



UPR Submission

China
September 2008

Summary

The government of the People's Republic of China has committed itself to strengthening human rights protection, as embodied by the symbolic inclusion in 2004 in the Constitution of a provision that says that "the State respect and protect human rights." The government has endeavored to further develop legal institutions, sought to improve legal protection for workers, renewed pledges to improve access to education and health care, supported large poverty-alleviation and basic infrastructure, implemented national policies to combat HIV-AIDS, and pledged to ratify the International Covenant on Civil and Political Rights, which it signed a decade ago.

But extensive human rights violations, including sharp limits on the exercise of fundamental freedoms, continue. These limits are compounded by the fact that the ultimate source of authority at every level of government is not the government itself but the Communist Party of China (CPC). The legal system including the judiciary remains explicitly under the "supervision and guidance" of the Party despite being nominally independent. Party control is reinforced by the constitutional prohibition of any action that detracts from the "four cardinal principles," which include upholding the "leadership of the CPC" and the "people's democratic dictatorship." These imperatives bar any direct criticism of the CPC by any individual or organization. Every year, hundreds of prosecutions for "subversion" and "separatism" attest to the strict enforcement of these prohibitions.

In addition to these institutional constraints, urgent human rights concerns in the People's Republic of China include: harassment and prosecution of dissidents and human rights defenders, the use of re-education-through-labor and administrative detention, deprivation of liberty without court procedures, forced confessions and torture in the justice system, active and overt political censorship of media and internet content, executions and judicial procurement of organ transplants, child labor including in state schools, abuses against petitioners and other citizens seeking redress against state institutions, persecution of religious believers who refuse to join state-controlled churches, large-scale forced-evictions and involuntary resettlements to make way for infrastructure projects, forced-abortions and abuses of family planning regulations, illegal land seizures by corrupt officials, discrimination against rural citizens formalized by the household registration system, and repression of ethnic Tibetans in Tibet and Uighurs in Xinjiang.

This submission will focus on five core areas where Human Rights Watch has conducted extensive research. Summaries of detailed reports can be found in the annex.

Tibet

The situation in the areas inhabited by ethnic Tibetans—the Tibet Autonomous Region and the adjacent Tibetan Autonomous Prefectures—is of extreme concern following the 2008 wave of protests, some violent, the largest in Tibet since the late 1980s.

While it is legitimate for a government to act to restore public order and prosecute persons who engage in violence, numerous, credible reports received by Human Rights Watch indicate that authorities have used the March protests as an opportunity to launch an indiscriminate crackdown on Tibetans' rights. The government, deploying large numbers of security forces, did not distinguish between violent and peaceful demonstrators, and further intensified religious repression in Buddhist monasteries. The government has accused the Dalai Lama of being behind the protests.

The Chinese government repeatedly denied demands for an independent international investigation into the protests and their aftermath. In response to international condemnation of the March 2008 violence, the government permitted 15 foreign diplomats to visit Lhasa in late March, but seriously restricted their ability to speak freely to Tibetans, visit those in detention, or otherwise investigate aspects of the protests. In early April, a request from Louise Arbour, the UN High Commissioner for Human Rights, to visit Tibet was declined on the grounds that it was "inconvenient." A separate appeal issued jointly by six UN Special Rapporteurs was similarly declined.

The government has deployed various measures to prohibit reporting of human rights violations on the grounds that such reports are "damaging to national security." These measures include systematically threatening to arrest those passing information to relatives, friends, or foreign journalists, arbitrarily arresting and detaining people and releasing them conditionally on the basis of arbitrary fines and pledges not to speak about recent events.

The whereabouts of several hundred Tibetans accused of participating in the protests remain unknown, while the Chinese authorities have prevented Chinese lawyers from Beijing from representing Tibetan protesters in legal proceedings.

Xinjiang

Human rights violations reported from Xinjiang are almost all linked to state efforts to curb separatist activity. Much like Tibetans, the Uighurs in Xinjiang have struggled for cultural survival in the face of a government-supported influx by Han Chinese migrants, as well as harsh repression of political dissent and freedom of expression. Some have also resorted to violence in pressing independence claims.

