HOW COULD THIS VERDICT BE ‘LEGAL’?

THE ROLE OF CHINA’S COURTS IN TARGETING HUMAN RIGHTS DEFENDERS

AMNESTY INTERNATIONAL

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As succinctly captured in the series of citations above: despite the Chinese government's repeated assertions that it upholds the rule of law, an analysis of legal decisions documenting the conviction of human rights defenders shows that in many instances courts in China do just the opposite.

This report presents Amnesty International's findings on the basis of 102 judicial documents, comprising 68 cases involving 64 human rights defenders (HRDs). Analyzing these indictments, verdicts and other case decisions, Amnesty International identified patterns of charges, prosecutions and sentences, as well as the rationale underpinning court rulings to convict and imprison individuals for behaviour, acts and/or expression that are protected both under international human rights law and, at least nominally, in China's Constitution.

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[1] UN Special Procedures Communication AL CHN (2.2022)

[2] "UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: China Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", 31 May 2024, UN Doc. A/HRC/56/6/Add.1, para. 34.

The evidence reviewed by courts – and ultimately used to prosecute the HRDs for national or public security crimes – included:

- posting comments and sharing others' comments on Chinese and US-based social media platforms
- eating dinner and gathering with friends, where social issues were discussed
- giving interviews to journalists about one's personal or professional experiences
- working in a non-profit organization and seeking funds from non-mainland Chinese sources
- participating in trainings on non-violent activism

In all cases reviewed where a verdict has been announced (67 of the 68), the court ruled the defendant was guilty: a 100% conviction rate for this sample. The vast majority – over 90% - of those cases involved the application of criminal law provisions ostensibly for the purposes of protecting against threats to national security or ensuring public order. The documentation makes clear that those provisions lack clear and consistent definitions and are applied to restrict fundamental freedoms without regard to the principles of legality, necessity, or proportionality.

- The criminal provisions lend themselves to arbitrary interpretations, appear designed to do so and are not subject to effective and independent oversight that could protect against the politicization of cases or biased interpretation of evidence to substantiate charges of more crimes.
- Only three of the 68 cases involved any allegations of violence, and for those three cases a reasonable link to violence on the basis of the evidence cited appears unfounded.
- Court documents show that judges regularly conflate the Chinese state and the Chinese Communist Party, for example by deeming speech critical of party leadership to be an element of state subversion, or by deeming critiques of government laws and policies to be attacks that "smear the image of the Chinese Communist Party". This conflation is a direct result of, and evidence for, a lack of independence of the courts that is a structural characteristic of the Chinese legal system.

The court documents also reveal a range of ways in which the application of national security crimes creates or exacerbates the risk of violations of fair trial rights, while simultaneously making it next to impossible to demand investigations into allegations of those violations, including torture and other cruel, inhuman or degrading treatment or punishment.

- Official charges of national security crimes, in certain cases, allow for a near-total suspension of legal safeguards otherwise written into Chinese criminal and criminal procedure laws. This is most egregious in the case of "residential surveillance in a designated location" which Amnesty International has, for the first time, determined to constitute enforced disappearance, a crime under international law and whose prohibition is a *jus cogens* norm.
- Although Amnesty found complete denial of the right to legal counsel in only one case, the court documents and interviews contain detailed information about personal experiences during the legal process that confirms extensive limits on the right to access to counsel of one's choosing, including threats against chosen lawyers and family members, and the use of government-appointed lawyers in direct opposition to wishes of the defendant. This information reinforces the findings related to specific cases, which have been the subject of public commentary by Amnesty International, among other groups.
- Eleven of the cases were marred by allegations of the use of illegal evidence obtained through torture; the courts refused to throw out any of the evidence cited, in any of the 11 cases.
- All but three of the individuals implicated in these cases were sentenced to prison terms, ranging from 18 months to a death sentence with two-year reprieve. And over half of the cases resulted in so-called "supplementary" sentences of "deprivation of political liberties," a practice that seriously impinges on the exercise of fundamental freedoms after release from prison, without clear definitions, recourse to appeal or compliance with international law.

Amnesty International's analysis, grounded in official documentation and supplemented by accompanying HRD testimony, indicates that China's judiciary enables the government to engage in systematic violations of human rights, notably when handling "sensitive" cases, with the apparent aim of suppressing activities related to human rights defence and discouraging – through a credible threat of imprisonment – individuals from engaging in such activities. As the rights to expression, association and peaceful assembly, as well as to a fair trial, are "enabling rights" this has a damaging ripple effect on rights protections more broadly and undermines efforts to tackle impunity in China.

The Chinese government has a duty to address these violations and to prevent their recurrence. Their persistent refusal to take serious measures to this end, despite clear and unequivocal recommendations

from the UN human rights mechanisms, calls into question the authenticity of their stated commitments to upholding the rule of law.

Amnesty International urges the Chinese authorities to take a range of steps that would respect, protect and fulfil the rights to freedom of expression, association and peaceful assembly, as well as fair trial, and allow human rights defenders to play their critical role in supporting victims and survivors of human rights abuse and seeking human rights progress in law and policy. To this end, the Chinese government should:

- Uphold its international human rights treaty obligations and respect *jus cogens* norms, including the absolute prohibitions of torture and other cruel, inhumane or degrading treatment and of enforced disappearances
- Drop all criminal charges against and immediately release all those who have been detained or imprisoned simply for exercising their human rights and fundamental freedoms, and ensure a pathway to effective remedy and reparation into allegations of fair trial and other violations while in state custody
- Revise legislation to remove provisions incompatible with international law, including vague and overly broad national security and public order crimes; the detention practice known as "residential surveillance in a designated location"; and the supplemental sentence of "deprivation of political rights".

2. CONTEXT

Over the last two decades, human rights defenders (HRDs) in China have proven themselves to be as varied and diverse a group as Chinese society itself. They may act individually, petitioning for justice for themselves or a family member, calling for their local government to take responsibility for its failings. They may be part of informal networks, sharing information and approaches to addressing deeply-rooted societal problems – of inequality between rural and urban residents, of blatant gender-based discrimination in employment or of the risks of economic and social precarity inherent in the gig economy. They may stand in a court room, they may be on either side of a journalist's microphone, they may be professors or students, or they may have never attended university at all. They hold a range of different religious beliefs, speak different mother tongues and identify themselves as part of different types of formal or informal networks.

What HRDs have in common, particularly over the last decade, during which President and Chinese Communist Party Secretary General Xi Jinping rose to and consolidated power, is that they have had a target placed on their backs. In retaliation for their pursuit of justice, human rights defenders in China have been subjected to significant and systemic injustice by a public security and judicial apparatus that enjoys *carte blanche* to define for itself what constitutes a threat to national security.

In and of itself, this observation is not new. The UN human rights mechanisms had documented so many concerns about the use of national security as a justification to repress fundamental freedoms in China, so wide-ranging in scope and geography, that in 2020 they issued a public statement with an unprecedented fifty-plus signatures calling for "renewed attention on the human rights situation in the country… to monitor Chinese human rights practices."[3] Five years later, little has been done to advance a more nuanced understanding of the mechanics of this repression, including how it is applied in across the country, much less to take concrete steps towards ensuring accountability.

This research briefing therefore builds on the research of Amnesty International and other non-governmental organisations, engaged academics, individuals, think tanks and activist networks. It reaffirms the concerns about the vague and overly broad language of Chinese criminal law provisions, and uses individual case documentation to lay bare not just the obscure, arbitrary and often absurd ways in which those laws are applied – but to demonstrate significant patterns in the criminalisation of the exercise of rights and in the failure to uphold procedural guarantees, including fair trial rights, that give rise to serious violations of human rights.

[3] Office of the UN High Commissioner for Human Rights (OHCHR), "UN experts call for decisive measures to protect fundamental freedoms in China", 26 June 2020, https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freedoms-china.

3. METHODOLOGY

In this research, Amnesty International chose to focus on human rights defenders (HRDs) located in mainland China whose individual experiences and cases had been highlighted by the UN human rights mechanisms. Specifically, using the Office of the High Commissioner for Human Rights (OHCHR) "Special Procedures Communications Database," Amnesty International first processed official Communications from the United Nations Special Procedures (UNSPs) to the Government of China between 2014 and 2024, identifying cases of individuals subjected to alleged human rights violations that met one or both of two criteria:

1) that the individual was the subject of a regular Communication (an Allegation Letter or Urgent Appeal) sent from the UN Special Rapporteur on the situation of human rights defenders, whether individually or jointly with other mandate holders,
2) that the individual was the subject of a published Opinion of the UN Working Group on Arbitrary Detention (WGAD) where the WGAD had found that the person's detention was as a result of their work to defend or promote human rights; in some cases, this finding was robust enough to determine that their detention was (or is) arbitrary due to its failure to recognize equality before the law, a violation of Article 7 of the Universal Declaration of Human Rights.

One hundred and fifty-nine (159) cases met these two criteria. Amnesty International was able to gather, analyse and assess 102 court documents pertaining to 68 of those 159 cases that had proceeded to the indictment and/or verdict stage; ultimately, this amounted to cases involving 64 human rights defenders in mainland China. Key information consistent across the cases was collected and coded, allowing the sum total of case details to paint a more comprehensive picture of police, prosecutorial and judicial approaches to the prosecution of HRDs.

The documents reviewed by Amnesty International included indictments from procuratorates, first instance court verdicts, and appeal verdicts. The organization gathered the documents through our network of trusted partners and through open-source searches, verifying those accessed open source by cross-referencing with media reports, other NGO reports, UN documents and, where necessary and subject to case-by-case risk assessment, direct engagement with lawyers and activists in the country. The government is not known to have made any of these documents public through official channels to the UN, despite explicit requests from the UN human rights mechanisms and the International Labour Organisation's Committee on Freedom of Association.[4]

To verify and validate our findings, Amnesty International reviewed the content of all relevant Communications and Opinions accessible via the UN's online databases, and 53 replies to those Communications from the Government of China. Amnesty International wrote directly to the Chinese government in August 2025, laying out the report's findings and conclusions and requesting additional information and comment. As of the date of publication, the Chinese government had not provided a response.

[4] Between 2018 and 2023, the Committee on Freedom of Association adopted language requesting a range of information about detained activists, including some on the List of Individuals Named. See most recently the 401st report of the Committee of Freedom of Association, Case 3184, UN Doc. ILO GB.347/INS/17.1, para 2709-297. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_872245.pdf

Two of those requests for additional information focused specifically on data regarding criminal prosecutions and the functioning of the judiciary in China. Given that there is no consistent and comprehensive access to government sources of information about criminal proceedings in China, and in the absence of a response from the government, Amnesty International was not in a position to consider all cases brought in Chinese courts under specific laws of interest, national security-related or otherwise. The legal procedures applied in practice to "sensitive" cases may diverge from the general or "standard" practices of the legal and judicial system in China. Nonetheless, Amnesty's analysis lends support to the argument that all cases considered by Chinese courts are characterized by similar structural and systemic challenges to rights protection, for example the lack of effective oversight of law enforcement, procuratorates[5] or courts.

It should be noted that the list of HRDs' cases used as the basis for this analysis cannot be understood to be comprehensive, either of the UN's efforts to address human rights issues in China or of the broad population of individuals who, in line with the UN's definition, "act individually or with others to promote or protect human rights in a peaceful manner." However, given the constraints on access to official sources of data discussed above, Amnesty believes that this sample of HRDs, using the work of the UN Special Procedures as a proxy identified, still permits analysis that provides meaningful insight into the legal tools mobilized to limit and criminalize the exercise of fundamental rights and the defence of the human rights of others.

