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I. Commission Finding

The Commission is deeply concerned that some Chinese government policies designed to address growing social unrest and bolster Communist Party authority are resulting in a period of declining human rights for China's citizens. The Commission identified limited improvements in the Chinese government's human rights practices in 2004, but backward-stepping government decisions in 2005 and 2006 are leading the Commission to reevaluate the Chinese leadership's commitment to additional human rights improvements in the near term. In its 2005 Annual Report, the Commission highlighted increased government restrictions on Chinese citizens who worship in state-controlled venues or write for state-controlled publications. These restrictions remain in place, and in some cases, the government has strengthened their enforcement.

The Communist Party's concern with growing social unrest dominated its policy statements over the past year, and served as justification for increased government interference with, and intimidation and harassment of, individuals and groups that the Party believes may threaten its authority or legitimacy. The government targeted social, political, and legal activists, as well as religious believers who violated strict government limitations on religious practice. In the past year, government efforts to maintain social stability have led to a greater reliance on the coercive powers of the police to subdue potential threats to Party rule. Chinese officials have also taken additional steps in the past year to curb the growth of China's emerging civil society. New government and Party controls have been imposed on courts and judges that may further weaken the independence of the Chinese judiciary. Moreover, the Chinese government continues to use its regulatory control over the Internet and print publishing to censor political and religious expression, to imprison journalists and writers, and to prevent Chinese citizens from having access to independent news sources.

The Commission notes the progress that the Chinese government has made over the past 25 years in beginning to build a political system based on the rule of law and on respect for basic human rights. The twin demands of social stability and continued economic progress have spurred legal reforms that may one day be the leading edge of constraints on the arbitrary exercise of state power. The Chinese government continues to pursue judicial and criminal reforms, often in cooperation with international partners, that could lead to further protection of citizen rights. The government's achievements in the economic realm are impressive, none more so than its success in lifting more than 400 million Chinese citizens

out of extreme poverty since the early 1980s. Economic reforms have also contributed to a growing middle class, expected to total 170 million people by 2010. China's WTO accession commitments have resulted in gradual improvements in transparency at all levels of government. Elections at the village level are now commonplace in China, and limited experiments with popular participation continue at other levels of government. Average Chinese citizens are free to discuss sensitive issues in a way that would have been unimaginable two decades ago.

While all of these changes are important, the gap between forward-looking economic freedoms and a backward-looking political system remains significant. There are leaders now within China who comprehend the need for change, and who understand that inflexibility, secretiveness, and a lack of democratic oversight pose the greatest challenges to continued development. These leaders will need to gather considerable reformist courage to overcome obstacles and push for continued change. Such changes will not occur overnight, but rather in ways that Chinese society, culture, infrastructure, and institutions must be prepared for and willing to accept.

II. Executive Summary

China has an authoritarian political system controlled by the Communist Party. Party committees formulate all major state policies before the government implements them. The Party dominates Chinese legislative bodies such as the National People's Congress (NPC), and fills all important government positions in executive and judicial institutions through an internal selection process. Party control extends throughout institutions of local government. Chinese authorities have ruled out building representative democratic institutions to address citizen complaints about corruption and abuse of power, and instead are recentralizing government posts into the hands of individual Party secretaries. The absence of popular and legal constraints to check the behavior of Party officials has led to widespread corruption and citizen anger. The Party has strengthened the role of internal responsibility systems to moderate official behavior, but these systems have provided some local Party officials with new incentives to conceal information and abuse their power. In 2005, the central leadership called for strengthened controls over society to address mounting social unrest and to suppress dissent.

Since the 1980s, officials have introduced limited reforms to allow citizens to vote in village elections. While these reforms are a step forward in permitting citizen participation at the local level, the reforms are designed to strengthen Party governance and do not represent Party acceptance of representative government. Since the late 1990s, the Party has experimented with reforms that allow a limited degree of citizen participation in the selection of local Party cadres, but the Party retains tight control over the candidate pool and the selection process. Since 2000, Chinese authorities have experimented with the use of legislative hearings to solicit public views on pending legislation, and the NPC held its first controlled public hearing in September 2005. In March 2005, the central government announced new transparency requirements for

local governments. The requirements mandate county and provincial governments to increase transparency and popular participation in government decisionmaking. Implementation of these "open government" requirements varies, but some local governments have taken steps toward greater transparency.

The Chinese government continues to engage the international community on human rights and rule of law issues to varying degrees. The government announced in 2006 that it plans to amend its Criminal, Civil, and Administrative Procedure Laws and reform the judiciary to prepare for ratification of the International Covenant on Civil and Political Rights. The government hosted visits by the UN Special Rapporteur on Torture in late 2005 and the UN High Commissioner for Refugees in March 2006. Both UN officials commended the Chinese government for its open attitude toward increased dialogue, but Manfred Nowak, UN Special Rapporteur on Torture, also reported that his work was monitored and obstructed by Chinese authorities. In May 2006, China was elected to serve for a three-year term on the newly established UN Human Rights Council. The government's application for membership in the Council noted that it has acceded to 22 international human rights accords. As a member of the new Council, the government has pledged to fulfill its obligations under the terms of these accords, and is obligated under the rules of the Council to submit to peer review of its human rights record.

Chinese scholars and officials continued to engage foreign governments and legal experts on a range of criminal justice issues during late 2005 and 2006. Chinese law enforcement agencies expressed a growing interest in cooperating with other countries to combat transnational crime, and in expanding cooperation with U.S. law enforcement agencies on money laundering, fighting terrorism, and other issues. Numerous international conferences and legal exchanges with Western NGOs, judges, and legal experts took place, including programs on public accountability, pretrial discovery, evidence exclusion, criminal trials and procedure, bail, capital punishment, and prison reform. In 2006, the U.S. and Chinese governments continued to conduct a series of bilateral cooperative activities on wage and hour laws, occupational safety and health, mine safety and health, and pension program oversight.

Government censorship, while not total, is pervasive and highly effective, and denies Chinese citizens the freedoms of speech and of the press guaranteed to them in the Chinese Constitution. The government has imprisoned journalists who provide news to foreigners, such as Zhao Yan, Shi Tao, and Ching Cheong. Editors of publications that criticize government policies, such as Yang Bin of the Beijing News and Li Datong of the China Youth Daily, have been dismissed. The government blocks the Web sites and radio and television broadcasts of foreign news organizations, such as those of the British Broadcasting Corporation, Radio Free Asia, and the Voice of America. In 2005, the government banned dozens of newspapers and confiscated almost one million "illegal" political publications. Beginning in May 2005, the government blocked the Commission's Web site from being viewed in China.

Modern telecommunications technologies such as the Internet, cell phones, and satellite broadcasts, allow Chinese citizens access

to more information sources, both state-controlled and non-state-controlled. But government restrictions on news and information media, including on these new information sources, do not conform to international human rights standards for freedom of expression. The Chinese government imposes a strict licensing scheme on news and information media that includes oversight by government agencies with discretion to grant, deny, and rescind licenses based on political and economic criteria. The Chinese government's content-based restrictions include controls on political opinion and religious literature that are not prescribed by law, and whose primary purpose is to protect the ideological and political dominance of the Communist Party.

The government's restrictions on religious literature do not conform to international human rights standards. Only government-licensed printing enterprises may print religious materials, and then only with approval from both the provincial-level religious affairs bureau and the press and publication administration. In addition to confiscating religious publications, the Chinese government also has fined, detained, and imprisoned citizens for publishing, printing, and distributing religious literature without government permission. Cai Zhuohua, a house church pastor in Beijing, and two of his family members were imprisoned in 2005 for printing and giving away Bibles and other Christian literature. In Anhui province, house church pastor Wang Zaiqing was arrested in May 2006 on the same charges.

The Communist Party's concern with growing social instability dominated its policy statements over the past year, and served as justification for increased government vigilance over activities and groups that potentially threaten Party legitimacy. Top Party, court, and law enforcement officials repeatedly linked the government's policy of pursuing periodic anti-crime campaigns, referred to as "Strike Hard" campaigns, to the goal of maintaining social stability. Government efforts to maintain social stability have led to a greater reliance on the coercive powers of the police to subdue potential threats to Party rule.

Abuse of power by local police forces remains a serious problem. The Supreme People's Procuratorate (SPP) has acknowledged the existence of continuing and widespread abuses in law enforcement, including illegal extended detentions and torture. New SPP regulations that detail the criteria for prosecuting official abuses of power went into effect in July 2006, and establish standards for the prosecution of police who abuse their power to hold individuals in custody beyond legal limits, coerce confessions under torture, acquire evidence through the use of force, maltreat prisoners, or retaliate against those who petition the government or file complaints against them.

The Chinese government continues to apply vague criminal and administrative provisions to justify detentions based on an individual's political opinions or membership in religious, ethnic, or social groups. These provisions allow for the targeting and punishment of activists for crimes that "endanger state security" or "disturb public order" under the Criminal Law. The UN Special Rapporteur on Torture concluded in his March 2006 report to the UN Commission on Human Rights that the vague definition of these crimes leaves

their application open to abuse, particularly of the rights to freedom of religion, speech, and assembly.

Chinese authorities use reeducation through labor and other forms of administrative detention to circumvent the criminal process and imprison offenders for "minor crimes," without judicial review and the procedural protections guaranteed by the Chinese Constitution and Criminal Procedure Law. The UN Working Group on Arbitrary Detention concluded in 2004 that the Chinese government has made no significant progress in reforming the administrative detention system to ensure judicial review and to conform to international law. Although proposed reforms would provide some added procedural protections, they would still not provide an accused individual the opportunity to dispute the alleged misconduct and contest law enforcement accusations of guilt before an independent adjudicatory body.

Although illegal in China, torture and abuse by law enforcement officers remain widespread. Factors that perpetuate or exacerbate the problem of torture include a lack of procedural safeguards to protect criminal suspects and defendants, over reliance on confessions of guilt, the absence of lawyers at interrogations, inadequate complaint mechanisms, the lack of an independent judiciary, and the abuse of administrative detention measures. The Chinese government emphasizes its ongoing efforts to pass new laws and administrative regulations preventing, punishing, and compensating cases of torture by law enforcement officers. Both the SPP and the Ministry of Public Security have announced their support for audio and video taping of interrogations of criminal suspects accused of a limited number of crimes. The Chinese government recognizes that problems of misconduct, including physical abuse, exist within Chinese prisons and reeducation through labor centers, and it is making progress toward increasing accountability for such behavior.

In 2006, Chinese authorities increased restrictions on lawyers who work on politically sensitive cases or cases that draw attention from the foreign news media. Law enforcement officials also intimidated lawyers defending these cases by charging them, or threatening to charge them, with various crimes. Since mid-2005, local authorities have also used harassment and violent measures against those who participated in criminal or civil rights defense in sensitive matters. Beijing lawyer Zhu Jiuhu was detained during the past year. Self-trained legal advocate Chen Guangcheng was sentenced on August 24, 2006, to four years and three months' imprisonment, and Shanghai lawyer Zheng Enchong is currently under house arrest after being released from prison on June 5, 2006. Beijing lawyer Gao Zhisheng has been held incommunicado since authorities reportedly abducted him on August 15 from his sister's home in Shandong province. Guo Feixiong, who served as a legal advisor to Gao's law firm, was arrested and later released in late 2005, and is currently in detention after being taken from his home on September 14.

Chinese criminal law includes 68 capital offenses, over half of which are non-violent crimes. The Chinese government reportedly has adopted an "execute fewer, execute cautiously" policy. In 2006, the Chinese judiciary made reform of the death penalty review process a top priority and introduced new appellate court proce-

dures for hearing death penalty cases. The Supreme People's Court announced that it would consolidate and reclaim the death penalty review power from provincial-level high courts. These reforms are designed to limit the use of death sentences, consolidate criteria used by courts to administer those sentences, and ensure constitutionally protected human rights.

The Vice Minister of Health acknowledged that the majority of human organs used in transplants in China originate from executed prisoners. Under the World Health Organization's guiding principles on human organ transplantation, organ donations by prisoners, even when reportedly voluntary, may nonetheless violate international standards if the organs are obtained through undue influence and pressure. New Ministry of Health regulations include medical standards for organ transplants, but do not provide guidance on what type of consent is required for taking organs from executed prisoners.

The Chinese government does not respect the internationally recognized right of workers to organize their own unions. The All-China Federation of Trade Unions (ACFTU), a Party-led mass organization, is the only legal labor federation in China. It controls local union branches and aligns worker and union activity with government and Party policy. The ACFTU began a campaign in March 2006 to establish union branches in foreign enterprises doing business in China. Chinese workers who attempt to form independent workers' organizations, or whom the government suspects of being leaders of such organizations, risk imprisonment. The government secretly tried labor rights activist Li Wangyang and sentenced him to 10 years' imprisonment in September 2001 for staging a peaceful hunger strike. Li had previously served most of a 13-year sentence for organizing an independent union. In May 2003, the government sentenced labor activist Yao Fuxin to a seven-year prison term for peacefully rallying workers to demand wage and pension arrearages from a bankrupt state-owned enterprise. Both Li and Yao remain in prison.

Weak protection of worker rights has contributed to an increase in the number of labor disputes and protests. According to ACFTU figures, the number of labor disputes rose sharply in 2005. The ACFTU reports that there were 300,000 labor-related lawsuits filed, a 20.5 percent increase over 2004 and a 950 percent increase compared to 1995. Strikes, marches, demonstrations, and collective petitions increased from fewer than 1,500 in 1994 to about 11,000 in 2003, while the number of workers involved increased from nearly 53,000 in 1994 to an estimated 515,000 in 2003. Poor workplace health and safety conditions and continuing wage and pension arrearages were the most prominent issues resulting in labor disputes during the past year. Chinese industry continues to have a high accident rate, with death rates in the mining and construction industries leading other sectors. According to official statistics, 110,027 people were killed in 677,379 workplace accidents through December 2005, and more than 10,000 workers died in the mining and construction sectors during 2005.

Forced labor is an integral part of the Chinese administrative detention system. Authorities sentence some prisoners without judicial review to reeducation through labor (*laojiao*) centers, where

they are forced to work long hours without pay to fulfill heavy production quotas, and sometimes are tortured for refusing to work. China's Labor Law prohibits forced labor practices in the workplace, and authorities have arrested employers who trap workers at forced labor sites. In 2002, the Chinese government began to cooperate with the International Labor Organization on broad issues of concern regarding forced labor, including on potential reforms to the reeducation through labor system, and on improving institutional capacity to combat human trafficking for labor exploitation.

The use of child labor in some regions of China is reportedly on the rise. Labor shortages in the economically developed southern and eastern coastal provinces are causing employers to turn to child laborers, according to NGO reports. This development coincides with intensified efforts by the Ministry of Justice and the Ministry of Labor and Social Security to fight the illegal employment of children, suggesting that the government is more concerned about such abuses than before. Government authorities consider statistics on child labor that have not been officially approved for release to be state secrets, and this policy thwarts efforts to understand the extent and causes of the problem.

Chinese government restrictions on the practice of religion violate international human rights standards. Freedom of religious belief is protected by the Chinese Constitution and laws, but government implementation of Party policy on religion, and restrictions elsewhere in domestic law, violate these guarantees. The Chinese government tolerates some aspects of religious belief and practice, but only under a strict regulatory framework that represses religious and spiritual activities falling outside the scope of Party-sanctioned practice. Religious organizations are required to register with the government and submit to the leadership of "patriotic religious associations" created by the Party to lead each of China's five recognized religions: Buddhism, Catholicism, Daoism, Islam, and Protestantism. Those who choose not to register with the government, or groups that the government refuses to register, operate outside the zone of protected religious activity and risk harassment, detention, imprisonment, and other abuses. Registered communities also risk such abuse if they engage in religious activities that authorities deem a threat to Party authority or legitimacy.

The 2004 Regulation on Religious Affairs (RRA) has not afforded greater religious freedom to Chinese citizens, despite government claims that it represented a "paradigm shift" by limiting state control over religion. Like earlier local and national regulations on religion, the RRA emphasizes government control and restrictions on religion. The RRA articulates general protection only for freedom of "religious belief," but not for expressions of religious belief. Like earlier regulations, it also protects only those religious activities deemed "normal," without defining this term. Although the RRA includes provisions that permit registered religious organizations to select leaders, publish materials, and engage in other affairs, many provisions are conditioned on government approval and oversight of religious activities.

Chinese government enforcement of Party policy on religion creates a repressive environment for the practice of Tibetan Buddhism. Party policies toward the Dalai Lama and Panchen Lama,

the second-ranking Tibetan spiritual leader, seek to control the fundamental religious convictions of Tibetan Buddhists. Government actions to implement Party policies caused further deterioration in some aspects of religious freedom for Tibetan Buddhists in the past year. Officials began a patriotic education campaign in Lhasa-area monasteries and nunneries in April 2005. Expressions of resentment by Tibetan monks and nuns against the continuing campaign resulted in detentions, expulsions, and an apparent suicide. Chinese officials continue to hold Gedun Choekyi Nyima, the boy the Dalai Lama recognized as the Panchen Lama in May 1995, in incommunicado custody along with his parents.

Tibetan Buddhist monks and nuns constituted 21 of the 24 known political detentions of Tibetans by Chinese authorities in 2005, compared to 8 of the 15 such known detentions in 2004, based on data available in the Commission's Political Prisoner Database. None of the known detentions of monks and nuns in 2005 took place in Sichuan province, a shift from the previous three years, but known detentions of monks and nuns in Qinghai and Gansu provinces increased during the same period. Based on data available for 50 currently imprisoned Tibetan monks and nuns, their average sentence length is approximately nine years and six months. In one positive development, the government permitted the resumption of a centuries-old Tibetan Buddhist tradition of advanced study that leads to the highest level of scholarly attainment in the Gelug tradition.

Government repression of unregistered Catholic clerics increased in the past year. Based on NGO reports, officials in Hebei and Zhejiang provinces detained a total of 38 unregistered clerics in 13 incidents in the last year, while in the previous year officials detained 11 clerics in 5 incidents. The government targets Catholic bishops who lead large unregistered communities for the most severe punishment. Bishop Jia Zhiguo, the unregistered bishop of Zhengding diocese in Hebei province, has spent most of the past year in detention. Bishop Jia has been detained at least eight times since 2004.

Government harassment and abuse of registered Catholic clerics also increased in the past year. In November and December 2005, three incidents were reported in which officials or unidentified assailants beat registered Catholic nuns or priests after they demanded the return of church property. In April and May 2006, officials began a campaign to increase control over registered Catholic bishops. Officials detained, sequestered, threatened, or exerted pressure on dozens of registered Catholic clerics to coerce them into participating in the consecration of bishops selected by the state-controlled Catholic Patriotic Association but not approved by the Holy See. Government authorities also restricted contact between registered clergy and the Holy See, denying bishops permission to travel to Rome in September 2005 to participate in a meeting of Catholic bishops. Authorities continued to permit some registered priests and nuns to study abroad.

The Chinese government also strictly controls the practice of Islam. Muslims face the same rigorous registration requirements as other religious groups. The state-controlled Islamic Association of China aligns Islamic practice to Party goals by directing the

training and confirmation of religious leaders, the publication of religious materials, the content of sermons, and the organization of Hajj pilgrimages, as well as by indoctrinating religious leaders and adherents in Party ideology and government policy.

The government severely represses Islamic practice in the Xinjiang Uighur Autonomous Region (XUAR), especially among the Uighur ethnic group. Local regulations in the XUAR impose restrictions on religion that are not found in other parts of China. The government's religious repression in the XUAR is part of a broader policy aimed at diluting expressions of Uighur identity and tightening government control in the region. The government continues to imprison Uighurs who engage in peaceful expressions of dissent and other non-violent activities. Writer Nurmemet Yasin and historian Tohti Tunyaz remain in prison for writing a short story and conducting research on the XUAR.

The Chinese government continues to repress Chinese Protestants who worship in house churches. From May 2005 to May 2006, the government detained nearly 2,000 house church members, according to one U.S. NGO. Almost 50 percent of the reported detentions of Protestant house church members and leaders took place in Henan province, where the house church movement is particularly strong. In June 2006, Pastor Zhang Rongliang, the leader of one of China's largest house churches, was sentenced to seven years and six months in prison for "illegally crossing the national border" and "fraudulently obtaining a passport." Authorities have detained or imprisoned Pastor Zhang multiple times since 1976. Pastor Gong Shengliang is serving a life sentence in declining health, and was beaten in prison during the past year.

The Chinese government continues to maintain strict control over the registered Protestant church. The RRA requires that all Protestants worship at registered churches, regardless of their differences in doctrine and liturgy. The state-controlled Three-Self Patriotic Movement, which leads the registered Protestant church in China, continues to impose a Party-defined theology, called "theological construction," on registered seminaries that is intended to "weaken those aspects within Christian faith that do not conform with the socialist society." In the past year, authorities detained a registered Protestant pastor in Henan province for conducting a Bible study meeting at a registered Protestant church outside his designated geographic area.

The Chinese government continues to disrupt the relationships that many house churches maintain with co-religionists outside China, including raiding meetings between house church leaders and overseas Protestants, and preventing foreign travel by house church leaders. The Chinese government also continues to restrict and monitor the ties between the registered Protestant Church and foreign denominations.

Government persecution of the Falun Gong spiritual movement continued during the past year. Authorities use both criminal and administrative punishments to punish Falun Gong practitioners for peacefully exercising their spiritual beliefs. The state-controlled press has reported on at least 149 cases of Falun Gong practitioners currently in prison, but Falun Gong sources estimate that up to 100,000 practitioners have been detained since 1999. Manfred

Nowak, UN Special Rapporteur on Torture, reported after his November 2005 visit to China that Falun Gong practitioners account for two-thirds of victims of alleged torture by Chinese law enforcement officers. Tsinghua University student Wang Xin was sentenced to nine years' imprisonment in 2001 for downloading Falun Gong materials from the Internet and printing leaflets.

Despite strict government controls on the practice of religion, Chinese authorities accommodate the social programs of Buddhist, Catholic, Daoist, Muslim, and Protestant communities when these programs support Party goals. For example, domestic Muslim civil society organizations carry out social welfare projects, and international Muslim charities have supported projects in Gansu and Shaanxi provinces, as well as in the XUAR. The Amity Foundation, affiliated with the registered Protestant Church, sponsors projects in social services and development aid, including education, health care, and care for the elderly.

The Chinese Constitution and national laws provide that men and women should enjoy equal rights and list protections for the economic and social rights of women, but vague language and inadequate implementation hinder the effectiveness of these legal protections. Some provincial and municipal governments have passed regulations to strengthen the implementation of national laws. A 2005 amendment to the Law on the Protection of Rights and Interests of Women prohibits sexual harassment and domestic violence, promotes a greater voice for women in the government, and charges several government organizations with responsibility for preventing human trafficking and rehabilitating victims.

Civil society groups in China advocate on behalf of women's rights within the confines of government and Party policy. The All-China Women's Federation, a Party-led mass organization, works with the Chinese government to support women's rights, implement programs for disadvantaged women, and provide a limited measure of legal counseling and training for women. Women, however, have limited earning power compared to men, despite government policies that guarantee women non-discrimination in employment and occupation.

The Chinese government strictly controls the reproductive lives of Chinese women. Since the early 1980s, the government's population planning policy has limited most women in urban areas to bearing one child, while permitting many women in rural China to bear a second child if their first child is female. Officials have coerced compliance with the policy through a system marked by pervasive propaganda, mandatory monitoring of women's reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and, in some cases, forced sterilization and abortion. The Chinese government's population planning laws and regulations contravene international human rights standards by limiting the number of children that women may bear, by coercing compliance with population targets through heavy fines, and by discriminating against "out-of-plan" children. Local officials have violated Chinese law by punishing citizens, such as legal advocate Chen Guangcheng, who have drawn attention to population planning abuses by government officials.

Human trafficking remains pervasive in China despite efforts by government agencies to combat trafficking, a framework of domestic laws to address the problem, and ongoing cooperation with international anti-trafficking programs. The government's population planning policy has created a severe imbalance in the male-female birth ratio, and this imbalance exacerbates trafficking of women and girls for sale as brides. Between 10,000 and 20,000 men, women, and children are victims of trafficking within China each year, and NGOs estimate that 90 percent of those victims are women and children trafficked for sexual exploitation. Authorities are working with the International Labor Organization to build anti-trafficking capacity and raise domestic awareness of the problem.

The Chinese government acknowledges the severity of China's environmental problems and has taken steps to curb pollution and environmental degradation. Since 2001, it has formulated or revised environmental protection laws, administrative regulations, and standards, and has worked to strengthen enforcement of anti-pollution rules. The Chinese government has also welcomed international technical assistance to combat environmental degradation, and has increased cooperation with the U.S. government on environmental protection over the past year.

Despite these initiatives, local enforcement of environmental laws and regulations is poor, and under funding of environmental protection activities continues to hinder official efforts to prevent environmental degradation. A lack of transparency hampers the Chinese government's ability to respond to civil emergencies, including environmental disasters. Government efforts to impose greater control over environmental civil society groups during the past year have stifled citizen activism.

The central government strengthened its commitment during the past year to address the severe shortage of affordable health care in rural China. Since the collapse of the rural public health infrastructure in the 1980s, the disparity in the availability and affordability of health care between urban and rural areas has increased. As a result, the medical needs of China's rural poor, including the diagnosis and treatment of infectious diseases, often go unaddressed. The government, however, has pledged to accelerate the establishment of rural health cooperatives and invest more than 20 billion yuan (US$2.5 billion) over the next five years to modernize hospitals, clinics, and medical equipment at the village, township, and county levels.

The central government continued to take steps over the past year to prevent and control the spread of HIV/AIDS. Although the estimated number of HIV/AIDS cases nationwide has decreased, health officials still consider the disease to be a grave problem. Government efforts to prevent and control the transmission of HIV/AIDS continue to face serious challenges, as local implementation of national policy lags far behind central government attention to the problem. Victims of HIV/AIDS and other infectious diseases also continue to face harassment and discrimination, despite legal protections.

Chinese public health officials have shown increased commitment and responsiveness in their efforts to prevent and control the

spread of avian flu, and have taken steps to improve government transparency following the mishandling of the SARS epidemic in 2003. International health experts, however, still consider China to be among the most likely incubators of a potential human influenza pandemic. Central government cooperation in sharing information and virus samples with international health organizations has been inconsistent, and international health organizations and central government officials continue to express concern about the speed and accuracy of local reporting on outbreaks among both humans and poultry.

Since its implementation in the 1950s, the Chinese household registration (*hukou*) system has limited the rights of ordinary Chinese citizens to choose their permanent place of residence, receive equal access to social services, and enjoy equal protection of the law. Economic changes and relaxation of some *hukou* controls have eroded previously strict limits on citizens' freedom of movement, but these changes have also exported a discriminatory urban-rural social division to China's cities. Migrants who lack a local *hukou* for their new city of residence face legal discrimination in employment, education, and social services.

Chinese leaders called for reforms to the *hukou* system during the past year. Central government interest in reform stems not only from concern over migrant rights and economic inequality, but also from concern over growing social instability and a desire for stronger government control over China's internal migrant population. New national goals for *hukou* reform, like similar proposals implemented periodically since the late 1990s, call for streamlined *hukou* categories, elimination of discriminatory regulations on employment, and improved migrant access to social services. Local governments and urban residents have resisted reforms to the *hukou* system because of the potential budgetary impact, fears of increasing population pressure in cities, and discriminatory attitudes toward migrants. Local opposition has limited the ability of central government authorities to achieve national reform goals.

The number of civil society organizations in China is growing, with many organizations undertaking projects such as poverty alleviation, faith-based social work, and legal efforts to protect citizen rights. These organizations include national mass organizations that the Party created and funds, smaller citizen associations registered under national regulations, and loose networks of unregistered grassroots organizations. In February 2006, the China Foundation for Poverty Alleviation selected six groups as the first civil society organizations to receive Chinese government funding to run experimental anti-poverty programs, including the China office of a U.S.-based rural development organization.

Central authorities seek to maintain control over civil society groups, halt the emergence of independent organizations, and prevent what they have called the "Westernization" of China. While recognizing the utility of civil society organizations to address social problems, Chinese authorities use strict regulations to limit the growth of an independent civil society. Some Chinese citizens who attempt to organize groups outside of state control have been imprisoned. These include individuals who have attempted to establish independent labor unions and political associations, such as

China Free Trade Union Preparatory Committee member Hu Shigen, and China Democracy Party member Qin Yongmin; or young intellectuals who organize informal discussion groups, such as New Youth Study Group members Jin Haike, Xu Wei, Yang Zili, and Zhang Honghai.

Chinese officials have taken additional steps to curtail civil society organizations in the past year, but authorities are undecided on how to proceed. Since early 2005, Ministry of Civil Affairs (MOCA) officials have been researching a new administrative system to monitor and control civil society organizations. Many details of the new system are undetermined, such as who will conduct the required evaluations of civil society groups, how the evaluation results will be used, and who will fund the evaluations. At the same time, Chinese authorities have supported limited reforms to the status of civil society organizations. MOCA officials are advocating changes to the tax code to encourage private donations to civil society organizations. Central Party officials have expressed support for the creation of rural farmer cooperatives in annual policy guidelines issued each year since 2004.

International human rights standards require effective remedies for official violations of citizen rights. Despite these guarantees, Chinese citizens face formidable obstacles in seeking remedies to government actions that violate their legal rights and constitutionally protected freedoms. External government and Party controls continue to limit the independence of the Chinese judiciary. Party officials control the selection of top judicial personnel in all courts, including the Supreme People's Court, China's highest judicial authority. Since 2005, the government has restricted the efforts of private lawyers and human rights defenders who challenge government abuses. The All China Lawyers Association issued a guiding opinion that restricts the ability of lawyers to handle cases involving large groups of people. Local Chinese authorities have imposed additional restrictions on lawyer advocacy efforts.

The constitutional and administrative mechanisms in Chinese law that allow citizens to challenge government actions do not provide effective legal remedies, and Chinese citizens seldom use them. Chinese citizens rarely submit proposals to the National People's Congress for constitutional and legal review because the review process lacks transparency and citizens cannot compel review. Administrative court challenges to government actions have not increased since 1998. Provincial authorities report an overall decline between 2003 and 2005 in applications for administrative reconsideration, and the total numbers of such applications in major Chinese municipalities is a few hundred per year.

Chinese law also permits citizens to petition government officials directly to redress their grievances through the "letters and visits" (*xinfang*) system. Official news media report that Chinese citizens presented 12.7 million petitions to county-level and higher *xinfang* bureaus during 2005, in contrast to the 8 million total court cases handled by the Chinese judiciary during the same period. Local officials are disciplined more severely for high incidences of petitioning. Absent alternative political or legal channels to check the power of local officials and obtain redress, this punishment structure provides an incentive for Chinese citizens to take their griev-

ances to the streets in order to force local officials to act. But this punishment structure also gives local authorities an interest in suppressing mass petitions and preventing petitioners from approaching higher authorities. A December 2005 study of the *xinfang* system by a U.S. NGO found that some local authorities have resorted to "rampant violence and intimidation" to abduct or detain petitioners in Beijing and force them to return home.

The Supreme People's Court 2004–2008 court reform program imposes stronger external and internal controls that may further weaken the independence of courts and judges. The court reform program, however, also sets some positive long-term goals for judicial reform in the areas of court financing, adjudication, retrial procedures, and juvenile justice. Party efforts to address growing social unrest have resulted in new government programs to strengthen institutions that assist citizens with legal claims and disputes. Official Chinese statistics show that the number of government legal aid centers rose from 2,774 in 2003 to 3,081 in 2005. The total number of cases handled by these centers rose from about 166,000 in 2003 to an estimated 250,000 in 2005, or roughly 3 percent of all cases handled by the Chinese courts in 2005.

In 2005, the Dalai Lama increased his efforts to explain that he does not seek Tibetan independence from China. The Dalai Lama's envoys traveled to China for a fifth round of dialogue with Chinese officials in February 2006, relaying a request to Chinese leaders to permit the Dalai Lama to visit China as a religious pilgrim. Tibetans could benefit from full implementation of the Regional Ethnic Autonomy Law, but the lack of local self-government in Tibetan autonomous areas of China creates mistrust in the dialogue and demonstrates that authorities are not implementing this law.

The Chinese government favors accelerating implementation of development initiatives, especially the Great Western Development program, that already erode Tibetan culture and heritage. The Qinghai-Tibet railway began passenger service in July 2006, increasing Tibetan concerns about the railway's potential effects on Tibetan culture and the environment. Education levels among Tibetans are much lower than those of ethnic Han Chinese, undermining the ability of Tibetans to compete for employment and other economic advantages in an emerging market economy that attracts an increasing number of Han.

The Chinese government strictly limits the rights of Tibetans to exercise the constitutionally guaranteed freedoms of religion, speech, and assembly. Communist Party political campaigns promote atheism and strengthen government efforts to discourage Tibetan aspirations to foster their unique culture and religion. Chinese authorities have punished Tibetans, such as Jigme Gyatso, a former monk imprisoned in 1996 who is serving a 17-year sentence and Choeying Khedrub, a monk serving a life sentence since 2000, for peaceful expressions and non-violent actions that officials believe could undermine Party rule. The Commission's Political Prisoner Database listed 103 known cases of current Tibetan political detention or imprisonment as of August 2006, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Based on sentence information available for 70 of the current pris-

oners, the average sentence is approximately 10 years and 11 months.

The Chinese government forcibly repatriates North Korean refugees facing starvation and political and religious persecution in their homeland, contravening its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Chinese authorities detained and returned to the Democratic People's Republic of Korea (DPRK) thousands of North Koreans in 2005. The government classifies all North Koreans who enter China without documents as illegal economic migrants and claims it must return them to the DPRK, even though North Korean defectors meet the definition of refugees under international law. Repatriated North Koreans face long prison sentences, torture, and execution.

Without legal status, North Korean refugees in China are vulnerable to abuse and exploitation. There are an estimated 20,000 to 50,000 North Koreans currently hiding in northeastern China, and some NGOs estimate that the number of refugees is much higher. The government refuses the UN High Commissioner for Refugees (UNHCR) access to North Korean refugees, and fines and imprisons humanitarian workers who assist North Koreans in China. Officials in Beijing met with UNHCR António Guterres in March 2006 during the first UNHCR visit to China since 1997. In July 2006, the Chinese government for the first time allowed three North Korean refugees to travel directly from the U.S. Consulate in Shenyang, Liaoning province, to the United States to seek asylum.

The people of Hong Kong continue to enjoy the benefits of an independent judiciary and an open society in which the freedoms of religion, speech, and assembly are respected. The Commission strongly supports the provisions of the Basic Law that provide for the election of the chief executive and the entire Legislative Council through universal suffrage, and highlights the importance of the central government's obligation to give Hong Kong the "high degree of autonomy" promised in the Basic Law. The Commission notes, however, that during the past year, no steps were taken that would move Hong Kong closer to the "ultimate aim" of universal suffrage as specified in the Basic Law.

The Hong Kong Special Administrative Region's Constitutional Development Task Force issued its fifth report in October 2005, which proposed modest measures to expand citizen participation in selecting the chief executive in 2007 and forming the Legislative Council in 2008. A vigorous public debate on the merits of the Task Force proposals, and their lack of a timetable for universal suffrage, culminated in a December 2005 march by tens of thousands to protest the slow pace of democratization. Twenty-four Legislative Council members voted against the report in late December, blocking its passage. A last-minute package of adjustments offered by the government did not meet the lawmakers' demand for a specific timetable to realize universal suffrage.

The Chinese government has made progress in bringing its laws and regulations into compliance with its World Trade Organization (WTO) commitments. Although significant flaws remain, the new body of commercial laws has improved the business climate for foreign companies in China. With new, more transparent rules, the

Chinese trade bureaucracy has reduced regulatory and licensing delays in many sectors. The Chinese commercial regulatory regime remains, however, largely opaque to both domestic and foreign businesses. When China joined the WTO in December 2001, the government committed to establishing an official journal that would publish drafts of trade-related measures for notice and comment, and to publish trade-related measures no later than 90 days after they become effective. Although the government has acted to improve transparency, some central government agencies and many local governments are not consistent in publishing trade-related measures in the official journal.

The Chinese government tolerates intellectual property rights (IPR) infringement rates that are among the highest in the world. The Chinese government has not introduced criminal penalties sufficient to deter IPR infringement, and steps taken by Chinese government agencies to improve the protection of foreign intellectual property have not produced any significant decrease in infringement activity. The Chinese government's failure to provide effective criminal enforcement of IPR has led foreign companies to turn to civil litigation to obtain monetary damages or injunctive relief. Civil litigants continue to find, however, that most judges lack the necessary training and experience to handle IPR cases, and damage awards are too low to be an effective deterrent.

Since acceding to the WTO, the Chinese government has used technical, regulatory, and industrial policies, some of which appear to conflict with its WTO commitments, to discriminate against foreign producers and investors and limit their access to the domestic market. U.S. rights holders and industry groups have complained that the government's censorship regime serves as a barrier to entry and encourages IPR violations. In 2005, the American Chamber of Commerce in China wrote that censorship clearance procedures severely restrict the ability to distribute CD, VCD, and DVD products in China and provide an "unfair and unnecessary advantage to pirate producers who bring their products to market long before legitimate copies are available for sale."

III. List of Recommendations

The Commission is working to implement the recommendations made in its 2002–2005 Annual Reports. Based on the information presented in this report and the Commission's belief that the United States must continue to pursue a dual policy of high-level advocacy on human rights issues and support for legal reform efforts, the Commission makes the following additional recommendations to the President and the Congress for 2006:

Human Rights for China's Citizens

- The UN Human Rights Council held its first session from June 19 to June 30 in Geneva. As a responsible member of the international community and one of the 47 members of the new Council, China must abide by the international norms of behavior articulated in the Universal Declaration of Human Rights and international covenants, and submit to peer review of its human rights record. The President and the Congress should continue to urge the Chinese government to ratify the

International Covenant on Civil and Political Rights, and to adopt such legislative and other measures as may be necessary to give effect to the rights recognized in the Covenant. The President and the Congress should also encourage the Council to fight human rights abuses and to speak on behalf of Chinese prisoners of conscience who have had their voices silenced, including: democracy and labor activist Hu Shigen (imprisoned for helping to establish an independent political party and trade union), members Jin Haike, Xu Wei, Yang Zili, and Zhang Honghai of the New Youth Study Group (imprisoned for participating in a university discussion group), former monk Jigme Gyatso (imprisoned for printing leaflets and distributing posters), Uighur publisher Korash Huseyin (imprisoned for publishing a short story), Uighur writer Nurmemet Yasin (imprisoned for writing a short story), democracy activist Qin Yongmin (imprisoned for serving as a China Democracy Party spokesman), poet and journalist Shi Tao (imprisoned for investigative journalism), Uighur historian Tohti Tunyaz (imprisoned for historical research), U.S. permanent resident and democracy activist Yang Jianli (whose detention was found to be arbitrary by the UN Working Group on Arbitrary Detention), freelance writer Yang Tianshui (imprisoned for writing articles critical of authoritarian rule), labor rights activist Yao Fuxin (imprisoned for rallying workers to seek back wages), and New York Times researcher Zhao Yan (imprisoned for investigative journalism).

• China's leaders say they are committed to building a fair and just society based on the rule of law, and, in an effort to control social unrest, have moved toward strengthening government institutions that assist citizens with legal claims. Over the past year, however, prominent Chinese criminal and civil rights defense lawyers who have worked to advance the development of the rule of law under the rubric of "rights defenders" have met with government intimidation, harassment, and imprisonment. The President and the Congress should continue to discuss with China's leaders the importance of an effective, robust, and transparent legal defense in protecting civil and political rights, and recall the 1998 UN General Assembly declaration calling for the protection of human rights defenders worldwide. The President and the Congress should also continue to emphasize that continued detention and imprisonment of rights defenders such as Chen Guangcheng (sentenced in August for speaking out against population planning abuses) will only undermine the legitimacy of government actions and of China's developing legal system. A full commitment to the rule of law will also require the Chinese government to cease its harassment, surveillance, and abuse of citizens such as legal advocates Guo Feixiong and Zhao Xin, who have suffered repeated violence for working peacefully to defend citizen rights, and to allow courageous lawyers such as Gao Zhisheng and Zheng Enchong to resume their important legal advocacy.

• The future of Tibetans and their religion, language, and culture depends on fair and equitable decisions about future policies that can only be achieved through dialogue. The Dalai

Lama is essential to this dialogue. To help the parties build on dialogue held during visits by the Dalai Lama's representatives each year since 2002, the President and the Congress should continue to urge the Chinese government to invite the Dalai Lama to visit China, so that he can see for himself the changes and developments in China, and so that he can seek to build trust through direct contact with the Chinese leadership.

• Rapid economic development without effective environmental safeguards has resulted in severe environmental degradation throughout China, poor air and water quality in many areas, and increased risk of disease. The Chinese government has acknowledged the severity of China's environmental problems and has taken steps to curb pollution. The United States and China share a common interest in protecting the environment, and the Chinese government has welcomed international technical assistance to combat environmental degradation. The President and the Congress should discuss with China's leaders the importance of citizen activism in protecting the environment and in challenging governments to provide clean air and drinking water. The President and the Congress should also provide funding to support the full range of activities envisioned in new Sino-U.S. bilateral and international efforts to protect the environment like the Joint Committee on Environmental Cooperation and the Asia-Pacific Partnership on Clean Development and Climate.

• The Chinese government continues to apply vague criminal and administrative provisions to justify detentions based on an individual's political opinions or membership in religious, ethnic, or social groups. These provisions allow for the targeting and punishment of activists for crimes that "endanger state security" or "disturb public order" under the Criminal Law. They also allow for administrative detention for "minor crimes" in centers where prisoners can be subjected to forced labor without judicial review and the procedural protections guaranteed by the Constitution and Criminal Procedure Law. The President and the Congress should raise these issues in discussions with UN oversight agencies and the Chinese government, and recommend that the Criminal Law be amended to define these crimes in precise terms, and to create exceptions for the peaceful exercise of fundamental rights guaranteed under the Chinese Constitution and international declarations and treaties. The President and the Congress should also recommend that the administrative detention system be reformed to conform to international law, including the abolition of forced labor practices. Reforms should ensure that Chinese citizens have the opportunity to dispute any alleged misconduct and contest law enforcement accusations of guilt before an independent adjudicatory body.

Freedom for Religious Believers in China

• Freedom of religion is a fundamental human right. The freedom to believe and to practice one's religion includes the right of religious adherents to interact freely with their co-religionists abroad, and to choose where they worship, who will teach

them, the texts they study, and whom they accept as their leaders. The President and the Congress should continue to foster the development of freedom of religion in China by encouraging the Chinese government to recognize that this freedom includes the right of Tibetan Buddhists to freely express their religious devotion to the Dalai Lama, of Chinese Catholics to worship with bishops selected by the Holy See, of Muslims to participate in religious pilgrimages without government interference, of Protestants to worship in house churches, and of adherents of spiritual belief systems, like Falun Gong, to freely practice their beliefs. In addition, the President and the Congress should continue to encourage the Chinese government to end the harassment, detention, and abuse of leaders and members of unregistered religious organizations; raise cases of religious imprisonment with the Chinese government; and call for the immediate release of religious prisoners of conscience, including house church pastor Cai Zhuohua (imprisoned for printing and giving away Bibles), Tibetan monk Choeying Khedrub (sentenced to life imprisonment for printing leaflets), South China Church leader Gong Shengliang (sentenced to life imprisonment based on tortured confessions), Catholic bishop Jia Zhiguo (detained for unauthorized Catholic ministry), Catholic bishop Su Zhimin (held incommunicado since 1997), and Tsinghua University student and Falun Gong practitioner Wang Xin (imprisoned for downloading Internet materials). The President and the Congress should also continue to urge the Chinese government to allow the UN Special Rapporteur on Religious Intolerance to visit China without conditions, as the Chinese government has committed to the U.S. government and to the Special Rapporteur.

• Chinese central government policy, and some local regulations, only recognize five government-defined religions. This restriction is neither contained in national law nor in China's new Regulation on Religious Affairs. In some parts of China, Protestant communities that are not affiliated with the state-controlled patriotic religious association have been allowed to register with the government. Although the government does not recognize Orthodox Christianity as a religion, some Orthodox communities in China have registered with a local government. These are welcome developments, but they have been limited in scope. The President and the Congress should continue to encourage the Chinese government to eliminate its policy restrictions on religion and to guarantee citizens freedom of thought, conscience, religion, and belief in accordance with Article 18 of the Universal Declaration of Human Rights; to allow all religious and spiritual groups to form independent organizations and practice their faith free from interference by the government and state-controlled religious associations; to remove registration requirements or amend them so that the government does not have the discretion to deny registration to certain groups; and to provide protections for individuals who choose to worship outside the framework of organized religion.

