



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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China: Legal recourse available to unregistered (house) church members; reports of cases undertaken to protect the right to practise at an unregistered (house) church  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The United States (US) Department of State's 2007 International Religious Freedom Report indicates that unregistered church members pursued the right to practise their faith through legal avenues and, in multiple provinces, lawsuits were said to be effective in "detering harassment by local authorities" (14 Sept. 2007, Sec. 2). A 2009 article in the Far Eastern Economic Review similarly indicates that unregistered church leaders are increasingly exercising their rights under existing Chinese legislation by taking authorities to court for violations of religious freedom (4 Sept. 2009). Though the article does not cite specific examples of legal cases that have resulted in the right to practise Christianity at an unregistered church, it indicates that an unregistered church in Beijing offers legal assistance to religious adherents (Far Eastern Economic Review 4 Sept. 2009).

An article in Christianity Today, a US-based magazine, indicates that the Chinese House Church Alliance, which organized in 2004 and represents 300,000 members of independent house churches, employs numerous lawyers, with these lawyers receiving an estimated 30 requests per week to provide legal services (18 Sept. 2006). In an interview with Christianity Today, the "top deputy" of the State Administration of Religious Affairs in China reportedly stated that "religious believers have a right and a duty to oppose civil injustice" (18 Sept. 2006).

The 2007 International Religious Freedom Report cites a May 2007 case, wherein the Shandong province police settled a lawsuit brought against them by a house church plaintiff, who served 10 days in jail after holding a house church service (US 14 Sept. 2007, Sec. 2). The settlement included an apology, an agreement not to raid the church again and damages paid to the plaintiff; the report states that these terms were honoured (ibid). The report does not give further details on specific lawsuits that protected the right to practise Christianity at unregistered churches.

A Canadian lawyer who monitors human rights in China and works with Lawyers Rights Watch Canada (LRWC), a committee of lawyers who "[provide] support internationally to human rights defenders in danger" (n.d.), indicated in 22 October 2009 correspondence that "normally" the prosecution of house church members is handled under administrative provisions, rather than criminal (Lawyer 22 Oct. 2009). The China Aid Association (CAA) has reported on a case involving the appeal of an administrative penalty, which ordered a house church pastor to stop activities at his residence, following an investigation of the residence on 14 December 2008 (3 Jan. 2009). The "statement of indictment for administrative litigation," submitted by the pastor on 18 December 2008, sought to repeal the administrative penalty and to have the Haizhu District Bureau for Ethnic Religious Affairs of the city of Guangzhou pay the litigation fee for the case (CAA 3 Jan. 2009). The statement argued that the bureau should "exercise administration in accordance with the law," as well as "safeguard the basic rights of religious belief endowed by the Constitution" (ibid.).

According to a press release published by the CAA, the Haizhu District People's Court of Guangzhou

accepted the pastor's statement of indictment on 25 December 2008 (31 Dec. 2008). In a September 2009 newsletter, the CAA reported that the pastor received notification on 3 September 2009 that the Guangzhou court had ruled in favour of the pastor's request for administrative reconsideration and that he should pick up the resulting award of funds (21 Sept. 2009). The CAA reports that on the same day he received the notification, the pastor was picked up at his home by four public security officials who questioned him for two hours (21 Sept. 2009). Subsequently, the pastor was notified by a government official that the ruling on his appeal was postponed (CAA 21 Sept. 2009). Information on the final ruling of the pastor's appeal for administrative reconsideration could not be found among the sources consulted by the Research Directorate.

The system of "re-education through labour" (RTL) is another type of administrative penalty (Criminal Procedure 2007, 92; Dui Hua Foundation 2009). The Dui Hua Foundation, a US-based non-profit organization that assists Chinese detainees, focusing particularly on the cases of non-violent political and religious prisoners (n.d.), indicates that the RTL system allows public security authorities to sentence individuals for up to four years (Dui Hua Foundation 2009). Those sentenced do not have a right to legal representation or to a trial before a judge; furthermore, formal charges need not be filed against the individual receiving an RTL sentence (Dui Hua Foundation 2009; see also AI 27 Jan. 2009).