While an analysis of HRDs as a particular sub-group would be expected to give only limited insight into the specific nature of violations that other groups may experience, it has relevance for the overall climate of the human rights situation. Any limitations or restrictions on human rights defenders' ability to carry out their work have a ripple effect on the ability of other individuals, communities and broader publics to enjoy their human rights.

Amnesty International would like to recognize and express its appreciation for the many legal experts and civil society colleagues whose feedback and analysis helped to shape the strategic and methodological approaches of the report, and above all, the Chinese human rights lawyers who lent their expertise and personal, often heart-wrenching, experience to this project; their voices, in clear print and in between the lines, are critical to understanding and documenting the repression of human rights in China and to developing recommendations and strategies to respond.

[5] The State Council Information Office defines "procuratorates" as agencies responsible for investigation and prosecution; this is akin to the role of public prosecutor in other jurisdictions, albeit with the caveat that procuratorates are not under the oversight of the executive/a Ministry of Justice but rather, of the Supreme People's Procuratorate, which itself reports to the National People's Congress Standing Committee.

4. RELEVANT LEGAL FRAMEWORKS

4.1 INTERNATIONAL HUMAN RIGHTS LAW

The rights to freedom of expression, association and peaceful assembly, the right to be free from arbitrary detention and the right to a fair trial, including the exclusion of evidence at trial obtained through torture, are key human rights protected under the Universal Declaration of Human Rights (UDHR) and reflected in the binding obligations on States contained in the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Chinese government ratified CAT in 1988 and ICESCR in 2001 and signed the ICCPR in 1998.[6]

The "principle of legal certainty" under Article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes and seeks to prevent vague, ambiguous and/or overly broad laws which are open to arbitrary application and abuse and may lead to arbitrary deprivation of liberty.

Human rights law narrowly defines the restrictions a government may legally impose on fundamental freedoms like freedom of expression and peaceful assembly and association: limitations must be prescribed by law, must protect a legitimate interest, and be necessary and proportionate.[7] While "national security" and "public order" have been recognized in international human rights law as sometimes justifying restrictions on certain rights, limitations can only be put in place in the least restrictive manner possible, and only where strictly proportionate.

Furthermore, national security cannot be invoked to justify restrictions on rights and freedoms unless genuinely and demonstrably intended to protect a state's existence or territorial integrity against specific and imminent threats of the use of force. Indeed, expressions can only be restricted on national security grounds if the authorities can demonstrate that it incites clear and imminent danger of force/violence, or reduces the states capacity to defend itself from such a threat.[8] A state cannot use national security as a justification for measures aimed at suppressing opposition to human rights violations or at perpetrating

[6] China has repeatedly stated its intention to ratify the treaty, putting it under an obligation not to do anything to defeat the treaty's object and purpose. Vienna Convention On the Law of Treaties (1969), Article 18.
[7] UN Human Rights Committee (HRCttee), General Comment 34: Freedoms of opinion and expression (Article 19), 29 July 2011. UN Doc. CCPR/C/GC/34; The Global Principles on National Security and the Right to Information (The Tshwane Principles), 12 June 2013, Principle 3.
[8] Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 2.

repressive practices against its population.[9] Nor may this be used as an excuse to deny people the right to express different political views and to exercise their other human rights as protected by international legal standards.

The right to freedom of expression includes the right to seek and receive information.
Journalists have the right to seek and convey information under Article 19 of the UDHR. States must also take care to ensure that individuals, including journalists, are not prosecuted for disseminating information of legitimate public interest that does not harm national security.[10] Some standards go further, arguing that punishment on national security grounds for journalists for disclosure of information, like leaking state secrets charges, is not permitted under international law if "the disclosure does not actually harm and is not likely to harm a legitimate national security interest", or "the public interest in knowing the information outweighs the harm from disclosure."[11]

As argued by the UN Special Rapporteur on the right to freedom of peaceful assembly and association, the right to association implies in practice the right to access (to solicit, receive and utilize) resources, including for the purpose of promoting and protecting human rights.[12] Furthermore, prohibition of an organisation, or use of criminal prosecution to restrict the freedom to associate, can only be justified if it is necessary to avert a real, not just hypothetical, danger to national security.[13]

The right to freedom of association includes the right of workers to form or join an organisation to promote their rights. The right to collective bargaining forms an important element of that right.[14]

The right to freedom of peaceful assembly is a fundamental freedom and may be restricted only under narrow circumstances. Restrictions on the grounds of public safety must establish that the assembly creates a "real and significant risk" to the life or security of persons or a similar risk of serious damage to property.[15] As above, "national security" may serve as a ground for restrictions if such restrictions are necessary to preserve the State's capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force. The UN Human Rights Committee provide that "this threshold will only exceptionally be met by assemblies that are "peaceful". Moreover, where the very reason that national security has deteriorated is the suppression of human rights, this cannot be used to justify further restrictions, including on the right to freedom of peaceful assembly."[16]

In 1998, the UN adopted a declaration on "the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms".[17] Commonly known as the "Declaration on human rights defenders", it outlines a clear set of rights, in all cases already existing in international human rights law, that should be protected in order to enable individuals or groups to promote and protect rights and that, in turn, protect those individuals or groups from retaliation for peacefully opposing human rights violations committed by the State.[18] While some states argue that this Declaration was always non-binding, other international norms[19], for example those grounded in the

[9] Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, 1984, UN Doc. E/CN.4/1985/4.
[10] HRCttee, General Comment 34 (previously cited), paragraph 30.
[11] Johannesburg Principles (previously cited), Principle 15.
[12] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 8 March 1999, UN Doc: A/RES/53/144, Article 13; the UN Special Rapporteur on the right to freedom of association and peaceful assembly, report summary: "General Principles for Protecting Civic Space and the Right to Access Resources", 13 November 2014.
[13] HRCttee, Views: Lee v. South Korea, adopted 20 July 2005, UN Doc. CCPR/C/84/D/1119/2002, para 7.2.
[14] Right to Organize and Collective Bargaining Convention (ILO Convention 98).
[15] UN Human Rights Committee (HRCttee), General Comment 37: The right to peaceful assembly (Article 12), 17 September 2020, UN Doc: CCPR/C/GC/37, para. 43.
[16] HRCttee, General Comment 37 (previously cited), para 42.
[17] UN Declaration on Human RIghts Defenders
[18] Ibid, Article 12.
[19] UN HRCtte, General Comment 37 (previously cited), paragraph 1; UN Declaration on Human Rights Defenders (previously cited), Article 1.

UN human rights treaties, state that everyone has the right to develop or discuss human rights ideas and principles and peacefully advocate their acceptance.

International norms on lawyers ensure that lawyers are entitled to freedom of expression, belief, association and assembly.[20] States must ensure that lawyers can perform their professional functions "without intimidation, hindrance, harassment or improper interference".[21]

International law guarantees the right to a fair trial, including the right to a lawyer,[22] the exclusion of evidence obtained through illegal means,[23] access to family, to a trial within a reasonable time frame, to a fair and public hearing, fair punishment, and other associated rights.[24] Inter-related to the right to a fair trial, the rights to liberty and to be free from arbitrary detention are often engaged where a person is wrongly detained or not afforded their fair trial rights.[25] Furthermore, the prohibition of torture and other ill-treatment can be violated by poor detention conditions, or by the mistreatment of those in detention and the admission of resultant confessions at trial.[26]

4.2 CHINESE DOMESTIC CRIMINAL LAW

Criminal offences in China are established under the Criminal Law, which was introduced in 1979 and underwent significant reform in 1997.[27] China's Criminal Procedure Law, also adopted in 1979 and reformed on multiple occasions since, including extensively in 1996, 2012 and 2018, establishes procedural statutes to ensure implementation of the Criminal Law. Other legislation may impact criminal proceedings, as do certain interpretations of law issued by the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP).

4.3 CRIMINAL LAW

The Criminal Law (CL) includes specific provisions and sentencing guidelines for certain offenses, including crimes in the category of "endangering national security". Of these, charges such as "separatism" and "inciting separatism"; "subversion of state power" and "inciting subversion of state power"; "collusion with foreign forces"; "espionage"; and "illegally providing state secrets to a foreign body" have been consistently found to have been levied against HRDs,[28] in Amnesty International's own research and in the observations and conclusions of UN human rights experts. Sentencing guidance for these crimes ranges from between zero months to the death penalty depending on the crime and the role the individual played.

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[20] Basic Principles on the Role of Lawyers, 7 September 1990, para. 23

[21] Basic Principles on the Role of Lawyers (previously cited), para. 16

[22] UN Human Rights Committee, General Comment 32: the right to equality before courts and tribunals and to fair trial (Article 14), 23 August 2007, UN Doc. CCPR/C/GC/32. para. 34.

[23] Article 5 of the Universal Declaration, Article 7 of the ICCPR, Article 2 of the Convention against Torture, Articles 37(a) and 19 of the Convention on the Rights of the Child, Article 10 of the Migrant Workers Convention, Article 5 of the African Charter, Article 5(2) of the American Convention, Articles 1 and 2 of the Inter-American Convention against Torture, Article 8 of the Arab Charter, Article 3 of the European Convention, Principle 6 of the Body of Principles, Articles 2 and 3 of the Declaration against Torture. HRC General Comment 32, §§6, 41, 60; Cabrera-García and Montiel Flores v Mexico, Inter-American Court (2010) §165; Gäfgen v Germany (22978/05), European Court Grand Chamber (2010) §§165-168; See Othman v United Kingdom (8139/09), European Court (2012) §§264-267.

[24] Amnesty International, Fair Trial Manual, 2014, Index: POL 30/002/2014

[25] Universal Declaration, Article 3; ICCPR, Article 9(1); Article 9 of the Universal Declaration, Article 9(1) of the ICCPR, Article 37(b) of the Convention on the Rights of the Child, Article 16(4) of the Migrant Workers Convention, Article 6 of the African Charter, Article 7(3) of the American Convention, Article 14(2) of the Arab Charter, Article 5(1) of the European Convention, Article 55(1)(d) of the ICC Statute; Section M(1)(b) of the Principles on Fair Trial in Africa; Principle III(1) of the Principles on Persons Deprived of Liberty in the Americas; See Article XXV of the American Declaration

[26] Such practices violate the UN Convention Against Torture, to which China is a state party.

[27] After the 1997 reform, the CL was amended 12 times, most recently in 2023. National People's Congress, Criminal Law Amendment (XII) of the People's Republic of China [中华人民共和国刑法修正案（十二）], 29 December 2023, https://www.gov.cn/yaowen/liebiao/202312/content_6923386.htm

[28] These appear in, respectively, Articles 103(1), 103(2), 105(1), 105(2), 106, 110, and 111 of the CL.

For individuals sentenced to national security crimes, they may also receive a deprivation of political rights, a punishment defined in the CL[29] that strips the individual of the right to vote and of freedoms of "speech, publication, assembly, association, procession and demonstration",[30] as well as other rights, most often upon completion of the custodial sentence.[31] It is not equivalent to parole, suspended sentences, or temporary release, which are separately enshrined in the CL and CPL. The maximum deprivation of political rights sentence is five years unless the individual has been sentenced to death or an indefinite imprisonment, in which case they are deprived of political rights for life.

