

Human Rights Abuses Involved in Official Interception of Petitioners in China

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Introduction

In the past few years, Chinese authorities have engaged in systematic and extensive illegal interception, detention, and torture against petitioners. “Petitioners” are those individuals who brought grievances to higher-level government offices in Beijing and provincial capital cities. This has made petitioners currently one of the social groups most vulnerable to human rights abuses in China.

Officially, the Chinese government encourages petitions. It has promulgated several versions of the “Regulations on Letters & Visits” (1995, 2005), and it has set up an extensive bureaucracy, known as the Letters & Visits Offices, to handle petitions. In practice, the government also developed a complex extra-legal system of interception and detention of petitioners in order to control and silence them. The system of intercepting petitioners (jie fang) has become almost as extensive as the Letters and Visits system (xin fang) itself.

This interception system was maximally activated prior to and during important political events, such as the Beijing Olympics, the celebrations of the 60th anniversary of the founding of PRC, to prevent “security” threats and maintain “public disorder”.

In 2007, I advised the group CHRD in its investigation of the abuses of petitioners and the detention facilities known as “black jails”. My talk today is based mainly on the findings of the investigations, which is documented in the report *Silencing Complaints* (http://crd-net.org/Article/Class9/Class11/200803/20080314221750_8056.html). I will proceed by answering some basic questions about the phenomenon of intercepting petitioners and the problems involved.

How big a population are we talking about?

It is difficult to estimate the number of petitioners in China due to a shortage of accurate official statistics. According to *Law Yearbook of China*, between 2002 and 2006, 3.54 to 4.22 million petitions were received at various levels of the People’s Courts every year, but the courts are only one of many government departments where petitioners went to lodge their complaints. Thus, the number of petitioning cases is undoubtedly far higher than 4.22 million. On November 4, 2004, *Southern Weekend* reported, “According to official statistics, there were over 10 million petitioning cases in China last year.” But the number is likely to be far greater because many petitions go unregistered, for example, those who were intercepted before they reach the Letters & Visits offices.

Why do petitioners petition?

Individuals become petitioners when they take action to deliver complaints to government authorities at higher levels about injustices they have experienced at the hands of local government after they judge they have no reasonable prospect of seeking redress at the local level. The most common reasons for petitioning are:

1. Promised benefits or entitlements are not delivered, or legal and/or human rights are violated due to official corruption, government decisions or actions. Common examples include:
 - Loss of farmland through appropriation by officials and commercial developers, often in the name of development
 - Loss of employment and corresponding benefits
 - Forced eviction and demolition of home or property without proper compensation, often to make way for development
 - Failure of government to make arrangements for the resettlement and livelihood of discharged soldiers
 - Political persecution over the past half century
2. Judicial decisions that are perceived as unfair.
3. Official abuse of power or misconduct, such as corruption, go on unpunished.

Who are the petitioners?

Petitioners are more likely to be women, old people and the disabled. In recent years, more rights violations are related to official corruption and the negative impact of economic development, and more young and educated petitioners joined.¹

Petitioners who go to Beijing are often veteran petitioners. First they petitioned the local government. Then, failing to gain redress and often suffering more abuses for petitioning, they took their grievances to higher authorities, eventually reaching Beijing.

Why do petitioners persist?

In a *Southern Weekend* article of November 4, 2004, a scholar at the Chinese Academy of Social Sciences, Yu Jianrong (于建嵘), says, “according to a survey...only 0.2% of petitioners solve their problems through petitioning.” So why petitioners keep going? A reason is their belief that their rights have been violated, that they have no other affordable or effective venues of seeking justice. The Letters and Visits system has survived as a result of the fact that for much of the modern era, the Chinese political system of government has provided virtually no fair, effective remedies for official malfeasance. An aspect of this is the weakness and lack of independence of the judiciary. Even where limited legal avenues for redress do exist, these may be difficult for people to use or judicial corruption may render them ineffective. Returning home also expose petitioners to retaliation by local officials whom they have complained for misconduct.

Many petitioners soon find their rights further violated because they often become targets of official repression. As they continued to complain about these further abuses, their original complaints snowballing to include a wide range of new grievances. Petitioners began organize to protest rights abuses against them and the political system that sustained such abuses, and they

¹ This information is based on the observations of the authors, who are long time petitioners and activists who have assisted petitioners for many years.

formed associations to support each other. These groupings and the organizers suffered harsh retaliation.

