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FREEDOM OF EXPRESSION

Findings

• The Chinese government and Communist Party continued to deny Chinese citizens the ability to fully exercise their rights to free expression.
• The government and Party's efforts to project a "positive" image before and during the 2008 Beijing Summer Olympic Games were accompanied by increases in the frequency and extent of official violations of the right to free expression.
• Official censorship and manipulation of the press and Internet for political purposes intensified in connection with both Tibetan protests that began in March 2008 and the Olympics.
• Chinese officials failed to fully implement legal provisions granting press freedom to foreign reporters in accordance with agreements made as a condition of hosting the Olympics, and which the International Olympic Committee requires of all Olympic host cities.
• The government and Party continued to deny Chinese citizens the ability to speak to journalists without fear of intimidation or reprisal.
• Officials continued to use vague laws to punish journalists, writers, rights advocates, publishers, and others for peacefully exercising their right to free expression. Those who criticized China in the context of the Olympics were targeted more intensely. Restraints on publishing remained in place.
• Authorities responsible for implementing a new national regulation on open government information retained broad discretion on the release of government information. Open government information measures enabled officials to promote images of openness, and quickly to provide official versions of events, while officials maintained the ability at the same time to censor unauthorized accounts.

Recommendations

○ Support Federal funding for the study of press and Internet censorship methods, practices, and capacities in China. Promote programs that offer Chinese citizens access to human rights-related and other information currently unavailable to them. Sponsor programs that disseminate through radio, television, or the Internet Chinese-language "how-to" information and programming on the use by citizens of open government information provisions on the books.
○ Support the development of "how-to" materials for U.S. citizens, companies, and organizations in China on the use of the Regulations on Open Government Information and other records-access provisions in Chinese central and local-level

laws and regulations. Support development of materials that provide guidance to U.S. companies in China on how the Chinese government may require them to support restrictions on freedom of expression and best practices to minimize or avoid such risks.

○ In official correspondence with Chinese counterparts, include statements calling for the release of political prisoners named in this report who have been punished for peaceful expression, including: Yang Chunlin (land rights activist sentenced to five years' imprisonment in March 2008 after organizing a "We Want Human Rights, Not Olympics" petition); Yang Maodong (legal activist and writer whose pen name is Guo Feixiong, sentenced to five years' imprisonment in November 2007 for unauthorized publishing); Lu Gengsong (writer sentenced to four years' imprisonment in February 2008 for his online criticism of the Chinese government); and other prisoners included in this report and in the Commission's Political Prisoner Database.

INTRODUCTION

Over the past year, the Chinese government and Communist Party continued to deny Chinese citizens the ability to fully exercise their rights to free expression. In its 2007 Annual Report, the Commission noted that China lacked a free press and that Chinese officials provided only limited government transparency, practiced pervasive censorship of the Internet and other electronic media, and placed prior restraints on a citizen's ability to freely publish.[1] This past year, the Commission has observed little to no improvement on these issues. To the contrary, censorship and manipulation of the press and Internet for political purposes worsened due to major events, including Tibetan protests that began in March 2008 and China's hosting of the 2008 Beijing Summer Olympic Games. The Chinese government continued to impose prior restraints on the publication of printed and online material. Authorities continued to punish religious practitioners for publishing or distributing religious materials without government permission. [See Section II—Freedom of Religion—Controls Over Religious Publications.] Officials continued to use vague laws to punish journalists, writers, rights advocates, and others for peacefully exercising their right to free expression, particularly those who criticized the government or Party in the context of the Olympics. Officials also continued to restrict the freedom of expression of Uyghurs [see Section IV—Xinjiang—Controls Over Free Expression in Xinjiang] and to harass foreign journalists, despite a pledge to grant them greater press freedom for the Olympics [see Section II—2008 Beijing Summer Olympic Games—Commitment to Foreign Journalists].

Over the past year, the government continued its gradual policy of increasing citizen access to government-held information. Officials, however, maintained broad discretion on the release of government information. Open government information measures enabled officials to promote images of openness, and quickly to provide official versions of events, while officials maintained the ability at the same time to censor unauthorized accounts.

The spread of the Internet and cell phones as mediums for expression continued to pose a challenge to the Party, a trend noted in the Commission's 2007 Annual Report.[2] Internet and cell phone use continues to grow. By the end of June 2008, the number of Internet and cell phone users in China had risen to 253 million[3] and 601 million,[4] respectively, increases of 56 percent and 20 percent over the previous year.[5] As the Commission noted in its 2007 Annual Report, Chinese citizens used these technologies to raise public awareness and protest government policies,[6] a trend that continued this past year.[7] Officials, however, continued to punish citizens who used these technologies to organize protests or to share politically sensitive information.[8]

CHINESE CITIZENS ENTITLED TO FREEDOM OF EXPRESSION, SPEECH, PRESS

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which China has signed and committed to ratify, provides:

> "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[9]

The Universal Declaration of Human Rights includes a similar provision.[10] Article 35 of China's Constitution states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration."[11]