"Endangering public security" crimes include terrorism charges[32] that have also been used against HRDs. Terrorism charges under the CL include non-violent offences, such as "advocating terrorism, extremism, or instigating the perpetration of terrorist crimes" by producing books or audio-visual materials; or "illegal possession of articles [and audio-visual materials] that promote terrorism and extremism". Sentencing guidance for the various provisions range from controlled release to ten years, depending on the severity of the crime and the role the individual played.

"Disrupting public order" crimes[33] include "illegal possession of state secrets"; "gathering a crowd to disrupt social order"; "gathering a crowd to disrupt order of a public place"; and "picking quarrels and provoking trouble". Sentencing guidance ranges from controlled release to up to ten years, depending on the role the individual played, the severity of the circumstances and number of acts committed.

4.4 CRIMINAL PROCEDURE LAW

China's Criminal Procedure Law (CPL) establishes several procedural rights for criminal defendants, including on general provisions, case filing, investigations, public prosecutions, trials, and enforcement of sentence. Under the law,[34] prosecutors are required to present evidence to prove the suspect is guilty, establishing the principle of innocent until proven guilty.

While the CPL may be intended to codify fair trial guarantees, in fact the law has many deficiencies. These include extensive loopholes in fair trial rights when national security crimes are suspected or alleged. For example, Article 75 enshrines "residential surveillance at a designated system" (RSDL), a measure that enables investigators to hold individuals outside the formal detention system for periods up to six months without access to legal counsel of their choice or to their families, and which places suspects at risk of torture and other ill-treatment. The UNSPs have described RSDL as "secret incommunicado detention" and "tantamount" to enforced disappearance,[35] which is prohibited under international law. Based on the legal criteria set out in international law, Amnesty International considers that the use of RSDL in such cases does in fact constitute enforced disappearance. The practice involves deprivation of liberty by state agents, concealment of the individual's location from their family, and denial of access to legal protections, placing the person outside the protection of the law.[36]

The CPL establishes provisions on the right to a defence lawyer; if an individual cannot afford a lawyer, they or their families are allowed to apply for support from a legal aid agency to have a lawyer designated for the case. In certain other cases, legal aid agencies can be instructed by police, procuratorates or courts to

[29] It may also apply to those convicted of intentional harm, rape, arson, setting explosives, poisoning or robbery, Article 56 of the CL.
[30] In addition to these two sets of rights, Article 55 of the CL ("Deprivation of political rights") also clarifies that the supplemental sentence includes deprivation of the right to "hold a position in a state organ" and the right to "hold a leading position in a state-owned company, enterprise, public institution or people's organisation".
[31] If an individual receives a controlled release sentence and deprivation of political release sentence, they are served simultaneously as per Article 55 of the CL.
[32] These appear in Article 120(1-6) of the CL.
[33] These appear in, respectively, Articles 282, 290, 291 and 293 of the CL.
[34] Article 51 of the CPL.
[35] Mandates of ten UN Special Procedures, Communication to the Government of China, 24 August 2018, UN Doc: OL CHN 15/2018.
[36] Enforced disappearance is defined by Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance. The prohibition of enforced disappearance is also a *jus cogens* norm of international aw, which means it is binding on all states.

designate a lawyer.[37] However, the law fails to ensure the right to legal counsel in line with international standards. For example, authorities are required to ("shall") arrange for a defence lawyer to meet with their clients within 48 hours of the former requesting a meeting. If the individual is suspected of national security or terrorism crimes, requests for meetings during the "criminal investigation period" are subject to permission granted by the police agency investigating the individual.[38].

While the CPL prohibits the use of evidence obtained through torture,[39] in most circumstances the law places the burden of proof on the defence to provide evidence and not on the state to investigate, in violation of international standards.[40] Prosecutors and courts are expected to investigate if they suspect illegal means were used to obtain evidence, but if the defendant alleges that they were subjected to torture or other ill-treatment and wishes for any evidence obtained through torture to be excluded, they must provide relevant "leads" and materials.[41] Under Chinese regulations, "leads" are defined as "specific content and clear indicated persons, times, places, measures, and so forth suspected of involvement with the illegal collection of evidence" and materials are defined as "photos, physical examination records, hospital records, interrogation records, interrogation recordings, or testimony of others in the same cell that can reflect the harm of the illegal collection of evidence.[42]

The use of torture to extract confessions is recognized as a crime under Chinese law,[43] subject to a maximum three-year sentence. The criminal abuse of a detainee, specifically the beating or physical abuse of a detainee, is also prohibited and subject to a prison sentence of up to three years or ten if the circumstances are serious.[44] For both offences, causing the disability or death of the detainee results in heavier sentences.

While the CPL requires notification of the suspect's family within 24 hours after a person is taken into custody, the law also contains loopholes where the family is not notified if it might "obstruct" the investigation if they are suspected of national security or terrorism charges (Article 85).[45] Additionally, there are no provisions in the CPL that permit suspects to meet with or correspond with their families.

The CPL grants a lengthy period for police, prosecutors and courts to investigate, examine and hear a case, with several extensions available that may result in prolonged periods of pre-trial detention or delays in receiving a verdict in breach of international standards.[46]

Under the CPL, police may detain an individual for up to 37 days before the arrest is reviewed and approved by the procuratorate (acting as a judicial officer), depending on the circumstances of the suspected activity and location; the procuratorate have up to seven days to approve the arrest.[47] International human rights law requires a detainee be brought before a judge or judicial officer within 48 hours of their arrest.[48]

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[37] Article 35 of the CPL.
[38] Article 39 of the CPL.
[39] Article 56 of the CPL.
[40]UN HRCttee, General Comment 32(previously cited), para 41.
[41] Articles 57-58 of the CPL.
[42] Article 5: Defendants and their defenders applying for the exclusion of illegal evidence shall provide relevant leads and material. "Leads" refers to specific content and clear indicated persons, times, places, measures, and so forth suspected of involvement with the illegal collection of evidence; "materials" refers to photos, physical examination records, hospital records, interrogation records, interrogation recordings, or testimony of others in the same cell that can reflect the harm of the illegal collection of evidence. Article 5, People's Court Rules for Handling the Exclusion of Illegal Evidence in Criminal Cases (Provisional), 27 November 2017, https://web.archive.org/web/20220108005413/https://www.court.gov.cn/fabu-xiangqing-75652.html. See also, Article 127, Supreme People's Court, Interpretation on the Application of the "Criminal Procedure Law of the PRC, 26 January 2021, https://web.archive.org/web/20250311213639/http://www.jcy.gansu.gov.cn/info/1116/32759.htm.
[43] Article 247 of the CL.
[44] Article 248 of the CL.
[45] Article 85 of the CPL.
[46] See, inter alia, International Covenant on Civil and Political Rights, Article 9(3); UN Human Rights Committee, General Comment 35: Liberty and security of person (Article 9), 16 December 2014, UN Doc. CCPR/C/GC/35, para 37.
[47] Article 91 of the CPL.
[48] UN Human Rights Council (UNHRC) Resolution 21/4: *Enforced or Involuntary Disappearances,* adopted on 27 September 2012, UN Doc. A/HRC/RES/21/4, operative para. 18(a). Rule 14(2) of the Council of Europe *Rules on remand in custody* HRCttee Concluding Observations: El Salvador, UN Doc. CCPR/C/SLV/CO/6 (2010), para. 14; Special Rapporteur on torture, UN Doc. E/CN.4/2003/68 (2002) para. 26(g) and UN Doc. A/65/273 (2010) para. 75; UN Committee against Torture (CAT) Concluding

Police have up to two months to investigate before bringing a case to the procuratorate for indictment, but that may be extended by up to a total of five months or restarted if another "major crime" is suspected – or even, contingent on the Supreme People's Court (SPC) receiving approval from the Standing Committee of the National People's Congress, to be extended indefinitely.[49] Once the case is transferred to the procuratorate, a decision to indict the suspect must be made within 45 days;[50]however, prosecutors may also send the case back to police for further investigation for up to a month for a maximum of two occasions[51] after which the period to make a decision to indict resets. In sum, these legal provisions allow for the possibility of thirteen-and-a-half months – or more, where the initial investigation is "restarted" – between initial detention and indictment.

Once the procuratorate indicts a suspect and transfers the case to a court, a verdict should be pronounced within three months of the court accepting the case. However, the law provides for a number of extensions that may be granted by the SPC resulting in the possibility of indefinite delay.[52]

4.5 JUDICIAL INTERPRETATIONS

Some judicial interpretations enacted by the SPC and SPP have attempted to clarify the implementation of the CL. However, a judicial interpretation issued by the SPC and SPP in 2001 permits retroactive application of any judicial interpretation if there was no relevant interpretation in force during the time.[53] The retroactive application of the law is generally prohibited under international law where it is disadvantageous to the accused.[54]

In 2013, the SPC and SPP issued a judicial interpretation that vastly expanded the scope of the "picking quarrels and provoking trouble" provision in the CL. The interpretation asserted that the use of the Internet to spread "false information" constituted "making a commotion and causing serious disorder in a public place" under 293(4) of the CL.[55]

Observations: Venezuela, UN Doc. CAT/C/CR/29/2 (2002) para 6(f); Kandzhov v Bulgaria (68294/01), European Court (2008) paras 66-67.

[49] Articles 156-160 of the CPL.

[50] Article 172 of the CPL.

[51] Article 175 of the CPL.

[52] Article 208 of the CPL.

[53] Supreme People's Court and Supreme People's Procuratorate, "Regulations of the Supreme People's Court and the Supreme People's Procuratorate on the Time Effect of the Application of Criminal Judicial Interpretations," Judicial Interpretation No. 5(2001), December 2001.

[54] See ICCPR, Article 15(1).

[55] Supreme People's Court and Supreme People's Procuratorate, "Interpretation on Several Issues Regarding the Applicable Law in Cases of Using Information Networks to Commit Defamation and Other Such Crimes", Judicial Interpretation No. 21(2013), 10 September 2013, https://www.spp.gov.cn/spp/zdgz/201309/t20130910_62417.shtml.

5. UNDERDEFINED AND OVERUSED CRIMINAL PROVISIONS

5.1 VAGUE, AMBIGUOUS AND BROADLY WORDED LEGISLATION

Amnesty International found that Chinese procuratorates and courts relied on a few vague and broad criminal charges when prosecuting HRDs. Specifically, the top three criminal charges used to convict HRDs out of the 68 cases reviewed were CL Article 105(2), "inciting subversion of state power" (22 cases); CL Article 293, "picking quarrels and provoking trouble" (17 cases); and CL Article 105(1), "subversion of state power" (14 cases).

Beginning in 1997, shortly after China amended the Criminal Law to adopt the offenses of "subversion" and "inciting subversion", the UN Working Group on Arbitrary Detention (WGAD) described these offences as having a "broad and imprecise definition liable to be both misapplied and misused."[56] This has been repeated in multiple Opinions issued since that visit, including over the research period.[57] Despite attention being raised from the time these offenses were first enacted, the Chinese government has not addressed these concerns nor reformed or amended these provisions. Since at least 2019 the WGAD has called on China to repeal Article 105(2) or bring it into line with its international human rights obligations.[58] In 2015, the UN Committee against Torture described endangering national security crimes (which include "inciting subversion" and "subversion") and "picking quarrels" as overly-broad and called on the Chinese government to adopt more precise definitions.[59]

"The work of lawyers, the lives of citizens, the rights of the people. They considered all this 'subversion of state power'. How could this verdict be 'legal'?"[60]

[56] UN Working Group on Arbitrary Detention (WGAD), report: *Visit to the People's Republic of China, 22* December 1997, UN Doc. E/CN.4/1998/44, para. 45.
[57] For reference, please see WGAD Opinions 15/2011, 3/2016, 7/2017, 36/2019, 13/2020 and 69/2021.
[58] WGAD Opinion 15/2019, paras. 33–35. See also, WGAD Opinion 41/2022, para. 42.
[59] UN Committee Against Torture (CAT), Concluding Observations: China, 3 February 2016, UN Doc. CAT/C/CHN/CO/5, para. 18, 36-37.
[60] Amnesty International interview with a Chinese lawyer.

