

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300; 917-591-3452

#### ASIA DIVISION

Brad Adams, *Executive Director*  
Kanae Doi, *Japan Director*  
Meenakshi Ganguly, *South Asia Director*  
Phelim Kine, *Deputy Director*  
Elaine Pearson, *Australia Director*  
Sophie Richardson, *China Director*  
Phil Robertson, *Deputy Director*  
John Sifton, *Advocacy Director*  
Mickey Spiegel, *Senior Advisor*  
Patricia Gossman, *Senior Researcher*  
Andreas Harsono, *Senior Researcher*  
David Mathieson, *Senior Researcher*  
Sunai Phasuk, *Senior Researcher*  
Tejshree Thapa, *Senior Researcher*  
Jayshree Bajoria, *Researcher*  
Carlos H. Conde, *Researcher*  
Saroop Ijaz, *Researcher*  
Maya Wang, *Researcher*  
Linda Lakhdhir, *Legal Advisor*  
Ahmad Shuja, *Assistant Researcher*  
Riyo Yoshioka, *Senior Program Officer*  
Georgia Bright, *Senior Associate*  
Shayna Bauchner, *Associate*  
Daniel Lee, *Associate*  
Seashia Vang, *Associate*

#### ADVISORY COMMITTEE

David Lakhdhir, *Chair*  
Orville Schell, *Vice-Chair*  
Maureen Aung-Thwin  
Edward J. Baker  
Robbie Barnett  
Robert L. Bernstein  
Jerome Cohen  
John Despres  
Mallika Dutt  
Kek Galabru  
Merle Goldman  
Jonathan Hecht  
Sharon Hom  
Rounaq Jahan  
Ayesha Jalal  
Robert James  
Joanne Leedom-Ackerman  
Perry Link  
Kimberly Marteau Emerson  
Krishen Mehta  
Andrew J. Nathan  
Xiao Qiang  
Bruce Rabb  
Balakrishnan Rajagopal  
Ahmed Rashid  
Victoria Riskin  
James Scott  
Mark Sidel  
Eric Stover  
Ko-Yung Tung  
Francesc Vendrell  
Tuong Vu

#### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*  
Bruno Stagno Ugarte, *Deputy Executive Director, Advocacy*  
Dinah PoKempner, *General Counsel*  
James Ross, *Legal & Policy Director*  
Hassan Elmasry, *Co-Chair*  
Joel Motley, *Co-Chair*

December 22, 2016

Li Shishi – Chairman  
Legislative Affairs Commission  
No. 23, Xijiaominxiang  
Xicheng District, Beijing 100805  
People's Republic of China

### Submission by Human Rights Watch To the National People's Congress Standing Committee On the Draft Revisions to the Police Law

Human Rights Watch is an international non-governmental organization that monitors and reports on human rights in about 90 countries around the world, including China. We welcome the opportunity to provide comments on the draft revisions to the Police Law (“the Draft Revisions”), which was published by the National People’s Congress Standing Committee Legislative Affairs Commission on its website on December 1, 2016.<sup>1</sup> We urge that you significantly revise many of the provisions in the draft, as they are contrary to basic international standards, notably the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“the UN Basic Principles”).<sup>2</sup>

Human Rights Watch has for very many years documented police abuses, including use of torture against criminal suspects, surveillance of ordinary citizens, and unnecessary or excessive force to break up peaceful protests, as well as the harassment and arbitrary detention of individuals and group members who peacefully criticize the authorities or advocate for policy changes. Procurators and judges rarely question or challenge police conduct, and internal oversight mechanisms remain weak. The extraordinary power of the police is reflected in their enormous power

<sup>1</sup> Notice of the Ministry of Public Security Regarding the Seeking of Public Opinion on the People's Police Law of the People's Republic of China (Draft Revisions), the Ministry of Public Security, December 1, 2016, <http://www.mps.gov.cn/n2254536/n4904355/c5561673/content.html> (accessed December 20, 2016).

<sup>2</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc.A/CONF.144/28/Rev.1 at 112 (1990).

