
Le Président
The President

**Mr. Wen Jiabao,
Prime Minister of the People's Republic of China,
Guojia Zongli, The State Council General Office,
Fuyoujie, Xichengqu, Beijingshi 100017,
People's Republic of China**

Re: Concerns regarding the proposed revisions to China's Criminal Procedure Law on potential introduction of new powers to secretly detain certain categories of suspects.

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which, through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area, represents more than 1 million European lawyers. In addition to membership from EU bars, it has also observer representatives from a further eleven European countries' bars.

The CCBE, through its Human Rights Committee, places great emphasis on respect for human rights and the rule of law. The CCBE is particularly concerned by the situation of human rights defenders in the world.

The CCBE writes to express its serious concerns over China's plans to increase secret detention powers, explicitly to hold dissidents and other suspects of state security crimes in secret locations without telling their families or their defence counsel.

These new detention powers of "*residential surveillance*" which fall under Article 30 of a comprehensive set of revisions to the criminal procedure law of the People's Republic of China (PRC) are expected to be scheduled for adoption by the National People's Congress in March 2012.

Under the revised provisions, law enforcement agencies would have the power to detain suspects in "*state security, terrorism and major corruption cases*" at a designated location other than the suspect's habitual residence and outside of formal detention facilities or investigation facilities. In these cases, law enforcement agencies are not obliged to notify relatives or defence counsel since "*such notification may impede the investigation*".

Especially worrisome is that the law enforcement authorities in China have long avoided the standard criminal procedure requirements for criminal suspects, especially in recent years, to detain human rights activists and government critics.

Those authorities were criticized for violating existing law, which only allows house arrest in police-designated places of detention in those cases where a person is found to have no regular residence. This new set of rules, while limited to state security suspects, terrorism and major corruption cases, would explicitly allow for the detention of suspects in police-designated places and for the waiving of the obligation to notify the family.

The procedural safeguards included in the proposed amendment are, in our view, almost non-existent. In fact, defendants, in cases where they are held incommunicado and without access to a defence counsel, would not be able to challenge the actions imposed on them. The measure would not be reviewed by a judge or a court but by the Prosecutor's office — itself the investigating body in cases of corruption.

In this context, the CCBE wishes to draw to your attention the following Articles of the United Nations Basic Principles on the Role of Lawyers (1990):

Article 1 and 2 state that:

- 1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*
- 2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.*

Furthermore, Article 7 and 8 state:

- 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer and in any case not later than forty-eight hours from the time of arrest or detention.*
- 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.*

Additionally, as you may know, the prohibition against arbitrary detention is a key principle of the administration of justice. It is recognized under the Universal Declaration of Human Rights, which is considered reflective of customary international law.

Moreover, the International Covenant on Civil and Political Rights (ICCPR), which China signed in 1998, but has yet to ratify, states in its Article 9 that:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

The ICCPR further provides that:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

As for the Universal Declaration of Human Rights (UDHR) adopted on 10 December 1948 by the General Assembly of the United Nations, and signed by China on the same date, in its Article 11 provides that:

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

As a signatory to the ICCPR and the UDHR, China is obliged under the Vienna Convention on the Law of Treaties “to refrain from acts which would defeat the object and purpose” of the treaty.

In view of the above, allowing secret detention would mark a sharp departure from this path. Thus, in order to preserve the independence and integrity of the administration of justice, the CCBE urges you

to take effective and immediate steps to guarantee China's compliance with international treaties regarding criminal procedures and to reassess the provisions under consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Dal', written over a long, thin horizontal line that tapers to a point on the right side.

Georges-Albert Dal
President