Criticism of the broadly-worded nature and abuse of the "picking quarrels" offense has been more recently made by legal scholars and legislators within China.[61] The charges have also been criticized by international human rights bodies; in 2024, the UN High Commissioner for Human Rights called on China to revise "picking quarrels" for being too vague and to release HRDs detained under the law.[62]

"Because of the particular kind of power dynamics in China, [the authorities] can take whatever you do – any behaviour or action – and define it as criminal."[63]

According to the court documents Amnesty reviewed, these concerns in principle were borne out in practice when the law was applied. In many instances the Chinese courts' interpretation of these provisions was ambiguous. There was no consistency in the elements of behaviour that provided evidence for a conviction for a single offence. Some individuals had been convicted of different crimes for essentially similar behaviour, such as posting comments or photos of demonstrations on social media. This was the case with three individuals convicted of national security crimes like "inciting subversion of state power" and "subversion" but on the basis of acts similar to those allegedly committed by other HRDs convicted of "picking quarrels" and "gathering a crowd to disrupt order of a public place".[64]

This suggests that authorities may be using a range of overlapping and vaguely defined offences to criminalize the peaceful exercise of human rights, often using more serious criminal provisions than reasonably justifiable to do so. This raises serious concerns under international law, including with respect to the principle of legality and to legal certainty.

Even when China's judicial bodies have provided an interpretation of provisions in the CL – a practice in many jurisdictions which allows the judiciary as a presumably independent branch of government to constrain potential abuses of power - this guidance has not served to narrow the scope of criminal prosecution. The 2013 SPC and SPP judicial interpretation expanded the provisions of "picking quarrels" to define the Internet as a public space that could be "disrupted" with the dissemination of "false information".[65] Thus an already broad provision under the CL was further expanded to include potentially any expression online. This overbroad interpretation was on display in one court verdict where an HRD was convicted of "picking quarrels" for sharing posts and videos about current affairs and human rights issues on Twitter (now X).[66] The court rejected their defence lawyer's argument that the defendant should not be convicted as Twitter was blocked in China and therefore could not possibly disrupt a public place in China.

5.2 WIDESPREAD USE OF NATIONAL SECURITY CRIMES WITHOUT LEGITIMATE PURPOSE

Of the 68 cases reviewed by Amnesty, 41 involved charges brought against HRD defendants on the basis of acts explicitly defined as being related to or a threat to national security..[67] This is despite the fact that neither the law nor the courts offer a clear definition of the concept of "national security"; indeed, the WGAD commented that since its inception, the CL "makes no attempt to establish standards to determine the quality of acts that might or could harm national security… and as long as [national security law] is part of the statute, it provides a rationale for restricting fundamental human rights and basic freedoms".[68] The government has not amended the national security provisions in the CL since they were adopted in 1997,

[61] China Daily, "Legislator proposes revision of vague 'picking quarrels' law", 21 March 2023, https://www.chinadaily.com.cn/a/202303/21/WS64190f5ea31057c47ebb59f9.html.
[62] OHCHR, "Türk's global update to the Human Rights Council", 4 March 2024, https://www.ohchr.org/en/statements-and-speeches/2024/03/turks-global-update-human-rights-council
[63] Amnesty International interview with Wang Quanzhang.
[64] Documentation for cases AKN, VWG and KRT.
[65] SPC and SPP Legal Interpretation No. 21 (2013), Article 5.
[66] Documentation for case YSO.
[67] In addition to the 36 cases noted above, under "subversion of state power" or "inciting subversion of state power", five additional cases involved charges of inciting separatism (2, case nos. 43 and 44), illegally providing or possessing state secrets (2, case nos. 11 and 17), and espionage (1, case no. 45).
[68] WGAD, *Visit to the People's Republic of China* (previously cited), para. 48.

and instead adopted a National Security Law in 2015 that was described by the UN High Commissioner for Human Rights as "extraordinarily broad".[69]

Under international legal standards the use of the concept of national security to limit human rights is only permitted on narrow restrictions based on the use of or threat of the use of force that threatens the state's existence. Of not just the 41 cases brought under national security charges, but all 68 cases reviewed by Amnesty, the judicial authorities only cited violent acts or threats of violent acts in three instances. No evidence provided in those three cases constituted an act that could reasonably be understood to have posed a threat to the state's existence; all three cases involved procedural violations.[70]

To the contrary, in 11 of the 41 cases brought under national security charges, the prosecutors and courts emphasized how the HRD's writing, advocacy or movement building in relation to *non-violent activism* was evidence of intent to subvert or incite subversion of state power.[71] In one court verdict, that of human rights defender Qin Yongmin, the indictment listed 37 independent pieces of "evidence", including online writings related to his previous imprisonment; articles on "government reform and peaceful transition of power"; speech promoting multi-party systems; posts on the website of Independent Chinese PEN; and sharing these writings in messages sent on the chat platform QQ.[72]

In determining their verdict, the judges stated: "[The defendant] argued that he did not use violence to overthrow state power, but the conduct of the crime of subverting the state power is not limited to violent means." They proceeded to convict and sentence the individual to 13 years in prison.[73]

The appeal court reiterated this sentiment in upholding the original ruling, stating:

> *"Although he did not use violent means, the conduct of the crime of subversion of state power includes but is not limited to the use of violent means nor is it a necessary condition whether the state power was actually subverted for establishing the crime. Therefore, [the defendant] should be convicted and punished for the crime of subversion of state power."*

Out of the 41 cases that involved national security charges, 36 cases related to charges of "subversion" and "inciting subversion". In all 36 of these cases, Amnesty found that prosecutors and court verdicts cited a common element of criminal conduct: they argued that, through their legitimate exercise of opinion and expression, including statements critical of the government, the defendant had "slandered", "defamed" or "smeared the image" of the government or Chinese Communist Party (CCP). While international human rights law permits limited and narrow restrictions on freedom of expression to respect the rights and reputations of others, the Chinese judicial system has ruled through these cases that expression of opinions critical of the Chinese government or its policies is a threat to national security, which goes far beyond permissible international standards and is a breach of the right to freedom of expression.

China's constitution, which establishes the Supreme People's Court (SPC), states that the leadership of the Chinese Communist Party (CCP) is a defining feature of the political system and it is prohibited for an organisation or individual to damage that system.[74] Regulations produced by the CCP create Party Committees that "guide" judicial organs in "political-legal work" (such committees are known as Political and Legal Committees or *zhengfawei*).[75] International standards on the right to be heard by an independent tribunal include that the independence of the judiciary is rooted in the separation of powers between the executive, legislature and judiciary to ensure checks and balances.[76]

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[69] OHCHR, "UN human rights chief says China's new security law is too broad, too vague", 7 July 2015, https://www.ohchr.org/en/press-releases/2015/07/un-human-rights-chief-says-chinas-new-security-law-too-broad-too-vague.

[70] In two cases (QAV and SHX) the individuals denied the charges and there were numerous violations of their right to a fair trial, and in the third (HZO) there were fair trial rights violations and the allegation was related to an abstract comment rather than a specific threat.

[71] Documentation for cases OLV, DXP, BGY, SGH, TYP, GKS, YCL, ZMP, CTZ, IMD and UBW.

[72] Documentation for case TYP.

[73] Ibid.

[74] Article 1, Constitution of the People's Republic of China, 2018.

[75] Central Committee of the Communist Party of China, "Regulation on the Communist Party of China's Political-Legal Work", 18 January 2019, https://www.gov.cn/zhengce/2019-01/18/content_5359135.htm.

[76] Basic Principles on the Independence of the Judiciary, Principle 1; Principles on Fair Trial in Africa, sections A(4)(a), (f)- (g); African Commissioner for Human and People's Rights, Views: *Lawyers for Human Rights v Swaziland* (251/2002), African Commission (2005) para. 56

In 2014, the UN Committee on the Elimination of all forms of Discrimination Against Women issued recommendations in its regular review of China calling on the State to "prevent all forms of interference with the judiciary by the political branch of the State party."[77] The year following, the UN Committee against Torture called on the Chinese government to ensure that the Political and Legal Committees "are prevented from undertaking inappropriate or unwarranted interference with the judicial process".[78]

One case reviewed by Amnesty International provides an example of how the judicial system operates to defend the CCP by defining criticism of the Party as an issue of national security and subsequently by convicting and imprisoning individuals for making such remarks. In 2016, an HRD was sentenced to 19 years in prison, with the first instance court endorsing the procuratorate's accusation that posting online, writing and publishing articles on overseas websites and giving interviews to international media outlets constituted "inciting subversion" and "providing intelligence overseas".

Evidence for his conviction includes a number of items, including an extensive audit of personal digital devices, as well as documentation of posts "illegally providing police-related images" online; using software to get over the Great Firewall; and "actively accepting" interviews from international media outlets.[79]

The appeal court upheld the conviction, agreeing with the first instance court, and explicitly stated that criticism of the CCP is equivalent to incitement of subversion. The judges stated:

> *"[The defendant] blatantly slanders the basic national policies and socialist system established by China's Constitution, which attacks and denies the socialist regime led by the Communist Party of China…China's national system and political system are the embodiment of the will of the people under the leadership of the Communist Party of China. The two are inseparable."*

The appeal court concluded that as result of this expression, the HRD's "behaviour [met] the constituent elements of inciting subversion of state power".[80]

Another set of cases demonstrate the latitude with which courts can consider pieces of evidence provided by police and prosecutors as threats to national security. Amnesty International reviewed the court documents of two journalists, one of whom was convicted for illegal possession of state secrets charges while the other was convicted for illegally providing a specific document to an individual overseas. The latter, because of the involvement of a foreign entity, was deemed in this case national security crime .[81] Authorities did not in either case describe how the disclosure of the cited documents would harm national security, as is required by international law, nor did they cite how the disclosures outweighed the public's right to know. The defence lawyers in both cases argued that the documents were improperly classified, but the courts dismissed their arguments not by engaging on the question of what content is or should be classified a state secret, but by simply stating that the process of the classification was "legal and valid".

While the documents themselves were not reprinted in the verdicts, there is no reason to believe that they consisted of "state secrets". In one of the cases above, that of citizen journalist (and founder of the online rights documentation platform "64 Tianwang") Huang Qi, the evidence concerned local administrative reports and a policy briefing.[82] The other case referred to an internal Party ideological directive, commonly referred to as "Document No. 9", that has long been publicly accessible. It warns government and Party organs to stay vigilant to seven "false ideological trends, positions and activities", including "promoting 'universal values'" and "promoting the West's idea of journalism, challenging China's principle that the media and publishing system should be subject to Party discipline".[83] In the court's discussion, neither of these documents were described in terms that suggested sensitive national defence or intelligence-related content, and the latter document did not pertain to the state at all, but to the Chinese Communist Party. The

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[77] UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations: China, 7 November 2014, UN Doc. CEDAW/C/CHN/CO/7-8. para. 15(b).
[78] CAT, Concluding Observations: China (previously cited), para. 23(d).
[79] Documentation for case GVL.
[80] Ibid.
[81] Documentation for cases NYT and LZN.
[82] Documentation for case LZN.
[83] China File, "Document 9: A ChinaFile Translation", 8 November 2013, https://www.chinafile.com/document-9-chinafile-translation

nature and general accessibility of these documents raise serious questions as to whether they constituted state secrets under international standards.

