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# CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA
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## I. Executive Summary and List of Recommendations

The Commission finds that human rights conditions in China have not improved overall in the past year. The Chinese government continues to violate China's own constitution and laws and international norms and standards protecting human rights. The Commission recognizes that some developments are underway in China, particularly in the area of legal reform, that could provide the foundation for stronger protection of rights in the future. However, these changes have been incremental, and their overall impact has been limited. Such limitations illustrate the complexity of the obstacles the Chinese people face in their continuing effort to build an accountable government that respects basic human rights and freedoms.

Chinese citizens are detained and imprisoned for peacefully exercising their rights to freedom of expression, association, and belief. Law enforcement authorities routinely ignore Chinese domestic law, or exploit loopholes in the law, to detain suspects and defendants for periods greater than Chinese law or international human rights norms and standards permit.

China's poor record of protecting the internationally recognized rights of its workers has not changed significantly in the past year. Chinese workers cannot form or join independent trade unions, and workers who seek redress for wrongs committed by their employers often face harassment and criminal charges. Moreover, child labor continues to be a problem in some sectors of the economy, and forced labor by prisoners is common. Although the government has begun to modify its policy of discrimination against migrant workers from rural areas, these workers still face serious disadvantages as they seek employment away from their home regions. Workplace health and safety conditions are poor in many Chinese workplaces. Fatalities among mine workers are especially common. Despite having enacted new and relatively progressive laws designed to improve health and safety standards, the Chinese government lacks the will or capacity to enforce these laws.

Scores of Christian, Muslim, and Tibetan Buddhist worshippers have been arrested or detained during 2003. Chinese Catholics, Protestants, Muslims, and Buddhists seeking to practice their faith outside officially-sanctioned churches, mosques, and temples are subject to harassment and repression. Government authorities continue to repress spiritual groups, including the Falun Gong spiritual movement, chiefly through the use of anti-cult laws.

Chinese citizens do not enjoy freedom of speech or freedom of the press. The Chinese government suppresses freedom of expression in a manner that directly contravenes not only international

human rights norms and standards, but also China's own constitution. Some individuals and groups that cannot obtain government authorization manage to publish on a small scale, but only by employing methods that risk administrative and criminal punishment.

China's new family planning law retains the broad elements of China's long-held policies on birth limitation. These include mandatory restrictions on absolute reproductive freedom and the use of coercive measures, specifically severe economic sanctions, to limit births. However, the new law also mandates prenatal and maternal health care and services for women.

The Chinese government is taking significant steps to address HIV/AIDS, but progress has been hard to achieve and public ignorance of the disease remains widespread. Public health policies in some provinces have fostered the spread of HIV/AIDS and have left patients and orphans in dire distress. Complaints by these victims have been met with fear and forceful repression.

China has built a progressive legal framework to protect women's rights and interests, but loopholes remain, and implementation of existing laws and regulations has been imperfect, leaving Chinese women vulnerable to pervasive abuse, discrimination, and harassment at home and in the workplace.

Recent policy changes in China indicate progress toward scaling back the restrictive residency registration (*hukou*) system, allowing rural migrants in urban areas to more easily obtain status as legal residents. In a welcome development, the Chinese government abolished an often abused administrative detention procedure called "custody and repatriation" in response to public outrage over official complicity in the death of a detainee. But local governments often fail to implement central government policy directives adequately, and ingrained discriminatory attitudes and practices toward migrants impede reform.

China has continued its efforts to reform and strengthen basic legal institutions. Experimental efforts by local people's congresses and local administrative bodies, if sustained and further expanded, could improve China's human rights performance by improving the accountability of public officials and transforming expectations regarding the role of public opinion in governance. The Chinese government has made progress in its effort to improve the capacity, efficiency, and competence of its judiciary and is considering reforms that may enhance judicial independence in limited respects. Accession to the WTO has had a positive impact in the areas of legislative and regulatory reforms by raising awareness of the importance of transparency at all levels of government. It is also helping to drive positive reforms in China's judiciary.

Despite the long-term promise of these changes, their overall impact remains limited at present. Although local governments have attempted to provide more information to their citizens and have begun to open their processes to public scrutiny, public hearings and real consideration of input by the public are limited in practice. The judiciary continues to be plagued by complex and interrelated problems, including a shortage of qualified judges, pervasive corruption, and significant limits on independence.

Legal restraints on government power remain weak in practice. Nevertheless, Chinese citizens are using existing legal mechanisms

to challenge state action in increasing numbers and are exhibiting signs of greater empowerment in confronting the state in some areas. Prompted in part by an official focus on constitutional development, Chinese citizens engaged in a spirited discussion of constitutionalism for much of the year. In mid-2003, however, central authorities became concerned about the scope of this promising discourse and prohibited discussion of constitutional amendments and political reform in the media or in unapproved academic forums until further notice.

The Chinese government opened a preliminary dialogue with envoys of the Dalai Lama during late 2002 and 2003. The Dalai Lama's unique stature positions him to help ensure the survival and development of Tibetan culture, while contributing to China's stability and prosperity. Although the envoys' visits are a positive step, repression of ethnic Tibetans continues and the environment for Tibetan culture and religion is not improving.

## RECOMMENDATIONS

The Commission works to implement its recommendations until they are achieved. Thus, in addition to the recommendations made in the 2002 report, the Commission makes the following recommendations for 2003:

*Human Rights for the Chinese People*

- The Chinese government made significant and far-reaching commitments on human rights matters during the December 2002 U.S.-China human rights dialogue. The President and the Congress should increase diplomatic efforts to hold the Chinese government to these commitments, particularly the release of those arbitrarily detained, and the unconditional invitations to the UN Special Rapporteur on Torture and the UN Working Group on Arbitrary Detention.
- U.S. government efforts to ensure that prison labor-made goods do not enter the United States have been hampered by a general lack of information and cooperation from the Chinese government. The President should direct that the Task Force on Prohibition of Importation of Products of Forced or Prison Labor from the People's Republic of China (created by Title V of P.L. 106–286) develop a database of known Chinese prison factories to be used to bar the entry of goods produced in whole or part in those facilities. The database should also be used to develop lists of Chinese exporters handling goods from these prison manufacturing facilities.
- Without urgent action, China faces an HIV/AIDS catastrophe, yet the Chinese government response has been tepid. The President and the Congress should continue to raise HIV/AIDS issues at the highest levels of the Chinese leadership during all bilateral meetings, citing the epidemic as an international concern that cannot be solved without the action of China's most senior leaders.
- The right to choose one's place of residence and to travel inside one's country is not only a basic human right but also fosters the labor mobility needed to build a modern economy. The Congress and the President should urge the Chinese govern-

ment to take additional measures to repeal residency restrictions (*hukou*) and to continue to take concrete measures toward ending discrimination against and abuse of internal migrants.

• U.S. government programs focused on Tibetans in China have done much to improve conditions, but need additional resources. The Congress should increase funding for U.S. nongovernmental organizations (NGOs) to develop programs that improve the health, education, and economic conditions of ethnic Tibetans living in Tibetan areas of China, and create direct, sustainable benefits for Tibetans without encouraging an influx of non-Tibetans into these areas.

*Religious Freedom for China's Faithful*

• The freedom to practice one's religious faith is an essential right. The President and the Congress should urge the Chinese government to reschedule without restrictions previously-promised visits to China by the U.S. International Commission on Religious Freedom and the UN Special Rapporteur on Religious Intolerance.

• China's officially sanctioned religious associations unfairly restrict the ability of Chinese believers to practice their religions freely, and many believers have been imprisoned for practicing religion outside the government-controlled system. The Congress and the President should press the Chinese government to permit free religious practice outside these official religious associations and release all those imprisoned for their religious beliefs.

*Labor Rights for China's Workers*

• Chinese workers are frequently unaware of their rights under Chinese law and China's international commitments. To help bridge this gap, the President and the Congress should expand existing worker rights education programs, emphasizing curriculum development and training in peer education techniques, and should provide funding for legal clinics that take on cases involving worker rights under Chinese law.

• U.S. government efforts to foster corporate social responsibility at home and abroad lack focus, coordination, and policy guidance. The President should establish a Coordinator for Corporate Social Responsibility to coordinate interagency policy and programs and work with private sector actors.

*Free Flow of Information for China's Citizens*

• The Chinese government exploits administrative restraints to chill free expression and control the media. The President and the Congress should urge the Chinese government to eliminate these restraints on publishing.

• China's government continues to prevent its citizens from accessing news from sources it does not control, particularly from Chinese language sources. The President and the Congress should urge Chinese authorities to cease detaining journalists and writers, to stop blocking news broadcasts and Web sites, and to grant journalist visas and full accreditation to at least

two native Mandarin speaking reporters from Voice of America's Chinese Branch. The Congress should fund programs to develop technologies to enable Internet users in China to access news, education, government, and human rights Web sites that China's government currently blocks.

*Rule of Law and Civil Society for China's Citizens*

- A vibrant civil society and the rule of law help a country develop politically, economically, socially, and culturally. The President should request, and the Congress should provide, significant additional funds to support U.S. government and U.S. NGO programs working to build the institutions of civil society and rule of law in China.
- As the overall U.S. government effort supporting rule of law programs increases, certain small-scale U.S. programs will have an impact beyond their size and funding. The President and the Congress should augment existing U.S. programs by making it a priority to create a permanent Resident Legal Advisor position at the U.S. Embassy in Beijing, and to increase funding for the Rule of Law Small Grants Program.

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

*This report was approved by a vote of 21 to 1.†*

## II. Introduction

The Commission has closely examined the specific human rights and rule of law issues listed in Section 302 of the United States-China Relations Act of 2002,[1] and presents its findings in Sections III through IX of this report. Beyond these specific rights and issues, the Commission has considered a number of underlying factors that might affect the future development of human rights and the rule of law in China. Without understanding such dynamics, any attempt to influence the future of human rights and rule of law in China will be ineffective. With this in mind, this report presents a short introduction to some of these factors: the evolution of China's position on international human rights, the recent rise of new political leaders, the steady development of new human and organizational resources for improvements in rights and law, and worsening corruption in the context of the Communist Party's monopoly on power.

### China's Evolving Position on Human Rights

Two forces have dominated China's rejectionist position on human rights since 1949: internationalist Marxist ideology, which reached its zenith in the 1950s and 1960s, and nationalism, now gaining strength as the market economy develops and contradicts the ideals and economic assumptions of Marxism.

Nationalist emotion has often driven the Chinese government to reject Western criticism of its human rights record. The strength of such nationalist sentiment springs from the strong sense among

Chinese elites that the West took unfair advantage of its weakness in the 19th and 20th centuries. The Qing Dynasty faced the rising powers of the West at a time when it was suffering from the decay common at the end of dynastic cycles. Overpopulation, economic and military weakness, a corrupt bureaucracy, and popular rebellion made the empire an easy mark for Western powers. Events forced a people who saw themselves as the cultural and political center of the world to confront repeated invasions and humiliations at the hands of soldiers, traders, and missionaries from beyond the borders of Chinese civilization. This experience ultimately produced an angry and powerful nationalism expressed in the convulsions of the Boxer Rebellion, the May Fourth Movement of 1919, and, more recently, riots at U.S. diplomatic and consular missions in China after the accidental bombing of the Chinese Embassy in Belgrade in May 1999.

In an address to the World Conference on Human Rights in 1993, Vice Foreign Minister Liu Huaqiu expressed China's nationalist rejection of human rights criticisms this way:

> To wantonly accuse another country of abuse of human rights and to impose the human rights criteria of one's own country or region on other countries or regions [is] tantamount to an infringement upon the sovereignty of other countries and interference in the latter's internal affairs, which could result in political instability and unrest. . . . As a people who used to suffer tremendously from aggression by big powers but now enjoys independence, the Chinese have come to realize fully that state sovereignty is the basis for the realization of citizens' human rights.[2]

After 1949, China readily embraced the Soviet Union's official Marxist line rejecting human rights as a capitalist strategy to protect private property. The anti-rights synergy of Marxism and nationalism provided China's leaders with a retort to Western criticisms of their human rights practices. In this spirit of official hostility, three Chinese theorists wrote "How Marxism Views the 'Human Rights' Question" in the Communist Party daily *Red Flag* in 1979. The article responded to the calls for reform posted on the "Democracy Wall" by asserting that "human rights is always a bourgeois slogan."[3] The authors asked sarcastically:

> First of all, let us analyze what kind of "human rights" the people who raise the cry of "human rights" really want. . . . They declare without reservation that "at present it is especially necessary to . . . advocate the study of the culture and civilization which grew out of Christianity under the guidance of its teachings of 'peace, forgiveness, understanding, and brotherly love'" and so on. . . . The Chinese people already have experience with the ideas and teaching for which they clamor: they are a hodgepodge of capitalism and imperialism.[4]

The Marxist equation of foreign religion with foreign aggression fueled severe and unrelenting religious repression even after China began to reform and open up to the world in the late 1970s. Communist Party leaders enacted laws limiting religious education in general, and prohibiting religious education of the young in par-

ticular, to protect the Leninist state's monopoly on education and information. But as Chinese socialism faded, the laws and regulations restricting religious organization and practice gained strength and found a new focus on the potential threats to Chinese sovereignty posed by domestic religious groups with foreign connections. Chinese officials administering these laws and regulations understand that popular religious movements in the past were often associated with periods of dynastic decline. This reinforced their suspicions of the growing religiosity among many Chinese people.

Nationalist sentiment based on lingering historical resentments and old Marxist arguments continue to make the Chinese state inhospitable to the development of a true human rights consciousness. At the beginning of the 21st century, this ingrained resistance to the international consensus on protecting individual dignity, welfare, and safety against the arbitrary acts of a powerful state sets China apart from the mainstream of modern nations. Many believe that the Communist Party's arguments about human rights are designed to justify policies that the Party would pursue in any case. In this view, the Party's arguments are a tactic to deflect the focus of criticism away from its own policies and on to the West, a practice that also fuels nationalism.

By the late 1970s, the cruelties of the Cultural Revolution convinced China's leaders of the need for certain human rights protections even in socialist states. After Deng Xiaoping adopted the policy of "reform and opening up" in 1978, China gradually took steps to join the international discussion on human rights. China began from a low starting point, since most government officials and many Chinese intellectuals still professed belief in the anti-rights dogmas of Marxism. As the theorists cited above wrote in *Red Flag* in 1979:

> The Chinese Constitution sets forth clear guidelines for the upholding of the [four] cardinal principles of socialism, the dictatorship of the proletariat, the leadership of the Party, and Marxism, Leninism and Mao Zedong Thought. They represent the will and interests of the people of the entire nation. The people must abide by them, and if they deviate from them their democratic rights are out of the question.[5]

Deng and other Party leaders first used reformist language at the Third Plenum of the Eleventh Central Committee in December 1978, but those who understood these early words as a signal for change would be silenced. One of the first to respond was Wei Jingsheng, then an unknown electrician, but later to become one of the most prominent of China's democracy activists. Wei's bold criticism of the Marxist line on human rights[6] led to his arrest, trial and conviction in 1979 on charges of "counterrevolution" and disclosing state secrets. Wei received a 15-year prison sentence.[7]

It was not until Chinese leaders faced a torrent of international criticism after the brutal suppression of the democracy movement in Tiananmen Square in 1989 that they began to abandon the rejectionist Marxist rhetoric on human rights. The government would finally express rhetorical support for the human rights movement in its 1991 "White Paper on Human Rights":

> The issue of human rights has become one of great significance and common concern in the world community. The series of declarations and conventions adopted by the United Nations have [sic] won the support and respect of many countries. . . . However, the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic, and cultural conditions of various nations, and involves a process of historical development.[8]

The White Paper framed the issue in new, evolutionary terms. Rather than rejecting civil and political rights as part of a transitory stage of bourgeois capitalism, the authors argued that human rights are more appropriate to developed than to developing nations. This idea may be short lived: as China assumes an increasingly powerful role on the world stage, nationalist pride may discourage reliance on the assertion that China's "backward" economic and cultural status allows the government to contravene international human rights norms and standards.

A more troublesome aspect of the White Paper's viewpoint is the relativist claim that the idea of human rights is an aspect of Western culture and not a universal standard. Along these lines, some commentators outside of Asia have suggested recently that a distinctively "Chinese" discourse on human rights exists and deserves deference. Moreover, they argue that it may suit China better than the international standards laid out in the Universal Declaration on Human Rights. In the 1990s, Chinese officials employed this argument as an all-purpose tool to deflect international criticism of their country's human rights practices. The United Nations Charter and the Universal Declaration on Human Rights first expressed the international consensus on basic human rights in the 1940s. The UN representative of the Republic of China, P.C. Chang, served as vice chairman of the Human Rights Commission during the drafting of the Universal Declaration. His belief in the importance of the Declaration helped make it possible for the General Assembly to adopt it unanimously in December 1948.

The unanimous, multinational genesis of the Universal Declaration, together with numerous contemporary statements, demonstrates the UN General Assembly's acceptance of a universally agreed-on set of minimum human rights standards. The General Assembly did not codify the substantive norms of any particular state or region in unanimously adopting the Universal Declaration. Instead, it reflected international consensus on the minimum standards by which all states should abide, without limiting any state from doing better than these standards within its own distinctive political and economic system.

Until the Chinese people acquire the open, transparent, and democratic means to influence their government's position on human rights, no one should assume that they do not wish to enjoy all the rights expressed in the Universal Declaration, or other international covenants, conventions and agreements.

## INSIGHTS INTO THE THINKING OF CHINA'S NEW LEADERS

China's political structure was modeled on the centralized and unitary party-state that Vladimir Lenin advocated and imple-

mented in the Soviet Union. As a natural result of this authoritarian structure, China's reforms since 1979 have been top-down in concept and implementation, beginning with a bold economic program of "reform and opening up to the outside world" enunciated by Deng Xiaoping. Although the relationship between market reforms and democratic development is neither clear nor certain, a similar authoritarian structure was the starting point for market-oriented economic changes, and then democratic reforms, in Taiwan and South Korea. While China's future path is impossible to predict, the openness of China's leadership to political reforms that could weaken the absolute control of the Communist Party has been a matter of debate, both in China and the West.

Political leaders, scholars, and analysts outside China know relatively little about the new generation of men (and a few women) who have entered the top Chinese leadership ranks since the 16th Communist Party Congress, held in November 2002. Some resources exist that may provide insights into their interests and factional affiliations. *Disidai* (The Fourth Generation), a book recently published outside China by a former Chinese government insider, Zhang Liang, writing under the pseudonym Zong Hairen, offers a view of the histories, alliances, and political views of China's new leaders.[9]

The book, while probably as much a political tract as a factual account, nonetheless gives the reader a sense of the issues of concern in intra-Party politics. It includes what purport to be actual dossiers compiled by the Communist Party's Organization Department to evaluate candidates for membership in the Standing Committee of the Politburo, the nine-person group that rules China. Although human rights issues do not figure prominently in Zhang's analysis,[10] the dossiers do suggest attitudes toward government and governance that imply a positive stance on citizens' rights. For example, the book quotes China's new premier Wen Jiabao as saying, "When doing anything in the countryside, we must respect the wishes of the peasants, respect their autonomy in production, and absolutely not use force and orders against them."[11] The generality of statements like this does not necessarily indicate what Premier Wen thinks about human rights and the rule of law, but such statements do reflect an appreciation for the rights and dignity of rural citizens, a concept not associated with China's leaders in the recent past.

The views of President Hu Jintao on issues relating to human rights protections and the rule of law are the least evident in either public documents or the material included in *Disidai*. However, as noted in Section V(e) of this report, President Hu's focus on the Chinese Constitution has revived hopes in China's law reform community that new constitutional mechanisms may be developed to protect individual rights and restrain the government's arbitrary exercise of power, despite the possibility that Hu may simply see these reforms as a means to enhance the power and legitimacy of the Communist Party. In addition, press accounts of his short tenure in office have included hints of his sympathies. For example, the *South China Morning Post* reported in April that Hu had intervened personally to limit punishment of the liberal paper that

published an article by progressive Party elder, Li Rui, urging sweeping democratic reform.

Excerpts of speeches included in the dossiers summarized in Zhang Liang's book portray other new leaders as having spoken in favor of policies helpful to the development of the rule of law, including Wu Guanzheng, a Communist Youth League ally of Hu Jintao who heads the Party's Central Discipline and Inspection Commission and sits on the Politburo's nine-member Standing Committee; Wu Yi, now both Politburo member and Minister of Health; and Li Changchun, a member of the Politburo Standing Committee.

However, while some in China's new leadership group seem to favor progress toward minimum international human rights norms and standards and the rule of law in China, these potentially more progressive voices are unlikely to dominate the repressive policy preferences of others in the Party and government. As one U.S. scholar observes, the new Politburo represents what must be a deliberate balance of power between "hardliners" and "progressives."

Former Chinese official and businessman Fang Jue, famous for his daring 1998 challenge to the Party entitled "China Needs a New Transformation—The Platform of the Democratic Faction," agrees that the new leadership is a careful balance between opposing groups. Fang was one of a group of mid-level officials and former officials advocating political reform in China at the time of the 15th Party Congress in 1998. He was first jailed at that time for 4 years, on what many say were trumped up charges. Released in 2002, he was re-arrested shortly before the 16th Party Congress in November 2002, held for 82 days, then expelled from China in January 2003. He has recently written a sophisticated analysis of the political coloration of the new leaders and the relationships among them.[12] His breakdown of the new Politburo members finds:

- 2 Progressives: Hu Jintao and Wen Jiabao
- 2 Moderates: Li Changchun and Wu Guanzhang
- 5 Conservatives: Zeng Qinghong, Wu Bangguo, Jia Qinglin, Huang Ju, and Luo Gan

Fang believes that this configuration will prevent both progressives and conservatives from taking control. Fang notes that, apart from the Politburo, conservatives dominate the second tier of positions in the Party, making it quite unlikely that the more progressively-oriented Hu and Wen will be able to push through significant political reform.

## HUMAN AND INSTITUTIONAL RESOURCES FOR CHANGE

Promising resources for change in China include both people and new institutions. Academics in China today are particularly influential because of the strong traditional tie between teacher and student, which often lasts a lifetime. The respect and admiration of former students may explain tolerance for the views of some senior scholars. For instance, despite his progressive views on topics ranging from federalism to constitutional review, Professor Jiang Ping of the University of Politics and Law remains active in legal academe and speaks frequently at conferences on law reform

issues. In the volatile world of inner-Party politics, powerful bonds grow up between older and younger cadres, with the result that senior retired officials may express critical views with some impunity. Li Rui, former secretary of Mao Zedong, speaking at the November 2002 Party Congress, suggested far-reaching political reforms, including the establishment of a constitutional court and an end to Party interference in the judiciary. But when his ideas were subsequently published in a Chinese newspaper, the Party expressed its displeasure by closing the paper. Li Rui remained unrepentant: "I am 86 years old. I don't care what people think of me."[13]

The development of new institutions and mechanisms permitting comparatively free-ranging intellectual discussion by a privileged group [see Section III(d) below] is among the greatest changes in China since the mid-1970s. From prominent universities in large urban areas to small local teachers colleges, academic centers have become relatively safe places for the expression and discussion of new ideas that were once considered radical or dangerous. Some schools now incorporate elements of constitutionalism and comparative law into their curricula.[14]

In addition to their traditional degree programs, many of these institutions have established research centers where scholars focus on and debate issues such as constitutional law, criminal jurisprudence, the legislative process, justice for the victims of environmental pollution, and public health. Law schools in China are also involved in this trend. An increasing number of law schools have established clinical legal education programs, and some support legal aid initiatives for the poor. In addition to academic institutions, policy institutes ("think tanks") have proliferated in China since the 1970s, with analysts and scholars studying and debating the issues and options in such areas as foreign policy, national security and military affairs, and social and economic development. Government agencies still control and fund these institutions to varying degrees, but the analysts working in them seem to operate under relatively few constraints. The Central Party School, which serves as the Communist Party's own "think tank," employs a permanent long-term research staff, many members of which also teach in the Party's mid-career development program for cadres destined for senior positions.

As discussed in Section V(a) below, China's nongovernmental sector is also growing, although at a modest rate, with continued requirements for government sponsorship, and without the advantages of clear legal and tax rules. While state regulation of "civil society" in China is still evolving, Commission staff members have observed a profusion of grassroots efforts to build service and advocacy groups at many levels. As Tiananmen Square leader Wang Dan has observed, real change may come first from this sector, propelled by citizen demand rather than initiative from above.

### Worsening Corruption in the Context of the CCP Monopoly on Power

Official corruption is likely to obstruct the efforts of reformers to realize the constitutional promise to "rule China according to law." Although the Communist Party claims to recognize the threat to

government legitimacy posed by corruption, the Party has yet to submit itself and all its members to equal justice under the same rules that apply to other Chinese citizens.[15]

Concern about official corruption continues to be strong today. Communist Party leaders recall that endemic corruption in the Kuomintang regime in the late 1940s fueled popular discontent and helped bring the Communist Party to power. The angry messages that flood Chinese Internet bulletin boards when the news media reports a corruption scandal reflects Chinese citizens' own perceptions of their government's inability or unwillingness to cope with domestic corruption.[16] Popular support for anticorruption campaigns is high, and the Chinese press routinely publishes accounts of successful campaigns and new initiatives against corruption.

The size of the problem, and the Chinese government's strategies for fighting it, can also be seen in the statistics published in the work reports of Party and state entities assigned to combat corruption. In March 2003, then-Procurator-General Han Zhubin[17] reported to the National People's Congress (NPC) that the procuratorate (China's prosecutorial agency) had investigated 207,103 cases involving embezzlement, bribery, and other crimes involving government officials.[18] The procuratorate also prosecuted 84,395 employees of state-owned enterprises for committing economic crimes and 554 government employees who had formed corrupt liaisons with criminal gangs.[19] At the end of March 2003, Chief Justice Xiao Yang boasted that the people's courts closed 99,306 cases of embezzlement and bribery and punished 83,308 corrupt officials in the same period.[20] In April, Minister of Supervision Li Zhilun noted that between 1997 and 2001, 860,000 corruption cases were filed against Communist Party members, resulting in 846,000 Party disciplinary actions and more than 137,000 Party expulsions.[21]

China's new political leaders have also addressed in public the problem of corruption. President Hu, for example, urged in early 2003 that former President Jiang Zemin's theory of the "Three Represents" should be used as a guide to strike hard against corruption.[22] And Party officials introduced measures in early 2003 proposing new rules that prohibit cadres from intervening in bids for construction projects, transferring land-use rights for commercial purposes, or profiting from real estate business activities.[23] Whether these measures are adopted and enforced remains to be seen, but the debate over their necessity illustrates the seriousness with which the Party takes the problems caused by official corruption.

To address new kinds of corrupt behavior resulting from the market-oriented economic reforms of the 1990s, the NPC added a substantial group of "economic and financial crimes" to the revised Criminal Law in 1997. These offenses include embezzlement,[24] misappropriation of public funds,[25] extortion,[26] bribery,[27] illegal gains,[28] smuggling,[29] and obstruction of tax collection and enforcement.[30] The investigation and enforcement of this new list of "white collar crimes" are duties of the Ministry of Supervision, the Supreme People's Procuratorate and the Ministry of Public Security.

The extensive apparatus designed to combat corruption suffers, however, from a fatal flaw: the lack of an institution with the distinct political authority and legal jurisdiction to police the Party

itself. While the structure laid out in the Party constitution seems to set up a system of local and provincial party congresses electing the members of the congresses higher up, in fact control of those in power at each level is in the hands of the next higher unit.[31] The whole structure is operated according to the principle of "democratic centralism,"[32] so that power and supervision flow from the top down rather than from the bottom up. As in the Soviet Union, this structure rules out effective outside supervision of Party activities.

For the Communist Party, the most important instrument for controlling corruption lies outside the criminal justice system. The Central Discipline and Inspection Commission (CDIC), which serves the Party's Central Committee, was created to check unacceptable behavior and breaches of "discipline" by Party members, including graft and corruption. The CDIC's Work Report for 2002 urges that "the Party should exercise self-discipline and be strict with its members,"[33] which reflects quite a different tone from that of the criminal anti-corruption provisions.

Party leaders seem to put great faith in the CDIC as the best method of overcoming corruption and restoring the faith of the Chinese people in the Party's rectitude. The CDIC's very existence, however, has resulted in an entrenched system of unequal justice. Government agencies may not charge Party members with criminal violations without obtaining prior approval from the relevant Party committee. Even if the CDIC or its local branch seeks to refer a case to the procuratorate for criminal prosecution, the local committee must approve. As a result, corruption laws are applied differently to Party cadres and other defendants. The case of Tao Siju, former Minister of Public Security, who was implicated in a high-profile smuggling case in Xiamen, provides an example of a case in which a high-level Party leader was treated with lenience while his co-conspirators and underlings received the draconian penalties prescribed in the 1997 revision of the Criminal Law.[34]

This case, and many others like it, suggest that the frenetic succession of state and Party anti-corruption campaigns cannot solve the problem of corruption in China. The Party's monopoly on power, its reluctance to open itself up to the scrutiny of a critical media, its inclination to try to hide high-level corruption that might undermine popular faith in the Party and thus social stability, and its refusal to submit to equal legal liability for crimes of corruption have created an environment in which corruption can thrive. These conditions have allowed the CDIC itself, designed as a tool to purify the party, to be used as a political weapon in intra-Party intrigues.

## III. Monitoring Compliance With Human Rights

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

## III(a) Rights of Criminal Suspects and Defendants

### FINDINGS

- The Chinese government continues to detain and imprison Chinese citizens for peacefully exercising their rights to freedom of expression, association, and belief in violation of China's own Constitution and laws, as well as international human rights norms and standards.
- Chinese prosecutors frequently charge persons engaged in such nonviolent conduct with crimes of endangering state security, including subversion or incitement to subvert state power, and often invoke "protection of state secrets" to deny defendants an open trial and access to legal counsel.
- Chinese authorities routinely ignore Chinese domestic law, or exploit loopholes in it, to detain suspects and defendants both before and after trial for periods greater than Chinese law and international human rights norms and standards permit.
- Spirited public discussion is taking place in China on a wide range of criminal justice issues, including such topics as the death penalty and whether China should adopt a bail system.

*China's Strike-Hard Anti-Crime Campaign*

Detailed information about the treatment of suspects and defendants at all stages of China's opaque criminal justice process (and administrative detention process) is limited. Nevertheless, some sense of the size of China's criminal justice system may be gleaned from government announcements about periodic anti-crime campaigns and government-published statistics.

China's current "strike hard" campaign against crime, launched in April 2001, continued unabated over the past year. "Strike hard" campaigns have been associated with harsh anti-crime tactics, violations of criminal procedure, and wrongful convictions.[35] In June 2003, President Hu Jintao praised the "remarkable successes" achieved in the campaign and stressed the importance of continued vigilance in cracking down on crime. From 1998 through the end of 2002, Chinese courts tried 2.83 million criminal cases, a 16 percent increase over the previous 5-year period, and sentenced 3.22 million defendants, an 18 percent increase. More than 800,000 defendants, or approximately 25 percent of the total, received penalties ranging from at least 5 years in prison to the death sentence.[36] According to official Chinese statistics, the conviction rate during this period was approximately 99 percent.[37]

In 2003, China's criminal code included 65 capital offenses, including financial crimes such as counterfeiting currency, embezzlement, and corruption.[38] The Chinese government does not disclose the number of death sentences carried out each year because it considers the number to be a state secret. Outside estimates of the number of executions in China range from 4,000 to more than 15,000.[39] Convicted criminals are often executed after summary trials with no opportunity for appeal.

*Political Crimes*

Although the Chinese Constitution recognizes the rights to freedom of assembly, expression, and association,[40] the Chinese gov-

ernment continues to routinely detain and arrest individuals for engaging in the nonviolent expression of these rights. Chinese law enforcement and security authorities often charge these individuals with crimes of "endangering state security," such as "subversion" or "incitement to subversion," or in the case of Tibetans and Uighurs, "inciting splittism." As detailed below, Chinese government authorities use these vague crimes to detain and charge individuals whose conduct they find threatening.[41] Chinese citizens who lead peaceful labor protests, form political parties, or post articles on the Internet that relate to political reform have been convicted of subversion.

According to Han Zhubin, the former head of the Supreme People's Procuratorate, the procuratorate has made a priority of cracking down on crimes threatening state security in recent years. From 1998 through the end of 2002, procurators approved the arrest of 3,402 criminal suspects and prosecuted 3,550 individuals on charges of crimes of threatening state security.[42] These statistics do not include political dissidents in administrative detention or psychiatric facilities and also exclude arrests and prosecutions for contravening laws and regulations against "heretical sects" (e.g., Falun Gong).[43] In 2001 and 2002, intermediate-level courts tried more than 1,600 people for endangering state security.[44] According to John Kamm of the Dui Hua Foundation, a U.S. NGO, "the great majority of cases of endangering state security for which we have information involve non-violent expression and association."[45]

In the most notable subversion cases over the past 12 months:

- A court in Liaoyang Province convicted Yao Fuxin and Xiao Yunliang of subversion in May 2003 for leading the Liaoyang labor protests in 2002, and sentenced them to 7 and 4 years of imprisonment, respectively. The two men were detained for approximately 10 months before trial. The Liaoning Higher People's Court rejected their appeals in mid-2003.
- A court in Chengdu, Sichuan Province, convicted Huang Qi, an Internet entrepreneur and activist, of incitement to subvert state power in May 2003 for his alleged involvement with politically sensitive postings on a Web site that he had developed, *www.6-4tianwang.com* (now defunct). Huang was sentenced to 5 years imprisonment, and his appeal is pending.
- Four members of a discussion group—Xu Wei, Jin Haike, Yang Zili, and Zhang Honghai—were detained in March 2001 and tried in September 2001 for subversion. They posted articles on the Internet expressing concern over current events and social conditions. In May 2003, a court found them guilty, sentencing Xu and Jin to 10 years in prison, and Yang and Zhang to 8 years each.
- A court found lawyer Zhao Changqing guilty of incitement to subvert state power and sentenced him to 5 years imprisonment in a secret trial in July 2003.[46] Zhao had been detained since November 2002 after he drafted an open letter to the 16th Party Congress that was signed by 192 activists from 17 provinces. The letter made several political demands, including the release of all political prisoners and a reassessment of the 1989 democracy movement. Public security officials had taken at least six other signatories of the letter into custody by the

end of 2002.[47] Human Rights in China, a U.S. NGO, has submitted a petition on Zhao's behalf to the UN Working Group on Arbitrary Detention.

• Authorities detained Liu Di, a student and Internet activist, in November 2002. In December, she was arrested under suspicion of incitement to subvert state power. Liu was accused of posting essays on the Internet criticizing government Internet restrictions and expressing sympathy for fellow Internet activist Huang Qi. Human Rights in China also has submitted a petition on her behalf to the UN Working Group on Arbitrary Detention.

Prosecutors also often charge political activists and members of religious and spiritual groups such as Falun Gong with nonpolitical crimes. Prosecutors have relied on charges of "disturbing the public order" to arrest and try thousands of adherents to unauthorized religions or spiritual movements. Fang Jue, a former official and prominent advocate of political reform, spent 4 years in prison for allegedly committing economic crimes. Labor leaders are often charged with "disturbing the public order" or "organizing an illegal procession."[48]

The Chinese government has also taken advantage of the global war on terrorism to persecute both Uighurs in northwestern China and political dissidents. In February 2003, Wang Bingzhang, a U.S. permanent resident and veteran pro-democracy activist, was convicted of "leading a terrorism organization" and "spying" and sentenced to life imprisonment. The Guangdong Higher People's Court rejected his appeal. In June 2003, the Chinese government accused two overseas dissidents of "violent terrorist activities" relating to an alleged plot to drop thousands of pro-democracy leaflets over Tiananmen Square and the Beijing airport via remote-controlled balloons.

Courts rarely acquit defendants charged with political crimes (or those charged with nonpolitical crimes to punish political activities). As John Kamm notes, "prosecutions in [endangering state security] cases almost always result in convictions, and parole and sentence reduction for prisoners convicted of endangering state security are rarely handed out."[49] The number of individuals serving time in Chinese prisons for political crimes is higher today than at any time since the end of 1992.[50]

Moreover, prospects are poor for criminal defendants who appeal their convictions. Lower courts often seek guidance from higher courts regarding legal issues in cases before them.[51] Consequently, many judgments made in the lower courts reflect the views of the appellate judges, making success at the appellate level much less likely. Defendants in politically sensitive cases have little hope of a favorable result on appeal.

*Arbitrary Detention in the Criminal Process*

According to official Chinese statistics on cases from 1998 through 2002, law enforcement authorities detained 308,182 people for periods longer than permitted under Chinese law.[52] In contravention of international human rights norms and standards, Chinese law does not give detained individuals the right to be brought promptly before a judge or to challenge the lawfulness of

their detention and arrest.[53] Recognizing that unlawful custodial detention has generated significant public anger in China, the Supreme People's Procuratorate recently established two hotlines and an e-mail address for public complaints about such unlawful detentions.[54] In addition, the National People's Congress (NPC) is reportedly reviewing proposals to strengthen laws designed to prevent extended detention.[55]

*Pre-trial detention*

Law enforcement authorities often hold criminal suspects and defendants in pre-trial detention for periods exceeding those permitted by both Chinese law and international human rights norms and standards. The International Covenant on Civil and Political Rights (ICCPR) provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody," yet pre-trial detention in China is the norm. Judges rarely grant petitions from defense lawyers seeking to "obtain a guarantor pending trial" (*qubao houshen*), a type of non-custodial detention.[56] Detainees routinely languish in detention centers for as long as a year, and sometimes longer, before a court formally charges and tries them.

The case of pro-democracy activist Yang Jianli, a U.S. permanent resident, provides an egregious recent example of unlawful pre-trial detention. In April 2002, Yang traveled to China using a borrowed passport and false identity documents to interview and lend support to striking workers in northeast China. Public security officials took Yang into custody and held him incommunicado for more than 14 months. Yang was indicted for illegal entry into China and espionage in July 2003. Chinese authorities have refused to permit family members to visit or correspond with him. Moreover, Chinese officials refused his lawyer's repeated requests to meet with him until July 2003, more than a year after his detention. In June 2003, the UN Working Group on Arbitrary Detention concluded that the Chinese government's detention of Yang was arbitrary and violated international law.[57] Yang was tried in secret on August 4. No verdict was issued after the 3-hour trial. Yang's brother and sister traveled to Beijing for the trial but were barred from the court.[58]

*Post-trial detention*

Authorities in China frequently detain defendants for long periods after trial while awaiting judgment, particularly in "sensitive cases." The PRC Criminal Procedure Law (CPL) provides that courts must pronounce the judgment no later than 2½ months after accepting a case of public prosecution.[59] Internet activist Huang Qi spent nearly 2 years in detention awaiting the court's verdict in his case. Tried for subversion in September 2001, Internet activists Xu Wei, Yang Zili, Jin Haike, and Zhang Honghai remained in custody for more than 18 months awaiting their verdicts.[60] Authorities in Liaoyang Province held labor protest leaders Yao Fuxin and Xiao Yunliang after their trial in contravention of the CPL. They were tried in mid-January 2003, but did not learn of their verdict until early May 2003. The Chinese government is currently holding criminal defense lawyer Zhang Jianzhong in violation of the CPL. Seven months after Zhang's trial in February

2003, the Beijing Intermediate People's Court has yet to render a verdict in the case.

*Disappearances*

Public security and law enforcement authorities periodically detain dissidents before significant public anniversaries or meetings, such as the 16th Party Congress held in November 2002. For example, the sister of democracy activist Fang Jue reported him missing in early November 2002, just before the Party Congress began. Authorities held Fang incommunicado, without charging him with a crime, until they expelled him from China in January 2003. Fang believes that he is the first Chinese citizen arrested and expelled from China without a trial or any other legal process.[61]

Democracy activist Wang Bingzhang was missing for 6 months before Chinese government authorities admitted in December 2002 that they had arrested him on terrorism and spying charges. Public security authorities apparently detained Wang and two other expatriate dissidents who were traveling with him for 6 months but denied any knowledge of their whereabouts. After being released, the two dissidents traveling with Wang claimed that Chinese agents abducted the three in Vietnam in June 2002 and forcibly took them into China, where they were held incommunicado. Wang subsequently was convicted of terrorism and espionage and is currently serving a life sentence. In July 2003, the UN Working Group on Arbitrary Detention declared that Wang's arrest and imprisonment violated international law.