International human rights standards allow for restrictions on freedom of expression under limited circumstances. Article 19 of the ICCPR provides that such restrictions must be "provided by law" and "necessary" for the "respect of the rights or reputations of others," "protection of national security or of public order (ordre public)," or "of public health or morals."[12] Chinese officials say that their restrictions on freedom of expression are "in accordance with law,"[13] and at times cite national security or public safety concerns.[14] Chinese law, however, does not require officials to prove that their actions are "necessary" to protect "national security" or "public order" and only vaguely defines crimes of "endangering national security" or "disturbing public order," allowing officials broad discretion to punish peaceful activity."[15]

GOVERNMENT'S LIMITED STEPS TOWARD OPENNESS

Over the past year, the government continued its gradual policy of increasing citizen access to government-held information. Both President Hu Jintao and Premier Wen Jiabao issued statements endorsing greater government transparency, echoing similar calls in recent years.[16] As noted in the Commission's 2007 Annual Report, the first national Regulations on Open Government Information (OGI regulation) went into effect in May 2008, giving citizens the right to request government information and calling on govern-

ment agencies at all levels to proactively disclose "vital" information to the public in a timely manner.[17] [See addendum at the end of this section for Commission analysis of the OGI regulation.] The government and Communist Party reportedly increased media access to the 17th Party Congress in October 2007 and the March 2008 meetings of the Chinese People's Political Consultative Conference and National People's Congress (NPC), although official media appeared to exaggerate the actual improvement.[18] In April 2008, the NPC Standing Committee announced that it would begin releasing draft laws to the public for review.[19] The Standing Committee generally does not have the power to draft criminal and civil legislation, however, meaning such important laws are not covered by the new policy.[20]

Systemic obstacles to obtaining information from the Chinese government have limited the impact of the OGI regulation. The Commission noted a few of these obstacles, such as China's state secrets laws and the lack of a free press, in its 2007 Annual Report.[21] As noted in that report, the OGI regulation contains a state secrets exception giving officials broad discretion to withhold information.[22] Since the regulation took effect, mainland Chinese and Hong Kong news organizations reported that some officials have been evasive or uncooperative when handling information requests and have cited the "state secrets" exception in refusing to disclose information.[23] The central government issued an opinion in April 2008 imposing a purpose test on information requests, saying that officials could deny requests for information not related to the requesting party's "production, livelihood and scientific and technological research."[24] China's lack of an independent judiciary has further hindered effective implementation of the OGI regulation. Chinese courts have been reluctant to accept disclosure cases and had not ordered any government agencies to release information as of September 2008.[25]

With few checks on their power to withhold information, officials continued to keep critical information from the public. In September 2008, for example, officials in Shijiazhuang city, Hebei province, reportedly waited more than a month before informing provincial officials about complaints of contaminated milk, which resulted in at least four deaths and injuries to thousands of infants.[26] An editor of the Southern Weekend, a Chinese newspaper with a reputation for more independent reporting, revealed on his blog that the paper had discovered cases of sick children in July but were unable to publish the stories because of censorship before the 2008 Olympic Games.[27] In the run-up to the Olympics in August, propaganda officials issued several directives to domestic journalists, one of which warned editors that "all food safety issues . . . is off limits."[28] After the milk scandal broke open, officials ordered journalists to follow the "official" line and banned commentaries and news features about the tainted milk products.[29] At least one Chinese journalist publicly criticized this censorship and called for press freedom.[30] [For more information on the government's handling of the milk crisis, see Section III—Commercial Rule of Law—Food and Product Safety.]

In some cases this past year, officials and the state-controlled media provided information about politically sensitive events more

quickly than they might have in the past, but such moves were not necessarily a sign of greater openness. As noted in a Newsweek article by Jonathan Ansfield, Xinhua's English news service reported an attack that killed at least 16 policemen in the Xinjiang Uyghur Autonomous Region on August 4, 2008, more than an hour before the Chinese version and little more than three hours after the event occurred.[31] Ansfield notes, however, that Chinese journalists told him that this unusual speed was "no fluke," but rather the result of a top Party propaganda official ordering journalists at central news organizations to take the initiative to report "major sudden incidents" in order to "get the official scoop on events before overseas media do, particularly around the time of the Olympic Games." One journalist called it a "form of progress" as it allowed them to report sensitive news before receiving specific instructions from propaganda authorities, but it only applied to central media outlets like Xinhua, and journalists were aware that they must still toe the Party line and that not all stories could be covered this way.[32]

In May 2008, foreign observers noted that Chinese officials responded to the devastating Sichuan earthquake with unusual openness.[33] The more open response of China's media, however, was in part due to large numbers of domestic reporters defying an initial ban on traveling to the disaster areas and other factors beyond the government's control.[34] Nevertheless, officials sought to take credit for the "openness" for propaganda purposes. A Xinhua article described the response as showing "unprecedented transparency," gave credit to recent reforms including the OGI regulation, and noted the "positive response from domestic and international observers alike," making no mention of the original ban on travel or subsequent orders by Party and government officials dictating how the media should cover the event.[35] [For more information on Party and government censorship of the media following the May 2008 Sichuan earthquake, see box titled Tibetan Protests, Sichuan Earthquake, Olympics below.]

