



Amnesty International's briefing on freedom of expression and the death penalty in China

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Amnesty International EU Office

Amnesty International
EU Office
Rue d'Arlon 39-41
B-1000 Brussels

Tel.: +32 2 502 14 99
Fax: +32 2 502 56 86
Email: amnesty-eu@aieu.be

1. Freedom of expression including restrictions on the internet

Key Issues

The negative trend in the area of freedom of expression continues into 2006. The administration of Hu Jintao and Wen Jiabao have significantly tightened controls over the internet and other media, including radio, TV and print media. Currently, more than 30 journalists are in prison for carrying out their work, and over 50 cyber-dissidents imprisoned for their use of the internet to communicate their ideas and publish their work. Many are imprisoned solely for having exercised their right to freedom of expression, including people who did nothing more than express views and opinions or circulate information on the internet.

Those detained for downloading information from the internet, expressing their opinions or circulating information on the internet or by email include students, political dissidents, Falun Gong practitioners, Tibetan exiles, workers, writers, lawyers, teachers, civil servants, former police officers, engineers and businessmen. Signing online petitions, calling for reform and an end to corruption, planning to set up a pro-democracy party, publishing 'rumours about SARS', communicating with groups abroad, opposing the persecution of the Falun Gong and calling for a review of the 1989 crackdown on the democracy protests are all examples of activities considered by the authorities to be "subversive" or to "endanger state security".

Local authorities continue to shut down newspapers and weblogs and monitor emails and other internet communications that challenge the political line of the Communist party, and journalists, editors, and other media personnel continue to be dismissed for not toeing the party line and raising sensitive issues. Over the last few months central authorities have increased demands for self-censorship by internet providers.

Legal and Regulatory developments

Over the last year the Chinese authorities have also introduced new regulations that strengthen government controls over the media, that place greater onus on individuals, media groups, internet providers, blog administrators, and internet cafes to self-censor what they publish and circulate over the internet. The government has intensified its use of the state secrets law, laws on subversion, laws prohibiting "defamation" of the nation, etc., to detain and imprison journalists, lawyers, internet users, and others.

The role of the press and freedom of the press remain in a legal vacuum, as the Press Law that authorities began drafting in the mid-1980s remains stalled. In the view of some mainland Chinese journalists the right to gather news and report news has not, consequently, become a legally recognised right, but remains only a "customary right", revocable at the whim of the political authorities.

While the Chinese authorities are forcing publications to be commercially viable, they have not changed the dictum that news media, book publishing, and internet communications must follow the political line of the Communist party. This view was most recently reiterated in an article in the People's Daily in which Long Xinmin, head of the General Administration of Press and Publication, wrote that news and publishing work "is an important domain of the Party's propaganda and ideology battle lines."

State authorities, including the GAPP and the State Administration of Radio, Film and Television (SARFT), continue to use their authority to accredit media outlets, including newspapers and TV hosts, to shut down newspapers, TV shows, etc. if they challenge political orthodoxy, offend local authorities, raise sensitive issues such as corruption, or challenge political authorities in other ways.

Some examples of regulations that underpin the political nature of the media and news reporting and the fact that state authorities view the media as a tool of propaganda, establishing a strict role for journalists, editors, etc.:

- Regulations issued by SARFT in April 2005 stated "it is necessary to instruct news reporting and editing personnel to strengthen their political consciousness."
- In April 2005, SARFT issued rules requiring radio and television reporters and editors to "put forth an effort to safeguard the interests and the image of the nation," "give priority to positive propaganda," and "carry out China's foreign policies."

- Regulations issued jointly by SARFT and the CCP Central Propaganda Department in March 2005 required news reporting and editing personnel to support the leadership of the Party, to focus on “correct propaganda” as their guiding principle, and have a firm grasp of “correct guidance of public opinion”.
- Regulations issued in December 2004 called on television operators to “increase their control over what radio and television interview programs hosts say on the air.”
- SARFT requires all television editors, journalists, and hosts to be accredited by the government, and imposes ethical and ideological requirements, in addition to language standards. A very popular television host was dismissed from his position for the ostensible reason that his Mandarin Chinese was not standard, when it was widely accepted it was because he raised sensitive issues in his programmes.

Crackdown on the press and media personnel

The crackdown on the press and publications continued in 2005 and the beginning of 2006.

Media workers who challenge political orthodoxy or raise sensitive social, political, or economic issues including corruption, continue to face dismissal or detention. The Southern Metropolitan Daily—one of the PRC’s most outspoken newspapers—continues to be targeted by the authorities. Several editors of the newspaper, including Xia Yitao, the newspaper’s deputy editor-in-chief, were dismissed in December 2005. This dismissal is one of a long series of attempts by the authorities to curb the publication, beginning in 2003 when the Southern Metropolitan Daily was the first to report publicly on the SARS case. Last year, the newspaper took the lead in reporting on unrest in Taishi Village, in a land dispute case, and had also reported that the vice-governor of Guangdong had received a demerit (from the central authorities) because of a coal mine disaster in the province.

