

UN EXPERTS VIEWS ON...

CHINA'S ABUSE OF NATIONAL SECURITY TO CURTAIL HUMAN RIGHTS

Credits: Studio Incendo / Flickr

China has a vast array of laws, regulations, and policies to safeguard what it understands as 'national security'. Its **Criminal Law** includes a whole chapter (Part II Chapter I) on 'Crimes Endangering National Security', which all carry very long jail sentences for 'ringleaders' (10 or more years), and for those 'inciting' others (up to 5 or more years).



Collusion
with foreign forces
(Article 102)



Separatism
(Article 103)



Subversion of State power
(Article 105)



Stealing or providing
State secrets
(Article 111)

Like many other governments, it invokes national security crimes to justify human rights abuses.

Over the past four years, **UN human rights experts** have raised concerns with the government on the misuse of national security legislation, in no less than:



23 letters to the government,
covering...



31 cases



5 laws and
regulations

ACCORDING TO THE UN EXPERTS' LETTERS, WHO IS AFFECTED?



Tibetans

Nine Tibetans from Ngawa were 'sentenced in December 2016 for participation in celebrations for the Dalai Lama's 80th birthday, and their advocacy for cultural and religious rights of Tibetans'...

... but for the Chinese government, this meant 'inciting ethnic separatism' to 'split the country', and other 'illegal activities that endanger national security'.



Hong Kongers

... who suffer from the 'continued practice of invoking national security provisions under the National Security Law to impermissibly impinge on the rights to freedom of expression, of association, and of peaceful assembly,' as per UN experts.



Human rights defenders in mainland China

... disappeared, arbitrarily detained, and jailed for 'subversion of State power' or 'inciting subversion', such as:

- Changsha Funeng anti-discrimination activists
- Chang Weiping, and 16 other activists sentenced to 10 years or more
- Ding Jiayi, Zhang Zhongshun, and Dai Zhenya, held during the 2019 '1226 crackdown'

Uyghurs and Muslim populations

... exposed to 'mass surveillance used to monitor, track and ultimately detain them'.

Says the government:

'According to the Chinese Constitution, no organization or individual may violate citizens' freedom of communication for any reason, except for needs related to national security or criminal investigation'



All countries have to protect national security. So why is the Chinese government invoking national security so problematic?

The UN experts break it down:



1. It is done to target human rights defenders, and affects society as a whole

Human rights defenders and lawyers 'continue to be charged, detained, disappeared and tortured [...] under the guise of national security concerns'

(Press release from 16 December 2020 on Chang Weiping and human rights lawyers in China)



UN experts are 'concerned by the repeated use of national security legislation [that] may have a **chilling effect on civil society** in China, hindering the basic exercise of human rights'

(Letter from 9 March 2020 on Ding Jiaxi, Zhang Zhongshun and Dai Zhenya)

'Despite China's legal obligations and commitments, multiple laws, decrees and policies, in particular those concerning national security and terrorism, **deeply erode the foundations for the viable social, economic and political development of the society**'

(Letter from 21 November 2018 on the Xinjiang De-extremification Regulations)



2. It is done to curtail free speech



UN experts point to a 'broader pattern of restrictions on space for discussion and debate in China, whereby critical or dissenting opinions are characterised as threats to national security. As such, there appears to be a **systematic stifling of dissent** and targeting of those who exercise their right to freedom of expression, as well as those who promote public freedoms'

(Letter from 28 April 2021 on long-term jailing of 17 human rights defenders)



3. National security legislation bypasses due process

'China's Criminal Procedure Law provides for explicit exemptions and restrictions to [legal provisions guaranteeing due process] for national security crimes, such as notification of family members of arrest within 24 hours, or access to a lawyer within 48 hours'

(Letter from 9 March 2020 on Ding Jiaxi, Zhang Zhongshun and Dai Zhenya)





Looking at the [case of Xu Zhiyong](#), the UN's Working Group on Arbitrary Detention declared 'such a **blanket denial of access to legal counsel** without due process of law [under article 37 of the Criminal Procedure Law] constitutes non-observance of international law on the right to a fair trial'.