CENSORSHIP OF THE MEDIA AND INTERNET SERVES THE PARTY AND GOVERNMENT'S INTERESTS

Censorship of Media and Publishing

The Communist Party continues to control what journalists may write or broadcast. In a June 2008 speech, President and Party General Secretary Hu Jintao reiterated the Chinese media's subordinate role to the Party, telling journalists they must "serve socialism" and the Party.[36] The Party's Central Propaganda Department (CPD) issues directives that Chinese journalists must follow. The directives do not meet the international human rights standard requirement that they be "prescribed by law" since they are issued by a Party entity, rather than pursuant to legislation issued by one of the organs authorized to pass legislation under the PRC Legislation Law. Reporters have no legal recourse to challenge such restrictions. Those that cross the line are subject to firing or removal of content. In November 2007, the CPD ordered the dismissal of a journalist who wrote about a major railroad line built with substandard materials.[37] In July 2008, officials pulled the Beijing

News from stands after it published a photo of injured protesters at the 1989 Tiananmen Square demonstrations.[38]

The Chinese government relies on prior restraints on publishing, including licensing and other regulatory requirements, to restrict free expression.[39] Anyone wishing to publish a book, newspaper, or magazine, or to work legally as a journalist, must obtain a license from the government's press regulator. The Chinese government forbids private publishing of religious materials and restricts the production of religious publications to state-licensed enterprises. Such restrictions have a chilling effect, and officials use them as a pretext to punish free expression. Shi Weihan, owner of a Christian bookstore in Beijing, was detained in November 2007 and accused of illegally printing and distributing religious literature.[40] In June 2008, authorities detained Ha Jingbo and Jiang Ruoling, two middle school teachers from Dongfeng county in Jilin province, for distributing educational leaflets about Falun Gong.[41] In November 2007, a court in Guangdong province sentenced legal activist and writer Yang Maodong (who uses the pen name Guo Feixiong) to five years' imprisonment for "illegal operation of a business," for using another book's publication number, the quantity of which the government limits, to publish his own book. Local officials were apparently angry at Guo's book, which concerned a political scandal.[42]

In May 2008, new book publishing regulations went into effect. Similar to other publishing regulations in China, the new regulations require book publishers to "insist on Marxism-Leninism, Mao Zedong Thought" and "the correct guidance of public opinion," to have a government-approved sponsor and meet financial requirements, and to abide by the government's plans for the "number, structure, and distribution" of publishing units.[43] Officials continued to target political and religious publications as part of an ongoing campaign to "clean up" the publishing industry.[44]

Internet Censorship

The Chinese government and Communist Party continue to control the Internet through an effective and pervasive system that relies on government regulation and public officials and Internet companies monitoring and censoring online content. China's measures to control the Internet do not conform to international standards for freedom of expression because they not only address issues of public concern such as pornography, privacy protection, and spam, but also content officials deem politically unacceptable. China's top officials continue to signal that its control over the Internet is motivated by political concerns. In his June 2008 speech, President Hu Jintao reiterated the importance of co-opting the Internet as a "forward position for disseminating socialist advanced culture."[45]

All Web sites hosted in China must either be licensed by or registered with the government,[46] and sites providing news content or audio and video services require additional license or registration.[47]

- In September 2007, the Shanghai Daily reported that officials shut down 9,593 unregistered Web sites, in a move that occurred just before the 17th Party Congress in October.[48]

Internet Censorship—Continued

- In May 2008, officials reportedly ordered a domestic human rights Web site to shut down for failing to have the proper license.[49]

This past year, Chinese officials also targeted audio and video hosting Web sites, whose content is increasingly popular but more difficult to censor, as well as online maps.

- Provisions that went into effect in January 2008 reiterated the licensing requirement for audio and video Web sites and now require them to be state-owned or state-controlled.[50]
- In March 2008, the State Administration of Radio, Film, and Television reported the results of a two-month crackdown, saying that it shut down 25 video Web sites and warned 32 others for, among other things, failing to have the proper license or "endangering the security and interests of the state."[51]
- Following the Tibetan protests that began in March, access to the U.S.-based video sharing Web site YouTube.com was reportedly blocked after dozens of videos about the protests showed up on the site.[52] No footage of the protests was found on the Chinese-based video Web sites 56.com, Youku.com, and Tudou.com.[53]
- In February 2008, the State Bureau of Surveying and Mapping issued an opinion telling online map providers that they must obtain the appropriate licenses and avoid "geographical information that could harm national security."[54]
- In April 2008, officials began a year-long campaign to remove "illegal" maps on the Internet, including those that commit "errors" such as identifying Taiwan as separate from China.[55]

Officials continued to use their control over the connection between China and the global Internet to block access to politically sensitive foreign-based Web sites, while also policing domestic content.[56] Over the past year, media reports and testing done by OpenNet Initiative indicated that access within China to the Web sites for foreign or Hong Kong news organizations such as Guardian, BBC, Deutsche Welle, Hong Kong-based Apple Daily, Radio Free Asia, and Voice of America, human rights organizations such as Amnesty International, Reporters Without Borders, Committee to Protect Journalists, Human Rights in China, and Human Rights Watch, and sites relating to Tibetans, Uyghurs, Taiwan, Chinese activists, and the 1989 Tiananmen democracy protests was blocked at various times.[57] In response to foreign reporters' complaints over blocked Web sites, a Chinese Olympics official publicly acknowledged in late July 2008 that sites relating to Falun Gong were blocked and would remain blocked despite the Olympics. Following those complaints, foreign media reported that some previously blocked sites, including those for Amnesty International, Human Rights Watch, and Radio Free Asia, became accessible at the Olympic village.[58] Domestic Web sites continued to be targeted as well. In the first half of 2008, officials reportedly ordered several HIV/AIDS Web sites to shut down or remove content.[59] In addition, the Commission has received no indication that access to its Web site has become available in China.