*Administrative Detention*

Public security officials have the power to send individuals to "reeducation through labor" (*laojiao*) for terms of up to 3 years, with the possibility of a 1-year extension, subject to only minimal judicial checks that are rarely invoked in practice.[62] Police also have the power to commit drug users to detoxification centers and reeducation centers.[63]

Although routine, these forms of detention, which are carried out pursuant to administrative regulations, violate China's Constitution and law, as well as international human rights norms and standards that require prompt judicial review for detainees.[64] Such unfettered police power can have disastrous consequences for others besides the detainee. In mid-2003, a 3-year-old girl named Li Siyi died alone at home of thirst or starvation when public security officials sent her mother—her only caregiver—to a detoxification center to serve a 3-month sentence. The mother pleaded with the authorities to help find someone to care for her child, but her pleas went unheeded.[65]

Law enforcement authorities also have the power to commit individuals to psychiatric facilities called *ankang* ("Peace and Health"). Although *ankang* are intended for the custody and treatment of severely mentally ill offenders, they have also been used to detain individuals who are mentally sound, but have somehow run afoul of persons in power. The courts have no visible role in the process of committing offenders to *ankang*.[66] One of the three main types of individuals whom police commit to *ankang* are "political maniacs"

(*zhengzhi fengzi*), a category that includes those who "shout reactionary slogans, write reactionary banners and reactionary letters, make anti-government speeches in public, and express opinions on important domestic and international affairs."[67] This category can easily be applied to mentally stable individuals who simply express dissenting political views. Veteran human rights activist Wang Wanxing remains detained in an *ankang* center in Beijing for attempting in June 1992 to unfurl a banner in Tiananmen Square to commemorate the third anniversary of the 1989 Tiananmen crackdown.[68] In 2001, the UN Working Group on Arbitrary Detention concluded that the Chinese government had detained Wang arbitrarily after he peacefully expressed his right to freedom of opinion and expression.[69] Authorities have reportedly detained hundreds of Falun Gong practitioners, whom they have found to be suffering from "evil cult-induced mental disorders," in mental asylums and *ankang* facilities throughout the country.[70] According to some reports, thousands of Falun Gong practitioners have also been sentenced to re-education through labor.[71]

Until June 2003, public security officials also had the power to detain anyone lacking an identification card, temporary residence permit, or work permit under a 1982 regulation entitled "Measures for the Custody and Repatriation of Vagrant Beggars in Cities."[72] Exiled activist Tong Yi testified before a Commission roundtable in June 2003 that official mistreatment of detainees was rampant in the more than 800 custody and repatriation centers in China.[73] Controversy over the regulation boiled over in the spring of 2003, after the Shenzhen newspaper *Southern Metropolitan Daily* revealed that a university graduate student named Sun Zhigang had been mistakenly detained under the regulations and beaten to death while in custody.[74] In response to public pressure, which included legal petitions [see Section V(e)], the State Council repealed the custody and repatriation regulation and issued a new regulation entitled "Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities."[75] The new regulation authorizes the Ministry of Civil Affairs, rather than the Ministry of Public Security, to manage shelters that are intended to provide temporary assistance to indigent vagrants and beggars. The regulation outlaws forced detention and labor, extortion, and other abuses, and requires local governments to fund the shelters.[76] While many outside China welcome this positive reform, some have noted that the government designed the original 1982 vagrancy regulation as a "welfare" measure. The success of the new measure will depend on the effectiveness and thoroughness of its implementation.

*Access to Counsel*

Only about one in three criminal defendants in China has legal representation.[77] The Chinese government often deprives defendants in political cases of their legal right to counsel. The Yang Jianli case illustrates the lengths the Chinese authorities often will go to deny a criminal suspect the right to counsel. In violation of Chinese law, public security authorities never issued a written notification of detention to Yang's family. Because defense lawyers often require a detention notice before they will accept a case, this official misconduct prevented Yang's family from hiring counsel for

him until February 2003.[78] Law enforcement authorities repeatedly denied the requests of Yang's lawyer to see his client on the grounds that the case involved state secrets.[79] Under the CPL, if a case involves state secrets, a lawyer must obtain approval from the investigating authorities before meeting with his or her client.[80] Thus, invoking the state secrets provision provides officials with a convenient method to deny suspects and defendants access to legal counsel without independent review by a judge. In the case of Yang Jianli, the authorities acquiesced to an initial meeting between the lawyer and Yang just 1 month before the trial.

Chinese criminal defense attorneys may face intimidation, harassment, or prosecution if they offend procurators or other government authorities while vigorously defending a client in a sensitive case.[81] More than 100 lawyers have been prosecuted since 1997 under Article 306 of the criminal law for "perjury" or "evidence fabrication by lawyers."[82] Zhang Jianzhong, one of the best-known criminal defense lawyers in China, was detained on Article 306 charges, but prosecuted under Article 307, a general perjury and evidence fabrication provision.[83] This intimidation has had serious consequences for the criminal justice system and the rights of criminal defendants. As the Commission noted in a May 2003 topic paper, the percentage of criminal cases in which defendants have legal representation has declined in recent years, in part because lawyers consider criminal defense to be high-risk work.

Lawyers specializing in criminal defense cases are not the only advocates that the public security authorities persecute. Any lawyer who takes up a cause deemed "sensitive" runs the risk of official harassment and sometimes prosecution. In August 2003, Shanghai authorities formally tried Zheng Enchong, a lawyer who had been assisting displaced families affected by redevelopment projects, on charges of "stealing state secrets."[84] The verdict in Zheng's case had not been announced as of late September 2003. In July 2003, the International Commission of Jurists, an international lawyers group, wrote the Chinese government to condemn Zheng's arrest and detention as well as a 2001 government decision to revoke his law license.[85]

*Torture and Abuse in Custody*

Even though Chinese law prohibits the use of torture to obtain confessions, the use of electric shock, beatings, sleep deprivation, mental abuse, and other forms of torture remains widespread in China, chiefly during the investigative stage of the criminal process.[86] Senior Chinese officials recognize that torture and coerced confessions corrupt the criminal justice system and undermine legitimate law enforcement goals, but the government has taken few practical steps to address this chronic problem. Former detainees report numerous instances of torture and other forms of abuse in detention centers and prisons.[87] Internet activist Xu Wei, who was sentenced in May 2003 to 10 years in prison, complained to the court that he had been beaten in custody and tortured with electric shock to his genitals, causing long-term numbness in his lower body.[88] Longstanding allegations of rampant abuse and ill-treatment in custody and repatriation centers were confirmed in 2003

after the beating death of Sun Zhigang in a custody and repatriation center in Guangzhou.[89]

Since the official repression of the Falun Gong movement began in 1999, Falun Gong organizations outside China have reported several hundred deaths of practitioners in Chinese custody as a result of torture, abuse and neglect.[90] Zhao Ming, a Falun Gong practitioner, reported that he was punched, beaten with electric batons, and deprived of sleep while being held in a re-education through labor camp in Beijing from June 2000 to March 2002.[91] In March 2003, a court in Yangzhou city, Jiangsu Province, sentenced Charles Li, a U.S. citizen and Falun Gong practitioner, to 3 years in prison for attempting to sabotage state-controlled television broadcast facilities. Mr. Li admitted the basic facts as alleged by the prosecutor, but he denied that he had intended to do harm or commit sabotage. Credible reports suggest that prison authorities have subjected Mr. Li to both mental and physical abuse due to his Falun Gong beliefs.

Since the 1980s, numerous credible foreign press accounts have detailed the practice of state-sanctioned removal and sale of the internal organs of executed prisoners. For example, an article in the *Observer* in 2000 described how hundreds of foreign patients with kidney diseases traveled to dilapidated hospitals in Chongqing in hopes of a kidney transplant.[92] Sources quoted in the article said they were told explicitly that the kidneys would come from executed prisoners. A June 2000 article in the *International Herald Tribune* reported that the travel of patients from one Southeast Asian country to China resulted from a 1998 visit of doctors from a military hospital in Chongqing. The doctors spoke to potential transplant recipients about prices and procedures for going to China for a transplant.[93]

Reports on this topic are unusual in the Chinese press, but one exposé, "Where Did My Brother's Body Go," appeared in a small paper in Jiangxi Province in 2001, and subsequently also appeared on the Web site of the *People's Daily*.[94] The article described a woman's plan to sue the government for selling her brother's organs without his permission. The brother had been executed for criminal offenses. Yao Xiaohong, the author of the article, was subsequently fired for violating "editorial rules."[95] Many wondered how this article found its way onto the official paper's Web site, but an unnamed Chinese journalist explained to a Western journalist that "there are people who are against this practice. . . . Sometimes in China, things sneak through the cracks."[96] In August 2003, the Standing Committee of the Shenzhen People's Congress passed China's first regulations on organ transplants, but the new regulations do not specifically govern transplants of organs from executed prisoners.[97]

*Public Trials*

Although the Criminal Procedure Law requires that trials be held in public, courts frequently ignore this requirement, particularly in politically sensitive cases.[98] The CPL permits some exceptions, notably in cases involving state secrets. Wang Bingzhang's trial was conducted in secret under the state secrets exception. U.S. consular officials requested permission to attend Wang's ap-

peal hearing, but the court denied the request. The courts also tried Tibetans Tenzin Deleg and Lobsang Dondrub in secret, and restricted attendance at the trials of both Zhang Jianzhong and Zheng Enchong.[99] Yang Jianli's trial was held behind closed doors because it also purportedly involved state secrets. The Chinese government denied a request from the U.S. Embassy to observe the trial.[100]

Authorities put Yang Bin, a Dutch orchid tycoon born in China, on trial in Shenyang on fraud and bribery charges in early 2003. The court granted a handful of his relatives and employees permission to attend the hearing, but court officials ordered court employees to stay away.[101] The authorities permitted a Dutch consular official to attend the trial, apparently pursuant to a bilateral consular convention permitting consular officials to attend trials involving Dutch citizens.[102] Chinese courts permitted U.S. consular officials to attend the trial and appeal hearing in a recent case involving Charles Li. The courts likely cooperated because the U.S.-PRC Consular Convention requires both countries to permit consular officers to attend trials or other legal proceedings involving defendants who are nationals of the other country.[103]

*Public Discussion and Debate About Criminal Justice Issues*

Spirited debates about some criminal justice issues are taking place in China today. In December 2002, for example, the Institute of Law at the Chinese Academy of Social Sciences, the Danish Institute of Human Rights, and Xiangtan University jointly sponsored a conference on the death penalty at Xiangtan University in Hunan Province. Chinese scholars participating in the conference presented a range of positions and arguments, from limiting the death penalty to outright abolition.[104] According to a report of an interview with Tian Wenchang, among China's most well-known criminal defense lawyers, arguments in favor of reducing the number of executions have also been heard in government circles.[105] The newspaper *Southern Weekend* published an in-depth report about the conference, thereby moving the debate about capital punishment from academic circles into the public domain. The issue was reportedly hotly debated in Internet chat rooms.[106]

In March 2003, the Great Britain-China Center, the Renmin University Law School Criminal Procedure Center, and the Dongcheng District Procuratorate of Beijing jointly sponsored a conference on bail reform at which more than 100 participants discussed the similarities and differences between the British system of bail and China's practice of "obtaining a guarantor pending trial" (*qubao houshen*). Participants included not only prominent criminal procedure scholars and well-known criminal defense lawyers but also officials from the Supreme People's Procuratorate and lower-level procuratorates, the Supreme People's Court, the Legislative Affairs Commission of the NPC Standing Committee, and the State Council's Office of Legislative Affairs.[107] According to press accounts, the conference began by examining the problem of illegal prolonged detention as well as the high rate of pre-trial detention in China.[108]

In September 2003, the American Bar Association Asia Law Initiative, in cooperation with the All China Lawyers Association,

sponsored a Beijing conference on the role of criminal defense lawyers. The conference included lawyers, academic experts, judges, and law enforcement officials from both the United States and China, and addressed a range of topics related to criminal defense.

## III(b) Protection of Internationally-Recognized Labor Rights

### FINDINGS

- China's poor record in protecting the internationally-recognized rights of its own workers has not changed significantly in the past year.
- Workplace health and safety is poor in many Chinese workplaces. Fatalities among mine workers are especially high. Although China now has better laws to improve health and safety standards, government authorities lack the will or capacity to enforce the law.
- Restrictions on the ability of Chinese workers to form and join independent trade unions limit workers' ability to assert not only their internationally recognized labor rights but also their rights under China's Constitution and laws.

*Overview*

The Commission's 2002 Annual Report found working conditions and respect for basic, internationally recognized worker rights in China to be well below international norms in numerous respects. It also found that working conditions and respect for worker rights in China were frequently in violation of China's own laws, especially those governing wages and overtime pay, work hours and overtime hours, and workplace health and safety. Over the last year, these conditions have remained largely unchanged.

The Chinese government continues to deny its citizens the right to freely organize and to bargain collectively and continues to imprison labor leaders and actively suppress efforts of workers to represent their own interests. Worker unrest continued in 2003, often in association with the closing of state-owned enterprises. Although no reports reached Western news media about massive worker demonstrations of the scale that occurred in northeast China in 2002, numerous reports in 2003 described smaller-scale protests by workers whose rights were ignored by management at collapsing state-owned companies. The government suppressed these protests with the same techniques used in northeast China in 2002. In addition, the Chinese government continues state-sanctioned discrimination against migrant workers and practices forced and prison labor. Child labor continues to be a significant problem in China.

*International Labor Organization*

Through the International Labor Organization (ILO), of which China is a member, most nations of the world have acknowledged the existence of a basic floor of international standards for the rights of workers—the rights to associate and to bargain collectively, elimination of forced labor, effective abolition of child labor, and nondiscrimination. The ILO's Declaration on Fundamental

Principles and Rights at Work re-affirms the commitment of ILO Members to those basic rights.

Guidance on the full scope of the rights and principles enumerated in the Declaration is provided by the ILO's eight core conventions.[109] Many countries, including the United States, have not ratified all of the ILO's core conventions, but the Declaration states, "even if they have not ratified the [ILO] Conventions . . . [ILO Members] have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions."

With the exception of the ILO provisions relating to freedom of association and collective bargaining, Chinese labor law generally incorporates the basic obligations from the ILO's eight core conventions. The Chinese government's failure to enforce existing laws, however, makes this incorporation largely irrelevant when considering actual working conditions in China.

*Freedom of Association and Collective Bargaining*

The Chinese government denies its citizens the freedom to associate and forbids them from forming independent trade unions. The government has made no progress in the past year toward respecting this right, and continues to use the All-China Federation of Trade Unions (ACFTU) as a tool of Communist Party control of union activity. China continues the practice of imprisoning labor leaders as a means of repressing independent labor activity.

The inability of Chinese workers to organize independent labor unions prevents them from defending their own interests. For working conditions in China to improve significantly, workers require greater freedom of association in law and in practice. In the short term, however, greater awareness by Chinese workers of the limited rights already available to them could yield some workplace improvements.

Workers and labor experts in China and elsewhere recognize that the ACFTU, the only legal labor organization in China, is ineffective as a voice for worker rights. Article 11 of China's Trade Union Law states that all basic level unions must be approved by the next higher level of union, ensuring state control of any locally-formed worker organizations. In testimony at a July 2003 Commission roundtable, Phil Fishman of the AFL–CIO stated that ". . . institutionally the ACFTU is a creature of the Chinese state and Communist Party and is obligated by its own rules to act as a transmission belt for Party and state policy."[110]

Chinese workers are generally unaware of the limited rights to organize already available to them. These rights are contained in the Trade Union Law but are implicit rather than explicit. The law requires all worker organizations to affiliate with the ACFTU, but does not state explicitly that the ACFTU must be involved in the establishment of new unions.[111] This allows, in theory, for workers to organize a union chapter and then seek affiliation. This has not, however, happened to date, and would likely be very difficult in practice.

Han Dongfang, Director of the *China Labour Bulletin,* a Hong Kong-based publication, testified to a November 2002 Commission roundtable that government efforts to improve workplace safety had been ineffective due to a lack of worker involvement. Han added that a new workplace safety law (effective November 1, 2002) calls for workers to be involved in workplace safety, which suggests the possibility of workers organizing for specific purposes.[112]

Similarly, at an April 2003 Commission roundtable, Doug Cahn, Vice President for Human Rights Programs at Reebok International, Ltd., described Reebok-facilitated elections for worker representatives at two Chinese factories.[113] Cahn described the elections as free, open and fair, and consonant with Chinese labor law. These elections suggest that existing Chinese law may be sufficiently flexible to allow workers to select their own leaders in some circumstances, notwithstanding legal limits on the creation of independent labor unions. Cahn also indicated that it is too early to predict whether the Reebok elections will affect the workers' ability to assert their rights in the future. Without training for elected leaders on how to represent workers' rights and claims, these organizations are unlikely to drive significant change. Moreover, given the practical limitations on establishing independent worker organizations, the elections sponsored by Reebok may be seen as a small but positive step forward, but they do not represent a significant advancement of freedom of association in China. Without independent labor unions and the ability of workers to organize freely and represent themselves, collective bargaining cannot truly be said to exist in China.

Legal action against workers who attempted to establish independent worker organizations continued over the past year. In May 2003, a court in Liaoyang, Liaoning Province convicted labor protest leaders Yao Fuxin and Xiao Yunliang of subversion and sentenced them to 4 and 7 years in prison respectively. The pair led peaceful protests in Liaoyang during March 2002 and were detained before trial for almost a year. In June 2003, their appeal of the convictions was denied. Neither family was notified of the appeal proceedings, nor were their lawyers present.

*Working Conditions*

Over the past year, generally poor working conditions in Chinese factories have not changed significantly. Amidst rising concern in the United States about the loss of U.S. manufacturing jobs to China, the ability of Chinese employers to avoid the expense of meeting international labor standards has continued to be a factor in China's competitive advantage.

*Workplace Health and Safety*

Poor to non-existent enforcement of existing regulations, rather than a lack of adequate legal provisions, is the determining factor behind China's unsafe workplaces. Mines continued to be the most hazardous of China's many dangerous workplaces. In a meeting with officials of the Department of Labor's International Labor Affairs Bureau (ILAB) in August 2003, officials of China's State Administration for Work Safety indicated that 6,995 Chinese miners

died on the job in 2002. At a Commission roundtable held in November 2002, Han Dongfang of the *China Labour Bulletin* cited Hong Kong press reports that 100,000 Chinese workers died in Chinese workplaces between January and September 2002.[114]

Government bodies do not enforce existing safety regulations in most Chinese workplaces, meaning that many Chinese-made products purchased in the United States are produced under conditions that would be unacceptable to most Americans. Discussing a new health and safety law and the chemical handling directives that went into effect in November 2002, labor scholar Trini Leung told a Commission roundtable that, "This law is the culmination of over a decade of efforts and resources . . . [and] 1 week into its effective date, it's not too early to announce that this statute will, just like hundreds of other laws in China . . . become another meaningless document sitting on the shelf while violations go from bad to worse." [115]

*Wages and Working Hours*

In much of China, particularly in the export-producing areas of southern China, workers continue to work hours well in excess of legal limits, and for wages that are frequently not calculated according to law. According to Chinese labor law, the regular workweek is limited to 8 hours per day, 5 days per week (40 hours).[116] Overtime is limited to 3 hours per day and 36 hours per month unless special permission is sought and certain conditions met. Overtime on regular workdays is to be paid at 150 percent of base pay (time and a half), 200 percent on weekends (double time), and 300 percent on national holidays (triple time).[117] Numerous conversations between Commission staff and Chinese, Hong Kong and U.S. NGOs involved with labor issues, as well as with U.S. and European companies, indicate general agreement that workers in China are frequently required to work in excess of legally allowed overtime, and that overtime pay is frequently calculated at the same rate as work performed during regular work hours, rather than at mandated premium rates.

Codes of conduct adopted by most U.S. companies require workweeks not to exceed 60 hours per week, including overtime. Although this 60-hour workweek exceeds China's legal limits, many companies report significant difficulty in persuading their suppliers to adhere even to this standard.

*Prison and Forced Labor*

Working conditions in many privately owned Chinese factories are such that workers cannot refuse overtime, but observers disagree whether this practice meets the definition of forced labor. However, forced labor in other forms is common in China. Called *laojiao* and *laogai* in Chinese (depending whether the prisoner is detained for "re-education through labor" by administrative means without trial or forced to engage in labor while serving a formal criminal sentence), forced labor is an integral part of China's prison system. As discussed in Section III(a), public security authorities have the power to place detainees in "re-education through labor" facilities without trial. Although *laogai* has been officially purged from the Chinese criminal code, China's criminal justice system

continues to force convicted offenders to work in prison facilities. Unlike U.S. prisoners, Chinese prison laborers often cannot refuse to work, and work under conditions that violate China's own law and international labor standards.

Section 307 of the Tariff Act of 1930 (10 U.S.C. § 1307) prohibits the import of goods made by prisoners into the United States. To promote effective enforcement of Section 307, the United States-China Relations Act of 2000 created a "Task Force on the Prohibition of Importation of Products of Forced or Prison Labor from the People's Republic of China." To date, the Task Force has been concerned principally with implementation of a 1992 U.S.-China Memorandum of Understanding, which allows U.S. Customs to request permission to visit Chinese prisons suspected of producing goods for the U.S. market. A 1994 bilateral Statement of Cooperation clarified procedures to be followed in requesting and making these inspections.

After 1994, Chinese authorities stopped agreeing to inspection requests from U.S. Customs. However, the Chinese government agreed in mid-2002 to cooperate in clearing the backlog of old requests and allowed a visit to a site suspected of producing goods for the U.S. market in the mid-1990s. Although as a result of the lack of Chinese cooperation, several years had elapsed since the original allegation was made, U.S. Customs inspectors found no evidence that the facility had been producing for export to the United States, or that it had been used recently for production of any kind. Currently, the U.S. government counts a total of 18 outstanding requests for prison site visits, most of which were filed between 1995 and 2002. The integration of the U.S. Customs Service into the new Department of Homeland Security delayed efforts to continue the inspections process. The Task Force was not reconstituted until mid-2003.

Goods made in Chinese prisons probably do not constitute a large percentage of overall Chinese imports into the United States. Whatever the scale of the problem, the model of enforcement set out by the 1992 Memorandum of Understanding is inadequate to address the questions raised by complaints. Enforcement of Section 307 currently depends on private individuals or organizations lodging complaints with U.S. Customs. A producer's competitors have the greatest motivation to lodge complaints, but they often lack credible evidence to support their allegations.

*State-Owned Enterprises*

The collapse of China's state-owned enterprises continued during late 2002 and 2003. Between 1998 and 2002, an average of more than 6,000 companies in China went bankrupt each year, most of them state-owned enterprises.[118] Shrinking employment rolls affect women disproportionately since managers tend to assume that unemployed women will be supported by their husbands, and therefore lay them off first. Significant worker unrest has grown out of the mass dismissals following these bankruptcies, but few details of these protests exist outside China. As a political party nominally constituted to represent and advance the interests of peasants and workers, the Communist Party views worker unrest with particular alarm.

*Child Labor*

In the past, Chinese authorities generally denied that child labor was a significant problem. News media and private sources reported comparatively few incidents of workplace injury or fatalities involving children in 2003, although reliable information about the severity of the problem is difficult to obtain.

New Chinese regulations on the employment of children took effect on December 1, 2002. The employment of children under the age of 16 is banned, with fines of up to 10,000 yuan for violations. The new regulations also require employers to check workers' identification cards, which may help prevent underage workers from being inadvertently hired in some factories.[119] While the new regulations do not provide any significant or fundamental change in China's approach to preventing child labor, when combined with China's ratification on August 8, 2002 of ILO Convention 182 on the Elimination of the Worst Forms of Child Labor,[120] the new regulations may indicate that the problem of child labor is starting to be considered at the national level. However, like other labor problems in China, recognition at the national level rarely translates into full, or even partial, implementation at the local level.

## III(c) Freedom of Religion

### FINDINGS

- Intolerance of free religious expression continues in China. Scores of Christian, Muslim and Tibetan Buddhist worshippers were arrested or detained in 2003. Government authorities continue to repress other spiritual groups, including the Falun Gong spiritual movement, chiefly through the use of anti-cult laws.
- Harassment and repression of Catholics practicing their faith outside the officially sanctioned church continue. No progress has been made in normalizing relations between the Holy See and the Chinese government.
- Uighur Muslims in Xinjiang continue to suffer harsh repression and restrictions on religious activity, exacerbated by ongoing "anti-splittism" and "counter-terrorism" campaigns in the region.
- In Tibetan areas, official controls continue to limit the practice of Tibetan Buddhism. Tibetan lamas are perceived by government authorities to wield significant influence in Tibetan communities and can become the targets of government crackdowns. Despite the central role of the Dalai Lama in Tibetan Buddhism, Tibetans caught with images of him or copies of his religious teachings may face abusive treatment, including arrest.

*Overview*

China's Constitution guarantees protection of "normal religious activity."[121] Despite this guarantee, the state's requirement that religion be congruent with patriotism has led to widespread repression of religion. In Tibetan and Uighur areas, where separatist sentiment often is interwoven with religious conviction, state repression of religion is particularly harsh. Chinese authorities do not clearly distinguish between the peaceful expression of sepa-

ratist sentiment and terrorism, creating additional pressures on religious practices that do not embrace Chinese nationalism.

The Chinese government allows religious practitioners to meet only in government-approved mosques, churches, monasteries, and temples. Authorities oversee the selection of religious leaders and monitor religious education. The Chinese government often labels unregistered religious groups and movements as "cults," and those who engage in such activities can be arrested on charges of "disturbing social order." In many cases, local authorities enforce regulations that are more restrictive than those enforced at the national level. Nevertheless, despite the risks, a growing number of religious practitioners choose to worship outside the government-controlled religious framework.

Religious freedom in China was a central topic during discussions between President George W. Bush and then-President of China Jiang Zemin in Crawford, Texas in October 2002. Following that meeting, President Bush told reporters that he had reminded President Jiang of "the importance of China freeing prisoners of conscience" and "giving fair treatment to peoples of faith." President Bush also raised "the importance of respecting human rights in Tibet and encouraged more dialogue with Tibetan leaders." [122] In March, the U.S. State Department included China on a list of six countries of particular concern for severe violations of religious freedom,[123] a finding supported by the U.S. Commission on International Religious Freedom.[124]

*Religious Freedom for China's Protestant Christians*

Over the past year, human rights groups have reported the arrest or detention of scores of house church participants across China. In June, Human Rights in China (HRIC), a U.S. human rights NGO, reported the arrest of 12 members of a house church in Funing County, Yunnan Province.[125] According to the report, eight face imprisonment on charges of "engaging in feudalistic superstition." HRIC called the police action in Funing and other towns in Yunnan "the most wide-scale crackdown on house churches carried out in China this year." [126]

Relatives of Pastor Gong Shengliang received information in May 2003 from a source inside Hubei Province's Jinzhou prison that the founder of the outlawed South China Church is suffering from serious medical problems. The Chinese government has denied these reports. Mr. Gong is serving a life sentence on charges of establishing a cult organization, raping women, and violating social order. His supporters dispute these charges. Mr. Gong was given a death sentence in 2001, but after an international outcry, his punishment was reduced to life in prison. The South China Church numbers some 50,000 members in Hubei and other provinces.[127]

China's State Administration for Religious Affairs (SARA), the government entity that regulates religion, recently estimated that China now has 25 million Protestants.[128] But Western researchers estimate that 50 million or more Protestants worship in unauthorized churches.[129]

*Religious Freedom for China's Catholics and China-Holy See Relations*

The Vatican has reported no progress over the past year in efforts to normalize relations with Beijing. According to a June 2003 report by the Union of Catholic Asian News (UCAN), Cardinal Angelo Sodano, the Vatican secretary of state, described relations between the Holy See and China as being "at a standstill." He said, "the Christian community in China lives in the midst of difficulties—one goes into prison, another comes out," but "the seminaries are full." [130]

China broke diplomatic relations with the Holy See in 1951, but Vatican contacts with China continued until the late 1950s. For some years before 2000, the Holy See engaged in indirect but steady contacts with China. However, relations soured in 2000, after China hastily ordained five bishops in Beijing without papal approval. China ended all dialogue with the Holy See after Pope John Paul canonized 120 Chinese martyrs on China's National Day, October 1, 2000.

ZENIT, a private Catholic news agency, reported in May 2003 that Chinese authorities had promulgated three official documents that formalize stricter control over the lives of Catholics throughout China.[131] The Vatican says the rules contained in the documents aim to increase the government-run Catholic Patriotic Association's control over the Chinese Catholic Church. According to ZENIT, Ye Xiaowen, director of the SARA, justified the three documents by saying that they "filled the void" in the "democratic" management of the Church. The Vatican has warned that the new rules might trigger "a new wave of persecutions." [132]

Catholics in China number about 12 million, though the government only recognizes 4 million to 5 million. There are 117 Catholic bishops, only 70 of whom are recognized by state authorities. The government recognizes 2,600 priests. Another 1,000 are not recognized. Bishops associated with the Catholic Patriotic Association have ordained 1,500 priests over the past 20 years.[133]

In February 2003, the Cardinal Kung Foundation, a U.S. NGO, published a list of two bishops and nine priests of the Baoding Diocese who are either missing or detained, including Bishop James Su Zhimin, 70, who local security authorities reportedly arrested in October 1997. Nationwide, the Vatican says that more than 50 underground Chinese Catholic bishops or priests have been detained or live under house arrest or police surveillance. Deputy Assistant Secretary of State Randall G. Schriver testified before a Commission Hearing in July 2003 that the U.S. government is concerned about the cases of Bishop Su and other Chinese Catholic leaders. "We continue to urge the Chinese government to release these detainees, and to resume its dialogue with the Vatican, in hopes that China will acknowledge Rome's unique role in the spiritual lives of all Catholics around the world, including in China." [134]

*Religious Freedom for Tibetan Buddhists*

In Tibetan areas, numerous official controls continue to limit the practice of Tibetan Buddhism. Authorities often characterize the religion as backward and its practice as a burden on society. Chinese authorities argue that the Dalai Lama is a hostile political figure, not a legitimate religious leader, and that programs counteracting

veneration of him do not violate religious freedom. Chinese authorities attempt systematically to repress Tibetan devotion to the Dalai Lama, with little success. Police confiscate printed, audio, and video material featuring the Dalai Lama's religious teachings and speeches, and those possessing such material sometimes face abusive treatment, including beating and detention.

Political education sessions require that monks and nuns denounce the Dalai Lama and Gedun Choekyi Nyima, the boy recognized by the Dalai Lama in 1995 as the reincarnation of the Panchen Lama, Tibet's second-ranking spiritual leader. Chinese authorities took the boy, then age six, and his parents into custody in 1995 and installed another boy, Gyaltsen Norbu, as the reincarnated Panchen Lama several months later. Gedun Choekyi Nyima and his parents have been held incommunicado since that time. Chinese authorities report that the boy is living a "normal" life, but Chinese authorities have refused requests to allow independent observers to verify this claim. The U.S. government has repeatedly urged China to end restrictions on Gedun Choekyi Nyima and his family, and to allow international representatives to visit them. Meanwhile, Gyaltsen Norbu's appointment continues to stir widespread resentment among Tibetans. His visits to important religious sites such as Tashilhunpo Monastery in the Tibet Autonomous Region, the historic seat of the Panchen Lamas, and Kumbum Monastery in Qinghai Province, are infrequent, brief, and conducted under tight security.[135]

Authorities have intensified a crackdown on religious activity and association in Kardze (Chinese: *Ganzi*) Tibetan Autonomous Prefecture, Sichuan Province. A Commission topic paper released in February 2003 discussed the case of Tenzin Deleg, a Buddhist teacher who was sentenced to death with a 2-year suspension for conspiracy in a series of explosions in Chengdu that resulted in one death.[136] He has consistently denied involvement, and Chinese authorities have not made public any evidence linking him to the blasts. Tibetan reports reaching the West say he was singled out for persecution because of his stature in the local community and his devotion to the Dalai Lama. Lobsang Dondrub was executed in January for his alleged involvement in the explosions. In February 2002, a prayer ceremony in a residential courtyard in Kardze County for the long life of the Dalai Lama resulted in a wave of detentions, with at least seven sentenced to administrative detention. In addition, Sonam Phuntsog, another influential Buddhist teacher, was arrested in 1999 and sentenced to 5 years in prison for allegedly advocating separatism.[137] No details about evidence or charges against him have been made public by Chinese authorities.

*Religious Freedom for Uighur Muslims in Xinjiang*

According to official estimates, China had some 20 million Muslims, 35,000 registered places of Islamic worship, and over 45,000 imams across China in 2002.[138] The Chinese government takes some measures to show consideration for the religious beliefs and associated cultural practices of China's Muslims. Most notably, the government permits and sometimes subsidizes Muslims to make the Hajj to Mecca. According to official Chinese figures, 5,000 Chinese Muslims made the Hajj in 1998. In the subsequent 5 years,

however, independent reports estimated that far fewer Chinese Muslims made the Hajj. The China Islamic Association reports that 2,000 Chinese Muslims took part in the Hajj with official delegations in 2001.[139] Other Muslims may not have been counted in official statistics if they made the Hajj through neighboring countries such as Pakistan. Cost and passport issuance restrictions often deter Chinese Muslims who wish to make the trip to Mecca. Unofficial sources say that most Chinese Muslims who make the Hajj are from the Hui, another one of China's minority groups, rather than Uighurs. Unofficial accounts also suggest that Muslims who are allowed to make the Hajj and who are subsidized for it generally must be loyal government officials, active or retired.

Despite permitting some Muslims to make the Hajj, the Chinese government continues to limit the religious freedom of Xinjiang's Muslim Uighurs, who constitute nearly half of China's Muslim population. Anti-separatism and anti-terrorism crackdowns persist, contributing to the harsh repression of Uighur religious activities in the region. These campaigns extend to stanching "religious extremism" and "illegal religious activities." While the government justifies its crackdowns on religious activities under the rubric of fighting "splittism" or "terrorism," many observers believe that the Chinese government is using the global war against terrorism as a pretext to suppress non-violent Uighur religious activity in Xinjiang.

In 2002, Party and government officials in the Xinjiang Uighur Autonomous Region emphasized more stringent supervision of religious affairs. In Yili Prefecture, authorities ordered increased scrutiny of Muslim religious ceremonies such as weddings, funerals, circumcisions, and house moving rituals.[140] Xinjiang authorities launched a campaign to dissuade Muslims from wearing religious attire such as veils and discouraged religious marriage ceremonies. Government officials also continued to restrict mosque building in Xinjiang.

The government continues to strictly regulate religious education and participation in religious activities by young people, preventing parents from exercising full freedom over the religious aspects of their childrens' upbringing. Authorities prohibit Uighurs under the age of 18 from entering mosques in Xinjiang. Signs reportedly posted at the entrances of most mosques announce the ban. University students found worshipping in mosques or participating in other religious activities face expulsion from their schools. Officials also limit participation in religious activities by teachers and professors. The government restricts religious teaching and periodically censors sermons given by imams. Authorities closely monitor the activities of imams, and local branches of the state-controlled Islamic Association of China must approve the appointment of imams. Government authorities continued to conduct mandatory political study sessions for imams and religious personnel during 2003.

While government policy limits the religious activities of Xinjiang's Uighur population, Hui Muslims throughout China enjoy greater religious freedom than Uighur Muslims. Mosques in areas with sizable Hui populations reportedly lack the signs common in Uighur areas prohibiting those under the age of 18 from entering mosques. Furthermore, reports indicate considerable mosque con-

struction and renovation in predominantly Hui areas. Observers concede that the Hui appear to enjoy a greater degree of religious freedom than their Uighur Muslim coreligionists, to whom the Chinese government often attributes separatist and terrorist sentiments and actions.

*Spiritual Movements*

The crackdown on the Falun Gong spiritual movement continues, although the vitriolic media campaign that characterized the government's anti-Falun Gong efforts between 1999 and 2001 has subsided. Nevertheless, a June 2003 commentary in the state-run newspaper *People's Daily* accused the group of deliberately trying to spread the SARS virus.[141] Chinese authorities continue to confine Falun Gong practitioners in prisons or psychiatric institutions for long periods. Police reportedly torture some practitioners in an effort to coerce them into renouncing their beliefs.

## III(d) Freedom of Expression

### FINDINGS

- China's citizens have access to a growing variety of government-controlled information sources. Many of these publications are becoming increasingly aggressive in reporting on matters of public concern, despite the government's continued practice of shutting down publications that criticize the Communist Party or the central government and firing editors who fail to follow the dictates of the Communist Party's Central Propaganda Department.
- At the risk of imprisonment, Chinese citizens are increasingly accessing media not controlled by the government and engaging in unauthorized publishing.
- Chinese authorities are considering a plan to privatize many government publications. If implemented, this reform could result in greater editorial independence for China's domestic media. However, the recent issuance of a list of forbidden media topics demonstrates that, at present, complete editorial control over all political news reporting continues to be a top priority for the government.
- China's government continues to employ an extensive system of administrative prior restraints to prevent its citizens from exercising their constitutional right to freedom of expression. The SARS crisis did not result in any meaningful reform of the prior restraint system.
- China's government continues to develop and implement laws and technologies to prevent its citizens from accessing information from sources it cannot control, including shortwave and satellite broadcasts, foreign Web sites, e-mail, and mobile phone text messages.
- Chinese authorities continue to use vague, selectively enforced national security laws to punish their critics and encourage self-censorship.

*Overview*

Under the Chinese Constitution, Chinese citizens enjoy freedom of speech and freedom of the press, in practice the government continues to suppress freedom of expression in a manner that directly contravenes not only the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, but also the Chinese Constitution.[142] In China, only those with government authorization may legally gather news[143] or engage in publishing,[144] and the government continues to detain and imprison individuals who publish criticisms of the Communist Party, the central government, or their policies. Chinese authorities continue to cite Karl Marx and Mao Zedong to justify these repressive policies as necessary and inevitable extensions of Communist ideology, while ignoring the writings of these individuals that criticized similar policies when their own publications were the targets of censorship.[145]

Despite barriers to access to the means of publication and the dangers inherent in publishing sensitive information, members of China's "free-speech elite" are able to express concerns and criticism regarding the government with less fear of punishment than the average Chinese citizen. This group is composed of senior government and Communist Party leaders, those with the patronage of such leaders and, to a lesser extent, academics. The operative principle could be expressed as follows: the degree to which the government is willing to tolerate criticism of its leaders and policies is contingent upon the size and nature of the audience and the ideological credentials of the speaker. For example, Chinese and Western academics convened a conference on the death penalty in January 2003, and some months later, a spirited debate ensued in the Chinese media. Centered on the review and approval process for death penalty cases, the debate in the press featured analytical articles by legal experts from Chinese universities.[146] However, the Chinese government tolerates such debates only as long as they occur in private discussions, closed academic conferences, government-authorized publishing outlets, or other forums where the government does not feel there is any threat of public participation that it cannot control.[147] Authorities continue to silence debates if they begin to take on a life of their own, and refuse to recognize the right of the average Chinese citizens to publish their opinions on political issues in forums that are free from government censorship.[148]

Certain groups and individuals who are unable to obtain government authorization to publish manage to put out books and periodicals on a small scale, but this is possible only through subterfuge and violating Chinese law (for example, by stamping publications as "not for external distribution," or by purchasing book numbers that licensed publishers illegally offer for sale). These private publishers are therefore subject to the threat of closure and arrest each time they exercise their right to freedom of expression.

The spread of the Internet and the introduction of capitalist market forces to the publishing industry have resulted in more sources of information becoming available to the citizens of China. While still state-controlled, China's media are becoming increasingly vigorous. Chinese authorities have also announced that they are

considering privatizing most government publications.[149] Depending on how it is implemented, this proposal could represent a first step toward relative editorial independence for China's domestic media. At present, however, the government's practices of replacing editorial and managerial personnel, shutting down entire publications, imprisoning journalists and writers for expressing political opinions, and blocking access to information it does not control demonstrates that editorial control over all politically sensitive reporting remains a top priority, and that it will not tolerate articles critical of the local government unless the author portrays the Communist Party and the central government in a generally positive light.[150]

Chinese authorities employ three tools to hinder the free flow of information and suppress freedom of expression: prior restraints, monitoring and jamming of communications, and selective enforcement of broad and vague national security laws. The past year has seen Chinese authorities make extensive use of each of these tools.

*Prior Restraints*

The term "prior restraint" refers to a system in which the government may deny a person the use of a forum for expression in advance of the actual expression. Such systems are rare in representative democracies with respect to print media and the Internet. Before the Chinese Communist Party came to power its official newspaper described prior restraints on publishing as "fascist."[151] Today, however, Chinese authorities employ extensive prior restraints over print and Internet media.

Rulers have recognized for centuries that prior restraints are effective in silencing dissent.[152] One of the most effective forms of prior restraint, and the form preferred by Chinese authorities, is to allow only authorized persons to publish.[153] The requirement of obtaining and maintaining authorization creates barriers to entry, and means that Chinese authorities control who gets to speak (by refusing to grant authorization) and keep their fingers on an "on-off switch" with respect to an entire publication (by maintaining the ability to revoke authorization and silence the speaker completely).