In practice, the Chinese government has for decades retained expansive powers to declare nearly any document a state secret.[84] Instead of taking steps to remove the ambiguity around what constitutes a state secret, the authorities in 2024 adopted a slate of amendments to the *Law on the Protection of State Secrets*[85] that further restricted access to information about state secrets, broadened the scope of classified information and tightened government control over its disclosure.[86]

[84] Amnesty International, *State secrets – a pretext for repression* (Index: ASA 17/042/1996), 13 May 1996, https://www.amnesty.org/en/documents/ASA17/042/1996/en/
[85] China, Law on the Protection of State Secrets, 2024, https://www.chinalawtranslate.com/en/secrets-law-2024/.
[86] Amnesty International, *The State of the World's Human Rights: April 2025,* Index: POL 10/8515/2025, 28 April 2025, https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/china/report-china/, p. 129.

6. SYSTEMATIC CRIMINALIZATION OF FUNDAMENTAL FREEDOMS

Of the 68 cases reviewed by Amnesty International, the vast majority – 63 – involved HRDs convicted of criminal offences in violation of their rights to freedom of expression, association and peaceful assembly. The other five cases related to violations of the right to a fair trial or freedom of movement,[87] though most cases reviewed involved fair trial violations, as described in a later section.

6.1 FREEDOM OF OPINION AND EXPRESSION

Amnesty International found 32 of the 68 cases primarily involved violations of freedom of expression, including press freedom. The types of behaviour punished by Chinese courts included writing and publishing articles, owning and sharing books, posting on social media platforms online, or giving interviews to media outlets. Online expression was repeatedly punished, with 27 of the 32 freedom of expression cases revolving around the HRDs' online speech.

For most of the 32 freedom of expression cases, the HRDs were convicted of either "inciting subversion" (20) or "picking quarrels" (6).[88] For most of the "inciting subversion" cases, the procuratorate and courts took aim at the content of the individuals' speech that criticized the political system of the country, human rights situation, or directly criticized the government or the CCP.[89] A similar range of content was cited in the cases of HRDs convicted of "picking quarrels"; courts argued that they had criticized, commented on, or shared information about government leaders or policies.[90] Notably, one WHRD convicted of "inciting subversion" had predominately written articles about, and promoted, women's rights and land issues, according to the court verdicts.[91]

[87] Documentation for cases VUJ, RNB, QAV, DBF and JYH.
[88] The other six cases involved charges of espionage, terrorism, inciting separatism, state secrets or defamation charges, as per documentation for cases SHX, LUM, LQO, CFW, NYT and LZN.
[89] Documentation for cases JLM, QYN, DXP, AKN, KMC, FEJ, YRB, XMU, IDL, EFN, GKS, YCL, ZMP, VWG, NEK, CTZ, PRQ, HXN, UBW and GVL.
[90] Documentation for cases XZQ, PKB, TQE, BZX, YSO and DWH.
[91] Documentation for case EFN.

These cases illustrate that the vague and overbroad language of both "inciting subversion" and of "picking quarrels" provisions enables the authorities to selectively target dissent and misapply the law to criminalize legitimate expression. The courts' application of different criminal provisions – blurring the line between what is considered a national security crime and a public order crime – may point to a potential for abuse. Crystal clear, however, is the fact that that the primary evidence justifying applications of the criminal provisions consists of expression that would be protected under international law.

A well-known case of targeting an HRD for their online speech is that of the Chinese Nobel Laureate Liu Xiaobo, who was convicted of "inciting subversion" in 2009 and sentenced to 11 years in prison for writing articles that were published online. The most well-known of these writings was the "Charter 08" manifesto for political reform, which was initially signed by over 300 Chinese citizens. The manifesto was launched to coincide with the ten years since China's signing of the ICCPR and which outlined China's political history over the twentieth century, using this as a basis for articulating what Liu called, "in the spirit of responsible and constructive citizens… specific positions regarding various aspects of state administration, citizens' rights and interests, and social development."[92] The court verdict cited the domain name, number of page visits, number of websites that reprinted the essay, comments and other pages that linked to the website as proof of "us[ing] the media features of Internet to publish slanderous articles on the Internet to carry out" the crime of "inciting subversion".

The excerpts included in the verdict are provided below (in bold), in their original context of the "Charter 08" text.[93]

> *"9. Freedom of Association: Guarantee citizens' right to freedom of association. Change the current system of registration upon approval for community groups to a system of record-keeping. Lift the ban on political parties. Regulate party activities according to the Constitution and law;* ***abolish the privilege of one-party monopoly on power****; establish the principles of freedom of activities of political parties and fair competition for political parties; normalize and legally regulate party politics.*
>
> *18.* ***Federal Republic****: Take part in maintaining regional peace and development with an attitude of equality and fairness, and create an image of a responsible great power. Protect the free systems of Hong Kong and Macau. On the premise of freedom and democracy, seek a reconciliation plan for the mainland and Taiwan through equal negotiations and cooperative interaction. Wisely explore possible paths and institutional blueprints for the common prosperity of all ethnic groups, and* ***establish the Federal Republic of China under the framework of a democratic and constitutional government****."*

6.2 FREEDOMS OF ASSOCIATION AND PEACEFUL ASSEMBLY

The right to freely associate was violated in 18 out of the 68 cases that Amnesty International reviewed. Of the 18 freedom of association cases, 14 involved HRDs convicted of "subversion".[94]

For four of the 14 HRDs convicted of "subversion", their conduct described by judicial authorities as criminal elements of "subversion" is wholly characteristic of the ordinary activities of running an NGO, such as raising funding, writing reports, and holding trainings.[95]
In the three cases related to the civil society organization Changsha Funeng, for example, these trainings were described by the court as part of the defendants' requests for funds for, and implementation of, "'protecting the right of lawyers' and other 'projects' to attack China's judicial system." The courts note that

[92] Hong Kong Free Press (HKFP), "In Full: Charter 08 – Liu Xiaobo's pro-democracy manifesto for China that led to his jailing", 14 July 2017, https://hongkongfp.com/2017/07/14/full-charter-08-liu-xiaobos-pro-democracy-manifesto-china-led-jailing/
[93] HKFP (previously cited).
[94] The other four cases involved charges of "inciting subversion" (2) and "gathering a crowd to disrupt social order" (2).
[95] Documentation for cases ZUR, VCA, TYP and ONU.

training (and training of trainers) also included "methods and techniques for using socially sensitive events to instigate relevant personnel to disseminate negative information."

Two other individuals were convicted of "inciting subversion" for similar activities; one was the director of an NGO who, according to their indictment, had "leased overseas servers to open [the NGO's] website, recruited staff, applied for funding… operated the website and publishing six annual reports" on social issues and human rights. The other had attended NGO trainings, including by the Geneva-based non-governmental organization the International Service for Human Rights, and in multiple cases applied to, and received from these overseas organisations "individual funding" of approximately 4000 euros.[96]

The difference offences used to prosecute similar behaviour again indicated the inherent vagueness of the criminal provisions, once again demonstrating that the vague definitions of the law can are used to clamp down on the legitimate exercise of human rights.

Seven of the 14 individuals convicted of "subversion" for their exercise of freedom of association were loosely associated with other HRDs who held similar ideas; private meetings where they discussed non-violent ideas about political reform were presented at court as evidence of criminal elements of "subversion".[97] In three of these seven cases, HRDs were convicted of "subversion" for their involvement in self-declared political parties, such as the "China Democracy Party" which was banned in the late 1990s.[98] An appeal court rejected the defence argument that the "China Democracy Party" was not an organisation but "a small circle of people with the same ideas" by stating, "the so-called 'China Democracy Party' is an illegal organization, and its purpose and goals violate the provisions of the Constitution and law of China".[99] Irrespective of the court's determination, Amnesty International considers this to be a violation of the right to freedom of association.

In cases that Amnesty International reviewed involving specifically lawyers that were convicted of national security charges, it was apparent that their criminal prosecutions were based, in part, on efforts to defend their clients' rights. In five cases when a human rights lawyer was convicted of "subversion" or "inciting subversion", documents revealed that prosecutors and courts accused the lawyers of criminal activity for their professional work as a lawyer or for supporting family members of detainees. Authorities accused them of "hyping up hot cases" to "smear the image of judicial organs and slander and attack the socialist judicial system with Chinese characteristics".[100]

Two individuals among the 18 freedom of association cases, at the time of their arrest employees of a workers' rights organization, were convicted of "gathering a crowd to disrupt social order" for assisting workers at a factory to collectively bargain for their rights.[101] The court verdict described common elements of collective bargaining and peaceful assembly as criminal conduct, despite such behaviour being protected by international human rights law and, on paper, Chinese domestic law.

> *"The [organisation] hoped that the employee representatives would use radical methods such as collective work stoppage, banners, slogans, and marches in the factory area to achieve their goal…and told the employee representatives that 'rights protection' requires employees to use their collective strength to put pressure on the factory so that employees can collectively negotiate with the factory in order to succeed."*[102]

In 13 of the 68 cases reviewed by Amnesty International, the right to peaceful assembly was violated. In eight of those 13 cases, authorities used "picking quarrels" charges, and for the other five charges of "gathering a crowd to disrupt order of a public place" were applied.[103] In no instance did the courts describe an assembly as violent, nor did they describe the defendant's conduct as violent or threatening violence to the life or security of persons, or likely to cause serious property damage. Without these details, it does not

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[96] Documentation for cases SGH and ABC.
[97] Documentation for cases OLV, BGY, HZO, AXE, KRT, IMD and LJI.
[98] Documentation for cases TRV, MBD and ZTC; Human Rights Watch, *Nipped in the bud: the suppression of the China Democracy Party,* 5 January 2000, https://www.hrw.org/report/2000/09/01/china-nipped-bud/suppression-china-democracy-party.
[99] Documentation for case TRV.
[100] Documentation for cases AKN, BGY, IDL, AXE, VWG and LJI.
[101] Documentation for cases WAK and ZVE.
[102] Documentation for case WAK.
[103] Documentation for cases WDF, ECI, GMX, HRA, RSK, UDL, QIW, NDJ, MJQ, XLR, MQR, KZB and AFO.

appear that the acts would meet the threshold required by international law in order to criminalize protestors in this way.

In five cases linked to the right to peaceful assembly, the HRD had been "petitioning", a civil process in China where individuals unsatisfied with an administrative decision may appeal to a higher government office, and they were convicted of what the judicial authorities described as "abnormal petitioning".[104] In one case, the verdict notes that the individual

> *"at around 10am… held up petition materials and made an abnormal petition on the roadside in front of the United National Development Programme in Sanlitun, Chaoyang District… went to the U.S. Embassy in Beijing for an abnormal petition… went to Tiananmen Square in Beijing to illegally petition… [and] from June 203 to January 2015 created trouble out of nothing."*

6.3 SUSPICION OVER INTERNATIONAL ENGAGEMENT

The right to freedom of expression includes the right to impart information and ideas "through any media and *regardless of frontiers"*.[105] The right to freedom of association also includes implicitly the freedom to seek, receive and use resources, including funding, regardless of whether their origins are domestic, foreign or international.[106] However, Chinese courts have such an expansive view of national security and "foreign interference" that a wide range of kinds interactions with a foreign person or entity was considered criminal.