Labor Rights for China's Workers

- Working conditions in China remain poor, and Chinese workers are often unaware of the national laws that protect their rights. The U.S. Department of Labor has been working with the Chinese Ministry of Labor and Social Security and the State Administration of Work Safety to implement activities that focus on such labor issues as occupational and mine safety and health, wage and hour law administration, and education for Chinese workers about national labor laws. The President and the Congress should support expansion of these cooperative activities to improve labor conditions for Chinese workers. The President and the Congress should also raise with Chinese leaders the critical role that independent unions can play in achieving safer workplaces, pressing factory owners to pay workers fully and on time, and reducing accidents and countering official corruption in the mining sector.
- Human trafficking is a serious problem in China. The government is cooperating with the International Labor Organization's (ILO) Special Action Program to Combat Forced Labor to strengthen the law enforcement aspects of the trafficking cycle, but government institutions lack the knowledge and capacity to combat these practices effectively. China's Criminal Law does not specifically address the issue of human trafficking as it relates to forced labor, and although the Labor Law outlaws forced labor practices in the workplace, it only provides light penalties for violators. The President should continue to support, and the Congress should continue to fund, U.S. assistance to the ILO's cooperative programs with China on forced labor and trafficking; should urge the Chinese government to ratify the two protocols to the UN Convention against Transnational Organized Crime concerning trafficking in persons and smuggling of migrants; and should encourage bilateral discussions on ways that government agencies, domestic law, and employers and business groups can deter human trafficking more effectively.

Free Flow of Information for China's Citizens

- The National People's Congress is considering a draft "Law on the Handling of Sudden Incidents" that, in its current form, restricts domestic and foreign news media reporting on natural and man-made disasters. If passed, this law would not only impose a prior restraint on the press that is inconsistent with international human rights standards, but also impede the efficiency of the Global Public Health Intelligence Network, an electronic surveillance system used by the World Health Organization to monitor the Internet for reports of communicable diseases and communicable disease syndromes. The President and the Congress should continue to raise with China's leaders the global nature of public health emergencies, the importance of complete transparency in the administration of public health, and the importance of an unimpeded press in monitoring government performance on public health and providing critical information to the public in a timely manner.

• The Chinese government uses technology, prior restraints, intimidation, detention, imprisonment, and vague and arbitrarily applied censorship regulations to suppress free expression and control the news media. Because the government restricts the free flow of information, many Chinese citizens are unaware that official censorship policies violate their rights to freedom of speech and freedom of the press. The President and the Congress should urge the Chinese government to eliminate prior restraints on publishing, cease detaining journalists and writers, stop blocking foreign news broadcasts and Web sites, and specify precisely what kind of political content is illegal to publish. The President should propose, and the Congress should appropriate, funds to support U.S. programs to develop technologies that would help Chinese citizens access Internet-based information currently unavailable to them, as well as educational materials about their rights under international law to freedom of speech and freedom of the press.

Rule of Law and the Development of Civil Society

• Chinese officials have taken additional steps in the past year to curb the growth of China's emerging civil society. Ministry of Civil Affairs officials are currently researching a new administrative system to supervise, control, and "rate" civil society organizations. Many details of the plan, such as who will conduct the evaluations and how the results will be used, are not yet determined. The President and the Congress should encourage bilateral discussion on the issue of official control over civil society organizations; reiterate statements made by Chinese officials and scholars regarding the important role independent civil society organizations can play in resolving conflict, protecting citizen rights, and maintaining social stability; and encourage the Chinese government to take steps that would promote the development of an independent civil society, such as removing the sponsor organization requirement.

• The Chinese government forcibly repatriates North Koreans seeking refuge in China and denies the Office of the UN High Commissioner for Refugees (UNHCR) access to this vulnerable population, contravening its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as the Chinese government's 1995 Agreement with the UN. The State Council is currently considering new Regulations on the Administration of Refugees. These regulations could provide new protections for the vulnerable North Korean refugee population, but little is known about their contents. The President and the Congress should continue to press the Chinese government to immediately cease repatriation of North Korean refugees and grant the UNHCR unimpeded access to screen North Korean refugee petitions. The President and the Congress should also encourage the Chinese government to be transparent as it progresses in drafting and adopting its new regulations on refugees, and to work closely with the UNHCR to ensure that this legislation will protect North Korean refugees in full accordance with international law.

- Abuse of power by local police forces remains a serious problem throughout China. The Supreme People's Procuratorate has acknowledged the existence of continuing and widespread abuses in law enforcement, including illegal extended detentions and torture. The President and the Congress should work to expand programs, such as funding a permanent Resident Legal Advisor at the U.S. Embassy in Beijing, that will help foster dialogue between Chinese and U.S. counterparts, and encourage Chinese procuratorates to exercise greater oversight over police abuses. These programs should encourage the Chinese government to continue reform efforts such as providing criminal defense lawyers with greater access to their clients and case files, audio and video taping law enforcement interrogations of criminal suspects, and excluding evidence at trial that was obtained through torture or other illegal means.
- Upon joining the World Trade Organization (WTO), the Chinese government committed to increasing regulatory transparency, improving the protection of intellectual property rights, and ensuring non-discrimination in administering trade-related measures. The government has achieved incremental improvements in regulatory transparency since WTO accession, but continues to tolerate rampant infringement of intellectual property rights. In addition, government industrial policies promote and protect many domestic industries, in some cases in a manner that appears to contravene China's WTO commitments. The President and the Congress should continue to urge the Chinese government to ensure that relevant authorities publish all measures affecting trade in a timely manner; to enact and impose criminal and civil penalties severe enough to deter intellectual property infringement; and to remove all non-prudential barriers to U.S. and other foreign participation in those market sectors governed by WTO commitments.

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

This report was approved by a vote of 22 to 1.†

IV. Introduction

Domestic Challenges Growing Out of Economic Restructuring

Since the beginning of the "reform and opening up" period in 1978, Chinese government policies have raised the national standard of living and lifted more than 400 million citizens out of extreme poverty, according to Chinese and World Bank statistics. This is an impressive achievement. But as incomes have risen, so too have inequalities created by economic restructuring policies that have favored urban over rural development. In 2005, the average income of China's urban residents was more than three times that of rural residents, an increase from two and one-half times in 1978. China's ethnic minorities, who live primarily in rural areas, constitute less than 10 percent of China's population, but represent

more than 40 percent of the nation's poorest citizens. The government also faces a growing population of new urban poor. Millions of Chinese citizens who lost their jobs and pensions because of the collapse of state-owned enterprises have not found new jobs. In addition, many rural to urban migrants survive in the low-wage informal economy without access to public services of any kind.

Chinese leaders face enormous domestic challenges. The government estimated that it needs to create 25 million new urban jobs in 2006 just to keep unemployment levels in check. The dual problems of urban unemployment and growing rural-urban inequality have created diverse and competing societal interests that increasingly clash, fueling social unrest throughout China, and complicating the government's efforts to find solutions. Officials reported that "disturbances of public order" rose to a total of 87,000 in 2005, a 6.6 percent increase over the figure in 2004. Citizen protests broke out in several provinces during the past year over land expropriations, official corruption and abuse, low wages and poor working conditions in factories, and environmental degradation. In September 2005, police clashed with hundreds of residents in Taishi village, Guangdong province, over citizen attempts to remove a local official from office for embezzling land compensation funds. In October, police in Chongqing municipality broke up one of the largest worker protests in China in more than a decade. In December, forces from the paramilitary People's Armed Police shot at thousands of villagers and killed as many as 20 in Shanwei city, Guangdong province, in response to protests against the pollution and displacement caused by construction of a power plant. In July 2006, hundreds of citizens rioted in Guiyang city, Guizhou province, after officials beat a migrant worker lacking a temporary residence permit.

Rural Inequality and Social Unrest

Concerns about mounting social unrest because of rural-urban inequality have reached the top levels of the Chinese leadership. In late 2005, Premier Wen Jiabao warned senior rural bureaucrats that more violence would result if they continued to commit the "historic mistake" of failing to protect farmers and their lands. Party and government leaders used the first major policy document of 2006 to announce a campaign for "construction of a new socialist countryside." This campaign seeks to address the growing inequalities between rural and urban residents and commits the central government to increasing services to rural areas in health, education, and employment. In March, Wen told the National People's Congress (NPC) that the central government will invest more than 20 billion yuan (US$2.5 billion) over the next five years to modernize hospitals, clinics, and medical equipment at the village, township, and county levels. Chinese officials also promised to spend 218 billion yuan (US$27.25 billion) over the next five years to improve rural education. In January, the central government stopped levying agricultural and livestock taxes on farmers in an effort to boost rural incomes. Although Chinese authorities remain sensitive to farmers' efforts to organize collectively to protect their interests, central policy documents issued each year since 2004 have given a limited degree of support to establishing farmer co-

operatives, and the 2006 legislative calendar for the NPC contains a proposal for a national law on these organizations.

The central government has also called for increased protections for the rights of migrant workers as part of its effort to increase social stability. The Central Party Committee and State Council issued a joint circular on social stability in October 2005 calling, in part, for greater protections of migrant rights and the creation of a permanent mechanism to address worker claims for unpaid wages, a problem that disproportionately affects migrants. China's Communist Party-led labor union federation responded to the new central government mandate by creating programs to help migrants avoid abuse and exploitation by employers. In the past year, the labor union federation has announced new programs to assist migrants in signing labor contracts with employers, recovering unpaid wages, improving work safety, and securing legal aid and job training. Concerns over social unrest growing out of rural-urban inequality also have compelled the government to consider reforming some of the political tools it has used to control society. Chinese authorities announced in October 2005 that they were considering national reforms to the Chinese household registration (*hukou*) system, and have taken steps to remove restrictions on migrant employment in urban areas.

Political and Religious Repression and Social Unrest

The largely positive government response to social unrest growing out of rural inequality stands in sharp contrast to the government response to citizen grievances over political and religious repression. The Chinese government has punished citizens who press for change and challenge government abuses, in disregard of the peaceful nature of their activities and in contravention of international human rights standards. The same October joint circular that detailed positive measures to help migrants and the rural poor also called for stronger controls over society. The central government has imposed countermeasures to rein in the Chinese press and to exercise greater control over the Internet. Officials are currently evaluating new measures to control civil society organizations. Party officials have warned about foreign "hostile forces" that push for "color revolutions" and "infiltrate" the press, civil society, the legal profession, and the Uighur and Tibetan autonomous areas of China.

In the absence of a free press, civil society, democratic governance, and other mechanisms to allow citizens to press for change, Chinese human rights defenders have used legal advocacy and civil disobedience to promote democracy and the development of the rule of law. Wang Yi, a Chinese law professor and rights defender, said at a May 3 Congressional Human Rights Caucus roundtable, "If even the rights defense movement cannot succeed, then there is really no hope for China." In February, Beijing lawyer and rights defender Gao Zhisheng began a hunger strike relay following months of government violence against large numbers of Chinese citizens. The hunger strike called attention to the illegal persecution and violent beatings of many groups in China, including workers, farmers, intellectuals, religious believers, petitioners, activists, and journalists. These groups suffered from government repression

despite having maintained a strict policy of peaceful protest against government abuses. In response to his citizen activism and peaceful defense of basic human rights, authorities stripped Gao Zhisheng of his ability to practice law, targeted him for government intimidation and harassment, and accused him of criminal activity.

The Chinese government's repressive measures threaten the Party's goal of maintaining social stability. The failure to provide effective mechanisms for citizens to voice their grievances and protect their civil and political rights fuels citizen anger and ultimately unrest, the very condition that China's leaders are seeking to prevent. Such a result can only undermine China's progress. Freedom of the press, a vibrant civil society, and democratic governance are the primary means for keeping officials accountable to the citizens they serve. They are also the essential building blocks for any long-term and successful system of government.

V. Monitoring Compliance with Human Rights

V(a) Special Focus for 2006: Freedom of Expression

FINDINGS

- Government censorship, while not total, is pervasive and highly effective, and denies Chinese citizens the freedoms of speech and of the press guaranteed to them in the Chinese Constitution. The government has imprisoned journalists who provide news to foreigners, such as Zhao Yan, Shi Tao, and Ching Cheong. Editors of publications that criticize government policies, such as Yang Bin of the Beijing News and Li Datong of the China Youth Daily, have been dismissed. The government blocks the Web sites and radio and television broadcasts of foreign news organizations, such as those of the British Broadcasting Corporation, Radio Free Asia, and the Voice of America. In 2005, the government banned dozens of newspapers and confiscated almost one million "illegal" political publications. Beginning in May 2005, the government blocked the Commission's Web site from being viewed in China.
- Modern telecommunications technologies such as the Internet, cell phones, and satellite broadcasts allow Chinese citizens access to more information sources, both state-controlled and non-state-controlled. But government restrictions on news and information media, including on these new information sources, do not conform to international human rights standards for freedom of expression. The Chinese government imposes a strict licensing scheme on news and information media that includes oversight by government agencies with discretion to grant, deny, and rescind licenses based on political and economic criteria. The Chinese government's content-based restrictions include controls on political opinion and religious literature that are not prescribed by law, and whose primary purpose is to protect the ideological and political dominance of the Communist Party.
- The government's restrictions on religious literature do not conform to international human rights standards. Only govern-

ment-licensed printing enterprises may print religious materials, and then only with approval from both the provincial-level religious affairs bureau and the press and publication administration. In addition to confiscating religious publications, the Chinese government also has fined, detained, and imprisoned citizens for publishing, printing, and distributing religious literature without government permission. Cai Zhuohua, a house church pastor in Beijing, and two of his family members were imprisoned in 2005 for printing and giving away Bibles and other Christian literature. In Anhui province, house church pastor Wang Zaiqing was arrested in May 2006 on the same charges.

Government Censorship in China

Government censorship in China, while not total, is pervasive and highly effective, and denies Chinese citizens the freedom of the press guaranteed to them in the Chinese Constitution.[1] As 13 Chinese scholars, lawyers, and editors wrote in a letter to Chinese President Hu Jintao after the Communist Party's Central Propaganda Department (CPD) shut down a popular news weekly in February 2006, the CPD "manipulates and controls the range of speech, and it has become the sole criterion for measuring truth."[2] Another group, composed of 13 former senior government, Party, and news media officials, wrote in an open letter regarding the same event that the CPD has "stripped away freedom of speech in order to quash public opinion."[3]

The Chinese government has imprisoned journalists who provide news to foreigners, such as Zhao Yan, Shi Tao, and Ching Cheong. Editors of publications that criticize government policies, such as Yang Bin of the Beijing News and Li Datong of the China Youth Daily, have been dismissed. The government blocks the Web sites and radio and television broadcasts of foreign news organizations, such as those of the British Broadcasting Corporation, Radio Free Asia, and the Voice of America. In 2005, the government banned dozens of newspapers and confiscated almost one million "illegal" political publications. Beginning in May 2005, the government blocked the Commission's Web site from being viewed in China. The heads of government and Party agencies responsible for enforcing China's media regulations emphasize press control, not press freedom:

- Liu Yunshan, director of the CPD, told attendees at the National Propaganda Directors Seminar in August 2005 that they should increase their supervision of the media, impose content controls earlier in the editorial process, and coordinate the application of administrative, economic, legal, ideological, and other controls.[4] In a speech to the same group the previous year, Liu said that no change to the role of the news media as the mouthpiece of the Party, or the Party's supervision of the media, would be tolerated.[5]
- Long Xinmin, Director of the General Administration of Press and Publication (GAPP), said in a speech to the National Press and Publication Directors Conference in December 2005 that Party leaders had ordered press and publication officials to increase their administration of press and publishing. Long

said that the key was to strengthen the leadership of the Party and establish a "grand cadre" of "politically strong" press and publication workers.[6]

• Liu Yuzhu, head of the Ministry of Culture's Market Department, wrote in the January 2005 edition of Seeking Truth, the official journal of the Chinese Communist Party Central Committee, that Web sites located in foreign countries such as the United States represent a threat to China's political structure. He encouraged increased censorship of foreign Web sites and called on domestic Web site operators to step up their self-censorship.[7]

Despite pervasive censorship, state control of domestic news media is now less severe than before the "reform and opening up" period began in the late 1970s. Modern telecommunications technologies such as the Internet, cell phones, and satellite broadcasts allow Chinese citizens access to more information sources, both state-controlled and non-state-controlled. More information is also available as a result of a dynamic domestic newspaper and book publishing industry. China also has a thriving underground publishing industry, and citizens may easily purchase many banned books from unlicensed publishers and retailers.[8] By forcing unlicensed publishers to break the law, however, the government erodes respect for intellectual property rights and the rule of law because illegal publishers are also *de facto* copyright violators (the illegal works are "pirated," and authors cannot collect royalties on them) and must bribe officials to keep operating.

Chinese leaders and officials maintain that citizens enjoy freedom of the press, and that government restrictions on that freedom conform to international standards.[9] While the Party does not screen content before publication to the same degree as in the past, the government continues to impose administrative restrictions on who may publish and what they may publish ("prior restraints") that do not conform to the international human rights standards set forth in the Universal Declaration of Human Rights[10] and the International Covenant on Civil and Political Rights (ICCPR).[11] These standards require the elimination of registration systems for the print media that grant government agencies the discretion to approve, deny, or rescind licenses based on the political and financial qualifications of the applicant ("licensing schemes").[12] These standards also prohibit government restrictions on the publication of political and religious ideas and information, other than restrictions that are both prescribed by law and necessary to protect an important state interest ("content-based restrictions"). As two Chinese legal scholars noted in their study of the ICCPR:

> This principle [that the ICCPR prohibits prior restraints] requires that government power may not be employed to suppress expressive activities before they are carried out, and no licensing measures or ideological content restrictions may be imposed on speech, books, periodicals, or radio or television programs prior to their dissemination, publication, distribution, or broadcast.[13]

The Chinese government imposes a strict licensing scheme on all newspaper, magazine, and book publishing and printing (public

and private, for-profit and non-profit). The government uses this licensing scheme, as well as post-publication punishments, to enforce content-based restrictions that include prohibitions on the publication of political opinion and religious literature. These content-based restrictions on political opinion and religious literature are neither prescribed by law nor necessary to protect a legitimate state interest. Government and Party leaders state that these restrictions are intended to protect the ideological and political dominance of the Party.

Government Licensing for Print Media

Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights provide that people enjoy the right to seek, receive, and impart information and ideas through any media and regardless of frontiers. The Chinese government's licensing scheme for print media does not conform to international standards for freedom of the press. Although no absolute international standard prescribes what constitutes freedom of the press, international human rights standards set forth a minimum prerequisite: no legal system can be said to respect freedom of the press if it subjects the print media to any prior restraint through a licensing scheme. In 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression issued a joint declaration saying that licensing schemes are unnecessary and subject to abuse.[14] Many nations, both developed and developing, have abolished licensing schemes for the print media. For example, the constitutions of many countries, including those of Brazil and South Korea, explicitly prohibit licensing schemes.[15] In other countries, such as the United States and India, the right to publish without first having to obtain government authorization is protected through a combination of constitutional and court-made law.[16] In those countries with registration requirements, such as Sweden and the United Kingdom, the government does not have the discretion to refuse registration.[17]

The Chinese government, like a number of governments in other countries, including Ethiopia,[18] Iran,[19] Jordan,[20] Syria,[21] Uzbekistan,[22] and Yemen,[23] imposes a strict licensing scheme on the print media.[24] No one may legally publish a book, newspaper, or magazine in China unless they have a license from the General Administration of Press and Publication (GAPP).[25] Chinese law requires that every book, newspaper, and magazine have a unique serial number, and the GAPP maintains exclusive control over the distribution of these numbers.[26] GAPP officials have explicitly linked the allotment of book numbers to the political orientation of publishers.[27] The Chinese government's licensing scheme includes substantive conditions on who may publish. To obtain a license to publish news, applicants must have a government sponsor.[28] Although the average annual income in China is less than 10,000 yuan (US$1,250),[29] the government also restricts the right to publish to those who can afford to invest at least 300,000 yuan (US$37,500) in registered capital.[30] The Chinese government says

that its licensing scheme is necessary to regulate the publishing market,[31] but such reasoning does not conform to international human rights standards.[32]

Chinese authorities banned 79 newspapers and periodicals and seized 169 million publications in 2005.[33] From 2003 to 2005, the government canceled the registrations of 202 news bureaus and shut down 73 others.[34] Other examples of the government using its licensing authority to violate citizens' freedom of the press in the past year include:

- In August 2005, GAPP officials in Luliang city, Shanxi province, banned the Luliang Weekly, shut down its editorial department, and dismissed its staff. Officials imposed these sanctions because the weekly had been published without government authorization, and "the articles it carried were mostly negative reports, which severely violated relevant national regulations, and which had an adverse effect on society."[35]
- In September 2005, the Hunan provincial government shut down the news bureaus of four publications established without government permission.[36]
- Also in September 2005, the Chinese government reported that no illegal political materials had been published in the Inner Mongolia Autonomous Region city of Wuhai since 2002.[37] The report attributed the city government's "success" in part to a rigorous training regime for publishers and printers and the fact that authorities had closed 12 illegal printing enterprises. The report said officials conducted daily inspection tours and surprise raids to stop unauthorized publications from entering or leaving the city.

In addition to these administrative measures, Chinese authorities have used Article 225 of the Criminal Law, which defines operating a publishing business without government permission as an illegal business activity,[38] to fine and imprison publishers:

- In January 2004, authorities in Anhui province sentenced two men to prison terms of nine and seven years for publishing collections of love poems.[39]
- In September 2004, a court in Xinxiang county, Henan province sentenced Wang Lelan, a farmer who had purchased two printing presses, to five years' imprisonment and an 8,000 yuan (US$1,000) fine for publishing "illegal books" such as "China's Top Level" and "Confidential Exclusive News."[40]
- In August 2005, a court in Beijing sentenced the head of the Beijing representative office of Hong Kong's Credit China International Media Group Limited to three years' imprisonment for publishing the magazine "Credit China" without government authorization.[41]

New rules governing the publication of newspapers and magazines in China went into effect in December 2005.[42] In addition to restricting the right to publish newspapers and magazines to government licensees, the rules also establish post-publication content screening and review systems. The rules require provincial-level GAPP offices to submit regular written reports to the GAPP and conduct annual "verification and examination" reviews. The rules stipulate that publishing, printing, and distribution enterprises

may not provide services to any newspaper or magazine unless they have passed the previous year's inspection. The rules also require each newspaper and magazine publisher to submit regular reports to the GAPP, as well as annual "self-examination reports" with copies of its most recently published editions. The rules require the GAPP to assess the "publishing quality" of newspapers and magazines, and empower it to take the following actions against any publisher whose contents it deems incorrect or in violation of regulations:

- order it to cease publication and distribution;
- order it to retract entire editions;
- order supervising and sponsoring government agencies to "rectify" the publisher;
- revoke its publishing license.

The Chinese government's press licensing scheme also extends to the Internet. According to the state-run media:

> Since 1996, 14 agencies, including the Central Propaganda Department, State Council Information Office, Ministry of Public Security, Ministry of Culture, and the General Administration of Press and Publication have participated in the administration of the Internet, have promulgated nearly 50 laws and regulations, and have put together the world's most extensive and comprehensive regulatory system for Internet administration. One scholar who specializes in researching Internet Law [said] China's emphasis on, and effectiveness of administration over, the problem of Internet security is "rare in this world."[43]

The government requires all Web sites in China to be either licensed by, or registered with, the Ministry of Information Industry (MII).[44] Web sites that fail to register or obtain a license may be shut down and their operators fined.[45] As part of the registration process, the MII requires anyone who posts news on a Web site to confirm that the Chinese government has authorized him or her to do so.[46] According to the OpenNet Initiative, "In large measure, the registration regulation is designed to induce website owners to forego potentially sensitive or prohibited content, such as political criticism, by linking their identities to that content. The regulation operates through a chilling effect."[47] In August 2005, the state-controlled news media reported that over 700,000 Web sites had registered,[48] and that authorities had shut down a "large number of Web sites," using "specialized software to render them inaccessible."[49] In December 2005, the MII issued a notice to Internet service providers saying, "The campaign to rectify unregistered Web sites has entered a period of severe sanctions," and demanded they shut down all unregistered Web sites.[50]

In September 2005, the MII and the State Council Information Office promulgated new rules tightening the government's control over Internet news services.[51] These rules prohibit anyone from using the Internet to post or transmit news reports or commentary relating to politics and economics, or military, foreign, and public affairs, without a government license. Chinese authorities used these rules to shut down at least five Web sites before the annual plenary sessions of the National People's Congress and the Chinese

People's Political Consultative Conference, which concluded in March 2006.[52]

The MII crackdown coincided with a similar crackdown on the Internet by branches of China's Ministry of Public Security (MPS) in major cities.[53] Throughout 2005 and 2006, public security bureaus in cities such as Beijing, Guangzhou, and Chongqing ordered Web sites to register with public security authorities or be shut down. In addition, in December 2005, the MPS promulgated new rules[54] requiring Internet portals, Web sites, Web logs ("blogs"), and hosting services to record and retain any content that news providers post on their Web sites, as well as the time it was posted.

Finally, the Chinese government instituted a licensing scheme for journalists in 2005,[55] even though such schemes are incompatible with international human rights standards for freedom of the press.[56] In January 2005, the GAPP issued two new regulations limiting "lawful" news gathering and editorial activities to government-licensed journalists.[57] In March 2005, the GAPP, Central Propaganda Department, and State Administration of Radio, Film, and Television (SARFT) jointly issued new rules specifying that journalists and editors must "support the leadership of the Chinese Communist Party, support the socialist system . . ., respect the Party's news propaganda discipline, [and] protect the interests of the Party and the government."[58] SARFT used its authority to accredit television hosts to shut down the television show of well-known economist Lang Xianping (also known as Larry Lang) in February 2006 on the grounds that he lacked required government certification.[59]

Restrictions on Political and Religious Publishing

The Chinese government's restrictions on the publication of political opinion and religious literature do not conform to international human rights standards for freedom of the press and freedom of religion. Article 19 of the Universal Declaration of Human Rights and the same article of the International Covenant on Civil and Political Rights (ICCPR) provide that people enjoy the right to publish "information and ideas," and the ICCPR adds "of all kinds." International human rights standards permit restrictions on the press, provided they are prescribed by law and are necessary to prevent the dissemination of speech that is obscene or defamatory, or that poses a realistic threat to national security, or that is false and threatens public order.[60] The Chinese government's restrictions on the press are not clearly prescribed in national law. In addition, the government uses discretionary and extralegal powers to restrict the publication of information and ideas that conflict with the Party's political and religious orthodoxy or that threaten its control over political and religious ideology.

Not Prescribed by Law

National media regulations include vague and sweeping prohibitions on the publication of material that "harms the honor or the interests of the nation,"[61] "spreads rumors,"[62] or "harms the credibility of a government agency."[63] The Criminal Law punishes acts said to constitute "rumor mongering" to incite subversion or the overthrow of the socialist system with sentences of up to five years'

imprisonment.[64] Nothing in Chinese law specifies what constitutes the "interests of the nation," a "rumor," or "harming credibility." Chinese laws and regulations provide lists of what may be deemed a state secret, but these lists are broad and vague, encompassing essentially all matters of public concern.[65] Moreover, Chinese law does not require the government to show that anyone committing any of these acts knew that the materials they published fell into one of these categories.[66] Finally, Chinese courts do not require the government to show that the publication of the materials in question caused, or could have caused, any negative effect on the national interest.[67]

Government agencies responsible for implementing and interpreting national security do not balance government interests against a citizen's right to freedom of the press, and instead consistently interpret laws in favor of the government. In recent years, more than 70 percent of all cases of criminal disclosure of state secrets were the result of a "faulty understanding of state secrets."[68] None of the 17 or more central government and Party agencies responsible for enforcing and interpreting national security and state secrets laws as they relate to freedom of the press has provided any public guidance about when it will or will not censor publications or pursue criminal complaints against publishers.[69] In 2004, the Chinese government shut down 338 publications for publishing "internal" information.[70] In addition, the Chinese judiciary is not independent from Party control and does not issue instructive opinions in criminal trials (see discussion of Huang Qi below). [For more information on the Chinese judiciary, see Section VII(c)—Access to Justice.]

The Chinese government does not articulate content-based restrictions in statutes and court judgments, but instead relies upon detaining writers, indoctrinating journalists, and banning publications to encourage companies, institutions, and individuals to "choose" not to publicize views that a government official might deem politically unacceptable.[71] An example of the Chinese government's indifference to freedom of the press is the case of Huang Qi. The Chengdu Intermediate People's Court sentenced Huang to five years' imprisonment in May 2003 for inciting subversion by operating a Web site that included articles on democracy and the 1989 Tiananmen democracy protests. The court's decision did not provide examples of any subversive language, and made no attempt to show that the articles on the Web site had caused, or were likely to cause, a threat to China's national security. Moreover, the court did not place any constitutional limitations on the authority of the government to criminalize certain types of speech, or balance the need to protect national security with Huang Qi's right to freedom of expression.[72]

Another example of the Chinese government's opaque national security content-based restrictions occurred in October 2003, when a Shanghai court sentenced Zheng Enchong to three years' imprisonment for "illegally providing state secrets to an entity or individual outside China." Zheng faxed a copy of a Xinhua news report to a U.S. NGO to get it published abroad.[73] In rejecting Zheng's appeal, the Shanghai High People's Court said that, while the document in question included no markings indicating it was a "state

secret," Zheng "should have known" that it was a state secret because it had been published in a Xinhua publication called "Internal Selections." Xinhua is a government agency that reports directly to the State Council, and if an article included information that was a state secret, Xinhua had both the authority and the legal obligation to have it classified.[74] Instead, Xinhua officials labeled the article "internal," and according to the Shanghai High People's Court, officials with the local state secrets bureau had it "certified" as a state secret after Zheng was detained.[75] Stories from "Internal Selections," however, are freely available on Party Web sites, including those of the Beijing Municipal Party Committee and the Chongqing Municipal Party Committee.[76]

The case of Zhao Yan, a researcher for the New York Times, is a more recent example. Authorities detained Zhao in September 2004 for "illegally providing state secrets to an entity or individual outside China." Sources said the "state secret" was information that former President and Party General Secretary Jiang Zemin had offered to resign as Chairman of the Central Military Commission. His resignation was later reported in the official press.[77] [See Section V(b)—Rights of Criminal Suspects and Defendants, for a discussion of Zhao's arbitrary and extended detention.]

Chinese courts cannot consider Chinese citizens' constitutional right to freedom of the press in subversion and state secrets trials [see Section VII(c)—Access to Justice—Constitutional Review]. Some cases have been reported, however, in which a court found insufficient evidence to hold a trial on the charges brought against a defendant. Such decisions are the result of international pressure rather than an interest in upholding the rights of the accused. For example, Chinese authorities detained Liu Di (also known as the "Stainless Steel Mouse") in November 2002 after she posted a series of essays on the Internet discussing political reform and criticizing the Party. They released her in November 2003 without charges following widespread international pressure.

The Chinese government also uses indoctrination as an extralegal means of restricting publishing of political opinions and religious literature. A January 2006 General Administration of Press and Publication (GAPP) report described an example of press indoctrination, saying that in 2005 the government carried out on-the-job training of Party officials holding leadership positions at news publishers, and "deeply and meticulously performed worker and staff ideological and political work" in order to "safeguard stability and unity."[78] Xinhua reported in May 2006 that the government and the Party expect Chinese journalists to be "politically strong" and "strictly disciplined."[79] The All China Journalists Association held a conference in April 2006 to study and implement the Party's propaganda campaign on "Socialist Glory and Shame."[80] The state-run news media reported that conference participants expressed a desire to reject "capitalist liberalism" and to accept "serving the general work of the Party and the nation" as the "sacred mission" of journalists.[81] Western news media have reported that the Beijing Municipal Information Office, an agency that reports to the Central Propaganda Department, summons executives from a dozen Internet news Web sites every Friday morning to attend a meeting. Chen Hua, Director of the Internet Propaganda Manage-

ment Department, usually runs this meeting. According to one Western news report, "[Chen] or one of his colleagues tells the executives what news they should keep off their sites and what items they should highlight in the week ahead."[82]

The Chinese government and the Party often carry out censorship through informal and opaque procedures that are not subject to legal oversight or restraint. For example, according to Wang Yi, a law professor in Sichuan province, public security officials in Beijing had his Web site shut down by calling an employee of the Chinese Internet company Blogchina at home and ordering him to do it.[83]

Chinese authorities used similar extralegal measures to censor two of China's most popular publications. The first incident occurred in December 2005, when the Party removed editor-in-chief Yang Bin and two deputy editors at the Beijing News, as part of an effort to curb that newspaper's aggressive reporting style.[84] Central Propaganda Department director Liu Yunshan had told officials at an April 2005 meeting that "[t]he South has a newspaper that disgusts a lot of officials in the North, and the North has a paper that disgusts a lot of officials in the South."[85] An unnamed source told a Western news magazine that the "northern paper" was the Beijing News, and a Beijing News editor noted that so many cadres had traveled to Beijing to complain about the paper that it was under "heavy" pressure to conform to new restrictions on "extra-territorial" investigative reporting.[86] In December 2005, propaganda officials singled out the Beijing News for criticism at a meeting where it was decided that "metropolitan newspapers" such as the Beijing News should "strengthen Party control" and obey propaganda officials.[87] Officials have said that the Beijing News "committed errors in the orientation of opinion," and Liu Yunshan concluded that the Beijing News' "problems" must be "fundamentally resolved."

A second example of official circumvention of the law to silence critics occurred in January 2006, when Party officials ordered the China Youth Daily (CYD) to suspend publication of its Freezing Point weekly because it had published an essay on Chinese history textbooks that officials claimed contradicted historical facts, violated news propaganda discipline, harmed the national sentiments of the Chinese people, harmed the image of the CYD, and had a detrimental social influence.[88] The officials also ordered the CYD Publishing House to submit a report criticizing Li Erliang, CYD editor-in-chief, and Li Datong, editor-in-chief of the Freezing Point weekly. On February 16, Ministry of Foreign Affairs spokesperson Qin Gang defended the Party's decision.[89] On the same day, the Communist Party Youth League Publishing House Party Committee announced the conditions under which Freezing Point would resume publication. The CYD was required to dismiss Li Datong from his position as editor-in-chief, and Lu Yuegang from his position as deputy editor. In addition, it had to publish an essay in the first issue of the re-launched Freezing Point weekly that would refute the earlier objectionable essay.[90]

Government and Party intimidation, harassment, and imprisonment of writers and journalists create a chilling effect on freedom of speech that results in self-censorship. For instance, Internet and

software companies in China must either employ censorship technologies in their products or risk a government order to close. Although no Chinese law or regulation forbids specific words, companies such as Tencent and MSN embed a list of banned words and phrases in their Internet applications, including "freedom" and "democracy."[91] Chinese search engines such as Baidu, and the China-based search engines of Yahoo!, MSN, and Google filter search results, including those relating to the Voice of America, Radio Free Asia, and human rights. A senior corporate official from Google testified to the House Committee on International Relations in February 2006 that one of the factors leading to the company's decision to filter search results for its China-based service was:

> Many queries, especially politically sensitive queries, were not making it through to Google's servers. And access became often slow and unreliable, meaning that our service in China was not something we felt proud of. Even though we weren't doing any self-censorship, our results were being filtered anyway, and our service was being actively degraded on top of that. Indeed, at some times users were even being redirected to local Chinese search engines.[92]

Google designed its Chinese-language news aggregation service so that users in China cannot view materials from dissident news Web sites that Chinese authorities have blocked. Google has said that it will not deploy e-mail and blogging services in China because the company cannot meet its own standards for the privacy and security of users' sensitive information.[93]

The Party and the government are seeking to expand self-censorship by instituting "industry self-discipline." During an August 2005 speech, Liu Yunshan called on propaganda officials to "merge propaganda work into the self-supervision of mass groups and professional organizations," and said that requiring professional organizations to "tightly integrate professional discipline and restraint with professional moral restraint" will allow employees to "voluntarily" accept government supervision. In April 2006, 14 major Internet portals, including Sina.com, Sohu.com, Baidu.com, and Yahoo!'s Chinese Web site, issued a joint proposal calling for the Chinese Internet industry to censor harmful information, spread the ideas of President Hu Jintao, and voluntarily accept government supervision.[94] Shortly after the Internet portals issued their proposal, Internet information providers and industry groups throughout China made similar announcements.

The state-run media portrayed the Internet portals' participation as spontaneous and voluntary, but both the GAPP and State Administration for Radio, Film, and Television (SARFT) have either used or advocated the use of "self-discipline" agreements and other informal methods to control the press in China. For example, in April 2006, GAPP Director Long Xinmin wrote that the government should establish an administrative system for newspapers and magazines characterized by Party leadership, government administration, and industry self-discipline.[95] In September 2005, SARFT issued a notice saying that radio announcers and television hosts would "voluntarily" obey professional ethical standards that SARFT had issued in December 2004.[96]

Political Speech

International human rights standards obligate the Chinese government to respect the rights of its citizens to publish political ideas or opinions, even when they are critical of the government.[97] Chinese government and Party officials have said, however, that they will not tolerate the publication of political ideas or opinions with which they disagree:

- Liu Binjie, a deputy director of the General Administration of Press and Publication (GAPP), has said that political publications are the highest priority target for the Sweep Away Pornography and Strike Down Illegal Publications Task Force.[98]
- Shi Feng, another GAPP deputy director, complained in an October 2005 speech that some newspapers and periodicals in China have exhibited "political orientation problems," by "denying the leading position of Marxism," "violating the Party line," and "openly smearing the Party's leaders."[99]
- Officials have said that it is necessary to "strike hard at" and "tightly seal up and investigate" political publications that "spread political rumors and create ideological chaos."[100]

The State Administration for Radio, Film, and Television (SARFT) issued "propaganda priorities" in 2005 that said broadcasters should "refuse all incorrect ideological and political perspectives and expression."[101] The GAPP has said that it will shut down publications with "severe political errors,"[102] and in 2005, the Chinese government confiscated 996,000 publications because of their political content.[103] Regulations require that everything published in China must adhere to Marxism, Leninism, Mao Zedong Thought, and Deng Xiaoping Theory[104] and prohibit the publication of anything that violates the propaganda discipline of the Party[105] or contradicts the guiding policies of the Party.[106] In addition, Chinese law requires that books and essays about Party and national government leaders must be "solemn and discreet," and their point of view must conform to the spirit of various Party documents.[107]

To enforce these ideological restrictions, Chinese regulations require that publishers submit to the GAPP and the Central Propaganda Department a list of any "important topic selections" that they plan to publish.[108] Only publishing houses that the GAPP specifically approves may publish works about government and Party leaders, foreign relations, religion, the history of the People's Republic of China, and the history of the People's Liberation Army.[109] In February 2005, a GAPP official warned in a report:

> If publishers are careless about strictly screening topic selection, then serious orientation and quality problems will occur. . . . Therefore, publishers' screening of the selection of topics is not merely a professional matter, but rather is a serious political responsibility. Therefore, topic selection screening is a political system.[110]

The GAPP report also said that publishers must carry out registration procedures for all selections relating to politics, the military, security, foreign affairs, religion, ethnicities, and "other sensitive issues." In addition, the report also noted that it is illegal to publish anything on these topics that has not been reported to, and approved by, authorities.

New rules governing the publication of newspapers and periodicals that went into effect in December 2005[111] include requirements that these publications must "adhere to Marxism-Leninism," "follow correct guidelines of public opinion and publication orientation," and foster a "good atmosphere for building socialism with Chinese characteristics." The rules also require newspapers and periodicals to obey unspecified "relevant regulations" when publishing articles that relate to "important state policies" and ethnic and religious affairs.

SARFT requires screenplays that depict major historic events and important leaders and their families to be approved by both the government and the Party.[112] SARFT issued regulations in April 2006[113] that removed the previous requirement that television producers obtain government approval for dramas, but programs relating to modern Chinese history must still have government approval.[114] In addition, anyone wishing to film television programs with content relating to "important or sensitive political issues, the military, foreign affairs, the Party's United Front, religion, ethnicities, the administration of justice, public security, education, and famous people" must first request an "opinion" from the relevant department at the provincial level or higher.

Government and Party intolerance of the independent political views of citizens is particularly apparent before and during government and Party plenary meetings and some national holidays. In the weeks before the annual plenary sessions of the National People's Congress and the Chinese People's Political Consultative Conference, which concluded in March 2006, Chinese officials took the following measures (in addition to the Web site closings that were described previously):

- The Sweep Away Pornography and Strike Down Illegal Publications Task Force held a teleconference in January 2006 and notified relevant agencies that they should "purify the publishing market" and be on duty 24 hours per day during the plenary sessions.[115]
- Officials in Zhongshan city, Guangdong province, issued a circular calling on local customs, traffic, press and publications officials, and commercial agencies, to step up their enforcement measures against "harmful information," including illegal political publications.[116]
- Officials in Henan province launched a crackdown on political publications and Falun Gong materials to "ensure the health and stability of the publications market" during the plenary sessions.[117]

During the last year Chinese authorities have continued to silence writers, journalists, and Web sites for expressing political ideas or opinions with which they disagree. In October, an Anhui court upheld Zhang Lin's sentence of five years' imprisonment for subverting state power in connection with articles he posted on the Internet and a radio interview he gave.[118] Chinese authorities detained and imprisoned several others, including Yang Tianshui, Guo Qizhen, and Li Yuanlong for publishing articles on foreign Web sites criticizing the government and the Party.[119] During the run-up to the annual plenary sessions, Chinese authorities shut down the Aegean Sea [*Aiqinhai*] Web site, as well as four other

sites that had complained on behalf of local workers.[120] In June, authorities shut down two of China's major Internet portals, Sina.com and Sohu.com, for several days to allow the Internet portals to upgrade their censorship capabilities after authorities found that the Internet portals failed to filter certain key words deemed politically harmful.[121] In July, the Beijing Communications Administration shut down the "Century China" Web site, a popular Internet discussion forum for commentary on political, historical, and cultural issues.[122] In August, authorities shut down the "Polls" Web site and revoked its license after the Web site posted a poll asking visitors whether the General Secretary of the Communist Party should be chosen from among several candidates in differential voting.[123]

Religious Speech

International human rights standards protect the printing and distribution of religious literature as a fundamental human right.[124] The Chinese government asserts that its protection of freedom of religious belief "is basically in accordance with the main contents of [relevant] international documents and conventions," and that everyone in China "should have the freedom to compile and distribute printed materials pertaining to religion or belief."[125] Only government-licensed printing enterprises may print such materials, however, and then only with approval from the provincial-level religious affairs bureau and a certificate of approval from the press and publication administration.[126] Printing enterprises in China may print religious publications for in-house use by customers, but the printing enterprise must first receive approval from provincial-level religious and publishing authorities.[127] Non-religious publications only require printing approval from publishing authorities at the county level.[128] Publishing regulations mandate government authorization and screening of books and news reports that mention religious issues.[129] [See Section V(d)—Freedom of Religion.]

Chinese authorities confiscated 4.62 million items of Falun Gong and "other cult organization propaganda material" in 2005.[130] This included the confiscation of 9,860 printed materials in the Xinjiang Uighur Autonomous Region that were either illegal publications of a religious nature, Falun Gong materials, or publications related to "feudal superstitions."[131] In addition, authorities in the Tibet Autonomous Region confiscated 54 "Dalai Lama splittist group reactionary publications."[132]

In addition to confiscating religious publications, the Chinese government also has fined, detained, and imprisoned citizens for publishing, printing, and distributing religious literature without government permission. In November and December 1999, officials detained and arrested Jiang Sunian, an unregistered Catholic priest from Wenzhou diocese in Zhejiang province who had published hymnals.[133] Officials charged Jiang with illegal publishing.[134] In April 2000, a court convicted Jiang under Article 225 of the Criminal Law, assessed a fine of 270,000 yuan (US$32,000), and sentenced him to six years' imprisonment. Officials released Jiang in December 2003.[135] In November 2005, a Beijing court sent Cai Zhuohua, a pastor of six house churches in Beijing, and two of

his family members to prison under Article 225 of the Criminal Law for printing and giving away Bibles and other Christian literature without government permission.[136] In Anhui province, house church pastor Wang Zaiqing was arrested in May 2006 on the same charges.

