad laws violate the requirement of legality under international human rights law, and their impact may go beyond what is necessary and proportionate to achieve the legitimate purpose. Any overbroad wording in the Draft Amendments raises the risk that it could be used to punish those who have exercised their legitimate rights to freedom of expression, association, peaceful assembly and other human rights, even when their acts do not indicate or constitute behavior internationally recognized as criminal.

The issues and provisions cited below are illustrative and not exhaustive examples of problems with the Draft Amendments, and do not purport to constitute a comprehensive human rights analysis of the Draft Amendments. In this submission, Amnesty International in particular submits concerns and recommendations with regard to amendments to provisions on the death penalty; public security and the crimes of “terrorism” and “extremism”; freedom of expression, association and peaceful assembly; and lawyers' professional functions.

Amnesty International welcomes this opportunity to make submissions on the PRC Criminal Law Amendment (9) (Second Draft), and would appreciate an opportunity to present further information, in writing or in person, to the Legislative Affairs Commission of the Standing Committee.

1. PROPOSED AMENDMENTS WITH REGARD TO THE DEATH PENALTY

Amnesty International notes the stated intention in the Explanation to the People's Republic of China Criminal Law Amendment (9) (Draft) (hereafter Explanation), which was released to the public to explain many of the proposed Amendments to the Criminal Law for the first draft

⁴ See Human Rights Committee, General Comment no. 32 on Article 14 (2007), para19, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11, accessed 3 August 2015.

⁵ Amnesty International, *China's 2013 Criminal Procedure Law: In line with international standards?* (Index: ASA 17/021/2013), July 2013, <http://www.amnesty.org/en/library/info/ASA17/021/2013/en>, accessed 3 August 2015.

reading, to “gradually reducing the number of crimes punishable by the death penalty”⁶, which coincides with our continued call on the government of China to limit the use of the death penalty, with the goal of declaring a moratorium on executions, as a first step towards abolition, in line with UN General Assembly resolution 67/176 of 20 December 2012⁷, and subsequent UN General Assembly Resolution 69/186 of 18 December 2014. The organization also positively notes findings by the Chinese authorities which show that, since the last amendment to the list of capital offences in 2011, the abolition of the death penalty for the 13 crimes listed at the time “has not had a negative impact on public order” and that society has “expressed positive opinion in favour of reducing the number of crimes for which the death penalty is used”.⁸

These findings are consistent with conclusions drawn by research carried out in countries in which the death penalty has been abolished, which have consistently shown that support for the retention of the death penalty progressively decreases after its abolition.⁹

However, Amnesty International is concerned that these proposed amendments would only have a limited effect in reducing the use of the death penalty in practice, as also acknowledged in the Explanation, because the death penalty for the nine crimes for which its abolition is proposed is “seldom used”.

While constituting a positive step in the journey towards abolition of the death penalty, the proposed amendments fail to bring the People’s Republic of China Criminal Law in line with requirements of the ICCPR, which China signed in 1998 and has repeatedly stated the intention to ratify.

Article 6(2) of the ICCPR allows for the imposition of the death penalty only for the “most serious crimes”. International bodies have interpreted this concept today as being limited to crimes involving “intentional killings.”¹⁰ The UN Commission on Human Rights had already in 2005 urged States that still maintain the death penalty to ensure that non-violent acts such as financial crimes should not carry death sentences.¹¹ The UN Human Rights Committee –

⁶ *Explanation to the People’s Republic of China Criminal Law Amendments (9) (Draft)*, 《关于〈草案〉〈九（中华人民共和国刑法修正案）的说明〉》，part (1); http://www.npc.gov.cn/COBRS_LFYJNEW/user/UserIndex.jsp?ID=6374365, accessed 1 December 2014.

⁷ Amnesty International, *China: Despite legal reforms human rights violations widespread: Amnesty International Submission to the UN Universal Periodic Review* (Index: ASA 17/013/2013), March 2013, <http://www.amnesty.org/en/library/info/ASA17/013/2013/en>, accessed 3 August 2015.

⁸ *Explanation*.

⁹ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, Clarendon Press, Fifth edition, 2015, pp464-467.

