

## HUMAN RIGHTS WATCH

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April 3, 2015

The Honorable Jeh Johnson  
Secretary of Homeland Security  
245 Murray Lane SW  
Washington, D.C. 20528

*Via Fax: (202) 612-1976*

## Re: Upcoming Secretary of Homeland Security Visit to China

Dear Secretary Johnson,

We write to urge that your upcoming visit to China visibly reflect the United States “whole-of-government” approach to supporting human rights and civil society abroad. We urge that you, like other Cabinet members and senior US officials, raise human rights concerns frankly and publicly with your Chinese counterparts.

Robust, unapologetic US intervention in support of a truly independent judiciary, respect for peaceful expression, and compliance with international human rights standards may help make China a better diplomatic, economic, and strategic partner, and demonstrate essential support to the country’s embattled civil society. Conversely, a failure to publicly address China’s deteriorating human rights environment, particularly in light of the US “Stand With Civil Society” agenda, will undermine other positive efforts made by the Obama administration. You may recall President Obama also noting in September 2014 that, “America’s support for civil society is a matter of national security.”

Since new leadership assumed power in China in March 2013, authorities have undertaken some positive steps in certain areas, including abolishing the arbitrary detention system known as Reeducation through Labor (RTL), announcing limited reforms of the *hukou* system of household registration that has denied social services to internal migrants, and giving slightly greater access for persons with disabilities to the all-important university entrance exam.

But during the same period, authorities have also directed an extraordinary assault on basic human rights and their defenders with a ferocity unseen in recent years—an alarming sign, given that the current leadership is likely to be in place through 2023. The crackdown is indicative of a significantly harder-line position on human rights. From mid-2013 onwards, the Chinese government and the ruling Chinese Communist Party (CCP) have issued

directives strengthening “correct” ideology among party members, university lecturers, students, researchers, and journalists. These documents warn against the perils of “universal values” and human rights, and assert the supremacy of the Party. President Xi Jinping has publicly stressed that the Party’s focus on the “rule of law” in fact means that the judicial system remains a tool of party and state power. The expanding security forces enjoy near-total impunity.

We expect that your visit will involve meeting with officials in government agencies about which we have long-standing, well-documented concerns, including the Ministry of State Security, the Ministry of Justice, the Ministry of Public Security, the People’s Armed Police, and the Supreme People’s Procuratorate, among others. Our research shows that these agencies are responsible for a variety of systemic human rights abuses, including torture and ill-treatment in detention, denial of the right to a fair trial and access to adequate medical care in detention, multiple forms of arbitrary detention, the use of unnecessary or excessive force against peaceful protesters and ordinary citizens, and the criminalization of peaceful criticism on dubious charges ranging from “picking quarrels and stirring up troubles” to inciting separatism or committing acts of terrorism.

In each of these meetings and in any public remarks, we urge that you exercise maximum caution to not legitimize any aspects of the Chinese government’s hostility to human rights, civil society, or the rule of law. Your visit to China is an important opportunity to make clear the entire US government is aligned in stark opposition to this approach, and to reaffirm US expectations of increased protection of human rights as a requirement for greater bilateral exchanges. Accordingly, we urge that you raise the following issues in all of your meetings, and publicly call for:

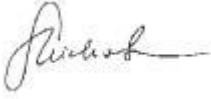
- The abolition of all forms of arbitrary detention. In their 2013 announcement regarding the abolition of RTL, Chinese authorities specifically cited the unconstitutional nature of this form of detention, which denied individuals access to a trial. Yet the government continues to employ or tolerate at least a half-dozen other forms of arbitrary detention. These range from official “Custody and Education” and “Drug Rehabilitation” centers, in which sex workers and their clients, drug users, and others are held, to unlawful “black jails” to the Party’s own internal disciplinary system, known as “*shuanggui*.” In light of the decision to abolish RTL, you should urge your Chinese counterparts to extend that logic to all forms of arbitrary detention.
- An end to abuses in police custody. Human Rights Watch continues to document physical and psychological torture and ill-treatment by police of those in their custody for both criminal and non-criminal offenses, and impunity for those responsible, despite recent government commitments to eradicate wrongful convictions as a result of torture. Current research reflects a concerted effort by police to deny suspects basic protections guaranteed under Chinese law, such as prompt access to family and counsel, video-taping interrogations, and only being held in designated facilities. We note your September 2014 remarks regretting the US use of “enhanced interrogation techniques.” We urge that you publicly and privately express deep concern about abusive policing in China.