During the last year Chinese authorities have continued to detain people who express religious ideas or opinions which they consider incorrect. Chinese authorities detained documentary filmmaker Hao Wu for 140 days after they discovered him shooting a documentary about China's unregistered house churches.[137] In July 2006, authorities shut down two blogs maintained by the popular Tibetan poet and writer Oezer, which she believed was a response to her posting a photograph of the Dalai Lama.[138] In August 2006, authorities detained journalist Zan Aizong for one week after he posted reports on foreign Web sites about detentions of Protestants who were protesting the destruction of a church in Xiaoshan city, Zhejiang province.[139]

Ideological Uniformity

International human rights standards prohibit content-based restrictions on the press except those necessary to protect the rights and reputations of others and to meet the requirements for morality, national security, and public order in a democratic society.[140] The Chinese government and the Communist Party exceed these allowances, however, and control and censor the press to impose ideological uniformity. In one of his first speeches as head of the General Administration of Press and Publication (GAPP), Long Xinmin told officials attending a national conference in December 2005 to "maintain a high degree of uniformity with the political ideology of the Party Central Committee under Comrade Hu Jintao as Secretary, and insist on never wavering from Marxism as the guiding principle of press and publication work."[141] Liu Yunshan called on propaganda officials to leverage the advantage provided by the large circulation and distribution of the state-run news media to guide public opinion in an "intimate, natural, quiet, and unobtrusive manner."[142] Shi Feng has said that investigative reporting must "serve the work of the Party and the government."[143] In September 2005, the Guangming Daily published an editorial saying:

> [I]rresponsible expression online easily brings with it ideological confusion, and creates a severe challenge for college students' political ideological education. An important and pressing question for university political ideological education is how to use positive and healthy ideological culture to capture the Internet battlefield and prevent people with ulterior motives from using the Internet to disseminate incorrect ideology and information, and resist infiltration by enemy forces and cult organizations.[144]

Government and Party leaders also have said that they intend to co-opt modern communications technologies such as the Internet and mobile communications, and have called on officials to ensure that their propaganda reaches newly emerging social groups.[145] Liu Yunshan noted that Chinese society is becoming increasingly complex as it shifts from one dominated by people employed in state-

run enterprises to one in which more and more people work for private enterprises.[146] Given this shifting demographic, Liu said that Party propagandists must "expand the targets of propaganda work" to new groups, such as young intellectuals, and "troubled" groups, such as unemployed workers, migrant workers, and farmers who have lost their land.[147] The Party also focuses political propaganda on Chinese youth. In late 2005, the Party journal Seeking Truth called on Party cadres to focus on guiding the organization of college student groups,[148] and the Guangming Daily published an editorial saying that schools should work to form "united and positive online public opinion" by organizing "ranks of online commentators."[149] Some Chinese universities have also instituted student-run monitoring groups to remove offensive content, including political dissent, from university Internet forums.[150]

In December 2004, the State Administration of Radio, Film, and Television (SARFT) issued ethical guidelines requiring television editors, reporters, and hosts to be loyal to, and carry out the work of, the Party.[151] Later the same month, SARFT announced that it would require television stations to increase control over what television interviewers say on the air, and only broadcast programs that "comply with propaganda discipline" produced by government-licensed production companies and screened by relevant officials.[152] In March 2005, the Central Propaganda Department, the GAPP, and SARFT jointly issued regulations requiring news reporting and editing personnel to support the leadership of the Party, focus on "correct propaganda" as their guiding principle, and have a firm grasp of "correct guidance of public opinion."[153] In April 2005, SARFT issued "Interim Implementation Rules for Administration of Those Employed as Radio and Television News Reporters and Editors," saying: "It is necessary to instruct news reporting and editing personnel to strengthen their political consciousness."[154] In September 2005, SARFT issued a notice requiring television announcers and hosts to increase their study of political theory, improve their political character and political proficiency, guide people with correct public opinion, passionately love the motherland, serve the greater interests of the work of the Party and the government, and implement the Party's "line, principles, and policies."[155] The same month, SARFT also issued a notice warning that reports relating to politics and government policies must be handled carefully to avoid "problems." In addition, to "ensure the correct guidance of public opinion," radio and television broadcasters must receive approval from SARFT before making any "large-scale live broadcast reports of significant events . . . especially those live broadcast reports of activities chaired by central leading cadres."[156] The notice also requires all broadcasters to be sensitive to "political" issues and to screen live broadcasts to "ensure their orientation is correct."

The government and the Party remain concerned that Chinese citizens have increased access to foreign sources of information that may dilute the Party's control over public opinion. Senior officials portray the news and information media as a battlefield for the Party's propaganda work that must either be occupied or lost to Western countries. For example, Liu Yunshan has called on Party propagandists to learn how to open to the outside world but pre-

vent "Western enemy forces" from using their "economic and technical superiority to carry out ideological infiltration and cultural expansion" in order to "Westernize and divide" China.[157] Shi Feng has said the government must not abandon the battlefield of public opinion, and has complained that, despite strict government prohibitions on private and foreign investment in newspaper and periodical publishing, people continue to "illegally enter the newspaper and periodical publication domain," and that illegal publishers are a "serious threat" to the Party's ability to use propaganda to influence ideology.[158]

The Supreme People's Court also supports censorship to prevent Chinese citizens from having access to "foreign" political ideas. In 1998, the same year it issued a judicial interpretation expanding the scope of Article 225 of China's Criminal Law to include unauthorized publishing,[159] it warned China's judges, "Foreign enemy forces are using publishing as a channel to carry out infiltration and aggravation of our ideology and culture, and there are numerous publications with political problems circulating within the country's borders."[160]

The Chinese government attempts to prevent its citizens from having access to uncensored political ideas and information by banning the general distribution of foreign newspapers, news magazines, and television news programs, and by restricting the ability of foreign news agencies to distribute news domestically. In November 2005, Shi Zongyuan, then Director of the GAPP, said that Chinese authorities had halted plans to allow foreign newspapers to print in China because of concerns raised by the recent "color revolutions" in former Soviet republics.[161] Also in 2005, the GAPP introduced internal restrictions on foreign magazines, limiting approvals to science and technology publications.[162] In October 2004, SARFT issued regulations prohibiting joint ventures from producing programs on "political news."[163] In March 2005, SARFT issued an interpretive notice on these regulations that further limits foreign companies to investing in a single joint venture, saying:

> [W]e must control the contents of all products of joint ventures in a practical manner, understand the political inclinations and background of foreign joint venture parties, and in this way prevent harmful foreign ideology and culture from entering the realm of our television program production through joint investment and cooperation.[164]

In September 2006, Xinhua issued new rules prohibiting foreign news agencies from distributing news to Chinese citizens without government permission.[165] The new rules require foreign news agencies to be licensed by Xinhua and to submit all articles to a government-approved agency for distribution.[166] The new rules give Xinhua the authority to select the news and information that foreign news agencies release, and to delete any information that the government has banned.[167] [For information on the commercial implications of the new rules, see Section VII(d)—Commercial Rule of Law and the Impact of the WTO.]

To prevent Chinese citizens from using television and radio to access ideas and opinions that may conflict with the Party line, the government jams programming offered by the Voice of America and the British Broadcasting Corporation. The government also has en-

acted regulations that restrict private satellite dish ownership and only permit foreign television news from broadcasters that are "friendly" to China and that offer their programs through government-controlled channels.[169] In August 2005, SARFT issued three notices restricting Chinese citizens' access to foreign television and radio content.[166] In April 2006, SARFT issued a circular[170] repeating the restrictions on the dissemination of foreign news reports that were first put in place in 2002.[171] Both circulars prohibit local television stations from using news footage taken from foreign satellite programs and require them to use only international news reports provided by China Central Television and China Radio International. The new circular said these restrictions are required to "ensure correct orientation of public opinion," because some foreign wire services and news media have distributed international news to local television stations with "blatant political intentions." The circular calls on television regulators to "firmly establish political consciousness" and "increasingly bring the administration of international news within the administration of propaganda work."

Chinese officials attempt to prevent citizens who use the Internet from gaining access to ideas and opinions that the government and Party cannot censor. In February 2006, Liu Zhengrong, Deputy Chief of the Internet Affairs Bureau of the State Council Information Office, said Chinese citizens can access the Web freely, except for "a very few" foreign Web sites that are blocked because their contents mostly involve pornography or terrorism.[172] According to one study, however, Chinese authorities operate "the most extensive, technologically sophisticated, and broad-reaching system of Internet filtering in the world" to prevent access to "sensitive" religious and political material on the Internet.[173] The central government blocks the Web sites of foreign news providers such as the Voice of America, Radio Free Asia, and the British Broadcasting Corporation, and of human rights advocacy groups such as Human Rights Watch, Human Rights in China, Reporters Without Borders, and the Committee to Protect Journalists. Since May 2005, the Chinese government has prevented its citizens from accessing the Commission's Web site.

V(b) Rights of Criminal Suspects and Defendants

FINDINGS

- The Communist Party's concern with growing social instability dominated its policy statements over the past year, and served as justification for increased government vigilance over activities and groups that potentially threaten Party legitimacy. Top Party, court, and law enforcement officials repeatedly linked the government's policy of pursuing periodic anti-crime campaigns, referred to as "Strike Hard" campaigns, to the goal of maintaining social stability. Government efforts to maintain social stability have led to a greater reliance on the coercive powers of the police to subdue potential threats to Party rule.
- Abuse of power by local police forces remains a serious problem. The Supreme People's Procuratorate (SPP) has acknowledged the existence of continuing and widespread abuses in law enforcement, including illegal extended detentions and tor-

ture. New SPP regulations that detail the criteria for prosecuting official abuses of power went into effect in July 2006, and establish standards for the prosecution of police who abuse their power to hold individuals in custody beyond legal limits, coerce confessions under torture, acquire evidence through the use of force, maltreat prisoners, or retaliate against those who petition the government or file complaints against them.

• The Chinese government continues to apply vague criminal and administrative provisions to justify detentions based on an individual's political opinions or membership in religious, ethnic, or social groups. These provisions allow for the targeting and punishment of activists for crimes that "endanger state security" or "disturb public order" under the Criminal Law. The UN Special Rapporteur on Torture concluded in his March 2006 report to the UN Commission on Human Rights that the vague definition of these crimes leaves their application open to abuse, particularly of the rights to freedom of religion, speech, and assembly.

• Chinese authorities use reeducation through labor and other forms of administrative detention to circumvent the criminal process and imprison offenders for "minor crimes," without judicial review and the procedural protections guaranteed by the Chinese Constitution and Criminal Procedure Law. The UN Working Group on Arbitrary Detention concluded in 2004 that the Chinese government has made no significant progress in reforming the administrative detention system to ensure judicial review and to conform to international law. Although proposed reforms would provide some added procedural protections, they would still not provide an accused individual the opportunity to dispute the alleged misconduct and contest law enforcement accusations of guilt before an independent adjudicatory body.

• Although illegal in China, torture and abuse by law enforcement officers remain widespread. Factors that perpetuate or exacerbate the problem of torture include a lack of procedural safeguards to protect criminal suspects and defendants, over reliance on confessions of guilt, the absence of lawyers at interrogations, inadequate complaint mechanisms, the lack of an independent judiciary, and the abuse of administrative detention measures. The Chinese government emphasizes its ongoing efforts to pass new laws and administrative regulations preventing, punishing, and compensating cases of torture by law enforcement officers. Both the SPP and the Ministry of Public Security have announced their support for audio and video taping of interrogations of criminal suspects accused of a limited number of crimes. The Chinese government recognizes that problems of misconduct, including physical abuse, exist within Chinese prisons and reeducation through labor centers, and it is making progress toward increasing accountability for such behavior.

• In 2006, Chinese authorities increased restrictions on lawyers who work on politically sensitive cases or cases that draw attention from the foreign news media. Law enforcement officials intimidated lawyers defending these cases by charging

them, or threatening to charge them, with various crimes. Since mid-2005, local authorities have also used harassment and violent measures against those who participated in criminal or civil rights defense in sensitive matters. Beijing lawyer Zhu Jiuhu was detained during the past year. Self-trained legal advocate Chen Guangcheng was sentenced on August 24, 2006, to four years and three months' imprisonment, and Shanghai lawyer Zheng Enchong is currently under house arrest after being released from prison on June 5, 2006. Beijing lawyer Gao Zhisheng has been held incommunicado since authorities reportedly abducted him on August 15 from his sister's home in Shandong province. Guo Feixiong, who served as a legal advisor to Gao's law firm, was arrested and later released in late 2005, and is currently in detention after being taken from his home on September 14.

• Chinese criminal law includes 68 capital offenses, over half of which are non-violent crimes. The Chinese government reportedly has adopted an "execute fewer, execute cautiously" policy. In 2006, the Chinese judiciary made reform of the death penalty review process a top priority and introduced new appellate court procedures for hearing death penalty cases. The Supreme People's Court announced that it would consolidate and reclaim the death penalty review power from provincial-level high courts. These reforms are designed to limit the use of death sentences, consolidate criteria used by courts to administer those sentences, and ensure constitutionally protected human rights.

• The Vice Minister of Health acknowledged that the majority of human organs used in transplants in China originate from executed prisoners. Under the World Health Organization's guiding principles on human organ transplantation, organ donations by prisoners, even when reportedly voluntary, may nonetheless violate international standards if the organs are obtained through undue influence and pressure. New Ministry of Health regulations include medical standards for organ transplants, but do not provide guidance on what type of consent is required for taking organs from executed prisoners.

• The Chinese government continues to engage the international community on human rights and rule of law issues, including those related to the criminal justice system. The government's application for membership in the UN Human Rights Council noted that it has acceded to 22 international human rights accords, and that it plans to amend its Criminal, Civil, and Administrative Procedure Laws and reform the judiciary to prepare for ratification of the International Covenant on Civil and Political Rights. As a member of the new Council, the government has pledged to fulfill its obligations under the terms of these accords, and is obligated under the rules of the Council to submit to peer review of its human rights record.

Public Security and Coercive Use of Police Power

The Communist Party's concern with growing social instability dominated its policy statements over the past year, and served as justification for increased government vigilance over activities and

groups that potentially threaten Party legitimacy. Top Party, court, and law enforcement officials repeatedly linked the government's policy of pursuing periodic anti-crime campaigns, referred to as "Strike Hard" campaigns, to the goal of maintaining social stability.[1] On a national level, the government's "Strike Hard" campaigns included crackdowns on the publication of materials, including Falun Gong literature, that the government deemed to be "illegal political publications" or that allegedly "spread political rumors and create ideological chaos"[2] [see Section V(a)—Special Focus for 2006: Freedom of Expression]. Regionally, provincial-level officials used "Strike Hard" campaigns to justify crackdowns on "ethnic separatist forces" in the Xinjiang Uighur Autonomous Region[3] and those who might threaten the operation of the new Qinghai-Tibet railroad,[4] among other groups. [See Section V(d)—Freedom of Religion—Religious Freedom for China's Muslims; Section VIII—Tibet for additional information.]

Government efforts to maintain social stability have led to a greater reliance on the coercive powers of the police to subdue potential threats to Party rule.[5] In late 2005, a land dispute between local government officials and villagers in Shanwei city, Guangdong province, escalated into a mass protest and then a violent confrontation between villagers and the paramilitary People's Armed Police (PAP).[6] Both domestic and international human rights activists condemned the coercive use of police power to subdue the Shanwei villagers, and called for an investigation into the PAP's decision to open fire on the crowd.[7] Shanwei authorities detained Deputy Director Wu Sheng of the local public security bureau for mishandling the situation,[8] but one month later, Public Security Minister Zhou Yongkang and the PAP's top two officials reaffirmed the role of the PAP as a prominent force in guarding against threats to public order, particularly large-scale mass incidents.[9] In May 2006, domestic news media reported that Party officials delivered a "stern internal warning" to Wu and fired him from office.[10] No criminal charges were filed against Wu, but 13 of the villagers who participated in the protest received sentences ranging from three to seven years' imprisonment for allegedly "gathering people to disturb public order," among other crimes.[11]

Party concerns over the type of unrest that occurred in Shanwei have prompted new government measures that allow for greater discretion by local police in responding to "disturbances of public order."[12] In late 2005, Premier Wen Jiabao warned senior rural bureaucrats that more violence would result if they continued to commit the "historic mistake" of failing to protect farmers and their lands.[13] In April 2006, the Ministry of Public Security (MPS) denied the existence of conflict between police and villagers.[14] Instead, MPS officials maintained that China faces "conflicts among the people," high crime rates, and struggles against unnamed "enemies."[15] The MPS reported that crimes of "disturbing public order" rose to a total of 87,000 in 2005, a 6.6 percent increase over the figure in 2004.[16] Officials declined to provide a figure for mass incidents in 2005, but previously reported a rise from 58,000 mass incidents in 2003 to 74,000 in 2004.[17] In March, a new Public Security Administration Punishment Law went into effect nationwide and added 165 new offenses that are subject to administrative pun-

ishments at the discretion of public security agencies, rather than according to the procedures required under the criminal justice system.[18] In a press conference about the new law, MPS officials explained that the law entrusts public security agencies and the police with greater powers and means for protecting social stability and public order.[19]

Abuse of power by local police forces remains a serious problem. The government does not encourage external supervision over police affairs or prosecution of police abuses by the procuratorate,[20] as mandated by law.[21] Instead, the MPS maintains a system of self-discipline carried out by the police affairs supervisory departments within local public security bureaus.[22] Between 2001 and 2005, 1.5 million on-site inspections resulted in 330,000 findings of abuse by police officers.[23] Of those, 4,321 offending officers were suspended and 2,576 were taken into custody as punishment for their wrongdoing.[24] In February 2006, the MPS announced that it had suspended a total of 10,034 police officers since 1997 for breaches of discipline.[25] The announcement acknowledged the problem of police misconduct and expressed a high-level commitment to confront the problem and improve the image of the police. At the same time, it also confirmed that local police in some areas openly collude with criminals, without fear of reprisal. In one case in Hunan province, a court convicted three senior public security officials for ties to organized crime, but ultimately suspended their two- and three-year sentences.[26]

The Supreme People's Procuratorate (SPP) has acknowledged the existence of continuing and widespread abuses in law enforcement, including illegal extended detentions and torture.[27] New SPP regulations that detail the criteria for prosecuting official abuses of power went into effect on July 26, 2006, and establish standards for the prosecution of police who abuse their power to hold individuals in custody beyond legal limits, coerce confessions under torture, acquire evidence through the use of force, maltreat prisoners, or retaliate against those who petition the government or file complaints against them.[28] Domestic news media reported in 2006 on the convictions of several public security officials who had beaten to death criminal suspects or prisoners in their custody.[29] In one case, two public security officials received sentences of 1 year and 12 years' imprisonment, respectively, for beating a woman to death during police interrogation.[30] The local procuratorate did not launch an investigation until two years after the incident occurred, and only in response to persistent efforts by the woman's husband to petition the government.[31] In response to these reports, one Chinese legal scholar criticized authorities for being too lenient and for shielding one another from punishment.[32] In July, an SPP spokesperson stated that local procuratorates do not lack potential cases against official abuses of power, but that "many of them are cases that [the procuratorates] don't dare handle, are unlikely to handle, and cannot handle."[33]

Political Crimes

The Chinese government continues to harass, detain, and imprison citizens for the peaceful exercise of fundamental rights guaranteed under the Chinese Constitution and international dec-

larations and treaties such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).[34] In some cases, police detain individuals without formal charge or judicial review, in contravention of provisions in both the UDHR and the ICCPR.[35] Arbitrary detentions intensified during politically sensitive periods, such as the periods both preceding and following the visits of U.S. President George W. Bush and Manfred Nowak, UN Special Rapporteur on Torture, in November and December 2005, respectively.[36] Police also detained, placed under surveillance, and harassed citizens before the first anniversary of former Communist Party General Secretary Zhao Ziyang's death in January 2006,[37] and before and after the March 2006 plenary sessions of the National People's Congress (NPC) and Chinese People's Political Consultative Conference.[38] A senior official from the Ministry of Public Security justified police use of mass roundups during the plenary sessions by stressing the need to "manage public order" and "reduce some of the factors threatening social stability"[39] [see Section VII(c)—Access to Justice—Citizen Petitioning]. In most cases, police released individuals after a few days in detention.

The Chinese government continues to apply vague criminal and administrative provisions to justify detentions based on an individual's political opinions or membership in religious, ethnic, or social groups, even when authorities identify a formal charge and initiate the legal process. These provisions allow for the targeting and punishment of activists for crimes that "endanger state security" or "disturb public order" under the Criminal Law.[40] After a 2004 visit to China, the UN Working Group on Arbitrary Detention (UNWGAD) recommended that the Chinese government define these crimes in precise terms and create exceptions under the Criminal Law for the peaceful exercise of fundamental rights guaranteed by the UDHR.[41] Nowak noted after his visit to China in late 2005 that the UNWGAD's recommendations have not been implemented to date.[42] He concluded in his March 2006 report to the UN Commission on Human Rights: "The vague definition of these crimes leaves their application open to abuse, particularly of the rights to freedom of religion, speech, and assembly."[43]

Courts convict 99 percent of those tried for crimes that allegedly "endanger state security," and the Dui Hua Foundation, a U.S. NGO that advocates for political prisoners in China, reports: "The great majority were detained for non-violent expression of their political and religious beliefs."[44] "Splittism" and "inciting splittism,"[45] as well as "subversion of state power" and "inciting subversion of state power,"[46] are classified as crimes that endanger state security under the Criminal Law. Chinese authorities continue to use charges of "splittism" and "inciting splittism" to target and punish peaceful activities by ethnic Uighurs and Tibetans [see Section V(d)—Freedom of Religion—Religious Freedom for China's Muslims; Section VIII—Tibet]. They continue to apply charges of "subversion" and "inciting subversion" to target and punish the peaceful activities of writers, journalists, and publishers [see Section V(a)—Special Focus for 2006: Freedom of Expression], as well as those who have supported the creation of independent political

parties or associations [see Section VII(a)—Development of Civil Society].

Faced with an increasing number of "public order disturbances" in 2005, Chinese authorities have applied criminal provisions to crack down on otherwise lawful citizen attempts to challenge government abuses.[47] Many of the "public order disturbances" that occurred in 2005 involved alleged crimes of "gathering people to disturb public order,"[48] "obstructing public services,"[49] "gathering people to engage in affrays,"[50] and "creating disturbances."[51] From 2004 to 2005, these "public order disturbances" increased by 13 percent, 18.9 percent, 5.8 percent, and 11.8 percent, respectively.[52] In one case, a local people's court in Yulin city, Shaanxi province, sentenced private investor and former Party official Feng Bingxian to three years' imprisonment for "gathering people to disturb public order" and obstructing the work of government agencies.[53] Feng's conviction was based on his efforts to meet with local officials and discuss compensation for private property that the government seized in 2003.[54] The procuratorate charged that the presence of too many investor representatives led to traffic congestion, disturbance of public order, and interference with the work of the government.[55] At the time that the procuratorate indicted Feng, the NPC was publicizing efforts to increase legal protection for property rights.[56]

Since late 2005, government officials have abused Criminal Law provisions on "public order disturbances" to silence property rights advocates in particular. In 2004, the government amended the Constitution to recognize explicitly the private property rights of Chinese citizens.[57] One year later, at the same time that Shaanxi officials detained Feng Bingxian, Guangdong provincial authorities used force to suppress citizen efforts to defend property rights in Shanwei city[58] and Taishi village[59] in Guangzhou city. In October 2005, Guangdong authorities arrested legal advocate Yang Maodong (who uses the pen name Guo Feixiong) for "gathering people to disturb public order."[60] The charge was based on Guo's efforts to advise Taishi villagers in their recall campaign against the village committee head, who allegedly had embezzled compensation funds for government seizures of farmland [see Section VII(b)—Institutions of Democratic Governance and Legislative Reform]. In February 2006, the Guangdong Public Security Bureau circulated a report that blamed a succession of mass protests in 2005 on "disputes over so-called rights defense."[61] With the release of this report, Guangdong authorities made explicit their campaign against legal advocates such as Guo and directly linked the activities of these individuals to crimes of "disturbing public order."

The Chinese government has released a small number of political prisoners since August 2005, but many Chinese citizens continue to serve long prison or reeducation through labor sentences for political or religious activities.[62] In April 2005, the Chinese government insisted that authorities do not apply a stricter standard for evaluating sentence reductions and parole in crimes that "endanger state security."[63] Between early 2005 and 2006, however, officials granted sentence reductions or early releases to political prisoners in only a few cases.[64] Authorities released most political prisoners only when their court-imposed sentences expired. The list of re-

leased political prisoners includes political activist Wang Wanxing, journalist Liu Shui, legal advocate Guo Feixiong, journalist Jiang Weiping, Falun Gong practitioner Charles Lee, labor activist Xiao Yunliang, journalist and Tiananmen democracy activist Yu Dongyue, Internet publisher Cai Lujun, China Democracy Party member Tong Shidong, Internet writer Luo Changfu, house church activist Xiao Gaowen, Shanghai lawyer Zheng Enchong, Gyatso Children's Home founder Nyima Choedron, and Catholic auxiliary bishop An Shuxin.[65] Despite the Chinese government's pledge to conduct a national review of cases involving political acts that are no longer crimes under Chinese law,[66] some prisoners are still serving sentences for counterrevolutionary and other crimes that were removed from the Criminal Law in 1997.[67]

Arbitrary Detention in the Formal Criminal Process

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

> (1) there is clearly no legal basis for the deprivation of liberty;
> (2) an individual is deprived of his liberty because he has exercised rights and freedoms guaranteed under the Universal Declaration of Human Rights (UDHR) or the International Covenant on Civil and Political Rights (ICCPR); or
> (3) non-compliance with the standards for a fair trial set out in the UDHR and other relevant international instruments is sufficiently grave to make the detention arbitrary.[68]

Chinese authorities use measures such as surveillance or house arrest[69] to punish and control political activists, even when no legal basis exists for such deprivations of liberty. Authorities in Linyi city, Shandong province, placed Chen Guangcheng, a legal advocate who exposed and challenged the abuses of local population planning officials [see Section V(h)—Population Planning], under house arrest on September 6, 2005.[70] In March 2006, Chen's house arrest exceeded the six-month limit permitted by Chinese law.[71] A network of Chinese human rights activists and groups subsequently worked with Chen's defense lawyers to submit information about his case to the UNWGAD, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the Special Representative of the Secretary General for Human Rights Defenders.[72] From March until formal notification of Chen's criminal detention on June 10, Linyi authorities held Chen without charge or trial.[73] Since March, authorities have kept Chen's wife under surveillance at their home, formally arrested several of Chen's relatives, beaten and summoned Chen's lawyers for interrogation, and placed other activists under house arrest to prevent them from holding a press conference about Chen's case.[74]

Chinese authorities also have used incommunicado detention to punish and control particularly high-profile political offenders who exercise their fundamental rights. The Criminal Procedure Law (CPL) permits detention without arrest or charge, but generally requires notification of family members or the detainee's workplace within 24 hours of custody.[75] Despite this legal safeguard, a number of activists, including Hu Jia, disappeared in February 2006 after launching a nationwide hunger strike to protest government

abuses [see Section IV—Introduction]. Hu, who has campaigned on behalf of HIV/AIDS patients [see Section V(g)—Public Health—HIV/AIDS], was missing from February 16 to March 28. When Hu reappeared, he reported that security officers took him from his home and held him on the outskirts of Beijing without any legal formalities and without notifying his family.[76] In February, a UN agency expressed concern about Hu's disappearance and reported his case to the Ministry of Health.[77] Others who have been held incommunicado include Gedun Choekyi Nyima and his parents, abducted by Chinese officials in 1995 after the Dalai Lama recognized him as the reincarnation of the Panchen Lama, and Catholic Bishop Su Zhimin, who reportedly has been detained in a form of house arrest since 1997. Both Gedun Choekyi Nyima and Bishop Su have been the subject of frequent U.S. and international inquiries, but the Chinese government denies that it took coercive measures against either of them. [See Section V(d)—Freedom of Religion—Religious Freedom for Tibetan Buddhists; Section V(d)—Freedom of Religion—Religious Freedom for China's Catholics and China-Holy See Relations for additional information.]

Law enforcement authorities continue to detain Chinese citizens for long periods without formal charge or trial, despite official statements to the contrary. In January 2006, the Chinese government reported to Manfred Nowak, UN Special Rapporteur on Torture, that serious cases of extended detention lasting more than three years had been eliminated, and that the number of individuals held beyond time limits was at an all-time low.[78] The government further reported that the number of provinces, autonomous regions, and municipalities in which there were no cases of extended detention had risen from 14 at the end of 2003 to 29.[79] In May 2006, the Supreme People's Procuratorate (SPP) identified Beijing as one of nine municipalities or provinces where no cases of extended detention had occurred in 2005.[80] Despite these claims, Beijing authorities repeatedly used provisions in Chinese law to hold New York Times researcher Zhao Yan from September 17, 2004, until his trial date on June 16, 2006.[81] After invoking several legal exceptions to extend Zhao's pretrial detention, authorities indicted him on December 23, 2005, for disclosing state secrets and for fraud.[82] The Beijing procuratorate withdrew its case against Zhao on March 17, 2006,[83] shortly before President Hu Jintao's visit to the United States, but resumed legal proceedings based on the same charge in May, after Hu returned to China.[84] The court permitted the procuratorate to resume its case, despite objections from Zhao's defense lawyer that this action was illegal.[85] The UNWGAD has concluded that Zhao's detention was arbitrary because it resulted from the exercise of rights guaranteed under the UDHR and the ICCPR, and because official non-compliance with the international standards for a fair trial was sufficiently grave.[86]

Chinese authorities do not comply with the minimum international standards for prompt judicial review of criminal detention and arrest. Both the UDHR and the ICCPR prohibit arbitrary detention or arrest. Under the ICCPR, anyone detained or arrested on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise adjudicatory powers, for review of the lawfulness of his detention or arrest.[87] In December

2004, the UNWGAD found that the CPL and related regulations on pretrial detention fail to meet this basic standard because: (1) Chinese suspects continue to be held for too long without judicial review; (2) procurators, who review arrest decisions, only examine case files and do not hold a hearing; and (3) a procurator cannot be considered an independent adjudicator under applicable international standards.[88] In May 2006, the SPP acknowledged that unlawful extended detentions remain problematic, and that Chinese authorities misuse provisions in the CPL to disguise this problem.[89] The SPP is currently working with the Supreme People's Court and Ministry of Public Security to finalize new regulations that will seek to address the problem of extended detention.[90]

Administrative Detention

The Chinese government continues to punish large numbers of citizens administratively, without effective judicial review and in contravention of human rights standards under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).[91] Public security agencies reported that they investigated and charged a total of 6.3 million "public security" (*zhi'an*) offenses in 2005, up from 5.4 million in 2004.[92] "Public security" offenses include public order disturbances, traffic offenses, prostitution, drug use, and other "minor crimes" that the Chinese government typically sanctions with administrative punishments rather than formal criminal sentences.[93] In some instances, public security agencies handle cases administratively because they do not have enough evidence for a formal prosecution,[94] or because it is a convenient method for detaining and harassing activists.[95] Administrative punishments can range from a warning or fine to detention in a reeducation through labor (RTL) center for up to three years, with the possibility of a one-year extension.[96] Administrative punishments such as RTL can be harsher than some criminal punishments such as fines, public surveillance, and criminal detention of one to six months.[97]

In March 2006, Manfred Nowak, UN Special Rapporteur on Torture, concluded that the RTL system and other forms of administrative detention "go beyond legitimate rehabilitation measures provided for in [A]rticle 10 of the ICCPR."[98] Forms of administrative detention include short-term detention under the Public Security Administration Punishment Law (PSAPL) and long-term detention such as RTL, forced psychiatric commitment, "custody and education" of prostitutes and their clients, forced drug detoxification, work-study schools, and discipline and inspection of corrupt officials under Party rules.[99] Although many public security cases do not result in detention, the U.S. State Department estimates that at least 260,000 to 310,000 individuals are currently detained in approximately 340 RTL centers.[100] In addition, another 350,000 individuals were held in facilities for drug offenders and prostitutes as of 2004.[101] The government consistently has emphasized the beneficial "reeducation" function of administrative detention measures,[102] but Nowak found that "some of these measures of [reeducation] through coercion, humiliation and punishment aim at altering the personality of detainees up to the point of even breaking their will."[103]

The Chinese government is in the process of reforming the administrative punishment system, but these reforms seek to codify rather than abolish it. In August 2005, the National People's Congress Standing Committee passed the PSAPL to provide a basis in national law for short-term detentions of up to 20 days. In addition to establishing more severe punishments than its predecessor, the Regulations on Public Security Administration Punishment, the new law creates 165 new offenses subject to administrative punishment effective March 1, 2006.[104] These offenses include, among other things, "taking on the name of religion or *qigong* to carry out activities disturbing public order"[105] and "inciting or plotting illegal assemblies, marches, or demonstrations."[106] The new law reaffirms the role of public security bureaus as the entities that determine and administer punishments for public security violations. Ministry of Public Security officials have interpreted this provision to mean greater powers and means for public security agencies and police to carry out their duties and protect stability.[107] The new law provides for disciplinary sanctions and criminal liability to address violations of human rights, such as coercing confessions under torture or exceeding time limitations on interrogation.[108] The law, however, lacks mechanisms for external supervision of public security agencies and police, and lacks standards for imposing disciplinary and criminal sanctions on police abuses.

Although short-term administrative detention of up to 20 days for public security offenses now has a basis in national law under the PSAPL, long-term administrative detention, including RTL, is authorized only under administrative regulations and therefore violates Chinese law. The Legislation Law requires that all deprivations of personal liberty be authorized by national law, and not by administrative regulation.[109] Under the criminal justice system, a Chinese citizen cannot be found guilty of any crime, even a "minor crime," without being judged guilty by a people's court.[110] The Constitution makes explicit the inviolable nature of a person's liberty and further dictates:

> No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited. . . .[111]

Nonetheless, Chinese authorities use RTL and other forms of long-term administrative detention to circumvent the criminal process and imprison offenders for "minor crimes," without judicial review and the procedural protections guaranteed by the Chinese Constitution and Criminal Procedure Law.[112]

The UN Working Group on Arbitrary Detention (UNWGAD) concluded that between its 1997 and 2004 visits, the Chinese government had made no significant progress in reforming the administrative detention system to ensure judicial review and to conform to international law.[113] Domestic pressure is building to reform the RTL system, particularly in the National People's Congress (NPC).[114] Since March 2005, the NPC has been considering a new Law on the Correction of Unlawful Acts that would provide a basis in national law for RTL.[115] The draft law reportedly enhances the

rights of RTL prisoners by setting a maximum sentence of 18 months, and by permitting defendants to hire a lawyer, request a hearing, and appeal sentences imposed by public security officials in RTL cases.[116] Although the reforms would provide some added procedural protections, the draft law would still not provide an accused individual the opportunity to dispute the alleged misconduct and contest law enforcement accusations of guilt before an independent adjudicatory body.[117] Public security officials continue to dominate the decisions of RTL administration commissions,[118] which consist of officials from the public security, civil affairs, and labor bureaus.[119] The Chinese government has argued that administrative detention decisions are subject to judicial review under the Administrative Procedure Law (APL), but the UNWGAD found APL review "of very little value" and maintained that "no real judicial control has been created over the procedure to commit someone to [reeducation] through labor."[120]

The UNWGAD also has found that the government's practice of forced psychiatric commitment of criminal offenders is a "form of deprivation of liberty, since it lacks the necessary safeguards against arbitrariness and abuse."[121] The U.S. State Department estimates that there are at least 20 *ankang,*[122] or special psychiatric institutions for mentally ill criminal offenders, in China. Public security officials can forcibly commit "political maniacs," and increasingly have done so as a measure against those who repeatedly petition the government such as Liu Xinjuan,[123] or political activists such as Wang Wanxing.[124] The government deprives these individuals of their liberty without judicial review.[125] Treatment in these institutions is sometimes brutal, and political prisoners are held along with patients suffering from true mental illnesses.[126] Upon his release in August 2005, Wang called for the government to cease psychiatric detention of those without mental illness and transfer administration of *ankang* hospitals from public security officials to psychiatric professionals.[127] He added that the inability to object to public security officials' determination that one is mentally ill "makes it so difficult for the inmates to hope for release—more difficult than in prison or in a labor camp, where the punishments are for a fixed term."[128]

Torture and Abuse in Custody

Although illegal in China, torture and abuse by law enforcement officers remain widespread.[129] In March 2006, Manfred Nowak, UN Special Rapporteur on Torture, reported that Falun Gong practitioners make up the overwhelming majority of victims of alleged torture [see Section V(d)—Freedom of Religion—Government Persecution of Falun Gong], and that other targeted groups include Uighurs, Tibetans, human rights defenders, and political activists.[130] About half of all alleged acts of torture take place in pretrial criminal detention centers or reeducation through labor (RTL) centers, and 47 percent of alleged perpetrators are police or other public security officials.[131] Forms of torture and abuse cited in Nowak's report include beating, electric shock, painful shackling of the limbs, denial of medical treatment and medication, and hard labor.[132] Foreign news media and NGOs reported that torture by

law enforcement officers resulted in the death of at least one detainee during the past year.[133]

The widespread use of torture in China violates both domestic and international law. Chinese domestic law prohibits judicial officers from coercing confessions under torture or acquiring evidence through the use of force, and imposes criminal liability on police and other corrections officers who beat or maltreat prisoners, if the circumstances are particularly "serious."[134] The government is further bound by the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) that prohibit the use of torture.[135] Nowak has said that the government's definition of torture under the Criminal Law and administrative regulations does not correspond fully to the international standard as outlined in Article 1 of the CAT.[136] In addition, the government does not recognize the competence of the Committee against Torture authorized under the CAT to investigate allegations of systematic torture.[137]

Factors that perpetuate or exacerbate the problem of torture in China include a lack of procedural safeguards to protect criminal suspects and defendants, over reliance on confessions of guilt, the absence of lawyers at interrogations, inadequate complaint mechanisms, the lack of an independent judiciary, and the abuse of administrative detention measures.[138] In late 2005 and early 2006, the U.S. State Department and several faith-based organizations reported that these factors and the pervasiveness of torture and abuse by public security officials contributed to the conviction of Pastor Gong Shengliang of the banned South China Church.[139] Following their release from prison in late 2003 and early 2004, several female members of the church disclosed that public security officials tortured and forced them to sign statements accusing Pastor Gong of the sexual crimes for which he was ultimately convicted.[140] Pastor Gong reportedly continues to be tortured in prison,[141] and is confined for a life term.

The Chinese government emphasizes its ongoing efforts to pass new laws and administrative regulations preventing, punishing, and compensating cases of torture by law enforcement officers.[142] Some of these new measures appeared after a series of news media reports in 2005 on wrongful convictions drew national attention to widespread abuses in the criminal justice system and the continuing problem of torture.[143] In April 2005, the Sichuan provincial government prohibited the use of evidence acquired through illegal means and introduced a requirement that interrogation in "major" cases be taped.[144] Other provincial governments have not followed Sichuan's lead in excluding illegally acquired evidence,[145] but have shown more willingness to adopt the practice of audio and video taping of interrogations as a preventive measure against torture. In early 2006, the Supreme People's Procuratorate mandated that by October 1, 2007, all procuratorate interrogations of criminal suspects in job-related crimes such as graft and dereliction of duty be audio and video taped.[146] At the March 2006 plenary session of the National People's Congress, one deputy submitted a proposal calling on the Ministry of Public Security (MPS) to mandate tapings of police interrogations in cases of crimes punishable by death.[147] The MPS has announced that it will promote audio and video tap-

ing of police interrogations in homicide and organized crime cases, and that public security bureaus in economically developed areas such as Shanghai and Beijing municipalities have already adopted this practice.[148] It has no formal plans for nationwide implementation.

The Chinese government recognizes that problems of misconduct, including physical abuse, exist within Chinese prisons and RTL centers, and it is making progress toward increasing accountability for such behavior. In February 2006, the Ministry of Justice (MOJ) established punishments ranging from warnings to dismissal and criminal liability for prison and RTL police found to violate prohibitions against beating, or instigating others to beat, prisoners.[149] Under these new regulations, police activities will be subject to regular supervision and investigation by the MOJ and local justice bureaus, to ensure that they comply with legal requirements. Beijing municipal authorities have also imposed quality control measures on prison police that authorize warnings, demotions, and dismissals for misconduct including insults, beatings, prolonged confinement, and isolation of inmates.[150]

Access to Counsel and Right to Present a Defense

Most defendants in China go to trial without a lawyer, and domestic sources cite fear of law enforcement retribution and the lack of legal protections for lawyers as major factors in the low rate of representation.[151] Chinese law grants criminal defendants the right to hire an attorney, but guarantees pro bono legal defense only if the defendant is a minor, faces a possible death sentence, or is blind, deaf, or mute.[152] In other cases in which defendants cannot afford legal representation, courts may appoint defense counsel or the defendant may apply for legal aid.[153] In late 2005, the Chinese government expanded the scope of legal aid in criminal cases and required public security bureaus and procuratorates to notify all criminal suspects of their right to apply for legal aid.[154] Criminal suspects who cannot afford legal services can now make a request for legal aid as early as the investigative stage of their case, and do not have to wait until formal indictment.[155] Despite these advances, lawyers represent criminal defendants in, at most, 30 percent of all cases, and the rate of representation continues to drop.[156]

Government abuses of provisions in the Criminal Procedure Law (CPL) have prevented some criminal defendants who are able to find lawyers from meeting with them. Under Chinese law, suspects have a right to meet with their lawyers after police interrogation or from the first day of their formal detention.[157] Nevertheless, after the first interrogation, police have manipulated legal exceptions to deny lawyers access to their clients or otherwise obstruct or encumber such access.[158] The UN Working Group on Arbitrary Detention identified China's use of the "state secrets" exception as one area of particular concern, noting that authorities apply the exception to improperly interfere with access to defense counsel.[159] In late 2005, Beijing lawyer Gao Zhisheng attempted to register as defense counsel for democracy activist Xu Wanping, but authorities refused to grant him access to Xu on the grounds that the case involved "state secrets."[160] Authorities also held freelance writer

Yang Tongyan (who uses the pen name Yang Tianshui) without access to a lawyer or contact with his family, again citing "state secrets."[161] According to Yang's lawyer, the inability of lawyers to get involved during the investigative stage is a "tacitly understood, unwritten rule" in political cases.[162] Chinese scholars have urged amending the CPL to allow for lawyers to be present throughout the criminal process, beginning with the interrogation of a criminal suspect, to help guard against coerced confessions under torture and other abuses.[163]

Chinese law imposes procedural obstacles that make it difficult for lawyers to build and present an adequate defense. In practice, defense lawyers cannot start building a case until the official investigation ends and a case is transferred to the procuratorate.[164] Even then, police and procurators often deny lawyers access to government case files and information, despite provisions in the CPL that are intended to guarantee access to those materials.[165] Defense lawyers can gather information in support of their case from a witness, but must obtain the consent of the witness or permission from a procuratorate or court.[166] In June and July, authorities obstructed attempts by lawyers to meet with witnesses and gather evidence in defense of legal advocate Chen Guangcheng.[167] Li Jinsong, one of Chen's defense lawyers, reported that unidentified assailants attacked him during a visit to Chen's home village, and that police officers stood by and watched.[168] In order to interview crime victims, defense lawyers must obtain both the consent of the victim and permission from a procuratorate or court.[169] In addition, about 95 percent of witnesses in criminal cases do not appear in court to testify, in part due to hardship or fear of reprisals.[170] The inability of defense lawyers to cross-examine witnesses undermines their ability to represent their clients.[171] Chinese scholars involved in the discussion of potential amendments to the CPL suggest that a provision requiring witnesses to appear in court should be written into the law.[172]

In 2006, Chinese authorities increased restrictions on lawyers who work on politically sensitive cases or cases that draw attention from the foreign news media. The All China Lawyers Association issued a guiding opinion that restricts and subjects to punishment lawyers who handle collective cases without authorization [see Section VII(c)—Access to Justice—Access to Legal Representation]. Defense lawyers have also reported that local authorities apply added pressure in cases that involve systemic problems or large groups of people.[173] In April 2006, local justice bureaus in at least two provinces formalized this growing practice by issuing opinions to restrict the scope of activities that lawyers are permitted to undertake in particularly sensitive or high-profile cases [see Section VII(c)—Access to Justice—Access to Legal Representation].[174] The opinion issued by the justice bureau in Shenyang city, Liaoning province, emphasized the role of Chinese lawyers as protectors of social stability and builders of a harmonious society, and implied that these functions may outweigh the defense of legally protected rights.[175]

Law enforcement officials intimidated lawyers defending these cases by charging them, or threatening to charge them, with various crimes [see Section IV—Introduction], including "evidence fab-

rication" under Article 306 of the Criminal Law.[176] Such charges often prove to be groundless.[177] At the March 2006 plenary session of the National People's Congress, one delegate submitted a motion to eliminate the Criminal Law's provision on evidence fabrication and noted its chilling effect on criminal defense work.[178] Since mid-2005, local authorities have also used harassment and violent measures against those who participated in criminal or civil rights defense in sensitive matters such as the Shaanxi oil case and Taishi recall election[179] [see Section IV—Introduction]. Asia Weekly included prominent legal advocates and scholars Chen Guangcheng,[180] Fan Yafeng,[181] Gao Zhisheng,[182] Guo Feixiong,[183] Guo Guoting,[184] Li Baiguang,[185] Li Heping,[186] Xu Zhiyong,[187] Zhang Xingshui,[188] Zheng Enchong,[189] and Zhu Jiuhu[190] among China's 14 "Icons of 2005,"[191] but all have been placed under surveillance or other government restrictions after drawing news media attention to themselves and their legal cases. Zhu Jiuhu was detained during the past year. Chen Guangcheng was sentenced on August 24, 2006, to four years and three months' imprisonment, and Zheng Enchong is currently under house arrest after being released from prison on June 5, 2006. Gao Zhisheng has been held incommunicado since authorities reportedly abducted him on August 15 from his sister's home in Shandong province. Guo Feixiong was arrested and later released in late 2005, and is currently in detention after being taken from his home on September 14.

