

**HUMAN RIGHTS FIRST SUBMISSION TO THE OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS**

UNIVERSAL PERIODIC REVIEW: CHINA, SESSION 4 – FEBRUARY 2-13, 2009

1. Introduction

1. This report is a Human Rights First submission to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for China's appearance before the fourth Universal Periodic Review session, scheduled from February 2 to 13, 2009.
2. This submission is consistent with the guidelines approved by the Human Rights Council¹ and the Civil Society Unit of OHCHR.² This submission focuses on the situation of human rights defenders in China, which is of particular relevance to sections I(B) and (C) of the Human Rights Council's Guidelines, and to sections 8(d)-(f) of the Civil Society Unit's Guidelines.

2. Executive Summary

3. Human rights defenders—always at risk in China—work in an increasingly hostile environment. They face arrest, detention, unfounded prosecution, threats and intimidation, and the revocation of the license to practice law. This submission focuses on two of the most damaging practices: arbitrary detention and the use of vague legal provisions to intimidate or punish criminal defense lawyers and other human rights defenders.
4. Arbitrary detention stands out as a particularly repressive and insidious problem. The use by the state of extrajudicial measures such as clandestine “black jails” and Reeducation through Labor to intimidate and silence human rights defenders significantly represses the promotion of human rights, as defenders may be detained on a whim and with no recourse. Domestic law also poses significant hurdles to the work and safety of Chinese human rights defenders. Vague provisions in the Criminal Law and the Criminal Procedure Law concerning subversion and incitement are used as the basis for unfounded charges against defenders engaging in peaceful, legal activities.
5. The following submission describes these fundamental problems and provides case examples, concluding with five specific recommendations for the Chinese government.

¹ Human Rights Council, *Follow-up to Human Rights Council resolution 5/1*, UN Doc. A/HRC/DEC/6/102, September 27, 2007.

² OHCHR, *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism*, July 1, 2008.

3. The State's Failure to Adequately Protect Human Rights Defenders in China³

A. Overview

6. In recent years, the Chinese government has made many promises to improve its human rights record. In 2004 Article 33 of the Constitution was amended to include the assertion that “the state respects and guarantees human rights,”⁴ In 2006, while seeking membership to the Human Rights Council, the government asserted its commitment to the “promotion and protection of human rights and fundamental freedoms of the Chinese people.”⁵ But in the last four years, the human rights situation in China has not improved, and, according to many observers, has deteriorated, particularly surrounding the 2008 Beijing Olympics. Arbitrary and extrajudicial detention continues to plague the work of human rights defenders, who are among the 920 political prisoners were believed to be detained or imprisoned in China as of August 2008.⁶

B. Use of Extrajudicial Measures to Punish Human Rights Defenders

7. The Ministry of State Security and the Ministry of Public Security's Internal Security Bureau—China's secret police—use extrajudicial powers to illegally monitor, detain, and even torture human rights defenders.⁷ Of the 428 people reported to have been newly detained between July 2007 and June 2008, over 40 percent were held in so-called “black jails.”⁸ In these secret and illegal detention centers, detainees are stripped of all of their rights. The clandestine nature of these facilities makes detainees particularly vulnerable to ill-treatment and torture. The problem of “black jails” is particularly acute in Beijing, where petitioners are seized by government officials working in the liaison offices of outside provinces and cities and held in secret detention until they are sent back to their home provinces.⁹

- Huang Yan, a human rights activist and close friend of celebrated rights defense lawyer Gao Zhisheng, was seized by the National Security Unit of the Beijing Public Security Bureau on September 22, 2007. In detention, Huang was repeatedly beaten before being released on

³ This section is relevant specifically to OHCHR, *Information and Guidelines for Relevant Stakeholders*, section 8(d): “Cooperation of the country under review with human rights mechanisms, and with national human rights institutions, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders.”

⁴ Constitution of the People's Republic of China, Amended 14 March 2004. http://english.gov.cn/2005-08/05/content_20813.htm.

⁵ “Aide Memoire,” China: Voluntary Pledges and Commitments, *Office of the High Commissioner of Human Rights*, April 13, 2006. <http://www.un.org/ga/60/elect/hrc/china.pdf>.

⁶ For the complete list, please see: Congressional-Executive Committee on China, “China: List of Political Prisoners Detained or Imprisoned as of August 7, 2008.”

http://www.cecc.gov/pages/victims/20080807_PPD.pdf?PHPSESSID=2f9dbad0eb20bffa6640e4d2d1cb5184.

⁷ Teng Biao and Hu Jia, “The Real Situation in Pre-Olympics China,” *China Rights Forum*, No. 4, 2007: 87-94.

⁸ Chinese Human Rights Defenders, “CHRD Releases China Human Rights Yearbook (2007-2008),” August 6, 2008. http://crd-net.org/Article/Class9/Class11/200808/20080807093200_9888.html.

⁹ Chinese Human Rights Defenders, “‘Black Jails’ in the Host City of the ‘Open Olympics’: Secret detention facilities in Beijing are illegally incarcerating prisoners,” September 21, 2007. http://www.crd-net.org/Article/Class9/Class11/200709/20070921161949_5739.html.

