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CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ANNUAL REPORT

2007

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 10, 2007

Printed for the use of the Congressional-Executive Commission on China

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CONTENTS

	Page
Preface	1
General Overview	2
I. Executive Summary and Recommendations	5
Findings and Recommendations by Substantive Area	5
Political Prisoner Database	31
II. Human Rights	33
Rights of Criminal Suspects and Defendants	33
Worker Rights	56
Freedom of Expression	73
Freedom of Religion	90
Ethnic Minority Rights	105
Population Planning	108
Freedom of Residence and Travel	111
Status of Women	115
Human Trafficking	120
North Korean Refugees in China	124
Health	126
Environment	134
III. Development of the Rule of Law	141
Civil Society	141
Institutions of Democratic Governance	143
Access to Justice	148
Commercial Rule of Law	153
Impact of Emergencies: Food Safety, Product Quality, and Climate Change	168
IV. Tibet: Special Focus for 2007	182
V. Developments in Hong Kong	212
VI. Endnotes	215

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Preface

As this report goes to press, Beijing is putting the finishing touches on preparations for the opening of the Chinese Communist Party's 17th Party Congress on October 15, 2007. The event will mark the completion of Hu Jintao's first five-year term as Party General Secretary. China in the last year also passed another important marker—the fifth year in the implementation of its World Trade Organization (WTO) commitments. The Commission passed a marker of its own, having issued five previous Annual Reports on human rights and the development of the rule of law in China.

This confluence of five-year markers provides a useful opportunity to understand the course of human rights and the rule of law in China. Hu Jintao ascended to the Party's top leadership post five years ago advocating greater government transparency, respect for law, protection of the environment, and a more creative response to rising citizen activism. Over the last five years, however, a different reality has unfolded. China's human rights practices in the last year reflected Chinese leaders' intolerance of citizen activism; suppression of information on urgent matters of public concern (including food safety, public health, and environmental emergencies); the instrumental use of law for political purposes; and the localization of dispute resolution as a method of insulating the central government and Party from the backlash of national policy failures. Whether or not the Chinese Communist Party's 17th Party Congress ultimately will be associated with change instead of continuity on these issues remains to be seen.

The commitments that China made five years ago when entering the WTO were not only important to its commercial development in the international marketplace, but to the development of the rule of law at home. These commitments require that China ensure nondiscrimination in the administration of trade-related measures and prompt publication of all laws, regulations, judicial decisions, and administrative rulings relating to trade. The required improvements to China's domestic rule of law should have assisted Chinese citizens in a wide range of areas from property rights, environmental protection, government transparency, and access to justice. Unfortunately, China has not lived up to its international commitments, and the unfair manner in which it competes in the global marketplace is causing alarm in the United States and around the world. Its instrumental use of legal reform for political purposes threatens its domestic rule of law.

This report summarizes, with the detailed findings of each section, previous Commission recommendations in order to provide readers a sense of the challenges that remain in leveraging im-

provements in China's human rights and rule of law practices. In addition, this report demonstrates the importance of the Commission's Political Prisoner Database, a unique and powerful resource on which the Commission relies for its advocacy and research work, including the preparation of this Annual Report.

The next year will be an important one for China, as the 2008 Summer Olympic Games place Beijing front and center on the world stage. Foreign correspondents and international organizations are already concerned that China has not lived up to its promises in important areas of human rights. The Commission will focus attention on these issues in the coming year, both before and after the Olympics.

GENERAL OVERVIEW

The Commission observed ongoing human rights abuses and stalled development of the rule of law in China during 2006-2007. The Commission also observed increased repression in the Xinjiang Uighur Autonomous Region (XUAR) and Tibetan autonomous areas of China, stepped-up harassment of legal advocates, and increased restrictions on Chinese reporters. In addition, across the areas the Commission monitors, the following general themes emerged: (1) Chinese leaders' increasing intolerance of citizen activism and greater suppression of information on urgent matters of public concern (including food safety, public health, and environmental emergencies); (2) the instrumental use of law for political purposes; (3) the localization of dispute resolution in order to insulate the center from the backlash of national policy failures; and (4) the influence that China's linkages with the rest of the world have had on some aspects of its domestic rule of law and human rights development.

INTOLERANCE OF CITIZEN ACTIVISM

Chinese officials have paid particularly close attention in the last year to civil society organizations. Central and local officials not only tightened existing controls over many citizen organizations, but also engaged in selective use of rarely enforced laws to provide a legal justification for shutting these organizations down. The influential China Development Brief was closed down in 2007 after one of its editors was accused of violating China's Statistics Law. As a vice minister of the State Environmental Protection Administration publicly criticized a dangerous algae bloom that had fouled China's Lake Tai, Wu Lihong, an environmental activist who was among the first to bring the lake's pollution problems to the public's attention, languished in prison. Official harassment of the family members of human rights activists (including Rebiya Kadeer, Gao Zhisheng, Chen Guangcheng, and Hua Huiqi) has continued. Chinese citizens who have attempted to organize workers outside of the Party-controlled All-China Federation of Trade Unions risk imprisonment, and particularly high-profile labor activists such as He Chaohui, Yao Fuxin, Wang Sen, and Hu Shigen remained in prison in 2007, serving out sentences that ranged from 7 to nearly 20 years. China's leaders rely on the disunity of workers to drive the economic growth on which the Party has staked its claim to supremacy. Notwithstanding the new Labor Contract

Law's collective contracting provisions (which do not, in fact, provide for true collective bargaining, nor do they grant workers the right to organize or to select their own representatives), the Party views organized labor as it does citizen activism on most matters of public concern: as a threat to the Party's hold on power.

INSTRUMENTAL USE OF LAW FOR POLITICAL PURPOSES

An increasing number of provisions concerning national unity, internal security, social order, and the promotion of a "harmonious society" crept into laws and regulations during 2006-2007, carving out for public officials an ever-widening realm for official discretion. China's laws place a burden of undefined risk on citizens. Unbounded legal discretion is manifest in many ways, including the deliberate omission of fundamental procedural protections (such as access to a lawyer or a public trial) for those accused of state security crimes, and the use of overbroad terms (such as "endangering state security," "subversion," "splittism," and "disturbance of public order," or the arbitrary criteria used to distinguish between "normal religious activities" and illegal religious practices). The Commission also noted several cases in the past year in which the state criminalized political activists not by charging them with state security and disturbance of public order crimes, but by indicting them on offenses such as fraud, extortion, tax evasion, or illegal border crossing. Most Chinese citizens—those who refrain from unapproved political and religious activities—enjoyed increased room to maneuver in many aspects of daily life. The system provides for an increasing number of legal protections across many areas, but enforces them selectively. Against persons the Party deems to pose a threat to its supremacy, officials wield the legal system as a harsh, and deliberately unpredictable, weapon.

It is now less obvious than before that the rapid pace with which China produces new legislation should be seen as a sign of progress. China has permitted the efficiency of legislative processes to become increasingly divorced from consistent and effective implementation. As a result, the distinction between the promulgation of law and the making of propaganda has become blurred in some instances, placing the credibility of China's legal and regulatory reforms at risk.

INSULATION OF THE CENTRAL LEADERSHIP FROM THE BACKLASH OF POLICY FAILURE

Throughout 2007, China's top leaders increasingly have encouraged the resolution of disputes through nonjudicial channels at the grassroots level wherever possible, insulating the central government from the backlash of national policy failures. In a March 29 speech, Supreme People's Court President Xiao Yang expressed concern over cases involving "hot button problems that can give rise to mass group administrative disputes." Xiao's call to resolve lawsuits involving rural land confiscations and urban home evictions through mediation rather than through administrative litigation came less than a month after China's passage of its new Property Law, one stated goal of which was to provide stronger legal protections for property rights holders. Xiao also spotlighted cases concerning "enterprise restructuring, labor and social security, and

resource and environmental protection." Party directives and State Council regulations concerning the petitioning system ("letters and visits," or *xinfang*) and administrative reconsideration system echoed the emphasis on dispute resolution through nonjudicial channels, at local levels wherever possible. A draft labor dispute resolution law, if adopted, would shift the focus of Chinese labor law to the nonjudicial, in-house resolution of labor disputes. This across-the-board trend appears intended, at least in part, to ensure that sensitive disputes do not enter legal channels which lead to Beijing.

Billed as a policy of local empowerment and part of a measured long-term strategy to induce grassroots legal development, the localization of disputes actually insulates the center from the backlash of national policy failures. China's leaders remain suspicious of efforts to undo this insulation. In February 2007, Luo Gan, a member of the Party Politburo Standing Committee, warned legal officials not to be swayed by "enemy forces" trying to use the legal system to Westernize and divide China, and by internal forces that denied the Party's leadership on legal matters. He reminded them that the "correct political position" is to be consistent with the Party.

RISING STAKES OF LEGAL REFORM IN CHINA

Among the most important developments of the last year is the growing impact outside of China of its domestic problems of implementation. China's increased engagement with the world economy means that events within China have an increasing influence on China's neighbors and trading partners. Weak or ineffective implementation of law and policy directly impacted China's international relations during 2007. A series of unsafe exports underscored the ways a lack of government transparency and weak legal institutions can have sudden and serious consequences on distant shores. It became more evident than ever during 2007 that the rest of the world has a stake in improved governance in China.

Chinese and Western experts have taken note of China's use of diplomatic leverage and, in particular, of the way Chinese diplomacy in recent years has promoted a notion of national sovereignty that supplies China's leaders with a theoretical basis and rhetoric with which to resist international calls for improvement in its domestic human rights.[1] Even if they may not all fall within the mandated scope of this Commission's work as understood in keeping with past precedent, these linkages form the backdrop against which some readers are likely to engage this report. Policymakers in the United States and elsewhere have found China's international actions troubling—especially when they have included China's opposition to, or withholding of support for, global efforts to combat human rights atrocities or humanitarian abuses in other parts of the world. China's new-found global reach affords it an expanded array of levers through which to reward those overseas who support or remain silent on its domestic human rights abuses, while punishing those critical of these practices. China's role in the UN's new Human Rights Council, Uzbekistan's extradition of Canadian citizen Huseyin Celil to China rather than allowing him to return home, some of China's actions related to Sudan and Darfur,

and China's campaign of pre-Olympics surveillance and intimidation of nongovernmental organization activists overseas may be understood, at least in part, in this context.

Even as the Commission highlights these areas of concern, China over the past year has issued a number of laws and regulations which have the potential to produce positive results if central and local government departments and Party officials prove their ability and willingness to implement them faithfully. Faced with popular anger over rampant corruption and abuse of power, China's procuracy has issued broad-ranging provisions, including, among others, July 2006 Provisions on the Criteria for Filing Criminal Cases of Dereliction of Duty Infringing Upon Rights, which directs procurators to prosecute a lengthy list of crimes of official abuse, including cases of torture and retaliation against petitioners. China in 2007 passed a long-awaited Labor Contract Law which, if fully implemented, could provide greater regularity and procedural protections in hiring, firing, workplace benefits, and safety. The Labor Contract Law was passed amid widespread worker anger over cases of unpaid wages. In April 2007, the State Council issued the Regulation on the Public Disclosure of Government Information, dubbed by some observers as China's first national "freedom of information" regulation. In order for this regulation to play an effective role, however, the government will have to clarify and limit the sphere of information considered "state secrets." Finally, in preparation for the 2008 Olympic Games, Chinese authorities adopted looser restrictions on foreign journalists, and issued regulations on the protection of the mentally ill, which could represent an important first step away from the almost entirely arbitrary police detention of the past.

I. Executive Summary and Recommendations 2006–2007

Findings and Recommendations by Substantive Area

A summary of findings for 2006-2007 follows below for each area that the Commission monitors. The order of topics roughly follows that set forth in the Commission's mandate. In each area, the Commission has identified a set of specific issues that merit attention over the next year, and submits recommendations of proposed action to address each set of issues to Members of the U.S. Congress and Administration officials.

RIGHTS OF CRIMINAL SUSPECTS AND DEFENDANTS

Chinese prisons in 2007 continue to hold individuals who were sentenced for counterrevolutionary and other crimes that no longer exist under the current Criminal Law. Shortly preceding the annual session of the former UN Human Rights Commission in 2005, Chinese central government officials pledged to "provide relief" to those imprisoned for political acts that were no longer crimes under the law. The reality is that Chinese citizens remain susceptible to detention and incarceration as punishment for political opposition to the government, as well as for exercising or advocating human rights.

Chinese law enforcement officers routinely detain individuals without formal charge or judicial review. In some instances, police hold individuals in custody for a few days before ultimately releasing them, without any justification other than a general desire to avoid protests and other instances of "social unrest" that might undermine Party governance. Citizens from localities all throughout China travel to Beijing to voice their complaints before central government offices, often congregating together in "petitioners' villages" on the city's outskirts. NGO and media sources have reported that police officers conduct night raids of these villages, sending petitioners to a special holding location called "Majialou" pending their forced repatriation home. According to Human Rights Watch, the detentions of more than 700 individuals in advance of the National People's Congress in March 2007 were "widely seen as a grand rehearsal in public order tactics for two even more important upcoming events: the Communist Party's 17th Congress in October 2007 and the Olympic Games in 2008."

Since releasing China's Third Report on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 2000, central government leaders have repeatedly emphasized their ongoing efforts to pass new laws and administrative regulations preventing, punishing, and compensating cases of torture by government officials. Despite international safeguards and recent domestic reforms designed to help guard against torture in China, "persons acting in an official capacity who torture and ill-treat others in violation of the [CAT] generally do so with impunity." In November 2006, two senior officials from the Supreme People's Procuratorate called on local procuratorates to strengthen their supervision over criminal investigations, and to bring into line police who extract confessions through torture or who illegally gather evidence.

Chinese defendants remain vulnerable to official abuses and faced mounting challenges to the defense of their legally protected rights during the past two years, as lawyers in general were increasingly called upon to contribute to the Party's efforts to build a "harmonious society." This new role was first clarified in a 2006 guiding opinion by the All China Lawyers Association (ACLA), which the Commission analyzed as an effort to restrict and punish lawyers who choose to handle collective cases without authorization. ACLA's guiding opinion effectively calls on China's legal profession to function in the interests of the Party and state, a demand that conflicts with a lawyer's duty to his or her client in criminal cases. It also calls into question ACLA's ability to operate as a self-governing professional association that works in the interests of Chinese lawyers, without external interference.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge China's leaders in written correspondence and meetings that they ensure the prompt review of cases in which an individual was charged with counterrevolutionary crimes, including the cases of political prisoners such as labor and de-

mocracy activist Hu Shigen (originally sentenced to 20 years for helping to establish an unauthorized political party and trade union), and former Tibetan monk Jigme Gyatso (now serving an extended 18-year sentence for printing leaflets, distributing posters, and later shouting pro-Dalai Lama slogans in prison). Commissioners should urge the immediate release of these and other prisoners who continue to be deprived of their liberty for non-existent crimes.

• Request in correspondence with the Chinese Embassy that when arranging trips to China, the Embassy should provide information about, and access to, petitioners who travel to Beijing to voice their grievances, to the "petitioners' villages" in which many previously congregated, and to the special holding location called "Majialou" where many are detained pending forced repatriation home. It is advisable to reiterate the desire to visit these places upon arrival in China. Commissioners should also request in pre-trip correspondence and in communicating with hosts on the ground that there be meetings with officials from the Ministries of Public Security and State Security to discuss their concrete plans for maintaining order in advance of the 2008 Beijing Summer Olympic Games.

• Urge in written correspondence and meetings with China's leaders that they revise the Lawyers Law and Criminal Procedure Law to provide greater rights and protections to lawyers. Support international educational exchanges and training that seek to bring public security, procuratorate, and court officials together with Chinese legal professionals to discuss the relationship between lawyers and law enforcement. Commissioners should also request meetings with officials from the Supreme People's Procuratorate and local procuratorates. Such meetings provide a unique opportunity to inquire about the number of reported cases of "tortured confession" and the number of officials actually prosecuted for this crime in recent years.

WORKER RIGHTS

In 2006-2007, several high-profile incidents underscored the inhumane conditions and weak protections for workers in certain sectors of the Chinese economy. The discovery in 2007 of a massive network of small-scale brick kilns in Shanxi and Hunan provinces employing kidnapped slave labor vividly illustrated China's inability to consistently enforce internationally recognized worker rights and to guarantee workplace safety.

Against this backdrop, a major legislative development in the area of worker rights occurred with passage on June 29, 2007, of a new Labor Contract Law, set to take effect January 1, 2008. The law outlines a set of nationwide minimum standards for employment contracts. On its face, the law provides for collective contracts, but it does not provide for true collective bargaining, nor does it grant workers the right to organize or the right to select their own representatives. Among its stated aims are the promotion of longer-term employment relationships, increased leverage for workers vis-à-vis employers, and an expanded role for the Party-controlled All-China Federation of Trade Unions, China's only recognized union.

The law appears to trigger the creation of rights by default in certain circumstances. If an employer fails to enter into a written labor contract with an employee within one year of starting employment, an open-ended employment contract is deemed to exist by default. The law increases the range of conditions under which severance pay to workers is required, but it also specifies severance pay caps for high-wage workers, apparently in order not to burden firms that depend on such workers.

A principal cause for concern with the law is uncertainty—the statutory text leaves much to interpretation and clarification during implementation. Even on a point as fundamental as its retroactive effect, the law is unclear. While the law does not explicitly require employers and employees to enter into new contracts when it takes effect on January 1, 2008, neither does it say whether it will apply to existing employment contracts that do not comply with the new law.

The law requires "consultation" between employers and trade unions on firm work rules, but says nothing about work rules that apply by default during the period of consultation. Employers must give the trade union prior notice before initiating terminations, but no rules govern the union's notification of workers. The law does not specify whether it will apply to employees (whether local or expatriate) of foreign company representative offices. Because so much has been left to be fleshed out through the issuance of supplemental regulations and interpretations during implementation, the law's full impact will remain unclear for some time.

Promulgation of the new Labor Contract Law does not imply that labor disputes are now more likely than before to be channeled into China's courts. Current law specifies that labor disputes are to be handled by "mediation, arbitration, and trial," but a new draft Law on Labor Dispute Mediation and Arbitration placed before the National People's Congress Standing Committee (NPCSC) on August 26, 2007, if passed, would change that by encouraging nonjudicial mediation. The draft entitles companies to establish labor mediation committees in-house "so as to solve disputes at the grassroots level," according to the Vice Chair of the NPCSC's Legislative Affairs Commission.

Taken as a whole, China's emerging national labor law regime, billed as both strengthening worker rights and grassroots dispute resolution, appears more intended to make sure that disputes do not enter legal channels that lead to Beijing. Whether this represents deliberate local empowerment as part of a measured long-term strategy to induce grassroots legal development, or a strategy of crisis localization and insulation from the center, or some combination of both, remains an open question.

The Chinese government has shown a willingness to engage in technical exchanges and cooperative activities with the United States, and to consider suggestions and recommendations on labor law reform from U.S. experts and scholars. Cooperation between the two countries is potentially significant with respect to China's need for progress in the area of coal mine safety and occupational safety. The Chinese government participated in a U.S. Department of Labor-supported pilot project on enterprise-based dispute resolu-

tion programs, creating labor relations committees with elected worker representatives.

The Commission notes that two Chinese government agencies, the Ministry of Labor and Social Security (MOLSS) and the State Administration of Work Safety (SAWS), have undertaken cooperative projects and exchanges with the United States since 2002. The cooperation between the two countries has focused on work safety, labor law reform, legal aid for workers, pension, and dispute resolution in the workplace. This year, MOLSS and SAWS signed or renewed six Letters of Understanding with the U.S. Department of Labor to continue bilateral exchange and cooperation.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge in meetings with Chinese officials that China fully implement and strictly enforce its new Labor Contract Law and, in forthcoming implementing regulations and judicial interpretations, that it provide all workers with an effective mechanism for true collective bargaining and free union organizing.
- Call upon the Chinese government to make public the results of its investigation on the origins and scale of the recent brick kiln slave labor scandal, including information about the involvement of public officials in protecting those kilns.
- Press Chinese officials for answers about working conditions, wage rates, overtime pay, and underage labor at all enterprises throughout China, and press for information on major violations to be published openly.

FREEDOM OF EXPRESSION

Recent international concern over the global health impacts of food, drugs, consumer products, disease outbreaks, and pollution originating from China underscore the importance of the free flow of information in China. Public access to government information, at least on paper, has improved, but major obstacles to government transparency remain, reflecting the Party's overarching concern that it maintain control over the flow of information. In April 2007, China passed its first national regulation requiring all government agencies to release important information to the public in a timely manner, but the regulation's impact may be limited by the presence of a "state secrets" exception that gives the government broad latitude to withhold information from the public.

Perhaps the biggest obstacle, however, is the Party and government's control over the press, which leads to incomplete reporting on issues of public concern and increases opportunities for public officials to hide or manipulate information when they find it advantageous to do so. In June 2007, Chinese media initially reported in graphic detail on a scandal involving the discovery of more than 1,000 forced laborers, including scores of teenagers and the mentally ill, working at brick kilns in the provinces of Shanxi and Hunan. But authorities later instructed journalists to limit their coverage and applaud the Party's rescue efforts, and warned parents and lawyers for victims not to speak to the media.

Developments during 2007 suggest that the prospects for a free press in China remain dim. While foreign reporters in theory were granted some increased press freedom in accordance with promises China made in 2001, as part of its successful bid to host the 2008 Olympic Games, China continues to justify increased restrictions on domestic media by asserting a public interest in preserving order, stability, and control in the period around the Party's 17th Congress in October 2007, and by alleging corruption among Chinese reporters. Furthermore, foreign journalists continue to report harassment by public officials in China. Central government officials have urged local officials to cooperate more with the media, but this development should not be interpreted as a sign of increased press freedom or openness.

The growing availability of the Internet and cell phones in China has given citizens unprecedented opportunities to shape public opinion and influence policy. In 2007, citizens used the Internet and other communication technologies such as cell phones with increasing success to raise public awareness, drive the reporting agendas of the state-controlled press, and force governments to respond to important social problems.

Their success, however, has not been the result of any government policy of liberalization. Instead, the Party has responded to this perceived threat to its supremacy over the last five years by continuing to adapt regulations and technical measures to maintain control over the Internet, including requiring Web sites to be licensed, blocking access to politically sensitive information on the Internet, and detaining citizens who criticize the government online. This past year, at least five writers and Internet essayists were punished under the Article 105 "subversion" clause of the Criminal Law for posting their criticism of the government and Party on foreign Web sites.

Finally, the government continues to impose prior restraints on publishing, preventing citizens from freely expressing ideas and opinions in books and magazines. In preparation for the Party's 17th Congress, publication and propaganda officials announced a crackdown on "illegal publications" and banned a number of books.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge Chinese officials at all levels that they must stop blocking foreign news broadcasts and Web sites, such as Voice of America, Radio Free Asia, and the Commission's Web site. Formulate and promote proposals that discourage China's Internet and media censorship and favor online freedom. Chinese officials must be made aware that the United States does not block Chinese government broadcasts, news, or Web sites.
- Impress upon Chinese officials that their interpretation of "state secrets" under Chinese law does not meet international human rights standards because it gives administrative officials unbounded discretion to withhold information. Chinese officials must be reminded that such discretion, which enables officials to hide information about important events such as

health and environmental emergencies, threatens the welfare of not only Chinese citizens but individuals around the world.

• Impress upon Chinese officials the urgency of the need for them to live up to their commitment to grant foreign journalists complete freedom to report in China before and during the 2008 Olympic Games. To date, China's fulfillment of this commitment has been incomplete at best. Remind Chinese officials that their continued failure to fulfill this commitment, by allowing harassment and intimidation of foreign journalists and the Chinese citizens they work with and interview, violates both the promise they made in connection with the Olympics and international human rights standards for freedom of expression. Members of the Congress and Administration officials are also urged to press their Chinese counterparts to remove the October 2008 expiration of this commitment and to grant similar protections to domestic journalists, for which this commitment does not apply.

• Call on the Chinese government to release political prisoners mentioned in this report who have been punished for peaceful expression, along with other prisoners included in the Commission's Political Prisoner Database. Representative cases include: freelance writer Yang Tongyan, who uses the pen name Yang Tianshui (serving a 12-year sentence for criticizing China's government online and attempting to form a branch of the China Democracy Party); journalist Shi Tao (serving a 10-year sentence for forwarding to an overseas Web site instructions from propaganda officials to the media); and writer Zhang Jianhong (serving a 6-year sentence for criticizing China's government online).

FREEDOM OF RELIGION

In both law and practice, China failed in 2007 to provide freedom of religion in accordance with international human rights standards. China's Constitution, laws, and regulations do not guarantee "freedom of religion" but only "freedom of religious belief." China's laws and regulations protect only "normal religious activities" and do not define this term in a manner to provide citizens with meaningful protection for all aspects of religious practice.

Religious communities must register with the government by affiliating with one of five recognized religions, and they must receive government approval to establish sites of worship. The state tightly regulates the publication of religious texts and forbids individuals from printing religious materials. State-controlled religious associations hinder citizens' interaction with foreign co-religionists, including their ability to follow foreign religious leaders. The government imposes additional restrictions on children's freedom of religion. Chinese citizens who practice their faith outside of officially sanctioned parameters risk harassment, detention, and other abuses. In its 2007 report on religious freedom in China, the U.S. Department of State noted past reports of abuse and deaths of Falun Gong practitioners in custody.[2]

Party leaders manipulate religion for political ends. Like his predecessor, President Hu Jintao has responded to an increase in the number of religious followers through the use of legal initia-

tives to cloak campaigns that tighten control over religious communities. Despite official claims in 2004 that the Regulation on Religious Affairs (RRA) adopted that year represented a "paradigm shift" in limiting state intervention in citizens' religious practice, it codified at the national level ongoing restrictions over officially recognized religious communities and discriminatory barriers against other groups.

Government harassment, repression, and persecution of religious and spiritual adherents has increased during the five-year period covered by this report. In 2004, the Commission reported that repression of religious belief and practice grew in severity. The Party strengthened its campaign against organizations it designated as cults, targeting Falun Gong in particular, but also unregistered Buddhist and Christian groups, among other unregistered communities. The Commission noted a more visible trend in harassment and repression of unregistered Protestants for alleged cult involvement, starting in mid-2006. The Commission reported an increase in harassment against unregistered Catholics starting in 2004 and an increase in pressure on registered clerics beginning in 2005. The government's crackdown on religious activity in the Xinjiang Uighur Autonomous Region (XUAR) has increased in intensity since 2001. New central government legal provisions and local measures from the Tibet Autonomous Region government intensify an already repressive environment for the practice of Tibetan Buddhism. Daoist and Buddhist communities have been subject to ongoing efforts to close temples and eliminate religious practices deemed superstitious, and have also been made subject to tight regulation of temple finances. Members of religious and spiritual communities outside the five groups recognized by the government continue to operate without legal protections and remain at risk of government harassment, abuse, and in some cases, persecution.

Government harassment, repression, and persecution of religious and spiritual adherents continued in the past year, and worsened for some communities. In the past year, the government continued its campaign of persecution against the Falun Gong spiritual movement; issued measures that increase repression of Tibetan Buddhism; maintained repressive policies against Islamic practice in the XUAR; closed unregistered Protestant house church gatherings and detained house church leaders; continued to dictate the terms upon which Chinese Catholics could recognize the authority of Catholic religious institutions outside China and continued to detain, sequester, and otherwise coerce clergy into complying with official policies; and enforced campaigns to close unregistered Buddhist and Daoist temples and purge both religions of practices deemed as "feudal superstitions."

The government has continued harassment of legal advocates who defend religious and spiritual practitioners. Authorities also have continued campaigns to restrict "illegal" religious publications, and continue to imprison religious adherents who publish or distribute religious materials without permission.

Chinese officials have increased oversight of citizens' contacts with foreign religious practitioners within China in the run-up to the 2008 Olympic Games. In March 2007, Minister of Public Security Zhou Yongkang said the government would "strike hard"

against hostile forces inside and outside the country, including religious and spiritual groups, to ensure a "good social environment" for the Olympics and 17th Communist Party Congress.

The Commission has recommended in the past that the President and Congress urge the Chinese government to allow visits by the U.S. Commission on International Religious Freedom (USCIRF) and the UN Special Rapporteur on Religious Intolerance. The Commission notes that China has since hosted USCIRF, and that discussions about a visit by the UN Special Rapporteur on Religious Intolerance are reportedly in progress. It commends the Chinese government for providing access to international monitors, but it notes monitors have so far encountered some restrictions on their activities within China.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge in direct meetings and written communications with Chinese officials that they guarantee, in both law and practice, freedom of religion to all Chinese citizens, in accordance with Article 18 of the Universal Declaration of Human Rights. Stress that this freedom extends to Tibetan Buddhists' right to express devotion to the Dalai Lama; Catholics' right to recognize the religious authority of the Holy See, free from Chinese government interference; Muslims' right to make overseas pilgrimages outside state-controlled channels that dictate Party loyalty; Protestants' right to congregate in house churches; Falun Gong practitioners' right to exercise spiritual beliefs; and all citizens' right to manifest their religious and spiritual beliefs free from government control and threat of harassment and other abuses. Also underscore the importance of protecting children's right to practice religion and receive religious education.
- Use talks and written correspondence at all levels to call on the Chinese government to release religious prisoners (including followers of spiritual movements) mentioned in this report, along with other prisoners included in the Commission's Political Prisoner Database. Cases of religious prisoners include Tibetan monk Choeying Khedrub (sentenced to life imprisonment for printing leaflets); Bishop Jia Zhiguo (detained repeatedly over the course of decades, and most recently in August 2007, for involvement in the unregistered Catholic Church); Pastor Wang Zaiqing (imprisoned for printing and distributing religious materials); and Li Chang (imprisoned for demonstrating in support of Falun Gong). Spotlight religious prisoners in speeches, on Web sites, and in other forums. Support funding for organizations that promote legal defense efforts for Chinese citizens detained and imprisoned for exercising their right to freedom of religion.
- Promote opportunities, both in the United States and China, for dialogue between Chinese officials and overseas religious leaders, including members of religious communities not officially recognized within China, to underscore to Chinese offi-

cials the importance of religious tolerance. Opportunities for dialogue include exchange programs supported by the U.S. Department of State's International Visitor Leadership Program and programs sponsored by nongovernmental organizations. Urge China to accept training programs that inform public officials of ways to bring China's own laws and policies into compliance with the Chinese government's domestic and international obligations. Urge the Chinese government to continue access to international monitors without imposing restrictions on their ability to fully investigate conditions for religious freedom in China.

ETHNIC MINORITY RIGHTS

The Chinese government recognizes and supports some aspects of ethnic minority identity, but represses aspects of ethnic minority rights deemed to challenge state authority, especially in the Xinjiang Uighur Autonomous Region (XUAR), Inner Mongolia Autonomous Region, and Tibet Autonomous Region and other Tibetan autonomous areas. Overall conditions vary for members of the 55 groups the Chinese government designates as minority "nationalities" or "ethnicities" (*minzu*), but all communities face state controls in such spheres as governance, language use, culture, and religion. The government provides some protections in law and in practice for ethnic minority rights, and allows for autonomous governments in regions with ethnic minority populations.

The narrow parameters of the ethnic autonomy system and the overriding dominance of the Communist Party, however, prevent ethnic minorities from enjoying their rights in line with international human rights standards. The central government has increased support for development projects in ethnic minority regions, but benefits to ethnic minority communities have been limited. Although one new development program sets concrete targets for improving economic and social conditions among ethnic minorities, it couples potentially beneficial reforms with measures designed to monitor and report on ethnic relations and perceived threats to stability.

The Chinese government uses counterterrorism and other policies as a pretext for suppressing ethnic minorities' peaceful aspirations to exercise their rights. The government has characterized some expressions of ethnic minority rights as separatism or a threat to state security, and levied prison sentences on some ethnic minority rights advocates.

The Chinese government has increased repression in the XUAR since 2001, building off campaigns started in the 1990s to squelch political viewpoints and expressions of ethnic identity deemed threatening to state power. Rights abuses in the region are far reaching and target multiple dimensions of Uighur identity. In addition to "strike hard" measures, officials also have enforced "softer" policies aimed at diluting expressions of Uighur identity. In recent years, local governments have intensified measures to reduce education in ethnic minority languages and have instituted language requirements that disadvantage ethnic minority teachers. Authorities in the XUAR continue to imprison Uighurs engaged in peaceful expressions of dissent and other nonviolent activities.

Although the Chinese government granted political prisoner Rebiya Kadeer early release on medical parole to the United States in 2005, it has since launched a campaign of harassment and abuse against her family members in the XUAR, in an apparent strategy to punish Kadeer for her activism in exile. In 2007, a XUAR court sentenced Kadeer's son, Ablikim Abdureyim, to nine years in prison for "instigating and engaging in secessionist activities." A court imposed a seven-year prison sentence and fine in 2006 on Kadeer's son, Alim.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Provide support for U.S. organizations that can provide technical assistance to the Chinese government in its efforts to draft and revise legislation on ethnic minority rights. Such organizations might include groups already engaged in legal reform projects in China. A new Chinese government program for ethnic minority development, issued in 2007, promotes drafting legislation to protect some aspects of ethnic minority rights, providing one possible opportunity for increased engagement in this area.
- Urge the Chinese government to end the practice of repressing the constitutionally protected right to the freedom of speech by ethnic minorities in China, such as Tibetans, Uighurs, and Mongols, and of punishing or imprisoning individuals of such ethnic minority groups by characterizing peaceful expression and nonviolent action as "splitting the country" or "endangering state security." Urge China's National People's Congress and State Council to clarify within their laws and regulations on state security the distinction between violent terrorist behavior, and nonviolent policy research and advocacy of ideas aimed at expanding ethnic autonomy and rights, and provide explicit legal protection for such research and advocacy. Support funding for organizations that can assist China in such legislative projects. Support funding for organizations that promote human rights in the XUAR. Because of restrictions on civil society groups within the region, recipients of such funding should include organizations that carry out their work outside the region.
- In talks and written correspondence, call on China to release Chinese citizens imprisoned for advocating ethnic minority rights, including prisoners mentioned in this report and included in the Commission's Political Prisoner Database. Such prisoners include Uighur writer Nurmemet Yasin (serving a 10-year sentence for writing a short story about a caged pigeon); Mongol bookstore owner Hada (serving a 15-year sentence for peacefully advocating for ethnic minority rights); and Tibetan schoolteacher Drolma Kyab (serving a sentence of 10 years and 6 months for authoring unpublished manuscripts on subjects such as Tibetan history and People's Liberation Army forces in Tibetan areas).

• Express concern about the continued abuse and imprisonment of Rebiya Kadeer's family members in the XUAR, and call for the release of all political prisoners in the region. Couple efforts to promote Uighur rights within China with measures to protect Uighur culture in diaspora. In particular, in light of recent measures that reduce Uighur language instruction within the XUAR, encourage and provide financial support for organizations and projects that seek to preserve Uighur language and literature in diaspora. Such funding targets could include community language schools that promote training in the Uighur language, especially among Uighur children; literary journals that publish works in Uighur; and library programs to collect Uighur books published inside and outside China and catalogue them by their Uighur-language titles, rather than by the Mandarin-Chinese titles imposed on Uighur books published within China.

POPULATION PLANNING

China continues to implement population planning policies that violate international human rights standards. These policies impose government control over women's reproductive lives, result in punitive actions against citizens not in compliance with the population planning policies, and engender additional abuses by officials who implement the policies at local levels. In 2007, the Party and government leadership reaffirmed its commitment to its population planning policies, and continues to implement such actions as charging large "social compensation fees" to families that bear children "out of plan."

Violent abuses continue to be widespread, particularly when local officials—whose promotions and incomes are connected to performance on these policies—come under pressure from higher level officials for failing to meet family planning targets. In the spring of 2007, local officials in the Guangxi Zhuang Autonomous Region sparked large-scale protests and riots in response to violent and heavy-handed tactics that they used to enforce population planning policies, an incident which underscored the continued tendency of citizens to resist such abuses. Throughout 2006-2007, public officials continued to suppress citizen activists who used legal measures to spotlight or fight illegal and coercive population planning enforcement.

The government has taken limited steps to address social problems exacerbated by population planning policies, such as imbalanced sex ratios and decreasing social support for China's aging population. In 2006, the government announced that the following year it would extend across China a pilot project to provide financial support to rural parents with only one child or two girls, once the parents have reached 60 years of age. At the same time, according to some observers, imbalanced sex ratios and a resulting shortage of marriage partners have already contributed to, or will exacerbate in the future, the problem of human trafficking. Sex ratios stand at roughly 118 male births to 100 female births, with higher rates in some parts of the country and for second births. Demographers and population experts consider a normal male-female birth ratio to be between 103 to 107:100.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge Chinese officials promptly to release Chen Guangcheng, imprisoned in Linyi city, Shandong province, after exposing forced sterilizations, forced abortions, beatings, and other abuses carried out by Linyi population planning officials. Yinan county and Linyi public security, procuratorate, and court officials convicted and imprisoned Mr. Chen through a process that deprived him of many of the procedural protections afforded to him under Chinese law.
- Impress upon China's leaders the importance of promoting legal aid and training programs that help citizens pursue compensation and other remedies against the state for injury suffered as a result of official abuse related to China's population planning policies. Provisions in China's Law on State Compensation provide for such remedies for citizens subject to abuse and personal injury by administrative officials, including population planning officials. Provide funding and support for the development of programs and international cooperation in this area.
- Urge the Chinese government to dismantle its system of population controls, while funding programs that inform Chinese officials of the importance of respecting citizens' diverse beliefs.

FREEDOM OF RESIDENCE AND TRAVEL

The Chinese government still restricts freedom of residence through the household registration (*hukou*) system it first enacted in the 1950s. This system limits the right of Chinese citizens to determine their permanent place of residence. Regulations and policies that condition legal rights and access to social services on residency status have resulted in discrimination against rural *hukou* holders who migrate for work to urban areas. The *hukou* system exacerbates barriers that migrant workers and their families face in areas such as employment, healthcare, property rights, legal compensation, and schooling. The government's restrictions on residence, and discrimination in equal treatment, contravene international human rights standards.

Under President Hu Jintao and Premier Wen Jiabao, the government has attempted to adapt this system to challenges created by the massive job-seeking migrant population spawned by economic reforms. In 2007, the Ministry of Public Security formulated a series of proposals to submit to the State Council for approval. Major reforms in the proposal include improving the temporary residence permit system, improving the ability of migrants' spouses and parents to transfer *hukou* to urban areas, and using the existence of a fixed and legal place of residence as the primary basis for obtaining registration in a city of residence. Uneven implementation of *hukou* reform at the local level has dulled the impact of national calls for change.

The Chinese government continues to enforce restrictions on citizens' right to travel, in violation of international human rights standards. The Chinese government uses restrictions on inter-

national travel to punish activists and control religious communities. In addition, Western academics, NGOs, and even Commission staff and Members have been restricted in their ability to travel to China. The Passport Law, effective January 2007, articulates some beneficial features for passport applicants, but permits officials to refuse a passport where "the competent organs of the State Council believe that [the applicant's] leaving China will do harm to the state security or result in serious losses to the benefits of the state." In August, Shanghai authorities denied the passport applications of rights defense lawyer and former political prisoner Zheng Enchong and his spouse, Jiang Meili. The same month, authorities in Beijing prevented Yuan Weijing, spouse of imprisoned rights activist Chen Guangcheng, from traveling overseas to accept an award on behalf of her husband. House church leader Zhang Rongliang, who resorted to obtaining illegal travel documents after the government refused to issue him a passport, was sentenced to seven and one half years' imprisonment in 2006 on charges of illegally crossing the border and fraudulently obtaining a passport. Also in 2006, authorities detained two leaders of the unregistered Wenzhou diocese, Peter Shao Zhumin and Paul Jiang Surang (who is also known by the name Jiang Sunian), after they returned from a pilgrimage to Rome. Authorities later handed down prison sentences of 9 and 11 months, respectively, alleging they had falsified passports and charging them with illegal exit from the country.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Raise the issue of restrictions on travel, and the cases of Zhang Rongliang, Zheng Enchong, Jiang Meili, and Yuan Weijing (mentioned above) in all levels of talks with Chinese officials. Such dialogue might be integrated into broader discussions on the promotion of citizen activism and of religious freedom.
- Urge the Chinese government to undertake the following measures, in line with recommendations the Commission made to the Chinese government in its 2005 Issue Paper titled "China's Household Registration System:" eliminate *hukou* restrictions that contravene domestic and international law and institute measures to equalize citizens' ability to change their residence; eliminate outstanding rules that link *hukou* status to access to public services like healthcare and education; support private efforts to provide social services to migrants; and engage in international dialogue on migration and *hukou* reform to develop effective models for China's reform efforts.
- Provide funding for organizations that can lend legal training and support for the reform efforts outlined above.

STATUS OF WOMEN

Discrimination against women remains widespread in Chinese society, as equal access to justice has been slow to develop, and coercive population planning policies remain in place in violation of internationally recognized human rights. There is a lack of aware-

ness among Chinese women of legal options when their rights are violated, in spite of efforts by Chinese officials and women's organizations to build protections for women into law. This is especially true of migrant women, women in impoverished rural areas, and women who are members of ethnic minorities. Moreover, a lack of reliable, publicly available statistical information and other data that are disaggregated by sex and region hinder efforts by Chinese women's rights activists and women's organizations to more accurately assess the current problems women face and accurately gauge how effectively laws and Party and government policies are being implemented.

Within the past year, provincial and municipal governments continued to pass regulations to strengthen the implementation of the Law on the Protection of Women's Rights and Interests (LPWRI), which the National People's Congress Standing Committee amended in August 2005. The LPWRI prohibited sexual harassment and domestic violence, and required government entities at all levels to give women assistance to assert their rights in court. In addition, the Ministry of Public Security and All-China Women's Federation, among others, issued guidelines in 2007 that will legally obligate police officers to respond immediately to domestic violence calls and to assist domestic violence survivors, or face punishment.

Women's organizations have been particularly active in the last few years, although these groups advocate on behalf of women's rights within the confines of government and Party policy. In the past year, these women's organizations, lawyers associations, and universities organized seminars and workshops to raise awareness of women's issues among lawyers, judges, public officials, and academics.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- In talks and in correspondence at all levels call on Chinese officials to encourage further creation of comprehensive social services for women, including literacy programs that focus on combating illiteracy among women, longer-term options for sheltering domestic violence survivors, and psychological counseling and suicide prevention programs, especially in rural areas. Urge Chinese counterparts to support initiatives that help raise public awareness of women's issues and rights, especially as they affect migrant women, women from rural communities, and ethnic minority women.
- Fund nongovernmental organizations that provide training to independent Chinese organizations that train legal officials and social service providers in women's issues and rights, and that strengthen collection and publication of data on issues affecting women.
- Encourage bilateral education and exchange programs, such as exchanges between sister-city police officers, judges, and other social service providers that work on cases of domestic violence and other issues affecting women.

HUMAN TRAFFICKING

The National People's Congress Standing Committee revised the Law on the Protection of Minors on December 29, 2006, which took effect on June 1, 2007. Article 41 of the revised law contains new provisions that prohibit the trafficking, kidnapping, and maltreatment, including sexual exploitation, of minors. In July 2007, the All-China Women's Federation (ACWF) and the Ministry of Public Security (MPS) held the first National Anti-Trafficking Children's Forum, in which an MPS spokesperson noted the increase in the number of cases of forced labor trafficking and trafficking for commercial sexual exploitation, and an annual decrease in the number of cases that the MPS handled that relate to the trafficking of women and children for marriage and adoption. According to the MPS spokesperson, "In trafficking and abduction aspects, China's legal protection is underdeveloped, and it needs to be further strengthened." Domestic rather than cross-border trafficking remains the most significant part of the problem in China. Women and children, who make up most cases, are trafficked from poorer provinces to more prosperous provinces. Metrics used to assess the extent of the problem in cross-border contexts may not adequately capture the full extent of human trafficking in China.

Recommendations

To address this issue, Members of the Congress and Administration officials are encouraged to:

- Under the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109-164), authorize and appropriate funding to staff the Office to Monitor and Combat Trafficking within the U.S. Department of State with additional personnel who possess appropriate expertise in China's unique situation, in which the majority of trafficking in persons remains domestic. Strengthen bilateral exchanges, such as the China-U.S. Global Issues Forum, and fund programs through the Department of State and other U.S. government agencies that promote international cooperation and address incidences of domestic and cross-border trafficking of persons in China, as provided for under the 2005 Act. Fund public education and exchange programs in China, such as the training of judges and court personnel, and assistance in the investigation and prosecution of traffickers, as provided for under the 2005 Act.
- Urge the Chinese government to ratify the Trafficking in Persons Protocol under the UN Convention Against Transnational Organized Crime, and to adopt and implement its anti-trafficking National Plan of Action. Use meetings with Chinese officials to encourage the implementation of best practices in investigation and prosecution, such as more comprehensive victim rehabilitation services and greater cross-jurisdictional cooperation among legal and administrative departments to combat forced labor trafficking and to share information about victims and prosecution efforts, including systematic identification of Chinese citizens that distinguishes victims of international trafficking from those who traveled abroad illegally. Urge Chinese officials to use the media to raise citizen

awareness of issues related to human trafficking, such as the role that corruption plays in facilitating trafficking, efforts by law enforcement officials to prosecute trafficking cases, how courts handle trafficking and forced labor cases, and the plight of trafficking victims and survivors.

• It has been reported that the severe imbalance in the male-female sex ratio created by China's population planning policies has the potential to severely exacerbate the trafficking of women from countries such as Laos, Vietnam, and North Korea, and the internal trafficking of Chinese women, for sale as brides. Members of the Congress and Administration officials are encouraged to fund needed research on this extremely serious set of problems, especially as they pertain to the trafficking of women and children for marriage, adoption, and commercial sexual exploitation.

NORTH KOREAN REFUGEES IN CHINA

The Chinese government forcibly repatriates North Korean refugees found on Chinese soil. Because China does not classify North Korean migrants as refugees, the Chinese government denies the UN High Commissioner for Refugees (UNHCR) access to this vulnerable population. North Korean refugees deported from China to the Democratic People's Republic of Korea face punishment ranging from detention in labor camps to long imprisonment to execution. Women are among the most vulnerable of the North Korean refugees in China, at risk of exploitation and abuse at the hands of human traffickers. The Commission notes numerous reports by international humanitarian workers in the region that during the past one to two years, the Chinese government has intensified its efforts to forcibly repatriate North Korean refugees, in part as a security preparation for the 2008 Olympic Games.

Recommendations

To address this issue, Members of the Congress and Administration officials are encouraged to:

• Use meetings and communications with Chinese officials to urge them to honor their obligations under the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol by halting the forced repatriation of refugees, and terminating the practice of automatically classifying all undocumented North Korean border crossers as illegal economic migrants.

• Press these officials to allow the UNHCR unfettered access to this vulnerable refugee population. Encourage them, as part of China's ongoing effort to draft national refugee regulations, to include provisions that establish formal and transparent procedures for the review of North Korean claims to refugee status.

HEALTH

During 2007, healthcare system reform focused on systems to reduce risks and irregularities in healthcare delivery. In July 2007, Premier Wen Jiabao announced plans to provide a national health

insurance plan for all urban residents, including children, the elderly, and the uninsured, with the aim of increasing the number of insured urban residents by 200 million. The central government has selected 79 cities to launch pilot programs by the end of September 2007.

While central government officials have emphasized the importance of combating HIV/AIDS, implementation remains highly problematic. A government advisor on AIDS policy has expressed concern that China's efforts to combat the disease have stalled and that funding, which in 2006 was 3 billion yuan (US$388 million), remains inadequate. At the local level, an overburdened, underfunded healthcare system makes it difficult for governments to provide the necessary prevention and treatment programs. It is not uncommon for persons living with HIV/AIDS and their advocates to report harassment by local officials. In 2007, the government announced plans to spend 960 million yuan (US$127 million) on pharmaceuticals, education, and efforts to reach out to the nation's homosexual community. The Commission will monitor the implementation and results of these plans in the coming months.

Discrimination against carriers of the hepatitis B virus (HBV) remains widespread. Employer screening for HBV remains common, especially in cities. Roughly half of a general population sample surveyed said that they were not willing to work with an HBV carrier, and over half said that they would not hire one. State control of information relating to infectious diseases hampers effective public health policy and management. Regulations categorize as "state secrets" information on large-scale epidemics. A new Beijing municipal regulation contains procedural protections for mentally ill patients hospitalized involuntarily, but concerns about forced commitment of the mentally ill in the period leading up to the 2008 Olympic Games remain.

Recommendation

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Call for an end to the harassment of HIV/AIDS activists listed in the Commission's Political Prisoner Database, such as Gao Yaojie, Wan Yanhai, and Hu Jia. Call on China to ease restrictions on civil society groups and provide more support to organizations that address HIV/AIDS issues. Encourage Chinese officials to make prevention and sensitivity training a requirement for local officials. Encourage Chinese officials to focus attention on the effective implementation of prohibitions on discrimination against persons living with HIV/AIDS and HBV in hiring and in the workplace. Urge public officials to develop and fund training programs to raise awareness among social service providers, public officials, and educators of HBV and other infectious disease-related discrimination in the workplace, schools, and other community organizations.

ENVIRONMENT

China's leaders acknowledge the severity of their country's environmental problems, and the Chinese government has taken steps

to curb pollution and environmental degradation. For example, the central government has developed an expansive framework of environmental laws and regulations to combat environmental problems. Nonetheless, effective implementation remains systemically hampered by noncompliance at the local level and administrative structures that prioritize the suppression of "social unrest" and the generation of revenue over environmental protection.

Just as China's environmental policies have not kept pace with the country's severe environmental degradation, neither have they kept pace with citizens' aspirations for a vigorous expression of concern over environmental health and human rights. During 2007, China's citizens confronted environmental public policy with an increasing propensity not only to voice intense dismay with government and industry, but also to turn to petitions and mass protests, and to some extent the courts, in order to pressure public officials for greater environmental accountability, enforcement, and protection.

Rural residents and middle-class urban residents have increased their participation in environmental activism in the last two to three years. Official responses to environment-related citizen activism have included crackdowns on the free flow of information, and the suppression of citizen complaints and protest. In part because these crackdowns and suppressions target potential social allies instead of engaging them, further environmental degradation may impel China's leaders to acknowledge that these strategies can diminish their capacity to exercise effective environmental leadership over the long run.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Impress upon Chinese officials the urgency with which they must combat the lure of revenue generation over environmental protection, especially at the local level, by urging China to endorse an incentives system for local-level officials to adhere to and enforce environmental laws and regulations. Emphasize in speeches, on Member Web sites, and in other fora the importance of effective local-level implementation of environmental protection measures in China.
- Request meetings with officials from China's State Environmental Protection Administration, provincial environmental protection bureaus, and experts from government, academic, and nongovernmental environmental think tanks when arranging travel to China. Endorse the efforts of officials who seek to implement sound environmental policy by advocating for improved disclosure and dissemination of pollution data. Support programs that provide training for Chinese officials in the conduct of environmental impact hearings open to the public. Support training programs in China aimed at increasing the integrity and precision of environmental data collection methods, and improving administration of public information disclosure and dissemination concerning environmental hazards and emergencies. Encourage constituents with expertise and expe-

rience in successful public-private environmental partnerships to build relationships with provincial and city-level counterparts in China.

• Call attention to China's practice of censoring and penalizing citizens who request access to, and disseminate, information relating to environmental hazards and emergencies. Call on Chinese officials to release and end harassment of environmental activists mentioned in this report, such as Wu Lihong and Tan Kai, and other environmental activists included in the Commission's Political Prisoner Database.

CIVIL SOCIETY

Chinese officials have expressed particular concern in the last year over the influence that civil society organizations have on the course of political development in China. Central and local officials not only tightened existing controls over many of these organizations, but also engaged in the selective use of laws to provide a legal pretext for shutting them down. In a widely publicized example, the influential nongovernmental organization (NGO) publication, China Development Brief, was closed down in 2007 in part because it was accused of violating China's Statistics Law.

In March, the Ministry of Civil Affairs announced that revisions to the key 1998 regulations on managing social organizations were under consideration. The revisions reportedly would for the first time permit international organizations operating in China to register with the government. At the same time, however, they would also retain one of the government's key mechanisms for political control over civil society organizations—the requirement that each organization obtain the formal sponsorship of a Party or government organization.

The government recently has initiated potentially beneficial reforms affecting two types of civil society organizations: rural farmers' cooperatives and charitable groups. The Chinese government has created space for NGO participation in delivering certain services, such as poverty relief.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

• Use contacts with Chinese officials to call for concrete measures that can help ease conditions for civil society, including removal of the legal requirement that all civil society organizations obtain a Party or government sponsor organization and the easing of restrictions on contact between Chinese and foreign NGOs.

• In talks and written correspondence at all levels, call on the Chinese government to release Chinese citizens imprisoned for forming and participating in independent civil society organizations, including prisoners mentioned in this report and included in the Commission's Political Prisoner Database. Such prisoners include Yang Tongyan (also known as Yang Tianshui, sentenced to 12 years in prison on subversion

charges, for criticizing the government online and attempting to form a branch of the China Democracy Party).

ACCESS TO JUSTICE

The Party continues to use the courts and the legal system instrumentally to further its political objectives. In January 2007, the Supreme People's Court issued several opinions calling on courts to insist on the Party's leadership. These opinions outlined in detail how lower courts should handle cases in order to promote the Party's "harmonious society." In February 2007, Luo Gan, a member of the Party Politburo Standing Committee, warned legal officials not to be swayed by "enemy forces" trying to use the legal system to Westernize and divide China, and internal forces that denied the Party's leadership on legal matters.

In March 2007, the President of China's Supreme People's Court urged local judicial officials to make greater use of mediation and other alternative methods of dispute resolution in dealing with cases that touch on issues that could spark public protest. "(R)ural land seizures, urban home evictions and demolitions, enterprise restructuring, labor and social security, and resource and environmental protection" cases were among the issues singled out. Courts have been urged to increase the proportion of cases handled through mediation. Officials continued to implement the State Council's January 2005 regulation on the proper handling of citizen petitions, which forces dispute resolution at local levels, implicitly making it more difficult for citizens to take appeals to provincial and central levels.

In early 2006, the All China Lawyers Association (ACLA) issued a "guiding opinion" restricting the ability of lawyers to handle cases involving representative or joint litigation by 10 or more litigants, or cases involving both litigation and non-litigation efforts. The guiding opinion further instructed law firms to assign only "politically qualified" lawyers to conduct the initial intake of these cases, and lawyers handling collective cases to attempt to mitigate conflict and propose mediation as the method for conflict resolution. Renowned lawyer Zhang Sizhi, former ACLA president, criticized the guiding opinion as retrogressive and warned that it would set the country's legal profession back several decades to the 1980s.

Recommendation

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge China to examine and take steps to ensure that the finality of the formal judicial process is not undermined by alternative channels for dispute resolution. Use meetings with Chinese officials to inquire about China's steps to reform its judicial personnel and budgetary systems, in order to make local courts and judges less beholden to local Communist Party committees and governments.

INSTITUTIONS OF DEMOCRATIC GOVERNANCE

The Ministry of Civil Affairs reported in July 2007 that villages in all of China's 31 provincial-level jurisdictions had held at least

two rounds of elections since 1998, when the Organic Law of the Village Committees took effect. In 2006-2007, official Chinese reports suggested that "corrupt" and "illegal" election practices, including "vote-rigging" and "rampant" bribery, remain widespread, and that there is reason to infer they are getting worse, despite numerous Party and government directives calling for a cleanup.

In 2006-2007, citizens took to the streets in some areas to protest vote-rigging and other electoral abuses. International nongovernmental organization (NGO) monitors, who have been involved in promoting and monitoring these village elections since their inception, have reported that in the past two years, Chinese officials in many localities have increasingly resisted permitting either Chinese or foreign observers to monitor the quality, procedural integrity, and fairness of village elections. The powers of village committees and their elected leaders by law are highly circumscribed by appointed village Party secretaries.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Call on Chinese officials to make elections more transparent by directing each province and locality to openly publish on Web sites and other media outlets detailed electoral information on all village committee and residents committee elections, including advance information on candidate nomination meetings, candidate names, election dates and locations, plus the total number and percentage of the vote each candidate received.
- Strongly urge Chinese officials to revive and expand engagement with international NGOs specializing in election monitoring.

COMMERCIAL RULE OF LAW

Deficiencies in legal institutions and systems of policy implementation have prompted a number of World Trade Organization (WTO) challenges, including challenges to China's intellectual property rights (IPR) enforcement regime and its provision of subsidies to domestic industry in direct contravention of its WTO obligations. China has shown little progress in correcting deficiencies that have prompted these cases and continues to engage in practices that deviate from WTO national treatment principles.

China's long-protected banking and oil sectors were opened in accordance with WTO commitments that came due on December 11, 2006. The opening of oil markets ends a longstanding state monopoly, but concerns about national treatment remain. New measures establish licensing schemes that may maintain some barriers to entry by new market participants without further regulatory loosening or relaxation of licensing requirements.

New banking sector regulations impose stringent compliance and risk management duties on both corporate Boards of Directors and Boards of Supervisors. It is unclear how the rules will be implemented and enforced with respect to institutions, such as many foreign banks, that do not have both a Board of Directors and a Board

of Supervisors. A new Anti-Money Laundering Law, as well as new Bankruptcy, Anti-Monopoly, and Enterprise Tax Laws will have broad impact in and beyond the banking sector.

In the area of transparency, developments include China's solicitation of comments on landmark legislation and regulations that came into effect in 2007 (including the new Labor Contract Law and Tax Law Implementation Regulations). Comment procedures afford interested parties some limited opportunities to offer input during legislative and regulatory development. The State Council's issuance of a landmark Regulation on the Public Disclosure of Government Information in April 2007, to take effect in May 2008, is potentially significant. Also potentially significant is the issuance by the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP) of measures concerning the publication of judicial decisions and other documents.

The SPC issued an interpretation in 2007 concerning China's Law Against Unfair Competition, an important development for judicial reform generally speaking, with possible implications for IPR. China ratified World Intellectual Property Organization (WIPO) Copyright and WIPO Performances and Phonograms Treaties in June 2007. The SPC and SPP jointly issued an interpretation in April 2007 to clarify the application of several criminal law provisions in IPR cases. Thresholds for applying Criminal Law provisions in IPR cases contained in the interpretation, though higher than before, still permit some commercial-scale infringement to elude criminal sanctions.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Urge Chinese officials to close the remaining loopholes contained in its April 2007 SPC-SPP joint interpretation on criminal sanctions and thresholds in IPR cases.
- As a general matter, express concern to Chinese counterparts about China's implementation of new laws and regulations. While some new laws and regulations may be welcome, they should not be seen as a sign of progress unless coupled with consistent, transparent, and effective implementation that meets international standards. Failure to do so risks reducing even good law with the best intentions to mere propaganda, and diminishes the credibility of China's commitment to reform and the integrity of China's legal and regulatory institutions.

IMPACT OF EMERGENCIES

The context of China's domestic rule of law development changed during 2006-2007, with a sharp rise in domestic and international concerns over food safety, product quality, and climate change. These concerns, and China's response to them, will both shape and be shaped by China's rule of law reforms. Because their impact on the course of rule of law in China is expected to be large, these developments are covered in added detail in the main body of this report.

Food Safety and Product Quality

The central government has taken steps to address recent concerns, but inadequate and inconsistent implementation, corruption, and the lack of regulatory incentives hinder effective regulation. The lack of strong national consumer laws, consumer associations, and other civil society groups, and public officials' ongoing harassment of individuals who report issues relating to consumer safety, represent additional challenges in ensuring consumer safety.

The State Council publicly released its national 11th Five-Year Plan on Food and Drug Safety (2006-2010) on June 5, 2007. The plan calls for the implementation of strict controls to prevent farmers and producers from overusing pesticides and additives, to publish online lists of blacklisted food exporters and restrict their ability to export, to strengthen investigations of major food safety incidents, to upgrade standards, and to severely punish offenders. In addition, the General Administration on Quality Supervision, Inspection and Quarantine announced plans to implement the first national recall system by the end of 2007.

Recommendation

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Use meetings and written communications with Chinese officials to underscore how strongly American consumers desire that China reform and strengthen its enforcement system for drug, food, and consumer product safety. Stress the indispensability of organized citizen involvement in making drug and product safety effective, and continue developing and funding Sino-U.S. exchanges aimed at strengthening quality and safety programs. Emphasize the importance of the free flow of information and citizen participation in an effective response to emergencies. Urge an end to the suppression of information during emergencies, and to the practice of penalizing those who wish to access information. Take additional, concrete steps, which might include adding product safety criteria to local officials' performance evaluations, enhancing the capacity and independence of enforcement personnel, and including enhanced whistleblower protection in new legislation and legislation currently under revision.

Climate Change

Government publications in 2007 indicate central government concern with the issue of climate change, but the effectiveness of central government policies to address climate change remains to be seen. China issued its first National Assessment Report on Climate Change in December 2006, and a five-year General Work Plan for Energy Conservation and Pollutant Discharge Reduction on June 4, 2007. The latter establishes regional climate change administrations for coordinating interagency work on climate change, energy efficiency, and renewable energy. The Chinese government does not appear likely to accept a mandatory reduction in its greenhouse gas emissions.

Recommendation

To address this issue, Members of the Congress and Administration officials are encouraged to:

- Use contacts with Chinese officials to continue promoting new areas of cooperation and new opportunities for pollution-control and environmental protection technology transfer, and the promotion of renewable energy use. Continue developing and funding educational exchanges with China regarding environmental governance and climate change.

TIBET

No progress in the dialogue between China and the Dalai Lama or his representatives is evident. After the Dalai Lama's Special Envoy returned to India after the sixth round of dialogue, he issued the briefest and least optimistic statement to date. Chinese officials showed no sign that they recognize the potential benefits of inviting the Dalai Lama to visit China so that they can meet with him directly.

Chinese government enforcement of Party policy on religion resulted in an increased level of repression of the freedom of religion for Tibetan Buddhists during the past year. The Communist Party intensified its long-running anti-Dalai Lama campaign. Tibetan Buddhism in the Tibet Autonomous Region (TAR) is coming under increased pressure as recent legal measures expand and deepen government control over Buddhist monasteries, nunneries, monks, nuns, and reincarnated lamas. The Chinese government issued legal measures that, if fully implemented, will establish government control over the process of identifying and educating reincarnated Tibetan Buddhist teachers throughout China.

Chinese authorities continue to detain and imprison Tibetans for peaceful expression and nonviolent action, charging them with crimes such as "splittism," and claiming that their behavior "endangers state security." The Commission's Political Prisoner Database listed 100 known cases of current Tibetan political detention or imprisonment as of September 2007, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Based on sentence information available for 64 of the current prisoners, the average sentence length is 11 years and 2 months. Tibetan Buddhist monks and nuns make up a separate set of 64 of the known currently detained or imprisoned Tibetan political prisoners as of September 2007, according to data available in the Commission's Political Prisoner Database. Based on data available for 42 currently imprisoned Tibetan monks and nuns, their average sentence length is 10 years and 4 months. (It is a coincidence that the number of monks and nuns, and the number of prisoners for whom the Commission has sentence information available, are both 64).

In its first year of operation, the Qinghai-Tibet railway carried 1.5 million passengers into the TAR, of whom hundreds of thousands are likely to be ethnic Han and other non-Tibetans seeking jobs and economic opportunities. The government is establishing greater control over the Tibetan rural population by implementing programs that will bring to an end the traditional lifestyle of the

Tibetan nomadic herder by settling them in fixed communities, and reconstructing or relocating farm villages.

Recommendations

To address these issues, Members of the Congress and Administration officials are encouraged to:

- Continue to convey to the Chinese government the importance and urgency of moving forward in dialogue with the Dalai Lama or his representatives. The most effective way for the dialogue to move forward is for Chinese government officials to invite the Dalai Lama to visit China and meet with him face-to-face so that the Chinese and Tibetans can begin to overcome obstacles to progress in the dialogue, and seek an understanding that will contribute to the protection and preservation of the Tibetan culture and heritage, and improve China's stability, prosperity, and harmony.
- Convey to the Chinese government the importance of respecting the Tibetan people's right to freedom of religion, and of not using the law as an instrument to deprive Tibetans and other Chinese citizens of that right. Freedom of religion includes the right of Tibetan Buddhists to identify and educate their religious teachers in a manner consistent with their preferences and traditions, without regulation and supervision by the Chinese government. Continue to urge the Chinese government to allow international observers to visit Gedun Choekyi Nyima, the Panchen Lama as recognized by the Dalai Lama, and his parents.
- Increase funding for U.S. nongovernmental organizations to develop programs that can assist Tibetans to increase their capacity to protect and develop their culture, language, and heritage; that can help to improve education, economic, and health conditions of ethnic Tibetans living in Tibetan areas of China; and that create sustainable benefits without encouraging an influx of non-Tibetans into these areas. Such assistance to Tibetans is of increased importance following the start of operation of the Qinghai-Tibet railway.
- Raise in meetings and correspondence with Chinese officials the cases of Tibetans who are imprisoned as punishment for the peaceful exercise of human rights. Representative cases include: monk Choeying Khedrub (sentenced to life imprisonment for printing leaflets); and reincarnated lama Bangri Chogtrul (serving a sentence of 18 years commuted from life imprisonment for "inciting splittism").

The Commission's Executive Branch members have participated in and supported the work of the Commission, including the preparation of this report. The views and recommendations expressed in this report, however, do not necessarily reflect the views of individual Executive Branch members or the Administration.

This report was adopted by a vote of 20 to 1.†

POLITICAL PRISONER DATABASE

A POWERFUL RESOURCE FOR ADVOCACY

Most of the Annual Report's sections provide information about Chinese political and religious prisoners[3] in the context of specific human rights and rule of law abuses, and as the result of the Chinese Communist Party and government's application of policies and laws. The Commission relies on the Political Prisoner Database (PPD) for its own advocacy and research work, including the preparation of the Annual Report, and routinely uses the database to prepare summaries of information about political and religious prisoners for Members of Congress and senior Administration officials.

The Commission invites the public to read about issue-specific Chinese political imprisonment in sections of this Annual Report, and to access and make use of the PPD at *http://ppd.cecc.gov*.

The PPD has served, since its launch in November 2004, as a unique and powerful resource for governments, nongovernmental organizations (NGOs), educational institutions, and individuals who research political and religious imprisonment in China, or that advocate on behalf of such prisoners. The most important feature of the PPD is that it is structured as a genuine database and uses a powerful query engine. Though completely Web-based, it is not an archive that uses a simple or advanced search tool, nor is it a library of Web pages and files. The PPD received approximately 28,000 online requests for prisoner information during the 12-month period ending July 31, 2007. About one-quarter of the requests for prisoner information originated from government Internet domains (.gov).

POLITICAL PRISONERS

The PPD seeks to provide users with prisoner information that is reliable and up-to-date. Commission staff members work to maintain and update political prisoner records based on their areas of expertise. Staff seek to provide objective analysis of information about individual prisoners, and about events and trends that drive political and religious imprisonment in China.

The PPD contained approximately 4,060 individual case records of political imprisonment in China as of September 2007. The Dui Hua Foundation, based in San Francisco, and the Tibet Information Network, based in London, shared their extensive experience and data on political and religious prisoners in China with the Commission to help establish the database.[4] The Dui Hua Foundation continues to do so. The Commission also relies on its own staff research for prisoner information, as well as on information provided by NGOs and other groups that specialize in promoting human rights and opposing political and religious imprisonment.

DATABASE TECHNOLOGY

The PPD aims to provide a technology with sufficient power to cope with the scope and complexity of political imprisonment in China. Upgrades to the database should be in operation before publication of the Commission's 2008 Annual Report, and will increase

the number of types of information available and allow the PPD to function in an interactive manner with other Commission resources and reports. The upgrade will leverage the capacity of these Commission resources to support research, reporting, and advocacy by the U.S. Congress and Administration, and by the public, on behalf of political and religious prisoners in China.

Providing Information to Users While Respecting Their Privacy

The design of the PPD allows anyone with Internet access to query the database and download prisoner data without providing personal information to the Commission, and without the PPD downloading any software or Web cookies to a user's computer. Users have the option to create a user account, which allows them to save, edit, and reuse queries, but the PPD does not require a user to provide any personal information to set up such an account. The PPD does not download software or a Web cookie to a user's computer as the result of setting up such an account. Saved queries are not stored on a user's computer. A user-specified ID (which can be a nickname) and password are the only information required to set up a user account.

Powerful Queries Provide Useful Responses

Each prisoner's record describes the type of human rights violation by Chinese authorities that led to his or her detention. These include violations of the right to peaceful assembly, freedom of religion, freedom of association, and free expression, including the freedom to advocate peaceful social or political change and to criticize government policy or government officials. Since inception, the PPD has allowed users to conduct queries on 19 categories of prisoner information. Users may search for prisoners by name, using either the Latin alphabet or Chinese characters. Users may construct queries to include one or more types of data, including personal information (ethnic group, sex, age, occupation, religion), or information about imprisonment (current status of detention, place of detention, prison name, length of sentence, legal process).

Many records contain a short summary of the case that includes basic details about the political or religious imprisonment and the legal process leading to imprisonment. Users may download and save the results of queries as Adobe Acrobat files or Microsoft Excel spreadsheets.

Upgrading the Database To Leverage Impact

The Commission expects to begin work to upgrade the PPD soon after publication of the 2007 Annual Report. When completed, the upgrade will approximately double the number of types of information available, making it possible for users to query for and retrieve information such as the names and locations of the courts that convicted political and religious prisoners, and the dates of key events in the legal process such as sentencing and decision upon appeal. The upgrade will double the length of the short summary about a prisoner. Users will be able to download PPD information more easily, whether for a single prisoner record, a group of records that

satisfies a user's query, or all of the records available in the database.

The upgrade will also enable the PPD to provide Web links in a record's short summary that can open reports, articles, and texts of laws that are available on the Commission's Web site or on other Web sites. In the same way, Web links in Commission reports and articles will be able to open a prisoner's PPD record. The Commission intends that streamlining and enhancing a user's browsing and research experience will leverage the impact of Commission resources and contribute in a tangible manner to a user's research and advocacy efforts on behalf of political and religious prisoners in China.

Recommendations

When composing correspondence advocating on behalf of a political or religious prisoner, or preparing for official travel to China, Members of the Congress and Administration officials are encouraged to:

- Check the database (http://ppd.cecc.gov) for reliable, up-to-date information on one prisoner, or on groups of prisoners.
- Check a prisoner's database record for available information on the public and state security issues, laws, and legal processes that may apply to the prisoner's case.
- Advise official and private delegations traveling to China to present Chinese officials with lists of political and religious prisoners compiled from database records.
- Urge U.S. state and local officials and private citizens involved in sister-state and sister-city relationships with China to explore the database, and to build new advocacy efforts for the release of political and religious prisoners in China.

II. Human Rights

Rights of Criminal Suspects and Defendants

INTRODUCTION

Since 2001, the Commission has been monitoring the development of human rights and the rule of law in China. The Commission's legislative mandate calls for scrutiny of Chinese government actions that either comply with or violate the fundamental human rights enjoyed by all individuals, including those individuals accused of a crime under China's domestic laws. The mandate calls specifically for the monitoring of criminal defendants' rights, including the right to be tried in one's own presence; to defend oneself in person or through legal assistance; to be informed of the opportunity for trial and criminal defense; to receive legal aid services where necessary; to be afforded a fair and public hearing by a competent, independent, and impartial tribunal; to be presumed innocent until proven guilty; and to be tried without undue delay.[1] In addition, the mandate requires that the Commission focus continuing attention on those individuals believed to be imprisoned, detained, placed under house arrest, tortured, or otherwise persecuted by Chinese government officials in retaliation for the mere pursuit of their rights.[2]

The Commission's annual report recommendations over the past five years have focused on the gap between mere legal ideals and actual law enforcement practice. In 2002, 2004, and 2006, the Commission underscored the continuing need to help fund and strengthen the work of criminal defense lawyers in China. In 2003, and again in 2006, the Commission emphasized that the detention and imprisonment of activists and rights defenders only serve to undermine the legitimacy of China's developing legal system. It thus called for the need to press for release of targeted individuals. Between 2002 and 2004, the Commission underscored the significance of multilateral and diplomatic efforts in encouraging the Chinese government to grant unconditional visits to the UN Working Group on Arbitrary Detention and the UN Special Rapporteur on Torture.[3] Based on the findings of those UN bodies, the Commission focused in 2006 on the urgency of reforming China's administrative detention system, abolishing forced labor practices, and ensuring that the procuracy exercise greater oversight over police abuses.

Domestic and international developments in 2006 have helped to highlight the Chinese leadership's desire to increase China's profile among the international community of rule of law nations. China was elected to serve for a three-year term on the newly established UN Human Rights Council, noting in its application that it had acceded to 22 international human rights accords, including 5 of the 7 core conventions.[4] The Chinese government promised that it would amend its Criminal, Civil, and Administrative Procedure Laws, as well as reform its judiciary, in preparation for ratification of the International Covenant on Civil and Political Rights.[5] In addition, Chinese citizens were appointed to lead international bodies such as the International Association of Anti-Corruption Authorities and the World Health Organization.[6]

While the Commission recognizes the progress that China has made in bringing its own practices into compliance with international standards, it also notes that significant gaps remain within Chinese laws and regulations, and between law on the books and law in action. The ideals embodied in recent legal and regulatory reforms are positive first steps, but nonetheless incomplete, and have not necessarily translated into the everyday practice of local law enforcement officers. For example, international human rights standards require that due process of law be accorded to all criminal suspects and defendants, and that they be free from torture, arbitrary detention, and prosecution on the basis of their political opinions or exercise of human rights.[7] Nonetheless, China's Criminal Law, Criminal Procedure Law, and accompanying regulations leave too much room for discretion and abuse. As a result, NGO and media reports indicate that criminal defense efforts have been hampered, numerous Chinese citizens continue to be arbitrarily detained and convicted, and torture remains widespread.

The Commission's findings in this section have been placed in the context of five years of monitoring and reporting on criminal justice reform, and take into account some of the systemic problems that have persisted throughout China during that timeframe. In many areas of criminal procedure, reforms that were initiated several years ago have stalled in the past year, and failed to achieve

the goals of better protecting human rights and guarding against official abuse. The problems that persist, and the reforms designed to confront those problems, are analyzed in greater detail throughout the remainder of this section. The first part of the section discusses continuing abuses of criminal law and procedure, while the second part turns to institutional failings that make these abuses possible.

LAW IN ACTION: ABUSES OF CRIMINAL LAW AND PROCEDURE

Arbitrary Detention

The UN Working Group on Arbitrary Detention (UNWGAD) defines the deprivation of personal liberty to be "arbitrary" if it meets one of the following criteria:

- there is clearly no legal basis for the deprivation of liberty;
- an individual is deprived of his liberty because he has exercised rights and freedoms guaranteed under the Universal Declaration of Human Rights (UDHR) or International Covenant on Civil and Political Rights (ICCPR); or
- non-compliance with the standards for a fair trial set out in the UDHR and other relevant international instruments is sufficiently grave to make the detention arbitrary.[8]

The ICCPR provides that the deprivation of an individual's liberty is permissible only "on such grounds and in accordance with such procedure as are established by law," and that an individual must be promptly informed of the reasons for his detention and any charges against him.[9]

Arbitrary detention in China takes several different forms, including detention and incarceration for the peaceful expression of civil and political rights, detention and incarceration in circumvention of criminal procedure protections, and illegal extended detention in violation of China's own Criminal Procedure Law.

Political Crimes

China's Criminal Law was revised by the National People's Congress in 1997 to eliminate mention of the socialist revolution and counterrevolutionary crimes, but to otherwise preserve the political and economic orientation of the Chinese criminal justice system:

> The aim of the Criminal Law of the People's Republic of China is to use criminal punishments to fight against all criminal acts in order to safeguard security of the State, to defend the State power of the people's democratic dictatorship and the socialist system, to protect property owned by the State, and property collectively owned by the working people and property privately owned by citizens, to protect citizens' rights of the person and their democratic and other rights, to maintain public and economic order, and to ensure the smooth progress of socialist construction.[10]

Nonetheless, Chinese prisons continue to hold individuals who were sentenced for counterrevolutionary and other crimes that no longer exist under the current Criminal Law.[11] Shortly preceding the annual session of the UN Human Rights Commission in

2005,[12] Chinese central government officials pledged to "provide relief" to those imprisoned for political acts that were no longer crimes under the law.[13] The U.S. State Department reported that in 2006, despite the urging of foreign governments, the Chinese government had yet to conduct a national review of such cases and continued to hold approximately 500 individuals in prison for counterrevolutionary crimes alone.[14]

Developments over the last year have breathed new life into this issue. The Dui Hua Foundation, which researches and seeks to curb political imprisonment, recently confirmed that on November 11, 2007, Chinese authorities will release one of the last known prisoners serving a sentence for the former crime of "hooliganism."[15] Authorities originally detained Li Weihong, a manufacturing worker in Changsha city, Hunan province, in April 1989 for helping to organize protests that subsequently turned violent. In February 2006, authorities released journalist Yu Dongyue, who was detained for throwing paint during the Tiananmen democracy protests of 1989 and later convicted of "counterrevolutionary propaganda" and "counterrevolutionary sabotage and incitement."[16] Numerous others remain in prison for counterrevolutionary crimes, including: Hu Shigen, who helped to establish the China Free Trade Union Preparatory Committee and China Freedom and Democracy Party, and was later convicted of "organizing and leading a counterrevolutionary group" and "engaging in counterrevolutionary propaganda and incitement"[17] [see Section II—Worker Rights for additional information about his case]; and former Tibetan monk Jigme Gyatso, who was detained for distributing pro-independence leaflets and putting up posters and later convicted of "forming a counterrevolutionary organization"[18] [see Section IV—Tibet for additional information about his case].

The Chinese central government officially maintains that there are no "political prisoners" in China, but ample evidence suggests that the Criminal Law is routinely abused to target and imprison individuals for their political opinions or the exercise of their fundamental human rights. China's official position on this issue has remained the same since 1991, when the State Council Information Office issued its first white paper on human rights: "In China, ideas alone, in the absence of action which violates the criminal law, do not constitute a crime; nobody will be sentenced to punishment merely because he holds dissenting political views."[19] However, since 2002, the Commission has reported on the repeated harassment, detention, and imprisonment of political dissidents, journalists, writers, lawyers, human rights defenders, Protestants, Catholics, Falun Gong practitioners, Tibetans, and Uighurs, among other groups. Many of these individuals continue to serve long prison or reeducation through labor sentences as a result of their peaceful exercise of fundamental rights guaranteed under China's Constitution, the UDHR, and the ICCPR.[20]

The ability of local law enforcement officers to target and punish these individuals is made possible, in large part, by the existence of vague criminal and administrative provisions, which allow for the punishment of activists for crimes of "disturbing public order" and "endangering state security."[21] Over the past five years, the Commission has reported on numerous instances in which these

two categories of crimes have been used to charge and convict individuals for their politics, beliefs, and affiliations.[22] After a 2004 visit to China, the UN Working Group on Arbitrary Detention (UNWGAD) recommended that the Chinese government define these crimes in precise terms and create exceptions under the Criminal Law for peaceful activity in the exercise of fundamental rights guaranteed by the UDHR.[23] In his March 2006 report to the UN, Special Rapporteur on Torture Manfred Nowak noted that to date, UNWGAD's recommendation has not been implemented.[24] He further concluded: "The vague definition of these crimes leaves their application open to abuse particularly of the rights to freedom of religion, speech, and assembly."[25] In its 2006 Annual Report, the Commission echoed these international calls for greater clarity in the definition of such crimes under Chinese law. No progress has been made on this front.

The reality is that Chinese citizens remain susceptible to detention and incarceration as punishment for political opposition to the government, as well as for exercising or advocating human rights. China's leaders say that they are committed to building a fair and just society based on the rule of law, with adequate guarantee of civil and political rights. In order to demonstrate true commitment to these claims, China's leaders need to ensure the prompt review of cases in which an individual was charged with counterrevolutionary crimes. They have already set a precedent for doing so, by resolving and releasing one of the last known prisoners serving a sentence for hooliganism, another crime eliminated by the 1997 revision to the Criminal Law. Logical next steps would include taking prompt action to clarify the Criminal Law's vague definitions of crimes that "disturb public order" or "endanger state security," and providing for the parole or immediate release of all political prisoners.

Detention Outside the Criminal Process

Chinese law enforcement officers routinely detain individuals without formal charge or judicial review, in contravention of international human rights standards and Chinese law. Both the UDHR and ICCPR provide that everyone is entitled to a "fair and public hearing" by an "independent and impartial tribunal," and that the accused shall enjoy "the right to be presumed innocent until proved guilty according to law."[26] These guarantees have been incorporated into China's Criminal Procedure Law (CPL) and related regulations. Nevertheless, public and state security officials regularly authorize mass security sweeps and take advantage of law enforcement tools that include incommunicado detention, surveillance, house arrest, and administrative detention measures such as reeducation through labor, to harass and control Chinese citizens.

In some instances, police hold individuals in custody for a few days before ultimately releasing them, without any justification other than a general desire to avoid protests and other instances of social unrest that might undermine Party governance. The CPL permits detention without arrest or charge, but generally requires notification of family members or the detainee's workplace within 24 hours of custody.[27] Public security officials have been known to conduct mass security sweeps during politically sensitive periods in China, including the approach of significant public anniversaries,

the annual sessions of Party or central government officials, and the duration of visits by foreign dignitaries.[28] Citizens from localities throughout China travel to Beijing to voice their complaints before central government offices, often congregating together in "petitioners' villages" on the city's outskirts. [See Section III—Access to Justice for a discussion of petitioning]. NGO and media sources have reported that police officers conduct night raids of these villages, sending petitioners to a special holding location called "Majialou" pending their forced repatriation home.[29] In 2006, a senior official from the Ministry of Public Security justified such security sweeps on the basis of the government's need to "manage public order" and to "reduce some of the factors threatening social stability."[30]

In March 2007, officials launched "the largest 'clean-up' operation by the police in recent years" and detained over 700 individuals.[31] According to Human Rights Watch (HRW), the detentions of more than 700 individuals in advance of this year's session of the National People's Congress were "widely seen as a grand rehearsal in public order tactics for two even more important upcoming events: the Communist Party's 17th Congress in October 2007 and the Olympics Games in 2008." On August 30, officials posted notice of imminent plans to demolish an area bordering the southern railway station in Beijing, where an estimated 3,000 to 4,000 petitioners congregate.[32] The notice provides a three-week deadline for relocation and attributes the timing of the demolition to planned road construction, but HRW asserts that it may also be the result of the "clean-up" in advance of the Party Congress.[33]

In other instances, Chinese law enforcement officers have relied on measures such as surveillance and house arrest[34] to punish and control political activists, despite the lack of any legal basis for such deprivations of liberty. Brad Adams, Director of HRW's Asia Division, has commented that house arrest is becoming "the weapon of choice for the authorities in silencing and repressing civil rights activists."[35] He added, "It is imposed at the entire discretion of the police and takes place outside of any legal procedure—you can't get more arbitrary than that." The case of Chen Guangcheng, a legal advocate who exposed and challenged the abuses of local population planning officials in Linyi city, Shandong province, provides one concrete example to support HRW's analysis. Public security officials at the county level placed Chen under house arrest in September 2005, one year before authorities ultimately charged and convicted him.[36] A network of Chinese human rights activists and groups worked with Chen's defense lawyers to submit information about his case to the UNWGAD, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the Special Representative of the Secretary General for Human Rights Defenders.[37] Around the time of Chen's retrial on November 27, 2006, the same public security officials issued a formal decision to place Chen's wife, Yuan Weijing, under house arrest from November 28, 2006 until May 27, 2007.[38] Despite the expiration date made explicit in this order, security officers reportedly obstructed Yuan's attempts to meet with U.S. Embassy officials in July 2007 and prevented her from exiting the country in August to receive an award on behalf of her husband.[39]

In cases where there is insufficient evidence to proceed with formal prosecution,[40] or it is expedient for the local government to keep watch over an activist for up to several years,[41] public security officials have taken advantage of their power to punish Chinese citizens through administrative sanction. Chinese law allows for punishment that includes "administrative," rather than criminal, detention of individuals who have been accused of "public security" offenses such as public order disturbances, traffic offenses, prostitution, and other "minor crimes" under the Criminal Law.[42] Pursuant to the Public Security Administration Punishment Law (PSAPL), effective March 1, 2006, public security officials can impose sanctions ranging from a warning or fine, to a maximum of 20 days in administrative detention.[43] A total of 165 offenses, including "taking on the name of religion or *qigong* to carry out activities disturbing public order,"[44] are subject to sanctions under the PSAPL. In November 2006, three house church Christians in Wendeng city, Shandong province, succeeded in forcing the local public security bureau (PSB) to rescind its decision to hold them in administrative detention for 10 days for allegedly committing this particular offense under the PSAPL.[45] Their success was attributable to the PSB's willingness to reach an out-of-court settlement and therefore avoid the issue of whether the detention had violated their constitutional and legal rights.[46] [See Section II—Freedom of Religion—Religious Freedom for China's Protestants for a more detailed analysis of efforts to defend religious rights.] Li Baiguang, who represented the three, agreed to drop the administrative complaint that he had filed on October 12 against the PSB in exchange for its promise to rescind the decision.[47]

China's system of "reeducation through labor" (RTL) has long drawn fire from various members of the international community as the most egregious abuse of administrative detention measures. Under the RTL system, public security officials can investigate a case and propose that an individual be confined to a RTL center for up to three years, with the possibility of a one-year extension.[48] The list of offenses subject to RTL is broad and vaguely defined,[49] lending itself to abuse by public security officials in order to silence Chinese citizens who attempt to express their political opinions or assert their fundamental rights.[50] Moreover, the RTL administrative committees that are responsible for making the final decision consist of representatives from each of the local public security, civil affairs, and labor bureaus,[51] but in practice, are dominated by public security officials.[52] Despite being harsher than some criminal punishments,[53] a RTL decision is typically imposed in the absence of judicial review by an independent and impartial tribunal.[54] The Chinese government has argued that administrative detention decisions are subject to judicial review under the Administrative Litigation Law (ALL), but the UNWGAD found ALL review "of very little value" and maintained that "no real judicial control has been created over the procedure to commit someone to [reeducation] through labor."[55] In practice, the decision to confine someone to a RTL center is rarely successfully challenged.[56] Between 1999 and 2002, the number of individuals held in RTL centers was estimated to range from 260,000 to 300,000.[57] According to the U.S. State Department, official statistics released in 2005 re-

flect the rapid growth of these numbers over the past few years, to a new total of approximately 500,000.[58]

Chinese authorities use RTL and other forms of administrative detention to circumvent the criminal process in a manner which disregards the procedural protections guaranteed under domestic and international law.[59] China's Legislation Law requires that all deprivations of personal liberty be authorized by national law, and not just by administrative regulation.[60] Under the criminal justice system, a Chinese citizen cannot be found guilty of any crime, even a "minor crime," without being judged guilty by a people's court.[61] The Constitution makes explicit the inviolable nature of a person's liberty and further dictates:

> No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited. . . .[62]

While the Chinese government consistently emphasizes the beneficial "reeducation" function of administrative detention measures,[63] Manfred Nowak, UN Special Rapporteur on Torture, found after visiting China that "some of these measures of [reeducation] through coercion, humiliation and punishment aim at altering the personality of detainees up to the point of even breaking their will."[64] In his March 2006 report, Nowak concluded that RTL and other forms of administrative detention "go beyond legitimate rehabilitation measures provided for in [A]rticle 10 of the ICCPR."[65] During the seven years between visiting China in 1997 and again in 2004, the UNWGAD found that the Chinese government had made no significant progress in reforming the administrative detention system to ensure judicial review and to conform to international law.[66]

Domestic pressure has been building to reform the RTL system,[67] but efforts have focused on better codification, rather than outright elimination, of the practice. Since March 2005, the National People's Congress (NPC) has been considering a new Law on the Correction of Unlawful Acts that would reportedly enhance the rights of RTL detainees by setting a maximum sentence of 18 months, and by permitting detainees to hire a lawyer, request a hearing, and appeal decisions imposed by public security officials in RTL cases.[68] The draft law does not currently provide the accused with an opportunity to dispute accusations of guilt before an independent adjudicatory body.[69] According to one drafter, the Ministry of Public Security and the Supreme People's Court continue to disagree about whether courts should get involved in the decision making process prior to administrative enforcement of a RTL decision.[70] In an attempt to enhance the transparency of the process,[71] Chongqing municipality recently issued Interim Provisions on Legal Representation in RTL Cases, which went into effect on April 1, 2007, and provide that a suspect may retain a lawyer to contest the legality of the process, access the files relevant to his case, and present proof of his innocence.[72] The Interim Provisions mirror some of the criminal procedure protections contained in the CPL,[73] and could potentially be incorporated into the draft law now pend-

ing before the NPC.[74] While greater access to legal representation is a positive sign, some in China maintain that the RTL system as a whole still contradicts provisions in the Chinese Constitution, CPL, and ICCPR.[75]

Illegal Extended Detention in the Criminal Process

In cases that enter the formal criminal process in China, public security, procuratorate, and court (collectively referred to as *gongjianfa*) officials continue to illegally detain Chinese citizens for long periods of time before determining the outcome of their cases. The National People's Congress (NPC) revised the Criminal Procedure Law (CPL) in 1996 to impose fixed deadlines for the resolution of each stage of the criminal process.[76] In 2003, the Supreme People's Court (SPC) took the lead by additionally issuing a notice to set time limits for the resolution of cases of extended detention in violation of the CPL.[77] The Supreme People's Procuratorate (SPP) soon followed by passing regulations to prohibit the abuse of legal procedures in order to disguise extended detention.[78] The SPC and SPP then worked together with the Ministry of Public Security (MPS) to issue a joint Notice on the Strict Enforcement of the Criminal Procedure Law, and on the Conscientious Correction and Prevention of Extended Detention.[79] The launch of such a major public campaign to eliminate illegal extended detention tacitly signaled acknowledgment by the central government of law enforcement abuses throughout the country.

Extended detention contravenes international standards for the prompt judicial review of a criminal detention or arrest. The ICCPR provides that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power," and that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."[80] In December 2004, the UNWGAD found that the CPL and related regulations on pretrial detention fail to meet these basic standards because: (1) Chinese suspects continue to be held for too long without judicial review; (2) procurators, who review arrest decisions, only examine case files and do not hold hearings; and (3) a procurator cannot be considered an independent adjudicator under applicable international standards.[81]

International scrutiny of this problem over the last few years has led to a dramatic decrease in the number of extended detention cases reported by the Chinese government. In 1998, Chinese procuratorates identified and called for the resolution of extended detention cases involving 70,992 individuals.[82] A white paper on the status of human rights in 2003 noted that extended detention cases involving 25,736 individuals had been resolved that year, accounting for a nationwide effort that was "the most extensive in scope, the biggest in scale and the largest in number of people involved in the nation's judicial experience."[83] By 2004, central government officials reported that there were no cases of extended detention among public security bureaus or procuratorates, and that Chinese courts had cleared extended detention cases involving

just 2,432 individuals.[84] In January 2006, the Chinese government told Manfred Nowak, UN Special Rapporteur on Torture, that serious cases of extended detention lasting more than three years had been eliminated, and that the number of individuals held beyond time limits was at an all-time low.[85] This claim was repeated again in March 2007, when the SPP identified in its work report to the NPC an all-time low of just 233 individuals cleared from extended detention.[86]

The continued decrease in cases of extended detention depends heavily on continued central government efforts to increase transparency and hold local law enforcement officials strictly accountable to the CPL. In May 2006, the SPP explicitly acknowledged that illegal extended detentions remain problematic, and that Chinese authorities misuse provisions in the CPL to disguise this problem.[87] Several months later, SPC President Xiao Yang echoed this acknowledgement and stated in an interview with the People's Daily that "delayed justice is a form of injustice."[88] In March 2007, the Standing Committee of the National People's Congress (NPCSC) commented on the significance of oversight mechanisms in helping to tackle the problem of extended detention.[89] SPP spokesman Dong Jianming has attributed the decrease in cases of extended detention to the NPCSC's push—and the resulting joint effort among *gongjianfa* officials nationwide.[90] *Gongjianfa* officials have continued to work together to finalize new regulations seeking to further address the problem.[91] In addition, China's unique system of ordinary citizens who function as "people's supervisors" expanded its oversight powers in the last year, to guard against illegal extended detentions by all three institutions.[92] This move holds great potential for enhanced public supervision of law enforcement agencies during the criminal process.

Torture and Abuse in Custody

Although illegal in China, torture and abuse by law enforcement officers remain widespread.[93] In March 2006, Manfred Nowak, UN Special Rapporteur on Torture, reported that Falun Gong practitioners make up the overwhelming majority of victims of alleged torture, and that other targeted groups include Uighurs, Tibetans, human rights defenders, and political activists.[94] Over three-quarters of all alleged acts of torture take place in venues where public security officials have chosen to confine criminal suspects.[95] Forty-seven percent of alleged perpetrators are police or other public security officials, while 53 percent are either staff members at correctional facilities or fellow prisoners acting at the instigation or acquiescence of staff members.[96] Forms of torture and abuse cited in Nowak's report include beating, electric shock, painful shackling of the limbs, denial of medical treatment and medication, and hard labor.[97]

Chinese media reports in 2005 about the wrongful conviction of She Xianglin, and in 2006 about the wrongful detentions and torture of four teenagers in Chaohu city, Anhui province, help to shed light on numerous institutional and legal factors that are to blame for the continuing problem of torture in China.[98] In both cases, authorities relied heavily on confessions obtained during interrogation as evidence of alleged crimes. She Xianglin, who was originally con-

victed of murder after the disappearance of his wife in 1994, was ultimately released in April 2005 after 11 years in prison and his wife's unexpected return to their village in Hubei province.[99] The Chaohu teenagers, who ranged in age from 16 to 18, were released in January 2006 after more than three months in police custody and further investigative efforts leading to the arrests of four other suspects.[100] Both cases reflect a number of institutional hurdles at the heart of the torture issue, including pressure on public security bureaus to meet quotas for cracking down on crime, inadequate training and investigative tools, and the lack of independence and oversight exercised by the procuracy and judiciary.[101] They also spotlight continuing legal challenges, including a strong presumption of guilt in criminal cases, the abuse of administrative detention measures, the absence of lawyers at interrogations, the lack of a rule requiring the exclusion of illegally acquired evidence, failure by procuratorates to prosecute torture cases, and inadequate complaint mechanisms.

Since releasing China's Third Report on the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 2000,[102] central government leaders have repeatedly emphasized their ongoing efforts to pass new laws and administrative regulations preventing, punishing, and compensating cases of torture by law enforcement officers.[103] For example, China's Criminal Law provides for the punishment of judicial officers who coerce confessions under torture or acquire evidence through the use of force, and also imposes liability in particularly "serious" cases where police or other corrections officers have beaten or otherwise mistreated prisoners.[104] In 2003, the Ministry of Public Security (MPS) issued a new regulation to also prohibit the use of torture as an investigative tool in administrative cases.[105] The following year, the Party,[106] MPS,[107] and Supreme People's Procuratorate (SPP)[108] each passed regulations to provide for Party or administrative sanction (including demerits, demotions, and dismissals) of officials who employ torture as an investigative tool to coerce confessions. The Ministry of Justice (MOJ) issued similar regulations in 2006 to provide for both administrative sanction and criminal investigation of prison and re-education through labor (RTL) police who beat, or instigate others to beat, detainees.[109] SPP regulations that went into effect on July 26, 2006, provide detailed criteria for the criminal prosecution of police who abuse their power to hold individuals in custody beyond legal limits, coerce confessions under torture, acquire evidence through the use of force, mistreat prisoners, or retaliate against those who petition to, or file complaints against, the government.[110]

Despite international safeguards and recent domestic reforms designed to help guard against torture in China, one China scholar has noted that "persons acting in an official capacity who torture and ill-treat others in violation of the [CAT] generally do so with impunity."[111] Two months after Xinhua and Southern Metropolitan Daily reports revealed the extent to which the Chaohu teenagers had been tortured while in custody,[112] two senior SPP officials called on local procuratorates to strengthen their supervision over criminal investigations, and to bring into line police who extract

confessions through torture or who illegally gather evidence. Deputy Procurator-General Wang Zhenchuan acknowledged that almost all wrongful convictions in China involve police abuses during the investigative stage,[113] and Chen Lianfu, head of the SPP office that investigates official misconduct and rights infringement, reported that systemic reforms still had to be implemented.[114] Neither provided statistics to detail the number of officials who had been prosecuted for torture in recent years, but SPP work reports submitted to the National People's Congress indicate that the number of officials investigated for civil rights abuses, including torture, totaled 1,983 in 2001, 1,408 in 2003, and 1,595 in 2004.[115] This number dropped to 930 in 2006, the same year that the SPP released its regulations on filing rights abuse cases for prosecution.[116] It is difficult to analyze how many Chinese officials go unpunished in any given year, particularly when the central government does not recognize the competence of the Committee against Torture to investigate allegations of systematic torture.[117] According to Nowak, SPP figures "are clearly the tip of the iceberg in a country the size of China and demonstrate that most victims and their families are reluctant to file complaints for fear of reprisal or lack of confidence that their complaints will be addressed effectively."[118]

Law enforcement practices in China further provide for official impunity by failing to adequately criminalize non-state actors who commit torture and abuse at the behest of state actors. Nowak pointed out that this omission is one reason that the Chinese definition of torture fails to correspond fully to the international standard as outlined in Article 1 of the CAT.[119] The MOJ's 2006 regulations are illustrative of this point, and punish only prison and RTL police for beating, or instigating others to beat, detainees. They do not take into account the existing practice of "*fanren guanli fanren,*" whereby "cell bosses" take part in correctional facility administration by helping officials control and punish recalcitrants.[120] Human Rights in China has noted that inmates who are assigned to supervise others "are widely known in the system as 'second-rank cadres,' or 'the second government,' indicating their power in the system."[121] Imprisoned legal advocate Chen Guangcheng told his wife that on June 16, 2007, six other inmates at Linyi Prison pushed him to the floor, and hit and kicked him hard, at the instigation of prison guards after he refused to have his head shaved.[122] There is no indication that any prison guards have been investigated as a result of this incident. In June 2005, when fellow detainees beat to death a 15-year-old at the instigation of a detention center superintendent in Jingdezhen city, Jiangxi province, the local procuratorate indicted the superintendent only for "abuse of power to accept bribes."[123] A September 2004 article on the Web site of the Chinese People's Political Consultative Conference disclosed that between 2003 and 2004, over 20 "prison bosses" had been investigated in Guangshan county, Henan province, alone. The article called for elimination of the practice of "*fanren guanli fanren.*"[124]

Social Unrest and Coercive Use of Police Power

The Chinese government maintains a vast network of people's police, who are employed in state security bureaus, public security bureaus, prisons, reeducation through labor centers, procuratorates, and courts throughout the nation. Public security bureaus (PSBs) divide their police into separate categories of "administrative personnel" responsible for public security, transportation, residence and migration, border defense, customs and immigration, fire prevention, and management of information and Internet safety, and "criminal personnel" responsible for investigation of crimes. In addition, local PSBs employ personnel responsible for domestic security and protection (*guobao*), which sometimes has been used to justify the targeting and harassment of democracy activists, Falun Gong practitioners, and other dissidents.[125] Official statistics recently disclosed that there were over 490,000 PSB police employed as police station personnel, 130,000 as community police officers, and 150,000 as criminal investigators as of early 2006.[126]

Communist Party leaders have leaned heavily on the powers of the police in order to quell social unrest during the past few years, but earlier this year, top Ministry of Public Security (MPS) officials acknowledged the risks inherent in such a tactic. The MPS reported a rise in "mass incidents," defined to include public demonstrations, protests, and riots over unresolved claims,[127] from 58,000 in 2003 to 74,000 in 2004.[128] This figure dropped to about 27,500 in 2005, and 23,000 in 2006, [129] accompanied by an MPS denial of the existence of any inherent conflict between police and civilians.[130] Notwithstanding the decrease in numbers and the accompanying MPS statement, there have been news reports of increasingly violent clashes between police and protesting villagers all over China. In December 2005, public security officials in Shanwei city, Guangdong province, brought in forces from the paramilitary People's Armed Police (PAP) to handle a protest by local villagers.[131] The PAP opened fire onto the crowd, and some estimates placed the resulting death count at up to 20 villagers. At a national public security meeting convened in April 2007 in Xi'an city, Shaanxi province, Vice Minister of Public Security Liu Jinguo emphasized the need to avoid police mishandling of demonstrations and protests, and warned that such mishandling could "aggravate the conflict and worsen the situation." [132]

A number of Chinese lawyers and former law enforcement officers agree that no inherent conflict exists between police and civilians, but they also warn that abuse of the coercive power of the police may create new tensions. One commentator, who formerly taught at a public security vocational school in Zhejiang province, attributed clashes between police and civilians to the fact that "Chinese police are policemen for the Party, not for the state." [133] Another commentator, who served for 18 years as a former police officer in Jiangsu province, added that in carrying out their law enforcement duties, the police do not carry out the laws of the state: "They carry out the law neither pursuant to the Police Law, nor pursuant to various [other] laws, but instead pursuant to the will of senior Party officials." [134] He added that the ability of PSB police

to simultaneously carry out both police and "non-police" (namely, administrative) functions has contributed to their loss of legitimacy in the eyes of the public.

Party and central government statements confirm that Chinese police forces are in fact required to assist in the advancement of Party priorities. A 2003 resolution passed by the Communist Party Central Committee (CPCC) establishes that "public security work must proceed under the Party's absolute leadership."[135] At its sixth plenum in October 2006, the CPCC issued a communiqué to announce that "the [Communist Party of China]'s role as the core leadership must be brought fully into play to build a harmonious socialist society."[136] At the same plenum, the CPCC also passed a resolution calling on police and armed forces to further strengthen public security, state security, and national defense construction, in furtherance of a "harmonious society."[137] The resolution specifically called on the MPS to reform community police affairs so that a "frontline platform" could be created to service the masses and safeguard stability. Later that month, Xinhua identified construction of this "frontline platform" as a significant part of Public Security Minister Zhou Yongkang's 2006 plan to reorganize public security agencies and send more police forces out into local communities and villages.[138] At a press conference in November, the MPS reported that it had issued a new Resolution on Implementing a Strategy for Community and Village Police Affairs, and had already set up more than 30,000 new police stations and dispatched more than 70,000 police officers to watch over villages nationwide.[139] One senior official defined the new strategy for community and village police affairs to be one that would allow public security agencies to "deeply integrate" into local communities, families, and schools, and "merge into one with the people,"[140] in the name of safeguarding public security and order, as mandated by the Party.

