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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 reflect 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 pending 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 sys-

tem 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 convicted 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]

LAW ON THE BOOKS: JUDICIAL INSTITUTIONS AND CHALLENGES

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 offenses 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 re-

ported 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:

- **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.

Continued Crackdown on Rights Defenders

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.
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.

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

- 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.
- 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.

Endnotes

[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 sub-

version" 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 (Online), 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.