Other sources indicate that RTL sentences do not exceed three years, but corroborate that RTL sentences do not require "any judicial proceeding" (Criminal Procedure 2007, 96; Lawyer 22 Oct. 2009). Those sentenced are able to challenge the decision after it has been imposed (Dui Hua Foundation 2009; Criminal Procedure 2007, 96; Lawyer 22 Oct. 2009). The 2007 edition of *Criminal Procedure: A Worldwide Study* indicates that this form of remedy "takes so long... that a person may serve his complete sentence before his appeal is even heard" (ibid.). The Dui Hua Foundation suggests that the review process of an RTL sentence is limited, since it is performed by the same public security system that administered the sentence and because some lawyers who represent RTL detainees experience "intimidation" (2009). The Lawyer indicated that in practice this appeal measure is "futile" and wasn't aware of any cases where the courts overturned the police decision to administer RTL (22 Oct. 2009).

An essay entitled "Religious Freedom: Friend or Foe," published in the January to June 2008 issue of the *Chinese Law & Religion Monitor*, a journal produced by the CAA, states that in many regions of China, trials and legal decisions related to religious policy are not made public (Yang Shengshan Jan. - June 2008, 24). An appendix attached to this essay charts the investigations of 42 religious cases that took place throughout 2006; in one case, dated 13 March 2006, which occurred in Henan province, an individual received an RTL sentence and submitted an appeal for "administrative reconsideration," which resulted in the sentence being repealed (ibid., 42).

Another essay in the same issue of the *Chinese Law & Religion Monitor*, entitled "Religious Freedom and Regulations: Focusing on China," states that the Regulations for Religious Affairs (RRA), which were implemented in China in 2005, provide

an avenue for legal recourse by clearly stating that in instances of any questionable conduct by administrative bodies for religious affairs that could not be satisfactorily addressed by bureaucratic review, the injured parties had the right to initiate legal action. As such, the RRA significantly bolstered safeguards on religious freedom. (Yang Junfeng Jan. - June 2008, 70)

However, the essay further states that though the RRA holds authorities accountable for unlawful behaviour, the articles that address these circumstances "are too vague and general to be implemented," suggesting that instances of illegal conduct by authorities "are largely overlooked or are addressed with trivial punishments" (ibid., 71).

The 2009 US International Religious Freedom Report states that the provisions of the RRA give "limited legal protections" to registered religious adherents, while unregistered groups are "outside the scope of the RRA's legal protection" (26 Oct. 2009, Sec. 2). The 2009 report also indicates that though the Chinese Constitution protects the right to engage in "'normal religious activities'," religious adherents cannot use this guarantee to pursue legal recourse (US 26 Oct. 2009, Sec. 2).

A 13 January 2009 Radio Free Asia (RFA) article indicates that several appeals involving unregistered house church members who filed complaints against authorities in Zhoukou, Henan had been rejected. The lawyer who submitted these appeals in Henan province also indicated that circumstances were similar in the city of Guangzhou and the provinces of Shandong and Anhui (RFA 13 Jan. 2009). In the article, the lawyer further stated that the authorities rejecting the appeals indicated that "they are acting on internal documents ordering them not to accept cases involving religious groups" (ibid.).

The Canadian Lawyer indicated that in his own research he has not found any legal cases that resulted in protection for house church members from harassment, detainment, arrest or RTL sentences (Lawyer 22 Oct. 2009). The Lawyer indicated that "the conviction rate for all Chinese prosecutions is well over 99 [percent]" and that "acquittals are almost unheard of" (ibid.). This information could not be corroborated among the sources consulted by the Research Directorate. The Lawyer further indicated that within the Chinese legal system, there is a lack of "the most fundamental due process" from arrest to conviction (ibid.).