The **UN's Committee Against Torture recommended** during [China's 2015 review](#) that the government 'repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of 'endangering State security', 'terrorism', serious 'bribery' or cases involving 'State secrets'.



UN experts also 'reiterate concern that the provisions of the 2012 Criminal Procedure Law appear to allow those suspected of one of the three types of crimes potentially warranting '**Residential Surveillance at a Designated Location**' (terrorism, major bribery and endangering national security) to be **held incommunicado, for long periods, in undisclosed location**, which may per se amount to cruel, inhuman or degrading treatment or punishment, or **even torture**, and additionally may expose them to an increased risk of further abuse, including acts of torture'

(Letter from 24 August 2018 on Residential Surveillance at a Designated Location, or RSDL)



4. In doing so, China is going against its obligations under international (human rights) law.

Any limits to internationally-protected human rights such as free speech, association and assembly, must always meet the triple test of being:



Legal – defined by an unambiguous, narrow, and accessible legal provision

During its [2015 review of China](#), the UN's Committee Against Torture expressed 'particular concern at the **broadly-defined crimes** grouped under the categories of "endangering national security" and "terrorism" in the Criminal Law and in the 2015 National Security Law'



Looking at the [case of Yu Wensheng](#), the UN's Working Group on Arbitrary Detention described the crime of 'inciting subversion' as a 'vague and imprecise offence' and called 'upon the government to **repeal article 105 (2) of the Criminal Law**'

UN experts are 'concerned over the reportedly frequent application of article 103 (2) of the Chinese Criminal Law on "**incitement to separatism**" to suppress freedom of

expression, religion, assembly and association and the cultural rights of the Tibetan minority, as well as to quash any human rights advocacy with regard to the protection and promotion of these rights'

(Letter from 10 May 2019 on nine Tibetans who celebrated the Dalai Lamas 80th birthday)



'The lack of an upper limit on the length of imprisonment in articles 105(2) [on 'inciting subversion'] and 120 (a) [on terrorist activities] does **not meet the principle of legal certainty** and allows for the imposition of long sentences'

(Letter from 28 April 2021 on long-term jailing of 17 human rights defenders)

Necessary – there is not another less restrictive tool that exists that can achieve the intended purpose, which can only be to protect public order, health or morals, or national security.



The experts remind that invoking national security is '**limited in application to situations in which the interest of the whole nation is at stake**, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group', as **defined by the Special Rapporteur on freedom of expression**.



The 1996 '**Johannesburg Principles**' further detail that invoking national security 'is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force.' **This excludes 'protecting a government from embarrassment or exposure of wrongdoing.'**

In **discussing Xu Zhiyong**, UN experts are 'concerned that the Chinese authorities punished individuals, including medical professionals, who attempted to inform the public on the spread of the virus where there may not have been widely available State figures.'



Proportionate – The severity of the restriction and its scope are appropriate, and the least intrusive, for the intended purpose, the severity of the risk and the number of persons impacted.

'The length of imprisonment stipulated in articles 105 and 120 of the Criminal Code, among others, **raise concerns about proportionality**'

(Letter from 28 April 2021 on long-term jailing of 17 human rights defenders)





'While cognizant of the security situation that China may face, [...] the disproportionate emphasis placed by the authorities on the repression of rights of minorities **risks worsening any security risk**'

(Letter from 21 November 2018 on the Xinjiang De-extremification Regulations)

The case of Tashi Wangchuk



Tibetan linguistic rights activist, held in prolonged pre-trial detention in 2016, and convicted for separatism in 2018. In a **joint letter**, six UN experts were concerned...

...at the use of separatist charges to criminalize the legitimate exercise of freedom of expression and his defense of cultural and linguistic rights of the Tibetan minority, as well as to target legitimate human rights activities.'



They 'regret to note that [the government] failed to clarify why Mr. Wangchuk's statements about linguistic rights were deemed to amount to the crime of "incitement to separatism", [and that the government's] reply failed to explain how, in accordance with the applicable international human rights norms, the restriction of free speech in this context pursues a legitimate objective, and how it is necessary and proportional to achieve such objective.'