

People's Republic of China

Briefing on EU concerns regarding human rights in China

Prepared for EU-China Summit 5 September 2005

In May of this year, representatives of the European Union decided to delay a move to lift the arms embargo against China, citing human rights concerns. They referred specifically to four areas of concern that would affect future consideration in lifting the embargo: the need for Chinese authorities to release citizens imprisoned in connection with the suppression of the 1989 pro-democracy movement; the need for reform of China's "Re-education through Labour" (RTL) system; the need for the PRC to ratify the International Covenant on Civil and Political Rights (ICCPR); and the need to ease media censorship.

Amnesty International welcomes the fact that the EU has made the lifting of its embargo contingent on human rights reform and has detailed specific areas for improvement. In this briefing Amnesty International presents an update on developments in these four areas in the lead-up to the EU-China Summit in September, 2005. Amnesty International urges the EU to take these factors and other human rights concerns into consideration in its ongoing analysis of the human rights situation in China.

Release of those imprisoned in connection with 1989 pro-democracy protests

A core issue raised by EU representatives as an area of human rights concern is the continued detention of individuals imprisoned for their connection to the 1989 pro-democracy movement. The EU arms embargo was imposed on 27 June 1989 as a direct response to the armed suppression by the Chinese military of the peaceful protests calling for democracy and political reforms in and around Tiananmen Square in Beijing on 3-4 June. Amnesty International considers that many of the killings on or after 3 June 1989 were extra-judicial executions: deliberate and targeted killings of peaceful demonstrators by government forces. Many other people were killed apparently as a result of troops firing at unarmed protestors and bystanders who posed no threat to army personnel. Troops used excessive force in a manner contravening international standards for the use of force and firearms. Thousands were arrested throughout China in the ensuing crackdown. Many of these were sentenced to long terms of imprisonment, including life sentences; others were sentenced to death and executed.

Sixteen years after those events, dozens of these individuals remain in prison, or have been exiled from their homeland, unable to return even to see elderly or sick parents. Yu Dongyue, for example, remains in prison for having, together with two other young men,

thrown paint on the portrait of Mao Zedong that hangs in Tiananmen Square. For this action Yu was charged with “counterrevolutionary propaganda and incitement” and sentenced to 20 years imprisonment. Having been previously scheduled for release on 22 May 2005, this has been postponed at least twice for reasons that have not been explained, and he is currently due to be released from prison on 22 February 2006.

Over the years the Chinese government has consistently refused appeals by Chinese citizens for a full, independent and impartial investigation into the events of June 1989 to be conducted and for justice for the victims of the crackdown.

No less disturbing is the harsh punishment and harassment of individuals who have sought to keep alive the memory of those who were killed, imprisoned, or executed during the 1989 crackdown. The network of families of victims killed or injured during the suppression of the protests, “The Tiananmen Mothers”, continues to experience harassment and intimidation, effectively reducing their ability to organize and express their concerns. The authorities have continued every year since 1989 to restrict the right of citizens to peacefully express themselves during the June 4 anniversary and to punish individuals who make any public gesture of support for the 1989 pro-democracy movement.

Many others have, over the years, been detained and sentenced to long terms of imprisonments for their calls for justice and an open, independent investigation, and any public or private signs of support for the victims of the 1989 crackdown and their families. Huang Qi, who was arrested on the eve of the 11th anniversary of the 1989 crackdown, spent five years in prison in connection with the posting of opinions and information regarding the 1989 events on a website that he operated, postings that included an account by a mother who accused police of having beaten her son to death during the protests.

Most recently, on 30 June 2005, Hunan Province High People’s Court upheld the ten-year sentence imposed on Shi Tao, for allegedly ‘leaking state secrets abroad’. Shi Tao’s conviction was linked to allegations he had provided an overseas website with an official document alerting journalists to possible social instability around the 15th anniversary of the 4 June 1989 Tiananmen crackdown.

Freedom of expression

Contrary to earlier hopes that the Hu Jintao/Wen Jiabao administration would relax controls over the press, investigative reporting, the internet, radio, and other forms of broadcasting, the trend has been towards a restriction of freedoms including even retrenchments in areas where citizens had earlier enjoyed freedoms, such as on private blogs on the internet. In the last six months the authorities have added new legal, technological, and political means of monitoring, controlling, and restricting the flow of information and expression in various media. The spate of recent detentions and sentencing of individuals — based on vaguely worded charges including “illegally leaking state secrets”, “disturbing social order”, “subversion” and “defamation”, among others — for the peaceful exercise of their right to free expression — sends a clear message to the citizenry of China of the risks they run in exercising their rights.

