

Statement for CECC hearing, "Human Rights and Rule of Law in China"

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Human rights and China

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, is widely cited as an articulation of human rights acknowledged around the world, since so many governments were signatory. It identifies among those rights freedom of speech, assembly, and association, as well as freedom of religious belief and practice. It also articulates a right to "seek, receive, and impart information and ideas through any media and regardless of frontiers."

<http://www.un.org/en/documents/udhr/#atop>

Beijing has long challenged the assertion that there are universal human rights. The mildest objection has been that different cultures define human values, and rights, differently, and that these differences must be respected. This line was advanced in the 1993 Bangkok Declaration on human rights, to which Beijing was signatory. Some critics have more sharply denounced Americans' criticisms of China's human rights record as interference in China's "internal affairs." Chinese officials have long worried that foreign governments, including the United States Government, have invoked concern for human rights in China as a cloak for attempts to bring about "peaceful evolution" or, more recently, a "Color Revolution," both euphemisms for regime change. Similarly, officials have worried since at least the mid-1990s that behind criticisms of human rights abuses in Tibet and Xinjiang lie plots to separate those territories from China.

We do well to acknowledge these concerns, and therefore must take pains to avoid even the appearance of raising the matter of human rights to serve other, strategic aims. When we speak of human rights we ought to focus, first and last, on the conditions of human flourishing – on the "dignity and worth of the human person," as the visionary UDHR puts it – and not on scoring political points.

That said, the argument that the human rights identified in the UDHR do not apply to China or require modification because they are incompatible with Chinese culture is unpersuasive, for at least two reasons. First, the PRC Constitution announces in Article 35 that Chinese citizens "enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration." Article 36 adds that citizens have "freedom of religious belief," and Article 41 recognizes the right to "criticize and make suggestions to any state organ or functionary." Second, hundreds of thousands of Chinese citizens, if not many times that number, have sought to exercise the very freedoms codified in the Constitution in 1982. They have published wall posters, handwritten manifestoes, journals, and books; they have spoken out in public; they have joined political and religious organizations; and they have demonstrated and marched peacefully, to express political or religious views. Put simply, Chinese citizens have shown that they consider these to be rights by exercising them.

What happened in Urumchi on July 5, 2009?

Did the events of July 5 begin with an attempt by Uyghurs to exercise such rights peacefully? It would appear so, but our information about the course of events on that day is still meager. There is evidence that the day began with a peaceful protest against the government's handling of a factory brawl in Shaoguan, Guangdong, the night of June 25 and 26, in which two Uyghurs were killed and more than one hundred injured. There is also abundant evidence of violence against property and people on that day. A number of questions remain:

- **Who organized the protest?** Chinese authorities blame Rabiya Qadir (Rebiya Kadeer) and others abroad. She denies the charge. It has been reported that students in Urumchi circulated

comments on the internet about the handling of the Shaoguan incident and proposing a demonstration. It also appears that the government, knowing of these comments, detained students on the morning of July 5 to prevent them from participating in the demonstration. Whether or not figures outside Xinjiang played some role in organizing the protest, there is strong evidence that locals inside Xinjiang did have a role. Moreover, the large number of participants in the protest suggests that we must look locally for its sources. In plain terms, no amount of orchestration from outside Xinjiang could have produced a protest or riot of this scale in the absence of large numbers of people willing to participate.

- **Did police respond to violence, or did police action incite demonstrators to violence?** There is insufficient information to answer this question now. Chinese sources argue the former, Uyghur organizations abroad the latter. The heavy politicization of the events and their aftermath make it unlikely that reliable, unbiased information will emerge soon.
- **What were the sources, and aims, of the protest?** Again, it is impossible to answer this question definitively. The Shaoguan incident was clearly a spark, but Uyghurs have raised many other grievances in prior years, and there is considerable evidence of widespread Uyghur dissatisfaction with Xinjiang's governance.¹ In blaming the July 5 events on outside instigators and local manipulators, and in claiming that most participants were "members of the masses who did not understand the real situation" – a standard rhetorical figure – the Chinese government has sought to direct attention away from Uyghur grievances and the question of how they might legitimately be expressed. The government has justified its very strong police and judicial response by characterizing the July 5 events as "terrorist" and an episode of "beating, smashing, and looting." It is safe to say, however, that the police response, the official characterization of the episode, and the judicial handling of accused participants are likely to have a chilling effect on those considering protest or public dissent in the future.

Human rights in Xinjiang

The evidence on human rights in Xinjiang over the last year is mixed, and there is some justification for cautious optimism. On the whole, however, the human rights situation in Xinjiang in 2008-9 appears no better than, and indeed in some regards worse than, in years prior.

One bright spot was government decisions to free individuals detained for questioning on what appear to have been political grounds. The most prominent example was the outspoken Uyghur economist Ilham Tohti, arrested several times in connection with his blog "Uighur Online," and arrested once again after the July 5 riots. He was released August 23.

Another bright spot was the decision to invite a group of foreign reporters to Urumchi to inspect the aftermath of the July 5 riots firsthand. This was a marked departure from the media blackout Beijing imposed in the wake of the March 2008 protests in Tibet.

On the other hand, various aspects of the official response to the July 5 events are worrying. Within a day the government had shut down internet service, cut off various text messaging services, and curtailed cell phone service. Officials announced soon after the July 5 events that they had shut down the internet to "to quench the riot quickly and prevent violence from spreading to other places." A check of major government and news websites in Xinjiang this morning confirmed that they are still

¹ Bovingdon, Gardner. 2002. "The Not-So-Silent Majority: Uyghur Resistance to Han Rule in Xinjiang." *Modern China* 28 (1):39-78.

———. 2004. "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent." *Policy Studies* (11):1-64.

———. Forthcoming 2010. *The Uyghurs: Strangers in Their Own Land*. New York: Columbia University Press.

inaccessible more than 3 months later. It should be noted that whatever the intention, shutting down modes of electronic communication abrogates the stipulation in the UDHR that all have a right to "seek, receive, and impart information and ideas through any media and regardless of frontiers."

Second, there is evidence that officials used a very free hand in detaining individuals in connection with the events. Human rights organizations have argued that the Chinese government "criminalizes" the public expression of political dissent in Xinjiang, and the handling of the July 5 protestors unfortunately confirms that suspicion – as did, unhappily, the detention of large numbers of Uyghurs in the runup to the 2008 Summer Olympics.²

Third, the government has sought to discourage lawyers and law firms from handling the cases of individuals accused of participating in the July 5 events. It has also announced the intention to select and prepare the lawyers who will try the cases, with the worrying implication that the lawyers chosen will lack experience with criminal cases and will have received prior instructions on how cases ought to be decided.³ Furthermore, in very publicly characterizing the July 5 events as a "riot," and in attributing its organization and aims to "separatists" and "terrorists," the government has dramatically compromised the likelihood that the accused will enjoy a presumption of innocence and receive fair trials.

Over the last year, officials have also placed further restrictions on Uyghur religious belief and practice, more closely regulating – and possibly purging the ranks of – female clerics and further discouraging religiosity among minors.⁴

² Becquelin, Nicolas. 2004. "Criminalizing Ethnicity: Political Repression in Xinjiang." *China Rights Forum* (1):39-46.

³ <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=128444>. While it may seem an odd choice to cite CECC materials in testimony before the CECC, I have done so only after confirming the sources they cite and determining to my satisfaction that the summaries and arguments are sound and comprehensive.

⁴ <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=125102> and <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=125058>. Please see the previous footnote for a justification of these citations.