Internet Censorship—Continued

The government compels companies providing Internet services in China, including those based in other countries, to monitor and record the online activities of its customers, to filter and delete information the government considers "harmful" or politically sensitive, and to report suspicious activity to authorities.[60] An October 2007 report on Chinese Internet censorship released by Reporters Without Borders and Chinese Human Rights Defenders and written by an unnamed Chinese employee of an Internet company said that there were between 400 and 500 banned key words and that companies censored these words to avoid fines.[61] Internet users in China frequently complain that censors remove their postings or prevent them from appearing at all.[62]

Such censorship is particularly evident before or after events perceived by the Party to be politically sensitive. After Tibetan protests began in March 2008, foreign media reported that searches on the popular Chinese search engine Baidu and Google for news stories on Tibet turned up no protest news in the top results or inaccessible links.[63] In April 2008, Chinese media reported that Baidu, Google, and Yahoo China were censoring searches that contained the word "Carrefour," a French department store, amid public outcry over protests during the Paris leg of the Olympic torch relay.[64] In the run-up to the Olympics, public officials across China ordered hotels to ensure that they had installed Internet security systems capable of monitoring and censoring users' Internet activities.[65] In October 2008, Information Warfare Monitor and ONI Asia issued a report detailing a large-scale surveillance system of Internet text messages sent by customers of Tom-Skype, a joint venture between a Chinese company and eBay, which owns Skype. They found that text messages relating to Falun Gong, Taiwan independence, the Chinese Communist Party, and words such as democracy, earthquake, and milk powder had been censored, and that customers' personal information, text messages, and chat conversations between users in China and outside China had been recorded.[66] Skype's president said that the company was aware that the Chinese government was monitoring chat messages but not that its Chinese partner was storing those messages deemed politically sensitive.[67]

The Communist Party also continued to directly order the removal of content or hire citizens to go online to influence public debate. In September 2008, Party propaganda officials ordered major financial Web sites to remove "negative" reports regarding China's stock markets amid a sharp downturn.[68] According to one expert on Chinese media, the Party has funded training for an estimated 280,000 Web commentators whose task is to promote the Party's views in online chat rooms and forums, and to report "dangerous" content to authorities.[69]

Rebecca Mackinnon, an expert on China's Internet controls, said in August 2008 that Internet users in China now faced a "more targeted and subtle approach to censorship than before."[70] She said blog postings about politically sensitive events were quickly taken down, while controlled reporting in Chinese media was allowed. She said the "strategy seems clear: Give China's professional journalists a longer leash to cover breaking news even if it's not positive—since the news will come out anyway and unlike bloggers, the journalists are still on a leash."

Restrictions Bolster Image of Party and Government

The Chinese government and Communist Party continue to use the media and Internet to project an image of stability and harmony and ensure that the Party and central government are reflected positively. Such measures increase in the run-up to major political meetings and public events and following disasters and incidents of civil unrest or citizen activism. Three events this past year—Tibetan protests that began in March, the devastating Sichuan earthquake in May, and China's preparations for and hosting of the 2008 Olympic Games in August—illustrate the ways the Party and government restrict free expression in an attempt to manipulate public opinion in their favor.

Tibetan Protests, Sichuan Earthquake, Olympics

Tibetan Protests

Chinese media initially devoted little coverage to a series of protests in Tibetan areas that began in March 2008.[71] Web sites censored searches for news reports and footage of the protests, and some foreign Web sites and foreign satellite news telecasts about the protests were blocked.[72] [See Censorship of the Media and Internet Serves the Party and Government's Interests—Internet Censorship earlier in this section.] When Chinese media stepped up reporting on the protests, they focused on violence committed against the ethnic Han population and denounced the Dalai Lama as a "wolf with the face of a human and the heart of a beast."[73] Chinese media also described U.S. Speaker of the House Nancy Pelosi as a "disgusting figure" and attacked the foreign media for its "biased" coverage.[74] Officials expelled foreign journalists from Tibetan areas where reported protests had occurred and barred them from entering those areas, a move the head of the International Olympic Committee said contravened China's Olympic promise to provide greater press freedom to foreign journalists.[75] Cell phone, landline, and Internet transmissions were also reportedly disrupted in Tibetan areas of western China, adding to the difficulty of accessing information.[76] [See Section V—Tibet for more information on the protests.]

