

## ANNEX A – Outline of States Secrets Framework in the People’s Republic of China<sup>1</sup>

### State Secrets System

The state secrets legal framework of the People’s Republic of China consists of the revised *Law on Guarding State Secrets of the People’s Republic of China* (the “State Secrets Law,” effective October 1, 2010);<sup>2</sup> the *Measures for Implementing the Law on Guarding State Secrets* (“Implementing Measures”);<sup>3</sup> related provisions in China’s *State Security Law of the People’s Republic of China*,<sup>4</sup> *Criminal Law of the PRC*,<sup>5</sup> and *Criminal Procedure Law of the PRC*.<sup>6</sup> This framework is further supplemented by numerous comprehensive detailed regulations in different areas including:<sup>7</sup>

- Family planning
- Public health
- Women
- Trade union work

On May 15, 2012, the State Council published the ***Draft Regulations for Implementation of the Law on Guarding State Secrets (Draft SSL Implementation Regulations), open for comments until June 15, 2012.***<sup>8</sup> The draft regulations aim to clarify the scope and definition of the “state secrets.”<sup>9</sup>

### State Secrets Law

The State Secrets Law, which came into effect on May 1, 1989 and later revised on April 29, 2010, was passed for the purpose of “protecting state secrets, safeguarding state security and national interests and ensuring the smooth progress of reform, of opening to the outside world, and of socialist construction.”<sup>10</sup> As the primary legislation governing the management of state secrets in the PRC, the State Secrets Law stipulates procedures for making classification determinations and lays out the basic scope of information to be protected.

The 2010 revised State Secrets Law reflects the government’s ongoing policy to **expand and tighten information control in the digital age**, and expands the scope of the law to include all public information networks, e.g. the Internet, traditional media, and various other sectors (hardware, software, service providers, etc.).<sup>11</sup>

**Article 9** of the revised State Secrets Law lays out the different types of **state secrets matters**:<sup>12</sup>

1. Secret matters concerning **major policy decisions** on state affairs;
2. Secret matters in the building of **national defense** and in the activities of the armed forces;
3. Secret matters in **diplomatic activities** and in activities related to foreign countries and those to be kept secret through commitments to foreign countries;
4. Secret matters in **national economic and social development**;

5. Secret matters concerning **science and technology**;
6. Secret matters concerning activities for safeguarding **state security** and the investigation of criminal offenses; and
7. **Other matters** that are classified as state secrets by the national department for the administration and management of state secret-guarding.

Some key provisions in the State Secrets Law include:

- **Definitions**
  - **“State secrets”** are matters that have a vital bearing on state security and national interests, as specified by legal procedure, known to a limited number of people for a given period of time.<sup>13</sup>
  - **“Intelligence”** refers to matters that concern state security and interests either not public yet or should not be made public.<sup>14</sup>
  - **“Internal Matters/Neibu”** are matters not classified as state secrets but must not be made public or disseminated without authorization from the regulatory organ.<sup>15</sup>
- **Disclosing, leaking, or divulging** state secrets includes:
  - allowing a state secret to be known by any individual that is not allowed to know such information;
  - allowing information to go beyond the specified group of individuals allowed access to that secret, while not be able to prove that such a disclosure of information did not take place.<sup>16</sup>
- **Classification of state secrets and levels of harm**
  - **top secret** (disclosure would cause *extremely serious harm*);
  - **highly secret** (disclosure would cause *serious harm*);
  - **secret** (disclosure would cause *harm*).<sup>17</sup>

## Retroactive Classification of Information

Under regulations and a Supreme Court interpretation, retroactive classification of information not already enumerated as a state secret is permissible if disclosure of information could result in any one of the eight “consequences” deemed to cause harm to the security and interests of the state retroactive classification is allowed.<sup>18</sup> These consequences include:<sup>19</sup>