In 39 of the 68 cases reviewed by Amnesty International, China's judicial system cited international connections as elements of criminal activity when convicting HRDs of national security (33) and other crimes (6).[107] The most common elements or behaviours cited by the procuratorates or courts were connections to an international organization, media outlet, website and/or individual. The types of activity described by the prosecutors or courts included:

- giving interviews or acting as a source for international media outlets, such as the New York Times[108]
- receiving funding from international (sic: non-Chinese) organisations, rarely identified by name[109]
- publishing articles on overseas websites, such as the Chinese language human rights information site *Boxun*[110]
- interacting with an international organisation or foreigner, in one case including an "overseas enemy element"[111]
- attending trainings hosted by international organisations, in one case explicitly naming the International Service for Human Rights[112]

Courts cited these international connections as causing damage to the image of the government abroad or causing an adverse influence internationally.[113] In a dozen of the cases reviewed, authorities described the international organisation or individual as "hostile" or "anti-China" without providing evidence or grounds for this determination – despite this being an element key to establishing the potential impacts of the national security-related allegations.[114]

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[104] "Abnormal" petitioning is when an individual appeals directly to the province's capital city or the Central Government in Beijing. The rules around petitioning are governed by the State Council's Regulations on Letters and Visits [国务院信访条例], 2005. See also, Xujun Gao and Jie Long, "On the Petition System in China", 2015, https://researchonline.stthomas.edu/esploro/outputs/journalArticle/On-the-Petition-System-in-China/991015130856403691.

[105] Universal Declaration of Human Rights, Article 19.

[106] These constituent rights are implicit in the Universal Declaration of Human Rights, Article 20, and in the UN Declaration on Human Rights Defenders, Art.13. They are elaborated, to include the consideration of access to resources, in the work of the UN Special Rapporteur on freedom of association and assembly, Report, 24 April 2013, UN Doc. A/HRC/23/39.

[107] Of the six non-national security crimes, the individuals were convicted of "picking quarrels" (4), "defamation" (1), and "illegally crossing national borders" (1).

[108] Documentation for case LUM.

[109] Documentation for case VCA.

[110] Documentation for case QYN.

[111] Documentation for case YRB.

[112] Documentation for cases ABC, ZUR and VWG.

[113] Documentation for cases PKB, ZUR, VCA, LQO, LUM and ONU.

[114] Documentation for cases ZUR, AKN, BGY, VCA, AXE, KRT, ONU, VWG, NEK, PRQ, GVL and LJI.

Chinese law gives rise to concern that for a significant proportion of the cases that cited international connections, the defendant faced reasonable assumption of aggravated sentencing – despite those individuals being involved in legitimate activity protected under international human rights law and despite the absence of substantiated claims that such activities included conduct that would be proscribed under international law. Criminal Law Article 106 instructs courts to "punish sternly" an individual convicted on charges of "inciting subversion", "subversion" or "inciting separatism" where the acts are "committed in collusion with an establishment, organization or individual outside the territory of China".[115]

This risk was borne out in six of the cases reviewed by Amnesty International, where examples of "collusion" appear to include "participating in an overseas news online conference", "playing the role of interviewee" for a foreign media outlet and "renting overseas servers… with the help of overseas personnel".[116] However, at no point does the court establish what of the activities listed as evidence constituted "collusion" – it appears the mere presence of a contact with an international actor, as described above, was sufficient. This points to a lack of definition of the term "collusion," and the potential for courts to interpret multiple provisions simultaneously, without sufficient specificity or certainty, that would result in heavier sentences for legitimate speech and acts that should never have been criminalized.

[115] Article 106 of the CL states "Where a crime prescribed in Articles 103 [inciting/separatism], 104 [armed insurrection] or 105 [inciting/subversion] of this Chapter is committed in collusion with an establishment, organization or individual outside the territory of China, follow the provisions of those articles to punish it sternly."
[116] Documentation for cases ABC, DXP, SGH, TYP, LUM and YCL.

7. REPEATED VIOLATIONS OF THE RIGHT TO A FAIR TRIAL

Amnesty International's review of 102 judicial documents for 68 cases demonstrated repeated violations of the right to a fair trial. For many of the cases, the court documents confirm what for more than a decade Amnesty International has documented in the cases of human rights defenders: that freedom from arbitrary and incommunicado detention and from torture and other ill-treatment, and the rights of access to freely-chosen counsel and to communicate with the outside world, are consistently violated by Chinese authorities. This results in significant, systematic harm to individual detainees (in this case, human rights defenders) and to the broader group of human rights advocates and civil society at large.

In all cases reviewed where a verdict was announced (67 of the 68), the verdict was guilty; all but three of the individuals implicated in these cases received custodial sentences, ranging from 18 months to a death sentence with two-year reprieve.[117]

7.1 RIGHT TO LIBERTY AND TO BE FREE FROM ARBITRARY DETENTION

International human rights law guarantees the right to liberty and the prohibition of unlawful detention, yet Amnesty International has determined that all 68 cases involve arbitrary detention of human rights defenders. In 63 of the cases, it is clear that the courts' verdicts relied primarily on understanding as "criminal" the exercise of rights to freedom of expression, association and assembly. In the remaining five cases, while there are also clear violations of fundamental freedoms Amnesty International cannot take a view on whether or not the charges were legitimately brought. What is clear is that they also featured violations of fair trial rights, on which basis they may still meet the definition of arbitrary.

Secret detention is also a violation of the right to be free from arbitrary detention.[118] While court documents do not in most cases explain the circumstances of an individual's arrest, or allow for transparency in the

[117] In case VWG, no custodial sentence was handed down (though the individual had spent over two years in pre-trial detention); another two individuals (cases BGY and ZVE) received suspended sentences after pleading guilty. Case NEK had not gone to trial as of the time of writing.

[118] Articles 2 and 17(1) of the Convention on Enforced Disappearance. UN Mechanisms Joint Study on secret detention, UN Doc. A/HRC/13/42 (2010) §§18-21; WGAD Opinion 14/2009 (the Gambia), UN Doc. A/HRC/13/30/Add.1 (2010) pp187-191 §§19-22; Salem Saad Ali Bashasha v The Libyan Arab Jamahiriya, HRC, UN Doc. CCPR/C/100/D/1776/2008 (2010) §7.6; European Court: Chitayev and Chitayev v Russia (59334/00), (2007) §§172-173, El-Masri v The Former Yugoslav Republic of Macedonia, (39630/09) Grand Chamber (2012) §§230-241.

extent to which public officials carried out their duties according to legal procedure, interviews with a number of lawyers and victims indicate that such procedures are often not followed at all, or not followed to the letter and in such a way as to avoid harm to detainees and their families. This is particularly true in the case of arrest and other police documents.

"When they arrested us, they gave no documentation to our families. Our family members received no notice at all."[119]

'The police arrested me in the early morning. They first cut off the internet and electricity in my home, then forcibly broke in without presenting any legal documents, such as an arrest warrant — and none have been provided so far.'[120]

In general, Chinese law requires the provision of documentation to families; however, in certain cases, this documentation can contain limited information – and in the case of RSDL, by definition need not include critically important information, such as the whereabouts of the individual.

Of the 68 cases reviewed, in 15 instances an HRD was subject to RSDL, which is a regime that Amnesty International has determined constitutes enforced disappearance under international law. Individuals held in RSDL are at higher risk of torture or other cruel, inhuman or degrading treatment or punishment (other ill-treatment), and indeed four of the HRDs held in RSDL had also alleged torture or other ill-treatment while in detention and further, argued for illegal evidence obtained through torture to be excluded from their trial.[121]

"I think the period of Residential Surveillance at a Designated Location (RSDL) was the main phase that broke me…It felt like being thrown back to a time before any rule of law. I was terrified … As the police put it, 'No one knows you are here, so whatever happens to you here, no one will ever know. Your family will just think you've disappeared.'"[122]

"According to the CPL, interrogations should happen in a detention centre. But in recent years, interrogations during RSDL appear in more and more cases. In most of them, it's not just confessions, but also torture, that happens in this context."[123]

In 24 out of the 68 cases, the defendant was initially arrested on different charges than those under which they were later convicted. While it is common in any jurisdiction for charges to change following arrest, as new evidence comes to light, what is worrying about the changes appearing in the cases analysed is the intersecting web of elements that increase the potential for abuse: prosecutors without independent oversight; acts or speech cited as evidence that should be protected under international law; and the reality that detention under more serious (national security-related) provisions increases the risk of human rights violations, including of and during RSDL.

"They put a black bag over my head and taped my mouth. They weren't wearing uniforms. They put me in a black room. Three days later they came with official forms - for administrative detention, for criminal detention, for RSDL - but they were all blank. What does this tell us? Easy: that they had no grounds for arresting me." [124]

Four individuals were detained on more serious charges than those for which they were ultimately convicted. Of those, three were HRDs detained on the national security charge of "inciting subversion" – which under Chinese law permits police to ignore certain due process rights, and which in these cases did result in fact in due process violations – and then each of the three was convicted on public order charges.[125] The implication is, if there was a clear and consistently understood approach to the distinction between these

[119] Amnesty International interview with a Chinese lawyer.
[120] Amnesty International interview with Wang Yu.
[121] Documentation for cases OLV, KMC, CTZ and IMD. This is additionally discussed in subsection below on the exclusion of illegally-obtained evidence.
[122] Amnesty International interview with Zhao Wei.
[123] Amnesty International interview with Wang Quanzhang.
[124] Amnesty International interview with Zhou Shifeng.
[125] Documentation for cases PKB, UDL, LQO and NDJ. One individual was detained on charges of "illegal assembly" and convicted of "gathering a crowd to disrupt public order" which, despite being considered a different "category" of crime carries the equivalent maximum prison sentence under the CL.

types of charges, then those three individuals could have been spared fair trial violations such as imposition of RSDL or restrictions on access to counsel and communication with their family.

At the same time, in at least three of the cases reviewed, individuals were subject to RSDL despite their arrests not being made under national security provisions, implying that at least in some cases, the legal procedure can be circumvented to permit arbitrary detention, including for the purposes of building a case for other criminal behaviours.

"I was detained on charges of so-called 'picking quarrels and provoking trouble', but I was then put into RSDL. That's ridiculous. After they amended the CPL, they could only [put the accused] in RSDL in three kinds of cases, which didn't include picking quarrels. So they ended up changing the charges to more serious crimes."[126]

That CL provisions are so broad and vaguely worded that HRDs have been detained on a range of charges – resulting in differential treatment and exposure to a cascading set of risks of human rights violations – for the exercise of fundamental freedoms. Without clarity around what acts are considered criminal, and in particular what acts are considered to constitute "endangering national security", individuals engaged in the protection and promotion of rights place themselves at risk of arbitrary detention and other violations of the right to liberty.

"You can't just take out a blank piece of paper, wave it around, call it 'following criminal procedure', and detain someone."[127]

7.2 RIGHT TO LEGAL COUNSEL

The documents analysed by Amnesty International show that the Chinese authorities have violated the right to legal counsel, including the right to a lawyer of one's own choice and to competent and effective counsel.[128]

It does not appear that human rights defenders are systematically deprived of the right to legal representation in toto, or for the full length of their deprivation of liberty. In only one case reviewed by Amnesty International did the court documents show that a woman HRD accused of "inciting subversion" had no lawyer representing her at the first-instance trial or her appeal.[129] She made no comments at either of the hearings and lost both cases; she received and served a 4.5-year prison sentence.