- An end to the harsh crackdown on civil society. President Obama recently spoke strongly in defense of civil society, noting its critical role not only in providing services but in informing government, and the US has recently unveiled its “Stand With Civil Society” initiative. Yet in China it is precisely these kinds of actors – from activist lawyers to advocates for victims of domestic violence to scholars, bloggers, and artists—who have been targeted over the past year. Legal reform activist Xu Zhiyong, investigative journalist Gao Yu, and 81-year-old writer Tie Lu are among those detained and/or imprisoned for the “crimes” of advocating for civil rights, access to information, and the right to peacefully criticize the government. Five women’s rights activists have now been in detention in Beijing for three weeks, as authorities have deemed their plans to distribute literature about sexual harassment on public transportation as “causing disturbances.” These people are not enemies of the state – they are essential allies as China undergoes profound social, economic, and political change. Particularly in light of your agency’s role in protecting and promoting civil rights and civil liberties in law enforcement, we urge that you publicly and privately call for the release of all individuals currently detained in China for peaceful criticism or activism.
- A commitment to upholding human rights in combating terrorism. The Chinese government’s approach to combating terrorism is highly problematic: it often conflates peaceful criticism with terrorism, and denies the already few basic legal protections to suspects alleged to have committed acts of terrorism. In the name of combating terrorism and improving delivery of social services, it has imposed an intrusive system that breaks communities down according to a “grid” to enable close monitoring and control of families, particularly in Tibet and Xinjiang, and resumed the Mao-era practice of holding public sentencing rallies for those found guilty of terrorism. We enclose a copy of our critique of China’s first draft of a counterterrorism law, which we believe will compound rather than combat abuses, further alienate minority communities, and potentially fuel violence. Not only should you urge the Chinese government to undertake a thoroughgoing review of its own practices, you should make clear that the US will not cooperate with China in this realm until at a minimum the government commits to a legal framework that meets international human rights standards. Building on China’s recent participation in the President’s “Countering Violent Extremism” summit, which you attended, provides an excellent opportunity to raise these concerns. We also note that various US officials at the resumption of the US-China counterterrorism dialogue in July 2014 committed to raise human rights concerns in all meetings on terrorism with Chinese officials; we hope you fulfill that commitment.

The Chinese government hears what the US is saying most clearly when the same message comes from a diversity of interests. Accordingly, as someone whose own portfolio addresses civil liberties, law enforcement, and combating terrorism, and as a senior official in an administration that has repeatedly asserted its deep concern about the deteriorating human rights environment in China, we urge you to seize every opportunity to make these important points.

We look forward to discussing these issues with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sophie Richardson', with a long horizontal flourish extending to the right.

Sophie Richardson  
China Director



## China: Draft Counterterrorism Law a Recipe for Abuses <sup>[1]</sup>

### Major Overhaul Needed for Law to Conform with International Legal Obligations

January 20, 2015

(New York) – The Chinese government should radically revise its proposed legislation on counterterrorism <sup>[2]</sup> to make it consistent with international law and the protection of human rights. The draft law was made public for consultation in November 2014 and is expected to be adopted in 2015 after minimal revisions.

As currently drafted, the law would legitimate ongoing human rights violations and facilitate future abuses, especially in an environment lacking basic legal protections for criminal suspects and a history of gross human rights abuses committed in the name of counterterrorism. Such violations are evident across the country and particularly in the Xinjiang Uyghur Autonomous Region, the region that has been most affected by acts of terrorism and political violence in recent years.

“China has seen appalling attacks on people, and the government has a duty to respond and protect the population,” said Sophie Richardson, <sup>[3]</sup> China director at Human Rights Watch. “But in its present form this law is little more than a license to commit human rights abuses. The draft needs to be completely overhauled and brought in line with international legal standards.”

The Chinese government claims that its proposed counterterrorism legislation responds to and conforms with United Nations Security Council resolutions urging countries to take measures to combat and strengthen their cooperation against terrorism. Yet such resolutions have also stressed that countries need to “ensure that any measure taken to combat terrorism comply with all their obligations under international law ... in particular international human rights, refugee, and humanitarian law” (Security Council Resolution 1456 (2003))—something that China’s proposed legislation clearly does not do.

The draft counterterrorism law states that “counterterrorism work shall be conducted in accordance with the law” and that “human rights shall be respected and guaranteed” (art. 6). But the 106-article draft makes clear the government’s intent to establish a counterterrorism structure with enormous discretionary powers, define terrorism and terrorist activities so broadly as to

easily include peaceful dissent or criticism of the government or the Communist Party's ethnic and religious policies, and set up a total digital surveillance architecture subject to no legal or legislative control. (See below: China's Draft Counterterrorism Law: Key Areas of Concern)

In recent years China has experienced a number of deadly and apparently politically motivated attacks directed against the general population. Since 2009 several hundred people have died in Xinjiang in attacks on police stations, train stations, and public markets. Some attacks have also taken place outside of Xinjiang. On March 1, 2014, in one of the most serious incident to date, 8 knife-wielding men and women attacked a crowd at Kunming train station, in Yunnan province, killing 29 and injuring 143, according to official accounts. [4]

At the same time, the Chinese government has long manipulated the threat of terrorism to justify its crackdown on the 10 million ethnic Uyghurs in Xinjiang. Human rights violations documented by Human Rights Watch [5] in recent years include broad denial of political, cultural and religious rights, torture and enforced disappearances, extensive censorship, and pervasive socio-economic discrimination.