Fairness of Criminal Trials and Appeals

China's criminal justice system is strongly biased toward presumptions of guilt, particularly in cases that are high-profile or politically sensitive.[192] The conviction rate for first instance criminal cases rose slightly and remained above 99 percent in 2005.[193] After Chinese reports disclosed in 2005 that official malfeasance had led to the wrongful murder conviction of She Xianglin, a local court official blamed the miscarriage of justice on negligence by investigative personnel, intense public pressure, and a heavy presumption of guilt throughout the criminal process.[194] The local court, city government, and public security bureau all acknowledged wrongdoing in She's case and agreed to provide compensation or subsidy based on his wrongful imprisonment, physical and emotional damages, lost wages, and reintegration into society.[195] She Xianglin's case sets a potential precedent for similar claims based on wrongful conviction and imprisonment. Reports of wrongful murder convictions in Hebei, Henan, Liaoning, and Shaanxi provinces appeared in the news throughout 2005, and similarly called into question the fairness of those trials and the criminal process.[196]

Reports of wrongful convictions indicate that public security officials and procurators rely heavily on pretrial witness statements to support their case,[197] despite provisions in the Criminal Procedure Law (CPL) that say such statements cannot serve as the sole basis for a criminal judgment.[198] In February 2006, an intermediate people's court in Chongqing municipality reversed its original death sentence against a man convicted of robbery, and called into question the procuratorate's heavy reliance on pretrial statements that were later retracted during the trial.[199] One Chinese legal scholar has reported that retraction of pretrial statements is increasing,

and that in recent years, the reliability of pretrial statements has become increasingly suspect.[200]

According to one criminal defense lawyer, even when lawyers and judges believe that a defendant may be innocent, "external factors" may nonetheless lead to a criminal conviction.[201] Senior court officials and Party political-legal committees continue to influence judicial decisionmaking, particularly in sensitive or important criminal cases[202] [see Section VII(c)—Access to Justice—The Chinese Judicial System]. In addition, Chinese procurators may appeal acquittals as a matter of right or request "adjudication supervision" from higher courts until they obtain a guilty verdict.[203] In practice, procurators have incentives to do so, since they face potential liability and professional sanction for wrongful detention if a criminal suspect is acquitted.[204]

Chinese defendants who are judged to be guilty face limited prospects for reversal of their conviction, due to procedural and other barriers. In one case during the past year, Beijing court officials pressured house church pastor Cai Zhuohua into giving up his right to an appeal,[205] even though provisions under the CPL guarantee this right.[206] If an appeals court finds a case to be based on questionable or incomplete evidence, it may send the case back to a court of first instance for retrial.[207] However, courts of first instance have incentives not to change their original judgments because they face potential liability and professional sanction for incorrect decisions[208] [see Section VII(c) —Access to Justice—The Chinese Judicial System]. Procedural provisions do not limit the number of times an appeals court may send the case back for retrial, so some cases based on questionable or incomplete evidence have bounced back and forth between courts, sometimes for several years while the defendant remains in prison.[209]

Capital Punishment

Chinese criminal law includes 68 capital offenses, over half of which are non-violent crimes such as tax evasion, bribery, and embezzlement.[210] The Chinese government reportedly has adopted an "execute fewer, execute cautiously" policy, but the government publishes no official statistics on the number of executions and considers this figure a state secret.[211] Some Chinese sources have estimated that the annual number of executions in China is in the thousands.[212]

In 2006, the Chinese judiciary made reform of the death penalty review process a top priority and introduced new appellate court procedures for hearing death penalty cases. After news accounts of several wrongful murder convictions in 2005, the Supreme People's Court (SPC) convened seminars to help lower-level courts draw lessons from judgments made in error.[213] In October 2005, the SPC announced that it would consolidate and reclaim the death penalty review power from provincial-level high courts, as part of a five-year court reform program for 2004 to 2008.[214] Court officials emphasize that returning the power of death penalty review to the SPC will play a significant role in limiting the use of death sentences, consolidating criteria used by courts to administer those sentences, and ensuring constitutionally protected human rights.[215] The SPC's five-year court program also mandates that in 2006, pro-

vincial-level high courts will begin to conduct hearings on all death penalty appeals.[216] At these hearings, courts are required to conduct a "comprehensive examination" of the trial court's conclusions of fact and law, and to ensure that key witnesses, expert witnesses, procurators, and lawyers appear in court.[217] Some provincial-level high courts began implementing these requirements in January 2006, and have commented that court hearings help them to minimize wrongful executions and to provide greater protection to criminal defendants.[218]

The Chinese government took positive steps toward reform of death penalty procedures in 2006, but legal scholars and professionals question how these steps will be implemented in practice. In 2005, provincial-level high courts reviewed nearly 90 percent of death sentences handed down in China.[219] The SPC has added three criminal tribunals to cope with the additional work from reclaiming death penalty review from the high courts, and has already transferred hundreds of court personnel to staff the new tribunals.[220] Scholars at the National Judges College, however, expressed concern that three new criminal tribunals would require training at least 300 new judges.[221] Moreover, early reports indicate that provincial-level high courts do not agree about which cases require court hearings under the law, or about the specific procedures that they should apply to hearings.[222] The SPC has not yet issued a judicial interpretation to help settle unresolved issues in the death penalty review process and further clarify its own procedures.[223]

Harvesting of Organs From Executed Prisoners

In July 2005, Huang Jiefu, Vice Minister of Health, became the first senior official to acknowledge that the majority of organs used in transplants in China originate from executed prisoners.[224] Other officials maintain that organ harvesting is limited to a few cases in which the express consent of the condemned convicts has been obtained, and pursuant to strict legal regulations.[225] In 2006, new reports from overseas medical and legal experts condemned the government's continuing practice of harvesting organs from executed prisoners without their consent.[226]

Existing Chinese law legalizes the harvesting of organs from executed prisoners, but does not regulate the practice in a way that conforms to international standards. Under the World Health Organization's guiding principles on human organ transplantation, organ donations by prisoners, even when reportedly voluntary, may nonetheless violate international standards if the organs are obtained through undue influence and pressure, or if insufficient information prevents the donor from understanding the consequences of consent.[227] Ministry of Health regulations that became effective on July 1, 2006, include new medical standards for organ transplants in China.[228] These regulations do not provide guidance, however, on what type of consent is required for taking organs from executed prisoners, and leave intact 1984 provisions that legalize organ harvesting if no one claims the prisoner's body for burial.[229]

Criminal Justice Exchanges

Chinese scholars and officials continued to engage foreign governments and legal experts on a range of criminal justice issues during late 2005 and 2006. Chinese law enforcement agencies expressed a growing interest in cooperating with other countries to combat transnational crime,[230] and in expanding cooperation with U.S. law enforcement agencies on money laundering, fighting terrorism, and other issues.[231] Numerous international conferences and legal exchanges with Western NGOs, judges, and legal experts took place, including programs on public accountability, pretrial discovery, evidence exclusion, criminal trials and procedure, bail, capital punishment, prison reform, and other subjects.[232] Participants in these programs encouraged more such exchanges.[233]

The Chinese government continues to engage the international community on human rights and rule of law issues, including those related to the criminal justice system. The government hosted visits by the UN Special Rapporteur on Torture from November to December 2005[234] and the UN High Commissioner for Refugees in March 2006.[235] Both UN officials commended the Chinese government for its open attitude toward increased dialogue,[236] but Manfred Nowak, UN Special Rapporteur on Torture, also reported that his work was monitored and obstructed by Chinese authorities.[237] On May 9, 2006, China was elected to serve for a three-year term on the newly established UN Human Rights Council.[238] The government's application for membership in the Council noted that it has acceded to 22 international human rights accords, including five of the seven core conventions.[239] In addition, the government reports that it plans to amend its Criminal, Civil, and Administrative Procedure Laws and reform the judiciary to prepare for ratification of the International Covenant on Civil and Political Rights.[240] As a member of the new Council, the government has pledged to fulfill its obligations under the terms of these accords,[241] and is obligated under the rules of the Council to submit to peer review of its human rights record.[242]

V(c) Protection of Internationally Recognized Labor Rights

Findings

- The Chinese government does not respect the internationally recognized right of workers to organize their own unions. The All-China Federation of Trade Unions (ACFTU), a Party-led mass organization, is the only legal labor federation in China. It controls local union branches and aligns worker and union activity with government and Party policy. The ACFTU began a campaign in March 2006 to establish union branches in foreign enterprises doing business in China. Chinese workers who attempt to form independent workers' organizations, or whom the government suspects of being leaders of such organizations, risk imprisonment. The government secretly tried labor rights activist Li Wangyang and sentenced him to 10 years' imprisonment in September 2001 for staging a peaceful hunger strike. Li had previously served most of a 13-year sentence for organizing an independent union. In May 2003, the government sentenced labor activist Yao Fuxin to a seven-year prison term

for peacefully rallying workers to demand wage and pension arrearages from a bankrupt state-owned enterprise. Li and Yao remain in prison.

• Weak protection of worker rights has contributed to an increase in the number of labor disputes and protests. According to ACFTU figures, the number of labor disputes rose sharply in 2005. The ACFTU reports that there were 300,000 labor-related lawsuits filed, a 20.5 percent increase over 2004 and a 950 percent increase compared to 1995. Strikes, marches, demonstrations, and collective petitions increased from fewer than 1,500 in 1994 to about 11,000 in 2003, while the number of workers involved increased from nearly 53,000 in 1994 to an estimated 515,000 in 2003. Poor workplace health and safety conditions and continuing wage and pension arrearages were the most prominent issues resulting in labor disputes during the past year. Chinese industry continues to have a high accident rate, with death rates in the mining and construction industries leading other sectors. According to official statistics, 110,027 people were killed in 677,379 workplace accidents through December 2005, and more than 10,000 workers died in the mining and construction sectors during 2005.

• Forced labor is an integral part of the Chinese administrative detention system. Authorities sentence some prisoners without judicial review to reeducation through labor (*laojiao*) centers, where they are forced to work long hours without pay to fulfill heavy production quotas, and sometimes are tortured for refusing to work. China's Labor Law prohibits forced labor practices in the workplace, and authorities have arrested employers who trap workers at forced labor sites. In 2002, the Chinese government began to cooperate with the International Labor Organization on broad issues of concern regarding forced labor, including on potential reforms to the reeducation through labor system, and on improving institutional capacity to combat human trafficking for labor exploitation.

• The use of child labor in some regions of China is reportedly on the rise. Labor shortages in the economically developed southern and eastern coastal provinces are causing employers to turn to child laborers, according to NGO reports. This development coincides with intensified efforts by the Ministry of Justice and the Ministry of Labor and Social Security to fight the illegal employment of children, suggesting that the government is more concerned about such abuses than before. Government authorities consider statistics on child labor that have not been officially approved for release to be "state secrets," and this policy thwarts efforts to understand the extent and causes of the problem.

• In 2006, the U.S. and Chinese governments continued to conduct a series of bilateral cooperative activities on wage and hour laws, occupational safety and health, mine safety and health, and pension program oversight.

Internationally Recognized Labor Rights

The Chinese government is committed through its membership in the International Labor Organization (ILO) to respect a basic set

of internationally recognized labor rights for workers: the freedom of association and the right to collective bargaining, the elimination of forced labor, the abolition of child labor, and non-discrimination in employment and occupation. The ILO's Declaration on the Fundamental Principles and Rights at Work (1998 Declaration) commits ILO members "to respect, to promote and to realize" these fundamental rights based on "the very fact of [ILO] membership." [1] China is a founding member of the ILO, and has been a member of the ILO Governing Board since June 2002.[2]

The ILO's eight core conventions provide guidance on the full scope of worker rights and principles enumerated in the 1998 Declaration.[3] Many ILO members have not ratified all of these core conventions, but each member is committed to respect the fundamental right or principle addressed in each.[4] China has ratified four of the eight ILO core conventions, including two core conventions on the abolition of child labor (No. 138 and No. 182) and two on non-discrimination in employment and occupation (No. 100 and No. 111).[5] The ILO reports that the Chinese government is preparing to ratify the two core conventions on forced labor (No. 29 and No. 105).[6]

Chinese labor law generally incorporates the basic obligations of the ILO's eight core conventions, with the exception of the provisions relating to the freedom of association and the right to collective bargaining.[7] The Chinese government's failure to implement existing labor regulations, however, and the general lack of awareness regarding worker rights among citizens, renders most of the protective aspects of Chinese labor law ineffective. The administrative detention system prescribes forced labor as a punishment for those accused of "minor crimes" [see Section V(b)—Rights of Criminal Suspects and Defendants—Administrative Detention],[8] in contravention of the 1998 Declaration, relevant ILO conventions,[9] and Article 8 of the International Covenant on Civil and Political Rights (ICCPR).[10]

In March 2001, the Chinese government ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which guarantees the right of workers to strike, the right of workers to organize independent unions, the right of trade unions to function freely, the right of trade unions to establish national federations or confederations, and the right of the latter to form or join international trade union organizations. The Chinese government took a reservation to Article 8(1)(a) of the ICESCR, which guarantees workers the right to form free trade unions. The government asserted that application of the article should be consistent with the Chinese Constitution and the Trade Union Law. The Trade Union Law does not allow for the creation of independent trade unions.[11]

Freedom of Association

The Chinese government does not respect the internationally recognized right of workers to organize their own unions. Article 22 of the International Covenant on Civil and Political Rights guarantees that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The All-China Federation of Trade

Unions (ACFTU), a Communist Party-led mass organization, is the only legal labor federation in China. It controls local union branches and aligns worker and union activity with government and Party policy.[12] The Trade Union Law requires the ACFTU to "uphold the leadership of the Communist Party."[13] Wang Zhaoguo, the current ACFTU chairman, is a Politburo member, and the Party, not union members, selected him as ACFTU chairman.[14] Article 10 of the Trade Union Law establishes the ACFTU as the "unified national organization," and Article 11 mandates that all unions must be approved by the next higher-level union body, giving the ACFTU an absolute veto over the establishment of any local union and the legal authority to block the formation of independent workers' associations.[15] Article 15 of the ACFTU constitution stipulates that the establishment of an ACFTU branch in a factory "must be endorsed by its general membership or membership congress."[16] Most workers, however, do not vote in union elections and most officials are appointed to their union posts.[17]

Since 2004, ACFTU and Party officials have made major efforts to expand their control over non-unionized groups of workers. In 2004, the ACFTU announced the target of recruiting 6.6 million workers per year from 2004 to 2008.[18] It also launched a major recruitment drive aimed at migrant workers.[19] Authorities permitted migrant workers to become union members for the first time in 2003, but ACFTU officials announced in 2006 that only 13.8 percent of the total migrant workforce has been "unionized."[20]

The ACFTU began a campaign in March 2006 to establish unions in foreign enterprises doing business in China, including Wal-Mart, Kentucky Fried Chicken, McDonald's, and Samsung.[21] ACFTU officials noted in July that some 60 percent of the 500,000 foreign enterprises in China have not established ACFTU branches,[22] and made the promotion of unions within foreign enterprises a priority for the second half of 2006.[23] ACFTU Chairman Wang Zhaoguo proposed an amendment to the Trade Union Law on July 5 that would specifically require foreign enterprises to establish ACFTU-affiliated unions.[24] ACFTU pressure has led to the creation of some local branches in foreign enterprises doing business in China. In July and August, unions were established in 17 Wal-Mart stores in China.[25] The ACFTU's campaign to establish unions in foreign enterprises followed a March directive issued by top Party leaders ordering the establishment of Party committees and trade unions in foreign enterprises as a means to counter social unrest.[26] Labor experts have noted that the ACFTU's 2006 efforts to expand the number of local branches in foreign enterprises is an effort to respond to declining ACFTU membership, increasing labor protests, efforts by Chinese workers to organize independent unions, and an increase in the percentage of the workforce composed of non-unionized migrant workers.[27]

Some local authorities have experimented with using direct elections to choose the leaders of union branches, but Party authorities and higher-level ACFTU officials retain control over the selection and approval of candidates.[28] ACFTU officials in Hubei province began an experimental program of direct elections for union officials in 2004, and issued a directive in July 2005 to implement the program on a province-wide basis by 2009.[29] The Hubei regulations

provide that higher-level ACFTU officials and Party authorities are responsible for choosing the electoral leadership groups that determine candidate eligibility. These authorities also approve the specific proposals of individual union branches about how to conduct their direct elections.[30]

Chinese workers who attempt to form independent workers' organizations, or whom the government suspects of being leaders of such organizations, risk imprisonment. The government secretly tried labor rights activist Li Wangyang and sentenced him to 10 years' imprisonment in September 2001 for staging a peaceful hunger strike. Li had previously served most of a 13-year sentence for organizing an independent union.[31] In May 2003, the government sentenced labor activist Yao Fuxin to a seven-year prison term for rallying workers to demand payment of wage arrearages and pension benefits from a bankrupt state-owned enterprise in Liaoning province.[32] Yao reportedly suffers from serious medical problems resulting from his imprisonment.[33] Li and Yao remain in prison.

Right to Collective Bargaining

Chinese labor law does not prohibit collective bargaining, but the absence of independent unions to represent worker interests makes the concept of bargaining with employers on behalf of workers incompatible with the Chinese labor system.[34] Trade union officials at the enterprise level function as part of the enterprise management structure for whom, according to three Western and Chinese labor experts, "the idea of representing and protecting the legitimate rights and interests of their members in opposition to those of the employer is something unfamiliar, if not totally alien."[35] Although collective bargaining does not exist, trade union officials are permitted under Article 20 of the Trade Union Law to facilitate a process of "equal consultations" between workers and employers that can result in a "collective contract."[36] The Provisions on Collective Contracts, issued by the Ministry of Labor and Social Security (MOLSS) in January 2004, detail the specific content which may be included, and the procedures for negotiating, such contracts.[37] Once concluded, the collective contract is legally binding on both employer and employees, but the contract generally includes only the "bare-boned reflections of labor statutory minimums," according to one Western scholar.[38] Another group of Western and Chinese academics examining collective contracts and the consultation process concluded in 2004 that trade unions defer to the employer on any contentious issue. Both the union and the employer are reluctant to include any provisions in the collective contract that "might subsequently provide grounds for a grievance or dispute."[39] Collective contracts covered more than 103 million Chinese workers at the end of September 2005, out of a total urban labor force of around 250 million.[40] The majority of collective contracts are not actually negotiated, but rather model agreements endorsed by the employer and union without the direct involvement of workers.[41] In addition, most collective contracts are "single-issue" agreements, usually pertaining to wages, rather than comprehensive agreements covering all aspects of labor relations.[42]

The Chinese labor dispute resolution process does not provide workers with meaningful union support to address workplace griev-

ances. Labor disputes in China are channeled through the government's three-stage labor dispute resolution process: mediation, arbitration, and litigation.[43] Workers enter the first stage of dispute resolution without union representation. Article 80 of the Labor Law designates the union branch chief to serve as chair of the labor dispute mediation committee.[44] As chair, the union official mediates on an equal basis between employer and employee, and does not represent the employee in the dispute. If mediation fails, either party may apply to an arbitration committee for a hearing.[45] The high cost of arbitration discourages workers from applying. According to one National People's Congress (NPC) delegate, labor arbitration typically costs 420 yuan (US$52.39), about half the average monthly wage for Chinese workers.[46] Workers who choose to arbitrate face other obstacles to achieving a fair outcome. Article 81 of the Labor Law designates a "tripartite structure" for the arbitration committee: the employer's representative, the union's representative, and the government's local labor bureau representative, who serves as chair.[47] In effect, the local labor bureau representative, in consultation with two representatives from the enterprise management team, decides how to rule on a worker's complaint.[48]

Chinese authorities currently are experimenting with reforms to the labor dispute resolution system. The Supreme People's Court issued a judicial interpretation on August 14 that allows workers seeking to recover back wages to bypass the labor arbitration process and sue directly in court.[49] Some authorities have supported the creation of arbitration tribunals, which are specialized sub-divisions of arbitration committees, to resolve labor disputes. Chinese news media reports note that the creation of these tribunals is an effort to make arbitration determinations "more neutral" by separating the administrative functions of the arbitration committees from hearing and deciding cases.[50] These tribunals also conduct mediation in addition to their arbitration work. Shenzhen authorities created the first such tribunal in 2001,[51] and the MOLSS reported in May 2006 that Chinese authorities have since established 116 of the tribunals throughout China.[52] Descriptions of the work responsibilities for some of the provincial tribunals emphasize that they should handle "major," "cross-provincial," or "emergency" events, suggesting that the tribunals may be focused on handling specifically designated, high-profile cases.[53]

The courts are the final recourse for resolving labor disputes, pursuant to Article 83 of the Labor Law.[54] The All-China Federation of Trade Unions (ACFTU) reports that there were 300,000 labor-related lawsuits filed in 2005, a 20.5 percent increase over 2004 and a 950 percent increase compared to 1995.[55] Like arbitration, litigation costs are high, which "results in many workers being unable to afford a lawyer or to even bring the case to court," according to one Chinese legal scholar.[56] The scholar recommended in December 2005 to the NPC Standing Committee that the NPC should enact a labor dispute resolution law that would allow courts to hear labor cases with simplified, less expensive procedures that better protect worker rights. The law should include evidentiary rules that do not discriminate against workers, the scholar said.[57] She criticized the current three-stage process for

labor dispute resolution as "more complex than the procedure for resolving regular civil disputes," and recommended that parties to certain types of labor disputes be able to choose to litigate directly without meeting the current precondition that parties first complete arbitration.[58]

Draft Labor Contract Law

The National People's Congress (NPC) circulated a draft of a new Labor Contract Law for public comment in early 2006,[59] the first law that would govern exclusively the establishment, revocation, and termination of labor contracts, and the rights of workers and employees who sign them.[60] During the one-month period for public comment, the NPC received over 190,000 comments, and claimed that over 65 percent of these were submitted by Chinese workers.[61]

Current Chinese law mandates labor contracts, but implementation and enforcement of this mandate have been poor. Chapter 3 of the Labor Law outlines the requirements and procedures for individual and collective labor contracts, and Article 16 mandates labor contracts between workers and employers.[62] A recent NPC survey found that less than 20 percent of small- and medium-size private enterprises use labor contracts.[63] According to a survey published in 2006, 46 percent of migrant workers did not have labor contracts with their employers.[64] Current law is deficient in that the contractual relationship between enterprises and workers hired though labor contractors is not defined. The widespread use of both legal and illegal labor contractors results in numerous cases of non-payment, underpayment, or late payment of wages, especially in the construction sector. Moreover, when labor contractors fail to give contracts to the workers they hire and assign to enterprises, the workers often cannot prove a contractual relationship with the enterprise, which is the principal employer for whom they have performed the work.[65]

The State Council compiled the draft Labor Contract Law for NPC consideration to increase the formation rate for written labor contracts. The draft law provides for a "contractual relationship" in situations where employers do not sign written contracts with their employees,[66] and it standardizes labor contract rules and procedures in a way that "tilts more toward workers," according to an All-China Federation of Trade Unions official.[67] The Ministry of Labor and Social Security began a three-year effort, concurrent with consideration of the draft law, to compel all employers to sign labor contracts with their workers, as required under the existing Labor Law.[68]

Some companies that have complied with Chinese labor contract regulations are concerned that the draft law includes provisions that would be both expensive and cumbersome to business owners,[69] and would take away market-driven flexibility in hiring and firing.[70] These provisions include a requirement that workers receive severance pay if fixed-term contracts expire and are not renewed, and a mandatory payment equaling an employee's annual salary to enforce non-compete agreements.[71]

One article in the Chinese state-controlled media criticized portions of the proposed draft for being too weak, pointing out that it

does not cover part-time workers or students engaged in work-study programs, that it fails to provide definitions for key terms such as "technical" and "non-technical" positions, and that the sanctions it applies on employers who withhold workers' wages in bad faith do not exceed the requirements of existing labor regulations.[72]

ACFTU Role in Protecting Worker Rights

The careers of union leaders are tied to their rank in the Communist Party, and local union officials generally are recruited from enterprise management. This system compromises the ability and willingness of unions to defend worker rights when they conflict with Party or employer interests.[73] Article 6 of the Trade Union Law calls on unions to "represent and safeguard the legitimate rights and interests of workers,"[74] but in practice this directive means that unions help workers only in ways that do not conflict with government and Party policy, such as by managing welfare assistance programs for workers and organizing social events. Some local unions, however, have developed innovative programs to help workers, within the limits of government and Party policy. For example, the Tianjin Trade Union Council has developed new procedures to aid unemployed workers, monitor safety problems and accidents, and resolve employee-employer disputes.[75]

Some national-level All-China Federation of Trade Unions (ACFTU) programs have had a positive impact on worker rights, while also maintaining consistency with government policy goals. ACFTU efforts in the past year to expand the availability of legal aid services to workers, and to improve worker knowledge of the dispute resolution process, are part of the central government's policy responses to Party concerns about growing social unrest[76] [see Section VII(c)—Access to Justice]. According to news media reports from early 2006, nearly 4,000 legal aid offices were established by ACFTU branches in 2005. Provincial branches must establish a legal aid office by the end of 2006, but county branches have three years to do so.[77] In 2005, the Shenzhen Federation of Trade Unions' legal aid efforts included outreach to ensure that workers understand their rights in cases of unlawful discharge, occupational injury, and compensation arrearages.[78] In June 2006, the ACFTU and the State Administration of Work Safety began a program to inspect mining, construction, and manufacturing worksites to ensure safe conditions for migrant workers.[79]

Elimination of Forced Labor

Forced labor is an integral part of the Chinese administrative detention system [see Section V(b)—Rights of Criminal Suspects and Defendants—Administrative Detention]. Authorities sentence some prisoners without judicial review to reeducation through labor (RTL, or *laojiao*) centers, where they are forced to work long hours without pay to fulfill heavy production quotas, and sometimes are tortured for refusing to work.[80] Prisoners in RTL centers have suffered physical injuries from extended periods of repetitive labor, and former prisoners report that fainting from exhaustion is common.[81] The Chinese government continues to deny the International Committee of the Red Cross access to such centers.

China's Labor Law prohibits forced labor practices in the workplace,[82] and authorities have arrested employers who trap workers at forced labor sites. Article 96 of the Labor Law prohibits employers from "compelling workers to work by the use of force, threat or by resorting to the means of restricting personal freedom,"[83] but only specifies light penalties for violators including a warning, fine, or 15 days in custody for the person in charge.[84] Chinese press reports over the past year, however, have described some instances of overseers coercing workers to remain in factories or fields for work without pay, and beating or torturing those who try to escape.[85]

In 2002, the Chinese government began to cooperate with the International Labor Organization (ILO) on broad issues of concern regarding forced labor, including potential reforms to China's RTL system, to prepare for the eventual ratification of the ILO's two conventions on forced labor.[86] Since September 2004, the ILO's Special Action Program to Combat Forced Labor has been working with the Chinese Ministry of Labor and Social Security to improve institutional capacity within China to address the law enforcement aspects of the trafficking cycle, and to assist employers' and workers' organizations in identifying cases of forced labor[87] [see Section V(e)—Status of Women—Human Trafficking].

Prison Labor Products

Section 307 of the Tariff Act of 1930 prohibits the import of goods made by prisoners into the United States.[88] The United States and China signed a Memorandum of Understanding in 1992 to prevent the import into the United States of prison labor products. A subsequent agreement in 1994 permits U.S. officials, with Chinese government permission, to visit prison facilities suspected of producing products for export to the United States.[89] The U.S.-China Relations Act of 2000 created a Prison Labor Task Force to monitor and promote enforcement of U.S. law in this area.[90] In 2005, the Chinese government cooperated with the Task Force to resolve a number of alleged cases of prison labor products being exported to the United States.[91]

Although goods made in Chinese prisons probably do not constitute a large percentage of overall Chinese imports into the United States, the types of products produced by prisoners, and the commercialization of the Chinese prison system, make prison labor products difficult to detect. Many prison labor goods are produced under abusive conditions,[92] and Chinese prisoners cannot refuse to produce goods for the commercial market.[93] Although the term *laogai,* or reform through labor, has been expunged from the Criminal Law as a term describing one form of criminal punishment, Western and Chinese experts estimate the number of commercial prison factories in China to be in the thousands.[94] One senior Chinese official expressed concern in 2004 about the commercial use of prison labor as a source of official corruption, and noted instances of prison administrators mixing prison-made goods with those from ordinary commercial enterprises.[95]

Abolition of Child Labor

The use of child labor in some regions of China is reportedly on the rise, according to analyses over the past year by NGOs with expertise on Chinese labor issues.[96] State-controlled media reported in June that the Ministry of Justice and the Ministry of Labor and Social Security intensified their efforts "to fight illegal employment of child laborers," suggesting that the government is more concerned about such abuses than before.[97] Article 15 of the Labor Law prohibits employing children under the age of 16, and Article 94 provides for punishment of businesses that employ children, including revocation of their business licenses.[98] Chinese law bars employers from hiring juvenile workers between 16 and 18 years old to engage in mining, or highly strenuous or hazardous work, and requires employers to provide such workers with regular health inspections.[99] The State Council issued a rule in September 2002 requiring employers to check identity cards to verify age, and imposing fines of 5,000 yuan (US$625) a month for each child laborer employed.[100] Government authorities consider statistics on child labor that have not been officially approved for release to be state secrets, and this policy thwarts efforts to understand the extent and causes of the problem.[101]

Labor shortages in the economically developed southern and eastern coastal provinces are causing employers to turn to child laborers, according to NGO reports.[102] Hong Kong news media has reported on employers who exploit child labor by recruiting underage students to work in factories as "interns." In one press report, teachers at a school in Shaanxi province arranged for about 600 students to be employed in a joint venture electronics factory in southern China. At the time of the report, more than 240 students were working on the factory's assembly lines for up to 14 hours a day of "practical training."[103] Although factory owners may legally employ interns, employers abuse internship programs when they rely on students as a large percentage of their workforce and do not pay them fairly for work performed, according to one publication on corporate social responsibility issues in China.[104]

Hong Kong based experts have asserted that the Chinese education system is partly to blame for the problem of child labor because insufficient state funding, expensive local surcharges, and an excessive focus on college entrance exams leads many students to drop out of school.[105] Poverty also leads to child labor abuses. Some poor families send children, frequently girls, to find work as a means of support.[106] Other children work because their families cannot afford to pay school tuition fees, or because schools have hired them out to fill budget shortfalls.[107]

Non-discrimination in Employment and Occupation

The Constitution, Labor Law, and Law on the Protection of Interests and Rights of Women all contain provisions that guarantee women non-discrimination in employment and occupation[108] [see Section V(e)—Status of Women]. The Rules on Collective Contracts issued in December 2003 contain "special protections" for women, including provisions on pregnancy and breastfeeding in the workplace.[109] The Chinese government has also begun national development programs to improve the status of women.[110] Despite these

efforts and legal protections, both urban and rural women in China have limited earning power compared to men, and women lag behind men in finding employment in higher-wage urban areas.[111]

Some local authorities provide job training and reemployment services for women,[112] and civil society groups may advocate for women's rights within the confines of government and Party policy [see Section V(e)—Status of Women—Gender Disparities]. For example, the Center for Women's Law and Legal Services at Peking University submitted a petition in March 2006 to the National People's Congress (NPC) Standing Committee requesting constitutional review of a regulation that requires women workers to retire five years before men.[113] The petition recommended that a future Chinese Pension Law include a provision for a flexible retirement system that allows both men and women to retire at or around 60 years of age.[114] As of August 2006, the NPC Standing Committee had not responded to the petition,[115] and it has no legal obligation to do so [see Section VII(c)—Access to Justice—Constitutional Review].

Article 4 of the Chinese Constitution prohibits ethnic discrimination,[116] and Article 12 of the Labor Law forbids discrimination in job hiring on the basis of ethnicity.[117] Nevertheless, ethnic discrimination continues to exist throughout China in both private and governmental hiring practices. Some Han Chinese entrepreneurs in ethnic minority areas recruit Han workers from other areas rather than hiring local minorities.[118] Tibetans have reported discrimination in job hiring.[119] According to the head of the Qinghai-Tibet railway construction project, 10,000 of 100,000 workers employed were Tibetan,[120] and most of the Tibetan workers were employed in menial labor positions.[121] In the Xinjiang Uighur Autonomous Region (XUAR), personnel decisions in 2005 and 2006 explicitly favored Han Chinese over minorities. In April 2005, for example, the government specified that 500 of 700 new civil service positions in the southern XUAR would be reserved for Han Chinese.[122] In June 2006, the Xinjiang Production and Construction Corps announced it would recruit 840 civil servants from the XUAR, designating almost all of the job openings for Han Chinese and reserving 38 positions for members of specified minority groups.[123]

Conditions for China's Workers

Weak protection of worker rights has contributed to an increase in the number of labor disputes and protests. According to All-China Federation of Trade Unions (ACFTU) figures, the number of labor disputes rose sharply in 2005. The ACFTU reports that there were 300,000 labor-related lawsuits filed, a 20.5 percent increase over 2004 and a 950 percent increase compared to 1995.[124] Strikes, marches, demonstrations, and collective petitions increased from 1,482 in 1994 to about 11,000 in 2003, while the number of workers involved increased from 52,637 in 1994 to an estimated 515,000 in 2003.[125] Participants in all labor disputes rose from 77,794 in 1994 to nearly 800,000 in 2003.[126] Poor workplace health and safety conditions and continuing wage and pension arrearages were the most prominent issues resulting in labor disputes during the past year. Workers in all parts of China have difficulty collecting the wages

that they are owed for work performed. Workers in the construction sector have the most problems with wage arrearages,[127] and the continuing building boom, along with new construction for the 2008 Olympics in Beijing, will challenge central and local governments to ensure that workers are paid promptly.

Workplace Health and Safety Conditions

Workplace health and safety conditions in China remain poor, despite central government statements about the need to improve safety and despite efforts at the enterprise level to cut the rate of industrial accidents. Chinese industry continues to have a high accident rate, with death rates in the mining and construction industries leading other sectors. According to State Administration of Work Safety (SAWS) statistics, 110,027 people were killed in 677,379 workplace accidents through December 2005, and more than 10,000 workers died in the mining and construction sectors during 2005.[128]

The government has continued to take steps to address China's poor workplace safety record. In February 2006, SAWS ordered the closure of 35,842 companies that failed to meet a requirement to obtain safety licenses by the end of 2005, warning that it would ensure compliance by cutting off electric power to the companies' facilities.[129] SAWS also announced in February 2006 that the government is drafting legislation that would hold top provincial and city government and Party officials responsible for fatal accidents that result from lapses in workplace safety.[130] Criminal Law amendments passed in June 2006 strengthen punishments for work safety violation, including new penalties for personnel who hinder rescue efforts by covering up or failing to report accidents.[131] In July, the government ratified a safety plan for the 11th Five-Year Program aimed at addressing major problems in workplace safety.[132] In August, the government announced it would dedicate 467.4 billion yuan (US$58.81 billion) over the next five years to curb workplace accidents.[133]

The Ministry of Health implemented a plan in May 2006 to improve rural migrant worker health that includes a number of goals for improving workplace health and safety conditions for migrant workers. These goals include implementing health and safety training and instruction programs in mid- and small-scale businesses, and undertaking collaborative efforts with the World Health Organization and the International Labor Organization.[134] Many migrant workers are employed in industries in which they are exposed to occupational diseases and other workplace safety hazards, according to an expert with the Chinese Center for Disease Control.[135]

Occupational Health

Occupational diseases and injuries are widespread in many Chinese industries. Estimates of the incidence rate of occupational diseases and injuries caused by chemicals, toxic fumes, and machinery vary and are difficult to confirm. For example, one Chinese press report estimates that 200 million workers suffer from occupational diseases.[136] The SAWS officials who provided the estimate note that the number of workers suffering from occupational dis-

eases is increasing, and describe the victims as mostly younger, poor workers.[137]

Coal Mine Safety

Deaths in the coal mining sector totaled 5,938 in 2005, according to official Chinese statistics,[138] but some NGOs estimate that the number of deaths is much higher.[139] A political scientist at the Chinese Academy of Social Sciences offered the view that "China is so hungry for energy that safe coal produced by safe mines is not enough to quench its thirst."[140] Press reports suggest that Chinese coal mines are the world's deadliest.[141] Fires, explosions, and floods occur in Chinese mines almost daily.[142] The government has set the modest goal of reducing coal mine deaths during 2006 by 3.5 percent, but one workplace safety activist believes that "even this will take a great effort to realize."[143]

Chinese officials have ordered the closure of dangerous mines, most of which are small, privately run mines, in an attempt to control the number of coal mine accidents.[144] Small mines produce one-third of China's coal output, but are responsible for two-thirds of coal mine deaths.[145] The government deems mines that produce under 30,000 tons per year as most vulnerable to accidents, and intends to close all such mines by the end of 2007.[146] Most of these small mines are expected to merge administratively with larger mines with better safety records.[147]

Pervasive official corruption impedes implementation of coal mine safety programs. Local officials often receive income from mines, and therefore are reluctant to enforce safety regulations that will affect production.[148] In an August 2005 circular, the State Council ordered the managers of state-owned enterprises and government officials to divest themselves of all financial interests in coal mines other than stock of publicly listed companies.[149] By January 2006, official news media reported that more than 7,000 officials had given up investments in coal mines.[150]

The government has prosecuted officials responsible for serious coal mine disasters. A December 2005 State Administration of Work Safety announcement described the prosecution and punishment of over 200 officials involved in six large coal mine disasters in 2004.[151]

Wages

Article 8 of the Provisions on Minimum Wages, issued by the Ministry of Labor and Social Security (MOLSS) in January 2004, charges provincial MOLSS authorities with drafting minimum wage rules in cooperation with provincial-level unions and industrial associations.[152] In July 2006, the Shenzhen Special Economic Zone, which is not a provincial-level government, raised its minimum wage to 810 yuan per month (US$101).[153] The previous minimum wage rate in Shenzhen had been the same as Jiangsu province and Shanghai municipality: 690 yuan per month (US$86).[154] At the lower end of the minimum wage scale are Gansu province at 340 yuan per month (US$43) and Jiangxi and Jilin provinces at 360 yuan per month (US$45).[155]

Provincial governments in China are reluctant to review their minimum wage levels every two years, even though the 2004 provi-

sions require it.[156] In March 2006, at least four provincial governments were out of compliance with the two-year rule, according to the MOLSS.[157] Official news media suggests that provincial officials fear that higher minimum wages will force companies to relocate manufacturing facilities to provinces where wages are lower.[158] A Xinhua editorial recommended that the central government develop a more clearly defined method to determine that the minimum wage is not artificially low, and monitor how local governments apply this method. An All-China Federation of Trade Unions official said in May that the minimum wage levels set by most provincial-level governments did not meet national guidelines."[159]

Wage Arrearages

Employers illegally withhold or refuse to pay wages earned by millions of Chinese workers.[160] Employers owe millions of migrant workers more than US$12 billion in unpaid wages, a problem that is particularly acute in the construction industry, which employs many migrant workers.[161] Some employers make only minimal wage payments through the year in addition to providing room and board. Others withhold payments over the New Year holiday as a means of compelling workers to return.[162] A State Council report estimates that employers do not pay about half of migrant workers on time.[163]

Despite central government pledges beginning in 2003 to clear up wage arrearages for migrant workers in the construction sector, the problem persists. In some cases where the government has reported success in clearing arrearages, the workers have, in fact, accepted less than full pay in order to get any cash at all. Many wage arrearages also go unreported, and new arrearages continue to accumulate, despite the creation of programs to discourage them.[164]

Some local governments have taken steps to help workers recover wages. In February 2006, the Shenzhen Labor and Social Security Bureau sanctioned 1,300 companies and imposed 47 million yuan (US$5.8 million) in fines for not paying wages owed to workers. The Bureau reclaimed about 70 million yuan (US$8.6 million) in unpaid wages.[165] Since July 2006, employers in Shaanxi province who have not met time limits set by the provincial government for paying back wages have been subject to fines totaling 50 to 100 percent of the arrearages.[166] In 2005, the Guangdong Provincial Labor and Social Security Bureau began posting the names of companies that continued to default on wages after "repeated education, warnings, or even heavy punishments."[167] Although these programs are positive developments, they have not been highly successful.[168]

Benefits

Employers in China rarely comply with laws and regulations on benefits.[169] In one 2004 study, a Western auditing firm found that only 5 of 80 Chinese factories surveyed were in compliance with benefits laws.[170] Compliance problems included failure to grant workers paid vacations and failure to enroll workers in the social security system (including pensions).[171] Companies also have failed to provide workers with medical benefits, including treatment for

workplace injuries and maternity benefits.[172] Some employers circumvent their obligation to provide benefits by refusing to sign labor contracts.[173]

The State Council adopted a decision on basic old-age insurance in December 2005 with the stated goal of shifting Chinese pensions from an enterprise-based system to a market-oriented system with personal accounts.[174] The decision also seeks to address the underfunding of personal accounts, guarantee the short-term availability of pension funds, and expand coverage of the funds.[175] One U.S. expert said, "For this patchwork [of pensions], covering perhaps a sixth of the total Chinese workforce, the net present value of unfunded liabilities is estimated to exceed current GDP—perhaps substantially."[176] Problems in the pension system spurred large-scale worker protests in 2005 and 2006.[177]

The government announced plans in 2006 to expand coverage of on-the-job injury insurance to 140 million people by 2010[178] and said it would take compulsory measures to promote employer participation.[179] As of April 2006, 87 million workers were covered, the government reported.[180] In June, the Shanxi province government announced that all employers must provide injury insurance to migrant workers.[181] By the end of July 2006, 18.7 million migrant workers nationwide had such insurance, according to government figures.[182]

U.S.-China Bilateral Programs

The U.S. Department of Labor (DOL) and two Chinese government agencies continued to conduct cooperative activities during 2006 on wage and hour laws, occupational safety and health, mine safety and health, and pension program oversight.[183] The DOL-sponsored mine safety program provided training to 55 Chinese mine managers and over 400 miners. Under the Labor Law Cooperation Project, four legislative drafters participated in internship programs in the United States to learn about legislative and labor law systems and enforcement practices. The project also produced information, education, and communication materials on labor law that were distributed to tens of thousands of Chinese workers. Under the project, 2,437 migrant workers received labor law training, 380 workers received counseling services, and 24 were provided with legal assistance.[184]

The DOL, in cooperation with central and local Chinese government agencies, completed five baseline surveys on labor dispute resolution that served as references for drafting a new Dispute Resolution Law, scheduled for consideration in August 2006. In addition, the Project selected 15 diverse enterprises (including joint venture, foreign-owned, state-owned, small, medium, and large enterprises) to participate in a pilot project to improve labor relations. Training for some 80 individuals began in April 2006 to establish and operate in-plant labor-management committees. Trainees include officials from district labor dispute tribunals, company human resource directors, and workers from the enterprises.[185]

Migrant Workers

Official statistics suggest 120 million rural migrants worked in China's urban cities in 2005.[186] These migrant workers often face

discrimination and violations of their legal rights. Over 81 percent of rural migrant workers currently work outside of their place of residence for more than six months out of the year, an increase of 6.4 percent compared to 2002, according to a State Council research report.[187] Since many local regulations limit the ability of poor migrants to obtain local *hukou* (household registration) in the urban areas where they live and work, migrant workers are often unable to obtain public services such as health insurance and education for their children on an equal basis with urban residents [see Section V(i)—Freedom of Residence and Travel].

Migrant workers also frequently have difficulties protecting their legal rights under China's labor laws. Fewer than 54 percent of rural migrant workers have signed labor contracts with their employers. Excessive work hours and unpaid wages are common problems.[188] Over 35 percent of rural migrant workers report "sometimes" having difficulty being paid on time, while nearly 16 percent say they "frequently" have problems being paid.[189] Seventy-six percent of migrant workers report that they have not received overtime pay owed to them.[190]

Chinese authorities have attempted to address the problems of migrant workers. The Ministry of Health announced a plan in May 2006 to improve the health of rural migrant workers. The plan includes goals for preventing and controlling the spread of HIV/AIDS among rural migrants, improving infectious disease monitoring capabilities in large urban areas with migrant workers, as well as improving workplace health and safety conditions for migrant workers.[191] The central government has also included in its 2006 rural development campaign for a "new socialist countryside" such components as reform of the *hukou* system, protection of the legal rights of migrant workers, and the elimination of discriminatory regulations that restrict urban job opportunities for migrants.[192] In 2005, both Beijing municipal authorities and national Ministry of Labor and Social Security officials eliminated rules that limit employment in cities for migrants.[193] Chinese authorities also have called for creating better mechanisms for addressing workers' claims for unpaid wages and for expanding workers' compensation insurance programs to cover migrants.[194] The State Council's research report on migrant workers notes that despite central government policies regarding the abolition of discriminatory permits and fees for rural migrant workers, "the phenomenon of illegal charges continues to exist" in some areas.[195]

V(d) Freedom of Religion

FINDINGS

- Chinese government restrictions on the practice of religion violate international human rights standards. Freedom of religious belief is protected by the Chinese Constitution and laws, but government implementation of Communist Party policy on religion, and restrictions elsewhere in domestic law, violate these guarantees. The Chinese government tolerates some aspects of religious belief and practice, but only under a strict regulatory framework that represses religious and spiritual activities falling outside the scope of Party-sanctioned practice.