¹⁰ See: Report, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document A/67/275 of 9 August 2012, paras35 and 67.

¹¹ UN Commission on Human Rights, Resolution 2005/59: The Question of the Death Penalty, 20 April 2005, UN document E/CN.4/RES/2005/59, OP 7(f).

the body tasked with the interpretation of the ICCPR – has on various occasions expressed concerns about large numbers of offences for which the death penalty can be imposed, including vague offences relating to internal and external security and drug-related crimes, and recommended remedying violations of Article 6(2) of the ICCPR by removing those offences which do not constitute most serious crimes within the meaning of the ICCPR.¹² The Human Rights Committee has further stated that, among others, economic offences, including embezzlement by officials; political offences; robbery; and abduction not resulting in death, cannot be characterized as the "most serious crimes" under Article 6(2) of the ICCPR.¹³

Even after the adoption of the proposed amendments, several of the remaining 46 capital offences, which include economic crimes such as embezzlement, corruption and bribery, as well as other non-lethal crimes such as rape, trafficking, sabotaging communications or communications equipment, and drug-trafficking, do not meet this threshold.

Amnesty International further positively notes that in the "Law Committee of the Standing Committee of the National People's Congress's Report Back on the Situation regarding Revisions Made to the People's Republic of China (PRC) Criminal Law Amendments (9)" (hereafter, "Report Back"), released after the second draft of the present Criminal Law Amendments (9), it is recorded that although some Committee members, and others voiced concerns regarding the elimination of the use of capital punishment for the nine crimes presently proposed, there were also some who advocated for further reductions, such as for drug trafficking crimes.¹⁴

Pending full abolition, Amnesty International therefore urges the Chinese authorities to extend proposed reforms to eliminate the death penalty for all crimes other than those involving intentional killings, as a first step.

Amnesty International further believes that, pending full abolition of the death penalty, as part of the ongoing reforms the Chinese authorities should consider as a matter of urgency the establishment of an official moratorium on executions with a view to abolishing the death penalty, as provided by four UN General Assembly resolutions, including most recently resolution 69/186 of 18 December 2014; to make available information on the use of the death penalty in China, including by publishing full national statistics on death sentences imposed and the number of executions carried out each year; the establishment of procedures allowing all persons under sentence of death to apply for clemency or pardon of their offence,

¹² See for instance: Concluding observations: Kuwait, Human Rights Committee, 103rd session, 17 October–4 November 2011, UN document A/67/40 (Vol. I), pp27-33, para14.

¹³ Amnesty International, *International Standards on the Death Penalty* (Index: ACT 50/001/2006), January 2006, pp9-10, <http://www.amnesty.org/en/library/info/ACT50/001/2006>, accessed 1 December 2014.

¹⁴ Law Committee of the Standing Committee of the National People's Congress's Report Back on the Situation regarding Revisions Made to the People's Republic of China (PRC) Criminal Law Amendments (9) 报修改情况的汇《(草案)》(九(中华人民共和国刑法修正案《全国人民代表大会法律委员会关于, http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-07/06/content_1941116.htm, accessed 1 August 2015.

in line with Article 6(4) of the ICCPR and other international legal standards; and to clarify in greater detail in law and make public the procedures through which the Supreme People's Court (SPC) should conduct its final review of death penalty sentences. These procedures must be in line with international standards that require the most stringent procedural safeguards in such cases, including the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, first adopted by the UN Economic and Social Council in its resolution 1984/50;¹⁵ and including, among other aspects, that such final reviews would allow the defendant and his or her defence lawyer to make their case to the SPC in person.

2. PROPOSED AMENDMENTS CONCERNING PUBLIC SECURITY AND THE CRIMES OF "TERRORISM" AND "EXTREMISM"

Amnesty International acknowledges that every government has a right and duty to take measures to ensure the security of the general population, including the responsibility to protect it from violent attacks by armed groups. However, Amnesty International remains concerned about imprecise definitions of national security offences, including "terrorism" and "extremism" in the Criminal Law and elsewhere, and equally important the proven misuse of these charges to restrict unlawfully the right to liberty and/or freedom of expression, peaceful assembly, association, religion and other human rights. The Draft Amendments do not address these deficiencies, but instead add related or even inchoate "anti-terrorism" crimes which therefore suffer from the same defect.

