

# **Amnesty International Testimony Rule of Law in China**

## **Remarks to the Congressional-Executive Commission on China**

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Thank you Senator Baucus, Representative Bereuter and distinguished members of the Congressional-Executive Commission on China for providing Amnesty International the opportunity to testify at this important hearing. We have documented human rights in China for numerous years. Our research shows that disregard for the rule of law is pervasive in China and one of the fundamental causes of the human rights abuses which occur in China. On this note Mr. Chairman, Amnesty International would like to express its appreciation for holding this hearing on this important subject.

### ***Importance of the Commissions work***

Amnesty International considers your Commission's work as essential to the U.S. effort to promote and protect human rights in China. Your Commission was created in the context of granting Permanent Normal Trade Relations (PNTR) status to China as a means of maintaining vigilance to monitor human rights and to track the development of rule of law in China. Until PNTR status was granted to China, every year the Congress analysed and debated the human rights situation in China. This annual debate proved to be an important element in highlighting gross human rights abuses in China. The PNTR debate kept China at check on its human rights practices. Your Commission was established not only to fill the role of closely scrutinising China's human rights practices but also to take effective steps to get meaningful results in the rights front. Mr. Chairman, the Commission has an obligation to keep China at check on its human rights practices and to find ways to improve its human rights practices.

### ***Rebiya Kadeer's imprisonment***

Mr. Chairman, Amnesty International would like to bring to the Commission's attention the case of Rebiya Kadeer. Ms. Kadeer, a successful businesswoman from Xinjiang China, was arrested while trying to meet with members of the Congressional Research Service and Congressional staff. Following a trial held in secret, a Chinese court sentenced her to eight years' imprisonment for "providing secret information to foreigners". This case highlights the dilemma the Commission is going to face when Commission staff visits China to meet with ordinary Chinese citizens. Amnesty International would urge the Commission to take note of this case and to raise it with the Chinese authorities. We also urge the Commission to raise Rebiya Kadeer's case in frank discussion with the Chinese Vice President Hu Jintao when he visits Washington later this month.

### ***Current human rights situation in China***

Thousands of people are arbitrarily imprisoned across China for peacefully exercising their rights to freedom of expression, association or belief. They include members of religious and spiritual groups, ethnic minorities, political dissidents, labour activists, workers and farmers, human rights defenders, and a wide range of people who were detained simply for criticizing official corruption or advocating reforms, or for attempting to defend their rights against officials' abuse of power. Some are held without charge or trial under a system

of administrative detention. Others have been sentenced to prison terms after unfair trials. Torture and ill-treatment of detainees and prisoners remain widespread across the country, affecting both criminal and political prisoners. Many deaths in custody resulting from torture are reported every year. The death penalty continues to be used extensively, arbitrarily and frequently as a result of political interference. Many individuals are sentenced to death after unfair or summary trials in which convictions are based on confessions extracted under torture.

During the past year, the Chinese authorities have continued to show willingness to adhere on a pro-forma level to the international human rights regime, but they have pursued domestic policies which resulted in serious human rights violations on a large scale. These included thousands of arbitrary arrests, widespread torture, and summary and arbitrary executions.

In April 2001, the Chinese authorities launched a "strike hard" campaign against crime which resulted in a massive escalation in executions. In a three months period, between April and July 2001, more people were executed in China than in the rest of the world for the previous three years. Many of the executions are believed to have been carried out after summary trials.

The authorities have also imposed new restrictions on the media and on freedom of religion, and increased the crackdown on many groups and individuals who are deemed to be a "threat" to the "stability" or "unity" of the country. Members of the Falun Gong spiritual movement and Muslim ethnic Uighurs were the targets of particularly harsh repression.

The crackdown on ethnic Uighurs and Muslim leaders suspected of nationalist activities or involvement in "terrorist" or "illegal religious activities" has intensified in the Xinjiang Uighur Autonomous Region over the past few months. Thousands of Uighurs are reported to have been detained as a result, and some executed after unfair trials. Freedom of speech and religion also continue to be severely restricted in Tibet. Scores of Buddhist monks and nuns remain arbitrarily imprisoned, among other Tibetans serving prison sentences for the peaceful exercise of fundamental human rights.

Falun Gong practitioners have suffered severe repression, with tens of thousands of practitioners being arbitrarily detained since the group was banned in July 1999 and many reportedly tortured in detention. Over 300 Falun Gong practitioners are reported to have died in custody, many of them due to torture, during the past two years. Members of evangelical Protestant groups and Roman Catholics who worship outside the official "patriotic" churches also continued to be the victims of a pattern of arrests, fines, and harassment. Many of those detained are reported to have been tortured. Some were sentenced to lengthy prison terms over the past few months.

Other groups were also the target of repression, including people who tried to organize free trade unions or spoke out on labour issues, political dissidents, advocates of reform, and people using the Internet to disseminate information deemed to be "politically sensitive".

### ***"Rule by Law" versus Rule of Law and Human Rights***

In addition to human rights violations which result from political repression, lack of respect for the law and arbitrariness in its enforcement are at the basis of gross human rights violations in China. Every year, countless numbers of people are detained without charge or trial. For those who are charged, sentences are frequently imposed after unfair trials. In many cases the verdicts passed at such trials include the death penalty.

Rule of law is still understood in China to mean "rule by law", reflecting a system in which the law is subordinate to political goals, including the defeat of perceived political threats. The judiciary lacks

independence and the judicial process is subject to interference by political authorities. The vague and contradictory provisions of the law lead consistently to its arbitrary use and provide wide scope for abuse of power. The combined effects of repressive and vaguely worded criminal legislation, impunity for officials who abuse their power, and the use of a system of administrative detention mean that anyone can be detained at the whim of individuals in a position of power.

During the 1990s, the Chinese government has taken steps to address some of these issues, including for example by amending the Criminal Procedure Law (CPL). However the measures taken were far too limited to significantly change the law enforcement and justice system. In practice, they have failed to protect individuals in China against arbitrary detention, unfair trials, torture and other human rights violations. Widespread illegal practices by law enforcers, such as the use of "torture to extract confessions", which has been explicitly prohibited by law since 1980, continue unabated, and in many cases remain unpunished.

