

Appendix II: Legal Provisions

	Provisions in Chinese domestic laws that protect rights	New laws enacted in 2015 that may jeopardize the same rights
<p>Freedom of expression, assembly, and peaceful association</p>	<p>Article 35 of the Constitution: “Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”¹</p> <p>Article 298 of the Criminal Law: “Whoever disturbs, breaks into or disrupts by any other means an assembly, a procession or a demonstration held in compliance with law, thus causing public disorder, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.”²</p>	<p>Article 25 of the National Security Law: “The State establishes a national network and information security safeguard system, raising the capacity to protect network and information security; increasing network management, preventing, stopping and lawfully punishing unlawful and criminal activity on networks such as network attacks, network intrusion, cybertheft, and dissemination of unlawful and harmful information ”³</p> <p>Article 19 of the Anti-Terrorism Law: “Telecommunications operators and internet service providers shall, according to provisions of law and administrative regulations, put into practice network security systems and information content monitoring systems, technical prevention and safety measures, to avoid the dissemination of information with terrorist or extremist content. Where information with terrorist or extremist content is discovered, its dissemination shall immediately be halted, relevant records shall be saved, and the relevant information deleted, and a report made to public security organs or to relevant departments. ”⁴</p> <p>Article 120 of The Criminal Law Amendment (IV): “Advocating terrorism or extremism through methods such as producing or distributing items such as books or audio-visual materials advocating terrorism; or advocating terrorism or extremism by giving instruction</p>

¹ Constitution of the People's Republic of China, <http://www.cecc.gov/resources/legal-provisions/constitution-of-the-peoples-republic-of-china>.

² Criminal Law of the People's Republic of China, <http://www.cecc.gov/resources/legal-provisions/criminal-law-of-the-peoples-republic-of-china>.

³ National Security Law of the People's Republic of China, <http://chinalawtranslate.com/2015nsl/?lang=en>.

⁴ Anti-Terrorism Law of the People's Republic of China, <http://chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%89%E6%B3%95-%EF%BC%882015%E6%89/?lang=en>.

		<p>or releasing information; or inciting the perpetration of terrorist activity; is sentenced to up to five years imprisonment, short-term detention, controlled release or deprivation of political rights and a concurrent fine; where circumstances are serious, the sentence is five or more years imprisonment and a concurrent fine or confiscation of property.</p> <p>Where methods such as violence or coercion are used to compel others to wear or adorn themselves with apparel or emblems promoting terrorism or extremism, it is punished by up to three years imprisonment, short-term detention or controlled release, and a concurrent fine.</p> <p>Illegally possessing books, audio-visual materials or other materials the one clearly knows advocate terrorism or extremism, where the circumstances are serious, is punished by up to three years imprisonment, short-term detention or controlled release and/or a fine."⁵</p>
<p>Freedom of religion and belief</p>	<p>Article 36 of the Constitution: "Citizens of the People's Republic of China enjoy freedom of religious belief."⁶</p> <p>Article 11 of the Law on Regional National Autonomy: "The organs of self-government of national autonomous areas shall guarantee the freedom of religious belief to citizens of the various nationalities."⁷</p> <p>Article 251 of the Criminal Law: "Any functionary of a State organ who unlawfully deprives a citizen of his or her freedom of religious belief or infringes upon the customs and habits of an ethnic group, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention."⁸</p>	<p>Article 23 of the the National Security Law: "The State lawfully protects citizens' freedom of religious belief and normal religious activities, upholds the principle of religions managing themselves, preventing, stopping and lawfully punishing the exploitation of religion's name to conduct illegal and criminal activities that endanger national security, and opposes foreign influences interference with domestic religious affairs, maintaining normal order of religious activities."⁹</p> <p>Article 28 of the National Security Law: "The State opposes all forms of terrorism and extremism, and increases the capacity to prevent and handle of terrorist activities, developing efforts in areas such as intelligence, investigation, prevention, handling and</p>

⁵ People's Republic Of China Criminal Law Amendment (9), <http://chinalawtranslate.com/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E5%88%91%E6%B3%95%E4%BF%AE%E6%AD%A3%E6%A1%88%EF%BC%88%E4%B9%9D%EF%BC%89/?lang=en>.

⁶ Constitution of the People's Republic of China.

⁷ Law of the People's Republic of China on Regional National Autonomy, <http://www.china.org.cn/english/government/207138.htm>.