HUMAN  
RIGHTS  
WATCH

HRW.org

over the justice system and the pervasive lack of accountability for police abuse. Governments have a responsibility to investigate and prosecute crimes and ensure public safety. But this responsibility should not be used as a pretext to limit rights guaranteed by China's constitution and international law, including the freedoms of expression, peaceful assembly, and personal security. Our specific concerns about the Draft Revisions include:

### 1. Firearm Use Rules Contrary to International Standards

The current Police Law,<sup>3</sup> adopted in 1995 and revised in 2012, contains only one provision on the use of firearms. It allows the police to broadly use weapons "in case of emergencies such as resisting arrest, rebellion, escaping from prison, grabbing firearms or other acts of violence." The Police Use of Police Equipment and Weapons Regulations,<sup>4</sup> promulgated by the State Council in 1996, contains more extensive rules on the use of firearms, but the provisions are equally broad.

The Draft Revisions were meant to offer more concrete guidelines to law enforcement officers on the use of weapons, according to state media reports.<sup>5</sup> Articles 32 and 33 outline, respectively, conditions under which firearms should not be used, including against children or when the persons targeted start obeying the police's orders. Article 35 also states the general principle that police should "rationally determine" the need to use police weapons, taking into account "the nature, degree and urgency of the risk," and to avoid injuries and damage "to the greatest extent possible."

Yet article 31 of the Draft Revisions allow police to use firearms under conditions that go well beyond what is permitted by international standards. The UN Basic Principles, in principle 4, set out the general rule that:

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

---

<sup>3</sup> The People's Police Law of the People's Republic of China, promulgated by the National People's Congress Standing Committee on February 28, 1995 and revised on October 26, 2012, Baidu Baike, <http://baike.baidu.com/view/35308.htm> (accessed December 21, 2016).

<sup>4</sup> Regulations of the People's Republic of China on the Use of Police Equipment and Weapons, promulgated by the State Council on January 8, 1996, <http://www.people.com.cn/item/faguiku/ga/O1050.html> (accessed December 20, 2016).

<sup>5</sup> Pu Xiaolei, "Understanding the Revised Draft Police Law: Current Provisions on the Use of Weapons and Police Equipment Too General," *Legal Daily*, December 13, 2016, [http://www.thepaper.cn/newsDetail\\_forward\\_1579026](http://www.thepaper.cn/newsDetail_forward_1579026) (accessed December 20, 2016).

Principle 9 states that:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. *In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life* (emphasis added).

Article 31 of the Draft Revisions outlines five situations under which police may use firearms “after warnings are ineffective.” Three of the five are contrary to the conditions set out by the Basic Principles. Article 31(1) allows the police to use weapons on persons who “resist arrest or flee while or after perpetrating acts that seriously endanger national security or public safety.” Chinese law defines terms such as “national security” and “public safety” broadly, and conflates peaceful criticism of the state with threats to national security. The sweeping National Security Law, passed in July 2015, defines national security as “the country’s state power, sovereignty, unity, and territorial integrity; its people’s wellbeing,” as well as the protection of a wide range of terms, including ideological issues and cybersecurity.

The broad, catch-all terms are contrary to international law, which requires specific threats to state security to be narrowly defined. Chinese authorities have also prosecuted and imprisoned individuals who peacefully advocate for human rights or criticize the Communist Party or state on national security charges. Article 31(1) thus allows the police to use weapons against anyone whose peaceful actions or speech is construed as threatening to the Party or state.

Article 31(3) allows police to use weapons on “detained criminal suspects, defendants, or convicts” who “cause disturbances, riots, are violent, escape, or rob those described here, or assist in perpetrating the conduct described here.” Article 31(4) allows the police to use firearms when “subjects and targets designated by the State for guarding, escort, or protection are violently attacked or destroyed, or where there is imminent harm of their being attacked or destroyed.” “Disturbances,” “subjects...designated by the State for guarding” are broad terms; none of the situations described in article 31(3) and article 31(4) requires the presence of an imminent or grave threat of life before police can use lethal force.

## 2. Empowering Police to Implement Unspecified “Network Controls”

The Draft Revisions also give police the new power of unspecified “network controls” over the internet and other telecommunications. Article 29 allows police to implement “network controls” in a wide range of situations including “natural disasters, accidents, public health incidents, public security incidents, or imminent risk of the occurrence of these disasters” as well as “when holding big activities or large-scale public events or when protecting persons or targets designated by the State.” The Draft Revisions will empower police as low as the county level with the approval of their superiors at the provincial level or above.