- Endangering the **ability of the state to consolidate and defend its power**
- Affecting **national unity, ethnic unity** or **social stability**
- Harming the **political or economic interests** of the state in its dealings with foreign countries
- Affecting the **security of state leaders** or top foreign officials
- Hindering important **security or defense work** of the state
- Causing a decrease in the reliability, or a loss of effectiveness to, the **measures used to safeguard state secrets**
- Weakening the **economic and technological strength** of the state
- Causing state organs to lose the ability to exercise their authority according to the law

## Enforcement

The emphasis in Chinese domestic law is on the role of the individual to protect state secrets. For instance, the Chinese Constitution includes the right to freedom of speech, but also imposes an obligation on all citizens to “keep state secrets.”<sup>20</sup> As a corollary to the duty of all citizens, the State Secrets Law and the Implementation Measures have a detailed system of reward and sanction for people who contribute to the protection of state secrets, or who steal or disclose state secrets.<sup>21</sup>

There are three types of sanctions for disclosure, illegally obtaining or holding of state secrets:<sup>22</sup>

- **Criminal** sanctions for intentional or negligent disclosure under circumstances deemed “serious,” illegally obtaining state secrets, and unlawfully holding state secrets;
- **Administrative** sanctions when disclosure is not deemed serious enough to warrant criminal punishment; and
- **Party** sanctions for Party members.

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<sup>1</sup> For more information, please see Human Rights in China, *State Secrets: China’s Legal Labyrinth* (New York: Human Rights in China, 2007), <http://www.hrichina.org/public/contents/41421>. This report describes and examines the PRC state secrets system and shows how it allows and even promotes human rights violations by undermining the rights to freedom of expression and information, and by maintaining a culture of secrecy that has a chilling effect on efforts to develop the rule of law and independent civil society. The report also includes a set of concrete and specific recommendations relating to governance, legislative amendments and strengthening implementation.

<sup>2</sup> Ibid.

<sup>3</sup> Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China [中华人民共和国保守国家秘密法实施办法], issued by the National Administration for the Protection of State Secrets [国家保密局], promulgated and effective May 25, 1990, [http://www.stats.gov.cn/tjgl/swdcglgg/xgfg/t20041118\\_402209111.htm](http://www.stats.gov.cn/tjgl/swdcglgg/xgfg/t20041118_402209111.htm). An unofficial translation can be found at Human Rights in China, *State Secrets: China’s Legal Labyrinth* (New York: Human Rights in China, 2007), 94-111 <http://www.hrichina.org/public/contents/41421>.

<sup>4</sup> State Security Law of the People’s Republic of China [中华人民共和国国家安全法], issued by the Standing Committee of the National People’s Congress [全国人民代表大会常务委员会], promulgated and effective February 22, 1993, [http://www.gov.cn/ziliao/flfg/2005-08/05/content\\_20927.htm](http://www.gov.cn/ziliao/flfg/2005-08/05/content_20927.htm). Official English translation available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383844.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383844.htm). For selected provisions of the *State Security Law*, Human Rights in China, *State Secrets: China’s Legal Labyrinth* (New York: Human Rights in China, 2007), 118-120, <http://www.hrichina.org/public/contents/41421>.

<sup>5</sup> Criminal Law of the People’s Republic of China [中华人民共和国刑法], issued by the National People’s Congress, promulgated July 1, 1979, amended 1997, 1999, 2001, 2002, 2005, 2006, 2009, 2011, See Section II, page 120, for relevant provisions.

<sup>6</sup> Criminal Procedure Law of the People's Republic of China [中华人民共和国刑事诉讼法], issued by the National People’s Congress [全国人民代表大会], promulgated July 7, 1979, effective January 1, 1980; amended March 17, 1996, effective January 1, 1997; revised March 14, 2012, effective January 1, 2013, [http://www.gov.cn/flfg/2012-03/17/content\\_2094354.htm](http://www.gov.cn/flfg/2012-03/17/content_2094354.htm). Official English translation of the 1996 CPL available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384067.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384067.htm).

