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From: Mills, Cheryl D <MillsCD@state.gov>
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To: H
Subject: Fw: How China Flouts Its Laws (NYT Op-Ed by Chen Guangcheng)

From: Operations Center
Sent: Wednesday, May 30, 2012 03:34 AM
To: NEWS-China; NEWS-DRL; NEWS-Mahogany; NEWS-L
Cc: SES-O
Subject: How China Flouts Its Laws (NYT Op-Ed by Chen Guangcheng)

Colleagues,

Please see the below Op-Ed by Chen Guangcheng, which was published online last night and is scheduled to run in today's New York Times.

Regards,

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http://www.nytimes.com/2012/05/30/opinion/how-china-flouts-its-laws.html?_r=1&ref=opinion

How China Flouts Its Laws

By CHEN GUANGCHENG

SINCE I arrived in the United States on May 19, people have asked me, "What do you want to do here?" I have come here to study temporarily, not to seek political asylum. And while I pursue my studies, I hope that the Chinese government and the Communist Party will conduct a thorough investigation of the lawless punishment inflicted on me and my family over the past seven years.

I asked for such an investigation while I was hospitalized in Beijing, after I had left the refuge of the United States Embassy and American officials negotiated my reunification with my family. High officials from the Chinese government assured me that a thorough and public investigation would take place and that they would inform me of the results. I hope that this promise will be honored. But the government has often failed to fulfill similar commitments. I urge the government and people of the United States and other democratic countries to insist that the Chinese government make timely progress in this matter.

The central government and the authorities in Shandong Province, Linyi City and Yinan County have many questions to answer. Why, beginning in 2005, did they illegally confine my family and me to our house in Dongshigu Village, cutting us off from all contact with other villagers and the world? Why, in 2006, did they falsely accuse me of damaging property and gathering a crowd to interfere with traffic and then, after farcical trials that excluded my witnesses and defense counsel, send me to prison for 51 months? On what legal basis, following my release from prison in 2010, did they turn our home into another, equally harsh, prison?

The fundamental question the Chinese government must face is lawlessness. China does not lack laws, but the rule of law. As a result, those who handled my case were able to openly flout the nation's laws in many ways for many years.

Although China's criminal laws, like those of every country, are in need of constant improvement, if faithfully implemented they could yet offer its citizens significant protection against arbitrary detention, arrest and prosecution. Countless legal officials, lawyers and law professors have labored for decades to produce constitutional and legislative rules intended to prevent a recurrence of the nightmarish anti-rightist campaign and other "mass movements" of the 1950s and the later abominations of the Cultural Revolution of 1966-76.

But those protections have been frequently ignored in practice, as they were in my case and in the case of my nephew, Chen Kegui. After the local police discovered my escape from my village in April, a furious pack of thugs — not one in uniform, bearing no search or arrest warrants and refusing to identify themselves — scaled the wall of my brother Guangfu's farmhouse in the dead of night, smashed through the doors and brutally assaulted my brother.

After detaining him, the gang returned twice more, severely beating my sister-in-law and nephew with pickax handles. At that point, Kegui tried to fend them off by seizing a kitchen knife and stabbing, but not killing, three of the attackers.

Kegui, who is 32 years old, was then detained in Yinan County and, absurdly, charged with attempted homicide. No one has been able to reach him, and he has most likely been tortured even more severely than his father was. Although China signed the United Nations convention against torture in 1988 and has enacted domestic laws to implement it, torture to extract confessions is still prevalent.

Moreover, none of the lawyers his family has sought to retain have been allowed to work on the case. Instead, the authorities have announced that Kegui will be forced to accept the assistance of government-controlled legal-aid lawyers.

Although China has yet to enact any remedy similar to habeas corpus, which allows people to challenge a detention before the courts, its current justice system is based on the assumption that prosecutors have the independence to correct the misconduct of the police and the extralegal thugs they often employ. Judges, in turn, are supposed to independently correct misconduct by prosecutors and the police when cases reach the courts.

In real life, however, cases of any significance are controlled at every level of the judicial system by a Communist Party political-legal committee, rather than by legal officials. From the Yinan County Basic Court to the Supreme People's Court in Beijing, it is this committee that directs the actions of the police, prosecutors and judges, transforming these ostensibly independent actors into a single, unchallengeable weapon. These political-legal committees have eroded decades of progress in implementing the rule of law.

While my wife and I now have the opportunity to study the law and meet freely with a broad range of American officials, law professors and legal reformers, the independent defense lawyers who tried to help me and now my nephew face daily danger and unfair treatment.

Any serious investigation of the injustices that we and hundreds of thousands of others have suffered must determine who is beating, kidnapping, disbaring and prosecuting these lawyers and threatening their families, and why defendants are compelled to accept the nominal legal assistance of government-employed lawyers instead of counsel of their choosing.

China's government must confront these crucial differences between the law on the books and the law in practice.

This issue of lawlessness may be the greatest challenge facing the new leaders who will be installed this autumn by the 18th National Congress of the Chinese Communist Party. Indeed, China's political stability may depend on its ability to develop the rule of law in a system where it barely exists. China stands at a critical juncture. I hope its new leaders will use this opportunity wisely. As an ancient Chinese proverb says, "If one is not righteous oneself, how can one rectify others?"