Chinese law states that the government directly controls the amount, structure, distribution, and coordination of all publishing in the country, and that only authorized government-sponsored entities may engage in publishing:

- No one may publish a newspaper, periodical, book, or any other publication without government authorization and sponsorship;
- Periodicals and Web sites may only publish news acquired from government-authorized sources;
- No one may engage in the publication, production, copying, importing, wholesale, retail, or renting of audio-visual products without authorization;
- No one may operate a facility to print or copy publications without authorization;
- No one may import publications without authorization;
- No one may exhibit imported publications without authorization; and

- No one may publish, produce, import, or distribute magnetic, optical, or electronic media containing drawings, writing, sound, or pictures without authorization.[154]

The Communist Party's Central Propaganda Department sends out regular bulletins to editors informing them which topics are forbidden.[155] For example, in July, *Xinhua* reported that Shenzhen's Administration for Press and Publication had issued "Measures for Publishing Orientation Warning Work" specifying how authorities may require editors and managers of publications exhibiting inappropriate political orientation to undergo "critical education" and possibly reassignment.[156] More recently, in August reports emerged that Chinese authorities had issued a list of "three topics that cannot be mentioned" (*san bu neng ti*) to media outlets and academic institutions prohibiting the publication of articles on, or academic discussion of, constitutional amendments, political reform, and the Tiananmen Square crackdown.[157]

Media outlets that fail to obey mandates like the aforementioned examples are subject to closure, and their editors, managers, and reporters to dismissal:

- In November 2002, Jin Minhua, an editor with *Shenzhen Zhoukan,* was fired at the behest of the Communist Party's Central Propaganda Department after the paper published an article depicting Hu Jintao as a puppet of Jiang Zemin.[158]
- In March 2003, Chinese authorities suspended publication of the *21st Century World Herald* after it published an article referring to democracy in China as "fake" democracy.[159]
- In April 2003, Chinese authorities replaced the editor-in-chief of the politically cutting-edge *Southern Weekend* with a senior official from Guangdong's Communist Party Propaganda Department.[160]
- In June 2003, Chinese authorities shut down the *Beijing Xinbao* and fired some editorial staff after the paper printed an essay criticizing the National People's Congress.[161]

China's prior restraint system not only allows authorities to exercise these "negative" controls over the media by prohibiting people from publishing and forbidding the publication of objectionable articles, but it also enables the government to suppress freedom of expression through "positive" controls, by dictating to editors what they must print. The government exercises these positive controls by requiring senior editorial staff to receive political indoctrination, and by convening regular meetings with editors and issuing bulletins to inform them of what stories they must carry and how certain issues must be portrayed.[162] In the weeks before the 16th Party Congress in 2002, the government demonstrated that it is both willing and able to force publications to print what it demands when it required popular Internet portals such as Sohu.com to display banners praising the Party and celebrating the Party Congress in lieu of paid advertising.[163]

SARS provided a tragic example of how China's prior restraint system allows the government to suppress freedom of expression and prevent China's media from reporting on matters of public concern. This system impedes the free flow of information in a way that threatens the well-being of Chinese citizens and, as China has

chosen to participate increasingly in global affairs, everyone with whom they interact.[164]

In December 2002, health care workers in Guangdong Province began noticing people coming in with "atypical pneumonia," and by early January 2003 people were already engaged in panic buying at drug stores because of rumors of a "mystery epidemic."[165] But the same government-controlled newspapers that first broke the story in early January devoted most of their coverage to stories with headlines claiming "The Appearance of an Unknown Virus in He Yuan is a Rumor" and articles quoting government claims that "there is no epidemic."[166] Chinese authorities did not begin to allow reporting on the crisis until the disease began killing people in Hong Kong, where there is little direct government restraint on the free flow of information. Even then, the government-controlled Chinese media continued to insist that everything was under control for several weeks.

In response to their cover-up and mishandling of the SARS crisis, Chinese authorities did dismiss some senior officials and enact regulations to discourage provincial and local officials from concealing information from the central government. However, these reforms were not intended to relax the government's control over the media or the free flow of information to the general public. Rather, the goal was to increase the flow of information to central authorities in Beijing, control how the press reported on the matter, and prevent private citizens from publishing opinions regarding the government's handling of the crisis.[167] For example, although admissions that authorities mishandled the SARS crisis appeared in some Chinese newspapers, criticism was limited to local officials and "the media," while the central government was portrayed as coming to the rescue of the people.[168] It remained forbidden to discuss the lack of a free press or the role that the Communist Party, the central government, and the censorship and media control systems they have established played in allowing SARS to spread unchecked for so long.[169]

The following events further illustrate how the SARS crisis has not resulted in any meaningful relaxation of the Chinese government's control over the reporting of politically sensitive news:

- In April 2003, authorities in Beijing arrested a person for sending messages saying that an "undiagnosed contagious disease was spreading in Beijing," on the grounds that he was spreading rumors and that "Beijing had never had the spread of any 'mysterious illness.'"[170]
- In April 2003, two editors at *Xinhua* were fired for publishing a document about SARS.[171]
- In April 2003, Chinese authorities removed the editor-in-chief of *Southern Weekend,* a publication known for addressing politically sensitive topics, and replaced him with Zhang Dongming, a former Director of News Media at the Propaganda Department in Guangdong, who some observers in China consider partly responsible for the initial SARS cover-up.[172]
- In May 2003, China blacked out a CNN interview that was critical of the government's handling of the SARS crisis.[173]
- In June 2003, Chinese authorities blocked distribution of an issue of *Caijing* magazine that discussed the government's

handling of the SARS crisis. Although it was reported that *Caijing* editors claimed that the failure to distribute the issue was the result of logistical problems, censors repeatedly blocked attempts by Commission staff to post questions such as "Has *Caijing* been censored?" on government-controlled Internet bulletin boards.

• In July 2003, the Propaganda Department issued a notice to at least one television station prohibiting it from inviting academics to discuss the government's handling of the SARS crisis.[174]

*Monitoring, Jamming, and Blocking of Information*

Although the SARS crisis has resulted in Chinese authorities encouraging the flow of government-controlled information, the past year has seen no easing of the government's blocking the flow of information that it does not control. Chinese authorities continue to attempt to block Voice of America and Radio Free Asia shortwave radio transmissions directed into China. In a statement made before a Commission roundtable in December 2002, a representative of the Broadcasting Board of Governors (BBG) said that the BBG has filed complaints of "harmful interference" with the International Telecommunications Union monthly since August 2000. China first acknowledged receipt of the complaints in July 2002, and again acknowledged the complaints in August 2002. Failure to acknowledge complaints is itself a violation of ITU radio regulations.[175]

The Chinese government restricts who can legally receive satellite television broadcasts and restricts individual ownership of satellite receivers. Chinese viewers often ignore these restrictions and install illegal receivers to view foreign broadcasts.[176] While authorities have allowed limited legal distribution of some foreign channels to some households in Guangdong Province, national distribution is limited to luxury hotels and foreign compounds. Authorities have also begun requiring that all foreign satellite television broadcasts be distributed through a government-owned and operated platform, which has enabled more fine-tuned censorship of foreign television broadcasts.[177] For example, in June 2003, Chinese authorities cut CNN's broadcast into China just as a Hong Kong lawmaker began to criticize proposed anti-subversion legislation and resumed the broadcast once the interview was over.[178]

Chinese authorities continue to block human rights, educational, political, and news Web sites without providing the public notice, explanation, or opportunity for appeal.[179] Chinese law requires U.S. Internet service providers operating in China to comply with Chinese government controls on Internet content and to cooperate with Chinese authorities in the enforcement of Chinese law. Some in the United States have expressed concern that Chinese authorities are using technologies developed by U.S. companies as part of this effort.[180] Chinese officials have publicly admitted that the government has established a national firewall to prevent Chinese citizens from accessing certain types of content.[181] Studies conducted by the Commission staff and others indicate that the firewall is used primarily to block political content, not obscenity or junk mail.

Tests performed by the Commission staff indicate that the Chinese government continues to manipulate Internet communications in the following manner:

- Attempting to access prohibited Web sites results in either a gateway timeout or "Page Cannot Be Displayed" message. Chinese authorities continue to block sites such as Google's cache (which would allow people to view "snapshots" of sites taken by Google, and thereby view Web pages which were otherwise blocked), the Alta Vista search engine, BBC (Chinese), VOA and those of most human rights organizations critical of the Chinese government (including Amnesty International, Human Rights Watch, Human Rights in China, China Labor Bulletin, the Dui Hua Foundation, and Reporters Without Borders).
- Searching for certain sensitive terms, such as "Falun Gong," on search engines regulated by the Chinese government yields results (which do not deviate from the official government position), while searches for the same terms on search engines not regulated by the Chinese government, such as Google, results in the Internet browser being temporarily disabled.
- Attempting to send e-mails from China to well-known dissidents using an Internet browser interface results in the browser being temporarily disabled.

Chinese Internet users are generally able to access English-language news from major Western news media outlets through the national firewall, but Chinese authorities actively block Chinese language news Web sites whose contents they are unable to control. For example, tests performed by the Commission staff indicate that while Internet users could access the BBC and Radio Canada Web sites in English, the Chinese versions were inaccessible.

Over the past year, Chinese authorities continued their policy of increasing the extent of Internet censorship during politically sensitive times. For example, Chinese authorities blocked access to foreign news Web sites (even sites available only in English such as the *New York Times, Washington Post, Wall Street Journal,* and CNN) during the 16th Party Congress in November 2002 and the 10th National People's Congress in March 2003.

Chinese authorities are becoming increasingly sophisticated in how they censor the Internet and admit to developing technologies that will both enable more targeted censoring and notify government officials as soon as any person tries to access such Web sites. Specifically, officials claim to be prepared to deploy technologies that will allow them to automatically and precisely block Web pages based, not on specific words, but on the actual viewpoint of the author. In February 2003, state-sponsored academic researchers in China announced that they already developed such technology for a "Falun Gong Content Examination System." Using this system if an article contains pro-Falun Gong information, it is designated as "black." If the system determines an article criticizes or opposes Falun Gong, it is designated as "red." Articles dealing with Buddhism, *qigong,* and health care are designated as "neutral." The system can be installed on personal computers, servers, and at national gateways, so that as soon as a user tries to visit a Web

page that is pro-Falun Gong, the system can filter the page and immediately notify authorities.[182]

Tests performed by Commission staff indicate that systems providing this type of increasingly fine-tuned censorship have already been deployed at some Internet cafes. Specifically, Web pages containing sensitive content on sites that are otherwise accessible begin loading, but before they are completely visible the page is replaced by a message informing the user that the content the user is trying to access is forbidden. The browser is then automatically redirected to a government-authorized general interest Web site, but the user is not told why the site was prohibited or to whom an appeal should be submitted to have the prohibition removed.

Internet bulletin board systems (BBSs) continue to provide a glimpse at how Chinese authorities would like to shape the Internet. As one Chinese government agency put it: "[BBSs such as the one operated by the official *People's Daily*] represent the degree of freedom of expression the people of China have."[183] Chinese law requires all BBSs to be licensed, all articles to be constantly monitored, and all inappropriate articles to be taken down. "Internet police" monitor domestic BBSs,[184] and BBS providers must keep a record of all content posted on their Web site, the time it was posted, and the source's IP address or city name.

BBSs use software to automatically block posts containing blacklisted words and also use human monitors to block and remove articles posted with content that they deem politically unacceptable.[185] It is possible to watch as users on government-controlled BBSs debate with the censor about whether or not a given post should be allowed. In one case, a Commission staff member observed a user successfully persuade a censor to allow his post because, even though the title sounded like it was praising the U.S. multi-party system, in fact, it was a long essay about the dangers inherent in such a system. Commission staff regularly observe censors removing posts that are either too critical of the government, or that might be acceptable by themselves but have generated too many responses critical of the government. BBSs that become known for allowing cutting-edge postings on politically sensitive topics routinely disappear from the Internet altogether.[186]

*Selectively Enforced National Security Laws*

Chinese national security laws do not clearly define the scope of freedom of expression, and the Communist Party and the Chinese government exploit these vague and broad regulations to silence Chinese citizens who would criticize them and their policies. Chinese law requires that anyone intending to disclose information relating to state secrets, national security, or the nation's leaders get prior government authorization. The law then defines these terms to encompass all forms of information pertaining to politics, economics, and society.[187] Therefore, anyone who publishes or passes on information regarding such matters without prior authorization has violated the law, regardless of the content of the writings.[188] In other words, Chinese authorities employ the country's broad and vague national security laws as another form of prior restraint.

In November 2002, Amnesty International published a report detailing 33 cases of individuals detained or imprisoned for na-

tional security-related charges in connection with the unauthorized publication of articles on the Internet.[189] Reports from U.S. and international NGOs such as the Digital Freedom Network, the Committee to Protect Journalists, Reporters Without Borders, and Human Rights in China indicate that Chinese authorities regularly detain and imprison professional and freelance journalists and writers based on accusations that their writings violate national security laws.[190] For example:

- In November and December 2002, authorities detained several people who had signed an open letter calling for political reform prior to the 16th Party Congress.[191]
- In February 2003 a court in the Xinjiang Uighur Autonomous Region sentenced Tao Haidong to 7 years in prison for using the Internet to publicize "reactionary" essays that "willfully smeared and vilified the leaders of the Party and the nation."[192]
- In May 2003, Huang Qi, a computer engineer, was sentenced to 5 years imprisonment for subversion and incitement to overthrow the government based on his alleged involvement with a Web site intended to assist people in locating relatives who had disappeared in the 1989 Tiananmen massacre.[193]
- Also in May 2003, Jin Haike, Xu Wei, Yang Zili, and Zhang Honghai, members of an informal discussion group, were given prison sentences of between 8 and 10 years for publishing articles on the Internet expressing opinions such as "The democracy currently implemented in China is fake democracy" and "End the elderly persons' government, establish a youthful China."[194]
- In July 2003, the official *People's Daily* carried a report that police in Henan had subjected a 15-year-old to administrative punishment for posting an article on an Internet bulletin board that "made insinuations regarding the Party and the government." According to the report, it was necessary to punish the child "in order to safeguard respect for the law and ensure the healthy development of the Internet."[195]

Chinese authorities have failed to make public any information indicating that these individuals (or most of those currently detained or imprisoned for their writings) did anything more than express opinions or provide a forum for others to express their opinions. Government authorities have not shown the public that these people have committed any acts, or advocated the commission of any acts, that violated any law or otherwise represented a threat to the national security of China. Rather, the only "crime" that has been shown to have occurred was the unauthorized publication of articles that expressed opinions inconsistent with, or critical of, the leaders and policies of the Communist Party and the central government.

China's legislative bodies continue to enact broad and conflicting regulations that hold out the threat of sanctions for anyone who commits such vaguely defined breaches as spreading rumors, offending the honor of China, or "jeopardizing social stability."[196] The example of the 15-year-old in Henan clearly illustrates how Chinese authorities use selectively enforced laws to encourage self-censorship: reports of the incident by the state-controlled media did

not specify what the child wrote, nor did it specify the "administrative punishment," which in China can include prolonged imprisonment. This legal system hangs over the citizens of China like a sword of Damocles, and as long it remains in place, for every person who chooses to speak out and is detained, many more will choose the cautious path and not speak at all.

## III(e) Economic, Social, and Cultural Rights

### FINDINGS

- The new Chinese family planning law retains the broad elements of China's long-held policies on birth limitation, including mandatory restrictions on absolute reproductive freedom and the use of coercive measures, specifically severe economic sanctions, to limit births. However, the new law also mandates prenatal and maternal health care and services for women.
- The Chinese government is taking significant steps to address HIV/AIDS, but it must overcome contradictory policies, underfunded programs, bureaucratic rivalry, social prejudice, and public ignorance about the disease if it hopes to avert a public health catastrophe.
- China has built a progressive legal framework to protect women's rights and interests, but loopholes remain, and implementation of existing laws and regulations has been imperfect, leaving Chinese women vulnerable to pervasive abuse, discrimination, and harassment at home and in the workplace.
- China's leaders have begun to recognize the enormous social and economic costs of the country's environmental problems, but the government's environmental management remains weak. Implementation of environmental laws and regulations is often poor due to vague legal drafting and lack of consistency, deficiencies in administrative coordination, lack of trained personnel, and local intransigence. These and other obstacles will continue to hinder Chinese efforts to cope with the country's environmental challenges.

*Introduction*

Despite its ideological commitment to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Chinese government has found it difficult in practice to meet all the challenges to its citizens' economic, social and cultural rights brought by the transition to a market economy. A coercive, top-down style of coping with government crises has exacerbated these problems.

Over the past year, the Commission staff has convened issues roundtables specifically devoted to rights specified by the ICESCR: citizens' right to health care and efficient systems of protection from epidemic disease, women's reproductive and economic rights, childrens' rights, the rights of all citizens to a safe environment, and citizens' reliable access to education. Through these roundtables, as well as through staff visits to many social organizations in China, the Commission has concluded not only that China cannot currently guarantee many of the rights enumerated in the ICESCR, but also, in some areas, provides them less reliably and less equitably than in the past.

At the same time, a "civil society with socialist characteristics" has sprung up in China to fill some of the gaps. The very existence of domestic organizations such as Wang Canfa's Pollution Victims Legal Research Center show that Chinese people feel increasingly empowered to organize to address social problems without government assistance. The government now must decide whether or not it can maintain strict control over this new sector without destroying it.

Testifying before a Commission roundtable in June 2003, Tiananmen Square-era leader and activist Wang Dan observed:

> It is very important that the United States pay attention to these sprouts of civil society. I believe that it is very short-sighted for the U.S. government only to focus on the actors in the Chinese government and the Chinese Communist Party . . . I think that the United States should move from attention only on human rights issues to other issues of political reform and democratic politics. One way that the United States can do this is to provide support for NGOs and universities in China . . .[197]

*Family Planning and Women's Reproductive Rights*

China's coercive family planning policy continues to be of particular concern to the Commission. On September 1, 2002, a new Population and Family Planning Law drafted and passed by the National People's Congress took effect, for the first time codifying China's "one-child" policy. The new national law retains the broad elements of China's long-held views on family planning policy, including mandatory restrictions on absolute reproductive freedom and the use of coercive measures to limit births, specifically severe economic sanctions. The grim results of such coercion in the past are evident in China's 2000 Population Census. The census reveals unbalanced male to female sex ratios at birth ranging from 114.58/100 in the city of Beijing to an astonishing 138.01/100 in Jiangxi Province.[198]

With some exceptions, the Chinese government expects its citizens to comply with China's "one-child" policy, and for those who do not, the new law imposes severe, albeit non-criminal, economic penalties. These individuals are subject to a social compensation fee (*shehui fuyang fei*) determined by Chinese authorities based on the average annual income for that region and details regarding their violation of the law.[199] The "fees" vary widely, ranging from two to eight times the average annual income for a particular region, a penalty so severe that expectant mothers "can sometimes be left with little choice but to undergo abortion or sterilization."[200] The Chinese government does not consider "social compensation fees" to be coercive, and the National Population and Family Planning Commission of China professes that it is "against coercion in any form."[201] Bonnie Glick, a member of a U.S. commission formed to investigate UN Fund for Population Activities (UNFPA) programs in China, offered a different view. Glick testified to a Commission roundtable in September 2002 that the new Family Planning Law's fees for "out of plan" births amount to coercion and therefore do not conform to international norms.[202]

Although Chinese family planning practices remain coercive, China's new Population and Family Planning Law does not incorporate some of the most troubling features of the physically coercive, non-statutory family planning policies it presumes to replace, which in recent years have included extensive physical coercion of non-compliant persons and forced abortion and sterilization. The new law also specifically forbids the use of ultrasound to assist sex-selective abortions. Finally, the new law includes penalties for Chinese officials found guilty of corruption or abuse of power. Article 39 of the new law stipulates that Chinese officials must not "infringe on a citizen's personal rights," for example, by forcing women to have abortions. Jiang Yiman, spokesperson for China's National Population and Family Planning Commission, stressed in January 2002 that "those who run foul of [this] stipulation will be prosecuted to the full extent of the law."[203] The Commission will closely monitor Chinese efforts to enforce these new provisions, particularly at the local level, where reports of overzealous family planning officials continue to surface.

Finally, the Commission notes that China's new Population and Family Planning Law includes specific provisions relating to education, prenatal and maternal health care, and women's rights. Professor Susan Greenhalgh of the University of California noted at the September 2002 Commission roundtable that China's total fertility rate has recently dropped to 1.8, allowing reformers in the State Planning Commission to introduce "pro-women" changes in policy.[204] Greenhalgh and Professor Edwin Winckler urged the United States to "identify reform factions within China and support [them] . . . both within the state and [in] NGOs who are operating outside the state."[205] Only time and experience will indicate whether changes in law in the population and family planning area represent an effective commitment to limit the arbitrary exercise of state power. The Commission is obligated to follow closely efforts and developments in this profoundly sensitive area.

*HIV/AIDS, SARS, and Public Health in China*

The scale and nature of the emerging HIV/AIDS epidemic in China has been a particular concern of the Commission over the past year.[206] The most significant concerns include the speed of transmission of the disease among the populations of intravenous (IV) drug users, the relatively weak response from the central government, and the likelihood that the disease may eventually be a substantial drag on economic growth.[207] The Chinese government is taking considerable steps to confront HIV/AIDS, but it must overcome contradictory policies, underfunded programs, rivalry between national and local institutions, social prejudice, and a continued lack of public awareness, education, and prevention before it can avert an HIV/AIDS catastrophe.

With respect to the U.S. policy response, the Commission heard repeated advice from U.S. experts that the President and the Congress should continue to raise HIV/AIDS issues with the highest levels of the Chinese leadership, citing the epidemic as an international concern that cannot be solved without action from the top.[208]

China's reaction to HIV/AIDS has been similar to early reactions elsewhere: shame and denial, stigmatization of the victims of the disease, and an impulse to enact punitive laws and regulations that drive patients into hiding. Official Chinese government estimates show that 1 million people were living with HIV in China by the middle of 2002,[209] while the United Nations estimates that up to 1.5 million people are currently infected. The United Nations and others predict that China is at risk of an HIV/AIDS epidemic that could reach a scale of 10 million to 20 million infected Chinese citizens by the year 2010.[210] In recent years, the Chinese government has slowly been coming to terms with the rapid rise of HIV/AIDS throughout China after a prolonged period of denial. Nevertheless, China's health care system is ill-prepared to fully confront what the United Nations Theme Group on HIV/AIDS in China considers to be a situation "on the verge of a catastrophe that could result in unimaginable human suffering, economic loss, and social devastation."[211]

In 2001, the Chinese government began recognizing the emerging crisis and initiated national-level programs to address the epidemic. A 5-year AIDS action plan, announced in mid-2001, and negotiations with pharmaceutical companies for affordable retroviral treatment, marked a growing awareness and initial commitment to confront HIV/AIDS. Another positive step toward accepting the country's HIV/AIDS challenge came in December 2001 when Zhang Wenkang, then the health minister, acknowledged that the practice of blood plasma collection in the late 1980s and early 1990s contributed to the spread of HIV to 23 of China's 31 provinces, centrally administered municipalities, and autonomous regions. In April 2003, the Chinese government began providing free AIDS drugs to thousands of HIV patients in Henan, Hubei, Hunan, Anhui, and Sichuan Provinces who contracted the virus after selling their blood as part of China's practice of blood plasma collection. Government programs are also treating patients in other provinces, and Chinese and foreign observers expect the program to expand.

In July 2003, Chinese Vice-Premier Wu Yi, who became the Minister of Health after Zhang Wenkang was dismissed over the SARS debacle, announced continued cooperation between China's Ministry of Health and the United Nations Development Program to "reinforce the nation's fight against HIV/AIDS and other public health problems."[212] After a trip to China in January 2003 to examine China's approach to HIV/AIDS, a U.S. think tank's HIV/AIDS delegation found that the Chinese government is finally making progress on this issue:

> The Chinese approach to HIV/AIDS is moving in the right direction, albeit slowly. The Chinese Ministry of Health recognizes the enormity and complexity of the threat and is leading a serious effort to preempt it, through increased funding, improved intra-governmental coordination, expanded pilot training programs, improved preventative education and awareness, and an enlarged dialogue with the international community on new partnerships.[213]

Despite China's recent progress in fighting HIV/AIDS, authorities have made numerous missteps, particularly at the local level. Corrupt and inept practices, prejudices, and lack of understanding have made a bad situation even worse, demonstrating that necessary policy-level improvements have yet to be realized on the ground. While the new national policies on fighting HIV/AIDS that the Ministry of Health has been promoting signify positive movement, local authorities appear to be less progressive in attitude and incapable of implementing new measures.

In testimony at a Commission roundtable in September 2002, two U.S. scholars emphasized that local inaction and stonewalling by provincial authorities, as well as lack of cooperation or enthusiasm from the security apparatus, complicate the ability of the Ministry of Health and others to address the HIV/AIDS problem.[214]

An incident in Henan Province illustrates the difference in attitudes between national and local authorities. On June 22, 2003, police officers and local thugs raided Xiongqiao village, an "AIDS village" in Henan where several hundred residents contracted HIV due to the unsanitary blood collection practices of the late 1980s and early 1990s. The law enforcement squads smashed property, assaulted residents, and arrested 13 farmers. Farmers from the village had appealed to local officials to receive previously promised government assistance for AIDS patients.[215] Approximately 700 of the 3,000 residents in Xiongqiao have been diagnosed as HIV positive, with 400 of them living with full-blown AIDS. Some residents and other observers believe the raid was an example of local authorities persecuting HIV/AIDS sufferers using repressive measures when victims seek access to promised treatment, aid, or care. A U.S. NGO offered the view that police in Henan Province, where many "AIDS villages" exist because it is the center of the blood collection scandal in which local authorities were complicit, are increasing their use of arbitrary arrests and violence against HIV-positive protestors. "Henan authorities seem to want to sweep their role in the AIDS epidemic under the rug by silencing protestors" who are seeking access to treatment and care of HIV/AIDS patients, and who are frustrated with the misappropriation of state AIDS funding.[216]

Other setbacks include problems surfacing in the Chinese government's program offering free AIDS drugs to thousands of farmers who contracted HIV after selling blood.[217] Although the program, which was launched in April 2003, significantly advances China's fight against HIV/AIDS, it also lacks sufficient numbers of qualified doctors to properly administer the drugs and help the patients maintain lifelong treatment. Qualified doctors are especially necessary to help the patients endure the strong side effects of the drugs, intensified by the use of older, locally-manufactured drugs. As a result of these side effects and the dearth of suitable doctors to keep patients on the approved course of treatment, many patients are dropping out of the program. These problems highlight the fact that China is ill-equipped to successfully fight HIV/AIDS on its own.

Other obstacles hindering more rapid progress in stemming the epidemic include social prejudice and the continued lack of awareness, public education, and prevention. Joan Kaufman, a visiting

scholar at Harvard Law School, summed up the difficulties facing a successful fight against HIV/AIDS in China in her testimony to a Commission roundtable:

> [T]he epidemic is unfolding in China because of a collection of local public policy failures: fiscal devolution in the health system and the strained budgets in poor areas make it very difficult for local government to pay for the necessary prevention and care activities; high levels of discrimination and fear-based laws aimed at protecting the public; a limited number of civil society organizations that could actually take up the battle; constraints on media coverage and information which make it difficult for people to know about the AIDS epidemic and what has worked in other countries; and complicity by local governments and denial.[218]

At a September 2002 Commission roundtable on HIV/AIDS in China, U.S. experts praised an existing U.S. program grant to help Chinese agencies implement vaccine development and begin treatment trials in the 100 counties most affected by HIV. They also advocated more U.S. technical assistance to help local governments adopt international best practices in coping with HIV and to build a nation-wide response.[219]

*Women's Rights*

Discrimination against women remains widespread in Chinese society, despite longstanding efforts by the Chinese government and government-affiliated organizations, most notably the All-China Women's Federation (ACWF), to identify and raise awareness of the problem. China's existing laws, if enforced, could stem much of the abuse. In other areas, such as sexual harassment, no laws exist. While progressive in scope, the 1992 Law on the Protection of the Rights and Interests of Women does not give women the legal tools they need to protect the rights specified. Efforts are currently underway in China to amend the law to enable women to sue to enforce their rights under it, as well as to add new protections against domestic violence and sexual harassment. Forced marriage and trafficking of women and girls remain serious problems in China.

The Commission notes that the Chinese government has been more vigorous in publicizing and condemning abuse against women than other areas of human rights concern. The Chinese government has also made significant progress in building the progressive legal framework necessary to combat these abuses and prohibit discrimination against women in employment, property rights, inheritance, and divorce.[220] However, equal access to justice and the full implementation of China's laws and regulations protecting women's rights have been slow to develop. "It's a long way to go for Chinese women to realize equality de facto from equality in law," said Professor Wu Changzhen of the China University of Politics and Law in March 2001.[221]

Article 48 of the Chinese Constitution states that "Women in the People's Republic of China enjoy equal rights with men in all spheres of life." Despite this guarantee of equality, the transition from a planned to a market economy in China has resulted in

particular hardships for women. Peng Peiyun, Vice Chair of the National People's Congress Standing Committee and ACWF President, noted in March 2003 that in China "it is hard for women to find jobs; it is hard for women to find jobs after having been laid off; it is difficult for female students to find jobs; labor protection measures for women employees are weak in many enterprises; procreation insurance for female employees is inadequate; and women's participation in the management of state and society affairs is still at a low level."[222]

China's economic reforms have had contradictory influences on the social status of women, offering both "greater freedom and mobility" and "greater threats . . . at home and in the workplace,"[223] according to testimony to the Commission by Professor Margaret Woo of the Northeastern University of School of Law. Although the Chinese economic system offers few assurances to any worker, women face the most jeopardy. Often the first to be fired and the last to be hired, women face continual setbacks in employment and grave challenges in a society marked by the "increased commodification of women as 'beauty objects,'" according to Woo.[224]

One result has been a surge in sexual harassment cases being filed in court, even though China has no specific law on sexual harassment. Legislators in the National People's Congress are deadlocked over the legal definition of sexual harassment and disagree on whether legal protections against sexual harassment should even be included in China's first civil code, which is now being drafted. The Chinese term for sexual harassment, *xing saorao,* is relatively new, reflecting the fact that this traditionally taboo subject has only recently entered the public consciousness. Despite the increased openness, most Chinese victims still choose to remain silent regarding sexual harassment because the chances for legal remedy remain slim. Few sexual harassment suits have ever led to trial in China. "Most such cases are rejected by the courts because China lacks a law against sexual harassment,"[225] according to Professor Ding Juan of the ACWF Women's Research Institute.

It is equally difficult for women facing violence in the home to institute civil action. Rangita de Silva of the Spangenberg Group, a U.S. NGO, testified to a Commission roundtable in February 2003 that domestic violence in China "is not broadly defined to cover threats of violence to the woman and/or her family members, psychological damage, sexual abuse and rape within marriage. Also, the question arises of whether a claim for compensation can be made during the existence of marriage," according to de Silva.[226] Chinese statistics indicate that upward of 30 percent of Chinese households face domestic violence,[227] with 90 percent of the victims being women,[228] figures that likely underestimate the severity of the problem as most cases in China go unreported.[229]

Although the Chinese government has publicly recognized domestic violence as a serious problem and taken limited measures to tackle it, including amending its Marriage Law in 2001 to include provisions on spousal violence, Chinese women still face significant hurdles in seeking justice or protection as victims. Women can hold their abusers liable under China's Criminal Law but must prove that the crime was particularly "evil" and the abuse was "continued, regular, and consistent."[230] In addition, "Public Secu-

rity Bureaus hesitate to intervene in family disputes"[231] and resources to help battered women, including shelters and legal aid, are scarce in urban areas and largely non-existent in rural areas.

The commercialization of sex has grown rapidly in China following the economic dislocation driven by market reforms and a general relaxation in social mores, leaving thousands of Chinese women and girls vulnerable to disease and abuse. China has not taken the necessary steps to increase HIV/AIDS awareness among sex workers. Such education would both protect their health and stem the looming health crisis inherent in an increasingly mobile labor force and a rapidly expanding sex industry. Many prostitutes in China believe HIV/AIDS is a "foreign phenomenon . . . and won't affect them," according to Chen Xinxin, a sociologist and former ACWF researcher.[232]

The harsh implementation of China's one-child policy over the last two decades has imposed high costs on Chinese women. As documented in the 2000 census, a cultural preference for sons, and the lack of other guarantees of economic security for women, have resulted in distorted male/female birth ratios in many areas.[233] Birth ratios of 138 boys to 100 girls in rural provinces like Jiangxi and 115 boys to 100 girls even in urban areas like Chongqing prove the prevalence of either sex-based abortion or infanticide. Some of the imbalance in these ratios may reflect the growth of a population of "black," or unregistered female babies, invisible to the state and ineligible for schooling and other state benefits. Most of the distortion, however, reflects a real reduction in the number of girls surviving birth and infancy.

The scarcity of women resulting from these practices has led to a number of serious social problems, including abandonment of infants, forced marriage, and trafficking of women and girls. An illicit trade in baby girls as future servants or brides is widespread in China, despite efforts by Chinese authorities to stem the activity. The Chinese Ministry of Justice launched a 3-month campaign against the illegal trade in 2000, resulting in the rescue of some 10,000 girls, indicating the scope of this problem. Continuing reports of such activity in the Chinese press suggest little progress has been made in curbing the practice. According to Song Liya, editor of *China Women's News,* China's one-child policy has prompted "some parents to acquire future brides for their sons . . . [and babies] are cheaper than buying a teenage bride."[234] Despite government efforts to crack down on the inland trafficking of Chinese women, the illicit trade continues, with the sale of women in rural areas as brides, and in urban areas as prostitutes, exceeding official efforts to stop the practice. In addition, reports are common of sexual slavery and trafficking of North Korean refugees in China's northeast border provinces.[235]

*China's Environmental Crisis*

The degradation of China's environment presents Chinese policymakers with a host of political, social, and economic challenges that not only affect China but also have an impact on the environment of its neighbors. As Elizabeth Economy noted in testimony before the Commission in January 2003, China faces daunting environmental problems.[236] Two-thirds of Chinese cities tested in 2000

failed to meet World Health Organization pollution standards. Hundreds of millions of Chinese drink contaminated water. Deforestation and overgrazing have led to the rapid loss of arable land, flooding of increasing severity and frequency, and devastating sandstorms in northeast China. Analysts estimate that during the 1990s, 20 to 30 million people were displaced by environmental degradation. These and other environmental problems have created a public health crisis, sparked social unrest, and imposed huge economic costs. According to estimates, China may lose as much as 8 percent of its GDP to environmental damage.[237]

In recent years, China's leaders have begun to recognize the enormous social and economic costs of the country's environmental problems. The Chinese government has reorganized state institutions responsible for environmental management, passed more than 25 laws and 100 administrative regulations related to environmental protection, and attempted to strengthen implementation and enforcement of environmental law.[238] It has opened the door to limited grassroots activism by environmental NGOs and encouraged media reporting on the environment.[239] It has also engaged the international community, working with such organizations as the World Bank, the Asian Development Bank, the American Bar Association, and foreign NGOs to improve environmental conditions on the ground and enhance environmental governance.[240]

Despite these efforts, the Chinese government's environmental management remains weak. China currently spends only 1.3 percent of GDP on environmental protection, a figure that most analysts agree is too low to prevent further deterioration, much less improve environmental conditions.[241] Implementation of environmental laws and regulations is often poor due to vague legal drafting and lack of consistency, deficiencies in administrative coordination, lack of trained personnel, and local intransigence.[242] These and other obstacles will continue to hinder Chinese efforts to cope with the country's environmental challenges.

## III(f) Freedom of Residence and Travel

### Findings

- Recent policy changes in China indicate progress toward eroding the restrictive residence registration (*hukou*) system, allowing rural migrants in urban areas improved legal status.
- Policy changes made at the central government level often are not implemented adequately at the local level, and ingrained discriminatory attitudes and practices toward migrants impede actual reform.
- The Chinese government does not implement its obligations under the Geneva Convention[243] toward North Korean refugees, instead repatriating many of them to North Korea without granting them their rights under international law.

China's stark urban-rural divide and internal migration problems are rooted in the country's residence registration (*hukou*) system. As the country continues on its path of rapid modernization and confronts the already wide and growing economic gap between urban and rural residents, the hukou system is responsible for, or exacerbates, some of the social and economic problems that have

developed over the last five decades. A succession of policy reforms announced since the beginning of 2003, abolishing or amending previously restrictive and discriminatory regulations related to hukou and migrant issues, have been positive steps toward dismantling a half-century old system that has hindered Chinese citizens' freedom to change residence and employment. However, whether these changes will actually improve the lives of millions of migrants across China depends on whether and how local authorities implement these new policies and recognize migrants' rights.

China's central government implemented the hukou system during the famines of the 1950s to differentiate food-growing farmers from urbanites who needed grain rations. This system divided Chinese society into urban and rural classes, permanently attaching citizens to a specific place of residence. Officials administering the system issue identification booklets, also called hukou, to each citizen, identifying him or her as a rural or urban resident. Every urban administrative unit issues its own hukou, which affords hukou holders of that urban area full access to such social services as health care, education, and subsidized housing. This system creates unyielding hierarchical divisions in society, as hukou status is inherited, and provides urban hukou holders with privileges unavailable to rural residents. Through the 1970s, the system became so rigid that traveling within the country was extremely difficult, and "peasants could be arrested just for entering cities."[244]

In the 1980s and 1990s, most urban areas relaxed hukou restrictions with the beginning of economic reforms. The dismantling of the collective farming system, food rationing, and other structures that supported the hukou system made it necessary to implement more flexible rural-urban migration policies. The combination of economic reforms and easing of travel barriers led to an influx of rural migrants into urban areas, and to this day urban areas continue to see a constant flow of rural migrants looking for opportunities for themselves and their families. In November 2001, *China Information Daily* reported that from 1982 to 2000, more than 200 million rural Chinese migrated to urban areas, with more than 100 million of them arriving between 1995 and 2000.[245] Of the total number of rural-to-urban migrants over the last couple of decades, approximately 100 million resided illegally in urban areas without temporary residence permits or urban hukou. Some predict that the total number of rural migrants permanently moving to urban areas will increase by an additional 100 to 180 million people by 2010.[246]

Chinese Communist Party Central Committee Document No. 11, issued in November 2000, outlines China's urbanization strategy for the Tenth 5-Year Plan from 2001 to 2005. The document provides a framework for basic hukou reform, allowing an individual and his or her immediate family members to obtain an urban hukou if he or she has stable work and a fixed residence, usually for more than a year, in an urban area. In addition, some urban areas that implement hukou reform also tend to offer permanent residence to migrants if they have investments or property in the city, or if they have graduate degrees. In March 2001, the State Council issued Circular No. 6, which instructed all cities having

populations less than 100,000 to grant a hukou to residents with fixed jobs and homes beginning in October 2001.

Implementation and interpretation of such policies vary from locality to locality, however, and the ease with which rural migrants can obtain an urban hukou differs greatly from one city to the next. Thus, rural migrants must overcome significant hurdles to obtain an urban hukou in cities where they find employment. Without an urban hukou, a migrant generally does not have access to basic services such as education and health care. Children of migrant workers without a hukou who live in urban areas with their parents cannot themselves get a hukou, and thus are unable to enroll in school. This obstacle to receiving an education violates Article 46 of the Chinese Constitution, which ensures Chinese citizens the right to receive education. Despite relaxations of the system and various reforms made in some urban areas, "the hukou system continues to impose differential opportunities based on inherited status, and is one of the key factors that exacerbates the growing inequality maintained by the deep rural-urban divide." [247]

Rural migrants to urban areas who lack an urban hukou amount to second-class citizens in the cities. Such migrants frequently are at the mercy of local authorities. Migrants face prejudice, discrimination, and exploitation by urban residents, employers, and officials, and have little legal recourse to fight such abuses. Migrants often only have access to the most menial, dangerous, and lowest paying jobs. Some of the prejudice is rooted in social and official attitudes, since "migrants have been perceived as rootless people who, free of communal or governmental constraints, embody potential societal chaos (*luan*)." [248] Furthermore, Hein Mallee asserts in an essay on migration and hukou in China, "From the state's point of view, people without, or far removed from, their organization or village are anonymous and thus unaccountable, untraceable, [and] hard to control." [249]

While migrants can move fairly freely from rural to urban areas in search of opportunities, they lead a tenuous existence when they lack a hukou or work permit for the city in which they reside and work. Until June 18, 2003, a regulation entitled "Measures for the Custody and Repatriation of Vagrant Beggars in Cities" allowed police to detain at will and without justification anyone who did not have an identification card, residence card, or work permit [see Section III(a)]. This regulation led to countless detentions and numerous detainees' deaths.

In response to public outrage over the death in custody of Sun Zhigang [see Section III(a)], the State Council abolished the custody and repatriation regulation in June 2003 and issued a new regulation to provide assistance to migrants and the homeless in urban areas, effective August 1, 2003. While this is a positive step in breaking the hukou barriers for migrants and relieving their precarious legal status in urban areas, the new regulation's success in upholding migrants' rights will depend upon implementation at the local level.

Since the beginning of 2003, a number of other policy changes have been made that promise better prospects and less hardship for rural migrants seeking urban hukou. On January 5, the State Council issued a directive proclaiming that rural migrants have the

legal right to work in cities, forbidding discriminatory policies toward migrants, and ordering police to provide urban hukou to any migrant who finds a job in that city.[250] This policy change indicates progress toward eliminating the abuses that rural migrants suffer at the hands of local authorities and employers. It is unclear whether these changes will take hold at the local level, considering "the fact that control over migration is no longer in the hands of the central government, but in those of the local municipalities."[251] The ingrained prejudices and discriminatory and abusive practices toward rural migrants will take time to shed, though migrants may finally begin to have the law on their side.