The Lawyer indicated that in a minority of cases, charges against house church Christians are processed in criminal courts (ibid.). In cases processed through criminal courts that involve unregistered church members, the Lawyer indicated that a separate criminal charge is used, rather than a charge relating to religion (ibid.). The Lawyer stated that though there is a right to trial under criminal procedure, as opposed to administrative, there is no "advantage," since criminal investigations also lack "due process" (ibid.). The Lawyer stated that "torture" is used in criminal investigations in China, leading to false confessions (ibid.). The United Nations (UN) Committee Against Torture expressed concern in its Concluding Observations regarding the "continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions" (12 Dec. 2008, Para. 11). The Asia and Pacific Director of advocacy for Amnesty International (AI) similarly states that "[t]orture by law enforcement personnel is endemic" in China (27 Jan. 2009).

According to the Lawyer, those accused are "routinely denied" their right to meet with counsel and that if the accused and counsel are able to meet, it is brief and monitored (22 Oct. 2009; see also AI 27 Jan. 2009). Criminal Procedure similarly notes that the police may monitor meetings between a suspect and his or her legal representative (2007, 97). The Lawyer also indicated that defence counsel are denied access to prosecution and court files, and are obstructed from testing witness testimonies because witnesses are often not present at trial, but rather submit written statements (22 Oct. 2009). Criminal Procedure similarly notes that though very few witnesses are present during the trial, and are thus not cross-examined, their written submissions are still "read into the record" of the trial (2007, 104).

On 10 July 2009, the US-based Congressional Executive Commission on China (CECC) hosted a roundtable on China's human rights lawyers (10 July 2009). The president of the CAA brought letters written by lawyers practising in China to the roundtable; several of the submissions indicated that human rights attorneys, who work in a range of fields that include freedom of religion, are subject to "harassment, repression and persecution from the government" (Jiang Tianyong n.d.; Li Fangping 5 July 2009; Zhang Kai and Li Fuchun 6 July 2009).

According to the Lawyer, despite the fact that "Chinese lawyers have not been subjected to a blanket prohibition against defending Christian House church members as, for example, is the case with Falun Gong practitioners," Chinese lawyers are not able to "practise freely" while they represent house church Christians (22 Oct. 2009). The Lawyer asserted that deterrents to representing sensitive cases range from "friendly persuasion," to "beatings," to confiscating or refusing to renew law licenses, as well as laying charges against the lawyers themselves (22 Oct. 2009).

An open letter written to the Ministry of Justice in China by 31 Chinese intellectuals, also published on the CECC's webpage for the roundtable, discusses the revocation of human rights attorneys' licenses by the Beijing Municipal Bureau of Justice and the Beijing Lawyers Association (Du Guang et al. 24 June 2009). The letter discusses a particular case involving a pastor who was charged with "'illegal business operation,'" when he printed and circulated bibles; the open letter indicates that the pastor wanted to appeal the charge and subsequent sentencing, but that because the lawyers representing his case were denied renewal of their licenses, other lawyers were deterred from representing him (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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#### Additional Sources Consulted

**Oral sources:** World Serve Ministries, a professor of law at the University of Melbourne and a research fellow at the East Asian Institute did not have information for this Request. The China Aid Association (CAA), Congressional Executive Commission on China (CECC), Human Rights in China (HRIC), a practising lawyer in Beijing, a professor of political science at the University of California, Los Angeles (UCLA) and a professor of political science at Baylor University did not respond within the time constraints of this Response.

**Internet sites, including:** All China Lawyers Association, Amity News Service, British Broadcasting Corporation (BBC), Centre on Religion and Chinese Society - Purdue University, China Elections and Governance, China Human Rights Lawyers Concern Group, China Ministries International, Chinese Human Rights Defenders, The Epoch Times [Ottawa], Forum 18, The Guardian [London], Human Rights in China (HRIC), Information Centre for Human Rights and Democracy, Initiatives for China, Legatum Institute, Social Science Research Network (SSRN), United States (US) Commission on International Religious Freedom, World Serve Ministries, Xinhua News Agency.

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