This testimony describes some of Amnesty International's concerns about legislation and practices which are at the root of widespread and serious human rights abuses in China. Further information and analysis of laws and regulations which have a human rights impact in China can be found in a number of Amnesty International reports, including "People's Republic of China - Law Reform and Human Rights", March 1997 (AI Index: ASA 17/14/97); "PRC - the Death Penalty in 1999", February 2001 (ASA 17/005/2001); "PRC - The Crackdown on Falun Gong and other so-called heretical organizations", 23 March 2000 (ASA 17/11/2000); "Torture: A growing scourge in China - Time for Action", 12 February 2001 (ASA 17/004/2001); and "China's anti-terrorism legislation and repression in the Xinjiang Uighur Autonomous Region", March 2002 (ASA 17/010/2002).

### ***The Criminal Procedure Law***

In March 1996, China's legislature, the National People's Congress (NPC), passed substantial amendments to the Criminal Procedure Law (CPL) - the basic law which has governed the criminal justice process in China for the previous 16 years. The revision of this law was the most significant legal development in China since 1979, when the CPL and the Criminal Law were adopted. The 1979 CPL had been the basis of widespread human rights violations, including long-term detention without charge, torture and ill-treatment of detainees, and unfair trials.

While the 1996 amendments improved its provisions in some respects (see ASA 17/47/97, cited above), they also increased the potential for incommunicado, lengthy and arbitrary detention and related abuses in the criminal justice system. The revisions altogether left the law far short of international fair trial standards.

Over four years of implementation of the 1996 revisions to the CPL have confirmed Amnesty International's initial concerns about these features of the revised law. Some of these are examined below.

### ***Lengthy Detention without Charge, Trial or Challenge***

Under international law, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release". This is one of the basic safeguards against arbitrary arrest or detention and the word "promptly" is taken to mean "a few days". There is no such safeguard in Chinese law.

The Human Rights Committee has stated that "[p]re-trial detention should be an exception and as short as possible" and must be lawful, necessary and reasonable in the circumstances. The Committee has also held that suspicion that a person has committed a crime is not sufficient to justify detention pending investigation and indictment.

The CPL revisions increased the maximum permitted length of detention (*juliu*) without charge for ordinary criminal suspects, from 10 days to 14 days (article 69) for some categories of suspect up to 37 days, and potentially indefinitely for others. CPL revisions also extend the period of detention for investigation by the procuratorate after charge from 3 months to 7 months. This may be extended to nine months if the procuratorate orders the police to carry out "supplementary investigation" or, as in the 1979 CPL, indefinitely in "especially major and complex" cases, with the approval of the National Peoples Congress Standing Committee.

When the CPL was revised, one form of administrative detention known as "Custody and Investigation" (or Shelter and Investigation - in Chinese *shourong shencha*), which caused widespread human rights violations, was abolished. However, instead, categories of people who previously fell within the scope of Custody and Investigation were introduced into the revised CPL in a number of ways, including:

- a. As special categories of suspects who may be detained without charge for up to 37 days (Article 69).
- b. As those "who do not tell their true name or address, whose status is unclear", for whom the time limits on detention start only from the time "when their status is clarified".(Article 128 para. 2).

Meanwhile, outside the criminal justice system, the provisions on "Custody and Repatriation" (*shourong qiansong*) still provide as much or more scope for administrative detention as "Custody and Investigation". In addition, another form of administration detention, "Re-education Through Labour", which is imposed as a punishment by executive authorities, continue to be used extensively (see below, the section on Administrative Detention).

In addition to "detention" (*juliu*), the CPL sets out two forms of pre-trial restriction or detention which the police may impose on their own authority, without charge or judicial review. These are: "Supervised Residence" (*jianshi juzhu*), which is comparable to detention, and "Taking a Guarantee and Awaiting Trial" (*qubao houshen*).

These may be imposed on any "criminal suspect" (article 51) including those against whom there is insufficient evidence to justify arrest (article 65). These "coercive measures" may also be imposed when pre-trial investigation by the police, procuratorate or the courts cannot be concluded within the legal time limits (article 74). Whereas the revisions to the CPL stipulated time limits for "Supervised Residence" and "Taking a Guarantee and Awaiting Trial" of 6 and 12 months respectively, subsequent interpretations have extended the limits to 18 months and 3 years respectively.

On paper, "Supervised Residence" may appear preferable to detention, but in practice it is being widely used as a means of detaining "suspects" incommunicado outside regular detention centres away from the oversight of existing supervisory mechanisms. Torture is frequently the result.

"Taking a Guarantee and Awaiting Trial", a form of bail, is the least restrictive of all pre-trial "coercive measures". Detainees, their near relatives or legal representatives have the right to apply for it, but there is no appeal process if their request is rejected. Furthermore, certain categories of suspect cannot apply for it, including those suspected of crimes "endangering national security". This includes the majority of prisoners of conscience and political prisoners known to Amnesty International.

Under the revised CPL, the police, procuratorate or the courts must rescind or alter "coercive measures" if they discover they have been "inappropriately" taken (article 73). However detainees or their representatives may contest their detention or restriction only on the basis that it has exceeded the stipulated time limits (article 75). Even then, the remedy may simply be a transfer to another type of restriction or detention rather than release.

### ***Access to Families and Legal Representatives - Limited, Discretionary and Conditional***

Under the revised CPL the police should inform the family of a detainee about their detention or arrest and place of detention within 24 hours, except where it "would hinder the investigation" (articles 64 and 71). In practice, communication with the family is frequently denied until the detainee is brought to trial or sentenced.

Provisions in the 1996 CPL concerning access to lawyers are an improvement over the 1979 CPL but still fall short of international standards. Guaranteed access to lawyers and legal representatives is one of the strongest protections against torture for any detainee. However, such access during the investigation stage is not a guaranteed right to all suspects and remains firmly at the discretion of the investigating authorities. While this situation continues, there is unlikely to be major progress in the fight against torture in China. In May 2000, the UN Committee against Torture recommended that the Chinese government consider abolishing the need to apply for permission, for any reason, before a suspect can have access to a lawyer whilst in custody.

Article 96 of the revised CPL states that a suspect "may appoint a lawyer to provide legal advice or to file petitions and complaints on his behalf" **after** the first session of interrogation by the "investigative organ", or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law ("compulsory measures"). Appointed lawyers have a limited role at this stage: they can demand to be told the offence imputed to the suspect, can apply for "Taking a Guarantee and Awaiting Trial" once the suspect is formally arrested (charged), and "may" meet the suspect in custody "to enquire about the case". Representatives of the investigative organs may be present at such meetings.