The UN Security Council, of which China is a permanent member, has repeatedly stated that: "States must ensure that any measure taken to combat terrorism comply with all their legal obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law."¹⁶ Also the UN Global Counter-Terrorism Strategy adopted unanimously by the General Assembly in 2006 recognized that measures to ensure respect for human rights for all and the rule of law are "the fundamental basis of the fight against terrorism".¹⁷ The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has recommended that: "Compliance with all human rights while countering terrorism represents a best practice because not only is this a legal obligation of States, but it is also an indispensable part of a successful medium- and long-term strategy to combat terrorism."¹⁸

¹⁵ UN Economic and Social Council resolution 1984/50, adopted on 25 May 1984, and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984.

¹⁶ See Declaration attached to Security Council Resolution 1456 of 2003 on combating terrorism, UN document S/RES/1456 (2003), Annex, para6.

¹⁷ UN General Assembly, *United Nations Global Counter Terrorism Strategy*, resolution 60/288, UN document A/60/288, 8 September 2006, Annex, part IV.

¹⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: *Ten areas of best practice in countering terrorism*, UN document A/HRC/16/51, 22 December 2010, para12, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf>, accessed 3 August.

It is Amnesty International's experience that some governments have used concepts such as "public security", "terrorism", and "extremism" as a misplaced justification to repress political opposition, human rights defenders and critical media reporting. In existing criminal law and practice in China, "national security" and maintaining the "social order" has been prioritized over individual human rights, to an extent that is not in compliance with international law and standards. This approach should not be perpetuated and exacerbated through the Draft Amendments.

Internationally recognized human rights standards, as reflected, for instance, in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information ('Johannesburg Principles')¹⁹ allow governments to restrict the exercise of some rights, including freedom of expression, on the ground of national security in order to "protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force", whether from an internal or external force.²⁰ However, the same Principles emphasize that such restrictions are not legitimate if "their genuine purpose or demonstrable affect is to protect interests unrelated to national security", including to protect a government from embarrassment or exposure of wrong-doing, or to entrench a particular ideology.²¹

The UN Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has repeatedly emphasized that definitions of terrorism must comply with the requirements of legality, that is, accessibility, precision, applicability to counter-terrorism alone, non-discrimination and non-retroactivity.²²

Analogously, the UN Working Group on Arbitrary Detention has expressed particular concern about "extremely vague and broad definitions of terrorism in national legislation". It stated that the requirement for precise definition of crimes is key to the whole modern penal system. Absence of such definition or failure to specify precisely what acts or omissions someone is charged with violates the principle of lawfulness "with the attendant risk to the legitimate exercise of fundamental freedoms".²³

2015.

¹⁹ *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand in Johannesburg, <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>, accessed 2 December 2014.

²⁰ *Ibid.*, Principle 2(a).

²¹ *Ibid.*, Principle 2(b).

²² UN document A/61/267, 16 August 2006, para. 44. For more detailed analysis see UN document E/CN.4/2006/98, 28 December 2005, paras26-50.

²³ Working Group on Arbitrary Detention, Report to the Commission on Human Rights, UN document E/CN.4/2004/3, 15 December 2003, paras64-65.

Provisions of the draft amendments, including additional provisions in the second draft, with regard to “maintaining public security” and “punishing the crimes of terrorism and extremism” use terms that are imprecise and overbroad in scope, violating the “legality” requirement for criminal offences, and/or unlawfully restricting a range of rights by failing to adhere to the requirements of demonstrable proportionality. The vaguely worded bases of “terrorism” and “extremism” are open to subjective interpretation, which is a cause for concern because it increases the possibility of abusive, arbitrary or discriminatory prosecution and conviction for the offences listed in the Draft Amendments and elsewhere. Amnesty International is concerned that the proposed terminology would breach China’s obligations under international human rights law by failing to satisfy the necessary requirements of clarity, accessibility and foreseeability as prescribed by the principle of legality, a core general principle of law, enshrined, *inter alia*, in Article 15 of the ICCPR and Article 11 of the UDHR. With regard to criminalization, the principle of legality requires that the law must classify and describe offences in precise and unambiguous language that narrowly defines the punishable behaviour. This means that all criminal laws, including counter-terrorism laws, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly, and must not confer unfettered discretion on authorities, but rather provide sufficient guidance to those charged with their application to enable them to ascertain the sort of conduct that falls within their scope.²⁴