<sup>7</sup> For further information, see Human Rights in China, *State Secrets: China's Legal Labyrinth* (New York: Human Rights in China, 2007), 125-185, <http://www.hrichina.org/public/contents/41421>.

<sup>8</sup> On May 15, 2012, the State Council published a draft to revise *the Regulations for Implementing the Law on the Protection of State Secrets* and sought public opinions by June 15, 2012. The draft in Chinese is available at <http://www.chinalaw.gov.cn/article/cazjgg/201205/20120500367762.shtml>.

<sup>9</sup> "Measures for Implementing the Law on the Protection of State Secrets of the PRC" [中华人民共和国保守国家秘密法实施办法], Art. 9. Translation by Human Rights in China.

<sup>10</sup> Law of the People's Republic of China on Guarding State Secrets, [中华人民共和国保守国家秘密法], Adopted at the Third Meeting of the Standing Committee of the Seventh National People's Congress [全国人民代表大会常务委员会] and promulgated on September 5, 1988, effective on May 1, 1989, art. 1; revised on April 29, 2010, revision effective as of October 1, 2010. For the entire text of the current law in Chinese, see [http://www.gov.cn/flfg/2010-04/30/content\\_1596420.htm](http://www.gov.cn/flfg/2010-04/30/content_1596420.htm). An official English translation for the previous version of the law, effective prior to October 1, 2010, is available at [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383925.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383925.htm). An unofficial translation of the State Secrets Law by Human Rights in China available at: <http://hrichina.org/sites/default/files/oldsite/PDFs/PressReleases/20101001-StateSecretsLaw-EN.pdf>.

<sup>11</sup> State Secrets Law, Art. 28. See also, Human Rights in China, "China Sharpens Legal Weapon for Information Control," April 29, 2010, <http://www.hrichina.org/content/394>.

<sup>12</sup> Revised State Secrets Law, Art. 9.

<sup>13</sup> State Secrets Law, Art. 2; Art. 8; Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China [*hereinafter* Implementation Measures] [中华人民共和国保守国家秘密法实施办法], issued by the National Administration for the Protection of State Secrets, promulgated and effective on May 25, 1990, Art. 4 and The Supreme People's Court Interpretation of Certain Issues Regarding Application of Law [最高人民法院关于审理为境外窃取、刺探、收买、非法提供国家秘密、情报案件具体应用法律若干问题的解释], Promulgated on January 17, 2000 and effective on January 22, 2001, Art. 1

Stealing, gathering, providing or procuring state secrets is also defined as an act that endangers state security in the State Security Law, Art. 4(3).

<sup>14</sup> The Supreme People's Court Interpretation of Certain Issues Regarding Application of Law [最高人民法院关于审理为境外窃取、刺探、收买、非法提供国家秘密、情报案件具体应用法律若干问题的解释], Promulgated on January 17, 2000 and effective on January 22, 2001, Art. 1.

<sup>15</sup> Several specific regulations implementing the State Secrets law.

<sup>16</sup> Implementation Measures, Art. 35.

<sup>17</sup> State Secrets Law, Art. 9 (Revised 2010 State Secrets Law, Art. 10).

<sup>18</sup> Implementation Measures, Art. 4. See also the Supreme People's Court Interpretation of Certain Issues Regarding Application of Law [最高人民法院关于审理为境外窃取、刺探、收买、非法提供国家秘密、情报案件具体应用法律若干问题的解释], Art. 5.

<sup>19</sup> Ibid. See also Human Rights in China, *State Secrets: China's Legal Labyrinth* (New York: Human Rights in China, 2007), p. 14, <http://www.hrichina.org/public/contents/41421>.

<sup>20</sup> See Human Rights in China, *State Secrets: China's Legal Labyrinth* (New York: Human Rights in China, 2007), p. 17, <http://www.hrichina.org/public/contents/41421>.

<sup>21</sup> Implementation Measures, Arts. 27-34.

<sup>22</sup> Ibid.