October 23, 2007.¹⁰ Gao Zhisheng, who also disappeared from his home on September 22, 2007, was held in secret detention and was reportedly tortured for nearly two months.¹¹

- Wang Ling is a Beijing housing rights activist currently being detained in a RTL camp. Five years ago, Wang Ling's property was forcibly torn down without compensation to make way for Olympics construction. She subsequently has worked alongside Ye Guozhu, petitioning for property owners' rights. Because of her activism, Wang has been arbitrarily detained, beaten, and threatened with being sent to a mental institution. On October 18, 2007, Wang Ling was sentenced to a 15-month sentence at the Daxing Re-Education through Labor Camp in Beijing.¹²

8. Neither "black jails" nor RTL camps have any basis in Chinese law and both operate entirely outside China's judicial system. They arbitrarily deprive citizens of their rights to legal counsel and fair trials and increase the likelihood of torture and ill treatment. The use of these extrajudicial detention methods violates Chinese law and the Chinese constitution,¹³ and contravenes China's international human rights obligations.

C. Use of the Vague Criminal Law to Assert Unfounded Charges

9. Another disturbing trend has been the use of China's Criminal Law to lay unfounded charges against human rights defenders. Criminal Law Article 105(2), amended in 1997, poses one of the greatest obstacles to the work and safety of human rights defenders, as it sets forth the punishment for "subverting the State power or overthrowing the socialist system" or "inciting others by spreading rumors or slanders or any other means" to do the same.¹⁴ From 2000 to 2007, at least 41 people were charged with or convicted of "inciting subversion of state power."¹⁵

10. In a 1997 report after its visit to China, the Working Group on Arbitrary Detention pointed out two key problems with Article 105: 1) the mere communication of thoughts, ideas or opinions, "without intent to commit any violent or criminal act," may be regarded as subversion, and 2) the article "makes no attempt to establish standards to determine the quality of acts that might or could harm national security," making the law susceptible to abuse.¹⁶ After a follow-up visit to China in 2004, the Working Group confirmed that its concerns in 1997 were "well founded" and that no significant improvements had been made.¹⁷

¹⁰ Fang Yuan, "Attorney's Family Again in Panic During CCP's National Congress," *Radio Free Asia*. October 21, 2007.

¹¹ Human Rights First, "Don't Forget Chinese Defenders Once the Olympic Crowds Go Home," August 18, 2008.

http://www.humanrightsfirst.org/defenders/alert081808_Olympics.htm.

¹² Human Rights First, "Don't Forget Chinese Defenders Once the Olympic Crowds Go Home," August 18, 2008.

http://www.humanrightsfirst.org/defenders/alert081808_Olympics.htm.

¹³ Article 37 of the Chinese Constitution states: "No citizen may be arrested except with the approval or by decision of a people's Procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited . . ."

¹⁴ Criminal Law of the People's Republic of China, Revised at the Fifth Session of the Eighth National People's Congress on March 14, 1997.

¹⁵ Chinese Human Rights Defenders, "'Inciting Subversion of State Power': A Legal Tool of Prosecuting Free Speech in China," January 8, 2008. http://www.crd-net.org/Article/Class9/Class11/200801/20080108225721_7032.html.

¹⁶ Commission on Human Rights, *Report submitted by the Working Group on Arbitrary Detention, Addendum, Visit to the People's Republic of China*, E/CN.4/1998/44/Add.2, December 22, 1997.

¹⁷ Commission on Human Rights, *Report of the Working Group on Arbitrary Detention, Addendum, Mission to China*. E/CN.4/2005/6/Add.4, December 29, 2004.

- Lawyer Gao Zhisheng was convicted of “inciting subversion of state power” on December 22, 2006, earning him a sentence of three years imprisonment, though the sentence was suspended. Gao is known for his work in defense of Falun Gong practitioners and religious rights, and as noted above, he was taken from his home on September 22, 2007 and detained for almost two months. His whereabouts are unclear, though it is believed he remains under surveillance.¹⁸
- Hu Jia, a renowned HIV/AIDS activist and human rights defender, was detained on suspicion of “inciting subversion of state power” by police on December 27, 2007. He has not yet been tried. Hu’s wife, Zeng Jinyan, and their baby daughter went missing from their Beijing home on August 7, 2008, one day before the start of the Olympics. They were reportedly detained in a hotel in Dalian, cut off from communication, for sixteen days before being sent back to Beijing.¹⁹

D. Human Rights Lawyers Under Attack

11. At least three laws specifically target lawyers’ work. Article 306 of the Criminal Law allows lawyers to be charged with “perjury” or “false testimony” for destroying or forging evidence or forcing a witness to change testimony. Like Article 105(2), Article 306 is written vaguely and susceptible to misuse. For example, a defense attorney who presents witness testimony that contradicts evidence presented by the prosecutor may be detained for forging evidence.²⁰ Such cases are widespread: falsifying evidence and interfering with testimony are a basis of 80 percent of all cases dealing with lawyers’ rights.²¹