Even as it moves to diminish internal controls on travel and choice of residence for Chinese citizens, the Chinese government continues to forcibly repatriate North Korean migrants who have sought refuge from starvation and repression.[252] Although China is honoring a treaty obligation with the Democratic People's Republic of Korea (DPRK), these repatriations contravene its obligations as a signatory of the 1951 Geneva Convention Relating to the Status of Refugees. The Convention forbids a signatory from expelling or returning a refugee to a place where his or her life or freedom would be threatened, and requires signatories to permit refugees to seek resettlement in third countries, normally under the auspices of the UN High Commissioner for Refugees (UNHCR).

## IV. Maintaining Lists of Victims of Human Rights Abuses

### Political Prisoner Database

The Commission's mandate includes maintaining information about victims of human rights abuses in China. To address this statutory requirement, and to facilitate the reporting, tracking, and analysis of information about political prisoners in China, the Commission is developing a political prisoner database that will provide information to Members of Congress, Administration officials, and the general public.

During 2003, the Commission made progress toward developing this system. During the coming year, the Commission staff expects to develop software, test it, commence populating the database with information about current prisoners, and make information from the system available to the general public. Information about persons imprisoned in China for exercising their internationally recognized human rights will be searchable in a variety of ways intended to accommodate diverse interests. The system will provide persons with Internet access the opportunity to conduct a query and receive a response. Areas available for query will include issue focus (e.g., religious freedom, labor rights, ethnic groups), province, time period, current status of detention, and legal process (e.g., judicial or administrative).

While the database is in development, the Commission will continue to monitor both key systemic issues underlying political imprisonment and the cases of individual prisoners, and will take measures on their behalf when appropriate.

## V. Development of Rule of Law and Civil Society

FINDINGS

- China's civil society is growing, spurred by an increasing number of non-governmental organizations (NGOs) operating throughout the country. These NGOs, however, face an unfriendly regulatory environment, inadequate funding, and lack of capacity in organizational management, program development, and evaluation.
- China's legislative process is gradually becoming more transparent and participatory, particularly at the provincial and local levels. However, reforms have been uneven and citizens most often lack any real power to effect change.
- China's compliance with WTO transparency requirements has improved overall, albeit slowly and with significant problems in politically sensitive sectors such as automobiles, agriculture, and telecommunications and other services. The Chinese government's focus on these commitments has contributed to growing public expectations of openness in the legislative and regulatory process.
- China's judiciary continues to suffer from a host of complex and interrelated problems, including a shortage of qualified judges, pervasive corruption, and significant limits on judicial independence.
- The Chinese government has made progress in its effort to improve the capacity, efficiency, and competence of its judiciary, is taking steps to combat corruption, and is discussing fundamental structural reform of the courts that could enhance judicial independence.
- Positive reform of China's judicial institutions will continue but progress is likely to be incremental due to the breadth and complexity of problems, limited resources, tensions between judicial independence and judicial accountability, and limited concepts of judicial independence.
- Legal restraints on the arbitrary exercise of government power remain weak in practice, and the development of constitutional enforcement mechanisms is likely to be incremental.
- For much of 2003, Chinese officials, scholars, and the public at large engaged in a spirited public discussion of constitutionalism and mechanisms of constitutional enforcement. Although meaningful public space was opened for a discussion about restraints on government power during this time, the government placed restrictions on this discussion in August 2003.
- Chinese citizens are using existing legal mechanisms to challenge state action in increasing numbers and, in some areas, are showing a greater ability to challenge state power.

INTRODUCTION

As noted in the Commission's 2002 Annual Report, the principal structural elements of a rule of law system include meaningful limits on the arbitrary exercise of state power, predictable and equal application of the law, transparency in the lawmaking process, and

an independent judiciary. These structural elements remain weak in China. Flaws in the system of laws persist, and legal restraints on government power are limited. Citizens lack access to uncensored information and concrete mechanisms to enforce rights provided to them by the Chinese Constitution. Public participation in the lawmaking process and the activities of nongovernmental organizations is severely limited. Senior leaders remain unwilling to subject themselves to meaningful checks on their power, and corruption with impunity of high-ranking Communist Party cadres and Party interference in the work of the courts continue to be problems. The Commission notes that China has made progress in building a legal infrastructure and has taken limited steps to provide checks on state actors and improve transparency. However, the Chinese state is still far from creating a legal and political system that is governed by the rule of law.

### V(a) Nongovernmental Organizations and the Development of Civil Society

Civil society connotes "associational space between the state and private citizens"[253] where individuals can "participate voluntarily in public or community affairs, with some degree of independence from the Party/state—and they may simply be loose associations of people with a common cause."[254] Since the early 1980s, the number, size, and influence of NGOs in China have increased dramatically, representing "a key step in the evolution of a civil society in China."[255] Although the growth of civil society suggests more official tolerance for some measure of civic participation and autonomy, Chinese government attitudes toward NGOs can change suddenly and become unreasonably harsh. Yet the overall government attitude toward NGOs appears more relaxed than in the past, owing in part to the Chinese government's recognition that it can no longer meet the vast social and economic needs of a modernizing nation.

According to Chinese government statistics, at the end of 2001, China had 129,000 "social organizations" (*shehui tuanti*), which were registered with the Ministry of Civil Affairs (MOCA), and 82,000 private nonprofit corporations.[256] Estimates of unregistered NGOs range from 1.4 to 2 million.[257] Other NGOs, unable or unwilling to register as an NGO with MOCA, register instead as for-profit commercial enterprises. NGOs engage in work and activities that span a wide variety of issues such as the environment, consumer protection, poverty alleviation, domestic violence, AIDS advocacy, and trade.[258] In 2002, the government for the first time permitted an international NGO—Lions Club International—to establish chapters in China.

The Chinese government recognizes that NGOs have an important role in filling some of the service gaps left by the transition to a market economy and the resulting decentralization of authority. An example of such recognition can be found in the government's July 2003 regulations on legal aid, which emphasize the importance of NGOs in providing legal services to China's underprivileged.[259] At the same time, Chinese authorities can react aggressively to perceived threats to central authority.[260] Despite the recent dramatic growth in NGOs, three substantial challenges face these organizations

in China today: burdensome registration requirements, inadequate funding, and lack of administrative and program capacity.[261]

Observers of civil society in China uniformly point to the onerous regulatory framework governing NGOs as a major impediment to the growth and development of civil society in China.[262] NGOs must register with MOCA and must also renew their registration annually.[263] NGOs must also find a governmental "sponsor"—an agency or unit that theoretically is involved in similar work—before they are permitted to register with MOCA. Some NGOs find this to be an insurmountable hurdle, and as a result register instead as for-profit enterprises with the Bureau of Industry and Commerce (and consequently must pay corporate tax). Other requirements for registering with MOCA include a minimum of 50 members and a minimum capital of RMB 30,000 (about $3,600). Moreover, only one organization of each type may register at each administrative level (e.g., only one bird-watching association would be permitted per township).[264]

Regulatory hurdles have led many NGOs to decide not to register, at least initially. The same regulations have also given MOCA the tools to close noncompliant NGOs. For example, in June 2003, MOCA closed 63 NGOs, including the China Fisherman's Association, the Golden Lotus Study Group, the Cool and Breezy Painting Society and the Dancing Hall Music Association. These groups either did not apply to re-register when required or failed to submit completed forms to renew their registrations. Government officials also closed down some organizations because individuals had complained that the groups had swindled and deceived them.[265]

The annual registration renewal requirement gives MOCA a useful tool of control. For example, MOCA threatened Friends of Nature, the first officially recognized environmental NGO in China, with de-registration if it did not oust Wang Lixiong, one of its founders and its current secretary.[266] MOCA deemed Wang "dangerous" because he supported Tenzin Deleg, a Tibetan lama who was sentenced to death for alleged participation in a terrorist conspiracy in Sichuan.[267]

A lack of funds for operational and capital expenses plagues most NGOs. China's tax and donation laws provide little incentive for donations to NGOs, and an identifiable philanthropic community or consciousness has yet to arise in China.[268] Consequently, most NGOs rely on international sources for funding. *China Development Brief* estimates that China is receiving over $100 million each year in project funding directly from or channeled through over 500 international NGOs, including foundations and faith-based charitable groups.[269] According to the NGO Research Center at Tsinghua University, 80 to 90 percent of funding for Chinese NGOs comes from international sources.

Chinese NGOs also lack the requisite capacity to manage organizations and programs. NGO officials and staff lack experience, training, and knowledge in organizational management, human resources, fundraising, public relations, and methods of accountability and transparency. The American Chamber of Commerce in China (in conjunction with the *China Development Brief*) recently announced an innovative initiative to address the need for capacity

building among Chinese NGOs. The Chamber asks American companies in China to temporarily donate highly qualified Chinese technical and managerial staff as volunteers at Chinese NGOs to advise in areas such as financial management, accounting, personnel management, and spreadsheet analysis.[270]

In addition to the restrictive registration requirements forced on Chinese NGOs, government authorities also limit permissible activities and subject matter. For example, no independent domestic NGOs monitor and report on human rights in China.[271] Discussion groups focusing on political reform, particularly if they appear in "cyber society," face particularly strict scrutiny. The 8- to 10-year sentences handed down in 2003 to members of an informal discussion group, which debated issues concerning social and political reform, provide a stark reminder of the limits on civil society in China.

Despite the significant challenges facing NGOs in China, many observers are optimistic about their future. The U.S. Embassy in Beijing concludes in its report on NGOs: "We expect China's growing NGO movement to (gradually) gain in strength, with Chinese authorities (also gradually) ceding political space."[272] Zhou Hongling, founder of the Beijing-based New Citizen Education and Research Center, observed recently that "[t]he development of civil society is like a rolling stone: if you nudge if forward, it will be unstoppable."[273]

## V(b) Legislative Reform and Transparency

### *The National People's Congress*

The Chinese Constitution provides that the National People's Congress (NPC) is the highest legislative authority, and therefore in theory the highest organ of government power in China.[274] The structure and function of the NPC and its local branches are defined in the Chinese Constitution and by a number of subsidiary laws and regulations.[275] The NPC has the right to revise the Constitution and create basic laws (*jiben falü*).[276] It consists of delegates elected from lower-level people's congresses for 5-year terms[277] and convenes as a whole in March each year.[278] In principle, "[t]he NPC is the supreme source of law in China and the basic laws (*jiben falü*) and other laws (*falü*) adopted by the full NPC or its Standing Committee are the highest form of law after the Constitution."[279]

In reality, however, the NPC traditionally has been subservient to the leadership's wishes, and in most respects has operated as a "rubber stamp" legislature. Beginning in the early 1990s, this role has gradually changed, and the NPC has begun to exercise more control over the legislative and policy agenda in accordance with its constitutional mandate.[280] This change follows leadership efforts to define more clearly the scope of the NPC's legislative powers, to unify the legislative system to prevent conflicts of laws, and to improve the overall quality of legislation.

In 2000, the NPC enacted the Legislation Law, a statute intended to standardize China's lawmaking process and define more clearly the boundaries of legislative power in China.[281] Under the Legislation Law, only the NPC and, in some cases, its Standing

Committee, can pass legislation on matters relating to the structure of state organs, the criminal justice system, and the deprivation of the personal freedom of citizens.[282]

The push to improve the quality of legislation has generated institutional change within the NPC itself. The Presidium sits at the top of the NPC's structure, and ultimately decides whether or not to permit draft laws to be considered by NPC sessions. This group also decides other logistical and procedural questions and lays out the general legislative program for each 5-year period.[283] The NPC also has institutionalized the process of creating specialized committees to focus on specific areas of law. In March 2003, the NPC announced that it would establish nine specialized committees for the 10th NPC.[284] In addition, the NPC now houses a significantly larger bureaucracy that drafts higher quality legislation and better supervises both the execution of NPC laws and the legislative efforts of the local people's congresses. This bureaucracy also has become more competent and specialized and has become a significant power center within the government.

When the NPC is not in session, its Standing Committee assumes legislative responsibilities until the next time the entire Congress convenes. The Standing Committee consists of delegates elected from the NPC and has a similar structure and virtually identical procedures to the NPC.[285] The Standing Committee has more limits on the types of laws it can draft than the NPC as a whole, but because the Standing Committee controls the legislative agenda for a longer period each year, it has produced a larger body of law. Like the NPC as a whole, the Standing Committee has made efforts to improve the quality of the legislation it promulgates. In 2003, the Standing Committee expanded from 155 to 175 members. The 20 new members serve as full-time delegates (as opposed to many older Standing Committee members who serve only on a part-time basis) and have professional backgrounds in subjects such as law and economics. The Standing Committee also has its own specialized bureaucracy to assist in drafting and supervising legislation.

Overall, the NPC has taken significant strides toward technical and professional competence. Although it was once common for laws to be drafted entirely within the State Council before being passed over to the NPC for enactment, the NPC has now begun to exercise more control over its own legislation, as was the case with respect to the China Contract Law passed in 1999.[286] Despite these advances, the NPC generally tends to purposely draft laws broadly, leaving considerable room for interpretation by those charged with executing and enforcing them.

The NPC also has heightened its stature by opening the legislative process to outside experts. The Legislation Law permits the NPC and its Standing Committee to seek outside opinions on its legislation. In addition to drawing on the developing competence of its own staff, the NPC increasingly relies on the expertise of scholars, private sector lawyers and other outside experts during the legislative process.

Still, there is little evidence that the public at large has much exposure to the proceedings of the NPC. While the Legislation Law contemplates the solicitation of opinions on draft laws through

"symposiums, debating meetings and public hearings" and publication of drafts of "important legislative bills,"[287] it does not require the NPC to do so. Without any provisions mandating publication, the NPC has little incentive to provide increased transparency.[288]

*Local People's Congresses*

Article 1 of the Organic Law on Local People's Governments and Congresses specifies that each province, centrally-administered municipality (Beijing, Chongqing, Shanghai, and Tianjin), and autonomous region has its local people's congress (LPC). The Organic Law also provides for local congresses at the county level and below. Like the NPC at the national level, LPCs also have risen in prominence and importance in recent years.[289] The Chinese Constitution charges local congresses and governments with legislating on specific matters relating to the localities and drafting local regulations to implement certain NPC laws.[290] Local governments also have the power to draft regulations or detailed implementation rules similar to those that a State Council ministry would draft. The Legislation Law requires that local congresses and governments have internal procedures similar to those laid out for the NPC and its Standing Committee for drafting and debating legislation.[291]

In the past decade, LPCs have been the focal point for much of the experimentation occurring in China in reforming legislative processes. This trend is due in part to increasing popular demand. The Chinese public no longer places complete trust in government officials or institutions, and increasingly looks to the law as a tool to limit government powers.[292] As a result, the public has shown a growing interest both in seeing quality legislation produced and in having a role in the legislative process.[293] Many local people's congresses now view public participation and transparency as vehicles to gain legitimacy for their legislation.[294]

In Shanghai, which is often the center of nascent legal reform efforts, the Shanghai People's Congress has taken a number of steps to open up its legislative process. The Shanghai People's Congress now makes a practice of seeking the views of the Shanghai Bar Association when issuing any new laws,[295] and Chinese lawyers report that the people's congress is considering financial support for academics to draft legislation.[296] Moreover, the Shanghai People's Congress has been a pioneer in holding open hearings on legislation.[297] Using a model for public hearings based on U.S. practice, the Shanghai People's Congress has been working to develop its own procedures. This process is evolving. The Shanghai People's Congress has experimented with different methods to notify the public about the hearings and with a variety of formats for the hearings themselves. It also has sought input and feedback from a number of sources on how to improve its hearings. Shanghai has seen a growing number of exchanges with delegations from other LPCs interested in improving public participation in the drafting process.

Other LPCs also have begun making efforts to improve the transparency of their legislative processes in the past year. The Standing Committee of the Yunnan Provincial People's Congress passed a "Decision to Openly Solicit Legislative Items and Draft Laws," calling for the public to submit legislative items and draft laws. This

decision was the first attempt by Yunnan authorities to open the legislative process to public participation.[298] According to Na Qi of the Yunnan Academy of Social Sciences, this experiment may enhance transparency in legislative activities and provides new means of measuring public opinion.[299] The Sichuan People's Congress has been publicly soliciting proposals since November 2002, and it included 13 proposals it received through the solicitation process in the Standing Committee's 2003 Plan on Legislation Proposals.[300] In December 2002, the Guiyang Municipal People's Congress began soliciting legislative proposals as well as comments from the public on existing legislation.[301] The Standing Committee of Zhejiang Province has announced a plan to regularize public participation in its legislative process by opening all of its meetings to the public.[302] Other cities and provinces that have begun to collect suggestions on legislation from citizens include Beijing, Kunming, Gansu, and Guangdong.

These efforts to improve transparency are limited, however, to only a small number of geographic areas. Such steps cannot be characterized as an indication that the legislative process on the whole has become significantly more democratic. The Communist Party still exercises control over the lawmaking process at every level. Representatives in the NPC and the LPCs have limited accountability, as direct elections only take place at the very lowest levels, notably for village representatives to the township local people's congress. Even at these levels, some have questioned the value of elections. While some observers argue that the elections familiarize the Chinese people with the tools of democracy and could lead to a yearning for greater popular representation at higher levels of government, critics charge that the election process only serves to strengthen Communist Party control. Moreover, the elections that do take place have many deficiencies—there are no competitive political parties, candidates are not granted access to the media, and secret ballot booths often are inadequately administered.[303]

*The State Council*

China's State Council executes laws and supervises the government bureaucracy and thus carries out the administrative functions of the Chinese government.[304] The Premier heads the Council and is assisted by the Vice-Premiers and the ministers and chairmen of the commissions. Subordinate to the State Council are ministries, commissions, and direct offices, which constitute the State Council's principal policymaking and supervisory offices.

The Chinese Constitution directs the State Council to assure that laws passed by the NPC are promptly and properly executed. Thus, it serves a primarily administrative function. The Constitution gives the State Council specific power "to adopt administrative measures, enact administrative rules and regulations, and issue decisions and orders in accordance with the Constitution and statutes."[305] Before the Legislation Law was enacted in 2000, a tradition of vaguely drafted laws and deference to the State Council left it with a wide mandate to regulate.[306] The Legislation Law defined the subjects that must be addressed in the form of "laws" and thus are exclusively within the competence of the NPC. Together with

a trend toward more precise drafting within the NPC, the Legislation Law now provides more concrete guidance on the State Council's rulemaking powers.

The State Council maintains a large staff that enacts detailed regulations and instructions on how to execute the laws.[307] Since the early 1980s, this staff has reflected an overall trend in Chinese government institutions toward greater professional competence and specialization.[308] Improving the quality of its regulations and avoiding conflicts between law and administrative and local regulations on important issues have been high priorities.

Through organizational changes, the State Council has sought to improve efficiency, combat corruption, and advance market-oriented economic reforms. In its March 2003 reform plan, the NPC made several important changes to the State Council that reflect China's interest in developing a "market economy with socialist characteristics." The merger of a number of government bodies that administer China's domestic and foreign trade regimes into a new Ministry of Commerce (MOFCOM) may prove to be the most significant of these changes.[309] MOFCOM may simplify access to China's economy for foreign businesses and investors through greater centralization and coordination of regulatory activities. In other potentially important changes, the NPC created a new commission to supervise state-owned enterprises,[310] with a mandate to supervise state capital, but not to participate in the management of the specific enterprises. The NPC also created a new commission to supervise the People's Bank of China, apparently to coordinate efforts to shore up the shaky state-owned banking sector—a risky and complex task.[311]

*Local Government Pilot Programs*

As with local people's congresses, local administrative agencies are becoming increasingly aware of the importance of transparency in carrying out the laws governing their communities. Many local governments are attempting to improve transparency through experimental programs that the central government has either explicitly or tacitly sanctioned. The Shenzhen government's pilot program to transform local government administration into a "tripartite administration system" has been among the most publicized of these initiatives.[312] Experts expect that the new tripartite system "will make possible the effective restraining of power and will make policymaking more democratic and scientific; it will make the execution of policies more transparent and impartial, and supervision more effective and vigorous."[313]

Other government reform efforts have resulted in promising changes, if on a smaller scale. For example, almost all provinces, autonomous regions, centrally-administered municipalities, and provincial and regional capitals now have detailed government Web sites.[314] More than half of these Web sites list at least some laws and regulations, although very few post draft versions of laws and regulations.[315] Most Web sites give the public the ability to contact government officials via email or by submission to an online "mailbox." Some sites also invite the public to ask questions about or comment on government policies or procedures. In some cases, the

public can view the responses that the government provides to each submission.

## V(c) THE JUDICIAL SYSTEM

Judicial reform is a critical element of China's rule of law development. At its core, the rule of law requires the impartial resolution of disputes, consistent and predictable application of legal rules, and the existence of mechanisms to protect legal rights and limit the arbitrary exercise of power. A clean, competent, and independent judiciary is a key institutional foundation for these rule of law elements.

The Chinese government has made the judiciary a primary focus of its legal reform effort. In its 5-Year Plan for Court Reform issued in 1999, China's Supreme People's Court (SPC) set 39 specific goals, including initiatives to improve judicial efficiency, streamline court organization and address such core problems as corruption, limited transparency, interference in judicial decisionmaking, a shortage of qualified judges, and obstacles to the enforcement of court judgments.[316] Although China has made progress in addressing some of these problems, they continue to be areas of concern.

### *Authority of Chinese Courts*

In China, courts have limited power and authority. As discussed in Section V(b), the National People's Congress (NPC) is the highest organ of state power under China's Constitution. The NPC and its Standing Committee have the ultimate authority to interpret law and to enforce the Constitution.[317] As China is a civil law jurisdiction, courts have no formal power to make law in the sense that judicial decisions are not binding precedent. Similarly, courts are not empowered to interpret administrative regulations—ultimate authority over the interpretation and application of such rules rest with the issuing agency.[318] Even with this limited authority, Chinese courts are subject to detailed supervision by the people's congresses and the procuratorate. Court officials typically are outranked by public security and other law enforcement officials in the Party hierarchy, limiting their influence over Communist Party policy related to legal work.[319]

One consequence of the limited power of Chinese courts is that many court judgments are not enforced. As a July 2003 report by China's official *Xinhua* News Agency notes, most court enforcement orders remain unresolved, "leaving a blemish on the reputation of the judiciary."[320] The problem is serious enough that judicial leaders have made improving the enforcement of judgments a key reform goal.[321] In the criminal context, the weak position of the courts in relation to public security and prosecutors makes it difficult for the courts to check abuses by these institutions or to resist interference from law enforcement chiefs in sensitive cases.

### *Judicial Competence*

Lack of professionalism is another pressing issue facing China's judiciary. Until 1995, when the NPC enacted the Judges Law, Chinese judges were not required to hold a college degree, and many judges were recruited from the ranks of retired military officers, law enforcement personnel, or Party cadres.[322] Despite a steady

rise in the educational level of Chinese judges in the 1990s, as of early 2003, only about 40 percent of China's 220,000 judges held a 4-year university degree, and only about 2 percent held graduate degrees.[323] Lack of competence is a particular problem in basic level courts, which employ 80 percent of judicial personnel.[324] Only 15 percent of judges and assistant judges in these courts held 4-year university degrees as of 2002.[325] Without advanced educational credentials or legal training, these judges often have difficulty grasping basic legal concepts and adjudicating cases,[326] a problem that is intensifying as Chinese law becomes more specialized and complex. Compounding the problem, the low salaries of judges and relatively weak authority of the courts make it difficult for the judiciary to attract qualified recruits; top law school graduates prefer to enter private practice, where the work is more lucrative and less frustrating.[327] The poor quality of the judiciary, pervasive corruption, and other problems have led to loss of confidence in the legal system and strong criticism of the courts by the NPC, the media, and the public.[328] In March 2003, the SPC reported that judicial organs handled more than 42 million letters and complaints between 1998 and 2002,[329] and NPC delegates voted against or abstained on the SPC's 2003 annual work report in historically large numbers.[330]

In response to these problems, the SPC has identified professionalization of the judiciary as one of its top reform goals[331] and has worked to improve judicial competence. Under amendments to the Judges Law in 2001 and subsequent SPC circulars, newly appointed judges must: (1) have an undergraduate degree in law or a degree in another subject and some legal knowledge, (2) have 2 to 3 years of legal experience (depending on the level of court that the judge is working in), and (3) pass a national unified judicial examination and a provincial court evaluation.[332] The new rules require courts at all levels to certify the qualifications of judges,[333] and sitting judges without the requisite qualifications must obtain new credentials within 5 years or face removal.[334] The SPC has also introduced reforms to encourage merit-based promotion.[335]

In addition to the reforms above, Chinese courts are engaged in a large-scale program of mandatory training for judges. The SPC established a National Judicial College in Beijing in 1997 and issued regulations that require provincial-level people's courts to establish and carry out judicial training programs. While the length and quality of training varies, official Chinese sources report that over 200,000 judges and court personnel have received at least some additional legal training since the program was launched in 1998.[336] SPC regulations require local courts to establish training implementation and evaluation plans and judges to complete 1 month of continuing legal education every 3 years.[337] Despite these significant achievements, legal experts conclude that China is likely to be encumbered by a poorly trained judiciary for at least another generation.[338]

*Corruption*

Chinese courts continue to be plagued by widespread corruption.[339] Although comprehensive statistics on corruption are not

available, a steady stream of regulations and circulars dealing with judicial ethics,[340] frequent media reports of judicial malfeasance,[341] and SPC President Xiao Yang's continued emphasis on corruption as a major judicial reform issue indicates that the problem is serious.[342] In an effort to control judicial corruption, the SPC has undertaken annual rectification campaigns[343] and passed numerous regulations on judicial ethics and conduct, including standards for recusal and rules imposing personal liability on judges for wrongly decided cases.[344] The NPC has also called for enhanced supervision of the judiciary by people's congresses and the procuratorate. However, the problem of judicial corruption does not appear to be abating. In June 2003, the SPC issued yet another circular stressing its intent to strictly enforce existing judicial ethics rules and announced another round of judicial inspections to last through September 2003.[345]

*Quality and Availability of Judicial Decisions*

Court judgments in China do not have the same force as those in common law countries because judicial decisions are not formally binding precedent. Nevertheless, from the perspective of judicial transparency and impartiality, the quality and availability of court judgments is a key rule of law concern. Until recently, most court decisions in China were short, formalistic, and often lacked detailed legal reasoning or references to the law.[346] In fact, SPC regulations in effect before 1999 prohibited Chinese courts from citing to several sources of law that they were required to rely on.[347] Only a small percentage of judgments were selected for publication, and then only in heavily edited versions that were often out of date by the time they were published.[348]

In recent years, the SPC has taken steps to improve the quality and availability of judicial decisions as a way to control corruption, root out incompetent judges, and improve the image of the judiciary. After highlighting the importance of court judgments in its 5-Year Court Reform Plan, the SPC passed guidelines requiring statements of legal reasoning in judicial decisions[349] and issued regulations on the publication of judgments.[350] The publication regulations call for influential or typical cases to be published in legal and general circulation papers, encourage courts to publish ordinary judgments in a timely manner, and highlight the Internet as an important medium for the publication of judgments. These reforms have resulted in some positive changes. The number of legal gazettes and compendia of published court decisions has increased in recent years.[351] More importantly, the SPC and many local courts have established Web sites on which they have posted a growing number of case decisions.[352] Although courts and publishers still heavily edit many decisions, the number of complete judgments available and the quality of judgments is slowly on the rise.[353] Finally, several local courts have begun to experiment with case precedent, a development that some Chinese legal scholars believe will enhance impartiality and efficiency in the judiciary.[354]

Despite these positive trends, courts face significant obstacles in improving judgments. Many courts in less-developed or rural areas lack computers and other basic equipment, making the publication of judgments difficult.[355] In addition, many judges lack the training

and expertise to draft publishable decisions with citations to the law and clear legal reasoning. Perhaps due to this concern, SPC regulations require all judgments to be submitted to an editorial committee for approval and specifically prohibit the publication of "substandard" judgments.[356] Given the scale of these capacity problems, improvement in judicial decisions will likely be incremental.

*Limits on Judicial Independence*

China's judiciary continues to be subject to a variety of internal and external controls that significantly limit its ability to engage in independent decisionmaking. Several internal mechanisms within the judiciary itself limit the independence of individual judges. A panel of judges decides most cases in China, with one member of the panel presiding at trial.[357] Despite recent reforms to enhance the independence of individual judges and judicial panels, court adjudicative committees led by court presidents still have the power to review and approve decisions in complex or sensitive cases.[358] Finally, judges in lower courts frequently seek the opinions of higher courts before making decisions on cases before them. Some legal reformers in China oppose this practice, arguing that it undermines the right of appeal.[359] China experts differ on whether the practice has become more or less frequent as reforms have progressed in recent years.[360]

Local governments are the most significant source of external interference in judicial decisionmaking. Local governments often interfere in judicial decisions in order to protect local industries or litigants, or, in the case of administrative lawsuits, to shield themselves from liability.[361] Local governments are able to exert influence on judges because they control local judicial salaries and court finances and also make judicial appointments.[362] According to one recent SPC study, over 68 percent of surveyed judges identified local protectionism as a major cause of unfairness in judicial decisions.[363] Judicial authorities in China speak frequently about the problem of administrative interference and have identified the spread of local protectionism as one of the principal problems facing the courts.[364]

The Communist Party also influences judicial decisions in both direct and indirect ways. Party groups within the courts enforce Party discipline[365] and the Party approves judicial appointments and personnel decisions.[366] Judges conscious of these control mechanisms are conditioned to watch for changes in Party policy in carrying out their work.[367] The Party exercises direct influence in individual cases through the Political-Legal Committees (PLCs) at each level of government. PLCs supervise and direct the work of state legal institutions, including the courts.[368] PLCs are typically staffed by court presidents, the heads of law enforcement agencies, officials of the justice ministry or bureau, and other legal organs. Although PLCs focus primarily on ideological matters,[369] they can influence the outcome of cases, particularly when the case is sensitive or important.[370] Judicial surveys suggest that direct Party interference is less common than local government interference, but this distinction is clouded in practice, as most key government officials are also Party members.[371]

A third significant form of external control is supervision by people's congresses and the procuratorate. Under the Chinese Constitution and national law, both the procuratorate and the people's congresses have the power to supervise the work of judges and the courts and to call for the reconsideration of cases.[372] In the case of the procuratorate, this power presents particular problems. Because the procuratorate has a dual role as both prosecutor and supervisor of the legal process, it has a conflict of interest in exercising its function of supervising the courts.

*Prospects for Enhanced Judicial Independence*

Both Communist Party and government leaders in China have embraced "judicial independence" as a key reform goal and have taken limited steps to enhance the autonomy of China's judges and courts.[373] Although important and complex cases are still subject to adjudication committee review, reforms have enhanced the power of presiding judges, and panels of trial judges now have the power to decide many ordinary cases without interference from court presidents or the adjudicative committee.[374] The SPC and NPC also are discussing major structural reforms to combat the problem of local administrative interference in the courts. Three principal reforms under discussion are: (1) establishing a system of national judicial circuits that transcend administrative boundaries, which in theory would reduce the influence of local governments; (2) centralizing control over court finances and judicial salaries; and (3) transferring control over the appointment of judges at high-level courts or above to the central government, and control over appointments at intermediate-level courts and below to provincial governments.[375] Although only in the early stages of discussion, such reforms could help alleviate the problem of local protectionism and as a result enhance the autonomy of the judiciary.

Despite these steps, several factors limit the prospects for improved judicial independence in the short term. First, Chinese leaders have a more limited concept of "judicial independence" than that accepted in many Western countries. When Chinese leaders refer to "judicial independence," they are generally not referring to the independence of individual judges, but instead to the autonomy of the courts in relation to other entities and government institutions.[376] Moreover, while the Chinese Constitution provides that the courts are not subject to interference by administrative organs, social organizations, or individuals,[377] judges are expected to adhere to the leadership of the Party and submit to the supervision of the people's congresses and the procuratorate.[378] Unlike in many Western countries, these influences are generally not considered improper restraints on judicial independence.

There is also a tension between judicial accountability and judicial independence. To deal with corruption and lack of professional competence in the court system, China's leaders have strengthened penalties for misconduct and wrongly decided cases and enhanced internal and external supervision of the courts.[379] However, these steps also limit judicial independence. As China law expert Randall Peerenboom observes, improvements in judicial independence are likely to be incremental as China continues to deal with problems of corruption and competence in the courts.[380]

Finally, limited resources and political realities will make it difficult for the Chinese government to implement major structural reform of the court system. Given the large size of the court system and limited central government resources, implementation of the more ambitious reform plans, such as centralizing control over judicial budgets and appointments, is unlikely in the near term.[381] Moreover, reforms designed to increase the authority and stature of the courts will require constitutional changes and shifts in institutional balances of power. Law enforcement and administrative organs that would lose power to the judiciary as a result of such reforms are likely to resist the changes.[382] Thus, while the United States should encourage current reform efforts, it should not expect drastic improvements in judicial independence in the near term.

## V(d) Commercial Rule of Law and the Impact of the WTO

Increasing awareness of the importance of World Trade Organization (WTO) compliance has served as the motivation for a number of reform efforts by national and local government bodies throughout China. For the most part, however, these efforts are limited in scope, and it is still too early to determine whether such efforts will lead to the comprehensive changes in China's legal system that are required for full WTO compliance. In the second year since China's accession, many observers believe there has been some progress in meeting its commitments. However, outstanding issues—particularly in sensitive sectors such as automobiles, agriculture, and telecommunications and other services—are attracting increasing attention from China's trading partners and threaten to overshadow any positive achievements.

### *Transparency Developments*

The Chinese government has made some progress in changing its legal framework and legislative process to bring them into compliance with its WTO commitments. The National People's Congress (NPC) has established a WTO group within its working committee on legal affairs; the group has been funding law professors to provide legislative drafts.[383] With advice from Chinese and foreign scholars, NPC drafters are working on a new anti-monopoly law, an administrative procedure law, and a Civil Code that is expected to include provisions regarding the protection of private property. Bar associations, including the All-China Lawyers Association, the Beijing Bar Association, and the Shanghai Bar Association report that their members have been participating in drafting trade-related measures and providing suggestions for changes to existing legislation that is not WTO compliant. More government bodies have made their laws and regulations available to the public through publication in gazettes and on Web sites.[384]

NPC-mandated changes to the structure of the State Council in early 2003 may be a step toward greater transparency. The integration of the trade functions of MOFTEC, the former State Economic and Trade Commission, and the former State Development Planning Commission into a new Ministry of Commerce (MOFCOM) may provide a more consistent and coherent means of promulgating trade measures. In addition, trade analysts expect trade measures to be more accessible to the public, as MOFCOM

will publish a single gazette collecting Chinese trade measures that were once published in the gazettes of several government agencies.

Local government officials have cited China's transparency commitments as justification for launching other types of reforms. According to Yu Youjun, the mayor of Shenzhen, "the motivation behind the political reform program has been China's accession to the World Trade Organization in late 2001 and the need to please multinational investors who increasingly insist upon a transparent, law-based environment."[385] According to one Western observer, "[t]his suggests that economic engagement with China . . . is actually causing the political changes that the proponents of engagement have predicted."[386] Additionally, Shanghai recently announced the creation of a press spokesperson position for the city government, invoking China's WTO commitment to transparent government as a reason for the step.[387]

Despite some developments, China's compliance with its WTO commitments has been uneven and incomplete. U.S. congressional analysts argue that China's compliance with its WTO obligations has been "hampered by resistance to reforms by central and local government officials seeking to protect or promote industries under their jurisdictions, government corruption, and lack of resources devoted by the central government to ensure that WTO reforms are carried out in a uniform and consistent manner."[388] Local protectionism may prove to be the major impediment to WTO-related reforms; central government concern about local protectionism has led to the promulgation of regulations on the subject.[389] While publication of enacted laws and regulations has become more regular, no uniform procedure yet exists for making draft legislation available for comment before implementation. Complaints abound that a ministry or commission will distribute a draft only to a select group. Others complain that interested parties often have no chance to review draft legislation before meeting with officials to discuss it. Even when government authorities make draft documents public, some critics say, the drafts are meaningless because the authorities treat the public "draft" that they have circulated as the final version. According to the U.S. Chamber of Commerce, "In many cases, this reluctance seems to be driven by a desire to protect domestic enterprises from competition or to slow or otherwise restrict market competition."[390] This view is consistent with the belief of many analysts that significant transparency problems occur in politically sensitive sectors such as automobiles, agriculture, and telecommunications and other services.

*Nondiscrimination*

China's WTO commitments include the promise of "national treatment" to nationals of WTO partners—treating foreign individuals and enterprises no worse than domestic individuals and enterprises with respect to its commercial policies.[391] Both the U.S. Trade Representative and private sector analysts charge that certain Chinese government practices contravene these nondiscrimination obligations. In particular, China's practice of assessing a higher Value Added Tax (VAT) rate on certain imported goods than on similar domestically-produced goods has come under

attack. In addition, policies providing VAT rebates on some goods intended for export rather than domestic consumption also have been criticized. U.S. and other foreign representatives of the semiconductor and fertilizer industries, as well as foreign businesses seeking to sell agricultural products, have raised VAT-related complaints in the past year. Moreover, U.S. companies say that China's implementation of its tariff rate quotas or "TRQs" for farm commodities unfairly favors domestic interests.[392] U.S. services firms, including insurance, banking, and telecommunications providers, also argue that China's high capital requirements, restrictions on branching, high prudential requirements in service industries, and other restrictions amount to de facto discrimination against foreign services providers. Finally, China's restrictions on foreign investment in biotech industries may constitute a violation of the commitment to provide national treatment to foreigners.

*Judicial Reform Developments*

China's WTO commitments require it to provide prompt and independent judicial review of trade-related administrative decisions. Many of the judicial reforms discussed in Section V(c) are being driven in part by China's effort to comply with this WTO obligation. The Supreme People's Court has also issued three judicial interpretations clarifying the procedures, duties, and standards of courts in handling trade-related cases.[393] As noted, however, general improvements related to judicial independence and competence have been limited, and further progress is likely to be incremental.

*Administrative Licensing Law*

In a welcome development driven in part by WTO compliance considerations, the NPC Standing Committee passed an Administrative Licensing Law in late August 2003.[394]

## V(e) Legal Restraints on Government Power

One core structural element of the rule of law is the existence of meaningful limits on the arbitrary exercise of power by state actors, supported by processes and institutions through which citizens can challenge state action. Restraints on state power in China traditionally have been weak when they have existed at all. As China's legal reform process has progressed, however, Chinese scholars and officials have discussed the need to establish new mechanisms for constitutional enforcement. The Chinese government has also created a limited set of legal mechanisms through which citizens can challenge state action, such as the Legislation Law, the Administrative Litigation Law and the State Compensation Law.

*Constitutional Enforcement and Legislative Review*

The Chinese Constitution guarantees many of the same rights and freedoms enjoyed in the United States and other Western democracies. In practice, however, Chinese citizens have no real power to enforce these constitutional guarantees. The Chinese Constitution vests the National People's Congress (NPC) and its Standing Committee with supreme lawmaking authority and with the power to interpret law and supervise enforcement of the Constitution.[395] However, the NPC and its Standing Committee have not

actively performed the latter two functions, a deficiency long criticized by Chinese legal scholars.[396] Although the NPC has delegated some limited powers to interpret law to the Supreme People's Court (SPC),[397] historically Chinese courts have not had the power to apply constitutional provisions in the absence of concrete implementing legislation or to strike down legislation that is inconsistent with the Constitution.[398] Given such restraints, some observers have characterized the Chinese Constitution as a national declaration or aspirational statement analogous to the U.S. Declaration of Independence, not as a legally enforceable document.[399]

Although constitutional development has been a subject of discussion by Chinese legal scholars for many years, several recent legal reforms and events suggest that China is taking tentative steps toward the development of more robust mechanisms of constitutional enforcement. In 1999, the Chinese Constitution was amended to emphasize the concept of rule according to law,[400] a change of significant symbolic importance that China's leaders have incorporated into government and Party rhetoric.[401] Under Article 90 of the 2000 Legislation Law [see Section V(b)], citizens have the right to petition the NPC Standing Committee for review of administrative regulations that they believe contradict the Constitution or national laws.[402] In 2001, the SPC authorized a court in Shandong Province to rely on constitutional provisions guaranteeing the right to education in deciding a case.[403] This potentially groundbreaking decision, the first in which the SPC explicitly authorized a lower court to directly apply constitutional provisions, has spawned new theoretical and practical discussion of the judicial application of the Constitution. According to Commission sources, several legal aid clinics in China are actively seeking new constitutional test cases to bring before Chinese courts.[404]

The past year has witnessed a number of notable developments related to constitutionalism. In December 2002, Hu Jintao chose the celebration of the 20th anniversary of the 1982 Chinese Constitution as the occasion for his first major speech after becoming the new General Secretary of the Party.[405] Hu emphasized the need for enhanced mechanisms of constitutional redress and called the Constitution "a weapon to guarantee the protection of citizen rights."[406] In late 2002, Hu directed the new Communist Party Politburo to hold its first study session on the primacy of the Constitution and appointed a high-ranking committee under NPC Chairman Wu Bangguo to study proposals to amend the Chinese Constitution.[407] The NPC also accelerated work on a national Supervision Law, which is expected to provide detailed provisions on constitutional supervision.[408]

These events have taken place in the context of renewed study in the NPC, the SPC, and the Party of reforms related to constitutional supervision and judicial review.[409] According to Commission sources, while the NPC Standing Committee will most likely retain the final power of constitutional review, the NPC is considering proposals to grant the SPC and lower courts greater authority to rely on the Constitution in adjudicating cases.[410] The creation of a constitutional court has also been discussed, but most observers conclude that this reform is unlikely to be adopted in the near term.