Available evidence indicates that human rights violations are pervasive, but restrictions on the flow of information have meant that they are poorly documented. Violations range from arbitrary arrest and execution after summary trials to curbs on freedom of expression, association, and religion. A precise assessment of the human rights situation in Xinjiang is complicated by the fact that some sectors of the Uighur separatist movement have resorted to violence in pursuit of national independence. In such a context, the Chinese government has legitimate security concerns in the region. It is equally apparent that the government has not distinguished between peaceful expression and violent acts, and has taken a hard-line approach to all expressions of separatism.

The government only tolerates religious activities in state-controlled religious venues, conducted by state-appointed clerics. Children are prohibited from participating in religious activities and, in some localities, barred from entering mosques. In June 2007 Xinjiang authorities started

confiscating Muslims' passports in an apparent bid to prevent them from making non-state-approved pilgrimages to Mecca.

Discrimination is also present in Xinjiang's administrative and business employment sector, in which the "distinctive" religious, dietary, and linguistic characteristics of Muslims are used as a pretext to deny them access to positions of responsibility on the grounds that the employing unit is "inadequately equipped" to meet their special needs. Although the law prohibits discrimination, Human Rights Watch is not aware of any case by Uighur plaintiffs on discrimination grounds pursued successfully through the courts in Xinjiang or elsewhere.

Administration of justice and the legal profession

If Chinese lawyers now enjoy greater administrative and financial independence from the state, legal restrictions still impede their ability to provide an effective defense, to champion causes that challenge local power, or to form independent bar associations. Lawyers who have taken politically sensitive cases or sought redress for abuses committed by Party and state agents have consistently faced abuses, including violence, arrest and prosecution, disciplinary sanctions, harassment, and suspension of their professional license or disbarment.

Such disincentives, combined with pervasive political control of the judiciary, effectively deter China's legal profession at large from engaging in work that is perceived by Party and government authorities as a threat or as a potential source of embarrassment. These dynamics undermine citizens' ability to exercise their legal rights and exacerbate rising levels of social unrest, as citizens are denied meaningful legal avenues to seek redress for abuses.

Instances of abuse by the national government or local authorities against lawyers have disproportionately affected the small group of influential lawyers who are part of the *weiquan*, or "rights protection" movement. *Weiquan* lawyers represent on cases involving some of the most serious human rights issues that beset China today: rural land confiscation, unlawful forced eviction, abuse of power, torture and ill-treatment, miscarriage of justice, labor exploitation and discriminatory access of migrants' to education and healthcare.

Human Rights Watch has documented over a dozen cases of lawyers who have been threatened, assaulted, detained and suspended by the authorities in retaliation for their work as human rights defenders.

Rural migrant workers

Rural migrants working in the construction industry in China face routine exploitation by their employers despite legal protections designed to prevent such abuses. Chinese labor law provisions apply to both migrant and non-migrant workers and the government has repeatedly made assurances that it recognizes the problems faced by migrant construction workers and promised long-term systemic solutions. However, employers still flout legal requirements and routinely pay migrant workers less than agreed and sometimes not at all.

Migrant construction workers are also vulnerable to high rates of injury and death in working environments in which the majority of employers fail to pay legally required medical and accident insurance. That danger is compounded by the fact that China's official household registration system, or *hukou*, specifically excludes rural migrants from public social welfare benefits including medical care in the areas where they work. Although in some cities the Chinese government has introduced temporary household registration permits for migrant workers and has publicly committed to eliminating the discriminatory household registration

system, millions of migrant construction workers continue to be denied social welfare benefits due to lack of an urban household registration status.

Children's Rights

Under "Work and Study" (in Chinese, *qingong jianxue*) programs regulated by the Ministry of Education, schools in impoverished areas are encouraged to set up income-generating activities to make up for budgetary shortfalls. According to the ministry, nationwide more than 400,000 middle and junior high schools, for children ages 12 to 16, are running agricultural and manufacturing schemes. Chinese law prohibits children under age 16 from working but stipulates that children may be employed under special circumstances, such as in sports or in the arts. Regulations that govern Work and Study programs in middle and junior high schools prohibit hazardous work and stress that "education must come first," but fail to provide a clear definition of the acceptable kind, intensity, and overall time duration of this special category of work.