12. Lawyers’ work is further restricted by Article 96 of the Chinese Criminal Procedure Law. In cases that involve “state secrets”—a broad and ill defined term—the detainee must obtain approval of the government’s investigative organ before appointing a lawyer. Similarly, the lawyer must obtain prior approval to meet with a client. A 2004 report by the Working Group on Arbitrary Detention noted that this leads to numerous abuses, “either because the notion of State secret is not defined with sufficient precision, or because it is interpreted in an extensive manner.” Article 96 also allows investigators to appoint someone to attend lawyer-client meetings, which directly violates Article 14, paragraph 3(b) of the International Covenant on Civil and Political Rights.²² While the recently revised Lawyers Law stipulates that meetings between defense attorneys and criminal suspects are not to be monitored,²³ it remains to be seen how this conflict will be resolved in practice.

13. Though the revised Law on Lawyers improves on the previous version, Article 37 of the new version hinders the work of lawyers. On the one hand, it guarantees lawyers’ immunity for statements made in court, but on the other hand, it carves out an exception to this rule for statements “compromising the

¹⁸ Human Rights in China, “Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China.” <http://ir2008.org/02/spotlight.php>.

¹⁹ “Wife of jailed Chinese activist back from Olympic disappearance,” *Macau Daily Times*, August 27, 2008. http://www.macaudailytimesnews.com/index.php?option=com_content&task=view&id=15235&Itemid=31.

²⁰ Human Rights in China, “About the Issue: Olympics and the Rule of Law,” <http://www.ir2008.org/02/issue.php>.

²¹ Feng Jing, “Protecting the Advocates,” *Beijing Review*, Vol. 48, No. 30. 28 July 2005. <http://www.bjreview.cn/EN/En-2005/05-30-e/china-3.htm>.

²² Commission on Human Rights, *Report of the Working Group on Arbitrary Detention, Addendum, Mission to China*. E/CN/4/2005/6/Add.4. December 29, 2004.

²³ “China amends law to make life easier for lawyers,” *Xinhuanet*, October 28, 2007.

national security, maliciously defaming others or seriously disrupting the court order.” Like the two previously discussed provisions, the ambiguous wording of the law makes it vulnerable to abuse.²⁴

14. To date, scores of lawyers have been arrested and prosecuted based on the above three laws. Some lawyers, such as Teng Biao, have also had their licenses revoked. Although the prosecution of these cases does not often lead to conviction, it intimidates and represses lawyers and discourages them from taking on criminal and other sensitive cases. While the number of lawyers in China has grown to around 130,000, only about one-third of these lawyers practices criminal law. The number of lawyers who work on sensitive “rights defense” cases is estimated to be as low as 20.²⁵

- Chen Guangcheng is a blind “barefoot” (self-taught) lawyer and rural rights activist currently serving a four year and three month prison sentence. He was detained in 2005 for helping residents of Linyi city (in Shandong province) file a lawsuit against the local government for coercive family planning practices. Chen was found guilty of “intentional damage of property” and “organizing people to block traffic” in August 2006 in a trial in which his lawyers were unable to appear.²⁶

4. Recommendations

15. To give effect to its obligations and commitments discussed above, the Chinese government should immediately take the following steps:

- The Chinese government should abolish the Re-education through Labor system and shut down “black jails” and other illegal detention facilities. All criminal punishment should be pursued through the judicial system, giving detainees access to adequate legal counsel and fair trials.
- The National People’s Congress Standing Committee must reform the Criminal Law, eliminating provisions such as Article 105, or, at minimum, making them more precise in order to protect those peacefully defending human rights.
- The Chinese Criminal Procedure law should not expose the legal profession to inappropriate punishment and harassment. In order to conform to the U.N.’s Basic Principles Regarding the Role of Lawyers, which the Chinese government has supported, Articles 306 of the Criminal Law, 96 of the Criminal Procedure Law and 37 of the Lawyers Law should be eliminated. At a minimum, the language should be clarified to define state secret, forgery of evidence, and compromising of national security.
- China should fulfill its promise to ratify the International Covenant on Civil and Political Rights. The National People’s Congress must also take all steps necessary to put the relevant Chinese laws in accord with international standards.
- Chinese authorities should issue a standing invitation to the U.N. Special Rapporteur on Human Rights Defenders, Margaret Sekaggya. China can use the date of the visit as a marker by which to achieve some initial reforms. The Special Rapporteur’s subsequent report will map out how China can protect human rights defenders in the future.

²⁴ Teng Biao, “Translations: Three Mainland Human Rights Lawyers on the Amended PRC Law on Lawyers,” *China Human Rights Lawyers Concern Group*, November 1, 2007.

²⁵ Human Rights in China, “About the Issue: Olympics and the Rule of Law,” <http://www.ir2008.org/02/issue.php>.

²⁶ Human Rights First, “Don’t Forget Chinese Defenders Once the Olympic Crowds Go Home,” August 18, 2008. http://www.humanrightsfirst.org/defenders/alert081808_Olympics.htm.