In cases "involving state secrets" prior approval of the investigative organs is required for a suspect to appoint a lawyer or before any meeting between lawyer and client takes place. The vague and potentially all encompassing definition of "state secrets" has meant that this provision has been heavily used to deny access to legal representation in these cases. This has continued even after the term was clarified in a joint communique in January 1998 which also spelt out that no approval was required in any other cases.

Formal "arrest" (charge) is followed by a period of "investigation". At the investigation stage (which may last for months before procurators decide whether or not to prosecute the case), detainees are not entitled to free legal assistance. This only becomes a right much later on, "at least 10 days before" the trial, and only for some categories of detainees. In practice, therefore, many detainees will not have the means of accessing legal assistance for long periods after being taken in custody. Regulations from the Ministry of Public Security stipulate that the police must inform suspects of their rights to appoint a lawyer at this stage, but officials admit this is often disregarded and most suspects are unaware of the law.

In practice, very few detainees have a legal representative during the investigation stage of detention. Incomplete statistics from the Ministry of Justice for 1997 and the first half of 1998 show that lawyers were appointed at this stage in only 16.9% and 17.7% of cases respectively. Some areas report less than 10% .

Although an improvement on the 1979 CPL, the provisions concerning access to lawyer in the revised CPL still mean that detainees can be held incommunicado for weeks or months without guaranteed access to a defence lawyer. They also place limits on the role lawyers can play in defending their clients.

### ***Lawyers Intervention - Additional Practical Obstacles***

In practice, state institutions and investigators themselves have used a wide range of additional expedients to curtail and deny suspect's access to lawyers. They have been assisted by ambiguities in Article 96 of the revised CPL, the lack of definition of "investigative organs", "first interrogation", and "compulsory measures".

State organs authorized to detain suspects have sought to exclude themselves from the remit of the law. The Customs authority, for example, works closely with the Ministry of Public Security investigating drug trafficking cases and smuggling cases which have been a major focus of a corruption crackdown in recent years. The Custom authority has the legal power to "Detain and Transfer" (*kouliu yisong*) suspects in smuggling cases. In a recent notice the authority stated that such detention was not one of the "compulsory measures" under the CPL, so requests from lawyers to see clients during Detention and Transfer should be denied.

Through local "internal" implementing regulations, limits have been set on the duration and number of meetings allowed between lawyers and clients. The police in several regions reportedly implement a complicated approvals process for all requests concerning access to lawyer, so that the Ministry of Public Security regulations that a lawyer's visit should be approved within 48 hours, or 5 days in "complex cases", are not followed in practice. In several recent cases, lawyers appointed by a suspect's family have been obstructed with many different excuses before being informed several weeks later that the suspect "does not want to see a lawyer". They have no power to verify or challenge this response. Lawyers seeking access away from their hometown are particularly susceptible to these blocking tactics. Lawyers have also complained that there is completely inadequate provision of meeting rooms in many detention centres, resulting in costly waiting and delay, and that, when they attempt to exercise their functions to apply for medical bail or to complain at detention beyond legal time limits, they frequently receive no reply.

As for pursuing allegations of torture, one defence lawyer has stated: "The use of torture to obtain a confession is something defendants often raise, but it puts us in a very delicate situation since we need facts and evidence to back up these claims... but it is very hard to gather evidence because it is almost impossible to get access to clients at these times".

In one high profile case which demonstrates the occupational hazards for defence lawyers, a rural Binhai County Court sentenced a young lawyer to 1 year imprisonment suspended for 2 years for the new crime of "interfering with witnesses". Liu Jian, from Nanjing City was prosecuted for his efforts to assist a client who claimed that his confession to bribe taking had been extorted through torture. Liu Jian was denied meaningful access to his client until one week before the trial. Then he found major discrepancies between his client's account and the details of the crime presented in the indictment. He tracked down many witnesses to prove the prosecution's distortion, but most failed to appear when the trial began on 13 July 1998. They had reportedly been threatened against interfering in this high profile corruption case. There was no halt in the trial when the defendant retracted his confession. Instead it was reinstated on the basis that he had failed to bring up allegations of torture during his four months of pre-trial detention. (In fact the defendant had raised the allegations the first time he had met his lawyer out of earshot of prosecutors). The court reportedly also passed a heavier sentence as his allegations of torture were considered to be evidence of a "poor attitude in acknowledging guilt" (*renzui taidu buhao*). The prosecutor immediately detained Liu Jian on accusations of "deliberately inducing witnesses to give false evidence" and "knowingly presenting false testimony". During five months' pre-trial detention Liu Jian reported he had been denied contact with his family and was worn down by constant interrogation. He was beaten until his mouth filled with blood for refusing to confirm his interrogators version of events. Eventually he read to camera a statement they prepared for him and chose to plead guilty rather than chance justice there.

Since the revised CPL gave an enhanced role to lawyers during the investigation period, there have been numerous reports of illegal detention and torture of lawyers across the country. Defence lawyers seeking to prove the innocence of their clients have also been prosecuted for falsifying evidence, ill-treated and denied due process even in cases attracting considerable public attention in Beijing. There have been calls for the reinstatement of provisions granting trial lawyers immunity from prosecution which were cut from the original draft of the 1997 Lawyer's Law.

## ***Provisions on Torture - Incomplete Exclusion of Evidence Obtained Through Torture***

The revised CPL repeats provisions in the 1979 law prohibiting the use of torture to extract statements:

**Article 43 (32 in 1979 CPL)...** "The use of torture to coerce confessions and the gathering of evidence by threats, enticement, deceit or other unlawful methods are strictly prohibited.

**Article 46 (35 in 1979 CPL)...** In cases where there is only the statement of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to criminal punishment.

The revised CPL still does not specifically exclude the use as evidence in court of confessions or statements extracted through torture as required under the Convention (article 15). In recent years, interpretations of the law and procedural regulations have progressed and then retreated on this issue. Stipulations currently in effect are inconsistent and confusing. None of them exclude all types of statements extracted through all types of torture. Nor do they comprehensively bar the use of all evidence derived from such statements.

Before revisions to the CPL, on March 21 1994, the Supreme People's Court (SPC) adopted "Specific Regulations on Criminal Adjudication Procedures", which stipulated:

...Any witness testimony, victim's statement, defendant's confessions verified to have really been (*jing chazheng queshi*) obtained through torture to extract a confession, threats, luring, deceit, or other illegal methods, cannot be used as evidence (*buneng zuowei zhengju shiyong*).