When did interceptions become so intensified and perverse?

Large-scale and systematic interception of petitioners is relatively new. In 2003, fearing protests at times of sensitive political events in Beijing, such as the annual session of the National People's Congress and CCP Congresses, Central government officials began ordering local Letters and Visits Offices to prevent petitioners from going to Beijing. Then the Custody and Repatriation System was abolished in 2004. It had previously been one of the main mechanisms used to detain people who were away from their places of registered residence and return them to their hometowns, and in its absence, other means had to be found to remove people from cities where they were unwanted or considered undesirables. Thus local Letters and Visits Offices took on the additional responsibility of intercepting petitioners who intended to go to Beijing. They often employed violence to do so and were assisted by local branches of the Public Security Bureau (PSB).

Interception does not exist legally or publicly, but evidence points to a rapidly expanding operation, extensive in scope. Since 2004-2005, because the number of petitions has kept rising, interception has become a major area of responsibility for various local governments, and many departments at different levels are involved. Local CCP organs and government agencies mobilize substantial resources to intercept petitioners.

What are the frequently used means of interception?

The frequently used methods of interception include:

Harassment of petitioners' families -- Interceptors contact petitioners' families and relatives and threaten them that if they do not stop the petitioning, they will lose their jobs (at state agencies or private or state-controlled companies).

Surveillance -- Officials wishing to intercept petitioners enlist neighbors, thugs and local government officials to monitor petitioners 24 hours a day. Technology is also employed: monitoring and wire-tapping devices and surveillance video cameras are used to monitor petitioners.

Kidnapping -- Interceptors are dispatched to forcibly kidnap and return petitioners to their home areas. Research shows that most petitioners returned home were kidnapped by interceptors.

Assault -- Interceptors often violently beat petitioners, sometimes until they are unconscious.

Murder -- There is evidence to suggest that in some cases, interceptors have beaten or tortured petitioners to death. At the start of 2005, six bodies were found when the moat near the State Council and National People's Congress was cleaned. Petitioning materials, well-preserved in plastic bags, were found on the bodies.² There are well-documented cases of petitioners who died as a result of torture. Shanghai petitioners Duan Huimin and Chen Xiaoming were allegedly tortured to death while in detention in 2007. Three months ago, Hebei petitioner Liu Fengqin

² According to a petitioner who witnessed the incident and who told this story to one of the authors of this report.

died in a local RTL after she was sent there for repeatedly petitioning in Beijing. In October, Shandong petitioner Li Shulian died in a local black jail after she was intercepted in Beijing and sent back to detention. Police claimed that she committed suicide, but the circumstances are suspicious. Family members of Liu and Li have been detained or otherwise silenced from demanding investigations.

▮ Arbitrary detention -- the various forms of arbitrary detention include:

- *Re-education through Labor (RTL)*

RTL is an administrative measure, meaning that it occurs outside of any judicial process and is “administered” directly and arbitrarily by law enforcement officials. Without access to legal counsel or judicial trial, individuals can be detained for a maximum of four years. Sending petitioners to RTL is one of the most common means of preventing them from petitioning. Of the 3,328 petitioners who participated in a 2007 survey, 35.2% had been formally detained or sent to RTL. There is evidence that local governments actively encourage sending petitioners to RTL. A leaked document from Jiangyong County government in Hunan Province, dated May 16, 2007, says that the county government gives a RMB 6,000 (US\$844) reward to the county PSB for every petitioner sent to RTL camp.³

- *Psychiatric facilities*

The 2007 survey found 3.1% of petitioners had been imprisoned in psychiatric institutions. Many had suffered this fate more than once. The mental health of the petitioners is generally not evaluated. In the psychiatric institutions, they are often forced to take unknown medication, which they reported to have caused confusion, nausea, headache and other symptoms.

- *“Black jails”*

“Black jails” are illegal and secret detention facilities set up by local governments in Beijing and in local areas to detain petitioners for an undefined period of time without charge or trial.

