

In 2014, the Chinese Communist Party (CCP) leader Xi Jinping announced plans to ‘construct Socialist rule of law with Chinese characteristics’. The meaning of this has become clear in recent years.

The Anti-Terrorism Law for the Xinjiang Uygur Autonomous Region (XUAR, in force since August 2016), the De-radicalization Regulations for XUAR (in force since April 2017) and Hong Kong National Security Law (in force since July 2019) have ushered in perhaps the most devastating consequences known to the outside world. Less visible have been the effects of the revised Regulations on Religious Affairs (in force since February 2018) and other relevant administrative rules on citizens’ fundamental right to freedom of religion or belief (FoRB) across China.

Two Chinese human rights lawyers recently shared their views, through an online forum, on the issues currently faced by religious groups in China. Both have been defending individuals from various religion or belief groups who have faced legal prosecution in recent years. This briefing provides a summary of the points they have raised, and some data based on CSW research.

Worsening violations against religious groups

Since the CCP began a period of economic ‘Reform and Opening Up’ in 1978 under Deng Xiaoping, until around 2015, religious groups (apart from banned groups) were more commonly subject to administrative punishment, whereby they would not be tried or sentenced. Punishments included, but were not limited to, members being placed in administrative detention for up to 15 days, groups being banned from gathering by the local civil affairs bureau, or meeting venues being forcibly demolished by the local authorities as ‘unauthorised buildings’. In some cases, people were sent to [labour camps for ‘re-education’](#) for two or three years as more severe punishment, again without trial.

However, in more recent years, the numbers of religious adherents who have faced criminal prosecution has increased rapidly.

China is officially an atheist state. Under the increased ideological control of Xi Jinping, the Chinese authorities attach even higher sensitivity to matters involving religious groups. Therefore, there is barely public space for education and discussions surrounding religious beliefs. It is unsurprising that many police officers, public prosecutors and judges lack basic religious literacy, let alone an understanding of FoRB as one of the basic human rights.

A lawyer remarked that when it comes to FoRB cases, the criminal justice agencies are more likely to fall short of legal norms and, in the absence of accountability, even ‘do whatever they please’. He also remarked that, as a result of the government’s crackdown, more religious groups have been driven underground. Some have chosen to hide, destroy or avoid keeping up-to-date financial accounts due to the pressure they are facing, however a lack of transparency can lead to poor management of ecclesiastical disputes and corruption, which can in turn can be used as

a means of further government prosecution against such groups in what the lawyer described as ‘a vicious circle’.

‘The current situation shows our ruling party’s lack of confidence in [dealing with] religious issues.’

Legal framework

There are no provisions within China’s constitution for a mechanism to review whether a law or a government decision violates the constitution. Chinese judges do not have power to declare a local piece of legislation inconsistent with the constitution invalid, and China does not have a body to review the constitutionality of legislation.

As a result of these flaws, there is no way for anyone to seek the abolishment of legislation even if it clearly violates the Chinese constitution, such as the 2017 Regulations on Religious Affairs.