Last year's implementation of the Public Security Administration Punishment Law (PSAPL)[141] helps expand the legal authority of PSB police to almost every realm of civilian life, creating new cause for concern about police abuses and domination over the general populace. [See Section II—Freedom of Expression for additional discussion of abuse of the PSAPL to exercise control over the sharing of information.] One month after the law went into effect, police reportedly filed over 35,000 cases, leading to the investigations of over 40,000 individuals, warnings or fines issued to over 16,000, and administrative detention of over 7,000 in Beijing alone.[142] In a July 2006 article that asks "Why Some Police Resemble Crime Bosses," a China Youth Daily journalist comments: "If detention and other criminal investigation measures are used in the administration of public security cases, while public security aspects of the [police] power are brought into criminal investigations, then objectively, this creates a self-perception among some police that they are boss."[143] The article asserts that there is a certain pervasiveness to abuse of power by the police, and that it can best be blamed on their unchecked legal authority. In March 2007, a Shenzhen delegate to the National People's Congress proposed revising the PSAPL to further expand the authority of the police to detain individuals for disruption of city management.[144] Under his proposal, individuals would be at the mercy of the police for such minor of-

fenses as running an unlicensed business or health clinic. Within months, the China Media Project, based across the border from Shenzhen in Hong Kong, questioned whether Chinese police aren't already "over-reaching" in their application of the PSAPL.[145]

Supervision over China's police forces has not improved in the last year, particularly when taking into account the concerns previously expressed by this Commission. The Commission noted in last year's annual report: "The government does not encourage external supervision over police affairs or prosecution of police abuses by the procuratorate, as mandated by law."[146] While the MPS continues to disclose the number of police officers who have been disciplined or even dismissed for improprieties, their sanctions are still decided and administered internally, by Party or MPS superiors.[147] One prominent Beijing law professor argues that the increasingly vicious nature of the police is attributable to this lack of meaningful constraints either externally or internally.[148] In February 2006, the Procuratorial Daily published an article that recognized the lack of power exercised by lawyers and courts during the investigative stage of the criminal process, and highlighted the urgency of greater procuratorate supervision as the only means for reining in the police.[149]

Access to Counsel and Right to Present a Defense

Most Chinese defendants go through the criminal process and are tried without assistance from an attorney, despite guarantees under Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR).[150] In 2006, domestic media sources reported the continuing growth of China's legal profession to over 150,000 attorneys and 12,000 law firms nationwide.[151] The Chinese government requires that public security bureaus and procuratorates notify all criminal defendants of their right to apply for legal aid,[152] and also mandates that all practicing attorneys undertake the duty of legal aid.[153] Nonetheless, the number of criminal cases handled per lawyer in a city like Beijing, one of China's most legally advanced locales, fell from 2.64 in 1994 to 0.78 in 2004.[154] The Commission noted in 2003 and 2004 that only one in three criminal defendants have access to legal counsel. This number fell to about 30 percent in 2005 and 2006, and has continued to drop.[155] China's legal system therefore makes possible, but does not guarantee, the fundamental right to legal assistance in defending oneself against the state.[156]

The ability to present a defense is further limited in China because of constraints on the role that criminal defense lawyers may play. Lawyers have long complained about the "three difficulties" that they face in criminal defense work: (1) the difficulty in obtaining permission to meet with a client, (2) the difficulty in accessing and reviewing the prosecution's evidence, and (3) the difficulty in gathering evidence in support of the defense. The Commission has reported on multiple cases in which law enforcement officers abused their discretion to deny a defendant access to his lawyer, noting in particular abuse of the "state secrets" exception.[157] [See Section II—Freedom of Expression for more information on abuse of "state secrets" law.] U.S. permanent resident Yang Jianli,[158] democracy activist Xu Wanping,[159] and freelance writer Yang

Tongyan[160] (who uses the pen name Yang Tianshui) were all denied access to their defense lawyers on the grounds that their cases involved state secrets. In addition, Chinese law authorizes law enforcement officials to obtain evidence from concerned parties, but provides that evidence involving state secrets "shall be kept confidential."[161] This effectively shields public security and procuratorate authorities from having to turn over to the defense any evidence they deem to be classified. In 2004, the UN Working Group on Arbitrary Detention identified China's use of the "state secrets" exception as one area of particular concern.[162] In April 2007, the All China Lawyers Association (ACLA) released its first draft proposal for a new revision of the Criminal Procedure Law, and took special note in its executive summary of the need to eliminate these "three difficulties" in criminal defense work.[163]

Chinese defendants remain vulnerable to official abuses and faced mounting challenges to the defense of their legally protected rights during the past two years, as lawyers in general were increasingly called upon to contribute to the Party's efforts to build a "harmonious society." This new role was first clarified in ACLA's 2006 guiding opinion, which the Commission analyzed as an effort to restrict and punish lawyers who choose to handle collective cases without authorization.[164] In its December 2006 report on the effects of this guiding opinion, Human Rights Watch (HRW) asserted that the opinion "fundamentally harm[s] the entire profession by limiting its independence and legitimizing the interference of local governments in professional processes."[165] HRW further noted, "It is not the role of lawyers to protect social and political stability," but that instead, "[t]heir duty is to represent their clients in an ethical and professional manner."[166] ACLA's guiding opinion effectively calls on China's legal profession to function in the interests of the Party and state, a demand that conflicts with a lawyer's duty to his client in criminal cases. The opinion calls into question ACLA's ability to operate as a self-governing professional association that works in the interests of Chinese lawyers, without external interference. In the wake of its issuance, a group of Beijing law professors and practicing lawyers held a seminar to voice their concerns. Renowned lawyer Zhang Sizhi, former ACLA president, criticized the guiding opinion as retrogressive and warned that it would set the country's legal profession back several decades to the 1980s.[167]

The foregoing problems are made worse by the fact that it is increasingly dangerous for Chinese defense lawyers to carry out their work, especially in high-profile or politically sensitive cases. Law enforcement officials sometimes resort to intimidating lawyers who defend these cases, charging or threatening to charge them with crimes such as "evidence fabrication" under Article 306 of the Criminal Law.[168] Despite official recognition of the chilling effect that such tactics have had on criminal defense work,[169] as well as indications that Article 306 would be repealed,[170] this problem persists and has become more damaging to China's legal system in the face of unchecked police power.[171]

In May 2007, the Network of Chinese Human Rights Defenders (CRD) published a report on "The Perils of Defending Rights" and included information on 20 "endangered defense lawyers."[172] This

list included all of the defense lawyers that the Commission reported on in 2006.[173] The Hong Kong-based China Human Rights Lawyers Concern Group issued an open letter to President Hu Jintao and Premier Wen Jiabao, dated June 22, 2007, to demand an end to the crackdown on defense lawyers and human rights activists.[174] The letter points to the ongoing harassment, targeting, and criminal cases of Gao Zhisheng, Chen Guangcheng, Yang Maodong (who uses the pen name Guo Feixiong), and Zheng Enchong as representative of that crackdown. In the weeks preceding publication of this report, authorities stepped up their campaign against those lawyers not already in official custody. Gao, who has been living on the outside since his three-year prison sentence was suspended in December 2006 for a period of five years,[175] went missing immediately after an open letter that he sent to the U.S. Congress was made public at a Capitol Hill press conference on September 20, 2007.[176] Zheng, who was released from prison in June 2006 and had his political rights reinstated in June 2007,[177] was taken into custody for interrogation as recently as September 29, 2007, for his potential involvement in sending an open letter to the United Nations.[178] Chen Guangcheng remains in prison, serving out his sentence of four years and three months for destruction of property and gathering crowds to disturb traffic order. As of the date of this report, Yang Maodong has been in detention for one year without any resolution to his criminal case.

Continued Crackdown on Rights Defenders

The UN High Commissioner for Human Rights defines a "human rights defender" as someone who acts on behalf of individuals or groups to promote and protect civil and political rights, and to promote, protect, and realize economic, social, and cultural rights. This definition includes those who focus on good governance and advocate peacefully for an end to government abuses of power.

In 2006–2007, local government officials in China continued to target for repression human rights defenders and others who turned to the law to defend their constitutionally protected rights. Harassment of the following high-profile lawyers and legal advocates intensified:

Chen Guangcheng

Current location: Linyi Prison.

Current status: Serving a sentence of four years and three months in prison for "intentional destruction of property" and "gathering people to disturb traffic order." Reportedly beaten in June 2007 by fellow inmates, at the behest of prison guards.

Profession and/or activity: Drew international attention in 2005 to population planning abuses in Linyi city, Shandong province. Issued a report that documented the extensive use of violence by local officials in order to implement population planning policies, and assisted in a lawsuit that sought to challenge those abuses.

Associations:

Continued Crackdown on Rights Defenders

- **Yuan Weijing** (Chen's wife and the mother of their two small children): Under house arrest from November 28, 2006 to May 27, 2007. Prevented from meeting with U.S. Embassy officials in July, and from leaving the country to receive an award on her husband's behalf in August.
- **Hu Jia, Zeng Jinyan** (activist couple who have befriended and spoken out on behalf of Chen and his wife): Prevented from leaving the country for travels in May 2007. Reportedly under house arrest, under suspicion of endangering state security.

Gao Zhisheng

Current location: Unknown.

Current status: Released from official custody on December 22, 2006 to serve a three-year prison sentence, suspended for five years, for the crime of "inciting subversion of state power." Went missing immediately after his open letter to the U.S. Congress was made public at a press conference on Capitol Hill on September 20, 2007.

Profession and/or activity: Founder of the Beijing Shengzhi Law Firm and criminal defense lawyer who has represented numerous activists, religious leaders, and writers. Law firm was shut down in November 2005, several weeks after he issued an open letter to President Hu Jintao and Premier Wen Jiabao to expose reports of widespread torture against Falun Gong practitioners.

Associations:

Geng He (Gao's wife and the mother of their two children): Under constant police surveillance since August 2006, and reportedly beaten by plainclothes police officers in late-November.

Li Heping (Gao's friend and fellow Beijing lawyer and rights defender): Reportedly beaten on September 29, 2007 and told to leave Beijing immediately. Returned home to discover that some of his legal files and his license to practice law were missing.

Guo Feixiong (Gao's colleague at the Beijing Shengzhi Law Firm): See below.

Yang Maodong (pen name: Guo Feixiong)

Current location: Guangzhou No. 3 Detention Center.

Current status: In official custody since September 14, 2006, transferred back and forth between Shenyang city, in Liaoning province, and Guangzhou city, in Guangdong province. Reportedly tortured while in detention in Shenyang. Ultimately put on trial on July 9, 2007 for "illegal operation of a business," in connection with a book that he edited about a political scandal in Shenyang. Still awaiting final judgment on his case.

Profession and/or activity: Previously detained for three months in late 2005, after he advised villagers in Taishi, Guangdong, on their recall campaign against an allegedly corrupt village committee head.

Zheng Enchong

Current location: Shanghai.

Continued Crackdown on Rights Defenders
Current status: Released from Tilanqiao Prison in Shanghai municipality on June 5, 2006, upon expiration of a three-year prison sentence for "illegally providing state secrets to entities outside of China." Passport application denied; prevented from visiting Hong Kong in August 2007. Taken into custody for interrogation as recently as September 29, 2007, for alleged involvement in putting together an open letter to the United Nations. *Profession and/or activity:* Criminal defense lawyer whose license to practice law was revoked in 2001, after he advised more than 500 households displaced by Shanghai's urban redevelopment projects. *Associations:* **Guo Guoting** (one of Zheng's criminal defense lawyers): License to practice law revoked in early 2005. Placed under house arrest for "adopting positions and making statements contrary to the law and the Constitution." Ultimately forced into exile.

Fairness of Criminal Trials

Over the past few years, Chinese courts have maintained a consistent conviction rate above 99 percent,[179] due in part to the lack of fairness of criminal trials and the routine failure to comply with standards set forth under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).[180] China's criminal justice system is strongly biased toward a presumption of guilt, particularly in cases that are high-profile or politically sensitive.[181] Trial courts are required by law to conduct their proceedings in public, but can also resort to the "state secrets" exception and conduct politically charged trials as they see fit,[182] behind closed doors and thus shielded from public scrutiny. Court officials have in the past also denied requests by U.S. embassy and consular officers to attend the criminal trials of certain political, legal, and religious activists, including the August 2003 trial of U.S. permanent resident Yang Jianli and the November 2005 trial of Protestant house church leader Cai Zhuohua. Yang was released on April 27, 2007, after serving a five-year prison sentence for alleged espionage and illegal border crossing.[183] Cai was released on September 10, 2007, upon the completion of his three-year prison sentence for printing and giving away Bibles and other religious literature without government permission.[184] In June 2007, the Supreme People's Court (SPC) issued several opinions aimed at improving trial adjudication throughout China, and called on local courts to carry out trial proceedings lawfully, promptly, and transparently.[185] Nonetheless, the opinions keep intact the "state secrets" exception.

Chinese courts rely heavily on the defendant's confession and on pretrial witness statements to judge guilt or innocence, even though provisions in the Criminal Procedure Law (CPL) explicitly prohibit this.[186] In 2005 and 2006, the Commission reported on several wrongful convictions that had been decided on the basis of confessions and pretrial statements only, and were later reversed.[187] In the wake of She Xianglin's wrongful conviction, a

Xinhua article provided the following quote from his lawyer: "Throughout the case, with the exception of She Xianglin's own confession, there was neither any evidence nor witnesses to prove that [Mr.] She had killed someone."[188] Illegally obtained evidence, such as a confession coerced under torture, is not currently excludable under the CPL, and about 95 percent of witnesses fail to appear in court to corroborate their pretrial statements. In the executive summary to its draft proposal for a new CPL, the All China Lawyers Association (ACLA) emphasized the adversarial nature of the criminal justice system, and urged a greater balance between what the prosecution and defense are allowed to present as evidence in support of their case.[189] ACLA's proposal insists that the CPL be revised to clarify the procedures for excluding illegally obtained evidence. In addition, it urges that courts be granted the legal authority to subpoena witnesses, noting that without this authority, a criminal defendant is deprived of his ability to confront witnesses and therefore present a proper defense.

The SPC made criminal justice reform one of its top priorities for the 2004 to 2008 period, but court reforms must proceed in the larger context of a biased judiciary in China. The SPC's most recent five-year court reform program provides that greater procedural protections be afforded to criminal defendants facing the death penalty, and that officials reject the use of illegally obtained evidence and adopt the principle of a presumption of innocence.[190] The program also addresses some of the institutional problems facing the judiciary generally, but it does not change basic Party control over the courts. In fact, the program makes clear that courts are also expected to strive toward the Party's ultimate goal of building a "harmonious society." Numerous structural constraints and internal practices therefore continue to limit the independence of Chinese courts and judges. In the Xinhua article on She Xianglin's case, one judge commented that the court responsibility system for wrongly decided cases, which has been used to discipline judges for cases overturned or altered on appeal, in fact increases the pressure felt by judges and causes them to decide cases in a way that takes into account various external factors.[191] Moreover, senior court officials and Party political-legal committees continue to influence judicial decisionmaking, particularly in sensitive or important criminal cases.[192] At present, the Chinese judiciary is therefore restricted in its ability to function as a transparent, impartial, and independent part of the legal system, and therefore, as a body capable of ensuring the full protection of defendants' rights.

Death Penalty Review and Regulations Against Organ Harvesting

Chinese criminal law includes 68 capital offenses, over half of which are nonviolent crimes such as tax evasion, bribery, and embezzlement.[193] In recent years, China's central government leadership has adopted an "execute fewer, execute cautiously" policy, but the government publishes no official statistics on the number of executions and reportedly considers this figure a state secret.[194] Some Chinese sources estimate that the annual number of executions in China ranges from 8,000 to 10,000.[195] The Dui Hua Foundation, which researches and seeks to curb political imprisonment, estimates that China executed about 100,000 individuals during

the past decade, accounting for more than 95 percent of all executions worldwide.[196] According to Dui Hua, since the late 1990s there has been a significant rise in the executions of those found guilty of membership in "splittist, terrorist organizations" in the Xinjiang Uighur Autonomous Region.[197] In addition, since the 1980s, numerous credible foreign media sources have reported on the practice of state-sanctioned removal and sale of the internal organs of executed prisoners.[198] One Chinese magazine disclosed in late-2005 that over 95 percent of organs transplanted in China comes from executed prisoners, and cited to Vice Minister of Health Huang Jiefu as the first official to publicly acknowledge that the majority of those organs originate from such prisoners.[199]

The leaders of China's highest court have reasserted their legal authority to review all death penalty cases in an effort to limit the use of death sentences, and to prevent miscarriages of justice that undermine China's criminal justice system. Xinhua reported earlier this year: "On Jan. 1, 2007, the Supreme People's Court (SPC) retrieved the right to review all death penalty decisions made by lower courts, ending its 24-year absence in approving China's execution verdicts."[200] Since January, SPC officials have heralded death penalty reform as a success, citing to the fact that the number of death penalty sentences imposed in 2006 reached a decade-long record low,[201] and that during the first five months of 2007, the number of death sentences imposed by courts in Beijing dropped 10 percent from the same period last year.[202] In early September, the China Daily reported that the downward trend had continued, and quoted one SPC vice president as saying that "[the SPC] is handing down a very small number of death sentences for economic crimes now, just a few a year. And much fewer for crimes of bribery."[203] A week later, domestic news media reported that the SPC had issued a new decision on adjudication of criminal cases, which called for "strict control and cautious application of the death penalty"[204] (code words for the government's continuing promise to limit the use of death penalty to only the most serious criminal cases).

The SPC first began considering death penalty reform in 1996, when the Criminal Procedure Law was revised, but pressure to accelerate reforms increased only after 2000, in response to domestic media coverage about a number of wrongful convictions that had led to unjustified executions.[205] For example: In early 2005, a rape and murder suspect arrested by police confessed that he had committed the crime that had resulted in the 1995 execution of Hebei farmer Nie Shubin.[206] In January 2007, the Hunan provincial high court acknowledged that the 1999 execution of local farmer Teng Xingshan was for the alleged murder of a woman who was in fact still alive.[207] Over the past few years, the SPC has convened a number of seminars and training sessions to help lower-level courts draw lessons from judgments made in error.[208] Last year, the Commission reported that the Chinese judiciary made reform of the death penalty review process a top priority in 2006, introducing new appellate court procedures for hearing death penalty cases.[209] At the same time, the Commission also noticed that the SPC had not yet issued a judicial interpretation to help settle unresolved

issues in the death penalty review process and further clarify its own procedures.

SPC reform efforts during the past year have helped to clarify a new review process by which errors will better be detected, but reforms do not address continuing concerns about the use of illegally obtained evidence or the lack of judicial independence generally.[210] The SPC's five-year court reform program effectively creates a three-step process in death penalty cases that is not available in ordinary criminal cases.[211] Beginning in 2006, provincial-level high courts are to focus solely on appeals from lower-level courts.[212] As of January 1, 2007, pursuant to an amendment to the Organic Law of the People's Courts, death penalty sentences are then submitted to the SPC for review and approval.[213] This extra step is designed to provide an extra guarantee of impartiality, but an SPC decision issued in December 2006 indicates that death sentences subject to immediate execution (sometimes imposed because the case has been accelerated due to intense external pressures) still remain within the jurisdiction of provincial-level high courts only.[214] The SPC has more recently taken the lead in issuing, together with the Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Justice, a joint opinion on the entire process for handling death penalty cases.[215] While this may be a positive step toward providing greater clarity and transparency throughout the criminal process, the joint opinion still does not provide for the excludability of illegally obtained evidence and repeats the standard practice that such evidence cannot form the basis for a verdict.[216] Furthermore, the joint opinion emphasizes the relevance and ultimate decisionmaking power of adjudication committees at the trial and appellate court levels, and provides for active participation by the procuratorate, but not by defense counsel, throughout all stages of the case.[217]

Interestingly, the new joint opinion also grants a criminal defendant the opportunity to meet with his family prior to execution,[218] and prohibits "humiliation" of a corpse,[219] provisions that hint at the need for greater respect for the sanctity of the deceased. In 2006, reports from overseas medical and legal experts condemned the government's continuing practice of harvesting organs from executed prisoners without their consent.[220] In January 2007, David Kilgour, a member of the Canadian parliament, and David Matas, a Canadian lawyer, released a revised version of their 2006 report and explained that the revised report "presents, we believe, an even more compelling case for our conclusions than the first version did."[221]

Although Vice Minister Huang Jiefu and spokesmen for both the Ministry of Health and the Ministry of Foreign Affairs have said that organ transplants are strictly regulated, and that donations must be accompanied by the written consent of the donor or donor's family members,[222] 1984 provisions governing the use of corpses or organs from executed prisoners say that a corpse or organ belonging to an executed prisoner may also be used if no one has retrieved the prisoner's corpse for burial.[223] According to Caijing Magazine, "in several cases, local courts have sold organs from prisoners' cadavers without informing their families."[224] In March 2007, the State Council passed new Regulations on Human Organ

Transplants that prohibit the purchase and sale of human organs and explain what type of consent is needed for the donation of organs.[225] The new regulations specifically omit any mention of the use of executed prisoners' organs and leave intact the 1984 provisions. After several years of discussions between the World Medical Association andthe Chinese Medical Association, Chinese medical authorities agreed in theory at an October 5, 2007, meeting in Copenhagen that they would not transplant organs from prisoners or others in official custody, except into members of the prisoner's immediate family.[226]

Significant Death Penalty Procedural Reforms
(in chronological order, since October 2005)

Second Five-Year Reform Program for the People's Courts (2004–2008) [Renmin fayuan di er ge wu nian gaige gangyao (2004–2008)]
- Issued on October 26, 2005 by the Supreme People's Court.
- Establishes criminal law reform, including reform of the death penalty review process, as one of the top priorities for judicial authorities during the 2004–2008 period.

Circular on Further Improving Court Hearing Work in Death Penalty Appeal Cases [Guanyu jinyibu zuo hao sixing ershen anjian kaiting shenli gongzuo de tongzhi]
- Issued on December 7, 2005 by the Supreme People's Court.
- Calls on provincial-level high courts to act as appellate bodies in death penalty cases, and establishes guidelines for how they should change their current practices.

Trial Provisions on Several Issues Regarding Court Hearing Procedures in Death Penalty Appeal Cases [Guanyu sixing di er shen anjian kaiting shenli chengxu ruogan wenti de guiding]
- Jointly issued on September 21, 2006 by the Supreme People's Court and Supreme People's Procuratorate.
- Establishes concrete guidelines for the handling of death penalty appeals by procuratorates and provincial-level high courts.

Decision on Amending the "Organic Law of the People's Courts" [Guanyu xiugai "Zhonghua Renmin Gongheguo renmin fayuan zuzhifa" de jueding]
- Passed on October 31, 2006 by the National People's Congress Standing Committee.
- Codifies into law the requirement that all death penalty sentences must be reviewed and approved by the Supreme People's Court.

Decision on Issues Relating to Consolidated Review of Death Penalty Cases [Guanyu tongyi xingshi sixing anjian hezhun quan youguan wenti de jueding]
- Issued on December 28, 2006 by the Supreme People's Court.
- Provides guidance on which death penalty cases will continue to be reviewed by provincial-level high courts, and which cases should be submitted to the Supreme People's Court for review.

Provisions on Some Issues Regarding Review of Death Penalty Cases [Guanyu fuhe sixing anjian ruogan wenti de guiding]
- Issued on January 22, 2007 by the Supreme People's Court.

Significant Death Penalty Procedural Reforms
(in chronological order, since October 2005)

- Provides guidance to all courts on when and how to review and approve a death sentence.

Decision on Further Strengthening Criminal Adjudication Work
[Guanyu jinyibu jiaqiang xingshi shenpan gongzuo de jueding]

- Issued in September 2007 by the Supreme People's Court.
- Retains the death penalty, but calls for limiting its use to only the most serious criminal cases.

WORKER RIGHTS

INTRODUCTION

The Chinese government does not fully respect internationally recognized worker rights. Chinese citizens are not guaranteed either in law or in practice full worker rights in accordance with international standards. In the five-year period the Commission has reported on worker rights in China, the government has made progress in enacting more legal protections for workers, but has continued to deny workers the fundamental right to organize into independent unions and strike to achieve meaningful change. In addition to these restrictions, factors such as poor implementation of labor protections on the books and collusion between local officials and employers create obstacles for workers who attempt to protect their rights. Although market liberalizations have brought Chinese citizens more freedom to choose their employment, along with prosperity and better jobs for some workers, social and economic changes also have engendered abuses from forced labor and child labor to flagrant violations of health and safety standards, wage arrearages, and loss of job benefits. Residency restrictions present hardships for workers who migrate for jobs in urban areas. In addition, tight controls over civil society organizations hinder the ability of citizen groups to champion for worker rights.

In the last five years, local and central governments have enacted a series of rules, regulations, and laws on labor, but have not created the administrative structure to ensure adequate enforcement. A new Labor Contract Law, passed in June 2007 and to take effect in January 2008, attempts to codify a series of protections for worker rights but does not include adequate provisions to guarantee equal bargaining power between workers and employers, and entrenches the role of China's only legal union, the Communist Party-controlled All-China Federation of Trade Unions (ACFTU) in contract negotiations.[1] The law's imprecision leaves interpretation and clarification to the discretion of implementing officials, further limiting the impact of potentially beneficial provisions within the law. As the number of labor disputes rise,[2] the government may aim for the law to remedy this source of perceived social unrest, but systemic weaknesses in implementing the law challenge the law's capacity to protect workers and reduce conflict.

In 2006–2007, several high profile incidents underscored the inhumane conditions and weak protections under which many Chinese work. The discovery in 2007 that a massive network of small-scale brick kilns in Shanxi and Hunan provinces were employing forced labor evidenced China's weakness in effectively enforcing even its own labor and workplace safety laws. The discovery and admission that child labor was being used in the manufacturing of Olympic souvenirs further illustrated the state's failure to enforce worker rights.

China's labor practices contravene its obligations as a member of the International Labor Organization (ILO) to respect a basic set of internationally recognized labor rights for workers, including freedom of association and the "effective recognition" of the right to collective bargaining.[3] China is also a permanent member of the ILO's governing body.[4] The ILO's Declaration on the Fundamental Principles and Rights at Work (1998 Declaration) commits ILO members "to respect, to promote and to realize" these fundamental rights based on "the very fact of [ILO] membership."[5] The ILO's eight core conventions articulate the scope of worker rights and principles enumerated in the 1998 Declaration. Each member is committed to respect the fundamental right or principle addressed in each core convention, even if that member state has not ratified the convention. China has ratified four of the eight ILO core conventions, including two core conventions on the abolition of child labor (No. 138 and No. 182) and two on non-discrimination in employment and occupation (No. 100 and No. 111).[6] The ILO has reported that the Chinese government is preparing to ratify the two core conventions on forced labor (No. 29 and No. 105).[7] Chinese labor law generally incorporates the basic obligations of the ILO's eight core conventions, with the exception of the provisions relating to the freedom of association and the right to collective bargaining,[8] but many of these obligations remain unrealized in practice.

The Chinese government is a state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which guarantees the right of workers to strike, the right of workers to organize independent unions, the right of trade unions to function freely, the right of trade unions to establish national federations or confederations, and the right of the latter to form or join international trade union organizations.[9] In ratifying the ICESCR, the Chinese government made a reservation to Article 8(1)(a), which guarantees workers the right to form free trade unions. The government asserts that application of the article should be consistent with Chinese law, which does not allow for the creation of independent trade unions.[10] The Chinese government is a signatory to the International Covenant on Civil and Political Rights, which guarantees the right to freedom of association, "including the right to form and join trade unions[.]"[11]

Workers in China have no choice as to their representation in the workplace. The ACFTU is China's only official trade union and is required by the Trade Union Law to "uphold the leadership of the Communist Party."[12] While the ACFTU has made progress in unionizing more workplaces in China, and has promoted pro-worker programs where they do not conflict with Party policy, the basic

structure of the union system in China is at odds with meaningful representation of workers' rights and interests. Surveys of local ACFTU branches have indicated that a majority of union leaders hold concurrent positions within Party committees, government, or enterprise. Union leaders have represented enterprises, rather than workers, in labor dispute arbitration.[13]

Workers who try to establish independent associations or organize demonstrations risk arrest and imprisonment. Independent labor organizers continue to serve long jail terms. For example, He Chaohui, a former railway worker at the Chenzhou Railway Bureau and vice-chairperson of the Hunan Workers Autonomous Federation during the May 1989 pro-democracy movement, has faced multiple detentions, including a current nine-year sentence, since taking part in labor strikes and demonstrations, and giving information on the protests to overseas human rights groups. Another long-term prisoner, Hu Shigen (Hu Shenglun), received a 20-year sentence in 1994 for "organizing and leading a counterrevolutionary group" and "engaging in counterrevolutionary propaganda and incitement" after helping to establish the China Freedom and Democracy Party and the China Free Trade Union Preparatory Committee.[14]

LABOR CONTRACT LAW

Overview

The Standing Committee of the National People's Congress (NPC) passed a new Labor Contract Law in June 2007, after considering multiple draft versions and soliciting public comments on the law.[15] In addition to seeking public comments, the Ministry of Labor and Social Security also sought technical assistance from U.S. experts in drafting the law. In 2005 and 2006, a U.S. Department of Labor-funded technical cooperation project sponsored a series of workshops and a study tour for Chinese officials who requested to be briefed on U.S. best practices in employment relationships, termination of contracts, part-time employment, regulation of labor recruitment, U.S. Wage and Hour regulations, the means of protecting worker rights, the means of enhancing compliance, and training for investigation.[16]

The new law, effective January 2008, governs the contractual relationship between workers and employers from enterprises, individual economic organizations, and private non-enterprise units.[17] The law expands requirements in China's 1994 Labor Law that mandate the signing of labor contracts.[18] It requires workers and employers to establish a written contract in order to begin a labor relation[19] and creates the presumption of an open-ended contract if the parties have not concluded a written contract within one year from the start of employment.[20] The law also includes provisions that allow certain workers with existing fixed-term contracts to transition to open-ended employment.[21] The law mandates that contracts specify matters including working hours, compensation, social insurance, and protections against occupational hazards. In addition, the employer and worker may add contractual provisions for probationary periods, training, supplementary benefits, and insurance.[22] The basic provisions on establishing contracts accom-

pany a series of other stipulations within the law that attempt to regularize the status of workers employed through staffing agencies; strengthen protections in the event of job dismissals; and establish a framework for penalizing non-compliance with the law.[23]

Despite strengthening formal legal protections for workers, the ultimate extent of the law's effectiveness, especially without an independent union system to monitor enforcement, remains untested until the law takes effect. China's track record for implementing existing labor protections is poor at best. One government official has described weak implementation as the root cause of China's labor problems.[24] A series of surveys on the enforcement of existing requirements to sign labor contracts found that many enterprises fail to use contracts, and that workers lacked knowledge of their right to sign a contract.[25] Even if the Labor Contract Law promotes the creation of more formal contracts, however, the benefits of such a development may have limited impact without adequate measures to ensure that employers adhere to the terms of the contracts.[26]

Ambiguities in the law amplify the challenges of implementation. While the law does not explicitly require employers and employees to enter into new contracts on January 1, 2008, neither does it say whether it will apply to existing employment contracts that do not comply with the new law.[27] The law requires workplaces that receive workers through staffing agencies to provide "benefits suited for the job" but does not elaborate on this provision.[28] The law allows employers to cover their costs for employees' "professional technical training" by requiring employees first to agree to a set service period in exchange, but it provides no definition of "professional technical training" or a method of valuing service.[29] Finally, the law does not specify whether it will apply to employees (whether local or expatriate) of foreign company representative offices. Because the law leaves many details to be fleshed out through the issuance of supplemental regulations and interpretations during implementation, its full impact will remain unclear for some time. In the interim, media reports indicate that some employers are dismissing workers now in order to avoid increased safeguards against terminations once the law enters into force.[30]

Non-Standard Workers

The new law attempts to address a gap in legal protection for workers employed through staffing agencies, who have labored without explicit legal guidelines governing various aspects of their relationships with both staffing agencies and worksites that hire through the agencies. The Labor Contract Law provides that staffing firms fulfill the same function as other employers under the law by signing contracts with workers that detail the terms of employment. Compliance with the law requires staffing firms to agree to fixed-term contracts of at least two years and to pay each worker on a monthly basis including for periods where the worker has not been dispatched to an outside employer.[31] Compliance also requires workplaces that receive workers through staffing agencies to provide the same wages as directly hired employees.[32] The law also stipulates that these workplaces provide overtime, benefits, and incremental wage increases, though the law lacks details on these re-

quirements.[33] In addition, workers may join a union affiliated with either the staffing firm or the workplace to which they are dispatched.[34] Finally, the law mandates that neither staffing firms nor workplaces that receive workers may levy placement fees from workers, nor can the staffing firm keep part of the worker's wages.[35] The provisions expand on more limited stipulations for staffing firms specified in the law's draft form.[36]

The Labor Contract Law attempts to extend a modest new protection for part-time employees by mandating that these workers (defined as those who work no more than 4 hours a day or 24 hours a week) not receive less than the local minimum hourly wage.[37] Under the 1994 Labor Law, part-time employees had no such protection, and in 2007, news sources in China reported that fast food restaurants in Guangzhou paid part-timers 40 percent less than the minimum wage.[38] In addition, the law mandates that part-time employees be paid no later than every 15 days.[39] However, the Labor Contract Law does not require employers to sign written contracts with part-time workers, and allows employers to terminate part-time workers without notice or termination compensation.[40] The law's prospects for improving conditions for nonstandard workers, therefore, are diminished not only by problems with implementation, but also by certain weaknesses in the law itself.

Terminations

The Labor Contract Law stipulates a series of guidelines governing workforce reductions. Where employers reduce their workforce by 20 or more employees—a reduction from the 50 or more workers earlier specified in the drafting process[41]—or if they terminate employment for fewer than 20 workers but by an amount that comprises 10 percent or more of the workforce, the union or all employees must receive 30 days' advance notice. In addition, in order to comply with the law, the employer must explain the staff reduction and "listen to the opinions of the trade union or the employees."[42] Such provisions reinforce the tendency that runs throughout the new law requiring notification to workers and the union, rather than negotiations, over major issues such as mass layoffs. In the event of layoffs, the law stipulates giving priority to retaining workers with open-ended contracts or long periods of employment under fixed-term contracts, as well as workers who are the sole wage earner in the family and must support children or elderly family members.[43] The law also forbids laying off several categories of workers, including workers near retirement, pregnant and postpartum workers, and workers who have sustained on-the-job injuries or occupational diseases, or are in the process of having such a disease diagnosed.[44] Where employers end a contract unilaterally, they must notify the union and allow the union to intervene where the termination violates the law or contractual terms.[45]

The law also specifies conditions under which employers must give severance pay to employees. Severance provisions apply to categories of workers including those laid off and workers who terminate their contracts because of illegal practices on the part of the employer.[46] The law specifies a formula for determining severance based on one month of wages for each year worked; workers em-

ployed for fewer than six months receive half of the monthly wage.[47] It also specifies severance pay caps for high-wage workers.[48]

Enforcement Mechanisms and Legal Liability

The Labor Contract Law includes a series of provisions to monitor enforcement of the law and penalize non-compliance. It assigns local labor officials at the county level and above with responsibility for overseeing implementation, including the enforcement of specific contractual terms.[49] The law also empowers authorities from other offices, such as construction and health officials, to monitor aspects of the law within the scope of their jurisdiction.[50] A report from the State Council Research Office issued in 2006 noted, however, a "serious shortage" of supervisors to enforce implementation of labor laws, drawing into question the effectiveness of provisions in the Labor Contract Law.[51]

Workers who allege an infringement of their rights may appeal to government authorities to address the matter, apply for arbitration, or initiate a lawsuit.[52] A section on legal liability requires employers who fail to sign a contract after one month of employing a worker to pay double wages.[53] It also articulates a series of other remedies for workers and stipulates additional penalties for employers, staffing firms, and labor officials who violate the law.[54] One provision holds workers responsible for damages where they cause loss to an employer for ending a labor contract in violation of the law or breaching confidentiality and competition agreements.[55]

Collective Bargaining

The Labor Contract Law includes six articles that specify guidelines for negotiating "collective contracts,"[56] but it does not provide for collective bargaining. Collective *contracting* provisions have appeared in Chinese law for many years.[57] The limited scope of the collective contracting process in the new law, including the lack of independent union participation, however, prevents it from translating into a meaningful mechanism for collective *bargaining*. Some leading Chinese experts argue that the meaning of the phrase "collective agreements" is rendered meaningless due to the ACFTU's historic record of never having negotiated genuine collective bargaining agreements.[58] Many provisions in the Labor Contract Law appear to be based on the presumption that workers will negotiate individual contracts. The final draft of the Labor Contract Law includes a provision that permits workers representatives to negotiate collective contracts where no ACFTU branch exists in the workplace, but such negotiations are "under the guidance of the ACFTU at the next higher level."[59] As three labor experts have noted, however, "the idea of [ACFTU officials] representing and protecting the legitimate rights and interests of their members in opposition to those of the employer is something unfamiliar, if not totally alien."[60] To date, the terms of collective contracts have been limited. One study of collective contracts observed that a typical contract lacks "detailed specification of the terms and conditions of labour, and often does not include reference to many of the benefits

that are in fact provided by the enterprise."[61] In addition, workers' input in the process is limited, and employers have concluded collective contracts through model agreements rather than through a process of negotiation with employees.[62] At the same time, use of the mechanism is widespread. According to the ACFTU, as of September 2006, 862,000 collective contracts covering 110 million workers had been signed, representing a 14.3 percent increase since 2005 in the number of contracts signed and an 8.3 percent increase in number of workers covered.[63]

Labor Disputes

The Labor Contract Law includes default provisions designed to function in the event of dispute over contractual terms. Workers and employers may renegotiate a contract in the event specific terms are not clearly specified in a contract, and where negotiations fail, the terms of the collective contract or "pertinent regulations of the state" apply.[64] The law also provides for the role of a labor arbitration board or people's court in the event the validity of a contract is disputed.[65] In addition, the labor union may apply for arbitration or initiate a lawsuit in the event of dispute over a collective contract.[66] Individual workers may do the same where their rights have been violated, and the law mandates that the labor union supply "support and help" in such cases.[67] The union's divided loyalties in practice, however, call into questions the efficacy of these provisions. In addition, the high cost of arbitration fees has the practical effect of discouraging workers from pursuing this avenue of dispute resolution.[68] Moreover, the law does not specify whether workers must first enter mediation before pursuing arbitration or legal suits, the first stage of labor dispute resolution listed in the 1994 Labor Law.[69] Unlike the 1994 Labor Law, it does not specify that workers must first exhaust arbitration options before pursuing a legal suit.[70]

In addition, broader legislative developments may ultimately deny workers a full range of options for resolving labor disputes. A new draft Law on Labor Dispute Mediation and Arbitration placed before the NPC Standing Committee on August 26, 2007, if passed, would limit the role of courts in labor dispute resolution. According to a vice-chair of the Legislative Affairs Commission of the NPC Standing Committee, as cited in a Xinhua article, "The draft bill is for strengthening mediation and improving arbitration so as to help fairly solve labor disputes *without going to court* and thus safeguard employee's legitimate rights and promote social harmony" [emphasis added].[71] The draft allows companies to establish labor mediation committees in-house "so as to solve disputes at [the] grassroots level," according to the Xinhua article, and specifies that the mediation committees may consist only of management and employees.[72] Taken as a whole, China's emerging national labor law regime, billed as both strengthening worker rights and grassroots dispute resolution, appears equally intended to make sure that disputes do not enter legal channels that lead to the central government. Whether this represents deliberate local empowerment as part of a measured long-term strategy to induce grassroots legal development, a strategy of crisis localization and

insulation for the center, or some combination, remains an open question.

Criticism and Support for the Labor Contract Law

Observers have been divided in their evaluations of the Labor Contract Law. While noting limitations for enforcing workers rights in practice, some worker rights organizations have expressed support for the law's role in strengthening protections for workers. For example, the China Labour Bulletin, directed by Hong Kong labor activist Han Dongfang, describes the new law as "a laudable attempt to protect the rights of individual workers" in its weekly publication but contends that workers need freedom to join unions, not just the ACFTU, and to freely elect their own representatives who would have the power to negotiate with management for collective bargaining agreements. It also expressed concerns about protections in earlier drafts omitted from the final version.[73]

Businesses and business associations have had mixed reactions to the new law. Some multi-national companies raised objections to the law during the drafting process because of provisions perceived as impediments to employers, and analysts have drawn attention to new requirements and extra costs the law may impose on foreign firms.[74]

U.S. and European multi-national companies and their representative associations commented upon or urged revisions to the law after publication of a draft version in spring 2006 and continuing through the next year.[75] The American Chamber of Commerce in the People's Republic of China "called several meetings of its members and formed a team to carefully study and discuss the draft" and prepared a set of comments as part of the NPC's formal public process of soliciting opinions.[76] Some foreign corporations and their associations endorsed revisions that would weaken some of the formal protections written into draft versions of the law, according to business association, media, and other sources.[77] Among the aspects of the drafts that concerned these companies were clauses on hiring and termination procedures, layoffs, employee probationary periods, the status of temporary workers, the power of the official trade union, severance pay provisions, and employee training repayment.[78] The U.S.-China Business Council contended that limitations on the use of temporary employees would prove "prohibitively expensive" for businesses. [79] NGO sources report that some business organizations threatened to withdraw manufacturing from China.[80]

In its comments on the draft law publicized in March 2006, the American Chamber of Commerce in the People's Republic of China cautioned against "impos[ing] additional and unrealistic obligations on employers" against the backdrop of poor implementation of existing labor laws, stating that the law instead "should leave enough latitude for local governments to make rules according to local needs."[81] The European Chamber of Commerce expressed support for the final version of the law, after initial criticism, and urged the Chinese government to focus on adequate implementation of the law.[82]

In answer to earlier complaints by foreign investors that the new law would have a detrimental effect on foreign investment, the di-

rector of the law department of the ACFTU stated that the Labor Contract Law "not only protects workers' interests and rights, but also equally protects employers."[83] According to one Chinese government official, "If there were some bias, it would be in favor of foreign investors because local governments have great tolerance for them in order to attract and retain investment."[84]

OTHER LEGISLATIVE DEVELOPMENTS

In August 2007, the Standing Committee of the National People's Congress adopted an Employment Promotion Law, effective January 1, 2008, that stipulates measures relating to the promotion of employment growth and equal access to employment.[85] In addition to containing provisions aimed at prohibiting discrimination based on factors including ethnicity, race, sex, and religious belief,[86] the law addresses the equal right to work for women and ethnic minorities;[87] specifies disabled people's right to work;[88] stipulates that rural workers' access to work should "be equal to" urban workers;[89] and forbids employers from refusing to hire carriers of infectious diseases.[90] The law also allows workers to initiate lawsuits in the event of discrimination.[91] A survey publicized in June 2007 found widespread discrimination among job-seekers, especially physically disabled people, HIV/AIDS and hepatitis B carriers, and migrant workers. Women reported discrimination related to their entitlement to maternity benefits.[92] [See Section II— Status of Women for more information.]

If properly implemented, the law may offer support for legal advocates pursuing employment discrimination cases, but other aspects of the law raise potential difficulties. One article assigns the state to spur workers to develop a "proper" mentality in job selections.[93] Another provision carves out a role for Party-controlled organizations like the Communist Youth League to aid in implementation of the law, which may dampen the role of civil society groups that promote implementation in ways that challenge Party policy.[94] Potentially beneficial safeguards also face barriers due to a lack of clearly defined terms. A provision to promote the employment of workers with "employment hardship," for example, defines this category of workers in general terms but leaves precise details to local authorities, introducing the possibility of uneven protections that reduce the law's overall impact.[95] In addition, the law specifies the establishment of an unemployment insurance system, but provides no extensive details on implementation.[96]

CONDITIONS FOR CHINESE WORKERS

Wages

The 1994 Labor Law guarantees minimum wages for workers, and assigns local governments to set wage standards for each region.[97] The new Labor Contract Law improves formal monitoring requirements to verify workers receive minimum wages. Article 74 requires local labor bureaus to monitor labor practices to ensure rates adhere to minimum wage standards. Article 85 imposes legal liability on employers who pay rates below minimum wage. In addition, Article 72 guarantees minimum hourly wages for part-time workers.[98]

The government reported progress in 2006 in establishing hourly minimum wage standards in most of its provinces. According to a report from the Ministry of Labor and Social Security (MOLSS) released in October 2006, 29 of China's 31 provincial-level areas had established hourly minimum wage standards, compared to 23 provinces in 2005. In addition, the report found that all 31 provincial-level areas maintained monthly minimum wage standards. The report shows greater local government compliance in 2006 than in 2005 with requirements to review monthly minimum wage standards every two years.[99] Local government discretion to set minimum wages has resulted in wide variances across provinces.[100] In 2006, the All-China Federation of Trade Unions reportedly urged provincial-level governments to increase minimum wages.[101]

Illegal labor practices have undermined minimum wage guarantees. In an investigation of working conditions for migrant workers in China, Amnesty International noted that "wages of internal migrant workers are effectively reduced by management through inadequate pay for compulsory overtime, fines, unpaid wages, and other methods."[102] The investigation found that some factories' fines for tardiness—calculated for each minute a worker is late—could constitute a major reduction in a worker's daily salary.[103] (See the discussions on "wage arrearages" and "working hours," below, for additional information.)

China's leaders have expressed concerns over the growing income gap between rural and urban workers, and between earners at the top of the income ladder and those at the bottom. In July 2006, the government announced it would institute reforms aimed at cutting the wealth gap to promote a "harmonious" society and "improve the socialist market economy," with focus on increasing the middle class and improving wages of low-level government employees.[104] Party officials and commentators have not yet settled on a firm opinion of the wealth gap problem. In November 2006, Ministry of Finance official Wang Bao'an outlined a new wage plan aimed at limiting the rate of wage increases at the high end of the scale; standardizing income subsidies; stabilizing the wages of middle-income earners; and raising the income of low-wage earners.[105] A commentary reprinted in the China Economic Daily, however, argued that "the existence of a high-income group is inevitable in a market economy," and argued against "robbing the rich to give to the poor."[106] Government official Qiu Xiaoping, of the Ministry of Labor and Social Security, agreed that the government should not intervene in setting wages in a socialist market economy where a "salary is the market price of labor."[107]

Wage Arrearages

Wage arrearages remains a serious problem, especially for migrant workers. In June 2006, the Ministry of Communications, which oversees China's transportation sector, issued a circular ordering provincial-level departments to finish resolving migrant workers' claims for unpaid wages from work on transportation projects by the end of 2006. The Ministry circular responds to a 2004 State Council decree to resolve all migrant worker wage arrears that have resulted from unpaid debt on government projects.[108] Government efforts have helped lower the amount of

outstanding unpaid wages, but progress in this area remains limited. Employers in the construction sector still owe workers a reported 10 billion yuan (US$1.2 billion).[109] An inspection in Gansu province found that companies owed 130 million yuan (US$16.6 million) in back wages to 130,000 migrant workers, mainly in the construction and restaurant industries.[110]

Some local governments have issued legal guidance and taken other steps to address wage arrearages. Trial legal measures implemented in Qinghai province in 2006 require construction companies to set aside and deposit wage funds before projects begin, to ensure that workers will be paid when the project is completed. The measures punish enterprises that fail to deposit sufficient funds, that do not make their deposits in a timely manner, or that provide false contract information, and allow authorities to bar non-compliant firms from participating in the construction market.[111] In Guangdong province, authorities had barred 30 enterprises for failing to pay employee wages as of June 2006. Though the government had given the companies previous warnings and implemented other punitive measures, the companies failed to remedy an outstanding debt of over 20 million yuan (US$2.5 million) to over 8,000 workers.[112]

Subcontracting practices within industry exacerbate the problem of wage arrearages. When investors and developers default on their payments to construction companies, workers at the end of the chain of labor subcontractors lack the means to recover wages from the original defaulters. Subcontractors, including companies that operate illegally, neglect their own duties to pay laborers and leave workers without any direct avenue to demand their salaries. In some cases, subcontractors will pay partial wages to force workers to stay on site to finish construction projects.[113]

Wage arrearages have resulted in protests and demonstrations by workers, and some Chinese employers have responding by hiring thugs or gangsters to drive off the protesters. In July 2007, a group of armed gangsters beat up 300 migrant workers who had gone on strike in Guangdong province to collect four months of back pay. The subcontractor construction company claimed that it could not pay the workers because it had not been paid by the contractor.[114]

Workers who try to take legal measures to recover lost wages face prohibitive expenses and limited possibilities of recovering wages, even where adjudicators decide in their favor.[115] Despite these obstacles, there has been a steady increase in the number of workers who turn to labor arbitration to settle their disputes with employers.[116] In addition to wage arrearages, sources of disputes have included illegal and improperly compensated overtime and failure to adhere to labor contracts.[117]

Working Hours

China's labor law mandates a maximum 8-hour work day and 44-hour average work week, but compliance with these standards is weak.[118] One specialist in China's compliance practices has estimated that work weeks above 80 hours are common in the apparel industry and other export sectors.[119] A study of migrant workers in southern China found that workers were subject to forced over-

time to upwards of 16 hours a day. The report noted that employers dodged paying overtime rates by compensating workers on a piece-rate basis with quotas high enough to avoid requirements to pay overtime wages. Workers who failed to comply with overtime requirements or who were late faced fines.[120]

Suppliers in China avoid exposing themselves to claims of requiring illegal, long hours by hiring firms that help them set up double booking systems designed to deceive foreign importers who aim to adhere to Chinese rules and regulations. A detailed account of the practice found that these firms not only help suppliers set up fake books for audit, but also coach managers and employees on answers to give the auditors. One specialist has estimated that only 5 percent of Chinese suppliers comply with overtime regulations, and 20 percent adhere to wage regulations.[121]

Benefits

The routine denial of legally guaranteed job benefits to workers by some employers is a serious problem in China. Gaps in social security and labor insurance coverage remain widespread. Though the government has reported that 100 million workers had unemployment insurance as of November 2006, this figure accounted for only one-seventh of the total 760 million workers in the country.[122] An International Labor Organization study found that enterprises dodge requirements to provide contributions for old-age insurance by misreporting the number of employees and wages, as well as by keeping workers in irregular employment positions.[123] In addition to failing to secure social security safeguards, employers also have denied workers benefits ranging from paid vacations to sick leave.[124] Workers have described being fined for taking sick days.[125]

Women workers face additional obstacles, as employers withhold maternity leave and related benefits.[126] A 2006 survey of women migrant workers conducted by the All-China Women's Federation found that only 6.7 percent of surveyed workers had maternity insurance. Of the 36.4 percent who reported that they were allowed to take maternity leave, 64.5 percent said this leave was unpaid.[127] The survey also found that only 23.8 percent have medical insurance and 19.1 percent have occupational insurance.[128] [See Section II—Status of Women for more information.]

Systemic failings of local governance exacerbate shortcomings in the provision of social security benefits, as local governments bear responsibility for providing coverage for retirement, illness or injury, occupational injuries, joblessness, and childbirth.[129] After local mismanagement of the pension system in Shanghai, central government departments issued a series of legal guidance in 2006 to increase oversight of fund management.[130] Li Jinhua, auditor-general of the National Audit Office, pledged in 2007 to stop the misuse of pension funds and said local governments would be held responsible for repaying misused funds out of their own budgets.[131] Despite these measures, fundamental flaws within the system persist. As one overseas media source observed, "The party has talked for decades about building a social safety net, yet as the working population ages the government isn't investing nearly enough to head off looming crises in health care, education, and pensions."[132]

Chinese officials reported in 2006 that only 6 percent of the population benefited from the existing social insurance system and pledged to enlarge participation by 2020.[133]

In 2006, the government announced it would take "compulsory measures" to promote employer participation in on-the-job injury insurance for migrant workers, expanding coverage to over 140 million people by the year 2010. By the end of July 2006, 18.71 million migrant workers nationwide were covered by the insurance, while 87 million workers overall had such insurance as of April 2006.[134]

WORKER SAFETY

Over the last year, the Chinese government enhanced its efforts to enforce work safety laws by conducting national inspections, promoting accident prevention through safety campaigns, enforcing the closure of small, illegal mines, and actively seeking international cooperation. According to latest statistics provided by the Chinese government, mine fatalities decreased by 20.1 percent in 2006 compared to 2005; fatalities during the first eight months of 2007 also decreased by 15.7 percent compared to 2006, according to latest statistics provided by the government.[135]

Industrial Accidents and Occupational Health

Industrial injuries and deaths remain widespread in China, despite reported decreases in the number of workplace deaths and accidents.[136] In February 2006, the State Administration for Workplace Safety (SAWS) closed nearly 36,000 businesses that had failed to obtain safety licenses by the end of 2005.[137] The government amended the Criminal Law in June 2006 to broaden punishments for work safety violations. The amendments included new penalties for "responsible" personnel who hinder rescue efforts by covering up or failing to report accidents, though the amendments do not clarify how responsibility for reporting such incidents is determined.[138] In August 2006, the government pledged over US$50 billion to lower workplace accidents.[139]

China has high rates of occupational disease and injuries. As of 2006, official statistics indicated that 440,000 workers suffered from the respiratory condition pneumonoconiosis, as a result of exposure to toxic particles. Unofficial estimates place the number as high as 5 million.[140] In 2006, government officials estimated the total number of workers with occupational illnesses may be as high as 700 million.[141] Workers have reported that workplaces fail to educate them on occupational hazards or provide adequate safety equipment.[142]

Coal Mine Accidents

China's coal mining sector continues to have high accident and death rates, and without independent worker organizations, coal miners are limited in their ability to promote safer working conditions. Though government statistics indicate a decline in deaths in coal mine disasters, official statistics are unreliable, and the reported death rate remains high nonetheless. In 2006, officials indicated that 4,746 workers died in coal mine accidents, representing a decline of 20 percent from 2005.[143] Unofficial estimates have

placed the number as high as 20,000, not including the number of workers who die from mining-related diseases.[144] The central government issued a series of legal guidance in 2006 aimed at addressing coal mine safety. Interim provisions issued in November 2006, for example, stipulate penalties for failing to correct hidden dangers that result in an accident; concealing, misreporting, or providing a delayed report of an accident; and allowing mines with revoked licenses to continue operations.[145]

Despite measures to penalize violations of coal mine safety, punishment of coal mine officials is limited in practice. In a Supreme People's Procuratorate investigation of officials charged for their involvement in mining disasters, 95.6 percent were not given any punishment or were given suspended sentences.[146] In one case, where 56 miners died in a flood at a coal mine in the Xinjiang Uighur Autonomous Region, public outrage resulted in a retrial of the township chief, whose sentence was increased from one year to 12.[147] Officials and mine operators have thwarted efforts to reconstruct evidence from coal mine disasters. After a series of accidents in April 2007, China's chief safety officer, SAWS head Li Yizhong, commented that mine operators "sabotaged the (accident) scenes, destroyed incriminating evidence and removed the bodies."[148]

China's coal is the source of its huge economic growth rate and some of its worst corruption.[149] Weak central government control over local governments has forced central authorities to postpone closing many small mines until 2010. These mines are the most dangerous ones, but are highly lucrative for local owners. Mine owners raise production levels above the legal limit, and if accidents happen, bribe local officials to ignore their practices. Overseas media reported that mine owners have sent corpses to other provinces to avoid requirements to report accidents with more than three deaths.[150]

MIGRANT WORKERS

Chinese migrants face numerous obstacles in the protection of their labor rights, and employers have exploited migrant workers' uprooted status to deny them fair working conditions. A report from the State Council Research Office found that wages for migrant workers are "universally low;" workplaces lack "the most basic labor protection[s];" migrant workers "engage in overly intensive labor for excessively long hours," without a guaranteed right to rest; and migrant workers are "unable to obtain employment rights and public employment services" on a par with permanent urban residents.[151] Migrant workers are reportedly denied a total of 100 billion yuan in back pay, with 94 percent of migrant workers in the construction sector not paid on time.[152] The central government has enacted a series of decrees to ease restrictions for migrant workers, but the measures lack sufficient legal force and sustainability at the local government level to ensure consistent implementation. [See Section II—Freedom of Residency and Travel for more information about migrant workers.]

Thirty-one Chinese city governments agreed to a plan in 2007 to set up a network of legal aid centers among the cities to improve legal access for migrant workers and ensure accountability among legal aid providers. Called the Chongqing Pact, the agreement

obliges legal aid centers in the network to help migrant workers with issues such as labor disputes and work-related injuries, regardless of a worker's residency status. It also requires legal aid centers in a migrant worker's original place of residency to assist in the process.[153] The program may be designed in part to avoid the demonstrations, and sometimes violence, that break out when workers are not paid.

Chinese officials reported in June 2007 on a draft plan to change its pension system to address migrant workers' needs. Under the proposed plan, those with steady employment would join current pension schemes, and those without a permanent place of employment would enter a new program designed specifically for that population. Under the proposed system, employers and employees would make mandatory contributions to the fund that would be shifted to accounts in the migrants' home towns but that would retain portability as migrants change jobs and relocate.[154] A 2006 investigation on old-age pensions by the International Labor Organization identified an existing lack of portability of pension funds as one of the "major barriers" to coverage for migrants.[155]

CHILD LABOR

Child labor remains a persistent problem within China, despite legal measures to prohibit the practice. As a member of the International Labor Organization (ILO), China has ratified the two core conventions on the elimination of child labor.[156] China's Labor Law and related legislation prohibit the employment of minors under 16,[157] and national legal provisions prohibiting child labor stipulate a series of fines for employing children.[158] Under the Criminal Law, employers and supervisors face prison sentences of up to seven years for forcing children to work under conditions of extreme danger.[159] Systemic problems in enforcement, however, have dulled the effects of these legal measures, though the overall extent of child labor in China is unclear due to the government categorizing data on the matter as "highly secret."[160] A report on child labor in China found that child laborers generally work in low-skill service sectors as well as small workshops and businesses, including textile, toy, and shoe manufacturing enterprises.[161] It noted that many under-age laborers are in their teens, typically ranging from 13 to 15 years old, a phenomenon exacerbated by problems in the education system and labor shortages of adult workers.[162] Children in detention facilities also have been subjected to forced labor.[163]

Events from the past year underscore the government's inability to prevent child labor. Underage workers were among the forced laborers found working in brick kiln mines in 2007, highlighting the existence of what the ILO terms the "worst forms of child labor."[164] [See the subsection on "Forced Labor," below, for more information on forced labor in brick kilns.] A company that produces Olympics-related products admitted in 2007 that children as young as 12 years old had worked in the factory.[165]

Although the Chinese government has condemned the use of child labor and pledged to take stronger measures to combat it,[166] it continues to actively endorse other forms of child labor under the guise of work-study activities. Under work-study programs implemented in various parts of China, children as young as elementary

school students pick crops and engage in other physical labor. In the Xinjiang Uighur Autonomous Region (XUAR), for example, some 800,000 students began their 2006 academic year by picking cotton in school-organized work-study programs, while elementary school students in some parts of the XUAR were forced to pick hops. The XUAR government issued legal guidance that year to outline the contours of this labor system, stating that priority should be placed on using labor revenue to buy accident insurance for students and liability insurance for schools. Reports from the region indicated that in recent years students had been made to work in 12-hour shifts and suffered injuries from dangerous working conditions and sexual abuse from adult laborers. [See Section II—Ethnic Minority Rights for more information on conditions in the XUAR.] Also in 2006, over 10,000 students in the fourth grade and higher in a city in Gansu province were made to harvest corn.[167]

Central government legislation allows this form of child labor. National provisions prohibiting child labor provide that "education practice labor" and vocational skills training labor organized by schools and other educational and vocational institutes do not constitute the use of child labor when such activities do not adversely affect the safety and health of the students.[168] The Education Law supports schools that establish work-study and other programs, provided that the programs do not negatively affect normal studies.[169] A nationwide regulation on work-study programs for elementary and secondary school students outlines the general terms of such programs, which it says are meant to cultivate morals, contribute to production outputs, and generate resources for improving schools.[170] These provisions contravene China's obligations as a Member State to ILO conventions prohibiting child labor.[171] In 2006, the ILO's Committee of Experts on the Applications of Conventions and Recommendations "expresse[d] . . . concern at the situation of children under 18 years performing forced labour not only in the framework of re-educational and reformative measures, but also in regular work programmes at school."[172]

Beyond the parameters of government-approved work study programs, some teachers have used their position of authority to induce students into exploitative working conditions in factories far from home. In 2006, for example, a teacher in Henan province recruited 84 female students from her school to work in a can factory in Zhejiang province. Students labored under exploitative conditions until some escaped. Authorities rescued the remaining students.[173] The same year, teachers at a school in Shaanxi province arranged for approximately 600 students, including under-age minors, to do "work-study" in an electronics factory in Guangdong province, where students were reported to work up to 14 hours a day without full wages.[174]

FORCED LABOR

In May and June 2007, Chinese media and Internet activists uncovered a massive network of forced labor in brick kilns in Shanxi and Henan provinces. Reports indicated that people forced to work in the kilns included children and mentally challenged adults kidnapped by human traffickers and sold to the kilns, where they

were beaten, denied food, and forced to work up to 20 hours per day. In other cases, workers were lured to the kilns through promises of high salaries.[175] One father described his son's condition when he found him:

> My son was totally dumb, not even knowing how to cry, or to scream or to call out "father"[. . .] He was in rags and had wounds all over his body. Within three months he had lost over [22 pounds].[176]

Chinese officials announced in August 2007 that a nationwide campaign led to the rescue of 1,340 enslaved workers,[177] but government reports of the size and scope of the problem appeared to conflict with accounts by citizens. Parents from Henan province, for example, said that up to 1,000 children were forced into labor in Shanxi province, but Shanxi provincial vice-governor Xue Yanzhong said that authorities had inspected 4,861 brick kilns in the province and identified only 15 child workers. According to Xue, only 17 of the brick kilns inspected used forced labor.[178]

The reports of forced labor reveal a longstanding phenomenon, according to an editorial in the Chinese newspaper Southern Weekly:

> The dirty slave trade has been thriving for a long time but the local government didn't take any action. It's become an actual accomplice. The scandal is so massive and catastrophic that it poses a serious threat to public security.[179]

According to a deputy director from the Ministry of Public Security, official knowledge of the forced labor system goes back as far as 2004. At that time, police discovered child labor being used in brick kilns in Henan province after a parent asked for help in finding his child. The deputy director considered the problem "solved . . . under the instructions of our leaders." A kiln contractor reported that many kiln operators received advance notice of the inspections from local police and hid enslaved laborers during inspections. Kilns were only closed if they had no business licenses or did not adhere to safety and environmental standards, not because they were using forced labor.[180]

By the middle of July 2007, 29 mine supervisors and owners received prison sentences for their involvement in forced labor. Of those convicted, a foreman who beat a mentally disabled worker to death was given the death penalty. The owner of this kiln, a son of a local Communist Party official, received a sentence of nine years. Other defendants were given prison terms from two years to life in prison.[181] Critics have complained that these few convicted criminals were being used to deflect attention from the involvement of Party officials.[182] By August, no senior officials had been punished and only 95 low ranking officials had been reprimanded.[183] [For information regarding Chinese officials' disclosure of information on the forced labor scandal see Section II—Freedom of Expression.]

In June, the All-China Lawyers Association asked the National People's Congress Standing Committee to introduce new legislation making slavery a criminal charge. The Association noted that current law applies only to legally recognized employers and does not apply to individuals or illegal workplaces.[184]

U.S.-CHINA BILATERAL COOPERATION

The U.S. Department of Labor and two Chinese government agencies continued to conduct cooperative activities during 2007 on wage and hour laws, occupational safety and health, mine safety, and pension oversight. The two countries renewed Letters of Understanding related to these areas and pledged to continue the cooperative activities for four more years. In addition, two new cooperative agreements were signed in the areas of unemployment insurance program administration and labor statistics.[185]

FREEDOM OF EXPRESSION

INTRODUCTION

The Commission's previous recommendations addressed three areas where China's citizens do not enjoy the right to free expression. First, the Commission has noted that restrictions on the free flow of information threaten the well-being of Chinese citizens and, increasingly, citizens around the world. In its 2003 Annual Report, the Commission noted that China's news media restrictions prevented citizens from being fully informed during the 2003 SARS crisis. After China began considering a proposal in 2006 to further limit media coverage during public emergencies, the Commission recommended in its 2006 Annual Report that the President and Congress urge China's leaders to recognize the importance of complete transparency in the administration of public health, and the importance of an unimpeded press in providing critical information to the public in a timely manner. Recent international concern over the global health impacts of food, drugs, consumer products, disease outbreaks, and pollution originating from China underscore the importance of the free flow of information.

Over the last five years, public access to government information, at least on paper, has improved, but major obstacles to government transparency remain, reflecting the Communist Party's overarching concern that it maintain control over the flow of information. In 2007, the government passed China's first national "freedom of information" regulation, but it remains subject to a "state secrets" exception that gives the government broad latitude to withhold information. The Party and government continue to maintain tight control over the press, and the prospects for a free press remain dim. While foreign reporters in theory were granted some increased press freedom in accordance with promises China made in 2001 as part of its successful bid to host the 2008 Summer Olympic Games, China continues to use upcoming important events such as the Party's 17th Congress in October 2007, and corruption among Chinese reporters, as a pretext for increased restrictions on domestic media. The lack of a free press to monitor the government leaves citizens poorly informed about major problems and unable to fully investigate the root causes of such problems and the extent to which the Party or the government should be held accountable.

Second, previous Commission reports highlighted China's pervasive censorship of the Internet and other electronic media. In its Annual Reports from 2002 to 2006, the Commission recommended that the President and Congress urge the Chinese government to

stop blocking access to foreign news broadcasts and Web sites, and allow its citizens freer access to information on the Internet, particularly information concerning the rights of Chinese citizens to free speech and a free press. The Commission has also recommended that the President and Congress urge China to cease detaining journalists and writers, many of whom are punished for posting essays critical of the Chinese government on the Internet.

Over the last five years, the Party and government have continued to emphasize management and control over the Internet. They have done so by requiring Web sites to be licensed, blocking access to politically sensitive information on the Internet, and detaining citizens who criticize the government online. In 2007, Hu Jintao called for "purifying" the Internet, saying "the stability of the state" depended on the Party taking full advantage of and successfully controlling the Internet. The Internet poses a daunting challenge for the Party. In 2007, citizen activists used the Internet and cell phones to raise public awareness about cases involving slave labor and the construction of a hazardous chemical plant, driving the reporting agendas of the state-controlled press and forcing the government to address these problems. Their success, however, reflects the creativity of China's citizenry in evading censors and the difficulty in trying to monitor China's growing online environment, rather than any government policy of liberalization. Furthermore, journalists and writers who criticize the government online continue to face imprisonment for such crimes as "inciting subversion."

Third, the Commission's previous reports have noted China's prior restraints on publishing, which prevent citizens from freely expressing ideas and opinions. In its Annual Reports from 2003 to 2006, the Commission recommended that the President and Congress urge the Chinese government to eliminate prior restraints on publishing. Over the last five years, public officials in China have maintained prior restraints on publishing and continue to ban and confiscate books and magazines that do not conform to the Party's political requirements. This past year, publication and propaganda officials stepped up their efforts to clean up the publishing industry in preparation for the Party's 17th Congress to be held in October 2007.

FREE FLOW OF INFORMATION

Improvements and Obstacles to Government Transparency

The Commission notes that over the last five years, the Chinese government has made progress in increasing public access to government sources of information. The Communist Party and State Council have directed all levels of government to increase transparency.[1] In its 2003 Annual Report, the Commission noted that most provinces and major cities had set up detailed government Web sites.[2] By March 2007, 86 percent of all government agencies had official Web sites.[3] Many of the Web sites provide detailed and substantive information.[4] In addition, by the end of 2006, most central government institutions and all provinces, autonomous regions, centrally administered municipalities, and top-level courts had established public spokesperson systems.[5]

Over the last five years, the government has also sought to improve its ability to respond to public emergencies and make information available to the public more quickly. The government's slow response to the SARS disease outbreak in 2003 and to the Songhua River chemical spill in 2005 led to passage of measures to prevent provincial and local officials from covering up such incidents.[6] The Regulation on the Handling of Public Health Emergencies, for example, requires provincial governments to report a public health emergency to central officials within one hour and requires central officials, or provincial governments who have received approval from central officials, to release information in a timely manner.[7] However, as the Commission noted in its 2003 and 2006 Annual Reports, these reforms were not intended to relax the government's control over the media or the free flow of information to the general public.[8] Rather, the goal was to increase the flow of information to central authorities in Beijing, control how the press reported on the matter, and prevent private citizens from publishing opinions regarding the government's handling of the crisis.

In April 2007, the State Council issued the Regulation on the Public Disclosure of Government Information (Public Disclosure Regulation), the first national "freedom of information" regulation requiring all government agencies to release important information to the public in a timely manner.[9] The new regulation, which takes effect on May 1, 2008, requires government agencies to timely disclose vital information regarding the government's handling of issues that have been at the forefront of controversy in recent years, such as food, drug, and product safety, public health emergencies, environmental protection, land expropriation, the sale of state-owned property, and population planning.[10] The regulation also provides citizens, legal persons, and other organizations with the right to request information from a government agency and to file an administrative lawsuit to appeal an agency's decision not to provide information.[11] The State Environmental Protection Administration subsequently issued implementing measures in April mandating public disclosure of information on China's environment.[12] [See Section II—Environment.]

The impact of these freedom of information regulations is limited, however, by the presence of a "state secrets" exception that gives the government broad latitude to withhold information from the public.[13] This policy reflects the continuing perception by the Party that relinquishing too much control over the flow of information will cause "social instability" and challenge the Party's supremacy. Chinese laws and regulations provide lists of what may be deemed a state secret, but these lists are broad and vague, encompassing essentially all matters of public concern.[14] For example, information about China's environmental pollution that would "reflect negatively on China's foreign affairs work" is considered a state secret.[15] Legal scholars in China have noted that the inclusion of a "state secrets" exception in the Public Disclosure Regulation gives officials too much discretion to withhold information.[16] In addition, the Public Disclosure Regulation's heavy penalties for officials who fail to protect state secrets may encourage even less transparency.[17] Moreover, citizens and journalists have encountered resistance from local officials when requesting information

under similar administrative rules already in place in some Chinese cities. In June 2006, a Shanghai journalist sued the Shanghai Municipal Planning Bureau under a similar freedom of information regulation, but lost the case and was fired from his job as a result.[18] Some legal experts in China have also questioned whether provisions in such regulations, granting citizens the right to request information, would apply to citizens acting in their role as journalists, an interpretation that would severely limit the law's impact.[19]

The National People's Congress recently issued the Emergency Response Law, which requires people's governments to publicly disclose accurate and timely information regarding emergencies.[20] The law was issued in August 2007 and will take effect on November 1, 2007. The Commission noted in its 2006 Annual Report that a draft of this law contained a provision that would have imposed a heavy fine on domestic or foreign media who reported on a public emergency without government approval.[21] The Commission noted that the provision would have impeded the efficiency of the Global Public Health Intelligence Network, an electronic surveillance system used by the World Health Organization to monitor the Internet for reports of communicable diseases and communicable disease syndromes. In a positive step, the provision was removed from the final version of the law.[22] The law, however, now contains a provision prohibiting the fabrication and spread of "false information."[23] Media who violate this provision may be shut down.[24] This provision could have a chilling effect on journalists who worry that the government retains too much discretion to determine whether information is false or not.[25] In January 2006, for example, public officials sentenced journalist Li Changqing to three years in prison for violating a Criminal Law provision that prohibits the "intentional dissemination of terrorist information that is knowingly fabricated to disturb public order," even though Li's reporting on a dengue fever outbreak turned out to be materially similar to the government's own accounts.[26]

Public officials have punished citizens for sharing second-hand information over the Internet or cell phones, threatening the free flow of information and forcing citizens to wait for the government's official version of the "truth" before discussing important public events. Commentators in China have expressed concern over the government's liberal application of Article 25 of the Public Security Administration Punishment Law, which provides for the detention of citizens who spread rumors with the intent to disturb public order.[27] [See Section II—Rights of Criminal Suspects and Defendants for more information about this law.] For example, in July 2007, officials in Jinan city, Shandong province, detained a resident for noting in an online discussion that she had heard that citizens had perished in heavy flooding that hit the city.[28]

The Supreme People's Court (SPC) has continued its campaign to increase public access to court proceedings. As the Commission noted in its 2003 Annual Report, the SPC has taken steps to improve the quality and availability of judicial decisions.[29] In June 2007, the SPC issued several opinions calling on courts to provide public access to all stages of the trial process,[30] and to make more judgments available in publications and over the Internet.[31] The

opinions, however, contain the "state secrets" exception, which courts have commonly used to conduct politically charged trials behind closed doors.[32] [See Section II—Rights of Criminal Suspects and Defendants for more information about these opinions.] In addition, court officials concerned about media threats to judicial independence have sought to limit media reporting of court activities. In September 2006, top officials at the SPC announced a policy prohibiting news media from interviewing judges or court officials without government permission and directing the media not to issue commentary on pending court cases.[33]

NO FREE PRESS

China's restrictions on the press violate the right to freedom of expression as provided for under international human rights standards and China's Constitution. Both the International Covenant on Civil and Political Rights[34] (ICCPR) and the Universal Declaration on Human Rights[35] (UDHR) guarantee the freedom to seek, receive, and impart information, through any media, regardless of frontiers. Article 35 of China's Constitution provides China's citizens freedom of speech and the press.[36] While this freedom is not absolute, the ICCPR and UDHR provide that restrictions may be imposed only to protect the following interests: national security or public order, public health or morals, or the rights or reputations of others. Furthermore, the restriction must be prescribed by law and must not exceed the scope necessary to protect a compelling interest.[37] China restricts the press for political and ideological reasons. Restrictions such as directives from propaganda officials are not prescribed by law because they are issued by a Communist Party entity, rather than one of the parties authorized to pass legislation under China's Legislation Law.

Party and Government Control Over Media

China's media could play an important role in helping inform the public about important events but, as noted above, recent laws and regulations dealing with government disclosure and public emergencies limit this potential. A more fundamental limitation, however, is the Party's continued control over all media in China, either directly or through its control over the government agencies that regulate China's media. The Party exercises direct control over the media through the Central Propaganda Department (CPD). The CPD issues directives informing publishers and editors what stories can and cannot be covered. It works together with lower-level propaganda departments to deliver these directives to all media and to appoint media managers to monitor each publication.[38] The CPD also requires editors and publishers to attend indoctrination sessions. In addition, government agencies heavily regulate the media. News publishers must be licensed by the General Administration of Press and Publication (GAPP) and have a government sponsor.[39] GAPP requires all journalists to be licensed.[40] The State Administration of Radio, Film, and Television (SARFT) controls the content of radio, television, satellite, and Internet broadcasts.

Major media, such as the People's Daily and Xinhua, remain closely affiliated with a Party or government entity.[41] Central Party and government officials use journalists to gather information so that they can monitor provincial and local officials, under a policy called "public opinion supervision."[42] Stories they deem too critical or politically sensitive to be published in the media are instead forwarded as intelligence reports to relevant officials through classified channels.[43] Commercialization of the industry in the 1990s and the "public opinion supervision" policy has led to the development of media with a reputation for more hard-hitting journalism, including Southern Metropolitan Daily and Caijing.[44] Yet, even these more independent media remain subject to control by propaganda officials and have been singled out for punishment in the past.[45]

Roles the Media Is Expected to Play

The media in China is expected to act as the Party's mouthpiece.[46] Just before becoming President and Party General Secretary, Hu Jintao, in 2002, reiterated this longstanding policy, which has remained firmly in place during Hu's first five years in power.[47] For example, the Party's Central Committee issued a resolution at the end of its sixth plenum meeting in October 2006, calling on the news media to promote Hu's "harmonious society" policy.[48] To create a "positive public opinion atmosphere" for the Party's 17th Congress in October 2007, propaganda officials issued guidelines restricting media coverage of 20 topics, including the 50th anniversary of the anti-Rightist campaign, judicial corruption, and campaigns by legal rights defenders.[49] SARFT ordered television stations to air only "ethically inspired TV series" during prime time in the months leading up to the Party Congress.[50]

The Party also expects the media to paint central Party and government officials in a positive light. While media may report critically on the activities of provincial and local officials, their criticisms must remain at that level and may not threaten Party supremacy. The media must emphasize efforts by central Party and government officials to remedy the situation. For example, after news media and Internet activists exposed the widespread use of forced labor in brick kilns in May and June 2007, authorities chided local officials for trying to hide information from the media, but then instructed journalists to limit their coverage and to applaud the rescue efforts of central Party and government officials.[51]

Media that disobey propaganda directives or publish content unacceptable to censors continue to risk being disciplined or censored by the Party. In November 2006, the CPD ordered senior executives at the Beijing-based weekly magazine, Lifeweek, to engage in self-criticism and required its journalists to undergo political training after the magazine violated a Party directive not to highlight politically sensitive events.[52] Staff at a newspaper in Sichuan province were suspended for inadvertently running an advertisement that included a veiled reference to the Chinese government's June 4, 1989 crackdown on the Tiananmen Square democracy protests.[53] In March 2007, Caijing was reportedly ordered to withdraw an issue containing an article about a contentious draft of the Property Law then under consideration.[54]

Consequences of the Lack of a Free Press

Over the last five years, events such as the SARS crisis in 2003 and more recent government scandals show that the Party's control over the press denies citizens critical information at important times. Chinese citizens and citizens around the world cannot effectively monitor the Chinese government because they remain dependent on the willingness of one unsupervised source, the Party, to provide accurate, timely, and unbiased information. Some recent examples include:

- Even after measures implemented following the SARS crisis in 2003 discouraged local officials from hiding information, local officials in the provinces of Jilin and Heilongjiang delayed notifying relevant officials and the general public about a chemical plant explosion in 2005 that released chemicals into the Songhua River, the main water source for the Heilongjiang capital of Harbin.[55] They imposed a two-week press blackout, and the incident led to panic among citizens and a diplomatic incident with Russia.
- When the top Party official in Shanghai was forced to step down in September 2006 amid allegations that he had mismanaged the city's nine billion yuan (US$1.2 billion) pension fund,[56] propaganda officials ordered local media to publish only official news reports from Xinhua.[57] During this time, Shanghai's municipal government reportedly did not hold a press conference for almost four months.[58]
- In May 2007, international and Hong Kong officials complained that Chinese officials were tight-lipped about a rumored epidemic affecting pigs in a province near Hong Kong, and about contaminated pet food that had reportedly caused large numbers of cats and dogs in the United States to become ill.[59] China's media had reportedly issued few reports on the incidents.[60]
- In July 2007, the Financial Times reported that officials at the State Environmental Protection Administration and Ministry of Health asked the World Bank to remove from a joint report the figure of 750,000 premature deaths every year in China, caused mainly by air pollution.[61] Officials reportedly said the information was "too sensitive" and could cause "social unrest."[62] A foreign ministry official denied the charge that any information had been censored.[63]
- In July 2007, propaganda officials ordered restrictions on food safety reports after a Beijing reporter issued a false news report alleging that food vendors were filling steamed buns with pieces of cardboard.[64]

Limited Prospects for a Free Press

Central government officials have urged local officials to cooperate more with the media, but this development should not be interpreted as a shift in government policy to allow for a freer press.[65] For example, in July 2007, a State Council Information Office official criticized local officials for blocking media coverage of the forced labor scandal at brick factories in central China.[66] This criticism is consistent with the central government's "public opinion su-

pervision" policy of relying on journalists to gather information so that they can monitor provincial and local officials. The central government's support of this policy has, however, given commentators in China justification for calling for broader press freedom, although they have been careful to do so in the context of local initiatives to restrict press freedom and to fashion arguments consistent with "public opinion supervision."[67] For example, a deputy editor at Southern Weekend argued in an editorial that the purpose of news is not to serve as a propaganda tool, and that the central government's "public opinion supervision" policy is intended for the press to be a check on public power.[68] The editorial was in response to the Anhui provincial government's issuance in October 2006 of rules requiring journalists to write a minimum number of "positive" stories about Anhui in order to receive a promotion.[69]

The Chinese government also allowed foreign journalists greater freedom in 2007. To fulfill China's commitment to give journalists "complete freedom" to report on China when it bid for the 2008 Summer Olympic Games in 2001,[70] Premier Wen Jiabao signed into law new regulations in December 2006, which eliminate the requirement that foreign journalists must obtain government permission before conducting interviews.[71] The new rules, which went into effect on January 1, 2007 and expire on October 17, 2008,[72] have had mixed results. The Foreign Correspondents Club of China, an association of Beijing-based foreign journalists, and Human Rights Watch both issued reports noting that while some journalists have said that China's reporting environment has improved, harassment, intimidation, and detention of foreign journalists and the Chinese citizens they interact with remains commonplace.[73] Problems have included intimidation of citizens who speak to foreign journalists,[74] harassment of journalists in politically sensitive areas such as the Tibet Autonomous Region,[75] harassment of citizens who work with foreign journalists,[76] and the refusal of local officials to recognize that the new rules extend to non-Olympics related coverage.[77] It remains to be seen whether the rules will be extended beyond the Olympics and what effect they will have on domestic journalists. For a more detailed and updated analysis on the impact of these regulations on freedom of expression in China, see the Commission's Web site at *www.cecc.gov*.

One obstacle to press freedom in China is that the state's control over the media contributes to corruption in the media. According to David Bandurski, a research associate at the China Media Project at the University of Hong Kong: "Media corruption is facilitated by the quasi-official status of reporters, who are seen by many Chinese as government functionaries with special authority. This combination of power and profit motive is a key ingredient in many extortion attempts."[78] In May 2007, the People's Daily reported that a person who had posed as a reporter and top editor at the paper had collected 3.79 million yuan (US$500,000) in bribes before being caught and sentenced to life in prison.[79] Problems of journalists asking for bribes in return for not publishing negative news or writing a positive story are reportedly widespread.[80]

This corruption has provided the state with a pretext to restrict China's media even more.[81] In March 2007, for example, the GAPP issued a notice requiring media to take greater measures to purge

their local offices of unlicensed journalists after one was beaten to death by the owner of an illegal coal mine who thought the journalist was seeking a bribe.[82] Later in 2007, a Beijing journalist falsified a report on food vendors filling steamed buns with cardboard. Amid rising international concern over China's food exports, China responded with a crackdown on false news and illegal publications, including "illegal political newspapers and magazines that fabricate political rumors."[83]

INTERNET CENSORSHIP

China's Internet Policy

Since the Internet first became popular in the late 1990s, China's policy has emphasized management and control over this medium. In a January 2007 speech to Politburo officials, Communist Party General Secretary Hu Jintao called for "purifying" the Internet environment, saying that "the stability of the state" depended on the Party taking full advantage of and successfully controlling the Internet.[84] China has controlled the Internet through licensing requirements for Web sites, shutting down and blocking access to Web sites that post political content, and detaining citizens who criticize the government online or post politically sensitive content. Its efforts have been relatively successful. Despite heavy censorship, many citizens consider the Internet in China to be quite free, with unprecedented access to information about sports, entertainment, and business, and in some cases, political content that China fails to block. According to a recent survey, more than 80 percent of Internet users in China are satisfied with the diversity of content.[85]

Far from simply limiting online information that runs counter to the Party's ideology, the Party has sought to use the Internet to bolster its monopoly on political power and to drive China's economy. According to the World Bank, information and communication technologies have led China's economic ascent, growing two to three times faster than China's overall GDP over the last 10 years.[86] Internet use has skyrocketed from 59 million users in 2002 to 162 million in June 2007.[87] According to Tim Wu, an expert on China and a professor at Columbia Law School, "the Chinese government has seen the Internet as an enormous opportunity at igniting public opinion in its favor."[88] During his January 2007 speech to Politburo officials, President Hu emphasized the central role the Internet plays in the Party's efforts to shape public opinion.[89] China views the Internet as a battleground for public opinion that is currently monopolized by the West,[90] and has sought to overcome this perceived monopoly by increasing Chinese sources for online information. The fact that it is easy to communicate with large numbers of people over the Internet, and that users rely heavily on the Internet for news and information, make the Internet a powerful platform for promoting the Party's ideology and policies.

Measures To Control the Internet

China's measures to control the Internet do not conform to international standards for freedom of expression. Under the ICCPR and UDHR, such restrictions may be imposed only if they are pro-

vided by law and are necessary to protect national security or public order, public health or morals, or the rights or reputations of others.[91] In some cases, China has imposed restrictions to address issues of public concern, such as privacy protection, false advertisements, spam, online pornography, and youth addiction to the Internet.[92] But public officials in China also prohibit citizens from accessing or posting online content if they find such content to be politically unacceptable without any formal determination of necessity based on ICCPR and UDHR standards.

Licensing System

As noted in the Commission's 2006 Annual Report, the government requires all Web sites in China to be either licensed by, or registered with, the Ministry of Information Industry (MII).[93] Web sites that fail to register or obtain a license may be shut down and their operators fined.[94] Authorities appear to be shutting down more Web sites in preparation for the 17th Party Congress, many for being unregistered.[95] Anyone wishing to post or transmit news reports or commentary relating to politics and economics, or military, foreign, and public affairs, must also have a government license.[96] According to the OpenNet Initiative, "In large measure, the registration regulation is designed to induce Web site owners to forego potentially sensitive or prohibited content, such as political criticism, by linking their identities to that content. The regulation operates through a chilling effect."[97] China continues to draft regulations to bring new forms of online media into the registration system. In April 2007, for example, Xinhua reported that the General Administration of Press and Publication (GAPP) had drafted the Regulation on the Supervision of Internet Publishing, which would require online magazines to be examined and approved by GAPP prior to publication.[98]

Monitoring, Blocking Access, and Filtering Content

China has continued to block access to foreign Web sites, which it is able to do because it controls access at the gateway connection between China and the global Internet.[99] Over the past five years, the Commission has noted that at various times China has blocked the Web sites of AltaVista, Google, and foreign news providers such as the Voice of America, Radio Free Asia, and the BBC, and human rights advocacy groups such as Human Rights Watch, Human Rights in China, Reporters Without Borders, and the Committee to Protect Journalists. The Commission has noted in its recommendations on the Internet that China's censorship system prevents its citizens from accessing information about their rights and China's violations of them. Since May 2005, the Chinese government has prevented its citizens from accessing the Commission's Web site. In June 2007, China reportedly unblocked access to the English Wikipedia Web site after it had been blocked for most of the last 18 months, but the version of Wikipedia designed for Chinese users remained blocked. Bloggers reported that certain pages on the English site remained blocked as well, such as those relating to Tibet or Tiananmen Square.[100] In July, Yahoo!'s photo sharing Web site, Flickr, reported that China had blocked its site, after ruling out the possibility of a technical problem.[101]

China employs a large number of public security officials to monitor the Internet and is improving its monitoring capabilities as Internet usage grows. In April 2007, Xinhua reported that by the end of June, all major portals and online forums would be monitored by "virtual cops" of the Ministry of Public Security.[102] In May, the MII announced that by October the ministry would complete a database of registered Web sites that would make it easier for law enforcement officials to keep track of the rapidly growing number of Web sites.[103] Xinhua reported that more than 2,000 Web sites are registered each day.[104]

China compels Internet companies to assist in censorship by requiring them to filter search results and to monitor the Internet activities of its customers to ensure that "harmful information" does not come online. Chinese search engines such as Baidu, and the China-based search engines of Yahoo!, MSN, and Google filter search results, including those relating to the Voice of America, Radio Free Asia, and human rights.[105] Providers of Internet access and services must monitor customers' online activity, maintain records of such activity, provide such information to officials as part of a "legal investigation," and remove any "harmful" information.[106] In February 2007, Radio Free Asia reported that Sohu.com, a major Chinese Internet portal, had shut down two of the blogs of Pu Zhiqiang, a prominent lawyer who has promoted citizens' legal rights.[107] Internet cafes, where many Chinese access the Internet, are also required to record the identities of their customers, monitor their online activity, and maintain records of both for not less than 60 days.[108]

Internet companies have also repeatedly pledged publicly to support China's censorship policies over the last five years, although they have shown a willingness to resist some proposals. This past year, the Internet Society of China (ISC), a think tank affiliated with the MII, sought to implement a policy requiring all bloggers to register under their real names. Real name systems may be useful for encouraging civil discourse and accountability, but in the context of China's tightly censored Internet it threatens what has become a haven for expression, as bloggers had come to rely on a veneer of anonymity[109] that had emboldened many to publicly express opinions they otherwise would not have. Real name systems that have already been implemented have reportedly led to dramatic drops in participation.[110] In May 2007, the ISC decided against making the proposal mandatory following industry resistance.[111] Instead, major Internet companies such as Sina Corporation, NetEase.com, Inc., TOM Online, Inc., Yahoo! China, which Yahoo! retains a minority stake in but reportedly does not have day-to-day operational control over,[112] and MSN's China service, signed a self-discipline pledge in August to encourage Internet users to use their real name when posting blogs or essays online.[113] Yahoo! and MSN, however, both indicated that there were no current plans to require customers to use their real names to register for blogging services.[114]

Imprisoning Online Critics

Over the last five years, public officials in China have frequently used Article 105 of the Criminal Law to detain citizens for criti-

cizing the government and the Party online, especially on Web sites outside of China.[115] Article 105 outlaws "subversion" or "incitement of subversion." The UN Working Group on Arbitrary Detention has criticized China's use of such "vague, imprecise, and sweeping" provisions to punish peaceful expression of rights guaranteed in the UDHR and ICCPR.[116]

Over the past year, public officials in China have punished numerous online critics in the run-up to the 17th Party Congress and the 2008 Beijing Summer Olympic Games.

- In October 2006, a court in Hebei province sentenced Internet essayist Guo Qizhen to four years in prison for inciting subversion in connection with 30 essays he posted on a U.S.-based Web site.[117]
- In October 2006, a court in Shandong province sentenced Internet essayist Li Jianping to two years in prison for inciting subversion in connection with essays he posted on foreign Web sites.[118]
- In March 2007, a court in Zhejiang province sentenced writer Zhang Jianhong (whose pen name is Li Hong) to six years in prison for inciting subversion by "slandering" the government and China's social system in 60 essays he posted on foreign Web sites.[119]
- In April 2007, a Zhejiang court sentenced painter and writer Yan Zhengxue to three years in prison for inciting subversion by "attacking the Party's leaders" on foreign Web sites.[120]
- In August 2007, a Zhejiang court sentenced writer Chen Shuqing to four years in prison for inciting subversion after he criticized the government online.[121]

The above individuals in Zhejiang were reportedly members of the China Democracy Party (CDP) or charged with being a CDP member,[122] and joined other reported CDP members in Zhejiang who were punished this past year, including Chi Jianwei and Lü Gengsong. Chi was sentenced to three years in prison in March for "using a cult to undermine implementation of the law"[123] and Lü was detained in August on charges of inciting subversion.[124] [See Section III—Civil Society for more information on the CDP.] Authorities also refused to renew the license of Li Jianqiang, the lawyer who represented Chen, Zhang, Yan, and Guo.[125] Li has represented numerous writers and activists, including freelance writer Yang Tongyan (whose pen name is Yang Tianshui), sentenced in May 2006 to 12 years in prison on "subversion" charges for criticizing the government online and attempting to form a branch of the CDP.[126]

Public officials in China have also used Article 105 to punish citizens who criticize China's human rights record in the context of the 2008 Olympic Games. In August 2007, public security officials in Jiamusi city, Heilongjiang province, arrested Yang Chunlin and charged him with inciting subversion after he organized an open letter titled "We Want Human Rights, Not the Olympics," and gathered more than 10,000 signatures from farmers who had reportedly lost their land.[127]

Additional information on these cases and others is available on the Commission's Political Prisoner Database [See Section I—Political Prisoner Database].

Both the UDHR and ICCPR allow for restrictions on free speech only to the extent necessary to protect national security. Available opinions from these cases, however, provide no examples of any subversive language and make no attempt to show that the actions in question caused or were likely to cause a threat to China's national security.[128] Moreover, the courts did not place any constitutional limitations on the authority of the government to criminalize certain types of speech, or balance the need to protect national security with the right to freedom of expression. Chinese officials have also begun to punish citizens for simply looking up and viewing Web sites deemed to be reactionary or a threat to its power. Zhang Jianping was barred from using the Internet for six months after he allegedly accessed the Web site for the Epoch Times, a New York-based newspaper linked to Falun Gong and known for its critical coverage of China.[129]

Challenges to Control

The Internet presents a daunting challenge for the Party. Its decentralized nature and the ability to send information to large numbers of people quickly makes it increasingly difficult to control.[130] This challenge is expected to increase over time as more people use the Internet and rely on it for information. With a penetration rate of only 12.3 percent of China's population, below the world average of 17.6 percent, there is plenty of room to grow.[131] The average number of hours per week spent online rose from 11.5 in 2002 to 18.6 in June 2007. Almost all Internet users in China look to the Internet first for information and more than three-fourths said that they first found out about a major news event from the Internet.

Commentators have noted recently that the Internet and blogs in particular are becoming a powerful vehicle for citizens to provide one another information that contrasts with information in the state-controlled press and Party propaganda. The number of blogs, personalized Web pages that citizens use to provide running commentary on all kinds of topics, has grown to an estimated 20 million in China.[132] Xiao Qiang, Director of the China Internet Project at the University of California at Berkeley, testified at the Commission's hearing in September 2006 that "[o]nline discussions of current events, especially through Internet bulletin board systems (BBS) and Weblogs, or 'blogs,' are having real agenda-setting power." According to Ashley Esarey, a Middlebury College professor and expert on China's media controls, China's blogs exhibit much higher freedom and pluralism than the state-controlled press.[133] The Internet has provided a platform for "citizen journalists" who operate largely outside of the censorship system for traditional media[134] and citizens are using less regulated blogs to break news stories. "[E]very blogger is a potential source of news. The Internet has the power to take any local news story and make it national news overnight," said Li Datong, the ousted former editor of Freezing Point, a weekly published by the China Youth Daily, who now writes for the current affairs Web site openDemocracy.[135]

Other information sharing technologies, especially cell phones, are posing similar challenges to China's information control. Cell phone use is ubiquitous in China and popular among broad seg-

ments of the population. By July 2007, cell phone usage had grown to 500 million, almost 40 percent of the population.[136] Rural residents made up nearly half of China Mobile's 53 million new cell phone subscribers in 2006.[137] While cell phones are a less conducive platform for exchanging large amounts of information, in China they are a popular tool for sending short text messages. Chinese of all ages use the "text messaging" function much more often than in the United States, where it has remained largely the province of the young.[138] China also employs censorship technology to filter out politically sensitive text messages.[139]

Citizens have been using the Internet and cell phones with increasing success to shape and even drive the reporting agendas of mainstream news outlets, and to force governments to address problems. Censors have not been able to stop an initial tide of information and instead have been left to contain the situation after the fact. Several high-profile instances over the last year include:

- Officials in the southeastern port city of Xiamen, home to more than 2 million people, planned to build a 300-acre, 10.5 billion yuan (US$1.4 billion) hazardous chemical plant in a heavily populated neighborhood.[140] In March 2007, central government officials criticized the project's safety,[141] but officials in Xiamen kept local residents in the dark about the concerns and made sure local media touted the project's economic benefits.[142] A local resident who became aware of the concerns began to use his blog to organize opposition to the plant, telling readers the plant would hurt the local property market and tourism industry.[143] Word quickly spread over the Internet. Meanwhile, residents began to circulate cell phone text messages comparing the plant to an "atomic bomb."[144] Xinhua reported that citizens sent nearly one million text messages opposing the project, leading local officials to suspend construction in May 2007.[145] Despite local officials' efforts to censor the Internet and cell phones, area residents used both to organize and document protest marches in early June that attracted thousands.[146]
- The Internet also helped bring nationwide and international attention to the kidnapping of migrant workers forced into labor in brick factories in central China. In early June 2007, the relative of a rescued child posted a plea on the Internet on behalf of hundreds of parents still looking for missing children.[147] The post was rejected by a Xinhua forum for containing "sensitive content," but was successfully posted on another forum. Her original post and a re-posting were each viewed hundreds of thousands of times. Following the postings, China's traditional media outlets gave the story extensive coverage, exposing in graphic detail the large numbers of migrant workers, including many children and mentally ill, who were forced under heavy guard to work for no pay and little food.[148] In response, the government launched raids involving a reported 35,000 policemen, ordered media to highlight the Party's rescue efforts, sought to discredit the Internet activist who helped uncover the scandal, and warned parents and lawyers for victims not to speak to journalists.[149] [See Section II—

Worker Rights for more information on the labor issues relating to this case.]

- In March 2007, Chinese bloggers made a national news sensation of a couple in Chongqing city in western China who resisted pressure to sell their home to developers, leaving their house protruding in the air like a nail after the land around it had been excavated.[150] Bloggers posted photos of the "awesome nail house" and traveled to the scene to conduct their own reporting of the story, which hit the headlines shortly after the landmark Property Law had been passed.[151]

While these technological tools have offered citizens new opportunities to express themselves and to elude censors, they have not increased citizens' freedom of expression per se, as the Chinese government has consistently responded to these outpourings of discontent with increased restrictions. Officials imposed restrictions on media coverage, blocked access to or removed offending blogs and cell phone text messages, and in some cases warned citizens not to speak with the media.[152] After the Xiamen chemical plant protests, for example, local officials drafted legislation that would prohibit area Internet users from commenting on blogs and discussion forums anonymously and require local Internet service providers to improve their capability to filter out "harmful and unhealthy" information.[153]

FREEDOM TO PUBLISH IDEAS AND OPINIONS

Government Policy Toward Publishing

The Chinese government's licensing scheme for print media[154] that has remained in place over the last five years does not conform to international standards for freedom of the press.[155] An individual who wishes to publish a book, newspaper, or magazine may not do so on their own, but must do so through a publisher that has been licensed by the General Administration of Press and Publication (GAPP).[156] The GAPP requires that to obtain a license, publishers must have a government sponsor and meet minimum financial requirements.[157] Every book, newspaper, and magazine must have a unique serial number, and the GAPP maintains exclusive control over the distribution of these numbers.[158] GAPP officials have explicitly linked the allotment of book numbers to the political orientation of publishers.[159]

While not speaking specifically about this licensing scheme, Premier Wen Jiabao acknowledged in March that government agencies with too much licensing authority, and little restraint or oversight, had bred corruption among officials.[160] In July, popular writer Wang Shuo accused television censors of abusing their authority and collecting bribes in exchange for a television show's approval, a situation that one official acknowledged, but denied being widespread.[161] Concern over corruption has not stopped officials from continuing to expand their licensing authority over free expression. In April 2007, the Ministry of Culture announced that it would begin to require actors, singers, directors, and other artists to receive certification in order to be hired.[162]

Publishers and writers must serve the Communist Party's interests. Long Xinmin said in October 2006 while he was director of

GAPP that press and publishing departments must "insist on the unwavering guiding position" of Marxism and the Party.[163] In November, President Hu Jintao told writers that the Party hoped that "each would make their own contribution to building a harmonious society."[164] In March 2007, Long Xinmin said that press and publishing industries must "firmly grasp the correct guidance of public opinion and create a good public opinion environment" for the Party's 17th Congress and "harmonious society" policy.[165]

Banning and Confiscating Illegal Publications

The government continues to target publications that contain political and religious information and opinions with which the government disagrees or for simply not having a license to publish. Between 2002 and 2006, public security officials in China confiscated 590 million "illegal publications."[166] Many of the publications are targeted for violating intellectual property rights or containing pornographic content, but in 2004, for example, public officials confiscated hundreds of thousands of copies of publications solely because of their political content. In 2005, officials seized 996,000 copies of "illegal political publications." During a two-month period in 2006, officials seized 303,000 copies of "illegal publications" deemed to have harmed social stability, endangered state security, or incited ethnic separatism.[167] During that same period, officials confiscated 616,000 unauthorized newspapers and periodicals.[168] In February 2007, a GAPP official explained that a crackdown on "illegal political publications," including those that "attacked the Party's leaders," "slandered the socialist system," or concerned Falun Gong, would be a major focus of the ongoing Sweep Away Pornography and Strike Down Illegal Publications campaign in preparation for the Party's 17th Congress.[169] [See Section II—Freedom of Religion—Religious Speech for more information on restrictions on religious publications.] In the first three months of 2007 alone, authorities confiscated 357,000 copies of publications deemed to have harmed social stability, endangered state security, or incited ethnic separatism.[170]

China's onerous licensing requirements encourage citizens to publish illegally, eroding the rule of law, and subjecting them to the risk that they will be caught and their publication shut down. One editor of a college magazine in China said in June 2007 that he had set up his own campus magazine because he had been disappointed with other magazines in China, which he described as "homogeneous, very contrived, and lacking in energetic content."[171] A professor commenting on the publications, however, said that without a publication number the students were engaged in illegal publishing. The professor said the licensing system was intended to ensure that publications were not "abused by certain groups."[172]

Censoring Publications

Authors who have published through a licensed publisher still risk being censored. Propaganda officials decide what to censor behind closed doors, making verification difficult and a legal challenge impossible. The Hong Kong-based South China Morning Post reported that at a meeting in January 2007, GAPP said it had

banned eight books because propaganda officials determined they had "overstepped the line."[173] The books dealt with topics such as China's media, SARS, the Cultural Revolution, the Great Leap Forward, and democracy. Officials reportedly criticized one of the books for "romanticizing" Japan's occupation of China in the 1930s and 1940s and others for revealing state secrets.[174]

In response to media attempts to confirm the ban, GAPP officials denied its existence.[175] Publishers, however, confirmed the ban.[176] As punishment, authorities reportedly required the editors at one publisher to write self-criticisms and forego bonuses, and reduced the publisher's allotment of book numbers by 20 percent. Zhang Yihe, the daughter of a prominent rightist figure from the 1950s and whose book on the repression faced by classical opera stars in 1960s China was banned, sought to have a Chinese court overturn the action, but two courts in Beijing refused to accept her application.[177]

Preventing Writers From Traveling Freely

Chinese officials have also punished critics by restricting their travel. In February 2007, local police officials prevented 20 writers from attending an International PEN conference in Hong Kong by refusing to approve their travel documents or warning them not to go.[178] The writers included Zhang Yihe and Zan Aizong, a journalist who was detained in 2006 after he posted reports on foreign Web sites about detentions of Protestants protesting the destruction of a church in Zhejiang province.

POLITICAL PRISONER DEVELOPMENTS

The case of Shi Tao, a Chinese journalist currently serving a 10-year sentence for "illegally providing state secrets to a foreign organization,"[179] gained greater attention outside of China in 2007, as new information about his case became public. In 2004, Shi Tao reportedly e-mailed notes to a New York-based democracy Web site that were from a propaganda document restricting media coverage during the 15th anniversary of the 1989 Tiananmen democracy protests. Shi Tao's conviction in 2005 was based in part on information provided by Yahoo! China, then under the control of Yahoo!.[180] In July 2007, the Dui Hua Foundation and Boxun released a copy of the request Chinese police made to Yahoo! China seeking information about Shi Tao's e-mail account. The release of the request brought to light new information about the basis of the request as communicated to Yahoo! China because it indicates that the request related specifically to a suspected "illegal provision of state secrets" case.[181] In addition, Shi Tao's case remains significant because he exposed China's censorship of its media. As the global impact of events within China has grown, China's censorship of the media has become more important because the rest of the world relies on China's media to better understand such events. The Commission will continue to monitor and note future actions by Chinese officials to punish citizens for exposing censorship of China's media, in violation of these citizens' internationally protected right to freedom of expression.

Another journalist, Zhao Yan, completed his three-year sentence for fraud and was released in September 2007.[182] Authorities originally arrested Zhao, a Chinese researcher for the New York Times (NYT), for providing state secrets to foreigners.[183] Sources said the "state secret" was information that former President and Communist Party General Secretary Jiang Zemin had offered to resign as Chairman of the Central Military Commission. Jiang's resignation was later reported in the official press. In August 2006, an intermediate court in Beijing sentenced Zhao to three years in prison on an unrelated fraud charge dating from 2001, but acquitted him of disclosing state secrets. Jerome Cohen, an expert on Chinese law and advisor to the NYT on Zhao's case, testified at a Commission hearing in September 2006 that Zhao was "sentenced to three years in prison after another trial that can only be regarded as a farce, and after highly illegal—according to Chinese law—pre-trial detention, interrogation, et cetera."