⁸ Criminal Law of the People's Republic of China.

⁹ National Security Law of the People's Republic of China.

		<p>capital monitoring in accordance with law, lawfully putting an end to terrorist organizations and strictly punishing violent terrorist activities.”¹⁰</p> <p>Article 4 of the Anti-Terrorism Law: “The state opposes all forms of using distorted religious teachings or other means to incite hatred or discrimination, to advocate violence and other extremism; eliminating terrorism's ideological basis.”¹¹</p> <p>Article 28 of the Anti-Terrorism Law: “Public security organs discovering extremist activities shall order them immediately stopped, and forcibly take relevant personnel away from the scene and register their identification information, take relevant items and materials and seal off the site of the illegal activity. Any unit or individual that discovers items, materials or information advocating extremism shall immediately report it to the public security organs.”¹²</p>
<p>Freedom of person</p>	<p>Article 37 of the Constitution: “The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.”¹³</p> <p>Article 238 of the Criminal Law: “Whoever unlawfully detains another person or unlawfully deprives the personal freedom of another person by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. If he</p>	<p>Article 53 of the Anti-Terrorism Law: “Upon approval by the responsible party for a public security organ at the county level or above, public security organs investigating suspected terrorist activities may order persons suspected of terrorist activities to comply with one or more of the following restrictive measures, based on the extent of the threat:</p> <ul style="list-style-type: none"> (1) must not leave their city or county of residence, or designated residence, without permission of a public security organ; (2) must not participate in large scale mass activities, or engage in specified activities; (3) must not ride on public transportation or enter specified venues without approval by the public security organs; (4) must not meet or communicate with specified

¹⁰ Ibid.

¹¹ Anti-Terrorism Law of the People's Republic of China.

¹² Ibid.

¹³ Constitution of the People's Republic of China.

	<p>resorts to battery or humiliation, he shall be given a heavier punishment.”¹⁴</p>	<p>persons;</p> <p>(5) periodically report on activities to the public security organs;</p> <p>(6) hand over passports or other entry and exit documents, id cards or drivers licenses to the public security organs organ for keeping.</p> <p>Public security organs may employ electronic surveillance, random inspections and other methods to monitor compliance with restrictive conditions.</p> <p>The period for restrictive measures provided for in the preceding two paragraphs must not exceed 3 months. Where it is not necessary to continue employing restrictive measures, they shall be promptly removed.</p>
<p>Rights to legal counsel (at the pre-trial stage)</p>	<p>Article 33 of the Criminal Procedure Law: “A criminal suspect shall have the right to retain a defender from the day when the criminal suspect is interrogated by a criminal investigation authority for the first time or from the day when a compulsory measure is taken against the criminal suspect.”¹⁵</p> <p>Article 37 of the Criminal Procedure Law: “A defence lawyer may meet and communicate with a criminal suspect or defendant in custody.</p> <p>When a defence lawyer files a request for a meeting with a criminal suspect or defendant in custody on the basis of the lawyer's practicing license, a certificate issued by the law firm, and a power of attorney or an official legal aid document, a jail shall arrange a meeting in a timely manner, no later than 48 hours after the request is filed. Where a defence lawyer files a request during the period of criminal investigation for a meeting with a criminal suspect in custody who is suspected of compromising national security, terrorist activities, or extraordinarily significant bribery, the meeting shall be subject to the permission of the criminal investigation authority.”¹⁶</p>	

¹⁴ Criminal Law of the People's Republic of China.

¹⁵ Criminal Procedure Law of the People's Republic of China, www.lawinfochina.com/display.aspx?lib=law&id=9247&CGid.

¹⁶ Ibid.

<p>Remedy to wrongful detention</p>	<p>Article 17 of the State Compensation Law: “The victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, infringe upon his right of the person in the exercise of its functions and powers in any of the following circumstances: (1) Wrong detention of a person without incriminating facts or proof substantiating a strong suspicion of the commission of a crime; (2) Wrong arrest of a person without incriminating facts; (3) Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the original sentence has already been executed; (4) Extortion of a confession by torture or causing bodily injury or death to a citizen by using or instigating the use of violence such as beating one up; or (5) Causing bodily injury or death to a citizen by the unlawful use of weapons or police restraint implements.”¹⁷</p>	
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¹⁷ State Compensation Law of the People's Republic of China, <http://www.cecc.gov/resources/legal-provisions/state-compensation-law-of-the-peoples-republic-of-china-amended>.