Legal reformers and human rights advocates were encouraged by the State Council's June 2003 decision to repeal China's custody and repatriation regulations. The State Council action was prompted in part by legal petitions challenging the constitutionality of the regulations. Riding a wave of public outcry over the death of Sun Zhigang and intensive reporting of the incident in the Chinese media[411] [see Section III(a)], three young legal scholars filed a groundbreaking petition with the NPC Standing Committee under Article 90 of the Legislation Law, arguing that the administrative regulations conflicted with two national laws and were therefore illegal restraints on the personal freedom of Chinese citizens.[412] A second group of legal scholars petitioned the NPC Standing Committee to establish a special commission of inquiry into the Sun Zhigang case and the implementation of the regulations.[413] Although the State Council's decision to repeal the custody and repatriation regulations pre-empted the need for the NPC Standing Committee to act on the scholars' legal challenge, thereby heading off a potentially precedent-setting annulment of an administrative provision, the decision was viewed as a significant victory for legal reformers and citizen empowerment and stimulated further discussion of the need for constitutional enforcement mechanisms.[414]

In the context of these events, scholars and the media engaged in a spirited discussion of constitutional issues for much of 2003. In March, for example, the newspaper *Southern Weekend* published a special issue on constitutional government featuring comments by eight prominent legal scholars.[415] Similar discussions have been published in many other Chinese newspapers and Web sites for much of the year.[416] The Sun Zhigang case in particular stimulated extensive discourse on the need for constitutional enforcement mechanisms. The government curtailed these discussions in August 2003, ordering the media and academics to refrain from discussing such issues and harassing academics that had been active in such debates. [See Section III(d)].

*The Administrative Litigation Law and State Compensation Law*

Since 1989, China's legislature has passed several laws that have enhanced the ability of Chinese citizens to mount legal challenges to state action. Under the 1989 Administrative Litigation Law (ALL), Chinese citizens and entities have the right to bring suit in court to challenge administrative acts that violate their lawful rights and interests.[417] Under the ALL, for example, a citizen sentenced to administrative detention by public security or arbitrarily denied a license by an administrative agency can challenge such decisions in court.[418]

In 1994, the NPC passed a related law called the State Compensation Law (SCL). The SCL provides citizens and entities with the right to obtain compensation in a limited number of situations in which they are harmed by the illegal acts of government officials.[419] Unlike the ALL, the SCL applies to both administrative and criminal justice organs. Under the SCL's "criminal compensation" procedures, citizens have the right to seek compensation from public security, procuratorial, judicial, and prison management organs for a range of illegal acts that take place in the course of criminal investigations, prosecutions, and sentencing.[420]

In practice, litigants face a number of obstacles in making use of these legal mechanisms. The scope of both the SCL and ALL is limited. Under the ALL, for example, citizens lack the power to challenge acts or administrative decisions with general applicability, such as family planning policies, and neither law applies to acts of the Communist Party.[421] Many citizens either do not understand that they have the right to challenge administrative actions and seek compensation, or misinterpret the scope of the laws and file improper claims, leading to frustration and disillusionment when such claims are dismissed.[422] Official resistance also has been a problem. In many cases, recalcitrant officials have restricted information about the ALL and SCL, threatened or otherwise mistreated claimants, or interfered in court decisions under the laws.[423] Procedural defects in the case of the SCL criminal compensation provisions make it easy for law enforcement organs to obstruct claims. Finally, the threat of official liability under the SCL has placed added pressure on law enforcement organs and personnel to secure criminal convictions, a factor in continued abuses in the criminal process.[424]

Despite such obstacles, the ALL and SCL have had some positive impact. Both laws have symbolic importance as official recognition that government officials violate rights and that citizens should have access to legal mechanisms to challenge such improper acts.[425] Citizens also have demonstrated an increasing willingness to put these legal mechanisms to use. Between 1989 and 2002, courts handled more than 810,000 administrative litigation cases, with steady growth in the annual number of cases over this period.[426] As measured by the number of cases in which the courts revoke or modify administrative acts or in which plaintiffs settle with administrative agencies, citizen success rates have ranged from 35 to 40 percent annually.[427] Although the annual number of SCL cases has remained much smaller, it also has grown since the SCL was enacted in 1994.[428] According to official statistics, citizen claimants in SCL cases show comparable rates of success.[429] As China law scholar James Feinerman told the Commission at an April 2003 roundtable, "There is no doubt that the changes in the last few years, economic, political, and legal, have reduced the arbitrariness of the government . . . ."[430]

*Implications of Developing Legal Restraints on Government Power*

Despite the promise of these developments, most observers are careful not to interpret them as signs that the senior leaders of the Communist Party will subject themselves to meaningful checks on their power in the near term. The impact of many of these developments has been limited. Due in part to the lack of a clear procedure for review or requirements that it act on petitions within a legally prescribed time period, the NPC Standing Committee has been unwilling to formally exercise its power to review and annul unconstitutional laws or regulations under the Legislation Law.[431] Even if Chinese citizens are provided with more concrete mechanisms through which to enforce constitutional rights, such rights are still qualified by other constitutional provisions prescribing their duties to the state.[432] While the ALL and SCL have provided citizens with basic legal mechanisms through which to challenge

arbitrary government action, they are limited in scope, and citizens face problems such as official resistance and procedural obstacles in invoking their rights under the laws. Chinese officials routinely ignore fundamental rights and freedoms guaranteed to Chinese citizens under the Chinese Constitution, and criminal justice authorities subject Chinese citizens to a host of arbitrary actions. Existing legal mechanisms are not yet strong enough to restrain abuses in these and other contexts.

On a broader level, when Chinese leaders discuss the need for constitutional enforcement and legal restraints on the government, it is unlikely that they have Western democracies in mind as models of governance.[433] The Chinese Constitution affirms the leadership role of the Communist Party,[434] a point that continues to be stressed even in progressive discussions of constitutional reform.[435] General Secretary Hu's speech on the Constitution emphasized the leading role of the Party and the need to maintain national unity and social stability, two common justifications for continued authoritarian controls.[436] The Party controls the lawmaking process, and the Chinese leadership likely believes that emphasizing rule according to law, promoting constitutional enforcement, and enacting statutes such as the ALL and SCL will help it to control rampant corruption, bolster the Party's legitimacy, and maintain its hold on power.[437] Finally, as noted above, there are limits to the discussion that the leadership will tolerate, as evidenced by the government's decision to curtail discussion of constitutional reform in academic circles and in the media in August 2003.[438]

Nevertheless, the long-term significance of these events should not be dismissed. As illustrated by the repeal of the administrative regulations on custody and repatriation, recent reforms have had limited but practical impact in providing citizens with checks on government action. More importantly, they have been crucial symbolic steps that have introduced and legitimized the concept of legal restraints on the government, generated a greater sense of empowerment among Chinese citizens, and established precedents and official space that reformers can use to justify an increasingly broad range of future reforms and challenges to government abuses.[439] This pattern has characterized China's 25-year legal reform process and has been illustrated again in the case of the successful challenge to the custody and repatriation regulations. Reformers are already stressing that citizens cannot rest with this victory and must press for further constitutional and legal reform.[440] These patterns of change are likely to continue.

## VI. Corporate Social Responsibility

FINDINGS

- Working conditions in factories producing many of the products exported to the United States and elsewhere from China do not meet international norms and standards.
- Contract factories that are not owned by U.S. companies produce many of the products that China exports to the United States. Many factories that sell nearly all of their production to U.S. consumers receive only indirect consumer pressure to provide adequate working conditions for their employees.

- Despite the good faith attempts of some U.S. companies sourcing from China, current efforts by these companies have not significantly improved working conditions in Chinese contract factories, and these companies are beginning to recognize that auditing is not enough to assure acceptable working conditions.

As globalization has swept the world economy over the past quarter century, the United States has become the destination for more manufactured products and agricultural produce from developing countries such as China. Many Americans have become concerned about the conditions in which these products are manufactured, grown, processed, and shipped from abroad. Consumer groups, labor activists, religious and service organizations, and individual Americans have reacted with alarm to reports of the frequently unclean, unsafe, and oppressive conditions in which foreign workers make the footwear, toys, apparel, textiles, and other goods available in U.S. retail stores.[441] Many of these facilities can be found in China.

Some NGOs accuse U.S. and other foreign businesses operating in China of focusing exclusively on earning profits without regard for the promotion of human rights.[442] Businesses respond by saying that a U.S. corporate presence represents the best way to promote U.S. values, particularly those championed by the most responsible U.S. corporate actors: adherence to the rule of law, transparency, workplace health and safety, modern environmental standards, and generally to build democratic values in China.[443] This debate fits into a larger policy debate about the role of the business corporation in modern life, and its responsibilities to the community and to the world. Few agree on a single definition of "corporate social responsibility" (CSR), however.[444]

The Commission examined a number of these CSR programs and policies over the past year, particularly to assess whether or not such programs have a significant impact on working conditions in China. Commission staff interviewed dozens of industry, NGO, and trade union officials, as well as scholars and human rights activists. Commission staff also participated in a private study group that debated and sought consensus on recommendations for government action to promote global CSR.[445]

*U.S. Corporate Approaches to CSR*

U.S. business firms and multinational corporations based in the United States have addressed popular concerns about corporate social responsibility in a variety of ways. Some firms have adopted their own corporate codes of conduct (see the discussion below); others have endorsed one or more of a number of industry-wide or global codes. In recent years, companies around the world have instituted corporate social responsibility programs intended to strike a balance between financial success, relations with host governments, and the well-being of their surrounding communities. In China, as part of such programs, some U.S. companies and industrial associations have established guidelines governing their practices with respect to working conditions, environmental protection, community involvement, and other aspects of their corporate activities.[446]

Some companies apparently equate corporate social responsibility with philanthropy, highlighting corporate charitable donation practices or the social service work of individual executives or employees.[447] U.S. academic experts criticize this view, insisting that corporate social responsibility requires more of a business corporation than financial or technical support to humanitarian projects, however laudable such humanitarian support may be.[448]

U.S. firms that manufacture in China in wholly-owned or joint-venture facilities generally implement their CSR policies more effectively than U.S. companies that source manufactures from factories in China owned by third parties. Virtually all U.S. companies with their own factories in China have developed their own standards, practices, and policies that they employ around the world, and they apply these policies at their facilities in China. These policies cover such issues as recruitment, training, motivation and promotion, workplace health and safety, environmental protection, transparency, and community development. As their businesses have matured in China, a number of U.S. companies are sourcing components from Chinese and third-country manufacturers in China. Most demand that contractors follow the principal's policies or guidelines on CSR issues such as workplace conditions, but subcontractors not supervised directly by the U.S. company may not be monitored as carefully for compliance. U.S. service industry firms have been increasing their presence in China over the past decade, but little information is available about their CSR practices in China.

In contrast to U.S. companies that own their manufacturing facilities in China, companies that source in China but do not own their factories rely on indirect means of code of conduct implementation to assure that the conditions under which their products are manufactured meet basic standards. CSR monitoring and remediation efforts are uneven and frequently short-lived.[449] A number of U.S. and international NGOs promoting monitoring and remediation have made some progress in helping U.S. companies address these issues in China. But the search continues for policy tools that would broaden participation in such efforts, and that can effectively address the problems of concern to U.S. consumers and activists, particularly concerning working conditions and workplace health and safety.

*Corporate Codes of Conduct and Labor Conditions*

In response to consumer pressure to ensure adequate working conditions in foreign factories, many U.S. companies have adopted codes of conduct that outline expectations of how workers at foreign supplier facilities should be treated. Most codes of conduct require supplier factories to adhere to International Labor Organization (ILO) core standards and local law concerning child labor, forced labor, health and safety, wages and benefits, working hours and overtime compensation, nondiscrimination, harassment and abuse, and freedom of association and collective bargaining. Of these broad subject areas, China presents special difficulties with regard to freedom of association, since Chinese law does not permit independent labor unions. Some companies deal with this contradiction by establishing what one international standard of social account-

ability calls "parallel means" of representation.[450] Parallel means require representative worker organizations to be established in factories in countries where free trade unions are restricted. Few companies have successfully ensured worker representation in the absence of free trade unions, although factory elections facilitated by Reebok, Inc., in 2002 indicate that a functional model to allow worker representation within the limits of Chinese law may yet emerge.[451] Not everyone agrees. A senior U.S. labor organization official told a Commission roundtable in July 2003 that "[w]ithout empirical evidence that notions like 'parallel means' lead to real freedom of association, it is our view that companies operating inside China with a code of conduct that includes freedom of association are in fundamental violation of their own codes."[452]

*State Responsibility and Code Enforcement*

Since companies first began implementing codes of conduct, enforcement has been contentious. Many companies fail to provide any meaningful enforcement of their codes, rendering them meaningless. Most companies have made at least token gestures to ensure compliance by conducting code of conduct factory audits. Some companies supplement an external audit with internal auditing programs. But for audits to be credible, independent outside organizations should conduct them. Labor and industry analysts generally agree that auditing alone is insufficient to correct code of conduct violations in supplier factories, and that significant follow-up measures are required.

Little public information is available about corporate code of conduct compliance programs. Informal conversations with a number of companies during 2002 and 2003, however, indicate general agreement that companies must augment their auditing by working closely with supplier factories to provide training and day-to-day encouragement to improve working conditions.

As in many developing countries, poor working conditions in China represent failure of the state and society to perform basic functions such as enforcement of existing law. The director of a major U.S. NGO told a Commission roundtable in May 2003,

> We need to pay attention to what has taken place with this development. We have concluded that the corporations bear ultimate responsibility for the conditions under which their products are manufactured or assembled. We then expect them to become the creators of the standards for the factories and the enforcers of those standards. In other words, we have handed over the role of the society and its governance-making and enforcing standards and laws to the corporations we are attempting to hold accountable. It is a shift in power, a shift in responsibility and a shift in accountability.

Many observers believe that companies can have significant impact on working conditions in China, but they admit that no individual company is large enough to have decisive impact nationwide on its own. Multi-company initiatives such as the Fair Labor Association, the Workers' Rights Consortium, SA8000 and others have yet to produce measurable, wide-spread improvement. Unless combined with more vigorous and systematic Chinese government

efforts to enforce existing Chinese labor laws, efforts by U.S. and other foreign corporations seem likely to have a piecemeal quality that will limit their overall impact, and may prove unsustainable in an environment where companies regularly change suppliers.

The Chinese themselves ultimately will have to improve working conditions, both through government enforcement efforts and through empowered workers participating in their workplaces. However, restrictions on the formation of independent trade unions and the insecurities caused by temporary resident status for migrant workers prevent workers from having a say in improving workplace conditions. Labor activist Han Dongfang told a Commission roundtable in November 2002:

> I keep asking the question, "Are we talking about monitoring the animal rights or labor rights?" They are very different. Animal rights should be for those animals that cannot help themselves. Human beings can go and help themselves, so that is one way to look at this question. Another way, if we are talking about labor rights, is that we have to assume that the workers in China and anywhere can help themselves. What we need to do is link them up and help them a little bit and push them, and they will be able to take care of their own problems.[453]

To succeed, code of conduct compliance must be part of a larger process that empowers Chinese workers to assert their rights under Chinese law. While some companies have begun to explore ways to achieve this end, a formula remains elusive.

## VII. TIBET

FINDINGS

- The Dalai Lama's representatives visited China in September 2002 and again in May of this year. The Dalai Lama and his representatives have described the meetings positively and expressed their commitment to continue the process. The visits have the potential to lead eventually to positive developments of long-term significance.
- The Dalai Lama is seeking bona fide autonomy for ethnic Tibetan areas of China, as guaranteed by the Chinese Constitution. The Chinese government's priorities are national unity, stability, and prosperity. Chinese and Tibetans would both benefit from an agreement about Tibet's future. As the most respected and influential Tibetan anywhere, the Dalai Lama is uniquely positioned to help ensure the survival and development of Tibetan culture, while contributing to the stability and prosperity of China.
- The overall environment for Tibetan culture (including language and religion) and human rights (including the freedoms of religion, speech, and association) is not improving. The Tibetan language and religion are in particular jeopardy.
- The growth in the Han population of Tibetan areas is substantial. Many Tibetans believe this influx is the most serious challenge facing Tibetan culture.
- The majority of Tibetans, who live in rural areas, benefit little from central government investment in the Tibetan economy.

Most of this investment supports large-scale construction and government-run enterprises in which Han control is predominant.

The Dalai Lama seeks to protect and strengthen Tibetan culture, not to gain independence for Tibet.[454] Where he seeks to realize genuine local autonomy and a degree of consolidation in the administration of Tibetan territory, China's government and Communist Party have instead applied a substantial degree of division, and consistently stressed national integration over local autonomy. Chinese leaders have characterized the Dalai Lama's approach as "independence in disguise,"[455] and contend that the Law on Regional National Autonomy protects Tibetan culture.[456] The law inverts the commonly understood concept of autonomy, stating, "The organs of self-government of national autonomous areas shall place the interests of the state as a whole above anything else and make positive efforts to fulfill the tasks assigned by state organs at higher levels."[457]

The Chinese government has divided ethnic Tibetan geographic areas into 13 administrative divisions. All are contiguous, and all are entitled to practice local self-government.[458] Tibetans living throughout these areas have long shared a common culture, religion, written language, and ethnic identity. The Tibet Autonomous Region (TAR) makes up about half of the total Tibetan area and is ranked at the provincial level. Its boundaries approximate the extent of administration exercised by the Tibetan government in Lhasa when the People's Republic of China was founded in 1949. The rest of the Chinese-designated Tibetan autonomous areas are found today in Qinghai, Gansu, Sichuan, and Yunnan Provinces. Until 1949 they formed a complex and decentralized administrative mosaic.

Many Tibetans regard oversight by a single Tibetan capital as central to their concept of "Tibet." However, no Tibetan capital has administered the entirety of what is designated by China today as "Tibetan" since the Tibetan empire collapsed in the 9th century. The Tibetan government-in-exile endorses the Dalai Lama's quest for genuine autonomy under Chinese sovereignty. At the same time, it asserts that Tibet is an "occupied country" and that "The Tibetan people, both in and outside Tibet, look to the [Tibetan government-in-exile] as their sole and legitimate government."[459]

The United States government recognizes the TAR and Tibetan autonomous prefectures and counties in other provinces to be part of the People's Republic of China.[460] The territories described above are equally Tibetan under China's Constitution and laws, and are entitled to similar rights under the rubric of regional national autonomy. Ninety percent[461] of the territory that the Tibetan government-in-exile claims as "Tibet" has been officially mapped by China as areas of Tibetan autonomy. Nearly 94 percent[462] of Tibetans in China are residents of those autonomous Tibetan areas.

*Dialogue between China and the Dalai Lama's Representatives*

Two representatives of the Dalai Lama, Special Envoy Lodi Gyari,[463] based in Washington, and Envoy Kelsang Gyaltsen, based in Europe, visited China twice during 2002 and 2003.[464] The delegations were the first to travel to China in nearly 20 years. The

envoys visited Beijing, Shanghai, several Chinese provinces, the TAR, and an autonomous Tibetan prefecture in Yunnan Province. They held discussions with central government and provincial-level officials, including top leaders of the United Front Work Department (UFWD)[465] and senior Tibetan officials in the TAR.[466]

The Special Envoy has characterized these developments in terms of cautious optimism and emphasized the importance of international support. Upon his return from the first visit, Lodi Gyari stated, "We have made every effort to create the basis for opening a new chapter in our relationship. We are fully aware that this task cannot be completed during a single visit. It will also need continued persistent effort and support from many sides."[467] After the second visit, he summed up the challenge, saying, "Both sides agreed that our past relationship had many twists and turns and that many areas of disagreement still exist. The need was felt for more efforts to overcome the existing problems and bring about mutual understanding and trust."[468]

*Tibetan Culture and Human Rights*

China imposed no major new campaigns across Tibetan areas during the past year, but economic development, the education system, and existing initiatives encouraging Han population migration continue to pressure Tibetans. Friction remains between Tibetan aspirations to maintain their distinctive culture and religion and Chinese policies favoring atheism and emphasizing the primacy of national identity.

*Human rights*

Tibetans face systematic restrictions of their basic human rights, including the freedoms of speech, press, association, and religion. The state represses peaceful expression that it considers "splittist," or which is deemed "detrimental to the security, honor and interests of the motherland."[469] The Dalai Lama enjoys unrivaled respect as a cultural and religious leader, but even innocuous expressions of support for him can result in punishment. According to a March 2003 report by the Tibet Information Network, approximately 150 Tibetan political prisoners were serving sentences or awaiting disposition of their cases.[470] Seventy-five percent are monks and nuns. About 60 political prisoners, most serving sentences for the now-defunct crime of counterrevolution, remain in TAR Prison No. 1, also known as Drapchi, in Lhasa.

In December 2002, a court in Sichuan Province sentenced two Tibetans to death after a closed trial. Lobsang Dondrub (Chinese: Luorang Dengzhu) was charged with causing a series of explosions; Tenzin Deleg (Chinese: A'an Zhaxi), a Buddhist lama, was accused of conspiracy. A few weeks later, Chinese authorities executed Lobsang Dondrub despite pledges to senior U.S. government officials that the Supreme People's Court (SPC) would undertake a "lengthy" judicial review of the sentence. A Commission staff paper published in February 2003 outlined the case and highlighted systemic failures in the criminal law and in the legal process for review and approval of death sentences.[471] Tenzin Deleg appealed his conviction and sentence but may face retrial by the same court that rejected his appeal and sent Lobsang Dondrub to the executioner.

A new hearing before the SPC would provide the best opportunity for a full, fair, and just reconsideration of the sentence.

In March 2003 Chinese officials allowed the nun Ngawang Sangdrol to travel to the United States to seek medical care, a welcome development which followed her early release from Drapchi Prison in October 2002. Imprisoned in 1992 at age 14 for peacefully demonstrating, the authorities extended her sentence three times for further political protests inside the prison to a total of 21 years, 6 months. After arriving in the United States, she discussed her experiences with Commission staff. The descriptions of her actions that police and court officials detailed during interrogation and sentencing sessions were, she said, "accurate." She never denied carrying out acts of protest or dissent, nor did she recant her beliefs while imprisoned, but even when beaten, tortured, or put into solitary confinement for prolonged periods, she refused to accept that she had committed any "crime." Her views are typical of Tibetan political prisoners, she said.[472]

Many Tibetans find Chinese requirements for obtaining permission to travel legally to Nepal[473] inordinately burdensome and their prospects for approval poor. Tibetans attempting to cross the Chinese-Nepalese frontier without documentation have long faced danger and abuse on both sides of the border. In May 2003, the Chinese government pressured Nepalese officials in Kathmandu to hand over 18 Tibetans who had entered Nepal the previous month to Chinese diplomats to be forcibly repatriated. The U.S. State Department swiftly condemned the action, which Nepalese authorities carried out without the status determination required by international law.[474] In August the Nepalese government articulated a policy toward Tibetan asylum seekers that assures "Nepal will not forcibly return any asylum seekers from its soil."[475]

*Ethnicity and economic development*

Tibetans living in Tibetan areas, when speaking privately, cite the changing population mix in Tibetan areas as their principal concern. They believe that nothing threatens Tibetan culture more directly than marginalization and minority status in their own territory. Government authorities deny that there is a substantial influx of Han and other ethnic groups. Referring to the 94 percent Tibetan majority reported in the TAR by the 2000 census, Ragdi, then Chairman of the TAR People's Congress, said, "[S]ome people say that with immigration, the Tibetan population is greatly reduced and Tibetan culture will be extinguished. There is absolutely no basis for such talk."[476] In contrast, another senior official acknowledged the magnitude of undocumented changes, saying last year that migrant Han already made up half of Lhasa's population and their number would continue to rise.[477]

Assessing official population data is difficult because China's census methods hinder meaningful analysis. Data reflect only registered permanent residents, who census officials tabulate as if they were present in their places of registered residence, irrespective of where they in fact live or work.[478] The majority of Chinese in Tibetan areas have not registered as permanent residents and are not enumerated in local census statistics. For example, comparing 1990 and 2000 census data shows a mere 2 percent increase

in the Han proportion of the TAR population. Remarkably, official census statistics show that Han population in Qinghai remained virtually flat from 1990 to 2000 while other ethnic groups increased their numbers. The official result is a 4 percent decrease in the Han proportion of Qinghai's population.[479] Tibetans speaking privately continue to express concern about the completion of the Qinghai-Lhasa railway, which stayed on schedule in 2003 for completion in 2007,[480] believing the rail link will accelerate the transformation of the TAR population. Construction of the railroad is providing its own boost to Han immigration—last December Vice-Minister of Railways Sun Yongfu told a news conference that only 700 of the then-current 25,000 project employees were Tibetan.[481]

Chinese officials point to years of surging economic growth in Tibetan areas, but unofficial reports show that most Tibetan incomes, while rising, are trailing regional economic indicators. Legchog, head of the TAR government, said in January that the TAR GDP had averaged 10.9 percent annual growth for the past 5 years.[482] Observers say that the engine of growth is central government funding of large-scale infrastructure construction projects and of the service sector, which is dominated by government-run workplaces, and not local production. Unofficial reports show that the gap between urban and rural incomes has doubled in the past decade, leaving the majority of Tibetans increasingly disadvantaged.[483]

The Great Western Development policy (*Xibu da kaifa*), the ambitious development program announced by President Jiang Zemin in 1999, will present far-reaching challenges to Tibetans. An article in a prominent Party journal featured a senior official declaring, "Development is the last word." He recognized the social risks, however, and warned, "We should correctly handle the relations between reform, development, and stability."[484] The paper outlined a vision for a reconfigured demographic landscape, calling for herders and farmers to be resettled in compact, urbanized communities.[485]

*Education and culture*

If Tibetans are to adapt successfully to their new environment, then they must have access to significantly improved educational resources. If their culture is to survive, then the Tibetan language must play an important role in their education. Education in the TAR trails every other province. Official data report that nearly half the population (46 percent) has "no schooling."[496] Barely more than 1 percent has attended junior college or above. Educational prospects for Tibetans in rural and urban communities differ sharply. Farmers and herders in the TAR attend primary school at a rate similar to city dwellers, but urbanites are 25 times more likely to reach junior college or higher. Some experts have observed that rural schools are often poorly funded, leading to shortages of staff and supplies. Fees linked to schooling can discourage or prevent parents from sending children to class.

In May 2002 the TAR People's Congress enacted regulations encouraging use of the Tibetan language. The rules also stress the equal status Chinese language shall have with Tibetan, and allow for one or both to be used in most official work.[487] Professor Nicolas Tournadre of the University of Paris 8 informed a Commission

roundtable that, while well-intentioned, "It is likely that the present regulation concerning [use of the] Tibetan [language] will have no significant impact and that only a far-reaching reform introducing a real Tibetan-Chinese bilingualism will be capable of changing the ecolinguistic situation."[488] At the same event, Professor David Germano of the University of Virginia summarized a strategy for supporting Tibetan language:

> What is important is not simply an exchange where Tibetans are taken out of Tibet and brought to the United States, but investment in Tibet, working with dedicated professionals in the institutions which survive our departure and presence . . . I think these emerging partnerships, if adequately supported, offer another vision of a better tomorrow, not one in which Tibetan triumphs over Chinese, but one in which Tibetan and Chinese can co-exist.

Economic development during the period of "opening up to the outside world" has produced impressive results in certain respects, but the predicament of the Tibetan people continues to be a matter of concern to the President and the Congress. China's Constitution and laws could provide an obvious and direct avenue toward improved circumstances for Tibetans—but only if Party and state privilege does not eclipse the authority of local autonomous governments and the rights of individual citizens.

## VIII. Recent Developments in Hong Kong

The Commission continues to be concerned about developments in the Hong Kong Special Administrative Region (HKSAR), not only because of longstanding U.S. interests there but also because of Hong Kong's role as an example of the benefits of the rule of law and broad civil liberties.

In this context, the extraordinary events of the spring and summer of 2003 in Hong Kong deserve special mention. Under Article 23 of Hong Kong's Basic Law, which serves as the territory's Constitution, the HKSAR government must adopt legislation "on its own" to prohibit treason, secession, sedition, subversion against the PRC government, theft of state secrets, and to prohibit local political groups from establishing ties with foreign political organizations. The possibility that legislation under this article might significantly curtail existing civil liberties in Hong Kong concerned not only many of Hong Kong's citizens but also supporters of Hong Kong in the United States and elsewhere. Many hoped that the HKSAR government would postpone consideration of legislation until after 2007, when a directly-elected Chief Executive and Legislative Council could consider and debate it. When the HKSAR government made it clear that it intended to legislate earlier, a number of individuals and groups in Hong Kong urged the government to release the draft legislation in the form of a "white bill" that would permit a significant period of public discussion before formal consideration in the Legislative Council.

Instead, the HKSAR government took a different approach, releasing a consultation paper in September 2002 entitled "Proposals to Implement Article 23 of the Basic Law" and inviting public comment. In the unprecedented consultation process, Hong Kong gov-

ernment authorities claimed that the proposed legislation would not "affect freedom of religion, of the press, or of expression."[489] However, the consultation document met with severe popular criticism. In December 2002, some 60,000 opponents of the proposed legislation staged the largest political demonstration held since the reversion of Hong Kong's sovereignty to the PRC in 1997. Opponents noted that the proposed legislation would define key security offenses in vague terms that could easily be abused; that the proposed legislation would go further than the plain language of Article 23 by allowing the government to ban local organizations with ties to groups banned in China, rather than for ties to "foreign" organizations; that since PRC national security legislation criminalizes acts rather than organizations, the proposed system went beyond what is permitted under Chinese law;[490] and that the system contemplated in the proposed legislation to ban mainland organizations from operating in Hong Kong did not currently exist in mainland China.[491]

After the period of consultation closed, the HKSAR government prepared a compendium of the thousands of comments it had received on the consultation document. Based on these comments, officials made some changes to specific ideas described in the consultation document, but the HKSAR government then announced plans to submit a bill to the Legislative Council in June. The announcement touched off another vigorous popular debate in Hong Kong. As the day approached for the debate on the bill in the Legislative Council, hundreds of thousands again took to the streets to protest. On July 1, 2003, in the words of the embattled Chief Executive, Tung Chee-hwa: "[d]espite the sizzling hot weather, hundreds of thousands of citizens took to the streets to express their concern over the legislative proposals to implement Article 23 of the Basic Law, their dissatisfaction over government policies, and over my governance in particular."[492]

As a result of this public activism, and lacking sufficient votes in the Legislative Council, the HKSAR government announced on July 7, 2003, a decision to postpone further consideration of the Article 23 bill pending further public consultation. Following that announcement, Hong Kong officials said that the government would conduct a thorough constitutional review and listen carefully to public views and ensure that there would be time for the public to discuss and be consulted.[493] They also said that the provision in the proposed legislation that gives the police the power to search without a court warrant in emergencies would be removed.[494]

In September 2003, Chief Executive Tung announced that the government would withdraw the proposed legislation and would consult widely with the public before submitting a new draft bill. Chief Executive Tung cited public concerns about the original bill's details and the need to focus on economic recovery as reasons for his decision to withdraw the bill. The HKSAR government has no timetable for preparing a new bill, Mr. Tung said.

The Commission supports the people of Hong Kong and appreciates their accomplishment in peacefully exercising their rights to freedom of speech, the press, and assembly to ensure that they do not find these same rights circumscribed. At the same time, the Commission notes that Hong Kong officials made unprecedented ef-

forts to give the people of Hong Kong access to information about the proposed Article 23 legislation and the opportunity to comment freely on it.[495] The Commission is encouraged by the apparent plans of the HKSAR government to review public concerns and engage in a longer, more meaningful consultation process before again introducing implementing legislation for Article 23. The Commission believes that what sets Hong Kong apart from other PRC jurisdictions is its more progressive tradition on rule of law issues. The rest of the world expects Hong Kong to be at the forefront of governance model setting for China, and it is in this context that backward-stepping precedents appear so troubling.

## IX. Appendix: Commission Activities in 2002 and 2003

### Hearings

July 24, 2003 — Will Religion Flourish Under China's New Leadership?

Randall Schriver, Deputy Assistant Secretary of State for East Asian and Pacific Affairs, Department of State
Felice D. Gaer, Vice Chair, U.S. Commission on International Religious Freedom
Joseph Fewsmith, Professor and Director of East Asia Interdisciplinary Studies, Boston University
Charles D. Lovejoy, Jr., Associate, U.S. Catholic China Bureau
David B.T. Aikman, Author, Foreign Affairs Consultant
Jacqueline M. Armijo-Hussein, Assistant Professor, Department of Religious Studies, Stanford University

September 24, 2003 — Is China Playing By the Rules? Free Trade, Fair Trade, and WTO Compliance

Charles Freeman, Deputy Assistant U.S. Trade Representative for China, Office of the U.S. Trade Representative
Henry A. Levine, Deputy Assistant Secretary for Asia Pacific Policy, U.S. Department of Commerce
Gary Martin, President and CEO, North American Export Grain Association
Brad Smith, Managing Director, International Affairs, American Council of Life Insurers
Daryl Hatano, Vice President of Public Policy, Semiconductor Industry Association
Bill Primosch, Director, International Business Policy, National Association of Manufacturers
Lawrence J. Lau, Kwoh-Ting Li Professor of Economic Development, Stanford University
Margaret M. Pearson, Professor of Government and Politics, University of Maryland
Yasheng Huang, Associate Professor, Sloan School of Management, Massachusetts Institute of Technology

### Roundtables

October 21, 2002 — China's Children: Adoption, Orphanages, and Children with Disabilities

Nancy Robertson, President and CEO, The Grace Children's Foundation
Dana Johnson, International Adoption Clinic, University of Minnesota Hospital
Susan Soon-Keum Cox, Vice President, Holt International Children's Services

November 4, 2002 — China's Cyber-Wall: Can Technology Break Through?

Aviel Rubin, Co-founder, Publius
Bill Xia, President, Dynamic Internet Technology, Inc.
Lin Hai, Computer Scientist
Paul Baranowski, Peekabooty

November 7, 2002 — Workplace Safety Issues in the People's Republic of China

Trini Wing-Yue Leung, Independent Researcher
Han Dongfang, Director, China Labor Bulletin
Chan Ka wai, Associate Director, Hong Kong Christian Industrial Committee

November 18, 2002 The Beijing Olympics and Human Rights

Kevin Wamsley, Director, International Centre for Olympic Studies
Don Oberdorfer, Journalist-in-Residence, School of Advanced International Studies, Johns Hopkins University
Lauryn Beer, Director, Human Rights and Business Roundtable, The Fund for Peace

December 9, 2002 Open Forum: Public Perspectives on Human Rights Practices in China

Alan Adler, Executive Director, Friends of Falun Gong
Christina Fu, Spouse of Yang Jianli, imprisoned in China
Robert A. Senser, Editor, Human Rights for Workers
Oyunbilig, Executive Director, The Inner Mongolian People's Party
Joan Mower, Communications Coordinator, Broadcasting Board of Governors
Ciping Huang, Executive Director, Wei Jingsheng Foundation

January 27, 2003 Clearing the Air: the Human Rights and Legal Dimensions of China's Environmental Dilemma

Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations
Richard Ferris, Principal, Beveridge and Diamond, P.C.
Brian Rohan, Associate Director, American Bar Association Asia Law Initiative
Jennifer Turner, Senior Project Associate for China, The Woodrow Wilson Center

February 3, 2003 Ownership with Chinese Characteristics: Private Property Rights and Land Reform in the People's Republic of China

Patrick Randolph, Professor of Law, University of Missouri at Kansas City
Brian Schwarzwalder, Staff Attorney, Rural Development Institute
James A. Dorn, Vice-President for Academic Affairs, The Cato Institute
Mark A. Cohen, Attorney-Advisor, United States Patent and Trademark Office

February 24, 2003 Holding up Half the Sky: Women's Rights in China's Changing Economy

Margaret Woo, Professor, Northeastern University School of Law
Rangita de Silva, The Spangenberg Group
Christina Gilmartin, Professor, History Department, Northeastern University

March 10, 2003 Open Forum on Human Rights and the Rule of Law in China

Roy Zhou, President, Association of Chinese Student And Scholars of the New York Area
Frederick Crook, Independent Consultant, The China Group
Yali Chen, Research Associate, Center for Defense Information
Lhundup Dorjee, Capital Area Tibetan Association
Tenzin, Washington DC-based Tibetan in exile
Nuri Turkel, General Secretary, Uyghur American Association
Greg Walton, Research Consultant
Ciping Huang, Executive Director, Wei Jingsheng Foundation

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| March 24, 2003 | To Serve the People: NGOs and the Development of Civil Society in China<br>Carol Lee Hamrin, Research Professor, George Mason University<br>Qiusha Ma, Assistant Professor of East Asian Studies, Oberlin College<br>Karla W. Simon, Professor of Law and Co-Director of the Center for International Social Development, Catholic University of America<br>Nancy Yuan, Vice President, Director of Washington office, The Asia Foundation |
| April 1, 2003 | The Rule of Law in China: Lawyers Without Law?<br>James V. Feinerman, James M. Morita Professor of Asian Legal Studies, Georgetown University Law Center<br>Randall Peerenboom, Acting Professor of Law, UCLA School of Law<br>Raj R.J. Purohit, Legislative Counsel, Lawyers Committee for Human Rights |
| April 7, 2003 | Teaching and Learning Tibetan: The Role of the Tibetan Language in Tibet's Future<br>Nicolas Tournadre, Associate Professor of Linguistics, University of Paris 8<br>David Germano, Associate Professor of Tibetan and Buddhist Studies, University of Virginia<br>Losang Rabgey, Commonwealth Scholar, School of Oriental and African Studies, University of London |
| April 28, 2003 | Codes of Conduct: U.S. Corporate Compliance Programs and Working Conditions in Chinese Factories<br>Doug Cahn, Vice President, Human Rights Programs, Reebok International Ltd.<br>Mil Niepold, Director of Policy, Verité, Inc.<br>Auret van Heerden, Director of Monitoring, Fair Labor Association<br>Ruth Rosenbaum, Executive Director, Center for Reflection, Education and Action |
| May 12, 2003 | Dangerous Secrets—SARS and China's Healthcare System<br>Gail E. Henderson, Professor of Social Medicine, University of North Carolina<br>Yanzhong Huang, Assistant Professor, Whitehead School of Diplomacy, Seton Hall University<br>Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies |
| June 2, 2003 | Voices of the Small Handful: 1989 Student Movement Leaders Assess Human Rights in Today's China<br>Wang Dan, Graduate Student, Department of History and East Asian Languages, Harvard University<br>Liu Gang, Senior Engineer, Aerie Networks<br>Tong Yi, Associate, Gibson, Dunn, & Crutcher LLP |
| July 7, 2003 | Freedom of Association for Chinese Workers<br>Phil Fishman, Associate Director for International Affairs, AFL–CIO<br>Amy Hall, Manager for Social Accountability, Eileen Fisher, Inc. |

September 8, 2003 Open Forum on Human Rights and the Rule of Law in China

Kaiser Seyet, Director of Communications, The Uyghur American Association
Terri Marsh, Human Rights Attorney
Timothy Cooper, Executive Director, Worldrights
Huang Ciping, Executive Director, Wei Jingsheng Foundation

September 22, 2003 Freedom of the Press in China After SARS: Reform and Retrenchment

Gong Xiaoxia, Former Director of the Cantonese Service, Radio Free Asia
Zhang Huchen, Senior Editor, VOA China Branch
Bu Zhong, Ph.D Candidate, University of Maryland
Lin Gang, Program Associate, Asia Program, Woodrow Wilson Center

# X. Endnotes

†Voted to approve: Representatives Leach, Bereuter, Dreier, Wolf, Pitts, Levin, Kaptur, Brown, and Wu; Senators Hagel, Thomas, Roberts, Smith, Baucus, Levin, Feinstein, and Dorgan; Under Secretaries Dobriansky and Aldonas, and Assistant Secretaries Craner and Kelly. Voted not to approve: Senator Brownback.

[1] The United States-China Relations Act, Public Law No. 106–286, div. B, title III, sec. 301, 114, Stat. 895 (2000).

[2] "Statement by Liu Huaqiu, Head of the Chinese Delegation," reprinted in Stephen C. Angle and Marina Swensson, eds., The Chinese Human Rights Reader: Documents and Commentary, 1900–2000 (Armonk, NY: 2001 M.E. Sharpe), 393.

[3] "How Marxism Views Human Rights" [*Makesi zenmayang kan "renquan" wenti*], Hongqi, no. 5 (1979), trans. in Angle and Swensson, 282.

[4] *Ibid.,* 284.