Religious organizations are required to register with the government and submit to the leadership of "patriotic religious associations" created by the Party to lead each of China's five recognized religions: Buddhism, Catholicism, Daoism, Islam, and Protestantism. Those who choose not to register with the government, or groups that the government refuses to register, operate outside the zone of protected religious activity and risk harassment, detention, imprisonment, and other abuses. Registered communities also risk such abuse if they engage in religious activities that authorities deem a threat to Party authority or legitimacy.

• The 2004 Regulation on Religious Affairs (RRA) has not afforded greater religious freedom to Chinese citizens, despite government claims that it represented a "paradigm shift" by limiting state control over religion. Like earlier local and national regulations on religion, the RRA emphasizes government control and restrictions on religion. The RRA articulates general protection only for freedom of "religious belief," but not for expressions of religious belief. Like earlier regulations, it also protects only those religious activities deemed "normal," without defining this term. Although the RRA includes provisions that permit registered religious organizations to select leaders, publish materials, and engage in other affairs, many provisions are conditioned on government approval and oversight of religious activities.

• Chinese government enforcement of Party policy on religion creates a repressive environment for the practice of Tibetan Buddhism. Party policies toward the Dalai Lama and Panchen Lama, the second-ranking Tibetan spiritual leader, seek to control the fundamental religious convictions of Tibetan Buddhists. Government actions to implement Party policies caused further deterioration in some aspects of religious freedom for Tibetan Buddhists in the past year. Officials began a patriotic education campaign in Lhasa-area monasteries and nunneries in April 2005. Expressions of resentment by Tibetan monks and nuns against the continuing campaign resulted in detentions, expulsions, and an apparent suicide. Chinese officials continue to hold Gedun Choekyi Nyima, the boy the Dalai Lama recognized as the Panchen Lama in May 1995, in incommunicado custody along with his parents.

• Tibetan Buddhist monks and nuns constituted 21 of the 24 known political detentions of Tibetans by Chinese authorities in 2005, compared to 8 of the 15 such known detentions in 2004, based on data available in the Commission's Political Prisoner Database. None of the known detentions of monks and nuns in 2005 took place in Sichuan province, a shift from the previous three years, but known detentions of monks and nuns in Qinghai and Gansu provinces increased during the same period. Based on data available for 50 currently imprisoned Tibetan monks and nuns, their average sentence length is approximately nine years and six months. In one positive development, the government permitted the resumption of a centuries-old Tibetan Buddhist tradition of advanced study that

leads to the highest level of scholarly attainment in the Gelug tradition.

• Government repression of unregistered Catholic clerics increased in the past year. Based on NGO reports, officials in Hebei and Zhejiang provinces detained a total of 38 unregistered clerics in 13 incidents in the last year, while in the previous year officials detained 11 clerics in 5 incidents. The government targets Catholic bishops who lead large unregistered communities for the most severe punishment. Bishop Jia Zhiguo, the unregistered bishop of Zhengding diocese in Hebei province, has spent most of the past year in detention. Bishop Jia has been detained at least eight times since 2004.

• Government harassment and abuse of registered Catholic clerics also increased in the past year. In November and December 2005, three incidents were reported in which officials or unidentified assailants beat registered Catholic nuns or priests after they demanded the return of church property. In April and May 2006, officials began a campaign to increase control over registered Catholic bishops. Officials detained, sequestered, threatened, or exerted pressure on dozens of registered Catholic clerics to coerce them into participating in the consecration of bishops selected by the state-controlled Catholic Patriotic Association but not approved by the Holy See.

• Government authorities also restricted contact between registered clergy and the Holy See, denying bishops permission to travel to Rome in September 2005 to participate in a meeting of Catholic bishops. Authorities continued to permit some registered priests and nuns to study abroad.

• The Chinese government strictly controls the practice of Islam. The state-controlled Islamic Association of China aligns Islamic practice to Party goals by directing the training and confirmation of religious leaders, the publication of religious materials, the content of sermons, and the organization of Hajj pilgrimages, as well as by indoctrinating religious leaders and adherents in Party ideology and government policy.

• The government severely represses Islamic practice in the Xinjiang Uighur Autonomous Region (XUAR), especially among the Uighur ethnic group. Local regulations in the XUAR impose restrictions on religion that are not found in other parts of China. The government's religious repression in the XUAR is part of a broader policy aimed at diluting expressions of Uighur identity and tightening government control in the region. The government continues to imprison Uighurs who engage in peaceful expressions of dissent and other non-violent activities. Writer Nurmemet Yasin and historian Tohti Tunyaz remain in prison for writing a short story and conducting research on the XUAR.

• The Chinese government continues to repress Chinese Protestants who worship in house churches. From May 2005 to May 2006, the government detained nearly 2,000 house church members, according to one U.S. NGO. Almost 50 percent of the reported detentions of Protestant house church members and leaders took place in Henan province, where the house church movement is particularly strong. In June 2006, Pastor Zhang

Rongliang, the leader of one of China's largest house churches, was sentenced to seven years and six months in prison for "illegally crossing the national border" and "fraudulently obtaining a passport." Authorities have detained or imprisoned Pastor Zhang multiple times since 1976. Pastor Gong Shengliang is serving a life sentence in declining health, and was beaten in prison during the past year.

• The Chinese government continues to maintain strict control over the registered Protestant church. The RRA requires that all Protestants worship at registered churches, regardless of their differences in doctrine and liturgy. The state-controlled Three-Self Patriotic Movement, which leads the registered Protestant church in China, continues to impose a Party-defined theology, called "theological construction," on registered seminaries that is intended to "weaken those aspects within Christian faith that do not conform with the socialist society." In the past year, authorities detained a registered Protestant pastor in Henan province for conducting a Bible study meeting at a registered Protestant church outside his designated geographic area.

• The Chinese government continues to disrupt the relationships that many house churches maintain with co-religionists outside China, including raiding meetings between house church leaders and overseas Protestants, and preventing foreign travel by house church leaders. The Chinese government also continues to restrict and monitor the ties of the registered Protestant Church with foreign denominations.

• Government persecution of the Falun Gong spiritual movement continued during the past year. Authorities use both criminal and administrative punishments to punish Falun Gong practitioners for peacefully exercising their spiritual beliefs. The state-controlled press has reported on at least 149 cases of Falun Gong practitioners currently in prison, but Falun Gong sources estimate that up to 100,000 practitioners have been detained since 1999. Manfred Nowak, UN Special Rapporteur on Torture, reported after his November 2005 visit to China that Falun Gong practitioners account for two-thirds of victims of alleged torture by Chinese law enforcement officers. Tsinghua University student Wang Xin was sentenced to nine years' imprisonment in 2001 for downloading Falun Gong materials from the Internet and printing leaflets.

• Despite strict government controls on the practice of religion, Chinese authorities accommodate the social programs of Buddhist, Daoist, Catholic, Muslim, and Protestant communities when these programs support Party goals. For example, domestic Muslim civil society organizations carry out social welfare projects, and international Muslim charities have supported projects in Gansu and Shaanxi provinces, as well as in the XUAR. The Amity Foundation, affiliated with the registered Protestant Church, sponsors projects in social services and development aid, including education, healthcare, and care for the elderly.

Introduction

Chinese government restrictions on the practice of religion violate international human rights standards.[1] Freedom of religious belief is protected by the Chinese Constitution[2] and laws,[3] but government implementation of Communist Party policy on religion, and restrictions elsewhere in domestic law, violate these guarantees. Although Party doctrine acknowledges the presence of religion in Chinese society, the Party's central tenets remain at odds with religion.[4] The Party promotes atheism among Chinese citizens, and has continued efforts to dismiss religious believers from its ranks.[5]

The government acknowledges only five belief systems as religions entitled to legal protection: Buddhism, Catholicism, Daoism, Islam, and Protestantism. While the State Administration for Religious Affairs (SARA) has established an office to oversee religions and folk beliefs other than these five,[6] legal protections are restricted to these five in practice,[7] with only limited exceptions.[8] Some local regulations also restrict legal protections to these five religions.[9] Religious organizations affiliated with recognized religions must register with the government and apply for government approval to establish churches, mosques, temples, or other religious venues. The government claims that citizens do not need official approval to conduct worship services in private homes "mainly attended by relatives and friends for religious activities such as praying and Bible reading,"[10] but no national law or regulation specifically protects worship at home,[11] and authorities have shut down services held in private homes.[12]

The Chinese government tolerates some aspects of religious belief and practice, but only under a strict regulatory framework that represses religious and spiritual activities falling outside the scope of Party-sanctioned practice. The government's policies create a hierarchy of religious communities subject to different forms of government control. The government and Party exercise control over registered religious communities through the "patriotic religious associations" created by the Party to lead each recognized religion.[13] The patriotic associations ensure that religious doctrine conforms to state policy by controlling such matters as the training of religious leaders, contacts with religious groups outside China, the interpretation of religious texts, the content of sermons, and the publication of religious materials.[14] Despite such controls, a visiting delegation from the U.S. Commission on International Religious Freedom found that the government nonetheless provides a "zone of toleration" for registered religious communities acting within the parameters set by the government.[15] Religious adherents also have reported being able to worship in authorized venues without direct government interference.[16] Those who choose not to register with the government, or groups that the government refuses to register, operate outside the zone of protected religious activity and risk harassment, detention, imprisonment, and other abuses. Members of approved organizations also risk harassment, detention, imprisonment, and other abuses if they engage in religious activities that authorities deem a threat to Party authority or legitimacy.

Legal protections for freedom of religion are narrow. By stating only that "religious belief" is under constitutional protection,[17] the

Constitution does not broadly protect the exercise of religion, including public expressions of belief. Instead, the Constitution and Chinese laws and regulations provide protection only for "normal religious activity." Laws and regulations do not clearly define what constitutes "normal religious activity," and this vague term is subject to arbitrary interpretation by implementing officials.[18]

Officials interpret and implement domestic laws and policies on religion inconsistently, resulting in uncertainty among religious believers about potential government actions. Such inconsistencies have led to additional restrictions in practice beyond those specified in law. In some cases, regional variations in implementation have resulted in more official tolerance for religion, and in unregistered groups being allowed to operate.[19] In a few cases, local authorities have registered groups affiliated with a religion not recognized by the central government, as well as groups that are part of a recognized religion but have not affiliated with a patriotic religious association.[20] In other cases, however, variations in implementation have resulted in official abuses and repression of religious activities.

Although the SARA acknowledges and manages some "folk" beliefs, the government does not give them the same protections as recognized religions, despite widespread practice throughout China. The government tolerates some practices associated with "folk" religions,[21] but also designates some other popular practices as "feudal superstitions," which it denounces and in some cases penalizes.[22]

The government does not recognize spiritual movements as belief systems protected under the law, and in some cases, the government persecutes practitioners. The government designates some spiritual movements, such as the Falun Gong, as "cults" and applies criminal and administrative punishments against them.[23] In 2006, the government continued its campaign of persecution against Falun Gong members.

Foreign residents or visitors may conduct worship services for foreign members of their own religious communities,[24] and foreign faith-based NGOs operate in China.[25] National rules governing foreigners' religious activities forbid them, however, from "cultivating followers from among Chinese citizens," distributing "religious propaganda materials," and carrying out other missionary activities.[26]

Regulation on Religious Affairs

The 2004 Regulation on Religious Affairs (RRA)[27] has not afforded greater religious freedom to Chinese citizens, despite government claims that it represented a "paradigm shift" by limiting state control over religion.[28] Like earlier local and national regulations on religion,[29] the RRA emphasizes government control and restrictions on religion. The RRA articulates general protection only for freedom of "religious belief,"[30] but not for expressions of belief. Like earlier regulations, it also protects only those religious activities deemed "normal,"[31] without defining this term. Although the RRA includes provisions that permit registered religious organizations to select leaders, publish materials, and engage in other affairs, many provisions are conditioned on government approval and oversight of religious activities.[32]

Party doctrine guides implementation of the RRA. The Party's United Front Work Department continues to administer religious matters alongside the government's religious affairs bureaus,[33] and in doing so, ensures that the RRA is implemented in line with Party directives. During 2006, local authorities cited Party policy as a guiding influence when addressing religious issues and implementing the RRA.[34]

The RRA and related regulations[35] subject religious communities to onerous and arbitrary registration requirements that give the government discretion to deny recognition to religious communities. Like earlier regulations,[36] the RRA requires religious groups to apply for approval from the government to operate as an organization or to establish a venue for religious activities.[37] Among other requirements, a group must have 50 or more members to apply for recognition as an official organization.[38] Once recognized, religious organizations must fulfill conditions such as demonstrating a "necessity to frequently carry out collective religious activities" to gain permission to build a venue for religious activities.[39]

The RRA's protections for religious activities are limited. Although the RRA states that it protects the "lawful rights and interests" of religious believers, it does not specifically protect individual public displays of religious belief, which is a protected component of religious freedom under international human rights standards.[40] In addition, it requires collective religious activities "in general" to be conducted at registered venues[41] and does not specify that religious believers or religious members of a family may practice a religion within their own homes, although some local regulations appear to permit this practice.[42]

International human rights standards define freedom of religion to include the "freedom to prepare and distribute religious texts or publications."[43] While the RRA provides that authorized religious organizations and venues may compile and print materials for internal and public distribution, the RRA requires such publications to be prepared in accordance with national regulations.[44] The Chinese government imposes strict prior restraints on religious literature in national regulations that go beyond restrictions on other types of publications[45] [see Section V(a)—Special Focus for 2006: Freedom of Expression].

The RRA provides for government oversight of the appointment of religious personnel. Although the RRA permits authorized religious organizations to select religious personnel, it requires them, in most cases, to report this selection to the local religious affairs bureau.[46] In addition, the RRA singles out the appointment of reincarnated Tibetan Buddhist lamas and Catholic bishops for reporting to higher levels of government, and in the case of reincarnated Tibetan Buddhist lamas, appointments require government approval.[47]

The RRA provides administrative penalties, ranging from fines to the possibility of administrative detention, for violations of its provisions.[48] While it sanctions government officials who abuse their authority when administering religious policy,[49] it is unclear whether this provision protects unregistered organizations and venues that lack legal standing. The RRA directs most of its provisions on legal liability at ordinary citizens, religious organizations,

or venues that violate its provisions.[50] Some of the RRA's penalties are absent in earlier regulations. For example, the RRA for the first time proscribes Hajj pilgrimages that are organized without government authorization and subjects violators to fines.[51]

The RRA also represents a codification, and in some cases expansion, of limited protections for authorized religion found in older regulations on religion. For example, the RRA permits registered religious organizations and venues to engage in social welfare activities, as earlier local regulations have allowed.[52] It also permits registered religious organizations and venues to accept contributions from abroad,[53] while previous regulations have not granted this permission in such explicit terms.[54] The RRA specifies time limits for decisionmaking by government agencies, and permits administrative appeal of actions and decisions by religious affairs bureaus.[55]

At the same time, the RRA lacks some of the restrictions found in earlier regulations. For example, the RRA does not specify that only the five recognized religions are protected, and does not reinforce the authority of patriotic religious associations by naming them, as in the case of some local regulations.[56] Some observers suggest that the omission of previous controls, coupled with vague language within the RRA, may signify more tolerance toward religion.[57] Without further clarification, however, such omissions and wording do not grant new rights. Moreover, the RRA's vague language, including the lack of a definition of "normal religious activity," generates inconsistent interpretations not only in the implementation of the RRA itself but also in the drafting of new local regulations.

The RRA does not mention the status of local regulations.[58] Since the RRA entered into force, however, at least six provincial-level governments have issued new or amended comprehensive regulations on religion. These regulations are generally consistent with the RRA with respect to provisions on establishing religious organizations and venues,[59] but differ in other areas. For example, a new regulation from Henan province restricts the term "religion" to Buddhism, Daoism, Islam, Catholicism, and Protestantism.[60] In April 2005, the Shanghai municipal government amended its 1995 regulation on religious affairs to remove a previous reference to the five recognized religions.[61] All of the new and amended regulations appear to provide citizens with a degree of permission to practice an authorized religion at home, but the wording of each regulation on this issue varies.[62] The amended Shanghai regulation expands its previous section on legal liability, increasing both penalties and protections for religious believers;[63] the Henan regulation contains the most detailed provision on the liability of government officials.[64]

Other Developments

In December 2005, the government announced the establishment of the China Religious Culture Communication Association (CRCCA), which it described as a non-profit social organization designed to promote religious exchanges, cooperation with other countries, and the dissemination of information about religion in China. Ye Xiaowen, Director of the State Administration for Religious Affairs (SARA), leads the association. CRCCA honorary chairman

Bishop Fu Tieshan, Vice Chairman of the Standing Committee of the National People's Congress and Chairman of the Catholic Patriotic Association, called the association's establishment "beneficial for accurately publicizing China's policies on freedom of religious belief and the real state of affairs for religious belief." [65]

The government adopted measures during 2005 that provide freer access to information on religious regulations and to religious sites that charge admission. The SARA launched a Web site on December 1, 2005, that posts religion-related news and regulations, bringing greater transparency to the administration of religious affairs.[66] The government also issued a circular in December 2005 requiring that religious sites charging admission to tourists must provide free entrance to religious adherents, although Chinese journalists investigating the circular in January 2006 found that implementation was inconsistent.[67]

Religious Freedom for Tibetan Buddhists

Chinese government enforcement of Communist Party policy on religion creates a repressive environment for the practice of Tibetan Buddhism. The Party tolerates religious activity only within the strict requirements of the Chinese Constitution, laws, regulations, and policies.[68] The government interprets and enforces these requirements in a manner that interferes with the Tibetan Buddhist monastic education system and discourages devotion to the Dalai Lama and other important Tibetan Buddhist teachers who live in exile.[69]

Party polices toward the Dalai Lama and Panchen Lama, the second-ranking Tibetan spiritual leader, seek to control the fundamental religious convictions of Tibetan Buddhists. Government actions to implement Party policies caused further deterioration in some aspects of religious freedom for Tibetan Buddhists during the past year. Officials began a patriotic education campaign in Lhasa-area monasteries and nunneries in April 2005.[70] The Chinese government and the Party mandate patriotic education as a recurrent feature of religious education to indoctrinate Tibetans on the relationship between religion and patriotism toward China, and to end the Dalai Lama's influence among Tibetans. Monks and nuns must pass examinations on political texts,[71] agree that Tibet is historically a part of China, accept the legitimacy of the Panchen Lama installed by the Chinese government, and denounce the Dalai Lama.

In May 2006, Zhang Qingli,[72] Secretary of the Tibet Autonomous Region (TAR) Party Committee, called on senior government and Party officials to widen the patriotic education campaign to include a broader population, and to intensify the "rectification" and restructuring of each monastery and nunnery's Democratic Management Committee (DMC),[73] according to the TAR Party newspaper.[74] Zhang told the officials that the Party is engaged in a "fight to the death struggle" against the Dalai Lama and his supporters, and that the Dalai Lama is "the biggest obstacle hindering Tibetan Buddhism from establishing normal order." Comprehensive implementation of the Regulation on Religious Affairs (RRA)[75] will lead to the "normalization of religious order" and the "standardization of religious activity," Zhang said. Li Guangwen, Executive Vice

Chairman of the TAR People's Congress Standing Committee, stressed "the need to step up legislative work in the area of the anti-separatism struggle and the management of religious affairs"[76] at a meeting of Standing Committee members, probably in early June. In August, Zhang confirmed the Party's plans to broaden patriotic education in an interview with Western media: "We are organizing patriotic education everywhere, not just in monasteries. Those who do not love their country are not qualified to be human beings."[77]

Expressions of resentment by Tibetan monks and nuns against the continuing campaign resulted in detentions, expulsions, and an apparent suicide. At Sera Monastery, when monks were to be tested on patriotic education in July 2005, officials reportedly expelled 18 monks, of whom police detained 8.[78] At about the same time, public security officials detained monk Tsering Dondrub and subjected Jangchub Gyaltsen, a Sera "disciplinarian,"[79] to one year of surveillance[80] for their roles in arranging an oral reading of a prayer that mentioned the Dalai Lama.[81] Drepung Monastery monk Ngawang Jangchub apparently committed suicide in October 2005, after he argued with patriotic education instructors.[82] Public security officials detained five Drepung monks (Abbot Ngawang Phelgyal, Ngawang Namdrol, Ngawang Nyingpo, Ngawang Thubten, and Phuntsog Thubwang) on November 23 after they refused instructions from patriotic education instructors to sign a document denouncing the Dalai Lama as a splittist, pledging loyalty to the Chinese government, and agreeing that Tibet is part of China.[83] On November 25, some 400 monks gathered in Drepung's main courtyard and protested together silently against the patriotic education campaign and the accompanying crackdown.[84] Authorities threatened to remove them by force and sealed the monastery for two days.[85] Officials conducting patriotic education at Gyabdrag Nunnery in June 2005 expelled more than 40 nuns, and authorities expelled 13 nuns from Shugsib Nunnery.[86]

In December 2005, the government and Party stepped up a campaign to challenge the Dalai Lama's role as the spiritual leader of Tibetan Buddhists by increasing the prominence of Gyaltsen Norbu, the boy the State Council installed in 1995 as the 11th Panchen Lama.[87] An official Chinese report on the 10th anniversary of Gyaltsen Norbu's installation referred to him as "the highest ranking figure in Tibetan Buddhism" and "the leader of Tibetan Buddhism."[88] Chinese news media reports that rank Gyaltsen Norbu above the Dalai Lama, however, contradict previous official statements about the relationship between the Dalai Lama and Panchen Lama. In November 1995, Li Ruihuan, then a senior Politburo member, described the late 10th Panchen Lama[89] as "a prominent leader of China's Tibetan Buddhism,"[90] and a 1992 Chinese government White Paper described the 10th Panchen Lama as the "co-leader of Tibetan Buddhism with the Dalai Lama."[91]

Gyaltsen Norbu demonstrated support of the Party's policy[92] to merge Tibetan Buddhism with patriotism toward China when he pledged at a December 2005 ceremony to be "a good living Buddha who loves his motherland, his religion, and serves his country and its people."[93] A week later, he concluded a Buddhist ritual at the tombs of his predecessors by saying that he would "live up to the

expectations of the Chinese Communist Party and the central government."[94] Gyaltsen Norbu made his first appearance before an international gathering at the First World Buddhist Forum in Hangzhou city, Zhejiang province, on April 13, 2006.[95] He told some 1,000 monks, nuns, and scholars from more than 30 countries that, "Defending the nation and working for the people is a solemn commitment Buddhism has made to the nation and society."[96] The forum's organizers[97] did not allow the Dalai Lama, Tibetan Buddhism's foremost representative, to attend. Qi Xiaofei, Deputy Director of the State Administration of Religious Affairs (SARA) told reporters on April 12 that the Dalai Lama is a stubborn secessionist who would "surely pose a really disharmonious note" if he had been invited.[98]

Chinese officials continue to hold Gedun Choekyi Nyima, the boy the Dalai Lama recognized as the Panchen Lama in May 1995, in incommunicado custody along with his parents.[99] After the Dalai Lama announced his recognition of Gedun Choekyi Nyima, Chinese officials took the then six-year-old boy and his parents into custody. The State Council declared the Dalai Lama's announcement "illegal and invalid"[100] and installed Gyaltsen Norbu, whose appointment continues to stir widespread resentment among Tibetans. The UN Committee on the Rights of the Child recommended in September 2005 that the Chinese government "allow an independent expert to visit and confirm the well-being" of Gedun Choekyi Nyima.[101] In an official response to the UN Special Rapporteur on Freedom of Religion or Belief in September 2005, Chinese officials claimed that Gedun Choekyi Nyima is leading a "normal, happy life and receiving a good cultural education."[102]

The Party intends to strengthen its authority over Tibetan Buddhism by controlling the selection of the religion's most important leaders, including the Dalai Lama. Party officials assert that the next Dalai Lama will be selected in the same manner as Gyaltsen Norbu: by drawing a name from a golden urn. In July 2005, Jampa Phuntsog (Xiangba Pingcuo), Chairman of the TAR government, referred to the Dalai Lama's advancing age and told reporters that the next Dalai Lama will be identified by "the traditional rules of Tibetan Buddhism since the Qing dynasty."[103] He denied that the Party interferes in the process.[104] In 1995, however, Party Central Committee member and State Councilor Luo Gan, who is now a Politburo Standing Committee member, presided when Gyalsten Norbu's name was pulled from a golden urn.[105] Jampa Phuntsog's comment about "the traditional rules of Tibetan Buddhism" refers to a 1792 Qing Dynasty edict demanding that the Tibetan government in Lhasa reform religious, administrative, economic, and military practices to suit the Qing court.[106] The first of the edict's 29 articles directed that the Dalai Lama and Panchen Lama be selected by drawing lots from a golden urn, and that a high-ranking Chinese official must be present to confirm the result. Tibetans used their own methods, however, to identify the current Dalai Lama and his predecessor.[107] Article 27 of the Regulation on Religious Affairs issued in 2004 includes the principle of the Qing directive by requiring that the identification of reincarnated lamas be performed in accordance with "religious ritual and historic conventions" and be subject to government approval.[108]

Tibetan Buddhist monks and nuns constituted 21 of the 24 known political detentions of Tibetans by Chinese authorities in 2005, compared to 8 of the 15 such known detentions in 2004, based on data available in the Commission's Political Prisoner Database (PPD) as of August 2006. This increased proportion in part reflects monks imprisoned for expressing their resentment of the patriotic education campaign. None of the known detentions of monks and nuns in 2005 took place in Sichuan province, a shift from the previous three years,[109] but known detentions of monks and nuns in Qinghai and Gansu provinces in 2005 increased during the same period.[110] Tibetan monks and nuns make up about 70 percent of the 103 currently detained or imprisoned Tibetan political prisoners, according to PPD data. Thirty-two of the monks and nuns were detained or imprisoned in the TAR, 22 in Sichuan province, 12 in Qinghai province, and 6 in Gansu province. Based on data available for 50 currently imprisoned Tibetan monks and nuns, their average sentence length is approximately nine years and three months. Several monks reportedly detained during patriotic education in Lhasa in 2005 remain unidentified and these figures do not reflect their cases.[111]

In one positive development, the government permitted the resumption in July 2004[112] of a centuries-old Tibetan Buddhist tradition of advanced study that leads to the highest level[113] of scholarly attainment in the Gelug tradition.[114] A small number of lamas successfully completed the program in 2005 and 2006.[115] Tibetan human rights monitors pointed out that even advanced lamas are required to study political texts promoting patriotism toward China,[116] but also noted that the resumption of the program is a "welcome gesture."[117] Chinese authorities shut the program down in 1966 at the start of the Cultural Revolution, and did not allow it to resume until 1986.[118] Officials closed it again in March 1988 after Tibetan monks staged a peaceful pro-independence protest march in central Lhasa.[119]

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

Government repression of unregistered Catholics increased in the past year.[120] Based on NGO reports, officials in Hebei and Zhejiang provinces detained a total of 38 unregistered clerics and 90 unregistered laypersons in 13 incidents during the past year, while the preceding year officials detained 11 clerics in 5 incidents.[121] Twelve of the 13 detention incidents reported since October 2005 occurred in Hebei province, where the unregistered Catholic community is particularly strong.[122] The other reported detention incident occurred in Zhejiang province.[123] Officials in Fujian province demolished an unregistered Catholic church in September.[124]

The government targets Catholic bishops who lead large unregistered communities for the most severe punishment. The government has detained Bishop Jia Zhiguo, the unregistered bishop of Zhengding diocese in Hebei province, at least eight times since 2004.[125] Bishop Jia has spent most of the past year in detention. The government detained Bishop Jia from November 2005 to April 2006, when officials released him into residential surveillance.[126] In May 2006, officials admitted Bishop Jia to the hospital for medical treatment, releasing him the following month into detention at

an unknown location.[127] Su Zhimin, the unregistered bishop of Baoding diocese in Hebei province, was detained in October 1997, and the government has refused to provide any information about his health or location.[128] Su's auxiliary bishop, An Shuxin, was released after 10 years' detention in August 2006. An reportedly agreed to register with the government but not with the state-controlled Catholic Patriotic Association (CPA).[129]

Government harassment and abuse of registered Catholic clerics also increased in the past year. In November and December 2005, three incidents were reported in which officials or unidentified assailants beat registered Catholic nuns or priests after they had demanded that local governments return church property. In November 2005, officials beat a group of registered Catholic nuns in Tongyuan village, Shaanxi province.[130] Also in November, unidentified assailants beat a group of registered Catholic nuns in Xi'an city, Shaanxi province.[131] In December 2005, unidentified assailants beat a group of registered Catholic priests in Tianjin municipality.[132] A Catholic news service reported additional incidents in which officials beat registered priests in Hebei province, but supplied no details.[133] The recent increase in reports of violence toward registered clergy contrasts sharply with the situation between 2000 and 2004, during which there were no such reports. The same period was marked by a relative relaxation of control over registered bishops.[134]

In the beating incidents in Tongyuan, Xi'an, and Tianjin, the nuns or priests sought to recover property that had once belonged to Catholic dioceses or religious orders and that local governments had confiscated during the 1950s and 1960s.[135] In violation of a 1980 State Council directive, local officials had refused to return the properties.[136] One NGO reported that local governments in Xi'an and Tianjin have rented or sold church properties to third parties and retained the income.[137] Incidents like these have occurred elsewhere in China.[138]

In April and May 2006, officials began a campaign to increase control over registered Catholic bishops, coercing bishops and priests to participate in episcopal consecrations not approved by the Holy See, and demanding that registered bishops uphold the government's authority to select bishops. Since the 1950s, the government has insisted that the Holy See lacks the authority to select Chinese bishops, and the state-controlled Catholic Patriotic Association (CPA) has selected bishops for the registered Church.[139] Nevertheless, the registered Catholic community has increasingly acknowledged the spiritual leadership of the Holy See, and Catholic bishops and news agencies outside China have reported that, in recent years, the CPA has accepted the Holy See's discreet involvement in the selection process. Most or all recently consecrated registered bishops had been approved by the Holy See before their consecration.[140]

In April 2006, however, officials detained, sequestered, threatened, or otherwise exerted pressure on dozens of registered Catholic clerics to coerce them into participating in the consecration of bishops selected by the CPA but not approved by the Holy See. On April 30 and May 3, a group of registered bishops consecrated two new bishops who had not been approved by the Holy See.[141] The

CPA installed the new bishops in episcopal sees in Kunming city, Yunnan province, and Wuhu city, Anhui province. The CPA also installed a bishop, who was consecrated in 2000 without the approval of the Holy See, in the see of Mindong diocese in Fujian province.[142] On May 19, the CPA convened a meeting of 18 registered bishops involved in recent episcopal consecrations and demanded they uphold the CPA's authority to select bishops without seeking approval from the Holy See.[143] On May 27, CPA officials announced their refusal to recognize a bishop in Shaanxi province, a former registered priest who was consecrated by a registered bishop without the approval of the CPA, but with the approval of the Holy See. Officials forbade him to act as a bishop, harassed him for several months, and on September 11 detained him at an unknown location.[144]

Although a generation of elderly bishops has been passing away, the CPA has been slow to approve candidates for the registered sees. Over 40 registered dioceses had no bishops in April 2006.[145] Because no priests were ordained during the Cultural Revolution period in the 1960s and 1970s, new bishops must be selected from priests in their thirties and early forties.[146] Government officials and the Holy See are competing for the loyalty of the new bishops, since many who will be selected in the next few years are likely to be young men who will govern the Church into the distant future.[147]

The Holy See has not approved the consecration of new bishops for the unregistered community since 1999.[148] In October 2005, an authoritative Vatican periodical recommended that the Holy See should unite the unregistered and registered communities by continuing its policy of approving the consecration of bishops only for the registered community.[149] According to the proposal, as the unregistered bishops pass away, Holy See-approved registered bishops would become the sole point of reference for both communities. As a result of reports from authoritative Catholic sources abroad that most registered bishops have been legitimated or approved by the Holy See, unregistered Catholics increasingly have accepted Catholics practicing in the registered church.[150]

Government authorities restricted contact between registered clergy and the Holy See over the past year. In September 2005, the CPA denied bishops permission to travel to Rome to participate in a meeting of Catholic bishops.[151] Since 2005, authorities have required registered clergy to report on their activities on a weekly basis.[152] Authorities continued to permit some registered priests and nuns to study abroad, including in the United States. Authorities also permitted the continued development of the registered community's Catholic social service agencies, and new charitable groups have reportedly been founded.[153]

The Chinese government has not altered its longstanding public position that the Holy See must break relations with Taiwan and renounce its role in the selection of Chinese bishops before the government will open formal talks on establishing diplomatic relations.[154] After the election of Pope Benedict XVI, the Chinese government reiterated its desire for diplomatic relations with the Holy See, but the tone of these public statements became progressively cooler during late 2005.[155] In February 2006, the government re-

sponded to the elevation to the College of Cardinals of Bishop Zen Ze-kiun of Hong Kong by warning him to stay out of politics.[156] In April 2006, Ye Xiaowen, Director of the State Administration for Religious Affairs, said that the issue of whether the CPA or the Holy See has the authority to select Catholic bishops "may be open to consultation."[157] Church figures, however, interpreted the government's coerced consecration of bishops without Holy See approval in April and May as a diplomatic rebuff to the Holy See.[158] In June, Chinese government officials met with Holy See representatives in Beijing, although the meeting reportedly yielded few concrete results.[159]

Religious Freedom for China's Muslims

The Chinese government strictly controls the practice of Islam. The state-controlled Islamic Association of China[160] aligns Islamic practice to Communist Party goals by directing the training and confirmation of religious leaders, the publication of religious materials, and the content of sermons, as well as by indoctrinating religious leaders and adherents in Party ideology and government policy.[161] The Regulation on Religious Affairs acknowledges that Muslims may make pilgrimages abroad but limits such trips to those organized by the Islamic Association of China[162] and penalizes those organizing pilgrimages without authorization.[163] In May 2006, the Islamic Association of China announced it would establish an office to manage pilgrimages to Mecca.[164] In 2005, the Association's Islamic Affairs Steering Committee, which controls the content of religious publications, announced that it was compiling a fourth edition of its "new collected sermons," noting that messages on patriotism and unity within the text contribute to building a "socialist harmonious society."[165] In May 2006, the China Islamic Congress, which met to define the goals of the Islamic Association for the coming five years, passed a measure on confirming religious personnel that requires knowledge of the sermons.[166]

Official policy toward Islam reflects government and Party concern about maintaining control over, and stability within, China's Muslim population, which includes 10 ethnic groups under the government's classification system.[167] In November 2005, the government said it was formulating national legislation to regulate halal foods, in part because of concerns that misuse of the halal label could "influence ethnic unity and social stability, and harm ethnic relations."[168] After Muslims protested the publication of materials that they found offensive to Islam, the government issued a national circular in 1993 requiring strict examination of publications that "touch upon the Islamic religion" in order to "uphold social stability" and avoid "hurting the feelings of religious believers."[169] A 1995 national circular on pilgrimages abroad requires provincial-level authorities to instruct pilgrims before departure on patriotism, socialism, "defending the unity of the motherland," and ethnic unity.[170]

The government accommodates Muslim communities in certain respects. Outside the Xinjiang Uighur Autonomous Region (XUAR), some Muslim communities and mosques have openly set up schools to provide children and adults with secular and religious education.[171] Domestic Muslim NGOs carry out social welfare

projects,[172] and international Muslim charities have supported projects in Gansu and Shaanxi provinces, as well as in the XUAR.[173]

Islam in the Xinjiang Uighur Autonomous Region

The Chinese government severely represses Islamic practice in the Xinjiang Uighur Autonomous Region (XUAR), especially among the Uighur ethnic group.[174] Some restrictions on religion in the XUAR are not found elsewhere in China. The XUAR's 1993 Implementing Measures for the Law on the Protection of Minors forbid parents and guardians to allow minors to engage in religious activity.[175] No other provincial-level or national regulation on minors or religion contains this restriction.[176] Amendments[177] in 2001 to the XUAR's 1994 Regulation on the Management of Religious Affairs eliminated a clause that protected "normal religious activities," and limited the publication of religious materials to provincial-level religious organizations.[178] Internal policy directives and handbooks also control the practice of religion in the region.[179] One Chinese official said, "Xinjiang is different from other places in China. Islam is administered much more strictly there than elsewhere."[180]

In addition to these formal legal strictures, the government also implements harsh policies in practice. Authorities have detained Muslims for unauthorized possession and study of religious materials,[181] forbidden students and discouraged adults from fasting during Ramadan,[182] barred university students from conducting prayers in dormitory rooms,[183] posted signs forbidding children from entering mosques,[184] and revoked the credentials of imams deemed not to uphold Communist Party policy.[185] The government limits the ability of Muslim communities in the XUAR to support social welfare programs.[186] A visiting U.S. delegation in 2005 was told that the government has not authorized Uighurs to build new mosques since 1999.[187]

The government continued severe repression of religious practice in the XUAR during 2006, including a reported new restriction on who may enter mosques. According to one report, authorities now have included women in restrictions on mosque entry already enforced against children, Party members, and government workers, including retirees.[188] Another report stated in January that authorities were conducting a month-long investigation aimed at "the masterminds of religious extremist forces" and other groups.[189] In February, authorities raided a minority-language publishing market and confiscated 350 "illegally printed" religious posters.[190] During the same month, official news media reported that XUAR authorities had confiscated 9,860 illegal publications involving religion, Falun Gong, or "feudal superstitions" during 2005.[191] In April, Wang Lequan, XUAR Party Secretary, said that the XUAR government would intensify its work on religion and called for "resolutely curb[ing] illegal religious activities" and strengthening the "ideological and political consciousness" of religious figures.[192]

The government uses counterterrorism policies as a pretext for severely repressing religion in the XUAR.[193] The government describes security conditions in the XUAR in a manner that suggests terrorist attacks continue in the region,[194] even as official sources

indicate that no terrorist attacks have taken place in the XUAR since 1999.[195] Authorities continue to detain and arrest XUAR residents engaged in religious activities deemed unauthorized and have charged them with a range of offenses, including state security crimes.[196] The government targets "religious extremism," splittism, and terrorism in anti-crime campaigns, calling them the "three evil forces."[197] The government began tightening control over religious practice in the region in the early 1990s, following unrest in the region, but intensified its crackdown after September 11, 2001.[198] Official sources published in 2001 recorded an increase in the number of Uighurs sent to prison or reeducation through labor centers since the mid-1990s because of religious activity.[199]

The government's religious repression in the XUAR is part of a broader policy aimed at diluting expressions of Uighur identity and tightening government control of the region. The government promotes Han migration to the XUAR, claiming it is necessary to foster "social stability," "ethnic unity," and the "unity of the state,"[200] and has staffed top government and Party positions with high numbers of ethnic Han Chinese [see Section V(c)—Protection of Internationally Recognized Labor Rights—Non-discrimination in Employment and Occupation].[201] In January and February 2006, the XUAR government acknowledged that migrants contribute to the region's high population growth rate, even as it announced plans to direct its population planning measures at controlling birth rates in impoverished ethnic minority regions.[202] The government also announced plans throughout the year to promote language programs that decrease the use of ethnic minority languages in XUAR schools and preschools.[203] The government continues to imprison Uighurs who engage in peaceful expressions of dissent and other non-violent activities. Foreign news media reported in November 2005 that Korash Huseyin, editor of the Kashgar Literature Journal, received a three-year sentence for publishing writer Nurmemet Yasin's story "Wild Pigeon."[204] Yasin received a 10-year sentence in February 2005 for "inciting splittism." Other Uighurs engaged in peaceful activities, including Tohti Tunyaz, Abdulghani Memetemin, and Abduhelil Zunun, remain in prison.[205] In addition, since Uighur activist Rebiya Kadeer's 2005 release into exile in the United States, the government has continued to harass her relatives in the XUAR.[206] In June 2006, authorities charged Alim, Ablikim, and Qahar Abdurehim, three of Kadeer's sons, with state security and economic crimes.[207] Authorities beat Alim and Ablikim, and in early July, Alim confessed to the charges against him after reportedly being tortured.[208] The local procuratorate indicted Alim and Qahar on July 10.[209] Authorities also have placed other family members under house arrest and surveillance.[210]

Religious Freedom for China's Orthodox Christians

The Chinese government has not officially recognized its small and slowly reawakening Orthodox Christian community, nor has it accommodated its need for priests and bishops.[211] In recent years, Chinese officials have met with representatives of the Russian Orthodox Church to discuss these issues.[212] The central government has not recognized Orthodoxy as a religion, as many had hoped

after the 2004 Regulation on Religious Affairs omitted mention of the government's five recognized religions. The provincial regulations of Heilongjiang and Inner Mongolia, however, have recognized Orthodoxy, and some other localities have published documents that appear to recognize Orthodoxy while including it under the category of Protestantism.[213] Local authorities have not accepted the registration of any Orthodox parishes other than the four that were registered before 2005 in Harbin city, Heilongjiang province, Labdarin city, in the Inner Mongolia Autonomous Region, and Ghulja and Urumqi cities, in the Xinjiang Uighur Autonomous Region (XUAR).[214] In the XUAR, authorities have reportedly advised Orthodox Christians not to communicate with foreigners.[215] The Chinese government has not permitted Chinese Orthodox priests trained in Russia to minister to Chinese Orthodox, who still have no priests to conduct divine liturgy and administer sacraments.[216]

Religious Freedom for China's Protestants

The Chinese government continues to repress Chinese Protestants who worship in house churches. According to reports from a U.S. NGO that monitors religious freedom in China, officials raided house church services or meetings, and detained and questioned leaders and members.[217] Although public security officials held most of those whom they detained in such raids for short periods, they held house church leaders for more extended periods, sometimes for weeks or months.[218] Officials also reportedly tortured or physically abused some of the house church detainees.[219] Officials confiscated personal property belonging to house church leaders and members, and officials also detained foreign missionaries who provided training to house church leaders.[220]

From May 2005 to May 2006, the government detained nearly 2,000 house church members, according to the same U.S. NGO.[221] Almost 50 percent of the reported detentions of Protestant house church members and leaders took place in Henan province, where the Protestant house church movement is particularly strong.[222] Detentions were also reported in Beijing municipality and in Anhui, Hubei, Jiangsu, Jilin, Shandong, Shanxi, Sichuan, Yunnan, and Zhejiang provinces, and in the Xinjiang Uighur Autonomous Region (XUAR).[223] In addition, officials demolished a large house church in Hangzhou city, Zhejiang province, and beat hundreds of house church members. Municipal officials had denied repeated requests for permission to build a church.[224]

The government targets house church leaders for the most severe punishment. In November 2005, officials convicted Cai Zhuohua, a house church pastor in Beijing, of "illegal operation of a business" for printing and giving away Bibles without government authorization[225] [see Section V(a)—Special Focus for 2006: Freedom of Expression]. The court sentenced Cai to three years' imprisonment. Xiao Yunfei and Xiao Gaowen, his wife and brother-in-law, were sentenced to shorter terms.[226] House church pastors Liu Yuhua and Wang Zaiqing also reportedly printed Bibles without permission, and in 2006 officials detained the former and formally arrested the latter.[227] In December 2004, officials arrested Zhang Rongliang, a leader of the China for Christ house church network in Henan province, and several months later charged him with "il-

legally crossing the national border" and "fraudulently obtaining a passport."[228] In June 2006, Pastor Zhang was sentenced to seven years and six months in prison.[229] Officials convicted Gong Shengliang, founder of the South China Church in Hubei province, of premeditated assault and rape in 2001. Gong continues to serve a sentence of life in prison in Hubei province, although nine of the government's witnesses against him have recanted their testimony, alleging that their testimony was extracted under torture [see Section V(b)—Rights of Criminal Suspects and Defendants—Torture and Abuse in Custody]. In 2006, Gong's daughters reported that he is in poor health, and that another inmate beat Gong in prison. His lawyers have applied for his release on medical parole.[230]

Chinese authorities have banned some house churches as "cults," and harassment and repression of unregistered Protestants for involvement in "cults" became more prominent in mid-2006. Religious practitioners involved in what the government classifies as a "cult" are subject to prosecution under Article 300 of the Criminal Law. On five occasions in June and July 2006, officials reportedly accused or investigated house church members for involvement in "cults" (*xiejiao*).[231] In July 2006, Xu Shuangfu and 15 additional leaders of the Three Grades of Servants house church, which was banned as a "cult" in 1999, were convicted on charges of murder and fraud.[232]

The Chinese government continues to maintain strict control over the registered Protestant church. The Regulation on Religious Affairs (RRA) requires that all Protestants worship at registered churches,[233] regardless of their differences in doctrine and liturgy. The state-controlled Three-Self Patriotic Movement (TSPM), which leads the registered Protestant church in China, does not allow Protestants to express these differences freely.[234] The TSPM continues to impose a Communist Party-defined theology, called "theological construction," on registered seminaries that, according to TSPM leader Ding Guangxun, will "weaken those aspects within Christian faith that do not conform with the socialist society."[235] TSPM publications indicate that the aspects to be weakened include fundamental Protestant beliefs, such as justification by faith alone.[236] TSPM publications also contain indications that some Chinese Protestants resist "theological construction," and that this resistance may be gaining in strength.[237] In the past year, one instance was reported in which officials detained a registered Protestant pastor in Henan province, when the pastor conducted a Bible study meeting at a registered Protestant church outside his designated geographic area.[238] The Henan provincial Regulation on Religious Affairs requires visiting registered religious personnel to secure permission from both the religious organization in their designated geographic area and the religious organization in the area they propose to visit.[239] A TSPM official in the XUAR, where Protestantism is spreading rapidly among the Han Chinese population, has reportedly said that, although several years ago children used to attend church, authorities now have forbidden this throughout the region.[240] A foreign expert who has done extensive research on the TSPM has said that authorities have been "siphoning off the church's main source of revenue—rental income."[241]

The Chinese government continues to restrict the relationships of unregistered Chinese Protestants with their co-religionists abroad, in contravention of international human rights standards.[242] House church Protestants reported that authorities raided meetings between house church leaders and Protestants visiting China to conduct theological or organizational training.[243] Officials have prevented some house church leaders from traveling abroad, and imprisoned others upon their return.[244] Senior government officials continue to incite suspicion of overseas Christians by accusing them of "religious infiltration" intended to weaken China. Press reports have associated Protestantism with "foreign imperialism" and warn that Protestantism must be "patriotic" and not harm China.[245] Despite these restrictions, Chinese house churches have become increasingly interested in theological and denominational issues,[246] and major house church networks continued to have regular contacts with each other and with Protestants abroad.[247]

The government also restricts and monitors the foreign relationships of the registered Protestant church. Although the government permits the TSPM to maintain contact with foreign denominations and educational institutions, and to conduct exchanges with interdenominational Protestant organizations abroad, it strictly regulates these contacts and limits them to the TSPM's top leadership.[248] Registered churches, however, continue to receive financial support from abroad, a right protected by Article 35 of the RRA.[249]

The number of reported house church and registered Protestants in China continued to increase in the past year.[250] Foreign estimates of the total number of Protestants range from 30 million to 100 million. Official Chinese estimates exclude those who worship in unregistered house churches.[251] In response to the rapid growth in the numbers of unregistered house churches, the government has instructed registered churches to hold home services.[252] According to some reports, Protestants constitute a significant proportion of the religious practitioners within the Communist Party.[253] An internal Party study found that of some 60 million Party members, 20 million engage in religious activities (9 million do so regularly), and that a majority of them are Christians.[254] In October 2005, Party leaders concluded that this high level of religious practice will "change the ideology of Party members and lead to the disintegration of their political belief . . . and this will create all kinds of social and political crises in the Party and in the country." The same leaders also called for all religious adherents to be expelled from the Party.[255] Party members in Liaoning province and certain members of the Party Central Committee in Beijing reportedly expressed their disagreement with this policy, and said that it is time to permit Party members to be believe in and practice a religion.[256]

The government continues to welcome some of the effects and influences of Protestantism, specifically those that support the Party's societal goals. Chinese Protestants report that many local officials believe that religious influence reduces criminality and contributes to social welfare.[257] The government continues to welcome social service projects undertaken by the Amity Foundation, a Protestant foundation that recently sponsored projects in social services and development aid, including education, healthcare, and

care for the elderly.[258] A U.S.-based NGO plans to open the first private university with an openly Christian mission in China since 1949.[259] A growing number of urban entrepreneurs who have become Protestants use their influence to protect and promote their religious communities.[260] Likewise, a growing number of urban intellectuals who have joined the house church movement advocate for political and legal reform in China.[261]

Government Persecution of Falun Gong

Government persecution of Falun Gong practitioners, which began in 1999 after thousands of practitioners demonstrated peacefully outside the senior leadership compound in Beijing,[262] continued during the past year. Falun Gong and other sources reported cases of arrest, abuse, detention, torture, and execution of practitioners in 2005 and 2006.[263] Based on official Chinese government information, at least 202 Falun Gong practitioners are currently in prison.[264] Falun Gong sources estimate that since 1999, at least 6,000 practitioners have been sentenced to prison, over 100,000 practitioners have been sentenced to reeducation through labor (RTL), and almost 3,000 Falun Gong practitioners have died from torture while in custody.[265] Manfred Nowak, UN Special Rapporteur on Torture, reported after his November 2005 visit to China that Falun Gong practitioners account for 66 percent of victims of alleged torture while in government custody.[266] Multiple allegations of government-sanctioned organ harvesting from Falun Gong prisoners surfaced in 2006. The U.S. State Department investigated one set of charges, but was unable to confirm them.[267] A former senior Canadian government official provided transcripts of telephone calls to detention facilities and transplant centers in China, where officials there confirmed the availability of organs from Falun Gong prisoners.[268] [See Section V(b)—Rights of Criminal Suspects and Defendants—Harvesting of Organs from Executed Prisoners.]