“While terrorism poses grave threats to society, overbroad and abusive counterterrorism measures can also inflict grave harm and exacerbate conflict,” Richardson said. “Harsh measures that conflate political or religious dissent with crime discourage ordinary people from trusting or cooperating with law enforcement agencies.”

Over the past three years hundreds of people have been killed by law enforcement personnel [6] in what the authorities claimed were counterterrorism operations, raising serious concerns about regular disproportionate use of force, especially since China systematically prevents independent monitoring of the region. This situation makes it impossible to assess the veracity of general and specific claims by the Chinese government of terrorist incidents or threats.

To reduce the risk of militancy and politically motivated violence, Human Rights Watch said, the Chinese government should immediately remove curbs on the rights to freedom of expression, religion and association, strengthen the independence of the judiciary, end torture and ill-treatment of criminal suspects, and strengthen effective human rights protections.

“Targeting people for attack is never justified, but committing human rights violations is no way to stop such horrific violence,” said Richardson. “The Chinese government needs to respect rights, not build a new architecture of surveillance.”

## **China's Draft Counterterrorism Law: Key Areas of Concern**

Many aspects of the current draft counterterrorism law are incompatible with international human rights law and could facilitate future human rights violations. Given the lack of an independent judiciary, the pervasive character of human rights violations in China, and the criminalization of peaceful political challenges to one-party rule by the Communist Party, the draft law raises serious concerns regarding privacy, police powers, counterterrorism interventions abroad, and freedom of association and expression.

### ***Serious Concerns Include:***

#### **1. The Definition of what Constitutes “Terrorism” is Dangerously Vague and Open-Ended**

The draft law's definition of terrorism includes “thought, speech, or behavior” that attempt to “influence national policy-making,” “subvert state power,” or “split the state” (art. 104). The first criterion is overly broad and could potentially apply to anyone advocating for policy changes. The two other criteria have been regularly used to prosecute peaceful dissenters and critics of government or Party policies, including the Nobel Peace Prize Laureate Liu Xiaobo and the Uyghur economist Ilham Tohti (sentenced respectively to 11 years [7] and life imprisonment [8]). The definition of what constitutes “terrorism” also tautologically refers to “other terrorist activities,” potentially allowing any activity to be deemed a terrorist offense. The offenses of “advocating, inciting, or instigating” terrorism and “supporting, assisting, or facilitating” a terrorist organization or terrorists includes these same overly broad definitions.

#### **2. Terrorism is Conflated with Religious “Extremism”**

Under China's already restrictive religion policies, the term “religious extremism” is routinely employed to characterize and often prosecute religious activities that take place outside state-controlled religious institutions, even if that activity is well within the boundaries of freedom of religion as defined under international law. Among the broad conduct identified as “extremist” by the draft law feature: “distorting or attacking state policies, laws, and administrative regulations,” “using ethnicity or religion to ... interfere in production or management,” and “forcing minors to take part in religious activities,” as well as open-ended clauses such as “other conducts that disrupt the implementation of state policy, laws, administrative rules and regulations” (art. 24).

In Xinjiang, minors have long been prohibited by law from participating in any religious activity. Under the draft law, defying these restrictions could now be characterized as “terrorist or extremist tendencies” (art. 25). Behavior deemed “extremist” is to be subject to reeducation, censorship, and punishment (art. 26).

#### **3. The Designation of Terrorist Organizations by the State is Devoid of Due Process**

## Protections

The draft law would establish a new counterterrorism body, the “leading organ on counterterrorism work” (*fankongbuzhuayi gongzuo lingdao jigou*) It will have the power to designate organizations and members as terrorists (arts. 68-72). Membership in a designated terrorist group is criminalized regardless of the actions or the intent of the individual members (art. 71). The draft law states that this determination can be appealed, but not in court, only to the “leading organ on counterterrorism work”—the body that will have made the initial determination (art. 72).