Sichuan Earthquake

Media access in the immediate aftermath of an 8.0 magnitude earthquake that hit Sichuan province on May 12, 2008, and killed nearly 70,000, was more open compared to previous natural disasters. Chinese television aired extensive and graphic live coverage from disaster areas and foreign reporters operated with few restrictions.[77] Propaganda officials, however, had initially ordered most journalists not to travel to disaster areas.[78] After the order was ignored, public officials rescinded the original order, but instructed the domestic media to highlight the government's proactive response, avoid "negative" stories, and promote "national unity" and "stability."[79] Officials later ordered domestic media not to report on protests by grieving parents, forcibly removed parents from protest sites, and briefly detained foreign reporters trying to cover the protests.[80]

Tibetan Protests, Sichuan Earthquake, Olympics—Continued

Beijing Olympics

In his June 2008 speech, President Hu Jintao told journalists to pay special attention to their coverage of the Olympics and said their first priority is to "correctly guide opinion."[81] In a January 2008 speech to propaganda officials, Hu urged them to improve China's international image.[82] From November 2007 to July 2008, propaganda officials issued several directives ordering journalists to avoid numerous topics for the Olympics, including air quality, food safety, protest zones designated for the games, and the performance of Chinese athletes.[83] One directive ordered them to counter the "negative" publicity stemming from protests along the Olympic torch relay by quickly producing reports that toed the Party line, as part of an "unprecedented, ferocious media war against the biased western press."[84] An ongoing campaign to weed out "illegal publications" focused this past year on creating a "positive public opinion environment" for the Olympics.[85]

SELECTIVE USE OF LAWS TO PUNISH POLITICAL OPPONENTS AND HUMAN RIGHTS ACTIVISTS

Officials continued to use vague laws to punish journalists, writers, rights advocates, and others for peacefully exercising their right to free expression, particularly those who criticized the Chinese government and Communist Party in the context of the Olympics. In 2006, the UN Working Group on Arbitrary Detention noted that China's vaguely defined crimes of endangering state security, splittism, subverting state power, and supplying state secrets left "their application open to abuse particularly of the rights to freedom of religion, speech, and assembly," and recommended the abolition of such "political crimes."[86] Among the most popular of these provisions to punish peaceful expression continued to be the "inciting subversion of state power" crime under Article 105(2) of the Criminal Law.[87] Among those punished for this crime included outspoken health and environmental activist Hu Jia and land rights activist Yang Chunlin, after each tied their criticisms of the government and Party to the Olympics, and freelance writer Lu Gengsong, for his online essays. [See box titled Inciting Subversion: Punishment of Activists and Writers below.] Hu and Yang's arrests came despite claims by the Chinese foreign minister in February that it is "impossible" for someone in China to be arrested for saying "human rights are more important than the Olympics." Officials targeted others for criticizing the government's response to the Sichuan earthquake. Sichuan officials detained retired professor Zeng Hongling in June 2008 on charges of "inciting subversion" after she posted articles online alleging corruption and poor living conditions in areas affected by the earthquake.[88]

Inciting Subversion: Punishment of Activists and Writers

Article 105(2) of the PRC Criminal Law reads in part: "[w]hoever incites others by spreading rumors or slanders or any other means to subvert the State power or overthrow the socialist system shall be sentenced to fixed-term imprisonment of not more than five years"[89]

Hu Jia[90]

Background: Well-known HIV/AIDS and environmental activist who for years has been an outspoken advocate for human rights and chronicler of rights abuses and who made extensive use of the Internet in his work. Hu had numerous run-ins with police, including spending more than 200 days under virtual house arrest before his formal detention in December 2007.[91] A month before his January 2008 arrest, Hu provided testimony before the European Parliament and criticized China's human rights record and the Beijing Organizing Committee for the Games of the XXIX Olympiad.[92]

Sentence and Alleged Criminal Activity: On April 3, 2008, the Beijing No. 1 Intermediate People's Court sentenced Hu to three years and six months' imprisonment.[93] Alleged "subversive" activities included posting essays online critical of the government's harassment of rights defenders and approach to governing Hong Kong, and making "subversive" comments to foreign reporters.

Yang Chunlin[94]

Background: Land rights activist who gathered more than 10,000 signatures for a petition titled "We Want Human Rights, Not the Olympics," which was also posted on the Internet. Most of the signatories were farmers seeking redress for land that officials allegedly took from them. Fellow petition organizers Yu Changwu and Wang Guilin were sentenced to reeducation through labor for two years and one-and-a-half years, respectively, for their advocacy on behalf of farmers in Fujin city, Heilongjiang province.[95]

Sentence and Alleged Criminal Activity: On March 24, 2008, the Jiamusi Intermediate People's Court in Heilongjiang sentenced Yang to five years' imprisonment for inciting subversion. Prosecutors accused Yang of writing essays critical of the Communist Party and alleged that the petition received heavy foreign media coverage that harmed China's image abroad. Prosecutors also accused Yang of accepting 10,000 yuan (US$1,430) from a "hostile" foreign group.[96]

Lu Gengsong[97]

Background: Freelance writer who has written about corrupt local officials who seize land in deals with property developers.[98]

Sentence and Alleged Criminal Activity: On February 5, 2008, the Hangzhou Intermediate People's Court affirmed Lu's four-year sentence. Alleged "subversive" activities included publishing on foreign Web sites essays that questioned the legitimacy of the Party-led government and called on activists, intellectuals, and religious activists to join together in opposition. The court made no attempt to determine the actual threat posed by the essays, none of which specifically called for violence.[99]