Chinese government persecution of Falun Gong practitioners contravenes the standards in Article 18 of the International Covenant on Civil and Political Rights (ICCPR).[269] Article 18(1) of the ICCPR guarantees everyone "the right to freedom of thought, conscience, and religion . . . [and] to manifest his religion or belief in teaching, practice, worship, and observance." Article 18(3) specifies that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights or freedoms of others."[270] The Chinese government justifies its persecution of Falun Gong on the grounds that it is necessary to protect public safety, order, and morals, an argument based on Article 36 of the Constitution.[271] The UN Working Group on Arbitrary Detention (UNWGAD), however, has rejected this argument. In 2004, the UNWGAD found the detention of Falun Gong practitioner Qiu Minghua arbitrary, and added that the Chinese government had "failed to adduce any argument explaining why and how Ms. Qiu's affiliation with, or profession of, the ideas or principles of Falun Gong was or could have been detrimental to the society as a whole, or to other individuals."[272]

Article 300 of the Criminal Law[273] and Article 27 of the newly enacted Public Security Administration Punishment Law[274] provide the legal pretext for penalizing Falun Gong activities. Public security officials punish the majority of detained Falun Gong practitioners administratively, including by detaining them in RTL centers.[275] [See Section V(b)—Rights of Criminal Suspects and Defendants—Administrative Detention.] According to a 1999 joint Supreme People's Court and Supreme People's Procuratorate interpretation, "cult" activities that merit punishment under the Criminal Law include publishing sect-related materials and inciting others to disturb public order.[276] Individuals sentenced under Article 300 of the Criminal Law for organizing the April 1999 demonstration in Beijing, and who remain in prison today, include Li Chang, Wang Zhiwen, Ji Liewu, and Yao Jie. In 2001, officials sentenced Chongqing practitioners Chen Qi, He Haiou, Li Zongyu, and Xu Linfen to sentences from 8 to 12 years in prison for using the Internet to create and distribute information about Falun Gong. In December 2001, a Beijing court sentenced Wang Xin, Dong Yanhong, Meng Jun, Yao Yue, and Liu Wenyu, five practitioners associated with Tsinghua University, and Wang Xuefei, a university student from Shanghai, to sentences ranging from 3 to 12 years. The practitioners were convicted of using the Internet to download materials from foreign Falun Gong Web sites and printing leaflets for posting and distribution on Beijing streets.[277]

Officials harass and punish Chinese rights defenders and lawyers who defend Falun Gong practitioners against government persecution. [See Section V(b)—Rights of Criminal Suspects and Defendants—Access to Counsel and Right to Present a Defense.] In November 2005, authorities suspended the operating license of the Beijing Shengzhi Law Firm and its director Gao Zhisheng after he wrote an open letter to President Hu Jintao and Premier Wen Jiabao criticizing official abuses against Falun Gong practitioners.[278] In January 2006, a Guangxi law firm dismissed lawyer Yang Zaixin after he represented three Falun Gong practitioners.[279]

The Chinese government continues its propaganda campaign against Falun Gong and other *qigong* disciplines that it has designated as "cults." The government alleges that "Falun Gong is not only a cult but also an anti-China political organization with base political intentions."[280] The government reports that "in some places, the illegal activities of Falun Gong and other cults are not completely contained," and has maintained a campaign to distribute posters illustrating the "nature and danger" of these organizations throughout the country.[281] The government campaign against Falun Gong extends to all written materials that practitioners use. In 2005, the government confiscated 4.62 million "illegal" Falun Gong and "other cult propaganda materials."[282] One email provider in China blocked almost 20,000 emails relating to Falun Gong and other "reactionary" topics in 2005.[283]

V(e) Status of Women

FINDINGS

- The Chinese Constitution and national laws provide that men and women should enjoy equal rights and list protections for the economic and social rights of women, but vague language and inadequate implementation hinder the effectiveness of these legal protections. Some provincial and municipal governments have passed regulations to strengthen the implementation of national laws. A 2005 amendment to the Law on the Protection of Rights and Interests of Women prohibits sexual harassment and domestic violence, promotes a greater voice for women in the government, and charges several government organizations with responsibility for preventing human trafficking and rehabilitating victims.
- Civil society groups in China advocate on behalf of women's rights within the confines of government and Communist Party policy. The All-China Women's Federation, a Party-led mass organization, works with the Chinese government to support women's rights, implement programs for disadvantaged women, and provide a limited measure of legal counseling and training for women. Women, however, have limited earning power compared to men, despite government policies that guarantee women non-discrimination in employment and occupation.
- Human trafficking remains pervasive in China despite efforts by government agencies to combat trafficking, a framework of domestic laws to address the problem, and ongoing cooperation with international anti-trafficking programs. The government's population planning policy has created a severe imbalance in the male-female birth ratio, and this imbalance exacerbates trafficking of women and girls for sale as brides. Between 10,000 and 20,000 men, women, and children are victims of trafficking within China each year, and NGOs estimate that 90 percent of those victims are women and children trafficked for sexual exploitation. Authorities are working with the International Labor Organization to build anti-trafficking capacity and raise domestic awareness of the problem.

Laws and Institutions

The Chinese Constitution and national laws provide that men and women should enjoy equal rights and list protections for the economic and social rights of women.[1] A 2005 amendment to the Law on the Protection of Rights and Interests of Women (LPRIW) prohibits sexual harassment and domestic violence, promotes a greater voice for women in the government, and charges several government organizations with responsibility for preventing human trafficking and rehabilitating victims.[2] Some provincial and municipal governments have passed regulations to strengthen the implementation of national laws. For example, 15 provinces and cities have passed anti-domestic violence regulations, and some localities have rules mandating that police respond to domestic abuse calls.[3]

Vague language and inadequate implementation hinder the effectiveness of these legal protections. The editor of the Beijing news-

paper Women's News points out that the LPRIW does not define sexual harassment and domestic violence.[4] According to one expert, many women know that laws exist to protect their rights, but do not understand what these rights are.[5] Moreover, judges lack training on the laws protecting women's rights. One Peking University Law School professor notes that case rulings in domestic violence cases are inconsistent because Chinese laws and judicial explanations lack clear standards.[6] Under a 1978 State Council regulation, employers can require women workers to retire five years before men.[7] Courts have used this regulation to rule against women in employment cases, even though the practice contravenes the LPRIW.[8] [See Section V(c)—Protection of Internationally Recognized Labor Rights—Non-discrimination in Employment and Occupation.] When determining who is eligible to receive shares of collectively owned village assets, village committees have made decisions that legitimize discrimination against women who have moved to their husband's village, or who have remained in the village in contravention of traditional marriage arrangements.[9] The Law of the PRC on Land Contract in Rural Areas and the Marriage Law guarantee women the same land rights as men, including land contracts and compensation for requisitioned land, and since August 2005, judges have ruled in favor of women in four lawsuits concerning land rights.[10]

The All-China Women's Federation (ACWF), a Communist Party-led mass organization, works with the Chinese government to support women's rights, implement programs for disadvantaged women, and provide a limited measure of legal counseling and training for women. The ACWF's close ties to the government allow it to secure funding for innovative methods to deal with women's problems.[11] According to one Chinese official, ACWF loans have helped increase education and employment opportunities for rural women living in poverty.[12] Urban district-level ACWFs are cooperating with judicial and law enforcement agencies to combat domestic violence by ensuring police intervention and improving evidence collection in domestic violence cases.[13] The ACWF does not promote women's interests, however, when such interests conflict with Party policies that limit women's rights. For example, an ACWF representative in Yunnan refused to allow a leading women's rights activist to represent over 500 women in Yunnan who were seeking redress for lost land, on the grounds that such interference could "influence stability."[14] In addition, the ACWF has been silent about the abuses of the government population planning policy and is complicit in coercive enforcement of birth limits[15] [see Section V(h)—Population Planning].

Civil society groups in China advocate for women's rights within the confines of government and Party policy. Working with the ACWF, the Chinese Legal Aid Foundation has set up a fund to encourage volunteers to provide expert legal advice for economically disadvantaged women.[16] Women lawyers represent women in lawsuits involving sexual harassment, domestic violence, and compensation for land seizures, and newspapers such as Women's News publicize the cases.[17] In October 2005, six domestic Chinese women's organizations attended a symposium to share best practices,[18] and women lawyers, entrepreneurs, mayors, and reporters

have also begun to form associations to raise the profile of women in these professions.[19]

Gender Disparities

Women have limited earning power compared to men, despite government policies that guarantee women non-discrimination in employment and occupation. [See Section V(c)—Protection of Internationally Recognized Labor Rights—Nondiscrimination in Employment and Occupation.] Women have fewer opportunities for promotion than men[20] and have lower rates of employment at high-paying jobs than men.[21] Employers demand that women have higher education levels than men to be hired for equivalent white-collar positions.[22] Middle-aged women have lost their jobs more quickly than men as the state-owned manufacturing sector has undergone economic restructuring.[23] Some local governments have established programs to provide loans and training to women who have lost their jobs.[24]

In rural areas, women have fewer economic opportunities than men and have less access to education. Men have more opportunities to engage in non-agricultural employment, and women are increasingly taking up uncompensated farming responsibilities.[25] Women now account for 60 percent of total rural laborers.[26] Some families emphasize the education of male children over female children.[27] According to statistics in a 2006 Chinese Academy of Social Sciences report, 61 percent of boys and 43 percent of girls in rural areas have completed education higher than lower middle school.[28] Young women migrate to urban areas to find work, leaving them vulnerable to trafficking, forced labor, and other abuses.[29] According to a 2005 survey conducted in Hunan province, 74.8 percent of migrant women respondents in Changsha, the capital of Hunan province, had experienced sexual harassment while working.[30]

Chinese health statistics reflect women's disadvantaged status. Chinese women have a higher overall rate of infectious disease and disability than men.[31] A lack of gender-sensitive anti-HIV/AIDS policies has led to a growing risk of infection for women[32] [see Section V(g)—Public Health—HIV/AIDS]. According to one Chinese report, since the late 1990s, the proportion of female HIV/AIDS patients has risen. In the late 1990s, the ratio of infected men to women was 9:1. In 2006, the ratio was reported to be 3:1.[33] China is the only country in the world where the rate of suicide is higher among women than among men.[34] In rural areas, the instance of suicide among women is three to four times higher than the rate among men.[35]

Human Trafficking

Human trafficking remains pervasive in China despite efforts by government agencies to combat trafficking, a framework of domestic laws to address the problem, and ongoing cooperation with international anti-trafficking programs. Traffickers are often linked to organized crime and specialize in abducting infants and young children for adoption and household service.[36] They also abduct girls and women for the bridal market in China's poorest areas and for sale as prostitutes.[37] According to the U.S. State Department's Office to Monitor and Combat Trafficking in Persons, between

10,000 and 20,000 men, women, and children are victims of trafficking within China each year, and NGOs estimate that 90 percent of those victims are women and children trafficked for sexual exploitation.[38] The government's population planning policy has created a severe imbalance in the male-female sex ratio, and the imbalance exacerbates trafficking of women for sale as brides [see Section V(h)—Population Planning]. The Chinese official media reported that employees at state-run welfare organizations in Hunan province and the Inner Mongolia Autonomous Region engaged in infant trafficking in 2005.[39]

Article 240 of the Criminal Law provides for severe punishment, including the death penalty, for abducting and trafficking women and children, and Article 416 contains provisions to punish officials who fail to rescue women and children who are abducted and trafficked.[40] Efforts by the Ministry of Public Security (MPS), however, have not kept pace with increased trafficking. The number of victims of child trafficking increased by 15 percent over a two-year period beginning in 2003, according to unofficial government sources cited by foreign news media,[41] but the number of trafficking-related arrests has declined since reaching a peak during an MPS enforcement campaign that began in 2000.[42] China is a signatory to the UN Convention against Transnational Organized Crime, but not to its two protocols that address human trafficking and smuggling of migrants.[43] China's Criminal Law does not specifically address the issue of human trafficking as it relates to forced labor, and although the Labor Law outlaws forced labor practices in the workplace, it only provides light penalties for violators.[44] [For more information on forced labor, see Section V(c)—Protection of Internationally Recognized Labor Rights—Elimination of Forced Labor.]

State Council ministries, as well as employers' and workers' organizations, are cooperating with the International Labor Organization (ILO) to build anti-trafficking capacity and raise domestic awareness of the problem.[45] For example, an ILO pilot program begun in 2000 to reduce the vulnerability of women and children to trafficking in Yunnan province has coordinated the resources of the All-China Women's Federation and other local agencies to raise awareness and rehabilitate victims of trafficking. The program has been expanded to five other provinces.[46]

V(f) The Environment

FINDINGS

- The Chinese government acknowledges the severity of China's environmental problems and has taken steps to curb pollution and environmental degradation. Since 2001, it has formulated or revised environmental protection laws, administrative regulations, and standards, and has worked to strengthen enforcement of anti-pollution rules. The Chinese government has also welcomed international technical assistance to combat environmental degradation, and has increased cooperation with the U.S. government on environmental protection over the past year.
- Despite these initiatives, local enforcement of environmental laws and regulations is poor, and underfunding of environ-

mental protection activities continues to hinder official efforts to prevent environmental degradation. A lack of transparency hampers the Chinese government's ability to respond to civil emergencies, including environmental disasters. Government efforts to impose greater control over environmental civil society groups during the past year have stifled citizen activism.

Government Response to Environmental Degradation

The Chinese government acknowledges the severity of China's environmental problems. The State Council's White Paper on "Environmental Protection (1996–2005)," issued in June 2006, notes that "the contradiction between economic growth and environmental protection is particularly prominent" as the "relative shortage of resources, a fragile ecological environment and insufficient environmental capacity are becoming critical problems hindering China's development."[1] Senior government officials also acknowledge the possible threat to social stability posed by severe environmental degradation.[2] A U.S. expert has observed that environmental degradation and pollution "constrain economic growth, contribute to large-scale migration, harm public health, and engender social unrest."[3] According to official Chinese estimates, environmental degradation and pollution cost China an estimated 8 to 12 percent of annual GDP,[4] and the number of mass protests over pollution has increased by 29 percent per year since 2000.[5]

The Chinese government has taken steps to curb pollution and environmental degradation. In both its 10th (2001–2005) and 11th (2006–2010) Five-Year Programs, the government formulated or revised environmental protection laws, administrative regulations, and standards,[6] and has worked to strengthen enforcement of anti-pollution rules.[7] The State Environmental Protection Administration (SEPA) announced in October 2005 that city governments will be penalized if they fail to attain national air quality standards.[8] SEPA has also continued to close factories and halt construction projects that violate the Environmental Impact Assessment Law and other environmental protection laws.[9] In September 2005, a Sichuan court found environmental protection officials and commercial enterprise officers criminally liable for severely polluting the Tuojiang (Tuo River). This case is the first in which environmental protection authorities investigated officials and company officers at the same time for an environmental crime.[10]

Despite these initiatives, local enforcement of environmental laws and regulations is poor, and underfunding of environmental protection activities continues to hinder official efforts to prevent environmental degradation.[11] Officials often seek to protect enterprises that pollute because local governments derive income from these enterprises and job evaluations for officials are based on local economic performance, not improvements in health or safety.[12] Local officials have also pressured local environmental protection bureaus (EPBs) to overlook pollution and take no action against polluters. Moreover, EPB officials sometimes allow polluting enterprises to continue operation, because their often underfunded bureaus derive additional funds by collecting fines from polluters.[13] In late 2005, poor local enforcement of environmental laws and corruption triggered mass protests by villagers in Zhejiang province.[14]

Government Transparency and Environmental Protection

A lack of transparency hampers the Chinese government's ability to respond to civil emergencies, including environmental disasters. An explosion in November 2005 at a petrochemical plant in Jilin province released over 100 tons of benzene and other toxic chemicals into the Songhua River.[15] The Songhua flows into neighboring Heilongjiang province and is the main water source for Harbin, the provincial capital, and surrounding areas.[16] Jilin officials and plant managers initially denied that the explosion caused any pollution and tried to dilute the spill by discharging water from a reservoir.[17] Jilin officials also waited approximately five days to inform Heilongjiang provincial officials and the State Environmental Protection Administration (SEPA) about the spill.[18] Once informed, Harbin officials announced that the water supply system would be shut down for "routine maintenance." Harbin officials revised the announcement amid rumors of a chemical spill, and informed the public 10 days after the spill that the water system would be unavailable for 4 days due to "possible" contamination.[19] This delayed local government response impeded central government efforts to manage the crisis, led to panic among the citizens of Harbin city, and created a diplomatic incident with Russia.[20] According to a U.S. expert, "there are few incentives for local officials in China to be bearers of bad news within the system, because they believe they will likely be penalized for it politically from the higher-ups."[21]

After the Songhua spill, the central government dismissed some officials and passed rules to discourage provincial and local officials from concealing information from the central government.[22] These reforms were not intended to relax the government's control over the media or over the free flow of information to the general public. Rather, the goal was to increase the flow of information to central authorities in Beijing. In January 2006, the State Council issued a general plan on emergency response, stipulating that Class I ("most serious") or Class II ("serious") incidents must be reported to the State Council within four hours, and that the public should be provided with accurate information in a timely manner.[23] In February 2006, SEPA issued a notice stating that serious incidents must be reported to SEPA within an hour of being discovered.[24] Despite these steps to improve local reporting to higher authorities, the central government did not address the larger issue of government control over the news media,[25] which led to a nearly two-week press blackout on the Songhua spill. Moreover, the National People's Congress is considering a new draft law that would fine news media organizations that report on sudden incidents, such as environmental disasters, without prior government authorization.[26]

Public Participation in Environmental Protection

The State Environmental Protection Administration (SEPA) has continued efforts to expand public participation in environmental protection work. In February 2006, SEPA released two provisional measures on public participation in Environmental Impact Assessment (EIA) procedures. These measures are the first to contain specific arrangements and procedures for public involvement in environmental issues.[27] The measures allow a limited role for the

public in the EIA process through attendance at symposiums or public hearings, answering questionnaires, and consulting experts. In July 2006, a SEPA official announced that public hearings may be held on important, complex, or difficult environmental matters.[28] In addition, before contractors launch a project, they are required to provide the public with details on how construction could affect the environment and what preventive measures will be taken.[29]

The Chinese government has altered or delayed some development projects in response to environmental concerns from civil society groups, but a continued lack of transparency limits public involvement and violates the government's own environmental protection laws. In February 2004, the government responded to citizen environmental concerns and agreed to suspend all 13 proposed hydroelectric dam projects on the Nujiang (Nu River) in Yunnan province, pending further review.[30] In 2005, Chinese officials reversed this decision after a closed internal review, said that four of the proposed dams would be built, and banned further news media coverage of the topic.[31] Officials released information regarding the proposed dam project under public pressure. In September 2005, environmental activists posted an open letter to the State Council on the Internet, pointing out violations of the EIA law and demanding that officials organize a public hearing on the dam project.[32] Provincial authorities subsequently released the government's order approving the EIA report, after refusing to do so for two years.[33]

Despite these positive steps, government efforts to impose greater control over environmental civil society groups during the past year have stifled citizen activism. In June 2006, an unidentified assailant assaulted Three Gorges resettlement activist Fu Xiancai, leaving him paralyzed from the shoulders down, after he met with a public security official to discuss his interview with a German television station in May. Fu had been harassed and threatened for more than a year as a result of his petitioning efforts.[34] The official investigation into the assault concluded in August that Fu's injuries were self-inflicted, a finding that is disputed by observers and those close to him.[35] This assault follows the detention of environmental activists in October 2005 and April 2006.[36] Tan Kai, who was detained in October 2005 for his involvement in the environmental group "Green Watch," went to trial in May on charges of illegally obtaining state secrets and was sentenced to 18 months' imprisonment in August.[37] Authorities tried a villager from Zhejiang province in November 2005 for his role in a protest against air pollution.[38] In August 2005, senior officials announced that the All-China Environment Federation would conduct a survey of environmental organizations.[39] Some analysts believe that the goal of the survey is to rein in the activities of civil society organizations.[40]

International Environmental Cooperation

The Chinese government has welcomed international technical assistance to combat environmental degradation. The United States and China share a common interest in protecting the envi-

ronment, and over the past year the two governments have increased bilateral cooperation on environmental protection, including:

- In November 2005, the Joint Committee on Environmental Cooperation (JCEC) met in the United States for its inaugural session. The JCEC was formed on the basis of a 2003 agreement between the U.S. Environmental Protection Agency (EPA) and the China State Environmental Protection Administration to collaborate on environmental issues, beginning with air pollution, water contamination, and the environmental impact of toxic substances.[41]
- The Asia-Pacific Partnership on Clean Development and Climate, a U.S. initiative to promote the development and deployment of clean energy technologies to meet pollution reduction, energy security, and climate change concerns, was launched in January 2006. Member countries include the United States, China, Australia, India, Japan, and South Korea.[42] One priority of the Partnership is to strengthen U.S.-China cooperation on environmental protection.[43]
- In April 2006, EPA Administrator Stephen Johnson met in China with his counterpart, Minister Zhou Shengxian, to sign an agreement on hazardous-waste management, including finding and disposing of polychlorinated biphenyls (PCBs). Johnson also toured an EPA-funded project to encourage the use of cleaner, safer home cooking fuels in Lijiang city, Yunnan province, and an EPA-supported project between the Port of Los Angeles and the Shanghai Municipal Port Administration to reduce air pollution.[44]
- In May 2006, the U.S. Trade and Development Agency awarded a grant to the Shandong Provincial Environmental Protection Bureau (EPB) to develop cleaner energy sources and another grant to the Shanxi Provincial EPB to improve air quality.[45]

V(g) Public Health

FINDINGS

- The central government strengthened its commitment during the past year to address the severe shortage of affordable health care in rural China. Since the collapse of the rural public health infrastructure in the 1980s, the disparity in the availability and affordability of health care between urban and rural areas has increased. As a result, the medical needs of China's rural poor, including the diagnosis and treatment of infectious diseases, often go unaddressed. The government, however, has pledged to accelerate the establishment of rural health cooperatives and invest more than 20 billion yuan (US$2.5 billion) over the next five years to modernize hospitals, clinics, and medical equipment at the village, township, and county levels.
- The central government continued to take steps over the past year to prevent and control the spread of HIV/AIDS. Although the estimated number of HIV/AIDS cases nationwide has decreased, health officials still consider the disease to be a grave problem. Government efforts to prevent and control the

transmission of HIV/AIDS continue to face serious challenges, as local implementation of national policy lags far behind central government attention to the problem. Victims of HIV/AIDS and other infectious diseases also continue to face harassment and discrimination, despite legal protections.

- Chinese public health officials have shown increased commitment and responsiveness in their efforts to prevent and control the spread of avian flu, and have taken steps to improve government transparency following the mishandling of the SARS epidemic in 2003. International health experts, however, still consider China to be among the most likely incubators of a potential human influenza pandemic. Central government cooperation in sharing information and virus samples with international health organizations has been inconsistent, and international health organizations and central government officials continue to express concern about the speed and accuracy of local reporting on outbreaks among both humans and poultry.

Rural Poverty and Public Health

The central government strengthened its commitment during the past year to address the severe shortage of affordable healthcare in rural China. Premier Wen Jiabao announced the launching of a Plan for Establishing and Developing a Rural Healthcare Service System in a March 2006 work report to the annual plenary session of the National People's Congress. The Chinese leadership highlighted these goals in their December 2005 Opinion Promoting the Construction of a New Socialist Countryside, a document that enumerated key policy goals related to rural development for 2006.[1]

According to the plan, the government will invest more than 20 billion yuan (US$2.5 billion) over the next five years to modernize hospitals, clinics, and medical equipment at the village, township, and county levels.[2] In an effort to accelerate the establishment of rural health cooperatives, Premier Wen pledged to expand experimental health cooperative coverage from 671 counties to 1,145 counties (over 70 percent of the counties in China) by the end of 2006, and double the healthcare allowances paid to rural residents in the program from 20 yuan (US$2.5) to 40 yuan (US$5).[3] Wen also said that central and local governments will build rural health cooperatives across the entire country by 2008.[4]

Since 2002, the central government has encouraged the formation of rural health cooperatives, which receive local government subsidies to cover a portion of the medical expenses for farmers who pay an annual 10 yuan (US$1.25) premium. Despite these improvements, healthcare costs have become one of the greatest financial burdens for those living in rural areas.[5] The poorest residents in rural areas frequently do not enroll in health cooperatives because of the modest annual fee.[6] Even for participants, the cooperative plan covers only between 30 and 40 percent of hospitalization costs, leaving many rural families in debt after a serious illness.[7] Yang Lixiong, a social security expert at Renmin University in Beijing, found that since 2001, the per capita income of those living in rural areas increased 2.4 percent, while the per capita yearly expenditure on healthcare services among rural residents rose 11.8 percent.[8]

Since the dissolution of the commune-based rural public health infrastructure in the 1980s, the disparity between urban and rural areas in the availability and affordability of healthcare has increased.[9] China's healthcare system underwent privatization beginning in 1978, and by 1999 the central government's share of national healthcare spending fell from 32 percent to 15 percent.[10] From 1977 to 2002, the number of doctors in rural China decreased from 1.8 million to 800,000, and the number of rural healthcare workers decreased from 3.4 million to 800,000.[11] Eighty percent of medical resources are now concentrated in cities, and the new rural healthcare system covers less than 23 percent of rural residents.[12] The rural-urban disparity is also apparent in mortality statistics. Residents of large cities in China live 12 years longer than rural residents, and the infant mortality rate in some rural areas is nine times higher than in large cities.[13]

Infectious Diseases and Public Health

Infectious diseases such as tuberculosis and hepatitis B continue to be a major challenge for China's public health system. According to the Ministry of Health (MOH), a total of 4.42 million infectious disease cases were reported in 2005, an increase of 12.7 percent from 2004.[14] Over 13,000 people died from infectious diseases in 2005, and the mortality rate increased more than 80 percent from 2004, according to a MOH report.[15] Among the top killers were tuberculosis, rabies, AIDS, hepatitis B, and neonatal tetanus.[16] Unofficial estimates place the number of hepatitis B carriers in China at 120 million.[17] In an attempt to reduce hepatitis B infection, the MOH issued the "2006–2010 National Plan on Hepatitis B Prevention and Control." The plan's top priority is to strengthen vaccination programs, especially among young children.[18] The plan sets the goal of lowering the infection rate to 1 percent among those five years old and younger, and to less than 7 percent nationwide by 2010. The MOH has acknowledged the limitations of the current public health system in addressing the growing medical needs of hepatitis carriers.[19] A survey conducted by the China Foundation for Hepatitis Prevention and Control (CFHPC) found that a majority of Chinese physicians do not have adequate knowledge of hepatitis B or of ways to prevent and treat the disease.[20]

Victims of infectious diseases, like hepatitis B, continue to face discrimination in schooling and employment, despite protections in the Law on the Prevention and Control of Infectious Diseases, as amended in 2004.[21] The amended law prohibits discrimination against people with infectious diseases, people carrying the pathogen of an infectious disease, and people who are suspected of having an infectious disease. A 2005 CFHPC survey, covering 583 hepatitis patients in 18 provinces, found that 52 percent of the respondents had faced discrimination in employment and education.[22] Some carriers, however, have become aware of their legal rights and have taken legal action against unfair treatment. In November 2005, university authorities in the Xinjiang Uighur Autonomous Region ordered 156 students, diagnosed as hepatitis B positive in their matriculation health checks, to suspend their schooling "for the sake of public health." Students formed an action group and circulated fliers to protest the unfair treatment, and one student

started legal proceedings against university authorities.[23] One student also filed a lawsuit against a university in Henan province alleging that the school denied him admission because he is a carrier of the hepatitis B virus. The university had denied the student admission, despite the fact that he scored above the cut-off point on the entrance examination. His application showed that he had tested positive for hepatitis B.[24]

HIV/AIDS

The central government continued to take steps over the past year to prevent and control the spread of HIV/AIDS. In January 2006, the State Council issued its most comprehensive HIV/AIDS regulations since the government first adopted guidelines in 1987.[25] The new regulations address the dominant modes of HIV/AIDS transmission in China: intravenous drug use and sexual contact. The regulations call for cooperative measures among health authorities to provide treatment for drug addicts, require that local governments organize HIV/AIDS prevention action plans and monitoring systems, and encourage local governments to post material about HIV/AIDS transmission in public places. The new regulations also require that governments at the county level and above provide free anti-HIV/AIDS drugs for rural and poor urban AIDS patients.[26] A March 2006 UNAIDS report found that China was only half way to meeting its goal under the UN's "3 by 5" initiative of providing 30,000 HIV/AIDS carriers access to anti-HIV drugs by the end of 2005.[27] The new regulations also address discrimination against HIV patients, mandating that "no work unit or individual shall discriminate against HIV carriers, AIDS patients, or their families."[28] The regulations, however, do not specify legal redress for victims who face such discrimination.

Health officials still consider HIV/AIDS in China to be a "grave" problem.[29] Although the World Health Organization and UNAIDS program decreased the estimated number of HIV/AIDS cases nationwide from 840,000 to 650,000, health officials calculate that there were on average 200 new cases of HIV/AIDS infection in China each day in 2005.[30] Government efforts to prevent and control the transmission of HIV/AIDS continue to face serious challenges. Central government officials expressed frustration during 2005 and 2006 with local-level implementation of national HIV/AIDS policy. During a November 29, 2005, meeting of the State Council Work Committee on AIDS Prevention and Treatment, Vice Premier Wu Yi criticized some local officials for failing to recognize the severity of the HIV/AIDS problem, and criticized others for neglecting and, at times, obstructing HIV/AIDS prevention and control efforts.[31] Wang Longde, Vice Minister of Health, criticized local governments in November 2005 for only providing HIV/AIDS prevention services to urban residents with local residential registration, thus excluding migrant workers who are a high-risk group for HIV/AIDS infection.[32] To address this discrimination, the State Council and the Ministry of Health announced a new program in November 2005 that aims to provide more than 65 percent of migrant workers with access to HIV/AIDS prevention information by the end of 2006, and more than 85 percent by 2010.[33]

Reports of government harassment of HIV/AIDS carriers continued throughout the year, as some local officials retaliated against AIDS victims who expressed their grievances.[34] Local government harassment of Chinese civil society organizations dealing with HIV/AIDS also continued, undermining efforts to combat the disease. Public security officials detained activist Hu Jia, co-founder of the Beijing Aizhixing Institute and of Loving Source, both HIV/AIDS advocacy groups, when he attempted to deliver a petition on behalf of more than 50 AIDS patients to Vice Premier Wu Yi at a November 2005 AIDS conference in Henan province.[35] Citing government pressure, Hu subsequently resigned from Loving Source in February 2006.[36] [See Section VII(a)—Development of Civil Society.]

Avian Flu

Chinese public health officials have shown increased commitment and responsiveness in their efforts to prevent and control the spread of avian flu, and have taken steps to improve government transparency following the mishandling of the SARS epidemic in 2003.[37] Since a series of outbreaks in poultry occurred in the fall of 2005, the central government has appropriated over 2 billion yuan (US$250 million) for the establishment of an avian flu prevention fund, and initiated avian flu emergency management and monitoring plans through the Ministry of Health and the Chinese Center for Disease Control and Prevention.[38] Local officials have culled or vaccinated millions of poultry in affected areas.[39] International health experts, however, still consider China to be among the most likely incubators of a potential human influenza pandemic.[40] International health officials have continued to express concern about the effectiveness of animal disease surveillance methods at the local level, as the majority of reported human infections have occurred in regions in which no previous bird infections had been reported.[41]

Central government cooperation in sharing avian flu information and virus samples with international health organizations has been inconsistent. Although the Ministry of Health has cooperated with international health organizations, the Ministry of Agriculture has been less forthcoming.[42] Testifying before a Commission roundtable, one health expert said, "Unfortunately, the lessons learned from SARS by the Ministry of Health do not seem to have translated as well to the Ministry of Agriculture."[43] In an attempt to improve the transparency of official reporting on avian flu outbreaks, the State Council issued regulations in November 2005 requiring provincial governments to report "major" animal epidemics to the State Council within four hours of discovering them, and county and city governments to report cases to provincial authorities within two hours.[44] Officials who are found negligent in reporting outbreaks face removal from office and potential prosecution.[45] Despite these regulations, international health organizations and central government officials continue to express concern about the speed and accuracy of local reporting of outbreaks among both humans and poultry.[46] The reporting of domestic outbreaks by Chinese news media sources also has frequently lagged behind that of international news media organizations.[47] In an October 2005 editorial discussing the government's response to avian flu, Hu Shuli,

editor of Caijing, a government-sponsored magazine, wrote that, "if one wants to do things even better, one should admit that announcements of avian influenza outbreaks to the domestic public are still obviously delayed and incomplete. This is inappropriate in every way."[48]

V(h) Population Planning

FINDINGS

- The Chinese government strictly controls the reproductive lives of Chinese women. Since the early 1980s, the government's population planning policy has limited most women in urban areas to bearing one child, while permitting many women in rural China to bear a second child if their first child is female. Officials have coerced compliance with the policy through a system marked by pervasive propaganda, mandatory monitoring of women's reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and, in some cases, forced sterilization and abortion.
- The Chinese government's population planning laws and regulations contravene international human rights standards by limiting the number of children that women may bear, by coercing compliance with population targets through heavy fines, and by discriminating against "out-of-plan" children. Local officials have violated Chinese law by punishing citizens, such as legal advocate Chen Guangcheng, who have drawn attention to population planning abuses by government officials.

Population Planning Policy

The Chinese government strictly controls the reproductive lives of Chinese women, but population planning policy varies by locality. Since the early 1980s, the government's population planning policy has limited most women in urban areas to bearing one child, while permitting many women in rural China to bear a second child but generally restricting the additional birth to women whose first child is female.[1] Officials have coerced compliance with the policy through a system marked by pervasive propaganda, mandatory monitoring of women's reproductive cycles, mandatory contraception, mandatory birth permits, coercive fines for failure to comply, and, in some cases, forced sterilization and abortion. Since the early 1980s, population planners have frequently revised provincial and local rules and quotas as the result of evolving national population targets.[2] Current policies concerning the circumstances under which women may bear two children vary at the provincial and local level, depending on changes in the national plan, on changes in provincial and local quotas, and on whether provinces or localities have met or exceeded previous quotas.[3] Local regulations permit ethnic minorities to have additional children. Ethnic minorities in the Xinjiang Uighur Autonomous Region are permitted to have more than two children if they reside in rural areas, and the Communist Party's official journal, Seeking Truth, has claimed that in the Tibet Autonomous Region there are no restrictions on the number of children that farmers and herders may have.[4]

The government coerces compliance with its restrictions on birth principally through a system of harshly coercive fines, which are termed "social compensation fees."[5] Provincial-level governments determine the criteria for issuing these fines, their amounts, and the method for collecting them "based on local conditions."[6] In Beijing municipality, officials file a case, investigate, and deliver a "Social Compensation Fee Decision" to parents when they suspect an illegal birth. The parents must pay in full within 30 days of receiving the "Social Compensation Fee Decision" or file an application to pay the fine in installments. The first payment must be 50 percent of the total fine, and the parents must make full payment within three years. Parents in Beijing who violate regulations on having a second child, or unmarried persons who violate regulations on having a child, are fined 3 to 10 times the area's average annual income. Parents who have a second child in accordance with regulations, but less than four years after the first child, or when the mother is less than 28 years old, are fined one-fifth of the area's average disposable annual income for urban residents, and one-fifth of the area's average gross annual income for rural residents. When the parents' actual income exceeds the area's average income, the regulations provide that the actual income should be the basis for computing the fine. If the parents "practice deception," obstruct official processes, or "exert negative social influence," fines can be doubled.[7] Practices for assessing fees against parents who violate population planning regulations differ in Shandong province, where incomes are lower than in Beijing municipality. The fine is set at 30 percent of a given area's average annual income.[8] Families forced to pay these heavy fines can be financially devastated for years. When parents do not pay the fines, population planning officials can file legal cases, and one Chinese media report from 2006 described a local court acting "vigorously" to collect fees and to "uphold the authority" of population planning officials.[9] Officials also have reportedly destroyed the homes of those who do not pay the fines.[10]

Violations of Chinese Law and International Human Rights Standards

The Chinese government's population planning laws and regulations contravene international human rights standards. For example, the Population and Family Planning Law, which became effective in 2002, contravenes the standards set by the 1995 Beijing Declaration and the 1994 Programme of Action of the Cairo International Conference on Population and Development (1994 Programme) by limiting the number of children that married women may bear and by banning unmarried women from bearing any children.[11] Population planning laws coerce compliance by penalizing women who bear an "out-of-plan" child with a "social compensation fee" that ranges from roughly one-half to 10 times an individual's average annual income, based on locality.[12] Moreover, 7 provinces require "termination" of pregnancies that violate provincial regulations, while 10 provinces require unspecified "remedial measures."[13] The government contravenes the standards set by the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights by discriminating

against "out-of-plan" children in health care and education.[14] The government also contravenes the 1994 Programme by setting population targets.[15]

Some local officials charged with implementing the national population planning policy violate Chinese law by physically coercing abortions and sterilizations. Although physical coercion violates Article 4 of the Population and Family Planning Law,[16] local officials continue to use physical coercion, or the threat of physical coercion, to enforce compliance with population planning laws and regulations. In December 2005, Western media reported that officials in Hebei province forced a Falun Gong practitioner to have an abortion, and in 2006, officials in Chongqing municipality and in Fujian province forcibly sterilized women.[17] In June 2006, Western media reported that a woman fell to her death while fleeing Anhui provincial officials who were attempting to force her to abort twins, since she had previously given birth to one child.[18] Central government personnel policies encourage the coercive practices of local officials by making the local officials' promotions and bonuses dependent on meeting population targets.[19] Little public evidence is available to show that officials who employ physical coercion against pregnant women have been punished for their illegal acts.[20] Two committees of the U.S. House of Representatives heard testimony in 2004 and 2006 that some Chinese officials continue to physically coerce compliance with the population planning policy. Witnesses said that the means employed against pregnant women include forced abortion, sterilization, and implantation of contraceptive devices. Other forms of physical coercion are exercised against friends and relatives who try to assist them.[21] The government uses group rewards and punishments, denying benefits or imposing penalties on entire villages, factories, or work units in the event of a single "out-of-plan" birth. As a result, women with "out-of-plan" pregnancies are ostracized and placed under great pressure to have an abortion.[22] These abuses have created an atmosphere of fear in which most Chinese women feel they have little choice but to comply with the population planning policy.[23]

Officials charged with implementing these laws and regulations have also violated Chinese law by punishing citizens, such as legal advocate Chen Guangcheng, who have publicized population planning abuses by local authorities.[24] In early 2005, authorities in Linyi city, Shandong province, directed a campaign against "out-of-plan" births in which local officials reportedly committed physical abuses, including forced abortions, forced sterilizations, and beatings. The authorities profited from their abuses by charging illegal fees to those detained.[25] Although Article 41 of the Chinese Constitution guarantees Chinese citizens "the right to criticize and make suggestions to any state organ or functionary," Chen was beaten, placed under house arrest, detained, arrested, tried, and sentenced to four years and three months in prison for peacefully drawing attention to the abuses in Linyi.[26] A number of his relatives, supporters, and attorneys were also harassed, beaten, or detained [see Section V(b)—Rights of Criminal Suspects and Defendants—Arbitrary Detention in the Formal Criminal Process]. In September 2005, an official from the National Population and Family Planning Commission (NPFPC) responded to international news

media attention by admitting that Linyi officials had committed unspecified "practices that violated law" and declaring that "the responsible persons have been removed from their posts."[27] In October 2005, however, foreign journalists reported that forced abortions continued in Linyi, and in February 2006, foreign journalists were unable to confirm that any Linyi officials had been punished for these acts.[28]

Victims and activists have accused officials of other instances of corruption and abuse of power in implementing the population planning program. Article 4 of the Population and Family Planning Law requires officials to perform their administrative duties strictly in accordance with the law, and Article 39 provides that population planning officials may be subject to criminal punishment for "abusing [their] power . . . demanding or accepting bribes. . . ."[29] In Hunan province, approximately 60 villagers claimed that population planning officials took 11 adopted and "out-of-plan" children away from their homes and demanded money for their return.[30] Xinhua reported that government authorities punished 13 officials in Shaanxi province after investigators found that a population planning official and a village head took bribes from a woman and her husband, supplied them with fraudulent documents, and forged the woman's contraception records.[31] Some wealthy Chinese choose to pay the fines for "out-of-plan" children to have a large family.[32] The head of the NPFPC said in an interview that a minority of wealthy and famous people, as well as leading cadres, violate the birth restrictions and, although they "should be legally punished . . . our supervision has not yet reached the desired level."[33]

Social Crises Resulting From the Population Planning Policy

Chinese population planning policies, combined with a cultural preference for sons, produce sex ratio imbalances and, in some cases, lead families to abort female infants. The current male-female birth ratio for first births is 121:100 and 152:100 for second births. Some foreign experts believe that the actual ratios are even more imbalanced,[34] and some reports claim that the imbalance is worsening.[35] Demographers and population experts consider a normal male-female birth ratio to be between 103 to 107:100.