It is also concerning that the Draft Amendments propose criminalizing a broad range of activities such as, among other things, production and dissemination of materials, the issuance of information, teaching etc. Furthermore, the Draft Amendments stipulate that simple possession of materials “advocating terrorism or extremism” should be criminalized.

Any restrictions of the right to freedom of expression such engaged, and other rights, must be prescribed by law which is clear and accessible, in pursuit of a legitimate purpose, and must be necessary and proportionate to achieve that purpose. Any restriction must not only be adequate to the pursuit of the legitimate purpose, but must also be the least intrusive measure among those available. The burden is on the state to demonstrate the necessity and proportionality of the restriction. Restrictions must be consistent with all other human rights recognized in international law; may not impair the essence of the right affected; and may not be applied in a discriminatory or arbitrary manner.

However, to meet the test of necessity and proportionality, including in relation to criminalization of the making or dissemination of statements which “encourage” terrorism, it must be shown that the person accused intended to incite an imminent act of violence (terrorist offence), that the statement was likely to incite such violence, and that there is a direct and immediate connection between the expression and the likelihood or occurrence of such

²⁴ Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc. A/HRC/28/28 of 19 December 2014, para28. See also, *inter alia*, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc. E/CN.4/2006/98 of 28 December 2005, para46.

violence.²⁵

The UN Human Rights Committee has pointed out that it is incompatible with the ICCPR to invoke national security laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.²⁶ Counter-terrorism provisions in the Criminal Law and elsewhere hence may not be used to reduce the public space, including the online sphere, for debate and academic freedom. To punish people for simply publishing and distributing material expressing views that oppose the positions or policies of the government would be a form of censorship.

Laws criminalizing acts of “terrorism”, “extremism” and “endangering public order” must not, under any circumstances, be used to deter or punish individuals for the legitimate exercise of their human rights, including freedom of expression, association and peaceful assembly. However, in China Amnesty International has documented the practice of using precisely such crimes to frequently punish individuals for exercising these rights. Individuals have been sentenced to imprisonment for their writings and the peaceful exercise of their rights on charges of “inciting subversion of state power”, sometimes with articles published on domestic or overseas websites, or lectures given, cited as evidence. The crime of “splitting the State”, one of the crimes listed under the category of crimes “endangering state security”, has also been used to punish people belonging to ethnic minorities, including ethnic Uighurs, Tibetans and Mongolians, for exercising their freedom of expression and right to enjoy their culture.

Amnesty International notes with concern that in the second draft a proposed modification to Article 322 is to criminalize “Violating provisions on management of national borders (boundaries), to sneak across national borders (boundaries)...”. The “Report Back” claims that this addition is a reaction designed to target the new situations that have arisen in relation to “violent terrorism” crimes, and that the Committee members from the Xinjiang Uighur Autonomous Region (XUAR) were some of the actors giving feedback proposing these changes. This raises concerns that the proposed change may have negative repercussions on Uighur individuals, among others, who have no connection with “terrorist” activities. Recently there have been concerns that Uighurs and other nationalities have not been granted passports. For example, Radio Free Asia reported that in Ili prefecture the authorities issued a recall notice for old passports, and residents had only two weeks to comply by turning in their passports.²⁷ An official from the Ili prefecture police said that no new passports were being issued as of March 2015.

Article 12 (2) of the ICCPR states that “Everyone shall be free to leave any country, including

²⁵ See Principle 6 of the Johannesburg Principles.

²⁶ General Comment no. 34 on Article 19 (2001), para30.