Both Chinese and foreign journalists operating in China — because of their ability to expose information and to investigate and uncover cases of corruption that implicate core institutions of the political system such as the police, the judicial system, prisons, and local government — have continued to run enormous risks in carrying out their work and to be targeted by the authorities. Journalists and editors from newspapers that have excelled in their investigative reporting and tested the boundaries of freedom of expression have been particularly vulnerable. On 20 July 2005 Guangdong Province High People's Court rejected the appeal lodged on behalf of Yu Huafeng former editor of the daily *Nanfang Dushi Bao* (*Southern Metropolis News*), and the courts have yet to respond to the appeal of Li Minying, another former executive of the same newspaper that was lodged on 12 November 2004. It is widely believed that these detentions were linked to this newspaper's role in investigating and reporting on the SARS epidemic as well as the death in custody of a young graphic artist, Sun Zhigang. Government authorities have failed to respond to a petition signed by 2,356 Chinese journalists calling for the release of Yu Huafeng and Li Minying, which also included a detailed rebuttal of the charges.

In a separate case, Ching Cheong, a Hong Kong resident and journalist working with the Singapore-based, *The Straits Times*, was formally charged with spying for Taiwan on 5 August 2005 after being detained since April 2005 in Guangzhou. Since his detention, he has reportedly been denied access to lawyers, members of his family and consular representatives of Singapore and the United Kingdom.¹ Many observers, including fellow journalists in Hong Kong and Singapore, believe that the prosecution may be politically motivated. Some sources, including his wife, have suggested that he may have been trying to acquire a document about the life of former Premier Zhao Ziyang, although this has been officially denied by the Chinese authorities. The exact evidence against Ching Cheong remains unclear, but the Chinese Ministry of Foreign Affairs has publicly stated that Ching Cheong had confessed to 'engaging in intelligence activities in China' for which he had received a 'large spying fee'.² Amnesty International is deeply concerned about public statements made by the Chinese authorities about Ching Cheong's alleged guilt ahead of his trial as well as his apparent *incommunicado* detention by the police. The organization is concerned that he will not receive a fair trial and is monitoring the case closely.

In addition to formal prosecution journalists also continue to be subjected to informal intimidation and harassment. Both journalists and citizens who cooperate with them are often harassed and badly mistreated, including by the police. *The Financial Times* reported that during the preparation of the BBC China Week some local residents who cooperated with reporters were harassed by the police. In August of last year, foreign news photographers were beaten by Chinese police during a football match in Beijing. As in often the case in such incidents, no police officer was sanctioned.

China's Internet has come under intensified control over the last year. The arrest and sentencing of citizens by the Chinese authorities for posting articles and opinions on the internet continues. Zhang Lin, an activist who had submitted articles to overseas websites

¹ Ching Cheong is a Singapore permanent resident and holds a British National (Overseas) passport.

² "China says detained HK-based reporter admits spying", *Associated Press*, 31 May 2005.

banned in China, was sentenced to five years' imprisonment in Anhui Province on 28 July 2005 after being found guilty of 'subversion'. The charges drawn up against Zhang claim that the content of the articles he posted "opposed the basic principles of the Constitution, damaged national unity, sovereignty and territorial integrity, spread falsehoods, disturbed social order and damaged social stability." Reportedly, his indictment used as evidence the claim that Zhang has posted on-line the words of a song by the Chinese punk rock group, Pangu. Another activist, Li Jianping, who had also frequently written articles critical of the Chinese leadership for overseas websites, was formally charged on 30 June 2005, with 'defamation' after being detained by the police in Zibo City, Shandong Province a month earlier.

In a move apparently aimed at tightening control over Internet use the Ministry of Education launched a campaign in March 2005 to tighten control over college bulletin boards (BBS). Beginning in early March China's major universities, including Beijing University, Nankai University, Qinghua University, Wuhan University, and Nanjing University successively restructured their campus BBS to prohibit access to IP addresses off campus. Some universities, including Nanjing University, transformed their BBS into read-only sites, shutting down a valued channel of expression and communication among university students. The change does not appear to have been initiated or supported by participants or managers of the BBS involved. In an open letter circulated to the users of the Qinghua University BBS, the managers were apologetic about the imminent changes, expressed their hope they would be temporary, and apologized to students for the inconvenience of not being able to access the site while on vacation.