In a positive sign, one journalist was released early while another received a sentence reduction. Local officials released former Xinhua journalist Gao Qinrong from a prison in Shanxi province in December 2006, 4 years before his 12-year sentence was to expire.[184] Gao was sentenced in 1999 after he exposed corruption at an irrigation project in Yuncheng district, Shanxi province, that implicated top provincial officials. Xu Zerong received a nine-month sentence reduction on an unknown date and is due for release in September 2012.[185] Xu, a senior research fellow at the Guangdong Academy of Social Sciences in Guangzhou city and head of an independent publishing company in Hong Kong, was sentenced to 13 years in prison in 2001 for revealing state secrets by copying and sending historical material dating from the 1950s about the Korean War to researchers overseas, and illegally operating a business by selling books and periodicals without officially issued book numbers.

Additional information on these cases and others is available on the Commission's Political Prisoner Database [see Section I—Political Prisoner Database].

FREEDOM OF RELIGION

INTRODUCTION

Government harassment, repression, and persecution of religious and spiritual adherents has increased during the five-year period covered by this report. In 2004, the Congressional-Executive Commission on China reported that repression of religious belief and practice grew in severity. The Communist Party strengthened its campaign against organizations it designated as cults, targeting Falun Gong in particular, but also unregistered Buddhist and Christian groups, among other unregistered communities.[1] The Commission noted a more visible trend in harassment and repression of unregistered Protestants for alleged cult involvement starting in mid-2006.[2] The Commission reported an increase in harassment against unregistered Catholics starting in 2004 and an increase in pressure on registered clerics beginning in 2005.[3] The government's crackdown on religious activity in the Xinjiang Uighur Autonomous Region has increased in intensity since 2001.[4] New central govern-

ment legal provisions and local measures from the Tibet Autonomous Region government intensify an already repressive environment for the practice of Tibetan Buddhism.[5] Daoist and Buddhist communities have been subject to ongoing efforts to close temples and eliminate religious practices deemed superstitious, as well as made subject to tight regulation of temple finances.[6] Members of religious and spiritual communities outside the five groups recognized by the government continue to operate without legal protections and remain at risk of government harassment, abuse, and in some cases, persecution. China has remained a "Country of Particular Concern" because of its restrictions on religion since the U.S. Department of State first gave it this designation in 1999.[7]

The Chinese government's failure to protect religion and its imposition of limits on religion violate international human rights standards. The Chinese Constitution, laws, and regulations guarantee only "freedom of religious belief" (*zongjiao xinyang ziyou*), but they do not guarantee "freedom of religion."[8] As defined by international human rights standards, "freedom of religion" encompasses not only the freedom to hold beliefs but also the freedom to manifest them.[9] Chinese laws and regulations protect only "normal religious activities." They do not define this term in a manner to provide citizens with meaningful protection for all aspects of religious practice.[10] Religious communities must register with the government by affiliating with one of the five recognized religions and they must receive government approval to establish sites of worship.[11] The state tightly regulates the publication of religious texts and forbids individuals from printing religious materials.[12] State-controlled religious associations hinder citizens' interaction with foreign co-religionists, including their ability to follow foreign religious leaders.[13] The government imposes additional restrictions on children's freedom of religion.[14] Chinese citizens who practice their faith outside of officially sanctioned parameters risk harassment, detention, and other abuses. In 2006, a top religious official in China claimed that no religious adherents were punished because of their faith, but the Chinese government continues to use a variety of methods within and outside its legal system—including selective application of criminal penalties—to punish and imprison citizens who practice religion in a manner authorities deem illegitimate.[15]

As recognized in international human rights standards,[16] including those in treaties China has signed or ratified,[17] freedom of religion "is far-reaching and profound."[18] It includes the freedom to manifest one's beliefs alone or in community with others; the freedom to believe in and practice the religion of one's choice, without discrimination; the freedom to build places of worship; the freedom to print and distribute religious texts; the freedom to recognize religious leaders regardless of those leaders' nationality; and the freedom of children to practice a religion.[19]

The Chinese government has failed to guarantee these freedoms to its citizens both in law and in practice.

Party leaders manipulate religion for political ends. Like his predecessor, President and Party General Secretary Hu Jintao has responded to an increase in the number of religious followers through the use of legal initiatives to cloak campaigns that tighten

control over religious communities.[20] Despite official claims in 2004 that the Regulation on Religious Affairs adopted that year represented a "paradigm shift" in limiting state intervention in citizens' religious practice,[21] it codified at the national level ongoing restrictions over officially recognized religious communities and discriminatory barriers against other groups. In the area of religion, the Party has used legal means as a tool for exerting tight control over all aspects of citizens' religious practice. Beyond overt measures of control, internal public security handbooks call for undercover teams to monitor the activities of religious communities.[22] In an essay on maintaining stability in western China, one public security analyst called for security officials to gather information on religious communities by cultivating "secret . . . 'friends'" from within such communities.[23]

In recent years, top officials publicly have stated that religion may play a positive role in society,[24] but have maneuvered this sentiment to meet Party goals. In its campaign to promote a "harmonious society," the Party has emphasized "bringing into play the positive role of religion" through greater control of internal religious doctrine.[25] In July 2006, Ye Xiaowen, head of the State Administration for Religious Affairs, said the government would direct religious leaders to provide correct interpretations of religious tenets to "convey positive and beneficial contents to worshippers and direct them to practice faiths rightly."[26] The announcement builds on earlier policies to manipulate doctrine to suit Party policy. For example, the national Islamic Association has continued a program to compile sermons that reflect the "correct and authoritative" view of religious doctrine in line with Party policy, making imams' confirmation contingent on knowledge of the sermons. The official Protestant church continues to promote "theological construction," a guiding ideology designed to minimize aspects of Christianity deemed incompatible with socialism.[27] The government and Party continue to propagate atheism among Chinese citizens. In an August 2006 article, Ye Xiaowen called for strengthening propaganda and education on atheism.[28]

Despite controls over religion, unofficial estimates indicate that the number of religious and spiritual adherents in China continues to grow. In 2007, Chinese media reported on a poll by Chinese scholars that found China has approximately 300 million religious adherents, a figure three times as high as official figures.[29] The growth of religion in Chinese society presents potential challenges to government authority, and government concerns over the rise of religion intersect with broader apprehensions about perceived social instability and ethnic unrest. A summary of religious work issued in 2005 listed "stability" as the "number one responsibility."[30] As long as the government views religion as a potential flashpoint for conflict or challenge to Party authority, it is unlikely to ease restrictions on religious communities. Broader political liberalizations that address how China's own restrictive policies exacerbate instability, however, could bring improvements in the area of religious freedom, but a review of events from the past five years indicates a trend in the opposite direction.

Legislative Developments

The central government has taken more steps to codify state and Party policy on religion in recent years, particularly through the 2004 national Regulation on Religious Affairs (RRA) and subsequent provincial regulations. Though the regulations guarantee some legal protections to registered religious communities, they also condition many religious activities on government oversight and approval. Codification of government procedures lends more transparency and predictability about government actions, but as legal controls over the internal activities of religious communities, the regulations reflect rule by law rather than rule of law.

Implementation of the RRA has been uneven, resulting in a confusing legal terrain for citizens who aim to understand the applicability of legal protections and restrictions imposed by the regulation. Though the State Administration for Religious Affairs (SARA) and local governments have reported training local officials in the RRA,[31] the complete scope of the training and indicators for measuring its progress are unclear. The central government has not issued general implementing guidelines, but has promulgated a limited number of legal measures that expand on specific provisions within the RRA. The new measures clarify some ambiguous provisions in the RRA, but generally articulate more rigid controls.[32] Although SARA also has promoted a handbook that provides a more detailed explanation of each article of the RRA, the book does not appear to be widely distributed in training classes.[33]

The national government has not publicized a clear plan of action for ensuring local regulations on religion are consistent with national requirements, and inconsistencies among regulations persist. Most of the provincial-level regulations issued after the RRA entered into force promote consistency with the RRA by aligning many key provisions to national requirements, but at least one province initially retained provisions that conflicted with those in the RRA.[34] Other provinces have yet to amend their regulations, leaving intact provisions that conflict with the RRA and, in some cases, impose harsher restrictions.[35]

Though the new provincial regulations have promoted uniformity with national regulations, they also contain provisions that differ from each other and from the national RRA. A new comprehensive regulation from Hunan province, for example, is the first comprehensive provincial-level regulation on religion to provide limited recognition for venues for folk beliefs.[36] Measures from the Tibet Autonomous Region provide detailed stipulations for the designation and supervision of reincarnated Buddhist lamas.[37] Some provincial-level regulations recognize only Buddhism, Catholicism, Daoism, Islam, and Protestantism. Others are silent on this issue.[38]

Recognized and Unrecognized Religious Communities

The central government has not made progress in extending its limited legal protections for religion to all Chinese citizens. The Regulation on Religious Affairs (RRA) did not explicitly codify Buddhism, Catholicism, Daoism, Islam, and Protestantism as China's only recognized religious communities, but the government perpet-

uates a regulatory system that recognizes only these communities, with limited exceptions.[39] Although recognized groups receive limited guarantees to practice "normal religious activities," they must submit to state-defined interpretations of their faith as well as ongoing state control over internal affairs. The RRA and subsequent regulations continue to subject recognized communities to onerous registration and reporting requirements.[40]

Party-sponsored religious associations,[41] with which religious communities must affiliate, remain the state's main vehicle for ensuring religious practice conforms to Party goals and for denying religious communities doctrinal independence.[42] The associations vet religious leaders for political reliability, and religious leaders who express sensitive political views have faced dismissal from their posts. For example, in 2006, the national Buddhist Association, in coordination with government officials, expelled a Buddhist monk from a temple in Jiangxi province after the monk led religious activities to commemorate victims of the 1989 Tiananmen crackdown and took measures to address corruption among government officials and the Buddhist Association.[43] Authorities in the Xinjiang Uighur Autonomous Region have enforced an ongoing campaign to monitor imams and decertify religious leaders deemed unreliable.[44]

Unregistered religious and spiritual communities continue to practice their faith under the risk of harassment, detention, and other abuses. Differences in legislation and regional variations in the implementation of religious policy have allowed a limited number of unrecognized groups to operate openly.[45] Without the clear guarantee that all citizens have a right to openly practice their religion, however, all unregistered communities remain vulnerable to official abuses and restrictions on their freedom. Religious and spiritual communities defined as "cults" remain subject to persecution. In 2004, the Party increased its campaign against organizations it designated as cults, targeting Falun Gong practitioners as well as unregistered communities including Buddhist and Christian groups.[46] In July 2007, the central government instructed officials to "strike hard against illegal religions and cult activities" as part of a campaign to address perceived instability in rural areas.[47] The promulgation of the RRA may increase pressures on unregistered groups. A district in Shanghai, for example, has set targets for carrying out work to eliminate "abnormal religious activity" in accordance with the RRA.[48]

Freedom To Interact with Foreign Co-religionists and Co-religionists Abroad

The Chinese government restricts Chinese citizens' freedom to interact with foreign citizens in China and with citizens abroad as part of its policy to promote self-management and independence from foreign religious institutions.[49] Chinese officials have increased oversight of citizens' contacts with foreign religious practitioners within China in the run-up to the 2008 Beijing Summer Olympic Games. In March 2007, Minister of Public Security Zhou Yongkang said the government would "strike hard" against hostile forces inside and outside the country, including religious and spiritual groups, to ensure a "good social environment" for the Olym-

pics and 17th Party Congress.[50] In 2006, local officials expelled a registered church leader in Shanxi province after his church invited an American missionary to the church.[51] According to the nongovernmental organization China Aid Association, authorities implemented a campaign in 2007 to expel foreigners thought to be engaged in Christian missionary activities.[52] National rules governing the religious activities of foreigners forbid them from "cultivating followers from among Chinese citizens," distributing "religious propaganda materials," and carrying out other missionary activities.[53]

Freedom of Religion for Chinese Children

The Chinese government failed to secure the rights of children to practice religion in its recent codification of religious policy. Although a Ministry of Foreign Affairs official stated in 2005 that no laws restrict minors from holding religious beliefs and that parents may give their children a religious education,[54] recent legislation has not articulated a guarantee of these rights. Regulations from some provinces penalize acts such as "instigating" minors to believe in religion or accepting them into a religion.[55] In practice, children in some parts of China participate in religious activities at registered and unregistered venues,[56] but in other areas, they have been restricted from participating in religious services.[57]

Ambiguities in the law and variations in implementation have created space for children in some parts of China to receive a religious education. Some Muslim communities outside the Xinjiang Uighur Autonomous Region have established schools to provide secular and religious education to children.[58] In some ethnic minority communities, children receive education at Buddhist temples.[59]

Some recent government campaigns against religion have targeted children. In 2004, authorities launched campaigns to educate children against the evils of government-designated cults and to encourage children to expose family members engaged in "illegal religious activities."[60] In 2006, Ye Xiaowen called for strengthening education in atheism especially among children.[61]

Social Welfare Activities by Religious Communities

The government accommodates, and in some cases, sponsors, the social welfare activities of recognized religious communities where such activities meet Party goals. Article 34 of the Regulation on Religious Affairs allows registered religious communities to organize such undertakings.[62] In some cases, government offices and Party-led religious associations initiate and control the scope of social welfare activities.[63] In other cases, religious civil society organizations organize their work under other auspices or are able to operate without registering with the government.[64]

Government support for religious charity work is part of a broader policy allowing civil society organizations to provide welfare services in certain areas. [See Section III—Civil Society for more information.] The government also has permitted some international religious organizations to engage in charity work within China.[65] In recent years, however, the government has increased pressures on civil society organizations.[66] Religiously affiliated civil society

groups in tightly controlled regions such as the Xinjiang Uighur Autonomous Region (XUAR) face additional restrictions. For example, local authorities in the XUAR have banned *meshrep,* Islam-centered groups that have sought to address social problems.[67]

RELIGIOUS FREEDOM FOR TIBETAN BUDDHISTS

Overview

The Chinese government creates a repressive environment for the practice of Tibetan Buddhism. Two new sets of legal measures increase legal bases for repression. Tibetan Buddhist monks and nuns remain subject to expulsions from religious institutions and imprisonment for refusing to accept government policy on issues such as the legitimacy of the Dalai Lama as a religious leader, and the identity of the Panchen Lama. For a detailed overview of current conditions for Tibetan Buddhists in China, see Section IV—Tibet.

RELIGIOUS FREEDOM FOR CHINA'S CATHOLICS

Overview[68]

The Chinese government continues to deny Chinese Catholics the freedom to recognize the authority of overseas Catholic institutions in a manner of their choosing. Authorities blocked Web sites in 2007 to prevent Catholic practitioners from viewing an open letter from Pope Benedict XVI urging reconciliation between registered and unregistered communities in China. Government harassment against Catholic communities has escalated since 2004. The government continues to detain unregistered bishops and coerce registered bishops to exercise their faith according to Party-dictated terms. The return of property owned by the Catholic Church in the 1950s and 1960s remains a contentious issue. Officials and unidentified assailants have beaten people protesting slated demolitions of church property.

Harassment, Detention, and Other Abuses

Both unregistered Catholics and registered clergy remain subject to government harassment, and in some cases, detention. The Commission noted an increase in reported detentions of unregistered Catholics in 2005, after the Regulation on Religious Affairs entered into force.[69] In June 2007, the public security bureau detained Jia Zhiguo, underground bishop of the Diocese of Zhending, in Hebei province, for 17 days.[70] Authorities detained him again in August as he prepared to lead meetings to discuss a letter Pope Benedict XVI issued to Chinese Catholics in June.[71] Jia previously spent more than 20 years in prison.[72] In 2006, the government increased pressure on registered bishops and priests to coerce them to participate in bishop consecrations without papal approval. Authorities detained, sequestered, threatened, or otherwise exerted pressure on registered Catholic clerics to obtain compliance.[73] Authorities have pressured both unregistered clergy and lay practitioners to join registered churches or face repercussions such as restricting children's access to school, job dismissal, fines, and detention.[74]

Closures of Religious Structures and Confiscation of Religious Property

The return of religious property remains a contentious issue. In recent years, some registered Catholic groups have called on the government to give back church property confiscated in the 1950s and 1960s, and in separate incidents, officials or unidentified assailants have beaten people protesting the slated demolition of such property. For example, in 2005, government officials assaulted a group of Catholic nuns in a village near the city of Xi'an, in Shaanxi province, after the nuns had attempted to prevent the authorities from erecting a new building on property that the government confiscated from their religious order during the 1950s. According to overseas sources, the nuns were not injured, and the construction work was halted after the assault. In another incident in 2005, unidentified assailants beat a group of Catholic nuns in Xi'an after the nuns had organized a sit-in to prevent the demolition of a school formerly belonging to their religious order. In a separate incident, unidentified assailants beat a group of Catholic priests in Tianjin who had occupied a building formerly belonging to their Shanxi dioceses and demanded its return. At issue in all three cases was the refusal of local authorities to abide by government instructions mandating the return of such property.[75]

China-Holy See Relations

The state-controlled Catholic Patriotic Association (CPA) does not recognize the authority of the Holy See to appoint bishops and has continued to appoint bishops based on its own procedures, in some cases coercing clerics to participate in consecration ceremonies. While in recent years authorities had tolerated discreet involvement by the Holy See in the selection of some bishops, in 2006 the CPA moved to appoint more bishops without Holy See approval. For example, in November 2006, the CPA appointed Wang Renlei as auxiliary bishop of the Xuzhou diocese, Jiangsu province, without Holy See approval, and authorities reportedly detained two bishops to force their participation in the ordination ceremony.[76]

In September 2007, the CPA ordained Paul Xiao Zejiang as coadjutor bishop of the Guizhou diocese. Though the CPA elected him according to its own practices, the Holy See expressed approval of his election to bishop.[77] The same month, the CPA ordained Li Shan as bishop of Beijing according to its own practices. The Holy See expressed approval for the ordination.[78]

The ordinations follow a June 2007 open letter from Pope Benedict XVI to Catholic church members in China, urging reconciliation between registered and unregistered Catholic communities in China and stating that "the Catholic Church which is in China does not have a mission to change the structure or administration of the State."[79] After the letter was published on the Vatican Web site, Chinese authorities blocked Internet access and ordered Catholic Web sites within China to remove the letter.[80] An overseas news agency reported that local authorities have since detained at least 11 unregistered church priests in an effort to assert official authority in the aftermath of the letter's publication.[81]

Government apprehension about Chinese Catholics' relationship with foreign religious communities and institutions also manifested itself in 2007 in the Xinjiang Uighur Autonomous Region (XUAR). In July, the XUAR government announced it would strengthen oversight of Catholic and Protestant communities to prevent foreign infiltration, a call reiterated in August by local authorities in the XUAR's Changji Hui Autonomous Prefecture.[82]

The government has penalized members of the unregistered Catholic community for their overseas travel. In 2006, authorities detained two leaders of the unregistered Wenzhou diocese, Peter Shao Zhumin and Paul Jiang Surang, after they returned from a pilgrimage to Rome. Six months after their detention, Shao and Jiang received prison sentences of 9 and 11 months, respectively, after authorities accused them of falsifying their passports and charged them with illegally exiting the country.[83]

RELIGIOUS FREEDOM FOR CHINA'S MUSLIMS

Overview[84]

The government strictly controls the practice of Islam, and religious repression in the Xinjiang Uighur Autonomous Region (XUAR), especially among the Uighur ethnic group, remains severe. In recent years the government has increased control over Muslim pilgrimages and continued an ongoing project to author sermons that reflect Party values. New confirmation rules for religious leaders require knowledge of the sermons. Authorities reportedly have tried to restrict the number of Muslim students who study religion overseas. Within the XUAR, the government restricts access to mosques, imprisons citizens for religious activity determined to be "extremist," has detained people for possession of unauthorized texts, and most recently has confiscated Muslims' passports. The XUAR government maintains the harshest legal restrictions in China on children's right to practice religion. Religious repression in the XUAR accompanies a broader crackdown in the region aimed at diluting expressions of Uighur identity. [See Section II—Ethnic Minority Rights for more information on conditions in the XUAR.]

Harassment, Detention, and Other Abuses

Authorities in the XUAR have intensified their crackdown on religion since 2001. Official records have indicated an increase in Uighurs in the XUAR sent to prison or reeducation through labor centers because of religious activity since the mid-1990s.[85] XUAR residents reported to overseas human rights organizations that police monitoring for illegal activity, including systematic door-to-door searches within neighborhoods and villages, has increased in recent years.[86]

In recent years, authorities have detained people for having unauthorized religious texts. In 2005, authorities in the XUAR detained a religion instructor and her students, accusing the teacher of "illegally possessing religious materials and subversive historical information."[87] XUAR officials also detained a group of people for possessing an unauthorized religious book.[88]

Access to Religious Sites and Closures of Religious Structures

The government continues to enforce tight restrictions on XUAR residents' ability to enter mosques. Overseas media has reported on restrictions on mosque entry enforced against minors under 18, local government employees, state employees and retirees, and women, among other groups. Authorities reportedly monitor attendance at mosques and levy fines when people violate the bans.[89]

Authorities in the XUAR continue to enforce earlier policies to demolish "illegal" religious sites, and they have increased oversight since 2001.[90] Authorities reportedly have not allowed Uighurs in the XUAR to build new mosques since 1999.[91]

Restrictions on the Freedom To Make Overseas Pilgrimages

The central government has increased its control over Muslims' overseas pilgrimages in recent years, and public officials in the XUAR have followed suit with further restrictions. The 2004 national Regulation on Religious Affairs charged the Islamic Association of China (IAC) with responsibility for organizing Chinese Muslims' overseas pilgrimages, and stipulated punishments for the unauthorized organization of such trips.[92] In 2006, the IAC established an office to manage pilgrimages to Mecca.[93] It also signed an agreement with the Saudi Ministry of Pilgrimage allowing Chinese Muslim pilgrims to receive Hajj visas only at the Saudi Embassy in Beijing and restricting visas to pilgrims in official Chinese government-sponsored travel groups. The government announced its agreement with Saudi Arabia after a group of Muslims from the XUAR attempted to obtain Saudi visas via a third country. In addition, the IAC issued a circular in 2006 that regulates secondary pilgrimages (*umrah*) to Mecca outside the yearly Hajj.[94] Some citizens who have tried to take trips outside official channels reportedly have done so to avoid requirements to demonstrate political reliability to the government and to save money, among other factors.[95] Authorities also reportedly have tried to restrict Muslims' opportunities to study religion overseas.[96]

Local officials in the XUAR have used pilgrimage policy to further religious repression in that region. In June 2007, after XUAR Party Secretary Wang Lequan announced that the government would further increase its oversight of pilgrimages in the region, overseas media reported that local authorities implemented a policy to confiscate passports from Muslims, and Uighurs in particular.[97] In July, the XUAR government announced that the public security bureau would strengthen passport controls as part of its campaign to curb unauthorized pilgrimages.[98]

Religious Publications

The government continues to exert tight control over the publications of religious materials in the XUAR. In 2007, authorities in the XUAR city of Urumqi reported destroying over 25,000 "illegal" religious books.[99] During a month-long campaign in 2006 aimed at rooting out "political and religious illegal publications," XUAR authorities reported confiscating publications about Islam with "unhealthy content."[100] In 2005, official news media reported that

XUAR authorities had confiscated 9,860 illegal publications involving religion, "feudal superstitions," or Falun Gong.[101]

Children

Restrictions on children's right to practice religion are harsher in the XUAR than elsewhere in China. Legal measures from the XUAR, unseen elsewhere in China, forbid parents and guardians from allowing minors to engage in religious activity.[102] Local governments throughout the XUAR continued restrictions on children's right to practice a religion during 2006. They enforced measures during Ramadan to prevent students from fasting and participating in other religious activities. Authorities also directed such measures at college students who are legal adults under Chinese law.[103] Also in 2006, a county government in the XUAR began a campaign aimed at monitoring and reforming the children of religious figures, alongside other students including truants and children of those released from administrative detention.[104]

RELIGIOUS FREEDOM FOR CHINA'S PROTESTANTS

Overview[105]

The government and Party control the activities of its official Protestant church, and the government continues to target unregistered Protestant groups for harassment, detention, and other forms of abuse. The targeting of Protestant groups deemed to be cults intensified in 2004 and again in 2006. Authorities continue to close house churches and confiscate property. The government has included in this crackdown groups with ties to foreign co-religionists. Religious adherents serving prison sentences include clergy who printed and distributed religious texts without government permission. Members of unregistered house churches have made some advances in challenging government actions, but harassment and abuses continue.

Harassment, Detention, and Other Abuses

Authorities continue to target some unregistered Protestant communities for harassment, detention, and other abuses. A July 2007 report from a district within Shanghai called on authorities to strengthen control over grassroots religious activity and singled out private Protestant gatherings for monitoring and regulation.[106] The China Aid Association (CAA), a U.S.-based nongovernmental organization that monitors religious freedom in China, recorded 600 detentions of unregistered Protestants in China during 2006. It noted that the figure represents a decline from over 2,000 detentions recorded in 2005, but attributed the decrease to a new strategy of targeting church leaders over practitioners and interrogating practitioners on the spot rather than formally arresting them.[107] The CAA found that 18 people were sentenced to more than a year of imprisonment in 2006.[108] In 2007, seven police officers attacked and wounded Beijing house church pastor and farmer advocate Hua Huiqi and his 76-year-old mother Shuang Shuying.[109] Officials charged Hua, who had been previously detained by local officials, with obstruction of justice and sentenced him to six months in pris-

on. Shuang was charged with willfully damaging property and sentenced to two years in prison. An overseas report in August 2007 indicated that police were using Shuang's imprisonment as leverage to pressure Hua to become a police informant. In September, authorities reportedly denied Shuang medical parole despite her poor health.[110] In October, CAA reported that authorities placed Hua under house arrest on October 1 and informed him that his mother's imprisonment was intended to pressure Hua to stop his activism. CAA reported Shuang had been beaten in prison.[111] Gong Shengliang, founder of the South China Church, continues to serve a life sentence for alleged assault and rape, and is reported to be in poor health.[112] Authorities released Liu Fenggang from prison in February 2007 after he served a three-year sentence for reporting on the government demolition of house churches.[113] CAA reported that authorities later placed him under house arrest, starting on October 1, 2007.[114]

Closures of Religious Structures and Confiscation of Religious Property

The government states there are no registration requirements for religious gatherings within the home,[115] but public officials continue to target unregistered Protestant churches for closure and demolition. For example, in July 2007, CAA reported that three underground church buildings in Wenzhou, Zhejiang province faced imminent demolition by local government authorities. The government accused the believers of subscribing to an "evil cult" and threatened to arrest them if they impeded the demolition.[116] In 2006, a court case against religious adherents who had protested the demolition of a church building in the Xiaoshan district of Hangzhou, Zhejiang province, concluded with the sentencing of eight house church leaders for "inciting violence to resist the law."[117] According to the CAA, closures of house churches increased between 2005 and 2006.[118]

The government also exerts control over the property of registered Protestant churches. In 2006, approximately 300 members of a registered Protestant church in Gansu province engaged in a peaceful demonstration to demand the return of property that had been confiscated by the government in 1966.[119]

Religious Speech

Chinese authorities continue to punish citizens who publish religious materials without permission, including Protestant religious leaders who have printed and given away Bibles. In separate incidents in 2005 and 2006, pastors Cai Zhuohua and Wang Zaiqing received prison sentences of three and two years, respectively, after each printed and distributed religious materials without government permission. In each case, the sentencing court found that the preparation and distribution of the materials constituted the "illegal operation of a business," a crime under Article 225 of the Criminal Law.[120] Authorities released Cai from prison upon completion of his three-year prison sentence on September 10, 2007.[121] The government has also detained people for publicizing abuses against house church members. In 2006, Chinese authorities de-

tained a documentary filmmaker who was making a film about house churches and detained a journalist after he posted reports publicizing protests about a church demolition.[122]

Challenging Government Actions

Some members of unregistered churches have used the legal system to challenge government actions. In August 2006, a court in Henan province rescinded a decision to subject a house church pastor to one year of reeducation through labor for participating in a house church gathering authorities deemed illegal. In November 2006, a group in Shandong province that previously had been placed in administrative detention for their attendance at a house church service reached a settlement with the Public Security Bureau to rescind the administrative detention decision against them. [See Section II—Rights of Criminal Suspects and Defendants for more information.] In neither case did the rescission include recognition of practitioners' right to assemble for worship outside of registered venues for religious activity.[123] Not all challenges to government actions have been successful. In 2007, local governments in Henan province and the Inner Mongolia Autonomous Region rejected unregistered church leaders' applications for administrative review of their detentions.[124] In addition, rights defenders who have advocated on behalf of house church members and other groups have faced repercussions.[125]

Outside of legal channels, international pressure has resulted in advances for some house churches. CAA reported that international pressure facilitated the release of 33 arrested house church leaders and 3 South Korean church leaders who had been detained after officials raided a house church study group in Henan province in 2007.[126] Two days after two house church pastors appealed for administrative reconsideration regarding a 2007 raid on their churches, local officials in Jiangsu province returned confiscated property, citing concerns about negative international repercussions.[127]

Freedom To Interact with Foreign Co-religionists and Co-religionists Abroad

Authorities have promoted official exchanges with overseas Protestant churches, including Chinese participation in a 2005 World Council of Churches conference,[128] but have restricted citizens from participating in programs outside these official channels. For example, authorities prevented house church members and legal advocates Fan Yafeng, Gao Zhisheng, and Teng Biao from attending a Washington, DC-based forum on religious freedom in 2005.[129]

In July, the Xinjiang Uighur Autonomous Region (XUAR) government announced it would strengthen oversight of Protestant and Catholic communities to prevent foreign infiltration in the names of these religions.[130] The announcement followed church service raids in the XUAR during 2006 and 2007, including those with foreign worshippers and pastors.[131] According to CAA, more than 60 of over 100 missionaries expelled from China between April and June 2007 came from the XUAR.[132]

The government has punished some house church members for traveling overseas. Unregistered Protestant church leader Zhang Rongliang, who resorted to obtaining illegal travel documents after the government refused to issue him a passport, was sentenced to seven and a half years' imprisonment in 2006 on charges of illegally crossing the border and fraudulently obtaining a passport.[133] Also in 2006, authorities placed house church historian and former political prisoner Zhang Yinan and his family under surveillance after he applied for a passport to attend a religious function in the United States.[134]

GOVERNMENT PERSECUTION OF FALUN GONG

The government has continued its campaign of persecution against Falun Gong practitioners, which it began in 1999. In its 2007 report on religious freedom in China, the U.S. Department of State noted past reports of deaths and abuse of Falun Gong practitioners in custody.[135] Government officials have used both the Criminal Law and administrative punishment regulations as legal pretexts for penalizing Falun Gong activities.[136] Citizens sentenced to prison terms under the Criminal Law include Falun Gong practitioners who demonstrated in support of Falun Gong in 1999, as well as practitioners who prepared leaflets about Falun Gong, including Wang Xin, Li Chang, Wang Zhiwen, and Ji Liewu.[137] Authorities released Yao Jie in 2006 after sentencing her in 1999 to seven years' imprisonment for crimes related to organizing and using a cult and for illegal acquisition of state secrets. The charges stem from accusations that she organized an April 1999 rally of Falun Gong practitioners outside the central government's leadership compound.[138]

Falun Gong practitioners and rights defenders who advocate on their behalf, as well as on behalf of other communities, including house church members, face serious obstacles in challenging government abuses. In 2006, authorities intensified a campaign of harassment against lawyer Gao Zhisheng, who has represented numerous activists, religious leaders, and writers, after he publicized widespread torture against Falun Gong practitioners. A Beijing court convicted him in 2006 to a three-year sentence, suspended for five years, for "inciting subversion of state power."[139] Gao went missing immediately after an open letter that he sent to the U.S. Congress was made public at a Capitol Hill press conference on September 20, 2007. Authorities also have harassed members of his family.[140] [For additional information, see Section II—Rights of Criminal Suspects and Defendants.] Overseas organizations reported that on September 29, 2007, unidentified assailants beat rights defense lawyer Li Heping, who had advocated on behalf of Falun Gong practitioners and house church members, among others.[141]

In 2006, courts in Shandong province rejected appeals from Liu Ruping and his lawyer that challenged Liu's sentence of 15 months of reeducation through labor for posting Falun Gong notices.[142]

In 2007, the government used possession of Falun Gong materials as a pretext for squelching a political activist. In March, a court in Zhejiang province gave a three-year sentence to Chi Jianwei, a member of the Zhejiang branch of the China Democracy

Party, for "using a cult to undermine implementation of the law" after authorities found Falun Gong materials in his home.[143]

OTHER RELIGIOUS AND SPRITUAL COMMUNITIES

Local governments continue to shut down unauthorized Buddhist and Daoist temples. Towns and cities reported in 2006 on campaigns to address the presence of illegal temples through measures that included closure and demolition.[144] Some local governments have targeted temples that include practices deemed as superstitious beliefs.[145] Other temples have registered and submitted to official control. At a forum evaluating implementation of the Regulation on Religious Affairs in 2007, the president of the Daoist Association of China noted that the regulation has led to the registration of previously unregistered Daoist temples.[146]

The government has supported some official interactions between domestic and foreign Buddhist communities,[147] but also limited some foreign involvement. In 2004, authorities closed a Buddhist temple renovated by an American Buddhist association and detained the temple's designated leader.[148]

Chinese religious adherents with ties to foreign religious communities not recognized within China have had leeway to practice their religion in some cases. The U.S. Department of State reported in 2006 that some Chinese citizens who joined the Church of Jesus Christ of Latter-day Saints (LDS) while living abroad met for worship in a Beijing location that Chinese authorities permitted expatriate LDS members to use.[149] The central government continues to deny formal recognition to the LDS church as a domestic religious community, however, as it does other religious communities outside the five recognized groups, including Christian denominations that maintain a distinct identity outside the Chinese government-defined Protestant and Catholic churches. A few local governments provide legal recognition to Orthodox Christian communities, but the central government has not recognized Orthodoxy as a religion.[150] In recent years, officials have met with representatives of the Russian Orthodox Church to discuss China's Orthodox communities.[151]

Central and local authorities have drawn some aspects of folk beliefs into official purview. Since at least 2004, the State Administration for Religious Affairs has operated an office that undertakes research and policy positions on folk beliefs and religious communities outside the five recognized groups,[152] but the government has neither extended formal legal recognition to any of these groups nor altered its system whereby religious communities must receive government recognition to operate. In 2006, Hunan province issued the first provincial-level regulation on religious affairs to provide for the registration of venues for folk beliefs.[153] The Hunan provincial government's decision to channel folk religions into the government system of religious regulation provides some limited legal protections, but also may subject more aspects of folk practice to government control. To date, no other provincial regulation has regulated folk beliefs,[154] but a central government official has indicated that the government is studying the Hunan model and may formulate national legal guidance on the regulation of folk belief venues.[155] Authorities continue, however, to express concern

over components within recognized religions deemed as folk beliefs, and view some aspects of folk practice as superstitions subject to official censure, and in some cases, legal penalties.[156]

ETHNIC MINORITY RIGHTS

INTRODUCTION

The Chinese government recognizes and supports some aspects of ethnic minority identity, but represses aspects of ethnic minority rights deemed to challenge state authority, especially in the Xinjiang Uighur Autonomous Region, Inner Mongolia Autonomous Region (IMAR), and Tibet Autonomous Region and other Tibetan autonomous areas. Overall conditions vary for members of the 55 groups the Chinese government designates as minority "nationalities" or "ethnicities" (*minzu*),[1] but all communities face state controls in such spheres as governance, language use, culture, and religion. In recent years, the state has further refined its legal and economic systems for ethnic minorities, whom official statistics place at almost 8.5 percent of China's total population.[2] The government provides some protections in law and in practice for ethnic minority rights and allows for autonomous governments in regions with ethnic minority populations.[3] The narrow parameters of the ethnic autonomy system and the overriding dominance of the Communist Party, however, prevent ethnic minorities from enjoying their rights in line with international human rights standards.[4] [See Section IV—Tibet for more information on conditions in Tibetan areas of China.]

The government has taken steps to refine the legal framework for ethnic minority autonomy, but it has retained the fundamental features of the system that deny ethnic minorities meaningful control over their own affairs. In 2005, the State Council issued legal provisions[5] for implementing the 1984 Regional Ethnic Autonomy Law (REAL), which defines the framework for autonomous governments. Though the 2005 provisions include measures beneficial in areas such as local economic development, monitoring implementation of regional ethnic autonomy legislation, and protection of cultural heritage,[6] some provisions weaken ethnic minority rights. For example, the provisions bolster measures to promote migration to ethnic minority areas and reduce support for ethnic minority language education.[7] In addition, the basic legal structure whereby higher organs of government can reject proposed legislation persists.[8] [See Section IV—Tibet for a discussion of the REAL as implemented in Tibetan areas of China.] In 2006, the National People's Congress Standing Committee (NPCSC) launched a program to examine implementation of the REAL in regions throughout China and reported positively on its investigation.[9] An NPCSC investigation team that went to the IMAR, for example, described the ethnic autonomy system as a success in that region.[10] The conclusion conflicts with other reports that authorities there have taken measures that undermine meaningful autonomy. In recent years authorities in the IMAR have closed Mongolian Web sites,[11] placed on trial Mongolian medicine practitioners Naguunbilig and Daguulaa,[12] and denied a Mongol rights advocate's passport application on the grounds of "possible harm to state security and na-

tional interests."[13] Ethnic Mongol bookstore owner Hada continues to serve a 15-year prison sentence for the crimes of "splittism" and "espionage," after he organized peaceful protests for ethnic minority rights.[14] Although the IMAR government issued new legal measures in 2005 to promote ethnic minority language use in schooling, jobs, and broadcasting, its effectiveness remains unclear.[15]

The central government has increased support for development projects in ethnic minority regions, with mixed results. Aid projects, including the Great Western Development program launched in 2000, have increased migration, strained local resources, and furthered uneven allocation of resources that favors Han Chinese.[16] In 2007, the central government issued a separate five-year development program for ethnic minorities and ethnic minority regions.[17] The program sets concrete targets for improving economic and social conditions among ethnic minorities, who make up almost half of the Chinese population living in extreme poverty,[18] and calls for improved efforts to draft regional ethnic autonomy legislation.[19] The program couples such potentially beneficial reforms, however, with measures designed to monitor and report on ethnic relations and perceived threats to stability.[20]

RIGHTS ABUSES IN THE XINJIANG UIGHUR AUTONOMOUS REGION

The Chinese government has increased repression in the Xinjiang Uighur Autonomous Region (XUAR) since 2001, building off campaigns started in the 1990s to squelch political viewpoints and expressions of ethnic identity deemed threatening to state power.[21] The government targets in particular the region's ethnic Uighur population, within which it alleges the presence of separatist activity. Since the mid-1990s, the government has carried out "strike hard" anti-crime campaigns that have addressed targets including the government-designated "three forces" of terrorism, separatism, and religious extremism.[22] In 2007, XUAR Communist Party Secretary Wang Lequan called on the XUAR government to make stability the "overriding" concern in the region and to continue to "strike hard" against the "three forces."[23] The statement followed a January 5 raid at a location in the XUAR that Chinese officials described as a terrorist training base.[24] Authorities provided limited information to back up the claim, drawing doubt from outside observers.[25] Broader Chinese government reporting on terrorist threats remains questionable in light of government actions that conflate the peaceful exercise of rights with terrorist or separatist activity.[26] In July 2007, a publication under the national Ministry of Public Security called for "greatly" strengthening intelligence gathering in the region to address perceived sources of instability, including "antagonistic forces within and outside the border."[27] In August, Wang Lequan called for ongoing measures to fight separatism. He urged vigilance against "western hostile forces" led by the United States that he said have used the guise of human rights and ethnic and religious issues in plots aimed at overthrowing Communist Party leadership.[28]

Rights abuses in the region are far reaching and target multiple dimensions of Uighur identity. Repression of Islam, the predominant religion practiced by Uighurs and many other ethnic minority

groups in the XUAR, remains severe. [See Section II—Freedom of Religion for more information.] "Strike hard" campaigns have resulted in high rates of incarceration among Uighurs for state security crimes, including sentences stemming from religious activity.[29] Official records have indicated an increase in Uighurs in the XUAR sent to prison or reeducation through labor centers because of religious activity since the mid-1990s.[30] Ministry of Justice figures from 2001 indicated that Uighurs incarcerated for "state security crimes" made up over 9 percent of those serving prison sentences.[31] XUAR residents reported to overseas human rights organizations that police monitoring for illegal activity, including systematic door-to-door searches within neighborhoods and villages, has increased in recent years.[32]

In addition to "strike hard" measures, officials also have enforced "softer" policies aimed at diluting expressions of Uighur identity. In recent years local governments have intensified measures to reduce education in ethnic minority languages[33] and have instituted language requirements that disadvantage ethnic minority teachers.[34] Broader discriminatory hiring practices, including in the government sector, also hinder ethnic minorities' job prospects. In 2006, for example, during job recruiting in the XUAR, the Xinjiang Production and Construction Corps (*bingtuan*) reserved approximately 800 of 840 civil servant job openings for Han Chinese, leaving 38 positions for members of specified ethnic minority groups.[35] The government provides incentives for migration to the region from elsewhere in China, in the name of recruiting talent and promoting stability.[36] Measures to address high population growth have targeted impoverished ethnic minorities within the region.[37] At the same time the government promotes migration to the XUAR to address perceived labor shortages, it also supports programs to send young ethnic minorities to work in factories in other parts of China.[38] In 2007, overseas media reported on abuses in such a government-sponsored labor program that sent Uighur women to a factory in Shandong province under false pretenses and compelled them to work without regular wages.[39] Central and local authorities also have promoted abusive labor practices within the region to fulfill state development goals. To meet harvesting demands in the XUAR's cotton industry, authorities have compelled children in the region to pick crops.[40] The government issued legal guidance in 2006 on supporting the child labor force.[41]

Authorities in the XUAR continue to imprison Uighurs engaged in peaceful expressions of dissent and other non-violent activities. Such political prisoners include Tohti Tunyaz, who received an 11-year prison sentence in 1999 after conducting historical research on the XUAR; Abduhelil Zunun, who received a 20-year sentence in 2001 after translating the Universal Declaration of Human Rights into the Uighur language; Abdulghani Memetemin, who received a 9-year prison sentence in 2003 after sending information on human rights abuses to a foreign NGO; Nurmemet Yasin, who received a 10-year prison sentence in 2005 after writing a short story authorities deemed a criticism of government policy in the XUAR; and Korash Huseyin, who received a 3-year prison sentence in 2005 after publishing Yasin's work of literature.[42]

Although the Chinese government granted political prisoner Rebiya Kadeer early release on medical parole to the United States in 2005, it has since launched a campaign of harassment and abuse against her family members in the XUAR in an apparent strategy to punish Kadeer for her activism in exile.[43] In 2007, a XUAR court sentenced Kadeer's son Ablikim Abdureyim to nine years in prison for "instigating and engaging in secessionist activities."[44] A court imposed a seven-year prison sentence and fine in 2006 on Kadeer's son Alim, and imposed a fine on her son Kahar, for tax evasion.[45] In 2005 and 2006, authorities also placed other family members under surveillance and house arrest[46] and held two of Kadeer's former business associates in detention without charges for seven months.[47]

The Chinese government's increasing cooperation with Central Asian neighbors has placed Uighur activists outside of China at risk of extradition. In 2006, Uzbek authorities extradited Canadian citizen Huseyin Celil from Uzbekistan to China, where he received a life sentence in 2007 for "terrorist activities" and "plotting to split the country." A former Chinese citizen originally from the XUAR, Celil had gained political asylum in Canada in 2001. Chinese authorities do not recognize Celil's Canadian citizenship and have denied Celil access to Canadian consular officials.[48]

POPULATION PLANNING

INTRODUCTION

During the past five years, the Chinese government has maintained population planning policies that violate international human rights standards. As this Commission noted in 2006, "The Chinese government strictly controls the reproductive lives of Chinese women. Since the early 1980s, the government's population planning policy has limited most women in urban areas to bearing one child, while permitting many women in rural China to bear a second child if their first child is female. Officials have coerced compliance with the policy through a system marked by pervasive propaganda, mandatory monitoring of women's reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and, in some cases, forced sterilization and abortion. The Chinese government's population planning laws and regulations contravene international human rights standards by limiting the number of children that women may bear, by coercing compliance with population targets through heavy fines, and by discriminating against 'out-of-plan' children."[1]

As this Commission reported in 2005 and 2006, China's population planning policies in both their nature and implementation constitute human rights violations according to international standards. During 2007, human rights abuses related to China's population planning policies clearly were not limited to physically coerced abortions. Local officials have violated Chinese law by punishing citizens, such as imprisoned legal advocate Chen Guangcheng, who have drawn attention to population planning abuses by government officials. Moreover, as described below, population planning policies have exacerbated imbalanced sex ratios—a male to female ratio of 118:100, according to the U.S. Department

of State, but reportedly higher in some localities and for second births.

OVERVIEW OF RECENT DEVELOPMENTS

China's population planning policies exert government control over women's reproductive lives, impose punitive measures against citizens not in compliance with the population planning policies, and engender additional abuses by officials who implement the policies at local levels. The government states that population planning policies have prevented more than 300 million births since implementation, and it justifies continuing the policies to maintain controls over population growth.[2] In 2002, when the Chinese government codified its population planning policies into national law, an official stated that China "does not yet possess the conditions for a relaxation of [the] birth policy, but there is also no need to tighten it."[3] A decision issued by the Communist Party Central Committee and State Council in December 2006 promoted the continuation of basic national policies on population planning.[4] In July 2007, the head of the Population and Family Planning Commission reiterated that the policies would remain in place.[5]

China's population planning policies deny Chinese women control over their reproductive lives. The Population and Family Planning Law and related local regulations permit women to bear one child, with limited exceptions.[6] Women who bear "out-of-plan" children face, along with their family members, harsh economic penalties in the form of "social compensation fees" that can range to multiples of a locality's yearly average income.[7] Authorities also subject citizens who violate population planning rules to demotions or loss of jobs and other punitive measures.[8] Authorities have used legal action and coercive measures to collect money from poor citizens who cannot afford to pay the fees.[9] The fees entrench the disparity between rich and poor, as wealthier citizens have come to view paying the fees as a way to buy out of population planning restrictions.[10] Public officials also have been able to flaunt restrictions. Official Chinese media reported in 2007 that the Hunan province family planning commission found that from 2000 to 2005, nearly 2,000 officials in the province had violated the Population and Family Planning Law.[11] In September 2007, the government and Party announced new measures to monitor public officials' adherence to population planning policies and deny promotions to officials who violate them.[12] In recent years, the government has introduced more programs to reward citizens' compliance with family planning policies, but it has retained punitive measures.[13] In May 2007, the national Population and Family Planning Commission adopted a plan to "rectify" out-of-plan births in urban parts of China.[14] Controls imposed on Chinese women and their families, and additional abuses engendered by the system, from forced abortion to discriminatory policies against "out-of-plan" children, violate standards in the Convention on the Elimination of All Forms of Discrimination Against Women,[15] Convention on the Rights of the Child,[16] and the International Covenant on Economic, Social, and Cultural Rights,[17] the terms of which China is bound to uphold as a state party to these treaties.

Abuses in the enforcement of population planning policies have further eroded citizens' rights. Although the Population and Family Planning Law provides for punishment of officials who violate citizens' rights in promoting compliance,[18] reports from recent years indicate that abuses continue. Media reports in 2005 publicized abuses in Linyi, Shandong province, where officials enforced compliance through forced sterilizations, forced abortions, beatings, and other abuses.[19] Citizens who challenge government offenses continue to face harsh repercussions. After legal advocate Chen Guangcheng exposed abuses in Linyi, authorities launched a campaign of harassment against him that culminated in a four-year, three-month prison sentence imposed in 2006 and affirmed by a higher court in 2007.[20] [See also Section II—Rights of Criminal Suspects and Defendants for more information.] Structural incentives for local officials to coerce compliance exacerbate the potential for abuses. In spring 2007, local officials in Bobai county, Guangxi Zhuang Autonomous Region (GZAR), initiated a wide-scale campaign to control birthrates after the GZAR government reprimanded officials for failing to meet population targets. Officials reportedly required all women to submit to examinations and subjected women to fines, forced sterilization, and forced abortions. Authorities looted homes and seized possessions of citizens who did not pay the fines.[21] In May, Bobai residents rioted in protest of government abuses. Residents of Rong county, also in the GZAR, protested population planning policies later the same month.[22] In one potentially positive development, an intermediate court in Hebei province agreed in 2007 to hear a couple's lawsuit against a local family planning commission for a forced abortion seven years ago, reportedly the first time a court has taken an appeal in this type of case.[23]

The government has taken limited steps to address social problems exacerbated by population planning policies, such as unbalanced sex ratios[24] and decreasing social support for China's aging population. In 2006, the government announced that the following year it would extend across China a pilot project to provide financial support to rural parents with only one child or two girls, once the parents have reached 60 years of age.[25] The Communist Party Central Committee and State Council decision issued in 2006 describes the unbalanced sex ratio as "inevitably influencing social stability," advocates steps to address discrimination against girls and women, and promotes measures to stop sex-selective abortion.[26] Sex ratios stand at roughly 118 male births to 100 female births, with higher rates in some parts of the country and for second births. Demographers and population experts consider a normal male-female birth ratio to be between 103 to 107:100.[27]

In 2006, the National People's Congress Standing Committee considered, but decided not to pass, a proposed amendment to the Criminal Law that would have criminalized sex-selective abortion.[28] Local governments have instituted prohibitions against fetal sex-determination and sex-selective abortion. For example, in 2006, Henan province passed a regulation imposing financial penalties on these acts where they take place outside of limited approved parameters.[29]

At the same time the government has taken some steps to deal with the sex imbalance and discriminatory attitudes toward girls, some provincial governments have enforced policies that institutionalize biases against girls by permitting families to have a second child where the first child is a girl.[30] According to some observers, imbalanced sex ratios and a resulting shortage of marriage partners have already contributed to, or will exacerbate in the future, the problem of human trafficking.[31] [See Section II—Human Trafficking, and Section II—North Korean Refugees in China.]

Within individual provincial-level jurisdictions, a range of factors beyond birth rates affect local population growth. Internal migration has contributed to demographic shifts within ethnic minority autonomous regions, among other areas. In 2006, authorities in the Xinjiang Uighur Autonomous Region (XUAR) acknowledged that floating and migrant populations would continue to contribute to the region's high rate of population growth, but also announced the government would carry out its population planning policies by continuing measures to control birth rates. A series of articles from official media specifically indicated that the XUAR government would target impoverished ethnic minority areas as the focus of these measures.[32] [See Section II—Ethnic Minority Rights, and Section IV—Tibet, for more information on population issues in ethnic minority areas.]

During 2008, the Commission will continue to monitor and report on violations of international human rights standards in China related to forced abortions, social compensation fees, licensing for births, control of women's reproductive cycles, and all other issues.

Freedom of Residence and Travel

Freedom of Residence

The Chinese government continues to enforce the household registration (*hukou*) system it first established in the 1950s. This system limits the right of Chinese citizens to determine their permanent place of residence. Regulations and policies that condition legal rights and access to social services on residency status have resulted in discrimination against rural *hukou* holders who migrate for work to urban areas. The *hukou* system exacerbates barriers that migrant workers and their families face in areas such as employment, healthcare, property rights, legal compensation, and schooling. [See Section II—Worker Rights for more information.] Central and local government reforms from the past five years have mitigated some obstacles to equal treatment, but provisions that allow people to change *hukou* status have included criteria that advantage those with greater economic and educational resources or with family connections to urban *hukou* holders.[1] The government's restrictions on residence and discrimination in equal treatment contravene international human rights standards,[2] including those in treaties China has signed or ratified.[3] In May 2005, the UN Committee on Economic, Social, and Cultural Rights expressed "deep concern" over the discrimination resulting from "inter alia, the restrictive national household registration system (*hukou*) which continues to be in place despite official announcements regarding reforms."[4]

Recent reforms have addressed some of the burdens migrants face. In 2001, the State Council expanded an earlier program to allow rural migrants who meet set requirements to migrate to small towns and cities and obtain *hukou* there, while keeping rural land rights.[5] In 2003, the State Council abolished "Measures for the Custody and Repatriation of Vagrant Beggars in Cities" that allowed the police to detain, at will, people without identification, residence, or work permits.[6] The same year, the State Council issued a national legal aid regulation that does not condition legal aid on residence status.[7]

Central government directives promulgated in 2003 and beyond also have called for reform, though many have had limited formal legal force and limited impact.

- In 2003, the State Council issued a directive acknowledging migrants' right to work in cities, forbidding discriminatory policies, and calling for improved services for migrants and their families.[8]
- Also in 2003, the State Council issued legal guidance ordering urban governments to take responsibility for educating migrant children.[9]
- A 2004 State Council directive called for an end to discriminatory work restrictions against migrants.[10]
- The Ministry of Labor and Social Services (MOLSS) issued a labor handbook the following year stating that the MOLSS will not require migrants to obtain a work registration card in their place of origin before seeking jobs in urban areas.[11]
- A joint opinion on the promotion of a "new socialist countryside" issued in 2005 by the Communist Party Central Committee and the State Council called for reforms to the *hukou* system, including a reiteration of prior reform measures that stalled at the local level.[12]
- In 2006, the State Council issued an opinion addressing various issues affecting migrant workers and calling for measures to ease, under certain conditions, migrants' ability to settle in urban areas.[13]
- 2006 revisions to the compulsory education law codify a guarantee of equal educational opportunities for children outside the jurisdiction of their *hukou* registry.[14]
- During the 10th session of the National People's Congress (NPC) in March 2007, Chinese legislators approved a resolution creating a delegate quota in the NPC reserved for migrant workers.[15]
- In 2007, the Ministry of Public Security formulated a series of proposals to submit to the State Council for approval.[16] Major reforms in the proposal include improving the temporary residence permit system, improving the ability of migrants' spouses and parents to transfer *hukou* to urban areas, and using the existence of a fixed and legal place of residence as the primary basis for obtaining registration in a city of residence.[17]

Uneven implementation of *hukou* reform at the local level has dulled the impact of national calls for change. Fiscal burdens placed on local governments have served as disincentives for imple-

menting reforms. Fears of population pressures and citizen activism, in addition to discriminatory attitudes against migrants, also have fueled resistance from local governments.[18] Since 2001, many provinces and large cities have implemented measures that allow migrants to obtain an urban *hukou*, but they generally give preference to wealthier and more educated migrants by conditioning change in status on meeting requirements such as having "a stable place of residence" and a "stable source of income," as defined in local provisions.[19] New reforms instituted in Chengdu in 2006 allow some migrants to obtain a *hukou* where they rent housing in the city and reside in it for over a year, but the reforms also impose conditions that disadvantage poorer migrants.[20] Other policies also are detrimental to broader reforms of the *hukou* system. In 2005, authorities in Shenzhen implemented tighter restrictions against migrants by suspending the processing of *hukou* applications for migrants' dependents. Authorities also said they would limit the growth of private schools for migrant children and require migrant parents to pay additional fees to enroll their children in public schools.[21] In 2006, Shenyang municipal authorities reversed 2003 relaxations on *hukou* requirements when they reinstituted temporary residence requirements for migrants.[22]

Some local government measures have been beneficial to improving conditions for migrants. After the State Council called in 2004 for abolishing employment restrictions for migrants, the Beijing municipal government followed suit with local reforms in 2005 that eliminated restrictions on migrant workers holding certain occupations.[23] In 2005, Henan provincial authorities reported that they would institute measures to increase migrant workers' access to healthcare while in urban areas.[24] In 2006, authorities in a district within the city of Xi'an reported instituting measures granting all residents equal access to social services.[25] Some local governments have removed discriminatory compensation levels for rural migrants. In October 2006, the Chongqing High People's Court issued an opinion stipulating that rural migrants who have resided in Chongqing for over a year and have an "appropriate source of income" are entitled to the same compensation as urban *hukou* holders in traffic accident cases.[26] The Supreme People's Court is currently contemplating a new judicial interpretation on the role of *hukou* status in determining death compensation rates.[27]

Central and local governments have accompanied measures to address discrimination against migrants with calls to strengthen supervision over migrant populations, reflecting concerns over perceived social unrest. The 2003 directive articulating broad protections for migrant workers also supports measures to increase control over them, including through "social order management responsibility systems."[28] Although a government official called in 2005 for transforming management techniques from methods of control to methods of service,[29] authorities have continued to enact measures to exert government control. A circular from Henan province issued in 2006 called for monitoring migrants by keeping files on their rental housing.[30]

FREEDOM OF TRAVEL

The Chinese government continues to enforce restrictions on citizens' right to travel, in violation of international human rights standards.[31] The Law on Passports, effective January 2007, articulates some beneficial features for passport applicants, but gives officials the discretion to refuse a passport where "[t]he competent organs of the State Council believe that [the applicant's] leaving China will do harm to the state security or result in serious losses to the benefits of the state."[32] Authorities restrict travel to penalize citizens who express views they deem objectionable. The Chinese government initially failed to approve democracy activist Yang Jianli's passport application,[33] which he submitted after his release from prison in April 2007.[34] In August, however, authorities allowed Yang to travel to the United States. Authorities had detained Yang in 2002 when he crossed into China on another person's passport. Authorities had earlier refused to renew his passport and had barred him and other activists from entering the country.[35] Chinese officials have prevented other activists from traveling abroad, including rights defender Tang Jingling, whose passport was confiscated by Guangdong border authorities in September 2006 as he was en route to New York. Tang brought an administrative lawsuit against the government in December 2006.[36] In February 2007, the government prevented a group of writers from participating in a conference in Hong Kong by denying visas to some writers, warning others not to attend, and directly preventing some from passing through border controls into Hong Kong.[37] [See Section II—Freedom of Expression for more information.] In June 2007, authorities intercepted human rights defenders Yao Lifa and Zeng Jinyan at the airport and prevented them from traveling to an overseas human rights conference.[38] In July, authorities rejected Mongol rights advocate Gao Yulian's passport application on the grounds of "possible harm to state security and national interests."[39] In August, Shanghai authorities denied the passport applications of rights defense lawyer and former political prisoner Zheng Enchong and his spouse Jiang Meili.[40] The same month, authorities in Beijing prevented Yuan Weijing, spouse of imprisoned rights activist Chen Guangcheng, from traveling overseas to accept an award for her husband.[41] In 2007, authorities also denied passport applications from the family members of defense lawyer Gao Zhisheng.[42]

The government also uses travel restrictions to control religious citizens' overseas travel and to punish religious adherents deemed to act outside approved parameters. [See Section II—Freedom of Religion for more information.] The central government has increased control over Muslims' ability to undertake overseas religious pilgrimages, especially since 2004. In June 2007, overseas media reported that authorities in the Xinjiang Uighur Autonomous Region (XUAR) implemented a policy to confiscate passports from Muslims, and Uighurs in particular, in a reported effort to enforce restrictions on overseas pilgrimages.[43] In July, the XUAR government announced the public security bureau would strengthen passport controls as part of its campaign to curb unauthorized pilgrimages.[44] House church leader Zhang Rongliang, who resorted

to obtaining illegal travel documents after the government refused to issue him a passport, was sentenced to seven and one-half years' imprisonment in 2006 on charges of illegally crossing the border and fraudulently obtaining a passport.[45] Also in 2006, authorities detained two leaders of the unregistered Wenzhou diocese, Peter Shao Zhumin and Paul Jiang Surang, after they returned from a pilgrimage to Rome. Six months after their detention, Shao and Jiang received prison sentences of 9 and 11 months, respectively, after authorities accused them of falsifying their passports and charged them with illegal exit from the country.[46] Authorities placed house church historian and former political prisoner Zhang Yinan and his family under surveillance in 2006 after he tried to apply for a passport to attend a religious function in the United States.[47]

STATUS OF WOMEN

INTRODUCTION

The Commission has noted in the past that the Chinese government has been more vigorous in publicizing and condemning abuse against women than in other areas concerning human rights.[1] In 2003, 2004, and 2006, the Commission observed that, while China had built an expansive legal framework to protect women's rights and interests, loopholes and inadequate implementation remained that left women vulnerable to widespread abuse, discrimination, and harassment at home and in the workplace.[2] The Commission noted in 2004–2006 that China's economic reforms have increased opportunities for women to build their own businesses, but these reforms still leave many women, when compared to men, with fewer employment opportunities, less earning power, less access to education, especially in rural areas, and increasing risks from HIV/AIDS.[3] In its 2004–2006 Annual Reports, the Commission also noted the existence of women's organizations that advocate on behalf of women's rights within the confines of government and Communist Party policy.[4] In its 2005 Annual Report, the Commission observed that China's Constitution and laws provide for the equal rights of women, but, as noted in 2006, vague language and inadequate implementation continue to hinder the effectiveness of legal protections written in the Constitution and national laws.[5]

LAWS AND INSTITUTIONS

The Chinese Constitution and laws provide for the equal rights of women.[6] In addition, the Program for the Development of Chinese Women seeks to increase women's development by 2010 in areas of the economy, decisionmaking and management, education, health, law, and the environment.[7] CECC Annual Reports dating from 2003 have noted that the number of laws and regulations promoting the equal rights of women has expanded, with a noticeable difference after 2004.

In August 2005, the National People's Congress (NPC) Standing Committee passed an amendment to the Law on the Protection of Women's Rights and Interests (LPWRI), which prohibit sexual harassment and domestic violence, and require government entities at all levels to give women assistance to assert their rights in court.[8]

At least nine provincial and municipal governments have passed regulations to strengthen the implementation of the LPWRI.[9] For example, Shanghai's regulations, passed in April 2007, explicitly prohibit five types of sexual harassment, namely verbal, written, pictorial, electronic transmission of information such as text messaging, and physical sexual harassment.[10] The 2002–2004 Annual Reports noted that although there was initially no specific law on sexual harassment, people began to file sexual harassment cases in court and several women won lawsuits against their employers, in part due to greater economic openness and government and women's organizations' efforts to build awareness.[11] In addition, at least 15 provincial and municipal governments have detailed domestic violence regulations, and the Ministry of Public Security and the All-China Women's Federation (ACWF), among others, issued guidelines in 2007 that will legally obligate police officers to respond immediately to domestic violence calls and to assist domestic violence victims, or face punishment.[12]

Previous annual reports have noted that the lack of a national definition on key terms, such as discrimination against women and sexual harassment, hinder effective implementation of the amended LPWRI and other policy instruments.[13] In addition, even though the amended Marriage Law of 2001 and the amended LPWRI prohibit domestic violence, "domestic violence" is not defined, and case rulings in domestic violence cases are inconsistent due to the lack of clear standards in laws and judicial explanations.[14] Other hurdles in accessing justice include domestic violence victims bearing the burden in bringing complaints, lack of detailed provisions on how to implement policy measures, and limited public understanding and awareness, among other factors.[15] Recent surveys show that domestic violence and sexual harassment remain widespread. For example, 30 percent of Chinese families experience domestic violence, and 74.8 percent of female migrant workers engaged in the service industry in Changsha city report experiencing some form of verbal or physical sexual harassment.[16]

GENDER DISPARITIES

Economy

China's transition to a market economy has had contradictory influences on the social status of women, who contribute to over 40 percent of China's gross domestic product, offering them both "greater freedom and mobility," and "greater threats . . . at home and in the workplace."[17] The Commission's 2003 Annual Report notes that women workers face particular hardships in finding a job, as they are often the first to be fired and the last to be hired, and there exists weak labor protection measures, inadequate maternity insurance, unequal compensation and benefits when compared to men for equal work, and fewer opportunities for advancement, among other factors.[18] There are also concerns that women's participation in the economy is unevenly distributed between rural and urban areas, and that the market transition has increased fees in rural areas, impoverishing some families and harming girls' access to education.[19] Young women are increasingly migrating to

urban areas to find work, leaving them vulnerable to trafficking, forced labor, and other abuses.[20]

At the same time, some women are succeeding as entrepreneurs in China, in certain measures even in comparison to men.[21] For example, most of these women entrepreneurs work in small and medium-sized companies, accounting for 20 percent of the total number of entrepreneurs in China. Among them, 60 percent have become successful in the past decade and 95 percent of the companies that they run have been very successful. These companies have created more job opportunities for women as well, since 60 percent of the staff tends to be women.[22] [See Section II—Worker Rights.]

Decisionmaking and Management

Women account for 40 percent of government positions, yet this number may be misleading as very few hold positions with decisionmaking power. For example, the Ministry of Civil Affairs estimates that less than 1 percent of village committees and village-level Communist Party Committees in China's 653,000 administrative villages were headed by women in 2004. In March 2007, the NPC announced that female representatives should account for at least 22 percent of the seats in the 11th NPC, with representatives to be elected by the end of January 2008, and at least 30 percent of civil servant posts must be held by women.[23] Various provincial and municipal governments have also announced gender quotas for positions in their local governments and local people's congresses.[24]

HIV/AIDS and Health

Chinese health statistics over the past five years continue to reflect women's disadvantaged status, and also reflect central and local governments' slow pace in effectively addressing health issues that are known to disparately impact women, especially women in rural areas. The Commission's 2005 Annual Report noted that women make up an increasingly larger percentage of newly reported HIV/AIDS cases, an observation confirmed by official Chinese government news media.[25] This trend has continued in the 2006–2007 reporting period,[26] although the government has taken some steps to increase HIV/AIDS awareness among women used in prostitution.[27] Although the Commission's 2003 Annual Report observed that China had not taken the necessary initiatives to increase awareness among this group, these recent steps suggest a possible positive development if they are implemented effectively.[28]

China is the only country in the world where the rate of suicide is higher among women than among men.[29] According to the editor of China Women's News, 157,000 women commit suicide each year in China, 25 percent more than men. In rural areas, the instance of suicide among women is three to four times higher than the instance among men, and three to five times higher than the instance among women who live in urban areas. Domestic violence is the main cause of suicide among women in rural areas.[30] While there has been a decline in maternal mortality rates since 1991, there is a widening gap between urban and rural areas, with

women in rural areas experiencing significantly higher mortality rates when compared with maternal mortality rates in urban areas and the national average.[31] Moreover, rural women's rates of illnesses are 5 percent higher when compared with rural men's rates of illnesses, most likely as a result of long working hours, poor nutrition and care after childbirth, and the collapse of the rural cooperative medical system.[32] [See Section II—Health.]

Access to Education, Especially in Rural Areas

Women continue to have less access to education in rural areas and lower educational levels when compared to men, although women's organizations and the government have initiated programs in recent years to reverse this trend by providing economic incentives to send girls to school or seeking to change traditional rural attitudes that give preference to the education of sons. Despite 99 percent enrollment rates for girls and boys, only 43 percent of girls in rural areas, as compared with 61 percent of boys, complete education higher than junior middle school.[33] Furthermore, the National Bureau of Statistics released statistical data in 2006 showing that more than 70 percent of those who are illiterate and 15 years of age and older are women, a figure that has increased since 2001.[34] In an attempt to address these issues in part, government and government-affiliated organizations have organized local-level "Spring Bud" programs that aim to help girls stay in school around the country.[35]

Rural Land Reallocation and the Rights of "Married-Out Women"

"Married-out women" in rural areas continue to experience violation of their land and property rights, although judges have recently ruled in favor of women in certain types of lawsuits, and some provinces are issuing regulations that seek to strengthen implementation of existing legal protections. Village committees, when determining who should be eligible to receive shares of collectively owned land assets, may order decisions that legitimize discrimination against "married-out women." "Married-out women" include women who have either married men from other villages, but whose household registration (*hukou*) remains in their birthplace, whose *hukou* is transferred from one place back to their birthplace, or whose *hukou* is transferred to their husbands' village.

These women are especially vulnerable to violation of their rights, including rights to use land, to receive compensation for the land, to use the land for residential purposes, and to have access to collective welfare resources.[36] Legal protections in the form of the PRC Law on Land Contract in Rural Areas, the Marriage Law, and other laws, guarantee women the same land rights as men. Judges have ruled in favor of women in four lawsuits concerning land rights since August 2005, and there have been reports of other successful cases within the last two years.[37] Most of these women who have won lawsuits, however, have been those who still live in their villages after marrying men from other villages.[38]

There are still tremendous difficulties for "married-out women" to use legal channels to seek redress for violations of their rights. For example, lawyers have noted that the LPWRI and relevant reg-

ulations in Guangdong province guarantee the property rights of women, but they lack detailed articles that could be used to protect these rights.[39] In addition, each village also has its own set of laws, which according to the PRC Organic Law of Village Committees (Organic Law) should not contravene national laws and regulations.[40] Yet the Organic Law does not indicate how to prevent or resolve this disconnect, with the consequence that some villages uphold their own laws even when they are in conflict with the LPWRI and other laws.[41] In May 2007, Guangdong province passed regulations to strengthen its implementation of the LPWRI, with the rule that neither organizations, such as the village committee, nor individuals can prevent or force rural women to change their *hukou* as a result of marriage, divorce, or widowhood.[42] In addition, the regulations state that village rules, laws, and resolutions concerning land rights must not violate women's rights on the basis of marriage, divorce, or widowhood.[43]

WOMEN'S ORGANIZATIONS

Women's organizations have been particularly active in the last few years, although these groups advocate on behalf of women's rights within the confines of government and Communist Party policy. The All-China Women's Federation (ACWF), a Communist Party-led mass organization, plays a supporting role in the formation of some of these organizations while others operate more independently and sometimes with unregistered status.[44] There were 2,000 active organizations by 1989, and the Fourth World Conference on Women in 1995 helped to launch other women's organizations, such as the Center for Women's Law Studies and Legal Services of Peking University and the Maple Women's Psychological Counseling Center. In addition, several women leaders jointly founded the advocacy project Women's Watch—China in April 2005.

Within the last year, the China Women's University established a legal center for women and children, and there have been various seminars and workshops sponsored by universities, lawyers' associations, and local women's federations to raise awareness of women's issues among lawyers, judges, public officials, and academics.[45] The ACWF works with the Chinese government to support women's rights, implement programs for disadvantaged women, and provide a limited measure of legal counseling and training for women.[46] As a Party organization, however, the ACWF does not promote women's interests when such interests conflict with Party policies that limit women's rights. For example, in 2005, an ACWF representative in Yunnan province refused to allow a leading women's rights activist to represent over 500 women in Yunnan in seeking redress for lost land, on the grounds that such interference could "influence stability."[47] In addition, the ACWF has been silent about the abuses of Chinese government population planning policies and remains complicit in the coercive enforcement of birth limits.[48]

NON-DISCRIMINATION IN EMPLOYMENT AND THE WORKPLACE

Women account for 60 percent of total rural laborers, and by the end of 2004, there were 337 million women working in cities and

rural areas, which accounted for 44.8 percent of the total workforce, roughly women's proportion of China's general population.[49] Women still face tremendous challenges in the workplace, and women migrant workers face particular hardship. For example, more than 70 percent of women in a 2007 survey reported worrying about losing their jobs after becoming pregnant, and there have been numerous cases of women dismissed after they became pregnant.[50] In addition, a 2006 survey of women migrant workers conducted by the ACWF found that only 6.7 percent of surveyed workers had maternity insurance. Of the 36.4 percent who reported that they were allowed to take maternity leave, 64.5 percent said this leave was unpaid.[51] Some local governments have established programs to provide loans, training, and legal aid for woman workers.[52] For example, the legal aid center in Jinan city provides legal services for migrant women workers.[53] The ACWF also has programs such as the Two Million Project, launched in 2003, which aims to train 2 million laid-off women so that they can find reemployment.[54] [See Section II—Worker Rights.]

CONTINUING CHALLENGES IN THE WORKPLACE

The Chinese government has passed a substantial body of protective legislation, particularly in the area of labor laws and regulations. For example, the 1978 Temporary Measures on Providing for Old, Weak, Sick, and Handicapped Cadres (Temporary Measures) require women to retire at 55, and men at 60.[55] Chinese academics and government officials have noted that the Temporary Measures discriminate against women.[56] In addition, requirements for employment based on height, weight, gender, age, and beauty are not uncommon. In 2006, a transportation company based in Hubei province issued rules stipulating that female attendants must stay within certain height and weight requirements, and that attendants whose weight exceeded 60 kilograms (132 pounds) would be laid off.[57] Despite some legal protections, both urban and rural women in China continue to have limited earning power when compared to men, and women lag behind men in finding employment in higher-wage urban areas.[58]

HUMAN TRAFFICKING

INTRODUCTION

The Chinese government has taken some steps to establish a national-level anti-trafficking coordinating mechanism, to increase public awareness, to expand the availability of some social services for victims of trafficking, and to improve international cooperation. The Chinese government reports that efforts have led to a decline in some forms of trafficking, but also notes that there has been an increase in other forms of trafficking that have not received as much attention, such as using trafficking victims to perform forced labor or engage in commercial sex. Within the past five years, for example, there has been a rise in cross-border trafficking cases, with internal and international traffickers increasingly working together. The U.S. State Department also notes that the Chinese government "continued to treat North Korean victims of trafficking as

economic migrants, routinely deporting them back to horrendous conditions in North Korea."[1]

DEVELOPMENTS IN THE PAST YEAR

The National People's Congress Standing Committee revised the PRC Law on the Protection of Minors on December 29, 2006, which became effective June 1, 2007, to explicitly prohibit the trafficking of minors.[2] Article 41 of the revised law contains new provisions that prohibit the trafficking, kidnapping, and maltreatment, including sexual exploitation, of minors, although these terms are not defined.[3] In July 2007, the All-China Women's Federation (ACWF) and the Ministry of Public Security (MPS) held the first National Anti-Trafficking Children's Forum, in which an MPS spokesperson noted the increase in the number of cases of forced labor trafficking and trafficking for commercial sexual exploitation, and an annual decrease in the number of cases handled by the MPS that relate to the trafficking of women and children for marriage and adoption.[4]

Official Chinese case statistics suggest, however, that China is either not publishing accurate data on the incidence of human trafficking, uses non-standard categories for these crimes, or has low prosecution rates in these cases. In 2005, the MPS reported that Chinese police departments nationwide opened 2,884 cases of "abducting women and children," of which they reported "investigating and handling" just over 2,400 cases. In 2006, the total number of cases investigated and resolved was just over 2,100. Police press reports portray the trends as evidence that such abduction cases have declined in society since the 1980s and 1990s, and as proof of the "obvious effectiveness" of their policies.[5] By contrast, the U.S. State Department's 2007 Trafficking in Persons Report notes that "an estimated minimum of 10,000 to 20,000 victims" are trafficked internally each year.[6] The ACWF–MPS forum also touched on legal protections for trafficking victims. According to the MPS spokesperson, "In trafficking and abduction aspects, China's legal protection is underdeveloped, and it needs to be further strengthened."[7] The forum noted, for example, that China's Criminal Law provides punishment for the trafficking of women and children, but neglects minors over 14 and male adults, who are often targeted for forced labor.[8]

TRENDS IN THE PAST FIVE YEARS

China's Ministry of Public Security reports that efforts to combat human trafficking have led to a decline in some forms of trafficking, but that there has also been an increase in other forms of trafficking that have not received as much attention, such as using trafficking victims to perform forced labor.[9] As the U.S. State Department reports in its annual review of global human trafficking, China "is a source, transit, and destination country" for human trafficking.[10] Domestic trafficking continues to comprise the majority of trafficking cases in China. Women and children, who make up 90 percent of the cases, are trafficked from poorer provinces to more prosperous provinces on the east coast.[11] Some experts note that the Chinese government's attention to human trafficking for commercial sexual exploitation appears to be uneven, with far

greater concern shown towards the internal trafficking of Chinese girls and women and little concern over foreign girls and women who are trafficked into China or who enter China voluntarily but are subsequently trafficked. Many of these women are from Vietnam, North Korea, and Mongolia, among other countries, and are treated as immigration violators who are detained and subsequently repatriated.[12]

There have also been increases in the number of cross-border trafficking cases and, especially between 2004 and 2006, an increase in the number of infant trafficking cases.[13] The rising number of infant trafficking cases in China reflects many factors, such as China's population planning policies, economic disparity, and a lack of awareness among the general public [see Section II—Population Planning]. Most of the infants who have been rescued were male, but the increased demand for children has reportedly driven traffickers to traffic females as well.[14] Some of the cases involved social service organizations buying infants that had been abducted, and selling them to adoptive families at marked-up prices, as well as traffickers buying infants from private medical clinics and other social service organizations and selling them to buyers elsewhere.[15] In 2007, the U.S. State Department placed China on its Tier Two Watch List for the third consecutive year due to the Chinese government's failure to show evidence of efforts to improve comprehensive victim protection services and to address trafficking of persons for forced labor.[16]

INTERNATIONAL LAWS AND OBLIGATIONS

The Chinese government ratified the UN Convention against Transnational Organized Crime on September 23, 2003, but still has not ratified its protocol that addresses trafficking in persons. The protocol represents the first global legally binding definition of trafficking in persons and aims to support international cooperation in investigating and prosecuting cases and in protecting and assisting victims of trafficking.[17] In addition, China has ratified the Convention to Eliminate All Forms of Discrimination against Women and the Convention on the Rights of the Child, which further legally bind the Chinese government to suppress and prevent the abduction and trafficking of women and children.[18]

DOMESTIC EFFORTS TO COMBAT HUMAN TRAFFICKING AND CHALLENGES

Central and local governments have taken steps to combat trafficking within the past five years, but these initiatives remain inadequate to effectively address the root causes of human trafficking and forms of trafficking such as forced labor. For example, Article 39 of the Law on the Protection of Women's Rights and Interests (LPWRI), which was amended in 2005, expanded the number of organizations responsible for preventing trafficking in women and rehabilitating victims, including local women's federations and local public security, labor, social security, and health bureaus.[19] The central government announced in 2007 that it will establish a national-level anti-trafficking coordinating mechanism that aims to strengthen interagency cooperation, as at least seven agencies currently have regulatory responsibilities to combat trafficking.[20]

The 2003 and 2004 Commission Annual Reports noted that the central government initiated several short-term "Strike Hard" campaigns to punish traffickers and rescue victims.[21] But these campaigns have not proven to be effective instruments that address the causes of trafficking, nor do they introduce administrative and legal mechanisms to combat future trafficking operations. "Strike Hard" campaigns have also been characterized by extensive violations of criminal procedure rights.[22] Some provincial and municipal governments have localized efforts to combat trafficking by creating short-term rehabilitation centers, and increasing public awareness efforts that inform people of their legal protections and resource options.[23] For example, Sichuan provincial public security officials have created informational fliers, public service announcements, and pamphlets that explain legal protections, resources, and hotline numbers that are aimed at migrant workers and other workers who are most at risk.[24] In addition, within the past year, Yunnan provincial authorities held a media outreach seminar to raise awareness among journalists of anti-trafficking strategies, victim protection, and relevant legislation.[25]

These preliminary steps are positive, but local governments need to expand them to include more comprehensive victim rehabilitation services such as psychological counseling and long-term care. While there are currently legal prohibitions against some types of human trafficking, these protections do not prohibit forms of trafficking such as debt bondage or commercial sexual exploitation that involves coercion or fraud.[26] Another hurdle is the difficulty central government officials face in compelling local law enforcement officials to aggressively pursue cases that cross jurisdictional boundaries, especially as more trafficking cases take place across provincial and national borders.[27] For example, U.S. experts have noted that "local Party dominance over law enforcement creates powerful incentives for local police departments to neglect their responsibilities to share crime-related data and intelligence with other jurisdictions."[28]

INTERNATIONAL COOPERATION

Central and local governments have increased cooperation with other countries to investigate and prosecute trafficking cases involving women and children. In particular, the Chinese government has discussed trafficking in persons with the United States as part of the bilateral China-U.S. Global Issues Forum, and has worked to improve its cross-border prosecution efforts with such countries as Vietnam.[29] China is also actively cooperating with international organizations such as the International Labor Organization, the International Organization for Migration, and the United Nations Interagency Project on Human Trafficking in the Greater Mekong Sub-region on programs to prevent and combat human trafficking.[30] The Chinese government has prepared a National Plan of Action to address the trafficking of women and children, which it still has not adopted.[31] A September 4, 2007, China Daily article noted that the government hopes to adopt the national action plan by the end of 2007.[32]

NORTH KOREAN REFUGEES IN CHINA

In 2006–2007, China continued to fail in its obligations to the thousands of North Korean refugees who crossed its northeastern border to escape North Korea's chronic food shortages and political oppression. While an accurate estimate of the size of this underground population is probably not possible, in recent years the U.S. State Department and several NGOs have estimated that 20,000 to 50,000 North Koreans currently are hiding in northeastern China. Chinese civilian, law enforcement and military experts speaking in 2005–2006 typically cited an estimate of 30,000 to 50,000.[1] An October 2006 report by the International Crisis Group surveyed the opinions of many NGO experts and reached an estimate that the total number of North Korean refugees residing on Chinese soil is approximately 100,000.[2] As noted by the State Department's 2007 Trafficking in Persons (TIP) report, these refugees, many of whom are women, are unable to work legally in China. Thus, many of them are highly vulnerable to being kidnapped by traffickers:

> The illegal status of North Koreans in the People's Republic of China (P.R.C.) and other Southeast Asian countries increases their vulnerability to trafficking schemes and sexual and physical abuse. In the most common form of trafficking, North Korean women and children who voluntarily cross the border into P.R.C. are picked up by trafficking rings and sold as brides to P.R.C. nationals, usually of Korean ethnicity, or placed in forced labor. In a less common form of trafficking, North Korean women and girls are lured out of North Korea by the promise of food, jobs, and freedom, only to be forced into prostitution, marriage, or exploitative labor arrangements once in P.R.C.[3]

The U.S. State Department reports that during 2006 "several thousand North Koreans were reportedly detained and forcibly returned to North Korea."[4] To encourage these repatriation efforts, central government authorities assign local public security bureaus in northeastern China a target number of North Koreans that they must detain in order to receive favorable work evaluations.[5] To persuade civilians in these areas not to assist the refugees, the government also provides financial rewards to citizens who reveal the locations of refugees.[6] By employing these incentive and punishment systems on citizens to turn these refugees in, China deliberately undermines its own international legal obligations to refrain from repatriating North Koreans and further deters its citizens from supplying humanitarian assistance. In the past several years, the government has reportedly built new detention centers along the Chinese-Mongolian border and the Chinese-North Korean border in order to accommodate more North Koreans before it repatriates them.[7]

By returning these refugees to the DPRK , China is in contravention of its obligations under the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol (Protocol). Under the 1951 Convention and its Protocol, no contracting state may "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom

would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[8]

The Chinese government classifies all North Koreans who enter China without documents as illegal economic migrants without making any effort to determine whether or not they are refugees, and claims that it must return them to the DPRK. In a June 19, 2007, press conference Ministry of Foreign Affairs press spokesperson Qin Gang repeated China's longstanding insistence that these migrants "came to China for economic reasons and they are not 'refugees' at all."[9] In addition, the Chinese government bases its policy of repatriating North Koreans on a 1961 treaty with the DPRK and a series of protocols on border management signed by the two countries in 1986 and 1998.[10] But China is also obligated under Article 3 of the Convention Against Torture not to forcibly return any person to another state where there are substantial grounds for believing that he or she would be in danger of torture.[11] Under the general international legal principle of non-derogation, China's bilateral commitments with the DPRK should not supersede China's international obligations under the 1951 Convention, its Protocol, and the Convention Against Torture.[12]

Moreover, the treatment these refugees receive upon their repatriation to the DPRK provides more than ample evidence that they satisfy the definition of refugees under international law. The 1951 Convention defines a refugee as someone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."[13] In a 2005 report, the UN Special Rapporteur on Human Rights in North Korea noted that even North Koreans who have crossed into China for reasons of livelihood are nevertheless "refugees sur place," a designation for those who "did not leave their country of origin for fear of persecution, but who fear persecution upon return."[14]

The DPRK government imprisons, tortures, and executes repatriated North Koreans, and has increased the punishment for border crossers since late 2004. Article 233 of the amended North Korean Penal Code provides for up to two years' imprisonment for citizens who leave the DPRK without permission, and Article 62 provides for no less than five years' imprisonment for defectors, and life imprisonment or execution for defectors deemed to have committed "an extremely grave offense."[15] According to international NGOs, North Koreans are considered to have committed a more serious offense, and are punished more harshly, if they have converted to Christianity or have met with Christian missionaries, South Koreans, or other foreigners while in China.[16] In late 2004, the North Korean government changed its policy toward repatriated border crossers to increase prison sentences from several months to several years and to detain them in regular prisons, which have harsher regimes, rather than labor camps.[17] Defector testimonies document cases of beatings, forced labor, lack of food and medicine, degrading treatment, torture, and execution.[18] Pregnant female defectors have reportedly been subjected to forced abortions under poor medical care. According to a South Korean Bar Association

study, defectors have also reported witnessing North Korean authorities carry out forced abortions.[19]

The Chinese government blanketly asserts that North Korean migrants are not refugees, and does not permit individual petitions for asylum. The government also denies the UN High Commissioner for Refugees (UNHCR) and other organizations the access needed to evaluate their claims. Chinese guards posted outside the UNHCR office and foreign embassies in Beijing block access to North Koreans who seek to present refugee petitions.[20] The government's failure to allow for a process in order to evaluate whether individual North Koreans have reason to fear persecution upon return to the DPRK contravenes its obligations under the 1951 Convention and its Protocol, as identified by the U.S. Committee for Human Rights in North Korea: "Implicit in the Convention—the strict Article 33 prohibition read together with the multi-pronged Article 1 refugee definition—is a requirement that states take appropriate steps to determine whether an individual is a refugee before sending him or her back to possible persecution."[21] This refusal of access by the UNHCR also contravenes Article 35 of the 1951 Convention.[22]

The government fines and imprisons Chinese citizens and international humanitarian workers who assist North Korean refugees, and these penalties have recently been increased. In 2006, Chinese authorities sentenced Hong Jin-hee, Kim Hong-kyun, and Lee Soocheol, three South Korean citizens and former North Korean defectors, to seven, five, and two years' imprisonment, respectively, for assisting North Koreans in China to seek asylum in a third country. Chinese authorities detained Kim and Lee in Beijing in October 2004, and Hong in Shenyang in November 2004, and have held the three without trial until their sentencing in 2006.[23] In November 2006, authorities in Yantai city, Shandong province, released on parole Choi Yong-hoon, a South Korean citizen imprisoned for assisting North Koreans in China to seek asylum in South Korea, after Choi served 3 years and 11 months of his 5-year sentence.[24]

The Chinese government is reportedly in the final stages of drafting a Regulation on the Administration of Refugees.[25] A June 2007 report in the official People's Daily said that "the government draft national refugee regulation [is] now in its final phase," but that "[i]t is unclear when the draft will be submitted to the State Council for final review and approval." The report also mentions the UNHCR role in "helping . . . [to] draft" the regulation.[26] In March 2006, the UNHCR said that his office would be involved in insuring that the regulation is in compliance with international law.[27] The drafting process for these regulations provides Chinese officials with an opportunity to carry out a long overdue reassessment of their refugee policies to make them accessible and transparent, providing every refugee with a chance for a legal hearing and an appeal if necessary.

HEALTH

MENTAL HEALTH

In December 2006, the Beijing Municipal People's Congress issued a new Regulation on Mental Health. On its face, the new

regulation prohibits local police from arbitrarily detaining the city's mentally ill as Beijing prepares to host the 2008 Summer Olympic Games.[1] Under the new regulation, which went into effect in March 2007, public security officials may remove a mentally ill person to a mental health center only if that person "harms or poses a serious threat to public safety, a person's life, or property."[2] The precise meaning of these words and how they are to be interpreted remain unclear.

The new regulation requires that at least two mental health doctors make determinations of medical necessity for involuntary hospital admission. It also provides for review of involuntary admission by a review body. On these points the regulation is not dissimilar from the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.[3] However, while the UN Principles provide that the review body complete its review "as soon as possible" and "in accordance with expeditious procedures," the Beijing regulation requires that the review be completed "within three months"—a period of time that could accomplish the purpose of removing persons from the streets for the duration of the 2008 Olympic Games (August 8–24, 2008) or longer, without violating the letter of the law.[4]

HIV/AIDS

Many international experts concur that over the past five years, the Chinese central government's policies to combat the spread of HIV/AIDS have, in general, progressively strengthened. On this issue of importance to China's leaders, however, the government's worries about uncontrolled citizen activism and foreign-affiliated nongovernmental organizations (NGOs) have limited their policies potential effectiveness. During its best periods, the government has developed a set of policies and laws and committed funding, and in limited but important ways engaged international groups and its own NGO community. China's HIV/AIDS policy has also demonstrated unusual openness to working with marginalized communities such as migrant workers, the homosexual community, women and men used in prostitution, and drug users. Due to these efforts and the increase in the use of anti-retroviral drugs, the death rate has reportedly decreased in recent years.[5]

China recorded its first AIDS case in 1989,[6] and by mid-2002, official Chinese government and UN figures estimated that between 1 million to 1.5 million people were infected with HIV.[7] Recent UN figures estimate there are about 650,000 people living with HIV in China today, but experts believe this estimate to be low on account of changes in estimation methodology and procedures.[8] While China is a country with a low prevalence of the disease nationwide, health experts say the disease is moving into the general population, with most new infections being spread sexually, followed by drug use.[9] China reported 18,543 new cases of HIV in the first six months of 2007, which is approximately the number of cases for all of 2006.[10] Health officials calculate that there were on average 200 new cases of HIV/AIDS infection in China each day in 2005.[11]

In 2007, China announced plans to spend 960 million yuan (US$127 million) on anti-retroviral drugs, expand public education, and conduct outreach to China's marginalized homosexual commu-

nity.[12] The government also expanded policies to further incorporate foreign governments, international companies, grassroots organizations, and trade unions in its efforts to combat HIV/AIDS. In January 2007, the government, along with the International Labor Organization and the All-China Federation of Trade Unions, initiated a program that made HIV/AIDS education available in the workplace.[13] Privately owned Chinese firms are also gradually becoming involved in these efforts, often at the request of their foreign business affiliates.[14] In addition, the U.S. Department of Labor initiated a $3.5 million grant to support a program that focused on migrant workers.[15]

Nonetheless, while national officials have emphasized the importance of combating HIV/AIDS, it is local implementation that determines whether national-level commitment and policy action produce outcomes of consequence on the ground. Implementation remains highly problematic. Fear of the disease has led some local officials to harass persons with HIV/AIDS and their advocates.[16] Henan province, where a large number of villagers contracted HIV through unsanitary blood collection practices in the late 1980s and early 1990s, provides a particularly stark example:

- In June 2003, public security officials, aided by local residents, raided Xiongqiao village, an "AIDS village" in Henan, and destroyed property, assaulted residents, and arrested 13 villagers. Villagers had appealed to local officials to receive previously promised government assistance for AIDS patients.[17]
- In May 2004, several people living with HIV/AIDS in Henan were detained for more than a week, apparently for seeking assistance from provincial officials to compel local officials to provide promised assistance.[18]
- In 2005, a U.S. NGO reported the violent closure of a privately run orphanage for children with AIDS in Henan, and another U.S. group noted that local officials in Henan have organized militias to prevent journalists and NGO observers from visiting AIDS patients.[19]
- In November 2005, public security officials detained activist Hu Jia, co-founder of two HIV/AIDS advocacy groups, when he attempted to deliver a petition on behalf of more than 50 AIDS patients to Vice Premier Wu Yi at a November 2005 AIDS conference in Henan. Citing government pressure, Hu subsequently resigned in February 2006 from one of the groups, Loving Source, and is currently under residential surveillance.[20]
- In November 2006, public officials detained HIV/AIDS advocacy group leader Wan Yanhai, forcing him to cancel a conference on AIDS, blood-transfusion safety, and legal human rights.[21]
- In February 2007, public security officials in Zhengzhou city, Henan, placed AIDS activist and doctor Gao Yaojie under surveillance at her home in an attempt to prevent her from traveling to the United States to accept a human rights award.[22] Central government officials intervened, and Gao was subsequently granted permission to travel to the United States to receive the 2007 Vital Voices Global Women's Leadership Award for Human Rights on March 14.[23]

The depth of the crisis is only magnified by official corruption. In July 2007, the Ministry of Health (MOH) announced the removal of a director of a Guangdong province blood center as a result of his involvement in illegal blood sales and noted that six other people had received sentences of between 6 and 18 months for helping individuals repeatedly sell their blood using fake identity cards.[24] In the hopes of reducing illegal blood trade activity, the MOH has announced that blood collection centers are required by the end of October 2007 to set up equipment to videotape plasma collections.[25]

A government advisor on AIDS policy has expressed concern that China's efforts to combat the disease have stalled and that funding, which in 2006 was 3 billion yuan (US$388 million), remains inadequate.[26] The government's commitment to provide care to specific subpopulations, such as children orphaned as a result of AIDS and ethnic minorities infected with HIV, appears to be wavering.[27] Sensitive issues, such as compensation for rural residents in central provinces who contracted HIV from the sale of blood, have hindered broader efforts to combat HIV/AIDS.[28]

At the local level, an overburdened, underfunded healthcare system makes it difficult for governments to provide the necessary prevention and treatment programs. Many programs lack sufficient numbers of qualified doctors to properly administer anti-retroviral drugs and to help patients maintain needed treatment, with the result that many patients simply drop out of the programs. Public education and awareness efforts have not fully succeeded: 66 percent of China's population reportedly continues to be unaware of how to protect themselves against HIV.[29] AIDS patients have also been discriminated against and denied treatment at hospitals.[30]

WIDESPREAD DISCRIMINATION AGAINST HEPATITIS B CARRIERS

China has a high rate of hepatitis B virus (HBV) infection, with 120 million carriers of the virus, who make up approximately 30 percent of the 400 million HBV carriers in the world.[31] Only 70 percent of China's population has been vaccinated for the disease. In an attempt to reduce hepatitis B infection, the Ministry of Health (MOH) issued the 2006–2010 National Plan on Hepatitis B Prevention and Control, with the top priority of strengthening vaccination programs, especially among young children. The goal is to lower the infection rate to 1 percent among those five years old and younger, and to less than 7 percent nationwide by 2010.[32]

Until 2004, there were no national laws protecting HBV carriers from discrimination in the workplace, and some central and local governments prohibited the hiring of people with certain varieties of the disease.[33] In April 2003, when university student Zhou Yichao was denied a public service job because he was an HBV carrier, he stabbed two officials in Zhejiang province, killing one. Zhou was later sentenced to death on murder charges.[34] This incident helped to spark discussion over the treatment of HBV carriers. In November 2003, HBV carrier Zhang Xianzhu of Anhui province successfully sued a government personnel office, complaining that his job application had been unjustly rejected. A court held in April 2004 that the personnel office applied the regulation incorrectly, but did not invalidate the regulation itself, and also denied Zhang's

request to be reconsidered for the civil service position, noting that the recruitment season had already ended.[35] This was the first partially successful administrative lawsuit regarding discrimination against HBV carriers in the workplace.

In 2004, the National People's Congress (NPC) Standing Committee amended the Law on the Prevention and Control of Infectious Diseases to prohibit discrimination against persons with infectious diseases, persons carrying a pathogen of an infectious disease, and persons suspected of having an infectious disease.[36] In January 2005, the Ministry of Personnel and the MOH revised national standards to allow HBV carriers who do not exhibit symptoms of the disease to apply for employment with the government.[37]

Yet discrimination against HBV carriers remains widespread. Even though experts and Chinese officials have publicly stated that hepatitis B is not infectious in most work and school situations, many people believe that it is and refuse to hire HBV carriers or interact with them on those grounds.[38] A 2005 China Foundation for Hepatitis Prevention and Control survey, covering 583 hepatitis B patients in 18 provinces, found not only that a majority of Chinese physicians do not have adequate knowledge of hepatitis B or of ways to prevent and treat the disease, but also that 52 percent of the respondents had faced discrimination in employment and education.[39] In November 2005, two universities in the Xinjiang Uighur Autonomous Region (XUAR) suspended 156 students, diagnosed as hepatitis B positive in their matriculation medical examinations, from their studies for a year.[40] Students formed an action group and distributed fliers to protest this decision, and one student filed the first hepatitis B discrimination lawsuit in the XUAR against her university, Xinjiang Agricultural University.[41] The student eventually withdrew her case as university authorities allowed her to resume her studies amid widespread media coverage, and support from NGOs and concerned individuals.[42] As of December 2006, the other students were reportedly still not able to return to school.[43]

In September 2006, Urumqi municipal education officials in the XUAR expelled 19 high school students who had tested positive for hepatitis B.[44] After first attempting to petition local government bureaus, seven families later filed a lawsuit against the municipal education bureau, with the hope that the students would be allowed to continue their education.[45] The Urumqi Tianshan District People's Court postponed the hearing date on several occasions until it announced on November 20 that the families had withdrawn their case. The families' lawyer and a NGO that works on hepatitis B issues believe that the case was dropped due to pressure from local officials and employers.[46] In addition, public security officials forced Snow Lotus, an unregistered NGO based in the XUAR, to close in October and discontinue its work for reportedly drafting open letters on behalf of the students and breaking the story to the media.[47] [See Section III—Civil Society for more information on this case.] Local education officials maintain that the students were expelled in order to protect other pupils, yet central officials and experts have condemned the expulsion.[48] According to Mao Qun'an, a MOH representative, "This is prejudice. All these

students can go to school unless they are sick enough to be hospitalized."[49]

Most recently, a 2007 survey on health discrimination in the workplace found that 49 percent of respondents would be unwilling to work with HBV carriers, and 55 percent noted that they would not hire HBV carriers.[50] Employer screening for HBV remains common, especially in cities.[51] A Chinese job applicant filed a lawsuit against Nokia in March 2007, alleging that its China branch denied him employment after he underwent a company medical examination and was found to be a HBV carrier.[52] The applicant is claiming 500,000 yuan (US$66,613) in emotional damages in what is reportedly the first hepatitis B discrimination case against a foreign multinational company in China.[53] The Dongguan People's Court accepted the case in May, and court proceedings began on August 15 and concluded with a decision by the judge to select a retrial date.[54] At press time, the court has yet to publicly issue a decision or a retrial date. In some online forums, there is active discussion of this case, as well as other cases of discrimination against HBV carriers.[55]

In May 2007, the MOH and the Ministry of Labor and Social Security issued a non-legally binding opinion to protect the employment rights of HBV carriers, including a prohibition against mandatory HBV screening for job applicants, except for those positions that were previously designated as forbidden for HBV carriers.[56] On August 30, 2007, the NPC Standing Committee adopted the Employment Promotion Law, which stipulates provisions that could benefit HBV carriers seeking employment.[57] For example, Article 30 of the new law prohibits employers from refusing to hire applicants on the grounds that they carry infectious diseases, except for those industries barred to formally certified infectious disease carriers because of the possibility that they might spread the disease, and Article 62 allows workers to file a lawsuit against employers who violate provisions of the new law and discriminate against employees.[58] Without the concurrent creation of effective programs to raise public awareness of how the disease is spread, incentives for local implementation, and a clear and comprehensive definition of discrimination,[59] the impact of these regulatory measures remains to be seen.[60]

STATE CONTROL OF INFORMATION RELATING TO SARS AND AVIAN FLU

In July 2007, military officials denied Dr. Jiang Yanyong permission to travel to the United States to receive a human rights award. Dr. Jiang had previously informed foreign media of government attempts to cover up the SARS outbreak in 2003.[61] In addition, Chinese laws still require journalists to get advance approval before publishing public health information about broad categories of diseases classified as "state secrets."

Chinese public health officials sought to improve their ability to prevent and control the spread of avian flu by improving the flow of information between lower officials and higher officials following the mishandling of the SARS epidemic in 2003. The State Council issued regulations in November 2005 requiring provincial governments to report "major" animal epidemics to the State Council within four hours of discovering them, and county and city govern-

ments to report cases to provincial authorities within two hours. Officials who are found negligent in reporting outbreaks face removal from office and potential prosecution.[62]

Such laws allow for improved internal channels of information but do not necessarily guarantee free flow of information to the public. The Law on the Protection of State Secrets and implementing regulations in the area of public health continue to serve as a hindrance to the free flow of information on public health matters. For example, the Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Health Work, issued in 1996, categorize as state secrets information on large-scale epidemics of viral hepatitis and other diseases that has not been authorized for public disclosure by the government.[63] A new national Regulation on the Public Disclosure of Government Information, issued in April 2007, contains provisions that require agencies to disclose information on public health supervision and sudden emergencies, but these "state secret" exceptions remain in place.[64] [See Section II—Freedom of Expression.]

HEALTHCARE SYSTEM REFORM

During the 1980s, the government abolished its previous rural healthcare system, which was based on village clinics staffed by "barefoot doctors" and financed by cooperative insurance.[65] The government did not replace the previous system with a new rural cooperative medical system until 2003.[66] From 1977 to 2002, the number of doctors in rural China decreased from 1.8 million to 800,000, and the number of rural healthcare workers decreased from 3.4 million to 800,000.[67] Eighty percent of medical resources are now concentrated in cities.[68] The rural-urban disparity is also apparent in mortality statistics. Residents of large cities in China live 12 years longer than rural residents, and the infant mortality rate in some rural areas is nine times higher than in large cities.[69]

Urban Healthcare

The government established a public health insurance program for employed urban residents in 1998, and by the end of 2006, approximately 160 million out of the country's 500 million urban residents received coverage.[70] In July 2007, Premier Wen Jiabao announced plans to establish a national health insurance program to cover all urban residents, including children, the elderly, and the uninsured, over the next three years. The central government has selected 79 cities to launch pilot programs by the end of September 2007.[71] In order to improve community-level medical services in urban areas, large city hospitals will provide facility and staff support to community health clinics, and a data-sharing system will be established.[72]

Rural Healthcare

Under China's Rural Cooperative Medical System (RCMS), a farmer and each family member that participates in the system pays an average premium of 10 yuan (US$1.25) each year into a personal medical care account, with governments at all levels subsidizing an additional 40 yuan (US$5) on average.[73] Participants

may have up to 65 percent of their healthcare costs reimbursed, but are required to first pay such costs out of pocket.[74] The scope of the RCMS's coverage, and government spending on healthcare, has increased in recent years. The government reported that the number of counties covered by the RCMS increased from 687 pilot counties in 2005 to 1,451 counties (50.7 percent of China's rural areas) at the end of 2006.[75] Prior to implementation of the RCMS, the percentage of rural residents with health insurance coverage reportedly reached a low of 7 percent in 2002.[76] After the RCMS was introduced in 2003, the government reported that coverage had increased to 51 percent by February 2007.[77] The amount of money the central government has announced it plans to spend on rural healthcare also increased from 2.073 billion yuan (US$252 million) in 2004 to 5.8 billion yuan (US$750 million) in 2006, and reportedly to 10.1 billion yuan (US$1.33 billion) in 2007.[78] Since the establishment of the RCMS, some areas have reported increases in the number of hospitalized patients and in the amount of revenue for local clinics.[79]

Rising Cost of Healthcare

Some senior Chinese officials and scholars have questioned the fairness and efficiency of the medical and healthcare system. The poorest residents in rural areas frequently do not enroll in the cooperatives because they cannot afford the required fee. As many as 50 percent of farmers who fall ill do not seek healthcare for economic reasons, and half of all children who die in rural areas had not received medical treatment.[80] For rural participants especially, the reimbursement level remains inadequate. The average reimbursement rate is 27.5 percent, determined in part by the specific disease and the local government's budget.[81] Many counties and townships do not have the financial resources to supply their portion of the fund. In addition, rural clinics are poorly funded and lack adequate medical personnel and equipment.[82]

High medical costs have become the top concern of Chinese citizens, according to a 2006 Chinese Academy of Social Sciences survey on "Problems that Affect Social Harmony and Stability," with medical expenses comprising 11.8 percent of an average family's total annual spending.[83] There has also been an increase in violent attacks on doctors and hospital personnel as citizens protest rising costs, medical errors, and declining professional ethics.[84] In 2006, hospitals reported 9,831 cases of violence, more than 200 million yuan (US$25.6 million) in damages to hospital facilities, and 5,519 medical personnel injuries, an increase from 5,093 cases of violence, 67 million yuan (US$8.8 million) in damages, and 2,600 medical personnel injuries in 2002.[85]

To address some of these issues, the Ministry of Health relocated approximately 5,500 doctors and nurses from urban areas to rural areas in 2007 to treat rural patients and train local medical personnel.[86] In addition, the central government has set a goal of renovating 22,000 village clinics, 1,300 county-level general hospitals, 400 county-level traditional or ethnic minority hospitals, and 950 county-level maternity and childcare institutes by 2010, and has pledged more than 20 billion yuan (US$2.5 billion) for the task.[87]

ENVIRONMENT

INTRODUCTION

China's leaders acknowledge the severity of their country's environmental problems, and the Chinese government has taken steps to curb pollution and environmental degradation. For example, the central government has developed an expansive framework of environmental laws and regulations to combat environmental problems. Nonetheless, effective implementation remains systemically hampered by noncompliance at the local level and administrative structures that prioritize the containment of "social unrest" and the generation of revenue over environmental protection.