A number of “black jails” in Beijing were established by local governments; for example, the Henan Province government Beijing Liaison Office in the back of a hotel. Black jails have also been set in local cities and small towns to incarcerate petitioners intercepted in Beijing or on their way to the Capital.

The UN monitoring bodies (such as CAT), the press, and HRW (Nov. 09) have drawn attention to “black jails”. Last week, *Liaowang*, a subsidiary publication of Xinhua, did a long expose of black jails and the “chain of grey profit-making enterprises” of intercepting petitioners – a very rare official admission of the existence of such illegal activities!

- *“Law education classes”* (xuefaban or xuexiban).

³The document is entitled “Regulations Regarding the Investigation of Responsibilities of the Implementation of the Work of Letters and Visits” (关于实行信访工作责任追究的若干规定).

Petitioners are held incommunicado in these “classes” where they were forced to study official regulations and law until they promise in writing that they will never petition again. Detainees are often required to pay fees for the “classes”. Such classes also served to keep petitioners out of the spotlight.

- *Imprisonment*

The government routinely uses the judiciary to put petitioners in prison.

Why do authorities abuse the petitioners to such an extent?

There are many explanations. I will identify five main ones:

- 1) Evading accountability. Local officials fear that their local “scandals” being disclosed to higher officials and national media. It has to do with the ways in which the political careers of individual officials are linked to their ability to guarantee “stability” in the areas under their control, with petitioning being seen by higher authorities as indicative of disorder;
- 2) Priority of maintaining image of “harmony”. The Central government officials’ inability to handle exponential cases brought by petitioners and they are determined to maintain façade of “social harmony” and an “un-tarnished image” in the nation’s capital, which receives many more foreign reporters and visitors.
- 3) Profit-driving motives. The use of petitioners between Central and local officials as a means of exchange for bribes. This has to do with the “point deduction system:” When a petitioner from a certain local area lodges a complaint at a Letters and Visits Office managed by a higher authority, that authority deducts points from or fines the relevant authorities at the lower level, and the punishment is passed down through the layers of government, getting heavier each time, until it reaches the location of origin of the complaint or petitioner. When a petitioner registers with higher “Letters & Visits Office”, lower level governments may get a call. They can go pay a bribe to cancel the registered petition. In the words of a Henan county official, “For cancellation, you only pay an economic price; without cancellation, you pay a price in your career...” As a result, those at lower levels have a strong incentive to try their best to prevent petitioners from lodging complaints. The incentive to intercept petitioners gets stronger as petitioners lodge complaints with higher levels of government. This system also leads to the establishment of rewards for agencies that engage in persecution of petitioners. A set of regulations concerning petitioners from Jiangyong County government, Hunan Province, states:

“If the county PSB detains one petitioner, the reward is RMB 2,000 (US\$282); for sending one petitioner to RTL camp, the reward is RMB 6,000 (US\$844); for investigating a petitioner’s criminal responsibility, the PSB receives RMB 6,000, the county Procuratorate receives RMB 2,000 and the county court RMB 2,000.”⁴

Other officials have found “creative” ways of capitalizing on the desire of local authorities to block petitioners. For example, Youanmen police station under Beijing Municipal PSB has frequently “sold” petitioners they caught at RMB 500-1,000 (US\$71-142) apiece to the relevant

⁴ “Regulations Regarding the Investigation of Responsibilities of the Implementation of the Work of Letters and Visits” (关于实行信访工作责任追究的若干规定). It was issued on May 16, 2007.

interceptors. If the interceptors from the relevant local governments refuse to pay, the petitioners are then sent to Majia Building, a government facility, where petitions are processed. As a result, many local governments are willing to “buy back” their petitioners and punish them for the expenses.

4).Political phobia against any organized mass mobilizations. The “Letters & Visits Regulations” (Article 18) banning “collective petitioning” by 2 or more people from filing the same complaint. (“Where two or more letter-writers or visitors intend to present the same letter-or-visit matter through visit, they shall choose representatives, and the number of representatives shall not exceed five.”) Petition organizers met harsh punishment. In the “point reduction system,” the incentives to intercept petitioners get stronger as petitioners organize themselves into larger groups. For example, in Shimen County, Hunan Province, a local government unit gets 0.5 points deducted if a group of 6 to 20 petitioners lodges a complaint against it at the county level, but 5 points deducted if the group is larger than 100 people.⁵

5).Vagueness of language in the Regulations allows abuses. The system of “self-review” outlined by Article 4, the restriction on collective petitioning stipulated by Article 18 and the list of vaguely-defined “crimes” described in Article 20 encourage officials to retaliate against petitioners, whether petitioning individually or in groups, and provide ready legal basis to do so. Let’s take a look at the system of “self-review.”