[5] *Ibid.*

[6] "Human Rights, Equality, and Democracy" [*Renquan, pingdeng yu minzhu*], Tansuo, 3 (1979).

[7] John Downer and Yang Jianli, eds., Wei Jingsheng: The Man and his Ideas (Pleasant Hill, CA: China in the 21st Century, 1995).

[8] "China's Human Rights Situation" [*Zhongguo de renquan zhuangkuang*], People's Republic of China State Council Information Office [*Zhonghua renmin gongheguo guowuyuan xinwen bangongshi*] (Beijing: *Zhongyang chubanshe,* October, 1991).

[9] Zhang Liang, Disidai, (New York: Mirror Books, 2002). Two prominent American scholars, Andrew Nathan and Bruce Gilley, working in consultation with Zong, have reorganized the material in Disidai for an English-reading audience in China's New Rulers: The Secret Files, (New York: New York Review Books Collections, 2002). Both books have generated a great deal of controversy, with some experts pointing out that Zhang Liang (compiler of The Tiananmen Papers, edited by Andrew J. Nathan and Perry Link (New York: Public Affairs, 2001) wrote Disidai with a political agenda in mind. While much of the information in the book may be accurate, it is likely to be distorted by "spin."

[10] China's New Rulers, 29.

[11] *Ibid.,* 178.

[12] Fang Jue, "Understanding the New Leadership in China: Situational Analysis and Suggested Courses of Action" (Cambridge: Research Report, Fairbank Center for East Asian Research, Harvard University, 1 July 2003).

[13] "Guangzhou Weekly Shut Down After Interview with Liberal-Minded Reformist Li Rui," South China Morning Post, 15 March 2003, *www.scmp.com.*

[14] Personal communication to CECC staff.

[15] *See* Tao-tai Hsia and Wendy Zeldin, People's Republic of China: Economic and Financial Crimes, Law Library of Congress Report LL2002–13494 (September 2002).

[16] For example, messages posted on the People's Daily's Internet forum, the "Strong Country Forum" [*qiangguo luntan*] had the following titles: "The corruption of Railway Ministry officials makes a person cluck one's tongue!" (13 December 2002); "China's cadres abuse power, and commit graft and corruption because they have too much power in their hands, and there is no effective supervision." (12 December 2002).

[17] The procuratorates are China's equivalent of the U.S. Attorney's offices; they are responsible for prosecuting criminal defendants in China. The procuratorates also perform legal supervision of the judicial process of courts and investigation of criminal cases. The Supreme People's Procuratorate is the highest procuratorial organ.

[18] Supreme People's Procuratorate 2003 Work Report, 11 March 2003.

[19] "Procuratorial Organs Actively Fight Against Corruption," Xinhua, 11 March 2003, <*www.chinadaily.com.cn/highlights/nbc/news/311fight.html*> (24 September 2003).

[20] "Chief Justice: 80,000 Corrupt Officials Brought to Justice," Xinhua, 11 March 2003, <*http://www.chinadaily.com.cn/highlights/nbc/news/311corrupt.html*> (24 September 2003).

[21] Li Xiao, "Anti-Corruption Work Has Only Just Begun," China Internet Information Center, 25 April 2003, <*www.china.org.cn./english/NM-e/63064.htm*> (24 September 2003).

[22] The theory of the "Three Represents" (defined as "representing the developmental requirements for China's advanced productive forces, representing forward progress for China's advanced culture, and representing the fundamental interests of the broadest section of the masses of the people") was enunciated by Jiang Zemin in a major speech on May 31, 2002. For the new leaders' goals in the corruption area, see "The Central Authorities Plan To Put in Place Mechanisms of Supervision for Anti-Corruption Work," Hong Kong Sing Tao Jih Pao, 22 August 2003, translated in FBIS, Doc. ID CPP20030711000075.

[23] "CPC Watchdog Outlines Anti-Corruption Policies," Xinhua, 20 February 2003, <*http://www.china.org.cn/english/government/56296.htm*> (24 September 2003).

[24] People's Republic of China Criminal Law [*Zhonghua renmin gongheguo xing fa*], enacted 1 July 1979, arts. 382–396.

[25] *Ibid.,* art. 384.

[26] *Ibid.,* art. 386.

[27] *Ibid.,* art. 390.

[28] *Ibid.,* art. 395. This offense resembles the "net assets" approach of white-collar crime experts in the United States. Once the Procuracy has shown that a defendant's disposable income exceeds his lawful income by a "very large amount," the burden of proof shifts to the defendant to prove that his money was acquired legitimately.

[29] Criminal Law, arts. 151–157.

[30] *Ibid.,* arts. 201–212.

[31] *See, e.g.,* Albert H.Y.Chen, An Introduction to the Legal System of the People's Republic of China (Hong Kong: Butterworths, Asia, 1992), 69–76.

[32] Constitution of the Communist Party of China (Adopted and Amended at the 16th National Congress of the Communist Party of China, November 14, 2002), Preamble, arts. 10, 15, and 16.

[33] "Work Report of the CPC Central Commission for Discipline Inspection to the 16th Party Congress," (Adopted at the 16th National Congress of the Communist Party of China on 14 November 2002).

[34] "Ex-Public Security Minister Under House Arrest for Role in Smuggling Case, Graft," Hong Kong Zhengming, 1 December 2000.

[35] Susan Travaskes, "Courts on the Campaign Path in China: Criminal Court Work in the 'Yanda 2001' Anti-Crime Campaign," 42 Asian Survey, no. 5 (September/October 1995), 676.

[36] Supreme People's Court 2003 Work Report, 11 March 2003.

[37] The format of official Chinese legal statistics makes it difficult to calculate a precise conviction rate. However, a 2003 Supreme People's Court report notes that between 1998 and 2002, 3,222,000 individuals were convicted of crimes in trials of first instance, while 26,521 defendants were found innocent of crimes (which gives a conviction rate of roughly 99.1 percent). Situation of Judgment Work and the Building of Judicial Cadres of the People's Courts, 1998–2002 [1998–2002 *nian renmin fayuan shenpan gongzuo heduiwu jianshe qingkuang*] *<http://211.147.1.70/public/detail.php?id=47770>* (17 March 2003). This figure corresponds with the annual conviction rate for 2001 provided in the China Law Yearbook. *See* 2002 China Law Yearbook [2002 *Zhongguo falü nianjian*], (Beijing: Law Publishing House, 2002), 144.

[38] People's Republic of China Criminal Law [*Zhonghua renmin gongheguo xingfa*], enacted July 1979.

[39] The U.S. State Department provides an estimate of 4,000 executions. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003 *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003). John Kamm of the Dui Hua Foundation conservatively estimates that at least 10,000 executions are carried out each year. Commission staff Interview. Disidai, a book purportedly written by a knowledgeable government source, claims that China has executed up to 15,000 people per year since beginning of this strike hard campaign in April 2001 "Sichuan Gangsters Sentenced to Death; Strike Hard Campaign Continues," Hong Kong Agence France-Presse, 19 July 2003, in FBIS, Doc. ID CPP20030719000050.

[40] Constitution of the People's Republic of China, art. 35.

[41] Crimes of endangering state (or national) security are found in the Criminal Law, arts. 102–113. The most notable are Article 105, which prohibits the organizing, plotting or carrying out of a scheme to subvert State power or overthrow the socialist system or inciting others to do the same, and Article 103, which prohibits the organizing, plotting or carrying out of a scheme to split the State or undermine the unity of the country or inciting others to do the same.

[42] "Chinese Procuratorates Crack Down on Crimes Threatening State Security," Xinhua, 11 March 2003, *<http://news.xinhuanet.com/english/2003-03/11/content_771037.htm>* (11 March 2003).

[43] Article 300 of the Criminal Law prohibits using a heretical sect "to undermine implementation of the laws."

[44] The Dui Hua Foundation, "Surge in Arrests and Prosecutions for Endangering State Security," Dialogue, Issue No. 11, Spring 2003, 2.

[45] *Ibid.,*1.

[46] Human Rights in China Press Release, "Dissident Zhao Changqing Jailed for 5 Years," 4 August 2003.

[47] The six other known cases relating to the open letter to the 16th Party Congress calling for political reform are He Depu, Sang Jianchen, Ouyang Yi, Dai Xuezhong, Han Lifa, and Jiang Lijun. (Human Rights in China, "China and the Rule of Law," No. 2, 2003, 99–104.) According to the Dui Hua Foundation, Dai Xuezhong was sent to re-education through labor for 3 years for "endangering state security." Han Lifa was reportedly "released on bail awaiting investigation" [*baowai houshen*].

[48] John Kamm, "China Wages Silent War on Dissident Thought," Project Syndicate, 15 June 2003. Article 300 of the Criminal Law is frequently used to further the persecution of Falun Gong members; it prohibits, among other things, the use of "heretical sects" or "superstition" to undermine implementation of laws, rules, and regulations.

[49] The Dui Hua Foundation, "Surge in Arrests and Prosecutions for Endangering State Security," Dialogue, No. 11, Spring 2003, 3. *See also* Robin Munro, Dangerous Minds: Political Psychiatry in China Today and Its Origins in the Mao Era, (New York: Human Rights Watch & Geneva Institute of Psychiatry, 2002) 3 ("[E]ven today the acquittal rate for people accused of political crimes in China is virtually nil.").

[50] The Dui Hua Foundation, "Surge in Arrests and Prosecutions for Endangering State Security," Dialogue, No. 11, Spring 2003, 3.

[51] Human Rights in China, Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice, 1 March 2001, 22; Randall Peerenboom, China's Long March toward Rule of Law (Cambridge, U.K.: Cambridge University Press, 2002), 314–15.

[52] Supreme People's Procuratorate 2003 Work Report, 11 March 2003.

[53] The International Covenant on Civil and Political Rights 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 "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Arts. 9(3) and 9(4). In China, a suspect or defendant may only seek release when detention has exceeded the permissible time periods under the CPL.

[54] "China's Public Prosecutors Crack Down on Illegal Prolonged Detention," Xinhua, 22 July 2003 available in FBIS, Doc. ID CPP20030722000129. The email address is <cyjb@spp.gov.cn>, and the hotline numbers are 010–68650468, 010–65252000.

[55] "Procuratorial Organs Take Action to Curb Extended Detention of Criminal Suspects," Zhongguo Xinwen She, 3 August 2003, translated in FBIS, Doc. ID CPP20030803000050.

[56] Human Rights in China, Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice, 1 March 2001, 38–9; Yu Ping "Glittery Promise v. Dismal Reality: The Role of a Criminal Lawyer in The People's Republic of China After the 1996 Revision of the Criminal Procedure Law," 35 Vanderbilt J. Transnational Law 827 (2002): 841–42.

[57] *See* UN Working Group on Arbitrary Detention, Opinion No. 2/2003.

[58] "Beijing Conducts Trial of U.S. Based Activist Accused of Spying For Taiwan," South China Morning Post, 5 August 2003, in FBIS, Doc. ID CPP20030808000075.

[59] Article 168 of the Criminal Procedure Law requires, as a general rule, that courts announce their decisions in public prosecution cases within 1.5 months of accepting the case. If certain specific conditions are met, however, the time period may be extended by 1 month, for a total of 2.5 months. People's Republic of China Criminal Procedure Law [*Zhonghua renmin gongheguo xingshi susongfa*], enacted 1 July 1979, art. 168.

[60] *See* Section III(d).

[61] Fang Jue, "A New Type of Political Exile," China Rights Forum, No. 2, 2003, 62.

[62] For a discussion of re-education through labor, *see* Congressional-Executive Commission on China, Annual Report 2002, 29.

[63] "China Makes Drug Addicts Say 'No'," Associated Press, 15 November 2001, *<http://www.unodc.un.or.th/press_reports/repnews_2001-11-15.htm>* (8 July 2003). China had one million registered drug addicts by the end of 2002, up 11 percent from 2001. *See* "China Registers One Million Drug Addicts by End of 2002," China Internet Information Center, 25 June 2003, *<http://test.china.org.cn/english/China/68079.htm>* (8 July 2003). In 2000, China had 746 detoxification centers and 168 re-education centers for drug users.

[64] *See* Section V(e). Chinese scholars have argued in different contexts that administrative regulations restricting the personal freedom of citizens are unlawful because (1) under Articles 8 and 9 of the Legislation Law and Article 8 of the Administrative Punishments Law, the freedom of citizens can only be restricted by law (not by administrative regulations) and (2) under Article 37 of the PRC Constitution, no citizen may be arrested except with the approval of a people's procuratorate or people's court, and unlawful deprivation of freedom by detention or other means is prohibited. In the international context, the ICCPR provides that "Anyone 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 "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." ICCPR, arts. 9(3) and 9(4).

[65] John Pomfret, "Child's Death Highlights Problems in Chinese Justice," Washington Post, 3 July 2003, A1.

[66] Robin Munro, Dangerous Minds: Political Psychiatry in China Today and Its Origins in the Mao Era (New York: Human Rights Watch & Geneva Institute of Psychiatry, 2002), 118–22.

[67] *Ibid.,* 121.

[68] *Ibid.,* 36, 235.

[69] UN Working Group on Arbitrary Detention, Opinion No. 20/2001, E/CN.4/2003/8 Add.1, adopted on 28 November 2001.

[70] Robin Munro, Dangerous Minds, 19, 37–38.

[71] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003, *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003). *See also* Veron Hung, "Reassessing Reeducation Through Labor," China Rights Forum, No. 2, 2002, 35. According to credible sources, as of late January 2003, hundreds of female Falun Gong practitioners were being held in a single re-education through labor camp in Sichuan.

[72] *See* Congressional-Executive Commission on China Annual Report 2002, 29, 30, for a discussion of custody and repatriation. *See also* Human Rights in China's reports on custody and repatriation and the *hukou* system: Not Welcome at the Party: Behind the "Clean-Up of China's Cities—A Report on Administrative Detention Under 'Custody and Repatriation'" (1999) and Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities (2002), and Congressional-Executive Commission on China Roundtable, Voices of the Small Handful, 1989 Student Movement Leaders Assess Human Rights in Today's China, 2 June 2003, Testimony of Tong Yi.

[73] Torture, rape forced labor, and other forms of abuse were commonplace in the custody and repatriation centers. Public security officers often abused their power by detaining migrant workers and then extorting money from them or their families in exchange for their release.

[74] "The Death of Sun Zhigang in Custody and Repatriation [*Bei shourongzhe sun zhigang zhisi*]" Southern Metropolitan Daily, [*Nanfang dushibao], 25 April 2003, <http://www.nanfangdaily.com.cn/ds/20030425/fmxw/200304250031.asp>* (3 September 2003).

[75] Daniel Kwan, "Police Lose Power over Rural Migrants," South China Morning Post, 23 June 2003, *www.scmp.com;* Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities [*Chengshi shenghou wuzhe de liulang qitao renyuanjiuzhu guanli banfa*], issued 18 June 2003.

[76] *Ibid.*

[77] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003, *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003) 3. See also Tom Kellogg, "A Case for the Defense," China Rights Forum: China and the Rule of Law, No. 2, 2003,

33 (noting a law professor in China estimated that 70 percent of criminal prosecutions take place without defense counsel).

[78] *See* People's Republic of China Criminal Procedure Law [*Zhonghua renmin gonghe guo xingshi susong fa*], enacted 1 July 1979, art. 64. UN Working Group on Arbitrary Detention Opinion, 2–3. *See also* Congressional-Executive Commission on China Roundtable, China's Criminal Justice System, 26 July 2002, Testimony of Jerome Cohen:

"It should be emphasized that the CPL does not require a lawyer to show the detaining authority a copy of the detention notice in order to get access to his client. Yet police and prosecutors frequently take this position, and defense lawyers themselves will often reluctantly tell a would-be client that they cannot even accept the case unless a copy of the detention notice is provided to them."

[79] *Ibid.*

[80] Criminal Procedure Law, art. 96. See also Congressional-Executive Commission on China Roundtable, China's Criminal Justice System, 26 July 2002, Testimony of Jerome Cohen. "Yet PRC police and prosecutors often deny lawyers access to their clients on far-fetched claims of 'state secrets.'"

[81] For a discussion of the problems plaguing Chinese criminal defense lawyers, see Congressional-Executive Commission on China Topic Paper, "Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China," 5 July 2003.

[82] "Lawyers Turn Pale at the Mention of Defending Criminal Suspects—on Worries Arising from Decreasing Ratio of Lawyers Taking on Criminal Defense Cases," Fazhi Ribao, 13 January 2003, translated in FBIS, Doc. ID. CPP20030213000191.

[83] *See* Congressional-Executive Commission on China Paper, "Defense Lawyers Turned Defendants;" Tom Kellogg, "A Case for the Defense," China Rights Forum: China and the Rule of Law, No. 2, 2003.

[84] "Shanghai Lawyer Zheng Enchong Formally Arrested," Human Rights in China Press Release, 20 June 2003.

[85] "Interventions Made on Behalf of Jailed Lawyer," Human Rights in China Press Release, 30 July 2003. See also International Commission of Jurists Web site for its letter to the Chinese government: *<http://www.icj.org/IMG/pdf/Zheng.pdf>* (22 September 2002).

[86] *See* Congressional-Executive Commission on China 2002 Annual Report, 28–29 and specific cases detailed below.

[87] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003 *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003).

[88] Human Rights in China Press Release, "Four Internet Activists Imprisoned for Subversion," 28 May 2003.

[89] Congressional-Executive Commission on China Roundtable, Voices of the Small Handful, 1989 Student Movement Leaders Assess Human Rights in Today's China, 2 June 2003, Testimony of Tong Yi.

[90] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003, *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003).

[91] Amnesty International Report 2003: China. Available at *<www.amnesty.org>*. AI Index: POL 10/003/2003.

[92] Ian Williams, "China Sells Organs of Slain Convicts," The Observer, 10 December 2000, *<http://observer.guardian.co.uk/international/story/0,6903,409218,00.html>* (22 September 2002).

[93] Thomas Fuller, "An Execution for a Kidney," International Herald Tribune, 15 June 2000, *<http://www.iht.com/IHT/TF/00/tf061500.html>* (22 September 2002).

[94] "Rare Chinese Newspaper Exposé Details Prisoner Organ Harvests," Washington Post, 31 July 2001, *<www.washingtonpost.com.>*

[95] "China Paper Sacks Organ Trade Reporter," Reuters, 2 August 2001. When Yao was hired later the same year at a unit of Guangdong's Yangcheng Evening News, he was quickly fired on orders from central and provincial Propaganda authorities. "Whistle-blower Sacked Again," South China Morning Post, 5 October 2001, *<www.scmp.com>*.

[96] "Chinese Journalist Who Reported on Human Organ-Harvesting is Dismissed," Associated Press, 4 August 2001, *<www.freedomforum.org/templates/document.asp?documentID=14547>* (24 September 2003).

[97] "Shenzhen: First Domestic Regulations Passed on the Donation and Transplantation of Human Organs" [*Shenzhen: Guonei shoubu renti ziguan sunxian yizhi tiaolie huo tongguo*], People's Daily [*Renmin ribao*], *<http://www.people.com.cn/GB/14576/14957/2032149.html>* (22 September 2003).

[98] *See Article 152 of the PRC Criminal Procedure Law requires trials to be heard in public with a few exceptions, and further provides that the reason for not hearing a case in public must be announced in court. People's Republic of China Criminal Procedure Law [Zhonghua renmin gonghe guo xingshi susong fa*], Art. 152 enacted 1 July 1979.

[99] *See* Congressional-Executive Commission on China Topic Paper: "Defense Lawyers Turned Defendants," 5; "China: Trial of Shanghai Lawyer Accused of Passing State Secrets to Foreigners Opens," Hong Kong RTHK Radio 3, 28 August 2003, in FBIS, Doc. ID CPP20030828000132.

[100] "China Bars U.S. From Activist's Trial," New York Times, 1 August 2003.

[101] "Chinese-Born Tycoon on Trial on Charges of Fraud, Bribery," Associated Press, 11 June 2003, *<http://online.wsj.com/article/0,SB105531118644483900,00.html?mod=home_whats_news_asia>* (11 June 2003).

[102] *Ibid.*

[103] Consular Convention between the United States of America and the People's Republic of China, 18 February 1982, art. 35(5).

[104] John Gittings, "China Questions Death Penalty," The Guardian, 15 January 2003, *<http://www.guardian.co.uk/international/story/0,3604,874820,00.html>* (16 January 2003).

[105] "Death-row Lawyer Heads China's Execution Debate," Reuters, 4 February 2003, *<http://asia.cnn.com/2003/WORLD/asiapcf/east/02/04/china.capital.punishment.reut/index.html>* (4 February 2003).

[106] Guo Guangdong, "Death Penalty: Keep it or Abolish it?" [*Sixing: Baoliu? Feichu?*] Southern Weekend [*Nanfang zhoumo*], 9 January 2003.

[107] "International Conference on Bail Opens in Beijing," [*Baoshi zhidu guoji yantaohui zai jing zhaokai*], Chinese Lawyer Net [*Zhongguo lüshiwang*], 3 June 2003, *<http://www.acla.org.cn/pg/lawyerShow.php?Id=541>* (6 July 2003).

[108] *See, e.g.,* "Bail System: Learn From Others Or Keep What We Already Have?" [*Baoshi zhidu: ta shan zhi shi haishi huai bei zhi ji*]," Procuratorate Daily [*Jiancha ribao*], 24 April 2003, *<http://www.jcrb.com/zyw/n84/ca52396.htm>* (7 July 2003).

[109] The eight core conventions are: Minimum Age Convention, 1973 (Convention 138); Worst Forms of Child Labor Convention, 1999 (Convention 182); Forced Labor Convention, 1930 (Convention 29); Abolition of Forced Labor Convention, 1957 (Convention 105); Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention 87); Right to Organize and Collective Bargaining Convention, 1949 (Convention 98); Discrimination (Employment and Occupation) Convention, 1958 (Convention 111); Equal Remuneration Convention, 1951 (Convention 100). Text for all conventions can be found at the International Labour Organization's Web site at *<http://www.ilo.org>*.

[110] Congressional-Executive Commission on China Roundtable, Freedom of Association for Chinese Workers, 7 July 2003, Testimony of Phil Fishman.

[111] Decision of the Standing Committee of the National People's Congress on Amending the Trade Union Law of the People's Republic of China, enacted October 27, 2001, art. 11.

[112] Congressional-Executive Commission on China Roundtable, Workplace Safety Issues in the People's Republic of China, 11 November 2002, Testimony of Han Dongfang.

[113] Congressional-Executive Commission on China Roundtable, Codes of Conduct: U.S. Corporate Compliance Programs and Working Conditions in Chinese Factories, 7 July 2003, testimony of Doug Cahn.

[114] Congressional-Executive Commission on China Roundtable, Workplace Safety Issues in the People's Republic of China, 11 November 2002, Testimony of Han Dongfang.

[115] Congressional-Executive Commission on China Roundtable, Workplace Safety Issues in the People's Republic of China, 11 November 2002, Testimony of Trini Leung.

[116] People's Republic of China State Council Order Number 174, Decision on Amending the "State Council Provisions on Work Hours for Laborers," [*Guowuyuan guanyu xiugai "Guowuyuan guanyu zhigong gongzuo shijian de guiding" de guiding*], enacted March 25, 1995, arts. 1 and 2.

[117] People's Republic of China Labor Law [*Zhonghua renmin gongheguo laodongfa*], enacted 5 July 1994, arts. 41 and 44.

[118] "China: A Boom in Going Bust," Economist Intelligence Unit Executive Briefing, 30 July 2003, *<http://www.factiva.com>* (July 7, 2003).

[119] "Nation Issues Regulation Banning Child Labor," China Daily, 16 October 2002 *<http://www1.chinadaily.com.cn/en/doc/2002-10/16/content_139877.htm>* (23 September 2003).

[120] International Labor Organization, Ratifications of the ILO Fundamental Conventions (As of 23 September 2003), *<http://Webfusion.ilo.org/public/db/standards/normes/appl/applratif8conv.cfm?Lang=EN>* (23 September 2003).

[121] Constitution of the People's Republic of China, art. 36.

[122] White House News Release, "President Bush, Chinese President Jiang Zemin Discuss Iraq, N. Korea," 25 October 2002, *<http://www.whitehouse.gov/news/releases/2002/10/20021025.html>* (23 September 2003).

[123] Department of State Press Statement, "Six Nations Listed As Severe Violators of Religious Freedom," 5 March 2003, *<http://usinfo.state.gov/regional/ea/uschina/hr0305.htm>* (23 September 2003).

[124] United States Commission on International Religious Freedom, 2003 Annual Report, 1 May 2003, *<http://www.uscirf.gov/reports/02May03/finalReport.php3?scale=800>* (23 September 2003).

[125] "China Arrests 12 Members of Unauthorized Church," Agence France Presse, 19 June 2003.

[126] *Ibid.*

[127] Erik Eckholm, "Jailed Religious Leader in China in Poor Health," New York Times, 11 June 2003, *<www.nyt.com>*.

[128] John Pomfret, "Evangelicals on the Rise in Land of Mao," Washington Post, 24 December 2002, *<www.washingtonpost.com>*.

[129] *Ibid.*

[130] "Cardinal Sodano Says Relations Between Holy See, China 'At Standstill,'" Union of Catholic Asian News, 12 June 2003.

[131] "China Tightening Its Grip on Catholics," Zenit.org, 28 May 2003, *<www.zenit.org/english/visualizza.phtml?sid=36290>* (24 September 2003).

[132] *Ibid.*

[133] *Ibid.*

[134] Congressional-Executive Commission on China Hearing, Will Religion Flourish Under China's New Leadership?, 24 July 2003, Written Statement of Randall Schriver.

[135] "After Five Decades, Tibet's Monks Still Bristle Under Chinese Rule," Agence France-Presse, 18 August 2002, in FBIS, Doc ID CPP20020818000009. ("When the 'Panchen Lama' . . . went to the Jokhang, the monastery at the centre of Lhasa in June [2002], soldiers armed with machine guns surrounded the building," [the monk] said. "Many monks were not even permitted to be there to receive him." Ibid. Another public but uncirculated report by Kate Saunders, "Se-

curity surrounds visit of Chinese choice of Panchen Lama to Kumbum," 18 August 2003, provides details about Gyaltsen Norbu's visit to Kumbum Monastery (Chinese: *Ta'ersi*) in August 2003.

[136] Congressional-Executive Commission on China Topic Paper, "The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," 10 February 2003.

[137] According to a draft translation by the International Campaign for Tibet of Sonam Phuntsog's official sentencing document dated 20 November 2002 (*gan zhong xin yi chu zi* No. 11, 2002), "Even though the accused and his lawyer denied that he delivered the words "Tibet independence," his actions showed that the accused advocated separating the country and undermining the unity of our nationalities." *<http://www.savetibet.org/News/News.cfm?ID=1433&c=7&Type=s>* (6 August 2003).

[138] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "International Religious Freedom Report—2002, China (Includes Hong Kong and Macau)," 7 October 2002, *<http://www.state.gov/g/drl/rls/irf/2002/13870.htm>* (8 October 2002).

[139] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Report on Human Rights Practices—2002, China (Includes Hong Kong and Macau)," 31 March 2003, *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (1 April 2003).

[140] Human Rights Watch World Report 2003: China and Tibet, January 2003, *<http://www.hrw.org/wr2k3/asia4.html>* (15 January 2003).

[141] "Falun Cult Condemned for Hindering SARS Control," People's Daily, (English edition) 11 June 2003, *<http://english.peopledaily.com.cn/200306/11/eng20030611_118041.shtml>*

[142] See arts. 19, 19, and 35, respectively.

[143] See, e.g., Zhao Xianglin, "A Web site in the City Posts News Without Authorization and is Ordered to Adjust and Reform," [*Shiqu yi wangzhan shanzi dengzai xinwen beile ling zhengdun*] FSOnline [*Foshan zaixian*] (online edition of the Foshan Daily), 10 September 2002, *<http://www.fsonline.com.cn/news/foshan/hot/200209100012.htm>* (2 September 2003) . In December 2002, Chinese authorities announced that they would institute a national licensing system for reporters, *see* "Who is Qualified to be a Reporter? Different Reflections on the Media's Reporting on Various Aspects of Society" [*Shei you zige dang jizhe-Meiti shilu shehui geshi duici butong fanying*], People's Daily [*Renmin wang*], 9 January 2003, *<http://www.people.com.cn/GB/news/6056/20030109/904328.html>* (14 August 2003), and Shanghai has already put such a licensing system in place, *see* "Shanghai Holds the First Journalist Qualification Examination, Questions May Stymie Older Journalists" [*Shanghai shouci jizhe zige kaoshi*] Southern Net [*Nanfang Wang*], *<http://www.southcn.com/edu/examinfo/zige/200212230075.htm>* (14 August 2003), citing Cai Yan, China Youth Daily [*Qingnian bao*], 23 December 2002.

[144] For a list of legal provisions relating to these and other restrictions on freedom of expression in China, see *<http://www.cecc.gov/pages/selectLaws/PRCLaws.pdf>*.

[145] *See, e.g.,* Karl Marx, "Debates on Freedom of the Press and Publication of the Proceedings of the Assembly of the Estates," Rheinische Zeitung, May 1842:

"The free press is the ubiquitous vigilant eye of a people's soul, the embodiment of a people's faith in itself, the eloquent link that connects the individual with the state and the world, the embodied culture that transforms material struggles into intellectual struggles and idealizes their crude material form. . . . It is the censored press that has a demoralizing effect. . . . The government hears only its own voice, it knows that it hears only its own voice, yet it harbors the illusion that it hears the voice of the people, and it demands that the people, too, should itself harbor this illusion."

Available at *<http://www.marxists.org/archive/marx/works/1840/free-press/index.htm>* (14 August 2003). *See also* Mao Zedong, "Discussions on United Government," [*Lunlian he zhengfu*] in "Mao Zedong Makes the Government Report to the Seventh Plenum of the Chinese Communist Party" [*Mao Zedong zuoqi da zhengzhi baodao*], 24 April 1945:

"We believe that the following demands are appropriate, and are the minimum acceptable: . . . We demand the elimination of all reactionary orders that suppress such things as the people's speech, press, assembly, association, thought, belief and personal freedoms, and that the people be able to obtain meaningful free rights."

Available at *<http://www.people.com.cn/GB/shizheng/252/5089/5099/20010426/452703.html>* (14 August 2003).

[146] For a summary of this discussion see the Congressional-Executive Commission on China Topic Paper, "The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," 10 February 2003.

[147] For example, unlike the death penalty conference discussed above, the Internet Society of China's 2002 Annual Conference held in November, 2002 in Shanghai and attended by Commission staff, was open to the press and the public. There was no discussion, much less debate, of freedom of expression as it relates to the Internet. One session was billed as having an "open forum," where audience members could question leaders of China's Internet industry. However, the open forum consisted of the moderator calling on a reporter from China's state owned media, who asked the panel: "When do you think the Spring of China's Internet will begin?" After several panel members responded, the moderator immediately declared the open forum over, even though 20 minutes remained before the session was scheduled to end.

[148] For example, although the Chinese government encourages the state controlled media to engage in targeted reporting on corruption, it will not tolerate similar criticisms from private individuals. *See, e.g.,* "An Employee is Detained [by 'Internet police'] for Rumormongering for Exposing the Corruption of a Superior [*Wangshang helu lingdao 'fubai' yi yuangong zaoyao bei juliu*]," People's Daily [*Renmin wang], 5 September 2003 (citing the Chu Tian Metropolitan Daily [Chutian dushibao*]), *<http://www.people.com.cn/GB/shehui/1061/2074192.html>* (5 September 2003).

[149] *See, e.g.,* "The Province Commences the Work of Province-Wide Rectification of Party and Government Agency Publications Abusing and Misusing Authority in Distribution," [*Wo sheng*

*kaizhan quansheng zhili dangzheng bumen baokan sanlan heli yongzhi quanfaxing gongzuo],* Hubei Press and Publication Net [*Hubei xinwen chuban wang*], 7 August 2003, *<http://www.hbnp.com.cn/news/show.asp?Id=1319>* (28 August 2003).

[150] *See, e.g.,* Zhang Jiahou, "A Marxist View of the Press and 'Supervising Public Opinion'" [*Makesi zhuyi xinwen guanyu xinglun jiandu*] Hubei Media Net [*Hubei zhuan mei wang*], 25 August 2002, *<http://www.cnhubei.com/aa/ca185509.htm>* (14 August 2003):

"When reporters write articles supervising public opinion, they must bang the drum and shout on behalf of the Party and the people, and certainly may not take the side of a single person or a small group of people and try to gain benefit for themselves in the name of supervising public opinion."

*See also* Dong Qiang, "Chen Liangyu Emphasizes Needs to Ensure Implementation of Central Committees' Demand in Shanghai; Municipal Party Committee Convenes Standing Committee Meeting to Specifically Study Ways to Rectify Unorganized, Indiscriminate Press and Publications Distribution," [*Chen Liangyu qiangdiao quebao zhongyang yaoqie zai benshi dedao guanqie luoshi zhili sanlan tanpai faxing*], translated in FBIS, Doc. CPP20030729000046, citing Shanghai Liberation Daily [*Shanghai jiefang ribao*], 28 July 2003:

"We should combine the launch of the special rectification drive with the strengthening of the party's supervision over the press and publications. We should always unswervingly uphold the nature of media as the mouthpiece of the Party and people, always uphold the Party's supervision over newspapers and periodicals, and always adhere to the correct direction in guiding public opinion."

[151] "Destroy Fascist Publishing Laws," [*Dadao faxicsi de chubanfa*], Chongqing Xinhua Daily [Xinhua ribao], 29 June 1946:

"Modern democratic countries like England and the United States simply have nothing like publishing laws formulated to gag freedom of the press. In a publishing law, to adopt requirements that newspapers and periodicals must not only apply and register, but most also obtain permission in order to engage in distribution under a so-called special permit system; only fascist countries have this sort of evil."

[152] *See, e.g.,* John Milton, "A Speech for the Liberty of Unlicensed Printing to the Parliament of England," Areopagitica (1644).

[153] Another form of prior restraint is judicial injunction. One political commentator explained the distinction between government censorship and judicial injunction as follows:

"The censor has no law but his superiors. The judge has no superiors but the law. The judge, however, has the duty of interpreting the law, as he understands it after conscientious examination, in order to apply it in a particular case. The censor's duty is to understand the law as officially interpreted for him in a particular case. The independent judge belongs neither to me nor to the government. The dependent censor is himself a government organ. In the case of the judge, there is involved at most the unreliability of an individual intellect, in the case of the censor the unreliability of an individual character."

Karl Marx, "Debates on Freedom of the Press and Publication of the Proceedings of the Assembly of the Estates," Rheinische Zeitung, May, 1842, available at *<http://www.marxists.org/archive/marx/works/1840/free-press/index.htm>* (14 August 2003).

[154] *See <http://www.cecc.gov/pages/selectLaws/PRCLaws.pdf>* for a list of Chinese laws and regulations in this area.

[155] *See, e.g.,* Wu Xuecan (former editor of the official People's Daily Foreign Edition), "Let Everyone Become a Censor: The CCP's Multifaceted Media Control" [*Rang meige ren dou biancheng jianchayuan*], VIP Reference [*Da cankao*], 12 March 2002, <http://www.bignews.org/20020312.txt> (14 August 2003); Congressional-Executive Commission on China Open Forum Roundtable on Human Rights and the Rule of Law in China, 10 March 2003, Testimony and written statement of Chen Yali; and Elisabeth Rosenthal, "Beijing in a Rear-Guard Battle Against a Newly Spirited Press," New York Times, 15 September 2002, A1.

[156] *See* Wei Xiaowei, "Shenzhen Establishes a Publication Orientation Warning Mechanism" [*Shenzhen jianli chuban daoxiang yu jingji zhi*], Gansu Xinhua *<http://www.gs.xinhuanet.com/cmpd/2003-06/30/content_659194.htm>* (29 August 2003) (citing the China Press and Publication Daily [*Zhongguo xinwen chuban bao*]).

[157] *See, e.g.,* "The Central Government Prohibits the Domestic Media from Discussing Constitutional Reforms" [*Zhongyang jin neidi zhuan meiti zhenggai xiuxian*] 21 August 2003, Hong Kong Sing Tao Jih Pao, *<http://www.singtao.com/frame.html?forcepage=/yesterday/chi/0821eo04.html>* (22 August 2003).

[158] "Shenzhen Editor Sacked over Article Satirizing Hu," The Straits Times, 26 November 2002. Available at *<http://www.asiamedia.ucla.edu/Weekly2002/11.26.2002/China2.htm>* (14 August 2003).

[159] John Pomfret, "Chinese Newspaper Shut After Call for Reform," Washington Post, 14 March 2003, *<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A23326-2003Mar13&notFound=true>* (14 August 2003).

[160] Richard McGregor, "China Moves to Control Liberal Paper," Financial Times, 4 May 2003, *<http://news.ft.com/home/asia>* (5 May 2003).

[161] "A Beijing Newspaper is Censored for Criticizing the Government," [*Beijing yi jia baozhi piping zhengfu zaojin*], BBC.com, Chinese edition, 16 June 2003, (citing a report in the Hong Kong Wen Hui Bao), *<http://news.bbc.co.uk/hi/chinese/news/newsid_2999000/29998841.stm>* (15 August 2003).

[162] *See, e.g.,* Congressional-Executive Commission on China Open Forum Roundtable on Media Freedom in China, 24 June 2002, Transcript of He Qinglian, former journalist in the PRC:

"One of these subjects [that the government does not allow to be reported] is criticism of individual Chinese leaders. Also, matters relating to foreign affairs that the government does not wish foreigners to know about. Every couple of months there were a dozen or more different kinds of materials that were not to be discussed at all. One is not permitted to criticize the na-

tional economic policy or to discuss matters relating to Tibet, Taiwan, or Xinjiang, or about the Cultural Revolution. There were many such regulations."

(Available at *<http://frWebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:81228.wais>* (18 August 2003)) For an example of such a regulation, see The Communist Party Propaganda Department and the General Administration on Press and Publication Issue a Notice Demanding that Book Publishing Work Welcome the 16th Party Congress in a Practical Manner, [*Zhong xuanbu xinwen chuban zong shufachu tongzhi yaoqiu qieshi zuohao huanjie shiliu da tushu chuban gongzuo*], issued 18 March 2002, *<www.bjppb.gov.cn/xwcbrx/2002-03-1802.htm>* (18 August 2003).

[163] "China Sites Count Cost of Cyber-Control," CNN, 4 November 2003 *<http://edition.cnn.com/2002/TECH/11/03/china.content/>* (15 August 2003).

[164] For example, by impeding the efficiency of the WHO's Global Public Health Information Network, an electronic surveillance system that actively trawls the World Wide Web looking for reports of communicable diseases and communicable disease syndromes in electronic discussion groups, on news wires and elsewhere on the Web.

[165] Huang Liqi, "Incident Resulting from Rumors of an Unknown Virus, Heyuan City Citizens Fight to Buy Antibiotics" [*Shi yin chuanwen chuxian weiming bingdu, Heyuan shimin zhenggou kangshengsu*], Jinyang Net [*Jinyang wang*] (the online version of the Yangcheng Evening News [*Yangcheng wan bao*]), 3 January 2003 *<http://www.ycwb.com/gb/content/2003-01/03/content_474860.htm>* (15 August 2003). Government-controlled media stated that people in Guangdong began coming down with SARS in November of 2002. *See* "What Can We Do to Defeat SARS?" [*Women kao shenma zhansheng "fedian?"*], Southern Weekend [*Nanfang zhoumou*], 24 April 2003, *<http://www.nanfangdaily.com.cn/zm/20030424/xw/tb/200304240721.asp>* (15 August 2003).

[166] "Heyuan City Citizens go to Guangzhou in Panic Buying of Antibiotics" [*Heyuan ren gua Guangzhou qianggou kangshengsu], Jinyang Net [Jinyang wang*] (the online version of the Yangcheng Evening News [*Yangcheng wanbao*]), 5 January 2003, <http://*www.ycwb.com/gb/content/2003-01/05/content_475250.htm>* (15 August 2003); "The Appearance of an Unknown Virus in Heyuan is a Rumor" [*"Heyuan xian weiming bingdu" shi yaoyan*], Jinyang Net [*Jinyang wang*] 9 January 2003, *<http://www.ycwb.com/gb/content/2003-01/09/content_476766.htm>* (15 August 2003).

[167] For example, in the same month the Ministry of Health issued a notice requiring government departments to concienciously report incidents of unknown infectious diseases to the Ministry, several provincial and municpal governments issued a notice threatening Internet users who "distorted facts" or "spread rumors" regarding SARS with criminal prosecution. Compare Notice Regarding Strengthening Work on the Prevention of Infectious Diseases [*Guanyu jiaqiang chuanranbing zhi gongzuo de tongzhi*], art. 4, issued 13 May 2003, with Notice Regarding Strictly Prohibiting Utilizing the Internet to Produce or Transmit Harmfull or False Information [*Guanyu yanjin liyong hulianwang zhizuo, chuanbo youhai he bushi deng xinxi de gonggao*], issued 3 May 2003 by the Shanghai Municipal Government Coordination Working Group Focusing on the Elimination and Rectification of Harmfull Information on the Internet. *See also* Congressional-Executive Commission on China Roundtable, Dangerous Secret: SARS and China's Health Care System, Testimony and written statement of Bates Gill: For the time being, it appears the mainland's initial denial and slow response to the SARS outbreak characterizes a political environment where individual initiative is discouraged and social stability is protected above other interests, to the detriment of social safety. *<http://www.cecc.gov/pages/roundtables/051203/index.php>* (2 September 2003).