This has been superseded by what appears to be a weaker conditional provision in the SPC "Decision on Specific Issues in the Implementation of the CPL" (effective 8 September 1998) which stipulates only that such statements: "... cannot become the basis for determining a case (*buneng zuowei ding'an de genju*)".

Several legal sources in China maintain that this does not even amount to full exclusion of the types of coerced statements listed. They may be still be used to "supplement" the major evidence used to determine a case. Moreover, material evidence derived from such coerced statements would not be excluded either.

The Supreme Peoples' Procuratorate followed the same language as the SPC in their "Rules on Implementing the CPL" (effective 18 January 1999):

**265:** Criminal suspects' confessions, victims' statements, and witness testimonies collected through torture to extract a confession (*xingxun bigong*), or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge (*buneng zuowei zhikong fanzui de genzhu*).

In practice there are also numerous practical obstacles to such verification. Sources also highlight that, however significant this SPC interpretation may be, it only binds judicial organs and does not directly bind administrative organs like the public security apparatus. Significantly, numerous regulations from the Ministry of Public Security, which is responsible for the majority of state officials involved in interrogation, do no more than repeat the general prohibitions against torture in CPL article 43.

Other experts maintain that, a confession or statement extracted through torture may also be legally "recollected" for use as evidence at trial. That is, if a suspect agrees to repeat statements which were initially extracted through torture, these may be admissible.

There are growing calls in China for full and firm exclusion of evidence extracted by torture and other illegal means. Commentators argue that without it efforts to eradicate torture have little hope of lasting success.

Amnesty International believes China's Criminal Procedure Law should be revised as a matter of urgency to explicitly exclude the use of all evidence extracted through torture of any kind. The same exclusions should also apply in any determination of administrative punishment.

### ***No Right to Silence or to Avoid Self-Incrimination***

Amnesty International believes the right of an accused to remain silent during the investigation phase and at trial is inherent to the presumption of innocence and an important safeguard of the right not to be compelled to confess guilt or testify against oneself. Currently the CPL states:

Article 93: When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

Legal analysts in China argue that the duty to answer fully and truthfully puts the suspect at great disadvantage: it legitimises the investigator's use of ill-treatment and demonstrates that the presumption of guilt is still the reality. The established practice of exercising "leniency to those who confess, severity to those who resist" (*tanbai congkuan, kangju congyan*) has a similar effect.

### ***Trial process and presumption of innocence***

The CPL revisions introduced some positive changes in the provisions related to the trial process. Despite that, however, the revised CPL still fails to conform to international standards for fair trial, including the right to a defence lawyer at all stages of the criminal process, the right to have adequate time and facilities to prepare the defence, the right to be presumed innocent and the right to a public trial by an independent and impartial tribunal.

As noted earlier, the right to defence is still limited during pre-trial detention and only some detainees have a clear entitlement to free legal assistance "at least ten days" before the trial. It is also at this time that defendants are entitled to receive a copy of the indictment and have full access to the evidence against them. In many cases, ten days is likely to be grossly insufficient to prepare an adequate defence. In contrast, the police and procuracy may have had months to build up evidence against the accused.

In addition, the revised law still fails to guarantee the defence's right to examine prosecution witnesses and to call new witnesses in court. Witnesses' testimony can still, as previously, be presented in writing (Article 157) and, when witnesses are called in court, cross-examination is subject to approval by the chief judge (Article 156). This may therefore be denied at the chief judge's discretion. As to the right to call new defence witnesses in court, this is at the discretion of the trial court (Article 159).

The revised law also fails to guarantee public trials in all cases: it retains a clause of the original law which allows cases involving "state secrets" to be tried *in camera* (Article 152). In such cases, only the verdict is to be announced "in public", which in practice usually means in the presence of close relatives of the accused or other people selected by the authorities.

When the amendments to the CPL were passed, some commentators stated that the law now included the presumption of innocence - a fundamental principle of fair trial in international law. This assumption was based on the inclusion of a new provision in the law, which reads: "No one shall be determined guilty without a verdict according to law by a people's court" (Article 12). This article, however, does not speak of presumption of innocence. All it says is that the only legal means to "decide" (*queding*) guilt is a verdict by a



court, and by extension, that only the courts have this power. According to some experts, the inclusion of Article 12 in the revised law is related to controversy about a procedure known as "exemption from prosecution" which, under the 1979 CPL, gave the procuracy the power to determine guilt. This procedure has been modified in the revised law.

Article 12, however, does not touch upon questions which are central to the presumption of innocence, such as the burden and standards of proof. One article in the revised law, retained from the 1979 CPL, appears in fact to place the burden of proof on the defence. It reads, in relevant part: "The responsibility of a defender is, on the basis of the facts and the law, to present material evidence and opinion proving that the criminal suspect or defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility..." (Article 35, revised CPL; Article 28 in the 1979 CPL). While this article can be interpreted in various ways, the law still does not give the defendant the benefit of the doubt.

Some moves were made in the revised CPL in the direction of presumption of innocence, notably through a change in the terminology used to designate detainees - as "suspects" and defendants", rather than as "criminals" prior to the revisions. However, the pre-trial detention process in China is still heavily weighted against detainees, denying them many of the rights which are associated with the presumption of innocence.

### ***Provisions on the death penalty***

Under the revised CPL, all defendants facing the death penalty should receive notice of the trial and of the right to a defence lawyer, as well as a copy of the indictment, at least ten days before the trial starts. Those who have not hired a defence lawyer have the right to have one appointed for them at that stage by the court hearing the case (Articles 34 and 151). While this is an improvement over the 1979 CPL, this still leaves very little time to prepare an adequate defence in death penalty cases. International standards require that people charged with offences for which the death penalty may be imposed be given "adequate legal assistance at all stages of the proceedings".

The revised CPL also stipulated that all death sentences have to be approved by the Supreme People's Court. In presentations to UN bodies, Chinese diplomats presented this as a significant safeguard against overuse of the death penalty in China. However, subsequent legal interpretations issued by the Supreme People's Court (SPC) have delegated powers of final approval back down to the High People's Courts and the Military Courts for the majority of crimes liable to the death penalty. Some legal analysts in China have described this as unconstitutional as it nullifies an additional safeguard for defendants set out in national law.