Officials also relied on vague charges of disturbing public order, inciting a disturbance, possessing state secrets, or inciting splittism, to punish free expression. Officials in Hubei province sentenced petitioner Wang Guilan to 15 months' reeducation

through labor for disturbing social order after she spoke with a foreign reporter during the Olympics.[100] In June 2008, officials in Sichuan province detained and later sentenced Liu Shaokun, a middle school teacher, to one year of reeducation through labor after he posted photos of collapsed schools online and criticized their construction in a media interview.[101] In another earthquake-related case, Sichuan officials arrested Huang Qi in July after he posted an article on his Web site detailing parents' demands for compensation and an investigation into the collapse of schools that took their children's lives.[102] Officials charged Huang, founder of the rights advocacy Web site 64tianwang.com, with illegally possessing state secrets.[103] In another state secrets case, officials released Hong Kong journalist Ching Cheong in February 2008, after he served almost two years of a five-year sentence.[104] Ching was convicted of passing state secrets to a Taiwan foundation in a case that critics said lacked transparency and relied on weak evidence.[105] Officials in Chengdu city, Sichuan province, detained freelance writer and journalist Chen Daojun in May 2008 on charges of inciting splittism,[106] a crime under Article 103 of the Criminal Law,[107] after he published an article on a foreign Web site calling for a halt in construction of a chemical plant, citing environmental concerns.[108]

In its 2007 Annual Report, the Commission noted that Chinese officials' application of Article 25 of the Public Security Administration Punishment Law,[109] which prohibits spreading rumors to disturb public order, threatened the free flow of information.[110] Officials continued to apply this provision broadly to detain citizens for sharing information following emergencies[111] or for organizing protests over the Internet.[112] After a train collision in Shandong province, officials sentenced one citizen to five days of administrative detention for posting another person's Internet message, which contained what turned out to be inaccurate claims about the collision, even though few people viewed the post.[113] Following a May 2008 protest against a chemical plant in Chengdu, officials put three activists under administrative detention pursuant to Article 25 for using the Internet to spread rumors and incite an illegal demonstration.[114] In May, a top editor at Southern Metropolitan Daily wrote an editorial criticizing the Chinese public security's application of "spreading rumors" provisions, saying it had a chilling effect on people's willingness to share information during public emergencies such as the Sichuan earthquake.[115]

Officials also restricted individuals' freedom of expression by placing conditions on their release on bail or suspended sentence. Officials in the Guangxi Zhuang Autonomous Region accused Internet essayist Wang Dejia of "inciting subversion," and released him on bail in January 2008, only after he agreed to stop posting online essays critical of the Chinese government and speaking with foreign journalists.[116] Officials in Hubei province detained essayist Du Daobin in July for allegedly violating the terms of his suspended sentence by publishing articles overseas, days before his sentence was to expire.[117]

HARASSMENT AND INTIMIDATION OF CITIZENS TO PREVENT FREE EXPRESSION

Officials continued to harass citizens and warn them not to express opinions, particularly to foreign journalists and dignitaries. Plainclothes officers seized legal activist and law professor Teng Biao outside his home in Beijing in February 2008, placed a sack over his head, and drove him away to be questioned.[118] They warned him to stop writing articles criticizing China's human rights record and the Olympics or risk losing his university post and going to jail.[119] In May, security personnel warned Zeng Jinyan, rights activist and wife of imprisoned human rights activist Hu Jia, that she would be prevented from leaving her home because "a U.S. delegation wants to meet with you," referring to U.S. officials who had traveled to Beijing for the U.S.-China Human Rights Dialogue.[120] Officials warned two human rights lawyers, Mo Shaoping and Zhang Xingshui, not to attend a May 27 lunch with Assistant Secretary of State David Kramer, who was taking part in the dialogue.[121] In late June, officials detained or put under house arrest a group of human rights lawyers to prevent them from attending a dinner in Beijing with U.S. Representatives Chris Smith and Frank Wolf.[122]

CHINESE GOVERNMENT ASSERTS THAT RESTRICTIONS ON FREE EXPRESSION ARE BASED IN LAW

Officials continued to justify restrictions on freedom of expression with an appeal to laws, without regard to whether such laws or their application violate international human rights standards:

Official Claim	International Human Rights Standards
Internet Censorship: In April 2008, after the International Olympic Committee expressed concern about Internet censorship following the Tibetan protests, a Ministry of Foreign Affairs spokesperson said the Chinese government's regulation of the Internet is "in line with general international practice" and "the main reason for inaccessibility of foreign websites in China is that they spread information prohibited by Chinese law."[123]	The government's Internet regulations prohibit content such as pornography, online gambling, invasions of privacy, and intellectual property violations.[124] Such regulations, however, also allow Chinese officials to censor politically sensitive content through provisions that prohibit information vaguely defined as "harmful to the honor or interests of the nation" or "disrupting the solidarity of peoples."[125] The result is that the government continues to block access to a number of foreign news Web sites and Web sites promoting human rights and, along with Internet companies in China, frequently removes and censors political content.