Just as China's environmental policies have not kept pace with the country's severe environmental degradation, neither have they kept pace with citizens' aspirations for, and increasingly vigorous expression of concern over, environmental health and human rights. During 2007, China's citizens confronted environmental public policy with an increasing propensity, not only to voice intense dismay with government and industry, but also to turn to petitions and mass protests, and to some extent to the courts, in order to pressure public officials for greater environmental accountability, enforcement, and protection.

Participation in environmental protests has risen in the last two years, particularly among middle-class urban residents. Their participation is significant because, until recently, public protest related to environmental issues was concentrated in rural areas and thought to be a more remote concern for urban elites. Official responses to environment-related activism have included crackdowns on the free flow of information, and the suppression of citizen protest. In part because these strategies target potential allies instead of engaging them, further environmental degradation may require China's leaders to confront the ways these strategies diminish their capacity to exercise effective environmental leadership over the long run.

ENVIRONMENTAL DEGRADATION AND PUBLIC FRUSTRATION WITH OFFICIAL RESPONSES

Rapid economic growth without effective environmental safeguards has led to severe environmental degradation, with water, air, soil, and other forms of pollution threatening public health and quality of life. Poor soil and water conservation practices and government inattention to polluting industries exacerbate these problems. Many Chinese citizens suffer from respiratory diseases, and the State Environmental Protection Administration (SEPA) estimated that there are approximately 358,000 premature deaths each year due to air pollution.[1] Acid rain affects about one-third of the country.[2] Deforestation and erosion leading to loss of arable land, landslides, and sedimentation of waterways are widespread.[3] Water pollution and poor conservation practices have led to water shortages in many areas, leaving millions in urban areas, and one-third of the rural population without access to clean drinking water.[4]

The Chinese government acknowledges the severity of China's environmental problems. The State Council's White Paper on "En-

vironmental Protection (1996–2005)," issued in June 2006, notes that "the contradiction between economic growth and environmental protection is particularly prominent" as the "relative shortage of resources, a fragile ecological environment, and insufficient environmental capacity are becoming critical problems hindering China's development."[5] Senior government officials also acknowledge the public protest that severe environmental degradation could prompt.[6] A U.S. expert has observed that environmental degradation and pollution "constrain economic growth, contribute to large-scale migration, harm public health, and engender social unrest."[7] According to official Chinese estimates, environmental degradation and pollution cost China an estimated 8 to 12 percent of annual gross domestic product (GDP), and the number of mass protests over pollution has increased by 29 percent per year in recent years.[8]

China has taken steps to curb pollution and environmental degradation. In both its 10th (2001–2005) and 11th (2006–2010) Five-Year Plans, the government formulated or revised environmental protection laws, administrative regulations, and standards, and has worked to strengthen enforcement of anti-pollution rules.[9] In addition, SEPA and the Ministry of Health (MOH) are working together to facilitate the sharing of information resources, and to develop a national action plan and implementation measures on environmental health.[10] As described below, for some incidents that have captured public attention, central and local governments have imposed administrative penalties on polluters and public officials responsible for enforcement failures.

Nonetheless, although the central government has issued numerous environmental laws and programs, effective implementation has been beset by problems that are fundamental and widespread. Local environmental protection bureaus (EPBs) depend on local governments for resources and funding, and submit to political control by local Party Committees. In part because local governments (and some officials) derive income from local enterprises, some local EPBs receive pressure to engage in weak or selective enforcement. Even without such pressure, officials in underfunded EPBs have incentives to permit polluting enterprises to continue operating in order to preserve revenue used to finance their bureau's operating deficits. Shortages of well-trained environmental personnel, loopholes in the law, and weak interagency coordination contribute to an incentive structure that favors economic growth over the rigorous implementation and enforcement of environmental protection measures.[11]

China's serious air, water, and soil pollution problems have emerged in recent years as one of the country's most rapidly growing sources of citizen activism. For example, SEPA's Minister Zhou Shengxian stated in July 2007 that the number of citizen petitions received by SEPA in the first five months of 2007 grew by 8 percent over the same period in 2006. Moreover, the number of pollution-related "mass incidents" (China's official term for protests) increased during a year when officials claimed that overall mass incidents decreased significantly.[12] These numbers reflect, in part, Chinese citizens' willingness, prompted by rapidly rising frustra-

tion with the government's failure to rein in environmental degradation, to stand up for the environment, and for their rights.[13]

In its 2006 Annual Report, the Commission reported that central government officials delayed some of the proposed hydroelectric dams on the Nujiang (Nu River) in response to environmental concerns from civil society groups.[14] As of February 2007, some villagers have already been resettled in advance of the Liuku dam, one of four approved dams, and there have been concerns over inadequate relocation compensation.[15] Local residents around the site of the proposed Lushui dam, which has not been approved, have observed laborers engaging in survey work on the dam. Other villagers have limited knowledge of the proposed dams being built in their vicinity.[16] This continued lack of transparency limits public involvement and violates the government's own environmental protection laws and policies.[17]

In a nationwide campaign that inspected 720,000 enterprises in 2006, the government reported that 3,176 polluting enterprises had been closed, and SEPA reported 161 pollution accidents in 2006.[18] Administrative litigation and administrative reconsideration remain avenues for environmental dispute resolution and private enforcement, but attention in 2006–2007 turned to a rise in the form of "high-impact" litigation, particularly in cases involving compensation for the health impacts of environmental pollution. Although the government prevails in the majority of cases, experts have noted that high-impact cases often prompt an official response, typically in the form of new administrative rules and Party directives, even when plaintiffs lose.[19]

Promotion of rural officials for a long time has been tied to their record of containing social protest. For example, "(L)ocal officials will only be promoted to more senior positions if they can minimize social unrest in the countryside," according to a senior Party official.[20] These officials choose either to confront the underlying environmental problem or to suppress activists.[21] Previously, experts have noted that rural residents tended more frequently than urban residents to engage in "large-scale" protests over environmental issues.[22] Events in 2007, however, suggest that this impression may now be outdated, as the urban middle class' supposed preference for non-confrontational approaches gave way to a rise in urban environmental activism. Mass protests in Xiamen over the construction of a chemical plant in June 2007 and protests shortly thereafter in Beijing over the building of a garbage incineration power project signal some of the first large-scale protests in urban areas by middle-class citizens over environmental pollution. These protests are significant because they suggest that middle-class urban residents regard alternative methods for pollution prevention and health preservation as inadequate.

Chinese citizens concerned with environmental issues are increasingly organized. There are now an estimated 4,000 registered and unregistered environmental nongovernmental organizations (NGOs) nationwide.[23] In recent years, these NGOs have broadened their focus beyond initial efforts at public education and awareness to assisting pollution victims in pursuing redress through the legal system, and mobilizing public participation in and support for environmental protection.[24] SEPA has sought public support for and

participation in environmental protection work and has, to a limited extent, encouraged and supported environmental NGO activism. In 2005, SEPA held a public hearing to encourage citizen interest and NGO activism,[25] and in February 2006, it released two provisional measures on public participation in Environmental Impact Assessment (EIA) procedures. These measures are the first to contain specific arrangements and procedures for public involvement in environmental issues.[26] Since the release of the provisional measures, approximately 43 projects with a value of 160 billion yuan (US$20.5 billion) in investments have been halted for violating EIA procedures.[27]

In an effort to increase transparency, SEPA issued a regulation in April 2007 on environmental information disclosure, coinciding with the State Council's issuance of the Regulation on the Public Disclosure of Government Information. [See Section II—Freedom of Expression.] The SEPA regulation lists 17 categories of government information that should be made public either through government Web sites, local newspapers, or upon request. Firms may voluntarily disclosure information in nine categories and are obligated to disclose information when they violate standards or cause an accident.[28]

In spite of this apparent support for limited citizen activism by SEPA, official efforts to increase control over environmental civil society groups during the past two years have had a chilling effect on citizen activism. During 2006–2007, the Commission has observed numerous official actions to repress citizen activism and organizers that work on environmental or environmental health issues:

- Fu Xiancai, who has protested forced resettlement of citizens during the construction of the Three Gorges Dam project, gave an interview with a German television station in May 2006. A public security official interrogated Fu about the interview in June 2006, and shortly thereafter an unidentified assailant attacked Fu. The attack left Fu paralyzed from the shoulders down.[29] The official investigation into the assault concluded in August 2006 that Fu's injuries were self-inflicted.[30]
- Environmental activist Tan Kai was detained in October 2005 for his involvement in the environmental group "Green Watch" and was tried in May 2006 on charges of illegally obtaining state secrets. In August 2006, Tan was sentenced to 18 months' imprisonment and was reportedly released in April 2007.[31]
- After activist Sun Xiaodi was awarded the Nuclear-Free Future Award in December 2006, officials have intensified their harassment efforts. Sun has spent more than a decade petitioning central authorities over radioactive contamination from the No. 792 Uranium Mine in the Gannan Tibetan Autonomous Prefecture in Gansu province. Sun has protested illegal mining allegedly carried out by local officials that has resulted in an unusually high rate of cancer and other health problems for residents in the area. In February 2007, Sun traveled to Beijing to seek further medical consultation and treatment of a tumor in his abdominal cavity.[32] In July 2007, the State

Security Bureau in Beijing reportedly ordered Sun to leave Beijing.[33]

Case: Human Rights Abuses and Intolerance of Environmental Activism

Background

Wu Lihong, a 39-year old sound-proofing equipment salesman turned environmental activist, has spent the past 17 years documenting the pollution in Taihu (Lake Tai) in his hometown of Yixing city, Zhoutie township, Jiangsu province, in the hopes of pressuring local officials and factories to stop the pollution and clean up the lake.[34] Wu notes, "My wish is that the lake will return to the lake of my childhood, when the water was safe and we could go swimming in it without fear."[35] Wu collects physical evidence of pollution in Lake Tai, such as bottles of dirty water illegally discharged from chemical enterprises around the area and the local officials whose complicity exacerbate the situation, and submits this evidence to provincial- and central-level officials through the *xinfang* (petitioning) system.[36]

In interviews with foreign media in 2006 and early 2007, Wu remarked that "It is shameful that we can't drink from the lake. The chemical factories and local government officials should be blamed. I want them to admit their responsibility so we will have clean drinking water again. . . . The corruption is severe. Some local officials are only after profits so they will do anything to protect their interests, even if it means flouting environmental standards and allowing polluting factories to operate."[37] His strategy of bypassing local officials and filing petitions with provincial- and central-level officials seemed to have worked in part: more than 200 polluting factories have been closed since the mid-1990s. Local officials, such as the director of Yixing's EPB, give a different assessment, "He is only interested in filing reports to officials above us. If you want me to commend him . . . sorry, I can only say I will not do that."[38]

Due to his environmental advocacy efforts, local government officials have repeatedly harassed Wu and his family members, even though a panel of judges from the People's Political Consultative Conference and the National People's Congress named him one of China's top 10 environmentalists in November 2005.[39] According to foreign media interviews with him and his wife, Xu Jiehua, Wu lost his job after his manager was warned by local officials to fire him and in 2003, he was beaten on three occasions by local thugs. In addition, his daughter reportedly received threats over the phone from anonymous callers, and his wife lost her job in 1998, after the chemical factory where she was employed closed in response to one of his reports.[40]

Official Mistreatment in 2007

April 13, 2007: Shortly before Wu planned to provide central officials in Beijing with new evidence against local officials, Yixing public security officials detained Wu, accusing him of blackmail and extortion.[41] Officials at the Yixing Detention Center restricted his ability to see his lawyer or family, and his lawyer reported evidence of torture when she met with him a month later.[42]

Case: Human Rights Abuses and Intolerance of Environmental Activism

May to June 2007: Outbreaks of green-blue algae in Lake Tai left millions of residents in a rush to purchase bottled water. The central government's main news agency, Xinhua, largely attributed the outbreaks to pollution.[43] In June, Premier Wen Jiabao ordered a formal investigation into the algae growth, noting that despite numerous attempts to improve the quality of the water, "the problem has never been tackled at the root."[44] State-controlled media and experts criticized local officials for blaming the problem on natural conditions, such as a warm climate, and for not taking effective steps to control pollution in Lake Tai.[45]

June 2007: The Yixing People's Court charged Wu with blackmail and allegedly extorting 55,000 yuan (US$6,875) from enterprises in exchange for not exposing them as polluters.[46] Wu's original trial date was scheduled for June 12, but was postponed to allow a medical investigation of his wounds in response to a complaint filed by his lawyer.[47]

August 10, 2007: The Yixing People's Court sentenced Wu to three years' imprisonment for fraud and extortion, and ruled that there was no evidence of torture.[48] Wu was also fined 3,000 yuan (approximately US$400) and ordered to return the money he allegedly extorted from enterprises.[49] Xu Jiehua has taken on her husband's cause by suing SEPA for naming Yixing a model city. The Yixing People's Court reportedly refused to consider the case.[50]

A System of Policy Implementation That Relies on the Abuse of Rights

Even though national leaders have publicly called on China's citizens to report misbehavior by members of the Communist Party, Wu Lihong's detention and imprisonment underscore the problem that activists are not afforded adequate whistleblower protections, but instead are singled out for harassment, and left vulnerable to revenge by the officials whose malfeasances they bring to light.[51] Effective implementation of China's announced commitment to environmental protection requires information, private initiative, and citizen leadership.[52] Wu's imprisonment illustrates the extent to which China's leaders have structured political and legal affairs in ways that impose risks on citizen activists.

Case: Human Rights Abuses and Intolerance of Environmental Activism

According to Xinhua, the central government demanded that officials close several hundred factories near Lake Tai in June 2007. Officials also required 20,000 chemical plants in the Lake Tai area to meet tougher standards for sulfur dioxide emissions and water pollution. Plants that fail to meet the new standards by the June 2008 deadline risk suspension or closure. In addition, cities around Lake Tai must establish sewage treatment plants and can no longer discharge untreated sewage into the lake and rivers in the area. Existing plants must install nitrogen and phosphorus removal facilities before the deadline. In July 2007, senior provincial officials in Jiangsu instructed local officials to make combating pollution in Lake Tai a priority, even if it meant a 15 percent decrease in the province's GDP.[53] At the time of this writing, Wu Lihong remains in prison.

CHALLENGES OF BUILDING BUREAUCRATIC CAPACITY AND OVERCOMING OBSTRUCTIONISM

Local EPBs are frequently unable or unwilling to carry out many of the numerous environmental laws and regulations passed by the central government. Strengthening local level EPB funding and enforcement capacity has been a significant challenge. Some local EPB offices rely upon income from fines to fund operating budget deficits, which in turn provides incentives for lax enforcement of environmental measures.[54]

China continues to delay publication of its 2005 Green GDP report due to bureaucratic wrangling and pressure from local governments. The report has already been drafted but has now been "indefinitely postponed." The report's release would have symbolized growing environmental transparency as it would have provided the public and Chinese and international NGOs more detailed information than the first Green GDP report in 2004. The 2004 report sparked controversy by estimating that China's economic losses from environmental degradation amounted to 511.8 billion yuan (US$67.7 billion), or approximately 3.1 percent of China's entire GDP.[55] Local governments reportedly opposed the report's publication because it contained detailed data on environmental performance and conditions broken down by province.[56] SEPA and the National Bureau of Statistics also reportedly disagreed over what information to include and how to disseminate that information.[57]

The Chinese government reportedly pressured the World Bank to remove material from a joint report, including the figure that some 750,000 people die prematurely in China each year due to air and water pollution.[58] China's Ministry of Foreign Affairs has denied this charge.[59] Several news accounts reported, however, that the Chinese government impugned the report's methodology, calling it "not very reliable," and voiced concern that it might spark citizen protest if released.[60] SEPA's Vice Minister Zhou Jian noted that "It's a very complex issue to analyze the impact of pollution on

human health. Without a common scientific methodology in the world, any survey on environment and health is not persuasive."[61]

In 2007, China finally issued punishments to those found responsible for the November 2005 Songhua River benzene spill that threatened the Chinese city of Harbin and the Russian city of Khabarovsk. As the Commission noted in its 2006 Annual Report, the coverup of the Songhua spill demonstrated a lack of transparency which, in turn, hampered the government's ability to respond to the environmental disaster. In its aftermath, despite steps to improve local reporting to higher authorities, the central government did not address the larger issue of government control over the news media [see Section II—Freedom of Expression]. In November 2006, the State Council supported administrative punishments and Party disciplinary punishments, but no criminal prosecutions, for 14 state-owned company and local government officials involved in the Songhua incident.[62] SEPA imposed the maximum fine on the state-owned Jilin Petrochemical Company as administrative punishment for its role in the incident.[63] Some Chinese experts assert that SEPA's maximum fines are still too low to act as an effective deterrent.[64] A recent draft revision of the Water Pollution and Control Law may strengthen and increase punishments for unlawful conduct.[65]

III. Development of the Rule of Law

Civil Society

Under Hu Jintao, the Chinese government has strengthened policies that restrict the growth of an independent civil society in an effort to guard against perceived challenges to state authority and sources of social unrest. In the past five years, and particularly since 2005, the government has enforced tighter controls over civil society organizations and has articulated increasing concern over "foreign infiltration" of these groups. Although the government increasingly has acknowledged the contributions of civil society networks[1] and eased some formal legal requirements governing the operation of certain civil society groups, these developments have not translated into greater freedom of association for Chinese citizens.

The government maintains tight legal controls over the operation of civil society organizations, though it has taken modest steps in recent years to loosen some formal legal strictures. Under the 1998 Regulation on the Management of the Registration of Social Organizations (Social Organizations Regulation), groups must register with a civil affairs office after securing sponsorship from a government or Party organization.[2] These restrictive registration requirements violate the right to freedom of association as defined by international human rights standards.[3] Stringent registration requirements lead some organizations to register as commercial organizations, undertaking related fiscal requirements, and others to operate without formal legal recognition.[4]

In March 2007, the Ministry of Civil Affairs (MOCA) announced that revisions to the Social Organizations Regulation had been completed and submitted to the State Council for approval. The revised regulations would allow, for the first time, international organizations that operate in China to register with the government.[5]

Although officials have proposed changing the sponsorship requirement for domestic organizations,[6] the revised regulations retain this provision,[7] and foreign nongovernmental organizations (NGOs) that register with the government also would be required to have an approved sponsor organization.[8] The 2004 Regulation on the Management of Foundations (Foundations Regulation) also retained sponsorship requirements but liberalized some controls that are still in place for the registration of other social organizations. The Foundations Regulation lacks a prohibition on the registration of more than one organization addressing the same topic within the same administrative region, and it permits foreign foundations to register.[9]

Despite various restrictions, citizens have been active in forming civil society organizations. Citizens have formed organizations to address such issues as HIV/AIDS, women's rights, worker rights, religious charity work, and the environment. [For more information on citizen organizations in each of these areas, see Section II—Health, Status of Women, Worker Rights, Freedom of Religion, and Environment.] Ministry of Civil Affairs statistics from 1999 to 2006 indicate an increase in the number of registered social organizations starting in 2002. The statistics indicate a total of 354,000 registered civil society organizations in 2006.[10] Estimates of the total number of organizations, including unregistered groups, have ranged as high as eight million.[11]

Government officials often have tolerated the operation of unregistered groups, but lack of legal status makes the organizations vulnerable especially where they challenge government actions or raise issues deemed politically sensitive.[12] In November 2006, Shenzhen officials shut down 12 grassroots labor rights organizations that were working together to overturn a regulation concerning labor arbitration fees.[13] Chinese authorities also have monitored the activities of health activist groups, especially HIV/AIDS awareness organizations. In October 2006, Xinjiang Uighur Autonomous Region officials shut down the Xinjiang Snow Lotus AIDS organization after the group publicized the expulsion of 19 middle school students diagnosed as hepatitis B carriers.[14] In addition, some citizens who try to establish organizations in politically sensitive areas have faced imprisonment. This past year, authorities detained or gave prison sentences to a number of citizens in Zhejiang province who were reportedly members of the China Democracy Party (CDP),[15] including Zhang Jianhong[16] (inciting subversion), Chen Shuqing[17] (inciting subversion), Lu Gengsong[18] (inciting subversion), and Chi Jianwei[19] (using a cult to undermine implementation of the law).[20] In addition, in May 2006, a court sentenced Yang Tongyan (whose pen name is Yang Tianshui) to 12 years in prison, also on subversion charges, for criticizing the government online and attempting to form a branch of the CDP.[21]

Chinese officials have expressed particular concern in the last year over the influence that civil society organizations have on the course of political development in China. Central and local officials not only tightened existing controls over many of these organizations, but also engaged in selective use of laws to provide a legal pretext for shutting them down. The government set up a task force in 2005 to strengthen monitoring of NGOs.[22] A 2005 academic

article in a publication linked to the State Council called for preventing "[W]estern countries from carrying out infiltration and sabotage of China through political NGOs," expressing a sentiment about Western NGOs echoed elsewhere among officials.[23] Since 2005, the government has been auditing the funding sources of domestic NGOs and investigating their personnel. Targeted groups include those receiving funding from foreign sources and those with influence among migrant workers.[24] International NGOs have reported that Chinese partners have been pressured by the government to withdraw from cooperative projects.[25] In 2007, the government closed the foreign NGO publication China Development Brief, which had reported on civil society developments in China and was preparing to transition to Chinese leadership. Authorities cited the 1983 Statistics Law to accuse the publication's English-language editor of conducting "unauthorized surveys."[26]

The government recently has initiated potentially beneficial reforms to two particular types of civil society organizations: rural farmers' cooperatives and charitable groups. The new Law on Professional Farmers' Cooperatives, effective July 2007, clarifies the previously ambiguous legal status of these organizations, which number over 150,000 and claim some 35 million members.[27] The law mandates registration with industry and commerce departments and does not require the cooperatives to secure sponsorship organizations.[28] If implemented fully, the law will improve cooperatives' access to financial resources.[29] The MOCA has been preparing a draft charity law, which aims to define charitable activities and standardize the operation of charitable organizations.[30] The Ministry of Finance and the State Administration of Taxation announced a new tax policy in January 2007 that expands the scope of permitted tax deductions for charitable giving.[31]

The Chinese government has created space for NGO participation in delivering certain services, such as poverty relief, where such activities do not run afoul of government and Party policy. In January 2007, the State Council's Leading Group of Poverty Alleviation and Development Office in conjunction with local officials in Jiangxi province initiated the second phase of a two-year pilot poverty alleviation project that marks the first time the Chinese central government officially has outsourced large-scale poverty alleviation projects to NGOs.[32] In Shanghai, municipal and district government officials have begun to coordinate with NGOs to provide various social services.[33] Authorities also have accommodated the social welfare programs of religion-based NGOs where they suit Party goals. [See Section II—Freedom of Religion for more information.]

Institutions of Democratic Governance

With more than 70 million members in more than 3.5 million grassroots organizations nationwide, the Communist Party of China exercises control over government and society through networks of Party committees. Party committees are set up at all levels in government, legislative, judicial, and security organs; major social groups (including unions); enterprises; and the People's Liberation Army. Party secretaries chairing Party committees simultaneously hold corresponding government positions, retaining final

decisionmaking authority on most issues. Except for a very small number of non-communist officials in symbolic positions, most leadership positions in China are held by Communist Party members.

Chinese citizens are formally permitted to directly elect just three types of governing institutions, all of which are at the local level: villagers committees in rural areas, residents committees in urban areas, and local legislatures, called People's Congresses, at the township and county levels. But the Party maintains control over these elections by controlling the lists of candidates, the identity of the electorate, voting procedures, ratification and announcement of election results, and many other key aspects of the process. China's National People's Congress and provincial and municipal people's congresses are indirectly elected by legislatures one level down.

The fact that China is a one-party system does not prevent Party leaders from disagreeing over many major issues, and central Party leaders often face persistent, tacit resistance to their policies from ministries and local governments. At the same time, some Western analysts believe that under Jiang Zemin and Hu Jintao, a common fear that divisive leadership struggles could encourage mass uprisings similar to 1989 has increased the pressure on Party leaders to avoid the bitter factional battles of the past. This relative unity among the leaders, in particular their opposition to Western democratization, and has become a major obstacle to more open discussions of fundamental political reform.[1]

As the Commission noted in its 2006 Annual Report, "China's authoritarian one-party system does not comply with international human rights standards contained in the International Covenant on Civil and Political Rights (ICCPR). Article 25 of the ICCPR requires that citizens be allowed to "take part in the conduct of political affairs" and "to vote and to be elected at genuine periodic elections." Under General Comment 25 to the ICCPR, this language requires that:

- The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties;
- Party membership should not be a condition of eligibility to vote;
- It is implicit in Article 25 that [elected] representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power;
- An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially, and in accordance with established laws which are compatible with the ICCPR;
- Freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected."[2]

VILLAGE AND RESIDENTS COMMITTEE ELECTIONS

In 2006–2007, China continued gradual expansion of its long-running experiment in local-level citizen participation in village and urban neighborhood affairs. These local-level rural and urban

elections have encouraged greater citizen participation in local administration, and sometimes result in rejections of specific local Party leaders. Although election results provide Party officials with information about popular attitudes, elections do not represent Communist Party acceptance of directly elected or representative government.

In a September 5, 2006 interview, Premier Wen Jiabao rejected further electoral reforms at the township and county levels in the countryside, stating:

> [C]onditions are not yet ripe for conducting direct election at a higher level of government . . . Democracy and direct election, in particular, should develop in an orderly way in keeping with the particular condition of a country . . . We are confident that when the people are capable of running a village through direct election, they will later be able to run a township, then a county and a province, true to the principle that our country is run by the people.[3]

The Ministry of Civil Affairs reported in July 2007 that villages in all of China's 31 provincial-level jurisdictions had held at least two rounds of elections since 1998, when the Organic Law of Village Committees took effect.[4] More than 500 million voters in over 624,000 villages have taken part in some form of village committee election since election experiments began in 1988, and the Ministry claims an average voter turnout rate of 80 percent.[5]

During the 2006–2007 election cycle, the poor administration of elections prompted citizens to take to the street to protest vote-rigging and other electoral abuses.[6] Despite numerous Party and government directives calling for a clean-up, official Chinese reports suggest that "corrupt" and "illegal" election practices, including "vote-rigging" and "rampant" bribery, remain widespread, and there is reason to infer they are getting worse. A senior Ministry of Civil Affairs official, speaking in July 2007, reported that "clan forces and gangsters are gaining ground in some elections" and noted cases of "beating and intimidation of candidates." The same official criticized the lack of a clear definition of "election bribery" as a major source of abuses.[7] Official Chinese sources have recently suggested that the influence some village committee officials have over sales of local land rights and mineral resources, coupled with China's long-running land and resource price boom, have probably made the incentives for electoral corruption even worse.[8]

In late 2006, for example, two candidates in the Inner Mongolia Autonomous Region spent the combined equivalent of US$82,500 entertaining voters to win a village committee chief's post that only paid about 10,000 yuan per year (around US$1,265), according to a Party-owned news magazine. Some candidates view election bribes as a business expense.[9] The official China Daily reported in February 2007 that the Central Organization Department issued a directive calling for "severe punishment" of those who commit election-related irregularities. But the same report indicates that nationwide authorities had prosecuted only 192 officials for vote-buying and electoral fraud during the most recent round of village elections over the last year.[10]

Under Hu Jintao, Party officials have been directed to strengthen their control over village committees and elections. Scholar Li

Lianjiang notes that the powers of these village committees and their elected leaders have always been "highly constrained because appointed village party secretaries remain by law the 'leadership core' of the village." This has left the village committee heads as "only a lieutenant to the village party secretary" who is actually selected by Party officials in the village or township.[11] Moreover, the fairness, competitiveness and openness of these elections have always varied significantly from region to region. Since 2005 and continuing through the past year, Party leaders in many areas have endorsed having village Party leaders take "joint membership" and "concurrent leadership" of village committees,[12] a change that would exacerbate some of the foregoing problems.

International nongovernmental organization monitors, who have been involved since the inception in promoting and monitoring these village elections, have reported that in the past two years Chinese officials in many localities have increasingly resisted permitting either Chinese or foreign observers to monitor the quality, procedural integrity, and fairness of village elections. The exclusion of these monitors removes a major disincentive for local officials to commit the types of irregularities that are already widespread.[13]

Grassroots citizen participation in cities is even more limited. Since 1999, many cities have experimented with using elections, rather than direct Party committee appointment, to select members of urban residents committees or community residents committees, the lowest level of state power in China's cities.[14] Although the percentage of community residents committees chosen through election appears to be significantly lower than the percentage of village committees that are elected, their share is rising. Shenzhen officials, for example, announced in July 2007 that they would increase the proportion of elected residents committees from 47 percent to 70 percent during their next term of office.[15] Although initially most of these committees did not control any goods or service of value, in the past year, some have asserted their influence as forums for debating and approving deals offered by city officials in return for eviction and demolition of homes in areas slated for renewal.[16]

INTERFERING WITH INDEPENDENT CANDIDATES

In addition to interfering with citizens' right to vote, local authorities continued to interfere with citizens' right to stand for election during the 2006–2007 cycle of township and county local people's congress (LPC) elections. Official statistics noted that 900 million county election voters and 600 million township election voters were scheduled to elect more than 2 million LPC deputies during the July 1, 2006, to December 31, 2007, election period.[17] Beijing lawyer and rights defender Teng Biao reported in late 2006 that more than 20 non-Party, independent LPC candidates were attempting to run for election in Beijing alone, but that the Party continued to select the vast majority of candidates.[18] Teng ultimately announced his decision to boycott the elections due to Party control over the election process and government harassment of independent candidates.[19]

Local authorities reportedly have harassed and taken into custody independent candidates and supporters who threaten Party

control over the electoral process and candidates. In some instances, these candidates continue to play an active role, despite having been targeted for harassment during previous election cycles.[20] For example, in November 2006, on the eve of the current cycle of LPC elections in Qianjiang city, Hubei province, public security officials took democracy activist Yao Lifa into custody as he was on his way to campaign for votes.[21] Yao had previously been taken into custody in July 2006, when he attempted to meet with five other independent LPC candidates to discuss their election campaigns, and was beaten by unidentified assailants several times in 2005 while educating villagers on the election process. Lü Banglie, an activist running for reelection in Zhijiang city, Hubei, was similarly beaten in 2003 for attempting to recall an allegedly corrupt leader in his village, again in 2005 for his role in another village's recall campaign, and twice during his own campaign for reelection in the 2006–2007 election cycle.[22] The former president of Human Rights in China argued in a September 2006 article published by the organization that although many independent candidates may not be elected in the current election cycle, they play a significant role in serving as forerunners for civil rights in Chinese society.[23]

PARTY LEADERSHIP SELECTION

Since the late 1990s, the Party has also continued to experiment with allowing limited citizen participation in the selection of local Party leaders, particularly at the village level. Most of these reported experiments involve local Party officials allowing non-party member citizens to help nominate candidates for Party offices at the village and sometimes the township levels, usually followed by an election in which only Party members may participate.[24] Party scholars report that in the past three years these experiments continued in some areas, but their scale is far narrower than that of either the village committee elections or the urban community residents committees.[25] Local Party officials have been urged to combine the selection of Party committee leaders with that of village elections to try to ensure that Party members dominate both organs. But they are also urged to use popular opinion to weed out the most unpopular Party officials during the process.[26] In a recent major speech discussing political reform and the Party, Hu Jintao endorsed both expanded popular participation in government and greater democracy within the Party, but did not specifically endorse further expanding these experiments in allowing the public to help choose local Party leaders.[27]

During 2006–2007 Hu Jintao continued to voice support for experiments in expanded "inner-Party democracy," or consultation by Party leaders with lower-level Party officials.[28] The Party's Central Organization Department reports that between 2003 and 2006, about 15,000 Party members were promoted to leadership positions as a result of elections within the Party. Of these, about 3,800 were chosen to county-level positions (an average of a little over one for each of China's counties) and just over 390 were at prefectural-level positions. The Party's Central Organization Department estimates that about 100,000 Party posts at various levels were filled by elections within the Party during 2006–2007.[29] With more than

70 million Party members in more than 3.5 million grassroots organizations nationwide, this represents a small experiment confined to lower levels.[30] However, elections for delegates to the 17th Party Congress have reportedly been more competitive than those for the 16th Congress in 2002, with the number of candidates exceeding the number of delegate slots by an average of 15 percent across provinces.[31]

Recent discussion within the Party indicates that efforts to make Party affairs more democratic have faced resistance. A January 2007 article in the Central Party School's journal Study Times stressed that Party elections can only strengthen the Party if they are truly "democratic," and "impartial." Zhang Xiaoyan endorsed several specific procedural steps to perfect Party elections, including opening up the nominating process to additional Party members, and having more multi-candidate elections, including elections with multiple serious candidates, well known to the local membership.[32] Official press sources have carried numerous reports of extreme corruption in Party leadership selection processes, and even reports of violence in Party elections. In a February 2007 report, the official China Daily stated that "the buying and selling of party and government posts is rampant in China's countryside."[33] In June 2007, Chinese police reported they were searching for a former village Party leader in Hebei province believed to have murdered two new Party committee members after losing his seat to them in an election.[34]

LOOKING TO THE 17TH PARTY CONGRESS

The Commission will monitor closely and assess the policies on political reform that are widely anticipated to emerge at the 17th Party Congress, and notes that the Party Congress may constitute Hu Jintao's last real chance to advance a sustained program of political reform in what is expected to be his final five-year term. As the Party Congress approaches, Party leaders have been engaging in public and internal discussions over the relative value of "inner-Party democracy" versus a more "consultative democracy" that would offer greater participation to the Chinese public and to members of its eight legally recognized non-Communist parties. An August 2007 article in the Party-managed national magazine Outlook (Liaowang) reported that the consensus among official policy analysts was that "after the 17th Party Congress, China's socialist democratic political reforms will move faster."[35] But a June 25, 2007, speech by Hu Jintao was more guarded. Although he called for "political structure reform" and greater "democracy within the Party," he also continued to endorse "democratic centralism," long the watchword for obedience to high-level Party leaders. As for greater participation for the Chinese people as a whole, Hu endorsed taking "active but prudent" steps in this direction, and expanding the "orderly political participation of our citizens."[36]

ACCESS TO JUSTICE

INTRODUCTION

Since the early 1950s, the Chinese system has had, at least on paper, several formal legal institutions and informal, nonjudicial

systems through which citizens could seek justice, appeal government actions, and exercise oversight of officials. The oldest and most widely used of these systems allows citizens to present their grievances to Party and government offices charged specifically with receiving "letters and visits" (*xinfang*). In 2006–2007, Chinese leaders continued efforts begun in 2005 to restructure and formalize the *xinfang* system in a manner that they asserted would make it more responsive, accessible, and fair. Since the 1989 passage of the Administrative Litigation Law (ALL), citizens have also been permitted to sue administrative organs of the government through the courts. Other dispute resolution institutions include local mediation committees, labor arbitration committees, and administrative reconsideration organs.

Petitions and citizen administrative suits rose sharply in number during the 1990s and early 2000s. Some citizens who avail themselves of these institutions have been successful. But for many, the last or only resort is public protest, which officials typically are quick to stifle. Surveys reveal that many citizens believe it is only the threat of protest that can help them get the attention of officials and kick-start formal institutions.

INDIVIDUAL AND GROUP PETITIONS ("LETTERS AND VISITS")

By far the most commonly used institution through which citizens may seek redress involves filing petitions through the "Letters and Visits Offices" available in nearly all county-level and higher government offices and in many government and judicial departments. Official statistics in recent years indicate that government departments nationwide receive more than 10 to 13 million such petitions annually, compared with between 90,000 and 100,000 administrative lawsuits that China's courts have accepted annually in the past five years.[1] "Petitions," however, are not lawsuits, and their handling is governed by State Council and other government regulations that leave citizens with no legal leverage to compel offices to respond. Citizen-petitioners more often than not find that institutions to which *xinfang* offices refer their petitions for actual resolution of grievances ultimately decline to handle complaints. The government forbids petitioners to seek "strength in numbers" by presenting petitions to *xinfang* offices in groups of more than five, although many citizens ignore this rule and try to pressure officials by petitioning in groups. Although regulations require offices to which petitions are referred by the *xinfang* office to respond within a specified period of time, they frequently stall indefinitely. As the Commission's 2004 Annual Report noted, "the overwhelming majority of individual petitioners . . . find themselves lost in a Kafkaesque shuffle from bureau to bureau and city to city, facing years of red tape without any real resolution to their problems."[2]

In 2006–2007, Chinese officials continued to implement the State Council's January 2005 regulation on the proper handling of petitions in a manner aimed to prevent citizens from taking appeals to Beijing and provincial capitals. The 2005 Regulation on Letters and Visits instead forces citizens to turn to lower-level *xinfang* offices to resolve their disputes. The regulation does permit citizens who are dissatisfied with the outcome of the local petition process to then submit their petition to officials at the next level up in the

administrative structure (for example, allowing a town dweller to submit at the county level) and, in some cases, two levels up (the city level). However, *xinfang* offices at higher levels are ordered not to accept petitions submitted from more than two levels down the administrative structure. Under the regulation, government offices were required to establish "responsibility systems" for handing citizen petitions, which link the performance assessments of public officials to their success in resolving complaints at their level. The regulation strictly forbids petitioners from physically organizing groups outside *xinfang* offices, or from taking other actions to pressure or threaten *xinfang* handlers.[3]

Since at least 2002, central government officials have maintained confidential rankings of which provinces have the highest number of petitioners who travel to Beijing or their own provincial capitals, and have encouraged provincial Party and security officials to compete to "improve" (that is, to lower) their national ranking. Since at least 2005, Beijing has rewarded local officials with "outstanding records" of handling petitioners locally, while punishing those whose disgruntled residents took their cases to Beijing or provincial capitals more frequently. Local officials continue to dispatch security officials to stop petitioners en route to Beijing, or to detain them in the capital and forcibly return them to their places of residence.[4]

In 2006, Chinese officials continued to declare success in their efforts to reduce the number of citizen petitions, claiming a nationwide decrease of more than 15 percent compared to 2005. Based on official statistics, the total number of petitions in 2005 was 12.7 million, down from 13.7 million in 2004.[5] These figures suggest that the total number of petitions for 2006 was less than 10.8 million. The official Xinhua news agency has attributed the decline to several successful policies, including giving local governments numerical targets for lowering petitions, fining or punishing local officials with negative performance appraisals if they missed their targets, and ordering local police officials to meet with, and listen to, petitioners.[6]

These statistics notwithstanding, throughout 2007, central government authorities continued to issue directives suggesting that they do not yet regard local officials' handing of petitions as satisfactory. In May, a directive on petitions from the Supreme People's Procuratorate acknowledged that many "major, complicated, or unclear" petition cases were not being handled adequately, and offered citizens the possibility of holding an open hearing in the event that cases could not otherwise be resolved.[7] In June, the Party and State Council leadership issued another directive suggesting that local authorities were still not handling petition cases in a satisfactory manner or devoting appropriate resources to keep petitioners contained within their local areas. The directive called on the top local Party leaders in each area to take personal charge and responsibility for handling petitions, to provide improved budgets and personnel to petition offices, and to resolve citizen complaints while keeping them at the local level.[8] The directive also indicated that the government plans to open a national center to maintain information on petitioning and help address citizen grievances. The center's exact role and functions remained unclear, especially in

light of the national leadership's directive to keep petition cases away from Beijing.[9]

Major policy documents and regulations issued in 2005–2007 insist that local authorities should make every effort to properly investigate and resolve citizen petitions, and demand that officials not employ harsh or coercive tactics except in the event that petitioners break the law. Nevertheless, in 2006–2007, widespread reports continued to indicate that many local officials remain unwilling or unable to deal with citizen complaints effectively, and still resort to coercive tactics to try to cover up cases and prevent petitioners from taking cases to provincial capitals or to Beijing. Officials in Hubei, for example, kept a disabled local resident, Ma Wenjun, under 24-hour guard by a rotating a group of 13 security officials and threatened to cut off his basic living allowance if he continued his attempt to take his petition to higher-level authorities.[10] In February 2007, a leading expert on protests and petitions from the Chinese Academy of Social Sciences, the nation's premier social science research institution, conducted a survey on the implementation of the 2005 regulation among 1,200 petitioners in Beijing to present their grievances to the central government. Of those surveyed, 71 percent indicated that they had suffered greater retaliation or intimidation as a result of their petitioning at the hands of authorities from their home region in the past year. Only five percent felt that their local officials had taken their grievances more seriously.[11]

Although China's Constitution and Criminal Law in principle provide ample protection from this sort of official retaliation against citizen petitioners, official press sources note that these protections often go unenforced. Article 41 of the Constitution grants citizens the right "to criticize and make suggestions to any state organ or functionary." The Constitution also asserts that "[N]o one may suppress such complaints, charges or exposures, or retaliate against the citizen making them." Article 254 of the Criminal Law provides for imprisonment of any state functionary who abuses his power and "retaliates against or frames up complainants, petitioners, critics or persons who report against him." But legal analysts have criticized many local procurators for failing to deal with officials who abuse their power to retaliate against petitioners and other citizen critics.[12] In January 2006, the Supreme People's Procuratorate attempted to pressure local procurators to file such cases by issuing Interpretation Number 2 (2006), which requires procurators to file charges in cases in which state personnel retaliate against or frame up petitioners, complainants and critics.[13]

ADMINISTRATIVE LAWSUITS

Under the 1989 Administrative Litigation Law (ALL), citizens may file administrative lawsuits through local courts. A 2004 Chinese Academy of Social Science survey of 632 petitioners who had taken their cases to Beijing revealed that nearly two-thirds (401) had initially submitted their cases to local courts. But 43 percent of these reported that the courts had declined to hear their cases at all, which spurred them to petition administrative officials.[14] The number of first-instance administrative suits accepted by

courts nationwide, which soared from 13,006 cases to 100,921 cases in the 12 years after the ALL was passed, tapered off between 2002 and 2005 (the most recent year for which data is available), fluctuating between about 80,000 and 96,000 cases annually.

The President of China's Supreme People's Court, Chief Justice Xiao Yang, urged local judicial officials in March 2007 to make greater use of mediation and other alternative methods of dispute resolution in dealing with cases that touch on issues that could spark public protest. Cases involving rural land seizures, urban home evictions and demolitions, enterprise restructuring, labor and social security, resource disputes and environmental protection cases were among issues Xiao singled out.[15]

In June, the State Council issued new regulations to clarify the procedures that citizens and officials must follow when seeking redress under China's 1999 Administrative Reconsideration Law, under which more than 80,000 administrative disputes per year are resolved, according to government statistics. The regulations obligate administrative departments to accept for reconsideration applications that meet the law's guidelines. The regulations also strengthen the authority of higher-level departments to compel lower-level departments to accept applications that they previously rejected. The regulations also require administrative departments to inform citizens of their right to apply for reconsideration if the department makes an administrative decision that adversely affects the citizen's interests.[16]

In March, the Supreme People's Court announced the nationwide expansion of what it deemed to be a successful pilot program aimed at ensuring "objectivity" in administrative suits, in part by circumventing local Party and government control of administrative courts. Under the program, administrative suits would not be tried in the plaintiff's home jurisdiction, but either in a higher-level court or in a court outside of the plaintiff's home area. The SPC reports that in areas where tests were conducted, such changes of venue resulted in judgments against the defendants—usually a public official or agency—about two and one-half times more often than when such cases are handled by the plaintiff's local court.[17] As promising as these statistics may be, if the improvement in the plaintiff's prospects for winning a case against an official depends on moving the case away from the official's local judiciary, it underscores the central government's failure to overcome local Party and government dominance of court procedures and verdicts.

Throughout 2006–2007, the Party leadership's political selectivity and ambivalence toward permitting citizens to use the courts and legal system to seek redress continued to be manifested in the comments of senior officials. In March 2007, for example, Party Politburo Standing Committee member Luo Gan, who heads the Party's Central Political-Legal Committee (which oversees legal and internal security policies), told a meeting of administrative law experts that China's system of administrative lawsuits was "one of the most effective and direct legal systems to safeguard the public's rights and interests," and called for the building of a "fair, effective, and authoritative system to try lawsuits against government bodies to guarantee social justice."[18]

Yet during the preceding year, the Party and government repeatedly pressured lawyers to refrain from taking politically sensitive cases. In early 2006, the All China Lawyers Association (ACLA) issued a "guiding opinion" restricting the ability of lawyers to handle cases involving representative or joint litigation by 10 or more litigants, or cases involving both litigation and non-litigation efforts. The guiding opinion further instructed law firms to assign only "politically qualified" lawyers to conduct the initial intake of these cases, and lawyers handling collective cases to attempt to mitigate conflict and propose mediation as the method for conflict resolution. Former ACLA president Zhang Sizhi criticized the guiding opinion as retrogressive and warned that it would set the country's legal profession back several decades to the 1980s. In speeches to Party judicial and internal security officials, Luo Gan has reaffirmed the responsibility of such Party members to defend the Party's interests and its leadership over society. He has also attacked lawyers who take on politically sensitive suits, calling for "forceful measures . . . against those who carry out sabotage under the pretext of rights protection . . . so as to protect national security and the political stability of society."[19]

COMMERCIAL RULE OF LAW

INTRODUCTION

China has passed the five-year mark in the implementation of its World Trade Organization (WTO) commitments. These commitments are outlined under both the WTO agreements and China's accession documents,[1] and require that the Chinese government ensure nondiscrimination in the administration of trade-related measures, as well as prompt publication of all laws, regulations, judicial decisions, and administrative rulings relating to trade. Over the past year, concerns have persisted that China continues to deviate from WTO norms in both law and practice.

Concerns regarding China's uneven implementation of its WTO commitments pursuant to its obligations as a member of the WTO have led to multiple WTO challenges against China during 2007.[2] Weaknesses in China's legal institutions and systems of policy implementation detailed by the U.S. Trade Representative (USTR) earlier this year formed the basis of the United States' August 13, 2007 request that the WTO establish a dispute settlement panel, in the U.S. case challenging deficiencies in China's intellectual property rights (IPR) protection and enforcement regime.[3] The WTO granted the U.S. request and established a panel in September 2007. On August 31, 2007, the WTO also granted a U.S. request to form a panel to review Chinese export and import-substitution subsidies prohibited by WTO rules.[4] The United States and Mexico allege that China's revised income tax law and related tax refunds, exemptions, and reductions constitute an export subsidy.[5]

The timely resolution of many of these disputes remains a focus of concern and effort. Throughout 2007, the ways in which "China's laws, policies, and practices deviate from the WTO's national treatment principle"[6] remained at center stage. The U.S.-China Business Council and other business interests kept a coordinated spotlight on China's inadequate protection of IPR, its insufficiently

transparent legal and regulatory processes, and its opaque development of technical and product standards that inadequately address quality issues and tend to favor local companies.[7] China's long-protected banking and oil sectors were opened in accordance with WTO commitments that came due on December 11, 2006, but concerns remain.

In the area of transparency, important developments during the Commission's 2006–2007 reporting cycle included China's solicitation of comments during legislative and regulatory development (including on the new Labor Contract Law and Tax Law Implementation Regulations). Comment procedures afford interested parties some limited opportunities to offer input prior to implementation. Among those who submitted comments on the draft Labor Contract Law were U.S. business groups. Some comments endorsed revisions that would weaken some of the formal protections written into draft versions of the law, according to business association, media, and other sources.[8] Among the aspects of the drafts that concerned these companies were clauses on hiring and termination procedures, layoffs, employee probationary periods, the status of temporary workers, the power of the official trade union, severance pay provisions, and employee training repayment.[9] The State Council's issuance of a new Regulation on the Public Disclosure of Government Information in April 2007, to take effect in May 2008, is potentially significant, and the Commission will monitor its implementation going forward. Also potentially significant is the issuance by the Supreme People's Court and Supreme People's Procuratorate's of measures concerning the publication of judicial decisions and other documents. The Commission also will be monitoring developments in this area closely. [See Section II—Freedom of Expression.]

PROTECTION OF INTELLECTUAL PROPERTY

For several years the Commission has noted the widespread counterfeiting and piracy of intellectual property in China.[10] The Commission's 2004 Annual Report concluded that "only rhetorical progress has been made toward reducing the extremely high level of intellectual property infringement in China in the past year and the situation continues to severely injure U.S. intellectual property industries."[11] In its 2006 Annual Report, the Commission characterized IPR infringement in China as "rampant." Placing China on its top-ranked "Priority Watch" list, the USTR noted in early 2007 that "[a]lthough this year's Special 301 Report shows positive progress in many countries, rampant counterfeiting and piracy problems have continued to plague China and Russia, indicating a need for stronger IPR regimes."[12]

Reasons for China's weak enforcement of IPR protections include what some analysts regard as deliberate "free-riding" on the international system—China's resistance to introducing criminal penalties sufficient to deter infringement, and the high thresholds that Chinese laws and regulations use to determine the existence of infringement, for example. Reasons also include structural and local factors that call for consistent, long-term policy solutions—weak, politicized legal institutions, for example, and the presence of Party, government, and military interests that have incentives to

resist the closure of commercial producers of infringing products because they generate revenues and contribute to local economies.[13]

From July through October 2006, central government officials launched a highly publicized "100 Day Anti-Piracy Campaign" sponsored by the Ministry of Culture, the Ministry of Public Security, and eight other central government departments.[14] Chinese authorities reported seizing more than 58 million illegal publications and four pirated DVD production lines, investigating more than 10,000 cases of IPR infringement, and sentencing at least two individuals to life imprisonment.[15]

The campaign targeted not only IPR infringing publications, but also material published without government permission, and material containing prohibited political content. Authorities reported confiscating some 616,000 unauthorized newspapers and periodicals, according to a People's Daily report citing information from the Sweep Away Pornography and Strike Down Illegal Publications Task Force.[16] But reflected in these figures were 303,000 publications deemed to "threaten social stability," "endanger state security," or "incite ethnic separatism," according to the report. In other words, the enforcement campaign appears to have been motivated only in part by the need to address IPR infringements.[17] Therefore, official portrayal of the campaign—both in its intent and results—should be understood from more than one perspective.[18]

In March 2007, China officially acceded to the World Intellectual Property Organization (WIPO) Copyright and Performances and Phonograms Treaties (collectively, the WIPO Internet Treaties), with its accession formally taking effect on June 9, 2007. The Commission indicated in its 2004 Annual Report that China's taking these steps would be interpreted as a sign of "concrete progress."[19]

On April 4 and 5, China's Supreme People's Court and Supreme People's Procuratorate issued the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (II). The new interpretation, which built upon an earlier December 2004 interpretation of the same name, clarified the thresholds for prosecution under China's Criminal Law for those who infringe copyrighted materials, reproduce and sell them on a large scale. The Interpretation directs, for example, that those duplicating and distributing 500 or more copies of a piece of music, videos, books, and computer software or other copyrighted audio-visual products meet the law's standard for cases "involving serious circumstances" and cases involving 2,500 copies would meet the law's standard for cases "involving other especially serious circumstances."[20]

Notwithstanding these additional measures, China continued to show what the USTR termed "unacceptably high" rates of piracy and counterfeiting. In its annual Special 301 Report, issued on April 30, 2007, the USTR noted surveys of copyright industries that estimate that between 85 and 93 percent of all copyrighted goods sold in China were, in fact, counterfeit—a level that constituted no significant improvement over 2005. The percentage of all IPR-violating goods confiscated by U.S. Customs agents that were shipped from China actually rose from 2005 to 2006, from 69

to 81 percent.[21] A 2006 survey of its members by the U.S.-China Business Council ranked weak IPR protection as the greatest failing in China's WTO implementation, and also found that while 33 percent of its members felt there had been some improvement in China's enforcement of intellectual property protection over the previous year, more than half of those polled felt there had been no improvement.[22] On the eve of a June 2007 European Union-China joint trade ministerial meeting, EU analysts noted that "China was the source of 80 percent of counterfeit goods intercepted at the EU borders in 2006. Some European manufacturers estimated in February 2007 that intellectual property rights infringement in China cost EU manufacturers operating there 20 percent of their revenue."[23]

Moreover, while China's IPR enforcement remains weak nationwide, the decentralization of China's legal system means that enforcement levels vary significantly across provinces and regions. Attacks on Internet piracy in Beijing, Xiamen, and Guangdong, for example have seen some positive results.[24] Guangdong remains, however, along with Zhejiang, one of the "provinces in which rights holders most consistently encountered all types of counterfeiting." These two provinces, plus Fujian province, are major ports of lading for infringing products shipped to the United States.[25]

On April 10, 2007, the United States initiated the first step in the WTO dispute settlement process by requesting consultations with China regarding violations of several provisions of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[26] The USTR raised four major issues. First, U.S. officials contended that the thresholds for criminal prosecution under China's Criminal Law and new interpretations remain too high and too vague, still allowing commercial scale acts of trademark counterfeiting and copyright piracy to avoid being subject to criminal prosecution. This is largely because prosecution thresholds are defined in terms of "illegal business volume," "illegal gains," and number of "illegal copies." "Illegal business volume," moreover, is normally calculated based on the lower price at which the illegal goods were to be sold, not the higher price that the corresponding legitimate goods would have fetched, which would permit an infringer to sell more of these goods without meeting the threshold for criminal prosecution.[27] Second, Chinese Customs laws and regulations regarding intellectual property protection in many cases allow confiscated counterfeit goods to have their illegal trademarks and other infringing features removed and be resold rather than destroyed.[28] Third, numerous Chinese laws and regulations do not appear to protect foreign creative works that must undergo censorship or other forms of pre-distribution review during the period when they are awaiting clearance by government authorities, or provide any protection for them if they are denied government clearance.[29] Fourth, Article 217 of the Criminal Law outlaws "reproducing and distributing" many copyrighted works, but does not explicitly address the case of those who reproduce copyrighted materials without distributing them, or distribute without reproducing them.[30] A USTR spokesperson reported on August 13, 2007 that after three months of formal consultation with Chinese officials, the United States felt that the "dialogue has not generated solu-

tions to the issues we have raised" and the United States requested the WTO Dispute Settlement Body establish a dispute resolution panel.[31]

SUBSIDIES

China continues to subsidize key export industries, including steel and paper, in contravention of its commitments under the Word Trade Organization (WTO) Subsidies Agreement, and has not demonstrated adequate transparency about these subsidies. A U.S. Trade Representative-Commerce Department joint report described China's April 2006 subsidies notification as "long overdue," noting that "although [China's] notification is lengthy, with over 70 subsidy programs reported, it is also notably incomplete. China failed to notify any subsidies provided by its state-owned banks or by provincial and local government authorities."[32] In October 2006, the U.S. paper industry filed a petition to the Department of Commerce alleging "injurious subsidized imports of coated free sheet . . . paper from China," and in November the Commerce Department initiated a countervailing duties investigation.[33]

China's steel industry subsidies are motivated in part by unemployment and demonstrations by laid-off workers This is especially so in China's northeastern rustbelt where Anben (formerly Anshan and Benxi) Steel and other major producers are based.[34] In 2000, the Chinese government committed more than US$6 billion to transform, expand, and modernize its steel industry, with much of this coming in various forms of directed support from local governments.[35] Baosteel has reported receiving 25 million yuan in "subsidies" in 2005, and another 21 million in the first six months of 2006.[36] Many other subsidies take the form of support from China's state-owned banks, including the extension of preferential loans and directed credit,[37] in addition to inaction on non-performing loans, exchanges of unpaid debt for equity, or actual forgiveness of debt.[38]

China's subsidies notification also notes other programs under which small- and medium- sized enterprises, a category which includes many steel producers, have received funds to support technological innovation, exploration of global markets, and other forms of development.[39] The Chinese government, and local governments in particular, also subsidize energy, raw materials, and land for these firms. In April 2007, Premier Wen Jiabao criticized local governments for offering deeply discounted or free land to job-creating local enterprises, specifically mentioning steel mills.[40] The Chinese government also selectively enforces environmental standards that would impose a significant cost on many aging factories.[41] The Chinese government also implements investment policies that leverage market access in ways that amount to an industry subsidy. China's 2005 "Policy for the Development of Iron and Steel Industry" encourages domestic sourcing and long-term import substitution:

> "Article 18: The policies of imported technologies and equipment: Enterprises are encouraged to use home-made equipment and technologies and reduce export. For any equipment or technology that cannot be produced domestically or fails to meet the demand and, thus, must be introduced from abroad, the introduced equipment or

> technology shall be advanced and practical. For the equipment in large amount or big scope, we should organize and implement the localized production thereof from now on."[42]

Elsewhere the policy promises that "the state shall grant policy supports in such aspects as taxation, interest subsidy and scientific research funds" for any "major iron and steel project" that is "based on home-made equipment as newly developed."[43] This policy contravenes China's WTO commitments by requiring use of domestic suppliers as a condition for investment.[44] Finally, exports of steel, like all Chinese exports, benefit from China's undervalued currency.[45]

In February 2007, the United States filed a WTO dispute settlement proceeding against China alleging prohibited subsidies and requesting consultations; later that month Mexico also sought consultations for these subsidies. In the initial February filing, the United States highlighted nine specific sets of tax law articles or regulations that it said constituted import substitution subsidies or export subsidies.[46] Seven of these nine sets of regulations were aimed at foreign invested enterprises. Three of them specifically cited articles in China's Rules for Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,[47] which were read in conjunction with several other directives from China's State Council and its financial and taxation departments as constituting prohibited subsidies.[48] In July, the Chinese government exercised its right under WTO regulations to block the complaint in favor of additional consultations, which took place on July 22.[49] U.S. officials, speaking after the second round of consultations, noted that the Chinese government had lifted one of the subsidies the United States had challenged. In August, the WTO Dispute Resolution Body accepted the complaint for investigation on second filing by the United States and Mexico.[50] China's Ministry of Commerce contends that the complaint is "politically motivated" and based on a "huge misunderstanding" of China's enterprise tax system.[51]

OPENING OF CHINA'S OIL MARKETS

The opening of China's oil sector has replaced a long standing state monopoly. New measures, however, establish licensing schemes that may continue to maintain barriers to entry by new market participants.

Crude Oil

Four state-run players have long controlled China's crude oil sale and storage market: China National Petroleum Corporation (CNPC), China National Offshore Oil Corporation (CNOOC), Sinochem Corporation (SINOCHEM) and China Petrochemical Corporation (SINOPEC). China's WTO commitments required opening of its crude oil distribution and storage market by December 11, 2006.

On December 4, 2006, the Ministry of Commerce (MOFCOM) issued a new Regulation on the Administration of the Crude Oil Market (the "Crude Oil Regulation"), which went into effect on

January 1, 2007.[52] Using the term "crude oil" to refer both to foreign and domestically produced crude, the new regulation permits foreign companies to sell foreign crude into China's domestic oil market. The regulation sets forth a new licensing scheme for crude oil sales and storage.[53] MOFCOM is responsible for implementation and enforcement of the new licensing scheme.[54]

The new licensing scheme under the Crude Oil Regulation sets high storage tank capacity requirements that may require significant additional investment for foreign applicants. It also requires license applicants to demonstrate access to sales channels that is "long-term, stable, and legal" but does not specify the meaning of these terms, leaving subsequent clarification to MOFCOM's discretion. At the time of this writing, MOFCOM has not provided formal clarification.

Oil Products

Additional measures also provided for new market entrants into the wholesale oil product market, which has long been controlled by CNPC and SINOPEC. The Regulation on the Administration of the Oil Product Market was issued by MOFCOM on December 4, 2006, and went into effect on January 1, 2007. With this regulation, both foreign and private Chinese companies can enter the market. The regulation sets forth a new oil product licensing framework[55] and expands the meaning of "oil products" to include gasoline, kerosene, diesel, and renewables including ethanol and biodiesel.[56]

China's opening of its oil product market is required under its WTO commitments and has been long-anticipated. Analysts have pointed out however, that, "while this opening will encourage diversification in oil product supply, the road ahead for foreign oil companies in China remains challenging."[57] Specifically, "the fact that separate import and export licenses are still required will nevertheless makes it difficult for foreign companies to independently operate in the wholesale market until such time as the licenses for import and export are relaxed."[58]

BANKING SECTOR DEVELOPMENTS

Foreign Participation In Chinese Banks

Pursuant to its WTO commitments, China issued the Regulation on Administration of Foreign Invested Banks and Implementing Rules on Foreign Invested Banks, both of which came into effect on December 11, 2006.[59] These measures opened China's banking sector to new entrants.

The Foreign Bank Rules distinguish among four kinds of foreign invested banks: wholly foreign owned banks (WFOB),[60] Sino-foreign joint venture banks (JVB),[61] branch offices of foreign banks,[62] and representative offices of foreign banks.[63] In order to invest in a Chinese bank, foreign investors must meet minimum size requirements. These new rules prohibit private equity investors, foreign non-banks, and investment funds from holding a controlling interest in Chinese banks.[64] They also give the China Banking Regulatory Commission (CBRC) a veto over prospective investment by a foreign entity.

WFOBs and JVBs are now permitted to offer services in core businesses heretofore reserved as the exclusive domain of Chinese banks.[65] Chinese banks in most sectors therefore face the possibility of direct competition from locally incorporated WFOBs and JVBs. Branch offices are prohibited under the new rules from engaging in bank card business, and must comply with new restrictions on the receipt of RMB deposits, but otherwise may now engage in business similar in scope to WFOBs and JVBs. In addition, foreign banks may now convert branch offices to WFOBs with the approval, and under the oversight, of the CBRC. Representative offices are not permitted to conduct banking business, but may engage in market research, liaison and consulting activities related to the establishment of a WFOB, JVB or branch.

Commercial Bank Risk Management

On October 25, 2006, the CBRC issued the Guidance on Compliance Risk Management for Commercial Banks that applies to domestic commercial banks, wholly foreign-owned banks, Sino-foreign equity joint venture banks, and foreign bank branches. The guidance requires these entities to implement systems for compliance assessment, reporting, and accountability. Specifically, it addresses the duties and obligations of boards of directors, boards of supervisors, and senior officers. Responsibility for the approval and assessment of compliance policies and reporting now resides with the board of directors, which is required to appoint a risk management committee, internal audit committee, and compliance management committee. The board of supervisors is responsible for evaluating fulfillment by the board of directors and senior management of their compliance and risk management duties. It is unclear how the guidance will be implemented and enforced with respect to institutions that do not have both a board of directors and a board of supervisors.[66]

Anti-Money Laundering Law

China's obligations under the UN Convention Against Corruption prompted passage in 2006 of a new Anti-Money Laundering Law that went into effect in 2007, along with a pair of anti-money laundering regulations issued by the People's Bank of China (PBOC).[67] China asserts that the new law also meets standards set forth by the Financial Action Task Force on Money Laundering (FATF) at the G7 Summit held in Paris in 1989.

The law applies to commercial banks, credit co-operatives, postal savings institutions, trust investment companies, securities companies, commodity brokerage firms, insurance companies, and other "financial institutions." Discretion to expand the definition of a "financial institution" resides with the State Council Anti-Money Laundering Bureau. The Customs Office and the State Council Anti-Money Laundering Bureau are the primary state actors under the new system set forth in the law, with the State Council Anti-Money Laundering Bureau also exercising authority to cooperate with overseas entities and international organizations. The PBOC has additionally emerged as the financial institution chiefly responsible for financial industry anti-money laundering matters, with

significantly expanded investigative powers. The PBOC has authority to monitor both yuan and foreign currency transactions, to exchange information with institutions abroad, and to cooperate with international law enforcement.[68]

The law requires financial institutions to establish dedicated anti-money laundering units, to maintain adequate systems of internal controls and to comply with tough new rules on the documentation of clients' identities. The law provides for specific administrative sanctions in money laundering cases that involve the abuse of enforcement authority. Financial institutions, and their directors and officers, are liable, both monetarily and non-monetarily, for entering into transactions with "suspicious individuals," opening accounts under false names, failure to maintain proper records, failure to report suspicious transactions, and general "failure to fulfill legal obligations under the law."

ANTI-MONOPOLY LAW

China passed a new Anti-Monopoly Law on August 30, 2007, which will take effect on August 1, 2008. The law provides for "an anti-monopoly commission to be set up under the State Council to deal with anti-monopoly issues."[69] The law provides for the investigation and prosecution of monopolistic practices, but also carves out exceptions for cases in which the proposed anti-monopoly commission determines that monopolistic arrangements "favor innovation and technological development."

Under the new law, foreign acquisitions of Chinese companies will be subject to scrutiny intended to "protect national economic security." In addition, "foreign mergers with, or acquisitions of, domestic companies or foreign capital investing in domestic companies' operations in other forms should go through national security checks according to relevant laws and regulations." These "checks" are "in addition to anti-monopoly checks stipulated by this law."

Passage of the new law follows regulations jointly issued last year by MOFCOM and five other agencies. Those regulations require foreign investors to obtain MOFCOM approval for purchases of domestic companies that may impact "national economic security." In issuing such approvals, MOFCOM relies on a list of strategic sectors issued by the State Council last December. Sectors on the list include military, manufacturing, power generation, power grids, petroleum, petrochemicals, telecommunications, coal, civil aviation, and shipping.

APPLICATION OF PRC LAWS TO FOREIGN-RELATED CONTRACTUAL DISPUTES

Business contracts between international parties typically specify which nation's laws govern the contract. China's courts, however, do not always recognize the choice of law provisions in contracts that come before them.

Most civil and commercial contracts are governed by China's Civil Law, General Principles of Civil Procedure, and Contract Law. In most cases, parties to a contract involving foreign interests are permitted to choose the contract's governing law. However, there are exceptions in which the application of PRC law is mandated. The most familiar exceptions include Sino-foreign equity

joint venture contracts, Sino-foreign cooperative joint venture contracts, and contracts for Sino-foreign cooperative exploration and development of natural resources.

In the last 12 months, China has expanded the list of contract types to which the application of PRC law is mandated, leaving parties with no choice of law discretion in a widening array of contractual relationships. Regulations on the Merger with or Acquisition of Domestic Enterprises by Foreign Investors, issued in August 2006, mandated that PRC law shall govern the purchase of equity interests or assets, as well as contracts in which foreign investors increase capital investment in domestic enterprises. In 2007, China further expanded the range of contract types over which the application of PRC law is mandated. Specifically, on June 11, 2007, the Supreme People's Court issued Provisions on Several Issues Concerning Application of Laws for Trial of Disputes Arising from Foreign-related Civil or Commercial Contracts, which went into effect on August 8, 2007. Under the new provisions, courts will now apply the "principle of proximate connections" in determining which nation's law governs a disputed contract provision. This principle requires courts to determine which country's law has the "strongest proximate connection" with the "subject matter" of the contract.[70]

Experts have concluded that under these provisions, "foreign investors doing business in China or engaging in cross-border transactions with China, have fewer choices than they once did concerning choice of law." Foreign investors, however, do retain the option to resolve contract disputes through arbitration within or outside the PRC. Some investors prefer arbitration over litigation in Chinese courts[71] Whether the new Provisions signal a broader attempt to channel contract dispute resolution away from courts remains to be seen.

SUPREME PEOPLE'S COURT INTERPRETATION OF 1992 LAW AGAINST UNFAIR COMPETITION

Civil litigation cases in China have more than doubled in number and frequency over the last decade and a half. Intellectual property cases account for a significant portion of that increase. Many such cases stem from the chronic ambiguity of statutory language, which prompted the Supreme People's Court to issue in January 2007 an Interpretation on Several Issues Regarding the Application of Law in Unfair Competition Civil Cases. The interpretation adds clarity to key statutory terms governing cases involving misleading advertising, misuse of brand names and the definition of trade secrets. It has been greeted positively by international business and legal professionals.[72]

In the absence of a case law tradition, the Court's interpretations are a critical medium through which the Court instructs judges on the meaning they are to attach to vague statutory text when applying such text to concrete circumstances in the context of individual cases. The interpretation offers specific, practical guidance to judges on statutory interpretation. In specifying the criteria judges may use to make complex determinations (such as whether an item is or is not "known to the public"), the interpretation offers concrete examples that appear to be drawn from prior cases.[73] The interpretation also refers to and adopts standards from China's Law on

Trademarks, and is expected to play a significant role in guiding future judicial decisionmaking in intellectual property cases.

BUSINESS ENTERPRISES

Enterprise Bankruptcy Law

Passed by the National People's Congress (NPC) in August 2006, China's new Enterprise Bankruptcy Law went into effect on June 1, 2007.[74] The new law establishes a court-appointed administrator system to replace the state-controlled "bankruptcy committee" model established in 1986, before implementation of some of China's more significant economic reforms and subsequent economic growth.

China first passed a trial version of the Enterprise Bankruptcy Law in 1986,[75] which applied only to state-owned enterprises (SOEs), many of which the state did not permit to fail for fear of the worker protests that might follow large-scale plant shut downs. The new law applies both to SOEs and to private enterprises (both foreign and domestic). It does not apply to individuals, but does provide for involuntary bankruptcy proceedings initiated by a single creditor. Individuals who voluntarily file for bankruptcy may choose reorganization (debt restructuring), liquidation or conciliation—choices not offered under the old law. Prompted in part by the widespread fraud and corruption associated with bankruptcies that took place under the old system, the new law also specifies conditions under which prior transactions may be invalidated.

The new law's most significant provisions concern the validity and prioritization of claims. The law applies to foreign firms in China and to Chinese firms abroad, allowing for cross-border bankruptcy.[76] The law provides for enforcement of foreign judgments in cases where there is reciprocal recognition of the extraterritorial effect of Chinese bankruptcy judgments. "In other words, debtors with foreign judgments against a bankrupt Chinese company may be able to collect on that judgment in the Chinese bankruptcy."[77] Under the old system, state-controlled "bankruptcy committees" had discretion to prioritize employees' and select "local" creditors' claims over those of secured creditors. The new law assigns first priority to secured creditors, followed by employees, unpaid taxes, and then unsecured creditors.[78]

Special provisions in the new law address the bankruptcy of financial institutions. Government approval is required prior to any declaration of bankruptcy by a financial institution. Receivership and restructuring provisions in the new law authorize the government to intervene in specific cases, if it finds the risk to society associated with financial institution failure to be too great.

Enterprise Income Tax Law

China's new Enterprise Income Tax Law, passed in March 2007, will take effect on January 1, 2008. The new law consolidates the two tax regimes set forth under the PRC Foreign Investment Enterprise and Foreign Enterprise Law (1991) and the Interim Measures of Enterprise Income Tax (1993). Until now, separate tax regimes for domestic and foreign invested enterprises had been an important part of China's overall scheme for attracting foreign in-

vestment. The new Enterprise Income Tax Law's regime is more industry focused. Industry-based incentives favor companies engaged in advanced technology, environmental protection, agriculture, utilities, water conservation, high technology, forestry, animal husbandry, fisheries and infrastructure construction, venture capital and enterprises supporting disadvantaged groups.[79]

The scope and application of the Enterprise Income Tax Law's most important provisions will depend on implementing rules still only in draft form. The State Tax Administration and the Ministry of Finance recently released proposed Implementing Rules on the New Tax Law in draft form for public comment. Analysts expect the implementing rules to be finalized by the end of 2007 and to take effect with the New Tax Law.[80] The law's full impact will become clearer only after a period of actual implementation.

Enterprise Partnerships

China's Partnership Enterprise Law, which was amended to promote the development of the accounting and other service professions, and to facilitate the establishment of venture capital investment firms, came into effect on June 1, 2007. The law's limited partnership provisions allow partners to enjoy limited liability so long as one partner assumes unlimited liability. Limited partners may make capital contributions in money or in kind, including in intellectual property rights and land use rights. In order "to protect national and public interest, and the interests of shareholders," the law prohibits SOEs and listed companies from becoming general partners.[81]

Commercial Franchising

China is number one in the world in terms of its number of commercial franchise operations (more than 168,000 outlets across over 60 industries).[82] Franchisors nonetheless find China to be a more restrictive operating environment than other markets.[83]

On February 6, 2007, the State Council issued a new Regulation on Administration of Commercial Franchises, which went into effect on May 1, 2007. Around the same time, MOFCOM issued Measures on the Administration of Filing of Commercial Franchising and Measures on the Administration of Information Disclosure of Commercial Franchising. The new measures introduce a "Two Outlets+One Year" rule for franchisor qualifications. Under old rules issued in 2004, franchisors were required to have at least two directly operated outlets in operation for more than one year to qualify for a franchise in China. Article 7 of the new regulation does not state explicitly that the outlets must be within China. Industry analysts have greeted this as "a welcome change for international franchisors."[84]

Value-Added Tax (VAT)

China continues to use its value-added tax (VAT) system, established in 1994, as an economic policy instrument, repeatedly adjusting the rates or eliminating them altogether to encourage some exports, promote import substitution, or lure in direct foreign investment.[85] In the first six months of 2007, the State Taxation Ad-

ministration reported processing more than 268 billion yuan (over US$33 billion) in tax rebates for exports of steel products, concrete, chemicals, and other products.[86] These differential VAT rates and export rebates violate China's national treatment obligations under the WTO, and have resulted in formal complaints concerning semiconductors and requests for dispute settlement panels regarding imported capital equipment and domestic equipment.[87] During 2006–2007, China readjusted export rebates for several thousand commodities, in part to "ease frictions between China and its trade partners." A September 2006 directive from the Ministry of Finance and four other departments raised the rebates on some biomedical, information technology, and other high-tech exports, while lowering them on a wide variety of steel, ceramic, wood, non-ferrous metal, and other products, and eliminating the rebates entirely for a number of low-tech products.[88] Effective April 15, 2007, the Ministry of Finance abolished export rebates for 86 categories of steel products. For 76 other categories of steel products, including cold-rolling products, the ministry retained the export rebates, although it lowered the rebate rate to a uniform five percent.[89] Effective July 1, 2007, the Ministry of Finance and the State Taxation Administration lowered VAT refund rates for over 2,800 commodities, most of which the Finance Ministry spokesman described as "highly polluting products that consume heavy amounts of energy and resources." Some are low value-added products (including apparel).[90] The readjustment of these VAT rates demonstrates that China is focused on VAT-related issues. Although China has increased the tax burden on exporters of some goods that have been the subject of international trade tensions, its overall approach shows continued use of the tax to subsidize favored exports, including high-tech and some steel products.

PROPERTY LAW

Property in China heretofore has been governed by a diffuse network of legal provisions distributed across several laws (primarily the General Principles of Civil Law, the Land Administration Law, the Urban Real Estate Administration Law, the Law on Rural Land Contracting and the Securities Law). China's new Property Law, passed last March and effective beginning October 1, 2007, consolidates China's various laws affecting both public and private property, and represents positive change in a number of important ways. It was passed following a particularly extensive process of deliberation by the National People's Congress and solicitation of comments from the general public.

Use Rights

The National People's Congress first recognized that "the right to use land may be transferred according to law" when it amended the Constitution and revised the Land Management Law in 1988.[91] The new Property Law helps to provide more detailed clarification of the bundle of property rights in China, and sets forth specific provisions to separate out and establish guideposts for the determination of ownership rights, use rights, security interests, and rights of possession.[92] The clarification of use rights is particularly

significant since it helps to elevate the legal status of the private sector of China's economy. As one analyst notes:

> (U)se rights are property rights that can be purchased and sold, mortgaged, gifted and inherited. Thus, classification of use rights as a form of property is essential to the creation of a market economy. . . . Since all rights concerning land held by private persons in China fall under the classification of use rights, categorization of use rights as property rights has an enormous impact.[93]

Clarification of use rights thus helps to codify into law a promise that was introduced into the 2004 Amendment to the Chinese Constitution: the state's protection of the "lawful rights and interests of non-public sectors of the economy such as the individual economy and the private economy."[94]

Uniform National Registration System

The creation of a uniform, national real property registration system is another of the new law's most important features.[95] Under the new law, the creation, change, transfer or termination of a property right may be legally unenforceable without evidence of registration. Registration is the only conclusive evidence of a property right.[96] That said, the law also creates a right to apply for correction in cases of alleged mistakes on the registry. In cases of proven loss, the law gives injured parties the right to claim damages against the registry. In cases where loss results from submission to the registry of false documentation, injured parties may file claims both against the submitter of false documentation and against the registry that accepted it. The new law also imposes limits on excessive registration fees, which was a problem under the old system.[97]

Reapportionment of Rural Land

The new Property Law makes it illegal for local officials to use reapportionment as a means to alter the terms of rural land contracts. This is another important development.

In many rural areas, the terms of land contracts are adjusted on an annual basis to account for changes in residence patterns and in cropping patterns. This practice was commonly used to punish households for disagreeing with local leaders, and by the leaders themselves to extract rents.[98] This practice is now prohibited and rural households are given the right to defend their land contract rights against these improper acts by local authorities.[99]

In 2004, reports of thousands of cases of illegal land activities impacting rural areas prompted the State Council to issue a decision to prevent the abuse of reapportionment powers. This decision is now codified into law with the passage of the Property Law.

Partitioned Ownership

Provisions covering partitioned ownership of buildings have received considerable attention. Urbanization increases the importance of partitioned ownership of multi-unit structures, such as high-rise buildings that house multiple businesses or families. The

new Property Law distinguishes between exclusive rights over individual units, and common rights over common spaces. It carves out special exceptions for elevators, green space and other areas.[100] The law also includes provisions regarding the allocation of garage and parking spaces, which have been the subject of a rising number of disputes in recent years.[101] The law also contains provisions that protect the property interests of unit owners in cases where developers deviate from previously announced construction plans.

Missed Opportunities

Despite the general progress that is reflected by the issuance of a Property Law in China, there remain some significant missed opportunities. Government seizure of land and buildings, for example, has been a major cause of citizen complaints and protest against the government. Chinese law explicitly requires that government takings of land must be in the "public interest" and accompanied by compensation. Failure to specify methods for calculating compensation and ambiguity in the meaning of "public interest" have seriously undermined these protections and invited abuse. Provisions addressing these problems were included in drafts of the new law, but proved so controversial that, by its own public admission, the NPC's only alternative to delay was to take them off the table. Provisions dealing with the transfer of agricultural land to the state for construction, another major source of controversy in rural China, also display what seems to be intentional ambiguity.[102]

Sector-Specific Impact

All in all, the new Property Law will have a significant impact across several industrial sectors, among them the following four:

Lending

By providing for mortgage, pledges and liens, the Property Law expands the range of security interests available to lenders. All property may be subject to charge or pledge, except where otherwise provided by existing law. By incorporating elements of common market practice (e.g. a charge on contracting rights to uncultivated land, pledges on receivables), the law increases the flexibility with which lenders may secure transactions.

Agriculture

Under the new Property Law, investors in agriculture may enter into direct arrangements with rural households who in turn may contract with farmer's cooperatives for cultivation rights over collectively-owned land. Investors also may contract directly with the government to cultivate uncultivated land. Combined with favorable tax treatment of agricultural investment, this would set the stage for increased foreign investment in Chinese agriculture, which could lead ultimately to the outsourcing of farming to China.

Mining

Current Chinese law encourages investment, including foreign investment, in the exploitation or mining of many of China's mineral and natural resources. Exploitation and mining rights, includ-

ing those held by a foreign invested enterprise, are transferable under the new law.[101] The impact of transferability on mining sector business may be significant.

Real Estate

Many aspects of the new law augur well for the real estate sector. But news from other quarters of China's bureaucracy have dampened enthusiasm. On July 10, 2007, the State Administration of Foreign Exchange reportedly issued an internal Circular (known to industry insiders as "Circular 130") on the Distribution of the List of the First Group of Foreign Invested Real Estate Projects which have Filed with MOFCOM. Experts familiar with the document warn that these measures place significant restrictions on foreign investors in China's Real Estate market:

> . . . Circular 130 is another restrictive measure of the Chinese government to cool down foreign investment in its real estate market, and its implications are very significant. Foreign investors may lose the ability to invest in new projects or claim ahead of other creditors of the onshore company to the extent that loans must now be injected as equity. Investors may also lose an important means for remittance of funds offshore in ways other than as dividends out of earnings and surplus, as any reductions in registered capital now require the consent of MOFCOM.[103]

LABOR CONTRACT LAW

In June 2007, the Standing Committee of the National People's Congress passed a new Labor Contract Law that governs the contractual relationship between workers and employers from enterprises, individual economic organizations, and private non-enterprise units. The law will take effect in January 2008. [See Section II—Worker Rights.]

IMPACT OF EMERGENCIES: FOOD SAFETY, PRODUCT QUALITY, AND CLIMATE CHANGE

The context of China's domestic rule of law development changed from 2006 to 2007, with a sharp rise in domestic and international concerns over food safety, product quality, and climate change. These concerns, and China's response to them, will both shape and be shaped by China's rule of law reforms. Because their impact on the course of rule of law in China is expected to be large, these developments are covered here in added detail.

FOOD SAFETY

Domestic and international concerns over the safety of Chinese food products have increased significantly in the last five years due to unsafe food production and insufficient government oversight. The Ministry of Health (MOH) reported that 31,860 people suffered from food poisoning in 2006.[1] A recent survey found that more than 80 percent of Chinese consumers are now willing to pay a premium for food safety, up from 57 percent in 2005.[2] In a particularly notorious case from April 2004, 13 babies died and hundreds more suf-

fered from serious malnutrition after consuming counterfeit and substandard milk powder in Anhui province.[3] In early 2007, pet food produced in China and containing wheat gluten contaminated with melamine reportedly caused the deaths of at least 16 cats and dogs in the United States, and sickened some 12,000 pets.[4] In June 2007, the U.S. Food and Drug Administration (U.S. FDA) restricted the import of five types of farm-raised fish and shrimp from China because they were found to contain unsafe antibiotics.[5]

Unsafe Food Production: Regulatory Challenges

With the transition to a market economy, many of China's food producers are small landholders or family workshops who rely on excessive amounts of fertilizers, pesticides, or veterinary drugs to maintain high production rates.[6] Water and soil used for this production may already be contaminated with metals from the poor disposal of industrial and electronic waste.[7] For example, up to 10 percent of farmland in China is thought to be polluted, and 12 million tons of grain is contaminated annually with heavy metals in the soil.[8] Inferior raw materials, the use of production chemicals unsuitable for food, and the lack of a safe infrastructure for food delivery and storage also contribute to substandard food products.[9]

Insufficient Oversight: Regulatory Fragmentation

Fragmentation of regulatory authority among 10 major government agencies makes it more difficult for the government to regulate the smaller family workshops that comprise the majority of China's food producers and processing centers.[10] [See Tables 1 and 2 for a list of government agencies involved in the oversight of food safety at the national and local level.] According to the State Council White Paper on Food Quality and Safety released in August 2007, China has 448,000 food production and processing enterprises, of which 353,000, or 78.8 percent, are small businesses or workshops with fewer than 10 employees.[11] Public officials established the State Food and Drug Administration (SFDA) in 2003 to consolidate oversight of food safety management, but resistance from other agencies who fear losing their revenue-generating ability has limited the transfer of power and responsibility to the SFDA. As a result, the SFDA and its local food and drug bureaus remain hampered in their ability to effectively regulate food safety and coordinate policy below the provincial level. The local bureaus remain beholden to local governments for their budgetary and personnel allocations, and approvals in promotions for their staff.[12] The central government has not instituted an effective regulatory system in rural areas that is in keeping with similar improvements in urban areas, including an increase in urban residents' awareness of their rights. Only some of the agencies have extended their presence down to the township and village level, and this regulatory void has led many counterfeiters to distribute their products in these areas, much to the worry of villagers.[13]

Government Response to Domestic and International Food Safety Concerns

China's international response is to reiterate its status as a developing country that had a late start in developing foundations for food and drug supervision, and to assert that it is the foreign media that exaggerate the extent of safety-related issues. Official Chinese figures report that 99 percent of its exports meet quality standards.[14] In late July and early August 2007, high-level officials from both the European Union and the United States met with Chinese public officials to discuss the quality and safety of China's exports and ways to improve inspections.[15] Both U.S. and Chinese media have reported back-and-forth blocking or banning of products from the other country.[16] While each country annually blocks food exports from the other country,[17] some of the current exports are probably being blocked in response to heightened attention on China's export safety issues.

Domestic Response

Domestically, central government reform of the food safety system has been in progress throughout the last five years, though largely in response to domestic food-related incidents. China's domestic response is aimed at increasing inspections and oversight of food producers; strengthening law enforcement, including increasing the punishment for violators; establishing a national recall system, national standards, and an emergency response mechanism; and strengthening international cooperation. To date, China has issued 14 national laws, 16 administrative regulations, 76 departmental regulations, and a five-year plan on food safety.[18] Within the past year, local governments have passed 129 regulations and other policy directives relating to food safety.

Since SFDA's creation in 2003, the central government has passed regulations on food quality monitoring and hygiene licensing, and strengthened the regulatory framework in local and rural areas. There are also periodic national campaigns against counterfeit and substandard products. For example, between 2006 and June 2007, inspectors from the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) closed 180 food plants and discovered more than 23,000 food safety violations.[19] SFDA has also promoted the establishment of local food safety commissions to improve interagency coordination and cooperation.[20] As of August 28, 2007, food safety commissions have been established in all provinces, and in most major cities. In addition to a national informational Web site on food safety established by the SFDA, many of these provincial and municipal commissions have also established active informational Web sites.[21] In terms of rural areas, Zhejiang province, for example, established a rural consumer rights protection network to help residents seek redress from producers or sellers of counterfeit or substandard products.[22] A municipal bureau in Zhejiang noted several shortcomings with this network, however, including its lack of financial resources and influence, and the lack of incentives to conduct inspections.[23] By mid-2005, SFDA and the State Administration for Industry and Commerce (SAIC) had taken measures to boost information gathering in rural areas

by recruiting volunteer food safety supervisors or coordinators to monitor food safety and the food production situation.[24]

The central government initiated the market access system in 2001, whereby food producers will be issued production licenses only when they have met the official standards for production conditions and facilities and the quality of foodstuffs.[25] This system, however, has undermined the government's objective to increase employment by forcing many of the smaller food producers to close.[26] Because implementation of this system has forced noncompliant smaller food producers to close, and because those producers contribute to local economic performance on which local officials are evaluated, the system must overcome political constraints that are not insignificant. The AQSIQ announced that it hopes to cut the number of these workshops in half by the end of 2009.[27]

After a series of domestic incidents in 2004, most notably the Anhui "fake baby milk powder" scandal, the State Council issued the Decision on Further Strengthening Food Safety Supervision in September 2004 to clarify the functions and responsibilities of the agencies with food safety oversight. Under this decision, the State Council divided food safety supervision into four "monitoring links," with each link managed by either the Ministry of Agriculture (MOA), AQSIQ, SAIC, or MOH. For example, MOA supervises the production of primary agricultural products; AQSIQ supervises the quality and safety of food processing, as well as imported and exported agricultural products and other foodstuffs; SAIC supervises food circulation and distribution; while MOH supervises the catering and restaurant industry. The SFDA is charged with the comprehensive supervision and coordination of food safety, and manages the investigation of major incidents and the punishment of those responsible for them.[28]

Even though the State Council has adopted measures to clarify the regulatory responsibilities of different agencies, recent food safety incidents reveal that there are still various regulatory loopholes that food producers and exporters can use to evade quality inspections. In terms of the pet food incident in 2007, AQSIQ noted that one of the companies who used melamine in its product bypassed quality checks by labeling its product as exports not subject to inspection.[29]

The current international spotlight has accelerated the issuance and implementation of regulations and other policy directives. For example, between June and July 2007, both President Hu Jintao and Premier Wen Jiabao pledged to improve food safety and product quality, which reflects high-level government attention to the issue.[30] On July 25, 2007, the State Council published draft regulations to strengthen the food safety oversight responsibilities of local governments, to increase the punishment for illegal activity, and to strengthen international cooperation efforts.[31] The meeting, chaired by Premier Wen Jiabao, also promised better safety checks and greater openness with quality problems.[32] In addtion, the central government has established an emergency response mechanism among several ministries and a national food product tracking system.[33] At the local level, the Beijing Municipal People's Congress is considering the passage of regulations regarding food safety that offer producers and vendors incentives to voluntarily recall

unsafe food, which is of special concern for Beijing during the 2008 Summer Olympics.[34] For example, Article 28 states that producers and vendors could receive lenient treatment or be exempted from penalties if they took the initiative to promptly recall unsafe food. The draft regulations also contain 18 articles regarding penalties for violations, including a maximum fine of 500,000 yuan (US$66,556). Some policymakers, however, believe that these penalties are too lenient to act as an effective deterrent.[35]

In terms of policy objectives, the State Council publicly released its national Five-Year Plan on Food and Drug Safety (2006–2010) on June 5, 2007,[36] with the aim to implement strict controls to prevent farmers and producers from overusing pesticides and additives, to publish online lists of blacklisted food exporters and restrict their ability to export, to strengthen investigations of major food safety incidents, to upgrade standards, and to severely punish offenders.[37] The AQSIQ announced plans to implement the first national recall system by the end of 2007, which would contribute to building a food safety credibility system, if implemented effectively, and would fill a regulatory void in the national law.[38] The Standardization Administration of China and the AQSIQ also aim to standardize processes in the food industry by changing, abolishing, and amending standards so that the average duration of food standards will be reduced from 12 years to 4½ years by 2010.[39]

Table 1.—Major National Government Departments With Food Safety Oversight Responsibilities

(Note: Under some circumstances, other national-level departments not listed here may perform food safety oversight functions.)

Government Agency	Main Responsibility With Regard to Food Safety
State Food and Drug Administration (SFDA)[40]	Established in 2003, the SFDA is charged with comprehensive supervision over the safety management of food and health foods. Within the SFDA, there is a Department of Food Safety Coordination and a Department of Food Safety Supervision.
General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)[41]	AQSIQ is charged with the supervision, management, inspection, and quarantine of import and export products, including food, and their producers. AQSIQ has a few departments that directly focus on food safety, including the Bureau of Import and Export Food Safety and the Department of Supervision on Food Production.

Table 1.—Major National Government Departments With Food Safety Oversight Responsibilities—Continued

(Note: Under some circumstances, other national-level departments not listed here may perform food safety oversight functions.)

Government Agency	Main Responsibility With Regard to Food Safety
Ministry of Health (MOH)[42]	MOH is charged with the supervision of food health, the formulation of food and cosmetics quality control protocols, and responsibility for its accreditation, as well as the supervision of the catering and restaurant industry.
Ministry of Agriculture (MOA)[43]	MOA is charged with the supervision of the production of primary agricultural products.
Ministry of Commerce (MOFCOM)[44]	MOFCOM is charged with researching and managing measures for the regulation of import and export commodities and compiling a catalogue of these regulations, organizing the implementation of an import and export quota plan, deciding on quota quantity, issuing licenses, and drafting and implementing import and export commodity quota tendering policies. In addition, it is charged with a broader mandate to formulate development strategies, guidelines, and policies that relate to domestic and international trade, and economic cooperation.
State Administration for Industry and Commerce (SAIC)[45]	SAIC is charged with the supervision of food circulation and distribution.

Table 2.—Major Local-Level Government Departments With Food Safety Oversight Responsibilities

(Based on analysis of Hangzhou City, Zhejiang province)[46]

Government Agency	Main Responsibility With Regard to Food Safety
Municipal Food and Drug Supervision Bureau	Responsible for the comprehensive supervision and management of food safety, and the investigation and prosecution of major incidents.
Municipal Party Committee Propaganda Department	Responsible for propaganda work related to food safety.
Municipal Party Committee Rural Affairs Office	Responsible for coordinating work with the Municipal Rural Affairs Office's related system to monitor food safety.

Table 2.—Major Local-Level Government Departments With Food Safety Oversight Responsibilities—Continued

(Based on analysis of Hangzhou City, Zhejiang province)[46]

Government Agency	Main Responsibility With Regard to Food Safety
Municipal Development and Reform Commission	Responsible for carrying out the implementation of policies relating to the development of the food industry.
Municipal Economic Commission	Responsible for directing and managing the food production industry.
Municipal Education Bureau	Responsible for school food safety management and food safety and health education work.
Municipal Science and Technology Bureau	Responsible for the formulation and implementation of food safety science and technology plans.
Municipal Public Security Bureau	Responsible for investigating and prosecuting suspected criminals in cases involving the production or sale of counterfeit, poisonous, or harmful food products.
Municipal Supervision Bureau	Responsible for participating in the investigation, handling, inspection, supervision, and disciplining of those responsible for major food safety incidents.
Municipal Finance Bureau	Responsible for safeguarding expenses related to food safety monitoring work and the supervision of the use of funds.
Municipal Agricultural Bureau (Aquatic Product Division)	Responsible for the monitoring of the production of primary agricultural products.[47]
Municipal Forestry and Water Bureau	Responsible for providing guidance, coordination, supervision, and management on the use of terrestrial animals and wildlife, and forest products development plans.
Municipal Trade Bureau	Responsible for the management of the livestock slaughtering industry and the supervision and management of slaughtering activities.
Municipal Grain Bureau	Responsible for management work to ensure the quality of grain that has been purchased, in storage, and in transit, and the safety of unprocessed food grains.

Table 2.—Major Local-Level Government Departments With Food Safety Oversight Responsibilities—Continued

(Based on analysis of Hangzhou City, Zhejiang province)[46]

Government Agency	Main Responsibility With Regard to Food Safety
Municipal Culture, Radio, Television, and News Publishing Bureau[48]	Responsible for monitoring and discipline work related to the city's printing industry of packaging materials for food products.
Municipal Health Bureau	Responsible for the supervision of food consumption in the catering and restaurant industry.[49]
Municipal Environmental Protection Bureau	Responsible for the monitoring, supervision, and investigation of environmental pollution that affects food.
Municipal Industry and Commerce Bureau	Responsible for the supervision of the circulation and distribution of food.[50]
Municipal Quality Supervision Bureau	Responsible for the supervision of food product quality and safety during processing.[51]
Municipal City Management Law Enforcement Bureau	Responsible for the investigation and prosecution of unlicensed outdoor sellers and unlicensed outdoor breakfast stalls.
Municipal Legal Affairs Office	Responsible for the supervision and inspection of food safety work units in charge of law enforcement, and to ensure that they are administering their duties according to law.
Municipal Supply and Marketing Cooperative	Responsible for the supply and marketing system of agricultural products in wholesale markets, the production, processing, and circulation of agricultural products, and the management of the agricultural industry's means of production.

Table 3.—Select Major Events and Government Food Safety Initiatives From 2003 to 2007

Date	Initiative
September 2004	The State Council issued the Decision on Further Strengthening Food Safety Supervision.
September 23, 2004	SFDA issued its opinions regarding the implementation of the Decision of the State Council to Further Strengthen Food Safety.

Table 3.—Select Major Events and Government Food Safety Initiatives From 2003 to 2007—Continued

Date	Initiative
December 2004	The Standardization Administration of China, the National Development and Reform Commission, MOA, MOFCOM, MOH, AQSIQ, SFDA, China National Light Industry Associations, and China General Chamber of Commerce jointly issued the National Food Standards Development Plan 2004–2005.
March 2007	Pet food incident: Pet food companies initiated a national recall in the United States after tainted wheat gluten was found in cat and dog food. The tainted wheat gluten was eventually linked to the deaths of at least 16 cats and dogs and the illnesses of some 12,000 pets.
May 7, 2007	Investigations revealed that two Chinese corporations, Xuzhou Anying Biologic Technology Development Co. and Binzhou Futian Biology Technology Co., are linked to the tainted wheat gluten.
May 10, 2007	The State Council vowed to crackdown on the food industry.
May 24, 2007	Toothpaste incident: The U.S. FDA announced that it would block imports of toothpaste from China due to reports elsewhere that diethylene glycol was found in toothpaste exported from China.
May 30, 2007	AQSIQ announced plans to establish a national food recall system.
June 5, 2007	The State Council publicly released its national 11th Five-Year Plan on Food and Drug Safety (2006–2010).
July 25, 2007	The State Council released the Special Regulations of the State Council on Intensifying Safety Control of Food and Other Products (No. 503 Decree of the State Council).
August 17, 2007	The Information Office of the State Council released a White Paper entitled "China's Food Quality and Safety."
End of 2007	AQSIQ plans to implement the first national food recall system.

Table 4.—Number of Food Safety Laws and Regulations Issued By Month and Level of Government in China in 2007

Month (in 2007)	National and Local Total	National	Local
January	17	3	14
February	12	2	10

Table 4.—Number of Food Safety Laws and Regulations Issued By Month and Level of Government in China in 2007—Continued

Month (in 2007)	National and Local Total	National	Local
March (Note: pet food incident first begins)	13	2	11
April	21	1	20
May (Note: toothpaste incident, and widespread reporting of poisonous cough medicine, first begins)	10	4	6
June	18	1	17
July	8	0	8
August	3	1	2
Total (as of August 28, 2007)	102	14	88

NON-FOOD PRODUCT QUALITY

Drug and product safety have been a longstanding domestic issue of concern in China. Recent incidents involving poisonous diethylene glycol in toothpaste and cough medicine, including the reported deaths of at least 100 people in Panama, have captured international attention.[52] A survey by the General Administration of Quality Supervision, Inspection and Quarantine released in 2007 discovered that 23 percent of locally made toys failed to meet quality standards,[53] and at least 18 Chinese people died in 2006 when they ingested medicine containing diethylene glycol.[54] Since the 1980s, the Chinese central government has passed numerous national laws, regulations, and other legislative measures concerning drug and product safety.

Despite the number of laws and regulations in the area of drug and product safety,[55] domestic and international consumers continue to face the possibility of being harmed by products made in China without a standardized and transparent way to seek redress. For example, the Chinese government has repeatedly ignored or delayed responses to requests by foreign government officials to release the identity of companies that manufactured substandard drugs and to investigate these companies.[56] Without this information and greater transparency, it is difficult for domestic and international consumers to bring cases against these companies and to avoid future incidents. Rural consumers and consumers in developing countries, who may not have adequate access to resources or knowledge of their rights, are particularly hard hit. Scholars have noted an influx of counterfeit goods into rural parts of China in recent years and a corresponding lack of bureaus at the local level who can address this influx.[57]

Chinese public officials have taken some steps in the past year to address concerns over drug and product safety, possibly in re-

sponse to recent incidents and international pressure, although these steps are reactive measures that are insufficient to address the root causes of safety concerns. For example, the Supreme People's Court approved the execution of Zheng Xiaoyu, former Commissioner of the State Food and Drug Administration (SFDA), in July 2007 after he was charged with accepting bribes from pharmaceutical companies in exchange for approving drug production licenses.[58] Commentators have noted that Zheng's swift trial and execution were meant to serve as a warning to other officials,[59] but it remains to be seen if Zheng's execution will serve as an adequate deterrent and have a lasting impact, especially given the lack of mechanisms in place to consistently and effectively address official corruption and counterfeit products.

Amid recent incidents, the central government highlighted the forthcoming release of a revised drug registration regulation and its funding pledge of 8.8 billion yuan (US$1.1 billion), which was first approved in 2005 as part of the government's 11th Five-Year Plan (2006–2010). The regulations charge the SFDA with the responsibility to fine companies that submit counterfeit drug samples or inaccurate information, to establish a panel system to review drug approvals, to raise approval standards, and to disclose on the Internet the name of the official reviewing a drug application and its stage in the submission process.[60] The SFDA and corresponding bureaus will use the 8.8 billion yuan to improve infrastructure, such as the renovation or building of inspection and testing facilities. The central government will contribute 71 percent of the funds, with the remainder coming from local governments.[61]

Despite these initiatives, serious challenges remain, including local government implementation of legislative measures, official corruption, and inadequate attempts to address the counterfeiting of products. Overall, enforcement remains hindered by China's existing regulatory structure, such as local food and drug safety bureaus that are beholden to local governments for their budgetary and personnel allocations, and national agencies providing these bureaus with non-binding and often unfunded policy directives for implementation.[62] Local government officials, whose promotions are largely based on their ability to promote economic growth, have more incentive to allow the counterfeiting of products than to effectively regulate drug and product safety.[63] In addition, regulatory loopholes hamper the government's oversight ability, with dangerous consequences for consumers. For example, in the case involving at least 100 reported deaths in Panama due to the use of diethylene glycol in cough medicine, the Ministry of Foreign Affairs noted that neither the chemical company that made the cough medicine, nor the state-owned company that exported it, fell under the regulatory supervision of the SFDA.[64] These companies were not classified as pharmaceutical production or sales businesses. In the case of the chemical company, it classified itself as making chemical industry raw material and was not licensed to make pharmaceutical products nor subject to inspections under the SFDA.[65]

Limited civil society activity, as well as continued official harassment of whistleblowers, place additional limitations on the government's ability to effectively regulate the drug and product industries and ensure consumer safety. Currently, there is a lack of ef-

fective consumer protection laws and very few consumer associations or other civil society groups to help monitor the quality and safety of consumer products.[66] Instead, public officials continue to punish those who try to notify others, via the Internet or through other forms of communication, of collusion between food and drug agencies and industry, or of unsafe or unconscionable industry practices.[67]

In 2006, law enforcement officials in Haikou city, Hainan province, detained Zhang Zhijian for nine months for reposting an anonymously written essay on the Internet that detailed collusion between high-level officials in the SFDA and a pharmaceutical company.[68] Public security officials detained him on "suspicion of damaging company reputation" after the company filed a complaint. He was finally released after investigations revealed that the accusations of collusion and corruption were true.[69] As a result of his detention, Zhang lost his job and reported difficulty finding other employment.[70] On March 26, 2007, Zhang filed a lawsuit with a Haikou city court seeking state compensation for wrongful detention and damage to reputation.[71] The court awarded Zhang 24,000 yuan (US$3,190) on July 20, 2007.[72]

In another case, Zhou Huanxi posted a story online in March 2007 that described how the company she worked for made substandard tonic for pregnant women.[73] When she initially tried to inform public officials in 2002, her employer fired her from her job and she was imprisoned for three years and six months on charges of extortion.[74] Zhou was released in November 2005.[75] Although there are provisions in the State Compensation Law that allow for individuals to sue the government for wrongful punishment, these provisions are not traditionally thought of as a whistleblower protection law since they only apply after the fact, nor are there other whistleblower protection laws currently in place.[76]

CLIMATE CHANGE

Some Chinese government officials reportedly have made statements that recognize that human activity worldwide is contributing to greenhouse gas (GHG) emissions. For example, China's first National Report on Climate Change, released in December 2006 by the Ministry of Science and Technology, concludes that "greenhouse gas (GHG) emissions from human activity contribute to increasingly serious global climate change problem."[77] China's domestic stance regarding climate change, however, is quite different from its stance in international forums. Internationally, China assumes the posture of a developing country, which drives much of its behavior with respect to the issue of climate change in the international context. Since 2002, China has announced domestic goals and initiated reforms that are aimed at energy security and China's economic development strategies, but these policies can also help to combat climate change if implemented properly at the local level. There is, however, no current policy that directly addresses China's heavy reliance on coal, and current measures are not enough to stop emissions from increasing significantly. It is unlikely that China will accept a mandatory reduction in its GHG emissions.[78]

The Chinese government changed its stance on climate change in 2002 as China's energy consumption growth surpassed its economic growth for the first time in modern history.[79] China could no longer claim that it was not contributing to the severity of global GHG emissions as it pursued rapid industrialization. President Hu Jintao's administration came into power at the same time and pledged to move away from the "economic growth at all costs" stance of his predecessor to a policy approach that, in Hu's words, called for "scientific development" and a "harmonious society" with a focus on conservation and sustainable development ("circular economy").[80] These two pledges reflect concerted efforts to combat climate change, and public officials have taken some steps to mitigate and adapt to climate change by adopting laws and other policy initiatives and by establishing a National Coordination Committee. Public officials could achieve more, but they are hampered by ineffective administrative and market incentives that fail to encourage local compliance, and by limitations on civil society activity.