The delegation to the high courts of the power to approve death sentences means that the procedure for approval of the death sentence is usually amalgamated with that for appeal or review of the case, also carried out by the high courts in most cases. This indeed amounts to nullify the safeguard initially provided in the revised CPL. In addition, the revised CPL includes no mechanism allowing prisoners sentenced to death to seek pardon or commutation of the death sentence, which is an internationally-recognized right.

International standards generally require that the most careful legal procedures and all possible safeguards for the accused be guaranteed in death penalty cases, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to have adequate time and facilities to prepare the defence - including, as noted above, the right to have adequate legal assistance at all stages of the proceedings - and the right to seek pardon or commutation of the sentence. These safeguards, however, remain unavailable in China.

The revised CPL retains a provision which bans public executions, but it still fails to prohibit the public display and humiliation of prisoners sentenced to death, which is a common practice. Prisoners sentenced to

death are frequently paraded in public - with their hands tied behind their back, a placard around their neck listing their names and crimes, and their head forced down by guards - at "mass sentencing rallies" or in parades of trucks through the streets on their way to the execution ground. In May 2000, Chinese government representatives reported to the UN Committee Against Torture that: ' China prohibits the practice such as parading in the streets the criminals to be executed, hanging big character name posters on criminals or tying them up with ropes. The people's courts at all levels have done a great deal of work to reduce and eliminate such practice. At the moment such phenomena no longer exist. Should they occur in some individual places, they will be seriously dealt with according to law".

However, whilst several regulations indeed "outlaw" this practice, it remains common and is resorted to particularly frequently as a means of warning potential offenders during the campaigns against crime periodically launched by the government. Some Chinese legal scholars have advocated banning this practice in national law, but no consideration appears to have been given to this suggestion so far. The revised CPL also fails to include provisions allowing prisoners sentenced to death to see their family before execution, which has also been advocated by some legal scholars in China. This is only granted at the discretion of the authorities.

Amnesty International is also concerned at other aspects of the treatment of prisoners sentenced to death, which constitute cruel, inhuman or degrading treatment. It is common practice for condemned prisoners to be kept in shackles (hands and feet) at least from their first trial until execution. They are frequently subjected to a particularly cruel form of shackling hands and feet together (termed dilao and "dragon board") which clearly inflicts severe pain and amounts to torture. Amnesty International has also received reports of condemned prisoners being shackled, arms and legs splayed, to bed boards for many months awaiting execution.

The use of leg irons is prohibited by international standards and the prolonged use of other instruments of restraint is also considered in some circumstances to amount to ill treatment. Prison and detention centre regulations in China specifically exclude those awaiting execution from time limits on the use of shackles and other restraining instruments and solitary confinement.

### ***Administrative Detention - Re-Education Through Labour***

The system of "re-education through labour" - a form of administrative detention imposed as a punishment - is based on a Decision passed by the National People's Congress in 1957, which was later updated with new regulations. This legislation remains in force. According to a definition given by an official legal newspaper, "re-education through labour" is a punishment for actions which fall "somewhere between crime and error".

"Re-education through labour" involves detention without charge or trial for up to three years, renewable by one year, in a forced labour camp. It is imposed by local government committees usually presided over by police officials. It applies to people who are regarded as troublemakers or those accused of committing minor offences which are not regarded as amounting to "crime" and which therefore are not prosecuted under the criminal justice system. Detainees liable to receive terms of "re-education through labour" have no right of access to a lawyer. Under the regulations on "re-education through labour", people who can be subjected to this punishment include those who are classified as being "counter-revolutionary", "anti-Party" or "anti-socialist", as well as people who "behave like hooligans", such as by engaging in fights, smuggling or prostitution, or by disturbing public order or "the order of production" in other ways.

According to official statistics, in 1996 there were 200,000 people in "re-education through labour" camps in China. By early 2001, the number had increased to 260,000. Over the past two years, the use of this form of detention has increased particularly against Falun Gong practitioners and during the "strike hard" campaign against crime launched by the Chinese authorities in April 2001. Other victims include political dissidents,

members of religious groups and a wide range of people accused of "disturbing public order", including prostitutes.

One argument frequently used by Chinese officials to justify "re-education through labour" is that this punishment does not have the stigma of a criminal punishment and that it involves less stringent conditions of detention than a term of imprisonment. In reality, however, the conditions of detainees in labour re-education camps are often similar to those of convicted prisoners, and they often face the same difficulties finding employment after their release.

If one compares "re-education through labour" with criminal punishments, one may also question the justification for imposing a punishment varying from one year to three years of detention in a forced labour camp in cases which are not considered serious enough to be prosecuted and tried under the Criminal Law, whereas those convicted of "crimes" under the Criminal Law can receive light punishments such as "control" (which involves supervision within the community for periods varying from three months to two years), or "criminal detention" (which involves between 15 days and six months of detention).

### ***The Martial Law***

The Martial Law of the PRC was promulgated on 1 March 1996 by the Standing Committee of the NPC. It provides that martial law can be imposed, either locally or in the whole country, in response to situations vaguely defined as "turmoil, riot or disturbance" where "only emergency measures can help preserve social order and protect the people's lives and property".

This law gives the national and local governments the power to suspend constitutional rights during such a state of emergency. It provides that the "martial law enforcement institutions" can ban or restrict assembly, parades, demonstrations, public speeches and "other group activities". They can also ban strikes, impose press censorship, control correspondence and telecommunications, and ban "any activity against martial law".

The personnel in charge of executing martial law - which can be the police, the People's Armed Police, or military units - are given wide powers to carry out arrests under the Martial Law. They can detain and search people violating curfew regulations, "criminals or major suspects endangering state security or undermining social order", people who obstruct or defy "the implementation of martial law tasks", and basically anyone suspected of opposing martial law.

Martial law enforcement personnel also have the power to use "police instruments" to disperse by force crowds or groups of people involved in "illegal" gatherings or demonstrations, or causing "disruption of traffic order", and to immediately detain the organiser or individuals who do not obey orders in such situations.

The Martial Law further specifies that, for those detained or arrested during martial law, the procedures and time limits provided by the Criminal Procedure Law for detention or arrest will not apply, except for the procedure which requires that "arrest" (charge) be approved by the procuracy.