Official Claim	International Human Rights Standards—Continued
Imprisonment of Critics: In March 2008, Premier Wen Jiabao described as "totally unfounded" the allegation that the government is cracking down on dissidents before the Olympics. He said "China is a country under the rule of law" and that cases such as Hu Jia's would be "dealt with in accordance with the law." [126]	The UN Working Group on Arbitrary Detention, Chinese defense lawyers, and human rights groups have criticized the vagueness of Article 105(2) of the Criminal Law, the criminal provision relied upon in Hu Jia's case, and Chinese officials' frequent reliance on this provision and other vague criminal law provisions to punish peaceful expression without showing that the expression had any actual or imminent subversive effect.[127]
Travel Restrictions on Foreign Reporters: In March 2008, a foreign ministry spokesperson defended a travel ban to Tibetan areas following reported protests as a measure intended to ensure the safety of journalists and added "it is legal and responsible for local governments to take some restrictive measures." [128]	The travel ban to Tibetan areas appeared much broader than necessary to protect foreign journalists. The borders of the closed-off areas extended far beyond reported protest sites.[129] The government's attempts to otherwise censor and manipulate information about the protests on the Internet and in Chinese media strongly suggest that the near total ban on foreign journalists except for a few unsupervised tours was motivated by political rather than safety concerns. Furthermore, officials initially allowed foreign journalists open access to disaster zones following the May 2008 Sichuan earthquake, areas that also posed a threat to the physical safety of the journalists.

CHINESE CITIZENS CONTINUE TO SEEK FREEDOM OF EXPRESSION

Citizens continue to seek ways to freely express their ideas and share information over the Internet and in the press. So many Chinese journalists rushed to the disaster areas following the May 2008 Sichuan earthquake that propaganda officials rescinded an earlier prohibition on such travel.[130] Despite restrictions on reporting the controversy surrounding the collapse of shoddily constructed schools, investigative journalists at Southern Weekend and Caijing continued to report the story.[131] Chinese citizens organized demonstrations against a chemical plant in Chengdu in May and against the proposed extension of the maglev train line in Shanghai using text messages.[132] [For more information on these protests, see Section II—Environment.] Dozens of Chinese lawyers, academics, and writers signed an open letter condemning the arrest of human rights activist Hu Jia.[133] In June 2008, Radio Free Asia reported that dozens of rights lawyers and scholars had begun an online free speech forum.[134]

Citizens and some Chinese media and editorialists continue to question government measures that restrict freedom of expression.[135] A January 2008 Southern Metropolitan Daily editorial criticized the regulations calling for state ownership of audio and video hosting Web sites as "restraining the civil right of social expression in the era of the Internet."[136] At the trial of land rights activist Yang Chunlin, defense lawyers argued that Chinese officials' application of the inciting subversion provision was likely to result in punishing free speech because of its vagueness and that neither the Supreme People's Court nor the National People's Congress Standing Committee had interpreted the law to provide guidance to citizens on the boundaries of free speech.[137] More than 14,000 Chinese citizens signed an open letter released to the public on January 1, 2008, urging the Chinese government to ratify the International Covenant on Civil and Political Rights before the 2008 Olympic Games "without reservations."[138] One of the letter's recommendations called on the Chinese government to allow freedom of speech and to protect the press and publishing.

ADDENDUM

CHINA COMMITS TO "OPEN GOVERNMENT INFORMATION" (OGI) EFFECTIVE MAY 1, 2008

In a move intended to combat corruption, increase public oversight and participation in government, and allow citizens access to government-held information, the State Council on April 5, 2007, issued the first national Regulations on Open Government Information (OGI Regulation), which took effect May 1, 2008.[139] Implementation begins at a time when the need for greater transparency in the areas of environmental health, land disputes, disease, and food, drug, and product safety has become apparent. The time lag between issue and effective date provided citizens and government departments a one-year preparatory period.

The national regulation may alter relations between citizens and traditionally protective government bureaucracies. But it is not entirely a new development. While the overall impact of the national regulation remains unclear, over 30 provincial and city-level governments throughout China as well as central government agencies and departments have adopted OGI rules in the last several years. Guangzhou, which was the first municipality to do so in 2002, and Shanghai, which issued its regulations in 2004, are but two examples. As implementation of the national OGI Regulation proceeds, a number of issues merit attention, the following among them:

Two Main Features of OGI

Government agencies at all levels have an affirmative obligation to disclose certain information, generally within 20 business days. This includes information that "involves the vital interests of citizens," with emphasis on information relating to, among other items, environmental protection, public health, food, drug, and product quality, sudden emergencies, and land appropriation and compensation.

Citizens, legal persons, and other organizations (Requesting Parties) may request information and are entitled to receive a reply

within 15 business days and no later than 30 business days. Requesting Parties can challenge a denial of access to information by filing a report with a higher-level or supervisory agency or designated open government information department or by applying for administrative reconsideration or filing an administrative lawsuit.

Areas To Watch During Implementation

No clear presumption of disclosure. Premier Wen Jiabao urged officials to proceed with implementation "insisting that disclosure be the principle, non-disclosure the exception." Chinese scholars and international experts, however, note that the national OGI Regulation does not set forth a clear presumption of disclosure. On this point it differs from earlier local-level OGI regulations and similar measures in other countries.

Certain provisions may discourage officials from disclosing information. Under the OGI Regulation, officials who withhold information the disclosure of which is required under the Regulation may face both administrative and criminal penalties. At the same time, however, the OGI Regulation stipulates that officials must not disclose information involving "state secrets, commercial secrets, or individual privacy," and must set up mechanisms to examine the secrecy of information requested. This emphasis on safeguarding secrecy and the breadth and vagueness of the definition of "state secrets" under Chinese law may encourage officials to err on the side of non-disclosure. The regulation also prohibits officials from disclosing information that might "endanger state security, public security, economic security, and social stability." Agencies and personnel who fail to "establish and perfect" secrecy examination mechanisms or who disclose information later deemed exempt from disclosure under the OGI Regulation may face administrative or criminal punishment.