In June 2006, the National People's Congress (NPC) withdrew a proposed law that would have criminalized sex-selective abortion. Article 35 of the 2002 Population and Family Planning Law prohibits, but does not penalize, sex-selective abortion. The prohibition has been widely ignored by medical personnel and parents.[36] In December 2005, the National Population and Family Planning Commission (NPFPC) reported that the government had submitted a draft Criminal Law amendment to the NPC under which parents or medical personnel involved in sex-selective abortions would face fines and up to three years in prison.[37] In an April 2006 interview, Zhang Weiqing, Director of the NPFPC, emphasized the long-term nature of the sex-ratio imbalance and the need to support the draft amendment.[38] Xinhua later reported that the proposed amendment had resulted in a "controversial debate" that left the NPC Standing Committee "sharply divided."[39] In June, the NPC decided to withdraw the proposed law.[40] Some officials opposed the law on the grounds that a woman has the right to know the sex of her child,

that harsh penalties would create a black market in fetal sex determination, and that prosecution of offenders under the proposed amendment would prove difficult.[41] Yu Xuejun, Director of the NPFPC's Department of Policies and Regulations, told a foreign newspaper that he regretted that the amendment had been withdrawn and that he would continue lobbying for it.[42] Subsequent reports in the state-run press have not disclosed whether the government plans to submit a similar amendment to the NPC in the future, but stated that curbing the sex ratio imbalance remained a "top priority" and that the imbalance could become a major obstacle to economic development. Other reports have also discussed the means by which the sex-ratio imbalance might be addressed. These included closing more clinics involved in sex-selective abortions; strengthening and geographically expanding implementation of the Care for Girls Program; raising the criteria for licensing medical institutes and practitioners; implementing preferential policies for girls and women in health care, education, and employment; and dispatching 60 teams to evaluate sex ratios, trends, and the efficiency of government policies.[43] The government has also said that it plans to create a system to punish local officials who fail to control sex ratio imbalances.[44]

The population planning policy has contributed to an increasing number of elderly Chinese citizens without children to support them financially. Director Zhang of the NPFPC has noted that "[t]here is a definite relationship between the acceleration of the aging of the population and the strict birth control policy."[45] During the past year, the government established a national program that grants a small sum of money to rural couples who have one child or two daughters.[46] Some Chinese demographers predict that the aging of the Chinese population and the sex-ratio imbalance will create additional economic and social problems in the future, and therefore advocate moving toward a "two-child policy."[47] One Chinese demographer at a December 2005 forum contended that the Chinese population is aging faster than expected, while others predicted that the population will begin to decrease earlier and more sharply than expected.[48] Others predict worsening labor shortages and insufficient numbers of working-age people to cover social insurance and pensions, and foresee economic stagnation or recession in the next 20 years.[49] Although many provinces have adopted policies that expand the number of people permitted to have two children, not all Chinese demographers agree with these forecasts or advocate a "two-child policy."[50] NPFPC officials maintain that the population planning policy will not change in the near future and that preventing overpopulation will remain the government's top priority for the foreseeable future.[51] Director Zhang of the NPFPC said in April that the policy was open to change, but not in the short term. He claimed that China faces an impending "baby boom."[52]

V(i) Freedom of Residence and Travel

FINDINGS

- Since its implementation in the 1950s, the Chinese *hukou* (household registration) system has limited the rights of ordi-

nary Chinese citizens to choose their permanent place of residence, receive equal access to social services, and enjoy equal protection of the law. Economic changes and relaxation of some *hukou* controls have eroded previously strict limits on citizens' freedom of movement, but these changes have also exported a discriminatory urban-rural social division to China's cities. Migrants who lack a local *hukou* for their new city of residence face legal discrimination in employment, education, and social services.

• Chinese leaders called for reforms to the *hukou* system during the past year. Central government interest in reform stems not only from concern over migrant rights and economic inequality, but also from concern over growing social instability and a desire for stronger government control over China's internal migrant population. New national goals for *hukou* reform, like similar proposals implemented periodically since the late 1990s, call for streamlined *hukou* categories, elimination of discriminatory regulations on employment, and improved migrant access to social services.

• Local governments and urban residents have resisted reforms to the *hukou* system because of the potential budgetary impact, fears of increasing population pressure in cities, and discriminatory attitudes toward migrants. Local opposition has limited the ability of central government authorities to achieve national reform goals.

The Hukou *System*

Since its implementation in the 1950s, the Chinese *hukou* (household registration) system has limited the rights of ordinary Chinese citizens to choose their permanent place of residence, receive equal access to social services, and enjoy protection of the law. Urban residents received preferential employment opportunities, favorable educational quotas, and old-age pensions. Rural residents did not. *Hukou* status, and the accompanying right to receive these benefits, is inherited at birth. Only limited methods exist for citizens to change their *hukou* status.[1] During the late 1970s, the system became so rigid that rural residents risked arrest for entering urban areas. These limits effectively blocked upward mobility for most rural citizens.[2]

Economic changes and relaxation of some *hukou* controls have eroded previously strict limits on citizens' freedom of movement,[3] but these changes have also exported a discriminatory urban-rural social division to China's cities. Official statistics suggest 120 million rural migrants worked in Chinese cities in 2005, about a quarter of China's total urban population.[4] Official reforms undertaken since the late 1990s have allowed migrants to obtain *hukou* in urban areas where they have a "stable source of income" and a "stable place of residence."[5] Local officials, however, often interpret these terms to exclude low-income rural migrants.[6] As a result, poor rural migrants may live in Chinese cities for long periods, even from birth, but retain *hukou* registration inherited from their parents because they are unable to obtain a local *hukou* in their new city of residence.

Migrants who lack a local *hukou* for their new city of residence face legal discrimination. They cannot receive social services such as healthcare or schooling for their children on the same basis as other residents.[7] Local authorities also condition government employment, old-age benefits, and low-interest housing loans on having a local *hukou* in the city of residence.[8] The Supreme People's Court issued a judicial interpretation in 2003 regarding compensation for deaths in personal injury cases that mandates a lower rate of compensation for deceased rural *hukou* holders, even if they have been resident in urban areas for many years.[9] Representation in local legislative bodies favors urban *hukou* holders; an individual rural local people's congress deputy represents four times as many citizens as his or her urban counterpart.[10]

Chinese laws and regulations that condition citizen legal rights and social services on hereditary *hukou* status conflict with international human rights standards on non-discrimination and have generated criticism in China. Article 26 of the International Covenant on Civil and Political Rights guarantees equal protection of the law and non-discrimination based on "national or social origin . . . birth or other status." Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights also prohibits discrimination on the same grounds in fields such as employment, education, health, and social security benefits. In early 2006, Chinese news media carried a series of critical reports on cases of long-term migrants in urban areas who held non-local rural *hukou* and who were killed in traffic accidents. Families of the deceased received substantially less in compensation than families of residents who held local urban *hukou* and who were killed in the same or similar accidents.[11] The father of one deceased migrant student said, "My daughter had lived in the city for 10 years. She didn't pay less for her school fees because she had [a] rural *hukou*. Why was her life worth less than half of that of her classmates?"[12]

Reform Efforts in 2005 and 2006

Chinese leaders called for reforms to the *hukou* system during the past year. Communist Party scholars and government officials publicly raised the subject of *hukou* reform in October 2005, after the conclusion of the Party plenum.[13] The joint opinion issued by the Party Central Committee and the State Council in December 2005 made *hukou* reform part of the Party's "new socialist countryside" campaign on rural reform, and a policy goal for 2006.[14]

Central government interest in reform stems not only from concern over migrant rights and economic inequality, but also from concern over growing social instability and a desire for stronger government control over China's internal migrant population. The December joint opinion emphasized the need to protect the "legitimate rights and interests of farmers who seek work."[15] Accompanying press statements noted a large and increasing gap between urban and rural incomes, with the former totaling 3.22 times the latter in 2005.[16] An earlier October 2005 joint Party and State Council opinion on public security and social stability also highlighted the need to better protect migrant rights, but also called for "new techniques to manage China's migrant population."[17] In December 2004, Chen Jiping, Director of the General

Office of the Party's Committee for Comprehensive Management of Public Security, the office that drafted the October joint opinion, called for improving systems used to keep track of temporary residents, including better monitoring of migrant housing rentals.[18]

New national goals for *hukou* reform, like similar proposals implemented periodically since the late 1990s, call for streamlined *hukou* categories, elimination of discriminatory regulations on employment, and improved migrant access to social services.[19] Public Security Vice Minister Liu Jinguo said in October 2005 that the government was considering elimination of the distinction between "agricultural" and "non-agricultural" *hukou*s nationwide, a reform already adopted in 11 provinces.[20] Chinese academics noted that this reform "has not involved substantive content," since it does not affect the requirement that migrants must obtain a *hukou* in a particular city in order to receive equal access to social services.[21] Liu also said that Chinese authorities will continue to require a "stable place of residence" to determine which migrants may obtain *hukou* in larger cities.[22]

Both Liu's speech and the December joint opinion also called for elimination of discriminatory regulations that limit the ability of rural migrants to work in urban areas.[23] The State Council issued a similar directive in December 2004.[24] Some ministries and local authorities have taken steps to implement these directives. In late 2005, the Ministry of Labor and Social Services (MOLSS) issued a migrant rights handbook that says that MOLSS officials will not require migrants to obtain a work registration card from their place of origin before they seek jobs in urban areas.[25] In early 2005, Beijing municipal authorities abolished regulations that prohibited renting apartments to migrants and that allowed labor officials to exclude migrants from certain occupations.[26]

Finally, central government authorities have called for improving migrant access to urban social services as a national reform goal. Public Security Vice Minister Liu said that local governments should make serious efforts to address migrant housing, education, and healthcare needs.[27] The December joint opinion calls for "gradually constructing a social security network for migrants," "exploring the provision of medical insurance for serious illnesses to migrants," and "solving the problem of educating migrant children"[28] [see Section IV—Introduction]. Draft amendments to the Law on Compulsory Education would charge local governments with providing equal educational opportunities to the children of migrants.[29] The Ministry of Health has announced projects to educate migrant workers about HIV/AIDS, provide occupational healthcare, and vaccinate migrant children against infectious diseases.[30]

Local governments and urban residents have resisted reforms to the *hukou* system because of the potential budgetary impact, fears of increasing population pressure in cities, and discriminatory attitudes toward migrants. Ministry of Public Security (MPS) officials said in November 2005 that national *hukou* reform efforts had encountered resistance from local authorities who would bear responsibility for funding the additional services to migrants.[31] In the fall of 2005, Shenzhen authorities announced tighter rules for migrants in an effort to control the growth rate of the temporary resident

population. The new Shenzhen measures temporarily suspend processing of local *hukou* applications for the dependent children of current Shenzhen migrant residents, limit the growth of private schools for migrant children, and require migrant parents to pay additional fees to enroll their children in public schools.[32] Some urban residents oppose improved treatment for migrants, expressing concern about urban population growth and the influx of poor, less educated migrants. Citizens invited to comment on Beijing's municipal development plans in August 2005 demanded tighter restrictions on rural migrants, including strict *hukou* policies and strict controls on providing housing and employment to migrants.[33]

Local opposition has limited the ability of central government authorities to achieve national reform goals. Lu Hongyan, Deputy Director of the MPS General Office, said that *hukou* reform "is not entirely within the power or responsibility of the MPS," but that the MPS would attempt to coordinate with local governments and other ministries to present a *hukou* reform program by late December 2005 or early 2006.[34] Neither official sources nor the state-controlled news media have reported the completion of work on such a program. Chen Xiwen, Deputy Director of the General Office of the Central Leading Group for Finance and Economics, remarked at a press conference accompanying the issuance of the December 2005 joint opinion that the "attached benefits" linked to *hukou* identification, such as education or healthcare, hinder reform efforts. Chen said that the central government will not press for a single plan for *hukou* reform, but will instead allow localities to adopt their own reforms.[35]

Some provincial governments have made efforts to address discrimination against migrants. For example, Henan provincial authorities announced that starting in October 2005 they would include several urban medical facilities in the local rural health cooperative system. The plan allows migrants and rural residents to receive health services at the designated facilities, and forbids health providers from discriminating between urban and non-urban residents in assessing fees.[36] In June 2006, the Henan High People's Court (HPC) issued an opinion setting death or injury compensation awards for some rural migrants at the same level as long-term urban residents. The opinion requires that rural migrants have a "regular place of residence in the city" and that their "main source of income be earned in the city."[37] The Anhui HPC has issued rules stipulating that injury or death compensation for minors who hold a rural *hukou* but attend school and live in urban areas shall be computed using the urban standard.[38] Other courts and legislative bodies are considering issuing similar directives.[39]

Other local reforms have been limited, or have reversed previous efforts to relax *hukou* controls. In January 2006, the Shanghai local people's congress (LPC) for the first time allowed two migrant workers from Jiangsu province to attend a session of the Shanghai LPC as observers. The China Economic Times, a State Council-sponsored publication, criticized the Shanghai LPC, however, for not allowing the two migrants to serve as full representatives. It noted that *hukou* restrictions bar migrants from standing for election, and that none of the 1,000 LPC delegates attending the session represented Shanghai's 4 million migrant workers.[40]

Shenyang municipal authorities announced in December 2005 that they would resume requiring temporary residence permits for migrants. Authorities had abolished these permits in July 2003, requiring only that migrants sign in with local public security officials upon arrival in the city. Shenyang authorities noted that they reinstated the temporary residence permits to comply with provincial and national guidelines on *hukou* reform.[41]

International Travel

The National People's Congress Standing Committee passed a new Law on Passports in April 2006 that will take effect in January 2007. The law narrows the legal authority of Chinese officials to deny passports to Chinese citizens.[42] Article 13 of the new law specifies the conditions under which Chinese authorities may deny a citizen's passport application, including document falsification, failure to prove citizenship, pending fulfillment of a criminal sentence or other criminal punishment, or a court order not to leave the country as a result of an ongoing civil case.[43] Authorities may also deny a passport application if they determine that the applicant's activities abroad would harm national security or state interests.[44] This language is narrower than that of the previous 1980 Regulations on Passports and Visas, which set no limits on the government's authority to deny passport applications.[45] Article 12 of the International Covenant on Civil and Political Rights provides both that "[e]veryone shall be free to leave any country, including his own," and that "[n]o one shall be arbitrarily deprived of the right to enter his own country." Chinese authorities have denied passports to Chinese citizens who express views they find objectionable. In May 2006, Chinese authorities refused to issue passports to two Chinese lawyers who applied for permission to travel to the United States to assist a Falun Gong practitioner who faced criminal charges.[46] Chinese authorities have also prevented Protestant house church leaders from traveling abroad [see Section V(d)—Freedom of Religion—Religious Freedom for China's Protestants]. Yang Jianli, a Chinese citizen and democracy activist, is currently serving a five-year prison sentence in China on charges of illegal entry and espionage after entering the country on another person's passport. Throughout the 1990s, Yang was unable to secure a passport from Chinese consular officials in the United States.[47] The UN Working Group on Arbitrary Detention has found his detention to be arbitrary.[48]

VI. Political Prisoner Database

The Commission made the CECC Political Prisoner Database (PPD) globally accessible via the Internet in November 2004. The PPD serves as a unique and powerful resource for individuals, educational institutions, NGOs, and governments that wish to research political and religious imprisonment in China or advocate on behalf of prisoners. The Commission routinely uses the database for its own advocacy work, and to prepare summaries of information about political and religious prisoners for Members of Congress and senior Administration officials. The Commission uses the database to alert the public about upcoming dates of parole eligibility, and about dates when sentences expire and prisoners are due for re-

lease. The PPD received approximately 150,000 online requests for prisoner information since last October.

The PPD is designed to allow anyone with Internet access to query the database and download prisoner data without providing personal information. Users also have the option to create a user account, which allows them to save, edit, or reuse queries. A user-specified ID and password is the only information required to set up a user account. The PPD does not download or install any software or Web cookies to a user's computer.

The PPD currently allows users to conduct queries on 19 categories of prisoner information.[1] The Commission intends to upgrade the PPD software and interface to make it possible to search and retrieve more categories of prisoner information, such as the names and locations of the courts that convicted political and religious prisoners, and the dates of key events in the legal process such as sentencing and decision upon appeal. The Commission also plans future upgrades that will make it possible for users to navigate between reports on political imprisonment in the CECC Virtual Academy and records of political and religious prisoners in the PPD. The Virtual Academy is accessible on the Commission's Web site.

Each prisoner's record describes the type of human rights violation by Chinese authorities that led to his or her detention. These include violations of the right to peaceful assembly, freedom of religion, freedom of association, freedom of expression, including the freedom to advocate peaceful social or political change, and to criticize government policy or government officials. Many records feature a short summary of the case that includes basic details about the political or religious imprisonment and the legal process leading to imprisonment. Users may download information about prisoners from the PPD as Adobe Acrobat files or Microsoft Excel spreadsheets.

As of September 2006, the PPD contained more than 3,900 individual case records of political and religious imprisonment in China. The Dui Hua Foundation, based in San Francisco, and the Tibet Information Network, based in London, shared their extensive experience and data on political and religious prisoners in China with the Commission to help establish the database.[2] The Dui Hua Foundation continues to do so. The Commission also relies on its own staff research for prisoner information, as well as on information provided by NGOs and other groups that specialize in promoting human rights and opposing political and religious imprisonment.

The PPD is accessible on the Internet at *http://ppd.cecc.gov*. The Commission Web site contains instructions on how to use the PPD.

VII. Development of the Rule of Law and Institutions of Democratic Governance

VII(a) Development of Civil Society

FINDINGS

- The number of civil society organizations in China is growing, with many organizations undertaking projects such as pov-

erty alleviation, faith-based social work, and legal efforts to protect citizen rights. These organizations include national mass organizations that the Communist Party created and funds, smaller citizen associations registered under national regulations, and loose networks of unregistered grassroots organizations. In February 2006, the China Foundation for Poverty Alleviation selected six groups as the first civil society organizations to receive Chinese government funding to run experimental anti-poverty programs, including the China office of a U.S.-based rural development organization.

• Central authorities seek to maintain control over civil society groups, halt the emergence of independent organizations, and prevent what they have called the "Westernization" of China. While recognizing the utility of civil society organizations to address social problems, Chinese authorities use strict regulations to limit the growth of an independent civil society. Some Chinese citizens who attempt to organize groups outside of state control have been imprisoned. These include individuals who have attempted to establish independent labor unions and political associations, such as China Free Trade Union Preparatory Committee member Hu Shigen and China Democracy Party member Qin Yongmin; or young intellectuals who organize informal discussion groups, such as New Youth Study Group members Jin Haike, Xu Wei, Yang Zili, and Zhang Honghai.

• Chinese officials have taken additional steps to curtail civil society organizations in the past year, but authorities are undecided on how to proceed. Since early 2005, Ministry of Civil Affairs (MOCA) officials have been researching a new administrative system to monitor and control civil society organizations. Many details of the new system are undetermined, such as who will conduct the required evaluations of civil society groups, how the evaluation results will be used, and who will fund the evaluations. At the same time, Chinese authorities have supported limited reforms to the status of civil society organizations. MOCA officials are advocating changes to the tax code to encourage private donations to civil society organizations. Central Party officials have expressed support for the creation of rural farmer cooperatives in annual policy guidelines issued each year since 2004.

Civil Society and Government Controls

The number of civil society organizations in China is growing, with many organizations undertaking projects such as poverty alleviation, faith-based social work, and legal efforts to protect citizen rights.[1] These organizations include national mass organizations that the Communist Party created and funds, smaller citizen associations registered under national regulations, and loose networks of unregistered grassroots organizations.[2] According to official Chinese statistics, the number of registered civil society organizations increased from 288,936 in 2004 to 317,000 in 2006, but one Chinese source estimates the number of unregistered organizations to be as high as 3 million.[3] Chinese authorities support the growth of civil society organizations to help address social problems such as pov-

erty and AIDS.[4] Ministry of Civil Affairs (MOCA) officials acknowledge that these organizations have "exerted [a] positive influence in boosting China's economic growth and helping maintain social stability."[5] In February 2006, the China Foundation for Poverty Alleviation selected six groups to be the first civil society organizations to receive Chinese government funding to run experimental anti-poverty programs, including the China office of a U.S.-based rural development organization.[6]

While recognizing the utility of civil society organizations to address social problems, Chinese authorities use strict regulations to limit the growth of an independent civil society. National regulations issued in 1998 require that civil society organizations have a government-approved sponsor organization to register and obtain legal status.[7] The government limits sponsor organizations to designated government and Party bureaus.[8] This requirement contravenes Article 22 of the International Covenant on Civil and Political Rights, which provides that:

> [N]o restrictions shall be placed on the exercise of [the freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety. . . .[9]

Chinese regulations that require a government sponsor organization for registration, and that consider all groups that do not register to be illegal, differ from legal standards in many countries and regions, including India, South Korea, the European Union, and the United States.[10] Other countries, such as Moldova, Singapore, Tajikistan, and Uzbekistan, have legal requirements similar to those in China.[11]

Chinese civil society organizations also have difficulty raising funds, which limits their ability to act independently. The majority of funds raised by environmental civil society organizations is monopolized by a small group of organizations with close official ties, according to a 2005 survey by the All-China Environment Federation (ACEF).[12] As a result, these groups avoid direct confrontation with the government. Almost 65 percent of environmental organizations say that they would prefer to cooperate with authorities, while 32.1 percent said they would neither cooperate with nor oppose the government.[13] As one officer of a Chinese civil society organization noted, "[we] all recognize that keeping in line with government policies and receiving government approval are indispensable prerequisites for successful action."[14] These pressures are heightened by legal rules that hamper the ability of civil society organizations to raise funds from private domestic donors.[15] Current law provides that Chinese corporations may only deduct charitable donations for tax purposes that are made to a few specified groups, and limits tax exemptions to 3 percent of income.[16]

Central authorities seek to maintain control over civil society groups, halt the emergence of truly independent organizations, and prevent what they have called the "Westernization" of China. Top government and Party officials have stopped citizen efforts to register groups that they perceive as a threat, such as *qigong* associations and organizations of veterans, laborers, and the unemployed.[17] Party officials have ordered the establishment of Party

cells within civil society organizations.[18] Chinese authorities periodically issue warnings against the use of civil society organizations by "hostile Western forces" to "combat" or "infiltrate" China[19] [see Section V(a)—Special Focus for 2006: Freedom of Expression and Section V(d)—Freedom of Religion]. Some Chinese citizens who attempt to organize groups outside of state control have been imprisoned. These individuals include those who have attempted to establish independent labor unions and political associations, such as China Free Trade Union Preparatory Committee member Hu Shigen and China Democracy Party member Qin Yongmin, and young intellectuals who organize informal discussion groups, such as New Youth Study Group members Jin Haike, Yang Zili, Xu Wei, and Zhang Honghai.[20]

Official reluctance to permit independent citizen associations limits the options of Chinese citizens seeking to protect their interests. According to the 2005 ACEF survey, only 23.3 percent of Chinese environmental civil society groups are registered.[21] The absence of applicable national legal standards hampers the development of the approximately 140,000 rural farmer cooperatives established as of 2003. Farmers use these cooperatives to pool resources, increase their competitiveness, and undertake limited collective action against government authorities. National law does not provide clear legal standards for the registration of these organizations. Without legal status, they cannot borrow money from institutional lenders or sign legally binding contracts. Their tax obligations are also unclear. Some have registered with MOCA, others with the Ministry of Industry and Commerce, and others choose not to register.[22]

Developments During 2005 and 2006

Chinese officials have taken additional steps to curtail civil society organizations in the past year, but recent developments indicate that authorities are undecided on how to proceed with additional controls. In early 2005, an article in an academic journal sponsored by the State Council pressed officials to prevent Western "infiltration and sabotage of China through political NGOs."[23] International NGOs with U.S. ties operating in China subsequently have reported Chinese partners cancelling or withdrawing from projects under government pressure.[24] Since 2005, Chinese public security officials have investigated the operations of domestic and international civil society organizations and questioned their staff.[25] In February 2006, prominent Chinese AIDS activist Hu Jia resigned from Loving Source, an organization that he helped establish to assist the orphans of AIDS victims, citing pressure on the organization's international donors. Hu said that the Chinese government "is using soft methods to narrow the space NGOs can exist in. The authorities are worried a civil society would bring about a strong force that challenges its rule."[26] In August 2006, one Western expert on Chinese civil society said that there has been a "virtual paralysis" of official registration by civil society organizations in China, contrasted this with a more permissive climate two years ago, and also noted an increase in self-censorship on the part of civil society organizations that seek to avoid antagonizing the government.[27]

Since early 2005, Ministry of Civil Affairs (MOCA) officials have been researching a new administrative system to supervise and control civil society organizations. In March 2005, MOCA established a leading group to develop this system. During the summer of 2005, MOCA sponsored research on the new system in Jinan and Qingdao municipalities in Shandong province, and participated in international conferences regarding new management techniques for civil society organizations in the fall of 2005.[28] News media reports and official statements say that the system will be designed to "evaluate" and "rate" civil society organizations.[29] Many details of the new system have not been determined, such as who will conduct the evaluations, how the evaluation results will be used, and who will fund the evaluations.[30] Provincial efforts to implement the new system suggest that it will augment rather than replace existing controls. For example, Jiangxi provincial officials called for the implementation of the new administrative system in March 2006, and said that it should operate in addition to existing registration authorities and official sponsor organizations.[31] A MOCA official said these efforts seek to improve the "quality" of civil society organizations,[32] while MOCA-sponsored conferences have linked these efforts to the elimination of "illegal organizations."[33]

Central government officials continue to consider draft revisions to the 1998 regulations that govern civil society organizations. Although MOCA officials have suggested that the sponsor organization requirement be abolished,[34] other central government officials have rejected this option. State publications note that "there are no fundamental changes in the draft revision[s]" and that the sponsor organization requirement will remain unchanged.[35] News reports suggest that the planned revisions contain a degree of liberalization, allowing authorities discretion to register multiple civil organizations of the same type in the same administrative area, and removing high capital requirements for registration.[36] Reports also indicate that the revisions will allow international organizations that operate in China to register, but will also require them to have approved sponsor organizations.[37] Existing regulations do not specify a procedure for most foreign NGOs to register, and therefore their status is unclear.[38] The reported content of the revisions corresponds to the approach taken in 2004 national regulations on foundations, which replaced a prior set of rules on the same subject.[39]

Chinese authorities have supported limited reforms to the status of civil society organizations. MOCA officials are advocating changes to the tax code to encourage private donations to civil society organizations.[40] Central Communist Party officials have expressed support for the creation of rural farmer cooperatives in annual policy guidelines issued each year since 2004.[41] Zhejiang provincial officials have experimented with granting legal status to these cooperatives, passing the first set of provincial regulations in 2004, and registering the first group of associations under these rules in 2005.[42] In 2006, Chinese leaders voiced support for national legislation to reform lending, tax, and registration treatment of rural farmer cooperatives.[43] The National People's Congress (NPC) has placed relevant proposals on the 2006 legislative calendar. Nonetheless, NPC delegates say that the central govern-

ment's attitude toward these organizations remains "cautious" and that central officials only support these reforms because they have concluded that these cooperatives are economic in nature, and will not become involved in political issues.[44]

VII(b) Institutions of Democratic Governance and Legislative Reform

FINDINGS

- China has an authoritarian political system controlled by the Communist Party. Party committees formulate all major state policies before the government implements them. The Party dominates Chinese legislative bodies such as the National People's Congress (NPC), and fills all important government positions in executive and judicial institutions through an internal selection process. Party control extends throughout institutions of local government.
- In 2005, the central leadership called for strengthened controls over society to address mounting social unrest and to suppress dissent. Chinese authorities have ruled out building representative democratic institutions to address citizen complaints about corruption and abuse of power, and instead are recentralizing government posts into the hands of individual Party secretaries.
- The absence of popular and legal constraints to check the behavior of Party officials has led to widespread corruption and citizen anger. The Party has strengthened the role of internal responsibility systems to moderate official behavior, but these systems have provided some local Party officials with new incentives to conceal information and abuse their power.
- Since the 1980s, officials have introduced limited reforms to allow citizens to vote in village elections. While these reforms are a step forward in permitting citizen participation at the local level, the reforms are designed to strengthen Party governance and do not represent Party acceptance of representative government.
- Since the late 1990s, the Party has experimented with reforms that allow a limited degree of citizen participation in the selection of local Party cadres, but the Party retains tight control over the candidate pool and the selection process. Since 2000, Chinese authorities have experimented with the use of legislative hearings to solicit public views on pending legislation, and the NPC held its first controlled public hearing in September 2005.
- Since 2000, the central government has announced new transparency requirements for local governments. In March 2005, central authorities specifically required county and provincial governments to increase transparency and popular participation in government decisionmaking. Implementation of these "open government" requirements varies, but some local governments have taken steps toward greater transparency.

Introduction

China has an authoritarian political system controlled by the Communist Party. Party committees formulate all major state policies before the government implements them. The Party dominates Chinese legislative bodies such as the National People's Congress (NPC), and fills all important government positions in executive and judicial institutions by an internal selection process. The State Council's White Paper on "Building Political Democracy in China," issued in October 2005, says that:

> Party committees serve as the leadership core over all [government and mass] organizations at the same level . . . and through Party committees and cadres in these organizations, ensure that the Party's policies are carried out. . . . Through legal procedures and democratic discussion, Party committees ensure that Party proposals become the will of the state and that candidates recommended by Party organizations become leaders in the institutions of state power.[1]

Party control extends throughout institutions of local government. Party institutions control the selection of judges, and local Party committees influence which judges are posted to their localities.[2] Many local Party secretaries serve concurrently as head of the local people's congress (LPC).[3] County and township Party secretaries also control LPC and village elections through the election leadership groups which they often head.[4] The Party constitution charges delegates to Party congresses with selecting and controlling local Party committees,[5] but, as a U.S. expert noted at a Commission roundtable, delegates "are generally uninformed as to the content of the Party congress or who they are to vote for until just before the congress meets."[6]

China's authoritarian one-party system does not comply with international human rights standards contained in the International Covenant on Civil and Political Rights (ICCPR).[7] Article 25 of the ICCPR requires that citizens be allowed to "take part in the conduct of political affairs" and "to vote and to be elected at genuine periodic elections." Under General Comment 25 to the ICCPR, this language requires that:

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

The absence of popular and legal constraints to check the behavior of Party officials has led to widespread corruption and citizen anger. Although Party policy documents assert that one-party control is necessary for social stability,[8] senior Chinese officials have acknowledged that the inability of local Party cadres to respond to citizen grievances is contributing to rising social unrest.[9] As one U.S. expert noted, "the power concentrated in the hands of the Party secretary and standing committee has led to corruption and other abuses of power that have fed social protests and a general decline in the legitimacy of the Party in recent years."[10] For example, thousands of local Chinese officials have used their positions to acquire financial interests in local mines, hampering efforts to improve their safety [see Section V(c)—Protection of Internationally Recognized Labor Rights]. In some localities, police collude with criminal forces[11] [see Section V(b)—Rights of Criminal Suspects and Defendants—Public Security and Coercive Use of Police Power]. In June 2005, local officials hired armed thugs to break up a protest by farmers in Shengyou village, Hebei province, killing six villagers and wounding more than 100. Villagers had opposed local government efforts to seize their land and claimed that local officials had embezzled money that should have gone to the villagers.[12] Ministry of Public Security statistics show that incidents of "mass gatherings to disturb social order" rose by 13 percent from 2004 to 2005.[13] Weak protection of labor rights and worker discontent over unpaid wages and benefits resulted in an increase in mass labor disputes from 1,482 in 1994 to 11,000 in 2003.[14] Both collective and individual citizen petitions seeking official redress have increased steadily from 1993 to 2004.[15]

Party secretaries can block access to local information sources that might challenge their control,[16] which stifles the role of the media as a check on the abuse of government power. In November 2005, Jilin provincial officials prevented the news media from reporting on an industrial accident and massive benzene leak on the Songhua River for more than a week. The delayed local government response impeded central government efforts to manage the crisis, caused panic among the citizens of Harbin city, and created a diplomatic incident with Russia[17] [see Section V(f)—The Environment]. In June 2005, Hong Kong news media reported that Party propaganda officials issued a directive limiting publication of critical investigative reports by local news media through a requirement that state-run news media first clear the articles with the local Party committee.[18] [See Section V(a)—Special Focus for 2006: Freedom of Expression.]

Chinese authorities have ruled out building representative democratic institutions to address citizen complaints about corruption and abuse of power,[19] and are recentralizing government posts into the hands of individual Party secretaries. Officials are also relying on top-down personnel controls to address local governance problems,[20] but these measures have increased incentives for some local Party secretaries to conceal problems from their superiors, and thus risk compounding the issue.[21] One Commission roundtable witness noted that "rural governance can only be improved within the current framework by strengthening the measures to monitor government by the local congress[es] and farmers' organizations,"

but that "Chinese rural governments have no impetus to initiate their own reform. . . ."[22]

Stronger Party Controls

In 2005, Communist Party officials called for strengthened controls over society to address mounting social problems and suppress dissent. In October 2005, the Party Central Committee and State Council issued an opinion calling for strengthened controls over society, and the accompanying press statement set a 2006 goal to reduce the number of "mass incidents" that disturb public order, including strikes, marches, demonstrations, and collective petitions to government authorities.[23] In January 2005, Party leaders launched an "advanced education" campaign to strengthen Party organizations and to conduct political education for Party cadres. Officials expanded the campaign to rural areas in November 2005.[24] Party officials assert that this propaganda campaign will help reduce social unrest.[25] A December 2005 Party and State Council joint opinion called for strengthening village autonomous institutions (such as elected village committees), but "under village Party leadership."[26] Government officials tightened controls over the press and imposed new restrictions on the Internet [see Section V(a)—Special Focus for 2006: Freedom of Expression]. Authorities issued warnings about the activities of civil society organizations, and are preparing new measures to monitor and control them [see Section VII(a)—Development of Civil Society].

Party officials say that the Chinese government "will absolutely not imitate Western political models," and they are strengthening Communist consultative institutions instead of creating representative political bodies.[27] At the March 2005 meeting of the Chinese People's Political Consultative Conference (CPPCC), Central Party School Vice President Li Junru contrasted the Chinese system of "elections plus consultation" with "discredited" Western liberal democratic models.[28] The CPPCC is a Party-led organization that includes Party members, representatives of Party mass organizations, and non-Party members that closely align themselves with Party goals, including members of the eight minor "democratic" parties permitted under Chinese law.[29] Li said, "[i]n order to address foreign and domestic challenges regarding the issue of democracy, particularly the challenge of the 'color revolutions,' the advantages of the CPPCC need to be brought into play more effectively."[30] In February 2006, Party authorities issued an opinion on strengthening the CPPCC.[31] It described "Chinese socialist democracy" as including not only elections but also "political consultation" between CPPCC and Party officials before important policy decisions are made.[32] It emphasized the role of the CPPCC in reflecting popular opinion and providing government and Party leaders with suggestions.[33] It also called for stronger guarantees that non-Party members may participate in consultations about government policies.[34] Foreign and Chinese news media have noted that Chinese government and Party officials see the CPPCC as a means to address mounting social unrest and popular grievances.[35]

Party officials are recentralizing government posts into the hands of Party secretaries, reversing reforms from the late 1980s in which Party leaders took some steps toward separating govern-

ment and Party roles.[36] Chinese authorities now encourage local Party secretaries to serve as the heads of local people's congresses (LPCs), and also encourage the same person to be village Party secretary and village committee head.[37] The Party's September 2004 "Decision on Strengthening the Party's Ruling Capacity" instructed officials to increase the number of dual Party-government appointments.[38] In 2005, Anhui provincial authorities expanded to 17 counties an experimental program that implements the 2004 Decision.[39] The Anhui program promotes having township Party secretaries serve concurrently as the head of township governments.[40] Reforms in individual townships require other government positions to be held by lower-ranking Party committee members.[41] Local officials say that the reforms seek to reduce overlapping responsibilities between government and Party officials, thereby decreasing the size of government and the local tax burden. Chinese domestic media has raised concerns about the wisdom of concentrating power in the hands of a single Party official.[42]

Chinese authorities increasingly use responsibility systems that, in the absence of popular and legal constraints on their power, provide incentives for local Party officials to conceal information and engage in illegal behavior. Responsibility systems link career rewards and sanctions to the success of local officials in meeting government and policy goals for social order, population planning, and other issues.[43] Because no meaningful popular participation constrains the behavior of local officials, responsibility systems create incentives for abuse of authority, as officials try to fulfill the goals set by their superiors. Such abuses include covering up mining accidents to meet safety goals [see Section V(c)—Protection of Internationally Recognized Labor Rights], coercing women to have abortions to meet population planning targets [see Section V(h)—Population Planning], and illegally detaining petitioners to meet social order objectives [see Section VII(c)—Access to Justice]. In July 2005, the State Council issued an opinion promoting the use of these top-down personnel systems.[44] Since that time, authorities have ordered responsibility systems to be implemented widely for officials in charge of enforcing intellectual property rights,[45] prohibiting illegal mining,[46] protecting the environment,[47] and supervising the judiciary [see Section VII(c)—Access to Justice]. In December 2005, central Party officials said that government and Party leaders at all levels should bear personal responsibility for maintaining social order.[48]

Limited Public Participation Reforms

Since the 1980s, officials have introduced limited reforms to allow citizens to vote in village elections. While these reforms are a step forward in permitting citizen participation at the local level, the reforms are designed to strengthen Party governance and do not represent Party acceptance of representative government.[49] Since the 1990s, Chinese authorities have pursued other reforms to increase citizen political participation, including the use of public hearings, greater government transparency requirements, and citizen participation in Party elections.[50] As one U.S. expert noted at a Commission roundtable, Chinese leaders have introduced these reforms to

> allay local discontent, to respond to growing demands for greater participation in politics, and to better monitor local agents of the state. . . . [They intend to] improve Party responsiveness both to reduce societal discontent and to preserve the Party's ruling position.[51]

These reforms attempt to "gain the sort of input that elections normally provide, but without introducing electoral democracy."[52] In an October 2005 joint opinion, Party and State Council officials specified that they want to create a system in which "the Party leads, the government bears responsibility, society assists, and the people participate."[53]

Since the late 1990s, the Party has experimented with reforms that allow a limited degree of citizen participation in the selection of local Party cadres, but the Party retains tight control over the candidate pool and the selection process. Party regulations adopted in 1995 and 2002 granted officials the discretion to permit public participation in nominations of government and Party leaders.[54] But the regulations warned that Party selection of nominees should not depend solely on the total number of votes received in the nomination process.[55] "Public nomination, direct election" experiments are currently under way in 217 counties in 13 provinces.[56] These experiments, however, grant citizens only a small role in the nomination of potential candidates, while allowing Party committees to strike names from the nominee lists, and giving Party members the final authority to choose officials.[57] For example, in February 2006 elections for the township Party committee in Longtoupu, Hunan province, Party members and non-Party citizen delegates first selected candidates from 16 nominees. The system weighted the selection process in favor of Party members, however, by restricting the proportion of citizen delegates to 30 percent (136) of the number of Party members (433). Party members then participated in a Party-only election to choose seven township committee members from the nine remaining candidates.[58]

Since 2000, Chinese authorities have experimented with the use of hearings to solicit public views on pending legislation.[59] The National People's Congress held its first controlled public hearing in September 2005. It chose 20 people, including academics and migrant workers, from among nearly 5,000 applicants to offer opinions on a proposal to raise the minimum taxable income.[60] The 2002 Environmental Impact Assessment (EIA) Law generally requires authorities and developers to hold public hearings or use other means to solicit public and expert input when projects may have a significant environmental impact.[61] The 2003 Administrative Licensing Law places similar requirements on government efforts to create administrative licensing schemes.[62] National authorities at the State Environmental Protection Administration (SEPA) and local authorities in cities such as Shenyang city in Liaoning province have adopted implementing measures for holding hearings under these two laws.[63] Environmental authorities and activists used public hearings in 2004 and 2005 to challenge some development projects.[64]

Citizen efforts to use hearings to advocate for change have been hampered both by the opposition of some central government officials and by rules that do not require hearings until late in the

regulatory drafting process. SEPA sponsored two environmental hearings in Beijing that received wide news media coverage and allowed the public to air concerns about the projects, but the hearings had limited impact on the projects. Some Western experts have noted that the hearings occurred well after the projects were under way.[65] Government authorities responded to public opposition to government plans to dam the Nujiang (Nu River) by temporarily halting the project, conducting a closed internal review, and banning further news media coverage of the topic[66] [see Section V(f)—The Environment—Public Participation in Environmental Protection]. Chinese officials have taken steps to curb SEPA's activism in the field of environmental protection. Soon after SEPA ordered the closure of 30 construction projects in early 2005 for failure to comply with EIA procedures, other central government officials overruled the decision.[67]

The central government has also announced transparency requirements for local governments. In 2000, the Party and State Council issued a joint opinion directing township authorities to make information available to the public on government administration and local finances. The joint opinion also encouraged authorities at the county level and above to experiment with such policies.[68] A March 2005 opinion expanded these requirements, announced the principle that government information generally should be made public, placed specific requirements on county and provincial governments, and linked these steps to efforts to increase popular participation in supervising government decisions.[69] Neither opinion requires officials to make Party information public. Implementation of these "open government" requirements varies, but some local governments, including the cities of Shanghai and Guangzhou, have taken steps toward greater openness.[70]

Local experiments with governance reform can result in positive changes when they are linked to substantive and independent citizen oversight. Officials in Wuyi county in Zhejiang province have allowed the creation of "village affairs supervision committees" with veto power over the financial decisions of the local Party branch and the village committee.[71] Villagers select supervision committee members through direct election, and the committee may not include Party branch or village committee members. The reforms have helped check official corruption and have provided limited space for citizen political participation.[72] Nonetheless, supervision committees in Wuyi remain dependent on the support of individual reform-minded Party cadres, and officials threatened by these reforms have resisted such efforts.[73]

In December 2005, the government placed reform of laws governing village and residents' committees (VCs, RCs) on the national 2006 legislative plan.[74] In October 2005, provincial Ministry of Civil Affairs officials prepared draft proposals for reform of the Organic Law on Village Committees. The proposed changes would regularize and clarify campaign rules, allow village representative assemblies to choose the village election committee, and require townships to organize village recall elections if a village assembly fails to handle a recall.[75] These changes do not address issues such as township government and local Party control over VCs. Party regulations and directives require local Party branches to direct VC

election work.[76] One local Party organization bureau official explained that this mandate requires the local Party secretary to head the election committee that is charged with supervising the elections; to organize Party members to serve on the election committee; to encourage Party members to run for the position of VC head; and to bar the registration of candidates who belong to unregistered religious groups, oppose population planning policies, or organize mass petitions.[77]

Local Party and township government control over local elections undermines the protections granted to citizens by national law. In July 2005, residents of Taishi village, Guangdong province, launched a recall campaign pursuant to the provisions of Article 16 of the Organic Law on Village Committees that authorize such efforts.[78] The recall sought to remove the official serving as both local Party branch secretary and village committee head, whom they accused of misusing village revenue from land sales.[79] In September 2005, township and village officials suppressed the recall effort. They removed village financial documents from government offices, forced popularly elected members of the recall committee to resign, arrested and beat dozens of residents and activists, and barred reporters from entering the village.[80] In March 2006, a leader of the Taishi recall effort lost a township local people's congress election bid against a rival candidate supported by local officials. The defeated candidate and his supporters alleged that the rival candidate bought votes and that the election committee and local officials tampered with the ballots.[81]

VII(c) Access to Justice

FINDINGS

- International human rights standards require effective remedies for official violations of citizen rights. Despite these guarantees, Chinese citizens face formidable obstacles in seeking remedies to government actions that violate their legal rights and constitutionally protected freedoms. External government and Communist Party controls continue to limit the independence of the Chinese judiciary. Party officials control the selection of top judicial personnel in all courts, including the Supreme People's Court, China's highest judicial authority. Since 2005, the government has restricted the efforts of private lawyers and human rights defenders who challenge government abuses. The All China Lawyers Association issued a guiding opinion that restricts the ability of lawyers to handle cases involving large groups of people. Local Chinese authorities have imposed additional restrictions on lawyer advocacy efforts.
- The constitutional and administrative mechanisms in Chinese law that allow citizens to challenge government actions do not provide effective legal remedies, and Chinese citizens seldom use them. Chinese citizens rarely submit proposals to the National People's Congress for constitutional and legal review because the review process lacks transparency and citizens cannot compel review. Administrative court challenges to government actions have not increased since 1998. Provincial authorities report an overall decline between 2003 and 2005 in

applications for administrative reconsideration, and the total numbers of such applications in major Chinese municipalities is a few hundred per year.

