

## AMNESTY INTERNATIONAL

### Public Statement

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### **CHINA: Draft Criminal Procedure Law amendments would mean further deprivation of right to fair trial before court**

Proposed amendments to China's Criminal Procedure Law (CPL), if adopted in their current form, would violate the right to a fair trial by depriving defendants of minimum guarantees, including to be tried in their presence and in public hearings, and by infringing upon the independence and impartiality of courts. As the public consultation period on these amendments comes to a close, Amnesty International calls upon the Chinese government to ensure that they are brought into conformity with its obligations under international human rights law and standards.

#### Trials in the defendant's absence

One of the main purposes of the proposed CPL amendments is to accommodate the new Supervision Law, passed in March 2018 and promoted as an essential tool in fighting corruption. The proposed CPL amendments would require courts to support the "supervision bodies" established by that law in their anti-corruption campaign, even if that violates fair trial principles.

The proposed amendments would add a new chapter to the CPL containing provisions for trials in the defendants' absence when the accused has "escaped abroad" in cases of corruption, bribery or other criminal offences investigated by supervision bodies and the case has been transferred to the procuratorate for public prosecution. These trials may result in penalties, including prison sentences and confiscation of properties, that could be enforced whether or not the defendant ever appears before the court.

Amnesty International considers the Supervision Law a systematic threat to human rights, as it grants far-reaching power to the virtually unaccountable supervision bodies and legalizes an extra-judicial system of detention (*liuzhi*) involving up to six months' incommunicado detention without charge or legal process. In 2017, Amnesty International [submitted comments](#) and recommendations on the legislative draft of the "Supervision law", which it found to have significant potential to infringe human rights.<sup>1</sup> The proposed consequential changes to the CPL support that fear.

Although international law allows court proceedings in the absence of the accused in some exceptional circumstances, such as when the accused makes a fully informed and court-verified decision not to be present, this does not waive all the defendant's fair trial rights, such as the right to be defended by counsel of his own choosing and

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<sup>1</sup> Amnesty International, *Submission to the NPC Standing Committee's Legislative Affairs on the draft "Supervision Law"* (Index: ASA 17/7553/2017); *China: New Supervision Law a systemic threat to human rights* (New output, 20 March 2018).

the presumption of innocence. Furthermore, individuals who have been convicted in their absence have the right to a remedy, including for any sentence to be quashed and for a completely new and fair trial to be held before an independent and impartial court in their presence once they have been apprehended or have voluntarily appeared.

Amnesty International believes that the inadequacy of human rights protections throughout China's criminal justice system means that introduction of trials in the absence of the accused will inevitably increase the risk of miscarriages of justice.

Defendants face the risk of unfair trials in China's judicial system even when they are present. The lack of checks over the supervision bodies' power, the high risk of torture and other ill-treatment and forced "confessions" once the accused is detained by the supervision bodies under *liuzhi*, and systematic political interference in judicial decision-making in China are all factors that also deter a person accused of corruption from voluntarily returning to China to face charges. Another highly problematic issue is China's continued use of the death penalty for corruption and other non-lethal offences, with at least one government official having been sentenced to death since enactment of the Supervision Law.<sup>2</sup>

Amnesty International agrees that systemic corruption in a country can undermine the rule of law and in fact frequently leads or contributes to violations of human rights. However, anti-corruption efforts must not in themselves result in the violation of human rights. Amnesty International urges the Chinese government to stop enacting and enforcing laws that allow arbitrary detention and violate the rights of the accused to a fair trial in the name of "anti-corruption".

#### Leniency for guilty pleas and expedited trial procedures

According to the proposed CPL amendments, suspects and defendants who voluntarily plead guilty and accept punishment may be given a more lenient punishment. In conjunction, the proposed amendments also seek to codify an expedited trial system to be used when defendants plead guilty. Amnesty International is concerned that, in the absence of stronger safeguards, such a system would place defendants' right to a fair trial in serious jeopardy.

With respect to provisions to encourage the use of guilty pleas, there are strong reasons to be sceptical about the voluntary nature of such pleas in the context of the Chinese legal system. Due to shortcomings in domestic law, systemic problems in the criminal justice system and repeated failure to implement protective rules and procedures in the face of entrenched practices, torture and other ill-treatment remain widespread in detention and during interrogation. Under these circumstances, detainees may find pleading guilty to be the only way to improve their conditions.

Although the court would be required to review whether admissions of guilt are voluntary and inform a defendant who wishes to make a guilty plea agreement of their procedural rights and the legal consequences of pursuing a guilty plea, there is little reason to expect that this process will be sufficient to guard against coerced

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<sup>2</sup> China Daily, "Former vice-mayor sentenced to death in massive bribery case", 29 March 2018, <http://www.chinadaily.com.cn/a/201803/29/WS5abc3794a3105cdcf6514f49.html>

“confessions” and effectively implements the protection against compelled self-incrimination.

The Chinese legal system already overly relies on “confessions” as the basis of most convictions. Introducing an expedited trial procedure will further provide incentives for law enforcement officials to use any means to press defendants to plead guilty and “accept” punishment.

The expedited trial process would apply in cases heard in the first instance by a basic-level court when a defendant pleads guilty and accepts punishment of up to three years’ imprisonment. Under these procedures, no court investigation or courtroom debate would be carried out. The court will give the defendant an opportunity to make a final statement before announcing the verdict. Although the proposed provisions require the court to halt the expedited process and initiate a new trial if it is discovered that the defendant’s guilty plea was involuntary or the defendant denies the facts of the alleged crime, the ability of the court to make such discoveries is severely impeded by the expedited process.

The proposed amendments also lay down the principle that courts should normally follow the prosecutors’ charges and sentencing recommendations except under specific circumstances, such as when the court finds that there was no crime or the accused has made an involuntary guilty plea. This strongly expressed presumption in favour of the position of the prosecutors is difficult to reconcile with the principle of separation of powers to safeguard judicial independence.

To guarantee the right to a fair trial, a competent, independent and impartial court is an absolute requirement and the court’s decision should be free from any interference, pressure or improper influence from any branch of government or elsewhere. Sentencing is without question part of judges’ power. By essentially codifying that, absent particular and so-called “clearly improper” cases, courts must follow the prosecutors’ sentencing recommendations, the law weakens the courts’ power to adjudicate in an independent and impartial manner. If a system of guilty pleas is to be accepted, the courts must be the ultimate and exclusive decision-maker. In particular, the independence of the judiciary requires that officials with judicial functions be completely autonomous from those responsible for prosecutions, and may not be subject to orders by branches of the executive or political interference.

Amnesty International has called for the Chinese government to stop introducing law amendments or practices detrimental to the independence and impartiality of the court, and to make sure the Criminal Procedure Law is in line with the absolute prohibition against torture and other ill-treatment.