Since 2002, China's annual GHG emissions have also increased rapidly due to strong economic growth and an increasing demand for energy.[81] The International Energy Agency has projected that China will surpass the United States in annual GHG emissions by 2010, and possibly as early as 2007.[82] In June 2007, the Netherlands Environmental Assessment Agency noted that China's emissions for 2006 surpassed the emissions from the United States in that year.[83] Although China's per capita GHG emissions and cumulative GHG emissions are still comparatively low,[84] its increasing share of global GHG emissions may be a trend that cannot be significantly reduced or reversed without governmental intervention.

China's International Response to Climate Change

China ratified the UN Framework Convention on Climate Change in 1993 and the Kyoto Protocol (Protocol) in 2002.[85] As a non-Annex 1 (developing) country, China has no binding emissions limits under the Protocol's first commitment period from 2008 to 2012. China is, however, an active participant in the Clean Development Mechanism established under the Protocol, which allows developed countries to use emissions credits for reductions in developing countries toward their own Protocol targets.[86] Despite China's increasing share of global GHG emissions, its current position as a developing country translates into "common but differentiated" responsibilities that are based more on its level of historical responsibility for the problem, its level of economic development, and its capability to act on the problem, than on its current annual GHG emissions rate.[87] The Chinese government continues to welcome international cooperation, and bilateral and multilateral exchanges with the United States and other countries in the form of the Asia-Pacific Partnership on Clean Development and Climate and the China-EU Partnership, that help to promote clean energy production projects and technology transfer.[88]

China's Domestic Response to Climate Change

Motivated by energy security concerns and its economic growth targets, the Chinese government has announced domestic goals and

initiated numerous reforms which, if effectively implemented, could help to combat climate change by conserving energy, reducing pollutant emissions, and increasing the use of renewable energy. The government has also enacted laws that relate to energy conservation, including the Energy Conservation Law (1997) and the National Renewable Energy Law (2005). There is, however, no policy that directly addresses China's heavy reliance on coal, and current measures are not enough to stop such emissions from increasing significantly.[89]

In its 11th Five-Year Plan (2006–2010), the central government has pledged to "conserve energy and reduce pollution," but has failed to meet goals set forth in the plan.[90] In 2006, China's energy consumption per unit of GDP decreased by 1.2 percent despite a stated goal of 4 percent.[91] Similarly, air and water pollutant levels in 2006 increased by 1.8 and 1.2 percent, respectively, despite the government's stated goal of reducing pollutants by 2 percent.[92] The failure to meet such goals may indicate that administrative and market-oriented incentives in place at the local level are inadequate to persuade local officials to adopt more sustainable forms of economic growth.[93]

Over the past year, the government published reports that suggest a high level of government attention to the issue of climate change, but it remains to be seen how vigorous local implementation will be. The central government released its first National Assessment Report on Climate Change in December 2006,[94] and a General Work Plan for Energy Conservation and Pollutant Discharge Reduction on June 4, 2007, that outlines how China intends to address climate change over the next five years.[95] The plan's release was delayed due to reported differences in official views at the national and local levels, but it was eventually published ahead of the opening of the G8 summit on June 6, 2007. Specifically, the plan establishes the formation of regional administration systems to better coordinate interagency work on climate change, energy efficiency, and renewable energy.[96] The plan also establishes a "National Leading Group on Climate Change," headed by Premier Wen Jiabao. In addition, there have been increases in the level of staffing for key agencies such as the statistics bureaus, which can strengthen data collection so as to better inform policy decisions.[97]

Effects of Climate Change and Expanding the Debate on Climate Change

The effects of China's heavy reliance on coal, the resultant pollution and GHG emissions, and policies to address these issues, have serious implications for domestic and international citizens' public health, and the global environment and economy. For example, air pollutants from China have been detected on the west coast of the United States, and sand storms that originate in China have reached its Asian neighbors.[98] Energy conservation and pollution reduction, and policies that address these issues, are thus also quality of life and public safety issues, exacerbated by official inaction or complicity that results in perceived harm. In addition, access to energy in rural areas, the contribution that energy security can provide in the development of the rule of law and government transparency, and the still preliminary level of engagement of do-

mestic civil society organizations in work on climate change are examples of additional issues that are not part of the traditional debate on climate change.

Policy approaches that attempt to control large amounts of emissions from a group of sources face greater challenges and are not as well-developed in China as they are elsewhere. In one such approach the government mandates an overall cap, or the maximum amount of emissions per compliance period, and lets sources, such as companies, decide how to use their individual emissions allowances. Under this system, known as cap and trade, a company might decide to use pollution control technology or more efficient energy sources in order to not exceed its cap, or purchase additional allowances from other companies if the company believes it will exceed its cap. Companies able to lower their emissions below their allotted allowance can have the difference credited for later use or sell these credits to another company for a profit.[99] This approach has been used in the United States with regard to sulfur dioxide emissions.[100] In part because some plants increase levels of pollutants and receive credits for reducing them later, cap and trade systems are not foolproof. There is also concern that emissions allowances for certain practices, such as agricultural offsets, may be overvalued, without a way to properly measure and verify if this is indeed the case.[101]

Given China's current information collection system, level of transparency, and accountability, it is not clear whether a system that depends on these factors can be implemented in a manner that effectively reduces carbon dioxide and other greenhouse gases. Challenges that confront effective implementation in China include the government's inability to accurately and consistently collect data on emissions, which is essential to establishing and maintaining an effective program.[102] In addition, the government must have accountability mechanisms in place that allow for the accurate reporting of emissions, and the rigorous and consistent enforcement of penalties for fraud and noncompliance. Transparency in areas such as public access to source-level emissions and allowance data are also important.[103] The accuracy and consistency of information, accountability, and transparency are all issues associated with persistent institutional challenges in China. [See Section II—Freedom of Expression and Section II—Rights of Criminal Suspects and Defendants.] Other options exist that may help to reduce greenhouse gas emissions. Some that are being attempted or discussed in other countries as well as in China include: implementing a tax on carbon emissions, regulatory measures that require industries to use the cleanest available technologies, policies that promote research and development into clean technologies, and policy changes that favor non-carbon emitting technologies such as nuclear or wind power generation.

IV. Tibet: Special Focus for 2007

FINDINGS

- No progress in the dialogue between China and the Dalai Lama or his representatives is evident. After the Dalai Lama's Special Envoy returned to India after the sixth round of dia-

logue, he issued the briefest and least optimistic statement to date. Chinese officials showed no sign that they recognize the potential benefits of inviting the Dalai Lama to visit China so that they can meet with him directly.

• Chinese government enforcement of Party policy on religion resulted in an increased level of repression of the freedom of religion for Tibetan Buddhists during the past year. The Communist Party intensified its long-running anti-Dalai Lama campaign. Tibetan Buddhism in the Tibet Autonomous Region (TAR) is coming under increased pressure as recent legal measures expand and deepen government control over Buddhist monasteries, nunneries, monks, nuns, and reincarnated lamas. The Chinese government issued legal measures that if fully implemented will establish government control over the process of identifying and educating reincarnated Tibetan Buddhist teachers throughout China.

• Chinese authorities continue to detain and imprison Tibetans for peaceful expression and non-violent action, charging them with crimes such as "splittism," and claiming that their behavior "endangers state security." The Commission's Political Prisoner Database listed 100 known cases of current Tibetan political detention or imprisonment as of September 2007, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Based on sentence information available for 64 of the current prisoners, the average sentence length is 11 years and 2 months. Tibetan Buddhist monks and nuns make up a separate set of 64 of the known currently detained or imprisoned Tibetan political prisoners as of September 2007, according to data available in the Commission's Political Prisoner Database. Based on data available for 42 currently imprisoned Tibetan monks and nuns, their average sentence length is 10 years and 4 months. (It is a coincidence that the number of monks and nuns, and the number of prisoners for whom the Commission has sentence information available, are both 64).

• In its first year of operation, the Qinghai-Tibet railway carried 1.5 million passengers into the TAR, of whom hundreds of thousands are likely to be ethnic Han and other non-Tibetans seeking jobs and economic opportunities. The government is establishing greater control over the Tibetan rural population by implementing programs that will bring to an end the traditional lifestyle of the Tibetan nomadic herder by settling them in fixed communities, and reconstructing or relocating farm villages.

INTRODUCTION

The human rights environment that the Communist Party and Chinese government enforce in the Tibetan areas of China has not improved over the past five years, and has deteriorated since 2005. No progress in the dialogue between China and the Dalai Lama or his representatives is evident. Implementation of China's Regional Ethnic Autonomy Law is weak and prevents Tibetans from realizing the law's guarantee that ethnic minorities have the "right to administer their internal affairs." The Communist Party tolerates

religious activity only within strict limits imposed by China's constitutional, legal, and policy framework. Legal measures issued in 2006 and 2007 impose unprecedented government control on Tibetan Buddhist activity. Party campaigns that seek to discredit the Dalai Lama as a religious leader, to portray him and those who support him as threats to China's state security, and to prevent Tibetans from expressing their religious devotion to him have intensified since 2005.

The government and Party prioritize economic development over cultural protection, eroding the Tibetan culture and language. Changes in Chinese laws and regulations that address ethnic autonomy issues and that have been enacted since 2000, when the government implemented the Great Western Development program, tend to decrease the protection of ethnic minority language and culture. The Qinghai-Tibet railway began service in July 2006 and has carried thousands of passengers to Lhasa each day, leading to crowded conditions in the city and increased pressure on the Tibetan culture. In recent years, governments in some Tibetan areas have accelerated the implementation of programs that require nomadic Tibetan herders to settle in fixed communities. The Chinese government applies the Constitution and law in a manner that restricts and represses the exercise of human rights by Tibetans, and that uses the law to punish peaceful expression and action by Tibetans deemed as threats to state security. The government made no progress in the past year toward improving the right of Tibetans in China to exercise their constitutionally guaranteed freedoms of religion, expression, and assembly. Such restrictions are inconsistent with the Chinese government's obligations under international human rights standards.

STATUS OF DISCUSSION BETWEEN CHINA AND THE DALAI LAMA

Commission Recommendations, U.S. Policy, and the Report on Tibet Negotiations

Commission Annual Reports in 2002, 2004, 2005, and 2006 included recommendations in support of the dialogue between the Chinese government and the Dalai Lama or his representatives. The Commission has observed no evidence of substantive progress in that dialogue toward fair and equitable decisions about policies that could help to protect Tibetans and their religion, language, and culture, even though a session of dialogue took place each year beginning in 2002, and even though a basis for such protections exists under China's Constitution and law.[1] In response to the lack of progress over the years, the Commission strengthened recommendations in successive annual reports.[2] The 2006 Annual Report called for efforts to persuade the Chinese government to invite the Dalai Lama to visit China so that he could seek to build trust through direct contact with the Chinese leadership.[3] In 2007, Chinese officials continued to allow the potential mutual benefits of the dialogue process—a more secure future for Tibetan culture and heritage, and improved stability and ethnic harmony in China—to remain unrealized.

The U.S. Congress will award the Congressional Gold Medal to the Dalai Lama on October 17.[4] The congressional act providing for

the award finds that the Dalai Lama "is the unrivaled spiritual and cultural leader of the Tibetan people, and has used his leadership to promote democracy, freedom, and peace for the Tibetan people through a negotiated settlement of the Tibet issue, based on autonomy within the People's Republic of China." [5]

U.S. government policy recognizes the Tibet Autonomous Region (TAR) and Tibetan autonomous prefectures and counties[6] in other provinces to be a part of China.[7] The Department of State's 2007 Report on Tibet Negotiations articulates U.S. Tibet policy:

> Encouraging substantive dialogue between Beijing and the Dalai Lama is an important objective of this Administration. The United States encourages China and the Dalai Lama to hold direct and substantive discussions aimed at resolution of differences at an early date, without preconditions. The Administration believes that dialogue between China and the Dalai Lama or his representatives will alleviate tensions in Tibetan areas and contribute to the overall stability of China.[8]

The Report on Tibet Negotiations observes that the Dalai Lama "represents the views of the vast majority of Tibetans," and that "his moral authority helps to unite the Tibetan community inside and outside of China." [9] The report cautions that "the lack of resolution of these problems leads to greater tensions inside China and will be a stumbling block to fuller political and economic engagement with the United States and other nations." The report rejects the notion that the Dalai Lama is seeking Tibetan independence:

> [T]he Dalai Lama has expressly disclaimed any intention to seek sovereignty or independence for Tibet and has stated that he only seeks for China to preserve Tibetan culture, spirituality, and environment.[10]

The President and other senior U.S. officials have pressed Chinese leaders to move forward in the dialogue process, according to the Report on Tibet Negotiations. In April and November 2006, President Bush urged President Hu Jintao to continue the dialogue and hold direct discussions with the Dalai Lama.[11] Secretary of State Condoleezza Rice called on Foreign Minister Li Zhaoxing to engage in direct talks with the Dalai Lama when they met at the UN General Assembly in September 2006.[12] When Secretary Rice traveled to China in October 2006, she reiterated the request for direct dialogue between Chinese officials and the Dalai Lama.[13] Under Secretary of State for Democracy and Global Affairs Paula Dobriansky, who has served since 2001 as the Special Coordinator for Tibetan Issues and as a CECC Commissioner,[14] traveled to Beijing in August 2006 and raised "the need for concrete progress" during meetings with officials including Executive Vice Foreign Minister Dai Bingguo and Assistant Foreign Minister Cui Tiankai, according to the Report on Tibet Negotiations.[15] Deputy Secretary of State John Negroponte raised the same issues during a February 2007 visit to China.[16]

Dalai Lama's Envoys' Fifth Visit to China; Discussions with the Party's UFWD

The Dalai Lama's envoys visited China for the fifth time[17] from June 29 to July 5, 2007, to engage in their sixth round of dialogue with Chinese officials.[18] The trip culminated with the briefest[19] and least optimistic statement issued after any of the previous rounds of dialogue. Special Envoy Lodi Gyari[20] reported that he and Envoy Kelsang Gyaltsen engaged in three "sessions of discussion" in Shanghai and Nanjing, the capital of Zhejiang province, over a one and one-half day period.[21] The statement provided no details about the topics the envoys discussed in meetings, or about their activities and location during the remainder of their visit. Unlike previous statements, the Special Envoy's statement did not close with an expression of "appreciation" to Chinese officials and hosts, perhaps signaling an increased level of frustration.

Gyari's statement acknowledged that the dialogue process had reached a "critical stage," and that "[b]oth sides expressed in strong terms their divergent positions and views on a number of issues." Referring to the lack of progress, Gyari said, "We conveyed our serious concerns in the strongest possible manner on the overall Tibetan issue and made some concrete proposals for implementation if our dialogue process is to go forward."[22] The statement provided no details about the proposals that the envoys hope Chinese officials will implement.

In China, the envoys met with the Communist Party's United Front Work Department (UFWD) Deputy Head Zhu Weiqun and UFWD Seventh Bureau Director Sithar (or Sita).[23] The UFWD oversees the implementation of Party policy toward China's eight "democratic" political parties, ethnic and religious groups, intellectuals, and entrepreneurs, among other functions. The UFWD established the Seventh Bureau in 2005 and appointed Sithar as Director, according to a September 2006 Singtao Daily report.[24] The Tibetan affairs portfolio moved from the Second Bureau, which handles ethnic and religious affairs, to the new Seventh Bureau. Sithar previously served as a deputy director of the Second Bureau.[25]

The creation of the UFWD Seventh Bureau may signal that the Party leadership has attached increased importance to Tibetan issues, such as the ongoing dialogue with the Dalai Lama's representatives. The mission of the Seventh Bureau, according to the Singtao Daily report, is "to cooperate with relevant parties in struggling against secessionism by enemies, both local and foreign, such as the Dalai Lama clique, and to liaise with overseas Tibetans."[26] The report notes that Party leaders are concerned principally about the "development of the Tibet independence movement in the 'post-Dalai Lama era'."[27]

UFWD officials with whom the Dalai Lama's envoys meet also hold additional posts in governmental, advisory, and NGO spheres that increase and extend their influence on the future of Tibetan culture, religion, and language. Liu Yandong, whom the envoys met during trips to China in 2003 and 2004,[28] is head of the UFWD, Vice Chairman of the Chinese People's Political Consultative Conference, and the Honorary President of China Association for Preservation and Development of Tibetan Culture (CAPDTC), a

Chinese NGO founded in June 2004 that describes its legal status as "independent."[29] Zhu is a member of the CCP Central Commission for Discipline Inspection, a senior official of the State Council Information Office,[30] a cabinet-level part of the Chinese government, and the Vice President of CAPDTC.[31] Sithar is CAPDTC's Vice Chairman.[32]

A Tibetan Vision of Autonomy: The Special Envoy Provides More Detail

In 2006 and 2007, the Dalai Lama, Special Envoy Lodi Gyari, and the elected head of the Tibetan government-in-exile, Samdhong Rinpoche, increased their efforts to advocate their vision of Tibetan autonomy under Chinese sovereignty, and to provide more detailed statements about their proposed formula. In his annual March 10, 2007, statement,[33] the Dalai Lama asserted, "The most important reason behind my proposal to have genuine national regional autonomy for all Tibetans is to achieve genuine equality and unity between the Tibetans and Chinese by eliminating big Han chauvinism and local nationalism."[34] In testimony before the U.S. House of Representatives Foreign Affairs Committee on March 13, 2007, Gyari stated, "In treating the Tibetan people with respect and dignity through genuine autonomy, the Chinese leadership has the opportunity to create a truly multi-ethnic, harmonious nation without a tremendous cost in human suffering."[35] Samdhong Rinpoche told a gathering of advocacy groups in Brussels in May 2007, "We are simply asking for the sincere implementation of the national regional autonomy provisions enshrined in the Constitution of the People's Republic of China, which is further spelt out in the autonomy law."[36]

The basis of the Tibetan negotiating position continues to be the Dalai Lama's Middle Way Approach,[37] which renounces Tibetan independence in exchange for genuine autonomy. An outcome of the dialogue process that would fulfill Tibetan wishes in a manner consistent with the Middle Way Approach would require the Chinese government's agreement to:

- The inclusion under the agreement of all the areas in China that many Tibetans regard as "the three traditional provinces of Tibet," or about one-quarter of China;[38]
- The unification of that area under one genuinely autonomous administration; and
- The empowerment of the residents of the resulting administrative area to elect a government through a democratic process.

Gyari identified the Chinese response to the Tibetan demands that "the entire Tibetan people need to live under a single administrative entity," and that Tibetans practice "genuine autonomy," as the principal area of disagreement in a November 2006 address at the Brookings Institution in Washington, D.C.[39] His prepared statement[40] and responses to questions[41] were more detailed than remarks Gyari made after the previous rounds of dialogue. The Dalai Lama emphasized his commitment to the same principles in March 2006, saying in his March 10 speech, "I have only one demand: self-rule and genuine autonomy for all Tibetans, i.e., the

Tibetan nationality in its entirety."[42] Samdhong Rinpoche underscored the importance Tibetans place on including all Tibetans in a reconfigured Tibet when he addressed advocacy groups in May: "[A]ll Tibetans must be administered by a single autonomous self-government."[43]

Like many Tibetans, Gyari refers to all of the territory in China where Tibetans live as "Tibet." "[I]t is a reality that the landmass inhabited by Tibetans constitutes roughly one-fourth[44] the territory of [China]," he said in his Brookings statement.[45] The Chinese government "has already designated almost all Tibetan areas as Tibet autonomous entities. . . . Thus, our positions on what constitutes Tibet are really not so divergent."[46] The land area that Tibetans claim as Tibet is about 100,000 square miles larger than the total area of the TAR and the Tibetan autonomous prefectures and counties designated by China.[47] Aside from pockets of long-term Tibetan settlement in Qinghai province,[48] most of the area that Tibetans claim beyond the existing Tibetan autonomous areas is made up of autonomous prefectures and counties allocated to other ethnic groups.[49] Ten counties in that area have populations that are between 5 and 25 percent Tibetan, according to official 2000 census data.[50] The precise portion of the approximately 100,000 square mile area that Tibetans claim as Tibet, and where the Tibetan population is less than 5 percent,[51] is unknown because a map that indicates the boundary of Tibet with respect to current Chinese administrative geographic divisions at the prefectural and county levels is not available.

Gyari addressed the critics of proposed administrative unification of land where Tibetans live, saying, "Having the Tibetan people under a single administrative entity should not be seen as an effort to create a 'greater' Tibet, nor is it a cover for a separatist plot."[52] Tibetans "yearn to be under one administrative entity so that their way of life, tradition, and religion can be more effectively and peacefully maintained," he said, and pointed out that the Chinese government "has redrawn internal boundaries when it suited its needs."[53] Gyari's prepared statement cites as an example the abolition in 1955 of Xikang province upon the completion of the division of its territory between Sichuan province and what later became the TAR.[54]

Establishing a unified Tibetan autonomous administrative area such as the Special Envoy described would involve all of the TAR, all or most of Qinghai province, approximately half of Sichuan province, parts of Gansu and Yunnan provinces, and according to some maps, a small part of Xinjiang Uighur Autonomous Region.[55] Under China's Constitution, establishing or changing units of administrative geography would require approval by the National People's Congress (NPC) or the State Council, or both.[56]

The Dalai Lama and Lodi Gyari provided more detailed statements than previously about their expectations of "genuine autonomy," which can be compared to the prevailing situation under the Regional Ethnic Autonomy Law (REAL).[57] Although the REAL declares in its Preamble that the practice of autonomy conveys the state's "full respect for and guarantee of ethnic minorities' right to administer their internal affairs,"[58] the Dalai Lama explained in

his March 10, 2007, statement the manner in which he believes the REAL has failed ethnic groups like Tibetans:

> The problem is that [regional ethnic autonomy] is not implemented fully, and thus fails to serve its express purpose of preserving and protecting the distinct identity, culture and language of the minority nationalities. What happens on the ground is that large populations from the majority nationalities have spread in these minority regions. Therefore, the minority nationalities, instead of being able to preserve their own identity, culture and language, have no choice but to depend on the language and customs of the majority nationality in their day-to-day lives.[59]

Gyari's statement to the Brookings Institution implied that a solution to the autonomy issue would have to reach beyond the REAL's status quo, and perhaps be innovative. He discussed the Tibetan need for autonomy in the context of the higher level of rights that Hong Kong and Macao enjoy under their status as special administrative regions (SARs).[60] Gyari said that the Tibetans have not proposed to their Chinese interlocutors any specific autonomy formula or administrative title, such as an SAR, and stressed, "[W]e place more importance on discussing the substance than on the label."[61] Samdhong Rinpoche maintained that a solution is available within the existing constitutional and legal environment: "The PRC leadership can very easily grant whatever we are asking for, if they have the political will. They need not have to amend their constitution nor make a major shift in their policies."[62]

The Tibetan Vision of Autonomy Versus China's Constitution and Law

The outlook for what the Tibetans call "genuine autonomy" under the current implementation of the REAL is poor. Communist Party control over China's legislative, governmental, policymaking, and implementation process, as well as contradictory provisions in Chinese laws and regulations, undercut the practice of regional ethnic autonomy in China. As a result, the functional level of autonomy that Chinese laws and regulations provide to local Tibetan autonomous governments to "administer their internal affairs,"[63] to protect their culture, language, and religion, and to manage policy implementation on issues such as economic development and the environment, is negligible.

Recent laws, regulations, and local implementing measures consistently prioritize the central government's interests above protecting the right of ethnic autonomous governments to exercise self-government.[64] The same legal issues that minimize the level of local autonomy for Tibetans serve to diminish the prospects for substantive progress in dialogue between Chinese officials and the Dalai Lama and his envoys. The following examples of how China's application of law adversely affects Tibetan autonomy are indicative, not comprehensive. [See Section II—Ethnic Minority Rights for more information on the REAL.]

The REAL Provides Subordination, Not Self-government

Article 7 of the REAL counteracts the Preamble's guarantee that ethnic autonomous governments have the right to "administer their own affairs" by directing that, "Institutions of self-government in ethnic autonomous areas shall place the interests of the state as a whole above all else and actively fulfill all tasks assigned by state institutions at higher levels."

The REAL Provides a Basis To Divide Tibetan Areas, Not To Unify Them

Tibetan leaders, including Lodi Gyari and Samdhong Rinpoche, have described their vision in the past year that China's Constitution and law, including the REAL, can support the unification of Tibetan autonomous areas.[65] The Constitution and REAL do not state explicitly whether or not contiguous areas where the same ethnic group lives are entitled to be included in the same ethnic autonomous area. In fact, Article 12 of the REAL provides the Chinese government a basis in law for division by allowing the establishment of ethnic autonomous areas to take into consideration factors such as "historical background" and "the relationship among the various nationalities."[66] Because the National People's Congress (NPC) and State Council have the constitutional authority to approve the establishment of autonomous regions, prefectures, and counties, and to alter their geographic divisions,[67] it is Beijing's view of history and ethnic relations that guides decisions to apply the REAL in a manner that unites—or divides—ethnic groups.

Conflict of Law Limits Rights Provided by the Constitution and REAL

The Constitution and REAL state that ethnic autonomous congresses have the power to enact autonomy or self-governing regulations "in the light of the political, economic, and cultural characteristics" of the relevant ethnic group(s).[68] But the Legislation Law reserves to the State Council the power to issue regulations when the NPC specifically authorizes the State Council to do so, thereby intruding upon the right of ethnic autonomous congresses to issue regulations.[69] These provisions in the Legislation Law explicitly create a conflict of law with respect to rights provided by the Constitution and the REAL. The Legislation Law authorizes an autonomous people's congress to enact an "autonomous decree or a special decree" that must be approved by the standing committee of the next higher level people's congress.[70]

The Legislation Law Bars Autonomous Governments From Altering Laws and Regulations That Concern Autonomy

The REAL includes a provision allowing an ethnic autonomous government to apply to a higher-level state agency to alter or cancel the implementation of a "resolution, decision, order, or instruction" if it does not "suit the actual conditions in an ethnic autonomous area."[71] The Legislation Law, however, bars ethnic autonomous governments from enacting any variance to any law or regulation that is "dedicated to matters concerning ethnic autonomous areas."[72]

Special Administrative Regions Offer More Flexibility

The Chinese Constitution provides a method to create a political and administrative solution to challenges that the principal body of Chinese law cannot resolve. Article 31 empowers the state to establish a "special administrative region" (SAR) that can satisfy a particular need "when necessary," and authorizes the NPC to enact a law that institutes a "system" (of governance and administration) "in the light of the specific conditions."[73] Hong Kong and Macao are the only SARs created by the NPC to date. Chinese officials reject the notion that a Tibetan solution could be developed by establishing a special administrative region,[74] but their arguments use as proof the dissimilarity of the pre-reunification political and economic systems of Hong Kong and Macao (not reunited with China, democratic government, capitalist economy) compared with the current political and economic system in the Tibetan autonomous areas of China (Chinese administration, non-democratic government, socialist economy). The language in Article 31, however, states no prerequisites of any kind and allows the state to create the solution that it needs.

RELIGIOUS FREEDOM FOR TIBETAN BUDDHISTS

Commission Recommendations and China's Record

Commission Annual Reports from 2002 to 2006 included recommendations calling for the Chinese leadership to "promote the concept of religious tolerance,"[75] to "meet with religious figures from around the world to discuss the positive impact on national development of free religious belief and religious tolerance,"[76] and to take measures to develop the freedom of religion in China including respecting "the right of Tibetan Buddhists to freely express their religious devotion to the Dalai Lama."[77]

The Commission cannot report improvement in the overall level of freedom of religion for Tibetan Buddhists at any time during the past five years, and in the past year the environment for Tibetan Buddhism has become significantly more repressive. The Party led an intensified anti-Dalai Lama campaign[78] and an expanding program of patriotic education,[79] and two sets of new legal measures imposing stricter and more detailed controls on Tibetan Buddhist institutions and religious activity took effect.[80] In the Tibet Autonomous Region (TAR), the government began on January 1, 2007, to implement new legal measures issued in September 2006 that regulate fundamental aspects of Tibetan Buddhism in a stricter and more detailed manner than previous measures.[81] The State Administration for Religious Affairs (SARA) issued legal measures in July 2007 that empower the government and Party to gradually reshape Tibetan Buddhism by controlling the religion's most important and unusual feature—lineages of reincarnated Buddhist teachers that Tibetan Buddhists believe can span centuries.[82]

Although the Party tolerates religious activity only within the strict limits imposed by China's constitutional, legal, and policy framework, and the government further restricts those limits at will, Chinese authorities tolerate selected Tibetan Buddhist practices and expressions of religious belief,[83] and the intensity of religious repression against Tibetans varies across regions.[84]

[See Section II—Freedom of Religion for more information on Party and government control of religion.]

TAR Party Chief Intensifies Anti-Dalai Lama Campaign, Patriotic Education

Tibetan Buddhism is at the core of Tibetan culture and self-identity, and for most Tibetans the Dalai Lama is at the core of Tibetan Buddhism. Seeking to strengthen control over Tibetan Buddhism and to end the Dalai Lama's influence over Tibetans, the Communist Party intensified a long-running campaign during the past year to discredit the Dalai Lama as a religious leader, to portray him and those who support him as threats to China's state security, and to prevent Tibetans from expressing their religious devotion to him.

TAR Party Secretary Zhang Qingli took on the role of a high-profile representative of the anti-Dalai Lama campaign in late 2005, when the Party's Central Committee transferred him to the TAR from the Xinjiang Uighur Autonomous Region.[85] In an August 2006 interview with a Western magazine, Zhang attacked the Dalai Lama's Buddhist credentials, accusing him of being a "false religious leader" who has led Tibetans astray and done "many bad things . . . that contradict the role of a religious leader" since he fled into exile in 1959.[86] Zhang urged the Party to "clearly distinguish between proper religious activities and the use of religion to engage in separatist activities," an expression that can refer to peaceful expressions of religious devotion to the Dalai Lama. Zhang described the Party's conflict with the Dalai Lama and the "Western hostile forces"[87] that support him as "long term, sharp, and complex," and "even quite intense at times."[88]

Zhang rallied hundreds of Party members at a May 2007 meeting in Lhasa, the capital of the TAR, telling them, "From beginning to end . . . we must deepen patriotic education at temples, comprehensively expose and denounce the Dalai Lama clique's political reactionary nature and religious hypocrisy."[89] Patriotic education ("love the country, love religion")[90] is an open-ended campaign to bring to an end the Dalai Lama's religious authority among Tibetans, and that requires Tibetan Buddhists to accept patriotism toward China as a part of Tibetan Buddhism. Patriotic education sessions require monks and nuns to pass examinations on political texts, agree that Tibet is historically a part of China, accept the legitimacy of the Panchen Lama installed by the Chinese government, and denounce the Dalai Lama."[91] Monitoring organizations confirmed in 2007 that officials are increasing patriotic education activity in monasteries and nunneries.[92] In one case, the abbot of a monastery in Qinghai province was forced to step down in May after he refused to sign a denunciation of the Dalai Lama.[93]

In May 2006, Zhang called on TAR Party and government officials to intensify restructuring and "rectification" of Democratic Management Committees (DMCs),[94] and to "[e]nsure that leadership powers at monasteries are in the hands of religious personages who love the country and love religion."[95] DMCs,[96] located within each monastery and nunnery, are the Party's direct interface with monks and nuns, and are charged by the Party and gov-

ernment to implement policies on religion and ensure that monks and nuns obey government regulations on religious practice.

An official poster reportedly displayed in a Tibetan Buddhist monastery in Sichuan province listed the DMC's main functions, including to "[u]phold the leadership of the Chinese Communist Party, love the county and love religion, and progress in unity" and to ensure that "[n]o activities may be carried out under the direction of forces outside the country."[97] The same document instructs the DMC on its "professional responsibilities," such as, "To collectively educate the monastery's monks and religious believers to abide by the country's Constitution, laws, and all policies, to ensure the normal progression of religious activities, to protect the monastery's legal rights and interests, to resolutely oppose splittist activities, and to protect the unification of the motherland."[98] The poster specified the subordinate relationship of the monastery to external, non-religious agencies: "The monastery should accept the administrative management of local village-level organizations, and accept the leadership of the Buddhist association." A 1991 set of TAR measures regulating religious affairs described a Buddhist association as "a bridge for the Party and government to unite and educate personages from religious circles and the believing masses."[99]

TAR Measures Extend Party Control Over Tibetan Buddhism

In January 2007, Zhang Qingli wrote in an issue of Seeking Truth that the TAR government must implement the national-level Regulation on Religious Affairs (RRA)[100] in a manner that will "ensure that the Constitution and laws enter the temple doors, the management system, and the minds of monks and nuns."[101] There are more than 1,700 monasteries and nunneries in the TAR, and approximately 46,000 monks and nuns, according to official state-run media reports.[102] As Zhang called on the Party to achieve comprehensive implementation of its policy on "freedom of religious belief," which he said aims to "actively guide religion to adapt to socialist society,"[103] the TAR Implementing Measures for the Regulation on Religious Affairs (TAR 2006 Measures) were coming into effect.[104]

The TAR 2006 Measures state a general formula for the relationship between the state and religion: "All levels of the people's government shall actively guide religious organizations, venues for religious activities, and religious personnel in a love of the country and of religion, in protecting the country and benefiting the people, in uniting and moving forward, and in guiding the mutual adaptation of religion and socialism." The national-level RRA, effective in March 2005, does not contain such language.[105]

The TAR 2006 Measures impose stricter and more detailed controls on TAR religious activity,[106] which is mainly Tibetan Buddhist,[107] than the RRA or the 1991 TAR Temporary Measures on the Management of Religious Affairs[108] (TAR 1991 Measures) that the TAR 2006 Measures replaced. The most forward-looking area of state intrusion into Tibetan Buddhist freedom of religion, and the most consequential to the future of the religion, is in the process of identifying, seating, and providing religious training to reincarnated Tibetan Buddhist lamas. The TAR 2006 measures

provide five articles on the matter,[109] compared to one each in the RRA[110] and the TAR 1991 Measures.[111] The RRA article includes language that seeks to compel Tibetan compliance with a 17th century Qing dynasty edict directing Tibetan religious leaders to identify reincarnations by drawing a name from an urn in the presence of an imperial Chinese official.[112] The TAR 1991 Measures ban the involvement in the identification process of "foreign forces," a reference to the traditional role of the Dalai Lama and other high-ranking Tibetan lamas now living in exile. [See the following subsection for information on national measures regulating Tibetan reincarnation issued in July 2007 and effective in September.]

The TAR 2006 Measures establish additional Party and government controls,[113] beyond those contained in the RRA or the TAR 1991 Measures, over the identification and education of reincarnated Tibetan Buddhist lamas in the TAR.

- No organization or individual in the TAR may attempt to identify a reincarnated lama without approval from the TAR government.[114]
- No one from the TAR may travel to another province to attempt to identify a reincarnated lama (or vice versa) until the TAR Buddhist association ("religious organization") consults with the provincial-level Buddhist association in the other province (or vice versa), and the TAR Buddhist association reports the matter to the TAR government.[115]
- DMCs must plan and implement milestones in the institutional advancement of reincarnated lamas, such as the formal seating of a reincarnated lama at a monastery, formally ordaining a reincarnated lama as a monk, and promoting a reincarnated lama to advanced levels of Buddhist study. Local government must supervise such events.[116]
- DMCs must draft, and reincarnated lamas must submit to, "practical measures for strengthening the development, education, and management" of reincarnated lamas.[117]
- DMCs must report to the local government the names of a reincarnated lama's religious and cultural teacher(s) after the DMC has proposed candidates to the local Buddhist association and the association consents.[118]

The TAR 2006 Measures impose new requirements[119] that eliminate freedom of movement for monks and nuns in the TAR if they travel for the purpose of teaching, studying, or practicing religion.[120] Monks and nuns living in TAR monasteries and nunneries may not travel anywhere in the TAR for the purpose of practicing religion[121] without carrying with them their "religious personnel identification [card]" and an unspecified form of "proof" provided by the county-level government where they live, and reporting "for the record" to the county-level government where they wish to practice religion.[122] Monks and nuns in the TAR may not travel to another TAR prefecture to study religion without first obtaining approval from the local government in the destination prefecture, and reporting the approval to the local government in the prefecture of origin.[123] The TAR 1991 Measures, in comparison, stated no requirements of monks and nuns who traveled between monasteries and nunneries in the TAR in order to practice or study religion. The TAR 1991 Measures contained one article addressing travel

that required monks and nuns traveling from the TAR to another province for advanced Buddhist study or teaching Buddhism (or vice versa) to first obtain consent from the governments of the TAR and the other province.[124]

Buddhist associations, monasteries, nunneries, monks, and nuns that violate provisions of the TAR 2006 Measures can face criminal or civil penalties under Chinese law, or expulsion from a monastery or nunnery.[125] Authorities can, for example, initiate punishments for "illegal activities such as those that harm national security or public security," a catch-all phrase that can include expressions of religious devotion to the Dalai Lama, or for sharing, viewing, and listening to any type of recorded media about him. The TAR 2006 Measures introduce an explicit ban on disseminating and viewing "books, pictures, and materials that disrupt ethnic unity or endanger national security," and a ban on requests by "religious followers" for monks and nuns "to recite from banned religious texts."[126] Another punitive measure with potentially broad impact empowers local governments to order a "religious organization" to "disqualify" as a registered religious professional a monk or nun who, in "serious circumstances," does not fulfill regulatory requirements on travel.[127]

A local government's use of regulations on religious affairs to enforce the demolition in May 2007 of a large, nearly completed statue of a ninth century Buddhist teacher, Padmasambhava (Guru Rinpoche),[128] at the oldest Tibetan monastery, Samye,[129] shows how the law can control religious practice, rather than protect religious freedom. Photographs available in one report appear to show that the 30-foot tall statue was constructed within the monastery's grounds.[130] People's Armed Police (PAP) arrived at Samye, located in Shannan (Lhoka) prefecture in the TAR, and demolished the statue during the Buddhist holy month of Saga Dawa, according to an unofficial report.[131] Private donors from Guangzhou city in Guangdong province paid 800,000 yuan to have the statue constructed.[132]

The RRA and TAR 2006 Measures introduce provisions prohibiting any group or individual not part of a state-authorized religious organization or venue for religious activity from building such a statue.[133] Both sets of provisions mandate the demolition of a religious statue that is erected without official approval, but the TAR 2006 Measures only address the matter if the statue is built outside monastery grounds.[134] Because the statue was built on Samye's grounds by individuals who were not authorized members of an officially recognized religious institution, the local government could have invoked RRA provisions as a legal pretext to destroy the statue. In fact, an official Chinese media report provided a rough translation of a Samye DMC notice confirming the role of the RRA as well as the Law on Protection of Cultural Relics.[135] The State Administration for Religious Affairs, the Ministry of Construction, and the China National Tourism Administration jointly issued a "Notice of Illegally Building [an] Open[-air] Statue of Buddha," according to the DMC notice.[136] Lodi Gyari, the Dalai Lama's Special Envoy, decried the statue's destruction, saying, "This divisive and sacrilegious act by an atheist state has caused deep anguish among Tibetans in the region."[137]

The total number of monasteries, nunneries, monks, and nuns that the TAR government tolerates could come under increased pressure, based on Zhang Qingli's statements in Seeking Truth. He described a "bottom line" for the number of locations for "religious activity" (monasteries and nunneries) and of "full time religious persons" (monks and nuns), and warned that, "[H]aving satisfied the needs of the believer masses, there can be no indiscriminate building and recruiting."[138] Zhang's comment could presage government action to assert more aggressively its role in limiting the size of the Tibetan Buddhist monastic establishment—which the TAR Party newspaper said in 1996 exceeded the number that the Party planned in 1986, and created a negative impact on Tibetan social and economic development.[139]

National Government Measures Take Control of Tibetan Buddhist Reincarnation

The State Administration for Religious Affairs (SARA) issued a set of national measures in July 2007 (effective on September 1) that, if fully implemented, will establish government control over the process of identifying and training reincarnated Tibetan Buddhist teachers throughout China.[140] Unlike the TAR 2006 Measures, the "Measures on the Management of the Reincarnation of Living Buddhas in Tibetan Buddhism"[141] (MMR) apply to the significant concentrations of Tibetan Buddhists in Qinghai, Gansu, Sichuan, and Yunnan provinces, as well as to the TAR. The total number of Tibetan Buddhist monasteries and nunneries in the TAR and the four provinces probably exceeds 3,300, based on official information, and the total number of monks and nuns may exceed 115,000 by several thousand.[142] Each monastery hopes to have a reincarnated teacher in residence, although some monasteries have none and other monasteries have more than one. Based on official but incomplete information, the Commission estimates that the total number of reincarnated teachers in the Tibetan areas of China probably exceeds 1,000, and could reach or surpass 2,000.[143]

The MMR will "institutionalize management on reincarnation of living Buddhas," according to a SARA statement,[144] and strengthen the subordination of traditional Tibetan Buddhist practices to Party policy: "The selection of reincarnates must preserve national unity and solidarity of all ethnic groups and the selection process cannot be influenced by any group or individual from outside the country." The MMR could result in greater isolation between Tibetan Buddhist communities living in China and important Tibetan Buddhist teachers living in exile, especially the Dalai Lama, by using each instance of recognizing a reincarnated Tibetan teacher as an opportunity for the government to reinforce the barrier between Tibetan Buddhism in China and Tibetan Buddhists living in other countries.

As elderly Tibetan Buddhist reincarnated teachers pass away, government enforcement of the MMR may prevent Tibetans from searching for and recognizing subsequent reincarnations, resulting in a decreasing number of reincarnated teachers. Article 3 requires that "[a] majority of local religious believers and the monastery [Democratic Management Committee] must request the reincarna-

tion" before the search for a reincarnation may take place.[145] DMCs are less likely to pursue a request for a reincarnation if local officials oppose it, and local authorities are well-positioned to hinder or discourage a majority of "religious believers" from expressing their desire to maintain a reincarnation in a local monastery. Article 4 disallows the recognition and seating of reincarnations within urban districts established by higher-level governments if the urban district government issues a local decree banning further reincarnations.[146] The Chengguan district under Lhasa municipality is currently the only urban district within the Tibetan autonomous areas of China.[147] If the Chengguan district government issues such a decree, it could affect two of the largest and most influential Tibetan monasteries, Drepung and Sera,[148] and the two oldest Tibetan Buddhist temples, Jokhang and Ramoche.

The MMR establishes unprecedented government control[149] over the principal stages of identifying and educating reincarnated Tibetan teachers, including:

- Determining whether or not a reincarnated teacher who passes away may be reincarnated, and whether a monastery is entitled to seek to have a reincarnated teacher in residence.[150]
- Conducting a search for a reincarnation.[151]
- Recognizing a reincarnation and obtaining government approval of the recognition.[152]
- Seating (installing) a reincarnation in a monastery.[153]
- Providing education and religious training for a reincarnation.[154]

The measures provide for punishment of individuals or offices that are responsible for a failure to comply with the measures, or that conduct activities pertaining to reincarnation without government authorization.[155]

In August 2007, senior officials, including Liu Yandong, Head of the Communist Party United Front Work Department (UFWD), and Ye Xiaowen, Director of SARA, convened a national seminar in Beijing on "Tibetan Buddhism work," and stressed that in the matter of seating Tibetan Buddhist reincarnated teachers, "our own come first," according to a Singtao Daily report.[156] The phrase underscores Party resolve to ensure that successful candidates for positions as reincarnated teachers will from now on fulfill the Party's political expectations, and that the Dalai Lama and other senior Tibetan Buddhist teachers living in exile will have no influence on the process.[157] Officials at the seminar emphasized that the MMR must be implemented fully throughout the Tibetan areas of China and in the Inner Mongolia Autonomous Region, where many Mongols believe in Tibetan Buddhism. At an August 17–18 UFWD work forum in Lhasa, Director of the TAR UFWD, Lobsang Gyaltsen (Luosang Jiangcun), relayed the national guidelines to regional officials, and Zhang Yijiong, Deputy Secretary of the TAR Party Committee, called on attendees to "thoroughly implement the policy of the [Party] on religious work" and "energetically unite the religious and patriotic forces."[158]

Number of Imprisoned Monks and Nuns Declines as Repression of Religion Increases

Tibetan Buddhist monks and nuns constituted 11 of the 13 known political detentions of Tibetans by Chinese authorities in 2006, compared to 21 of the 24 known such detentions in 2005, and 8 of the 15 such detentions in 2004,[159] based on data available in the Commission's Political Prisoner Database (PPD)[160] as of September 2007. The increased proportion of monks and nuns that make up the total number of known political detentions evident in 2005 has not changed in 2006, and is likely to reflect monastic resentment against the intensified patriotic education campaign. The total number of known detentions of monks and nuns, however, has declined in comparison with 2005. The unusual shift of political detention of monks and nuns away from Sichuan province in 2005,[161] when none were reported, was short lived. Nine of the 13 known political detentions of Tibetan monks and nuns in 2006 took place in Sichuan province; the rest occurred in the TAR.

The extent to which the apparent decline in political detention of monks and nuns in 2006 reflects actual circumstances, or incomplete information, or both, is unknown. It is possible that the Party and government's increased repression of Tibetan Buddhism since 2005 (especially of aspects of the religion that involve the Dalai Lama) has produced the result that the government desires: a more subdued monastic community. Fewer monks and nuns may be risking behavior that could result in punishments such as imprisonment or expulsion from a monastery or nunnery (a prospect that may increase under the TAR 2006 Measures). At the same time, it is likely that the actual number of detained monks and nuns is higher than PPD data indicates.[162] Reports of detention of unnamed persons,[163] or of persons who are reported as missing,[164] are not listed along with reports of detention that include detailed information. Irrespective of the actual number of recent detentions, the high proportion of monks and nuns among them, and recent statements by monks and nuns describing their frustration with government management of Tibetan Buddhism,[165] suggests that the level of monastic resentment against Chinese religious policies remains high. Repressive policies can result in a decline of behavior that triggers punishment, but a high level of frustration suggests that the potential for a resurgence of political protest exists.

Tibetan monks and nuns make up about 64 of the 100 known currently detained or imprisoned Tibetan political prisoners, according to PPD data current in September 2007. Twenty-eight of the monks and nuns were detained or imprisoned in the TAR, 24 in Sichuan province, 7 in Qinghai province, and 4 in Gansu province. Based on data available for 42 currently imprisoned Tibetan monks and nuns, their average sentence length is 10 years and 4 months.

No Progress on Access to (or Freedom for) the Panchen Lama

The Chinese government continues to refuse to allow access by an international organization, such as the International Red Cross, to Gedun Choekyi Nyima, the boy the Dalai Lama recognized as the Panchen Lama in May 1995.[166] Chinese officials continue to

hold him in incommunicado custody along with his parents at an unknown location. Gedun Choekyi Nyima turned 18 years of age in April 2007, and in May he completed his 12th year in custody. Chinese officials claim that Gedun Choekyi Nyima is leading a "normal, happy life and receiving a good cultural education."[167] After the Dalai Lama announced his recognition of Gedun Choekyi Nyima, Chinese officials took the then six-year-old boy and his parents into custody. The State Council declared the Dalai Lama's announcement "illegal and invalid"[168] and installed Gyaltsen Norbu,[169] whose appointment continues to stir widespread resentment among Tibetans. Chinese authorities may punish or imprison Tibetans who possess photographs of Gedun Choekyi Nyima or information about him.

Incidents of Repression of Freedom of Religion in Tibetan Secular Society

Chinese government repression of freedom of religion is not limited to the Tibetan Buddhist monastic community, and adversely affects secular Tibetan society. Most Tibetans are not monks or nuns—they are farmers, herders, workers, traders, business operators, professionals, students, teachers, and government staff. In the TAR about 98 percent of Tibetans live in secular society.[170] Official repression of Tibetan Buddhist activity by secular Tibetans principally targets the Dalai Lama, Tibetan religious devotion to him, and aspects of Tibetan Buddhism closely linked to him, especially certain ceremonies and observances associated with the Gelug tradition of Tibetan Buddhism.[171] Tibetans who follow other traditions of Tibetan Buddhism, such as the Kargyu, Sakya, and Nyingma traditions, especially in Tibetan areas outside the TAR, may experience less interference from authorities.[172]

Chinese authorities routinely seek to prevent Tibetans from participating in religious observances that they suspect signify Tibetan devotion to the Dalai Lama. For example, the Lhasa Evening News published a Lhasa Party Committee notice on December 12, 2006, that forbids government employees, workers in government-run businesses, and school students to participate in a Tibetan Buddhist observance, Gaden Ngachoe, that would take place three days later.[173] The notice warned, "Everyone must conscientiously respect the government and Party committee's demand." Tibetans traditionally light butter lamps to mark the occasion.

The Lhasa Party Committee in May 2007 forbade Tibetan school children in some Lhasa neighborhoods from participating in Tibetan Buddhism's most holy day, Saga Dawa,[174] or wearing "amulet threads" (blessing strings) received at Buddhist sites.[175] Beginning in the late 1980s, when Tibetans staged a series of public protests against Chinese policies, the Lhasa government has attempted to prevent Tibetans employed in the government sector and Tibetan students from participating in Saga Dawa.[176] The prohibition continued in 2006, when the government threatened to fire government employees who defied the ban, according to a U.S. Department of State report.[177]

Tibetans living in the Lhasa area, as well as throughout the TAR and in Tibetan autonomous areas of Qinghai, Gansu, and Sichuan provinces, openly celebrated the Dalai Lama's July 6 birthday in

2007,[178] despite government characterization of such celebration as "illegal"[179] and effective enforcement of a ban in previous years.[180] Some Tibetans reportedly believed that the turnout in 2007 represented Tibetan celebration of the Dalai Lama's receipt of the Congressional Gold Medal, scheduled for October 2007.[181]

TIBETAN CULTURE UNDER CHINESE DEVELOPMENT POLICY AND PRACTICE

Commission Reports and Recommendations: Tibetan Culture in a Developing West

CECC Annual Reports issued since 2002 document that Chinese government development policy and implementation, especially of the Great Western Development (GWD) program,[182] increase pressure on the Tibetan language and culture, and erode the Tibetan people's ability to preserve their heritage and self-identity.

- The 2002 Annual Report observed that GWD "has the most profound implications for western China of any official policy formulation to emerge in the post-Deng era."[183] The report identified the Qinghai-Tibet railway, then in its second year of construction,[184] as the project causing the greatest alarm for Tibetans. An expert told the Commission, "The new railway to Tibet will only intensify existing migratory trends, exacerbate ethnic income disparities, and further marginalize Tibetans in traditional economic pursuits."[185]
- In 2003, the Annual Report stated, "The majority of Tibetans, who live in rural areas, benefit little from central government investment in the Tibetan economy. Most of this investment supports large-scale construction and government-run enterprises in which Han control is predominant."[186] Tibetans must have access to significantly improved educational resources if they are to adapt successfully to their new environment, and if their culture is to survive, then the Tibetan language must play an important role in their education, the report said.[187]
- In 2004, the Annual Report noted that "existing policy initiatives are gaining momentum, especially the Great Western Development program, formulated to accelerate economic development in China's western provinces and speed their integration into the political and social mainstream."[188] The report warned that government policies "promote strict adherence to a national identity defined in Beijing [and] discourage Tibetan aspirations to maintain their distinctive culture and religion."[189]
- The 2005 Annual Report showed that Chinese government statistics on educational achievement demonstrate that few Tibetans are prepared to compete for employment and business opportunities in the Han-dominated economic environment developing around them.[190] Urban Tibetans reached senior middle school at 19 times the rate of rural Tibetans, the report said, but rural Tibetans are the largest and least prepared category of Tibetans competing for opportunities created by government economic development programs.[191]
- The release of the 2006 Annual Report followed the start of operation of the Qinghai-Tibet railway. The report noted "in-

creasing Tibetan concerns about the railway's potential effects on the Tibetan culture and environment,"[192] and explained why Chinese law, government and Party policies, and official statements increase Tibetan concerns that programs such as GWD and projects such as the Qinghai-Tibet railway will lead to large increases in Han migration.[193]

The Commission responded to the concerns and needs of Tibetans in China by recommending increased funding for U.S. NGOs to develop programs that "improve the health, education, and economic conditions of ethnic Tibetans." A Commission recommendation in 2003 stressed that such programs should "create direct, sustainable benefits for Tibetans without encouraging an influx of non-Tibetans into these areas."[194]

GWD Era Laws and Regulations Tend To Pressure, Not Protect, Tibetan Culture

Changes in Chinese laws and regulations that address ethnic autonomy issues and that have been enacted during the period of GWD tend to decrease the protection of ethnic minority language and culture. The stated purpose of GWD is to "accelerate economic and social development of the western region and the minority nationality regions in particular."[195] TAR Party Secretary Zhang Qingli asserted that as the result of such policies, "Tibet is in [the] best period of development and stability in its history."[196] President and Party General Secretary Hu Jintao, who served as the TAR Party Secretary from 1988–1992,[197] affirmed support for GWD and the importance of "the issue of coordinated regional development" when he met TAR delegates to the NPC in March 2007.[198] Laws and regulations such as the following have resulted in a trend of increasing cultural, linguistic, and economic pressure on ethnic minorities.

The National People's Congress (NPC) amended the 1984 Regional Ethnic Autonomy Law (REAL)[199] in 2001, bringing the law into conformity with more recent trends in Party policy. Amendments added extensive language guiding issues that include economic development, natural resource exploitation, infrastructure construction, financial and fiscal management, recruiting cadres, professionals, and workers from other parts of China to "Go West," establishing cooperative development projects between other parts of China and the GWD area, and improving the education system for ethnic minorities.[200] [See Section II—Ethnic Minority Rights for more information on the REAL.]

The amended REAL increased state support for ethnic minority education but lessened the state's commitment to the constitutionally protected task of preserving and using ethnic minority languages.[201] The 1984 REAL required the state to set up "institutes of nationalities and, . . . nationality oriented classes and preparatory classes which only enroll students from minority nationalities."[202] The amended REAL requires such institutes to "enroll only or mostly students from ethnic minorities,"[203] potentially reducing the level of use of ethnic languages within such institutes. Another result is that ethnic minorities must compete academically with Han who enroll in ethnic minority institutes, and compete

with them for jobs after graduation.[204] The 1984 REAL authorized the state to introduce for ethnic minorities "[p]referred enrollment and preferred assignment of jobs,"[205] a form of assistance that can help Tibetans and other minorities to compete for employment in an emerging market economy that attracts an increasing number of Han who have better educations.[206] The amended REAL, however, removed the language that authorized the preferential treatment for ethnic minorities.[207]

The Provisions of the State Council for Implementing the REAL,[208] issued in May 2005, promote a key GWD strategy:[209] encouraging professionals, experts, and workers in China's populous areas to "Go West" along with their families to "develop and pioneer in ethnic autonomous areas."[210] The amended REAL itself provides the basis for establishing implementing provisions that provide incentives for population movement into autonomous areas where Tibetans and other ethnic groups live by authorizing local autonomous governments to provide "preferential treatment and encouragement" to "specialized personnel joining in the various kinds of construction in these areas."[211] Minister Li Dezhu of the State Ethnic Affairs Commission (SEAC) warned in 2000 that implementation of the GWD and the resulting westward population flow could cause "possible trouble" in ethnic relations. He wrote in Seeking Truth that "some changes in the proportions of the nationalities" would take place and that "conflicts and clashes" could occur between ethnic groups.[212]

The State Council Legislative Affairs Office is reportedly preparing a draft law for submission to the NPC that "aims to create a favorable legal environment and support for a smooth implementation" of GWD, according to a March 2006 statement by Wang Jinxiang, the Vice Minister of the National Development and Reform Commission and the Deputy Director of the State Council Office of the Leading Group for Western Region Development.[213] Wang said that the Legislative Affairs Office was working on the 14th version of the draft and that he believed completion of the draft was "imminent." No updated information is available about the progress of the bill.

Protection for the Tibetan language has also decreased under autonomy regulations enacted during the GWD period. In 2002, the TAR People's Congress revised the 1987 TAR Regulations on the Study, Use, and Development of the Tibetan Language,[214] ending the precedence of the Tibetan language by authorizing the use of "either or both" of Mandarin and Tibetan languages in most areas of government work.[215] A 1998 government White Paper stated, "Guaranteeing the study and use of the Tibetan language is an important aspect of safeguarding the Tibetan people's right to autonomy and exercising their right to participate in the administration of state and local affairs."[216] The then-current regulation "clearly specifies that both Tibetan and Chinese should be used in the Tibet Autonomous Region, with precedence given to the Tibetan language," according to the White Paper.

Qinghai-Tibet Railway Carries 1.5 Million Passengers Into the TAR in First Year

The Qinghai-Tibet railway, officially designated a key GWD project,[217] "transported 1.5 million passengers into Tibet" during its first year of operation (ending on June 30, 2007), according to a July report.[218] The government issued no public reports of major incidents or accidents linked to the railway's operation during the year. Advocacy organizations have expressed publicly[219] what Tibetans in China say privately, that the railway will facilitate a surge of non-Tibetans into Tibetan autonomous areas, altering the demographic and economic structure of the region, and further increasing pressure on Tibetan culture and on Tibetans as they compete for jobs and other economic benefits.[220] Jampa Phuntsog (Xiangba Pingcuo), Chairman of the TAR government, claimed in June 2007 that such a threat does not exist, and that Tibetans in the TAR would not face assimilation into Chinese culture ("Han culture").[221]

State-run media reports about the Qinghai-Tibet railway generally apply the terms "passenger" and "tourist" interchangeably to persons traveling to the TAR, and provide little information about how many passengers arrive in the TAR for purposes other than tourism. For example, the July report of "1.5 million passengers" describes them as "nearly half of the total tourist arrivals in the region."[222] At that rate of arrival, nearly 4,100 passengers arrived in the TAR each day. That figure accords closely with a May 2006 statement by the China Tibet Tourism Bureau (before railway operations began) that the railway would "transport an additional 4,000 tourists to Tibet each day."[223] The July report's portrayal of the 1.5 million passengers as "tourists" making up nearly half the total tourist arrivals is also consistent with information in other official reports: there were a total of 3.6 million tourist arrivals in 2006 and the first six months of 2007.[224]

The Commission is aware of one official Chinese media report that less than half of the Lhasa-bound Qinghai-Tibet railway passengers were tourists during the height of the tourist season after the railway began service. Midway into September 2006, the railway's third month of operation, Jin Shixun, the Director of the TAR Committee of Development and Reform, provided information about the occupational categories of passengers—60 percent were business persons, students, transient workers, traders, and individuals visiting relatives; 40 percent were tourists.[225] Jin's remark was based on 270,000 passengers over a period of approximately 75 days, or about 3,600 passengers per day. If a similar proportion prevailed throughout the remainder of the first year of operation, then approximately 900,000 of the 1.5 million passengers could have been non-tourists, and hundreds of thousands of them could have been non-Tibetan business persons, workers, and traders who intended to remain for a period in the TAR. An October 2005 report by China's state-run media also acknowledged that the railway will "attract tourists, traders, and ethnic Chinese settlers" to the region.[226]

A Tibetan resident of Lhasa told a radio call-in show in July 2007 that "Tibetans in Lhasa have been overwhelmed by the fright-

ful explosion of the Chinese population in the city."[227] The caller said that "wherever you go, you get the impression of overcrowding." Tibetans "[witness] Chinese tourists becoming permanent residents," she said, and reported that "Chinese migrants were moving fast into formerly Tibetan neighborhoods and businesses." Another Tibetan caller from Lhasa said "there is deep skepticism about the aim and whose purpose [the railway] is serving," and asserted that "the Tibetans are certainly not the direct beneficiaries." The first caller acknowledged that Tibetan traders are doing more business, but she said those benefits are "insignificant if you take the whole picture of Chinese benefits in terms of business and employment into account."[228] An NGO reported in early August that Chinese fleeing flooded areas of the country were "pouring into Tibet" on the Qinghai-Tibet railway, and that thousands of unemployed migrants roamed Lhasa looking for work.[229] The "unprecedented movement of Chinese migrants to Lhasa," which started in July, "has put pressure on the local Tibetans and their day-to-day livelihood," according to the report.

Inadequate information provided by the Chinese government about passengers traveling on the Qinghai-Tibet railway hampers objective assessment of the railway's alleged role in accelerating the influx of non-Tibetan residents into the region. Existing examples of the establishment of rail links to remote regions in China indicate that significant changes to the proportions of ethnic groups occur over time. Rail links were built into what is now the Inner Mongolia Autonomous Region (IMAR) before the PRC was established;[230] a railway reached Urumqi, the capital of the Xinjiang Uighur Autonomous Region (XUAR), in 1962; the railway arrived in Kashgar, in the western XUAR, in 1999.[231] Based on official 2000 census data, the ratio of Han to Mongol in the IMAR is 4.6 Han to 1 Mongol. In the XUAR the ratio of Han to Uighur is 0.9 Han to 1 Uighur. The ratio of Han to Tibetans in the TAR stood at 0.07 Han to 1 Tibetan in 2000, according to census data.[232] Tibetans are concerned that the Qinghai-Tibet railway will facilitate changes in Tibetan areas of China similar to those in the IMAR and XUAR.

Rebuilding the Tibetan Countryside: Allegations of Forced Settlement, Re-housing

Another Party-led program linked to GWD and the anti-Dalai Lama campaign aims to end a way of life that is iconic among Tibetans and that has survived for centuries: nomadic herding.[233] A government program gathered momentum last year that aims to build a "beautiful, new socialist countryside"[234] and requires nomads to give up their traditional lifestyle and grazing lands to live in fixed settlements, or find other work. Similar programs affecting herders in Qinghai, Gansu, Sichuan, and Yunnan provinces are underway.[235] A TAR government program underway is moving Tibetan farmers into new housing in reorganized communities. TAR Party Secretary Zhang Qingli said that such steps would result in a "harmonious society."[236] Party General Secretary Hu Jintao[237] advised TAR delegates, including Zhang, attending the NPC in March 2007 that "maintaining social harmony and stability is the premise" for economic and social development in the TAR.[238]

Zhang Qingli said in the January 2007 issue of Seeking Truth that the Party's determination to restructure Tibetan farming and grazing communities is not only to promote economic development, but also to counteract the Dalai Lama's influence.[239] Zhang said that to do so is essential for "continuing to carry out major development of west China" (e.g., GWD), and pointed out that 80 percent of the TAR population are farmers and herders. "[Farmers and herders 'living and working in peace and contentment'] is the fundamental condition for us in holding the initiative in the struggle against the Dalai clique," Zhang said.[240] He listed Party objectives including to construct permanent housing for nomadic herders, improve farmers' housing, relocate farmers' housing to achieve poverty relief, and ensure that 80 percent of TAR farmers and herders are in "safe and suitable" housing within five years. Zhang called on the Party to support measures to "actively organize" Tibetan farmers and herders to move to towns or urban areas to find employment, set up businesses, or seek training in other skills.[241]

The Chinese government has implemented policies since 2000 (the year that GWD was implemented) to confiscate herders' land, erect fencing, and resettle herders, and has intensified the policies in some areas since 2003, Human Rights Watch (HRW) reported in June 2007.[242] Guolou (Golog) and Yushu Tibetan Autonomous Prefectures (TAPs) in Qinghai province are the areas most severely affected by implementation.[243] The report acknowledges that China faces environmental crises, and that Chinese officials have explained that removing herds from traditional pastures will benefit the environment,[244] but the report asserts that "there are grounds for disputing both who is responsible for those crises and the consequent actions taken by the government in the name of protection in Tibetan areas."[245]

The resettlement program has subjected herders to compulsory or forced resettlement, compulsory livestock reduction, bans on grazing, compulsory change of land use, and evictions to make way for public works schemes, the HRW report asserts.[246] Chinese authorities failed to consult adequately with the affected herders, provide them with adequate compensation, or allow them adequate options for complaint, thereby failing to fulfill requirements under the Chinese Constitution, according to the report.[247] "Claims of nonpayment are endemic, and there are also allegations of corruption and discrimination in the compensation process," according to HRW.[248]

The number of Tibetans affected by forced resettlement is unknown but it "clearly runs into the tens, if not hundreds, of thousands," according to the HRW report.[249] The Commission's 2006 Annual Report reported that TAR authorities relocated 48,000 herders and settled them in fixed communities in the period 2001–2004,[250] that a government program in Qinghai province to settle herders (including Tibetans) placed about 10,000 families in fixed communities by 2005,[251] and that a Gansu province program started in the late 1990s to settle herders in Tibetan autonomous areas settled 7,000 families by 2004 and is expected to be complete in 2009.[252]

TAR government Chairman Jampa Phuntsog stated in June 2007 that "no forced resettlement has been done" in the TAR, and he

provided details about some cases of relocation.[253] He acknowledged that the TAR government had "displaced some 7,000 people who lived at the source of the Yangtze River" in Changdu (Chamdo) prefecture and resettled them in Linzhi (Kongpo) prefecture. He claimed that the government had "respected the will of the people" in doing so. In addition, the TAR was seeking to move dozens of herding families out of the Hol Xil Natural Reserve, but not all of them had agreed to leave. "We are still trying to persuade them to move, and they will only be relocated when they agree to," Jampa Phuntsog said.[254]

The TAR government launched a program in 2006, concurrent with the region's 11th Five-Year Plan, to move Tibetan farmers and herders into new housing.[255] In the first year of operation, the program moved 56,000 households with 290,000 members into new houses.[256] Zhang Qingli personally led the effort, according to state-run media, and when the program concludes in 2010, it will have moved 220,000 families into new homes.[257] Based on an average household size of 5.2 persons (suggested by the preceding data), the total number of Tibetans moved into new housing by 2010 could be approximately 1.14 million—more than half of the total number of Tibetan rural residents in the TAR at the time of the 2000 census.[258]

Reports by advocacy groups and official Chinese media organizations on whether or not Tibetan participation in the housing program is voluntary, and the consequences of the financial burden on Tibetan farmers and herders, differ sharply. Zhang Qingli said in March 2007 that county- and prefecture-level governments offer each household a subsidy to defray 10,000–25,000 yuan (US$1,300–US$3,300) of the estimated 60,000 yuan (US$8,000) cost of a house, with Tibetan householders paying the rest.[259] Construction is on a "strictly volunteer basis," Zhang claimed.[260] HRW reported in December 2006 that the program requires villagers, "particularly those who live next to main roads," to rebuild their homes "in accordance with strict official specifications within two to three years."[261] The government does not subsidize the cost of the house, according to HRW, but lends Tibetans between 20 and 25 percent of the cost to householders.[262]

Tibetan farmers and nomads, whose 2,435 yuan average per capita income in 2006 places them among China's poorest citizens,[263] generally do not have savings or other capital resources equal to several years of income, so they face difficulty in paying for the government-mandated housing. "Nearly all must therefore supplement these funds with considerable bank loans," HRW said. Even relatively wealthy households have been "forced into debt," and borrowers who default on loans forfeit the right to occupy the house, according to the report.[264] None of the Tibetans interviewed by HRW reported that they had a right to challenge the program or refuse to participate in it. Some Tibetans described incidents in which local authorities demolished Tibetan homes after residents refused to participate in the program, or who said that they could not participate because they could not borrow enough money to pay for a new home. According to a June 2007 foreign media report, the relocated villages are "cookie-cutter" in style, and even though

farmers did not appear to be happy, they were "reluctant to complain."[265]

Local government officials in a village in Dingri county, located in Rikaze (Shigatse) prefecture in the TAR, threatened to punish households that failed to build a new home, according to a May 2007 Tibetan Centre for Human Rights and Democracy (TCHRD) report.[266] Officials told the villagers that they should improve their village before the 2008 Olympics so that it will be more attractive to tourists. The government offered to contribute 10,000 yuan toward houses that must cost a minimum of 20,000 yuan, but villagers in the area are so poor that only 4 of the 34 households built houses.[267] Three of the four households had to secure a bank loan in order to match the government's 10,000 yuan contribution. "The new houses do not reflect the better living standards of Tibetan people, they are not happy in the new houses built upon debts, [and] they are more worried than ever about how to repay the loans to banks," TCHRD's source said.[268]

PUNISHING PEACEFUL TIBETAN EXPRESSION UNDER CHINA'S CONSTITUTION AND LAW

Commission Reports, China's Record on Tibetan Rights

Commission Annual Reports issued since 2002 document that the Chinese government applies the Constitution and law in a manner that restricts and represses the exercise of human rights by Tibetans, and that uses the law to punish peaceful expression and action by Tibetans as threats to state security. The Chinese government, and governments in the TAR and other provinces where Tibetans live, made no progress in the past year toward improving the right of Tibetans in China to exercise their constitutionally guaranteed freedoms of religion, expression, and assembly. Such restrictions are inconsistent with the Chinese government's obligations under international human rights standards.[269] Instead, Communist Party political campaigns promote atheism and strengthen government efforts to discourage Tibetan aspirations to foster their unique culture and heritage. [See Section II—Freedom of Religion.]

- The 2002 Annual Report observed that the Chinese government seeks to maintain unity and stability[270] by "constraining Tibetan political, cultural, educational, and religious life," and that human rights and the rule of law in Tibetan areas of China are configured to serve government and Party interests.[271]
- In 2003, the Annual Report noted that friction remains between Tibetan aspirations to maintain their distinctive culture and religion and Chinese policies favoring atheism and emphasizing the primacy of national identity. China represses peaceful expression that it considers "splittist," or that it deems to be "detrimental to the security, honor, and interests of the motherland."[272]
- The 2004 Annual Report observed that China represses or punishes peaceful expression by Tibetans that authorities deem to "endanger state security" even if the expression is non-violent and poses no threat to the state. An official in Beijing told Commission staff in September 2003, "There is not a

distinct line between violent and non-violent. . . . A non-violent action can result in eventual violence."

• The 2005 Annual Report noted the downward trend in the number of known Tibetan political prisoners, and suggested, "Tibetans are avoiding the risks of direct criticism or protest against Chinese policies and are turning to education, arts, and religion for ways to express and protect their culture and heritage." But as incidents of protest declined, Chinese authorities watched for other signs of Tibetan resentment or nationalism.

• In 2006, the Annual Report provided additional information on how Tibetans appear to be avoiding the risks of direct protest against government policies and turning to other methods of cultural expression. After the Dalai Lama told Tibetans in India, "Neither use, sell, or buy wild animals, their products or derivatives," Tibetans in China staged public events in which they burned rare furs stripped from traditional Tibetan garments.[273]

Political Imprisonment of Tibetans: Peaceful Expression and Non-Violent Action as Threats to State Security

Chinese authorities continue to detain and imprison Tibetans for peaceful expression and non-violent action, charging them with crimes such as "splittism,"[274] and claiming that their behavior "endangers state security."[275] [See Section II—Rights of Criminal Suspect and Defendants—Law in Action: Abuses of Criminal Law and Procedure.] Expression or action that is linked to the Dalai Lama is especially likely to result in such charges. Chinese officials have punished Tibetans, such as Jigme Gyatso, a former monk imprisoned in 1996 who is serving an 18-year sentence[276] for printing leaflets, distributing posters, and later shouting pro-Dalai Lama slogans in prison, and Choeying Khedrub, a monk serving a life sentence since 2000 for printing leaflets, for peaceful expressions and non-violent actions that officials believe could undermine Party rule. Two Tibetans sentenced along with Choeying Khedrub, monk Yeshe Tenzin and builder Tsering Lhagon, are serving sentences of 10 and 15 years respectively on the same charges.

Possessing photographs or copies of religious teachings of the Dalai Lama can result in imprisonment for endangering state security (by "inciting splittism") for up to five years, especially if a Tibetan carries such material across the international border into the TAR, an official of the Rikaze (Shigatse) Prefecture Intermediate People's Court, located in the TAR, confirmed in 2005.[277] "Any document that relates to Tibetan independence, Dalai Lama photos, or any other documents or literature containing reactionary themes or subjects are punishable," he said. In February 2007, the Rikaze court sentenced a Tibetan man, Penpa, to three years' imprisonment after police searched his home and confiscated audio recordings of the Dalai Lama conducting a Buddhist teaching in India.[278] Local authorities became suspicious of Penpa when they learned that he was saving sheep from the slaughterhouse as a religious offering dedicated to the Dalai Lama's long life.[279]

Public security officials detained a total of nine Tibetans in Ganzi (Kardze) Tibetan Autonomous Prefecture (TAP), Sichuan province,

none of whom authorities accused of violent activity, between March and August 2006, according to reports issued between June and September.[280] Officials detained six of the Tibetans for alleged roles in printing and distributing pro-independence leaflets in late May: Kayo Doga (a layman in his late-50s, previously sentenced to three years of reeducation through labor in 2002 for his role in arranging a prayer ceremony for the Dalai Lama's long life); Yiga (Kayo Doga's daughter, a former nun); nuns Sonam Lhamo, Sonam Choezom (or Sonam Choetso), and Jampa Yangzom (or Jampa Yangtso); and Yiga, a female middle-school student. According to an unofficial source, a Ganzi county court issued a notice that all six detainees, including the minor, Yiwang, would face trial and that formal arrest had taken place.[281]

In separate incidents reported by unofficial sources involving the seventh and eighth Ganzi detentions, officials detained monk Namkha Gyaltsen of Gepheling Monastery in March 2006 for allegedly painting pro-independence slogans on government buildings (or putting up pro-independence posters), and monk Lobsang Palden, also of Gepheling, on August 15 after authorities searched his room and found "incriminating documents" including photos of the Dalai Lama.[282] Namkha Gyaltsen allegedly confessed and may face a sentence of seven to eight years, and officials formally arrested Lobsang Palden on September 6 on charges of inciting splittism. In the ninth reported Ganzi detention, public security officials searched the living quarters of Jinpa, the abbot of Taglung Monastery, located in Seda (Serthar) county in Ganzi TAP, in August 2006, according to an unofficial report.[283] The officials reportedly found nothing that they considered to be illegal, but they detained Jinpa nonetheless, possibly in connection with pro-independence posters that appeared in the monastery a year earlier.

Public security officials based at Sera Monastery in Lhasa detained monk Gyaltsen Namdrag in May 2006 on suspicion that he distributed pro-independence pamphlets, according to an unofficial report.[284] The Lhasa Intermediate People's Court sentenced him in October to five years' imprisonment on charges of endangering state security (probably "inciting splittism"). Gyaltsen Namdrag is reportedly serving his sentence at Qushui Prison, according to the report.

The Lhasa Intermediate People's Court sentenced tailor Sonam Gyalpo to 12 years' imprisonment for espionage on June 9, 2006,[285] following a search of his Lhasa home in August 2005 by state security officials who discovered photos and videotapes of the Dalai Lama and printed matter, according to an unofficial report.[286] Sonam Gyalpo allegedly made contact with the Tibetan government-in-exile in the 1990s and engaged in pro-independence activity in the TAR, according to official Chinese information reported by Dui Hua Dialogue in April 2007.[287] Sonam Gyalpo was 1 of about 10 Tibetans detained before the 40th anniversary of the TAR on September 1, 2005, according to another unofficial report.[288] He was reportedly imprisoned twice previously for a total of nearly four years as punishment for political activity,[289] and is serving his current sentence in Qushui Prison.[290]

Official Chinese information confirmed the detention of Lhasa school teacher Drolma Kyab in March 2005, his conviction on

charges of espionage and illegally crossing the border, and his sentence of 10 years and 6 months' imprisonment after he authored a manuscript touching on sensitive political subjects.[291] The unpublished book contained 57 chapters on subjects such as "democracy, sovereignty of Tibet, Tibet under [C]ommunism, colonialism, [and] religion," according to an unofficial report.[292] Drolma Kyab had started a second work that focused on Tibetan geography and that touched on topics including the number and location of military camps in "Chinese occupied Tibet."[293] He smuggled a letter appealing to the United Nations for help out of Qushui Prison,[294] where he is serving his sentence.[295] Drolma Kyab wrote in the letter, "They think that what I wrote about nature and geography was also connected to Tibetan independence. . . . [T]his is the main reason of my conviction, but according to Chinese law, the book alone would not justify such a sentence. So they announced that I am guilty of the crime of espionage."[296]

The Gannan Intermediate People's Court in Gansu province sentenced nun Choekyi Drolma to three years' imprisonment in December 2005 for "inciting splittism," according to official Chinese information that became available in November 2006.[297] She is serving her sentence in the Gansu Women's Prison. Choekyi Drolma was among five Tibetan monks and nuns detained in 2005 in Xiahe (Sangchu), in Gannan (Kanlho) Tibetan Autonomous Prefecture (TAP) in Gansu. Public security officials detained her along with nuns Tamdrin Tsomo and Yonten Drolma of Gedun Tengyeling Nunnery, and monks Dargyal Gyatso and Jamyang Samdrub of Labrang Tashikhyil Monastery, on May 22, 2005, on suspicion that they circulated and displayed letter-sized posters that were critical of the Chinese government. The official information mentioned only Choekyi Drolma, but it is likely that the court tried and sentenced the five monks and nuns together since they allegedly acted together. Dargyal Gyatso and Tamdrin Tsomo are believed to be serving 3-year sentences; Jamyang Samdrub and Yonten Drolma are believed to have been released after completing 18-month sentences.[298]

Jamphel Gyatso and Tashi Gyaltsen, two of a group of five monks of Dragkar Traldzong Monastery reportedly detained in Qinghai province in January 2005 and sentenced in February for publishing a poem in the monastery newsletter, are reportedly serving their three-year sentences at a brick kiln near Xining, the capital of Qinghai.[299] The other three monks, Lobsang Dargyal, Tsesum Samten, and Tsultrim Phelgyal, completed two-year and six-month sentences in July 2007 and are presumed to be released. Security officials considered the poem to be politically sensitive and ordered the monks to serve terms of reeducation through labor.

No new developments were reported in the past year in the cases of prisoners Bangri Chogtrul or Tenzin Deleg, reincarnated Tibetan lamas convicted in separate cases. Both men had contact with the Dalai Lama in India in the years prior to their detentions. Bangri Chogtrul (Jigme Tenzin Nyima), who lived as a householder in Lhasa and managed a children's home along with his wife, was convicted of inciting splittism and sentenced to life imprisonment in a closed court in Lhasa in September 2000.[300] The Lhasa Intermediate People's Court commuted his sentence to 19 years of fixed

term imprisonment in July 2003, and reduced the sentence by 1 year in November 2005.[301] Tenzin Deleg (A'an Zhaxi) was convicted in a closed court in Sichuan province in November 2002 of conspiring to cause explosions and inciting splittism.[302] Authorities claim that the case involves state secrets and refuse to disclose details of evidence that establishes a direct link between Tenzin Deleg and the alleged criminal acts. The Commission and Human Rights Watch have published reports on the case, which has stirred international controversy for its procedural violations and lack of transparency.[303] The provincial high court commuted Tenzin Deleg's reprieved death sentence to life imprisonment in January 2005. Chinese officials acknowledge that he suffers from coronary heart disease and high blood pressure.[304]

In an incident linked to a protest against Tenzin Deleg's imprisonment, public security officials in Litang county, Ganzi TAP, detained Tibetan nomad Ronggyal Adrag (Runggye Adak) on August 1, 2007, at a horse-racing festival after he climbed onto a stage where officials were scheduled to speak and, according to one report,[305] shouted slogans calling for the Dalai Lama's return to Tibet, the release of Gedun Choekyi Nyima (the Panchen Lama identified by the Dalai Lama), and Tibetan independence. According to other reports,[306] he called for the Dalai Lama's return, freedom of religion, and the releases of the Panchen Lama and Tenzin Deleg. Ronggyal Adrag's statements may have been provoked by a petition drive conducted by Chinese officials who visited local monasteries in the weeks before the festival and told monks to sign a petition stating that they do not want the Dalai Lama to return to Tibet.[307] In an unusually swift and public response, China's state-run media acknowledged on August 3 that police detained Ronggyal Adrag for "inciting separation of the nationalities," and that more than 200 Tibetans had gathered the same day outside the detention center to call for his release.[308] All of the Tibetans left the area of the detention center by the following day, according to the official report. A week later, on August 8, People's Armed Police forces used tear gas and stun grenades to disperse Tibetans who gathered peacefully near the horse-racing grounds to call for Ronggyal Adrag's release, according to an unofficial report.[309] Authorities detained three of Ronggyal Adrag's nephews on August 21, including monk Adrug Lopoe of Lithang Monastery, whom police deemed to be a "splittist" influence behind the public demands for Ronggyal Adrag's release.[310] Officials released Adrug Lopoe's two brothers soon after they took him into detention.[311]

Another incident of Tibetan expression of the wish for the Dalai Lama to return to Tibet resulted in the detention of seven 14- and 15-year old middle school students in Xiahe county, Gannan TAP, according to an NGO report.[312] On or about September 7, 2007, local public security officials detained about 40 students from a village middle school after some of the students allegedly wrote slogans on walls calling for the Dalai Lama's return and Tibetan freedom.[313] Police released all but seven of the students within 48 hours, and transferred seven boys to the Xiahe county seat, where authorities refused to provide any information to the children's families or confirm that they were in police custody.[314] The report named five of the boys: Chopa Kyab (age 14), Drolma Kyab (14),

Tsekhu (14), and two 15-year-olds each named Lhamo Tseten.[315] Police reportedly beat one of the seven boys upon detention, resulting in profuse bleeding, and refused to allow the boy's family to take him for medical care.

Chinese authorities carried out 13 known detentions of Tibetans in 2006, a decrease compared to the 24 such detentions in 2005 and 15 such detentions in 2004, according to information available in the Commission's Political Prisoner Database (PPD) as of September 2007. Of the known political detentions in 2006, nine took place in Sichuan province and four in the TAR. The PPD listed 100 known cases of current Tibetan political detention or imprisonment, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Reports of Tibetan political imprisonment often do not reach monitoring groups until at least one or two years after the detentions occur. Forty-nine of the Tibetans are believed to be detained or imprisoned in the TAR, 30 in Sichuan province, 9 in Qinghai province, and 9 in Gansu province. The location where Chinese authorities are holding the Panchen Lama and his parents is unknown. Based on sentence information available for 61 of the current prisoners, the average sentence length is 11 years and 7 months.

The number of known cases of current Tibetan political detention or imprisonment reported in the current Annual Report is approximately half the number that the Commission reported in the 2002 Annual Report.[316] The downward trend in the number of known Tibetan political prisoners may reflect incomplete information, as well as fewer Tibetans risking imprisonment as punishment for peaceful expression and non-violent action in opposition to Chinese policies. Instead, Tibetans may be turning to other methods of expressing their culture and self-identity.

Monk Ngawang Phuljung of Drepung Monastery, the longest serving Tibetan who remains imprisoned for counterrevolutionary crimes, received a 6-month reduction to his 19-year sentence in September 2005 and is due for release from Qushui Prison on October 18, 2007, according to an October 2006 report based on official Chinese information.[317] After his detention in April 1989, the Lhasa Intermediate People's Court sentenced him along with nine other Drepung monks at a public rally in November. Ngawang Phuljung's crimes included "forming a counterrevolutionary organization," "spreading counterrevolutionary propaganda," "passing information to the enemy," and "crossing the border illegally and spying," according to a 1994 UN Working Group on Arbitrary Detention (UNWGAD) report that quoted an official Chinese response about the case.[318] The UNWGAD report declared Ngawang Phuljung's detention arbitrary, and stated that the alleged espionage and betrayal of state secrets "consisted in fact in the exposure of cases of violations of human rights including their disclosure abroad."

V. Developments in Hong Kong

The United States supports a stable, autonomous Hong Kong under the "one country, two systems" formula articulated in the Sino-U.K. Joint Declaration and the Basic Law.[1] The people of Hong Kong enjoy the benefits of an independent judiciary[2] and an

open society in which the freedoms of religion, speech, and assembly are respected. The Commission strongly supports the provisions of the Basic Law that provide for the election of the Chief Executive and the entire Legislative Council through universal suffrage, and highlights the importance of the central government's obligation to give Hong Kong the "high degree of autonomy" promised in the Basic Law.

CONSTITUTIONAL REFORM AND STEPS TO UNIVERSAL SUFFRAGE

The National People's Congress Standing Committee (NPCSC) issued a decision in April 2004 prohibiting the people of Hong Kong Special Administrative Region (HKSAR) from electing both the Chief Executive in 2007 and the members of the Legislative Council (LegCo) in 2008 through universal suffrage.[3] Universal suffrage is described in Articles 45 and 68 of the Basic Law as the "ultimate aim."[4] Currently, the Chief Executive is selected by the 800-member Election Committee chosen from Hong Kong's 28 functional constituencies, and only half of the 60 legislators in the LegCo are chosen by direct election.

In June 2005, following the resignation of former Chief Executive Tung Chee-hwa, then-acting Chief Executive Donald Tsang was elected unopposed as Chief Executive. In December 2006, Civic Party legislator Alan Leong successfully competed in the Chief Executive Election Committee (CEEC) selection process, and ran against Tsang for Chief Executive in March 2007. Tsang and Leong conducted an open and vigorous election campaign. Two televised debates were widely viewed, and attracted broad public and media interest. Tsang won a large majority of the CEEC votes and will serve a five-year term ending in 2012. Under Hong Kong law, he cannot run for another term. Tsang has vowed publicly to "resolve" the universal suffrage issue during his term in office.[5]

On July 1 2007, Hong Kong's Constitutional Affairs Bureau was renamed the Constitutional and Mainland Affairs Bureau "to reflect more clearly the Bureau's key function of coordinating and promoting closer ties and cooperation with the Mainland."[6] The Bureau is responsible "for overseeing the full and faithful implementation of the Basic Law," and ensuring that local elections are held fairly, openly, and honestly in accordance with the relevant provisions of the Basic Law.[7] The Bureau in 2007 focused on public discussion of the models, roadmap, and timetable for implementing universal suffrage for the Chief Executive and the LegCo. During the second half of 2007, the Bureau also has focused on further development of Hong Kong's political appointment system. As of July 1, 2007, the Bureau also assumed responsibility for matters relating to human rights and access to information.[8]

The Hong Kong Government issued a Green Paper on Constitutional Development ("the Green Paper") in July 2007 to consult the public on plans for implementing universal suffrage.[9] The Green Paper outline plans to develop a "mainstream" model of reform by the end of 2007.[10] The document offers a number of scenarios and timetables for universal suffrage including 2012 and 2016.[11] The issuance of the Green Paper for public comment reflects an attempt to forge a basis for consensus on implementation of universal suffrage and the future development of the democratic process in

Hong Kong.[12] The period of public consultation ends on October 10, 2007. After summarizing public comments, the HKSAR Government will submit a report to Beijing on the views gathered.

The Basic Law provides for an independent judiciary. Under the Basic Law, the courts may interpret those provisions of the Basic Law that address matters within the limits of the SAR's autonomy. The courts also interpret provisions of the Basic Law that touch on Chinese central government responsibilities, or on the relationship between the central authorities and the SAR. However, before making final judgments on these matters, which are not subject to appeal, the courts must seek an interpretation of the relevant provisions from the NPCSC.[13]

Under the Basic Law, the National People's Congress (NPC) has the sole power to amend the Basic Law. Placing an amendment of the Basic Law on the NPC's agenda requires the approval of the Chief Executive, two-thirds of the LegCo, and two thirds of Hong Kong's NPC delegates.

The Basic Law requires the courts to follow the NPCSC's interpretation of Basic Law provisions, although judgments previously rendered are not affected. As the final interpreter of the Basic Law, the NPCSC also has the power to initiate interpretations of the Basic Law, as in April 2004 when it ruled out universal suffrage in Hong Kong's 2007 and 2008 elections.[14] There is concern that this process, which circumvents the Court of Final Appeal's power of final adjudication, could be used to limit the independence of the judiciary.[15]

VI. Endotes

† Voted to adopt: Representatives Levin, Kaptur, Udall, Honda, Walz, Smith, Manzullo, Royce, and Pitts; Senators Dorgan, Baucus, Levin, Feinstein, Brown, Hagel, Smith, and Martinez; Under Secretary Dobriansky, Assistant Secretary Hill, and Acting Deputy Secretary Radzely.
Voted not to adopt: Senator Brownback.

Notes to Section I—Executive Summary and Recommendations 2006–2007

[1] Jacques deLisle, "China's Quest for Resources and Influence," Orbis reposted to AmericanDiplomacy.org, 15 February 07; Qi Zhou, "Human Rights Conflicts: China and the United States," Human Rights Quarterly, Volume 27, Number 1 (February 2005), 105:124; For an example of Chinese thinkers' assertion of a strong notion of sovereignty in the United Nations as a rejection of U.S. human rights "interference" in China, see "Are Human Rights Higher than Sovereignty?" People's Daily Online, 17 March 06.

[2] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report 2007, China (includes Tibet, Hong Kong, and Macau), 14 September 07.

[3] The Commission treats as a political prisoner an individual detained or imprisoned for exercising his or her human rights under international law, such as peaceful assembly, freedom of religion, freedom of association, free expression, including the freedom to advocate peaceful social or political change, and to criticize government policy or government officials. (This list is illustrative, not exhaustive.) In most cases, prisoners in the PPD were detained or imprisoned for attempting to exercise rights guaranteed to them by China's law and Constitution, or by international law, or both.

[4] The Tibet Information Network (TIN) ceased operations in September 2005.

Notes to Section II—Rights of Criminal Suspects and Defendants

[1] See 22 U.S.C. δ6912(a)(5).

[2] See 22 U.S.C. δ6912(b).

[3] The UN Working Group on Arbitrary Detention (UNWGAD) visited China from September 18–30, 2004, and the UN Special Rapporteur on Torture visited from November 20 to December 2, 2005. For findings from those visits, see UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Mission to China, Addendum, 29 December 04 [hereinafter UNWGAD Report]; Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to China, Advance Edited Version, 10 March 06 [hereinafter Nowak Report].

[4] These include the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. PRC Aide Memoire, reprinted in United Nations (Online), 13 April 06.

[5] Ibid.

[6] See Wang Xinyou, "International Association of Anti-Corruption Authorities Formally Established; Jia Chunwang Elected First Chair" [Guoji Fantanju Lianhehui zhengshi chengli; Jia Chunwang dangxuan shouren zhuxi], Procuratorial Daily (Online), 26 October 06; World Health Organization (Online), "Dr. Margaret Chan to be WHO's next Director-General," 9 November 06.

[7] See, e.g., Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 48, arts. 5, 9–11, 14 [hereinafter UDHR]; International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, arts. 7, 9, 14 [hereinafter ICCPR].

[8] UN Commissioner for Human Rights, Fact Sheet #26, the Working Group on Arbitrary Detention. Examples of the first category include individuals who are kept in detention after the completion of their prison sentences or despite an amnesty law applicable to them, or in violation of domestic law or relevant international instruments. The rights and freedoms protected under the second category include those in Articles 7, 10, 13, 14, 18, 19, and 21 of the UDHR, and in Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.

[9] ICCPR, arts. 9(1) and 9(2).

[10] PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 2.

[11] Nowak Report, para. 60.

[12] The 61st session of the UN Commission on Human Rights was held in Geneva from March 14 to April 22, 2005.

[13] See A Global Review of Human Rights: Examining the State Department's 2004 Annual Report, Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations, House Committee on International Relations, 17 March 05, Oral Statement of Michael Kozak, Assistant Secretary of State for Democracy, Human Rights, and Labor, US Department of State, 40. Kozak, then-Acting Assistant Secretary of State for the Bureau of Democracy, Human Rights and Labor, noted in his testimony that the Administration's decision on whether it would introduce a resolution condemning China's human rights practices in any given year depended on what concrete steps the Chinese government had taken to improve human rights that year.

[14] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2006, China (includes Tibet, Hong Kong, and Macau), 6 March 07, sec. 1.e. As of September 2007, the Commission's Political Prisoner Database contained only 87 records of prisoners still believed to be in detention or serving sentences connected to counterrevolutionary activity.

[15] See Dui Hua Foundation (Online), "Long-Serving June 4 Prisoner Set for Release," 29 August 07.

[16] See Jim Yardley, "Man Freed After Years in Jail for Mao Insult," New York Times (Online), 23 February 06; Dui Hua Dialogue, "Sentence Reduction for Yu Dongyue," Summer 05, 6.

[17] See Dui Hua Dialogue, "Official Responses Reveal Many Sentence Adjustments," Fall 06, 6.

[18] See UN Commission on Human Rights (Online), Opinions adopted by the Working Group on Arbitrary Detention, Decision No. 8/2000, 9 November 00, 70. In the opinion that it adopted, the UNWGAD declared Jigme Gyatso's detention to be arbitrary and in contravention of articles 19 and 20 of the UDHR and articles 19 and 22 of the UDHR.

[19] State Council Information Office, White Paper on Human Rights in China, PRC Central Government (Online), November 91.

[20] The Commission's Political Prisoner Database contained approximately 4,060 individual case records of political and religious imprisonment in China, as of September 2007. See supra, "Political Prisoner Database," and accompanying notes. Thousands of political prisoners are detained in China's reeducation through labor system. See infra, "Detention Outside the Criminal Process," and accompanying notes.

[21] Crimes that "disturb public order" are listed in Part 2, Chapter 6, Section 1, of the Criminal Law, and include "assault[ing] a State organ, making it impossible for the State organ to conduct its work" (Article 290), gathering people to block traffic (Article 291), and the use of heretical sects to undermine implementation of the law (Article 300), among others. Although the 1997 revision of the Criminal Law eliminated all counterrevolutionary crimes, it added a new category of crimes "endangering state security." Crimes that "endanger state security" are listed in Part 2, Chapter 1, and include "inciting splittism" or "splittism" (Article 103), "inciting subversion" or "subversion" (Article 105), and "illegally providing state secrets to entities outside of China" (Article 111), among others.

[22] See, e.g., CECC, 2003 Annual Report, 2 October 03, 15–16; CECC, 2004 Annual Report, 5 October 04, 13–14; CECC, 2005 Annual Report, 11 October 05, 25–26; CECC, 2006 Annual Report, 20 September 06, 47–48.

[23] UNWGAD Report, para. 23.

[24] Nowak Report, para. 35.

[25] Ibid., para. 34.

[26] UDHR, art. 10 and 11(1); ICCPR, arts. 14(1) and 14(2).

[27] PRC Criminal Procedure Law [hereinafter CPL], enacted 1 January 79, amended 17 March 96, art. 64 (establishing an exception to this requirement "in circumstances where such notification would hinder the investigation or there is no way of notifying them"). The maximum period of detention prior to approval of a formal arrest is 37 days after taking into account extensions permitted by law. Ibid., art. 69.

[28] See CECC, 2003 Annual Report, 18; CECC, 2004 Annual Report, 16; CECC, 2005 Annual Report, 25; CECC, 2006 Annual Report, 47.

[29] Human Rights in China (Online), "News Wrap-up: Crackdowns on Petitioners Continue," 9 March 07; "Cat-and-mouse game begins for petitioners," South China Morning Post (Online), 2 March 07.

[30] "Ministry of Public Security Announces the Status of Preventing Major Public Security Disasters and Accidents, Ensuring Public Security Supervision" [Gonganbu tongbao yufang zhongda zhi'an zaihai shigu, baozhang gonggong anquan ducha qingkuang], China News Net (Online), 2 March 06.

[31] Human Rights Watch (Online), "Largest 'Clean-up' of Protestors and Rights Activists in Years," 14 March 07.

[32] See Human Rights Watch (Online), "China: Beijing Petitioners' Village Faces Demolition," 6 September 07; Mark Magnier, "Beijing evicting disgruntled citizens from 'petitioners village,'" Los Angeles Times (Online), 18 September 07.

[33] Human Rights Watch, "China: Beijing Petitioners' Village Faces Demolition."

[34] The U.S. State Department characterized house arrest as a "nonjudicial punishment and control measure" that can sometimes include "complete isolation in one's own home or another location under lock and guard." U.S. Department of State, Country Reports on Human Rights Practices—2006, China, sec. 1.d.

[35] Human Rights Watch, "Largest 'Clean-up' of Protestors and Rights Activists in Years."

[36] "Population Planning Official Confirms Abuses in Linyi City, Shandong Province," CECC China Human Rights and Rule of Law Update, October 2005, 2; Philip P. Pan, "Rural Activist Seized in Beijing," Washington Post (Online), 7 September 05. For a summary and the ultimate outcome of Chen's case, see CECC, 2006 Annual Report, 49.

[37] Chinese Human Rights Defenders (Online), "Activist Chen Guangcheng's House Arrest Exceeds Legal Limits, with Domestic Remedies Ineffective, CRD Submits Case to UN," 9 March 06.

[38] Hu Jia, "After Serious Negotiations with Yuan Weijing, Police Are Forced to Formally Release Her From House Arrest" [Zai Yuan Weijing yanzheng jiaoshe xia jingfang beipo zhengshi jiechu dui ta de "jianshijuzhu"], reprinted in Chinese Human Rights Defenders (Online), 29 May 07.

[39] Hu Jia, "Yuan Weijing Barred From Meeting U.S. Embassy Human Rights Officer" [Yuan Weijing huijian Meiguo shiguan renquan guanyuan shouzu], reprinted in Chinese Human Rights Defenders (Online), 6 July 07; Maureen Fan, "Wife of Chinese Activist Detained at Beijing Airport," Washington Post (Online), 25 August 07.

[40] Wu Yihuo and Hong Jun, "Too Few Administrative Law Enforcement Cases Transferred to Judicial Organs—Relevant Anhui Research Reveals Information: Three Major Factors Influence Effective Links Between Administrative Law Enforcement and Criminal Law Enforcement" [Xingzheng zhifa anjian yisong sifa jiguan taishao, Anhui youguan yanjiuban touchu xinxi: san da yinsu yingxiang xingzheng zhifa yu xingshi zhifa youxiao xianjie], Procuratorial Daily (On-

line), 31 January 05; Protection of Human Rights in the Context of Punishment of Minor Crimes in China, Staff Roundtable of the Congressional-Executive Commission on China, 26 July 02, Testimony of Dr. Veron Mei-ying Hung, Associate, China Program, Carnegie Endowment for International Peace.

[41] Various analysts estimate that between 2 percent and 10 percent of those sentenced to reeducation through labor are political detainees. Veron Mei-Ying Hung, "Reassessing Reeducation Through Labor," 2 China Rights Forum 35 (2003); Randall Peerenboom, "Out of the Frying Pan and Into the Fire," 98 Northwestern University Law Review 991, 1000–01 and accompanying notes (2004); Jim Yardley, "Issue in China: Many in Jails Without Trial," New York Times (Online), 9 May 05.

[42] PRC Administrative Punishment Law, enacted 17 March 96, art. 8(6).

[43] For more information about the passage and effect of the Public Security Administration Punishment Law, see CECC, 2006 Annual Report, 51–52.

[44] PRC Public Security Administration Punishment Law, enacted 28 August 05, art. 27(2).

[45] According to attorney Li Baiguang, at least 60 people were attending a worship service at a house church in Bukou district, Wendeng city, on June 11, 2006, when 50 public security officials from several different precincts and departments arrived. These authorities blocked the exits and ordered worshippers into police vehicles. Thirty-one of the worshipers were driven to the Bukou police station for interrogation, and all but Tian Yinghua, Wang Qiu, and Jiang Rong were released following interrogation. Li noted that officials from the Wendeng Religious Affairs Office had been to the house church in April 2006, and had told worshipers there that any religious gathering that exceeded 30 people or included non-family members was an "illegal gathering." See Li Baiguang, "Shandong Wendeng: Threatening to Confiscate House Where Christians Gathered" [Shandong Wendeng: weixie yao moshou Jiditu jihui de fangzi], reprinted in China Aid Association (Online), 27 July 06; China Aid Association (Online), "House Church Christians Take Legal Action, File Lawsuit Against Local Public Security Bureau for Illegal [Administrative] Detention" [Shandong Wendeng jiating jiaohui Jidutu caiqu falü xingdong, qisu dangdi gongan jiguan feifa jujin], 25 October 06.

[46] According to an application for administrative reconsideration filed with the Wendeng city government by Li on June 30, 2006, the Wendeng Public Security Bureau's decision to place Tian, Wang, and Jiang in administrative detention illegally interfered with their constitutionally and legally protected right to freedom of religious belief. On September 28, the government rejected this application. On October 12, Li proceeded to file with the Wendeng Intermediate People's Court an administrative complaint that set forth arguments similar to the ones in his earlier application. See Application for Administrative Reconsideration Filed by Li Baiguang with the People's Government of Wendeng City, Shandong Province, on Behalf of Tian Yinghua, Wang Qiu, and Jiang Rong [Xingzheng fuyi shenqingshu], 30 June 06, reprinted in China Aid Association (Online), 27 July 06; Administrative Complaint Filed by Li Baiguang with the People's Court of Wendeng City, Shandong Province, on Behalf of Tian Yinghua [Xingzheng qisu zhuang], 12 October 06, reprinted in Boxun, 26 October 06.

[47] China Aid Association (Online), "Xinjiang Arrests Another Female Christian Preacher; Shandong Christians File Administrative Lawsuit Against Public Security Agency" [Xinjiang you daibu yi ming nü jidu tu chuandao ren; Shandong jidu tu dui gongan jiguan tiqi xingzheng susong], 15 November 06.

[48] Trial Measures on Reeducation Through Labor [Laodong jiaoyang shixing banfa], issued 21 January 82, arts. 13, 58(10); Provisions on Public Security Agencies' Handling of Reeducation Through Labor Cases [Gongan jiguan banli laodong jiaoyang anjian guiding], issued 12 April 02, art. 44.

[49] See Trial Measures on Reeducation Through Labor, art. 10; Provisions on Public Security Agencies' Handling of Reeducation Through Labor Cases, art. 9; These crimes are not serious enough to warrant punishment under the Criminal Law, but are too serious to fall under the PSAPL. See Protection of Human Rights in the Context of Punishment of Minor Crimes in China, Testimony of Dr. Veron Mei-ying Hung.

[50] A recent China Daily article notes that the original purpose of the reeducation through labor system was to "punish dissent." Wu Jiao, "New law to abolish laojiao system," China Daily (Online), 1 March 07.

[51] Gao Yifei, "Why NPC Delegates Propose Reforming the Reeducation Through Labor System" [Renmin daibiao weihe tiyi gaige laojiao zhidu], Boxun (Online), 29 April 06.

[52] Nowak Report, para. 33; Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), sec. 1.d.

[53] See PRC Criminal Law, ch. 3, sec. 1–3.

[54] Wu, "New law to abolish laojiao system."

[55] UNWGAD Report, paras. 56, 73. Individuals can appeal under the ALL for a reduction in, or suspension of, a RTL sentence, but these appeals are rarely successful. U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d; Hung, "Reassessing Reeducation Through Labor," 37–38.

