

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: ASA 17/008/2012
13 March 2012

China: proposed law revisions increase the risk of enforced disappearance

Provisions that would make it legal for police to secretly detain certain groups of criminal suspects would violate China's obligations under international law and should be dropped from the latest revisions to the Criminal Procedure Law, Amnesty International said today.

The latest draft of the law removed a clause that would allow authorities to "disappear" suspects for up to six months. However, in a set-back for China's criminal justice system, the latest revisions presented to the legislature on 8 March and expected to be passed on 14 March would, for the first time, make it legal for police to secretly detain suspects outside the formal detention system for up to six months if they have been accused of "endangering state security," "terrorism" or certain types of "bribery."

Already, many thousands of people in China are being held in secret and are at great risk of being tortured. These thousands include petitioners seeking justice, members of underground churches, and political activists.

China's leaders claim they have enshrined protection of human rights into the latest version of the Criminal Procedure Law, but those who try to peacefully challenge the government and many others would be exempt from these protections and vulnerable to abuse.

Amnesty International commends changes to the law that would improve legal protections for minors and the mentally ill as well as strengthen due process for ordinary criminal suspects and defendants if enforced.

However, the legislation would provide dangerous exemptions from due process for entire categories of criminal suspects, including those who simply wish to peacefully express their opinion. The charge of "endangering national security," for example, can include criticizing the Communist Party and has long been used to silence government critics. Last year, China sentenced activist Chen Wei to nine years in prison on charges of "inciting subversion of state power" for posting essays critical of the government online.

Ethnic minorities, such as Uighurs and Tibetans, who advocate peacefully for autonomy or independence are also at risk under the latest version of the law.

A draft of the revised law released in August 2011, which would have essentially legalized "enforced disappearance" for those suspected of "endangering state" security or "terrorism" for up to six months, caused an outcry both inside and outside China from legal scholars, rights advocates and the general public. The latest changes to the "residential surveillance" clause (article 73) require police to notify families of suspects being held in this type of informal detention within 24 hours. However, law enforcement agencies can still hold the suspects outside the formal detention system. And, law enforcement would not be required to tell families why or where the suspect is being held. The suspects could also be denied access to legal counsel during this time.

Criminal suspects in China are always at great risk for torture. Holding them outside formal places of detention puts them in even greater danger.

In addition, articles 37 and 83 would allow police to secretly detain (in formal places of detention) those suspected of crimes involving “national security”, “terrorism” and “major bribery” for up to 37 days. During this time, these suspects would have to seek approval from the authorities to contact a defense lawyer, giving law enforcement the power to block their access to legal counsel. And, if law enforcement determines notifying the family would “impede the investigation,” they would be allowed to suspend notification.

By contrast, in ordinary criminal cases, law enforcement would have to provide access to legal counsel within 48 hours and notify families within 24 hours, an improvement over the previous version of the law.

The Chinese government claims the latest revision to the Criminal Procedure Law strengthens the protection of criminal suspects and limits the power of police. But police would in fact retain the upper hand, continuing to operate without judicial review. And because China does not have an independent judiciary, there is no effective remedy for those who face abuse at the hands of law enforcement.

It’s not too late for China to pass a law that would improve justice for all criminal suspects and bring it closer to the goal of realizing the protection of human rights.

ENDS/

Public Document
International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK www.amnesty.org