²⁷ Radio Free Asia, *Passports in Xinjiang's Ili To Be Handed Into Police Stations: China*, 13 May 2015, <http://www.rfa.org/english/news/uyghur/uyghur-yili-05132015140829.html>, and New York Times, *Chinese Police Order Residents in a Xinjiang Prefecture to Turn In Passports*, 14 May 2015, <http://www.nytimes.com/2015/05/15/world/asia/china-passports-xinjiang-ili-kazakh-autonomous-prefecture.html>, both accessed 3 August 2015

his own". However, given the difficulties of obtain passports for members of ethnic minorities in China, and given the widespread discrimination many face in employment, cultural, education and other areas of life, Amnesty International is concerned that this proposed amendment may be used to restrict the right of individuals who wish to leave the country, but have no opportunity to do so in a legal manner. There are also concerns that all Uighurs trying to leave the country may be seen as "terrorists" attempting to participate in "terrorist organizations". For example, on 8 July 2015, 109 Uighurs were deported from Thailand to China. The Global Times said that according to the Ministry of Public Security, the Uighurs had been "brainwashed by terrorist groups" advocating for Xinjiang independence, such as the "East Turkestan Islamic Movement" and the "World Uyghur Congress", and that the Uighurs were on their way to Turkey, and then on to join the "jihad" in Syria and Iraq.²⁸ However, to date no evidence to support these claims has been made public.

Amnesty International therefore calls on the Standing Committee to ensure that any use of terms such as "endangering state security" and "terrorist activities", and all related counter-terrorism and national security offenses in the law are grounded in clear, strict and narrowly-constructed definitions of these crimes, and specifically exclude from their remit the peaceful exercise of human rights to freedom of expression, association and peaceful assembly, and to take part in cultural life.

Amnesty International further calls on the Chinese authorities to repeal or amend all relevant counter-terrorism and national security laws so that they conform to international human rights law and standards, including that any permissible restrictions do not impair the essence of the relevant human rights, and the impact of which can be demonstrated to be necessary and proportionate to counter specific threats of terrorism and national security.

3. FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

a) Proposed amendments restricting the freedom of expression, association and peaceful assembly

Article 19 of the Universal Declaration of Human Rights proclaims: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Under international law, governments may, in defined circumstances, restrict certain forms of expression or information on narrow grounds such as national security, the protection of public morals or to protect the rights and reputations of others, but only to the extent strictly necessary (see above).

Amnesty International has serious concerns that harsh criminal sentences continue to be imposed in China on writers, bloggers, journalists, academics, whistle-blowers and ordinary citizens for peacefully exercising their right to freedom of expression, including publishing articles or posting comments online that advocate democratic reform and human rights;

²⁸ Global Times, "公安部披露泰国遣返偷渡者内幕 疆遣返数批多来自新" (Ministry of Public Security reveals details of illegal immigrants repatriated from Thailand, most of them from Xinjiang), 10 July 2015, <http://world.huanqiu.com/exclusive/2015-07/6960112.html>, accessed 1 August 2015.

exposing official corruption or malfeasance; distributing information on banned religious groups; or touching on a steadily expanding range of politically “sensitive” topics, including Tibet, Taiwan, and other topics which suddenly generate widespread attention online. In addition, many individuals and religious groups whom the authorities have declared “illegal” or “heretical”, or who seek to operate without state sanction, including “house church” Christians, Falun Gong practitioners and certain Catholic, Buddhist, Muslim and other spiritual groups, also face criminal persecution for merely exercising the right to freedom of religious belief, freedom of association or otherwise expressing their cultural identity. Amnesty International has documented the misuse of the label of “religious extremism”, and the various charges of “separatism” and “terrorism” to violate the rights to freedom of expression, peaceful assembly and religion.²⁹ Existing definitions of “extremism” do not meet international standards with regard to legal clarity, ability of people to predict whether their behaviour will be judged as criminal, and respect for human rights.³⁰

Amnesty International considers the additions to Article 290 as an attempt to further restrict the freedom of peaceful assembly. These criminal offenses include imprecise terms that are subject to arbitrary interpretation, such as “disrupting the work of state organs”, “disrupting social order”, and “serious consequences”. In addition, the criteria of “funding others” are not clearly specified, and could arguably lead to severe punishment where the consequences of the disruption are “serious”, but the contribution in terms of organization or financial support is minimal. Such a vague criminal provision violates the principle of legality, and is likely to deter people from associating themselves with peaceful assemblies, especially where they themselves have no influence about direction and objective of that assembly. This in effect could lead to a “chilling effect” and amount to a violation of the exercise of the right to freedom of peaceful assembly.