In addition, the Chinese government has recently reportedly adopted a new approach which is to pro-actively manipulate public opinion on Internet forums, chat-rooms, and BBS through the use of "under-cover" on-line commentators. A May 19 article in the journal *Southern Weekend*, "Suqian: Practicing Guidance of Internet Public Opinion," reported that city authorities in Suqian, Jiangsu province, had hired 26 Communist Party propaganda officials and government spokespersons who will, in their capacity as "ordinary" internet users, guide public opinions in directions desired by the authorities. According to one individual hired as this type of on-line commentator, "More and more localities will begin to hire online commentators, and there are many who have already commenced operations, it is just that the outside world doesn't know."

"Re-education through Labour" (*Laodong Jiaoyang*, RTL)

Moves by the Chinese authorities to abolish or reform RTL appear to have slowed over recent months. The main obstacle to reform appears to be the Ministry of Public Security which seems reluctant to give up its broad powers of detention and sanction under RTL. A proposal for a new law entitled "Illegal Behaviour Rectification Law" (IBRL) replacing RTL, is currently believed to be on the agenda of the Standing Committee of the National People's Congress. However, no draft of the law is currently publicly available and it is unclear if or when the law will be introduced. This being the case, the following represents Amnesty

International's preliminary assessment of current proposals, and is subject to change as more information becomes available.

Amnesty International understands that the new IBRL will offer more precise definitions of types of behaviour deemed 'illegal' than is currently the case under legislation covering RTL. Nevertheless, the organization remains seriously concerned that moves to replace RTL with a system which continues to parallel the formal criminal justice system by penalising 'behaviour' rather than 'offences' or 'crimes' are incompatible with the general legal principles of 'no crime without law' (*nullum crimen sine lege*) and 'no punishment without law' (*nulla poena sine lege*) which are also provided for in international human rights treaties, such as Article 15 of the ICCPR. People should not be punished on the basis of their subjectively assessed 'behaviour'. Individuals should only be punished for activities clearly defined in law as offences and recognizably criminal under international law, following trials that meet international standards of fairness. Amnesty International is concerned that attempts to hone definitions of 'illegal behaviour' in the draft ICBL as distinct from 'crimes' under the Criminal Law will merely serve to exacerbate the contradiction between what does and does not constitute a crime in China.

Amnesty International considers that substantial punishments, including deprivation of liberty, should only be imposed following trial proceedings that uphold the full range of fair trial guarantees established in the ICCPR and other international treaties and standards.

- Article 9 of the ICCPR provides, among other things, that anyone arrested or detained on a criminal charge shall be brought promptly before a judge and that anyone deprived of his liberty by arrest and detention shall be entitled to take proceedings before a court in order that the court may decide on the lawfulness of his or her detention.
- Article 14 of the ICCPR provides, among other things, for a trial by a competent, independent and impartial tribunal, where defendants accused of a criminal offence must have the right to legal representation and an opportunity to present a defence. Other key elements of due process guaranteed by Article 14 include: the presumption of innocence; the right to be informed of the charge; the right to a fair and public hearing; the right to call own witnesses and examine prosecution witnesses; the right not to be compelled to testify against oneself; and the right to judicial review.

According to the current information available, procedures under the system being proposed by the draft IBRL will retain certain similarities with procedures under RTL.³ In particular, publicly available official comment on the draft IBRL states that individuals

³ "China's RTL system facing reform, IBRL to be formulated" [*woguo laojiao zhidu mianlin gaige jiang zhiding weifa xingwei jiaozhi fa*], available at www.sina.com.cn (in Chinese), 2 March 2005; "Illegal behaviour rectification drafted to replace RTL" [*weifa xingwei jiaozhi ni tidai laojiao*], *The Beijing News*, available at www.thebeijingnews.com (in Chinese), 2 March 2005.

accused by police of “illegal behaviour” will still have their culpability and period of detention decided by Public Security Bureau (PSB) officials – as is general practice under the current system of RTL. Reports have stressed that persons accused by police of “illegal behaviour” will have the right to “apply for a hearing” [*shenqing tingzheng*] before a tribunal of PSB officials, and will also have the right to present a legal defence or engage a lawyer to present a defence on their behalf.