"While we were inside [the detention centre], all our rights were stripped away, including the right to legal counsel..."[130]

However, the documents do support other findings by Amnesty International's in respect of specific cases it has commented on publicly: that the right to a lawyer of one's own choice has also been violated.

To ascertain this from the court documents, Amnesty International considered that a lawyer of one's choice would be highly correlated to a lawyer that a) engaged on the cases under the direction of their client, and b) that the client would insist on their innocence, absent other aggravating factors (such as, as discussed below, the use of torture and ill-treatment to extract confessions, or pressure on family members to encourage guilty pleas), and despite the fact that under Article 67 of China's Criminal Law, pleading guilty can result in a reduction of sentence.[131]

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[126] Amnesty International interview with Zhou Shifeng.
[127] Amnesty International interview with Zhou Shifeng.
[128] ICCPR, Article 14(3)(b); Universal Declaration of Human Rights, Article 11(1); UN HRCttee Concluding Observations: Spain, UN Doc. CCPR/C/ESP/CO/5 (2008) para. 14; Principle 6 of the Basic Principles on the Role of Lawyers; Principle 13 and Guidelines 5 and 9 of the Principles on Legal Aid.
[129] Documentation for case ABC.
[130] Amnesty International interview with a Chinese lawyer.
[131] Article 67 of the CL: 【自首】Turning oneself in after a crime and giving a true account of one's crime is surrender. Criminals who surrender may have their punishment mitigated or commuted. Among them, those whose crimes are minor may be exempted from punishment. Criminal suspects subjected to compulsory measures, defendants and criminals who are serving their sentence who truthfully confess their other crimes which are not yet known to judicial authorities are regarded as having surrendered.

Among the 68 cases reviewed, Amnesty International documented 46 cases in which human rights defenders insisted on their innocence and 10 in which the plea was not known, either because the only available documentation was an indictment or, in one case, because the individual has not yet been tried.[132] Of the 12 HRDs that pled guilty, Amnesty International review of court documents and publicly-available media reports suggest that at least nine had government-appointed lawyers.[133]

"They used all sorts of soft and hard tactics, including coercion, deceit, and threats to make me dismiss my lawyer. I had no choice. I eventually complied and accepted government-appointed lawyers. After I was released, I heard that the government-appointed lawyers had completely refused to meet with my family."[134]

7.3 FREEDOM FROM TORTURE AND THE EXCLUSION OF EVIDENCE OBTAINED THROUGH ILLEGAL MEANS

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) have long been prevalent in all situations where authorities deprive individuals of their liberty in China.[135] During criminal proceedings against HRDs in the cases reviewed by Amnesty International, Chinese courts systematically dismissed concerns about torture and the gathering of illegal evidence through torture. Under international law, states must ensure that allegations are promptly, impartially, independently and thoroughly investigated, that victims have access to an effective remedy and receive reparation, and that those responsible are brought to justice.[136]

"Despite being told I had rights, in reality none of those rights were respected. They deprived me of rest, access to the toilet, and I was beaten and coerced to confess."[137]

"They would adjust my treatment and food based on my responses. For example, if I confessed, they would ease the restrictions and improve my meals. If I resisted, conditions would worsen... Eventually, I felt that the only way to survive and get out of the interrogation room was to confess — to admit to the charges as they wanted. Not just to admit what I and Li Heping, and the other lawyers I knew, had done, but also to declare — as they demanded — that our actions were aimed at 'subverting state power'."[138]

In 11 cases out of the 68 reviewed, where the court documents indicated that the defence attorneys argued for the exclusion of evidence on the basis that their client was tortured, the court ruled against the defence lawyers in every single instance. In three of those 11 cases, the courts claimed the defence lawyers hadn't provided enough materials to support their allegation, stating in one case that "they did not provide the court with relevant 'leads' or materials such as the personnel, time, place, method, and content of illegal evidence collection".[139]

Several lawyers Amnesty International spoke to in 2015, who had tried to raise claims that their clients had been tortured in court proceedings, said that these demands to provide or obtain sufficient evidence to prove

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Criminal suspects who do not have the conditions of surrender provided for in the two above paragraphs, but truthfully confess their crimes, may receive a mitigated punishment; and where due to their truthful confession of their crimes the occurrence of particularly serious circumstances is avoided, [their] punishment may be commuted.

[132] Documentation for, among others, NEK.

[133] Documentation, and complementary research, related to cases ZUR, AKN, BGY, VCA, WAK, ONU, VWG, LJI and ZVE.

[134] Amnesty International interview with Jiang Tianyong.

[135] Amnesty International, *No End in Sight: Torture and forced confessions in China* (Index: ASA 17/2730/2015), 11 November 2015, https://www.amnesty.org/en/documents/asa17/2730/2015/en/

[136] HRCttee General Comment 31, paras 15-16; CPT 14th General Report, CPT/Inf 2004 (28) §§31-36.; Article 8 of the Universal Declaration, Articles 2 and 7 of the ICCPR, Articles 12-14 of the Convention against Torture, Articles 5 and 7 of the African Charter, Articles 5 and 25 of the American Convention, Articles 8-9 of the Inter-American Convention against Torture, Article 23 of the Arab Charter, Articles 3 and 13 of the European Convention, Articles 8-11 of the Declaration against Torture, Guidelines 16-19, 40 and 49-50 of the Robben Island Guidelines, Sections C(a) and M7(g)-(j) of the Principles on Fair Trial in Africa, Article XVIII of the American Declaration, Principle V of the Principles on Persons Deprived of Liberty in the Americas

[137] Amnesty International interview with Jiang Tianyong.

[138] Amnesty International interview with Zhao Wei.

[139] Documentation for cases DBF, CTZ and IMD.

torture were difficult, and seemed to reflect a lack of understanding of both international and domestic law.[140] In its review later that year, the Committee against Torture raised concern over the provisions in the CPL that shift the burden of proof back to defendants during the exclusionary procedure and called on the Chinese government to ensure that the burden of proof effectively remains on the procuratorate and courts.[141] In other words, where the defendant alleges that they have been subjected to torture or other ill-treatment, it is for the prosecution to disprove this, and demonstrate that they were not ill-treated. The onus should not be on the defendant to prove their own ill-treatment.

Among the documents analysed by Amnesty, in rare instances where the court claimed an investigation had taken place, there was reason to doubt that those investigations would have met international standards.[142] For example, in one case the appeal verdict stated that the police force which is alleged to have tortured the individual simply "issued a statement to confirm that the investigative agency did not commit any illegal acts in the interrogation of [the defendant]" which the court accepted.[143]

7.4 THE RIGHT TO A PROMPT TRIAL

Under international norms, criminal proceedings must be started and completed within a reasonable time.[144] Amnesty International found that the right to a trial within a reasonable time frame was not respected. Amnesty has long observed that individual human rights defenders may wait years before their case progresses and the verdict is pronounced; among the documents reviewed for this report, the time individuals were held in custody between initial "detention" and rendering a verdict exceeded two years in 21 of the 68 cases.[145] In one particularly egregious case, the individual was detained for six years before a verdict was handed down.[146]

Amnesty International documented 22 cases out of the 68 where the courts stated they applied for and received approval from the Supreme People's Court (SPC) to extend the period for the trial beyond the period granted under the CPL, which was granted by the SPC in every instance.[147] That over one-third of the trials required an exemption from the highest court in the country suggests that many trials are not conducted within a reasonable time frame – and given that none of the acts or speech constituting the evidence provided in these cases would have been considered criminalizable under international law, the approval of that court for the investigation to continue calls into question their ability or will to engage in effective oversight and fair administration of justice.

7.5 THE RIGHT TO A FAIR AND PUBLIC HEARING

The right to a public hearing is an essential safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system. The right to a public hearing means the parties to the case as well as the general public and the media have a right to attend the hearing. This right can only be prescribed in narrow defined circumstances, such as cases involving children or national security.[148] However, states do not have unfettered discretion to define for themselves what

[140] Amnesty International, *No End in Sight* (previously cited).
[141] CAT Concluding observations: China, 2015 (previously cited), para. 33(a).
[142] Documentation for cases OLV, DXP, HXN and GVL.
[143] Documentation for case GVL.
[144] ICCPR (previously cited), Article 9(3); HRCttee, General Comment 35 (previously cited), para 37.
[145] Documentation for cases ABC, JLM, PKB, OLV, GMX, HRA, RSK, DXP, KMC, VCA, SGH, IDL, TYP, EFN, LUM, YCL, AXE, ONU, VWG, NEK, IMD and PRQ.
[146] Documentation for case QIW.
[147] Under Article 208 of China's Criminal Procedure Law, a court must issue a verdict in a case within three months after accepting it, however the law permits unlimited number of requests for extensions from the SPC at the end of the three months (this is also discussed in the "Domestic criminal law framework" section).
[148] Article 10 of the Universal Declaration, Article 14(1) of the ICCPR, Article 18(1) of the Migrant Workers Convention, Article 8(5) of the American Convention, Article 13(2) of the Arab Charter, Article 6(1) of the European Convention, Principle 36(1) of the Body of Principles, Section A(1) and (3) of the Principles on Fair Trial in Africa, Article XXVI of the American Declaration, Articles 64(7), 67(1) and 68(2) of the ICC Statute, Articles 19(4) and 20(2) of the Rwanda Statute, Articles 20(4) and 21(2) of the Yugoslavia Statute; See Article 7(1) of the African Charter

constitutes an issue of national security,[149] and under the Johannesburg Principles, a restriction based on national security must be demonstratable to protect a country's existence from the use or threat of the use of force.[150] Even if this criteria were to be met, the restriction on open justice could go no further than what is strictly necessary and proportionate in the circumstances.

Amnesty's review of the 68 cases strongly indicated that the right to a fair and public hearing was not consistently respected.

Amnesty International's analysis shows a lack of judicial scrutiny on human rights grounds, and limited-to-no consideration – whether by courts themselves or by defence arguments – that a defendant's rights were being violated because the act they were alleged to have carried out was protected by human rights law. In 19 cases reviewed by Amnesty, including both first instance trials and appeals, defence attorneys sought to demonstrate that the individual was not guilty because they were exercising their right to freedom of expression, association or peaceful assembly, all of which are guaranteed by China's Constitution.[151] But in every relevant document, the court rejected the human rights defence.

For example, in one HRD's appeal against their conviction for "subversion", the lawyer argued that the HRD's publication and dissemination of articles online constituted merely the exercise of right to freedom of speech; among those articles were 24 essays, compiled by the defendant into a publication called "A Beautiful China", comprising reflections on his time in university, experience of human rights and social issues, analysis of China's recent history, aspirations for a more accountable government, etc.[152] The same lawyer continued, arguing that the allegations linked to advocacy for political change – articulated in those same essays as, for example, drawing from Mahatma Gandhi's "non-violent non-cooperation":

> "Our goal is to end tyranny, not to drive out some alien race. We cannot drive out 80 million communists. Some of them will turn into democratic politicians. We are all Chinese, and we will build a beautiful China together in the future."[153]

The appeal court however rejected the appeal, stating that the HRD's "actions have exceeded the scope of exercising civil rights" without noting a test applied to make such a determination.