In recent years, numerous cases of children working in abusive conditions under the guise of Work and Study programs have been documented, with problems ranging from long working hours, dangerous working conditions, low salaries, and a range of health and safety hazards. Hard labor, low pay, and hazardous work conditions are more prevalent in poor and remote rural areas. Schools, often with the encouragement of local education authorities, have sent children from poor areas in Sichuan, Hunan, Anhui, Guangxi, Guizhou, and Shaanxi provinces to factories in the coastal regions for "summer employment." In remote areas such as Yunnan, Gansu, and Xinjiang provinces, local employers have hired children for heavy agricultural work during the harvests. In summer 2007, factories in Guangdong, Jiangxi, and Fujian provinces were found using child labor under bogus Work and Study schemes, prompting domestic experts to urge the government to close this loophole in the legal prohibition of child labor.

Recommendations

Regarding the situation in the Tibet Autonomous Region and the Tibetan Autonomous Prefectures, the Chinese government should:

- Allow an independent international investigation of the protests in Tibetan areas since March 2008.
- Make known the names and whereabouts of all Tibetan detainees arrested for protesting since March 2008. Release all those held without charge or try them for legally cognizable offenses in accordance with international fair trial standards.
- Accede to the joint request by UN special rapporteurs and working groups to visit Tibet and extend an open invitation to the High Commissioner on Human Rights.
- End the criminalization of peaceful advocacy for autonomy or return of the Dalai Lama to China under "separatism" charges.

Regarding the situation in the Xinjiang Uighur Autonomous Region, the Chinese government should:

- End the criminalization of peaceful advocacy for Uighur autonomy.
- Ensure that peaceful religious observance and practice is neither equated with nor incurs liability for state security offenses.
- Amend article 36 of the constitution to explicitly protect the right to manifest one's religious belief without state interference.
- Make publicly available information on all persons in Xinjiang detained or imprisoned for offenses related to religion, including individuals brought before the courts and the reeducation through labor committees. Release all those held without charge or try them for legally cognizable offenses in accordance with international fair trial standards.

Regarding administration of justice and the legal profession:

- Repeal article 306 of the Criminal Procedure Law that allows for the prosecution of lawyers who counsel clients to retract inaccurate depositions or forced confessions.
- To improve lawyers' access to criminal suspects in custody, bring article 96 of the Criminal Procedure Law into agreement with provisions of the revised Law on Lawyers. In particular, repeal the provisions stating that a meeting request can be denied for "cases involving state secrets" and that "personnel from the investigating organ... [may] be present" during meetings between lawyers and their clients.
- Revise the Ministry of Justice's "Methods for the Management of Lawyers Professional Licenses" and similar local regulations to ensure that lawyers' annual registration is not subject to political considerations or other arbitrary factors. No lawyer should be denied renewal of registration on the basis of the cases he or she has represented or is representing. If registration is denied, the grounds should be communicated in writing, and the decision subject to appeal to an independent appellate body.
- Allow for free elections of the executive bodies of bar associations at the local and national level and ensure that they exercise their functions without government or Party interference.
- Issue an unconditional invitation to the United Nations special rapporteur on the independence of lawyers and judges to visit China.

Regarding migrant labor in the construction industry:

- Eliminate the discriminatory aspects of the urban household registration permit system (*hukou*), which denies migrant construction workers the same basic social welfare benefits, including medical care, enjoyed by urban residents with permanent urban household registration permits.
- Take immediate steps to comply with the right of freedom of association as set out in article 8 of the International Covenant on Economic, Social and Cultural Rights, and ratify the International Labour Organization's Conventions No. 87 and No. 98 on freedom of association and collective bargaining. Amend Chinese labor law to incorporate the protections of all these conventions' into domestic law.
- Prohibit firms guilty of wage exploitation and other abuses from tendering for state-financed construction projects.

Regarding child labor and the "qingong jianxue" work-study programs:

- Make public the results of a nationwide Ministry of Education survey conducted from October 2006 to February 2007 about middle and junior high school Work and Study programs.
- Abolish regulations that classify statistics about child labor as "state secrets."
- Ensure that the regulations governing vocational training do not contradict the provision of the law on labor which prohibits the work of children under 16 of age.
- Abolish the use of income-generating child labor schemes in middle and junior high schools that violates international standards and Chinese domestic law.