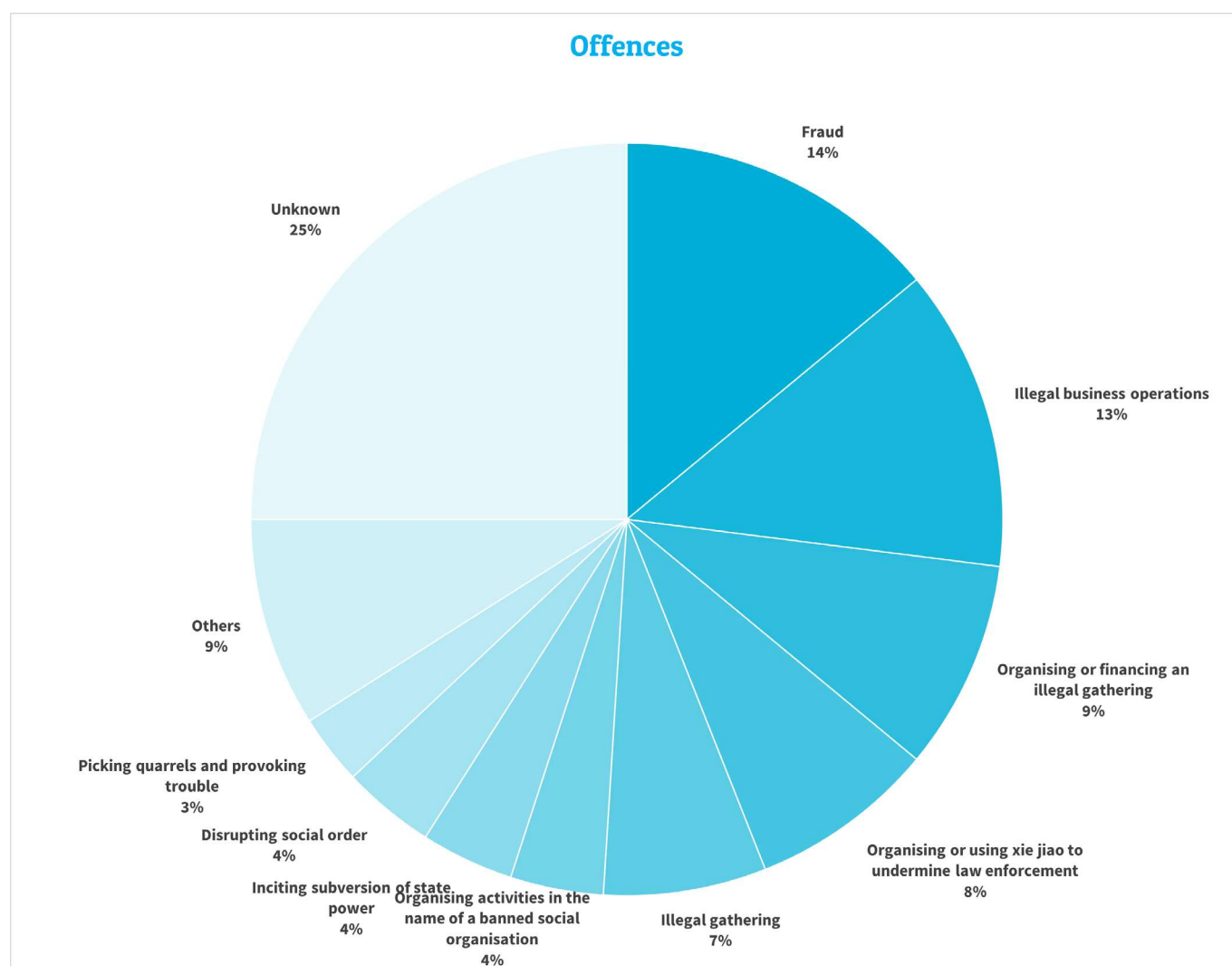
According to the principle of legal supremacy, laws passed by the National People’s Congress are higher in ranking than administrative regulations passed by the State Council. However, on a day-to-day basis, more attention is paid to the latter because of their operational practicality. So, when a defence lawyer makes a point in court by quoting the constitution as the most fundamental law of the country, they will likely be ignored by the judge. On the other hand, articles of the Regulations on Religious Affairs are frequently quoted by police officers and religious affairs bureau officials as they raid meeting venues, declare gatherings to be illegal or take participants to police stations for questioning.

Law enforcement

Chinese law enforcement is responsible for periodic waves of nationwide crackdowns such as on groups the Chinese state media refers to as ‘black societies and evil forces’. From 2018 to 2021, County Religious Affairs Bureaus lead ‘the fight to eliminate black or evil forces’ in religious activity venues. According to the Norway-based media outlet [Voice of Tibet](#), Tibetan organisations elected and recognised by villagers to protect their mother tongue, the environment, religion, culture and the rights and interests of the locals were targeted as ‘evil force organisations’ and subjected to severe crackdowns during this period, as was the case for the nine Tibetans criminally detained by the Tongren County police in Qinghai province on 13 July 2018.