[168] *See, e.g.,* "Editorial: Sharing Health Info with the Public," China Daily, 27 August 2003, *<http://www1.chinadaily.com.cn/en/doc/2003-08/27/content_258532.htm>* (27 August 2003): The outcome would have been hard to imagine, had Beijing not shared information with the public and the rest of the world and ordered a nationwide mobilization.

But on the other hand, had local and national health authorities acted more resolutely and shared information with the public in a more timely manner, the epidemic may well have been contained within the borders of Guangdong Province, where SARS was first reported in China. See also, Ray Cheung, "Investigative Newspaper's Virus Reports 'Are Being Censored,'" South China Morning Post, 9 May 2003, *<www.scmp.com>*, and "China Gags SARS Talk on Net," South China Morning Post, 7 April 2003, *<www.scmp.com>*, citing AFP Beijing; Xue Baosheng, "Valuable Lesson for Government to Learn," China Daily, 6 June 2003, *<http://www1.chinadaily.com.cn/cndy/2003-06-06/118111.html>* (15 August 2003); Shu Xueshan, "A Test for Government and the Media" [*Kaoyan zhengfu yu meiti*], Jinyang Net [*Jinyang wang*] (the online version of the Yangcheng Evening News [*Yangcheng wanbao*]), 15 February 2003, *<http://www.ycwb.com/gb/content/2003-02/15/content_490366.htm>* (15 August 2003).

[169] For a detailed discussion of the role of information control in the spread of SARS, see the Congressional-Executive Commission on China Topic Paper "Information Control and Self-Censorship in the PRC and the Spread of SARS," 7 May 2003.

[170] "An Individual Spreading Rumors that 'An Unknown Epidemic is Spreading in Beijing' is Arrested" [*Wangshang sanbu "Beijing you buming jiqing yanman" yaoyanzhe beibu*], People's Daily [*Renmin wang*], 23 April 2003, citing the Beijing Youth Daily [*Beijing Qingnian bao*] *<http://www.people.com.cn/GB/shehui/45/20030423/978114.html>* (15 August 2003).

[171] "Two Chinese Editors Sacked Over Confidential SARS Document," South China Morning Post, 29 April 2003, *<www.scmp.com>*, citing Agence France-Presse, Beijing.

[172] Richard McGregor, "China Moves to Control Liberal Paper," Financial Times, 4 May 2003, *<http://news.ft.com/home/asia>* (5 May 2003).

[173] "China censors CNN SARS Report," CNN, 15 May 2003, *<http://www.cnn.com/2003/WORLD/asiapcf/east/05/14/sars.censor/>* (2 September 2003).

[174] "Media and Academics 'Gagged by Officials' over SARS," South China Morning Post, 2 July 2003, *<www.scmp.com>*.

[175] Congressional-Executive Commission on China Open Forum Roundtable on Human Rights and the Rule of Law in China, 9 December 2002, Testimony, written statement, and transcript of Joan Mower.

[176] Regulations for the Management of Ground Satellite Television Broadcasting Receptors [*Weixing dianshi guangbo di mianjie shoushe shi guanli guiding*], issued 5 October 1993, art. 2; Detailed Implementing Regulations for the Management of Ground Satellite Television Broadcasting Receptors [*Weixing dianshi guangbo dimianjie shoushe shi guanli guiding shishi xize*], issued 2 March 1994, art. 6.

[177] Interim Measures Concerning the Examination, Approval and Regulation of Transmission of Foreign Satellite Television Channels in China [*Jingwai weixingdian shipin daoluo dishen piguan lizhanxing guiding*], issued 26 December 2001.

[178] "CNN Broadcast to China Cut," USA Today, 30 June 2003, *<http://www.usatoday.com/news/world/2003-06-30-Broadcast-cut_x.htm>* (15 August 2003), citing Associated Press.

[179] *See, e.g.,* Congressional-Executive Commission on China Roundtable, China's Cyber-Wall: Can Technology Break Through?, 4 November 2002, testimony and written statements of Avi Rubin, Co-founder, Publius, a Web publishing system that resists censorship and provides publishers with anonymity; Bill Xia, President, Dynamic Internet Technology Inc.; Lin Hai, computer scientist from Shanghai, served 2 years in prison for distributing Chinese e-mail addresses to a dissident on-line magazine; Paul Baranowski, chief architect for the Peekabooty project, which seeks to bypass censorship of the World Wide Web.

[180] *See, e.g.,* "CIC Press Conference: Corporate America's Role in China's Building of an 'E-Police' State," 17 June 2003, *<http://www.cicus.org/news/newsdetail.php?id=1237>* (8 September 2003).

[181] Larry X. Wu, "[W]e have our own understanding of what is a limitation of the freedom of speech. So we do use techniques to block certain Web sites . . . ." Second Secretary for Science and Technology at the Embassy of the People's Republic of China in Washington, DC, quoted in Patrick Di Justo "Does the End Justify the Means?" Wired.com, 18 March 2003, *<http://www.wired.com/news/politics/0,1283,58082,00.html>* (15 August 2003). See also Keith J. Winstein, "China Blocks MIT Web Addresses," The Tech, 22 November 2002, Volume 122, Number 58, *<http://wild-turkey.mit.edu/V122/N58/58Web.58n.html>* (28 August 2003): "A spokesperson for the Chinese embassy in Washington . . . confirmed that China was blocking access to MIT Web sites, but said neither he nor his colleagues in China knew why it was imposed."

[182] "Phonetics Institute Achieve Advance in Computer Language Comprehension Technology," [*Shengxuesuo jisuanji yuyan lijie jishu qude jinzhan*] Announcement on the Phonetics Institute, Chinese Academy of Sciences Web site, 18 February 2003, *<http://www.cas.ac.cn/html/Dir/2003/02/18/7228.htm>* (28 August 2003).

[183] China Internet Network Information Center [*Zhongguo hulianwang luxin xizhongxin*], "China Internet 2002 Annual Report" [*Zhongguo hulian wanglu 2002 nianjian*], *<http://www.cnnic.net.cn/annual2002/42.shtml>* (15 August 2003).

[184] *See, e.g.,* "15 Year Old Youth Making Reactionary Expression on the Internet is Subject to Administrative Punishment" [*15 sui shaonian wangshang fabu fandong yanlun shou chufa*], People's Daily [*Renmin wang*], 10 July 2003.

[185] For a thorough study of how BBSs in China are censored, see Reporters Without Borders, "Living Dangerously on the Net: Censorship and Surveillance of Internet Forums," 12 May 2003, *<http://www.rsf.org/article.php3?id_article=6793>* (15 August 2003).

[186] For example, one Internet forum that the Commission has been monitoring first went down in early July 2003, saying it was "under malicious attack." It came back up for a short period at the end of July, with the moderator citing "content problems" as one of the possible reasons for the site having been taken down, and warning posters that ". . . '[Forum name]' warmly welcomes you to join, provided you observe the principles of 'a united motherland, harmony between peoples, and obedience of the law.'" Cases where the government has shut down BBSs for political content include "Sleepless Night" [*Bumei zhiye*], and "Study and Thought" [*Xue er si*]. *See also* Kathy Chen, "China Cracks Down on Growing Debate Over Political Reform," The Wall Street Journal, 24 September 2003, *<http://online.wsj.com/article/0,,SB106434520777450300,00.html?mod=asia%255Fbusiness%255Ffeatured%255Farticles>* (24 September 2003) (discussing how in September 2003 Chinese authorities ordered four Web sites that posted articles on political and constitutional reforms to close because the sites—*www.caosy.com, www.libertas2000.net, www.xianzheng.net,* and *www.cc-forum.com*—were not registered and did not have business licenses).

[187] *See, e.g.,* Rules for the Protection of Secrets in News Publishing [*Xinwen chuban baomi guiding*], issued 13 June 1992, art 15: Anyone wishing to provide a foreign news publishing organization a report or publication with contents that relate to the nation's government, economy, diplomacy, technology or military shall first apply to their unit or their supervising organ or unit for examination and approval. *See also* Law on the Protection of State Secrets [*Baoshou guojia mimifa*], issued 25 April 1990, art 8.

[188] *See, e.g.,* "If a Nanny Can Disclose State Secrets, Then Average Citizens Should Raise Their Awareness of Preserving Secrets" [*Baomu jingran toulu guojia jimi, baixin yexu tigao baomi yishi*], People's Daily [*Renmin wang*], 5 September 2003, http://*www.people.com.cn/GB/shizheng/1026/2073981.html (citing the Guangzhou Daily [Guangzhou ribao*]), emphasizing how anyone from Internet users to garbage collectors can run afoul of China's state secrets legislation. For a more detailed discussion of China's state secrets and national security laws, see the Congressional-Executive Commission on China Topic Paper, "Information Control and Self-Censorship in the PRC and the Spread of SARS," 7 May 2003.

[189] "People's Republic of China: State Control of the Internet in China," Amnesty International Document: ASA 17/007/02, *<http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA170072002ENGLISH/$File/ASA1700702.pdf>* (15 August 2003).

[190] *See, e.g.,* Reporters Without Borders, "2003 Annual Report: China," *<http://www.rsf.org/article.php3?id_article=6464>* (15 August 2003); Committee to Protect Journalists, "Attacks on

the Press in 2002: China," *<http://www.cpj.org/attacks02/asia02/china.html>* (15 August 2003).

[191] *See, e.g.,* China Detains Dissident over Reform Call, CNN.com, 9 January 2003, *<http://asia.cnn.com/2003/WORLD/asiapcf/east/01/09/china.dissident.ap/index.html>* (9 January 2003).

[192] Wang Shulin, "Xinjiang Hears Case of Incitement of Subversion Against the State" [*Xinjiang shenli yilie shandong dianfu guojia zhengquanan*], China Court Web [*Fayuan hulianwang*], 16 February 2003, *<http://www.chinacourt.org>* (15 August 2003).

[193] The accounts of the accusations against Huang Qi are based on copies of official government documents made available by his supporters at *<http://www.6-4tianwang.com>* (19 May 2003—now defunct).

[194] The accounts of the accusations against these individuals are based on copies of official government documents available at *<http://peacehall.com/news/gb/china/2003/04/200304291247.shtml>* (19 May 2003).

[195] "15-Year-Old Youth Making Reactionary Expression on the Internet is Subject to Administrative Punishment" [*15 sui shaonian wangshang fabu fandong yanlun shou chufa*], People's Daily [*Renmin wang*], 10 July 2003, *<http://www.people.com.cn/GB/shehui/1061/1967015.html>* (15 August 2003).

[196] *See, e.g.,* "Congressional-Executive Commission on China Selected Legal Provisions of the People's Republic of China Affecting the Free Flow of Information," available at *<http://www.cecc.gov/pages/selectLaws/PRCLaws.php>*.

[197] Congressional-Executive Commission on China Roundtable, Voices of the Small Handful: 1989 Student Movement Leaders Assess Human Rights in Today's China, 2 June 2003, Testimony of Wang Dan.

[198] Population Census Office Under the State Council, Tabulation on the 2000 Population Census of the People's Republic of China, vol. 3, chart 6–1 (Beijing: China Statistics Press, 2002), 1681.

[199] "New Guidelines for Over-Quota Child Fines," The U.S. Embassy in Beijing Web site, *<http://www.usembassy-china.org.cn/sandt/estnews081602.htm>* (17 September 2003).

[200] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003 *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (16 September 2003).

[201] "Basic Views and Policies Regarding Population and Development," National Population and Family Planning Commission of China Web site, *<http://www.sfpc.gov.cn/en/basicview.htm>* (18 September 2003).

[202] Congressional-Executive Commission on China Roundtable, Women's Rights and China's New Family Planning Law, 23 September 2002, Testimony of Bonnie Glick.

[203] David Hsieh, "China Relaxes Family Planning Controls With Fine," The Straits Times, 19 January 2002, *www.straitstimes.com.*

[204] Congressional-Executive Commission on China Roundtable, Women's Rights and China's New Family Planning Law, 23 September 2002, Testimony of Susan Greenhalgh.

[205] *Ibid.*

[206] The United Nations' Office of the High Commissioner for Human Rights identifies HIV/AIDS as an undeniable human rights concern: "There is clear evidence that where individuals and communities are able to realize their rights—to education, free association, information, and, most importantly, non-discrimination—the personal and societal impact of HIV and AIDS are reduced. The protection and promotion of human rights are therefore essential to preventing the spread of HIV and to mitigating the social and economic impact of the pandemic. In addition, Article 21 of the Chinese Constitution states, "The state develops medical and health services, promotes modern medicine and traditional Chinese medicine . . . all to protect the people's health."

[207] *See, e.g.,* Congressional-Executive Commission on China Roundtable, HIV/AIDS in China: Can Disaster Be Averted?, 9 September 2002.

[208] *See, e.g.,* The Center for Strategic and International Studies, "Averting a Full-Blown HIV/AIDS Epidemic in China: A Report of the CSIS HIV/AIDS Delegation to China, 13–17 January 2003," February 2003. The Commission staff also directly received this advice from J. Stephen Morrison, Executive Director of the CSIS HIV/AIDS Task Force, and Bates Gill, Freeman Chair in China Studies at CSIS.

[209] Joint United Nations Programme on HIV/AIDS and World Health Organization, "AIDS Epidemic Update," December 2002, 7, *<http://www.who.int/hiv/facts/en/epiupdate_en.pdf>* (3 September 2003).

[210] The Center for Strategic and International Studies, "Averting a Full-Blown HIV/AIDS Epidemic in China: A Report of the CSIS HIV/AIDS Delegation to China, 13–17 January 2003," February 2003, 2.

[211] United Nations Theme Group on HIV/AIDS in China, "HIV/AIDS: China's Titanic Peril—2001 Update of the AIDS Situation and Needs Assessment Report," June 2002, 7.

[212] "Chinese Vice Premier Meets UNDP Official," Xinhua, 5 July 2003, *<http://service.china.org.cn/link/wcm/Show_Text?info_id=68982&p_qry=AIDS>* (3 September 2003).

[213] CSIS, "Averting a Full-Blown HIV/AIDS Epidemic in China: A Report of the CSIS HIV/AIDS Delegation to China," 2.

[214] Congressional-Executive Commission on China Roundtable, HIV/AIDS in China: Can Disaster Be Averted?, 9 September 2002, Testimony of Joan Kaufman, Visiting Scholar, East Asia Legal Studies Program, Harvard Law School, and Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies.

[215] *See, e.g.,* "Hundreds of Police Storm 'AIDS Village' in China, Arrest 13 Farmers," Agence France-Presse, 3 July 2003, in FBIS, Doc ID CPP20030703000102; Agence France-Presse, "Group Says China Increased Arrests, Violence Against HIV Positive Protestors," 9 July 2003, in FBIS, Doc ID CPP20030709000038.

[216] Human Rights Watch, "China: Police Violence Against HIV-Positive Protestors Escalates—Henan Authorities Deepen AIDS Cover-up," 9 July 2003, *<http://www.hrw.org/press/2003/07/china070903.htm>* (3 September 2003).

[217] "China Starts Offering Free AIDS Drugs but Lacks Doctors to Administer Them," Agence France-Presse, 14 July 2003, *<http://www.aegis.com/news/afp/2003/AF030781.html>* (12 August 2003).

[218] Congressional-Executive Commission on China Roundtable, HIV/AIDS in China: Can Disaster Be Averted?, 9 September 2002, Testimony of Joan Kaufman, Visiting Scholar, East Asia Legal Studies Program, Harvard Law School.

[219] *See, e.g., ibid.;* Testimony of Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies.

[220] China has included provisions for the protection and equality of women in a succession of laws including the Constitution, Law of Inheritance (1985), Compulsory Education Law (1986), Law on the Protection of the Rights and Interests of Women (1992), Maternal and Infant Health Care Law (1994); Labor Law (1994), Criminal Procedure Law (1996), Criminal Law (1997), Adoption Law (1998), Marriage Law (2001, as amended), Population and Family Planning Law (2001), and the Trade Union Law (2001).

[221] "Woman Lawmaker Condemns Family Violence, Extramarital Affairs," People's Daily (English edition), 8 March 2001, *<http://fpeng.peopledaily.com.cn/200103/08/eng20010308_64465.html>* (23 September 2003).

[222] "Peng Peiyun Appealed to the 10th NPC to Amend the Law," All-China Women's Federation Web site, *<http://www.women.org.cn/womenorg/English/english/whatisnws/2003-1.htm>* (28 August 2003).

[223] Congressional-Executive Commission on China Roundtable, Holding up Half the Sky: Women's Rights in China's Changing Economy, 24 February 2003, Testimony of Margaret Woo.

[224] *Ibid.*

[225] Cindy Sui, "Beijing Woman Files Chinese Capital's First Sexual Harassment Suit," Agence France Presse, 1 July 2003.

[226] Holding up Half the Sky, Prepared Statement of Rangita de Silva.

[227] "Family Violence Becomes Public Evil in China," Xinhua, 7 March 2003, *<http://www.china.org.cn/english/China/57629.htm>* (23 September 2003).

[228] "White Ribbons to End Violence Against Women in Beijing," People's Daily (Engilsh edition), 29 November 2002, *<http://english.peopledaily.com.cn/200211/30/eng20021130_107691.shtml>* (23 September 2003).

[229] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003, *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003).

[230] Holding up Half the Sky, Testimony of Rangita de Silva.

[231] *Ibid.*

[232] Peter Harmsen, "China's Sex Workers Heading Blindly Towards AIDS Catastrophe," Agence France Press, 29 November 2002, *<http://www.aegis.com/news/afp/2002/AF0211C3.html>* (23 September 2003).

[233] Population Census Office, Tabulation on the 2000 Population Census of the People's Republic of China, vol. 3, Chart 6–1 (Beijing:China Statistics Press: Beijing, 2002), 1,681.

[234] Joe McDonald, "China's Trade in Baby Girls Illicit But Thriving," Associated Press, 25 March 2003.

[235] Human Rights Watch, "The Invisible Exodus: North Koreans in the People's Republic of China," November 2002, *<http://www.hrw.org/reports/2002/northkorea/>* (16 September 2003).

[236] Congressional-Executive Commission on China Roundtable, Clearing the Air: The Human Rights and Legal Dimensions of China's Environmental Dilemma, 27 January 2002, Testimony of Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations.

[237] Report of the U.S. Embassy in Beijing, "The Cost of Envrionmental Degradation in China," December 2000, *<http://www.usembassy-china.org.cn/sandt/CostofPollution-Web.html>* (22 September 2003).

[238] China's Environmental Dilemma, Written Statement of Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations.

[239] *Ibid.,* Testimony of Jennifer Turner, Senior Project Associate for China, Woodrow Wilson Center.

[240] *Ibid.,* Written Statements of Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations, and Brian Rohan, Associate Director, American Bar Association Asian Law Initiative.

[241] *Ibid.,* Testimony of Elizabeth Economy, C.V. Starr Senior Fellow and Director, Asia Studies, Council on Foreign Relations.

[242] *Ibid.,* Testimony of Richard Ferris, Principal, Beveridge & Diamond, PC.

[243] Convention relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.

[244] Joe Young, "Hukou Reform Targets Urban-Rural Divide," The China Business Review, May–June 2002, 32.

[245] *Ibid.,* 32–33.

[246] *See, e.g., ibid.,* 33; Nicolas Becquelin, "Without Residency Rights, Millions Wait in Limbo," South China Morning Post, 27 February 2003, *<http://focus.scmp.com/focusnews/ZZZZ0WR4JCD.html>* (27 February 2003).

[247] Human Rights in China, "Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities," 6 November 2002, ii, *<http://iso.hrichina.org/download_repository/A/HRIC%20Full%20Report%20Nov%202002.pdf>* (2 September 2003).

[248] *Ibid.,* 77.

[249] Hein Mallee, "Migration, Hukou and Resistance in Reform China," in Elizabeth J. Perry and Mark Selden (eds.), Chinese Society: Change, Conflict and Resistance (London: Routledge, 2000), 85.

[250] Charles Hutzler and Susan Lawrence, "New Rules on Migrant Workers Mark Major Policy Shift in China," The Wall Street Journal, 20 January 2003, *<http://online.wsj.com/article/0,,SB1043003515257479704,00.html?mod=home_inside_today_asia>* (22 January 2003).

[251] Nicolas Becquelin, "Without Residency Rights, Millions Wait in Limbo," South China Morning Post, 27 February 2003, *<http://focus.scmp.com/focusnews/ZZZZ0WR4JCD.html>* (27 February 2003).

[251] *See, e.g.,* "Japanese Daily: 30 'Refugees' Sent Back to DPRK in Late January," Choson Ilbo, translated in FBIS, Doc. ID: KPP20030409000094, 10 April 2003.

[253] Nick Young, "Searching for Civil Society," 250 Chinese NGOs (China Development Brief 2001), 9.

[254] Julia Greenwood Bentley, "The Role of International Support for Civil Society Organizations in China," Harvard Asia Quarterly, Winter 2003), 11.

[255] Congressional-Executive Commission on China Roundtable, To Serve the People: NGOs and the Development of Civil Society in China, 24 March 2003, Testimony of Ma Qiusha. This report uses the term non-governmental organizations (NGOs) to refer to groups and organizations in civil society, but others reject the term in the context of China and prefer to use instead "non profit organizations" (NPOs) or "civil society organizations" (CSOs). *See* Bentley, at 11; *see also* To Serve the People, Testimony of Ma Qiusha, for a discussion of terms, definitions and the different kinds of NGOs that exist in China.

[256] *See* U.S. Embassy Beijing, "Chinese NGO's—Carving a Niche Within Constraints," January 2003, *<http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm>* (19 February 2003).

[257] *Ibid.,* 2.

[258] *See* Congressional-Executive Commission on China Roundtable, Clearing the Air: The Human Rights and Legal Dimensions of China's Environmental Dilemma, 27 January 2003, Testimony of Jennifer Turner.

[259] Regulations on Legal Aid [*Falü yuanzhu tiaoli*], issued 16 July 2003, arts. 7–9. An official Chinese commentator stressed that legal aid contributions and services from non-governmental organizations would be keys in providing legal services to the underprivileged. "Law, How it Becomes a Consumable of the Weak" [*Falü, ruhe chengwei ruozhe de xiaofepin*], Procuratorate Daily [*Jiancha ribao*], 18 August 2003, *<http://www.jcrb.com/zyw/n194/ca110462.htm>* (22 August 2003).

[260] *See* Congressional-Executive Commission on China Roundtable, To Serve the People: NGOs and the Development of Civil Society in China, 24 March 2003, Testimony of Nancy Yuan; U.S. Embassy Beijing, "Chinese NGOs—Carving a Niche Within Constraints," January 2003, *<http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm>* (19 February 2003) ("All knowledgeable interlocutors in China believe that the emergence of the Falun Gong movement, and the government's crackdown against it, significantly slowed the process of drafting and approving new NGO registration rules.").

[261] Congressional-Executive Commission on China Roundtable, Clearing the Air: The Human Rights and Legal Dimensions of China's Environmental Dilemma, 27 January 2003, Testimony of Jennifer Turner.

[262] *See, e.g.,* Congressional-Executive Commission on China Roundtable, To Serve the People: NGOs and the Development of Civil Society in China, 24 March 2003, Testimony of Ma Qiusha; U.S. Embassy Beijing, "Chinese NGO's-Carving a Niche Within Constraints," January 2003, *<http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm>* (19 February 2003); and Julia Greenwood Bentley, "The Role of International Support for Civil Society Organizations in China," Harvard Asia Quarterly, (Winter 2003), 13. The main regulations governing the registration and operation of social organizations in China is the Regulations for Registration and Management of Social Organizations [*Shehui tuanti dengji guanli tiaoli*], issued 25 September 1998.

[263] NGOs may also register with the local Civil Affairs bureau. For ease of discussion, we will just use MOCA as representative of the Civil Affairs bureaucracy, whether national or local.

[264] *See* Julia Greenwood Bentley, The Role of International Support for Civil Society Organizations, Harvard Asia Quarterly (Winter 2003).

[265] Edward Gargan, "China Cracks Down on Clubs; Lit Study Group, Anglers Among Those Dissolved," 22 June 2003, Newsday, (23 June 2003); "Shutting Down Social Organizations Is Not an Administrative Punishment" [*Zhuxiao shetuan bushu xingzheng chufa*], Jinghua Ribao, 20 June 2003, *<http://www.people.com.cn/GB/paper1787/9470/876267.html>* (10 July 2003).

[266] Professor Liang Congjie founded Friends of Nature in 1994. By 2001, it had over 1,200 members and had engaged in a wide range of activities, from publishing a seven-volume series on environmental issues to campaigning for the banning of logging in Yunnan. *See* Julia Greenwood Bentley, The Role of International Support for Civil Society Organizations, Harvard Asia Quarterly (Winter 2003), 13.

[267] Human Rights in China Press Release, "Activist Writer Wang Lixiong Dismissed from Environmental Group," 14 February 2003. According to a knowledgeable source, the Board of Friends of Nature had apparently asked Wang to resign, but he refused. Wang wanted to be fired, so that it neither be, nor appear to look, voluntary and compliant.

[268] *See* Bentley, 14 ("In the absence of significant tax incentives for charitable donations by either corporations or individuals, it is very difficult for CSOs [civil society organizations] to raise funds domestically.").

[269] *See* Congressional-Executive Commission on China Roundtable, To Serve the People: NGOs and the Development of Civil Society in China, 24 March 2003, Testimony of Nancy Yuan. See also *<www.chinadevelopmentbrief.com>*—an impressive resource about domestic and international NGOs working in China.

[270] Multinational corporations such as Nike, Adidas, Reebok, Levi Strauss, Microsoft, Ford Motor Company and General Motors have also invested in China's civil society by supporting a wide range of activities, including for example, health and education programs, rule of law efforts and poverty alleviation projects. See Congressional-Executive Commission on China Roundtable, To Serve the People: NGOs and the Development of Civil Society in China, 24 March 2003, Written statement of Nancy Yuan.

[271] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Reports on Human Rights Practices—2002, China (includes Hong Kong and Macau)," 31 March 2003 *<http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>* (8 July 2003). The government-established China Society for Human Rights does not monitor human rights conditions in China, but rather defends China's record and views on human rights.

[272] U.S. Embassy Beijing, "Chinese NGOs—Carving a Niche Within Constraints," January 2003, *<http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm>* (19 February 2003).

[273] Julia Greenwood Bentley, The Role of International Support for Civil Society Organizations, Harvard Asia Quarterly (Winter 2003), 1.

[274] Constitution of the People's Republic of China, art. 57.

[275] *See, e.g.,* Delegate Law of the National People's Congress and Various Levels of Local People's Congresses [*Zhonghua renmin gongheguo quanguo renmin daibiao dahui he difang geji renmin daibiao dahui daibiao fa*], enacted 3 April 1992, arts. 1–3; Election Law of the National People's Congress and Various Levels of Local People's Congresses [*Zhonghua renmin gongheguo quanguo renmin daibiao dahui he difang geji renmin daibiao dahui xuanju fa*], enacted, 1 July 1979, arts. 1–4; Organic Law of the National People's Congress [*Zhonghua renmin gongheguo quanguo renmin daibiao dahui zuzhi fa*], enacted 10 February 1982; Organic Law of the Various Levels of Local People's Congresses and Governments [*Zhonghua renmin gongheguo difang geji renmin daibiao dahui he difang geji renmin zhengfu zuzhi fa*], enacted 1 July 1979.

[276] Peter Howard Corne, "Creation and Application of Law in the PRC," Am. J. of Comp. L. (2002): 369, 378.

[277] Constitution of the People's Republic of China, art. 60; Election Law of the National People's Congress, ch. 3.

[278] Organic Law of the National People's Congress, arts. 1–4.

[279] Perry Keller, "The National People's Congress and the Making of National Law," in Law-Making in the People's Republic of China (Boston: Kluwer Law International, 2000).

[280] See Murray Scot Tanner, "The National People's Congress" in Merle Goldman and Roderick MacFarquhar (eds.) The Paradox of China's Post-Mao Reforms (Cambridge, MA: Harvard University Press 1999), 101.

[281] People's Republic of China Legislation Law [*Zhonghua renmin gongheguo lifa fa*], enacted 15 March 2001, art. 7.

[282] Ibid., ch. 2.

[283] Organic Law of the National People's Congress, ch. 2.

[284] The 2003 announcement stated that "the National People's Congress establishes an ethnic specialized committee, a law specialized committee, an internal judicial committee, a finance and economics committee, an education, science, culture and healthcare committee, a foreign affairs committee, an overseas Chinese committee, an environmental and natural resources protection committee, and a agricultural enterprise and village committee." The decision of the 10th National People's Congress on the Establishment of Specialized Committees [*Dishijie quanguo renmin daibiao dahui diyi ci huiyi guanyu sheli dishijie quanguo renmin daibiao dahui zhuanmen weiyuanhui de jueding*], issued 6 March 2003, <http://*www.law-lib.com/law/law_view.asp?id=42898*> (14 August 2003).

[285] Legislation Law, ch 2.

[286] Corne, "Creation and Application of Law in the PRC," 279.

[287] Legislation Law, arts. 34 and 35.

[288] One noted case in which the NPC did in fact solicit public opinion was in the drafting of amendments for the Marriage Law of 2001. "Public Replies to New Marriage Law," People's Daily (English edition), 2 March 2001, *<http://fpeng.peopledaily.com.cn/200103/02/print20010302_63854.html>* (25 September 2003).

[289] *See, e.g.,* Young Nam Cho, "From 'Rubber Stamps' to 'Iron Stamps': The Emergence of Chinese Local Congresses as Supervisory Powerhouses," China Quarterly 171 (2002): 724.

[290] Constitution of the People's Republic of China, ch. 5. Certain areas, such as Tibet (Xizang), Xinjiang, Inner Mongolia, and the Shenzhen special economic zone, have special legislative powers superior to those of other provincial and directly administered municipalities. The local congresses in these areas have the power, within their specific NPC mandates, to enact legislation that conflicts with the law promulgated by the NPC and NPSC. Legislation Law, ch. 4, sec. 1.

[291] Legislation Law, art. 68.

[292] Commission Staff Interview.

[293] *Ibid.*

[294] *Ibid.*

[295] *Ibid.*

[296] *Ibid.*

[297] Congressional-Executive Commission on China 2002 Annual Report.

[298] Zhang Tingting, "The Public Solicited for Legislative Items and Drafts," China Internet Information Network, 12 August 2002, *<www.china.org.cn/english/2002/Aug/39228.htm>* (24 September 2003).

[299] *Ibid.*

[300] Alex Xu, "Nine Proposals by Public Representatives Adopted in Sichuan," China Internet Information Network, 3 January 2002, *<www.china.org.cn/english/2003/Jan/52699.htm> (24 September 2003).*

[301] "Citizens Invited to Participate in Lawmaking in SW China Province," Xinhua, 25 December 2002, *<http://www.china.org.cn/english/government/52072.htm>* (24 September 2003).

[302] "Zhejiang: Citizens Have the Right to Attend Provincial People's Congress Meetings," Zhejiang Daily [*Zhejiang Ribao*], 28 June 2003, *<http://www.zjdaily.com.cn>* (14 August 2003).

[303] Conclusions from Commission staff observation of village elections.

[304] Constitution of the People's Republic of China, art. 89 (1982).

[305] *Ibid.,* art. 89.

[306] Peter Howard Corne, "Creation and Application of Law in the PRC," Am. J. of Comp. L. (2002): 381.

[307] *See generally* Organic Law of the State Council of the People's Republic of China [*Zhonghua renmin gongheguo guowuyuan zuzhi fa*], enacted 10 December 1982; Constitution of the People's Republic of China, sec. 3.

[308] The State Council set legislative competence as a high priority in 1998 even before the National People's Congress enacted the Legislation Law for that specific purpose. General Office of the State Council, Notice on Several Opinions Regarding Improving the Legislative Work of the State Council and the 1998 State Council Legislative Plan [*Guanyu yin fa guowuyuan lifa gongzuo ruogan yijian he 1998 nian lifa gongzuo anpai de tongzhi*] in The State Council Gazette [*Guowuyuan gongbao*], No. 14 (1998): 588–91 (stating that the goal of improving government legislation is a central component of Deng Xiao Ping theory and the basic CCP line of thought).

[309] "Specialists' Discussion: The Ministry of Commerce and a New Era of Trade" [*Zhuanjia fangtan: shangwu bu zhuzheng xin maoyi shidai*], People's Daily [*Renmin wang*], 3 March 2003, *<http://www.peopledaily.com.cn/GB/shizheng/252/10434/44>* (1 July 2003).

[310] Wen Lei Ma et. al., "The State Capital Commission, the Banking Supervision Commission, and the Ministry of Commerce" [*Guozi wei, yinjian hui, shangwu bu deng si bumen fuxian*], People's Daily [*Renmin wang*] 7 March 2003, *<http://www.peopledaily.com.cn/GB/shizheng/252/10434/72>* (1 July 2003).

[311] *Ibid.*

[312] "Shenzhen to Lead PRC's Pilot Reform Toward 'Tripartite Administration,'" Shanghai Wenhui Bao, translated in FBIS, Doc. ID CPP20030203000034 (30 January 2003).

[313] *Ibid.*

[314] Within the listed categories, only Jiangsu Province, the Tibet Autonomous Region, Lhasa (the capital of the Tibet Autonomous Region), and Nanning City (the capital of Guangxi Autonomous Region) did not have Web sites when this report went to print. *See* "CECC E-Government Directory" *<http://www.cecc.gov/pages/prcEgovdir/dirEgovPRC.php>* (14 August 2003).

[315] Beijing Municipality, Chongqing Municipality, Fujian Province, and Anhui Province provide links to draft legislation on their Web sites. See *<http://www.cecc.gov/pages/prcEgovdir/dirEgovPRC.php>* (14 August 2003).

[316] Five Year People's Court Reform Plan, Legal Daily [*Fazhi ribao*], 23 October 1999, translated in FBIS Doc. ID CPP20000505000668.

[317] Constitution of the People's Republic of China, arts. 57, 58, 62, 67.

[318] Stanley Lubman, Bird in a Cage: Legal Reform in China After Mao (Stanford: Stanford University Press, 1999), 282.

[319] For example, the Minister of Public Security is the current head of the CCP's national Political-Legal Committee. See John Pomfret, "Child's Death Highlights Problems in Chinese Criminal Justice," Washington Post, 3 July 2003.

[320] "New 'Enforcement Notices' Designed to Increase Legal Transparency," Xinhua (English edition), in FBIS, Doc ID: CPP20030703000060.

[321] Supreme People's Court 2003 Work Report, 11 March 2003; Supreme People's Court Opinions on Strengthening the Construction of Grassroots People's Courts [*Zuigao renmin fayuan guanyu jiaqiang renmin fayuan jiceng jianshe de ruogan yijian*], issued 13 August 2000].

[322] Lubman, Bird in a Cage, 253.

[323] These figures include judges who hold degrees in any subject, not necessarily law. For number of judges in China at the end of 2002, see "PRC's Top Judge Xiao Yang: Numbers of Judges to be Cut Back," Xinhua, 7 July 2002, translated in FBIS, Doc. ID CPP20020707000050. For the number of judges in China in 1998 and their educational level, see 1998 Law Yearbook of China [*1998 Zhongguo falü nianjian*], (Beijing: Law Yearbook of China Press, 1998), 71. According to Chinese sources, in the five-year period ending in February 2003, the number of judges holding graduate degrees increased from 1,591 to 3,774 and the number of judges holding four-year college degrees increased from 52,117 to 82,764. "Chinese Courts Have 3,774 People with Ph.Ds: Judicial Ranks Stride Towards Professionalization," [*Zhongguo fayuan you boshi 3,774 ren, fayuan duiwu maixiang zhiyehua*], Isinolaw, 4 April 2003, *<http://www.sinolaw/net.cn/news/fzxw/jctj/200344133215.htm>* (17 June 2003).

[324] Supreme People's Court 2003 Work Report, 11 March 2003; Supreme People's Court Opinions on Strengthening the Construction of Grassroots People's Courts [*Zuigao renmin fayuan guanyu jiaqiang renmin fayuan jiceng jianshe de ruogan yijian*], issued 13 August 2000.

[325] Randall Peerenboom, China's Long March toward Rule of Law, (Cambridge, U.K.: Cambridge University Press, 2002), 290.

[326] "PRC's Top Judge Xiao Yang: Numbers of Judges to be Cut Back," Xinhua, 7 July 2002, translated in FBIS, Doc. ID CPP20020707000050; Veron Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," Working Paper, Carnegie Endowment for International Peace, No. 32, November 2002, 11; Shao Zongwei, "Courts to Guarantee Fair Trials," 25 December 2002, translated in FBIS, Doc. ID CPP20021225000028.

[327] Jerome A. Cohen, "Reforming China's Civil Procedure: Judging the Courts," Am. J. of Comp. L. (1997): 802.

[328] "PRC Chief Justice Xiao Yang Promotes Concept of 'People's Justice,'" Xinhua, 24 August 2003, in FBIS, Doc. ID CPP20030824000055; Xu Xun, "Analysis on Relationship Between Chinese Media and the Judiciary," Legal Studies [*Faxue Yanjiu*], 10 December 2001, translated in FBIS, Doc. ID CPP200112310000159; Bei Hu, Gary Cheung, and Fong Tak-ho, "Concern over Law and Order Efforts," South China Morning Post, 19 March 2003; Hung, "China's Commitment on Independent Judicial Review," 7.

[329] Supreme People's Court 2003 Work Report, 11 March 2003.

[330] Hu, Cheung, and Fong, "Concern Over Law and Order Efforts." 13 percent of delegates rejected the report and 7 percent abstained.

[331] Commission Staff Interview.

[332] People's Republic of China Judges Law [*Zhonghua renmin gongheguo faguan fa*], enacted 28 February 1995, art. 9; Supreme People's Court, Several Opinions on Strengthening the Professionalization of the Judicial Corps [*Zuigao renmin fayuan guanyu jiaqiang faguan duiwu zhiyehua de ruogan yijian*], issued 18 July 2002. Judicial authorities held China's first national judicial examination in the spring of 2002, but the passage rate was only 7 percent. Shi Fei, "Malfeasance in Judicial Exams Begins to Show: This Year Pattern the Pattern is Changed" [*Si kaoshi biduan chulu: jin nian geng fangshi*], 21st Century World Herald [*21 shiji huanqiu baodao*], 13 January 2002.

[333] "China's Judges Must Pass Exam to Keep Jobs," Xinhua, 20 July 2001, in FBIS, Doc. ID CPP20010720000074.

[334] Judges Law, art. 9; Supreme People's Court, Several Opinions on Strengthening the Professionalization of the Judicial Corps; Tian Yu, "Judicial Professionalization: The New Image of Chinese Judges" [*Faguan whiyehua: zhongguo faguan xin xianxiang, 19 February 2003, People's Daily [Renmin wang], <http://www.npcnews.com.cn/gb/paper8/23/class00800007/hwz229120.htm>* (25 June 2003). Judges in this category who are over the age of 40 must complete at least 6 months of college-level legal training within this 5 year-period, while younger judges must obtain a 4-year degree.

[335] *See, e.g.,* Measures (Experimental) on Appointing Presiding Judges [*Renmin fayuan shenpanzhang xuanren banfa*], issued 11 July 2000.

[336] Supreme People's Court 2003 Work Report, 11 March 2003.

[337] Supreme People's Court Circular on on Enforcing PRC Judges Law [*Zuigao renmin fayuan guanyu guancheluoshi "Zhonghua renmin gongheguo faguanfa" de tongzhi*], issued 11 July 2001; Judicial Training Regulations [*Faguan peixun tiaolie*], issued 20 October 2000.

[338] *See, e.g.,* Randall Peerenboom, China's Long March toward Rule of Law, (Cambridge: Cambridge University Press, 2002), 321.

[339] *Ibid.,* 295; Veron Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," Working Paper, Carnegie Endowment for International Peace, No. 32, November 2002, 12; Stanley Lubman, Bird in a Cage: Legal Reform in China After Mao (Stanford: Stanford University Press, 1999), 279–80.

[340] *See, e.g.,* Supreme People's Court, Methods on Strict Observance of the Recusal System [*Zuigao renmin fayuan, guanyu shenpan renyuan yange zhixing huibi zhidu de ruogan guiding*], issued 31 January 2001; People's Republic of China Basic Code of Professional and Ethical Conduct for Judges [*Zhonghua renmin gongheguo faguan zhiye daode jiben zhunze*], issued 18 October 2001; Amendments to the Judges Law [*Faguan fa*], enacted in 2001; Measures (Experimental) on Courts Enforcing Work Discipline [*Renmin fayuan zhixing gongzuo jilü chufen banfa (shixing)*], issued 12 September 2002; Several Provisions on Strictly Enforcing the Relevant Punishment Systems of the PRC Judges Law [*Zhigao renmin fayuan guanyu yange zhixing "Zhonghua renmin gongheguo faguanfa" youguan chengjie zhidu de ruogan guiding*], issued 10 June 2003.

