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CHINA: LAW REFORM AND HUMAN RIGHTS - NOT FAR ENOUGH

As China enters the post-Deng Xiaoping era -- and the country's Parliament proceeds with the current revision of the Chinese Criminal Law -- Amnesty International calls on the Chinese authorities to broaden the legal reforms and to review the institutional framework in which laws are implemented.

"Recent law reform introduced in China in 1996 has brought about some welcome changes to human rights practice, but it doesn't go far enough. The law continues to be used as a tool against dissent and to be arbitrarily implemented," Amnesty International said.

"Arbitrary detention, unfair trials and torture continue, and the number of executions carried out last year -- many after summary trials -- reached its highest level in the past 13 years."

The revision of the Criminal Law currently under way includes announced plans to replace the most ostensibly political crimes -- those on "counter-revolutionary offences" -- by offences against "state security" which have been increasingly used to jail prisoners of conscience.

"Amnesty International would welcome the repeal of the provisions on 'counter-revolution' from the Criminal Law, but replacing them by offences against 'state security' is only a nominal improvement," the organization said.

Human rights related legislation in China has followed two distinct directions in recent years. One has brought some aspects of Chinese legislation more in line with international human rights standards, while the other has expanded the State's legal tools of repression. The legal changes made in 1996 reflect these two trends.

Amnesty International welcomes some of the changes made to China's Criminal Procedure Law (CPL) last year -- which came into force on 1 January 1997 -- as a positive step to bring some fairness in a criminal justice system that has long been heavily weighted against defendants.

"However, this law is still far behind international human rights standards," Amnesty International said. "For those detained under the criminal justice system, the changes to the CPL are far from sufficient to ensure protection against arbitrary detention, unfair trial or torture."

Not all the changes to the law are positive ones according to Amnesty International. The integration into the revised CPL of the main provisions of "shelter and investigation" -- a form of administrative detention which has caused widespread human rights violations in the past -- constitutes a good instance.

"The main difference is that, in the revised CPL, this form of detention without charge has been limited to 37 days. But the police still have the power to detain the same categories of people without charge and without judicial review," Amnesty International said. "The human rights violations which have characterized 'shelter and investigation' may continue".

Many other aspects of the revised Criminal Procedure Law still fall far short of international standards, including some provisions concerning detention, access to lawyers, the right to defence, the trial process, protections against torture, and the imposition of the death penalty

Many other laws in China lead to human rights violations. The law on "re-education through labour", for example, a form of administrative detention allowing local government committees to detain people for up to three years, without charge or trial, in forced labour camps, has been used for many years to arbitrarily detain political dissidents.

Various laws and regulations on "state secrets" and state security have been introduced since the late 1980s, and are increasingly being used to jail people for the peaceful exercise of basic human rights. Also, a martial law passed last year, which allows the suspension of basic rights during a state of emergency, goes beyond the restrictions envisaged under international standards.

"Widespread illegal practices in law enforcement, the lack of independence of the judiciary and the arbitrary application of the law in China also result in numerous human rights violations. These factors raise doubt as to the extent to which the most positive of the recent legal changes will be implemented in practice," Amnesty International said.

Illustrative cases

Wang Dan, a former student leader sentenced to 11 years' imprisonment after an unfair trial in October 1996, was accused of engaging in activities which "endangered state security" because of his contacts with organisations and individuals outside China. His activities in fact did not threaten any legitimate national security interest.

The case of dissident Liu Xiaobo -- assigned to three years of "re-education through labour" in October 1996 -- shows that double standards continue to apply in the implementation of the law.

He was handed down this administrative sentence just one week after the new Administrative Punishment Law came into force in October 1996. This law provides for "the right to a public hearing" and stipulates that the bodies abilitated to impose administrative punishments must "fully hear the opinions of the parties concerned", and verify the "facts, reasons and evidence presented by the parties concerned". No such hearing or procedures are known to have taken place in Liu Xiaobo's case. Xiaobo was assigned a term of three years' detention with unprecedented speed, just a few hours after being taken away from his home by police.

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