When it comes to legal technicalities, many regulations have adequate provisions, but they are not implemented and enforcement agencies do not show any motivation to seriously apply them in practice. Crucially, these agencies also do not bear any consequences for compliance failure, and the wronged parties do not have effective remedies. One lawyer said that he had spent thousands of yuan in postage in a month sending letters of complaints or objections but received very few responses.

‘We often tell those who work in law enforcement agencies that [as lawyers] we are diligently implementing General Secretary Xi’s “law-based governance”.’



Cases involving Protestant Christian groups since 2018 collected by CSW by October 2023 (including those pending trials)

‘Xie jiao’

The Supreme People’s Court and the Supreme People’s Procuratorate [interpreted](#) ‘xie jiao’ as ‘illegal organisations, which, through fraudulent use of religion, qi gong, or any other name, by deifying and promoting their ringleaders, or by fabricating and spreading superstitious fallacies to confuse and deceive others, grow membership and control group members, and harm society’.

Such a vague definition gives the authorities power to target legitimate religious activities. A lawyer recalled a case where a house church pastor was accused for their ‘unbiblical teaching’ on suspicion of ‘spreading superstition’. Much to his amusement, the evidence produced was a doctrine document provided by a pastor affiliated with the government-approved Three Self Patriotic Movement (TSPM).

In July 2022, China’s Anti-Xie-Jiao Association published an [article](#) listing 25 groups which the author claims have been designated ‘xie jiao’ by ‘relevant national departments’ since the 1980s. This is not an official document, and there are no official government or legal documents defining any particular group as ‘xie jiao’ that are accessible to the public.

The process by which public security, procuratorate and courts identify ‘xie jiao’ appears to be completely arbitrary. Some groups are frequently targeted while others in the same region are largely left alone. Some house church leaders receive a fine while others are arrested and handed harsh prison sentences with a ‘xie jiao’ label.

In the case of the group known as the Shouters (‘huhan pai’; other names include Assembly ‘zhaohui’ or Little Flock ‘xiaoqun’), for example, anyone found in possession of a copy of the Recovery Bible or books written by Watchman Nee and Witness Lee may be identified as one of the Shouters and prosecuted for ‘organising or using a xie jiao organisation to undermine law enforcement’ under Article 300 of the Criminal Law; having 250 copies of such books could land someone in jail for up to seven years.

‘I have asked investigative officers, prosecutors and judges: Where can you find me a document in which a department has designated, let’s say, the Shouters as a xie jiao or a xie jiao organisation? I have asked the prosecution dozens of times in court whether there is such a thing. No one has ever said “Yes, I can find it for you” or showed me such a document.’

Other trumped-up charges against religious groups

In addition to those prosecuted for belonging to ‘xie jiao’, recent years have seen a marked increase in members of religion or belief groups being targeted on a number of other unfounded charges.

1) Fraud

The number of prosecuted leaders and staff members of unregistered churches has been increasing at a concerning rate. They are typically accused of ‘fraud’ for receiving or collecting tithes and offerings.

Year	‘Fraud’ cases known	Christians released after detention	Christians still in pre-trial detention	Christians jailed
2019	1	2	0	1
2020	1	0	0	4
2021	3	9	9	0
2022	5	2	9	3
2023 (until October)	3	7	4	0

Number of cases known to CSW where independent Protestant church members have been detained (including those released on bail) or jailed for ‘fraud’ since 2019.

A lawyer pointed out that the logic behind the accusations against house church pastors across the country is the same: If a church is not registered with the government, it is illegal, which means the pastor is fake, which means that the tithes and offerings they receive are fraudulent. Such a logic indicates ‘an utter denial of the legitimacy of house churches’. On the other hand, there is admittedly lack of a proper accounting policy and transparency in some churches.