The law allows martial law enforcement personnel to use "guns and other weapons", "if police instruments prove to be of no avail", in various situations where violence occurs or there is a threat of the use of violence. This includes situations where a person detained, or transported under escort, commits a physical assault or "attempts to get away". The law sets no limit on the amount of force to be used in such situations and does not specify that force must be used only when strictly necessary and must be proportionate to the threat of violence. Amnesty International is concerned that the Martial Law permits restrictions to the exercise of basic rights which go beyond those envisaged under international standards. The declaration of a state of

emergency is an expression of the rule of law, not the abrogation of it, and emergency measures must not be introduced as a means of suppressing legitimate rights.

International standards set strict limits on the scope of restrictions which may be enforced under a state of emergency and specify that such restrictions may only occur "in time of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed". The Martial Law of the PRC goes far beyond this by providing that martial law, and the restrictions it involves, can be imposed in response to a local situation of "turmoil, riot or disturbance".

Furthermore, some rights are so fundamental that they can never be suspended, even during a state of emergency. Under international standards, the rights which can never be derogated from include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion. In Amnesty International's experience, violations of the non-derogable rights to life and freedom from torture often occur during an emergency when security forces are given licence to maintain public order with no effective executive, legislative or judicial control. The Martial Law of the PRC gives wide powers to the security forces and may lead to such violations.

International standards also limit the restrictions that can be put on all other rights during a state of emergency. They specify that the exercise of rights other than the non-derogable rights can be suspended by a state only "to the extent strictly required by the exigencies of the situation" and as a temporary measure. The Martial Law of the PRC does not contain any such limitations. Its provisions are so vague that they would permit the arbitrary suspension of rights, such as the right not to be arbitrarily detained, the right to fair trial, and the rights to freedom of expression, association and peaceful assembly.

### ***The Criminal Law - Recent Amendments Concerning Provisions On Terrorism:***

Amnesty International is concerned about many provisions of the Criminal Law, notably provisions concerning "state security" and "state secrets" offences, which are frequently used to imprison people for the peaceful exercise of fundamental human rights, and provisions which include the death penalty as a punishment for over 60 offences, including many non-violent crimes. These concerns have been examined in other reports and this testimony describes only recent amendments made to the Criminal Law concerning its anti-terrorism provisions.

On 29 December 2001, the Standing Committee of the National People's Congress (NPC - China's legislature) adopted amendments to the Criminal Law. The stated purpose of the amendments, which entered into force the same day, was to "punish terrorist crimes, ensure national security and the safety of people's lives and property, and uphold social order".

Prior to the adoption of the amendments, the Criminal Law already included provisions punishing some "terrorist" crimes in a section of the law dealing with "Crimes of Endangering Public Security". Most of the amendments adopted in late December 2001 modify existing articles in that section of the law.

The main changes brought about by the amendments are described below, together with Amnesty International's concerns about some of the amendments or existing provisions:

- **Two amendments have been made to Article 120 of the Criminal Law.** The first one increases the punishments for people who "organise or lead a terrorist organisation". Prior to the amendments, this was punishable by between three and 10 years' imprisonment - this has now been increased to between 10 years' and life imprisonment. Under this article, "active" participation in a "terrorist organisation" is punishable by between three and 10 years' imprisonment, and "other participants" can be punished by up to three years' imprisonment. The second amendment to this article is the

addition of a new clause punishing those who "fund terrorist organisations or individuals engaging in terrorist activities". This is punishable by penalties ranging from fines to maximum five years' imprisonment, except "when the circumstances of the case are serious", in which case five years' imprisonment is the minimum punishment. No maximum is specified.

Amnesty International is concerned that the provisions of Article 120 make it a criminal offence to be a member, leader or organiser of a "terrorist organisation" even if the individual does not commit any other illegal act. The term "terrorist organisation" is not defined in the law and could be interpreted as referring to peaceful political opposition or religious groups.

Amnesty International is also concerned that the new clause added to Article 120 does not specify a maximum punishment, thus potentially making the "funding" of "terrorist organisations" or "individuals engaging in terrorist activities" liable to the death penalty, as other provisions of the law examined below.

- **Four of the amendments add new provisions in Articles 114, 115, 125 and 127 of the Criminal Law** to punish the "dissemination", or "illegal manufacturing, trading, transporting or storing", or "the stealing or seizing or plundering", of "poisonous or radioactive substances or contagious-disease pathogens".

This is in addition to existing provisions in these articles which punish "causing fires, floods or explosions, or using other dangerous means that harm public security" (Article 114), or the same acts as in Article 114 that "lead to serious injury or death or cause major damage to public or private property" (Article 115), or the illegal manufacturing, trading, transporting or storing of firearms, ammunition or explosives (Article 125), or the stealing or seizing or plundering of firearms, ammunition and explosives (Article 127).

The punishments provided in these articles remain unchanged. Articles 115, 125 and 127 all provide punishments ranging from varying terms of imprisonment to the death penalty. Therefore, the new range of offences related to the use of "poisonous or radioactive substances or contagious-disease pathogens", which have been added in articles 115, 125 and 127, are also liable to be punished by death, including for example the illegal transporting or storage of such substances.

Amnesty international is concerned that the amendments to these articles enlarge the scope of the death penalty in China.

- **Two amendments have been made to Article 191 of the Criminal Law.** This article punishes illegal financial operations or gains related to a range of crimes, including narcotics and smuggling crimes. One of the amendments has now added "terrorist crimes" to this range of crimes. The second amendment provides that, when such crimes are committed by a "work unit", punishments will now range between five and 10 years' imprisonment if the "circumstances are serious" - i.e. a heavier punishment than previously provided.
- **The last amendment is a new clause added to Article 291 of the Criminal Law.** The existing provisions in Article 291 punish people who "disturb social order" by gathering in public places, blocking traffic, or obstructing agents of the state from carrying out their duties; the punishments for these offences "if the circumstances are serious" range from "public surveillance" to maximum five years' imprisonment.

The new clause added to Article 291 provides that "whoever seriously disturbs social order by disseminating false explosive, poisonous or radioactive substances or contagious-disease pathogens, or by fabricating threats or information about an explosion or biological or radioactive threat, or by knowingly disseminating fabricated threats or messages" is to receive punishments ranging from 'public surveillance' to five years'

imprisonment, or "if serious consequences have been caused" a sentence of minimum five years' imprisonment. No maximum sentence is specified.