Requesting Parties may be denied access if the request fails to meet a recognized purpose. An opinion issued by the State Council General Office on April 29, 2008, states that officials may deny requests if the information has no relation to the Requesting Party's "production, livelihood and scientific and technological research." This reflects language in Article 13 of the OGI Regulation that says Requesting Parties may request information "based on the special needs of such matters as their own production, livelihood and scientific and technological research." This introduction of an apparent purpose test differs from earlier local-level OGI regulations and international practice. Furthermore, another provision in the OGI Regulation which sets forth the information to be included in a request, does not instruct the Requesting Party to indicate the purpose of the request.

Requesting Parties lack an independent review channel to enforce the OGI. Some Chinese scholars have noted that the OGI Regulation's relief provisions constrain citizens from using the courts to challenge decisions that deny requests for information. Because China's courts are subordinate to the National People's Congress Standing Committee and the Communist Party, "it can be anticipated that enforcement of emerging information rights in China, even with the adoption of the State Council OGI Regulations, will

continue to face high hurdles within the existing court system." While it is still too early to tell, one scholar notes that it may be possible, however, to achieve some independent review of non-political cases through creation of tribunals or commissions designed to handle OGI cases.

Sufficiency of funding, preparedness, and public awareness. For many departments, OGI implementation may amount to an unfunded mandate. Many agencies face resource constraints or rely on funding sources predisposed to favor non-disclosure. Local governments may not favor information disclosure that could negatively impact local business. Local environmental protection bureaus, for example, which are funded by local governments, may not receive funding adequate to implement OGI effectively. Already, a number of localities failed to meet a March 2008 deadline to make catalogues and guides intended to assist parties in requesting information available to the public. This resulted in part from inadequate funding and technical expertise. While the government has focused on training officials, it has been less active in raising public awareness.

Access to information may not apply to media, whether foreign or domestic. The national OGI Regulation applies to "citizens, legal persons, and other organizations." This suggests its applicability to foreigners remains open to interpretation during implementation. It also remains unclear whether journalists in general may request access to information under the national regulation. Some Chinese experts argue that the regulation clearly applies to news organizations, which have the status of "legal persons or other organizations," and journalists, who have the status of "citizens," although foreign journalists may not be covered because they are not citizens. Some local-level OGI regulations in existence prior to the national regulation made clear its applicability to foreigners. The Guangzhou regulation, for example, provides that foreigners, stateless persons, and foreign organizations have the same rights and obligations to request information, limited to the extent that the requesting party's country or region of origin imposes restrictions on government information access to Chinese citizens. It remains to be seen whether the national OGI Regulation will be implemented so as to trump local OGI rules that are broader in application or whether the national regulation will be interpreted in a similarly broad fashion.

Endnotes

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[4] Ministry of Industry and Information Technology (Online), "Nation's Cell Phone Users Breaks 600 Million, Telecommunications Industry Increases by 25.9%" [Wo guo yidong dianhua yonghu tupo liuyi hu dianxin yewu zongliang tongbi zengzhang 25.9%], 23 July 08.
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[7] David Eimer, "Mobile Dissent," South China Morning Post (Online), 14 May 08; Quentin Sommerville, "Well-Heeled Protests Hit Shanghai," BBC (Online), 14 January 08.
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[10] Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217A(III) of 10 December 48, art. 19 [hereinafter UDHR].
[11] PRC Constitution, art. 35. Article 51, however, states: "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." PRC Constitution, art. 51.
[12] ICCPR, art. 19. Article 29 of the UDHR states the following: "everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."
[13] See, e.g., Ministry of Foreign Affairs, "Premier Wen Jiabao Answered Questions at Press Conference."
[14] See, e.g., Ministry of Foreign Affairs (Online), "Foreign Ministry Spokesperson Qin Gang's Regular Press Conference on March 25, 2008," 26 March 08.
[15] Following its 2005 visit to China, the UN Working Group on Arbitrary Detention noted that the vague definition of crimes of endangering national security, splitting the state, subverting state power, and supplying state secrets "leaves their application open to abuse particularly of the rights to freedom of religion, speech, and assembly." It recommended that political crimes "that leave large discretion to law enforcement and prosecution authorities such as 'endangering national security,' 'subverting State power,' 'undermining the unity of the country,' 'supplying of State secrets to individuals abroad,' etc. should be abolished." Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to China, 10 March 06, para. 34, 82(s). In a January 2008 report, Chinese Human Rights Defenders studied 41 cases from 2000 to 2007 in which officials used the "inciting subversion" provision of the Criminal Law (Article 105(2)) to punish Chinese citizens for exercising their right to freedom of expression. It found that in such cases "[t]he 'evidence' often consists of no more than the writings of an individual or simply shows that he/she circulated certain articles containing dissenting views, without any effort to show that the expression had any potential or real subversive effect. That is to say, speech in and of itself is interpreted as constituting incitement of subversion. . . ." Chinese Human Rights Defenders (Online), "Inciting Subversion of State Power: A Legal Tool for Prosecuting Free Speech in China," 8 January 08.
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