[341] *See, e.g.,* Xu Xun, "Analysis on Relationship Between Chinese Media and the Judiciary," Legal Studies [*Faxue Yanjiu*], 10 December 2001, translated in FBIS, Doc. ID CPP200112310000159; Fong Tak-ho, "Judiciary to Undergo Anti-Graft Inspections," South China Morning Post, 9 October 2002, *<www.scmp.com>*; "PRC, Former Court President Sentenced to 1 Years for Bribery, Illegal Gains," Xinhua, 6 July 2003, translated in FBIS, Doc. ID CPP20030705000113.

[342] *See, e.g.,* Supreme People's Court, Work Reports, 1999–2003; "Xiao Yang Says that People's Courts Should Strive to Do Six Tasks Well," Xinhua, 11 March 2003, translated in FBIS, Doc. ID CPP20030211000203.

[343] Fong Tak-ho, "Judiciary to Undergo Anti-graft Inspections."

[344] Provisional Measures on Liability for Judgments Not in Accordance with the Law [*Renmin fayuan shenpan renyuan weifa shenpan zeren zhuijiu banfa*], issued 4 September 1998.

[345] Supreme People's Court, Several Provisions on Strictly Enforcing the Relevant Punishment Systems of the Judges Law, "The Whole Country's Court System Begins a Major Judicial Inspection [*Quanguo fayuan xitong kaizhan sifa da jiancha*]," People's Daily [*Renmin wang*], 20 June 2003, *<http://www.people.com.cn/GB/paper464/9472/876494.html>* (25 June 2003).

[346] Stanley Lubman, Bird in a Cage: Legal Reform in China After Mao (Stanford: Stanford University Press, 1999), 288, 291; Colin Hawes, "Dissent and Transparency in Recently Published Chinese Court Judgments," Paper Presented at the Association of Asian Studies Annual Meeting, New York, March 2003, 1.

[347] Supreme People's Court, Reply on People's Courts Using Standardized Legal Documents When Making Judgments [*Zuigao renmin fayuan guanyu renmin fayuan zhizuo falü wenshu renhe yinyong falü guifanxing wenjian de pifu*], issued 28 October 1986.

[348] Lubman, Bird in a Cage, 39, 42; Hawes, "Dissent and Transparency in Recently Published Chinese Court Judgments," 1.

[349] Supreme People's Court Notice Regarding the Promulgation of "Forms for Criminal Judgments by People's Courts" [*Zuigao renmin fayuan guanyu yinfa "fayuan xingshi susong wenjian yangshi"*], issued 30 April 1999.

[350] Supreme People's Court, Measures on the Management of Publication of Judgment Documents [*Zuigao renmin fayuan panjue wenshu gongbu guanli banfa*], issued 15 June 2000.

[351] Zhai Jianxiong, Judicial Information of the PRC: A Survey, *<http://www.llrx.com/features/chinajudicial.htm>* (1 October 2002).

[352] *See, e.g., <www.chinacourt.org>*. As of June 2003, the Supreme People's Court Web site contained hundreds of typical case decisions.

[353] Hawes, "Dissent and Transparency in Recently Published Chinese Court Judgments," 1, 13.

[354] These include the Guangzhou Maritime Court and the Tianjin High People's Court, and the Zhongyuan District Court in Zhengzhou. Hawes, at 8; "Tianjin Becomes First PRC Higher Court to Set Legal Precedents," Xinhua, 1 August 2003, in FBIS, Doc. ID CPP20030801000164.

[355] Supreme People's Court 2003 Work Report, 11 March 2003; Supreme People's Court 2002 Work Report, March 2002; Randall Peerenboom, China's Long March toward Rule of Law, (Cambridge: Cambridge University Press, 2002), 294.

[356] Supreme People's Court, Measures on the Management of Publication of Judgment Documents, arts. 2(4) and 4.

[357] Peerenboom, China's Long March Toward Rule of Law, 286.

[358] Lubman, Bird in a Cage: Legal Reform in China After Mao (Stanford: Stanford University Press, 1999), 12–13; Five-Year People's Court Reform Plan, Legal Daily [*Fazhi ribao*], 2 October 1999, No. 1; Supreme People's Court 2003 Work Report, 11 March 2003. In fact, Chinese law provides for the Adjudication Committees and tasks them with "discussing" important or difficult cases. Organic Law of the People's Courts [*Zhonghua renmin gongheguo renmin fayuan zuzhifa*], enacted 1 July 1979, amended 2 September 1983, art. 11.

[359] Commission Staff Interview. Critics of the practice argue when higher courts are consulted in this manner, they often reach decision about the case before the parties have had an opportunity to present arguments on appeal.

[360] While some scholars report that this practice is on the decline, others argue that recent rules imposing personal liability on judges for wrongly decided cases have made it more common. Veron Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," Working Paper, Carnegie Endowment for International Peace, No. 32, November 2002, 12; Peerenboom, China's Long March Toward Rule of Law, 315.

[361] Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," 8; Peerenboom, China's Long March Toward Rule of Law, 311.

[362] *Ibid.* at 9. Formally, people's congresses appoint court presidents at the corresponding level, who then nominate assistant judges. In practice, however, local governments and Party committees control the appointment process.

[363] Zhu Qiwen, "Elevate Quality of Judges," China Daily, 9 March 2002, <*www.Chinadaily.com.cn.*>.

[364] *See, e.g.,* Supreme People's Court 2003 Work Report, 11 March 2003; Supreme People's Court 2002 Work Report, March 2002; Five Year Plan for PRC Court Reform, Legal Daily [*Fazhi ribao*], 23 October 1999, No. 1.

[365] Peerenboom, China's Long March Toward Rule of Law, 303.

[366] *Ibid., 305.*

[367] Cohen, "Reforming China's Civil Procedure," 797.

[368] Stanley Lubman, Bird in a Cage: Legal Reform in China After Mao (Stanford: Stanford University Press, 1999), 264.

[369] Cohen, "Reforming China's Civil Procedure," 798.

[370] *Ibid.;* Lubman, Bird in a Cage, 252. PLCs typically exert their influence through court presidents, which sit on the PLCs, or by making a direct "recommendation" to judges. Hung, "China's Commitment on Independent Judicial Review," 8.

[371] Peerenboom, China's Long March Toward Rule of Law, 307.

[372] Constitution of the People's Republic of China,, arts. 67(6), 129; People's Republic of China Organic Law of the People's Procuratorates [*Zhonghua renmin gongheguo renmin jianchayuan zuzhifa*], enacted 1 July 1979, arts. 5–6; People's Republic of China Criminal Procedure Law [*Zhonghua renmin gongheguo xingshi susongfa*], enacted 1 July 1979, art. 8, chapter V; People's Republic of China Civil Procedure Law [*Zhonghua renmin gongheguo minshi susongfa*], enacted 9 April 1991, arts. 185–6.

[373] *See, e.g.,* the working document of the 16th Party Congress, stating that "we should institutionally ensure that the judicial and procuratorial organs are in a position to exercise adjudicative and procuratorial powers independently and impartially in accordance with the law." Documents of the 16th National Congress of the Communist Party of China (Beijing: Foreign Languages Press, 2002), 43. See also People's Court Reform Plan, Legal Daily [*Fazhi ribao*], 2 October 1999, No. 1; Supreme People's Court 2003 Work Report, 11 March 2003.

[374] Supreme People's Court 2003 Work Report; Peerenboom, China's Long March Toward Rule of Law, 286.

[375] Commission Staff Interview.

[376] Peerenboom, China's Long March Toward Rule of Law, 286.

[377] Constitution of the People's Republic of China, art. 126.

[378] For importance of Party leadership, *see, e.g.,* Xiao Yang, "Vigorously Proceed with Professionalization Constructions of the Body of Judges," Seeking Truth [*Qiushi*], 1 May 2003, translated in FBIS, Doc. ID: CPP20021023000078; Supreme People's Court Opinions on Strengthening the Construction of Grassroots People's Courts [*Zuigao renmin fayuan guanyu jiaqiang renmin fayuan jiceng jianshe de ruogan yijian*], issued 13 August 2000]; Five Year Plan for PRC Court Reform. On the supervision of the NPC and the Procuratorate, see "Senior Procurator: Judicial Reforms should Support and Perfect Judicial Independence with Chinese Characteristics" [*Gao jian: sifa gaige yao jianchi he wanshan zhongguo tese de sifa duli*], Xinhua, 12 June 2003.

[379] *See, e.g.,* Tian Yu, "Supreme People's Court to Strengthen Supervision and Guidance of Courts Nationwide in 'Three Respects'" Xinhua, 2 April 2003, translated in FBIS, Doc. ID CPP20030404000058; Supreme People's Court 2003 Work Report, 11 March 2003; Supreme People's Court 2002 Work Report, March 2002.

[380] Peerenboom, China's Long March toward Rule of Law, 282.

[381] Veron Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," Working Paper, Carnegie Endowment for International Peace, No. 32, November 2002, 18; Commission Staff Interviews.

[382] Peerenboom, China's Long March toward Rule of Law, 330.

[383] Commission Staff Interview.

[384] American Chamber of Commerce in the People's Republic of China, "WTO Implementation Report-Fall 2002," 2002, 12.

[385] James Kynge, "China's bold political reform," Financial Times, 12 January 2003.

[386] *Ibid.*

[387] "PRC Scholar on Shanghai's Decision To Introduce Press Spokesman System," translated in FBIS, Doc. ID No. CPP20030605000068, *Hong Kong Ta Kung Pao* (Internet Version-WWW) in Chinese 5 June 2003.

[388] "China-U.S. Trade Issues," CRS Report No. IB91121, 16 May 2003.

[389] Regulations to Prohibit Local Protectionism in Market Economy Activities [*Guowuyuan jinzhi zai shichang jingji huodong zhong shixing diqu fengsuo de guiding*], issued 29 April 2001, arts. 1-3.

[390] U.S. Chamber of Commerce, "First Steps: a U.S. Chamber Report on China's WTO Progress," September 2002, 5.

[391] *See* Protocol on the Accession of the People's Republic of China to the World Trade Organization, paras. 3, 8.2; Working Party Report on the Accession of the People's Republic of China to the World Trade Organization, para. 111.

[392] *See* "China-U.S. Trade Issues," CRS Report No. IB91121, 16 May 2003, 9; U.S.-China Business Council, "China's WTO Implementation: a Mid-Year Assessment," 2 (2003).

[393] Supreme People's Court, Regulations on Several Problems in the Trial of Trade-Related Administrative Litigation Cases [*Zuigao renmin fayuan guanyu shenli guoji maoyi xingzheng anjian ruogan wenti de guiding*], issued 8 August 2002; Supreme People's Court Regulations on the Application of Law in the Trial of Anti-Subsidy Administrative Litigation Cases [*Zuigao renmin fayuan guanyu shenli fan butie xingzheng anjian ying yong falu ruogan wenti de guiding*], issued 11 September 2002; Supreme People's Court Regulations on the Application of Law in the Trial of Anti-Dumping Administrative Litigation Cases [*Zuigao renmin fayuan guanyu shenli fan qingxiao xingzheng anjian ying yong falu ruogan wenti de guiding*], issued 1 January 2003.

[394] People's Republic of China Administrative Licensing Law [*Zhonghua renmin gongheguo xingzheng xukefa*], enacted 27 August 2003.

[395] Constitution of the People's Republic of China, arts. 57, 58, 62, 67.

[396] Peter Howard Corne, "Creation and Application of Law in the PRC," American Journal of Comparative Law (Spring 2002), 409.

[397] Organic Law of the People's Courts, art. 33. Under Article 33, the Supreme People's Court has the power to issue interpretations of law that are binding on lower courts. However, the procedure and scope of this power is not precisely defined.

[398] Commission Staff Interview; Shen Kui, "Is it the Beginning or the End of the Era of the Run of the Constitution? Reinterpreting China's 'First Constitutional Case,'" Pacific Rim Law & Policy Journal 12 (January 2003), 200, 209–10; Randall Peerenboom, China's Long March toward Rule of Law, (Cambridge: Cambridge University Press, 2002), 317.

[399] Donald C. Clarke, "Puzzling Observations in Chinese Law: When Is a Riddle Just a Mistake?" in Understanding China's Legal System, Steven Hsu (ed.) (New York: New York University Press, 2003), 106.

[400] Constitution of the People's Republic of China, art. 5.

[401] *See, e.g.,* Constitution of the Communist Party of China (Adopted and Amended at the 16th National Congress of the Communist Party of China, November 14, 2002), General Program; "Build a Well-Off Society in an All-Around Way and Create a New Situation in Building Socialism with Chinese Characteristics," Jiang Zemin, Report to the 16th National Congress of the Communist Party of China, 8 November 2002.

[402] People's Republic of China of Legislation Law [*Zhonghua renmin gongheguo lifa fa*], enacted 15 March 2001, art. 90.

[403] Shen Kui, "Is it the Beginning or the End of the Era of the Run of the Constitution? Reinterpreting China's 'First Constitutional Case,'" 200, 209–10.

[404] Commission Staff Interviews. One such case was brought in Sichuan Province in April 2002, where a plaintiff sued the Chengdu branch of the People's Bank, arguing that height requirements in the bank's job advertisements violated his constitutional rights to equal treatment under the law. The lawsuit was dismissed primarily on technical grounds. "Record of the Court Hearing of China's First Constitutional Case on the Right to Equal Protection" [*"Zhongguo xianfa pingdengquan di yi an" tingshen tou lu*], China Lawyer Net [*Zhongguo falu zixun wang*], 12 December 2002, *<http://www.law.com.cn/pg/newsShow.php?Id=6457>* (20 June 2003).

[405] Both Chinese and foreign observers attached significance to Hu's choice of this occasion for his first major policy address.

[406] "Hu Jintao Stresses Moving Forward to Establish Consciousness and Authority of the Constitution (Full Text) [*Hu jintao qiandiao jinyibu shuli xianfa yishi yu quanwei (fu quanwen),"* Chinanews.com [*Zhongguo xinwen wang*], 4 December 2002, *<http://www.chinanews.com.cn/2002-12-04/26/250121.htmlb>* (30 May 2003).

[407] Zhai Wei "Hu Jintao Stresses Importance of Study at CPC Politburo's Group Study Session," Xinhua, 26 December 2002, translated in FBIS, Doc. ID CPP20021226000099; Kathy Chen, "Chinese Leaders Consider Overhaul for the Constitution," The Wall Street Journal, 13 June 2003, *<www.wsj.com>*.

[408] Wang Leiming, Shen Lutao, and Zou Shengwen, "Supervision: A Force That Bears Witness to Democracy—Shining the Spotlight on Five Bright Spots in the Supervision Work of the Ninth

National People's Congress," Xinhua, 2 February 2003, translated in FBIS, Doc. ID CPP20030223000012.

[409] Commission Staff Interview.

[410] *Ibid.*

[411] Along with efforts to control the outbreak of SARS, news and debate about the Sun Zhigang case and its implications dominated the Chinese media in May and June 2003.

[412] Proposal to Examine the "Measures for Custody and Repatriation of Urban Vagrants and Beggars," Submitted to the National People's Congress Standing Committee on 14 May 2003 [*Guanyu shencha "chengshi liulang qitao renyuan shourong yisong banfa de jueyishu"*], available at *<http://www.southcn.com/weekend/commend/200305220015.htm>* (20 June 2003). The scholars argued that the regulations were illegal because (1) under Articles 8 and 9 of the Legislation Law and Article 8 of the Administrative Punishments Law because the freedom of citizens can only be restricted by law (not by administrative regulations such as the Measures for Custody and Repatriation of Urban Vagrants and Beggars) and (2) under Article 37 of China's Constitution, no citizen may be arrested except with the approval of a people's procuratorate or people's court, and unlawful deprivation of freedom by detention or other means is prohibited. As such, the Measures were illegal under the Article 87 of the Legislation Law, which states that administrative regulations may not contravene the Constitution or the law.

[413] Proposal Submitted to the Standing Committee of the National People's Congress on Initiating a Special Investigation into the Sun Zhigang Case and the Implementation of the Custody and Repatriation System [*Tiqing quanguo changweihui jiu Sun zhigang an ji shourong yisong zhidu shishi zhuangkuang qidong tebie diaocha chengxu de jianyishu*], submitted to the National People's Congress, 22 May 2003, available at *<http://www.china-review.com/everyday/jianyishu.htm>* (20 June 2003).

[414] *See, e.g.,* Erik Eckholm, "Petitioners Urge China to Enforce Legal Rights," New York Times, 2 June 2003 (quoting He Weifang and petitioners); "Hu Jintao Overseas Tour; Sun Zhigang Case Driving Constitutional Change," Hong Kong Feng Huang Wei Shih Chung Wen Tai, 5 June 2003, translated in FBIS, Doc. ID CPP20030609000100.

[415] "Start with Respecting the Constitution [*Cong zunzhong xianfa kaishi*]" Southern Weekend [*Nanfang zhoumo*], 13 March 2003, 1.

[416] Commission monitoring of legal newspapers and Web sites. In June 2003, for example, a nongovernmental symposium on constitutional amendment held by 40 well-known scholars put forth a series of five-year and ten-year constitutional reform proposals to the NPC. "Non-Governmental Sector Submits to the Central Authorities a Proposal on Constitutional Amendment: Forty Scholars Call for Abrogation of Dictatorship," Hong Kong Ming Pao, 30 June 2003, translated in FBIS, Doc. ID 20030708000048.

[417] People's Republic of China Administrative Litigation Law [*Zhonghua renmin gongheguo xingzheng susong fa*], enacted 4 April 1989, arts. 2, 11. The law applies only to a range of "concrete administrative acts" that target a specific person or entity, and not to government acts that are binding generally. However, the scope of the law has gradually been expanded under SPC Interpretations. *See* Supreme People's Court Opinion on Several Questions Related to the Implementing the PRC Administrative Litigation Law [*Zuigao renmin fayuan guanyu guanche zhixing "zhonghua renmin gongheguo xingzheng susongfa" ruogan wenti de yijian*], issued 11 June 1991, Section 1; Supreme People's Court Interpretation on Several Problems in Implementing the PRC Administrative Litigation Law [*Zuigao renmin fayuan guanyu zhixing "zhonghua renmin gongheguo xingzheng susongfa" ruogan wenti de jieshi*], issued 24 November 1999.

[418] Administrative Litigation Law, art. 11. Under the ALL, courts also have the power to grant compensation to claimants. The right to compensation was clarified by the SCL, which was enacted 5 years later.

[419] People's Republic of China State Compensation Law [*Zhonghua renmin gongheguo guojia peichanfa*], enacted 12 May 1994, art. 2.

[420] *Ibid.,* chapter 3. Both the scope of and process for criminal compensation is more restrictive than that for administrative compensation. For example, while administrative compensation claimants may file their claims directly with a people's court as part of an administrative lawsuit, criminal compensation claimants must first petition the criminal justice organ that is accused of violating the claimant's rights. Only if such claims are denied do claimants have a right to review in a people's court, and even then review is conducted by a "people's court compensation committee," not by the court itself. State Compensation Law, chapter 3.

[421] Minxin Pei, "Citizens vs. Mandarins: Administrative Litigation in China" The China Quarterly (1997), 385; Ding Yuechao, et. al., State Compensation Law Principles and Practice [*Guojia peichangfa yuanli yu shiwu*], (Beijing, 1998), 72. Note, however, that if administrative regulations violate the Constitution or the law, citizens can petition the NPC Standing Committee for such laws to be annulled under Article 90 of the Legislation Law.

[422] Commission Staff Interview.

[423] Veron Hung, "China's Commitment on Independent Judicial Review: An Opportunity for Political Reform," Working Paper, Carnegie Endowment for International Peace, No. 32, November 2002, 5–10; Kevin O'Brien, "Suing the Local State: Administrative Litigation in Rural China," 4 November 2002 (draft paper on file with author); "If You Damage Things you Must Pay! A Look Back on Four Years of Implementing the State Compensation Law, Commentary on Democracy and the Rule of Law [*Sunhai dongxi yao pei! Guojia peichangfa shishi si nian huimou, minzhu fazhi shuping*]" People's Daily [*Renmin Wang*], 8 December 1999, *<www.people.com.cn>*.

[424] De Hengbei, "An Analysis of Basic Concepts in the Controversy over Seeking Criminal Liability of Lawyers" [*Lüshi xingshi zeren zhuijiu zhenglun de jichu guannian pingxi*], Legal Daily [*Fazhi ribao*], 16 January 2003.

[425] Passage of the Administrative Litigation Law was hailed as a positive reform by both Chinese and foreign legal observers. Pei, "Citizens vs. Mandarins: Administrative Litigation in China," 832.

[426] China Law Yearbooks, 1991–2002; Situation of Judgment Work and the Building of Judicial Cadres of the People's Courts, 1998–2002 [*1998–2002 nian renmin fayuan shenpan gongzuo he duiwu jianshe qingkuang*], *<http://211.147.1.70/public/detail.php?id=47770>* (17 March 2003). From 13,006 cases in 1990, the number of Administrative Litigation Law cases accepted in China grew to 52,596 in 1995 and 84,942 in 2002. 1991 China Law Yearbook [*1991 Zhongguo falü nianjian*], (Beijing: China Law Yearbook Press, 1992), 933; 1996 China Law Yearbook, 1055. In 2000 and again in 2002, there was a dip in the number of ALL cases accepted. The Supreme People's Court has monitored this situation closely and ordered courts in provinces that experienced such decreases to study the causes and report to the SPC. Commission Staff Interview.

[427] *See* Pei, "Citizens vs. Mandarins: Administrative Litigation in China," 841–43; 2001 China Law Yearbook, 156. In 1995, for example, the success rate was 36.7 percent. For 2001, it was 39.4 percent.

[428] The lack of complete State Compensation Law statistics makes a comprehensive evaluation of State Compensation Law implementation difficult, but official Chinese sources report that the number of criminal compensation cases accepted by the people's courts grew from 398 in 1996 to 2,818 in 2002, while the number of such cases accepted for review by procuratorial offices increased from 379 to 1996 to 1,361 in 2001. See Situation of Judgment Work and the Building of Judicial Cadres of the People's Courts, 1998–2002 [*1998–2002 nian renmin fayuan shenpan gongzuo he duiwu jianshe qingkuang*], *<http://211.147.1.70/public/detail.php?id=47770>* (17 March 2003); 1997 China Law Yearbook, at 183; 2002 China Law Yearbook, at 184. There is some likely some overlap in the number for criminal compensation cases accepted by the courts and the procuratorate, since claimants may appeal to a people's court compensation committee if the procuratorate denies their claims. State Compensation Law, art. 13. Public security and procuratorial organs review criminal compensation cases because claimants must first petition the criminal justice organ that is accused of violating the claimant's rights.

[429] According to official sources, in 2001, people's courts granted claimants compensation in about 22 percent of the 4,048 administrative compensation cases decided and in 34 percent of the 2,705 criminal compensation cases decided. 2002 China Law Yearbook, at 158.

[430] Congressional-Executive Commission on China Roundtable, Rule of Law in China: Lawyers without Law, 1 April 2003, Testimony of James V. Feinerman, Georgetown University Law Center.

[431] Foreign legal observers have criticized procedural deficiencies in the Legislation Law review mechanism. Randall Peerenboom, China's Long March toward Rule of Law, (Cambridge: Cambridge University Press, 2002), 264–5. Indeed, Chinese scholars concluded that the NPCSC was unlikely to act on the scholars' petition in the Sun Zhigang case due to a lack of detailed procedures for handling such petitions. The Commission is unaware of any administrative regulations that have been formally overturned in response to a citizen petition filed under the Legislation Law. According to Commission sources, however, the NPC Standing Committee has in some cases called local people's congresses and regulatory agencies informally and suggested that local laws or regulations should be repealed.

[432] Constitution of the People's Republic of China, art. 33. "Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law."

[433] *See, e.g.,* Congressional-Executive Commission on China Roundtable, Rule of Law in China: Lawyers without Law, 1 April 2003, Testimony of Randall Peerenboom, Professor of Law, University of California at Los Angeles.

[434] Constitution of the People's Republic of China, Preamble.

[435] "Constitutional Governance: Selecting the Path of Modern Political Civilization [*Xianzheng: Xiandai zhengzhi wenming lujing de xuanze*]," Guangming Daily [*Guangming ribao*], 13 August 2003, *<http://www.chinacourt.org/public/detail.php?id=74712>* (13 August 2003).

[436] "Hu Jintao Stresses Moving Forward to Establish Consciousness and Authority of the Constitution (Full Text)" [*Hu jintao qiandiao jinyibu shuli xianfa yishi yu quanwei (fu quanwen)*], Chinanews.com [*Zhongguo xinwen wang*], 4 December 2002, *<http://www.chinanews.com.cn/2002-12-04/26/250121.html>* (30 May 2003).

[437] Vivian Pik-kwan Chan, "Hu Uses Constitution to Tighten Grip on Power," South China Morning Post, 20 January 2003, in FBIS, Doc. ID CPP20030120000048; "Nailene Chou Wiest, "Hu Delivers on a Promise to Uphold Rule of Law," South China Morning Post, 16 June 2003, in FBIS, Doc. ID CPP20030616000085; Hugo Restall, "Why China's Glass is Half Full," The Wall Street Journal, 13 June 2002; Kevin O'Brien, "Suing the Local State: Administrative Litigation in Rural China," 4 November 2002 *<www.wsj.com>*, (draft paper on file with author), at 19–20.

[438] "The Central Authorities Have Forbidden Media from Bringing Political Reform and Constitutional Amendment to Discussion," Hong Kong Xing Dao Ri Bao, 21 August 2003, translated in FBIS, Doc ID CPP20030821000078.

[439] According to one Commission source, for example, after the State Council repealed the custody and repatriation regulations, legal scholars filed a second petition with the NPC Standing Committee arguing that regulations on re-education through labor should be repealed. The legal arguments were reportedly similar to those make in the petition on custody and repatriation. Reportedly, the NPC Standing Committee denied the petition and authorities barred the Chinese media from reporting on it.

[440] *See, e.g.,* commentary by Chinese legal scholar Xiao Han at *<http://www.china-review.com/everyday/everyday-79.htm>*; Eckholm, "Petitioners Urge China to Enforce Legal Rights."

[441] *See generally* Hearts and Minds: Information for Change *<http://www.heartsandminds.org/articles/sweat.htm>* (24 September 2003); Sweatshopwatch.org

*<http://www.sweatshopwatch.org/>* (24 September 2003); *<http://www.uniteunion.org/sweatshops/sweatshop.html>* (24 September 2003).

[442] *See, e.g.,* Global Exchange China Campaign, *<http://www.globalexchange.org/campaigns/sweatshops/china/index.html>*, (24 September 2003); National Labor Committee for Worker and Human Rights, "New Balance in China Freetrend Factory Shenzhen, Guangdong Province, China" (24 September 2003), Hong Kong Christian Industrial Committee reports, *<http://www.www.cic.org.hk/research.htm#h>* (23 September 2003).

[443] Business Roundtable, "Corporate Social Responsibility in China: Practices by U.S. Companies," 16 February 2000, *<www.brtable.org/pdf/377.pdf>* (24 September 2003).

[444] *See, e.g.,* Business for Social Responsibility, Issue Brief, "Overview of Corporate Social Responsibility," *<http://www.bsr.org/BSRResources/IssueBriefDetail.cfm?DocumentID=48809>*; see also "Corporate Social Responsibility-What Does it Mean?" Mallenbaker.net, <www.mallenbaker.net/csr/CSRfiles/definition.html> (24 September 2003).

[445] Kenan Institute Corporate Social Responsibility Study Group, Washington, DC.

[446] Congressional-Executive Commission on China Roundtable, Codes of Conduct: U.S. Corporate CompliancePrograms and Working Conditions in Chinese Factories, 28 April 2003, Testimony of Doug Cahn.

[447] *See generally* BRT Report.

[448] Commission Staff Interview.

[449] Congressional-Executive Commission on China Roundtable, Codes of Conduct: U.S. Corporate Compliance Programs and Working Conditions in Chinese Factories, 28 April 2003.

[450] Social Accountability International, SA8000 Standard Elements, Section 4, *<http://www.sa-intl.org/SA8000/SA8000.htm#StandardElements,>* (24 September 2003).

[451] Congressional-Executive Commission on China Roundtable, Codes of Conduct: U.S. Corporate Compliance Programs and Working Conditions in Chinese Factories, 28 April 2003, Testimony of Doug Cahn.

[452] Congressional-Executive Commission on China Roundtable, Freedom of Association for Chinese Workers, 7 July 2003, Testimony of Phil Fishman.

[453] Congressional-Executive Commission on China Roundtable, Health and Safety in Chinese Workplaces, 7 November 2002, Testimony of Han Dongfang.

[454] Zhang Lifen, "Dalai Lama: Holding out Hope," BBC, 4 February 2003, *<http://news.bbc.co.uk/2/hi/asia-pacific/2723395.stm>* (9 July 2003). ("I am not seeking separation or independence of Tibet from the People's Republic of China. All I want is a genuine self-rule for Tibet within China. This is my 'middle way' approach.")

[455] "Tibetan Chairman Condemns Dalai's Separatist Acts," China Daily, 13 November 2002, *<http://www3.chinadaily.com.cn/en/doc/2002-11/13/content_143579.htm>* (9 July 2003). While attending the 16th CCP Congress, the Chairman of the TAR government, Legchog, said, "[T]he Dalai Lama now adopts a new strategy of playing down separatist sentiments while trumpeting the highest degree of autonomy of the so-called 'greater Tibet.'" Legchog labeled the Dalai Lama's initiative "another form of his separatist stance." *Ibid.*

[456] People's Republic of China Regional National Autonomy Law [*Zhonghua renmin gongheguo minqu quyufa*], enacted 31 May 1984, art 2. "Regional autonomy shall be practiced in areas where minority nationalities live in concentrated communities. National autonomous areas shall be classified into autonomous regions, autonomous prefectures and autonomous counties. All national autonomous areas are integral parts of the People's Republic of China."

[457] Regional National Autonomy Law, art. 7.

[458] Steven D. Marshall and Susette Ternent Cooke, Tibet Outside the TAR: Control, Exploitation and Assimilation: Development with Chinese Characteristics (Washington D.C.: self-published CD–ROM, 1997), Table 7. The 13 areas total 2.24 million square kilometers (865,000 square miles).

[459] Tibetan Government-in-Exile, "Facts - Occupied Tibet," *<http://www.tibet.net/tgie/eng/tibet/>* (13 August 2003). "Background," *<http://www.tibet.net/eng/tgie/background/>* (13 August 2003). "Tibet at a Glance," *<http://www.tibet.com/glance.html>* (13 August 2003). The area of "occupied Tibet" is reported as 2.5 million square kilometers (965,000 square miles) with Lhasa as the capital.

[460] Department of State International Religious Freedom Report on Tibet, 2003.

[461] The Tibetan government-in-exile's representation of Tibet exceeds the total area of Chinese-designated Tibetan autonomy by about 100,000 square miles. Aside from pockets of long-term Tibetan settlement in Qinghai, most of that is made up of autonomous prefectures or counties allocated to other ethnic groups. These include the Nu, Lisu, Bai, and Naxi in Yunnan Province; the Yi and Qiang in Sichuan Province; the Hui, Kazak, Mongol, and Yugur in Gansu Province; the Hui, Tu, Salar, and Mongol in Qinghai Province; and, according to some maps, Mongol in Xinjiang. Substantial Han Chinese populations are also included, some established for centuries.

[462] According to 1990 census data there were 4.6 million Tibetans in China, of whom 4.3 million lived in autonomous Tibetan areas. More than half of Tibetans living outside autonomous Tibetan areas were in Haidong Prefecture and Xining, in Qinghai Province, where they make up about 7 percent of the population. In parts of Gansu, Sichuan, and Yunnan Provinces that the Tibetan government-in-exile represents as "Tibet," but that are not within autonomous Tibetan areas, Tibetans generally make up 1 percent or less of prefectural populations.

[463] International Campaign for Tibet (ICT), *<http://www.savetibet.org>* (13 August 2003). Lodi Gyari is also the Executive Chairman of ICT. ICT has offices in Washington, Amsterdam, and Berlin and "works to promote human rights and self-determination for Tibetans and to protect their culture and environment."

[464] Tibetan Government-in-Exile, "Statement by Special Envoy Lodi Gyari, Head of the Delegation Sent by His Holiness the Dalai Lama to China," 11 June 2003, *<http://www.tibet.com/NewsRoom/delegation2.htm>* (13 August 2003); "Statement by Special Envoy Lodi Gyari, Head

of the Delegation," 28 September 2002, *<http://www.tibet.net/tibbul/0207/news6.html>* (13 August 2003).

[465] In September 2002 the envoys met with United Front Work Department Director Wang Zhaoguo in Beijing. In May 2003 the delegation met Liu Yandong, Wang's successor as head of the UFWD. Ibid. The UFWD is the Party organ charged with dealing with groups outside of the Chinese communist mainstream, including ethnic and religious groups, non-communist political parties, and non-Party leaders and intellectuals.

[466] In September 2002 the envoys met with Tibetans Ragdi and Legchog (Chinese: Raidi and Lieque) in Lhasa. *Ibid.* Ragdi was then Chairman of the TAR People's Congress and is now a Vice-chairman of the NPC. Legchog was then Chairman of the TAR government and is now Chairman of the Standing Committee of the TAR People's Congress. Both are Deputy Secretaries of the TAR Party Committee.

[467] Tibetan Government-in-Exile, "Statement by Special Envoy Lodi Gyari, Head of the Delegation," 28 September 2002, *<http://www.tibet.net/tibbul/0207/news6.html>* (9 July 2003).

[468] Tibetan Government-in-Exile, "Statement by Special Envoy Lodi Gyari, Head of the Delegation sent by his Holiness the Dalai Lama to China," 11 June 2003, *<http://www.tibet.com/NewsRoom/delegation2.htm>* (9 July 2003).

[469] Constitution of the People's Republic of China, art. 54.

[470] "Changes in pattern of political detention," Tibet Information Network, 10 March 2003, *<http://www.tibetinfo.net/news-updates/2003/1003.htm>* (9 July 2003).

[471] Congressional-Executive Commission on China Staff Paper, The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality, 10 February 2003, *<http://www.cecc.gov/pages/news/lobsang.php>* (13 August 2003). Tenzin Deleg was sentenced to death with a two-year suspension and is believed to be held in Sichuan.

[472] Ngawang Sangdrol's statements were made at an interview conducted by Commission staff.

[473] Chinese authorities rarely grant permission for Tibetans to travel to India. Tibetans wishing to do so often apply to travel to Nepal and then make the onward journey to India without official documentation.

[474] Press Statement of Philip T. Reeker, Deputy Spokesman, U.S. Department of State, 2 June 2003, *<http://www.state.gov/r/pa/prs/ps/2003/21136.htm>* (9 July 2003): "We condemn the behavior of Nepalese officials and Chinese diplomats for their role in forcibly returning the asylum seekers to China. We call on Nepal to return to its previous long-term practice of allowing Tibetans to seek protection in Nepal for onward resettlement."

[475] International Campaign for Tibet, "Nepal Adopts New Policy on Tibetan Refugees," 26 August 2003, *<http://www.savetibet.org/News/News.cfm?ID=1960&c=7>* (27 August 2003). The ICT report includes a letter dated August 4, 2003, from Nepal's Foreign Secretary Madhu Raman Acharya to Senator Dianne Feinstein which sets out the policy.

[476] "Raidi Meets Hong Kong Journalists, Gives Interview," Lhasa Tibet Daily [*Lasa Xizang Ribao*], 7 August 2001, translated in FBIS, Doc. ID CPP20010809000073.

[477] "Chinese to Outnumber Tibetans in Lhasa," Reuters, 8 August 2002, *<http://www.washingtonpost.com/wp-dyn/articles/A57467-2002Aug7.html>* (30 August 2003). Jin Shixun, deputy director general of the TAR Development and Planning Commission, said at a news conference, "At the moment the population here in Lhasa stands at around 200,000. About half of them are the [Han] migrant population. There will certainly be a large increase in these numbers." *Ibid.*

[478] "Notes from the Editor," Population Census Office, National Bureau of Statistics of the People's Republic of China, Major Figures on 2000 Population Census of China, 1 June 2001. "The 2000 population census covered all persons with the nationality of, and a permanent residing place in, China. The census took the de jure approach by which each person should be enumerated at his/her permanent residence and should be enumerated at only one place."

[479] Tabulation on 1990 Census of TAR; China Population Statistics Yearbook 1990; Tabulation on the 2000 Population Census of the People's Republic of China, China Statistics Press, Beijing, August 2002. Han population in the TAR increased from 3.7 percent in 1990 to 6.1 percent in 2000; the Han proportion of Qinghai's population fell from 57.9 percent to 54.0 percent. In Qinghai the official number of Han increased from 2.580 million in 1990 to 2.606 million in 2000, an increase of only 1 percent in 10 years.

[480] "Environmental Concerns Paramount in Qinghai-Tibet Railway Construction," People's Daily, June 2003, *<http://english.peopledaily.com.cn/200306/03/eng20030603_117590.shtml>* (7 August 2003).

[481] "Laying Tracks To China's Future," Associated Press, 23 December 2002, *<http://www.cbsnews.com/stories/2002/12/23/world/main534151.shtml>* (30 August 2003).

[482] "Tibet Reports Double-digit Economic Growth," Xinhua, 13 January 2003, *<http://www.china.org.cn/english/2003/Jan/53426.htm>* (9 July 2003).

[483] "Deciphering Economic Growth in the Tibet Autonomous Region," Tibet Information Network, 8 April 2003, *<http://www.tibetinfo.net/news-updates/2003/0804.htm>* (9 July 2003). "In 2001, the average urban income in the TAR was more than five and a half times the average rural income. In 1990 this ratio was only about two and a half to one." *Ibid.* "Despite economic boom, rural standards of living in the Tibet Autonomous Region still below 1992 levels," Tibet Information Network, 6 February 2003, *<http://www.tibetinfo.net/news-updates/2003/0602.htm>* (9 July 2003). "The consumer price index of the rural areas, available from the official Tibet Bureau of Statistics, shows that the cost of living in rural TAR rose by 97 percent between 1992 and 2001. However, rural incomes rose by only 69 percent over the same period." *Ibid.*

[484] Four articles presented together under the title, "There Must Be New Ideas for the Large-scale Development of the Western Region," Seeking Truth [Qiushi], 16 February 2003, translated in FBIS, Doc. ID CPP20030222000011 (also available at *<http://www.qsjournal.com.cn/*

*qs/20030216/GB/qs%5E353%5E0%5E11.htm* >). Article 1, "Blaze a New Road of Faster Development," Li Zibin, Vice-minister, State Development Planning Commission.

[485] *Ibid.* Article 2, "Industrialize Ecological Construction and Make Industrial Development Eco-Friendly," Professor Shi Peijun, Vice-president, Beijing Teachers' University, and Professor Liu Xuemin, Institute of Resource Science, Beijing Teachers' University.

[486] Population Census Office, National Bureau of Statistics of the People's Republic of China, Major Figures on 2000 Population Census of China, 1 June 2001. Educational statistics, Tables 9–13, pages 24–29.

[487] "TAR Regulations on the Study, Use and Development of the Tibetan Language" [*Xizang zizhiqu xuexi: shiyong he fazhan zangyuwen de ruogan guiding*], passed 22 May 2002, art. 4: "Important conferences and meetings of state organs at all levels in the TAR are to simultaneously use the Tibetan and common national languages, or to use one of them. Work meetings of units in TAR enterprises will, according to need, use one or both of the commonly used languages. . . ."

[488] Congressional-Executive Commission on China Roundtable: Teaching and Learning Tibetan: The Role of Tibetan Language in Tibet's Future, 7 April 2003. Prepared Statement of Professor Nicolas Tournadre, Associate Professor of Linguistics, University of Paris 8. First published in China Perspectives, No. 45 January-February 2003, Hong Kong.

[489] Johann Wong for Secretary for Security, letter to the editor, Washington Times, 19 June 2003, <*www.scmp.com*>.

[490] "Why China will Lose with Article 23's Passage," South China Morning Post, 3 July 2003, <*www.scmp.com*>.

[491] "Legal Blind Spot," South China Morning Post, 20 June 2003, <*www.scmp.com*>.

[492] "Hong Kong Delays Security Bill After Cabinet Member Quits," New York Times, 7 July 2003, <*www.nyt.com*>.

[493] Chief Executive Tung Chee-hwa in Hong Kong government statement dated 28 July 2003, <*http://www.info.gov.hk/gia/general/200307/28/0728198.htm*> (8 September 2003).

[494] Hong Kong government statement, 29 July 2003, <*http://www.info.gov.hk/gia/general/200307/29/0729220.htm*> (8 September 2003).

[495] These efforts included a 3-month public notice and comment period, publications, and establishing Web sites. *See, e.g.,* <*http://www.basiclaw23.gov.hk/*> and <*http://www.legco.gov.hk/yr02-03/english/bc/bc55/general/bc55.htm*> (8 September 2003).

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