Annex

Tibet

[China: Tibetan Protesters Denied Fair Trial](#)

Sentenced in Secret After Party Urges 'Quick Hearings'

The trials of 30 Tibetans accused of participating in violent protests on March 14, 2008 in Lhasa were not open and public, as claimed by the Chinese government, and did not meet minimum international standards of due process, Human Rights Watch said today.

April 30, 2008

["No One Has the Liberty to Refuse"](#)

Tibetan Herders Forcibly Relocated in Gansu, Qinghai, Sichuan, and the Tibet Autonomous Region

This 79-page report documents how the government's policy of forced resettlement has violated the economic and social rights of Tibetan herders. It draws on interviews conducted between July 2004 and December 2006 with some 150 Tibetans from the areas directly affected.

HRW Index No.: C1908

June 11, 2007

Xinjiang

[Devastating Blows](#)

Religious Repression of Uighurs in Xinjiang

This 114-page report is based on previously undisclosed Communist Party and government documents, as well as local regulations, official newspaper accounts, and interviews conducted in Xinjiang. It unveils for the first time the complex architecture of law, regulation, and policy in Xinjiang that denies Uighurs religious freedom, and by extension freedom of association, assembly, and expression. Chinese policy and law enforcement stifle religious activity and thought even in school and at home.

HRW Index No.: C1702

April 12, 2005

Administration of justice and the legal profession

["Walking on Thin Ice"](#)

Control, Intimidation and Harassment of Lawyers in China

This 142-page report details consistent patterns of abuses against legal practitioners. These include intimidation, harassment, suspension of professional licenses, disbarment, physical assaults, and even arrest and prosecution when lawyers take politically sensitive cases, seek redress for abuses of power and wrongdoings by party or government agents, or challenge local power-holders.

HRW Index No.: 1-56432-311-0

April 29, 2008

[China: Rights Lawyers Face Disbarment Threats](#)

Intimidation Overshadows Reforms to Law on Lawyers

Two prominent Chinese lawyers who offered to represent Tibetans face the loss of their professional licenses as part of a recent drive to threaten lawyers and law firms, Human Rights Watch said today. The government's unprecedented efforts to intimidate firms into refusing

politically sensitive cases reflects the vulnerability of the legal profession, and overshadows the June 1, 2008, enactment of revisions to the Law on Lawyers, which is supposed to establish new procedural protections for lawyers.

May 29, 2008

["We Could Disappear At Any Time"](#)

Retaliation and Abuses Against Chinese Petitioners

This 89-page report is the first in-depth look at the treatment of Chinese citizens who travel to Beijing to demand approval of or answers to their complaints of mistreatment by officials. Research was carried out in China. Petitioners, many of them rural people with minimal education or resources, often come to Beijing fleeing local violence and seeking a venue of last resort. Yet while they wait for their petitions to be addressed in Beijing, many are ambushed by groups of plainclothes security officers on the street, beaten, and kidnapped. Many are taken back to their home provinces, imprisoned, and even tortured. A few petitioners who spoke to Human Rights Watch had lost the use of limbs due to torture in detention. The perpetrators of these abuses are usually government employees or agents who act with impunity.

HRW Index No.: C1711

December 8, 2005

Rural Migrant Workers

["One Year of My Blood"](#)

Exploitation of Migrant Construction Workers in Beijing

This 61-page report documents the Chinese government's failure to fulfill long-repeated promises to protect the rights of migrant construction workers, as well as to end deprivations caused by the discriminatory nature of China's household registration (hukou) system. An estimated 1 million migrant construction workers, hailing from other parts of China, make up nearly 90 percent of Beijing's construction workforce. These workers are the muscle behind completion of Olympic Games-related infrastructure and sporting venues. The Beijing Olympic Games begin on August 8, 2008.

HRW Index No.: C2003

March 12, 2008

Children's rights

[China: End Child Labor in State Schools](#)

'Work and Study' Programs Put Hundreds of Thousands of Children at Risk

The Chinese government should abolish the use of income-generating child labor schemes in middle and junior high schools because of their chronic abuses, Human Rights Watch said today. Many programs interfere with children's education, lack basic health and safety guarantees, and involve long hours and dangerous work.

December 3, 2007