Amnesty International is concerned that the language used in this article is vague, leaving the door open to wide interpretation. It is not clear what the "dissemination" of "false" explosives or substances or of "fabricated threats and messages" might mean, nor is it clear what would constitute "serious consequences". The vagueness of these provisions therefore opens the possibility that this clause may be used to punish people peacefully exercising their right to freedom of expression. This concern is increased by the fact that the provisions of Article 291 have been frequently used in the past to imprison people criticising the government or expressing their views through peaceful gatherings or demonstrations. There are indications that the new provisions in Article 291 may also be interpreted very broadly. On 24 December 2002, in a report on the draft amendments, the official Xinhua news agency stated that "even joking about putting anthrax powder in a letter can lead to a five year prison sentence under a new amendment to China's Criminal Law." This was referring to the new provisions in Article 291, which the news agency cited.

Amnesty International is also concerned that the failure to specify a maximum punishment in the amendment to Article 291 raises the possibility that those convicted of the offences specified may be sentenced to death if this is deemed to have caused "serious consequences".

Overall, the vague wording of several articles of the law, the lack of definition of "terrorism", "terrorist organisation" or "terrorist crime", which are cited in several provisions, and the failure to specify a maximum punishment in some of these provisions give rise to concern that:

- the lack of precision creates uncertainty about what conduct is prohibited;
- these provisions may criminalize peaceful activities and infringe unduly upon other rights such as freedom of expression and association;
- the death penalty may be applied as a punishment under most of the articles cited above.

While the word "terrorism" is used frequently and its practice is generally opposed, there is no universally accepted definition of the word in general use or in treaties and laws designed to combat it. Frequently, the word indicates the user's attitude to a certain crime. States and commentators describe as "terrorist" acts or political motivations that they oppose, while rejecting the use of the term when it relates to activities or causes they support.

In a recent report, the UN Special Rapporteur on terrorism noted that the issue of "terrorism" has been "approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day." The Special Rapporteur also pointed out that "the term terrorism is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgement and is used selectively."

There are a number of UN conventions prohibiting specific acts, such as hijacking or bombing, which specify in detail various crimes which are commonly understood as "terrorist" crimes. However, recent attempts to finalize the UN Convention on "terrorism" stalled, inter alia, because of disagreements about the definition.

In the case of China, Amnesty International is concerned that the anti-terrorist legislation may be used in the context of the government's ongoing repression of "ethnic separatist activity", particularly in the XUAR. In early March 2002, a deputy to the Ninth National People's Congress called on the legislature to set up an anti-terrorism legal framework as soon as possible and stated in this context: "To safeguard China's

sovereignty and territorial integrity, we have to fight separatists, international terrorists and religious extremists."

The Chinese government's use of the term "separatism" refers to a broad range of activities, many of which amount to no more than peaceful opposition or dissent, or the peaceful exercise of the right to freedom of religion. Since the 11 September events, the Chinese authorities have tried to justify their harsh repression of Muslim ethnic opponents or independent religious leaders in the XUAR by claiming they were linked with international "terrorism".

While there have been some incidents of bombings in the XUAR over the past ten years and a few officially reported assassinations which are alleged to have been politically motivated, the government has so far failed to provide convincing evidence that those allegedly involved in these incidents had links with international terrorist groups. Furthermore, the number of such incidents is relatively small and the government's campaign of political repression in the region has gone far beyond the search for people involved in using this kind of violence for political ends.

In the continuous political crackdown in the XUAR over the past ten years, the authorities have detained tens of thousands of people, held many of them in complete secrecy, preventing all independent investigation into the cases, while periodically releasing selective information about a few of those who have been prosecuted. Many of those prosecuted have been held incommunicado for months on end, subjected to torture, and sentenced after grossly unfair trials, most of these either held in secret or in front of large crowds during "mass sentencing rallies". In this context, there are reasons to doubt the credibility of the government's information about those it accuses of involvement in "terrorist" activity.

Amnesty International considers that the measures taken by states to protect their population from violent criminal acts must be implemented within a framework of protection for all human rights, and should not be used as a pretext to curtail fundamental freedoms and crack down on peaceful opposition or dissent.

### ***Increased Repression In The Xinjiang Uighur Autonomous Region Since 11 September 2001***

"Xinjiang is not a place of terror." "By no means is Xinjiang a place where violence and terrorist accidents take place very often." (Statements by Wang Lequan, Secretary of the XUAR Communist Party Committee, and Abdulahat Abdurixit, Chairman of the XUAR Regional Government, in Urumqi on 1 September 2001)

These statements, by the two leading officials of the XUAR, were reportedly made on 1 September 2001, when they met a group of Chinese and foreign reporters following the opening ceremony of the Urumqi Fair. Wang Lequan also told the reporters that Xinjiang was stable and that its stability had never been affected by the activities of "national separatists and religious extremists".

Just a few weeks later, however, Chinese officials were painting quite a different picture. Following the 11 September attacks in the USA, they placed emphasis on the "terrorist" threat posed by "separatists" in the XUAR, stating that the latter had close ties with international terrorist forces, suggesting that "separatism" and "terrorism" were one and the same thing, and calling for international support in their fight against domestic terrorism.

The crackdown on suspected government opponents was intensified in the XUAR soon after 11 September 2001. It further intensified in December 2001, following a national conference on 'political and legal work' held in Beijing on 4 December 2001, which made the crackdown on "ethnic separatist forces, religious extremist forces and violent terrorist forces", as well as the Falun Gong spiritual movement, the first of four main priorities in "political and legal work" for the year 2002.

The authorities also imposed new restrictions on freedom of religion, closed down mosques which were deemed to have a "bad influence" on young people, and subjected the Islamic clergy to intensive scrutiny and "political education". Such "political education" campaigns, which are reminiscent of those held during the Cultural Revolution, aim both to force participants to follow closely the party's dictates and to identify potential opponents and dissenters.

The search for dissenters through the same type of campaign was extended in early 2002 to other sectors of society in the XUAR, including cultural and media circles. Official sources made clear that the "struggle against separatism" is wide-ranging and encompasses repressing all potential dissent and opposition activities, including the peaceful expression of views via poems, songs, books, pamphlets, letters, or the Internet.

Reports on various aspects of this crackdown are cited below. Some of the official reports mention arrests, including the arrest of people accused of "terrorist" activities. However, they give no supporting evidence of such activities. In fact, hardly any "terrorist" acts are reported to have been perpetrated in the XUAR for the past several years. According to a Chinese government report published on 21 January 2002, which lists "terrorist" incidents in the region over the past ten years, the most recent explosion allegedly carried out by a "terrorist" group took place in April 1998 in Yecheng and the only other recent incident of violence imputed to "terrorists" since 1999 is the murder of one court official in Kashgar prefecture in February 2001.