[56] See Protection of Human Rights in the Context of Punishment of Minor Crimes in China, Testimony of Dr. Veron Mei-ying Hung ("Unfortunately, the courts' role in reviewing the legality of administrative sanctions such as [RTL] has been limited by aggrieved parties' fear of suing administrative organs and limited access to lawyers as well as administrative organs' interference with the process.")

[57] See After the Detention and Death of Sun Zhigang, Staff Roundtable of the Congressional-Executive Commission on China, 27 October 03, Testimony of Dr. James D. Seymour, Senior Research Scholar, Weatherhead East Asian Institute, Columbia University; Protection of Human Rights in the Context of Punishment of Minor Crimes in China, Testimony of Dr. Veron Mei-ying Hung; Peerenboom, "Out of the Frying Pan and into the Fire," 999.

[58] See U.S. Department of State, Country Reports on Human Rights Practices—2006, China, sec. 1.d. This number exceeds Professor James Seymour's estimate of 400,000 individuals held in RTL centers 20 years ago. After the Detention and Death of Sun Zhigang, Testimony of Dr. James D. Seymour.

[59] Freedom House (Online), 2005 China Country Report. In its December 2004 report, the UNWGAD found:

"The operation of the laws governing decisionmaking on placement in a [reeducation] through [labor] camp is, however, highly problematic. From reliable sources, including interviews with persons affected, it is clear that in the overwhelming majority of cases, a decision on placement in a [reeducation] center is not taken within a formal procedure provided by law. The commission vested with power to take this decision in practice never or seldom meets, the person affected does not appear before it and is not heard, no public and adversarial procedure is conducted, no formal and reasoned decision on placement is taken (or issued for the person affected). Thus, the decisionmaking process completely lacks transparency. In addition, recourse against decisions are [sic] often considered after the term in a center has been served." UNWGAD Report, para. 58.

[60] Under Chinese law, punishments that involve a restriction on personal liberty may only be established by national law. PRC Legislation Law, enacted 15 March 00, art. 8(v); PRC Administrative Punishment Law, arts. 9, 10.

[61] CPL, art. 12.

[62] PRC Constitution, art. 37.

[63] Nowak Report, para. 63; State Council Decision on the Question of Reeducation Through Labor [Guowuyuan guanyu laodong jiaoyang wenti de jueding], issued 3 Aug 57, para. 2; "Last year's rate of resettling those released from prison or reeducation through labor near 90 percent" [Xingshi jiejiao renyuan qunian anzhilüjin jiucheng], China Legal Publicity (Online), 3 March 06; Yardley, "Issue in China: Many in Jails Without Trial."

[64] Nowak Report, para. 62.

[65] Ibid., para. 64. Article 10(3) of the ICCPR provides that, "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." In response to characterization of forced reeducation as a form of inhuman or degrading treatment, Chinese authorities have maintained that RTL helps transition detainees back into society.

[66] UNWGAD Report, paras. 16, 45; ICCPR, arts. 9, 14.

[67] In 2003, 127 NPC delegates raised the issue of reforming RTL. At the 2004 NPC plenary session, this number increased to 420, or approximately one-tenth of the entire NPC body. NPC delegates at the 2005 plenary session submitted six motions to expedite RTL reform, and in January 2006, the NPCSC added the draft law for reforming RTL to its legislative plan for 2006. Gao, "Why NPC Delegates Propose Reforming the Reeducation Through Labor System."

[68] Liao Weihua, "Reeducation Through Labor System Faces Change; Law on Correction of Unlawful Acts To Be Formulated" [Laojiaozhi mianlin biangai jiang zhiding weifa xingwei jiaozhifa], Beijing News, reprinted in Xinhua (Online), 2 March 05.

[69] "Reeducation Through Labor 'Changes Names'" [Laojiao "gengming"], China Business View (Online), 4 March 05.

[70] Wu, "New law to abolish laojiao system" (summarizing comments by Wang Gongyi, Deputy Director of the Institute of Justice Research, a research center affiliated with the Ministry of Justice).

[71] See Qin Liwen, "Chongqing Implements 'Interim Provisions on Legal Representation in Reeducation Through Labor Cases'" [Chongqing shishi "Lüshi daili laodong jiaoyang anjian zanxing guiding"], Legal Daily, reprinted in Procuratorial Daily (Online), 3 April 07; Irene Wang, "Lawyers win role for people facing labour-camp cases," South China Morning Post (Online), 4 April 07.

[72] See Chongqing Municipal Public Security Bureau, Chongqing Municipal Justice Bureau Circular on Issuing Interim Provisions on Legal Representation in Reeducation Through Labor Cases [Chongqing shi gonganju, Chongqing shi sifaju guanyu yinfa lüshi daili laodong jiaoyang anjian zanxing guiding de tongzhi], issued 16 March 07, arts. 2, 9–10.

[73] See CPL, arts. 32–41.

[74] See Wu, "New law to abolish laojiao system" (quoting Wang Gongyi as saying that "[the Chongqing regulation] allows people to defend themselves, a right enshrined in the constitution" and therefore "works as a good example for national legislation"). The article notes that the Chongqing Justice Bureau obtained approval for its initiative from the Ministry of Justice and the Ministry of Public Security. In May, Shandong province adopted measures providing for similar procedural protections in RTL cases. See Trial Measures on Legal Representation in Reeducation Through Labor Cases [Lüshi daili laodong jiaoyang anjian shixing banfa], issued 25 May 07.

[75] See Wu, "New law to abolish laojiao system;" Hai Tao, "Chongqing Permits Legal Representation in Reeducation Through Labor Cases" [Zhongguo Chongqing yunxu lüshi daili laodong jiaoyang an], Voice of America (Online), 4 April 07.

[76] See, e.g., CPL, arts. 92 (on interrogation by summons), 64 (on notification of the reasons for detention), 69 (on approval of arrest), 124–128 (on release pending trial), and 168 (on pronouncement of a court judgment).

[77] See Supreme People's Court Notice on Issues Related to Clearing Cases of Extended Detention [Zuigao renmin fayuan guanyu qingli chaoqi jiya anjian youguan wenti de tongzhi], issued 29 July 03.

[78] See Several Provisions from the Supreme People's Procuratorate Regarding the Prevention and Correction of Extended Detention in Procuratorial Work [Zuigao renmin jianchayuan guanyu zai jiancha gongzuo zhong fangzhi he jiuzheng chaoqi jiya de ruogan guiding], issued 24 September 03, para. 1.

[79] Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security Notice on the Strict Enforcement of the Criminal Procedure Law, and on the Conscientious Correction and Prevention of Extended Detention [Zuigao renmin fayuan, zuigao renmin jianchayuan, gonganbu guanyu yange zhixing xingshi susongfa, qieshi jiufang chaoqi jiya de tongzhi], issued 11 November 03.

[80] ICCPR, arts. 9(3) and 9(4).

[81] UNWGAD Report, para. 32.

[82] See State Council Information Office, White Paper on Fifty Years of Progress in China's Human Rights, PRC Central Government (Online), June 00.

[83] See State Council Information Office, White Paper on China's Progress in Human Rights: 2003, PRC Central Government (Online), March 04.

[84] See State Council Information Office, White Paper on China's Progress in Human Rights in 2004, PRC Central Government (Online), April 05.

[85] Nowak Report, note 34.

[86] See Supreme People's Procuratorate Work Report [Zuigao renmin jianchayuan gongzuo baogao] [hereinafter SPP Work Report], 13 March 07.

[87] "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year"[Jiuzheng chaoqi jiya gonggu gongzuo qunian xin fasheng chaoqi jiya xiajiang 96.2%], Procuratorial Daily (Online), 21 May 06; "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12.

[88] Wu Jing, "Supreme People's Court President Xiao Yang: Delayed Justice Is In Fact Injustice" [Zuigao renmin fayuan yuanzhang Xiao Yang: chidao de gongzheng jiushi bu gongzheng] Defense Lawyer Net, 3 August 06.

[89] See National People's Congress Standing Committee Work Report [Quanguo Renmin Daibiao Dahui changwu weiyuanhui gongzuo baogao], 20 March 07.

[90] See Han Jinghong, "Supreme People's Procuratorate: In 2006, Phenomenon of Extended Detention Fell To Historical Low" [Zuigaojian 06 nian chaoqi jiya xianxiang yi jiangdao lishi zuididian], China News Net, reprinted in China Court Net, 14 March 07.

[91] "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year," Procuratorial Daily; "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12. In 2003, the SPP passed regulations that prohibit the abuse of legal procedures to disguise the extended detention of a criminal suspect. Several Provisions from the Supreme People's Procuratorate Regarding the Prevention and Correction of Extended Detention in Procuratorial Work, para. 1.

[92] In 2003, people's supervisors were given administrative authority to challenge only procuratorate actions in violation of Chinese law. See Supreme People's Procuratorate Trial Provisions on Implementation of the System of People's Supervisors [Guanyu shixing renmin jianduyuan zhidu de guiding (shixing)], issued 2 September 03, amended 5 July 04. There are some limitations on who may qualify to serve as a "people's supervisor," including a minimum age of 23 years and formal recommendation and appointment upon evaluation. Ibid., arts. 5(3) and 8. As of late 2006, 86% of the nation's procuratorates had instituted this system. See Nationwide Cases of Extended Detention Fall to Historical Low [Quanguo chaoqi jiya an jiangdao lishi zuidi], Beijing Youth Daily, reprinted in Xinhua (Online), 25 April 07.

[93] Nowak Report, para. 45; UN High Commissioner for Human Rights (Online), "Human Rights Council Discusses Reports on Torture, Arbitrary Detention and Independence of Judges and Lawyers," 19 September 06.

[94] Nowak Report, para. 42.

[95] Ibid., para. 43. These include police stations, pretrial detention centers, RTL centers, and "ankang" hospitals for the psychiatric commitment of criminal offenders.

[96] Ibid., para. 44.

[97] Ibid., para. 45.

[98] See also ibid., paras. 53–57.

[99] For more information about his case, see 2005 Annual Report, 24; CECC, 2006 Annual Report, 57.

[100] For more information about their case, see "Detention, Torture of Anhui Teens Reflect Continuing Criminal Procedure Violations," CECC China Human Rights and Rule of Law Update, October 2006, 2.

[101] For additional discussion of these topics, see "Law on the Books: Judicial Institutions and Challenges," infra.

[102] See Ministry of Foreign Affairs (Online), "Third Report on the Implementation of the Convention against Torture and Others," 15 November 00. The Chinese government ratified the CAT in 1988. Article 19 of the CAT requires that state parties report to the Committee against Torture within one year of ratification and once every four years thereafter. The due date for the Chinese government's latest report was November 2, 2005.

[103] "Foreign Ministry Spokesman Qin Gang's Press Conference on 6 December 2005," Ministry of Foreign Affairs (Online), 7 December 05.

[104] PRC Criminal Law, arts. 247, 248. A "judicial officer" is defined as one who "exercises the functions of investigation, prosecution, adjudication, and supervision and control." Ibid., art. 94. The Special Rapporteur on Torture notes that the Supreme People's Procuratorate, which directly handles all investigations of torture, restricts application of both Articles 247 and 248 so that law enforcement officials are prohibited from acting, or punishable for abuses, in just a small number of enumerated cases. Nowak Report, para. 16. New regulations effective July 2006 expand the number of punishable scenarios from five to eight (in cases of coercing a confession under torture) and from five to seven (in cases of acquiring evidence through the use of force and prisoner maltreatment). Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases, sec. II, paras. 3–5.

[105] See Provisions on the Procedures for Public Security Agency Handling of Administrative Cases, [Gongan jiguan banli xingzheng anjian chengxu guiding], issued 26 August 03, art. 26 (stating that illegally acquired evidence may not form the basis of a determination in any administrative case). New provisions went into effect on August 24, 2006, and supercede the 2003 provisions. See Ministry of Public Security, Provisions on the Procedures for Public Security Agency Handling of Administrative Cases [Gongan jiguan banli xingzheng anjian chengxu guiding], issued 29 March 06. The Ministry of Public Security has explained that the 2006 revision establishes stricter procedural rules consistent with the new Public Security Administration Punishment Law. See "MPS Revises Internal Procedures To Conform With Public Security Administration Law," CECC China Human Rights and Rule of Law Update, November 2006, 10–11.

[106] Communist Party of the People's Republic of China, Regulations on Disciplinary Actions [Zhongguo Gongchandang jilü chufen tiaoli], issued 18 February 04.

[107] Provisions on Public Security Use of Continuing Interrogation [Gongan jiguan shiyong jixu panwen guiding], issued 12 July 04, arts. 1, 18–19.

[108] Trial Regulations on Disciplinary Sanctions Against Procuratorate Personnel [Jiancha renyuan jilü chufen tiaoli (shixing)], issued 1 June 04, art. 47.

[109] "Ministry of Justice Issues Prohibitions to Restrain Prison and RETL Police Abuses," CECC China Human Rights and Rule of Law Update, April 2006, 4.

[110] See Supreme People's Procuratorate Provisions on the Criteria for Filing Cases of Dereliction of Duty Infringing Upon Rights [Zuigao renmin jianchayuan guanyu duzhi qinquan fanzui anjian li'an biaozhun de guiding], issued 29 December 05, sec. 2. For additional information about these regulations, see CECC, 2006 Annual Report, 46.

[111] Human Rights in China, "Impunity for Torturers Continues Despite Changes in the Law," April 00, 3. See also Professor Peter T. Burns, "China and the Convention against Torture," The Canada China Procuratorate Reform Cooperation Programme Lecture Series I, Xi'an and Lanzhou, China (August 2005) (stating that "[t]he whole premise of the Torture Convention is that torturers are not to enjoy impunity" and that "they must be investigated, arrested and tried for their crimes"). The prohibition against torture is also included in Article 5 of the UDHR.

[112] See "Miscarriage of Justice in Chaohu, Anhui: Three Policemen Investigated for Suspected Involvement in Coercing Confessions Under Torture" [Anhui Chaohu yuan'an: san xingjing shexian xingxun bigong bei li'an zhencha], Xinhua (Online), 12 September 06; "Anhui: Four Students Falsely Accused of Murder, Detained For 3 Months During Which They Suffered Extensive Torture in Succession [Anhui: si xuesheng beiwu sharen jiya 3 ge yue; qijian zaoshou "chelunzhan" shoujin zhemo], Southern Metropolitan Daily, reprinted in Southern Daily (Online), 12 September 06.

[113] "Symposium on Illegal Evidence Gathering and Wrongful Conviction" Convenes; Procuratorates To Further Standardize Evidence Gathering Work" ["Feifa quzheng yu xingshi cuo'an" yantaohui zhaokai; jiancha jiguan jinyibu guifan quzheng gongzuo], Legal Daily (Online), 18 November 06.

[114] "Supreme People's Procuratorate Says It Will Strengthen Implementation of the Existing System To Bring Under Control the Use of Illegal Evidence Gathering" [Zuigaojian biaoshi jiang qianghua zhixing xian you zhidu zhili feifa quzheng], Xinhua (Online), 19 November 06.

[115] See SPP Work Report, 11 March 02; SPP Work Report, 10 March 04; SPP Work Report, 9 March 05.

[116] See SPP Work Report, 13 March 07.

[117] Office of the UN High Commissioner for Human Rights (Online), Declaration and Reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 April 04. By contrast, the United States has declared that it recognizes the competence of the Committee against Torture.

[118] UN High Commissioner for Human Rights, "Human Rights Council Discusses Reports on Torture, Arbitrary Detention and Independece of Judges and Lawyers."

[119] Nowak Report, para. 17.

[120] Burns, "China and the Convention against Torture," 8.

[121] Human Rights in China, "Impunity for Torturers," 16.

[122] See Amnesty International (Online), "China: Torture/Medical concern/Prisoner of conscience, Chen Guangcheng (m)," 21 June 07.

[123] See Li Qing and Huang Hui, "Jingdezhen No. 2 Detention Center Superintendent Prosecuted" [Jingde zhen di er kanshousuo zhidaoyuan bei qisu], China Legal Publicity (Online), 4 June 05.

[124] See "No Tolerance For Further Aggression By Prison Bosses" [Bu rong laotou yuba zai xiaozhang], Chinese People's Political Consultative Conference (Online), 13 September 04.

[125] See Ya Wei, "Critique: Malpractice and Reform in China's Police System" [Pingxi: Zhongguo jingcha zhidu de bibing he gaige], Voice of America (Online), 1 September 06.

[126] See "Nation Altogether Has 52,000 Police Stations, 490,000 People's Police" [Quanguo you paichusuo 5.2 wan minjing 49 wan], Legal Daily (Online), 8 February 06; "Report Concerning Public Security Reform (Part 6): Of 770,000 Communities Nationwide, 80 Percent Have Constructed Police Affairs Offices" [Quanguo 7.7 wan ge shiqu bacheng jian you jingwushi—guangzhu gongan gaige baodao zhi liu], Legal Daily (Online), 10 April 06; "Report Concerning Public Security Reform (Part 5): 150,000 Criminal Police Pursue 652 Fugitives Each Day Online [15 wan xingjing meitian wang shang zhuitao 652 ren—guangzhu gongan gaige baodao zhi wu], Legal Daily (Online), 6 April 06.

[127] "Clear Drop in Number of Rural Mass Incidents in 2006, Compared With 2005" [2006 nian he 2005 nian xiangbi nongcun quntixing shijian shuliang mingxian xiajiang], PRC Central Government (Online), 30 January 07.

[128] CECC, 2005 Annual Report, 10.

[129] Ministry of Public Security (Online), "Liu Jinguo Calls for Strengthening Public Security's Grassroots, Fundamentals Work, and Wholeheartedly Safeguarding Social Stability" [Liu Jinguo

zhichu jiaqiang gongan jiceng jichu gongzuo, quanli weihu shehui wending], 18 April 07; Zhao Huanxin, "Farmers' protests drop 20% last year," China Daily (Online), 31 January 07.

[130] Ministry of Public Security (Online), "Ministry of Public Security Announces First Quarter 2006 Nationwide Public Security Situation (Direct Feed Transcript)" [Gonganbu tongbao 2006 nian di yi jidu quanguo shehui zhi'an xingshi (tuwen zhibo)], 11 April 06.

[131] For more information, see CECC, 2006 Annual Report, 45; "Power Plant Construction Continues After Government Suppresses Villager Protests in Shanwei," CECC China Human Rights and Rule of Law Update, January 2006, 4–5.

[132] Ministry of Public Security, "Liu Jinguo Calls for Strengthening Public Security's Grassroots, Fundamentals Work, and Wholeheartedly Safeguarding Social Stability."

[133] Ya, "Critique: Malpractice and Reform in China's Police System."

[134] Ibid.

[135] Communist Party Central Committee Resolution on Further Strengthening and Improving Public Security Work [Zhong Gong Zhongyang guanyu jinyibu jiaqiang he gaijin gongan gongzuo de jueding], issued November 03.

[136] Communiqué of the Sixth Plenum of the Sixteenth Communist Party Central Committee [Zhongguo Gongchandang di shiliu jie Zhongyang Weiyuanhui di liu ci quanti huiyi gongbao], issued 11 October 06, reprinted in Xinhua (Online).

[137] Communist Party Central Committee Resolution on Major Issues Regarding the Building of a Harmonious Socialist Society [Zhong Gong Zhongyang guanyu goujian shehuizhuyi hexie shehui ruogan zhongda wenti de jueding], issued 11 October 06, reprinted in Xinhua (Online).

[138] Decoding the Resolution of the Sixth Plenum of the Sixteenth Communist Party Central Committee: 10 Major Keywords [Jiedu shiliu jie liu Zhong quanhui "jueding" shi da guanjianci], Xinhua, reprinted in People's Daily (Online), 28 October 06.

[139] Ministry of Public Security (Online), "Ministry of Public Security Convenes Press Conference To Announce Public Security Situation and Status of Implementation of Community and Village Police Affairs Strategy" [Gonganbu zhaokai xinwen fabuhui tongbao shehui zhi'an xingshi ji shishi shequ he nongcun jingwu zhanlüe qingkuang], 14 November 06.

[140] Wang Doudou, "Civilians are Most Important Backers of Public Security: Decoding Community and Village Police Affairs Strategy" [Baixing shi gongan zuida kaoshan: jiedu shequ he nongcun jingwu zhanlüe], Legal Daily (Online), 14 November 06.

[141] See supra, "Detention Outside the Criminal Process," and accompanying notes.

[142] "Beijing Police Will Establish a Public Security Violation Blacklist; Those Who Have Been Punished Will Leave Behind a Record" [Beijing jingfang jiang jian zhi'an weifa heimingdan; shou chufa zhe jiang liu andi], Legal Evening News, reprinted in Procuratorial Daily (Online), 13 April 06.

[143] Li Jian, "Why Some Police Resemble Crime Bosses" [Weishenme youde jingcha xiang "heilaoda"], China Youth Daily (Online), 13 July 06.

[144] "Zhang Yuqing: Increase Police Types To Take Over City Management and Carry Out Administration of Urban Order" [Zhang Yuqing: zengjia jing zhong jieti chengguan jinxing chengshi zhixu guanli], Yancheng Evening Post (Online), 12 March 07.

[145] David Bandurski, "Are police over-reaching in their application of China's new law on management of public security?" China Media Project (Online), 27 July 07.

[146] CECC, 2006 Annual Report, 46.

[147] See, e.g., "Ministry of Public Security Decides To Implement Resident [Police] Inspection Commissioner System; Residence Period 3 Years" [Gonganbu jueding shixing paizhu ducha zhuanyuan zhidu; paizhu shijian 3 nian], Public Security Daily, reprinted in Xinhua (Online), 11 May 06; Ministry of Public Security Implements Resident [Police] Inspection Commissioner System [Gonganbu shixing paizhu ducha zhuanyuan zhidu], Legal Daily (Online), 11 Mary 06.

[148] See Dan Shibing, "Punish Thuggish Airs of Police [Zhizhi jingcha piqi]," Baixing Magazine (Online), 2006.

[149] See Wu Junyi, "My View on the New Restrictive Relationship Between Police and Procuratorate" [Xinxing de jing, jian zhiyue guanxi zhi wojian], Procuratorial Daily (Online), 5 February 06.

[150] Article 14(3)(d) of the ICCPR states that any individual charged with a crime is entitled:

"[t]o defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

[151] See, e.g., "Lawyers Nationwide Total Over 150,000" [Quanguo lüshi yi da 15 wan yu ren], Legal Daily (Online), 11 July 06 (noting that this number includes over 7,000 part-time lawyers and 31,957 paralegals).

[152] "Central Government Expands Provision of Legal Aid in Criminal Cases," CECC China Human Rights and Rule of Law Update, December 2005, 5–6; Provisions on Legal Aid Work in Criminal Litigation [Guanyu xingshi susong falü yuanzhu gongzuo de guiding], issued 28 September 05, art. 4.

[153] PRC Lawyers Law, enacted 15 May 96, art. 42.

[154] See Jian Fa, "Independence Called for Lawyers," Beijing Review (Online), 2 April 04 (citing to a report from the Fifth National Lawyers Convention).

[155] See CECC, 2006 Annual Report, 55.

[156] Pro bono legal defense is guaranteed only to certain, limited categories of defendants, including minors, those who face a possible death sentence, and those who are blind, deaf, or mute. CPL, arts. 33, 34; Regulations on Legal Aid [Falü yuanzhu tiaoli], issued 16 July 03, art. 12.

[157] In cases involving "state secrets," a criminal suspect must first obtain the approval of the investigating agency before he can appoint a lawyer; the lawyer must obtain similar approval before he can meet with his client. See CPL, art. 96.

[158] See CECC, 2003 Annual Report, 19–20.

[159] See CECC, 2006 Annual Report, 55.
[160] See ibid., 56.
[161] CPL, art. 45.
[162] UNWGAD Report.
[163] See "First Issuance of a 'Lawyers Proposed Draft and Arguments for Another Revision of the Criminal Procedure Law'" ["Xingshi Susongfa zai xiugai lüshi jianyi gao yu lunzheng" shoufa], Defense Lawyer Net, 20 April 07.
[164] See CECC, 2006 Annual Report, 56.
[165] Human Rights Watch, "A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protestors," December 06, 7.
[166] Ibid.
[167] "Legal Community Denounces All China Lawyers Association For Harming the Legal Rights of the Masses" [Fajie chi lüxie qianghai dazhong falü quanli], Ming Pao Daily (Online), 15 June 06.
[168] UNWGAD Report, para. 38. See also "Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China," Congressional-Executive Commission on China, 27 May 03.
[169] "NPC Delegate Zhang Yan Proposes Elimination of Criminal Law Article 306" [Zhang Yan daibiao jianyi feichu xingfa di san bai ling liu tiao], Legal Daily (Online), 9 March 06.
[170] Xiao Yang, "Scrapping Article 306 Would Make Law Fairer," China Daily, 12 April 04; "Several Problems in the Reform of Judicial Administration" [Sifa xingzheng gaige de ruogan falü wenti], Legal Daily, 12 August 04.
[171] See supra, "Social Unrest and Coercive Use of Police Power," and accompanying notes.
[172] See Chinese Human Rights Defenders (Online), "The Perils of Defending Rights: A Report on the Situation of Human Rights Defenders in China (2006)," 4 May 07, pt. I(2)(c).
[173] See CECC, 2006 Annual Report, 57.
[174] See China Human Rights Lawyers Concern Group, "Deeply Concerned About the Recent Incidents of Beating and Detention of Mainland Human Rights Lawyers," 22 June 07.
[175] Under China's Criminal Law, a court may suspend a prisoner's sentence and allow that prisoner to serve the period of suspension on the outside, subject to observation and other restrictions imposed by a public security organ. See PRC Criminal Law, arts. 72–77.
[176] See China Human Rights Lawyers Concern Group (Online), "Demand Immediate Release of Beijing Human Rights Lawyer Gao Zhisheng," 27 September 07. For more information about Gao's open letter, which called on the Congress to take action against the Chinese government's human rights abuses, see Human Rights Torch Relay (Online), "Gao Zhisheng's letter to the Senate and the Congress of the United States," 12 September 07; Bill Gertz, "Chinese dissident urges boycott of Olympics," Washington Times (Online), 21 September 07.
[177] Under China's Criminal Law, a court may impose a supplementary punishment of "deprivation of political rights" (in addition to fixed-term imprisonment). A term of deprivation of political rights is typically counted beginning on the date that a prisoner has completed his sentence. See PRC Criminal Law, arts. 54–55, 58.
[178] Fang Yuan, "Status of Shanghai Lawyer Zheng Enchong's Summons for Interrogation, Petitioners' House Arrest" [Shanghai lüshi Zheng Enchong bei chuanxun ji rangmin bei ruanjin qingkuang], Radio Free Asia (Online), 1 October 07.
[179] The number of criminal defendants who have been found guilty is actually on the rise, while the number found not guilty continues to drop. In 2006, Chinese trial courts found 889,042 defendants guilty of crimes and 1,713 not guilty. Supreme People's Court Work Report [Zuigao renmin fayuan gongzuo baogao][hereinafter SPC Work Report], 21 March 07. Those numbers were 844,717 guilty, 2,162 not guilty in 2005; and 767,951 guilty, 2,996 not guilty in 2004. See SPC Work Report, 20 March 06.
[180] Article 14(3)(d) of the ICCPR states that: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."
[181] See supra, "Political Crimes," and accompanying notes.
[182] See CPL, art. 152.
[183] For more information, see http://www.yangjianli.com.
[184] See "China Frees Protestant Pastor After Three Years," Agence France-Presse (Online), 17 September 07; China Aid Association (Online), "Renowned Beijing Church Leader Cai Zhuohua Released after Three Years Imprisonment for distributing Bibles; Forced Labor for Olympics Products Imposed," 14 September 07, for confirmation of Cai's release. See CECC, 2006 Annual Report, 38; "Beijing Court Jails House Church Minister for Giving Away Bibles," CECC Human Rights and Rule of Law Update, December 2005, 1–2 for information about Cai's case.
[185] Supreme People's Court, Several Opinions on Strengthening the Open Adjudication Work of the People's Courts [Guanyu jiaqiang renmin fayuan shenpan gongkai gongzuo de ruogan yijian], issued 4 June 07.
[186] Responses provided during interrogation may later be used as evidence at trial, but a court cannot convict and sentence a defendant "if there is only his statement but no evidence." CPL, arts. 46, 93.
[187] See CECC, 2005 Annual Report, 24 (on the wrongful convictions of She Xianglin and Nie Shubin); CECC, 2006 Annual Report, 57–58 (on the wrongful conviction of a Chongqing man for robbery).
[188] "Behind the Scenes of a Wrongful Conviction: Judicial Games" [Cuo'an muhou de sifa youxi], Xinhua (Online), 14 April 05.
[189] See "First Issuance of a 'Lawyers Proposed Draft and Arguments for Another Revision of the Criminal Procedure Law,'" Defense Lawyer Net.
[190] See "Supreme People's Court Maps Future Judicial Reforms in Five Year Reform Program," CECC Human Rights and Rule of Law Update, February 2006, 7–9; Supreme People's

Court, Second Five-Year Reform Program for the People's Courts (2004–2008)[Renmin fayuan di er ge wu nian gaige gangyao (2004–2008)], issued 26 October 05.

[191] "Behind the Scenes of a Wrongful Conviction: Judicial Games," Xinhua.

[192] CECC Staff Interviews; Veron Mei-Ying Hung, "Judicial Reform in China: Lessons from Shanghai," 58 Carnegie Papers 10–11 (April 2005).

[193] Chinese sources note that the number of crimes punishable by death increased from 28 under the 1979 Criminal Law to 68 (approximately one-quarter of the total number of crimes) under the 1997 Criminal Law. Xiong Qiuhong, "Discussing the Defense of Death Penalty Cases" [Lun sixing anjian zhong de bianhu], Justice of China (Online), 20 July 04; Lin Tao, "Study on the Issues in Hearing and Reviewing Death Penalty Cases" ["Sixing" anjian de shenli yiji fuhe zhong de wenti yanjiu], China Legal Publicity (Online), 10 January 06. At least one scholar has characterized 44 (approximately 65 percent) of the crimes punishable by death as nonviolent crimes. Jiang Anjie, "Compilation of Viewpoints from the First Period Forum 'Concerning Death Penalty Reform'" ["Guanzhu sixing gaige" shouqi luntan guandian huicui], China Legal Publicity (Online), 29 December 05 (quoting Professor Gao Mingxuan, Renmin University). See also "Death Penalty Developments in 2005," Amnesty International (Online), 20 April 06; "China to Open More Death Penalty Cases to Public," Reuters, reprinted in China Daily (Online), 27 February 06.

[194] "PRC Foreign Ministry Spokesman Defends Keeping PRC Execution Statistics Secret," Agence France-Presse, 5 February 04 (Open Source Center, 5 February 04).

[195] Liu Renwen, a scholar at the Law Institute of the Chinese Academy of Social Sciences, estimates that China carried out about 8,000 executions in 2005. Geoffrey York, "China's Secret Execution Rate Revealed," The Globe and Mail (Online), 28 February 06; Antoaneta Bezlova, "China to 'Kill Fewer, Kill Carefully,'" Asia Times (Online), 31 March 06. In March 2004, an NPC delegate suggested that Chinese courts issue death sentences for immediate execution in "nearly 10,000 cases per year." "41 Representatives Jointly Sign Proposal for the Supreme People's Court to Take Back the Power of Death Penalty Approval" [41 daibiao lianming jianyi, zuigao renmin fayuan shouhui sixing hezhun quan], China Youth Daily, reprinted in People's Daily (Online), 10 March 04.

[196] "China urged to cut back executions before Olympics (John Kamm)," Agence France-Presse, reprinted in Yahoo (Online), 9 June 07.

[197] Dui Hua Foundation (Online), "Death Penalty Reform Should Bring Drop in Chinese Executions," Winter 07.

[198] See CECC, 2003 Annual Report, 21; CECC, 2004 Annual Report, 20.

[199] "Organ Transplants: A Zone of Accelerated Regulation" [Qiguan yizhi: jiakuai guizhi de didai], Caijing Magazine (Online), 28 November 05. In late-2006, Vice Minister Huan reported this information, stating: "Apart from a small portion of traffic victims, most of the organs from cadavers are from executed prisoners." Qiu Quanlin and Zhang Feng, "In organ donations, charity begins with body," China Daily (Online), 16 November 06.

[200] "Court hails penalty review a success," Xinhua, reprinted in China Daily (Online), 10 June 07.

[201] "Least number of death sentences meted out in '07," Xinhua (Online), 16 March 07.

[202] Xie Chuanjiao, "Fewer executions after legal reform," China Daily (Online), 8 June 07.

[203] Xie Chuanjiao, "Capital punishment decreases nationwide," China Daily (Online), 5 September 07.

[204] Wu Jing, "Supreme People's Court Demands Strengthening of Criminal Adjudication" [Zuigao renmin fayuan yaoqiu jiaqiang xingshi shenpan], People's Daily (Online), 14 September 07.

[205] Feng Jianhua, "Taking Back the Power," Beijing Review (Online), 5 February 07.

[206] Ibid.

[207] Liu Li, "In matter of life and death, extra caution," China Daily (Online), 2 November 06.

[208] See "China's Supreme Court to Reclaim Death Penalty Review Right from Lower Tribunals," Xinhua, reprinted in People's Daily (Online), 26 October 05; Song Wei, "610 Death Penalty Judges Congregate in Beijing for Rotational Training, Consolidating the Measure of Death Penalty Standards" [610 ming sixing faguan Beijing jizhong lunxun; tongyi sixing biaozhun chidu], Democracy & Law Times [Minzhu yu fazhi shibao], reprinted in Defense Lawyer Net, 13 November 06.

[209] CECC, 2006 Annual Report, 58–59.

[210] See supra, "Fairness of Criminal Trials," and accompanying notes.

[211] For additional information on the reform program's specific provisions related to death penalty reform, see CECC, 2006 Annual Report, 58–59.

[212] In September 2006, the SPC and Supreme People's Procuratorate jointly issued a judicial interpretation to provide guidance on when and how to conduct an appeals hearing in a death penalty case. See Supreme People's Court and Supreme People's Procuratorate, Trial Provisions on Several Issues Regarding Court Hearing Procedures in Death Penalty Appeals Cases [Guanyu sixing di er shen anjian kaiting shenli chengxu ruogan wenti de guiding], issued 21 September 06. Nonetheless, an SPC Vice President noted in July 2007 that provincial-level high courts continue to apply uneven standards during such hearings. See Xie Chuanjiao, "Supreme court targets 'judicial injustice,'" China Daily (Online) 5 July 07.

[213] Article 13 of the PRC Organic Law of the People's Courts was amended on October 31, 2006, to read: "Death penalty sentences, with the exception of those decided by the Supreme People's Courts, shall be submitted to the Supreme People's Court for review and approval." National People's Congress Standing Committee, Decision on Amending the "Organic Law of the People's Courts" [Guanyu xiugai "Zhonghua Renmin Gongheguo renmin fayuan zuzhifa" de jueding], issued 31 October 06. In January 2007, the SPC issued a judicial interpretation to provide guidance on when and how to review and approve a death sentence. See Supreme People's Court, Provisions on Some Issues Regarding Review of Death Penalty Cases [Zuigao renmin fayuan guanyu fuhe sixing anjian ruogan wenti de guiding], issued 22 January 07.

[214] Supreme People's Court, Decision on Issues Relating to Consolidated Review of Death Penalty Cases [Guanyu tongyi xingshi sixing anjian hezhun quan youguan wenti de jueding], issued 28 December 06.

[215] See Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice, Opinion on Further Handling Cases in Strict Accordance with Law, to Ensure the Quality of Death Penalty Case Handling [Guanyu jinyibu yange yifa ban an quebao banli sixing anjian zhiliang de yijian], issued 9 March 07.

[216] Ibid., Items 6 and 13.

[217] See, e.g., ibid., Item 34.

[218] Ibid., Item 45.

[219] Ibid., Item 48.

[220] "British Transplantation Society Criticizes the Alleged Use of Organs Without Consent from Prisoners Executed in the People's Republic of China," The British Transplantation Society (Online), 19 April 06; David Matas and David Kilgour, Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 6 July 06, available at "Report Into Allegations of Organ Harvesting of Falun Gong Practitioners in China," Epoch Times (Online), 7 July 06.

[221] David Matas and David Kilgour, Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 31 January 07, available at http://organharvestinvestigation.net/.

[222] See, e.g., Ministry of Foreign Affairs (Online), "September 28, 2006, Routine Press Conference Q&A With Foreign Ministry Spokesman Qin Gang" [2006 nian 9 yue 28 ri Waijiaobu fayanren Qin Gang zai lixing jizhehui shang da jizhe wen], 28 September 06; Qiu and Zhang, "In organ donations, charity begins with body."

[223] Temporary Provisions Regarding the Use of Corpses or Organs from Executed Prisoners [Guanyu liyong sixing zuifan shiti qiguan de zanxing guiding], issued 9 October 84, para. 3.

[224] Ji Minhua and Zhang Yingguang, "Beijing Mulls New Law on Transplants of Deathrow Inmate Organs," Caijing Magazine (Online), 28 November 05.

[225] State Council, Regulations on Human Organ Transplants [Renti qiguan yizhi tiaoli], issued 21 March 07.

[226] "China Agrees Not To Take Inmates' Organs," Associated Press (Online), 5 October 07.

Notes to Section II—Worker Rights

[1] See the discussion on the "Labor Contract Law," infra, for more information.

[2] See, e.g., Guan Xiaofeng, "Labor Disputes Threaten Stability," China Daily, 30 January 07 (Open Source Center, 30 January 07).

[3] These other rights are "the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation." ILO Declaration on Fundamental Principles and Rights at Work, 18 June 98, International Labor Organization (Online), art. 2 [hereinafter ILO Declaration].

[4] See "ILO Tripartite Constituents in China," International Labour Organization (Online), last visited 27 September 07.

[5] ILO Declaration, art. 2. China has been a member of the ILO since its founding in 1919. For more information, see the country profile on China in the ILO database of labor, social security and human rights legislation (NATLEX) (Online).

[6] "Ratifications of the Fundamental Human Rights Conventions by Country," International Labor Organization (Online), 11 September 07.

[7] "China: Forced Labor and Trafficking: The Role of Labour Institution in Law Enforcement and International Cooperation," International Labour Organization (Online), August 05.

[8] See generally PRC Labor Law, enacted 5 July 94, art. 12.

[9] International Covenant on Economic, Social, and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 8.

[10] Declarations and Reservations, United Nations Treaty Collection (Online), 5 February 02. Article 10 of China's Trade Union Law establishes the All-China Federation of Trade Unions as the "unified national trade union federation," and Article 11 mandates that all unions must be approved by the next higher-level union body, giving the ACFTU an absolute veto over the establishment of any local union and the legal authority to block independent labor associations. PRC Trade Union Law, enacted 3 April 1992, amended 27 October 01, art. 10, 11.

[11] International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 22. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, "to refrain from acts which would defeat the object and purpose of a treaty" it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.

[12] PRC Trade Union Law, art. 2, 4.

[13] For an overview of ACFTU programs hat have promoted worker rights, see the section on "ACFTU Role in Protecting Worker Rights" in the CECC 2006 Annual Report, 67. For a summary of surveys of trade union leadership in Guangzhou and Shenyang, see "Is the All China Federation of Trade Unions Merely a Front for the Communist Party and Enterprise Management?," China Labour Bulletin (Online), 1 August 07.

[14] See the CECC Political Prisoner Database for more details.

[15] According to information from the ACFTU reported by CSR Asia Weekly, the government enacted its first comprehensive labor law in 1994, and officials first proposed supplementing it with a labor contract law in 1996. After drafting of the law stalled in 1998, work on a new labor contract law began in 2004. "Labour Contract Law of the PRC," CSR Asia Weekly (Online), 4 July 07. "China's Legislature Adopts Labor Contract Law," Xinhua (Online), 29 June 07. The government claimed that more than 65% of the comments were from Chinese workers. "Chinese Public Makes Over 190,000 Suggestions on Draft Labor Contract Law," Xinhua, 21 April 06 (Open Source Center, 21 April 06).

[16] CECC Staff Interviews.

[17] PRC Labor Contract Law, adopted 29 June 07, art. 2.

[18] PRC Labor Law, art. 16, 19.

[19] PRC Labor Contract Law, art. 10. If no contract exists at the time the relationship starts, it must be signed within one month.

[20] Ibid., art. 14.

[21] Ibid., art. 14.

[22] Ibid., art. 17.

[23] Ibid., art. 36–50 (on terminations generally); 57–67 (on workers employed through staffing firms); and 80–95 (on legal liability). See also discussion infra.

[24] Josephine Ma, "New Law To Protect Mainland Workers," South China Morning Post (Online), 30 June 07.

[25] For an overview of several surveys on the use of labor contracts, see "Internal Migrants: Discrimination and Abuse," Amnesty International (Online), 1 March 07.

[26] As the China Labour Bulletin observes, "All too often in China, employers can disregard the terms and conditions of the contracts they have signed with their workers and impose their own terms and conditions as and when it suits them." "National People's Congress Approves New Labour Contract Law," China Labour Bulletin (Online), 29 June 07.

[27] Article 97 states that written contracts established before the law's implementation remain in force, but includes no provisions to address existing written contracts that do not abide by the terms of the Labor Contract Law. PRC Labor Contract Law, art. 97.

[28] Ibid., art.62.

[29] Ibid., art.22.

[30] "Employers Sacking Workers Before the Labour Contract Law Is Implemented," China Labour Bulletin (Online), 14 September 07.

[31] PRC Labor Contract Law, art.58.

[32] Ibid., art.63.

[33] Ibid., art.62(3), 62(5).

[34] Ibid., art.64.

[35] Ibid., art. 60.

[36] See, e.g., PRC Labor Contract Law (Draft) [Zhonghua renmin gongheguo laodong hetong fa (cao an)], 20 March 2006, art. 12, 24, 40.

[37] PRC Labor Contract Law, art. 72.

[38] "Draft Labour Contract Law Improves Protection of Part-Time Workers," Xinhua (Online), 24 June 07. The foreign-owned fast food restaurants investigated also denied part-time workers benefits and failed to abide by overtime regulations, among other violations. "Fast Food and Wages in China,"CSR Asia, (Online), 12 April 07.

[39] PRC Labor Contract Law, art. 72.

[40] Ibid., art. 71.

[41] PRC Labor Contract Law (Draft), art. 33.

[42] PRC Labor Contract Law, art. 41.

[43] Ibid., art. 41.

[44] Ibid., art. 42.

[45] Ibid., art. 43.

[46] Ibid., art. 46.

[47] Ibid., art. 47.

[48] Ibid., art. 47.

[49] Ibid., arts. 73–74.

[50] Ibid., arts. 76.

[51] Translated portions of the study, conducted by the State Council Research Office Study Group and originally published as the book China Peasant Worker Research Report in April 2006, is available at "PRC: Excerpts of State Council Research Report on Migrant Workers," Open Source Center, 12 September 07.

[52] PRC Labor Contract Law, art. 77.

[53] Ibid., art. 82.

[54] See generally Chapter 7, Legal Liability (articles 80–95) in the Labor Contract Law.

[55] Ibid., art. 90. Article 86 holds either party liable where an invalid contract causes harm to one side.

[56] Ibid., arts. 51–56. The draft of the law released in March 2006 provided for collective bargaining but lacked the consolidated set of provisions of the final version. PRC Labor Contract Law (Draft), art. 7, 11, 23, 44, 45, 46, 48, 50, 51.

[57] PRC Trade Union Law, art. 20; Provisions on Collective Contracts [Jiti hetong guiding], issued 20 January 04.

[58] CECC Staff Interviews.

[59] PRC Labor Contract Law, art. 51. See also "National People's Congress Approves New Labour Contract Law," China Labour Bulletin.

[60] Simon Clarke, Chang-Hee Lee, and Qi Li, "Collective Consultation and Industrial Relations in China," 42 Brit. J. Industrial Relations 235, 242 (2004).

[61] Ibid., 246–247.

[62] Information provided by U.S. Embassy Beijing.

[63] "ACFTU Issues '2006 Blue Book on Chinese Trade Unions Safeguarding the Rights and Interests of Workers,'" People's Daily, reprinted on China Trade Union News (Online), 15 May 07.
[64] PRC Labor Contract Law, art. 18.
[65] Ibid., art. 26.
[66] Ibid., art. 56.
[67] Ibid., art. 77–78.
[68] For a description of costs involved, see "Xinjiang People's Congress Representative Appeals for Abolition of Labor Arbitration Procedure" [Xinjiang renda daibiao huyu quxiao laodong zhongcai qianzhi de falü chengxu], Xinhua (Online), 20 January 06.
[69] PRC Labor Law, art. 77–84.
[70] Compare PRC Labor Law, enacted 5 July 94, art. 79 to PRC Labor Contract Law, adopted 29 June 07, arts. 26, 56, 77.
[71] "Law To Deal with Rising Number of Labor Disputes To Be Enacted," Xinhua, 27 August 07, reprinted on the National People's Congress Web site.
[72] Ibid.
[73] "National People's Congress Approves New Labour Contract Law," China Labour Bulletin. For additional evaluations, see, e.g., Tim Costello, Brendan Smith, and Jeremy Brecher, "Labor Rights in China," Foreign Policy in Focus (Online), 21 December 06.
[74] See, e.g., Bill Savadove, "Firms Say New Labour Law is a Step Backwards," South China Morning Post (Online), 21 March 06; Bill Savadove, "Labour Law Won't Go to NPC in March; But Regulation—Which Foreign Firms Say is Too Strict—Still Expected To Pass This Year," South China Morning Post (Online), 31 January 07; Joe McDonald, "China Due to Enact New Labor Law After Heated Debate," Associated Press, 27 June 07; Joseph Kahn and David Barboza, "China Passes a Sweeping Labor Law," New York Times (Online) 30 June 07.
[75] CECC Staff Interviews. Comments addressed the draft version released in March 2006 and subsequent revisions. See, e.g., American Chamber of Commerce in the People's Republic of China, "Comments on the Draft Labor Contract Law of the People's Republic of China," 19 April 06; US-China Business Council, "Comments on the Draft Labor Contract Law of the People's Republic of China (Draft of March 20, 2006)," 19 April 06; American Chamber of Commerce in Shanghai, "AmCham Shanghai and AmCham China (Beijing) Comments on Draft Two of the PRC Labor Contract Law," last viewed 7 October 07; US-China Business Council, "Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006)," last viewed 7 October 07.
[76] American Chamber of Commerce, "Comments on the Draft Labor Contract Law."
[77] CECC Staff Interviews; US-China Business Council, "Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006);" Sarah Schafer, "Now They Speak Out," Newsweek International (Online), 28 May 07; Andrew Batson and Mei Fong, "China Toils Over New Labor Law," The Wall Street Journal (Online), 7 May 2007; "Undue Influence: Corporations Gain Ground in Battle Over China's New Labor Law," Global Labor Strategies, March 2007; "The Chinese Draft Contract Law—A Global Debate," CSR Asia, 25 April 2007; "Behind the Great Wall of China: U. S. Corporations Opposing New Rights for Chinese Workers," Global Labor Strategies (Online), last viewed 7 October 07.
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[79] US-China Business Council, "Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006)."
[80] "Behind the Great Wall of China," Global Labor Strategies, 3; "The Chinese Draft Contract Law," CSR Asia.
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[82] "European Union Chamber of Commerce in China Welcomes the Promulgation of the Labour Contract Law," European Chamber of Commerce Web site (Online), 1 July 07. Joe McDonald, "China Due To Enact New Labor Law After Heated Debate."
[83] Guan Xiaofeng, "Labor Law 'Will Not Hurt Investment Environment,'" China Daily, 3 July 07.
[84] Quoted in Jude Blanchette, "Key Issues for China's New Labor Law: Enforcement," Christian Science Monitor, 2 July 07.
[85] PRC Employment Promotion Law, adopted 30 August 07, art. 28.
[86] Ibid., art. 3. Other laws have also included this provision. See, e.g., PRC Labor Law, art. 12.
[87] PRC Employment Promotion Law, art. 27, 28.
[88] Ibid., art. 29.
[89] Ibid., art. 31.
[90] Ibid., art. 30.
[91] Ibid., art. 62.
[92] "Survey: Discrimination in Job Market Common," Xinhua (Online), 27 June 07.
[93] PRC Employment Promotion Law, art. 7.
[94] Ibid., art. 9.
[95] Ibid., art. 52.
[96] Ibid., art. 16.
[97] PRC Labor Law, art. 48.
[98] PRC Labor Contract Law, art. 72, 74, 85.

[99] "Most Provincial-Level Governments Issue Hourly Minimum Wage Standards," CECC China Human Rights and Rule of Law Update, November 2006, 7–8. Legal provisions governing minimum wages require provincial-level governments to formulate the minimum wage standards for their area, in consultation with local unions and businesses. The MOLSS has two weeks to review draft standards submitted by the local labor and social security bureaus. The standards are deemed approved if the MOLSS does not raise objections during this period. The provisions set forth a number of factors that provincial governments should consider in calculating the minimum wage, including the average salary, minimum living expenses, unemployment rate, and level of economic development in their area. See generally Provisions on Minimum Wages [Zui di gongzi guiding], issued 20 January 04.

[100] See "Most Provincial-Level Governments Issue Hourly Minimum Wage Standards," CECC China Human Rights and Rule of Law Update, November 2006, 7–8, noting that the 2006 MOLSS report recorded the highest monthly minimum wage in Shenzhen, at 810 yuan (US$101.25), the highest hourly minimum wage in Beijing, at 7.9 yuan (US$0.99), and the lowest monthly and hourly minimum wages in Jiangxi, at 270 yuan (US$33.75) and 2.7 yuan (US$0.34), respectively.

[101] "China's Trade Union Calls for Minimum Wage Boost," Xinhua (Online), 19 May 07.

[102] "Internal Migrants: Discrimination and Abuse," Amnesty International.

[103] Ibid.

[104] "Government To Reduce Income Gap Through Reform," China Daily, 18 July 06 .

[105] "Ministry of Finance 8-Item Work Deciphered: Wage Revolution 'Limits High [Wages], Stabilizes Middle [Incomes], Brings Up Low [Wages]'" [Caizhengbu ba xiang goingzuo jiedu: gongzi gaige "xian gao wen zhong tuo di"], People's Daily (Online), 7 November 06.

[106] "'Limit High [Wages], Stabilize Middle [Incomes], Bring Up Low [Wages],' Reducing Subsidies for High Income Earners Is Not the Same as Equal Distribution," Yanzhao Metropolitan Newspaper, reprinted in China Economic Daily, 9 November 06.

[107] Stephen Chen, "Forced Wages Rises Won't Work; Official Labour Officer Says Beijing Can't Set Salaries," South China Morning Post (Online), 18 July 2007.

[108] "Communications Ministry Orders Push To Resolve Unpaid Migrant Wage Claims," CECC China Human Rights and Rule of Law Update, August 2006, 2–3.

[109] This number figure represents a decrease from previous years in the amount of unpaid wages. "Internal Migrants: Discrimination and Abuse," Amnesty International.

[110] "Migrants Frustrated Over Unpaid Wages, Xinhua, reprinted in China Daily, 31 December 06.

[111] Implementing Measures for the Qinghai Province Construction Sector Migrant Worker Wage Payment Deposit System (Trial Measures) [Qinghaisheng jianshe lingyu nongmingong gongzi zhifu baozhengjin zhidu shishi banfa (shixing)], issued October 06, art. 2, 17.

[112] "30 Firms Blacklisted for Defaulting Wages," Xinhua (Online), 27 June 06.

[113] See, e.g., Chenyan Liu, "China's Construction Sector: Untangling CSR Issues," CSR Asia Weekly, Vol. 1 Week 22, 2005. "Internal Migrants: Discrimination and Abuse," Amnesty International.

[114] 'More on Migrants Beaten Up in China After Demanding Unpaid Wages," BBC Monitoring Asia Pacific, citing Xinhua, 2 July 07. Zhuang Pinghui, "Gang Beat Migrants Demanding Wages," South China Morning Post (Online), 2 July 07.

[115] See, e.g., "Internal Migrants: Discrimination and Abuse," Amnesty International. See also the CECC 2006 Annual Report, 65–66, for more information on financial and other obstacles workers face in trying to recover wages and resolve other disputes.

[116] See Ministry of Labor and Social Security (Online), "2006 Statistical Communiqué on the Development of Labor and Social Security Affairs," last visited 10 October 07. For statistics by year, see data from the National Bureau of Statistics of China Web site. See also Guan Xiaofeng, "Labor Disputes Threaten Stability," China Daily, 30 January 07 Open Source Center, 30 January 07); "China To Enact Law To Deal With Rising Number of Labor Disputes," Xinhua, 26 August 07 (Open Source Center, 26 August 07).

[117] "Labour Disputes Threaten China's Stability: Report," Reuters (Online), 30 January 07.

[118] PRC Labor Law, art. 36.

[119] Dexter Roberts and Pete Engardio, "Secrets, Lies, and Sweatshops," Business Week, 27 November 2006.

[120] China Labour Bulletin, "Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China," September 06, 6, 10, 15.

[121] Dexter Roberts and Pete Engardio, "Secrets, Lies, and Sweatshops."

[122] "Work Injury Insurance Covers 100 Million Chinese," Corporate Social Responsibility Asia, 29 February 06; "Loopholes Seen To Undermine China's Unemployment Insurance System," BBC Asia, 6 December 2006.

[123] "Extending Old-age Insurance Coverage in the People's Republic of China," International Labor Organization (Online), January 06, 6, 19.

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[125] "Internal Migrants: Discrimination and Abuse," Amnesty International.

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[127] The survey data was collected from 6,595 questionnaires handed out in 416 villages and four cities. "Female Migrants Suffering at Work," China Daily, 30 November 06 (Open Source Center, 30 November 06).

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[130] See, e.g., "MOLSS Circular Concerning Implementation of the Essence of the State Council Standing Committee on Issues Related To Strengthening Social Security Funds Supervision"

[Laodong he shehui baozhangbu guanyu guancheluoshi guowuyuan changwu huiyi jingshen jiaqiang shehui baoxian jijin jianguan youguan wenti de tongzhi], issued 30 November 06; See also Opinion Concerning Strengthening Social Security Fund Supervision and Enforcing Fund Rules [Guanyu jin yi bu jiaqiang shehui baoxian jijin jianguan yansu jijin jilu de yijian], issued 29 September 06. For more information, see, e.g., Mu Tzu, "Central Authorities Will Recover Power of Social Security Fund Management," Hong Kong Commercial Daily, 27 September 06 (Open Source Center, 29 September 06).

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[132] Pete Engardio, Dexter Roberts, Frederik Balfour, and Bruce Einhorn, "Broken China," Business Week (Online), 23 July 07.

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[134] "Government Strengthens Enforcement of Requirements on Injury Insurance," CECC China Human Rights and Rule of Law Update, October 2006, 4.

[135] CECC Staff Interviews.

[136] See, e.g., "Fatalities Down in Work Accidents, But China's Work Safety Still 'Grim,'" Xinhua, 28 August 07 (Open Source Center, 28 August 07); "'Work Safety Situation Still Grim,'" China Daily (Online), 3 September 07.

[137] "35,800 Firms Ordered To Close Over Safety Concerns," Xinhua (Online), 16 February 06.

[138] Sixth Amendment to the Criminal Law of the People's Republic of China [Zhonghua renmin gonghe guo xingfa xiuzheng an (liu)], issued 29 June 06. See also PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 05, 29 June 06, art. 244.

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[140] Ibid.

[141] "700 Million People Might Suffer from Occupational Illnesses, Government Says," China Labour Bulletin (Online), 23 January 06.

[142] China Labour Bulletin, "Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China."

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[146] Investigation cited in "95.6 Per Cent of All Officials in Mining Disaster Cases Receive No Punishment or Get a Suspended Sentence," China Labour Bulletin, May 24, 2006.

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[151] Translated portions of the study, conducted by the State Council Research Office Study Group and originally published as the book China Peasant Worker Research Report in April 2006, is available at "PRC: Excerpts of State Council Research Report on Migrant Workers," Open Source Center, 12 September 07.

[152] Vivien Cui and Kevin Huang, "China's Neglected 'Untouchables,'" South China Morning Post, 1 May 06.

[153] Raymond Li, "Legal Aid Network To Help Migrants; Pact to Tackle Unpaid Wages and Injuries," South China Morning Post, 5 July 2007.

[154] Josephine Ma, "Pension Plan for Migrant Workers," South China Morning Post, 12 June 07.

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[157] PRC Labor Law, enacted 5 July 94, art. 15. See also Law on the Protection of Minors, issued 4 September 91, art. 28. See generally Provisions on Prohibiting the Use of Child Labor [Jinzhi shiyong tonggong guiding], issued 1 October 02.

[158] Provisions on Prohibiting the Use of Child Labor, art. 6.

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[161] Ibid., 8.

[162] Ibid., 15, 22, 25–32.

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[164] See, e.g., ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, art. 3, defining such labor to include forced or compulsory labor.

[165] See, e.g., "Olympic Firm Admits Child Labour," BBC (Online), 13 June 07.

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[168] Provisions on Prohibiting the Use of Child Labor, art. 13.

[169] PRC Education Law, issued 18 March 95, art. 58.

[170] See generally "Regulation on Nationwide Temporary Work-Study Labor for Secondary and Elementary Schools" [Quanguo zhong xiaoxue qingongjianxue zanxing gongzuo tiaoli], issued 20 February 83.

[171] ILO Convention 138 permits vocational education for underage minors only where it is an "integral part" of a course of study or training course. ILO Convention 182 obligates Member States to eliminate the "worst forms of child labor," including "forced or compulsory labor." ILO Convention (No. 138) concerning Minimum Age for Admission to Employment; ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

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[174] "Teachers Arrange for Underage 'Interns' To Work at Guangdong Electronics Factory," CECC China Human Rights and Rule of Law Update, June 2006, 15.

[175] Howard W. French, "Child Slave Labor Revelations Sweeping China," International Herald Tribune (Online), 15 June 07; He Huifeng, "I Thought There Was Nothing He Could Take From Me, So I Went" South China Morning Post (Online), 15 June 07; Josephine Ma, "Trafficker Admits To Selling 3,000 Labourers in Three Years," South China Morning Post (Online), 20 June 07; Zhang, "Crackdown on Slave Labour Nationwide—State Council Vows To End Enslavement;" Josephine Ma, "Illegal Kilns Used Over 50,000 Laborers," South China Morning Post (Online), 26 June 2007.

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[177] "1,340 Rescued From Forced Labor," Xinhua (Online), 13 August 07.

[178] "Top Official Plays Down Scale of Kiln Slavery," South China Morning Post (Online), 14 August 07.

[179] Cited in Ting Shi, "Officials Targeted in Slavery Scandal—Public Anger Mounting at Coercion of Kiln Workers in Shanxi," South China Morning Post (Online), 18 June 07.

[180] Josephine Ma and Ng Tze-wei, "Police Admit Failure To Stem Slavery—Henan Labour Abuses 'Solved' Three Years Ago," South China Morning Post (Online), 20 June 07.

[181] Alice Yan, "Brick Kiln Foreman Gets Death Penalty; 28 Others are Jailed," South China Morning Post (Online), 18 July 07; "Death Sentence Over China Slave Scandal," Agence France-Presse, reprinted in Yahoo news, 17 July 07.

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[185] CECC Staff Interviews.

Notes to Section II—Freedom of Expression

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[2] CECC, 2003 Annual Report, 2 October 03, 61–62.

[3] "China Effectively Promotes Administrative Transparency," People's Daily (Online), 23 March 07.

[4] For example, the Web site for the State Environmental Protection Administration contains links to relevant policies, laws, and regulations, a daily report on air quality in major cities, and news stories on the environment. State Environmental Protection Administration of China (Online), visited on August 28, 2007.

[5] "China's Media Announcement Work and Construction of Media Spokesperson System Makes New Progress" [Zhongguo xinwen fabu gongzuo he xinwen fayanren zhidu jianshe qude xin fazhan], China.com.cn (Online), 22 January 07; "Supreme People's Court and High Courts Have Already All Established News Spokespersons" [Zhongguo zuigaofayuan he gaojifayuan yi quanbu jianli xinwen fayanren], Xinhua, reprinted in People's Daily (Online), 12 September 06.

[6] See, e.g., Regulation on the Handling of Public Health Emergencies [Tufa gonggong weisheng shijian yingji tiaoli], issued 9 May 03, art. 45; Ching-Ching Ni, "China Toughens Stance on Environmental Protection," Los Angeles Times (Online), 22 February 06; Elaine Kurtenbach, "Environmental Agency Says Disasters Must Be Reported Within One Hour," Associated Press, reprinted in South China Morning Post (Online), 7 February 06.

[7] Regulation on the Handling of Public Health Emergencies, arts. 19, 25.

[8] CECC, 2003 Annual Report, 37; CECC, 2006 Annual Report, 20 September 06, 102.

[9] Regulation of the People's Republic of China on the Public Disclosure of Government Information [Zhonghua renmin gongheguo zhengfu xinxi gongkai tiaoli], issued 5 April 07, art. 1.

[10] Ibid., arts. 10, 11, 12.
[11] Ibid., arts. 13, 20, 21, 22, 23, 24.
[12] Measures on Environmental Information Disclosure (Trial) [Huanjing xinxi gongkai banfa (shixing)], issued 11 April 07.
[13] Regulation on Public Disclosure of Government Information, art. 14; Measures on Environmental Information Disclosure (Trial), art. 12.
[14] See, e.g., Provisions on the Protection of Secrets in News Publishing [Xinwen chuban baomi guiding], issued 13 June 92, art. 14: "Anyone wishing to provide a foreign news publishing organization a report or publication with contents that relate to the nation's government, economy, diplomacy, technology or military shall first apply to this agency or their supervising organ or unit for examination and approval." See also PRC Law on the Protection of State Secrets [Zhonghua renmin gongheguo baoshou guojia mimi fa], issued 5 September 88, art. 8; Measures for the Implementation of the Law on the Protection of State Secrets [Zhonghua renmin gongheguo baoshou guojia mimi fa shishi banfa], issued 25 April 90, art. 4; and Article 1 of the Explanation of Certain Issues Regarding the Specific Laws to be Used in Adjudicating Cases of Stealing or Spying to Obtain, or Illegally Supplying, State Secrets or Intelligence for Foreigners [Guanyu shenli wei jingwai qiequ, citan, shoumai, feifa tigong guojia mimi, qingbao anjian juti yingyong falü ruogan wenti de jieshi], issued 20 November 00, which states: "The term 'intelligence' in Article 111 of the Criminal Law refers to items which involve the security and interests of the nation, but which are not public or which, according to relevant regulations, should not be made public." See also "Secrets Protection Knowledge" [Baomi zhishi], posted on the Administration for the Protection of State Secrets of Guangdong province Web site, which states: "'Relating to the security and interests of the nation,' means that, if a secret matter were known by people who do not currently know it, it would result in various kinds of harm to the security and interests of the nation." In September 2003, the Guangzhou Daily published a warning to readers that everyone from Internet users to garbage collectors can run afoul of China's state secrets legislation. "If a Nanny Can Disclose State Secrets, Then Average Citizens Should Raise Their Awareness of Preserving Secrets" [Baomu jingran xielou guojia jimi baixing yexu tigao baomi yishi], People's Daily (Online), 5 September 03.
[15] Regulations on the Specific Scope of State Secrets in Environmental Protection Work, issued 28 December 04, art. 2; Human Rights in China (Online), "State Secrets: China's Legal Labyrinth," June 2007, 174.
[16] Ye Doudou and Duan Hongqing, "How Wide Is the Door to Chinese Governments' Information Disclosure," Caijing (Online), 2 May 07; "China Issues Landmark Decree To Encourage Gov't Transparency," Xinhua (Online), 24 April 07.
[17] Human Rights in China, "State Secrets: China's Legal Labyrinth," 51.
[18] Committee to Protect Journalists (Online), "Falling Short, As the 2008 Olympics Approach, China Falters on Press Freedom," August 2007, 17; "Shanghai Journalist Sues Municipal Authorities for Refusing Interviews" [Caifang zao jujue shanghai jizhe qisu shi guihua ju xinxi bu gongkai], Xinhua (Online), 2 June 06.
[19] Ibid.
[20] PRC Emergency Response Law, enacted 30 August 07, art. 53.
[21] CECC, 2006 Annual Report, 20.
[22] "China Adopts Emergency Response Law," People's Daily (Online), 30 August 07.
[23] PRC Emergency Response Law, art. 54.
[24] Ibid., art. 65.
[25] The South China Morning Post quoted one Shanghai journalist as saying, "Who gets to define what false information is? It's still up to the government. They can still do whatever they want. As long as the system stays the same, I can't imagine any major improvement." Ting Shi, "Journalists Welcome Revision of Rules on Reporting Emergencies," South China Morning Post (Online), 26 June 07.
[26] "Li Changqing Gets Three Years Imprisonment for Reporting Disease Outbreak," CECC Human Rights and Rule of Law Update, February 2006, 15–16.
[27] PRC Public Security Administration Punishment Law, enacted 28 August 05, art. 25. See, e.g., Yan Lieshan, "Xin Yanhua's Luck and the Bad Fortune of the Three Xinyi Netizens" [Xin Yanhua de jiaoxing he xinyi sanwangmin de buxing], Southern Metropolitan Daily (Online), 12 July 07; and Zhan Jiang, "Selectively Taking Citizens' Text Messages Out of Context Violates Freedom of Communication" [Suiyi jiequ gongmin duanxin qinfan tongxin ziyou], Southern Daily (Online), 27 July 07.
[28] Yu Wei, "Accused of Spreading Rumors While Participating in Discussion Over Rainstorm, 23 Year Old Female Jinan Internet User Who Posted Is Detained" [Canyu bayou taolun bei zhi sanbu yaoyan jinan 23 sui nuwangyou gentie bei ju], Southern Metropolitan Daily (Online), 25 July 07.
[29] CECC, 2003 Annual Report, 64.
[30] Supreme People's Court Several Opinions on Strengthening Open Adjudication Work of the People's Courts [Zui gao renmin fayuan guanyu jiaqiang renmin fayuan shenpan gongkai gongzuo de ruogan yijian], issued 4 June 07, arts. 5, 15.
[31] Ibid., art. 22.
[32] Ibid., art. 3.
[33] "Supreme People's Court Clarifies 'Restricted Area' for People's Court News Publishing Work" [Zuigaofayuan minque renminfayuan xinwen fabu gongzuo "jinqu"], Xinhua (Online), 13 September 06. For a discussion of the competing roles that the media and the courts play for the Party, and the media's influence over China's courts and legal development, see Benjamin L. Liebman, "Watchdog or Demagogue? The Media in the Chinese Legal System," 105 Colum. L. Rev. 1, 7 (2005).
[34] International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A(XXI) of 16 December 66, entry into force 23 March 76 [hereinafter ICCPR]. China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself

to ratifying, and thus bringing its laws into conformity with, the ICCPR, and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly.

Article 19 of the ICCPR states: "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

[35] Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217A(III) of 10 December 48 [hereinafter UDHR]. Article 19 of the UDHR states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[36] PRC Constitution, art. 35. Article 35 of China's Constitution states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

[37] This language is found in Article 19 of the ICCPR. Article 29 of the UDHR states the following: "everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

[38] Ashley Esarey, "Speak No Evil, Mass Media Controls in Contemporary China," Freedom House, February 2006, 3–4.

[39] Article 11(2) of the Regulations on the Administration of Publishing states that publishing work units must have a sponsoring work unit and a managing work unit recognized by the State Council's publishing administration agency. The "sponsoring work unit" must be a government agency of a relatively high level, and the publishing work unit must answer to its sponsoring work unit and managing work unit. Circular Regarding Issuance of the "Temporary Provisions on the Functions of the Sponsoring Work Unit and the Managing Work Unit for Publishing Work Units" [Guanyu fabu "Guanyu chuban danwei de zhuban danwei he zhuguan danwei zhize de zanxing guiding" de tongzhi], issued 29 June 93, arts. 5–6; Regulations on the Administration of Publishing [Chuban guanli tiaoli], issued 25 December 01, art. 11(2).

[40] Measures for the Administration of Journalist Accreditation Cards [Xinwen jizhezheng guanli banfa], issued 10 January 05; Measures for the Administration of News Bureaus [Baoshejizhezhan guanli banfa], issued 10 January 05; Interim Provisions for the Administration of Those Employed as News Reporters and Editors [Guanyu xinwen caibian renyuan congye guanli de guiding (shixing)], issued 22 March 05; Interim Implementation Rules for the Administration of Those Employed as Radio and Television News Reporters and Editors [Guangdianzongju yinfa "guangbo yingshi xinwen caipian renyuan congye guanli de shishi fangan (shixing) de tongzhi"], issued 1 April 05. GAPP has used its licensing authority to punish journalists for their reporting. In September 2006, GAPP revoked the license of Zan Aizong, a journalist who was detained for one week in August 2006 after he posted reports on foreign Web sites about detentions of Protestants who were protesting the destruction of a church in Xiaoshan city, Nanjing province. "September 17–21, 2006" [2006 nian 9 yue 17 ri — 9 yue 21 ri], Mediainchina.org.cn, 27 September 06. In March 2007, police in the city of Nanjing reportedly harassed a reporter for the U.S.-based news Web site Boxun, accusing him of working for an illegal news outlet and failing to have a journalist license. Committee to Protect Journalists (Online), "China Reporter Arrested Following Months of Police Harassment," 4 June 07.

[41] Liebman, "Watchdog or Demagogue?," 18–20.

[42] CECC, 2004 Annual Report, 5 October 04, 47; CECC, 2005 Annual Report, 56–57.

[43] Provisions on the Protection of Secrets in News Publishing. For example, in April 2003, two editors at the Xinhua news agency were fired for publishing a news report about SARS that had been classified as secret. "Two Chinese Editors Sacked over Confidential SARS Document," South China Morning Post, 29 April 2003.

[44] Committee to Protect Journalists, "Falling Short," 25.

[45] See, e.g., CECC, 2004 Annual Report, 48; and Andrew Batson, Geoffrey Fowler, and Juying Qin, "China Magazine Is Pulled," Wall Street Journal (Online), 9 March 07.

[46] CECC, 2004 Annual Report, 47; CECC, 2005 Annual Report, 56–57.

[47] "Hu Jintao Delivers Important Remarks at National Meeting of Propaganda Department Directors" [Hu Jintao zai quanguo xuanchuan buzhang huiyi shang fabiao zhongyao jianghua], Xinhua (Online), 12 January 01.

[48] "Party Uses Journalists, Artists, Academics To Promote 'Harmonious Society'," CECC China Human Rights and Rule of Law Update, December 2006, 10. Following the plenum, top officials such as Li Changchun, a Politburo member, and Liu Yunshan, a top Party official and Director of the Central Propaganda Department, told journalists that their "foremost duty is to study, publicize, and carry out" the spirit of the sixth plenum and the important statements of President Hu to unify the thoughts of the whole party and the whole nation, and to be "loyal to the Party's news work and protect the interests of the Party and the people." The duty of journalists to be caretakers of the Party's ideology is also embodied in formal regulations. See, e.g., the Interim Provisions on the Administration of Those Employed as News Reporters and Editors issued jointly by the General Administration of Press and Publication, the Central Propaganda Department, and the State Administration of Radio, Film and Television in 2005, which provides that reporters and editors must be "guided by Marxism, Leninism, Mao Zedong Thought, Deng Xiaoping Theory, and the important ideology of the 'Three Represents', support the leadership of the Chinese Communist Party, and support the socialist system" and "protect the inter-

est of the Party and the government." Interim Provisions on the Administration of Those Employed as News Reporters and Editors, art. 1. One Chinese court has recently held that for purposes of China's criminal law, journalists at state-owned newspapers are state functionaries. "Former China Business Times Reporter Meng Huaihu Final Sentence of 12 Years for Extortion" [Zhonghua gongshang shibao jizhe Meng Huaihu zhongshen yi shouhui zui panxing 12 nian], Xinhua (Online), 19 April 07.

[49] "Liu Yunshan: Begin Contruction of a Good Ideological and Public Opinion Atmosphere for the 17th Party Congress" [Liu Yunshan: wei shiqi da yingzao lianghao sixiang yulun qifen], Xinhua (Online), 9 July 07; "Perform Well News Publishing Work, To Create a Positive Cultural Environment for the 17th Party Congress" [Zuohao xinwen chuban gongzuo wei shiqi da zhaokai yingzao lianghao wenhua huanjing], Xinhua (Online), 16 July 07; Edward Cody, "Broadcast Media in China Put On Notice," Washington Post (Online), 27 February 07; Cary Huang, "Party Introduces New Censorship Rule," South China Morning Post (Online), 16 January 07.

[50] "China To Show Only 'Ethically Inspiring TV Series' in Prime Time From Next Month," People's Daily (Online), 22 January 07.

[51] Gordon Fairclough, "Finally Rescued, China's 'Slaves' Detail Their Plight," Wall Street Journal (Online), 19 June 07; "1,340 Rescued from Forced Labor," Xinhua (Online), 13 August 07.

[52] Cary Huang, "Magazine Censured for Political 'Defiance'," South China Morning Post (Online), 30 November 06. After further investigation, propaganda officials docked the magazine six points under a 12-point punishment system imposed in January 2007 (12 points meaning closure of the magazine) and issued a serious internal warning to the executive editor. Cary Huang, "Editor and Magazine Disciplined by Party," South China Morning Post (Online), 26 April 07.

[53] Kristine Kwok, "Two Newspaper Staff Suspended for 'June 4' Advert," South China Morning Post (Online), 8 June 07.

[54] Batson, Fowler, and Qin, "China Magazine Is Pulled."

[55] CECC, 2006 Annual Report, 102.

[56] "Shanghai's Top Leader Removed Over Scandal Involving Alleged Misuse of City Pension Funds," Associated Press (Online), 25 September 06; James T. Areddy, "China Warns of Broader Corruption Probe," Wall Street Journal (Online), 27 September 06.

[57] "Media Told To Downplay Demise of Party Boss," South China Morning Post (Online), 27 September 06.

[58] "Shanghai City Government Press Conferences Come Back Online, No Mention of Chen Liangyu" [Shanghai shi zhengfu xinwen fabuhui chongxin dengchang bu ti Chen Liangyu], Boxun (Online), 4 November 06.

[59] Keith Bradsher, "China Tells Little About Illness That Kills Pigs, Officials Say," New York Times (Online), 8 May 07.

[60] Ibid.

[61] Richard McGregor, "750,000 A Year Killed by Chinese Pollution," Financial Times (Online), 2 July 07. The article also said that the World Bank removed a map showing the areas with the most deaths because it was too sensitive.

[62] Ibid.

[63] "China Denies Requiring WB to Delete Environmental Data from Report," Xinhua, reprinted in People's Daily (Online), 5 July 07.

[64] "Censors Clamp Down on Food Safety Reports," South China Morning Post (Online), 31 July 07.

[65] For example, in March 2007, State Council Information Office (SCIO) Director Cai Wu said that "leaders should not be afraid of reporters." "Cai Wu: Some Leaders Fear Facing Reporters Because They Worry They Will Lose Their Official Posts" [Cai Wu: moxie lingdao pa jian jizhe shi danxin diudiao ziji de wushamao], Chinanews.com, 9 March 07. In January 2007, SCIO's vice-minister, speaking about foreign journalists, said that the Chinese government was moving away from its practice of "managing the media" and was preparing to "serve" and not shy away from reporters. "China Gov'ts 'Serve Media, Not Manage Them,'" China Daily (Online), 4 January 07.

[66] "Official: Transparency Key to Public Faith," China Daily (Online), 29 July 07.

[67] "Anhui Requires Journalists To Write 'Positive' Reports for Promotion," CECC China Human Rights and Rule of Law Update, December 2006, 18–19

[68] "Linking Professional Evaluations to Positive Reporting Is Absurd" [Zhicheng pingding yu zhengmian baodao guagou tai huangtang], Southern Metropolitan Daily (Online), 27 October 06.

[69] "Anhui Requires Journalists To Write 'Positive' Reports for Promotion," CECC China Human Rights and Rule of Law Update, December 2006, 18–19

[70] In 2001, when the Chinese government was bidding to host the 2008 Summer Olympic Games, Wang Wei, then the Secretary-General of the Beijing Bid Committee, said that the government would give the news media "complete freedom" to report on China and that the guarantee had been made in China's bid documents. "Journalists To Write Whatever They Like if Beijing Holds 2008 Games," China Daily (Online), 12 July 01.

[71] Regulations on Reporting Activities in China by Foreign Journalists During the Beijing Olympic Games and the Preparatory Period [Beijing auyunhui ji qi choubei qijian waiguo jizhe zai hua caifang guiding], issued 1 December 06.

[72] The regulations expire one month after Beijing hosts the 13th Paralympic Games. The Paralympic Games follow the 2008 Summer Olympics Games, which run from August 8 to August 24, 2008. "Paralympic Games Schedules Set," China Daily (Online), 22 May 06.

[73] In a survey of 163 journalists conducted by the Foreign Correspondents Club of China and released in August 2007, 43 percent of the respondents said that China's reporting environment had improved, although 95 percent said reporting conditions still did not meet what they considered to be international standards. Respondents reported 157 incidents of interference, including 57 instances of intimidation of local citizens who spoke with foreign reporters. Foreign Correspondents Club of China, "Foreign Correspondents: China Yet To Fulfill Olympic Pledge of

Free Media Coverage, Harassment Still Common," 1 August 07. A report by Human Rights Watch also found that government and state security officials, as well as unidentifiable thugs, were harassing, intimidating, and detaining foreign journalists, but that some foreign reporters also said that the new rules "significantly widened access to sources and topics previously taboo, such as access to certain prominent political dissidents and to villages with public health emergencies." Human Rights Watch (Online), "Beijing 2008 China's Olympian Human Rights Challenges," 10 August 07.

[74] Foreign Correspondents Club of China, "China Yet To Fulfill Olympic Pledge of Free Media Coverage."

[75] Ibid. In May 2007, a foreign ministry official reportedly summoned two foreign journalists to the ministry to reprimand them for stories they had written about the TAR. Reporters Without Borders (Online), "Two Foreign Reporters Summoned and Warned About Tibet Stories," 25 May 07. The new regulations do not contain any exception or carve-out for Tibet or any other region of China. Foreign ministry officials, however, have indicated orally that existing regulations applicable to Tibet, such as special permit requirements, remain in effect. In a February 13, 2007, press conference Foreign Ministry Spokeswoman Jiang Yu said the following about the new rule's applicability to Tibet: "The new Regulations should be abided by generally when foreign journalists conduct reporting activities in Tibet and elsewhere. In the meantime, due to restraints in natural conditions and reception capabilities, Tibetan local authorities have some regulations for foreigners' access there, which should be abided by. Please contact the local foreign affairs office for conducting reporting activities in Tibet." Ministry of Foreign Affairs (Online), "Foreign Ministry Spokeswoman Jiang Yu's Regular Press Conference on 13 February 2007," 14 February 07 (English translation); Ministry of Foreign Affairs (Online), "Foreign Ministry Spokeswoman Jiang Yu's Regular Press Conference on 13 February 2007" [2007 nian 2 yue 13 ri waijiaobu fayanren Jiang Yu juxing liexing jizhehui], 13 February 07 (Chinese).

[76] Human Rights Watch, "Beijing 2008 China's Olympian Human Rights Challenges."

[77] In March 2007, local officials in Hunan province detained two BBC journalists covering a riot, telling them the rules apply only to Olympics coverage. Reporters Without Borders (Online), "Disturbing Lapses in Application of New Rules for Foreign Media," 22 March 07. Foreign ministry and State Council officials have publicly stated that the rules cover not only the Olympics but also politics, economy, society, and culture in China. "Journalists Promised Wide Access in 2008," China Daily (Online), 2 December 06; "Foreign Journalists 'Welcome in China'," China Daily (Online), 29 December 06. The "Service Guide for Overseas Media Coverage of the Beijing Olympic Games and the Preparatory Period" issued by the Beijing Organizing Committee for the Games of the XXIX Olympiad state that under the rules "[f]oreign journalists can carry out reporting activities not only on the Beijing Olympic Games and the preparatory period, but also on politics, economy, society, and culture of China." Beijing Organizing Committee for the Games of the XXIX Olympiad, "Service Guide for Overseas Media Coverage of the Beijing Olympic Games and the Preparatory Period," 3.

[78] Christopher Bodeen, "China Media Seen as Corrupt, But Experts Blame Communist Controls for Skewing System," Associated Press (Online), 31 January 07.

[79] "Fraudster Who Impersonated People's Daily Deputy Editor-in-Chief Liu Yonghong Sentenced to Life" [Maochong renmin ribao fu zongbianji zha pian zhe Liu Yonghong bei pan wuqi tuxing], People's Daily (Online), 9 May 07.

[80] Edward Cody, "Blackmailing By Journalists in China Seen as 'Frequent'," Washington Post (Online), 25 January 07; Winny Wang, "China To Improve Supervision of Reporters," Shanghai Daily (Online), 9 July 07.

[81] The Commission noted in its 2004 Annual Report that the media in China often focus on the ethical problems within its own industry. CECC, 2004 Annual Report, 48.

[82] Notice Regarding Further Improving Standards for Supervision of Press Journalist's Stations [Guanyu jin yibu guifan baoshe jizhezhan guanli de tongzhi], issued 18 March 07.

[83] "China Targets 'False News' Ahead of Party's Congress," Associated Press (Online), 16 August 07; "Special National Operation Launched To Resolutely Rid News Publishing of the 'Four Dangers'" [Quanguo kaizhan zhuanxiang xingdong jianjue qingchu xinwen chuban "si hai"], People's Daily (Online), 15 August 07.

[84] "Hu Jintao: Increase the Building and Administration of Internet Culture with a Spirit of Innovation" [Hu Jintao: yi chuangxin de jingshen jiqiang wangluo wenhua jianshe he guanli], Xinhua (Online), 24 January 07; "Hu Asks Officials To Better Cope With Internet," Xinhua (Online), 24 January 07.

[85] China Internet Network Information Center, 20th Statistical Survey on Internet Development in China, 18 July 07.

[86] "Infocom Is 'Vital' for China," Xinhua (Online), 27 April 07.

[87] China Internet Network Information Center, 11th Statistical Survey on Internet Development in China, 15 January 03; China Internet Network Information Center, 20th Statistical Survey.

[88] "China's Internet Conundrum," Podcast with Tim Wu, CNET News.com (Online), 1 June 07.

[89] "Hu Jintao: Increase the Building and Administration of Internet Culture with a Spirit of Innovation," Xinhua. In his January 2007 speech, President Hu Jintao also said it was important to "strengthen the battlefield position over ideology and public opinion on the Internet."

[90] "Build Up An Online Culture, Solidify Our Position Online" [Jianshe wangluo wenhua gonggu wangshang zhendi], Guangming Daily, reprinted in Xinhua (Online), 19 June 07.

[91] This language is found in Article 19 of the ICCPR. Article 29 of the UDHR states the following: "everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

[92] Ariana Eunjung Cha, "In China, Stern Treatment for Young Internet 'Addicts'," Washington Post (Online), 22 February 07; "New Measures Come Out: Excessive Senders of Junk Mail To

Be Recorded on 'Black List'" [Xin cuoshi chutai lanfa lese youjian jiang jiru "hei mingdan"], Xinhua (Online), 1 March 06; "Authorities Crack Down on Internet Porn," Agence France-Press, reprinted in South China Morning Post (Online), 15 August 07; "China's News Websites Vow To Clean Up the Internet," Xinhua, reprinted in China Daily (Online), 18 May 07.

[93] All commercial Web sites must obtain a government license. Measures for the Administration of Internet Information Services [Hulianwang xinxi fuwu guanli banfa], issued 20 September 00. All non-commercial Web site operators must register. Registration Administration Measures for Non-Commercial Internet Information Services [Fei jingyingxing hulianwang xinxi fuwu bei'an guanli banfa], issued 28 January 05. Because the MII's registration system gives the government discretion to reject an application based on content (i.e., whether the Web site operator intends to post "news," and if so, whether it is authorized to do so), it is qualitatively different from registration which all Web site operators must undertake with a domain registrar, and constitutes a de facto licensing scheme.

[94] Peter Ford, "Why China Shut Down 18,401 Websites," Christian Science Monitor (Online), 25 September 07; "MII Reports China's Government Has Met its Goals in Private Web Site Crackdown," CECC Human Rights and Rule of Law Update, September 2005, 5; "Ministry of Information Industry: Web Sites That Fail to Register May Be Shut Down," CECC Human Rights and Rule of Law Update, June 2005, 3.

[95] Ford, "Why China Shut Down 18,401 Websites."

[96] "Government Shuts Down Web Site; China Scholars and Activists Respond," CECC China Human Rights and Rule of Law Update, September 2006, 12–13; "Government Agencies Issue New Regulations Restricting News Reporting on the Internet," CECC China Human Rights and Rule of Law Update, November 2005, 4; Provisions on the Administration of Internet News Information Services [Hulianwang xinwen xinxi fuwu guanli guiding], issued 25 September 05.

[97] OpenNet Initiative (Online), "OpenNet Initiative: Bulletin 011–Analysis of China's Non-Commercial Web Site Registration Regulation," 22 February 06. The Opennet Initiative comprises researchers at the Citizen Lab at the Munk Centre for International Studies, University of Toronto, Berkman Center for Internet & Society at Harvard Law School, the Advanced Network Research Group at the Cambridge Security Programme, University of Cambridge, and the Oxford Internet Institute, Oxford University.

[98] "GAPP Drafts Supervision Regulation, Celebrity Magazines To Be Supervised" [Xinwen chuban zongshu ni qicao guanli tiaoli mingren zazhi jiang shou jianguan], Shanghai Youth Daily, reprinted in Xinhua (Online), 23 April 07.

[99] OpenNet Initiative (Online), "Internet Filtering in China in 2004–2005: A Country Study," 14 April 05; China Internet Network Information Center, 20th Statistical Survey.

[100] Steven Schwankert, "English Wikipedia Unblocked in China," IDG News Service (Online), 18 June 07; Simon Burns, "Wikipedia Partly Unblocked in China," VNUnet (Online), 18 June 07.

[101] Juan Carlos Perez, "Flickr Investigates Blocking of Images in China," IDG News Service (Online), 11 June 07.

[102] "Clean Up Cyberspace," China Daily, reprinted in Xinhua (Online), 19 April 07.

[103] "China's Law Enforcement Internet Database Set for Completion This Year," Xinhua, reprinted in People's Daily (Online), 28 May 07.

[104] Ibid.

[105] CECC, 2006 Annual Report, 35.

[106] Measures for the Administration of Internet Information Services, arts. 14, 15, 16.

[107] "Lawyer Pu Zhiqiang Sees 2 Blogs Closed Within 10 Days" [Lüshi Pu Zhiqiang shi tian nei liangge boke bei guan], Radio Free Asia (Online), 21 February 07.

[108] Regulations on the Administration of Business Sites of Internet Access Services [Hulianwang shangwang fuwu yingye changsuo guanli tiaoli], issued 29 September 02, arts. 19, 23; China Internet Network Information Center, 20th Statistical Survey.

[109] Bloggers are never truly anonymous because they can be traced back to an IP address. Jason Leow, "Why China Relaxed Blogger Crackdown, Registration Plan Was Dropped In Face of Tech-Industry Protests," Wall Street Journal (Online), 17 May 07.

[110] See, e.g., "Real Name Registration in Full Bloom, 'Lilac' Withers and Falls: To Post on Harbin Institute of Technology's BBS Requires Information About Full Name and School Department" [Shimingzhi shengkai zidingxiang diaoxie hagongda BBS fatie xuyao xingming he yuanxi xinxi], Southern Metropolitan Daily, 13 July 07.

[111] Jason Leow, "China Eases Real-Name Blog Effort," Wall Street Journal (Online), 23 May 07.

[112] The Internet in China–A Tool of Freedom or Suppression?, Joint Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations, and the Subcommittee on Asia and the Pacific, Committee on International Relations, U.S. House of Representatives, 15 February 06, Testimony of Michael Callahan, Senior Vice President and General Counsel, Yahoo! Inc.; "Congressional Committee to Investigate Disparity Between Documents and Hearing Testimony by Yahoo!," House Foreign Affairs Committee (Online), 3 August 07.

[113] Internet Society of China (Online), "Internet Society of China Formally Issues 'Blogging Services Self-Discipline Pledge' To Promote Orderly Development of Blogging Services" [Zhongguo hulianwang xiehui zhengshi fabu "boke fuwu zilu gongyue," cujin boke fuwu youxu fazhan], 21 August 07.

[114] Reporters Without Borders (Online), "Yahoo! and MSN Comment on 'Self-Disciplinary Pledge'," 28 August 07.

[115] PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 105.

[116] UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Mission to China, Addendum, 29 December 04, para. 78.

[117] "Authorities Sentence Guo Qizhen to Four Years in Prison for Online Essays," CECC China Human Rights and Rule of Law Update, November 2006, 5–6.

[118] "Shandong Court Sentences Internet Essayist Li Jianping to Two Years' Imprisonment," CECC Human Rights and Rule of Law Update, December 2006, 12–13.

[119] "Well-Known Online Article Writer Zhang Jianhong Sentenced for Inciting Subversion of State Power" [Wangshang zhuanwen da Zhang Jianhong shandong dianfu guojia zhengquan an xuanpan], Xinhua, reprinted in Phoenix Television (Online), 20 March 07.

[120] Independent Chinese Pen Center (Online), "ICPC Statement Regarding Protest of Member Yan Zhengxue's Sentence" [Duli zhongwen bihui guanyu huiyuan Yan Zhengxue bei panxin de kangyi shengming]," 19 April 07.

[121] "China Jails Internet Writer for Subversion, Disbars Lawyer," Reuters (Online), 16 August 07.

[122] Independent Chinese Pen Center, "ICPC Statement Regarding Protest of Member Yan Zhengxue's Sentence"; "Overseas Service Center of Chinese Democracy Party Calls for Attention to Case of China Democracy Party's Chen Shuqing and Li Hong (Zhang Jianghong)" [Zhongguo minzhu dang haiwai fuwu zhongxin huyu guanzhu Chen Shuqing, Li Hong (Zhang Jianhong) zhongguo minzhu dang yi an], Radio Free Asia (Online), 19 September 06.

[123] Gao Shan, "Zhejiang China Democracy Party Member Chi Jianwei Sentenced to 3 Years in Prison" [Zhejiang sheng zhongguo minzhu dang chengyuan chi jianwei bei pan xing 3 nian tuxing], Radio Free Asia (Online), 27 March 07.

[124] Chinese Human Rights Defenders (Online), "Pro-Democracy Activist Detained for 'Inciting Subversion' Government Must End Criminalization of Free Speech," 25 August 07.

[125] "Lawyer for Journalists and Cyber-Dissidents Loses License," Reporters Without Borders (Online), 6 August 07.

[126] "Authorities Arrest and Imprison Writers for Online Essays Criticizing Government," CECC China Human Rights and Rule of Law Update, November 2006, 4–5.

[127] Chinese Human Rights Defenders (Online), "Yang Chunlin Accused of 'Subversion Against the State Power'," 4 September 07; "Refused Meeting With Lawyer, Yang Chunlin's Sister Reveals Police Intimidation" [Ju lüshi huijian Yang Chunlin mei jie jingfang konghe], Epoch Times, 17 September 07.

[128] See, e.g., "Authorities Sentence Guo Qizhen to Four Years in Prison for Online Essays," CECC China Human Rights and Rule of Law Update, November 2006, 5–6 and "Shandong Court Sentences Internet Essayist Li Jianping to Two Years' Imprisonment," CECC Human Rights and Rule of Law Update, December 2006, 12–13.

[129] China Information Center (Online), "Administrative Penalty Decision for Zhang Jianping" [Xingzheng chufa jueding shu], 17 April 07. In punishing Zhang, officials relied on the Measures for the Administration of Security Protection of Computer Information Networks with International Interconnections, which prohibit individuals from using the Internet to look up "information that incites the subversion of state power and the overthrow of the socialist political system." Measures for the Administration of Security Protection of Computer Information Networks with International Interconnections [Jisuanji xinxi wangluo guoji lianwang anquan baohu guanli banfa], 11 December 97. Zhang filed an administrative appeal with the Changzhou PSB. The PSB denied the appeal on June 6 and noted that there was evidence that Zhang had browsed certain hostile foreign Web sites, and used censorship circumvention tactics. "Changzhou Public Security Administrative Reconsideration Decision Calls Tianwang A Hostile Foreign Web Site" [Changzhou gongan xingzheng fuyi cheng tianwang jingwai didui wangzhan], 64tianwang.com, 6 June 07.

[130] Xiao Qiang, "China Censors Internet Users With Site Bans, Cartoon Cop Spies," San Francisco Chronicle (Online), 23 September 07.

[131] China Internet Network Information Center, 20th Statistical Survey.

[132] "China Eases Off Proposal for Real-Name Registration," Xinhua (Online), 22 May 07.

[133] Access to Information in the People's Republic of China, Hearing of the U.S.-China Economic and Security Review Commission, 31 July 07, Written Statement Submitted by Ashley Esarey, Luce Fellow of Asian Studies and Assistant Professor of Comparative Politics, Middlebury College.

[134] Edward Cody, "China's Muckrakers for Hire Deliver Exposés With Impact," Washington Post (Online), 2 May 07; Edward Cody, "Text Messages Giving Voice to Chinese," Washington Post (Online), 28 June 07. Because they post on the Internet, however, such journalists are still subject to China's censorship of that medium.

[135] Clay Chandler, "Is China Emerging from a Media Ice Age," Fortune (Online), 1 June 07.

[136] "500 Mln Cellphone Users Mark China's 20th Anniversary of Mobile," Xinhua, reprinted in People's Daily (Online), 20 July 07.

[137] China Mobile Limited (Online), visited on September 27, 2007.

[138] Mitchell Landsberg, "Chinese Activists Turn to Cellphones," Los Angeles Times (Online), 1 June 07.

[139] Louisa Lim, "China To Censor Text Message," BBC (Online), 2 July 04. Until recently, prepaid phones could be purchased anonymously. In 2005, in an apparent move to curb fraud and spamming, mostly committed via text message, the government began to require real name registration of cell phones. "China Cracking Down on Cell Phone Fraud, Spam," Reuters (Online), 28 December 05. This was aimed mostly at pre-paid phones, which in 2006 represented more than half of all mobile phones. It is unclear how widely enforced this requirement is.

[140] "Xiamen Suspends Controversial Chemical Project," Xinhua (Online), 30 May 07.

[141] Ibid.

[142] Cody, "Text Messages Giving Voice to Chinese."

[143] Landsberg, "Chinese Activists Turn to Cellphones."

[144] Cody, "Text Messages Giving Voice to Chinese."

[145] "Xiamen Suspends Controversial Chemical Project," Xinhua.

[146] Many around China followed the protests in real time through written reports and cell phone photos posted on blogs. Some sites were blocked but many of the reports had already been forwarded to other sites around China before censors could react. Cody, "Text Messages Giving Voice to Chinese."

[147] Zhu Hongjun, "She Started the Storm Over the Shanxi Illegal Brick Kilns" [Shanxi hei zhuanyao fengbao bei ta dianran], Southern Weekend (Online), 12 July 07.

[148] Fairclough, "Finally Rescued, China's 'Slaves' Detail Their Plight."

[149] "China's Internet Justice," Wall Street Journal (Online), 21 June 07; Josephine Ma, "Beijing's Damage Control Moves Behind the Scenes," South China Morning Post (Online), 10 July 07; Josephine Ma, "Top Official Plays Down Scale of Kiln Slavery," South China Morning Post (Online), 14 August 07.

[150] Howard French, "In China, Fight Over Development Creates a Star," New York Times (Online), 26 March 07.

[151] "Blogger Also Comes to Report on the 'Awesome Nail House'" [Boke ye lai baodao "zui niu dingzi hu"], Southern Metropolitan Daily (Online), 30 March 07.

[152] Ma, "Beijing's Damage Control Moves Behind the Scenes"; Geoffrey York, "The Coolest Nail House in History," Globe and Mail (Online), 29 March 07.

[153] "Draft Xiamen Regulation of Online Forums Abolishes Anonymous Comment Function" [Xiamen ni guiding luntan quxiao niming fatie gongneng], Taihai Wang, reprinted in Sina.com, 4 July 07.

[154] Regulations on the Administration of Publishing.

[155] Although no absolute international standard prescribes what constitutes freedom of the press, international human rights standards set forth a minimum prerequisite: no legal system can be said to respect freedom of the press if it subjects the print media to any prior restraint through a licensing scheme. In 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression issued a joint declaration saying that licensing schemes are unnecessary and subject to abuse. The UN Human Rights Committee ruled in March 2000, that a licensing scheme in Belarus similar to China's violated Article 19 because the government of Belarus had failed to show how the licensing requirements were necessary to protect any of the legitimate purposes set forth in Article 19. The Commission has recommended in its annual reports that China eliminate this prior restraint on publishing.

[156] Notice Regarding Prohibiting the Transmission of Harmful Information and Further Regulating Publishing Order [Guanyu jinzhi zhuanbo youhai xinxi jinyibu guifan chuban zhixu de tongzhi], issued 5 November 01: "No one may establish an entity whose primary purpose is to transmit news information and engage in other news publishing activities without permission from the press and publication administration agency."

[157] Circular Regarding Issuance of the "Temporary Provisions on the Functions of the Sponsoring Work Unit and the Managing Work Unit for Publishing Work Units", arts. 5–6; Regulations on the Administration of Publishing, art. 11(2).

[158] Regulations on the Administration of Publishing, art. 29.

[159] Guangdong Press and Publication Administration (Online), "Responsible Person at the General Administration of Press and Publication Book Office Reports on the Previous Year's National Book Publishing Administration Work" [Zongshu tushusi fuzeren tongbao qunian quanguo tushuchuban guanli gongzuo], 24 February 05 (saying that authorities should use the opinions provided when screening the selection of topics to determine the distribution of book numbers, because this "reduces the risks relating to orientation").

[160] "Wen Jiabao: Pushing Forward Political Reform, Strengthening People's Supervision of the Government" [Wen Jiabao: tuijin zhengzhi tizhi gaige jiaqiang renmin zhengfu de jiandu], China Court Network (Online), 16 March 07. Premier Wen also said that more public supervision of the government was needed.

[161] "China's TV Watchdog Vows To Fight Corruption in TV Drama Censorship," Xinhua, reprinted in People's Daily (Online), 21 June 07.

[162] The move was intended to improve the quality of talent and combat commercially driven "talent shows," but it also increases the government's control over artists and entertainers. "If You Want To Be a Music or Movie Star, You'll Need Certification" [Yao dang gexing yingxing xu xian chi zheng shang gang], Beijing News (Online), 19 April 07.

[163] Hebei Administration of Press and Publication (Online), "GAPP Director Long Xinmin Comes to Our Province To Inspect Guidance Work" [Guojia xinwen chuban zongshu shuzhang Long Xinmin dao wo sheng diaoyan zhidao gongzuo], 15 October 06.

[164] "Party Uses Journalists, Artists, Academics To Promote 'Harmonious Society'," CECC China Human Rights and Rule of Law Update, December 2006, 10.

[165] "Long Xinmin: Publish Large Volume of Outstanding Publications To Serve Readers and as Favor to Masses" [Long Xinmin: chuban dapi youxiu chuban wu fuwu duzhe hui ji qunzhong], People's Daily (Online), 28 March 07.

[166] "Public Security Organs Capture 590 Million Illegal Publications of All Kinds Over Five Years" [Gongan jiguan 5 nian shoujiao gelei feifa chubanwu 5.9 yi jian], Xinhua (Online), 29 March 07.

[167] "100 Day Anti-Piracy Action: 368 Business Licenses Rescinded" [Fan daoban bairi xingdong: 368 jia danwei jingying xuke zheng bei diaoxiao], People's Daily (Online), 17 September 06.

[168] Ibid. Li Baozhong, head of GAPP's Market Supervision Department, said that "compared to pornographic publications, the harm from these kinds of illegal news and economic publications is even greater. Lawbreakers follow their own prerogatives to edit and publish these publications, severely deviating from the correct news orientation." General Administration on Press and Publication (Online), "Illegal Periodical 'China New Observer' Investigated and Prosecuted" [Feifa qikan "zhongguo xin guancha" bei chachu], 8 May 07.

[169] General Administration on Press and Publication (Online), "Nationwide 'Sweep Away Pornography, Strike Down Illegal Publications' Method: Three Major Points to Implement, Maintaining High Posture" [Quanguo "saohuang dafei"ban: shishi san da zhongdian baochi gaoya taishi], 27 February 07.

[170] "In the First 3 Months of the Year, 36 Million Pieces of Illegal Publications of All Kinds Were Confiscated" [Zhongguo jinnian qian 3 ge yue shoujiao gelei feifa chubanwu 3600 duo wan jian], Xinhua (Online), 14 April 07.

[171] "Guangzhou College Students Self-Publish Newspaper and Magazine: Legality In Question" [Guangzhou daxuesheng zi ban baozhi zazhi hefaxing shou zhiyi], People's Daily (Online), 20 June 07.

[172] Ibid.

[173] "Eight Books Banned in Crackdown on Dissent," South China Morning Post (Online), 19 January 07.

[174] "GAPP Director Clarifies That Regarding Reported Banning of 'Past Stories of Peking Opera Stars' and Other Books: We Never Banned Even One Book" [Zhongguo xinwen chuban zongshu chengqing "lingren wangshi deng shu bei jin": women yi ben shu dou mei chajin], Zaobao.com, 1 February 07; "Eight Books Banned in Crackdown On Dissent," South China Morning Post.

[175] "GAPP: Investigated and Found No Book Ban, Zhang Yihe Counters That Officials Don't Understand When To Admit Error" [Chubanzongshu: you chachu wu jin shu Zhang Yihe bochi guanyuan bu dong ren cuo], Ming Pao (Online), 9 February 07; "GAPP Director Clarifies That Regarding Reported Banning of 'Past Stories of Peking Opera Stars' and Other Books: We Never Banned Even One Book," Zaobao.com.

[176] "Publishers Confirm Being Punished for Printing Controversial Books" [Chubanshe zhengshi bei fa], Ming Pao (Online), 2 February 07.

[177] This year is the 50th anniversary of the start of the anti-rightist movement, a purge of intellectuals that followed the Hundred Flowers Campaign's brief tolerance of dissent. Propaganda officials have reportedly ordered China's media to limit coverage of this topic. Vivian Wu, "Court Reject Author's Plea on Ban," South China Morning Post, 27 April 07.

[178] "China Keeps Its Critics At Home While Promising Greater Freedom for Foreign Media," Associated Press (Online), 5 February 07.

[179] CECC, 2005 Annual Report, 11 October 05, 62; Reporters Without Borders (Online), "Journalist Faces Possible Life Sentence for Posting Tiananmen Document on Website," 4 February 05; Keith Bradsher, "China Announces Media Crackdown," New York Times (Online), 15 August 07.

[180] Yahoo!'s general counsel testified at a congressional hearing that in October 2005 Yahoo merged Yahoo! China with Alibaba.com, a Chinese company. Yahoo! maintained a large equity stake but no longer has day-to-day operation control over Yahoo! China. The Internet in China–A Tool of Freedom or Suppression?, Testimony of Michael Callahan.