States must respect, protect and fulfil the right to association and to peaceful assembly without discrimination of any kind. Any restrictions must be established in conformity with law, including with sufficient clarity, and must be necessary and proportionate to a legitimate concern. The perceived existence of a hypothetical risk of, for example, public disorder is not a legitimate ground to restrict the exercise of the right to peaceful assembly or association.

²⁹ Amnesty International, *People's Republic of China: Bringing China's criminal procedure law in line with International Standards*, July 2013 (Index: ASA 17/00/2013), <http://www.amnesty.org/en/library/info/ASA17/021/2013/en>, accessed 1 December 2014; *China: Despite legal reforms human rights violations widespread: Amnesty International Submission to the UN Universal Periodic Review*, March 2013, March 2013 (Index: ASA 17/013/2013), <http://www.amnesty.org/en/library/info/ASA17/013/2013/en>; *China: “Changing the soup but not the medicine?”: Abolishing re-education through labour in China*, December 2013 (Index: ASA 17/042/2013), <http://www.amnesty.org/en/library/info/ASA17/042/2013/en>, both accessed 3 August 2015.

³⁰ This is also the case for the definition proposed under the Draft Anti-Terrorism law; see “People's Republic of China Anti-Terrorism Law (Draft)” 《中华人民共和国反恐怖主义法（草案）》，http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-11/03/content_1885027.htm, accessed 4 August 2015.

Amnesty International urges the Standing Committee to revise the Criminal Law and the Draft Amendments thereto, as well as all other relevant provisions in administrative and criminal law, with a view to clearly distinguishing, in law and in practice, between activities that involve peaceful exercise of human rights including freedom of expression, association and peaceful assembly, and those that would constitute internationally recognized criminal acts.³¹

b) Proposed amendments on “maintaining information network security and improving laws and regulations which penalize internet crimes”

Ensuring respect for human rights, including freedom of expression, is a vital component in the discussion of internet monitoring. Modern communication networks, especially the Internet, have proved invaluable to the development of human rights – revolutionizing access to information and improving transparency and accountability.³²

The UN Human Rights Committee has stated that any interference with the operation of websites, blogs or other internet-based, electronic or other dissemination systems, including respective supporting systems, must be in compliance with Article 19(3) of the ICCPR, which lays out permissible restrictions to the freedom of expression; such restrictions must be content-specific, rather than generically covering certain sites, and may not be based solely on the fact that the content is critical of the government.³³

In contrast, China's model of the regulation of the internet and other networks is one of control and suppression, including the use of censors to target people who are solely exercising their right to free expression online. The authorities continue to abuse criminal laws to suppress freedom of expression, including by detaining and imprisoning activists for online posts that fall foul of the censors, and to block access to many websites, including Facebook, Instagram and Twitter as well as major international news sites. Scores of phrases are censored on social media. Amnesty International believes that indiscriminate mass surveillance is never a proportionate interference with the rights to privacy and freedom of expression.

Furthermore, it is Amnesty International's experience that this restrictive and repressive approach has already led to self-censorship by service providers, and the organization is concerned that the addition to Article 286(a) concerning the failure by network service providers (NSP) to fulfil management duties may cause these service providers to further increase self-censorship in order to avoid imprisonment and fines, and thereby violates the right to freedom of expression, and the public's right to information.

The system used for filtering “undesirable” information, and words or phrases which are

³¹ Amnesty International, *China: "Justice, justice": The July 2009 protests in Xinjiang, China*, July 2010 (Index: ASA 17/027/2101), <http://www.amnesty.org/en/library/info/ASA17/027/2010/en>, accessed 3 August 2015.