Amnesty International considers that international fair trial standards are not satisfied by a mere right to ‘apply for a hearing’. Moreover, the police force is under the direct authority of the Ministry of Public Security, and therefore ‘hearing’ procedures under the IBRL, held by a body which is administrative rather than judicial, and is neither independent nor impartial, will be in contravention of these standards.

Under the current system of RTL (and other forms of administrative detention), the main mechanism of appeal against imposition of detention is the Administrative Procedure Law [*xingzheng susong fa*] (APL). While this law does indeed provide for the right to appeal decisions to a People’s Court, under current practice this right is only granted once the judgment against the accused has become effective, and the period of detention has begun. In the absence of any evidence to suggest otherwise, Amnesty International is concerned that the APL will remain the sole legal recourse for people appealing against a decision to impose a period of detention under the IBRL.

These general procedural concerns have formed the crux of arguments against RTL by legal experts within China for at least 20 years.⁴ Amnesty International is disappointed that these concerns appear to have been only partially addressed by reforms reportedly being introduced under the IBRL.

Ratification of the ICCPR

China signed the ICCPR in October 1998. Since then Chinese authorities have repeatedly expressed their intention to ratify the Covenant. They have not, however, provided any concrete timeframe for ratification. Whilst recent piecemeal proposals for legal reform have been presented by officials or legal academics as moves towards compliance with the ICCPR, the government has yet to present a coherent plan of reform that would bring Chinese institutions and practice in line with the standards contained in the Covenant.

The ICCPR is a key human rights instrument, that provides, within a legally-binding treaty, for fundamental human rights enshrined in the Universal Declaration of Human Rights.

⁴ See for example: “Reform of China’s re-education through labour system”, Liu Renwen, www.brookings.edu 25 January 2005; and “Tentative proposals for the reform of China’s system of RTL” [*zhongguo laodong jiaoyang zhidu gaige chuyi*], Qu Xuewu, available at www.iolaw.org.cn (in Chinese), undated.

The PRC's ratification of this covenant is thus an important step in committing the Chinese government to the protection of these internationally recognized rights, and to following through on its earlier promises to fully commit to the terms of this covenant. The areas in which China would need to bring its institutions and practices in line with international standards are many. Some of these are discussed in the above sections. As noted, China's RTL and other systems of administrative detention stand in violation of Article 9 of the ICCPR. According to the report of the UN Working Group on Arbitrary Detention following a mission to China in September 2004, the rules and practice concerning judicial deprivation of liberty used in China are not in keeping with international law and standards.⁵ Reform of the procedures used in any instance in which a citizen is deprived of liberty would thus need to be brought into line with international standards.

China's arbitrary detention of human rights defenders solely on account of their peaceful and legitimate human rights activities violates key rights protected, for instance, in articles 18 (freedom of thought, conscience and religion) and 19 (freedom of expression) of the ICCPR. Articles of China's Criminal Law that can be used to violate the rights to freedom of expression, association, or assembly, including Articles 102, 103, 105, 106, 107, 110 and 11, would also need to be amended or repealed to bring China's laws and practices into line with international standards.

China's extensive use of the death penalty and the lack of procedural safeguards built into its laws infringe on key fundamental rights protected by the ICCPR, including Article 6 of the ICCPR (right to life). Amnesty International is opposed to the imposition of the death penalty in all cases, considering it a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The organization recommends that the CoE urge China to impose an immediate moratorium on executions, abolish the death penalty and, alongside ratifying the ICCPR accede to its Second Optional Protocol aiming at the abolition of the death penalty.

Furthermore, under Chinese law detainees are not guaranteed immediate access to legal representation; confessions extracted through torture and other ill-treatment are often used as evidence against the accused in court despite being outlawed; and a defendant in court is effectively required to prove their innocence rather than the prosecution being required to prove the defendant's guilt, all in violation of several provisions of the ICCPR, including Articles 7 (freedom from torture and other ill-treatment), 9 and 14 (fair trial rights).

The above concerns constitute only some of the areas in which reform would be required to bring China's laws and practices in line with international standards. In addition, once legislative reform is implemented, laws must be implemented in a clear, predictable, and consistent manner.

⁵ Report on the Working Group on Arbitrary Detention: Mission to China, E/CN.4/2005/6/Add.4, 29 December 2004.