In December 2001, the XUAR Party leader, Wang Lequan, was also reported to have said that, "due to effective preventive measures", there had been no "terrorist activities" in the region since the war in Afghanistan started after 11 September. He was referring specifically to six types of "terrorist activities", including some which few countries would recognize as terrorist activities, such as "the staging of riots" and "the perpetration of beating, smashing and looting". The latter is an expression used in China during the Cultural Revolution, which in the current Criminal Law refers to offences committed during rioting.

One example of such "terrorist activities" is given in the government's report cited above. Among the incidents it claims to have been perpetrated by "terrorist organisations" is extensive ethnic unrest in the city of Gulja (Yining) in February 1997. The unrest started with a peaceful demonstration by Uighurs, which was brutally suppressed by the security forces and followed by sporadic rioting and violence over two days. The government's report gives a simplistic and distorted picture of the unrest - which it calls an "incident". It omits for example to mention the extreme brutality used by the security forces against both protesters and residents, and describes the protesters as "terrorists".

This confirms Amnesty International's concerns, expressed earlier about legislation, concerning the very loose and broad definition given to "terrorism" by the authorities in China.

#### *Estimates of arrests in the XUAR since September 2001:*

Due to the strict control exercised by the authorities over all politically "sensitive" information and the lack of access to the XUAR for independent human rights monitors, it is difficult to estimate with accuracy the number of people detained, arrested or sentenced at any one time in the region. However, on the basis of the reports it has monitored, Amnesty International believes that the number of people detained for investigation on political grounds over the past six months is likely to be in the thousands, with at least scores charged or sentenced under the Criminal Law - most of them Uighurs. There is as yet very little information on people who may have received administrative sentences involving detention in "re-education through labour" camps.

The reports available from official sources give an incomplete picture of the extent of repression. They refer only to a few cities and areas of the XUAR. In addition, official reports of arrests usually refer to people under formal "arrest" (charged) and rarely account for the much larger number of people detained for interrogation, who may be held for long periods without charge. Neither do they usually account for those



who receive "sentences" of "re-education through labour", an administrative punishment imposed without charge or trial which involves up to three years' detention in a labour camp. Official media reports also give a patchy picture of political trials and sentences. The official media hardly ever reports on trials in the XUAR and publishes only selected reports of the "public sentencing rallies or meetings" which are held to announce verdicts and sentences.

Uighur exile sources estimate that at least 3000 people were detained in the political crackdown in the XUAR from mid-September 2001 until the end of 2001. They have also reported that during the same period at least 20 people tried on politically driven charges were sentenced to death and executed, and many more sentenced to prison terms.

### ***Conclusion***

Lack of genuine "rule of law" plays a major role in the human rights abuses occurring in China. The vague and contradictory provisions of the law lead consistently to its arbitrary use and provide wide scope for abuse of power, affecting a very large number of people in the country. In addition, the law is manipulated by the authorities as a tool to imprison political opponents, to silence government critics, to harass and intimidate independent religious groups, and to suppress fundamental freedoms among ethnic minorities. Even though the Chinese authorities have taken some steps to reform the law, this has had no significant impact for the overall protection of human rights in the country.

Serious human rights violations are currently being perpetrated against a broad range of groups, including religious and spiritual groups, in particular members of the Falun Gong spiritual movement. Extensive abuses are also occurring in the context of the Chinese government's current campaign against "separatist, terrorist and religious extremist forces" in the Xinjiang Uighur Autonomous Region. These include violations of a broad range of civil, political, social and cultural rights. Amnesty International is particularly concerned at reports indicating that thousands of people may have been arbitrarily detained during this crackdown in the region and some sentenced to death and executed after summary trials. It is also concerned that serious abuses, such as prolonged incommunicado detention, torture, denial of access to lawyer and other rights associated with fair trial, are likely to have increased in the crackdown.

### ***Recommendations:***

*Exclude all evidence extracted through torture from all proceedings, Criminal or Administrative:*

- Revise the Criminal Procedure Law and other relevant laws and regulations to introduce clear and unambiguous exclusion of all evidence obtained through torture.
- Institute for all suspects all necessary guarantees of the presumption of innocence, including the right to avoid self-incrimination and the right to silence.

*End Arbitrary or incommunicado detention:*

- Abolish all forms of Administrative detention which are imposed without charge, trial or judicial review. Introduce procedures to ensure that all detainees are brought before a judicial authority promptly after being taken into custody and regularly thereafter.
- Ensure that this judicial authority can effectively continue to supervise the legality of the detention and conditions of detentions.

- Effectively outlaw the misuse of "supervised residence" for detention outside recognized places of custody.
- Enable detainees, their relatives and legal representatives to challenge the legality of all aspects of detention, not just on the basis that it has exceeded legal time limits.
- Enhance and protect public scrutiny and accountability of official organs holding the power to detain citizens.

*Ensure detainees effective rights of access to lawyers and family:*

- Guarantee all detainees, as a matter of right and from the outset of any form of detention by the state, and regularly thereafter, access to legal representatives, relatives and doctors of detainees' choice.
- Access should include the right for the detainee to have a lawyer present during interrogation.
- End current exclusions to access in cases such as "state secrets cases" and "where it would hinder investigations".
- End arbitrary limits in practice to the number and duration of meetings between detainees and their lawyers.

*Anti-terrorism provisions:*

*Review the provisions on terrorist crimes in the Criminal Law with a view to:*

- Removing the death penalty from the punishments they provide.
- Ensuring that these provisions do not criminalize activities which amount to no more than the peaceful exercise of fundamental human rights.
- Ensuring in addition that the offences listed in these provisions are clearly defined in unambiguous language.
- Ensure that any future legislation related to "counter-terrorism measures" conforms to international human rights standards.

*End torture:*

- Revise the Criminal Law, Criminal Procedure Law and review prosecution policy to ensure that all acts which constitute torture as defined in Article 1 of the Convention against torture are fully and effectively outlawed. Prosecution should not be limited to cases resulting in death or serious physical injury. Attempts to commit torture, and acts constituting complicity or participation in torture committed by anyone acting in an official capacity should also be punished.

*Demand the release of Rebiya Kadeer, who was arrested for trying to meet with Congressional Research Service (CRS) staff and Congressional staff.*

Thank you for inviting Amnesty International for this important hearing.

T.Kumar

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