2) ‘Illegal business operation’

‘Illegal business operation’ is a typical ‘pocket crime’, frequently used by the Chinese authorities to target educational services and publication products provided by religious groups.

CSW research shows that Chinese religious believers have been detained or imprisoned on charges of ‘illegal business operation’ in recent years for reasons including but not limited to:

- Printing and distributing religious books free of charge
- Contacting a printing company to buy religious books
- Selling religious books online
- Organising purchase of religious books for members
- Selling Bibles purchased from a government-appointed printing house
- Teaching in a church school
- Making and selling audio Bible players
- Teaching piano lessons to children

3) ‘Advocating extremism’

Charges of ‘advocating extremism’ are more commonly used to prosecute members of religious and ethnic minorities in the XUAR but citizens elsewhere in China also have also been targeted under such charges. Even the mention of the situation for Muslims in XUAR in a social media post can result in criminal detention on suspicion of committing this offence.

In a case noted by CSW, in Yunnan province, four Hui Muslim scholars were convicted of ‘advocating extremism’ and handed lengthy jail terms for refusing to cooperate with the authorities’ policies with regard to mosque demolitions and dismissing students from Arabic schools.

Conclusion

Despite the CCP’s boasting of its progress in promoting the rule of law, confidence in China’s legal system remains low. Religion and belief groups have witnessed how the CCP regime has been effectively strengthening its ‘rule by law’ instead. Unless some fundamental changes are implemented, these groups will continue to suffer restrictions of regular activities, unlawful seizure of property, arbitrary detention and wrongful imprisonment. Deprivation of FoRB will be a permanent feature of social injustice in the country, and, to quote a Chinese legal scholar, we will see religion-related issues being ‘produced on an industrial scale’ in China.

Recommendations

To the People’s Republic of China:

- Ratify the ICCPR, the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and ensure national laws and relevant policies are in line with these international conventions.
- Protect the rights of all people in China to freedom of thought, conscience and religion or belief, in accordance with Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). This includes revising all regulations and legislation pertaining to religion to ensure they align with international standards, in consultation with religious communities and legal experts.
- Repeal laws and regulations pertaining to xie jiao, including Article 300 of the Criminal Law.
- Review Article 73 of China’s Criminal Procedure Law and repeal RSDL.
- Ensure that any form of registration system for religion or belief groups is optional, not mandatory, and is not used as a tool to control religious activities.
- Immediately release all prisoners of conscience detained in connection with their religion or belief, and impartially investigate cases of wrongful imprisonment.
- Extend a standing invitation to UN Special Procedures as well as to other international human rights bodies

and experts to carry out their investigations, monitoring and reporting and grant unhindered access to all parts of the country, including XUAR and Tibet.

To the United Nations and Member States:

- At every possible opportunity, in public and in private, urge the Chinese government to respect, protect and promote the right to freedom of religion or belief for all people in China, and to implement the recommendations provided above.
- Investigate and monitor cases of human rights abuses including violations of the right to FoRB, and call for the immediate and unconditional release of all those detained in connection with their religion or belief, or their defence of universal human rights.
- Monitor developments in freedom of religion or belief policy and violations in Hong Kong.
- Support all available means of investigation into human rights abuses in XUAR, including inquiries into whether abuses perpetrated by the Chinese government constitute crimes against humanity and genocide.
- Consider sanctions against policymakers responsible for human rights abuses including, but not limited to, those responsible for the abuses in XUAR.
- Given the high risk of arbitrary detention and ill treatment for those returning to China from overseas who fled due to religious persecution, national governments should also ensure that individuals belonging to ethnic and/or religion or belief minorities who may be at risk of persecution are not forcibly deported to China.
- Urge all relevant UN mechanisms, including the UN Special Procedures and Treaty Bodies, to include the right to freedom of religion or belief in their reporting on China, addressing the vulnerabilities and violations faced by religion or belief communities and those seeking to defend them.

**CSW everyone
free to believe**

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