In another case, while convicting an HRD of "inciting subversion", the judges affirmed that China's constitution protects freedom of speech but stated that it also "stipulates that citizens shall not undermine the interests of the state, society, or collective…when exercising their freedoms and rights".[154] Without apparently performing any test to ensure that rights are protected, the defence was rejected.

While the default under Chinese law is that a trial must be conducted in public, the CPL permits restrictions on the grounds that the case involves state secrets or private personal information.[155] In 11 of the 68 cases, the court stated that the first-instance hearing was held behind closed doors. In nine of the cases where the reasoning was provided, the courts argued that it involved state secrets; however, in only two of those cases were individuals charged with state secrets crimes, and in both, defence lawyers challenged the classification of the material.[156] The court verdicts of those two cases do not state what aspect of the hearing involved state secrets, nor are the verdicts themselves redacted, suggesting no state secrets were discussed.

In 41 of the 68 cases reviewed by Amnesty, the court explicitly stated that the hearing was public.[157] However, Amnesty has ascertained from interviews and review of relevant media sources that in at least 15

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[149] See the Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, Section A(3)(f)(ii).

[150] Johannesburg Principles, Principle a(2).

[151] People's Republic of China, Constitution, Article 35, "Citizens of the People's Republic of China shall enjoy freedom of speech, the press, assembly, association, procession and demonstration".

[152] Xu Zhiyong, *A Beautiful China - One - China's Twentieth Century.* Translated by Joshua Rosenzweig, 12 February 2024. https://chinachange.org/2024/02/13/a-beautiful-china-chinas-twentieth-century/. The 23 remaining essays are also available, translated into English, at this site.

[153] Xu Zhiyong, "A Beautiful China, Part Thirteen: The Citizens Movement," translated by Andrea Worden, 24 August 2024, https://chinachange.org/2024/08/28/the-citizens-movement/.

[154] Documentation for case HXN, referencing Article 51 of the Chinese constitution.

[155] Article 188 of the CPL.

[156] Documentation for cases NYT and LZN.

[157] In the other 16 cases, Amnesty International either did not have access to the relevant court verdicts or the case had not yet gone to trial.

of those cases family members, diplomats, journalists or friends and supporters were blocked from attending, in violation of international standards and Chinese law. HRDs themselves have also pushed back at this violation of their procedural rights, though without a positive outcome. For example, in one case reviewed by Amnesty, an HRD filed an ultimately unsuccessful appeal in part on the grounds that the original trial had been held in secret in violation of his legal rights; the first instance trial verdict claimed the trial was open,[158] reinforcing that such claims of open trials may be false.

7.6 FAIR PUNISHMENTS

Punishments or the way the punishment is imposed may violate international standards. This includes pain and suffering arising from sanctions lawful under national law,[159] or punishments handed down in violation of international standards.

In 19 of the 68 cases, the individual was sentenced more harshly for being a repeat offender, under Articles 65 and 66 in the Criminal Law. While this may be a standard practice globally, in situations where there are already concerns about the circumstances of the first conviction, these sentencing practices can exacerbate violations and lead to further arbitrary detention. Eight of the 68 cases reviewed by Amnesty involved four HRDs that had been prosecuted twice during the research period (2014-2024). Two of those four HRDs received heavier prison sentences subsequent to their second conviction on the grounds that they were recidivists.[160] Another HRD received a prison sentence one year shorter than the original sentence after being convicted on the same charges of "inciting subversion" four years after the first case.

In 38 of the 68 cases reviewed by Amnesty International, the individual was also given a "deprivation of political rights" punishment. This is in violation of international standards.

Of those 38 cases, these "supplemental" punishments ranged from a few days to a full life sentence. In some instances, the individual was given a deprivation of political rights sentence that was equal to or longer than their prison sentence.[161] Since the inception of the modernized Criminal Law in 1997, when the "deprivation of political rights" provisions were introduced into Chinese law, the Working Group on Arbitrary Detention has warned that they would likely jeopardize the rights to freedoms of expression, association, the press and assembly of those subjected to such a punishment.[162]

Amnesty International considers that criminal provisions allowing for, and in certain cases requiring, supplemental penalties/sentences are in contravention of international human rights laws and standards. Firstly, it should be noted that the vast majority of the cases analysed for this research briefing involved prosecutions for conduct that is protected by international law; the human rights defender charged should not have faced any sanctions at all, let alone long-term restrictions on their rights to freedom of expression and of peaceful assembly. Secondly, in any event, long-term blanket bans on assembly and expression are neither necessary nor proportionate sentences as they curtail an individual's political expression and ability to highlight or challenge injustice they are facing.

[158] Documentation for case PKB.
[159] UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1; UN Special Rapporteur on torture, Report: 10 January 1997, UN Doc. E/CN.4/1997/7, para 8. and UN Special Rapporteur on torture, Report: 30 August 2005, UN Doc. A/60/316, paras 26-28.
[160] Documentation for cases OLV, IMD and HXN. The fourth, case, NEK, remains in pre-trial detention as of the time of writing.
[161] Documentation for cases ZUR, AKN, BGY, VCA, EFN, LUM, QAV and SHX.
[162] WGAD, *Visit to the People's Republic of China* (previously cited), para. 50.

7.7 RIGHT TO REPARATION FOR UNLAWFUL DETENTION

International standards require that every person who has been the victims of unlawful arrest or detention has a right to reparation, including compensation.[163] However, in order to exercise the rights afforded by Chinese domestic law, notably for state compensation, the convicted person must first appeal their sentence – and win. None of the appeals available to and reviewed by Amnesty International in respect of the 68 cases comprising this analysis were accepted by the courts.

Over the period 2014-2024, Amnesty knows of no case related to human rights issues and implicating the criminal provisions of national security and public order where a verdict was overturned and an individual was provided with compensation. In only one case of a wrongful arrest was the individual successful in getting the charges expunged and obtaining a compensation ruling; however, the local government refused to honour it and financial compensation was never awarded. That individual was later convicted on other charges, which to an objective observer would have failed to constitute either national security or "normal" criminal activities; she remains in prison.

"In a normal criminal case, if you appeal, [the court] will tell you if they refuse to accept the appeal, if it's inadmissible, or if they uphold the original verdict. But they've refused to even give me a document stating this much."[164]

[163] Article 9(5) of the ICCPR, Article 24(4) of the Convention on Enforced Disappearance, Article 16(9) of the Migrant Workers Convention, Article 14(7) of the Arab Charter, Article 5(5) of the European Convention, Section M(1)(h) of the Principles on Fair Trial in Africa; See Article 8 of the Universal Declaration, Article 7 of the African Charter, Article 25 of the American Convention, Principle 35 of the Body of Principles, Article 85(1) of the ICC Statute.
[164] Amnesty International interview with Wang Quanzhang.

8. CONCLUSION AND RECOMMENDATIONS

> **"They've written ignorance, brutality, and authoritarianism into the law."[165]**

Amnesty International's analysis of 102 judicial documents across 68 cases shows that China's judiciary serves a tool that enables the government to engage in systematic violations of human rights, notably when handling "sensitive" cases, with the apparent aim of suppressing activities related to human rights defence and discouraging individuals from engaging in such activities.

Across the cases examined, individuals exercising their rights to freedom of expression, association, and peaceful assembly are systemically criminalized under vaguely worded offences that have, time and again, been critiqued by international legal experts for falling short of the standards the Chinese state is expected to uphold, and has committed to in both international and national law.

Court proceedings in such cases fall far short of international fair trial standards. Defendants are often held for long periods before trial, denied access to lawyers of their choice, and subjected to closed or heavily restricted hearings. Allegations of torture or other ill-treatment are ignored, and remedies for procedural violations are virtually non-existent.

Punishments often extend beyond prison terms, with additional restrictions on political and civil rights that continue long after releases.

These practices are not the result of isolated or exceptional misconduct by individual officials. They reflect a deliberate system in which the judiciary serves to deter and punish human rights defence, operating within a structure designed to prioritize Chinese Communist Party control over the rule of law.

Meaningful progress to address the violations outlined here will require commitments by the state and the legislature to repeal or substantially amend the vague offences most used against human rights defenders, bringing them in line with international standards where possible or throwing them out if not. Such progress would hinge on an as-yet unseen commitment by Chinese authorities to upholding civil and political rights obligations that would allow for the exercise of fundamental freedoms. It would require ensuring that judicial bodies are able to operate free from political interference by Political and Legal Committees or any other actors and to be subject to independent oversight.

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[165] Amnesty International interview with a Chinese lawyer.

As clearly articulated by human rights lawyers interviewed in the context of this research, the outlook for this scope and scale of change is not optimistic. When given the opportunity to acknowledge shortcomings and make progress, not least through the ten-year long engagement by UNSPs that underlies this analysis, the Chinese government's response has been unconstructive at best, and actively hostile at worst. Of the 64 HRDs whose cases comprise this analysis, Amnesty was able to access the Chinese government response to the UN Special Procedures' concerns in respect of 53 individuals. Despite this comparatively high rate of response, the replies often lacked substance. The government denied that the cases showed anything but the normal process of implementing justice "in accordance with the law", and neither made claims nor provided evidence of action(s) taken to remedy the violations.

In official replies reviewed by Amnesty International the government denied that there had been violations of the rights to freedom of expression, association, peaceful assembly and fair trial rights and claimed that all of the cases were being handled "in accordance with the law". In only half of the replies did the government even state that it had investigated the allegations raised by UN experts, including serious allegations of torture and other forms of ill-treatment.

The lack of political will by the Chinese authorities to engage meaningfully on this subject has persisted for more than a decade; yet the extensive documentation of individual cases by the UN's expert human rights mechanisms over that time demonstrates two important points. First, it has allowed for an analysis that can highlight the consistency of the absence of legal certainty; the methodical and targeted way in which simple acts of dissent, critique and organizing are criminalized; and the widely shared systemic gaps that allow for violations of fair trial rights. Second, it has shown the determined and dedicated nature of networks of Chinese HRDs, family members who can engage in advocacy and survivors of human rights violations. They continue to use the UN system to speak out, seek documentation, provide a check to some of the most outrageous claims of the Chinese state, and ultimately build toward accountability.

It is to echo the calls of those activists, human rights defenders, grassroots networks and individuals committed to the protection and promotion of human rights that Amnesty International calls on the Government of the People's Republic of China to:

- Respect, protect and fulfil the rights to freedom of expression, association and peaceful assembly, and halt acts that seek to violate these rights in China;
- Drop all criminal charges against and immediately release those who have been detained or imprisoned simply for exercising their rights to freedom of expression, association, peaceful assembly or other human rights, and end the practice of bringing such charges in future;
- Pending their release, ensure that all detained human rights defenders have regular access to their family members, lawyers of their choice, are not subjected to torture and other ill-treatment;
- Halt all prosecutions under Article 105(1) and Article 293 of the Criminal Law until the law has been substantially revised to be brought in line with international human rights laws and standards, and repeal Article 103(2) and 105(2);
- Abolish section 7 of the Criminal Law and terminate all deprivation of political rights punishments currently being served;
- Revise criminal and national security legislation to bring it in line with international human rights law and standards, including but not limited to the Criminal Law, Criminal Procedure Law, National Security Law and related judicial interpretations;
- Ensure all criminal proceedings are consistent with fair trial rights, including but not limited to the right to legal counsel and the requirement of proper investigations into torture allegations, and that all cases are subject to full and effective review by an independent and impartial judiciary.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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HOW COULD THIS VERDICT BE 'LEGAL'?

THE ROLE OF CHINA'S COURTS IN TARGETING HUMAN RIGHTS DEFENDERS

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