[181] Dui Hua Foundation (Online), "Police Document Sheds Additional Light on Shi Tao Case," 25 July 07; "Regarding Court Decisions and Security Bureau Documents for Shi Tao, Wang Xiaoning" [Guanyu Shi Tao, Wang Xiaoning de zhongguo fayuan panjue he anquanju wenjian], Boxun (Online), 23 July 07; Reporters Without Borders (Online), "Information Supplied by Yahoo! Helped Journalist Shi Tao Get 10 Years in Prison," 6 September 05. The Internet in China–A Tool of Freedom or Suppression?, Testimony of Michael Callahan; "Congressional Committee to Investigate Disparity Between Documents and Hearing Testimony by Yahoo!," House Foreign Affairs Committee (Online), 3 August 07; Stephanie Kirchgaessner and Richard Waters, "Yahoo Faces Scrutiny in China Case," Financial Times (Online), 7 August 07. In May 2007, Shi Tao also joined a lawsuit against Yahoo! filed with the U.S. District Court for the Northern District of California, alleging, among other things, that the company had aided and abetted the commission of international human rights violations. See Amended Complaint for Tort Damages, Xianing et al v. Yahoo! Inc., et al., U.S. District Court Northern District California, Oakland Division, 29 May 07.

[182] Jim Yardley, "China Releases Jailed New York Times Employee," New York Times (Online), 15 September 07.

[183] The Beijing High People's Court upheld the sentence in December 2006. "Beijing Court Rejects Zhao Yan's Appeal, Affirms Three-Year Sentence," CECC Human Rights and Rule of Law Update, December 2006, 3–4.

[184] Reporters Without Borders, "Journalist Gao Qinrong Released Five Years Early," 11 December 06. In August 1999, a court in Shanxi province sentenced Gao for accepting bribes, fraud, soliciting prostitutes. "After Anti-Corruption Journalists Speaks the Truth" [Fan fu jizhe jiangle zhenhua yihou], Southern Weekend (Online), 12 December 02. Gao's reporting exposed a sham irrigation project in Yuncheng in 1998. "Gao Qinrong," PEN Canada (Online), December 2006. Investigative reports by several Chinese news media found that authorities in Yuncheng detained Gao in the absence of reliable evidence, started building a criminal case against him only after he was detained, and convicted him on the basis of insufficient evidence. "After Anti-Corruption Journalists Speaks the Truth" [Fan fu jizhe jiangle zhenhua yihou], Southern Weekend (Online), 12 December 02; "To Only Have Right To Interview Is Not Enough" [Jin you caifangquan shi bugou de], Legal Daily (Online), 14 May 01.

[185] Dui Hua Foundation, "Nine-Month Sentence Reduction Confirmed for Xu Zerong," 26 September 06.

Notes to Section II—Freedom of Religion

[1] CECC, 2004 Annual Report, 5 October 2004, 34, 36–37.

[2] CECC, 2006 Annual Report, 20 September 2006, 93.

[3] CECC, 2004 Annual Report, 39; CECC, 2005 Annual Report, 11 October 05, 49; CECC, 2006 Annual Report, 86–87.

[4] See, e.g., CECC, 2005 Annual Report, 52; CECC, 2006 Annual Report, 91.

[5] See discussion infra and in Section IV, "Tibet," for more information on religion-related legislative developments in Tibetan areas of China.

[6] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report—2006, China (includes Tibet, Hong Kong, and Macau), 15 September 06. See discussion infra for more information on closures of Buddhist and Daoist temples.

[7] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report—2007, China (includes Tibet, Hong Kong, and Macau), 14 September 07. The International Religious Freedom Act mandates that the "Country of Particular Concern" designation be made for countries that "engaged in or tolerated particularly severe violations of religious freedom," and sets out possible courses of action, including sanctions, toward these countries. See International Religious Freedom Act of 1998, 22 U.S.C. 6401 et seq., 6442(b)(1)(A), 6442 (c), 6445. In 2006, John V. Hanford III, Ambassador at Large for International Religious Freedom, noted that the climate for religious freedom had improved in recent decades but that "a number of setback[s]" have taken place in the past two to three years. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, On-the-Record Briefing on the Release of the Department of State's Annual Report on International Religious Freedom, 15 September 06.

[8] See, e.g., PRC Constitution, art. 36; Regulation on Religious Affairs (RRA) [Zongjiao shiwu tiaoli], issued 30 November 04, art. 2; PRC Regional Ethnic Autonomy Law (REAL), enacted 31 May 84, amended 28 February 01, art. 11.

[9] See, e.g., the Universal Declaration of Human Rights (UDHR), adopted and proclaimed by General Assembly resolution 217A (III) of 10 December 48, art. 18.

[10] See, e.g., PRC Constitution, art. 36; RRA, art. 3; REAL, art. 11.

[11] Registration requirements to form a religious organization and establish a venue for religious activities are found in RRA, art. 6 and art. 13–15. See also Measures on the Examination, Approval, and Registration of Venues for Religious Activity [Zongjiao huodong changsuo sheli shenpi he dengji banfa], issued 21 April 05.

[12] See discussion on religious speech, infra, as well as "Prior Restraints on Religious Publishing in China" in the CECC Virtual Academy for more information.

[13] See discussions on citizens' freedom to interact with foreign co-religionists, infra.

[14] See the discussion on children, infra.

[15] "Head of Religious Association: Religious Adherents Not Arrested Due to Their Faith," CECC Virtual Academy (Online), 26 June 06.

[16] See, e.g., UDHR, art. 18; International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 18; the International Covenant on Economic, Social, and Cultural Rights (ICESCR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 13(3) (requiring States Parties to "ensure the religious and moral education of . . . children in conformity with [the parents'] own convictions"); and the Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 89, entry into force 2 September 90, art. 14; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly resolution 36/55 of 25 November 81.

[17] China is a party to the ICESCR and the CRC, and a signatory to the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, "to refrain from acts which would defeat the object and purpose of a treaty" it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.

[18] See General Comment No. 22 to Article 18 of the ICCPR for an official interpretation of freedom of religion as articulated in the ICCPR. General Comment No. 22: The Right to Freedom of Thought, Conscience, and Religion (Art. 18), 30 July 93, para. 1. This section of the Commission's Annual Report primarily uses the expression "freedom of religion" but encompasses within this term reference to the more broadly articulated freedom of "thought, conscience, and religion" (see, e.g., UDHR, art. 18; ICCPR, art. 18).

[19] ICCPR, art. 18(1), (2), (4). See also General Comment No. 22, para. 1, 2, 4, 6; and CRC, art. 14. See also Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

[20] For more background on government policy to "use law to strengthen management of religious affairs," see, e.g., Ye Xiaowen, "Preface," in Shuai Feng and Li Jian, Interpretation of the Regulation on Religious Affairs [Zongjiao shiwu tiaoli shiyi], (Beijing: Beijing Religious Culture Press, 2005), 1–2 (pagination for preface); Beatrice Leung, "China's Religious Freedom Policy: The Art of Managing Religious Activity," The China Quarterly, no. 184, 894, 907–911 (2005).

[21] Zhang Xunmou, Policy and Law Department of the State Administration for Religious Affairs, quoted in Nailene Chou Wiest, "Religious Groups Get More Room to Move," South China Morning Post (Online), 20 October 04.

[22] See, e.g., Public Security Bureau Personnel Training Bureau, Lectures on Domestic Security Defense Studies [Guonei anquan baoweixue jiaocheng] (Beijing: Mass Publishing Company, 2001), 141–142.

[23] Wang Zhimin, "Thoughts on How To Safeguard Social Stability and Supply High-Grade Service in the Course of Developing the West" [Dui xibu dakaifa zhong ruhe weihu shehui wending tigong youzhi fuwu de sikao], in Police Science Society of China, ed., Collected Essays on

Public Security Work and Developing the West, (Beijing: Chinese People's Public Security University Press, 2002), 254.

[24] See, e.g., Ye Xiaowen, "Give Play to the Positive Role of Religion in Pushing Forward Social Harmony," Study Times, 25 December 06 (Open Source Center, 8 January 07). For earlier statements, see, e.g., Sun Chengbin and Yin Hongzhu, "National Work Conference on Religious Affairs Held in Beijing, Jiang Zemin Stressed Need to Effectively Do a Good Job in Religious Work at the Beginning of This Century To Serve the Overall Situation of Reform, Development, and Stability," Xinhua, 12 December 01 (Open Source Center, 12 December 01).

[25] See, e.g., Ye, "Give Play to the Positive Role of Religion in Pushing Forward Social Harmony;" "SARA Director Calls for Continued Controls on Religion," CECC China Human Rights and Rule of Law Update, September 2006, 8.

[26] "SARA Director Calls for Continued Controls on Religion," CECC China Human Rights and Rule of Law Update, September 2006, 8.

[27] For more information, see, e.g., CECC, 2006 Annual Report, 89, 93.

[28] Ye Xiaowen, "Correctly Understanding and Handling the Religious Relationship in the Socialist Society—Studying Comrade Hu Jintao's Important Speech at the National United Front Work Conference," Seeking Truth, 18 August 06 (Open Source Center, 23 August 06).

[29] Wu Jiao, "Religious Believers Thrice the Official Estimate: Poll," China Daily, 7 February 07 (Open Source Center, 7 February 07). Figures differ greatly. Unofficial estimates indicate a rapid growth in numbers in some religious communities. For example, overseas sources have estimated that up to 100 million people worship in unregistered Protestant churches and that the number continues to grow. Official government sources have stated that China has 16 million Protestants and 4.5 million Catholics affiliated with the state-controlled Catholic church, but State Administration for Religious Affairs director Ye Xiaowen also reportedly said that China had 130 million Protestants and Catholics as of 2006. For an overview of official and unofficial statistics, see U.S. Department of State, International Religious Freedom Report—2006, China, and U.S. Department of State, International Religious Freedom Report —2007, China.

[30] "Diligently Strengthen the Foundation, Arouse the Passions To Serve the Situation—A Scan of Religious Work in 2005" [Yongxin guben qiangji dongqing fuwu daju—2005 zongjiao gongzuo saomiao], China Religions 2006 volume 1, reprinted on the State Administration for Religious Affairs Web site, 27 January 06.

[31] See, e.g., "SARA Holds First Term of Religious Work Cadre Training" [Guojia zongjiaoju juban diyiqi zongjiao gongzuo ganbu peixunban], United Front Work Department (Online), 4 December 06; "Suzhou Daily: Our City's Religious Personages Discuss Study and Implementation of 'Regulation on Religious Affairs'" [Suzhou ribao: woshi zongjiaojie renshi zuotan xuexi guanche 'zongjiao shiwu tiaoli'], Suzhou Daily, reprinted on the Suzhou Ethnic and Religious Affairs Bureau Web site, 17 March 07.

[32] Measures on the Examination, Approval, and Registration of Venues for Religious Activity; Measures on the Management of the Reincarnation of Living Buddhas in Tibetan Buddhism [Cangchuan fojiao huofo zhuanshi guanli banfa], issued 18 July 07; Measures on Establishing Religious Schools [Zongjiao yuanxiao sheli banfa], issued 1 August 07; Measures for Putting on File the Main Religious Personnel of Venues for Religious Activities [Zongjiao huodong changsuo zhuyao jiaozhi renzhi bei'an banfa], issued 29 December 06; Measures for Putting on File Religious Personnel [Zongjiao jiaozhi renyuan bei'an banfa], issued 29 February 06. Measures Regarding Chinese Muslims Signing Up To Go Abroad on Pilgrimages (Trial Measures) [Zhongguo musilin chuguo chaojin baoming paidui banfa (shixing)], undated (estimated date 2006), available on the SARA Web site. See Section IV—Tibet for an analysis of the Measures on the Management of the Reincarnation of Living Buddhas in Tibetan Buddhism.

[33] Shuai and Li, Interpretation of the Regulation on Religious Affairs. This book is written by drafters of the Regulation on Religious Affairs. See p. 6 of the preface. The book includes a preface by State Administration for Religious Affairs (SARA) director Ye Xiaowen and is advertised on the SARA Web site. A Web search of the book's title, limited to Web sites with "gov.cn" in the Web address, found only three local governments reporting on having received or used the text. Web search conducted July 16, 2007. While the text clarifies some ambiguous provisions of the Regulation on Religious Affairs, it also leaves some ambiguities—such as the question of whether religions outside the five belief systems are recognized in practice by the central government—unanswered.

[34] Between March 1, 2005, when the national RRA entered into force, and September 2007, 11 provincial-level areas issued new or amended comprehensive regulations on religious affairs and made the texts available on legal databases and other Web sites. These regulations are: Shanghai Municipality Regulation on Religious Affairs [Shanghaishi zongjiao shiwu tiaoli], adopted 30 November 95, amended 21 April 05; Henan Province Regulation on Religious Affairs [Henansheng zongjiao shiwu tiaoli], issued 30 July 05; Zhejiang Province Regulation on Religious Affairs [Zhejiangsheng zongjiao shiwu tiaoli], issued 6 December 97, amended 29 March 06; Shanxi Province Regulation on Religious Affairs [Shanxisheng zongjiao shiwu tiaoli], issued 29 July 05; Anhui Province Regulation on Religious Affairs [Anhuisheng zongjiao shiwu tiaoli], issued 15 October 99, amended 29 June 06 and 28 February 07; Beijing Municipality Regulation on Religious Affairs [Beijingshi zongjiao shiwu tiaoli], issued 18 July 02, amended 28 July 06; Chongqing Municipality Regulation on Religious Affairs [Chongqingshi zongjiao shiwu tiaoli], issued 29 September 06; Hunan Province Regulation on Religious Affairs [Hunansheng zongjiao shiwu tiaoli], issued 30 September 06; Liaoning Province People's Congress Standing Committee Decision on Amending the Liaoning Province Regulation on Religious Affairs [Liaoningsheng renmin daibiao dahui changwu weiyuanhui guanyu xiugai "Liaoningsheng zongjiao shiwu tiaoli" de jueding], issued on 28 November 98 as the Liaoning Province Regulation on the Management of Religious Affairs, amended and name changed on 1 December 06; Sichuan Province Regulation on Religious Affairs [Sichuansheng zongjiao shiwu tiaoli], issued on 9 May 00 as the Sichuan Province Regulation on the Management of Religious Affairs, amended and name changed on 30 November 06; and Tibet Autonomous Region Implementing Measures for the

"Regulation on Religious Affairs" (Trial Measures) [Zizang zizhiqu shishi "zongjiao shiwu tiaoli" banfa (shixing)], issued 19 September 06. In addition, the Hebei provincial government also amended its 2003 Regulation on Religious Affairs, according to a report from the Hebei Province Ethnic and Religious Affairs Department Web site, but a public copy appears to be unavailable. Hebei Province Ethnic and Religious Affairs Department (Online), "Hebei Province Regulation on Religious Affairs Revised and Promulgated" ["Hebeisheng zongjiao shiwu tiaoli" xiuding bing gongbu], 14 February 07. The Anhui provincial government retained inconsistent provisions in its first amendments, in 2006. For an analysis of the Anhui amendments and other regulations, see "Anhui Government Amends Provincial Religious Regulation," CECC China Human Rights and Rule of Law Update, October 2006, 10–11; "Zhejiang and Other Provincial Governments Issue New Religious Regulations," CECC China Human Rights and Rule of Law Update, June 2006, 9–10; "Beijing Municipality Amends Local Religious Regulation," CECC China Human Rights and Rule of Law Update, November 2006, 8–9; "Chongqing Municipality and Hunan Province Issue New Religious Regulations," CECC Virtual Academy (Online), 4 January 07

[35] Article 79 of the Legislation Law says that national regulations have higher force than local ones, and Articles 64 and 88 call for amending or canceling local regulations that conflict with national legal sources. PRC Legislation Law [Zhonghua renmin gongheguo lifafa], adopted 15 March 00. Nonetheless, out-of-date provisions remain within local-level legislation. For example, the Guangdong Province Regulation on the Administration of Religious Affairs retains a provision requiring yearly inspections of venues for religious activities in accordance with a national legal measure (banfa) on the topic, but subsequent legal developments have voided this legal guidance. See Guangdong Province Regulation on the Administration of Religious Affairs [Guangdongsheng shiwu guanli tiaoli], adopted 26 May 00, art. 15. See also "Beijing Municipality Amends Local Religious Regulation," CECC China Human Rights and Rule of Law Update, November 2006, 8–9; and Shuai and Li, Interpretation of the Regulation on Religious Affairs, 93. According to this book of interpretations, the national RRA annuls an earlier measure requiring yearly inspections. This annulment is not explicit within the text of the RRA itself.

[36] Hunan Province Regulation on Religious Affairs, art. 48. See also "Chongqing Municipality and Hunan Province Issue New Religious Regulations," CECC Virtual Academy (Online), 4 January 07.

[37] Tibet Autonomous Region Implementing Measures for the "Regulation on Religious Affairs," art. 36–40.

[38] See, e.g., "Zhejiang and Other Provincial Governments Issue New Religious Regulations," CECC China Human Rights and Rule of Law Update, June 2006, 9–10, for a comparison of regulations from four provincial-level areas.

[39] The central government has referred to the five religions as China's main religions, but in practice the state has created a regulatory system that institutionalizes only these five religions for recognition and legal protection. See, e.g., State Council Information Office, White Paper on Freedom of Religious Belief in China, October 1997 (Online) (stating that the religions citizens "mainly" follow are Buddhism, Daoism, Islam, Catholicism, and Protestantism). Wording from this White Paper is posted as a statement of current policy on the Web sites of the United Front Work Department, the agency that oversees religious affairs within the Communist Party, and the State Administration for Religious Affairs (SARA). Some local regulations on religious affairs define religion in China to mean only these five categories. See, e.g., Guangdong Province Regulation on the Administration of Religious Affairs, art. 3, and Henan Province Regulation on Religious Affairs, art. 2. There is some limited tolerance outside this framework for some ethnic minority and "folk" religious practices. See text infra and see also Kim-Kwong Chan and Eric R. Carlson, Religious Freedom in China: Policy, Administration, and Regulation (Santa Barbara: Institute for the Study of American Religion, 2005), 9–10, 15–16. Some local governments have recognized the Orthodox church. See the discussion, infra, on Orthodoxy in China. Officials told a visiting U.S. delegation in August 2005 that they were considering at the national level whether to allow some other religious communities, including the Orthodox church, to register to establish organizations or religious activity venues, but no decisions in this area have been reported. U.S. Commission on International Religious Freedom (USCIRF), "Policy Focus: China," 9 November 05, 4. See also "A Year After New Regulations, Religious Rights Still Restricted, Arrests, Closures, Crackdowns Continue," Human Rights Watch (Online), 1 March 06 (reporting no decision on whether or not to recognize additional religions).

[40] See, e.g., RRA, art. 6 (requiring religious organizations to register in accordance with the Regulations on the Management of the Registration of Social Organizations); art. 8 (requiring an application to the State Administration for Religious Affairs (SARA) to establish an institute for religious learning); art. 13–15 (imposing an application procedure to register venues for religious activity); art. 27 (requiring the appointment of religious personnel to be reported to the religious affairs bureau at or above the county level and requiring reporting the succession of living Buddhas for approval to governments at the level of a city divided into districts or higher, and requiring reporting for the record the appointment of Catholic bishops to SARA).

[41] These Party-led associations are sometimes also referred to as "patriotic religious associations."

[42] For a description of the religious associations in Chinese sources, see Shuai and Li, Interpretation of the Regulation on Religious Affairs, 4–5.

[43] Authorities accused the monk of engaging in improper relations with lay practitioners and dismissed him on those alleged grounds. "Jiangxi Buddhist Master Accused of Being a Womanizer and Driven Out of Temple," Sing Tao Jih Pao, 25 August 06 (Open Source Center, 27 August 06). "Top Buddhist Officials Join in Persecution of Activist Monk," Human Rights in China (Online), 23 August 06.

[44] Human Rights Watch and Human Rights in China, "Devastating Blows: Religious Repression of Uighurs in Xinjiang," April 2005, 49–53, 55–57 (pagination follows "text-only" pdf download of this report).

[45] Some organizations operate without any registration and are tolerated by local authorities. A limited number of organizations have registered with local officials without affiliating with a Party-controlled religious association. U.S. Department of State, International Religious Freedom Report—2006, China.

[46] See CECC, 2004 Annual Report, Section III(c) Freedom of Religion, for more information.

[47] Ministry of Public Security (Online), "Liu Jinguo's Speech at Conference on National Work To Investigate and Deal with Rural Districts That Have Public Order in Disarray" [Liu Jianguo zai quanguo paicha zhengzhi nongcun zhi'an hunluan diqu huiyi shang de fayan], 6 July 07. The China Aid Association (CAA) reported detentions in the aftermath of the campaign's launch. "Chinese Government Launched Nationwide Campaign against Uncontrolled Religious Activities; Massive Arrests Occurred in Inner Mongolia, Liaoning, Xinjiang, Jiangsu, Henan, Shandong, and Anhui," CAA (Online), 24 August 07.

[48] "Our District's Work on the Administration of Abnormal Religious Activities Is Taking on a Desirable Posture" [Woqu feizhengchang zongjiao huodong zhili gongzuo xingcheng lianghao taishi], Baoshan Ethnicities and Religion Net (Online), 20 July 07.

[49] See, e.g., RRA, art. 4 and White Paper on Freedom of Religious Belief in China, for more information on these principles.

[50] "PRC Public Security Minister Zhou Yongkang Urges Crackdown on 'Hostile Forces,'" Agence France-Presse, 20 March 07 (Open Source Center, 20 March 07). Zhou made a similar statement again in September, calling for increased security specifically for the 17th Party Congress, scheduled for October 2007. Shi Jiangtao, "Crackdown by Police Ahead of Party Congress," South China Morning Post (Online), 7 September 07. After Western media reported that foreign missionaries planned to increase their presence during the Olympics, Party-led China Christian Council head Cao Shengjie told foreign groups to adhere to Chinese rules and not engage in religious activities without invitation from the Party-led Protestant church. Kristine Kwok, "Olympic Missionaries Warned To Follow Rules," South China Morning Post (Online), 29 May 07; "Thousands Planning to Bring the Gospel to China During the Olympic Games," AsiaNews (Online), 21 May 07.

[51] "Government Intervenes into a Three-Self Church in Shanxi Province, Pastor Evicted," CAA (Online), 9 August 06.

[52] "Over 100 Foreign Missionaries Expelled or Forced To Leave by Chinese Government Secret Campaign," CAA (Online), 10 July 07. For additional reporting on this news, see, e.g., Alexa Olesen, "Christian Aid Group Says China Kicking Out Foreign Missionaries Ahead of 2008 Olympics," Associated Press (via Nexis), 10 July 07 (citing a U.S. Embassy spokesperson who said her office had "heard some reports of deportations.")

[53] Detailed Implementing Rules for the Provisions on the Management of the Religious Activities of Foreigners within the PRC [Zhonghua renmin gongheguo jingnei waiguoren zongjiao huodong guanli guiding shishi xize], issued 26 September 00, art. 17.

[54] Ministry of Foreign Affairs (Online), "MFA Spokesperson Liu Jianchao Answers Reporters Questions" [Waijiaobu fayanren Liu Jianchao huida jizhe tiwen], 16 March 05.

[55] See, e.g., Fujian Province Implementing Measures on the Law on the Protection of Minors [Fujiansheng shishi "Zhonghua renmin gongheguo weichengnianren baohufa" banfa], issued 21 November 94, amended 25 October 97, art. 33; Inner Mongolia Autonomous Region (IMAR) Implementing Measures on the Management of Venues for Religious Activity [Neimenggu zizhiqu zongjiao huodong changsuo guanli shishi banfa], issued 23 January 96, art. 13. While the national regulation addressed in the IMAR measures was annulled in 2005, the IMAR measures appear to remain in force.

[56] U.S. Department of State, International Religious Freedom Report—2006, China.

[57] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices —2006, China (includes Tibet, Hong Kong, and Macau) (Online), 6 March 07.

[58] Elisabeth Allès, "Muslim Religious Education in China," 45 Perspectives Chinoises (January–February 2003) (Online); Will Religion Flourish Under China's New Leadership? Staff Roundtable of the Congressional-Executive Commission on China, 24 July 03, Testimony of Dr. Jacqueline M. Armijo-Hussein, Assistant Professor, Department of Religious Studies, Stanford University.

[59] See, e.g., Sara L.M. Davis, "Dance, Or Else: China's 'Simplifying Project,'" China Rights Forum 2006, No. 4—Ethnic Groups in China, 20 December 06.

[60] See CECC 2004 Annual Report, 37, for more details on these campaigns.

[61] Ye Xiaowen, "Correctly Understanding and Handling the Religious Relationship in the Socialist Society—Studying Comrade Hu Jintao's Important Speech at the National United Front Work Conference."

[62] RRA, art. 34.

[63] See, e.g., Guangdong Province Ethnic and Religious Affairs Commission (Online), "Shantou City Religious Circles Launch Compassion Activities to Help Haojiang District's Dusheng Village Resume Work After Disaster" [Shantoushi zongjiaojie kaizhan aixin huodong bangzhu haojiangqu dushengcun zuohao zaihou huifu gongzuo], 12 June 06; Hebei Province Ethnic and Religious Affairs Department (Online), "Hebei Province's Two Catholic Associations Establish the 'Hebei Promote-Virtue Charity Service Center'" [Hebeisheng tianzhujiao lianghui chengli "Hebei jin de gongyi shiye fuwu zhongxin"], 14 July 06.

[64] Susan K. McCarthy, "The Three Represents and the Four Noble Truths: Faith-Based Civil Society Organizations in Contemporary China," Paper submitted for the 2007 annual meeting of the Association of Asian Studies, March 22–25, Boston, 9–10. [On File.]

[65] See, e.g., "Muslim Hands Reach Out to Gansu," China Development Brief (Online), 6 May 05; "MH in China: 70 Kids Have Cleft Lip Correction," Muslim Hands Feedback Report 2004 (Online), last visited 6 October 07; Correspondence to the CECC, 9 May 06; Elaine Chan, "Beyond Parallel," South China Morning Post, 30 September 06.

[66] See Section II—Civil Society, infra, for more information.

[67] See, e.g., Jay Dautcher, "Public Health and Social Pathologies in Xinjiang," in Xinjiang: China's Muslim Borderland, ed. S. Frederick Starr (Armonk, New York: M.E. Sharpe, 2004), 285–6.

[68] This overview paragraph provides a summary of key issues of concern. See the text that follows the paragraph for more information, including detailed citations.

[69] CECC, 2005 Annual Report, 49.

[70] "Underground Bishop Jia Zhiguo Is Arrested Again," Cardinal Kung Foundation (Online), 6 June 07 "Msgr. Jia Zhiguo, Underground Bishop Is Freed," AsiaNews, reprinted on the CAA Web site, 23 June 07.

[71] "Mgr Julius Jia Zhiguo, Who Wanted To Disseminate the Pope's Letter, Is Arrested," AsiaNews (Online), 23 August 07.

[72] "Underground Bishop Jia Zhiguo Is Arrested Again," Cardinal Kung Foundation. See the CECC Political Prisoner Database for more information.

[73] CECC, 2006 Annual Report, 87.

[74] U.S. Department of State, International Religious Freedom Report—2006, China.

[75] "Officials Assault Nuns Over Land Dispute in Shaanxi Province," CECC China Human Rights and Rule of Law Update, March 2006, 11; "Registered Catholics Claim Property in Tianjin," CECC China Human Rights and Rule of Law Update, March 2006, 11–12; "Nuns and Alleged Assailants Reach Out-of-Court Settlement in Xi'an Beating Case," CECC China Human Rights and Rule of Law Update, December 2006, 9.

[76] "Chinese Government Appoints Bishop Without Holy See Approval," CECC China Human Rights and Rule of Law Update, December 2006, 5–6. Wang's ordination followed the CPA's ordinations in April and May 2006 of other bishops who also lacked Holy See approval.

[77] "Guizhou Scheduled To Hold First Episcopal Ordination Since Papal Letter," Union of Catholc Asian News (UCAN) (Online), 3 September 07; "Vatican Approval for Guiyang Episcopal Ordination Made Public," AsiaNews (Online), 10 September 07.

[78] "Beijing Ordination Had Papal Approval," UCAN (Online), 22 September 07; "New Bishop Vows To Lead Catholics Contributing to a Harmonious Society," UCAN (Online), 21 September 07. Holy See approval was not openly made known until after the ordination. Earlier articles on Li's nomination differed on whether Li had received approval. "China Nominates Bishop, Threatening Vatican Rift," Reuters (Online), 18 July 07. The Vatican has expressed some support for Li, whom outside media has suggested is less entrenched in official Chinese Catholic institutions than his predecessor, Fu Tieshan. "The New Bishop of Beijing is Elected," AsiaNews (Online), 18 July 07. "Vatican Welcomes New China Bishop," BBC (Online), 19 July 07. "Beijing Getting Ready for the Ordination of Mgr Li Shan, CCPA Seizes Bishop's Residence," AsiaNews (Online), 17 September 07. For Chinese reporting on the appointment, see "Li Shan Picked as Bishop of Beijing Diocese" [Li Shan dangxuan tianzhujiao Beijing jiaoqu zhujiao], China Ethnicity News (Online), 3 August 07.

[79] "Letter of the Holy Father Pope Benedict XVI to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China," Vatican Web site, 27 May 07. Though dated May 27, the Holy See released the letter on June 30. "More on Pope's Letter to China Over Religious Freedom, Appointment of Bishops," Agence France-Presse, 30 June 07 (Open Source Center, 30 June 07).

[80] "Beijing Removes Papal Letter to Chinese Church from Web," AsiaNews (Online), 3 July 07.

[81] "Priests Arrested and Put into Solitary Confinement: the Governments Answer to the Pope's Letter," AsiaNews (Online), 2 August 07.

[82] Yang Yingchun, "Ismail Tiliwaldi, While Speaking at an Autonomous Region-Wide Religion Work Meeting, Calls for Stronger Management Over Pilgrimage and the 'Two Religions' To Safeguard the Masses' Interest," Xinjiang Daily, 11 July 07 (Open Source Center, 13 July 07); "Autonomous Prefecture's Religion Meeting Stresses Strengthening Management of Religion, Safeguarding Social Stability" [Zizhizhou zongjiao huiyi qiangdiao jiaqiang zongjiao guanli weihu shehui wending], Changji Evening News, reprinted on the Changji Hui Autonomous Prefecture Government Web site, 14 August 07.

[83] "Two Priests Detained in Wenzhou After Arrest on Return from Europe," UCAN, 3 October 06; "'Underground' Chinese Catholic Priests Charged, Likely To Face Trial," UCAN (Online), 26 October 06. "Two Underground Priests from Wenzhou Soon To Be Freed," AsiaNews, 17 May 07; "Two Underground Priests, Arrested After Pilgrimage, Sentenced Six Months After Arrest," UCAN (Online), 16 May 07. Authorities released Shao from prison in May 2007 to obtain medical treatment. "Jailed Wenzhou Priest Released Provisionally for Medical Treatment," UCAN, 30 May 07. Authorities released Jiang in August. "Second Of Two Jailed Wenzhou Priests Released, Diagnosed With Heart Conditions," UCAN, 29 August 07. See the CECC Political Prisoner Database for more information. Jiang Surang is also known by the name Jiang Sunian.

[84] This overview paragraph provides a summary of key issues of concern. See the text that follows the paragraph for more information, including detailed citations.

[85] Human Rights Watch, "Devastating Blows," 73–74. The report cites official data published in 2001.

[86] Ibid., 69.

[87] "Teacher and 37 Students Detained for Sudying [sic] Koran in China: Rights Group" Agence France-Presse, 15 August 05 (Open Source Center, 15 August 05).

[88] "Three Detained in East Turkistan for 'Illegal' Religious Text," Uyghur Human Rights Project (Online), 3 August 05.

[89] See, e.g., "Xinjiang Government Continues Restrictions on Mosque Attendance," CECC China Human Rights and Rule of Law Update, March 2006, 8. XUAR regulations forbid parents from allowing children to engage in religious activities, and mosques have restricted children's entry. The U.S. Department of State noted in its 2006 Country Reports on Human Rights Practices for China, however, that such restrictions were not uniformly enforced in practice. U.S. Department of State, Country Reports on Human Rights Practices—2006, China.

[90] Human Rights Watch, "Devastating Blows," 55–56.
[91] USCIRF, "Policy Focus: China," 6.
[92] RRA, art. 11, 43.
[93] "Islamic Congress Establishes Hajj Office, Issues New Rules," CECC Human Rights and Rule of Law Update, June 2006, 12–13.
[94] "Government Increases Controls Over Muslim Pilgrimages," CECC Human Rights and Rule of Law Update, December 2006, 20; Circular of Provisions Regarding Organizing and Carrying Out Secondary Pilgrimage Activities [Guanyu zuzhi kaizhan fuchao huodong ruogan guiding de tongzhi], August 2006.
[95] U.S. Department of State, International Religious Freedom Report—2007, China (noting reasons why some Uighur Muslims in particular have avoided participating in official trips).
[96] Jackie Armijo, "Islamic Education in China," 9 Harvard Asia Quarterly, (Winter 2006) (Online).
[97] Cheng Lixin, "Wang Lequan, Speaking at the Feedback Meeting of the United Front and Religious Affairs Investigation and Study Team, Emphasizes the Need To Strengthen Management of Pilgrimage Activity To Safeguard the Masses Interests," Xinjiang Daily, 19 June 07 (Open Source Center, 25 June 07); "China Confiscates Muslims' Passports," Radio Free Asia (Online), 27 June 07; "Activist: Members of Muslim Minority Group in China Forced To Surrender Their Passports," Associated Press, reprinted in the International Herald Tribune, 20 July 07.
[98] Yang, "Ismail Tiliwaldi, While Speaking at an Autonomous Region-Wide Religion Work Meeting, Calls for Stronger Management Over Pilgrimage and the 'Two Religions' To Safeguard the Masses' Interest."
[99] "Over 70,000 Illegal Publications 'Smashed to Dust'" [7 wan duo ce feifa chubanwu "fenshensuigu"], Xinjiang Legal Daily (Online), 6 August 07.
[100] "Xinjiang Government Seizes, Confiscates Political and Religious Publications," CECC Human Rights and Rule of Law Update, July 2006, 7–8.
[101] "Xinjiang Uighur Autonomous Region Destroys 29 Tons of Illegal Books" [Xinjiang weiwuer zizhiqu xiaohui 29 dun feifa tushu], Tianshan Net (Online), 16 March 06.
[102] Xinjiang Uighur Autonomous Region Implementing Measures of the Law on the Protection of Minors [Xinjiang weiwuer zizhiqu shishi "Weichengnianren baohufa" banfa], issued 25 September 93, art. 14. No other provincial or national regulation on minors or on religion contains this precise provision. Devastating Blows, 58.
[103] "Local Governments in Xinjiang Continue Religious Repression During Ramadan," CECC Virtual Academy, 12 December 06. Some local governments also extended these campaigns to teachers.
[104] Kashgar Government (Online), "Yopurgha County Implements 'Mandatory Visits System' Among Students in Elementary and Secondary Schools," [Yuepuhuxian zai zhongxiaoxuesheng zhong shixing "bifangzhi"], 11 October 06.
[105] This overview paragraph provides a summary of key issues of concern. See the text that follows the paragraph for more information, including detailed citations.
[106] The document says that meetings that are "purely" gatherings of family members within the home should be placed under normal management, and non-family gatherings that are large in scope and disruptive should be stopped and participants urged to go to approved sites of worship. Gatherings with elements of cult practices or foreign infiltration should be dispelled and if necessary subject to penalties. "Our District's Work on the Administration of Abnormal Religious Activities Is Taking on a Desirable Posture" [Woqu feizhengchang zongjiao huodong zhili gongzuo xingcheng lianghao taishi], Baoshan Ethnicities and Religion Net (Online), 20 July 07.
[107] "Annual Report on Persecution of Chinese House Churches by Province from January 2006 to December 2006," CAA (Online), January 2007, 3.
[108] CAA noted that while church members are often released after interrogation, authorities have held church leaders for longer periods, in some cases imposing prison sentences. Ibid.,19.
[109] "Beijing House Church Activist Hua Huiqi and His Mother Attacked and Detained by Police," CAA (Online), 27 January 07. See the CECC Political Prisoner Database for additional information.
[110] "Beijing House Church Activist Hua Huiqi Sentenced for 6 Months Secretly," CAA (Online), 4 June 07; "House Church Christian Activist Hua Huiqi and Mr. Qi Zhiyong Were Removed from Home Before US Presidential Visit," CAA (Online), 21 November 05; "Activist's Mother 'Held Hostage' for Information," Human Rights In China (HRIC) (Online), 17 August 07; "Elderly Activist Denied Medical Parole," HRIC (Online), 13 September 07. See the CECC Political Prisoner Database for more information.
[111] "Prominent Beijing Rights Defense Christian Lawyer Li Heping Kidnapped and Tortured; Two Beijing Christian Activists Held Under House Arrest," CAA, reprinted in Christian News Wire, 3 October 07.
[112] See the CECC Political Prisoner Database for more information. See also "UN Petition Submitted for Jailed Ailing Church Leader; Medical Parole Appeal Filed by Family Members," CAA (Online), 12 July 06. Gong's accusers say they were tortured into signing allegations against Gong. Authorities originally charged Gong with using a cult to undermine the implementation of the law, along with premeditated assault, and rape, but the cult charges were later dropped. Examples of cult activity included carrying out unauthorized missionary activities and publishing and distributing a church periodical.
[113] "Beijing House Church Activist Liu Fenggang Released," CAA (Online), 7 February 07.
[114] "Prominent Beijing Rights Defense Christian Lawyer Li Heping Kidnapped and Tortured; Two Beijing Christian Activists Held Under House Arrest," CAA.
[115] White Paper on Freedom of Religious Belief in China.
[116] "Three House Church Buildings in Zhejiang Facing Imminent Destruction by Government," CAA (Online), 14 July 07.

[117] "Basic People's Court of Xiaoshan District, Hangzhou City, Criminal Judgment" [Hangzhou xiaoshanqu renminfayuan xingshi panjueshu], 22 December 06, reprinted on the CAA Web site, 15 January 07.

[118] "Annual Report on Persecution of Chinese House Churches, " CAA, 3–4.

[119] "Church Property in Gansu Occupied by the Government, 300 Christians Protest by Sitting Demonstration; 3 Singapore Christians Arrested & Released in Xinjiang, 5 Local Believers Still in Detention," CAA (Online), 31 October 06. Government officials threatened to withhold retirement benefits to church members and reportedly used violence against the demonstrators. The group reportedly reached a compromise with authorities. "Annual Report on Persecution of Chinese House Churches," CAA, 19.

[120] See the CECC Political Prisoner Database for more information about these cases. CAA reported in September 2007 that authorities arrested Zhou Heng, a house church leader in the Xinjiang Uighur Autonomous Region, on August 31 after he received a shipment of Bibles reported to have been donated by an overseas church. Authorities accused him of illegally operating a business. "House Church Leader in Xinjiang Formally Arrested for Receiving Bibles and Abused in Jail," CAA (Online), 5 September 07. In March 2007, CAA reported that authorities arrested unregistered church leader Chen Jiaxi in January 2007 for distributing religious literature, on the grounds he was illegally managing a business. CAA reported that Chen was expected to stand trial soon but has not reported further information on the case. "House Church Leaders Arrested in Liaoning and Anhui Province," CAA (Online), 31 March 07. In 2006, the CAA reported that authorities levied a similar charge on pastor Liu Yuhua after he printed and distributed religious literature. "Multiple Arrests of Protestants Occurred in Shandong and Jiangsu; One South Korea Missionary Expelled from China; Prominent Chinese Legal Scholar Banned to Go Abroad," CAA (Online), 16 May 06.

[121] "Renowned Beijing Church Leader Cai Zhuohua Released After Three Years Imprisonment for Distributing Bibles; Forced Labor for Olympics Products Imposed," CAA (Online), 14 September 07.

[122] "Chinese Authorities Release House Church Filmmaker After 140 Days in Custody," CECC Human Rights and Rule of Law Update, September 2006, 9; "Journalist Arrested for Posting Reports About Crackdown on Christians," Reporters Without Borders (Online), 11 August 06.

[123] "House Church Members Successfully Fight Detentions For Unauthorized Worship," CECC Virtual Academy, 19 December 06.

[124] The church leaders have since filed lawsuits against the government. According to an April report from the China Aid Association, Dong Quanyu and Li Huage of Henan province await a decision on whether their case will be heard. In April 2007, the People's Court of Duolun County, Inner Mongolia Autonomous Region accepted Zhi Ruiping's case for an upcoming trial. "Released Church Leaders in Henan and Inner Mongolia File Lawsuit Against Abusers in the Government," CAA (Online), 18 April 07.

[125] See the subsection on "Government Persecution of Falun Gong," infra, for more information.

[126] "Thirty-Three Chinese and Three Korea[n] Pastors Released in Henan After International Religious Pressure; One Sentenced for 10 Days Detention," CAA (Online), 7 March 07.

[127] "Confiscated Church Properties in Jiangsu Returned after International Pressure," CAA (Online), 11 May 07.

[128] "Delegation of Chinese Protestants Attends International Mission Conference," CECC Human Rights and Rule of Law Update, June 2005, 6.

[129] "House Church Lawyers Promote Religious Freedom Through the Rule of Law," CECC Human Rights and Rule of Law Update, July 2006, 3.

[130] Yang, "Ismail Tiliwaldi, While Speaking at an Autonomous Region-Wide Religion Work Meeting, Calls for Stronger Management Over Pilgrimage and the 'Two Religions' To Safeguard the Masses' Interest." This call was reiterated by local authorities in Changji Hui Autonomous Prefecture in August. "Autonomous Prefecture's Religion Meeting Stresses Strengthening Management of Religion, Safeguarding Social Stability," Changji Evening News.

[131] See, e.g., "Massive Arrest of Chinese and American Christian Leaders in Xinjiang," CAA (Online), 24 April 07; "3 Singapore Christians Arrested and Released in Xinjiang, 5 Local Believers Still in Detention," CAA (Online), 31 October 06; "35 Arrested Christians in Xinjiang Released after Interrogation; American Korean Pastor Put Under Surveillance in a Hotel," CAA (Online), 27 October 06; "On Christmas Day, Christmas Services Stopped in Xinjiang; House Church Leaders Arrested; Persecution Against Beaten Christian Businessman Intensified," CAA (Online), 27 December 05.

[132] "Over 100 Foreign Missionaries Expelled or Forced To Leave by Chinese Government Secret Campaign," CAA (Online), 10 July 07.

[133] "China Sentences Underground Pastor to 7.5 Years in Prison," Agence France-Presse (Online), 12 July 06. See the CECC Political Prisoner Database for more information.

[134] Timothy Chow, "Chinese House Church Historian Denied ID Card," Compass Direct News, reprinted on the CAA Web site, 17 February 06.

[135] U.S. Department of State, International Religious Freedom Report—2007, China.

[136] "Head of Religious Association: Religious Adherents Not Arrested Due to Their Faith," CECC Virtual Academy (Online), 26 June 06; "Falun Gong Practitioners To Be Punished Under New Administration Punishment Law," CECC China Human Rights and Rule of Law Update, May 2006, 6.

[137] See the CECC Political Prisoner Database for more information.

[138] See the CECC Political Prisoner Database for more information.

[139] See the CECC Political Prisoner Database for more information.

[140] See China Human Rights Lawyers Concern Group (Online), "Demand Immediate Release of Beijing Human Rights Lawyer Gao Zhisheng," 27 September 07. For more information about Gao's open letter, which called on the Congress to take action against the Chinese government's human rights abuses, see Human Rights Torch Relay (Online), "Gao Zhisheng's letter to the

Senate and the Congress of the United States," 12 September 07; Bill Gertz, "Chinese dissident urges boycott of Olympics," Washington Times (Online), 21 September 07.

[141] "Prominent Beijing Rights Defense Christian Lawyer Li Heping Kidnapped and Tortured; Two Beijing Christian Activists Held Under House Arrest," CAA; "Amnesty International's Urgent Appeal for Beijing Human Rights Lawyer Li Heping, Who Was Abducted and Assaulted," Amnesty International, reprinted in CAA (Online), 4 October 07.

[142] "House Church Members Successfully Fight Detentions For Unauthorized Worship," CECC Virtual Academy, 19 December 06; "Court Officials Refuse Falun Gong Practitioner's Appeal of RTL Sentence," CECC Virtual Academy, 3 November 06.

[143] See the CECC Political Prisoner Database for more information.

[144] See, e.g., "Dachang Demolishes Illegal Small Temple According to Law" [Dachang zhen yifa chaichu yichu feifa xiao miao], Shanghai Baoshan Ethnicity and Religion Net (Online), 1 September 06; Mianyang City Bureau of Ethnic and Religious Affairs (Online), "Govern According to the Law for Good Results, Strength To Demolish 'Illegal Small Temples' Great," [Yifa zhili xiaoguo hao, chai "feifa xiao miao" lidu da], 08 June 06.

[145] See, e.g., "Investigative Report on the Situation of Unregistered Small Temples and Convents" [Weijing zhengfu dengji de xiao miao xiao an qingkuang de diaoyan baogao], Xiaogang Information Net (sponsored by the Beilun District People's Government Xiaogang Neighborhood Committee Office) (Online), 12 September 06; "Some Reflections on Rural Religious Work in a New Period" [Xin shiqi nogcun zongjiao gongzuo de jidian sikao], Yixing United Front Web Site (Online), 13 June 05.

[146] State Administration for Religious Affairs (Online), "Forum for Religious Personages Opens in Beijing at Second-year Anniversary of the Implementation of the 'Regulation on Religious Affairs'" ["Zongjiao shiwu tiaoli" shishi liang zhou nian zongjiaojie renshi zuotanhui zai jing zhaokai], 3 March 07.

[147] See, e.g., "China Exclusive: China Supports Buddhism in Building Harmonious World," Xinhua, 12 April 06 (Open Source Center, 12 April 06).

[148] Jim Yardley, "In Crackdown, China Shuts Buddhist Site and Seizes Catholic Priests," New York Times, 19 August 04.

[149] U.S. Department of State, International Religious Freedom Report—2006, China.

[150] Among provincial-level areas, the Heilongjiang Regulation on the Management of Religious Affairs and Inner Mongolia Autonomous Region Implementing Measures for the Management of Venues for Religious Activity recognize the Orthodox Church. Heilongjiang Regulation on the Management of Religious Affairs [Heilongjiangsheng zongjiao shiwu guanli tiaoli], issued 12 June 97, art. 2; Inner Mongolia Autonomous Region Implementing Measures for the Management of Venues for Religious Activity [Nei menggu zizhiqu zongjiao huodong changsuo guanli shishi banfa], issued 23 January 96, art. 2.

[151] For more information see "Religious Freedom for China's Orthodox Christians" in the CECC 2005 and 2006 Annual Reports.

[152] In addition to work in these areas, it also oversees anti-cult work and addresses "foreign infiltration." The Web site of the State Administration for Religious Affairs (SARA) includes a description of this office but does not indicate when it was established. The curriculum vitae for a SARA staff members notes he was made head of this department in December 2004. The Hong Kong newspaper Ta Kung Pao reported the establishment of this department in September 2005. Chan and Carlson write that authorities decided at a January 2004 conference to establish a SARA department focused on folk beliefs. Chan and Carlson, 15–16. State Administration for Religious Affairs (Online), "Fourth Work Department" [Yewu sisi], last visited 6 October 07; State Administration for Religious Affairs (Online), "CV of [SARA Official] Jiang Jianyong" [Jiang Jianyong jianli], last viewed 6 October 07. "Religious Affairs Bureau Establishes Special Department To Manage Folk Religions" [Zongjiaoju she zhuansi guanli minjian zongjiao], Ta Kung Pao (Online), 20 September 05.

[153] Hunan Province Regulation on Religious Affairs, art. 48. See also "Chongqing Municipality and Hunan Province Issue New Religious Regulations," CECC Virtual Academy (Online), 4 January 07. Some localities outside Hunan province also regulate folk beliefs. See, e.g., "Xiamen Exchanges Experiences on Management of Venues for Folk Beliefs" [Xiamen jiaoliu minjian xinyang huodong changsuo guanli jingyan], China Ethnicities News (Online), 6 February 07; "Yanping District, Jian'ou City Standardizes Financial Management of Venues for Folk Beliefs," [Jian'ou shi yanping qu guifan minjian xinyang changsuo caiwu guanli], China Ethnicities News (Online), 13 February 07.

[154] "Chongqing Municipality and Hunan Province Issue New Religious Regulations," CECC Virtual Academy (Online), 4 January 07.

[155] Hunan Provincial Religious Affairs Bureau (Online), "State Administration for Religious Affairs Comes To Hunan To Investigate and Research Our Province's Present Conditions for Folk Beliefs and Experimental Management Situation" [Guojia zongjiaoju lai xiang diaoyan wo sheng minjian xinyang xianzhuang he shidian guanli qingkuang], last viewed 6 October 07 (posted on the Hunan Provincial Religious Affairs Bureau Web site in 2007, in apparent reference to events in August 2006). See also "Popular Folk Beliefs and Religion" [Minjian xinyang yu zongjiao], China Religion, September 2004 (indicating, within an official publication under SARA, some support for protecting folk beliefs but also subjecting them to state control).

[156] State Administration for Religious Affairs, "Forum for Religious Personages Opens in Beijing at Second-year Anniversary of the Implementation of the Regulation on Religious Affairs;" "Some Reflections on Rural Religious Work in a New Period," Yixing United Front Web Site; U.S. Department of State, International Religious Freedom Report—2006, China. Some activities related to "superstitions" or "feudal superstitions" are penalized under the Criminal Law and administrative regulations. See, e.g., the PRC Criminal Law, enacted 1 July 79, amended 14 March 97, art. 300, and the PRC Public Security Administration Punishment Law, enacted 28 August 05, art. 27(1).

Notes to Section II—Ethnic Minority Rights

[1] The word "minzu" refers to populations within China's borders that the government does not designate as Han Chinese. Although Chinese and outside sources have used such expressions as "nationality" and "ethnic group" to translate the word into English, some scholars writing in English choose to leave the term in Chinese. See e.g., Gardner Bovingdon, "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent," East-West Center Washington 2004, Policy Studies 11, 49 (endnote 4); Jonathan N. Lipman, Familiar Strangers: A History of Muslims in Northwest China (Seattle: University of Washington Press, 1997), xx–xxv (discussing the notion of minzu).

The 55 groups designated as minzu are spread across nearly two-thirds of China's area, mainly along international borders. They speak more than 60 languages and include communities such as Koreans, Mongols, and Kazaks that have ethnic counterparts in neighboring countries. For more information, see the "Special Focus for 2005: China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law," CECC, 2005 Annual Report, 11 October 05, 13–23.

[2] "Major Figures of the 2000 Population Census," National Bureau of Statistics of the PRC posted on the Web site of the China Population Information and Research Center (Online), 28 March 2001.

[3] See generally Regional Ethnic Autonomy Law (REAL), enacted 31 May 84, amended 28 February 01; PRC Constitution, art. 4. For ethnic minority protections within other laws, see, e.g., the PRC Education Law, enacted 18 March 95, art. 9, 12; PRC Labor Law, enacted 5 July 94, art. 12, 14.

[4] See discussion infra for more information on restrictions on ethnic minority rights. Regarding international human rights standards, see, e.g., the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 48, art. 2, 7; International Covenant on Civil and Political Rights (ICCPR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 2(1), 26, 27; International Covenant on Economic, Social, and Cultural Rights (ICESCR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 2(2); Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 89, entry into force 2 September 90, art. 2(1), 30. See generally, International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 65, entry into force 4 January 69. Article 1(1) of CERD defines racial discrimination to mean "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

China is a party to the ICESCR, CRC, and CERD, and a signatory to the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, "to refrain from acts which would defeat the object and purpose of a treaty" it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.

[5] State Council Provisions on Implementing the PRC Regional Ethnic Autonomy Law (REAL Implementing Provisions) [Guowuyuan shishi "Zhonghua renmin gongheguo minzu quyu zizhifa" ruogan guiding], issued 19 May 05.

[6] See, e.g., REAL Implementing Provisions, art. 5, 10–12, 15, 25, 30, 34.

[7] REAL Implementing Provisions, art. 22, 29. Article 22 promotes "bilingual education" in Chinese and ethnic minority languages. The article represents a shift from Article 37 of the 1984 REAL, which articulates support for education within ethnic minority languages. While the REAL promotes language and literature courses in Mandarin Chinese, it does not call for "bilingual education." As discussed infra, some "bilingual" programs have eliminated almost all use of ethnic minority languages.

[8] REAL, art. 19.

[9] "NPCSC Examines Implementation of Regional Ethnic Autonomy Law," CECC China Human Rights and Rule of Law Update, August 2006, 6–7. "Official Evaluates Regional Ethnic Autonomy in Inner Mongolia," CECC China Human Rights and Rule of Law Update, September 2006, 16–17.

[10] "Official Evaluates Regional Ethnic Autonomy in Inner Mongolia," CECC China Human Rights and Rule of Law Update, September 2006, 16–17.

[11] "Mongolian Internet Forum Closed for Discussing Ethnic Problems," Southern Mongolian Human Rights Information Center (Online), 16 July 07; "Two Ethnic Minority Web Sites in Inner Mongolia Closed," CECC China Human Rights and Rule of Law Update, July 2006, 14; "Authorities Close Two Mongolian-Language Web Sites for Posting 'Separatist' Materials," CECC China Human Rights and Rule of Law Update, November 2005, 13–14.

[12] "Authorities Try Mongol Couple, Assault Son of Imprisoned Mongol Activist," CECC China Human Rights and Rule of Law Update, August 2006, 2. See the CECC Political Prisoner Database for more information.

[13] "Mongolian Dissident's Passport Application Denied for 'Possible Harm to State Security and National Interests,'" Southern Mongolian Human Rights Information Center (Online), 8 August 07.

[14] "Authorities Try Mongol Couple, Assault Son of Imprisoned Mongol Activist," CECC China Human Rights and Rule of Law Update, August 2006, 2. See the CECC Political Prisoner Database for more information.

[15] "Inner Mongolia Government Promotes Mongolian Language," CECC China Human Rights and Rule of Law Update, September 2006, 10–11.

[16] See, e.g., Human Rights in China, "China: Minority Exclusion, Marginalization and Rising Tensions," 2007, 22–24. For information on the impact of economic development in the XUAR, see e.g., Sean R. Roberts, "A 'Land of Borderlands': Implications of Xinjiang's Trans-border Interactions" in Xinjiang: China's Muslim Borderland, ed. S. Frederick Starr (Armonk, NY: M.E. Sharpe, 2004), 224–225 and Stanley W. Toops, "The Ecology of Xinjiang: A Focus on Water," in Xinjiang: China's Muslim Borderland, 270–271. See also Section IV—Tibet for more information on development issues in Tibetan areas.

[17] State Council General Office Circular on Printing and Issuing the 11th 5-Year Program for Ethnic Minority Undertakings [Guowuyuan bangongting guanyu yinfa shaoshu minzu shiye 'shiyiwu' guihua de tongzhi], issued 27 February 07.

[18] Zhao Huanxin, "Priority Plan for Ethnic Minorities," China Daily, 30 March 07 (Open Source Center, 30 March 07).

[19] State Council General Office Circular on Printing and Issuing the 11th 5-Year Program for Ethnic Minority Undertakings, item 1(3), 2(9).

[20] Ibid., item 2(11).

[21] See "Rights Violations in Xinjiang" and "Religious Freedom for China's Muslims," CECC, 2005 Annual Report, 21–23 and 51–53 for addition information. For information on policies beginning in the 1990s, see, e.g., Nicolas Becquelin, "Xinjiang in the Nineties," The China Journal, No. 44, July 00, 68–70, 86–88; James A. Millward, Eurasian Crossroads: A History of Xinjiang (New York: Columbia UP, 2007), 322–341.

[22] For an overview of the campaigns, see Human Rights Watch and Human Rights in China, "Devastating Blows: Religious Repression of Uighurs in Xinjiang," April 05, 66–69. (Online. Pagination follows "text-only" pdf download of this report.)

[23] "Wang Lequan Stresses at Regional Political and Legal Work Conference a Need To Think of Dangers When in Safety, Firmly Seize Initiative in Struggling Against the Enemies," Xinjiang Daily, 7 January 07 (Open Source Center, 9 January 07).

[24] "Xinjiang Public Security Offices Destroy 'East Turkistan Islamic Movement' Terrorist Training Base" [Xinjiang gong'an jiguan daohui "gongyiyun" yichu kongbu xunlian yingdi], Tianshan Net (Online), 8 January 07.

[25] See, e.g., Robert Saiget, "Questions Linger Over China's Terrorist Threat After Deadly Raid," Agence France-Presse, reprinted in Yahoo news (Online), 10 January 07 (citing scholar Dru Gladney, who stated that the government had provided little evidence indicating the existence of a terrorist base rather than another criminal, but non-terrorist, operation); "Chinese Government's Claims of Uyghur Terrorism Still Lack Substance," Uyghur American Association (Online), 9 January 07.

[26] In addition to portraying peaceful acts as terrorist threats (such as charging writer Nurmemet Yasin with "inciting splittism" for authoring a short story about a caged pigeon), the government may also portray some ordinary criminal activity as terrorist or separatist. "Uighurs Face Extreme Security Measures; Official Statements on Terrorism Conflict," CECC China Human Rights and Rule of Law Update, May 2006, 12. For an analysis of Chinese statistics on terrorism and separatism, see James Millward, "Violent Separatism in Xinjiang: A Critical Assessment," East-West Center Washington 2004, Policy Studies 6.

[27] Wang Lexiang, "Analysis of Mass Incidents in Xinjiang and Suggestions on How To Handle Them," Beijing Public Security Research, 20 July 07 (Open Source Center, 3 September 07).

[28] "Soundly Drive Ahead in the Fight Against Separatism, Resolutely Safeguard Xinjiang's Stability" [Zhashi tuijin fanfenlie douzheng jianjue weihu xinjiang wending], Tianshan Net (Online), 7 August 07.

[29] Human Rights Watch, "Devastating Blows," 71–72. The report cites official data published in 2001.

[30] Ibid., 73–74, citing official data published in 2001.

[31] Ibid., 72. Human Rights Watch and Human Rights in China estimate this percentage may represent over 1,000 prisoners. The state prosecuted 4,500 people nationwide for the crime of endangering state security between 1998 and 2004. "China state security trials 'find 99 pct guilty,'" Reuters (Online), 21 February 06.

[32] Human Rights Watch, "Devastating Blows," 69.

[33] Schools have reduced minority language use through programs the government deems "bilingual," but that place primacy on Mandarin Chinese, in some cases at the almost complete exclusion of ethnic minority languages. See, e.g., "Our District Promotes Bilingual Education Work, By 2012 Our District Will Realize Every Ethnic Minority Language School Teaching All Classes in Mandarin Except for Mother-Tongue [Language Arts] Class" [Woqu tuijin shuangyu jiaoxue gongzuo dao 2012 nian, woqu jiang shixian ge minyu xuexiao chu muyu wai suoyou kecheng dou shiyong hanyu jiaoxue], Chochek News, reprinted in Chochek Online, 20 December 06; "City in Xinjiang Mandates Exclusive Use of Mandarin Chinese in Schools," CECC China Human Rights and Rule of Law Update, September 2006, 9–10; "Xinjiang Official Describes Plan To Expand Use of Mandarin in Minority Schools," CECC China Human Rights and Rule of Law Update, March 2006, 13. "Xinjiang Government Promotes Mandarin Chinese Use Through Bilingual Education," CECC China Human Rights and Rule of Law Update, January 2006, 17–18. For a general overview of bilingual education in the XUAR, including information on how bilingual education in the XUAR has been focused on transitioning students away from using their native language in school, see Arienne M. Dwyer, "The Xinjiang Conflict: Uyghur

Identity, Language Policy, and Political Discourse," East-West Center Washington 2005, Policy Studies 15, especially pages 38–41. For more information on the recent scope of bilingual education, see, e.g., "Xinjiang Bilingual Education Students Increase 50-Fold in 6 Years" [Xinjiang shuangyu xuesheng liu nian zengzhang 50 bei], Xinjiang Economic News, reprinted in Tianshan Net, 31 October 06. In 2005 and 2006 the government announced it would establish "bilingual" preschool education in seven prefectures through programs that provide material incentives for students to enroll. "5-Year Investment of 430 Million Yuan To Develop Rural Bilingual Preschool Education, Which Our District Will Launch This Fall" [5 nian touru 4.3 yi fazhan nongcun xueqian "shuangyu" jiaoyu woqu jinnian qiuji qidong xueqian "shuangyu" jiaoyu], Xinjiang Education News, reprinted on Xinjiang Education Department Web site, 3 July 06; "Xinjiang Official Describes Plan To Expand Use of Mandarin in Minority Schools," CECC Human Rights and Rule of Law Update, March 2006, 13.

Chinese law guarantees the freedom of ethnic minorities to use and develop their own languages and promotes education in those languages. REAL, art. 10, 37. The 2005 REAL Implementing Provisions affirm the freedom to use and develop minority languages, but also place emphasis on the use of Mandarin by promoting bilingual education and bilingual teaching staff. REAL Implementing Provisions, art. 22.

[34] See, e.g., "Artush Starts Mandarin Chinese Strengthening Training Class in Shenyang" [Atushi kaiban fu Shenyang jiaoshi hanyu qianghua peixunban], Kizilsu News, reprinted on the Kizilsu Kirghiz Autonomous Prefecture Government Web site, 16 August 06; "China Imposes Chinese Language on Uyghur Schools," Radio Free Asia (Online), 16 March 04; "Uyghur Language Under Attack: The Myth of 'Bilingual' Education in the People's Republic of China," Uyghur Human Rights Project, 24 July 07, 7–9. The XUAR government has started a program to bring teachers from across the country to teach in XUAR schools. See, e.g., "Xinjiang's First Batch of Specially Appointed Teachers Get Pre-Job Training" [Xinjiang shoupi "tegang jiaoshi" jieshou gang qian peixun], Xinjiang Economic News, reprinted in Tianshan Net, 30 August 06.

[35] "Civil Servant Recruitment in Xinjiang Favors Han Chinese," CECC China Human Rights and Rule of Law Update, August 2006, 6. See also "Xinjiang Government Says Ethnic Han Chinese Will Get 500 of 700 New Civil Service Appointments," CECC Virtual Academy, 7 April 05.

[36] See, e.g., REAL Implementing Provisions, art. 29; "Important Meaning" [Zhongyao yiyi], Web site of the State Administration for Ethnic Affairs, 13 July 04; "Some Suggestions of the State Council on Continuing To Press Ahead with the Development of the Western Region," Xinhua, 22 March 04 (Open Source Center, 22 March 04). See also Gardner Bovingdon, "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent," East-West Center Washington 2004, Policy Studies 11, 44; Becquelin, "Xinjiang in the Nineties,", 74–76; Stanley W. Toops, "The Demography of Xinjiang," in Xinjiang: China's Muslim Borderland, 247.

[37] "Xinjiang Focuses on Reducing Births in Minority Areas To Curb Population Growth," CECC China Human Rights and Rule of Law Update, April 2006, 15–16; "Xinjiang Reports High Rate of Population Increase," CECC China Human Rights and Rule of Law Update, March 2006, 16–17. A 1953 government census found that Han Chinese constituted 6 percent of the XUAR's population of 4.87 million, while Uighurs made up 75 percent. The 2000 census listed the Han population at 40.57 percent and Uighurs at 45.21 percent of a total population of 18.46 million. Demographer Stanley Toops has noted that Han migration since the 1950s is responsible for the "bulk" of the XUAR's high population growth in the past half century. Stanley Toops, "Demographics and Development in Xinjiang after 1949,"East-West Center Washington Working Papers No. 1, May 04, 1.

[38] See, e.g., "Money From Our Kids Has Come" [Zan haizi jiqian laile], Tianshan net (Online), 25 June 07; "160 Rural Women from Kashgar Go to Tianjin To Apply Their Labor" [Xinjiang Kashi 160 ming nongcun funü fu Tianjin wugong], Urumqi Evening News reprinted in Tianshan Net, 19 March 07.

[39] See, e.g., "Uyghur Girls Forced Into Labor Far From Home By Local Chinese Officials," Radio Free Asia (Online), 11 July 07. Radio Free Asia's Uighur language service also has reported extensively on labor transfer programs.

[40] "Xinjiang Government Continues Controversial 'Work-Study' Program," CECC China Human Rights and Rule of Law Update, November 2006, 11. The central government holds tight control over the economy in the resource-rich XUAR. Calla Wiemer, "The Economy of Xinjiang," in Xinjiang: China's Muslim Borderland, 163–164.

[41] Opinion on Strengthening the Management of Secondary and Elementary School Students' Work-Study Service Activities [Guanyu jiaqiang zhongxiaoxue qingongjianxue laowu huodong guanli de yijian], issued 8 May 06. See "Xinjiang Government Continues Controversial 'Work-Study' Program," CECC China Human Rights and Rule of Law Update, November 2006, 11, for an analysis of this opinion.

[42] See the CECC Political Prisoner Database for more information about these cases.

[43] Kadeer was a businesswoman and civic leader in the XUAR who had advocated for attention to ethnic minority rights. Authorities detained her in 1999 while she was en route to meet a delegation from the U.S. government. Kadeer was convicted at a secret trial and sentenced in 2000 to eight years in prison for "unlawfully supplying state secrets or intelligence to entities outside China," based on newspaper clippings she had sent her husband in the United States. For more information, see the CECC Political Prisoner Database.

[44] "Son of Rebiya Kadeer Sentenced to Nine Years in Prison on Charges of 'Secessionism,'" Uyghur American Association (Online), 17 April 07. "Abdurehim" is an alternate spelling for Ablikim's second name.

[45] "Rebiya Kadeer's Sons Receive Prison Sentence, Fines, for Alleged Economic Crimes," CECC China Human Rights and Rule of Law Update, December 2006, 15–16. "Qahar" is an alternate spelling for "Kahar."

[46] "Rebiya Kadeer's Children Held in Custody, Beaten," CECC China Human Rights and Rule of Law Update, June 2006, 2.

[47] "Rebiya Kadeer's Employees Released After Seven-Month Detention," CECC China Human Rights and Rule of Law Update, February 2006, 4–5.

[48] For information on Celil's case, see, e.g., "China Sentences Canadian Activist to Life in Prison," Associated Press reprinted in the International Herald Tribune, 19 April 07. "Canada Protests Sentencing of Human-Rights Activist by China," Toronto Globe and Mail, 20 April 07 (Open Source Center, 20 April 07). The XUAR High People's Court refused Celil's appeal in July. "Chinese Court Rejects Appeal of Convicted Xinjiang Terrorist," Xinhua, reprinted in People's Daily (Online), 10 July 07. For more information on other Uighurs deported to China or at risk of deportation, see "Central Asia Summary of Human Rights Concerns January 2006–March 2007," Amnesty International (Online), 2007.

Notes to Section II—Population Planning

[1] CECC, 2006 Annual Report, 20 September 06, 109.

[2] The population increased by roughly 300 million from 1980 to 2005. Statistic cited in Tyrene White, China's Longest Campaign: Birth Planning in the People's Republic, 1949–2005 (Ithaca: Cornell UP, 2006), 263. For official Chinese government information on its population planning policies see State Council Information Office, White Paper on Population in China, 19 December 00. For information on the number of births prevented, see paragraph 7 of the report.

[3] Quoted in White, China's Longest Campaign, 238.

[4] Central Committee of the CCP and State Council Decision Regarding the Comprehensive Strengthening of Population and Family Planning Work To Resolve the Population Problem as a Whole [Zhonggong zhongyang guowuyuan guanyu quanmian jiaqiang renkou he jihua shengyu gongzuo tongchou jiejue renkou wenti de jueding], issued 17 December 06.

[5] Guan Xiaofeng, "Official: Family Planning Policy To Stay," China Daily, reprinted on the National Population and Family Planning Commission of China Web site, 4 July 07.

[6] The circumstances under which women may bear a second child are governed by provincial-level regulations. Provincial regulations have allowed additional children for ethnic minorities and some rural Han Chinese residents and permitted second births where the first child is a girl, is disabled, or, in some cases, where both parents are only children themselves, among other circumstances. For basic codification of the one-child policy, see Population and Family Planning Law of the People's Republic of China (Population and Family Planning Law), adopted 29 December 01, art. 18. For examples of restrictions in local regulations, see, e.g., Henan Province Population and Family Planning Regulation [Henansheng renkou yu jihua shengyu tiaoli], adopted 30 November 02, art. 15, 17, 18; Xinjiang Uighur Autonomous Region (XUAR) Regulation on Population and Family Planning [Xinjiang weiwu'er zizhiqu renkou yu jihua shengyu tiaoli], art. 15. Article 15 of the Henan province regulation "advocates that a couple give birth to one child, strictly controls the birth of a second child, and prohibits the birth of a third child." Articles 17 and 18 stipulate conditions under which couples may apply for approval to have a second child, such as where a first child carries a genetic disability. Article 15 of the XUAR regulation allows urban Han Chinese couples to have one child, urban ethnic minority couples and rural Han Chinese couples to have two, and rural ethnic minority couples to have three. See also Gu Baochang et al., "China's Local and National Fertility Policies at the End of the Twentieth Century," Population and Development Review 33(1), March 2007, 132–136. Government officials have attempted to downplay controls by stating that a strict one-child rule affects less than 36 percent of the population. See, e.g., "Many Free To Have More Than One Child," Xinhua (Online), 11 July 07.

[7] Population and Family Planning Law, art. 41. Each provincial-level government determines its own fees. Measures for Collection of Social Compensation Fees [Shehui fuyangfei zhengshou guanli banfa], issued 2 September 02, art. 3, 7. In Beijing, parents who have children in violation of the local regulation, including unmarried women who are in violation by giving birth to a child, face fines that range from 3 to 10 times the area's average income. Beijing Measures for Managing the Collection of Social Compensation Fees [Beijing shi shehui fuyangfei zhengshou guanli banfa], adopted 5 November 02, art. 5. Fees are lower in Shandong province, where the fine is set at 30 percent of local incomes. Shandong Province Measures for Managing the Collection of Birth Control Social Compensation Fees [Shandongsheng jihua shengyu shehui fuyangfei zhengshou guanli banfa], issued 1998, art. 4.

[8] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2006, China (includes Tibet, Hong Kong, and Macau) (Online), 6 March 07.

[9] Under Article 41 of the Population and Family Planning Law, where a citizen does not pay the social compensation fee, "the administrative department for family planning that makes the decision on collection of the fees shall, in accordance with law, apply to the People's Court for enforcement." Population and Family Planning Law, art. 41. U.S. Department of State, Country Reports on Human Rights Practices—2006; CECC Staff Interview.

[10] See, e.g., "Family Planning Faces Challenge from New Rich," Xinhua, reprinted in China Daily (Online), 14 December 05. Officials have said the government will take measures to discourage wealthier citizens from violating restrictions. Alice Yan and Kristine Kwok, "One-Child Crackdown Looms for Elite; Officials Consider Stiffer Penalties for Rich and Famous Who Flout Family Policy," South China Morning Post (Online), 1 March 07.

[11] "2,000 Officials Breach 'One-Child' Policy in Hunan," China Daily, reprinted on China Elections and Governance Web site, 9 July 07. The Hunan government amended local regulations on population planning in September to increase fines for violating the regulations. "Chinese Province Raises Fines on Wealthy Flouters of Family Planning Laws," Xinhua, 29 September 07 (Open Source Center, 29 September 07).

[12] "Chinese Officials Breaching One-Child Policy Denied Promotion," Xinhua, 14 September 07 (Open Source Center, 14 September 07).

[13] See, e.g., "State Population and Family Planning Commission Indicates 'Encouraging and Rewarding Fewer Births' To Be Carried Out at Least 20–30 Years" [Guojia renkou jishengwei

biaoshi "jiangli shaosheng" zhishao zhixing er san shinian], People's Daily (Online), 19 October 06; "Encouragement and Reward Assistance System To Enter Implementation Phase" [Jiangli fuzhu zhidu jiang jinru shishi jieduan], People's Daily (Online), 16 October 06. Yang Jie, "Autonomous Region Launches Important Reform on General College Entrance Examination," Xinjiang Daily, 31 May 07 (Open Source Center, 12 June 07).

[14] National Population and Family Planning Commission Circular on Printing and Distributing Action Plan for Special Rectification of Unlawful Births in Cities and Towns [Guojia renkou jishengwei guanyu yinfa chengzhen weifa shengyu zhuanxiang zhili xingdong fang'an de tongzhi], issued 24 May 07. For an English translation, see "China: Action Plan To Rectify Unlawful Births in Urban Areas," Open Source Center, 16 June 07.

[15] Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 79, entry into force 3 September 81, art. 2, 3, 16(1)(e).

[16] Convention on the Rights of the Child, adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 89, entry into force 2 September 90, art. 2, 3, 4, 6, 26. China has submitted a reservation to Article 6: "[T]he People's Republic of China shall fulfil its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People's Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People's Republic of China." Office of the UN High Commissioner for Human Rights, "Declarations and reservations to the Convention on the Rights of the Child" (Online).

[17] International Covenant on Economic, Social, and Cultural Rights (ICESCR) adopted by General Assembly resolution 2200 A (XXI) of 16 December 66, entry into force 3 January 76, art. 10(3).

[18] Population and Family Planning Law, art. 39.

[19] See, e.g., "7,000 Forcibly Sterilised in Eastern China," South China Morning Post (Online), 12 September 05; Joseph Kahn, "Advocate for China's Weak Crosses the Powerful," New York Times, 20 July 06. For Chinese reporting on events in Linyi, see, e.g., "Officials Fired for Forced Abortions," Xinhua (Online), 21 September 05; "PRC Official Confirms Irregularities in Shandong Family Planning Management," Xinhua, 19 September 05 (Open Source Center, 26 September 05).

[20] See the CECC Political Prisoner Database for more information on Chen Guangcheng.

[21] See, e.g., "Guangxi Town 'Tense' After One-Child Protest Put Down," South China Morning Post (Online), 22 May 07; Joseph Kahn, "Birth Control Measures Prompt Riots in China," New York Times (Online), 21 May 07; "Government Uses Iron Fist To Force Sterilization of Female Student" [Zhengfu tiewan bi nüsheng jueyu], Ming Pao (Online), 22 May 07.

[22] See, e.g., Chow Chung-yan, "One-Child Policy Riots Flare Up—Anger Over Birth-Control Fines Spreads across Guangxi," South China Morning Post (Online), 31 May 07; "10,000 Riot in Guangxi," Tung Fang Jih Pao, 21 May 07 (Open Source Center, 21 May 07); "Guangxi Family Planning Protests Erupt Again in Rong County," Radio Free Asia (Online), 29 May 07. In July, state-controlled media reported that two men received prisons sentences of one and two years for their involvement in the protests. "China Jails Two Men for Birth-Control Riots," Reuters (Online), 23 July 07.

[23] "Full-Term Abortion Lawsuit a First for China," Caijing (Online), 25 July 07.

[24] The pressures created by population planning policies, combined with entrenched preferences for male children and under-reporting of female births, have factored into estimates of China's unbalanced sex ratio. See White, China's Longest Campaign, 203–207, for more information on sex ratios in China and in other countries with traditional preferences for boys.

[25] "New Policy Will Offer Cash Instead of Kids," China Daily (Online), 16 October 06.

[26] Decision Regarding the Comprehensive Strengthening of Population and Family Planning Work To Resolve the Population Problem as a Whole. Article 35 of the 2002 Population and Family Planning Law prohibits, but does not penalize, sex-selective abortion. Population and Family Planning Law, art. 35.

[27] Statistics cited in U.S. Department of State, "Country Reports on Human Rights Practices—2006. There is some variation in reporting on the sex ratio. See the CECC, 2006 Annual Report, 230 (footnote 34) for an overview of estimates during and before 2006.

[28] "Abortion Law Amendment To Be Abolished," China Daily, reprinted in Xinhua, 26 June 06.

[29] Henan Province Regulation on Prohibiting Non-Medically Necessary Fetal Sex Determination and Sex-Selective Abortion [Henansheng jinzhi feiyixue xuyao tai'er xingbie jianding he xuenze xingbie rengong zhongzhi renshen tiaoli], issued 29 September 06. The regulation only allows sex determination for cases in which medical personnel suspect the existence of a congenital disease. For women who have abided by all population planning requirements and are more than 14 weeks pregnant, abortion is permitted only when a serious hereditary disease or severe birth defect is detected; if continuation of gestation will damage the health or life of the pregnant woman; or if the pregnant woman is divorced or widowed. The regulation does not alter the legal framework for abortion prior to 14 weeks of gestation or for women whose pregnancy violates population planning requirements. The regulation also prohibits the retail sale of abortion-inducing drugs, limits manufacturers' ability to distribute such pharmaceuticals, and requires a physician to administer these drugs. Penalties include fines of up to 2,000 yuan (US$260) for women who have abortions in violation of the regulation's parameters, and fines of up to 30,000 yuan (US$3,870) and possible revocation of licenses for health organizations that do not comply with the new regulation.

[30] For an overview of such measures, known as a "1.5-children policy," see Gu, "China's Local and National Fertility Policies at the End of the Twentieth Century," 133, 138.

[31] Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Trafficking in Persons Report—China, 12 June 07.

[32] "Xinjiang Focuses on Reducing Births in Minority Areas To Curb Population Growth," CECC China Human Rights and Rule of Law Update, April 2006, 15–16; "Xinjiang Reports High Rate of Population Increase," CECC China Human Rights and Rule of Law Update, March 2006, 16–17. A 1953 government census found that Han Chinese constituted 6 percent of the XUAR's population of 4.87 million, while Uighurs made up 75 percent. The 2000 census listed the Han population at 40.57 percent and Uighurs at 45.21 percent of a total population of 18.46 million. Demographer Stanley Toops has noted that Han migration since the 1950s is responsible for the "bulk" of the XUAR's high population growth in the past half century. Stanley Toops, "Demographics and Development in Xinjiang after 1949,"East-West Center Washington Working Papers No. 1, May 04, 1.

Notes to Section II—Freedom of Residence and Travel

[1] For a fieldwork-based case study that discusses the impact of the *hukou* system, including provisions allowing family members of urban *hukou* holders to transfer their status, see Dorothy J. Solinger, "The Sad Story of Zheng Erji Who Landed in the City Through the Favors Reform-Era Policies Bestowed But Rewrote the Rules While Suffering Wrongs, Once There," in Dorothy J. Solinger, ed., Narratives of the Chinese Economic Reforms (Lewiston, NY: The Edwin Mellen Press, 2005), 113–127, esp. 121, 123, 125.

[2] See, e.g., Universal Declaration of Human Rights (UDHR), adopted and proclaimed by General Assembly resolution 217A (III) of 10 December 48, art. 2, 13; International Covenant on Civil and Political Rights (ICCPR) , adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 2(1), 12(1), 12(3), 26; the International Covenant on Economic, Social, and Cultural Rights (ICESCR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 2(2). [See Section X, "Protection of Internationally Recognized Labor Rights," for more information on China's obligations to comply with internationally recognized labor rights, include provisions relevant to migrant workers' status.]

[3] China is a party to the ICESCR and a signatory to the ICCPR . The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, "to refrain from acts which would defeat the object and purpose of a treaty" it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.

[4] UN Committee on Economic, Social and Cultural Rights (CESCR), "UN Committee on Economic, Social and Cultural Rights: Concluding observations: People's Republic of China (including Hong Kong and Macao)" (Online via UNHCR Refword©)13 May 2005. E/C.12/1/Add.107, para. 15. This committee is charged with monitoring states' compliance with the ICESCR.

[5] State Council Notice on Endorsing the Public Security Bureau's Opinions on Promoting Reform of the Management System for Residence Permits in Small Towns and Cities [Guowuyuan pizhuan gong'anbu guanyu tuijin xiaochengzhen huji guanli zhidu gaige yijian de tongzhi], issued 30 March 01. Under these rules, migrants to small cities or towns may keep their land rights in their villages of origin. For more information on earlier reforms, see the CECC Topic Paper "China's Household Registration System: Sustained Reform Needed To Protect China's Rural Migrants," October 2005.

[6] See the CECC 2003 Annual Report for more information. CECC, 2003 Annual Report, 2 October 03, 52.

[7] Regulations on Legal Aid [Falü yuanzhu tiaoli], issued 21 July 03.

[8] State Council Office Circular on Improving Work on Management and Services for Migrant Workers in Cities [Guowuyuan bangongting guanyu zuohao nongmin jincheng wugong jiuye guanli he fuwu gongzuo de tongzhi], issued 5 January 03.

[9] State Council Circular Transmitting the Opinion of the Education and Other Ministries Relating to Further Work on Migrant Children's Compulsory Education [Guowuyuan bangongting zhuanfa jiaoyubu deng bumen guanyu jin yibu zuohao jincheng wugong jiuye nongmin zinü yiwu jiaoyu gongzuo yijian de tongzhi], issued 17 September 03.

[10] State Council Office Circular Regarding Work on Improving the Employment Situation for Migrants in Urban Areas [Guowuyuan bangongting guanyu jin yibu zuo hao gaishan nongmin jincheng jiuye huanjing gongzuo de tongzhi], issued 27 December 04.

[11] "Labor Ministry Officials Remove Regulatory Barrier to Migrants Seeking Work in Cities," CECC Virtual Academy, 4 October 06.

[12] Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside [Zhong-gong zhongyang guowuyuan guanyu tuijin shehuizhuyi xin nongcun jianshe de ruogan yijian], issued 31 December 05. See also "Communist Party, State Council Set Rural Reform Goals for 2006," CECC China Human Rights and Rule of Law Update, April 2006, 8.

[13] State Council Opinion on Resolving Migrant Worker Problems [Guowuyuan guanyu jiejue nongmingong wenti de ruogan yijian], issued 27 March 2006.

[14] PRC Compulsory Education Law, adopted 12 April 86, revised 29 June 06, art. 12; "Amended Compulsory Education Law Would Assure Migrant Children the Right To Attend School" ["Yiwu jiaoyufa" xiuding cao'an baozhang liudong renkou zinü shangxue], CCTV (Online), 1 May 06.

[15] Resolution Concerning the Question of Delegate Quotas and Elections for the 11th Session of the National People's Congress" [Guanyu shiyi jie quanguo renda daibiao ming'e he xuanju

wenti de jueding], Guangdong News (Online), 16 March 07. "NPC's Approval of Key Laws Seen as Promotion of Social Justice by Chinese Academics," Xinhua News reprinted by BBC (Online), 16 March 07. Whether the resolution will give migrant workers a greater voice in practice remains unclear. In an article from the Xinhua news agency, one migrant worker expressed concern over election logistics since most migrant workers lack urban residence registrations, making them ineligible to vote in the cities where they reside. "Rural Migrant Workers To Enter China's Top Legislature," Xinhua (Online), 8 March 2007. In January 2006, the Shanghai local people's congress (LPC) for the first time allowed two migrant workers from Jiangsu province to attend a session of the Shanghai LPC as observers. The China Economic Times, a State Council-sponsored publication, criticized the Shanghai LPC, however, for not allowing the two migrants to serve as full representatives. It noted that *hukou* restrictions bar many migrants from standing for election, and that none of the 1,000 LPC delegates attending the session represented Shanghai's 4 million migrant workers. "State Council Newspaper Criticizes Lack of Migrant Representation in Shanghai LPC," CECC China Human Rights and Rule of Law Newsletter, March 2006, 13–14.

[16] "Hukou Reform Submitted To State Council, Legal and Fixed Place of Residence as Criteria for Shifting Hukou Registration" [Huji gaige wenjian bao guowuyuan, hefa guding zhusuo cheng qianyi tiaojian], Guangdong News (Online), 23 May 97. "Many Difficulties Remain in Hukou Reform, MPS Launches Investigation and Research into Legislating a Hukou Law [Huji gaige cun zhuduo nandian gong'anbu qidong hukoufa lifa diaoyan]," Legal Daily (Online), 20 June 07. There has been some dispute over the document's submission to the State Council. For background see Carl Minzner, "Hukou Reforms Under Consideration," Chinese Law and Politics Blog, 4 June 07.

[17] The current reforms bear close resemblance to earlier proposals put forth by central government officials. Nevertheless, one scholar has suggested that the current reforms are more liberal than past efforts in that they only demand citizens meet a residence requirement, rather than both residence and income requirements, for transferring *hukou*. See Carl Minzner, "Hukou Reforms Under Consideration," Chinese Law and Politics Blog, 4 June 07.

[18] See Max Tuñón, "Internal Labour Migration in China: Features and Response," International Labour Organization (Online), April 2006, 10, 22–23, 35.

[19] For more information on local regulations that condition *hukou* transfers on meeting such criteria, see "China's Household Registration System: Sustained Reform Needed To Protect China's Rural Migrants," 4–5.

[20] Only certain types of rental housing qualify. The reforms permit other groups of migrants to obtain an urban *hukou* based on economic and educational criteria similarly used in other localities to restrict the number of migrants eligible to change their *hukou* status. Chengdu Municipal Party Committee, Chengdu City People's Government Opinion Concerning Deepening Residence Registration Reform and Reforming and Deepening the Integration of Cities and Towns (Trial) [Zhong-gong chengdu shiwei chengdushi renmin zhengfu guanyu shenhua huji zhidu gaige gaishen shenru tuijin cheng xiang yitihua de yijian (shixing)], issued 20 October 06, art. 2.

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[25] Ma Lie, "Xi'an District Grants Migrant Farmers Equal Treatment," China Daily (Online), 1 September 06 (Open Source Center, 1 September 06).

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[27] "Supreme People's Court To Release Determination on Issue of 'Same Life, Different Value' [Zui gao fayuan ni chutai xiangguan jueding jiejue "tongming bu tongjia" wenti], Xinhua (Online), 14 March 07. In 2003, the SPC issued a judicial interpretation mandating a lower rate of compensation for rural *hukou* holders. "Supreme People's Court's Judicial Interpretation Regarding Compensation Cases for Personal Injuries (2003)" [Zui gao renmin fayuan guanyu shenli renshen sunhai peichang anjian shiyong falü ruogan wenti de jieshi], Supreme People's Court (Online), 4 December 03, art. 29.

[28] State Council Office Circular on Improving Work on Management and Services for Migrant Workers in Cities [Guowuyuan bangongting guanyu zuohao nongmin jincheng wugong jiuye guanli he fuwu gongzuo de tongzhi], issued 5 January 03.

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[32] PRC Law on Passports, adopted 29 April 06, art. 13(7). For an example of a beneficial provision within the law, see, e.g., Article 6, which stipulates time limits for officials to approve applications and allows applicants to contest rejected applications.

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[2] Ibid., 47–49; CECC, 2004 Annual Report, 5 October 04, 56–57; CECC, 2006 Annual Report, 20 September 06, 97–98.

[3] CECC, 2004 Annual Report, 55–56; CECC, 2005 Annual Report, 11 October 05, 67, 69; CECC, 2006 Annual Report, 99.

[4] CECC, 2004 Annual Report, 56–58; CECC, 2005 Annual Report, 67–68; CECC, 2006 Annual Report, 97–99.

[5] CECC, 2005 Annual Report, 67; CECC, 2006 Annual Report, 97–98.

[6] PRC Constitution, art. 48. Article 48 declares that women are equal to men and names women as a "vulnerable social group" requiring special protection.

[7] The State Council Women's Development Program, 2001–2010 [Zhongguo funü fazhan gangyao, 2001–2010], May 2001.

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[58] China Gender Equality and Women's Development Report [Zhongguo xingbie pingdeng yu funü fazhan baogao], ed. Tan Lin (Beijing: Social Sciences Academic Press, 2006), reprinted in China Net (Online).

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[2] PRC Protection of Minors Law, enacted 4 September 91, amended 29 December 06.

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[5] National Bureau of Statistics, China Statistical Yearbook 2006, Table 23–11; "Ministry of Public Security Strengthens the Combating of Crimes of Trafficking in Women and Children" [Zhongguo gongan jiguan jiada daji guaimai funü ertong fanzui lidu], Xinhua (Online), 26 July 07.

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[26] U.S. Department of State, Trafficking in Persons Report—China, 80; "Social Service Organizations Involved in Two Child Trafficking Cases," CECC China Human Rights and Rule of Law Update, 11. See also, CECC, 2006 Annual Report, 20 September 06, 100.

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[51] For example, in 2002, President Hu Jintao noted that "the masses should play a role in supervising party officials." Simon Montlake, "Whistle-blower in China Faces Prison," Christian Science Monitor (Online), 14 August 07.

[52] For example, Zhou Jian, Vice Minister of SEPA, mentioned that there is differing information relating to environmental health data. Yet, he reiterated the Chinese government's promise to protect people's health from pollution. Sun Xiaohua, "World Bank Environment Report 'Not Very Reliable,'" China Elections and Governance Web site (Online), 18 July 07.

[53] Wang Jiaquan, "China's Economic Engine Forced To Face Environmental Deficit," China Watch (Online), 26 July 07.

[54] China Council for International Cooperation on Environment and Development (CCICED) Task Force on Environmental Governance, "Environmental Governance in China," presented at the 5th Annual General Meeting of the CCICED, 10–12 November 06, 11–12.

[55] Ling Li, "China Postpones Release of Report on 'Green' GDP Accounting," China Watch (Online), 31 July 07; "China's Environmental Degradation Creating Social Time-Bomb," China Corporate Social Responsibility.

[56] Ling Li, "China Postpones Release of Report on 'Green' GDP Accounting."

[57] Ibid.

[58] Sun Xiaohua, "World Bank Environment Report 'Not Very Reliable.'"

[59] "Beijing Denies Bid To Cover Up World Bank Pollution Data," South China Morning Post (Online), 9 July 07.

[60] Monica Liau, "Chinese Government Censors World Bank Pollution Report," China Watch (Online), 11 July 07; Richard McGregorin, "Beijing Censored Pollution Report," Financial Times (Online), 3 July 07; Mitchell Landsberg, "China Cancels Environment Report," Los Angeles Times (Online), 24 July 07.

[61] Sun Xiaohua, "World Bank Environment Report 'Not Very Reliable.'"

[62] State Council Information Office (Online), "The State Council Has Handled the Jilin Explosion Incident and Songhua Water Pollution Incident" [Guowuyuan dui jihua baozha shigu ji songhua jiang shuiwuran shijian zuo chuli], 24 November 06.

[63] "Branch Office of Jilin Petrochemical Company Fined One Million Yuan for Songhua River Incident" [Jilin shihua fengongsi yin songhua jiang shuiwuran bei fakuan 100 wan], Xinhua (Online), 24 January 07.

[64] "Can SEPA's Maximum Fine Unsettle Enterprises' Low Cost of Violating the Law?" [Huanbao zuida fadan nengfou zhenshe qiye dichengben weifa], China Youth Daily (Online), 25 January 07.

[65] "Draft of Revised Water Pollution Prevention Law Already Finished" [Shuiwuran fangzhi fa xiugai caoan yi ni chu], Legal Daily (Online), 30 January 07; "China Solicits Public Opinion on Draft Law on Water Pollution," Xinhua (Online), 5 September 07.

Notes to Section III—Civil Society

[1] See, e.g., "Chinese NGOs Wish To Be Helpful to the Government," Xinhua, reprinted in People's Daily, 7 July 05.

[2] Regulation on the Management of the Registration of Social Organizations, [Shehui tuanti dengji guanli tiaoli], issued 25 October 98. art. 3, 6.

[3] See, e.g. International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 22; China is a signatory to the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese

Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, "to refrain from acts which would defeat the object and purpose of a treaty" it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.

[4] See, e.g., "Minister of Civil Affairs Li Xueju: Foreign NGOs Can Legally Register for First Time" [Minzhengbu buzhang Li Xueju: shewai minjian zuzhi shouci nihe fa dengji], People's Daily (Online), 13 March 07. Guo Xiaojun, "NGOs May Not Need an Oversight Organization in Order To Register" [NGO zhuce you wang wu xu zhuguan danwei], Beijing News (Online), 18 October 04.

[5] "Minister of Civil Affairs Li Xueju: Foreign NGOs Can Legally Register for First Time," People's Daily. Current regulations provide no guidelines for most foreign NGOs to register. Bereft of means to legally register as civil society organizations, some foreign NGOs decide not to register, others register as for-profit businesses, and others partner with a government-organized NGO. See, e.g., "NGOs Defined in China," China Corporate Social Responsibility (Online), 11 October 06. The government announced in January it had started work to revise the Temporary Regulations on the Registration and Management of Non-Governmental, Non-Commercial Enterprises, and that it had drafted implementing measures for the 2004 Regulation on the Management of Foundations. "Director Sun Weilin's Speech at National Video Conference on Management of Civil Society Organizations" [Sun Weilin juzhang zai quanguo minjian zuzhi guanli gongzuo shipin hui shang de jianghua], Ministry of Civil Affairs (Online), 31 January 07.

[6] See, e.g., Guo, "NGOs May Not Need an Oversight Organization in Order To Register;" "CPPCC Member Wang Ming Demands Reform of Dual Regulatory System for Social Organizations," China Law Digest (Online), 13 March 07; "Minister of Civil Affairs Li Xueju: Foreign NGOs Can Legally Register for First Time," People's Daily.

[7] "Grassroots NGOs Struggle for Legitimacy," State Environmental Protection Administration (Online), 22 June 07 (referring to the retention of the dual oversight system stemming from requirements to obtain a sponsorship organization and register with a civil affairs bureau).

[8] "Minister of Civil Affairs Li Xueju: Foreign NGOs Can Legally Register for First Time," People's Daily.

[9] Regulations on the Management of Foundations [Jijinhui guanli tiaoli], issued 8 March 04, art. 13

[10] The figure includes registered social organizations [shehui tuanti], nongovernmental noncommercial enterprises [minban feiqiye danwei], and foundations [jijinhui], three categories of civil society organizations delineated in MOCA's statistical reports. "2006 Statistical Report on Civil Affairs Sector Development" [2006 nian minzheng shiye fazhan tongji baogao], Ministry of Civil Affairs (Online), 23 May 07.

[11] Estimates, which include quasi-governmental organizations, are cited in Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2006, China (includes Tibet, Hong Kong, and Macau)," 6 March 07. One Chinese scholar estimated the total number at 3 million. Zhao Ling and Dong Shuhua, "New Regulations on Social Organizations To Be Issued This Year: Civil Society Organizations To Receive Appropriate Encouragement" [Xin shetuan tiaoli nian nei chutai: minjian zuzhi jiang huo shidu guli], Southern Weekend (Online), 19 May 05. Chinese news sources continued to cite this figure in 2007. See, e.g., "Minister of Civil Affairs Li Xueju: Foreign NGOs Can Legally Register for First Time," People's Daily.

[12] One survey of 22 Chinese NGOs revealed 5 unregistered ones which "conducted their activities openly without experiencing any explicit control exerted by any government agencies." The study noted that "because civil affairs offices had no resources to register all prospective NGOs and the Chinese government had a policy to encourage voluntary activities as a way to advance the well-being of society, civil affairs offices allowed the existence of unregistered NGOs as long as these NGOs had not committed any financial misdeeds or posed any political threats." NGOs in China: Encouraging Action and Addressing Public Grievances, Staff Roundtable of the Congressional-Executive Commission on China, 7 February 05, Written Statement submitted by Jiang Ru, Ph.D. in Environmental Management and Planning, Stanford University. See also "Students With Hepatitis B File Lawsuit After School Officials Bar Enrollment," CECC China Human Rights and Rule of Law Update, November 2006, 11–12; Georgina Li, "Xinjiang AIDs NGO Calls for End to 'State of Terror' After Closure," South China Morning Post (Online), 25 October 06.

[13] "Li Qiang: Call To Pay Attention to Harassment of 12 Grassroots Organizations in Shenzhen" [Li Qiang: Huyu guanzhu Shenzhen shi'er jia caogen tuanti shou dapo shijian], Boxun (Online), 15 November 06. See also "ACFTU Measures Promote Migrant Benefits, Also Aim To Curb Independent Groups," CECC China Human Rights and Rule of Law Update, December 2006, 11–12.

[14] "Students With Hepatitis B File Lawsuit After School Officials Bar Enrollment," CECC China Human Rights and Rule of Law Update, November 2006, 11–12. See also "Xinjiang AIDS Organization Snow Lotus is Shut Down" [Xinjiang aizibing minjian zuzhi xuelianhua bei qudi]," Radio Free Asia (Online), 19 October 06. The Xinjiang government formally shut down the group for failing to register, but AIDS activist Wan Yanhai noted that many of China's HIV/AIDS organizations operate without official registration. Li, "Xinjiang AIDs NGO Calls for End to 'State of Terror' After Closure."

[15] Public officials in China consider the CDP to be an illegal organization and have used subversion charges to impose lengthy prison sentences on numerous CDP activists since the group's founding in 1998 to promote multi-party politics and a peaceful transformation of Chinese politics. Human Rights Watch (Online), "Nipped in the Bud: The Suppression of the China Democracy Party," September 00. See also "Overseas Service Center of Chinese Democracy Party Calls for Attention to Case of China Democracy Party's Chen Shuqing and Li Hong (Zhang

Jianghong)" [Zhongguo minzhu dang haiwai fuwu zhongxin huyu guanzhu Chen Shuqing, Li Hong (Zhang Jianhong) zhongguo minzhu dang yi an], Radio Free Asia (Online), 19 September 06.

[16] "Well-Known Online Article Writer Zhang Jianhong Sentenced for Inciting Subversion of State Power" [Wangshang zhuanwen da Zhang Jianhong shandong dianfu guojia zhengquan an xuanpan], Xinhua, reprinted in Phoenix Television (Online), 20 March 07. See also the CECC Political Prisoner Database for more information.

[17] "China Jails Internet Writer for Subversion, Disbars Lawyer," Reuters (Online), 16 August 07. See also the CECC Political Prisoner Database for more information.

[18] "Pro-Democracy Activist Detained for 'Inciting Subversion' Government Must End Criminalization of Free Speech," Chinese Human Rights Defenders (Online), 27 August 07. See also the CECC Political Prisoner Database for more information.

[19] "Zhejiang China Democracy Party Member Chi Jianwei Sentenced to 3 Years in Prison" [Zhejiang sheng zhongguo minzhu dang chengyuan chi jianwei bei pan xing 3 nian tuxing], Radio Free Asia (Online), 27 March 07. See also the CECC Political Prisoner Database for more information.

[20] In 2007 a Zhejiang court sentenced writer and painter Yan Zhengxue to three years in prison for inciting subversion for publishing essays deemed critical of the government. Procuratorate officials had alleged Yan was a secret member of the CDP, but the court did not include this as a basis for its sentence. Independent Chinese Pen Center, "ICPC Statement Regarding Protest of Member Yan Zhengxue's Sentence" [Duli zhongwen bihui guanyu huiyuan Yan Zhengxue bei panxin de kangyi shengming]," 19 April 07. See also the CECC Political Prisoner Database for more information.

[21] See the CECC Political Prisoner Database for more information. See also "Authorities Arrest and Imprison Writers for Online Essays Criticizing Government," CECC China Human Rights and Rule of Law Update, November 2006, 4–5.

[22] U.S. Department of State, Country Reports on Human Rights Practices—2006, China. Chinese and western sources have defined the term "nongovernmental organization" in different ways and have varied in their views of the function of such organizations. In the Chinese context, government involvement can shape the operation of such groups, some of which include so-called government-operated NGOs. As noted in the State Department report, registration requirements "prevented the formation of truly autonomous political, human rights, religious, spiritual, labor, and other organizations that might challenge government authority."

[23] Chen Xiangyang, "The Current State and Challenges of Nongovernmental Organizations in China," China Economic Times, 26 May 05 (Open Source Center 27 May 05). In the spring and summer 2005, after uprisings in former Soviet republics, senior Chinese international relations experts fanned out to the United States and quizzed U.S. specialists on China whether there was a deliberate U.S.-backed plan, with U.S. NGOs at the forefront, to shift from a "War on Terror" to "War for Democracy," following on a theme sounded in President George Bush's second inaugural address. Some Chinese sources confided in Western specialists that they heard Russian President Vladimir Putin had urged Hu Jintao to exercise caution toward the role of U.S.-supported NGOs in Chinese society, lest they promote a revolution from below via civil society. CECC Staff Interviews. For a more recent article expressing general concerns about Western infiltration, see "Be on Guard Against the Western Countries in Their Attempt To Stage 'Peaceful Evolution' in China," Beijing Marxism Research, 5 October 06 (Open Source Center, 4 January 07). At the same time, an August 2006 article in Study Times, a Central Party School newspaper, criticized the polarization of views regarding foreign NGOs and called for a more objective assessment recognizing both the positive contributions of such organizations as well as their shortcomings. Zhao Liqing, "How To Assess Foreign NGOs in China" [Ruhe kandai zai Zhongguo de waiguo feizhengfu zuzhi], Study Times, reprinted on the China Elections and Governance Web site, 23 August 06.

[24] See, e.g., "China Tightening Control Over NGOs" [Zhongguo jiajin kongzhi feizhengfu zuzhi], Voice of America, reprinted on Boxun, 31 August 06; "Investigation Sends Chill Through Activist Group," Associated Press, printed in the South China Morning Post, 31 August 06.

[25] CECC Staff Interviews. In addition to receiving earlier reports of Chinese partners withdrawing from cooperative projects, the Commission confirmed in 2007 that the practice has continued.

[26] Nick Young, "Message from the Editor," China Development Brief (Online), 12 July 07.

[27] "Ministry Mulls Help for Farmers' Groups," China Daily (Online), 07 July 07. Law on Professional Farmers' Cooperatives [Zhonghua renmin gongheguo nongmin zhuanye hezuoshe fa], issued 31 October 06, art. 13. Details on registration requirements are articulated in the Regulation on the Management of the Registration of Professional Farmers' Cooperatives [Nongmin zhuanye hezuoshe dengji guanli tiaoli], issued 28 May 07. For more information on the law and regulation, see Kevin Schwartz, "The Farmers' Professional Cooperative Law (P.R.C.) in Economic, Political, and Legal Context." 5 International Journal of Civil Society Law, July 2007, 39.

[28] Law on Professional Farmers' Cooperatives, art. 13.

[29] World Bank, East Asia and Pacific Region, "China—Farmers Professional Associations: Review and Policy Recommendations," October 2006, 2–3. Critics of the law have noted that it fails to apply to all types of cooperatives and does not promote the formation of rural finance cooperatives. "Ministry Mulls Help for Farmers' Groups," China Daily.

[30] "Better Regulation of Charities on [the] Way: Official," China Daily, reprinted in People's Daily (Online), 25 May 07. See also "Tax Policy on Charity Widened," China Daily (Online), 20 January 07. Although Chinese authorities have expressed support for charitable activities, critics argue that the government has hindered the growth of grassroots charitable organizations. "Chinese Government Does Not Encourage Development of Grassroots Philanthropic Organizations" [Zhongguo zhengfu bu guli caogen cishan jigou de fazhan], Radio Free Asia (Online), 31 January 07. In 2006, the Communist Youth League Central Committee began a campaign to

recruit and train "registered" volunteers. "China Developing Law To Recognize and Boost Volunteerism," Xinhua, reprinted on People's Daily (Online), 06 December 06. The status of charitable organizations has taken on increasing importance as part of a broader effort by the Chinese government to encourage volunteer work among the populace. In March 2005, Premier Wen Jiabao presented the first government report to include specific support for charitable activities. "Policy Incentives Urged for Charitable Activities," China Daily (Online), 22 November 05 (Open Source Center, 22 November 05).