In 2005 the authorities claimed to have confiscated 996,000 illegal political publications, as well as 4,620,000 “propaganda materials” issued by the Falun Gong and other “evil cult organisations” as part of the *Sweep Away Pornography and Strike Down illegal Publications campaign*.

The internet

As of May 2006, China is estimated to have around 111 million internet users. The growth in internet use has been met with growth in the government’s efforts to control it.

The authorities continue to routinely block news sites, especially foreign-based sites, including those featuring dissident views or banned groups. The blocking may be intensified at times of heightened security such as the anniversary of the crackdown on the 1989 pro-democracy protests, the annual meeting of the National Party Congress or visits from heads of state or government. Many websites, considered to contain politically sensitive information, such as those of human rights organizations and banned groups as well as international news sites, are inaccessible from China. The average internet user in China knows there are certain sites that are inaccessible, searches that cannot be done and content that cannot be viewed.

Over the last year government authorities sustained their efforts to control internet content and the crackdown on internet users, including well-known cyber-dissidents, continued.

Over the last year Chinese government authorities have been engaged in a campaign to tighten control over private email communications and weblogs.

In February 2005 the Ministry of Information Industry (MII) promulgated a measure requiring all websites, including private ones, to register with the MII. As part of this registration process, the MII requires anyone who posts news on their website to prove that state authorities have authorised them to do so. State-run media reports have recently suggested that thousands of websites whose operators failed to register were closed down

This tightening of control over private websites coincided with the government’s tightening of control over the posting of news on the Web through new rules issued in September 2005.

2. Fair trial / security of liberty and persons

See AI's memorandum ASA 17/016/2006, 12 May 2006.

3. Death penalty

Penal types/death penalty offences

The death penalty is applicable to around 68 offences in Chinese criminal law. These include non-violent crimes such as economic crimes (ex.: tax fraud and embezzlement) and drug offences. It is also applicable to violent crimes of robbery, rape, murder etc. Such crimes are also potentially punishable with terms of imprisonment, but incur the death penalty where the circumstances are 'serious'.

Individuals may also be sentenced to death but 'suspended for two years'. If they do not commit another crime during the period of suspension, the death sentence is generally commuted to life imprisonment.

Official secrecy around the death penalty

AI has long-standing concerns about the secrecy surrounding the application of the death penalty in China. The government does not publish annual statistics on death sentences and applications. The process surrounding individual executions is also cloaked in secrecy.

Methods and numbers of executions

Prisoners are executed by shooting, usually to the back of the head, and increasingly by lethal injection. Based on available public reports, AI estimated that at least 1,770 people were executed and 3,900 people were sentenced to death during 2005, although the true figures are believed to be much higher. In early 2006, a Chinese legal expert was quoted as giving the figure for executions at approximately 8,000 based on information from local officials and judges. In March 2004, a senior legislator announced that China executes around 10,000 people per year.

The death penalty continues to be applied extensively and often arbitrarily, at times as a result of political interference. The number of death sentences and executions increases in the weeks preceding significant national events such as Anti-Drugs Day and Chinese New Year. Periodic 'Strike Hard' campaigns against crime have also resulted in a rise in death sentences and executions as local courts come under political pressure to achieve 'quick results'.

The issue of fair trials

No one who is sentenced to death in China receives a fair trial in line with international human rights standards. Failings include lack of prompt access to lawyers, political interference in the judiciary and failure to exclude evidence extracted through torture.

Organ transplants

Extracting organs from death penalty prisoners has been a widespread practice in China for several years, and it is estimated that over 90% of transplanted organs in China may come from executed prisoners.

Organ transplants have become a highly profitable business, particularly since the commercialisation of health care in China. There are serious concerns that the potential to profit from such transactions combined with apparently widespread corruption among police, courts and hospitals may lead to abusive practices. It may also provide an economic incentive to maintain the death penalty.

On 28 March 2006, the Chinese Ministry of Health released new regulations on organ transplants, which will take effect on 1 July 2006. They reportedly ban the buying and selling of organs and stress that organs may only be removed with the written consent of the donor. However, medical experts have criticised them for not addressing the crux of the problem. For example, Professor Chen Zhonghua, a transplantation specialist from Wuhan who reportedly helped to draft the regulations, has stated that they only offer guidance on transplants from live donors and fail to address key issues such as the source of organs.

Annex - Individual cases

Freedom of expression

Dozens of people remain in prison for accessing or circulating politically sensitive information online.