³² See Report, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Use of information and communications technologies to secure the right to life*; UN document A/HRC/29/37 of 24 April 2015; see also, General Comment no. 34 on Article 19 (2001), para15.

³³ General Comment no. 34 on Article 19 (2001), para43.

banned, lacks transparency. Many Chinese crimes, such as “picking quarrels and provoking trouble”, are of a highly subjective nature. By definition, Internet communications can create large volumes quickly, exposing NSP to a substantial, but to some extent unforeseeable risk of liability.

Likewise, amendments to Article 287 contain provisions that could unduly limit the rights to freedom of expression and association of individuals merely using the internet as a communication and organizing tool. The term “other illegal activities” in the proposed new Article 287(a)(1) would give the authorities wide power to clamp down on websites or mailing lists deemed “undesirable” or “sensitive”. For instance, Amnesty International has documented the detention of over 101 Chinese citizens for exercising their right to freedom of expression to support the Hong Kong pro-democracy protests in 2014, many of them for just posting their photos holding placards with slogans supporting the Hong Kong protests.³⁴ Many of these individuals have been detained on suspicion of “picking quarrels and provoking trouble” or “inciting subversion”. We are concerned that the proposed amendments on the duties of NSP would allow the authorities to further restrict the use of the Internet and other networks for the lawful exercise of human rights.

Similarly, the proposed addition of a new Article 291(2) may induce self-censorship among Internet users and NSP to avoid being charged for “fabricating” and “transmitting” “false information”. This will infringe on the right to freedom of expression and information. The public should be able to discuss and exchange information especially when official information and statistics are not available. Merely passing on or sharing information already in the public domain, should not be criminalized even if the information later is proven to be false.

With the proliferation of social media, it is common for ordinary citizens to transmit and forward information online. It is unreasonable to expect ordinary citizens to confirm the validity of every single piece of information before sharing it. The new addition, therefore, makes sending or receiving online information a dangerous activity. For example, individuals who re-post a piece of information can be punished, as long as the authorities consider the information provided by the page to be false and the individuals' act of transmission to have been made in knowledge of that falsehood. While on the face of it, the terms “fabricating” and “clearly knowing” could act as limits to the application of this provision, in the past courts have interpreted these terms liberally. This means that the proposed provision again carries the risk of arbitrary application, self-censorship, and hence a chilling effect on any debate labelled as “sensitive” by authorities.

Amnesty International calls on the Standing Committee of the National People's Congress to amend the Criminal Law in a way that ensures that the rules in the Criminal Law, and in other

³⁴ Amnesty International, *China: Release supporters of Hong Kong protests*; 1 October 2014, <http://www.amnesty.org/en/for-media/press-releases/china-release-supporters-hong-kong-protests-2014-10-01>; *Chinese activists detained for supporting Hong Kong protests*, 7 November 2014, updated on 24 November 2014, <http://www.amnesty.org/en/news/chinese-activists-detained-supporting-hong-kong-protests-2014-11-07>; both accessed 3 August 2015.

legal and administrative provisions, related to the regulation of activities on the Internet and other networks, are in line with international law and standards.

c) Proposed amendments threatening the ability of lawyers to carry out their professional functions

Amnesty International is concerned that the proposed change to Article 309(3) in the second draft, which adds "...seriously disrupting courtroom order" to the clause "Insulting, defaming or threatening judicial personnel or litigation participants, and not heeding the court's admonitions, seriously disrupting courtroom order" only puts lawyers at further risk. On 9 and 10 June 2015, authorities launched an unprecedented nationwide crackdown on human rights lawyers and activists, in which, as of 3 August, more than 232 lawyers and activists have been targeted and 27 are still in police custody or are missing. In state media, this crackdown on hundreds of lawyers has been justified on the pretext that a criminal gang was formed to "serious(ly) disturb social order". Amnesty International has documented numerous instances in which charges like "disturbing social order" and "picking quarrels and provoking trouble" have become commonly known as "pocket crimes" (koudaizui in Chinese), that is, crimes in which any behaviour can fit into the wide "pocket" of the crime's definition, thereby enabling police and government officials to use discretionary power to criminalize almost any behaviour. In light of the present, unprecedented campaign against lawyers, there are concerns that language "disturbing courtroom order" may be similarly misused.