[31] "Donations to Charitable Organizations All To Be Exempt from Taxation" [Juanzeng gongyi shetuan junke mianshui], Beijing News (Online), 19 January 07; "Tax Policy on Charity Widened," China Daily. For text of the policy, see "Circular of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations" [Guanyu gongyi jiujixing juanzeng shui qian kouchu zhengce ji xiangguan guanli wenti de tongzhi], issued 19 January 07. Previous policy only allowed tax deductions for donations made to a small group of specified organizations; the new policy extends this to all registered nonprofit social welfare organizations and foundations. A new Enterprise Income Tax law adopted during the 10th NPC session in March 2007 raises the limitation of permitted deductions for corporate donations from 3 to 12 percent of annual profit. Enterprise Income Tax Law of the People's Republic of China, issued 16 March 07, art. 9. This provision replaces the Trial Regulations on Enterprise Income Tax [Zhonghua renmin gongheguo qiye suodeshui zanxing tiaoli], issued 13 December 93, art. 6(4).

[32] In the first phase, six NGOs (including the U.S.-headquartered Heifer Project International) were selected to facilitate projects in villages in Jiangxi province. Wang Zhenghua, "NGOs Win Bid for Poverty Relief," China Daily (Online), 22 February 06. Chan Siu-Sin, "Civil Groups Given State Funding for Relief Operations," South China Morning Post (Online), 20 March 06. The government traditionally has acted independently of NGOs in implementing poverty alleviation initiatives, which has led to inefficiency due to bureaucratic requirements. Corruption among local government officials has also proved problematic in the distribution of relief funds. "Beijing Review: Government Changes Needed To Clarify NGOs' Role in China," Beijing Review, 31 March 06 (Open Source Center, 31 March 06).

[33] Chang Tianle, "Shanghai Dances with NGOs," China Development Brief Newsletter, November 06.

Notes to Section III—Institutions of Democratic Governance

[1] On Tiananmen's impact on leadership politics and political reform, see Joseph Fewsmith, China Since Tiananmen: The Politics of Transition (Cambridge University Press, 2001), 1–10; Joseph Fewsmith,"Hu Jintao's Outbox," The Atlantic Council, Conference Paper for China and The World Economy Workshop, December 2005; Murray Scot Tanner, "Can China Contain Unrest? Six Questions Seeking One Answer," Brookings Institution Northeast Asia Commentary (Online), March 2007.

[2] CECC, 2006 Annual Report, 20 September 06, 125.

[3] David Schlesinger and Brian Rhoads, "Wen Says Time Not Ripe for Direct Polls," Reuters (Online), 5 September 06; See also "Chinese Premier Rules Out Democratic Reform in Near Future," Voice of America (Online), 27 February 07.

[4] According to a 2001 article by elections expert Jamie Horsley of the China Law Center at Yale Law School, as of that year, voters in some parts of Fujian province had already participated in their seventh round of voting since 1988. Jamie Horsley, "Village Elections: Training Ground for Democratization," China Business Review, March–April 01, reprinted in China Elections and Governance (Online), 4 November 06.

[5] Guan Xiaofeng, "Progress and Problems Mark Village Elections," China Daily (Online), 10 July 07 (Open Source Center, 11 July 07).

[6] "Guangdong Villagers Surround Village Committee, Protest Election Rigging and Manipulation," Radio Free Asia (in Chinese), 26 September 07; Law enforcement officials in Zhejiang province, for example, reported that in some rural areas, popular anger over vote-buying, election rigging, and other efforts to subvert the electoral system account for more than one-tenth of all cases of rural unrest. Zhang Ruoxian, Wang Weiwen, Liu Zhiming, "Causes and Policy Responses to the Problems of Crimes Committed by Rural Residents in the Course of Urbanization" [Chengshihua jincheng zhong shidi nongmin weifa fanzui wenti de chengyin yu duice], Zhejiang Court Network (Online), 20 March 06.

[7] Guan, "Progress and Problems Mark Village Elections."

[8] "Rural Elections Undermined by Bribery, Manipulation," China Daily, reprinted in China Elections and Governance (Online), 21 August 06.

[9] "Bribery Reported in Grass-Roots Elections in Villages," Xinhua, 9 October 06; "Inner Mongolia Village Elections See Rampant Bribery," China Elections and Governance (Online), 10 October 06.

[10] "China Punishes 192 Officials for Electoral Fraud," China Daily, reprinted in China Elections and Governance (Online), 2 February 07; See also "Central Committee Investigates Vote Buying Affair by Li Tangtang," 21st Century Economic Herald (21 Shiji jingji daobao), 6 February 07.

[11] Lianjiang Li, "Driven to Protest: China's Rural Unrest," Current History, 105 (689) September 06, 253.

[12] CECC, 2006 Annual Report, 20 September 06, 127–131. For evidence that this trend has continued and deepened in 2006–2007, see the endorsement of "concurrent leadership" in "Hunan Issues 'Opinions' on Strengthening Village Cadres Contingent," Hunan Daily (Online), 25 May 07. Liaoning Daily, 10 January 07 in "Report on Village Democracy in China," (Open Source Center, 24 Jan 07); Hebei Daily, 17 April 07 in "Report on Village Democracy in China," (Open Source Center, 13 April – May 07); Sun Dongwen (Dantu District CCP Organization Department Deputy Director), "Speech Before the Work Meeting of the Entire District on Village

Party Committee Elections," [Zai quanqu cundang zuzhi huanjie gongzuo huiyi shang de jianghua], 9 August 07, Dantu Communist Party Committee Party Building Web site.

[13] CECC Staff Interviews.

[14] Election and nomination rules for residents committee elections are reportedly far more flexible than those for village committees, which are in principle governed by more detailed laws. In some cities, the process is very restricted and indirect, with only a few more candidates than committee seats. Local election committees control the identity of candidates, with voters choosing a limited number of representatives for their housing blocks who can, in turn, vote for the actual committee candidates. More fundamentally, rural village committees actually influence provision of important services in their area, while an urban community committee "doesn't control any benefits that people value, so they do not value the community committee." For a brief history of these elections and foreign NGO election monitoring activities, see Elizabeth Dugan, "Urban Elections in China," China Elections and Governance (Online), 10 January 03.

[15] "Shenzhen To Increase Direct Resident Committee Election Proportion to 70 Percent," Southern Daily, 15 May 07 (Open Source Center, 17 July 07).

[16] For a report on such a vote in Beijing, see Sun Yuqing, "In a Rare Vote, Local Residents Support Compensation Plan for Demolition of their Homes," China Daily (Online), 11 June 07. However, some analysts have observed that residents committees work more predominantly in the interests of developers, serving as the developer's agent during the planning and relocation process. See Pamela N. Phan, Enriching the Land or the Political Elite? Lessons from China on Democratization of the Urban Renewal Process, 14 Pac. Rim. L. & Pol'y J. 607, 621 (2005); Daniel Abramson, Marketization and Institutions in Chinese Inner-City Neighborhood Redevelopment: A Commentary on Beijing's Old and Dilapidated Housing Renewal by Lu Junhua, 14 Cities 71, 73 (1997).

[17] "China's County, Township, Congress Elections Underway," Xinhua (Online), 24 October 06.

[18] An Hua, "Voter Appraisals of Representatives to the Beijing People's Congress Vary" [Beijing xuanju renmin daibiao zhong xuanmin baobian buyi], Voice of America (Online), 8 November 06.

[19] Ibid.

[20] For a general report on various instances of harassment, see "Local Authorities Interfere With Rights To Vote and Stand For Election," CECC China Human Rights and Rule of Law Update, December 2006, 14–15.

[21] Ding Xiao, "Yao Lifa Obstructed in his Independent Candidacy, Summoned for Interrogation on the Eve of Election Day" [Yao Lifa duli jingxuan shouzu; toupiaori qianxi zao chuanxun], Voice of America (Online), 7 November 06.

[22] An Hua, "Chinese Rights Defender Campaigning To Be People's Congress Representative Is Detained" [Zhongguo jingxuan renda daibiao weiquan renshi bei juliu], Voice of America (Online), 7 November 06.

[23] Liu Qing, "Far-Reaching Significance of Independent Candidacy" [Duli canxuan yiyi shenyuan], Human Rights in China (Online), September 06.

[24] For a detailed list of recent experiments , see Chen Jiaxi, "Rural Village Basic-Level Party Organization Elections: Progress and Problems," [Nongcun jiceng dang zuzhi xuanju gaige: jinzhan yu wenti], Beijing Party Building [Beijing Dangjian] (Online), 17 July 07.

[25] Chen Jiaxi, "Rural Village Basic-Level Party Organization Elections."

[26] For a detailed example, see Weihai City Communist Party Organization Department, "Opinion on how to do a better job of the 'two nominations and one election' in the selection of village party organization members," [Guanyu jinyibu zuohao 'liangtui yixuan' nongcun dang zuzhi chengyuan de yijian], Organization Department Document Number 22 (2007).

[27] In Hu Jintao's June 25 "important speech" to the Central Party School, which official commentators have indicated is likely to be a precursor to his 17th Party Congress report, Hu endorsed both expanded popular political participation and socialist democracy, as well as improved "inner-Party democracy." Hu did not make any endorsement of expanded popular participation in Party affairs, however. "Hu Jintao Gives Important Speech at Central Party School," Xinhua, 25 June 07.

[28] Ibid.

[29] "130 Officials Caught in Election Scandals," Xinhua, reprinted in China Elections and Governance (Online), 21 November 06.

[30] "CPC Promotes Democracy by Open Elections," Xinhua, reprinted in China Elections and Governance (Online), 17 July 07.

[31] Ji Lima, "A New Light for Democracy within the Party" [Dangnei minzhu xin liangxiang), China Elections and Governance (Online), 6 August 07.

[32] Zhang Xiaoyan, "Enhance Inner Party Harmony by Means of Inner-Party Democracy," Study Times, 8 January 07.

[33] "China Punishes 192 Officials for Electoral Fraud," China Daily, reprinted in China Elections and Governance (Online), 2 February 07.

[34] Kristine Kwok, "Four Killing in Row Over Village Election," South China Morning Post (Online), 26 June 07; "(In Brief) Village Chief Kills Self," South China Morning Post, 29 June 07.

[35] Ting Shi, "Party Wants Faster Path to Reform, Says Report," South China Morning Post (Online), 8 August 07.

[36] Michael Huang, "CCP Regime Maintenance: Pragmatic, But Not Necessarily Democratic," China This Week, 29 June–6 July 07.

Notes to Section III—Access to Justice

[1] "Last Year Total Letters and Visits Decreased Over 15 Percent," Radio Free Asia (Online), 28 March 06. Another source indicates that "disorderly petitions" decreased by 16.9 percent over 2005. "Central Discipline Inspection Commission: Disorderly Petitions and Improper Petitions Decrease Greatly," Radio Free Asia (Online), 11 July 07. See also, CECC, 2006 Annual Report, 20 September 06, 140.

[2] CECC, 2004 Annual Report, 5 October 04, 74.

[3] Regulations on Letters and Visits [Xinfang tiaoli], issued 10 January 05, arts. 6–8, 33–36.

[4] For reports on this police incentive system, see "Ten Major Events in Liaoning's 2004 Public Security Work" [Liaoning gongan 2004 shi jian da shi], Liaoning Provincial Yearbook 2005(Online); Yao Hengbin, "Deeply Promote Activities for the Construction of Peace, Work Hard to Create and Harmonious and Stable Social Environment" [Shenru tuijin pingan jianshe huodong nuli chuangzao heping wending de shehui huanjing], Jiangsu Academy of Social Sciences (Online), 27 January 05; Duan Shouliang, "Investigation and Reflections on the Pudong New District Conflict Mediation System" [Pudong xinqu jiufen jiejue jizhi diaocha yu sikao], Pudong People's Court (Online); Chen Shuangquan, "Reform of Sichuan's Letters and Visits System" [Sichuan sheng *xinfang* zhidu gaige], 16 November 04; "Xinfang Becomes Indicator of Chinese Official's Political Evaluation" [Xinfang cheng zhongguo guanyuan zhengji zhibiao], Yunnan Provincial Communist Party (Online); Human Rights Watch, "China: Rampant Violence and Intimidation Against Petitioners," 8 December 05.

[5] CECC, 2006 Annual Report, 140.

[6] "Last Year Total Letters and Visits Decreased Over 15 Percent" Radio Free Asia. Another source indicates that "disorderly petitions" decreased by 16.9 percent over 2005. "Central Discipline Inspection Commission: Disorderly Petitions and Improper Petitions Decrease Greatly," Radio Free Asia.

[7] "The Supreme People's Procuratorate Publishes Regulations Strengthening Petition Oversight; Uncertain Cases May Permit Hearings" [Zuigaojian chutai guiding jiaqiang *xinfang* jiandu; yinan shigu ke tingzheng], Jiancha Ribao, 14 May 07.

[8] The document is entitled "CCP Central Committee and State Council Promulgate 'Opinions on Further Strengthening Petition Handling Work for the New Period'." See "Central Government Requests Correcting and Restricting Mistaken Methods of Interfering in Petition Activities," China Court Network (Online), 25 June 07.

[9] "China To Establish National Center To Receive Public Complaints," Xinhua (Online), 24 June 07.

[10] "Chinese Local Governments Pressure Petitioners," Radio Free Asia (Online), 30 May, 07.

[11] "New Rules Make Life Tougher on Petitioners, Survey Finds," China Development Brief, 15 May 07.

[12] "Supreme People's Procuratorate Details New Efforts to Prosecute Abuses of Power," CECC China Human Rights and Rule of Law Update, September 2006, 4.

[13] Supreme People's Procuratorate Provisions on the Criteria for Filing Derelection of Duty and Rights Infringement Criminal Cases [Zuigao renmin jianchayuan guanyu duzhi qinquan fanzui anjian lian biaozhun de guiding], issued 26 July 06.

[14] Yunling City Communist Party Committee (Online), "Sichuan's Petition System Reform, The Pressure of Political Evaluations Leads to the Obstruction of Petitions" [Sichuan *xinfang* zhidu gaige zhengyi zhong qi hang, zhengji yali daozhi shangfang bei zu], 16 November 04.

[15] Irene Wang, "People's Legal Action on the Rise," South China Morning Post (Online), 30 March 07; Xie Chuanjiao, "Citizens Get New Support from Supreme Court," China Daily, reprinted in China Elections and Governance (Online), 29 March 07.

[16] "Being People-Centered and Reconsideration for the People—The Responsible Person of the State Council Legislative Affairs Office Answers Questions on the Regulations on the Implementation of the Admninistrative Reconsideration Law," Xinhua (Online), 14 June 07; Implementing Regulations of the People's Republic of China on the Administrative Consideration Law, issued 29 May 07.

[17] Xie Chuanjiao, "Citizens Get New Support from Supreme Court."

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Notes to Section III—Commercial Rule of Law

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[53] Two licenses will be available under the new licensing system: a crude oil sale license ("Sale License") and a crude oil storage license ("Storage License"). See Ibid.
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[55] The new regulatory scheme defines three types of licenses: oil product wholesale licenses ("OPWL"), oil product storage licenses ("OPSL"), and oil product retail licenses ("OPRL").
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[61] Invested by a foreign financial institution(s) together with a PRC corporation(s) or enterprise(s) and with minimum registered capital 1 billion yuan (or foreign currency equivalent). See Wang, "Foreign Participation."
[62] Branch office of a foreign bank with minimum allocation of 200 million yuan in operational. See Wang, "Foreign Participation."
[63] Representative office of a foreign bank. No capital requirement.
[64] The sole shareholder or controlling shareholder of a WFOB and the controlling shareholder of a JVB must satisfy the following conditions: be a commercial bank; with total assets of no less than US$10 billion in the year preceding application; have a representative office within

the PRC for at least 2 years (in the case of a WFOB); and have a representative office within the PRC (in the case of a JVB).

[65] Pursuant to Article 29 of the new Regulations, both WFOBs and JVBs are allowed to conduct a range of foreign exchange and RMB banking business including the taking of RMB deposits from the public; short, medium and long term lending; and bank card business.

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[73] Under Article 9 of the Interpretation, when making a determination of whether allegedly proprietary information satisfies the criteria of being "unknown to the public," for example, courts are instructed to consider, among other things, whether the size, materials and components of the product in question are observable by the general public after the a product enters the market; whether information about the product appears in print or other mass media; whether the product is known to have been on display at exhibitions; whether the product or information can be obtained through public channels; and the ease with which the product or information may be obtained without paying any consideration. See Interpretation of the Supreme People's Court on Some Matters about the Application of Law in the Trial of Civil Cases Involving Unfair Competition [Zui gao renmin fayuan guanyu shenli bu zhengdang jingzheng minshi anjian yingyong falv ruogan wenti de jieshi], issued 12 January 07, art. 9.

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[88] Ibid; See also KPMG China Alert: Tax and Regulatory Developments, Issue 30, November 2006.

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[91] See PRC Constitution, art. 10; PRC Land Management Law, enacted 25 June 86, amended 29 December 88, amended 28 August 04, art. 2.

[92] See PRC Property Law, issued 16 March 07, effective 1 October 07.

[93] Dan Harris, "China's New Property Law, Part I – Introduction," China Law Blog (Online), 15 May 07.

[94] See PRC Constitution, art. 11, clause 2.

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[96] The Land Administration Law provides that registration of the certificates that prove an individual's rights in the land is required to create a property interest. See PRC Land Administration Law, art. 13.

[97] Ibid., art. 22. Article 22 provides "Real property registration fees shall be collected on each piece, and may not be collected according to the size, volume or on the basis of certain proportion of the value of the real property. The specific charging rates shall be jointly determined by the relevant departments under the State Council and the pricing administration authority."

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[99] Helen H.C. Peng and David Y. Shen, "Property Law Lays Legal Foundation for Protection of Property in China," 3 China Law Reporter, 12 (May 2007). See also Harris, "China's New Property Law, Part I—Introduction."

[100] Ibid. Article 73 of the new Property Law, which expressly provides that the "Definite Common Elements" includes green land, road, public area, public facilities and the houses used for the property management, reads: "the roads within the building zone shall be commonly owned by the owners, except the public roads of cities or towns. The green lands within the building area shall be commonly owned by all the owners, except the public green lands of cities or towns or those which are expressly ascribed to individuals. The other public places, common facilities and houses used for real property services within the building zone shall be commonly owned by all the owners."

[101] Ibid. Article 74 of the new Property Law which gives detail provisions on the garages and parking place which fall into the "Indefinite Common Elements," reads: "The parking places and garages that are within the building area and planned for parking cars shall be used to satisfy, above all else, the needs of the owners. The ownership of the parking places and garages shall be determined by the parties involved by way of selling, donation or leasing, etc. The parking places occupying the roads or other fields commonly owned by all owners shall be commonly owned by all the owners."

[102] Ibid. Section 42 seems to address improper transfers, but says little of legal consequence: "The state engages in special protection of agricultural land, severely limits the conversion of agricultural land for construction purposes and controls the quantity of land used for construction purposes. It is not permissible to seize collectively owned land in violation of the limits and procedures provided by law."

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Notes to Section III—Impact of Emergencies: Food Safety, Product Quality, and Climate Change

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[10] Zhao Huanxin, "China's Food Safety Beset by Challenges," China Daily (Online), 11 July 07; Thompson, "China's Food Safety Crisis: A Challenge to Global Health Governance," 8.

[11] State Council Information Office (Online), White Paper on China's Food Quality and Safety, 17 August 07, 1.

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[13] For example, a 2003 survey by the China Consumers Association reports that villagers are most worried about product quality and substandard and counterfeit products. Ibid., 21–22.

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[15] Barboza and Bogdanich, "China Shuts 3 Companies over Safety of Products."

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[18] CECC Staff Search. See also, Hu Ying, "China Struggles To Digest Food Safety Laws," Asia Times (Online), 28 August 07.

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[22] Zhejiang province, through the provincial- and local-level industry and commerce bureaus, established a rural consumer rights protection network, including consumer associations and consumer rights protection stations. Among administrative villages that lacked an association or a station, the industry and commerce bureau would cooperate with the township- or county-level government to establish consumer rights protection points that designated personnel to mediate disputes or complaints that were filed by rural consumers. State Administration of Industry and Commerce Government Affairs Information (Online), "Problems with the Rural Consumer Rights Protection Network, and Countermeasures" [Nongcun xiaofei weiquan jiandu wangluo jianshe cunzai de wenti ji duice (zhejiang sheng ningbo shi gongshang ju)], 7 July 06; Waikeung Tam and Dali Yang, "Food Safety and the Development of Regulatory Institutions," 34.

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[50] Ibid., 3.

[51] Ibid.

[52] "Key Dates in China Export Scares," Wall Street Journal (Online), 7 August 07. Toothpaste exported from China containing diethylene glycol has been confiscated or banned in the United States, Singapore, Panama, the Dominican Republic, South Africa, Australia, Nicaragua, Greece, and Poland. The New York Times reports the figure of at least 100 deaths from the use of cough medicine containing diethlyene glycol in Panama. Jake Hooker, "Chinese Company Linked to Deaths Wasn't Licensed," New York Times (Online), 9 May 07.

[53] Andrew Batson, "China's Safety Failures Include Toys Sold at Home," Wall Street Journal (Online), 2 July 07.

[54] Walt Bogdanich, "F.D.A. Tracked Poisoned Drugs, but Trail Went Cold in China," New York Times (Online), 19 June 07.

[55] A U.S. expert has noted that in the area of packaging standards and pricing alone, China has more than 30 laws and regulations. "Can China Restore Its Exports Image?," Financial Times (Online), 21 August 07.

[56] Bogdanich, "F.D.A. Tracked Poisoned Drugs, but Trail Went Cold in China;" David Barboza, "China Yields to Inquiry on Pet Food," New York Times (Online), 24 April 07.

[57] For example, a 2003 China Consumers Association survey found that villagers are most concerned about product quality and substandard and counterfeit goods. Waikeung Tam and Dali Yang, "Food Safety and the Development of Regulatory Institutions," 21–22.

[58] "Former Head of China's Drug Watchdog Executed," Xinhua; Geoff Dyer, "China Executes Ex-Food Safety Chief," Financial Times (Online), 10 July 07.

[59] Ibid.

[60] Josephine Ma, "Drug Makers Face Higher Standards," South China Morning Post (Online), 12 July 07.

[61] Zhuang Pinghui, "8.8b To Be Spent on Food and Drug Safety," South China Morning Post (Online), 8 August 07.

[62] Waikeung Tam and Dali Yang, "Food Safety and the Development of Regulatory Institutions," 10–13.

[63] Ibid.

[64] The New York Times reports the figure of at least 100 deaths from the use of cough medicine containing diethlyene glycol in Panama. Hooker, "Chinese Company Linked to Deaths Wasn't Licensed;" "China Says Fatal Drug Outside Scope of Regulators," Reuters (Online), 8 May 07.

[65] Ibid.

[66] "Can China Restore Its Exports Image?," Financial Times; Thompson, "China's Food Safety Crisis: A Challenge to Global Health Governance," 9.

[67] Ariana Eunung Cha, "Safety Falters as Chinese Quiet Those Who Cry Foul," Washington Post (Online), 19 July 07.

[68] Ibid.; "Reposting 'Collusion Between Government and Pharmaceutical Company' Essay Ruined My Life" [Zhuanzai 'guanyaogoujie' wangwen daluan wo de yisheng], Beijing News (Online), 9 April 07.

[69] The essay helped in part to initiate investigations against Zheng Xiaoyu, former Commissioner of the SFDA, and Cao Wenzhuang, former director of SFDA's drug registration department. Cha, "Safety Falters as Chinese Quiet Those Who Cry Foul."

[70] Ibid.

[71] "Reposting 'Collusion Between Government and Pharmaceutical Company' Essay Ruined My Life," Beijing News.

[72] "[Zhang Zhijian] Who Was Formerly Wrongfully Detained by Law Enforcement Officials, Received 24,000 Yuan in Compensation Yesterday" [Ceng bei sifa jiguan cuowu jiya 9 ge duo yue, zuori huo pei 2.4 wan], Southern Metropolitan Daily (Online), 21 July 07.

[73] Cha, "Safety Falters as Chinese Quiet Those Who Cry Foul."

[74] Ibid.

[75] Ibid.

[76] PRC State Compensation Law, enacted 12 May 94, art. 3.

[77] The exact language is "Renlei huodong paifang de wenshi qiti daozhi yuelaiyue yanzhong de quanqiu qihou bianhua wenti." Ministry of Science and Technology (Online), "MOST, Six Other Agencies Release China's Climate Change National Assessment Report" [Keji bu deng liu buwei lianhe fabu "qihou bianhua guojia pinggu baogao"], 26 December 06; Ling Li, "China Releases First National Report on Climate Change," China Watch (Online), 11 January 07.

[78] For example, if China decides to accept classification as a developed country, or if there is a diversification in the types of commitments that countries can accept that go beyond the developing versus developed country framework. Briefing on China, the Economy, and Global Warming, Panel hosted by the U.S. House of Representatives Committee on Foreign Affairs and National Environmental Trust, 23 July 07.

[79] Ibid.
[80] CECC, 2004 Annual Report, 5 October 04, 1; "China To Enact Law on Circular Economy," Xinhua (Online), 26 August 07.
[81] Briefing on China, the Economy, and Global Warming, Panel hosted by the U.S. House of Representatives Committee on Foreign Affairs and National Environmental Trust, 23 July 07.
[82] John Vidal, "China Could Overtake US as Biggest Emissions Culprit by November," The Guardian (Online), 25 April 07.
[83] Ibid.
[84] Briefing on China, the Economy, and Global Warming.
[85] United Nations Framework Convention on Climate Change (Online), Status of Ratification, 11 April 07.
[86] Briefing on China, the Economy, and Global Warming.
[87] National Development and Reform Commission (Online), The People's Republic of China National Climate Change Program, June 2007, 2; Pew Center on Global Climate Change (Online), "Climate Change Mitigation Measures in the People's Republic of China," International Brief 1, April 2007.
[88] Pew Center on Global Climate Change, "Climate Change Mitigation Measures in the People's Republic of China."
[89] Briefing on China, the Economy, and Global Warming.
[90] Pew Center on Global Climate Change, "Climate Change Mitigation Measures in the People's Republic of China."
[91] Ting Shi, "Wen Warns of Grim Environmental Challenge," South China Morning Post (Online), 10 July 07. China had an increase in energy consumption per unit of GDP for the years 2003 to 2005. Briefing on China, the Economy, and Global Warming.
[92] "Question Marks over China's Climate Commitment," Agence France-Presse (Online), 6 May 07; U.S.-Chinese Economic and Security Review Commission, China's Energy Consumption and Opportunities for U.S.-China Cooperation to Address the Effects of China's Energy Use, 14 June 07, Testimony of Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations.
[93] Fu Jing, "Local Gov'ts 'Ignoring' Green Model," China Daily (Online), 23 July 07.
[94] Ling Li, "China Releases First National Report on Climate Change."
[95] National Development and Reform Commission, The People's Republic of China National Climate Change Program; Daniel Griffiths, "China's Mixed Messages on Climate," BBC (Online), 7 May 07; "Analysis: PRC Climate Plan Aims To Deflect Criticism Prior to G–8," Open Source Center (Online), 7 June 07.
[96] Joanna I. Lewis, "China's Climate Change Strategy," 7 China Brief 10, 11 (2007).
[97] Briefing on China, the Economy, and Global Warming.
[98] "S. Korea Increases Monitoring Posts for Yellow Dust in China," Yonhap News (Online), 5 April 07; "China Works To Fight Desertification in Xinjiang," China Daily (Online), 10 July 07.
[99] Jeff Goodell, "Capital Pollution Solution?," New York Times (Online), 30 July 06.
[100] U.S. Environmental Protection Agency (Online), "Cap and Trade Essentials," last visited 23 August 07.
[101] Goodell, "Capital Pollution Solution?," New York Times; "Carbon Markets Create a Muddle," Financial Times (Online), 26 April 07; Michael Gerson, "Hope on Climate Change? Here's Why," Washington Post (Online), 15 August 07.
[102] U.S. Environmental Protection Agency, "Cap and Trade Essentials."
[103] Ibid.

Notes to Section IV—Tibet

[1] PRC Constitution, art. 36 ("enjoy freedom of religious belief"), art. 116 ("enact autonomy regulations and specific regulations in the light of the political, economic, and cultural characteristics of the nationality or nationalities"), art. 119 ("independently administer educational, scientific, cultural, public health, and physical culture affairs"), art. 121 ("employ the spoken and written language or languages in common use"). Regional Ethnic Autonomy Law, enacted 31 May 84, amended 28 February 01, art. 11 ("guarantee the freedom of religious belief"), art. 19 ("enact self-governing regulations and separate regulations in the light of the political, economic, and cultural characteristics"), art. 21 ("use the language or languages commonly used in the locality;. . . the language of the nationality exercising regional autonomy may be used as the main language"), art. 36 ("decide on educational plans"), art. 37 ("independently develop education for the nationalities"), art. 38 ("develop literature, art, the press, publishing, radio broadcasting, the film industry, television, and other cultural undertakings"). Regulation on Religious Affairs, issued 30 November 04, art. 2 ("Citizens enjoy freedom of religious belief.").]
[2] CECC, 2004 Annual Report, 5 October 04, sec. I. The 2004 recommendation stressed more specifically the objectives of dialogue: "The future of Tibetans and their religion, language, and culture depends on fair and equitable decisions about future policies that can only be achieved through dialogue. The Dalai Lama is essential to such a dialogue. The President and the Congress should continue to urge the Chinese government to engage in substantive discussions with the Dalai Lama or his representatives." CECC, 2005 Annual Report, 11 October 05, sec. I. The 2005 recommendation called for direct contact between the Dalai Lama and the Chinese leadership: "To help the parties build on visits and dialogue held in 2003, 2004, and 2005, the President and the Congress should urge the Chinese government to move the current dialogue toward deeper, substantive discussions with the Dalai Lama or his representatives, and encourage direct contact between the Dalai Lama and the Chinese leadership."
[3] CECC, 2006 Annual Report, 20 September 06, 17–18.
[4] H. Con. Res. 196, "Authorizing the use of the Rotunda and grounds of the Capitol for a ceremony to award the Congressional Gold Medal to Tenzin Gyatso, the Fourteenth Dalai Lama," 4 September 07. According to the House Concurrent Resolution, the award ceremony will take place in the Capitol Rotunda on October 17, and the Capitol grounds will be available for a pub-

lic event. The Resolution names the International Campaign for Tibet as the sponsor of the public event.

[5] S. 2784, Fourteenth Dalai Lama Congressional Gold Medal Act, The Library of Congress (Online), enacted 27 September 06; International Campaign for Tibet (ICT) (Online), "US Congress Passes Bill to Award the Dalai Lama the Congressional Gold Medal: Bill Cosponsored by 387 Members of U.S. House and Senate," 13 September 06. ICT notes that the Fourteenth Dalai Lama Congressional Gold Medal Act was introduced as S.2782 by Senators Dianne Feinstein and Craig Thomas, and as H.R.4562 by Representatives Ileana Ros-Lehtinen, and Tom Lantos.

[6] Steven Marshall and Susette Cooke, Tibet Outside the TAR: Control, Exploitation and Assimilation: Development With Chinese Characteristics (Washington D.C.: self-published CD–ROM, 1997), Table 7. The 13 Tibetan autonomous areas include the provincial-level Tibet Autonomous Region (TAR), with an area of 1.2 million square kilometers (463,320 square miles), as well as 10 Tibetan autonomous prefectures (TAP) and two Tibetan autonomous counties (TAC) located in Qinghai, Gansu, Sichuan, and Yunnan provinces. Qinghai province: Yushu TAP, 197,791 square kilometers (76,367 square miles); Guoluo (Golog) TAP, 78,444 square kilometers (30,287 square miles); Huangnan (Malho) TAP, 17,901 square kilometers (6,912 square miles); Hainan (Tsolho) TAP, 41,634 square kilometers (16,075 square miles); Haibei (Tsojang) TAP, 52,000 square kilometers (20,077 square miles); Haixi (Tsonub) Mongol and Tibetan AP, 325,787 square kilometers (125,786 square miles). Gansu province: Gannan (Kanlho) TAP, 45,000 square kilometers (17,374 square miles); Tianzhu (Pari) TAC, 7,150 square kilometers (2,761 square miles). Sichuan province: Ganzi (Kardze) TAP, 153,870 square kilometers (59,409 square miles); Aba (Ngaba) Tibetan and Qiang AP, 86,639 square kilometers (33,451 square miles); Muli (Mili) TAC, 11,413 square kilometers (4,407 square miles). Yunnan province: Diqing (Dechen) TAP, 23,870 square kilometers (9,216 square miles). The Table provides areas in square kilometers; conversion to square miles uses the formula provided on the Web site of the U.S. Geological Survey (USGS): one square kilometer = 0.3861 square mile. Based on data in the Table, the 10 TAPs and 2 TACs have a total area of approximately 1.04 million square kilometers (402,000 square miles). The TAR and the Tibetan autonomous prefectures and counties are contiguous and total approximately 2.24 million square kilometers (865,000 square miles). Xining city and Haidong prefecture, located in Qinghai province, have a total area of 20,919 square kilometers (8,077 square miles) and are not Tibetan autonomous areas.

[7] Office of the Special Coordinator for Tibetan Issues, U.S. Department of State, Report on Tibet Negotiations, 11 July 2007. The Report is mandated by Section 611 of the Foreign Relations Authorization Act, 2003.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid. President Bush raised the issue of dialogue and direct discussion between the Dalai Lama and Chinese officials when he met President Hu in Washington in April 2006 and at the Asia-Pacific Economic Cooperation Forum (APEC) in Vietnam the following November.

[12] Ibid.

[13] Ibid.

[14] Paula Dobriansky was sworn in as Under Secretary of State for Global Affairs on May 1, 2001. She was appointed Special Coordinator for Tibetan Issues on May 17, 2001. She was appointed CECC Commissioner in July 2001.

[15] U.S. Department of State, Report on Tibet Negotiations.

[16] Ibid.

[17] "Dalai Lama's Envoy: China Talks Deal With Substantive Issues, Encounter Obstacle," CECC China Human Rights and Rule of Law Update, April 2006, 3. The envoys visited China on September 9–27, 2002; May 25–June 8, 2003; September 12–29, 2004, and February 15–23, 2006. The fourth round of dialogue took place at the Chinese Embassy in Bern, Switzerland on June 30–July 1, 2005.

[18] Tibetan Government-in-Exile, "Statement by Special Envoy of His Holiness the Dalai Lama, Lodi Gyari, head of the Tibetan delegation, following the sixth round of discussions with the Chinese leadership," 7 July 07.

[19] Word count of main text of Special Envoy statements following sessions of dialogue: 2002, 770 words; 2003, 831 words; 2004, 454 words; 2005, 514 words; 2006, 303 words; 2007, 235 words.

[20] International Campaign for Tibet (Online), "ICT's Mission," last visited 15 July 07. In addition to serving as the Dalai Lama's Special Envoy, Lodi Gyari is the Executive Chairman of the International Campaign for Tibet (ICT). International Campaign for Tibet (Online), "ICT's Mission," last visited 15 July 07. ICT "promotes self-determination for the Tibetan people through negotiations between the Chinese government and the Dalai Lama."

[21] Tibetan Government-in-Exile, "Statement by Special Envoy of His Holiness the Dalai Lama, Lodi Gyari, head of the Tibetan delegation, following the sixth round of discussions with the Chinese leadership," 7 July 07.

[22] Ibid.

[23] Ibid.

[24] "Communist Party Adds Tibetan Affairs Bureau to the United Front Work Department," CECC China Human Rights and Rule of Law Update, October 2006, 8.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Tibetan Government-in-Exile (Online), "Statement by Special Envoy Lodi Gyari, Head of the Delegation Sent by His Holiness the Dalai Lama to China," 11 June 03; Tibetan Government-in-Exile (Online), "Statement by Special Envoy Kasur Lodi Gyari, Head of the Delegation to China," 13 October 04.

[29] "Forum on Tibetan Cultural Preservation Upholds Party Development Policy," CECC China Human Rights and Rule of Law Update, November 2006, 12–13.

[30] "Talks With Chinese Officials in Switzerland Were Concrete and Substantive, Says Tibetan Special Envoy," CECC China Human Rights and Rule of Law Update, August 2005, 2–3.

[31] "Forum on Tibetan Cultural Preservation Upholds Party Development Policy," CECC China Human Rights and Rule of Law Update, November 2006, 12–13.

[32] Ibid.

[33] The Dalai Lama has made a statement on the anniversary of the 1959 Lhasa uprising on March 10 of every year that he has lived in exile, beginning in 1960.

[34] Tibetan Government-in-Exile (Online),"The Statement of His Holiness the Dalai Lama on the Forty-Eighth Anniversary of the Tibetan National Uprising Day," 10 March 2007. PRC Constitution, Preamble. Samdhong Rinpoche's remark refers to a statement in the Preamble, "In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local-national chauvinism." China's system of ethnic autonomy is an attempt to resolve the divergent interests of a dominant and potentially overbearing ethnic group (Han) and nationalistic ethnic minorities (such as Tibetans, Uighurs, and Mongols).

[35] Testimony of Lodi G. Gyari, Special Envoy of His Holiness the Dalai Lama, at the House Foreign Affairs Committee Hearing on the Status of Tibet Negotiations, U.S. House of Representatives Committee on Foreign Affairs (Online), 13 March 07.

[36] Tibetan Government-in-Exile (Online), "We Are Not Asking for 'High' or 'Low' Degree of Autonomy: Kalon Tripa," 12 May 07.

[37] Tibetan Government-in-Exile (Online), "The Middle-Way Approach: A Framework for Resolving the Issue of Tibet," last visited 13 July 07. The explanation of the Middle-Way Approach lists eight "important components." The first three are: (1) Without seeking independence for Tibet, the Central Tibetan Administration strives for the creation of a political entity comprising the three traditional provinces of Tibet; (2) Such an entity should enjoy a status of genuine national regional autonomy; (3) This autonomy should be governed by the popularly-elected legislature and executive through a democratic process.

[38] Tibetan Government-in-Exile (Online), "Tibet at a Glance," last visited 14 July 07. "Land Size: 2.5 million square kilometers, which includes U-Tsang, Kham and Amdo provinces [the three traditional provinces of Tibet]. 'Tibet Autonomous Region,' consisting of U-Tsang and a small portion of Kham, consists of 1.2 million square kilometers." A People's Daily Web page states that the area of China is 9.6 million square kilometers.

[39] "Dalai Lama's Special Envoy Describes Status of Discussions With Chinese Government," CECC China Human Rights and Rule of Law Update, December 2006, 6–7.

[40] "Seeking Unity Through Equality: The Current Status of Discussions Between His Holiness the Dalai Lama and the Government of the People's Republic of China," Prepared Statement of Lodi Gyaltsen Gyari, Special Envoy of His Holiness the Dalai Lama, The Brookings Institution (Online), 14 November 2006.

[41] Question and Answer Session with Lodi Gyaltsen Gyari, Special Envoy of His Holiness the Dalai Lama, on the Current State of Discussions Between the Dalai Lama and the Government of the People's Republic of China, The Brookings Institution (Online), 14 November 2006.

[42] Tibetan Government-in-Exile (Online), "Statement of His Holiness the Dalai Lama on the Forty-Seventh Anniversary of the Tibetan National Uprising Day."

[43] Tibetan Government-in-Exile (Online), "We Are Not Asking for 'High' or 'Low' Degree of Autonomy: Kalon Tripa," 12 May 07.

[44] International Campaign for Tibet, Tibet at a Glance. The ICT Web page describes Tibet as an "occupied" country of 2.5 million square kilometers (965,000 square miles) with Lhasa as its capital.

[45] "Dalai Lama's Special Envoy Describes Status of Discussions With Chinese Government," CECC China Human Rights and Rule of Law Update, December 2006, 6–7. "Seeking Unity Through Equality," Prepared Statement of Lodi Gyaltsen Gyari.

[46] "Seeking Unity Through Equality," Prepared Statement of Lodi Gyaltsen Gyari.

[47] "Dalai Lama's Special Envoy Describes Status of Discussions With Chinese Government," CECC China Human Rights and Rule of Law Update, December 2006, 6–7. Steven Marshall and Susette Cooke, Tibet Outside the TAR, Table 7. The total area of the TAR and Tibetan autonomous prefectures and counties is approximately 2.24 million square kilometers (865,000 square miles). The area that Tibetans claim as Tibet, 2.5 million square kilometers, is approximately 965,000 square miles.

[48] Tabulation on Nationalities of 2000 Population Census of China, Department of Population, Social, Science and Technology Statistics, National Bureau of Statistics, and Department of Economic Development, State Ethnic Affairs Commission (Beijing: Ethnic Publishing House, September 2003), Table 10–4. The only prefectural-level areas of Qinghai province that are not a Tibetan autonomous prefecture or a Mongol and Tibetan autonomous prefecture are Xining municipality and Haidong prefecture. According to official 2000 census information, the total population of Xining and Haidong was about 3.24 million. Of that population, about 224,000 persons (6.9 percent) were Tibetans.

[49] The territory that Tibetans claim outside the existing Tibetan autonomous areas contain parts of autonomous prefectures or counties named to reflect ethnic groups including the Hui, Salar, and Tu in Qinghai province; the Kazak, Mongol, Yugur, Hui, Dongxiang, and Bao'an in Gansu province; the Yi in Sichuan province; the Naxi, Lisu, Nu, Bai, and Pumi in Yunnan province; and, according to some maps, the Mongol in Xinjiang. Substantial Han Chinese populations are also included, some established for centuries.

[50] Tabulation on Nationalities of 2000 Population Census of China, Table 10–4. According to official data, no county-level area outside the existing Tibetan autonomous areas has a Tibetan population higher than 25 percent. Three counties outside the existing Tibetan autonomous areas have a Tibetan population between 20 and 25 percent: Xunhua Salar Autonomous County

(24.7 percent), Hualong Hui Autonomous County (21.5 percent), and Su'nan Yugur Autonomous County (24.4 percent) in Gansu province. One county outside the existing Tibetan autonomous areas has a Tibetan population between 10 and 20 percent: Huangyuan county (10.4 percent) in Qinghai province. Six counties outside the existing Tibetan autonomous areas have a Tibetan population between 5 and 10 percent: Huangzhong county (8.5 percent), Datong Hui Autonomous County (6.6 percent), Ledu county (6.4 percent), and Huzhu Tu Autonomous County (6.0 percent) in Qinghai province; and Shimian county (9.8 percent) and Baoxian county (8.7 percent) in Sichuan province.

[51] Ibid. Substantial areas and populations of the territory that Tibetans claim outside the existing Tibetan autonomous areas contain Tibetan populations of 5 percent or less, including part or all of: Xining municipality in Qinghai province; Jiuquan, Zhangye, and Wuwei municipalities, and Linxia Hui Autonomous Prefecture in Gansu province; Liangshan Yi Autonomous Prefecture in Sichuan province; and Lijiang Naxi Autonomous Prefecture and Nujiang Lisu Autonomous Prefecture in Yunnan province.

[52] "Seeking Unity Through Equality," Prepared Statement of Lodi Gyaltsen Gyari.

[53] Ibid.

[54] Ministry of Foreign Affairs (Online), "The Tibetan ethnic minority," 15 November 00. "In 1929, the Kuomintang government set up a commission for Mongolian and Tibetan affairs in Nanjing and established Qinghai province. In 1939, Xikang province was set up." (The article also shows that the Guomindang established Qinghai province in 1929. Today, Qinghai is occupied principally by Tibetan autonomous prefectures established by the PRC government.) People's Daily (Online), "Panda's Hometown Lures Tourists, Investors With Wonders," 23 August 01. "Ya'an boasts a history of over 2,000 years and was once the capital of Xikang province which was abolished in 1955."

[55] International Campaign for Tibet, Tibet at a Glance. A map on the Web site shows the Tibetan boundary as a solid line. Portions of Qinghai, Gansu, Sichuan, and Yunnan provinces that are inside the Tibet boundary are shown as dashed lines. Tibetan Government-in-Exile (Online), Map of Tibet, last visited 14 July 07. The relatively straight contour between the western and northern tips of the Tibet map shows that a portion of Bayinguoleng Mongol Autonomous Prefecture is included within Tibet.

[56] PRC Constitution, art. 62(12). The National People's Congress exercises the function and power to "approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government." PRC Constitution, art. 89(15). The State Council exercises the function and power to "approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities."

[57] PRC Regional Ethnic Autonomy Law [hereinafter REAL], enacted 31 May 84, amended 28 February 01.

[58] REAL, Preamble.

[59] Tibetan Government-in-Exile (Online)," The Statement of His Holiness the Dalai Lama on the Forty-Eighth Anniversary of the Tibetan National Uprising Day.

[60] PRC Constitution, art. 31. "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions."

[61] Ibid.

[62] Tibetan Government-in-Exile, "We are not asking for 'high' or 'low' degree of autonomy."

[63] REAL, Preamble.

[64] The REAL (amended 28 February 01) and State Council Regulations on the Implementation of the REAL (issued 11 May 05) promote increased emphasis on economic development, and reinforce the government's Great Western Development program. The Regulation on Religious Affairs (RRA) (issued 30 November 04) elaborates the state's legal control over the publication and dissemination of religious literature, the identification of high-ranking reincarnated Tibetan Buddhist lamas, state supervision over who teaches and studies religious subjects. The TAR Implementing Measures for the Regulation on Religious Affairs (issued 19 September 06) are more detailed and intrusive than the RRA in establishing control over the function of Tibetan Buddhism. The TAR Regulations on the Study, Use, and Development of the Tibetan Language (revised May 22, 2002) drop the requirement that state government agencies use both Mandarin and Tibetan, and instead allow them to decide to use either one.

[65] Question and Answer Session with Lodi Gyaltsen Gyari, The Brookings Institution. Responding to a question about the "unification of all ethnic Tibetans," Gyari said that China accepts that "the Tibetan people are one people," so the Tibetans are asking that they "be able to live within one single administration." Gyari asserted, "I am utterly convinced from every point of view, what we ask is legitimate, what we ask is according to the Chinese Constitution, Chinese laws." Tibetan Government-in-Exile, "We are not asking for 'high' or 'low' degree of autonomy." Samdhong Rinpoche told a conference, "Our two desires are that the constitutional provisions of national regional autonomy must be implemented . . ., [so that] all Tibetans must be administered by a single autonomous self-government. . . . We are simply asking for the sincere implementation of the national regional autonomy provisions enshrined in the Constitution of the People's Republic of China, which is further spelt out in the autonomy law."

[66] REAL, art. 12. "Autonomous areas may be established where one or more minority nationalities live in concentrated communities, in the light of local conditions such as the relationship among the various nationalities and the level of economic development, and with due consideration for historical background."

[67] PRC Constitution, art. 62(12), 89(15).

[68] Ibid., art. 116. "People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. . . ." REAL, art. 19.

"The people's congresses of ethnic autonomous areas shall have the power to enact self-governing regulations and separate regulations in the light of the political, economic, and cultural characteristics of the nationality or nationalities in the areas concerned. . . ."

[69] PRC Legislation Law, enacted 15 March 00, art. 9. "In the event that no national law has been enacted in respect of a matter enumerated in Article 8 hereof, the [NPC] and the Standing Committee thereof have the power to make a decision to enable the State Council to enact administrative regulations in respect of part of the matters concerned for the time being, except where the matter relates to crime and criminal sanctions, the deprivation of a citizen's political rights, compulsory measure and penalty restricting the personal freedom of a citizen, and the judicial system."

[70] Ibid., art. 66.

[71] REAL, art. 20. "If a resolution, decision, order, or instruction of a state agency at a higher level does not suit the actual conditions in an ethnic autonomous area, an autonomous agency of the area may report for the approval of that higher level state agency to either implement it with certain alterations or cease implementing it altogether. . . ."

[72] PRC Legislation Law, art. 66. ". . . An autonomous decree or special decree may vary the provisions of a law or administrative regulation, provided that any such variance may not violate the basic principles thereof, and no variance is allowed in respect of any provision of the Constitution or the Law on Ethnic Area Autonomy and provisions of any other law or administrative regulations which are dedicated to matters concerning ethnic autonomous areas."

[73] PRC Constitution, art. 31.

[74] State Council Information Office, "White Paper on Regional Ethnic Autonomy in Tibet," Xinhua (Online), 23 May 04. "The situation in Tibet is entirely different from that in Hong Kong and Macao. The Hong Kong and Macao issue was a product of imperialist aggression against China; it was an issue of China's resumption of exercise of its sovereignty. Since ancient times Tibet has been an inseparable part of Chinese territory, where the Central Government has always exercised effective sovereign jurisdiction over the region." "Yedor: On the 'Middle Way' of the Dalai Lama," China Tibet Information Center (Online), 18 July 06. "It is known to all that the "one country, two systems" refers to the fact that the mainland follows the socialist system while Hong Kong and Macao continue to follow the capitalist system they had followed before. However, no capitalist system existed in Tibetan history; . . ."

[75] CECC, Annual Report 2002, 12 October 02, Sec. 1.

[76] CECC, Annual Report 2004, 5 October 04, Sec. 1.

[77] CECC, Annual Report 2006, 20 September 06, Sec. 1.

[78] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability, Promote the Building of a Harmonious Tibet," Seeking Truth, 16 January 07 (Open Source Center, 18 January 07); Tenzing Sonam, "Roadblock on the Middle Path," Himal Magazine (Online), December 2006. "Why, then, when the Tibetans are officially doing everything possible to create what the Kashag's Prime Minister, Samdhong Rinpoche, calls a 'conducive atmosphere,' are the Chinese stepping up their campaign to vilify the Dalai Lama, and denouncing his overtures to find accommodation?"

[79] "China Vows to Tighten Security in Tibet," Reuters, reprinted in Phayul (Online), 21 May 07. TAR Party Secretary Zhang Qingli told a group of Party members, "From beginning to end . . . we must deepen patriotic education at temples, comprehensively expose and denounce the Dalai Lama clique's political reactionary nature and religious hypocrisy;" "Tibetan Abbot Forced To Step Down," Radio Free Asia (Online), 30 May 07. A Tibetan Buddhist abbot in Gande county, Guolou Tibetan Autonomous Prefecture, Qinghai province, said that officials were stepping up patriotic education in the county. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2006, China (includes Tibet, Hong Kong, and Macau), 8 March 06. "Numerous credible sources reported that political education sessions intensified in Lhasa beginning in April 2005."

[80] Tibet Autonomous Region Implementing Measures for the "Regulation on Religious Affairs" [hereinafter TAR 2006 Measures], issued by the Standing Committee of the Tibet Autonomous Region People's Government on September 19, 2006. The TAR 2006 Measures became effective on January 1, 2007.

[81] Ibid. The Measures contain 56 articles (6,221 Chinese characters). Tibet Autonomous Region Temporary Measures on the Management of Religious Affairs [hereinafter TAR 1991 Measures], issued by the Standing Committee of the Tibet Autonomous Region People's Government on December 9, 1991. The measures contain 30 articles (3,355 Chinese characters).

[82] State Administration for Religious Affairs, Measures on the Management of the Reincarnation of Living Buddhas in Tibetan Buddhism [Zangchuan fojiao huofo zhuanshi guanli banfa] [hereinafter MMR], issued 13 July 07.

[83] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report—2006, China (includes Tibet, Hong Kong, and Macau), 15 September 06. "Although authorities permitted many traditional religious practices and public manifestations of belief, they promptly and forcibly suppressed any activities, which they viewed as vehicles for political dissent. This included religious activities that officials perceived as supporting the Dalai Lama or Tibetan independence."

[84] CECC Staff Interviews. The Kargyu, Sakya, and Nyingma traditions, especially in Tibetan areas outside the TAR, may experience less interference from authorities.

[85] "Zhang Qingli becomes new Party chief of Tibet," Xinhua (Online), 29 May 07; "Xinjiang Communist Party Official Promoted to Acting Secretary of the Tibet Autonomous Region," CECC China Human Rights and Rule of Law Update, January 2006, 19. The Party Central Committee appointed Zhang Qingli to the post of acting TAR Party Secretary in November 2005, and Secretary on May 29, 2006. Zhang previously served in the Xinjiang Uighur Autonomous Region as Deputy Party Secretary and commander of the Xinjiang Production and Construction Corps (XPCC).

[86] "TAR Party Secretary Accuses the Dalai Lama of Being a 'False Religious Leader,'" CECC China Human Rights and Rule of Law Update, September 2006, 14.

[87] The Party and government use the term "Western hostile forces" to include governments, NGOs, advocacy groups, media organizations, and individuals who criticize Chinese policies, actions, and records with respect to issues such as human rights, and who work to encourage or facilitate change in such areas.

[88] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[89] "China Vows to Tighten Security in Tibet," Reuters.

[90] "Monk Dies Following Dispute With Patriotic Education Instructors," CECC China Human Rights and Rule of Law Update, December 2005, 10. "A Reader for Advocating Science and Technology and Doing Away With Superstitions" (translated by International Campaign for Tibet in When the Sky Fell to Earth: The New Crackdown on Buddhism in Tibet, 2004). The manual asks, "Why do we conduct patriotic education among monks and nuns in the monasteries?," and provides the answer: "Conducting patriotic education among the monks and nuns in the monasteries is an important aspect of strengthening the management of religious affairs by the government. . . . Dalai's bloc has never stopped penetrating and engaging in splittist activities in our region under the support of international antagonistic forces. . . . The monks and nuns should be religious professionals who love the country, love religion, obey the discipline, and abide by the law."

[91] "Lhasa Area Monks and Nuns Face a New Round of 'Patriotic Education'," CECC China Human Rights and Rule of Law Update, November 2005, 10; Tibetan Centre for Human Rights and Democracy (Online), "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions," 13 October 05.

[92] International Campaign for Tibet (Online), "The Communist Party as Living Buddha: The Crisis Facing Tibetan Religion Under Chinese Control," 26 April 2007, 5. Tibetan Centre for Human Rights and Democracy (Online), Annual Report 2006, March 2006, 39, 41–42.

[93] "Tibetan Abbot Forced To Step Down," Radio Free Asia. RFA reports that officials forced an abbot of a Tibetan Buddhist monastery in Gande (Gade) county, Guoluo (Golog) Tibetan Autonomous Prefecture to step down in May after he refused to sign a statement denouncing the Dalai Lama. An official of the county Religious Affairs Bureau allegedly acknowledged that authorities were stepping up patriotic education.

[94] "Zhang Qingli Delivers Major Address at Opening of Party Conference in Tibet [Xizang quanqu dangyuan lingdao ganbu dahui zhaokai Zhang Qingli fabiao zhongyao jianghua]," Tibet Daily, reprinted in Xinhua (Online), 16 May 06; "TAR Party Secretary Calls for Tighter Control of Tibetan Monasteries, Nunneries," China Human Rights and Rule of Law Update, July 2006, 9.

[95] International Campaign for Tibet, "The Communist Party as Living Buddha," 37. ICT cites, Xinhua, "Zhang Qingli: Ensure Tibet's Leap-over Style Development and Long Term Order and Security [Zhang Qingli: Quebao Xizang kuayueshi fazhan he changzhi jiuan], 18 May 06.

[96] RRA, art. 17: "Venues for religious activities shall set up management organizations and practice democratic management. Members of the management organizations of venues for religious activities shall be selected through democratic consultations and reported as a matter of record to the registration management organs for the venues." (In a Tibetan monastery or nunnery, a DMC is generally made up of monks or nuns selected from among themselves. Candidates are sometimes screened by local officials, according to some reports.)

[97] International Campaign for Tibet, "The Communist Party as Living Buddha," 39.

[98] Ibid.

[99] Tibet Autonomous Region Temporary Measures on the Management of Religious Affairs [hereinafter TAR 1991 Measures], issued by the Standing Committee of the Tibet Autonomous Region People's Government on December 9, 1991, art. 15. "The Buddhist Association is a mass organization of personages from religious circles and religious believers, and a bridge for the Party and government to unite and educate personages from religious circles and the believing masses. Its effectiveness shall be vigorously brought into play under the administrative leadership of the government's religious affairs department."

[100] Regulation on Religious Affairs (RRA) [Zongjiao shiwu tiaoli], issued 30 November 04.

[101] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[102] "Regional National Autonomy Is the Only Road for Tibet's Development, Part One," Xinhua, 24 April 07 (Open Source Center, 17 May 07). (Official TAR reports provided the figures of more than 1,700 monasteries and nunneries and 46,000 monks and nuns as early as 1996.)

[103] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[104] Tibet Autonomous Region Implementing Measures for the "Regulation on Religious Affairs" [hereinafter TAR 2006 Measures], issued by the Standing Committee of the Tibet Autonomous Region People's Government on September 19, 2006. The measures became effective on January 1, 2007.

[105] RRA, translated on the Web site of China Elections and Governance.

[106] TAR 2006 Measures. Of the Measures 56 articles: 7 articles lay out the "general principles" for religious activity; 21 articles stipulate responsibilities and regulations for "religious organizations" (provincial-level, government-controlled Buddhist associations) and "venues for religious activities" (e.g. monasteries and nunneries), as well as on activity by monasteries and nunneries; 17 articles regulate religious activity by "religious personnel" (e.g. monks and nuns); 10 articles stipulate punitive measures against persons or entities that violate the measures; 1 article repeals the 1991 Temporary Measures on the Management of Religious Affairs.

[107] State Council Information Office, "White Paper on Regional Ethnic Autonomy in Tibet," Xinhua (Online), 23 May 04. "At present, there are over 1,700 venues for Tibetan Buddhist activities, with some 46,000 resident monks and nuns; four mosques and about 3,000 Muslims; and one Catholic church and over 700 believers in the [Tibet Autonomous Region]."

[108] TAR 1991 Measures, issued by the Standing Committee of the Tibet Autonomous Region People's Government on December 9, 1991.

[109] TAR 2006 Measures, arts. 36–40.
[110] RRA, art. 27.
[111] TAR 1991 Measures, art. 23.
[112] Ministry of Foreign Affairs (Online), "Did Tibet Become an Independent Country After the Revolution of 1911?," 15 November 00. "In 1792 the Twenty-Nine Article Imperial Ordinance was issued. It stipulated in explicit terms for the reincarnation of the Living Buddhas in Tibet as well as the administrative, military, and foreign affairs." (The edict sought to impose Qing control over religious, administrative, military, fiscal, commercial, and foreign affairs. The edict demanded that an Amban, the "Resident Official" representing the imperial court, would have equal status to the Dalai and Panchen Lamas, and function as the supervisor of the Tibetan administration.)
[113] Although the TAR 2006 Measures are government-issued, the measures depend in part on Democratic Management Committees (DMCs) and Buddhist associations for effective application. The Party maintains regular contact with both organizations, and requires each of them to study and implement Party policies on religion.
[114] TAR 2006 Measures, art. 36.
[115] Ibid., art. 37.
[116] Ibid., art. 38.
[117] Ibid., art. 39.
[118] Ibid., art. 39.
[119] The RRA contains no precedent for restriction on travel by religious professionals such as Tibetan Buddhist monks and nuns. The TAR 1991 Measures contained no restrictions on intra-provincial travel by monks and nuns. The Commission does not have on file detailed information about local rules or practices that may have exceeded the level of restriction provided for by the TAR 1991 Measures or the RRA.
[120] TAR 2006 Measures, arts. 41–44.
[121] "Practicing religion" is distinct from studying religion, which is more strictly regulated. Practicing religion may include activities such as conducting extended periods of prayer and ritual offering, or going on pilgrimage. Monks and nuns sometimes conduct extended periods of prayer and offering while living in seclusion, or in remote places in a rudimentary shelter.
[122] TAR 2006 Measures, art. 41. The requirement to report for the record to the local government's religious affairs bureau could provide government officials a pretext to discourage, interfere in, or prevent monks and nuns from engaging in traditional Buddhist practices, especially living in seclusion or in remote places.
[123] Ibid., art. 43.
[124] TAR 1991 Measures, art. 9.
[125] TAR 2006 Measures, arts. 46–55. The articles use the term "disqualify," not "expel." "Disqualify" here means to disqualify someone from legally practicing religion as a religious professional. Revoking registration as a "religious professional" terminates a person's legal status as a monk or nun, and the authorization to reside at a monastery or nunnery in order to study and practice religion.
[126] Ibid., art. 34. The RRA and TAR 1991 Measures do not explicitly state such a ban.
[127] Ibid., art. 53.
[128] Padmasambhava, or Guru Rinpoche, is regarded as one of the greatest teachers of Tibetan Buddhism and a central figure in the oldest tradition of Tibetan Buddhism, the Nyingma.
[129] Gyurme Dorje, Tibet Handbook, (Bath, England: Trade and Travel Handbooks, 1996), 235. Samye Monastery was probably constructed between 775 and 779, although other historical accounts provide different dates.
[130] International Campaign for Tibet (Online), "Demolition of Giant Buddha Statue at Tibetan Monastery Confirmed by China," 14 June 07.
[131] Tibetan Centre for Human Rights and Democracy (Online), "Colossal Guru Rinpoche's Statue Demolished in Tibet: China's New Religious Affairs Regulations for 'TAR' Entered Into Force," 4 June 07.
[132] Ibid.
[133] RRA, art. 24, "No organizations or individuals other than religious bodies, monasteries, temples, mosques, and churches may build large-size outdoor religious statues." TAR 2006 Measures, art. 13, "No group or individual outside of religious organizations and venues for religious activities may build religious structures such as a large-scale open-air religious statue, or mani lhakhang [prayer (wheel) temple]." (The TAR 1991 Measures do not contain a precedent for Article 13 of the TAR 2006 Measures.)
[134] RRA, art. 44, "Where, in violation of the provisions of these Regulations, anyone builds a large outdoor religious statue, the religious affairs department shall order it to discontinue the construction and to demolish the statue in a specified time limit; . . ." TAR 2006 Measures, art. 48, "Where, in violation of provisions in Article 13 of these measures, a religious structure such as an outdoor religious statue, stupa, or mani lhakhang [prayer (wheel) temple] is built without authorization outside of a venue for religious activity, the people's government religious affairs department at the county level or above orders redress, suspension of construction, and demolition within a specified time limit, in accordance with relevant laws and regulations."
[135] "Samye Moves Open-air Statue of Buddha," China Tibet Information Center (Online), 9 June 07. "Samye Monastery made bold to erect a copper statue of Buddha Padmasambhava in the open air donated by a related enterprise's principal, which disobeyed the Law of the People's Republic of China on Protection of Cultural Relics and the Notice of Illegally Building Open Statue of Buddha jointly issued by the State Administration for Religious Affairs of People's Republic of China, Ministry of Construction of the People's Republic of China, and China National Tourism Administration."
[136] Ibid.
[137] International Campaign for Tibet, "Demolition of Giant Buddha Statue at Tibetan Monastery"

[138] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[139] Tibet Information Network (TIN), Background Briefing Papers: Documents and Statements from Tibet 1996–1997, 1998, 45. A November 4, 1996, article in the Tibet Daily said that the number of monasteries and nunneries in the TAR (1,787) was too high and that the Party planned in 1986 that only 229 monasteries would be reopened in the TAR. The article said that the number of monks and nuns (46,000 in early 1996) was high and created a negative impact on social and economic development. (The TIN summary of the article did not include any reference to a Party statement explicitly calling for a reduction in the number of monasteries, nunneries, monks, and nuns.)

[140] "Reincarnation of Tibetan Living Buddhas Must Get Government Approval," Xinhua, reprinted in People's Daily (Online), 3 August 07.

[141] State Administration for Religious Affairs, Measures on the Management of the Reincarnation of Living Buddhas in Tibetan Buddhism [Zangchuan fojiao huofo zhuanshi guanli banfa] [hereinafter MMR], issued 13 July 07.

[142] State Council Information Office, "White Paper on Regional Ethnic Autonomy in Tibet," Xinhua (Online), 23 May 04. There are approximately 1,700 monasteries and nunneries and 46,000 monks and nuns in the TAR. CECC Staff Interviews, September 2003. According to a Chinese official, there are 655 Tibetan Buddhist monasteries and nunneries and approximately 21,000 monks and nuns in Qinghai province. An official in Huangnan (Malho) TAP in eastern Qinghai province reported that there are 83 monasteries and nunneries, 3,656 monks and nuns, and 116 Tibetan Buddhist reincarnations in the prefecture. (Based on the Huangnan figures, the ratio of the number of monasteries and nunneries in Huangnan to the number of reincarnations is about 1.4 to 1. The ratio of monks and nuns to reincarnations in Huangnan is approximately 32 to 1.) CECC Staff Interview, April 2004. According to a Chinese official, in Gansu province there are 276 Tibetan Buddhist monasteries and nunneries, approximately 10,000 monks and nuns, and 144 Tibetan Buddhist reincarnated teachers. (Based on these figures, the ratio of the number of monasteries and nunneries in Gansu to the number of reincarnations is approximately 1.9 to 1. The ratio of monks and nuns to reincarnations in Gansu is approximately 69 to 1.) Web site of the Sichuan Province Party Committee Policy Research Office, "Improve Capacity to Resolve Minority Issues, Make Efforts to Build a Harmonious Ganzi," 10 August 05. There are 515 Tibetan Buddhist monasteries and nunneries and 37,916 monks and nuns in Ganzi (Kardze) Tibetan Autonomous Prefecture (TAP). (The data in these sources total 3,146 Tibetan Buddhist monasteries and nunneries and approximately 115,000 monks and nuns, and do not include monasteries and nunneries in Aba (Ngaba) Tibetan and Qiang Autonomous Prefecture and Muli (Mili) Tibetan Autonomous County in Sichuan province, and Diqing (Dechen) TAP in Yunnan province.)

[143] Based on an estimated 3,300 Tibetan monasteries and nunneries, and extrapolating an estimate by applying the ratio of monasteries to reincarnations in Gansu province (1.9 to 1) and Huangnan TAP (1.4 to 1), an estimated total number of reincarnations could be more than 1,700 (based on the Gansu ratio) and more than 2,300 (based on the Huangnan ratio). The Gansu and Huangnan data samples are relatively small, however, and may not provide a reliable estimate. The Commission has very little information on the number of reincarnated teachers in the TAR; the proportion there may be lower than in some of the Tibetan areas of Sichuan and Qinghai provinces.

[144] "Reincarnation of Tibetan Living Buddhas Must Get Government Approval," Xinhua, reprinted in People's Daily (Online), 3 August 07.

[145] MMR, art. 3.

[146] Ibid., art. 4.

[147] Xining city, the capital of Qinghai province, has four urban districts (Chengdong, Chengxi, Chengzhong, and Chengbei), but there are no Tibetan Buddhist monasteries within the city districts.

[148] The Commission does not have official information on the number of reincarnated Tibetan Buddhist teachers at Drepung and Sera Monasteries, but each monastery has several according to unofficial reports.

[149] In comparison to the MMR, only Article 27 of the RRA addresses reincarnation (requiring government guidance and compliance with "historical conventions"). Articles 36–40 of the TAR 2006 Measures address reincarnation, but the measures apply only within the TAR and do not apply as many detailed requirements as the MMR. Only Article 23 of the TAR 1991 Measures refers to reincarnation (banning the involvement of "foreign forces" in confirming reincarnations).

[150] MMR, arts. 3–4.

[151] Ibid., arts. 5–7.

[152] Ibid., arts. 4, 7–9

[153] Ibid., art. 10.

[154] Ibid., art. 12.

[155] Ibid., art. 11.

[156] "'Our Own Come First' in the Reincarnation of Living Buddhas," Singtao Daily, 23 August 07 (Open Source Center, 13 September 07). The report does not state the date when the forum took place.

[157] "Ibid. "The meeting stressed that the Tibetan areas must strictly carry out the Management Measures for the Reincarnation of 'Living Buddhas' in Tibetan Buddhism, that 'our own comes first' in the reincarnation of living Buddhas, and that we must be on guard against interference by the Dalai Lama clique in exile abroad with the support of international hostile forces."

[158] Ibid.

[159] The figures for 2004 and 2005, reported by the CECC 2006 Annual Report based on data available in the PPD as of August 2006, have not changed.

[160] The Commission's Political Prisoner Database (PPD) is available Online at http://ppd.cecc.gov.

[161] The CECC 2005 Annual Report referred to the period 2002–2004 saying, "About two-thirds of the Tibetan political prisoners detained from 2002 onward are in Sichuan province, according to the PPD. Half of them are monks."

[162] U.S. Commission on International Religious Freedom, "Annual Report of the Commission on International Religious Freedom," 2 May 07, 123. "The Chinese government acknowledges that more than 100 Tibetan Buddhist monks and nuns are being held in prison." The report does not provide a date for the Chinese statement or provide additional detail.

[163] Tibetan Centre for Human Rights and Democracy, "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions." For example, TCHRD reported that as many as eight Sera monastery monks reportedly detained the previous July remained unidentified. As of September 2007, additional information about the outcome of their detentions is not available.

[164] Tibetan Centre for Human Rights and Democracy (Online), "Human Rights Update, October 2006. For example, TCHRD reported that Sera Monastery monk Thubten Samten "disappeared" in May 2006 after he behaved in a defiant manner to members of a patriotic education work team when they warned him not to display prohibited material in his room. As of September 2007, information about whether or not police detained him is not available.

[165] See, for example, International Campaign for Tibet, "The Communist Party as Living Buddha: The Crisis Facing Tibetan Religion Under Chinese Control," 26 April 2007, 29, 43, 55, 75.

[166] U.S. Department of State, International Religious Freedom Report 2006, China. "The Government continued to refuse to allow access to Gendun Choekyi Nyima, . . . and his whereabouts were unknown. . . . All requests from the international community for access to the boy to confirm his well-being have been refused." "UN Committee Recommends Independent Expert to Visit Boy Named As Panchen Lama," CECC Virtual Academy (Online), 26 January 06.

[167] UN Commission on Human Rights (Online), "Summary of Cases Transmitted to Governments and Replies Received, 27 March 06, 24–25. The Special Rapporteur on Freedom of Religion or Belief sent a request to the Chinese government for information about Gedun Choekyi Nyima on June 9, 2005. The Chinese government provided a response on September 7, 2005.

[168] "It Is Both Illegal and Invalid for the Dalai Lama to Universally Identify the Reincarnated Soul Boy of the Panchen Lama," People's Daily, 1 December 95 (Open Source Center, 1 December 95).

[169] See CECC Annual Report 2006, Section V(d)—Freedom of Religion, for additional information about the Panchen Lama and Gyaltsen Norbu.

[170] Tibet Information Network, Background Briefing Papers: Documents and Statements from Tibet 1996–1997, 1998, 45. A November 4, 1996, article in the Tibet Daily said that there were 1,787 monasteries and nunneries in the TAR, and 46,000 monks and nuns. Tabulation on Nationalities of 2000 Population Census of China, Table 10–4. The Tibetan population of the TAR was 2,427,168 in 2000. (If the government enumeration of monks and nuns is accurate, then 1.9 percent of the TAR Tibetan population are Tibetan Buddhist monks and nuns, and 98 percent are living in secular society.)

[171] The Gelug tradition, established in the late 14th century, is the largest of several traditions of Tibetan Buddhism that are currently practiced. The Dalai Lama and Panchen Lama are the most revered spiritual teachers of the Gelug.

[172] CECC Staff Interviews.

[173] International Campaign for Tibet (Online), "Tibetans Banned From Marking Traditional Buddhist Anniversary," 9 January 07. "All members of the Communist Party, government employees, retired cadres and staff, cadres and workers of business and enterprise work units and people's collectives, and the broad masses of young students are not permitted to participate in or observe celebrations of the Gaden Ngachoe Festival." (Gaden Ngachoe observes the passing in 1419 of Tsongkhapa, the founder of the Gelug tradition of Tibetan Buddhism, of which the Dalai Lama and Panchen Lama are the most revered spiritual teachers. The observance takes place on the 25th day of the 11th lunar month on the Tibetan calendar, December 15 in 2006.)

[174] Saga Dawa falls on the 15th day (the full moon) of the 4th month of the Tibetan lunar calendar. The day commemorates both the enlightenment and passing away of the Buddha. Saga Dawa fell on June 11 in 2006, and on May 31 in 2007.

[175] Tibetan Centre for Human Rights and Democracy (Online), "China intensifies prohibition of religious activities in Tibet during the holy month of Saka Dawa," 19 May 07.

[176] CECC Staff Interviews.

[177] U.S. Department of State, Country Reports on Human Rights Practices—2006, China. "Government officials reportedly ordered Tibetans working for the government to refrain from going to temples during the Saga Dawa festival in May or risk losing their jobs."

[178] "Dalai Lama's Birthday celebrated by Tibetans across Tibet," Phayul (Online), 5 July 07.

[179] "Work Report of the Tibet Autonomous Regional Government," Tibet Daily, 29 January 03 (Open Source Center, 16 June 03). Legchog (Lieque), then-Chairman of the TAR government, said, "We carried out the work to confiscate and ban reactionary propaganda materials, cracked down on illegal exit to and entry from other countries, and checked "Trunglha Yarsol" [activities to mark the birthday of the Dalai Lama] and other illegal activities."

[180] U.S. Department of State, Country Reports on Human Rights Practices—2006, China. The report refers to the Dalai Lama's birthday in July 2006, saying, "The prohibition on celebrating the Dalai Lama's birthday on July 6 continued."

[181] "Dalai Lama's Birthday celebrated by Tibetans across Tibet," Phayul.

[182] "Grand Western Development Is a Vivacious Chapter in Implementation of 'Three Represents'," People's Daily, 20 October 02 (Open Source Center, 20 October 02). "Since 1999, Comrade Jiang Zemin has frequently presided over meetings to specifically study the issue of implementing the strategy of great western development and has issued a series of important directives. In early 2000, the State Council founded a leading group for the development of the west-

ern region and presented the strategy of great western development." State Council, "Some Opinions of the State Council on Continuing to Press Ahead with the Development of the Western Region," Xinhua, 22 March 04 (Open Source Center, 29 March 04). "Practice provides ample evidence that the strategic decision by the CPC Central Committee and the State Council to develop the west is entirely correct and that all policy measures and key tasks pertaining to the development of the western region are entirely consistent with reality." (The statement shows that the State Council considers implementation of GWD to be a matter of policy.)

[183] CECC, 2002 Annual Report, 40.

[184] "Qinghai-Tibet Railway Project to Start on June 29," Xinhua (Online), 17 June 01. Railway construction was scheduled to begin on June 29, 2001. Completion would take six years.

[185] CECC, 2002 Annual Report, 40.

[186] CECC, 2003 Annual Report, 78.

[187] Ibid., 81.

[188] CECC, 2004 Annual Report, 97.

[189] Ibid., 97–98.

[190] CECC, 2005 Annual Report, 108

[191] Ibid., 109.

[192] CECC, 2006 Annual Report, 166.

[193] Ibid., 168.

[194] CECC, 2002 Annual Report, 41. "The Commission recommends that the Congress appropriate increased funding for NGOs to develop programs that improve the health, education, and economic conditions of ethnic Tibetans." CECC, 2003 Annual Report, 4. "The Congress should increase funding for U.S. nongovernmental organizations (Ngos) to develop programs that improve the health, education, and economic conditions of ethnic Tibetans living in Tibetan areas of China, and create direct, sustainable benefits for Tibetans without encouraging an influx of non-Tibetans into these areas.

[195] Li Dezhu, "Large-Scale Development of Western China and China's Nationality Problem," Seeking Truth, 15 June 00 (Open Source Center, 15 June 00). Li Dezhu (Li Dek Su) addresses the social and ethnic implications of the program that Jiang Zemin launched in 1999. (The campaign is also known as Develop the West, and as Xibu da kaifa.)

[196] "Zhang Qingli Addresses 'First Plenum' of Tibet Military District Party Committee," Tibet Daily, 20 April 07 (Open Source Center, 8 May 07).

[197] "Hu Jintao," China Tibet Information Center (Online), visited 2 August 07.

[198] "Hu Jintao Takes Part in Deliberations by Delegation of Tibet Deputies," Xinhua, 5 March 07 (Open Source Center), 5 March 07. Hu met with TAR delegates including Zhang Qingli and Jampa Phuntsog.

[199] PRC Regional Ethnic Autonomy Law [hereinafter REAL], enacted 31 May 84, amended 28 February 01.

[200] See, for example, REAL, amended 28 February 01, arts. 54–72.

[201] PRC Constitution, art. 4. "The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs."

[202] REAL, enacted 31 May 84, art. 65.

[203] REAL, amended 28 February 01, art. 71.

[204] "Education, Employment Top Concerns for Tibetan Youth," Radio Free Asia (Online), 13 July 07; "Tibetans Stage Rare Public Protest in Lhasa," Radio Free Asia (Online), 8 November 06; Tibetan Government-in-Exile, "Abuse in Job Allocation in Tibet Drives Students to Streets," 6 December 06. "Tibetan University Graduates Stage Public Protest, Allege Job Discrimination," CECC Virtual Academy (Online), 15 December 06.

[205] REAL, enacted 31 May 84, art. 65.

[206] CECC, 2006 Annual Report, 169, citing Ma Rong and Tanzen Lhundup, "Temporary Migrants in Lhasa in 2005," Section IV(4.8), Table 14. Based on a survey published by Chinese academics Ma Rong and Tanzen Lhundup, the rate of illiteracy among Tibetan migrants (32.3 percent) was almost 10 times higher than for Han migrants (3.3 percent), and Han migrants were better prepared to secure jobs that require skills learned in junior or senior middle school. Of the migrants surveyed, Han reached junior or senior middle school at about twice the rate of Tibetans: 53.7 percent of Han compared to 26 percent of Tibetans reached junior middle school, and 19.4 percent of Han compared to 9 percent of Tibetans reached senior middle school.

[207] REAL, amended 28 February 01, art. 71.

[208] Provisions of the State Council for Implementing the Law on Regional Ethnic Autonomy of the People's Republic of China [hereinafter REAL Implementing Provisions], issued 11 May 05.

[209] "PRC Western Development Official on 4 Key Aspects of New Preferential Policies," China Daily, 23 October 00 (Open Source Center, 23 October 00). "Wang Chunzheng, deputy director of the State Council's Western Development Office, said the policies focus on four key aspects; increasing capital input, improving the investment environment, attracting skilled personnel and boosting the development of science and technology. This is the first time that China has summarized the measures to be carried out in its 'Go-West' campaign, . . ."

[210] REAL Implementing Measures, art. 29. "The State encourages and supports talents of all categories and classes to develop and pioneer in ethnic autonomous areas and local government shall offer preferential and convenient working and living conditions to them. Dependents and children of cadres of Han nationality or ethnic minorities who go to work in remote, tough, and frigid ethnic autonomous areas shall enjoy special treatment in employment and schooling."

[211] REAL, amended 28 February 01, art. 22.

[212] Li Dezhu, "Large-Scale Development of Western China and China's Nationality Problem."

[213] "Law on Western Development in Pipeline," China Daily (Online), 14 March 06.

[214] TAR Regulations on the Study, Use and Development of the Tibetan Language [hereinafter TAR Language Regulations], adopted July 9, 1987, by the Fifth Session of the Fourth TAR Peo-

ple's Congress, and amended on May 22, 2002, by the Fifth Session of the Seventh TAR People's Congress.

[215] TAR Language Regulations, arts. 3–5. Mandarin and Tibetan have "equal effect" when government agencies at any level in the TAR are "carrying out their duties." Government and regional enterprise meetings may use either or both of the Tibetan and Mandarin languages. Official documents must be issued in both languages. Citizens of ethnic minorities are "assured of the right to use their native language to carry out legal proceedings."

[216] State Council Information Office, White Paper on New Progress in Human Rights in the Tibet Autonomous Region, February 1998.

[217] "Report on the Outline of The 10th Five-Year Plan for National Economic and Social Development by Chinese Premier Zhu Rongji at the Opening of the Fourth Session of the Ninth National People's Congress at the Great Hall of the People in Beijing," China Central Television, 5 March 01 (Open Source Center, 5 March 01). Premier Zhu said, "During the Tenth Five-Year Plan period, we need to place emphasis on key projects for a good beginning to the program. . . . We must focus on a number of major projects of strategic significance, such as the transmission of natural gas and electricity from western to eastern regions and the planned Qinghai-Tibet Railway." State Council Office of Western Region Development, "Implementation Opinions Concerning Policies and Measures Pertaining to the Development of the Western Region," Xinhua, 20 December 01 (Open Source Center, 15 January 01). "Resources must be concentrated on the construction of a host of major projects that impact the development of the western region as a whole, such as the "West China-East China Gas Pipeline Project," the "West China-East China Power Transmission Project," the Qinghai-Tibet Railway, major state highways, and the proper exploitation, conservation, and utilization of water resources."

[218] "Figures Related to Qinghai-Tibet Railway on its One Year Inauguration Anniversary," Xinhua (Online), 01 July 07.

[219] Tibetan Center for Human Rights and Democracy (Online), Annual Report 2006, 02 March 07, 5. "The railway facilitating a huge population influx, including Chinese settlers into Tibet, is bound to inevitably change Tibet physically and culturally causing further alienation of Tibetan identity."

[220] "Education, Employment Top Concerns for Tibetan Youth," Radio Free Asia (Online), 13 July 2007. The report does not refer to the Qinghai-Tibet railway or to an increase in the Chinese population. It cites the increasing importance of having fluency in Mandarin language in order to secure a good job. The other factor necessary for finding a job is "making the right connections."

[221] "Tibet Official: Tibet Not to be "Assimilated" by Han Amid Huge Investment," Xinhua (Online), 20 June 07. Jampa Phuntsog supported his assertion by pointing out, "The customs and traditional festivals also remain unchanged after millions of tourists flock there following the central government's large amount investment in the region."

[222] "Figures Related to Qinghai-Tibet Railway on its One Year Inauguration Anniversary," Xinhua. "A year after its inauguration, the railway has transported 1.5 million passengers into Tibet, nearly half of the total tourists arrivals in the region."

[223] "Tibetan Railway to Transport 4,000 More Tourists Each Day," China Tibet Information Center (Online), 22 May 06.

[224] "Tibet Expects 6 Million Tourist Arrivals by 2010," Xinhua, reprinted in People's Daily (Online), 7 June 07. "The region hosted more than 2.5 million tourists last year, including 154,800 from overseas." "More Than 1.1 mln Tourists Visit Tibet in First Half Year," Xinhua (Online), 11 July 07. "More than 1.1 million tourists traveled to Tibet in the first six months of the year, up 86.3 percent over the same period last year, according to the local tourism authority."

[225] "Qinghai-Tibet Railway Transports 270,000 Passengers," Xinhua (Online), 14 September 06. "About 40 percent of the passengers were tourists, 30 percent business people and the rest students, transient workers, traders and people visiting relatives in Tibet."

[226] "Tibet Rail Construction Completed," China Daily (Online), 15 October 05. "The line is expected to attract tourists, traders and ethnic Chinese settlers who currently have to take either expensive flights to Lhasa or bone-shaking bus rides."

[227] "Callers Decry Impact of Tibet Railway," Radio Free Asia (Online), 31 July 07.

[228] Ibid.

[229] Tibetan Centre for Human Rights and Democracy (Online), "Tibetan People in Lhasa Reel Under Influx of Chinese Migrants," 3 August 07.

[230] John K. Fairbank and Roderick MacFarquhar, eds., The Cambridge History of China, Vol. 14, (New York: Cambridge University Press, 1978), 368: "Map 7. Railway Construction between 1949 and 1960." The railroads linking Jining, Hohhot, and Baotou in Inner Mongolia were built before the PRC was founded.

[231] State Council Information Office, "White Paper on History and Development of Xinjiang," Xinhua (Online), 26 May 03.

[232] Tabulation on Nationalities of 2000 Population Census of China, Department of Population, Social, Science and Technology Statistics, National Bureau of Statistics, and Department of Economic Development, State Ethnic Affairs Commission (Beijing: Ethnic Publishing House, September 2003) Table 10–1: total population of the Inner Mongolia Autonomous Region (IMAR) was 23,323,347, of whom 18,465,586 were Han; total population of the Xinjiang Uighur Autonomous Region (XUAR) was 18,459,511, of whom 7,489,919 were Han; total population of the Tibet Autonomous Region (TAR) was 2,616,329, of whom 158,570 were Han. Table 10–2: total Mongol population of the IMAR was 3,995,349. Table 10–5: total Uighur population of the XUAR was 8,345,622. Table 10–4: total Tibetan population of the TAR was 2,427,168. In the IMAR, the ratio of Han to Mongol was approximately 4.6:1; in the XUAR, the ratio of Han to Uighur was approximately 0.9:1; in the TAR, the ratio of Han to Tibetan was approximately 0.07:1

[233] Human Rights Watch (Online), '"No One Has the Liberty to Refuse'—Tibetan Herders Forcibly Relocated in Gansu, Qinghai, Sichuan, and the Tibet Autonomous Region," 11 June 07,

3. A Tibetan herder from Maqin (Machen) county, Guoluo (Golog) Tibetan Autonomous Prefecture in Qinghai province (November 2004): "They are destroying our Tibetan [herder] communities by not letting us live in our area and thus wiping out our livelihood completely, making it difficult for us to survive in this world, as we have been [herders] for generations. The Chinese are not letting us carry on our occupation and forcing us to live in Chinese-built towns, which will leave us with no livestock and we won't be able to do any other work. . . ."

[234] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability, Promote the Building of a Harmonious Tibet," Seeking Truth, 16 January 07 (Open Source Center, 18 January 07).

[235] Human Rights Watch, "No One Has the Liberty to Refuse," 3. According to the report, the current program to settle nomadic herders began in 2000 and has intensified in some areas since 2003.

[236] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[237] Hu Jintao served as the TAR Communist Party Secretary from 1988–1992.

[238] "Hu Jintao Takes Part in Deliberations by Delegation of Tibet Deputies," Xinhua, 5 March 07 (Open Source Center), 5 March 07.

[239] Zhang Qingli, "Grasp the Two Major Affairs of Development and Stability."

[240] Ibid.

[241] Ibid.

[242] Human Rights Watch, "No One Has the Liberty to Refuse," 3.

[243] Ibid., 27.

[244] Ibid., 17–18. "The [policy] known as 'revert pasture to grassland' (tuimu huancao), was aimed at reversing degradation in pastoral regions by imposing total, temporary, or seasonal bans on grazing."

[245] Ibid., 45. "Tibetan herders had pursued their way of life for centuries without causing harm to the grassland; damage emerged only after the imposition of policies such as collectivization."

[246] Ibid., 26–38.

[247] Ibid. The report provides as examples art. 13 ("the right of citizens to own lawfully earned income, savings, houses and other lawful property"); art. 41 ("the right to criticize and make suggestions," "the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty"); and art. 111 ("committees for people's mediation," "mediate civil disputes," "convey residents' opinions and demands and make suggestions to the people's government").

[248] Ibid., 57.

[249] Ibid., 43.

[250] "More Nomadic Tibetan Herders Settle Down," Xinhua (Online), 2 September 04; "Government Campaign to Settle Tibetan Nomads Moving Toward Completion," CECC China Human Rights and Rule of Law Update, November 2005, 8.

[251] Hamish McDonald, "China Anxious To Prove Settled Life is Better for Tibetan Nomads," Sydney Morning Herald (Online), 5 October 05; "Government Campaign to Settle Tibetan Nomads Moving Toward Completion," CECC China Human Rights and Rule of Law Update, November 2005, 8.

[252] CECC Staff Interviews. The nomad families lived in Gannan (Kanlho) TAP and Tianzhu (Pari) Tibetan Autonomous County. "Government Campaign to Settle Tibetan Nomads Moving Toward Completion," CECC China Human Rights and Rule of Law Update, November 2005, 8.

[253] "Tibet Official Denies Forced Relocation of Herdsmen," Xinhua (Online), 20 June 07.

[254] Ibid.

[255] "Zhang Qingli Addresses 'First Plenum' of Tibet Military District Party Committee," Tibet Daily, 20 April 07 (Open Source Center, 8 May 07). "250,000 Tibetans move into new houses in 2006," China Tibet Information Center (Online), 16 January 07. "The "Housing Project" which has been put into operation since 2006 aims at improving locals' living condition and special attention has been put into the house renovation, nomads' settle-down and moving because of endemic [local health problems]."

[256] "Party Chief Brings Tibet New Homes," China Daily, reprinted in People's Daily (Online), 15 March 07.

[257] Ibid.

[258] Tabulation on Nationalities of 2000 Population Census of China. Table 1–2 shows 2,427,168 Tibetans in the TAR. Table 1–2c shows that 2,058,011 of them are classified as "rural."

[259] "250,000 Tibetans move into new houses in 2006," China Tibet Information Center (Online), 16 January 07. The article states, "The "Housing Project" mostly reduces the cost of building houses for local Tibetans as the subsidy varying from 10,000 yuan to 25,000 yuan has been offered to locals."

[260] "Party Chief Brings Tibet New Homes," China Daily. "It would cost a rural Tibetan about 60,000 yuan to build a new house with a floor space of about 200 square meters. Part of that money could come from the autonomous region's government. Farmers can apply to receive 10,000 yuan; a herdsman can apply for 15,000 yuan; and a resident of a poverty-stricken area can seek up to 25,000 yuan."

[261] Human Rights Watch (Online), "Tibet: China Must End Rural Reconstruction Campaign," 20 December 06.

[262] Ibid. "The cost of building a new house that meets the government's standards is about US$5,000–US$6,000, though the government lends households only about US$1,200 for construction costs."

[263] "Tibet Population Tops 2.8 Million," Xinhua (Online), 12 April 07. In the TAR in 2006, "Farmers and herders posted a per capita net annual income of 2,435 yuan, . . ." "China's GDP Grows 10.7% in 2006," China Daily, reprinted in Xinhua, 25 January 07. In 2006, "Last year, rural residents in China had their per-capita income increase by 10.2 percent to 3,587 yuan."

(Based on these figures, the average rural income in the TAR is 68 percent of the national average.)

[264] Human Rights Watch, "Tibet: China Must End Rural Reconstruction Campaign."

[265] "Tibet is Remade by Hand of Chinese Government by Force," McClatchy Newspapers, 29 July 07, reprinted in Phayul, 30 July 07.

[266] Tibetan Centre for Human Rights and Democracy (Online), Human Rights Update and Archives, "The Rural Reconstruction Campaign in Tibet Against the Will and Wishes of the Residents," April 2007.

[267] Ibid.

[268] Ibid.

[269] See, e.g., the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 48, arts. 2, 7, 18, 19, 20; International Covenant on Civil and Political Rights (ICCPR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, arts. 2(1), 18, 19, 21, 22, 26, 27; International Covenant on Economic, Social, and Cultural Rights (ICESCR) adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 2(1, 2).

[270] "China to Monitor Ethnic Relations," Xinhua (Online), 29 March 07. The State Council announced a monitoring mechanism to deal with "emergencies resulting from ethnic issues." The mechanism aims to "clamp down on ethnic separatism so as to safeguard ethnic unity, social stability, and national security." (The report provides an update about government efforts to crack down on what it deems to be ethno-nationalism.)

[271] CECC, 2002 Annual Report, 38.

[272] PRC Constitution, art. 54.

[273] CECC, 2006 Annual Report, 170–71.

[274] PRC Criminal Law, art. 103 ("organize, plot or carry out the scheme of splitting the State or undermining unity of the country;" "incites others to split the State or undermine unity of the country"). The Commission's Political Prisoner Database does not contain official charge information for many Tibetan cases, but official Chinese media reports, as well as unofficial reports, frequently provide information indicating a charge of splittism.

[275] Ibid., art. 102–113.

[276] Dui Hua Dialogue, "Official Responses Reveal Many Sentence Adjustments," Fall 2006, 6; "Officials Extend Tibetan's Sentence for Shouting Pro-Dalai Lama Slogans in Prison," CECC China Human Rights and Rule of Law Update, December 2006, 17.

[277] "Chinese Court Has Jailed More Than 20 'Reactionary' Tibetans Since 1996," Radio Free Asia (Online), 1 September 05; "Court Official Acknowledges Imprisoning Tibetans Who Carried Dalai Lama Photos Into the TAR," CECC China Human Rights and Rule of Law Update, October 2005, 4–5.

[278] "Tibetan Jailed for Three Years," Radio Free Asia (Online), 9 March 07. (The RFA report did not provide information about the charges against Penpa. Charges arising from possessing material pertaining to the Dalai Lama are likely to be based on Article 103 of the Criminal Law (inciting splittism).)

[279] Ibid. (The RFA report did not provide information about the charges against Penpa. Charges arising from possessing material pertaining to the Dalai Lama are likely to be based on Article 103 of the Criminal Law (inciting splittism).)

[280] "Three Tibetan Women Arrested in Lhasa," Phayul (Online), 15 June 06; "Chinese Authorities Detain Five Tibetans for Alleged Leafleting," Radio Free Asia (Online), 16 June 06; "Tibetan Monk Faces Eight Years for Separatism," Radio Free Asia (Online), 14 July 06; "China Detains Teenage Girl for Writing Pro-Independence Leaflets," Radio Free Asia (Online), 18 August 06; "China Detains Tibetan Abbot in Sichuan," Radio Free Asia (Online), 7 September 06; "Another Tibetan Monk Arrested," Radio Free Asia (Online), 19 September 06;; "Officials Detain Nine Tibetan Residents of Sichuan for Links to Leaflets, Posters," CECC China Human Rights and Rule of Law Update, November 2006, 3–4.

[281] "China Detains Teenage Girl for Writing Pro-Independence Leaflets," Radio Free Asia.

[282] "Tibetan Monk Faces Eight Years for Separatism," Radio Free Asia; "Another Tibetan Monk Arrested," Radio Free Asia. Namkha Gyaltsen was reportedly held in a detention center in Aba (Ngaba) Tibetan and Qiang Autonomous Prefecture in Sichuan province, according to RFA, and Lobsang Palden is presumed to be detained in Ganzi TAP.

[283] "China Detains Tibetan Abbot in Sichuan," Radio Free Asia.

[284] Tibetan Centre for Human Rights and Democracy (Online), "Monk Sentenced to Five Years Term for Distributing Political Pamphlets," 14 November 06.

[285] Dui Hua Dialogue, "Summary of Recent Prisoner Responses," Spring 2007, 7.

[286] Tibetan Centre for Human Rights and Democracy (Online), "Former Tibetan Political Prisoner Served With 12 Years Prison Term," 24 November 06. According to the TCHRD report, Sonam Gyalpo's family appealed his case. No additional information is available about the appeal.

[287] Dui Hua Dialogue, "Summary of Recent Prisoner Responses."

[288] TibetInfoNet (Online), "Detentions Before 40th Anniversary of TAR," 9 September 2005.

[289] Ibid. Sonam Gyalpo was sentenced to three years' imprisonment in TAR Prison (Drapchi) after he supported a protest march by monks in Lhasa on September 27, 1987. He was held without charge for about one year in the TAR Police Detention Center (Sitru) after July 1993, when he returned to the TAR following an undocumented visit to India. Dui Hua Dialogue, "Summary of Recent Prisoner Responses." Dui Hua reports that, according to the official Chinese response, Sonam Gyalpo was sentenced to three years in prison in January 1989 for "counterrevolutionary propaganda and incitement." (It is not clear whether the three-year sentence began in 1987 or 1989.)

[290] Dui Hua Dialogue, "Summary of Recent Prisoner Responses."

[291] Ibid.

[292] Tibetan Centre for Human Rights and Democracy (Online), "Commentary Manuscript Lands Tibetan Youth Ten Years in Prison," 25 July 06.

[293] Ibid.

[294] International Campaign for Tibet (Online), "Tibetan Scholar Sentenced to Ten Years in Prison After Writing Book on History and Culture," 8 August 06.

[295] Dui Hua Dialogue, "Summary of Recent Prisoner Responses," Spring 2007, 7.

[296] International Campaign for Tibet, "Tibetan Scholar Sentenced to Ten Years." ICT obtained a copy of the letter.

[297] "Official Information Confirms Sentence for Tibetan Nun Who Put Up Posters," CECC China Human Rights and Rule of Law Update, December 2006, 17.

[298] Free Tibet Campaign (Online), "Four Monks and Nuns Arrested for Displaying Dalai Lama Poster," 30 January 06; "Gansu Court Sentences Five Tibetan Monks and Nuns for Protest Posters," CECC China Human Rights and Rule of Law Update, March 2006, 10–11; Radio Free Asia (Online), "China Arrests Tibetan Monks, Nuns for Dalai Lama Poster," 20 December 05; Tibetan Centre for Human Rights and Democracy (Online), "Arrest of Tibetan Monks for Postings Calling for Freedom in Tibet," 15 July 05; "Official Information Confirms Sentence for Tibetan Nun Who Put Up Posters," CECC China Human Rights and Rule of Law Update, December 2006, 17.

[299] "Five Tibetan Monks Jailed in Western China," Radio Free Asia (Online), 13 February 05; Tibetan Centre for Human Rights and Democracy, Human Rights Update February 2005, "Monks Imprisoned for Political Journal," April 2005.

[300] International Campaign for Tibet (Online), "Long Sentences for Tibetan Political Prisoners for 'Splittist' Offences," 12 May 06. The ICT report contains a link to an ICT translation of the sentencing document. "Lhasa Court Commutes Life Sentence for Children's Home Director to 19 Years," CECC China Human Rights and Rule of Law Update, April 2006, 16. The sentencing document lists evidence against Bangri Chogtrul that includes meeting the Dalai Lama, accepting a donation for the home from a foundation in India, and a business relationship with a Tibetan contractor who lowered a Chinese flag in Lhasa in 1999 and tried to blow himself up. Jigme Tenzin Nyima acknowledged meeting the Dalai Lama, accepting the contribution, and knowing the contractor, but he denied the charges against him and rejected the court's portrayal of events.

[301] Dui Hua (Online), "Dui Hua Executive Director Attends Trials, Explores Judicial Openness, Clemency Granted to Tibetan Monk, Labor Activist," 28 February 06.

[302] "The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," Topic Paper of the Congressional-Executive Commission on China, February 2003; Human Rights Watch (Online), Trials of a Tibetan Monk: The Case of Tenzin Delek, 9 February 04.

[303] Ibid.

[304] "Tibetan Monk Involved in Terrorist Bombing Still in Prison," Xinhua (Online), 31 December 04.

[305] Tibetan Centre for Human Rights and Democracy (Online), "A Tibetan Arrested in Lithang for Political Demonstration," 2 August 07.

[306] International Campaign for Tibet (Online), "Security Crackdown Feared Following Public Appeal by Tibetan for Return of Dalai Lama," 2 August 07; "Scores of Tibetans Detained for Protesting at Festival," Radio Free Asia (Online), 2 August 07.

[307] International Campaign for Tibet (Online), "Official Petition on Dalai Lama May Have Provoked Lithang Action," 10 August 07. According to an ICT source: "'It seems that most of the local population knew about this petition being circulated by officials, and it caused an increase in tension and anxiety. People in this area revere His Holiness the Dalai Lama, and Runggye Adak's action could have been a response to this provocative move by officials. Local people may have somehow wanted to demonstrate that this petition is a lie, and did not represent the wishes of Tibetans in Lithang."

[308] "Villager Detained for Inciting Separation," Xinhua, reprinted in China Daily (Online), 3 August 07.

[309] International Campaign for Tibet (Online), "New Images Confirm Dispersal of Tibetans by Armed Police After Lithang Protest: Runggye Adak's Relatives Taken Into Custody," 24 August 07.

[310] Tibetan Centre for Human Rights and Democracy (Online), "The Chinese Authorities Transfer Adruk Lopoe to an Unknown Location, Arrest Another Tibetan Nomad," 28 August 07; International Campaign for Tibet, "New Images Confirm Dispersal of Tibetans by Armed Police After Lithang Protest." Tibetan Centre for Human Rights and Democracy (Online), "China Arrest Three Nephews of Ronggye A'drak in Lithang," 22 August 07.

[311] Tibetan Centre for Human Rights and Democracy (Online), "The Chinese Authorities Transfer Adruk Lopoe to an Unknown Location, Arrest Another Tibetan Nomad," 28 August 07.

[312] Human Rights in China (Online), "Tibetan Schoolboys Detained as Crackdown Worsens," 20 September 07.

[313] Ibid. The students allegedly wrote slogans on walls of the village police station, and elsewhere in the village.

[314] Ibid. According to the report, authorities held the students at a village police station from September 7–9 and allowed families to access the children.

[315] It is commonplace for multiple Tibetans in the same community to have identical names. Generally, Tibetan names do not include a family name.

[316] The number of known cases of current Tibetan political detention or imprisonment reported in CECC Annual Reports: 2002 Annual Report, 39, "less than 200," based on a 2002 report by the Tibet Information Network (TIN); 2003 Annual Report, 79, "approximately 150," based on a March 2003 TIN report; 2004 Annual Report, 101, "145 prisoners," based on a February 2004 TIN report; 2005 Annual Report, 112, "120 current cases," based on CECC Political Prisoner Database information current in June 2005; 2006 Annual Report, 171, "103 known

cases of current Tibetan political detention or imprisonment," based on PPD information current in August 2006.

[317] Dui Hua Dialogue, "Official Responses Reveal Many Sentence Adjustments."

[318] United Nations Commission on Human Rights, Working Group on Arbitrary Detention, Decisions adopted by the Working Group on Arbitrary Detention, Decision No. 65/1993, 5 October 94.

Notes to Section VI—Developments in Hong Kong

[1] United States-Hong Kong Policy Act of 1992, Public Law No. 102-383, enacted 4 April 90; The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, enacted 4 April 90; Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, adopted 19 December 84.

[2] CECC, 2005 Annual Report, 11 October 05, 115-116.

[3] CECC, 2004 Annual Report, 5 October 04, 104-6. Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008, 26 April 2004.

[4] The Basic Law of the Hong Kong Special Administrative Region of the PRC, arts. 45 and 68.

[5] Bureau of East Asian and Pacific Affairs, U.S. Department of State, Hong Kong Policy Act Report, 30 June 07.

[6] Stephen Lam, Secretary for Constitutional and Mainland Affairs, Government of the Hong Kong Special Administrative Region, "Welcome Message," reprinted by Constitutional and Mainland Affairs Bureau (Online) (last visited October 8, 2007).

[7] Ibid.

[8] Ibid.

[9] Government of the Hong Kong Special Administrative Region (Online), Green Paper on Constitutional Development, July 07.

[10] Hong Kong Economic and Trade Offices in the United States (Online), "Constitutional Reform Green Paper Unveiled," 11 July 07.

[11] Scarlett Chiang and Diana Lee, "Paper spells out options for reform," The Standard (Online), 12 July 07.

[12] Government of the Hong Kong Special Administrative Region (Online), "Government's response to procession: opinions expressed during consultation period will form basis for assessment," 7 October 07.

[13] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2006, China (includes Tibet, Hong Kong, and Macau), 6 March 07.

[14] As the Commission has noted previously, "A March 2006 report by the UN Human Rights Committee, which is responsible for reviewing compliance with the International Covenant on Civil and Political Rights (ICCPR), expressed concern about the absence of universal suffrage in Hong Kong, as well as with the implementation of the procedure for interpretation of the Basic Law, a reference, in part, to the April 2004 NPCSC decision to prohibit universal suffrage in the 2007 Chief Executive and 2008 Legislative Council elections. The report questioned the HKSAR government's compliance with Article 25 of the ICCPR in both situations. Article 25 states that every citizen should have the right and the opportunity, without unreasonable restrictions, to participate in public affairs, either by himself or through a directly elected representative, and to express his political will through universal suffrage. The report concluded that, '(a)ll necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant.' See CECC, 2006 Annual Report, 20 October 06, 176-177. See also International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76: See also UN Human Rights Committee, Concluding Observations of the Human Rights Committee--Hong Kong Special Administrative Region (HKSAR), 30 March 06; The Sino-British Joint Declaration states that the provisions of the ICCPR still remain in force in Hong Kong after the territory's reversion to the PRC. See Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Section XIII.

[15] U.S. Department of State, Country Reports on Human Rights Practices—2006, China.