China’s new Cybersecurity Law, passed on November 7, 2016, allows similar “temporary network restrictions” during “major, sudden social security incidents,” but vests such powers with the government, not the police, and at a higher administrative level (provincial level upon approval by the State Council). Although Chinese police already have the power to censor and monitor online expression, it is possible that “network control” as described in article 29 of the Draft Revisions, could go beyond these to include network suspension, a strategy tested by authorities in Xinjiang, who arbitrarily cut internet access to the entire region for 10 months following the 2009 violence in Urumqi.<sup>6</sup>

## 3. Wide Police Powers Continue Unchecked

The Draft Revisions (articles 17-23, 25) outline a range of existing police powers, most of them already set out in other laws, including the Criminal Procedure Law. These powers include the power of search and seizure, accessing citizens’ personal data, administrative punishments including detention without trial known as *xingzheng julu* and *pancha* (ch: 盘查), and a form of non-coercive summons (ch: 传唤). The Draft Revisions do not impose any meaningful limits on these wide powers. For example, police can conduct a search and seizure without needing to apply for court warrants; internal approval by their superiors is considered adequate. Similarly, the police alone have the power to detain individuals for various lengths of time, by using one of several forms of coercive measures under the criminal law system, or by holding individuals under forms of administrative detentions in which detentions are imposed solely through an administrative decision, without any trial.

Although article 62 of the Draft Revisions outlines 13 prohibited behaviors for police officers, such as “conducting unlawful searches” or “unlawful deprivation of liberty,”

---

<sup>6</sup> Li Rongde, China Proposes Rule Allowing Police to Cut Internet Access During 'Crisis,' *Caixin*, December 2, 2016, <http://www.caixinglobal.com/2016-12-02/101022159.html> (accessed December 20, 2016).

these vaguely worded prohibitions are meaningless without strict limits on police powers or procedural safeguards that protect citizens from these powers.

Human Rights Watch notes that in recent years incidents of police abuse such as the Qing'an police shooting,<sup>7</sup> the death in custody of environmentalist Lei Yang,<sup>8</sup> and the abusive behavior caught on tape of an officer checking the identity cards of two Shenzhen shoppers,<sup>9</sup> have generated strong public criticism of the police force in China. The proposed revisions to the Police Law serve as an important opportunity to address those criticisms, and to make reforms that bring the law into conformity with international standards.

Human Rights Watch urges the Chinese government to revise the proposed revisions to:

- Amend provisions on firearm use to bring them in conformity with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Excise article 29 of the Draft Revisions on “network controls”; and
- Impose strict limits on police power, in conjunction with a review and revisions of other relevant laws, including the Criminal Procedure Law. As a first step to improve accountability, the Chinese government should establish an independent Civilian Police Commission with power to conduct investigations with respect to alleged police misconduct, including deaths in custody and police abuse.

Thank you for your attention to this important matter. We look forward to hearing from you.

Sincerely,



Sophie Richardson  
China Director  
Human Rights Watch

---

<sup>7</sup> Qing'an Train Station Shooting Incident, Wikipedia, <https://zh.wikipedia.org/zh-sg/%E5%BA%86%E5%AE%89%E7%81%AB%E8%BD%A6%E7%AB%99%E6%9E%AA%E5%87%BB%E4%BA%8B%E4%BB%B6> (accessed December 20, 2016).

<sup>8</sup> The Lei Yang Incident, Wikipedia, <https://zh.wikipedia.org/wiki/%E9%9B%B7%E6%B4%8B%E4%BA%8B%E4%BB%B6> (accessed December 20, 2016).

<sup>9</sup> Xing Bingyin, “Shenzhen Said Police Officer who Summoned and Abuses the Two girls Who Did Not Bring Identification Cards Has Been Suspended,” *the Paper*, June 11, 2016, [http://www.thepaper.cn/newsDetail\\_forward\\_1481755](http://www.thepaper.cn/newsDetail_forward_1481755) (accessed December 20, 2016).