The proposed change to Article 309(4) ("other conduct that seriously disrupts the order of the court") is problematic for three main reasons: it is vague and open to subjective interpretation; it may serve to intimidate and interfere in lawyers' professional functions; and it may curtail lawyers' freedom of expression.

The Criminal Law should guarantee that lawyers can carry out their duties in accordance with the General Comment No. 32 on Article 14 of the ICCPR³⁵, which provides among other things that lawyers should be able to advise and represent their clients in accordance with their generally recognized professional ethics without restrictions, influences, pressure or undue interference from any quarter.

Lawyers must be able to perform their professional duties in representing their clients at fair trials before independent judiciaries. In practice, lawyers in China often are unable to fully represent their clients and prohibited from raising arguments or presenting full evidence, particularly in trials dealing with human rights defenders and other issues labelled as "sensitive" by the authorities.

As the reform of "promote structural reform in litigation with trials at the centre" takes place, a greater emphasis will follow on a robust exchange of arguments, including between lawyers and judges.³⁶ This is necessary to provide the best defence available to their clients, and to be

³⁵ UN Human Rights Committee, General Comment No. 32 on Article 14 (2007), para34.

³⁶ *CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward*, 28 October 2014, translated by China Copyright and Media, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision->

able to challenge assertions and allegations by judges, prosecutors and witnesses. However, there are numerous examples of judges refusing to abide by established procedures according to laws and regulations.

The UN Basic Principles on the Role of Lawyers state that lawyers have an important role in protecting fundamental freedoms. Principle 14 specifies that “lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law”. Principle 16 calls on government to:

“ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”³⁷

Amnesty International calls on the Chinese authorities to undertake a comprehensive review of the Lawyers Law, the Criminal Law, the Criminal Procedure Law, the Administrative Punishment Law and other relevant laws to eliminate the obstructions they impose on the work of lawyers in order to fully implement international standards on the role of lawyers, including the UN Basic Principles on the Role of Lawyers.³⁸

Moreover, the wording of “other conducts that seriously disrupt the order of the court” may limit lawyers’ right to freedom of expression. For instance, the Lawyers Association Disciplinary Rules (Provisional) Comment Draft connect “disrupting” public order with lawyers’ use of the media, and puts numerous restrictions on lawyers’ use of social media.³⁹ This contravenes the UN Basic Principles on the Role of Lawyers which state:

“Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend

[concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/](#), accessed 3 August 2015.

³⁷ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>, accessed 4 August 2015.

³⁸ Amnesty International, *China: Against the law: Crackdown on China's human rights lawyers deepens*, June 2011 (Index: ASA 17/018/2011), <http://www.amnesty.org/en/library/info/ASA17/018/2011/en>, accessed 4 August 2015.

³⁹ See, Article 39 of the Lawyers’ Association Disciplinary Rules (Provisional) Comment Draft, <http://photo.weibo.com/1272651680/wbphotos/large/mid/3720785526638270/pid/4bdb1fa0tw1ehbgmajrkvj20c6kis7wm>, accessed 1 December 2014.

their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.”⁴⁰

Amnesty International is concerned that the rules with regard to “disruption of the order of the court”, in conjunction with other relevant rules and regulations, may lead to restriction of lawyers’ use of media – including social media – that may impact unjustifiably on the lawyers’ right to freedom of expression.

An independent and proactive legal profession committed to providing strong legal representation regardless of the sensitivity of the issue involved is essential for the protection of human rights, in China as elsewhere. Lawyers who take up human rights cases should be able to do so free from harassment and the risk of being barred from practicing law, arbitrary detention, torture and imprisonment.

Amnesty International calls on China's authorities to abolish all administrative requirements and regulations, as well as provisions of the Criminal Law, that undermine the independence of the legal profession, and to ensure that the administration of the legal profession in China accords with international human rights laws and standards.

⁴⁰ Basic Principles on the Role of Lawyers, Principle 23.

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