In the past, the Chinese government has labeled as “terrorist” organizations that openly rejected violence but were critical of government policies, such as exile groups including the World Uyghur Congress [9] and the Tibetan Youth Congress. [10]

## 4. Enforcing a System of Complete, Permanent Digital Surveillance

All telecommunication and Internet service providers would be required to provide the government with “backdoors” and a copy of the encryption systems they use, and assist with decryption (arts. 15-16, 94). Requiring companies to do so could actually undermine security because these services would be more vulnerable to hacking. All telecommunication and online service providers would be required to store user data within China’s borders (arts. 15, 93). Providers that do not comply will not be allowed to operate in China (art. 15). This information will be networked with the new national counterterrorism intelligence center (arts. 41-52).

Major transport hubs, streets, and public spaces will be outfitted with facial recognition equipment that will cross-check the information collected against a database of wanted suspects (arts. 23, 46). Such a system could easily be abused for personal or political ends, or used to track political dissenters and others for peaceful activities protected under international human rights law. The draft law does not establish a time limit for keeping the data, nor does it define which agencies and under what procedures they will be able to access it.

In the absence of any meaningful protections, and given the near complete absence of privacy statutes in China, Human Rights Watch is concerned that this architecture of surveillance will be used to suppress peaceful political dissent, target human rights and other civil society activists, and suppress particular religious or ethnic groups deemed suspect by the law enforcement agencies.

## 5. The Authority and Powers of the New Body in Charge of Coordinating Counterterrorism Work are Vague

The new “leading organ on counterterrorism work” is vested with considerable powers to carry



out “all work on counterterrorism nationwide.” However, the draft law gives no details about the source of its legal authority and the authority to which it will report, its operations, and its staffing. The draft law merely states that this structure will have an “office” in charge of “day to day work,” corresponding bodies at the local (provincial, municipal and prefectural) level (art. 10), and that a “national counterterrorism intelligence center” will be established to centralize information between the “relevant departments” (art. 41).

## **6. The Draft Law Would Expand Coercive and Surveillance Powers of Law Enforcement Agencies**

Law enforcement agencies would be allowed to impose a wide range of restrictive measures on terrorism suspects, such as prohibitions against leaving particular locations, communicating with specific people, or engaging in “large-scale social activities” or “business activities” (art. 52). These measures are not subjected to court authorization or a time limitation, and could easily be abused or applied arbitrarily, without legal recourse.

## **7. The Draft Law Would Allow Counterterrorism Missions Beyond China’s Borders**

The People’s Liberation Army, the People’s Armed Police, the Public Security and the State security would be able to carry out “counterterrorism missions” abroad with the approval of the country concerned (art. 76.) The open-ended definition of “terrorism” used in the draft law would facilitate abusive acts in violation of China’s extra-territorial obligations to respect international human rights law.

## **8. The Draft Law Targets Nongovernmental Organizations**

The draft law includes a specific section on nongovernmental organizations (NGOs) receiving foreign funding, reflecting the suspicion with which the Chinese government regards civil society groups. The law would require banks and related government departments to monitor the funding flow of foreign NGOs that operate in China, as well as that of foundations and other non-profit agencies. It also would require these organizations to report their financial situations and funding sources to the government agencies that sponsor them.

Such requirements are already part of the regulatory framework for NGOs and so are unnecessarily included in the counterterrorism law. The Chinese authorities have often used alleged tax or financial infractions to justify politically motivated arrests and prosecutions of civil society figures, such as the legal activist Xu Zhiyong <sup>[11]</sup> in <sup>[12]</sup> 2009 and the filmmaker Shen Yongping <sup>[13]</sup> in 2014. The inclusion of such measures in a counterterrorism law means that NGOs would now be subject to investigation for much more serious offenses and face potentially much harsher penalties.

**Source URL:** <http://www.hrw.org/news/2015/01/20/china-draft-counterterrorism-law-recipe-abuses>

**Links:**

- [1] <http://www.hrw.org/news/2015/01/20/china-draft-counterterrorism-law-recipe-abuses>
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- [3] <http://www.hrw.org/bios/sophie-richardson>
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- [5] <http://www.hrw.org/reports/2009/10/22/we-are-afraid-even-look-them-o>
- [6] <http://bigstory.ap.org/article/killings-china-anti-terror-cops-raise-concerns>
- [7] <http://www.hrw.org/en/news/2009/12/21/china-liu-xiaobo-s-trial-travesty-justice>
- [8] <http://www.hrw.org/news/2014/11/21/china-xinjiang-verdict-upholds-unjust-life-sentence>
- [9] <http://en.chinacourt.org/public/detail.php?id=3621>
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- [11] <http://www.economist.com/news/china/21595050-clampdown-activists-continues-new-citizens>
- [12] <http://www.hrw.org/news/2014/01/25/china-reverse-judgment-show-trial-xu-zhiyong>
- [13] <http://www.reuters.com/article/2014/10/27/us-china-politics-film-idUSKBN0IGoCF20141027>

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