Under this system, a complaint about a particular agency will be handed back to it to deal with, even if it has failed to do so in the past. A direct result of the “territorial jurisdiction,” the officials responsible for the alleged wrongdoing described in the petitions are also the ones responsible for dealing with the petitioners and their complaints. No impartial third party to adjudicate the dispute. Not surprisingly, very few petitions are successful. And naturally, petitioners tend to be punished harshly by angry officials. Interestingly, Article 23 of the Regulations prohibits Letters and Visits staff from divulging “the materials of accusation...or the relevant information provided by a letter-writer or visitor to the individual or department accused or exposed.” Articles 4 and 23 thus directly contradict each other. Article 23 is routinely violated.

There is a lack of clarity on what constitutes a “crime” in the Regulation (Article 20), which outlines a host of actions as prohibited, including: “illegally assembling around offices of state organs or public places,” “inciting, colluding with, coercing or enticing with money or things of value others to write letters or make visits,” or “committing other acts that disrupt public order or impair national or public security.” The vague language leaves room for police to interpret what constitutes “undesirable” or “unlawful” behavior. Many petitioners have been sent to RTL or sentenced for “disrupting public order and impairing national or public security.”

What to do?

It is clear what the government should do to end the horrendous abuses involved in jie fang. The question is whether there is any incentive for doing anything. Here is a list of the obvious things to do:

⁵ “2007 Measures of Shimen County to Assess the Work of Maintaining Stability” (石门县 2007 年度维护稳定工作考评办法), Notice Major Item 2 Article 16

Reform the incentives system that encourages interception

The current “point deduction system” punishes officials and government units for the number of petitions lodged against them. If petitioning is to be kept, higher level officials must take charge to investigate the accusations and find resolutions.

Abolish the RTL system

The RTL provide authorities a very convenient tool to handle petitioners. It’s not subsumed under the Criminal Law system where some procedural guarantees exist, which slows down and encumbers officials seeking to punish or tuck away stubborn petitioners quickly and quietly.

Hold officials criminally accountable

Government officials suspected of ordering or carrying out the abuses of petitioners’ rights and participating in bribery must be held accountable according to the Regulations on Letters and Visits and relevant Chinese laws. China’s laws already contain appropriate punishments for those who violate human rights. For example, Article 238 of the Criminal Law stipulates that,

“Whoever unlawfully detains another or deprives him of his freedom of person by any other means is to be sentenced to not more than three years of fixed- term imprisonment, criminal detention, control, or deprivation of political rights. In circumstances where beating or humiliation is involved, a heavier punishment is to be given.”

Make complaints procedures impartial, amending discriminatory regulations

Abolish the “territorial jurisdiction” principle and ensure that the departments or officers in-charge of processing petitions are impartial and independent from those the petition concerns. In addition, the confidentiality of the petitioner’s identity must be ensured, in accordance with Article 23 of the Regulations. For example, petitioners reporting on local corruption or abuse of power should not be identified and be known to the local department or officials involved.

Article 18 of the Regulations on Letters and Visits, which restricts the number of representatives to no more than five for any collective petition, must be amended so that it explicitly states that the article cannot be used as a basis for punishing petitioners who exercise their rights to association and peaceful assembly.

Article 20 also needs to be amended to clarify and precisely define the meaning of the terms “illegally assembling” “disrupt public order” and “impair national or public security,” as well as the specific conditions under which a peaceful act of expression may constitute these acts. Such conditions must explicitly exclude any non-violent activity in the exercise of the right to freedom of expression, fundamental in the act of petitioning.

Strengthen judicial independence and other alternative channels to lodge complaints

Reform other dispute resolution mechanisms, such as the judiciary, making them impartial, effective, and independent of political interferences. Other alternative channels for citizens to lodge complaints should also be considered, such as direct communication with their local representatives of the People’s Congress.