Shi Tao (m), 38, journalist - Shi Tao, a Chinese journalist, is serving a 10-year prison sentence in China for sending an email dated 20 April 2004, summarising the content of a Chinese Central Propaganda Department communiqué orally transmitted to editorial staff at the newspaper where he worked. Shi Tao sent the email using his Yahoo account to the editor of a Chinese pro-democracy website based in the USA.

On the basis of this email, Chinese authorities accused Shi Tao of “illegally providing state secrets to foreign entities”. He was detained on 24 November 2004 and officially arrested on 14 December 2004. He was sentenced to 10 years’ imprisonment on 27 April 2005.

According to the transcript of the Changsha Intermediate People’s Court of Hunan Province, Yahoo Holdings (Hong Kong), the US-based internet company, provided account-holder information that was used as evidence in the case against Shi Tao and that resulted in his sentence of 10 years’ imprisonment.

Amnesty International considers Shi Tao a prisoner of conscience, imprisoned for peacefully exercising his right to freedom of expression, a right entrenched in international law and the Chinese Constitution.

The vaguely-worded legal definition of what constitutes a “state secret” gives the Chinese authorities broad discretion to detain those engaged in the peaceful exercise of their right to free expression.

A representative of Shi Tao’s family has filed a privacy complaint with Hong Kong’s Office for the Privacy Commissioner for Personal Data against Yahoo’s Hong Kong subsidiary for its role in the case.

Amnesty International finds Yahoo’s role in providing critical information to the Chinese authorities that led to Shi Tao’s sentencing highly disturbing. Companies must respect human rights, wherever they operate. And according to a company spokesperson, “We condemn punishment of any activity internationally recognised as free expression, whether that punishment takes place in China or anywhere else in the world.” Yet the company has signed the PRC’s Public Pledge on self-discipline for the Internet Industry, effectively agreeing to implement China’s draconian system of censorship, and it would appear that the company unquestioningly met the Chinese government’s request for information on Shi Tao.

Background

Shi Tao was born on 25 July 1968 in Yanchi City in the province of Ningxia in north-west China. From 1986 to 1991 he studied political economics and later changed to political education at the East China Normal University in Shanghai. In addition to being a journalist, Shi Tao is also an accomplished poet whose widely published works express his concern about the country and its people and reflect his belief in democracy and freedom of speech. At university he was active in poetry societies; he founded the urban poetry group *Woting* and served on the board of the Shanghai University Association of Poets. After graduating from university in 1991, he worked as a reporter and editor at several newspapers. He joined *Dangdai Shangbao* (Contemporary Trade News) in Changsha, Hunan Province on 11 February 2004 as director of the editorial board and assistant to the editor-in-chief. He resigned in May 2004 and became a freelance journalist and writer based in his home city of Taiyuan until his arrest in November 2004.

On 20 April 2004 Shi Tao attended a meeting during which the contents of a Central Propaganda Department communiqué was transmitted to the newspaper staff concerning the 15th anniversary of the June 4 Movement, a communiqué which was also transmitted to all major public institutions, including media organisations, and government organs at all levels. The communiqué warned about the possibility of unrest during the anniversary period, and what the government viewed as the dangers of infiltration by “democratic elements” and other hostile foreign elements from abroad, “sabotage” activities by the Falun Gong, “mass crowd incidents”, and other events during the memorial period of 4 June 2005.

According to the communiqué, “preventative actions” should be taken by various levels and departments”. Media workers were instructed to “correctly direct public opinion”, to “never release any opinions that are inconsistent with central policies”, and to prioritise the work of combating these trends. The communiqué concludes by urging journalists to report to the authorities any suspicions regarding colleagues who may have contacts with “overseas democratic elements”. Shi took notes during the meeting, and then sent an abstract of these to a contact in the USA who runs a well known Chinese pro-democracy website. The article was published the same day using the pseudonym of “198964”.

According to the court verdict, Yahoo! Holdings (Hong Kong) Ltd provided the authorities with the user location corresponding to the IP address from which Shi’s email was sent at 23:32:17 on 20 April 2004, which was the office of Contemporary Business News (*Dangdai Shangbao*), the newspaper for which Shi Tao worked. Spokespersons for Yahoo claimed the company was simply following local laws.

Currently imprisoned in Chishan prison, Shi Tao is reportedly being forced to work under harsh conditions. Shi’s family has also been harassed by the authorities. According to sources, Shi Tao’s wife underwent daily questioning by public security bureau officials and was persistently pressured by her work unit to divorce Shi, which she eventually did. Shi Tao’s uncle and brother have also been under surveillance and harassed both at work and at home, and his mother is also reportedly being closely monitored and harassed as she petitions for his release.

Amnesty International considers Shi Tao to have been detained for peacefully exercising his right of freedom of expression. The organisation considers him a prisoner of conscience and calls for his immediate and unconditional release.