• Chinese law also permits citizens to petition government officials directly to redress their grievances through the *xinfang* ("letters and visits") system. Official news media report that Chinese citizens presented 12.7 million petitions to county-level and higher *xinfang* bureaus during 2005, in contrast to the 8 million total court cases handled by the Chinese judiciary during the same period. Local officials are disciplined more severely for high incidences of petitioning. Absent alternative political or legal channels to check the power of local officials and obtain redress, this punishment structure provides an incentive for Chinese citizens to take their grievances to the streets in order to force local officials to act. But this punishment structure also gives local authorities an interest in suppressing mass petitions and preventing petitioners from approaching higher authorities. A December 2005 study of the *xinfang* system by a U.S. NGO found that some local authorities have resorted to "rampant violence and intimidation" to abduct or detain petitioners in Beijing and force them to return home.

• The Supreme People's Court 2004–2008 court reform program imposes stronger external and internal controls that may further weaken the independence of courts and judges. The court reform program, however, also sets some positive long-term goals for judicial reform in the areas of court financing, adjudication, retrial procedures, and juvenile justice. Party efforts to address growing social unrest have resulted in new government programs to strengthen institutions that assist citizens with legal claims and disputes. Official Chinese statistics show that the number of government legal aid centers rose from 2,774 in 2003 to 3,081 in 2005. The total number of cases handled by these centers rose from about 166,000 in 2003 to an estimated 250,000 in 2005, or roughly 3 percent of all cases handled by the Chinese courts in 2005.

Access to Justice and International Human Rights Standards

Chinese citizens face formidable obstacles in seeking remedies to government actions that violate their legal rights and constitutionally protected freedoms. Party and government controls limit the independence of Chinese courts and weaken the ability of individual judges to decide cases fairly. The government restricts lawyer advocacy efforts, particularly in politically sensitive cases. Although Chinese law provides citizens with Constitutional, judicial, and administrative mechanisms to challenge official violations of their rights, these mechanisms do not provide effective legal remedies.

International human rights standards require effective remedies for official violations of citizen rights. Article 8 of the Universal Declaration of Human Rights states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article 2 of the International Covenant on Civil and Political Rights (ICCPR) requires that all parties to the ICCPR ensure

that persons whose rights or freedoms are violated "have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." [1]

The Chinese Judicial System

External government and Communist Party controls continue to limit the independence of the Chinese judiciary. Party officials control the selection of top judicial personnel in all courts, including the Supreme People's Court (SPC), China's highest judicial authority. Party interests guide judicial reform efforts. SPC President Xiao Yang has linked official efforts to improve the funding and professionalization of rural Chinese courts to the core Party goals of establishing a "harmonious society" and "increasing the Party's governance capacity." [2] In January 2006, the Party's Political and Legislative Affairs Committee issued a circular directing courts to improve enforcement efforts "under the leadership of local Party committees," apparently in response to the Party's broader effort to address mounting social unrest.[3]

The SPC's 2004–2008 reform program imposes stronger external controls on courts.[4] The program directs courts to permit officials from local procuratorates to participate in adjudication committees, the highest authorities within Chinese courts. Since the procuratorate represents the government in cases pending before the courts, this directive raises issues of judicial independence and conflict of interest.[5] The program also directs local officials to strengthen court mechanisms for receiving criticism and recommendations from local people's congresses (LPCs). The Chinese Constitution grants the standing committees of LPCs the authority to supervise local courts,[6] and court procedures facilitate the intervention of LPC delegates in individual cases.[7]

The SPC also announced stronger internal controls over Chinese courts that may weaken the independence of individual judges to decide cases fairly. The SPC's 2004–2008 program requires that Chinese courts implement responsibility systems for individual judges and judicial panels.[8] These systems discipline judges for a range of errors, including reversals by a higher court for legal errors.[9] Chen Youxi, Vice President of the Constitutional and Human Rights Committee of the All China Lawyers Association, noted that because such systems "have a direct impact on personal interests such as bonuses and benefits of those trial judges with high rates of overturned cases," trial judges "commonly resort to seeking advance guidance from higher courts before making a decision, and run to appeals courts to convince them not to overturn their verdicts." [10] Such systems encourage judges to violate the principles of openness and transparency in judicial decisionmaking.[11] In November 2005, Chi Qiang, the president of the Beijing No. 1 Intermediate People's Court, announced the abolition of his court's responsibility system, and said that his court will attempt to move toward a disciplinary system that sanctions judges for illegal behavior rather than "incorrect" outcomes.[12] The wider adoption of such innovative local reforms remains in doubt, however, given the SPC's requirement that courts implement responsibility systems.

Some local Party officials have called for a degree of judicial independence, even as they press for strengthened controls over

courts.[13] State-controlled news media announced in January that Jiangxi provincial Party officials had issued a decision pressing local Party committees to strengthen their controls over the selection of court personnel. The decision, however, also called on local Party officials to support judicial independence and guard against local protectionism. The decision warned local Party committees against organizing court personnel to participate in campaigns to enforce administrative decisions or to attract investment in the local economy.[14]

The SPC's 2004–2008 court reform program sets some positive long-term goals for judicial reform. The SPC announced that it will consolidate and reclaim the death penalty review power from provincial-level high courts, and will require court hearings to resolve death penalty appeals [see Section III(b)—Rights of Criminal Defendants and Suspects]. The program also proposes steps to implement other positive reforms,[15] including:

- Court financing. Local governments influence courts through their control over judicial funding and appointments, and use this influence to protect local interests. The program directs court officials to explore national financing for court operations.
- Court adjudication committee system. Adjudication committees include court presidents and other administrative personnel and are the highest authorities in Chinese courts. They are often the vehicle for outside pressure to reverse individual decisions. The program directs committees to adopt more open decisionmaking procedures and to guarantee that experienced judges are able to serve on adjudication committees.
- Retrial procedures. Chinese court decisions often lack finality, as the result of extensive use of retrial procedures with vague rules and few limitations. [See Section V(b)—Rights of Criminal Suspects and Defendants—Fairness of Criminal Trials and Appeals for the impact that this has had on criminal trials.] The program directs officials to clarify the criteria, limits, jurisdiction, and procedures for granting retrial. Officials have drafted two proposed judicial interpretations that seek to address some of these questions.[16]
- Advisory opinion system. Lower courts often rely on advisory opinions from higher courts for specific guidance on how to decide pending cases. This system undermines judicial fairness by separating actual court decisions from trials and by making subsequent appeals (to the same entity that responded to the request for review) no more than a formality. The program directs courts to limit use of advisory opinions to general questions of law rather than determinations of fact.
- Use of official authentication conclusions and expert testimony. The program directs court officials to implement a 2005 National People's Congress decision that forbids courts from establishing for-profit authentication centers to provide expert testimony. The Ministry of Justice issued relevant implementing measures in September 2005.[17]
- Juvenile justice system. China currently has 2,400 juvenile tribunals.[18] The program directs courts to improve their work in handling criminal, civil, and administrative cases affecting

the rights of juveniles. It also provides for the establishment of experimental juvenile courts.

Access to Legal Representation

Communist Party efforts to address growing social unrest have resulted in government programs to strengthen institutions that assist citizens with legal claims and disputes. To help reduce the number of citizen protests and mass petitions, provincial and municipal Party committees have directed local officials to improve legal aid and mediation efforts.[19] Minister of Justice Wu Aiying said in February that:

> [We must] bring into play the professional strengths of lawyers in resolving disputes. [We must] take further steps to organize and guide lawyers, basic legal service workers, and legal aid personnel to actively participate in the work of handling mass incidents and citizen petitions involving legal issues. [We must] actively explore methods and measures that press parties to settle out-of-court and in non-litigation forums, in order to better resolve disputes and prevent them from escalating.[20]

Central government officials also are strengthening the Ministry of Justice (MOJ) presence at the local level, particularly in western China and at the level of township governments. MOJ offices guide the work of local mediation committees, run government legal aid programs that provide pro bono legal representation to citizens who meet designated criteria, and supervise and license Chinese lawyers.[21] In 2005, Chinese authorities set the goal of ensuring that 91 percent of Chinese townships had a MOJ office by the end of 2006.[22] Chinese authorities designated 7.4 billion yuan (US$920 million) to improve housing and work conditions for township court, justice, and public security bureaus in western China from 2004 to 2008.[23] The MOJ has made the strengthening of township mediation and legal aid programs part of its effort to implement the Party's "new socialist countryside" campaign.[24]

Chinese authorities have expanded the scope of government legal aid efforts. Official Chinese statistics show that the number of government legal aid centers rose from 2,774 in 2003 to 3,081 in 2005. The total number of cases handled by these centers rose from about 166,000 in 2003 to an estimated 250,000 in 2005, or roughly 3 percent of all cases handled by the Chinese courts in 2005.[25] In July 2005, the All-China Environment Federation and the State Environmental Protection Administration announced the creation of a joint legal aid program for the victims of environmental pollution.[26] In September 2005, the Shanghai People's Congress issued a decision clarifying the eligibility of migrant workers for legal aid in cases of labor disputes, occupational injuries, and domestic violence.[27] In May, the All-China Federation of Trade Unions (ACFTU) announced that 669 of its legal staff would be permitted to acquire bar licenses and provide increased legal services to workers [see Section V(c)—Protection of Internationally Recognized Labor Rights].

At the same time that it has promoted efforts to expand legal assistance to citizens, the government also has restricted the efforts of private lawyers and human rights defenders who challenge gov-

ernment abuses [see Section IV—Introduction; Section V(b)—Rights of Criminal Suspects and Defendants—Access to Counsel and Right to Present a Defense]. The MOJ's "2006 Report on the Policy for Development of China's Legal Profession" emphasized its role in "guiding" the legal profession and the need for all lawyers to "serve the harmony and stability of society."[28] The All China Lawyers Association (ACLA) issued a guiding opinion that went into effect on March 20 and restricts the ability of lawyers to handle cases involving representative or joint litigation by 10 or more litigants, or cases involving both litigation and non-litigation efforts.[29] The guiding opinion further instructs law firms to assign only "politically qualified" lawyers to conduct the initial intake of these cases, and to obtain the approval of at least three law firm partners before taking them on.[30] Lawyers who handle mass cases must accept supervision and guidance by judicial administration departments, attempt to mitigate conflict, and propose mediation as the method for conflict resolution.[31] Local lawyers' associations may sanction any lawyer or law firm that fails to follow these guidelines and causes a "negative impact."[32]

Local Chinese authorities have imposed additional restrictions on lawyer advocacy efforts. The Henan Provincial Justice Bureau has issued an opinion that forbids lawyers from using the news media and engaging in various other activities when handling "major, sensitive, mass" cases.[33] The opinion says that lawyers in Henan province cannot "use the media to stir things up or create a negative impact on domestic or international public opinion." It prohibits lawyers and law firms from publishing commentary to affect the outcome of a case or the mood of the public, and warns them not to establish contact with foreign organizations or news media in violation of disciplinary rules. The Shenyang Municipal Justice Bureau has also issued an opinion that requires lawyers to seek instruction from the Justice Bureau before they handle "major, difficult, and sensitive" cases.[34]

Constitutional Review

The National People's Congress (NPC) wields exclusive power to amend the Constitution and to enact and amend national laws, particularly through its Standing Committee (NPCSC). The NPC is the only governmental body with the power to interpret the Constitution and supervise its enforcement. Chinese courts do not have the power either to apply constitutional provisions in the absence of concrete implementing legislation or to strike down laws or regulations that are inconsistent with the Chinese Constitution.[35] In December 2005, the NPCSC enacted new procedures that require the Supreme People's Court (SPC) and the Supreme People's Procuratorate to submit judicial interpretations to the NPCSC within 30 days of promulgation.[36] At least one Chinese scholar has said that these new procedures represent an NPC move to rein in the SPC and to ensure that the SPC does not erode the NPC's power as China's sole legislator and interpreter of the Constitution.[37] The NPC supervises both the SPC, China's highest judicial authority, and the State Council, China's executive authority, but the NPC remains subject to tight Party control [see Section VII—

Development of the Rule of Law and the Institutions of Democratic Governance].

Some scholars have suggested removing the power of constitutional review from the NPC and vesting it in a "dedicated judicial agency,"[38] but the government has ruled out establishing a specialized court to review the constitutionality of laws and administrative regulations.[39] Senior government and Party leaders have warned officials to guard against the promotion of "Western-style constitutional reform."[40] They also reject adopting a "Western separation of powers,"[41] and insist that any restraint on the central government's power must not diminish the leadership of the Communist Party.[42]

Under Article 90 of the Legislation Law, Chinese citizens may propose NPCSC review of whether or not a State Council regulation violates the Constitution or any national law.[43] The Chinese government has taken some limited steps to formalize the constitutional and legal review system. For example, the NPCSC announced in 2004 the formation of a new Legislation Review and Filing Office (LRFO) to assist its Legislative Affairs Commission in reviewing regulations that may conflict with the Constitution and national laws.[44] In December 2005, the NPCSC amended the "Working Procedures for the Filing and Review of Administrative Rules, Local Rules, Autonomous Region and Special Purpose Regulations, and Special Economic Zone Rules" (Legislation Procedures).[45] The Legislation Procedures stipulate three phases for constitutional and legal review: consultation between the NPCSC and the formulating agency; NPCSC submission of a written request to the formulating agency that it revise or rescind the legislation; and, if the formulating agency does not accept the request, consultation within the NPCSC to determine whether or not to rescind the legislation. The amendments include a new provision authorizing the special committees of the NPC to review laws and regulations on their own initiative, with a deadline of two months for formulating agencies to respond to NPCSC special committee requests that a regulation be revised or rescinded.

Chinese citizens rarely submit proposals to the NPCSC for constitutional and legal review because the review process lacks transparency and citizens cannot compel review.[46] During the run-up to the annual plenary sessions of the NPC and the Chinese People's Political Consultative Conference, Chinese authorities shut down the Aegean Sea (*Aiqinhai*) Web site, as well as four other sites that had complained on behalf of local workers.[47] The Web site operators sought relief through the constitutional and legal review system in April 2006.[48] As of September 2006, the NPCSC had not yet responded to the request for review. To address these problems, some Chinese legal experts have called for requiring the LRFO to notify those seeking review whether or not it will accept their proposal, and to provide explanations to those whose proposals it rejects.[49] Others have suggested that the NPCSC report each year to the full NPC, describing the previous year's constitutional review work.[50] Some legal experts in China also have advocated that the NPCSC establish a dedicated Constitutional Commission staffed by scholars, judges, and lawyers.[51]

NPC special committees and other central government agencies have the power to compel the NPCSC to act on their applications,[52] but they have an interest in maintaining the national status quo and not creating conflicts among themselves.[53] Thus, they have little incentive to request review of national laws, State Council regulations, or other central government agencies' rules on major issues relating to civil or human rights.[54] Citizens may only offer proposals to the LRFO, which stands between them and the NPCSC and lacks the power to issue binding decisions that would resolve disputes.[55] In addition, unlike other laws that compel State Council departments, courts, and local governments to act on citizens' applications and lawsuits,[56] the Legislation Law merely provides that the NPCSC may react to citizens' proposals "if necessary." Finally, the government is not required to inform citizens whether or not it will act on a proposal, and the 2005 amendments to the Legislation Procedures revised the provision concerning government notification to a citizen that a review is complete, making such notification voluntary.[57]

The NPCSC has enacted and amended laws and regulations that protect citizens from government abuses in response to public pressure[58] and new legislative mandates,[59] but it has never rescinded a law or administrative regulation in direct response to a citizen proposal.[60] The primary purpose of the constitutional and legal review system is to safeguard the unity of China's legal system rather than to give citizens an effective remedy by a competent national tribunal.[61] The system is based on the constitutional and legal presumption that the NPC and its Standing Committee are paramount,[62] and therefore not subject to checks, balances, or oversight.[63] The China Law Society's Democracy and Law Times summarized the situation as follows:

> As a system, constitutional review comprises proposal, acceptance, review, determination, and resolution. If it lacks any one of these, then the constitutional review system is not complete. Although the meaning of citizens having been granted the right to submit proposals for constitutional review is very important, if all they have is the right of proposal, and do not have the right of acceptance, review, determination, and resolution, then the right of proposal exists in name only. This also explains the reason why so few citizens propose constitutional review.[64]

Judicial and Administrative Review of State Action

Chinese law provides methods for citizens to seek a remedy when they believe the government has violated their rights. These methods allow Chinese citizens limited legal recourse against individual officials or local governments that exceed their authority.[65] Under the Administrative Reconsideration Law (ARL), Chinese citizens may submit an application to State Council departments for administrative review of specific government actions that violate their legal rights and interests.[66] Under the Administrative Procedure Law (APL), citizens may file a lawsuit in a people's court to challenge government actions.[67] Under the State Compensation Law, citizens may request compensation for illegal government acts along with an ARL or APL action, or present them directly to the

relevant government bureau.[68] Some local Party disciplinary committees are also experimenting with procedural changes that grant cadres in specific cases the ability to mount a defense, present evidence, and receive a hearing on the charges against them.[69]

These methods, however, do not allow Chinese citizens to challenge administrative regulations that violate constitutional or legal rights. Article 12 of the APL forbids courts from accepting citizen challenges of administrative rules and regulations that have "general binding force." Article 7 of the ARL allows citizens to apply to administrative agencies for review of the legality of decrees[70] of State Council departments and local people's governments at or above the county level, and any provisions enacted by town or township people's governments.[71] The ARL does not, however, allow reconsideration of State Council rules or regulations.[72]

Citizens are making only limited use of laws that protect their rights by granting judicial and administrative review of government actions. For example, Hubei provincial authorities report an overall decline between 2003 and 2005 in applications for administrative reconsideration, from 3,468 to 3,336.[73] Total numbers of such applications in major Chinese municipalities is a few hundred per year.[74] Administrative court challenges to government actions have not increased since 1998. In 2005, first-instance administrative law cases totaled 95,707, nearly twice the 52,596 reported in 1995, but a decline from the 101,921 recorded in 2001. This decline parallels a similar stagnation in citizens using the judiciary generally. In 2005, the Chinese judiciary handled 4.3 million first-instance civil cases, down from 4.73 million reported in 2001, and only slightly higher than the 4 million recorded in 1995.[75]

Chinese laws that grant judicial and administrative action to citizens to protect their rights do not provide mechanisms to compel effective judicial or government review. When the government shut down the Aegean Sea Web site, along with four other Web sites, in March 2006, authorities cited Article 5 of the Provisions on the Administration of Internet News Information Services (Provisions),[76] which grant the State Council Information Office (SCIO) the authority to license Web sites that report and comment on politics, economics, fast-breaking social events, and military, foreign, social, and public affairs. The operators of the closed Web sites believed that the Provisions violated their constitutional and legal rights,[77] but they had no way to compel judicial or other government review of the Provisions. Government authorities were acting under the authority of the Provisions when they shut down the Web sites, and so the issue was whether the Provisions violated the Constitution, a national law, or a State Council regulation. Administrative review under the ARL could not provide the Web site operators an effective remedy because the Provisions are "department rules," and a 2005 State Council decision (Decision) explicitly provides for the licensing authority granted to the SCIO.[78] Because citizens may not use the administrative reconsideration system to question the constitutionality or legality of State Council regulations (such as the Decision) or State Council department rules (such as the Provisions), the Web site operators would be unlikely to obtain effective relief based on an application for administrative reconsideration attacking the Provisions directly.

The ARL provides that citizens who do not accept an administrative reconsideration decision may file a lawsuit with a people's court under the APL.[79] Like the ARL, however, the APL explicitly prohibits constitutional or legal review of State Council departments' rules.[80] A court could refuse to enforce the Provisions if they conflicted with a national law or a State Council regulation,[81] but since the SCIO's licensing authority is derived from the Decision, a court would lack the authority to declare the Provisions unconstitutional or illegal.[82]

Citizen Petitioning

Since the 1950s, *xinfang* ("letters and visits") offices have provided a channel outside court challenges for citizens to appeal government decisions and present their grievances.[83] Under the new national Regulations on Letters and Visits (RLV) issued in January 2005, citizens may "give information, make comments or suggestions, or lodge complaints" to *xinfang* bureaus of local governments and their departments.[84] Individual petitioning may be as simple as one dissatisfied citizen visiting multiple *xinfang* bureaus within government agencies. Collective or mass petitioning may involve organized demonstrations, speeches, or marches of hundreds or thousands of people seeking to present their grievances, despite an official prohibition on such activities.[85] Official news media report that Chinese citizens presented 12.7 million petitions to county-level and higher *xinfang* bureaus during 2005,[86] in contrast to the 8 million total court cases handled by the Chinese judiciary during the same period.[87] The total number of petitions increased each year from 1993 to 2004.[88] Petitioning is common even within the judiciary. Chinese courts handled four million petitions in 2005, a number roughly equal to the total number of civil court cases for the year.[89]

Authorities launched an implementation campaign for the RLV in 2005 aimed at reducing the number of citizen petitions. The government tasked the Ministry of Public Security (MPS) with coordinating official responses to citizen petitions, required local MPS heads to meet personally with petitioners in a May-to-September campaign, and increased propaganda efforts pressing local officials to resolve citizen petitions.[90] Chinese authorities have ordered the nationwide adoption of responsibility systems that discipline local officials who fail to prevent mass petitions.[91] Concerned about the rising number of mass petitions, central Party officials have set a goal to decrease the number during 2006.[92] Party and government officials have called for strengthening *xinfang* institutions in conjunction with stronger efforts to maintain social order.[93]

Chinese authorities and state-run news media report that official measures to address citizen petitions in 2005 were a major policy success,[94] but official statistics provide conflicting support for this claim. Official statistics show total citizen petitions declined for the first time in 12 years, from 13.7 million in 2004 to 12.7 million in 2005.[95] Although officials reported a 90 percent success rate in resolving petitions,[96] scholars commissioned by the government to study the issue say that only 0.2 percent of petitions filed receive a response.[97] Official news media report that government and Party *xinfang* bureaus at the county level and above have handled

some 917,000 petitions since the beginning of the campaign, but this represents less than a tenth of the total number of petitions received in 2005 by *xinfang* bureaus. Since MPS rules issued in August 2005 provide for disciplining local MPS officials who fail to prevent collective petitions, MPS officials may be suppressing petitioners or misreporting their numbers rather than resolving the underlying problems.[98]

The 2005 RLV requires local governments to adopt official *xinfang* responsibility systems, and some local governments have done so.[99] These systems punish local officials more harshly for mass petitions that reach higher-level authorities, depending on the numbers of petitioners involved and the level of government that they reach.[100] Absent alternative political or legal channels to check the power of local officials and obtain redress, this punishment structure provides an incentive for Chinese citizens to take their grievances to the streets in order to force local officials to act.[101] But this punishment structure also gives local authorities an interest in suppressing mass petitions and preventing petitioners from approaching higher authorities. A December 2005 NGO study of these systems found that some local authorities have resorted to "rampant violence and intimidation" to abduct or detain petitioners in Beijing and force them to return home.[102] The report alleges that Beijing police often ignore such abductions or detentions and sometimes assist with abductions.[103]

The government uses harsh measures to repress petitioners during high-profile national events. In March 2006, a senior MPS official confirmed that MPS officials would engage in mass roundups to "strongly encourage" those "people without proper professions, fixed places of residence, or stable incomes who have been hanging around Beijing for a long time" to leave the capital before the annual plenary session of the National People's Congress (NPC).[104] Other repressive measures include:

- During the annual NPC plenary session in March 2006, authorities detained AIDS activist Hu Jia for 41 days without legal formalities and without notifying his family [see Section V(b)—Rights of Criminal Suspects and Defendants—Arbitrary Detention]. Hu had attempted to submit petitions on behalf of AIDS victims to central government officials during high-profile conferences [see Section V(g)—Public Health—HIV/AIDS].
- In December 2005, Beijing police arrested several hundred petitioners who gathered outside the offices of China Central Television to present their grievances on "Popularize Law Day."
- In December 2005, Shanghai police arrested over 200 petitioners who sought to present their grievances to municipal Party officials and were gathered outside a building in which the local Party branch was holding a conference.
- In November 2005, police in a number of cities arrested or detained dozens of petitioners before an official visit by U.S. President George W. Bush.[105]

Chinese court officials are pursuing reforms to the process of handling citizen petitions that may weaken the ability of individual judges to decide cases according to law. The Supreme People's Court (SPC) announced in November 2005 that it will require Chi-

nese courts to establish procedures to resolve citizen petitions about judicial decisions. Trial judges will be responsible for responding to parties who visit the court and raise complaints about judgments, and their record for handling such complaints will be made part of their performance reviews.[106] Similarities between the SPC announcement and the RLV suggest that the central government seeks to implement a common set of reforms for addressing citizen petitions to both the courts and local governments.[107] The SPC reforms may encourage Chinese litigants to resort to post-decision petitioning rather than appeals to reverse verdicts, increase pressure on Chinese trial judges to alter verdicts to satisfy persistent petitioners, and weaken the finality of judgments.[108]

VII(d) Commercial Rule of Law and the Impact of the WTO

FINDINGS

- The Chinese government has made progress in bringing its laws and regulations into compliance with its World Trade Organization (WTO) commitments. Although significant flaws remain, the new body of commercial laws has improved the business climate for foreign companies in China. With new, more transparent rules, the Chinese trade bureaucracy has reduced regulatory and licensing delays in many sectors.
- The Chinese commercial regulatory regime remains, however, largely opaque to both domestic and foreign businesses. When China joined the WTO in December 2001, the government committed to establishing an official journal that would publish drafts of trade-related measures for notice and comment, and to publishing trade-related measures no later than 90 days after they become effective. Although the government has acted to improve transparency, some central government agencies and many local governments are not consistent in publishing trade-related measures in the official journal.
- The Chinese government tolerates intellectual property rights (IPR) infringement rates that are among the highest in the world. The Chinese government has not introduced criminal penalties sufficient to deter IPR infringement, and steps taken by Chinese government agencies to improve the protection of foreign intellectual property have not produced any significant decrease in infringement activity. The Chinese government's failure to provide effective criminal enforcement of IPR has led foreign companies to turn to civil litigation to obtain monetary damages or injunctive relief. Civil litigants continue to find, however, that most judges lack the necessary training and experience to handle IPR cases, and damage awards are too low to be an effective deterrent.
- Since acceding to the WTO, the Chinese government has used technical, regulatory, and industrial policies, some of which appear to conflict with its WTO commitments, to discriminate against foreign producers and investors and limit their access to the domestic market. U.S. rights holders and industry groups have complained that the government's censorship regime serves as a barrier to entry and encourages IPR violations. In 2005, the American Chamber of Commerce in

China wrote that censorship clearance procedures severely restrict the ability to distribute CD, VCD, and DVD products in China and provide an "unfair and unnecessary advantage to pirate producers who bring their products to market long before legitimate copies are available for sale."

Introduction

On December 11, 2001, China formally became a member of the World Trade Organization (WTO). In doing so, the Chinese government agreed to abide by the rules governing trade relations among most of the nations in the world, and voiced its willingness to make fundamental changes to its trade regime to conform with the WTO's rules-based system, affecting China's system of governance at all levels. The WTO agreements and China's accession documents contain many core elements of the rule of law. When China joined the WTO, the Chinese government committed to ensuring that all trade-related measures be administered in a non-discriminatory manner. The WTO also imposes transparency on its members by requiring that all laws, regulations, judicial decisions, and administrative rulings relating to trade be published promptly.

The government's implementation of its WTO non-discrimination and transparency obligations is a useful measure of the overall development of the rule of law in China, including the extent to which the government treats individuals equally under the law and makes laws and administrative regulations accessible to the public. The Chinese government has made progress in bringing its laws and regulations into compliance with its WTO commitments. The new body of commercial laws has improved the business climate for foreign companies in China. With new, more transparent rules, the Chinese trade bureaucracy has reduced regulatory and licensing delays in many sectors. Nevertheless, serious problems remain in such areas as regulatory transparency, the enforcement of intellectual property rights (IPR), and discrimination against goods and services of foreign origin. Most of China's WTO commitments were to have been phased in by December 2004, and the past year therefore provides an indication of what Chinese citizens and foreign investors can expect of China as a WTO member with its full range of WTO commitments in place.

The U.S. and Chinese governments established the U.S.-China Joint Commission on Commerce and Trade (JCCT) in 1983 as a government-to-government mechanism to develop and facilitate the bilateral commercial relationship. The two governments held the 17th plenary session of the JCCT on April 11, 2006, in Washington, D.C. The Chinese delegation made a number of commitments on trade issues of priority concern to the United States, such as fighting piracy of U.S. intellectual property; increasing transparency in China's domestic regulatory process; ending duplicative testing of U.S. medical products entering the Chinese market; resuming sales of U.S. beef; and making progress toward accession to the WTO Agreement on Government Procurement. The U.S. Department of Commerce is the lead U.S. government agency in the JCCT process, and engages the Chinese government to ensure compliance with commitments made at JCCT meetings.

Transparency

The Chinese commercial regulatory regime continues to exhibit what the United States Trade Representative (USTR) describes as "systemic opacity."[1] China's Protocol of Accession to the WTO requires that the Chinese government translate all trade-related laws, regulations or other measures into one or more of the WTO's official languages.[2] In addition, to the maximum extent possible, it must make these laws, regulations and other measures available before they are implemented or enforced, but in no case later than 90 days after the date of implementation or enforcement.[3] Moreover, the government committed to designating an official journal to regularly publish trade-related laws, regulations, and other measures, and to provide additional relevant information, such as the effective date for a particular measure and the identity of the governmental and non-governmental authorities responsible for authorizing, approving, or regulating services activities.[4] Before implementing or enforcing trade-related laws, regulations, and other measures, the Chinese government has committed to publishing them in an official journal and to providing a reasonable period for public comment to the appropriate government authorities, except in extraordinary circumstances.[5]

The government, in particular the Ministry of Commerce (MOFCOM), has taken steps toward improving transparency, but still does not consistently publish trade-related measures[6] and does not always translate those measures that it publishes.[7] Some government agencies do not circulate drafts of trade-related measures to outside groups or individuals, domestic or foreign, or do so only on the condition that the outside party promises not to share the draft more widely.[8]

In March 2006, the State Council issued a circular providing that the "Chinese Foreign Economic Trade Gazette" would be the government's official journal for the publication and registration of "all laws, regulations, or other measures pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights (TRIPs), or the control of foreign exchange."[9] The circular reiterated that all local governments and government agencies are required to forward to MOFCOM any trade-related regulations that they promulgate or make available in draft form for public comment. MOFCOM is then responsible for publishing the regulations. MOFCOM began making the Gazette available on its Web site in 2003.[10] A Commission review of the Gazette indicates, however, that few trade-related measures below the central government level have been published there.

Poor transparency has made it difficult for the U.S. government to obtain accurate information on the Chinese government's subsidy programs.[11] The WTO Agreement on Subsidies and Countervailing Measures requires each WTO member to submit an annual notification of all the subsidies that it maintains, and provides that members shall respond to requests for information regarding practices that appear to constitute subsidies "as quickly as possible and in a comprehensive manner."[12] To date, however, the Chinese government has not met its annual notification commitment. The United States submitted a request to the Chinese government in October 2004 regarding a number of subsidy programs.[13] The Chi-

nese government did not respond until April 2006,[14] and that response was limited to subsidies that existed between 2001 and 2004.

Chinese officials credit China's accession to the WTO as having increased the government's attention to transparency. Zhou Hanhua, the head of the State Council-designated drafting team on open government measures [see Section VII(b)—Institutions of Democratic Governance and Legislative Reform], said WTO accession has raised awareness about citizen rights and the importance of openness and transparency.[15] Some local governments also have cited the WTO transparency principle as support for their own reforms. For example, officials in Changzhou city, Jiangsu province, announced in November 2005 that the city government would no longer enforce regulatory documents that have not been published first in the local newspaper, the government's gazette, or other publications specified by the city government. In the circular announcing this requirement, the Changzhou government said that, "[A]ccording to the WTO 'principle of openness and transparency,' there is generally one month between the time that regulatory documents and other policies and proceedings are promulgated and the time that they are implemented."[16] The new procedures provided that the public could "inspect and review" any such draft measure before the government makes it effective if it has been published in one of the three approved media.

Intellectual Property Rights Protection and Enforcement

Intellectual property counterfeiting and piracy in China are rampant, according to Chinese[17] and U.S. government sources.[18] Industry reports indicate that infringement levels in China range from 85 to 95 percent for all copyrighted works.[19] In 2005, the value of copyrighted works that were pirated exceeded US$2.3 billion.[20] China is now the second-largest legal music market in Asia, with sales worth US$212 million in 2004. Sales of pirated discs were, however, worth approximately US$400 million.[21] Ninety percent of the software used in China is pirated,[22] and business software losses were estimated at US$1.27 billion in 2005.[23] A study commissioned by the Motion Picture Association of America found that 93 percent of the Chinese film market is lost to piracy,[24] costing U.S. rights holders nearly US$300 million per year, according to industry estimates.[25] According to U.S. customs statistics, 69 percent of all counterfeit products seized at the U.S. border in 2005 were of Chinese origin,[26] and the volume of seized Chinese goods continues to rise.[27] U.S. industry reports of piracy levels in China ranged from an assessment that "no significant reduction in IPR infringement levels" had taken place in 2005,[28] to a more positive assessment that there had been sharp improvement in some regions.[29]

Some Chinese officials have characterized their government's IPR enforcement efforts as effective, or downplayed the seriousness of IPR issues.[30] In November 2005, the head of China's WTO delegation responded to simultaneous requests under Article 63 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights from the United States, Japan, and Switzerland for information on the Chinese government's IPR enforcement, by saying that

the blame laid on China for being one of the top producers and exporters of counterfeit and infringing automotive parts was groundless.[31] One report in the state-run Chinese news media cited the United States and other developed countries as being the source of intellectual property piracy.[32] A Ministry of Commerce (MOFCOM) analyst said that the U.S. government exaggerates IPR issues because it fears China's surging exports.[33] According to one senior Chinese customs official, IPR infringement in China is "not that serious" when compared with international standards and when viewed in proportion to China's total exports to the United States.[34]

Chinese officials cite enforcement statistics and legislative activities to demonstrate a strong respect for IPR.[35] In the weeks before the April 2006 meeting of the bilateral Joint Commission on Commerce and Trade (JCCT), Chinese officials made several announcements regarding administrative IPR enforcement measures that the government had recently undertaken.[36] The State Council and its agencies continue to issue new regulations regarding intellectual property rights.[37] In March 2006, the MOFCOM National IPR Protection Working Group Office issued an "Action Plan on IPR Protection 2006" outlining how 11 government ministries and agencies will coordinate in nine areas to work on the protection of trademarks, copyrights, and patents, and formulate and revise IPR-related laws and regulations.[38] In July 2006, a new regulation on Internet copyright protection went into effect.[39] Chinese officials said this regulation would form the basis of China's ratification of the World Intellectual Property Organization Internet treaties in the second half of 2006.[40] In November 2005, the Supreme People's Court published four draft interpretations for comment regarding unfair competition, plant patents, civil IPR disputes, and civil disputes regarding music television broadcasting rights.[41]

Ongoing enforcement and legislative activity, however, has not translated into decreased IPR infringement. At the conclusion of a review conducted under Special 301 provisions of U.S. trade law in April 2005, the United States elevated China to the "Priority Watch" list. In its report, the USTR noted that "[i]nadequate IPR enforcement is one of China's greatest shortcomings as a trading partner," and that "China suffers from chronic over reliance on toothless administrative enforcement and underutilization of criminal remedies."[42]

At the 2005 JCCT Plenary, the Chinese government committed to completing its legalization program to ensure that all central, provincial, and local governments offices would use only licensed software, and would extend that program to enterprises in 2006.[43] In March 2006, the National Copyright Administration, Ministry of Information Industry, Ministry of Finance, and State Council jointly reiterated requirements set forth in previous regulations that ordered Chinese government agencies to use legitimate copies of software. According to Chinese officials, all government departments had complied with this mandate.[44] The software industry reports, however, that the level of new government purchases does not support this claim.[45]

Current provisions in the Criminal Law are inadequate to deter infringement.[46] While China has said that the absolute number of

criminal IPR infringement cases rose from 2004 to 2005,[47] the number remains small in comparison to the volume and value of IPR violations that occur in China each year. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) requires WTO members to maintain criminal IPR infringement penalties, including monetary fines "sufficient to provide a deterrent."[48] China's state-run media, however, cites "experts" to support the position that, because intellectual property is a private right, the government should prosecute IPR violations only in those cases that "negatively influence the public interest," and that if the government were to focus on assisting foreign companies in protecting their IPR, "it would be an infringement on the rights of Chinese individuals and companies."[49]

High thresholds for criminal liability make it difficult for the Chinese government to prosecute illegal commercial operations.[50] Although some high-profile prosecutions have been undertaken,[51] because the government calculates criminal thresholds using the retail value of the illegal goods rather than the value of genuine products, the current procedure creates a "safe harbor" for commercial infringers. In addition, because a government agency that successfully prosecutes an IPR case is eligible to receive a portion of any fines assessed, current rules create a disincentive to transfer cases to law enforcement officials.[52] The Supreme People's Court and Supreme People's Procuratorate issued an interpretation in 2004 on transferring IPR infringement cases from administrative to criminal enforcement,[53] but the U.S. government subsequently determined that the revisions did not go far enough,[54] and less than 25 percent of respondents in one survey of U.S. businesses believed the interpretation would aid IPR protection to a moderate or great extent.[55] In response to expressions of concern from the United States regarding the availability of remedies to address commercial-scale counterfeiting and piracy, as well as reliance on non-deterrent administrative penalties rather than transferring cases for criminal prosecution,[56] China's WTO delegation said that the National People's Congress had no plans to amend China's Criminal Law or other intellectual property laws.[57]

A lack of interagency cooperation is at least partly to blame for the government's continued failure to impose criminal sanctions on IPR infringers, according to Zhu Xiaoqing, Deputy Procurator General of the Supreme People's Procuratorate.[58] The government has begun, however, to address this problem. In January and March 2006, the Ministry of Public Security and several other government agencies enacted rules intended to improve interagency coordination in handling criminal trademark and copyright infringement cases.[59]

The Chinese government's failure to provide effective administrative and criminal enforcement of IPR has led foreign companies to turn to civil litigation to obtain monetary damages or injunctive relief.[60] Civil litigants continue to find, however, that most judges lack the necessary training and experience to handle IPR cases. In addition, the evidentiary and other rules governing civil lawsuits are generally vague or ineffective, and damage awards are too low to be an effective deterrent.[61] Despite these challenges, some high-profile lawsuits have been filed in which foreign IPR holders have

succeeded in suing infringers as well as the Chinese government. For example, in December 2005, the Shanghai No. 2 Intermediate People's Court ordered a Chinese coffee retailer to pay Starbucks Corporation 500,000 yuan (US$62,000), saying the Chinese retailer had engaged in unfair competition by using Starbucks's Chinese name and imitating the design of its cafés.[62] In June 2006, the Beijing No. 1 Intermediate People's Court ordered the State Intellectual Property Office to withdraw its decision to invalidate Pfizer, Inc.'s patent on the active ingredient in the drug Viagra.[63]

The central government has begun to make policy statements emphasizing the importance of IPR protection, specifically about how this protection will benefit domestic Chinese IPR holders. At its October 2005 plenum, the Communist Party included "innovation" in the 11th Five-Year Plan (2006–2010), and since then Chinese officials[64] and the state-run media[65] have called for increasing IPR protection to further the innovation of Chinese companies and increase China's international trade. In 2004, China overtook the United States to become the world's largest exporter of information and communication technology goods.[66] Although the majority of these goods are made by foreign-invested enterprises,[67] some high-technology Chinese manufacturers, such as Huawei and Lenovo, are garnering global name recognition and market share. In 2005, the first Chinese company with independently developed intellectual property was listed on the NASDAQ.[68]

The Chinese government possesses the resources necessary to enforce IPR, but appears to lack the resolve to do so with respect to foreign rights holders. The government's position is that its failure to enforce IPR is a result of China's current stage of economic development.[69] According to Chinese and U.S. experts, however, the problem is that local police generally resist efforts to shut down commercial infringers because large-scale pirating efforts support local economies and have the financial support of key local officials.[70] In 2002, the State Council enacted regulations specifically addressing protection of the 2008 Beijing Olympic Games' trademark symbol from counterfeiting.[71] Western news media reports indicate that vendors who otherwise sell counterfeit goods are avoiding the new Olympic symbol out of fear of government reprisals.[72]

Financial Services

In 2004, the United States recorded a US$145 million financial services surplus with China, according to the U.S. International Trade Commission.[73] Exports of U.S. banking and securities services to China were down, however, from 2003.[74] Although the Chinese government has acknowledged the value that foreign investment and exchanges can bring to its financial services sector,[75] it continues to impose strict limits and high barriers to entry on foreign investment in its banking, insurance, and securities sectors.

Banking

The Chinese government has committed to eliminating all nonprudential measures that restrict ownership, operation, and juridical form of foreign financial institutions, including measures on internal branching and licenses, before 2007.[76] The government

currently imposes tighter limitations and higher barriers to entry on foreign banks than on Chinese banks.

In its WTO accession agreement, the government also set different restrictions and schedules on foreign banks based on whether they conduct business in domestic or foreign currency. With respect to business in domestic currency, the government has met its WTO commitment regarding lifting geographic restrictions. The Chinese WTO accession agreement provides that, immediately upon joining the WTO, the government would allow foreign banks to conduct domestic currency business with foreign-invested enterprises and foreign individuals, subject to certain geographic restrictions. Within two years after accession, foreign banks were also to be able to conduct domestic currency business with Chinese enterprises, subject to certain geographic restrictions, which were to be lifted gradually over the following three years.[77] The Chinese government met these commitments, and opened several cities ahead of schedule.[78] In addition, in December 2005, the China Banking Regulatory Commission (CBRC) announced that it was lowering the minimum operating capital requirement to conduct domestic currency businesses from 500 million yuan to 400 million yuan for a foreign bank branch, and from 300 million yuan to 200 million yuan for a wholly foreign-owned or a joint venture bank.[79]

With respect to foreign currency business, the Chinese government agreed as part of its WTO accession agreement that, immediately upon joining the WTO, it would allow foreign banks to conduct foreign currency business without any geographic or client restrictions. According to the U.S. Trade Representative, although the Chinese government has permitted licensed foreign banks to freely engage in foreign currency business with any customer, only a limited number of banks are allowed to enter into forward foreign exchange contracts.[80] In addition, according to one industry group, measures issued in May 2004 limit the foreign currency financing of foreign banks in China and, although identical restrictions are applicable to domestic banks, their effects on foreign banks are disproportionately negative.[81]

Market entry requirements for foreign banks are higher than those for domestic banks. For example, domestic banks need only 100 million yuan in registered capital to establish an urban commercial bank.[82] Foreign banks seeking to establish a market presence through a wholly foreign-owned or joint venture bank must have at least 300 million yuan in registered capital.[83] In addition, Chinese regulations, consistent with China's WTO services schedule, provide that these banks must have total assets of at least US$10 billion.[84] Finally, a wholly foreign-owned bank must have had a representative office in China for at least two years.[85] Even if a foreign bank meets these requirements, it is restricted to conducting foreign currency business with a limited category of clients, unless it meets higher registered capital requirements.[86]

The prudential thresholds to establish a branch are much higher for wholly foreign-funded banks or joint venture banks than for domestic commercial banks.[87] A wholly foreign-funded bank or joint venture applying to establish a branch must have three years of business operation experience in China, and have been profitable for two consecutive years before applying.[88] In addition, Chinese

law, consistent with its WTO services schedule, provides that a foreign bank applying to establish a branch in China must have at least US$20 billion in total assets.[89] In its accession agreement, the Chinese government agreed that qualified foreign financial institutions could establish joint venture banks immediately after accession. The government currently caps total foreign investment in any single Chinese bank at 25 percent, however, with no single foreign investor allowed to hold more than 20 percent.[90]

In December 2005, it was reported that a group of investors led by Citigroup had successfully bid for the right to negotiate to purchase an 85 percent stake in the Guangdong Development Bank, with Citigroup taking a 40 percent stake.[91] This led to speculation and conflicting reports that Chinese authorities might be considering raising limits on foreign investment in Chinese banks.[92] In April 2006, however, China's state-run media reported that, "It is certain that the banking regulatory agency will not let the ceiling be broken in this case."[93] The same month, the CBRC sent a letter to the Guangdong provincial government saying: "The case of Guangdong Development Bank has been looked into many times by the CBRC and other related administrations, and it is hard to break the present restrictions on foreign strategic investor issues."[94] In July, Chinese-language news media in Hong Kong reported that Citigroup would lower its offer to below 20 percent.[95]

Insurance

According to the USTR's 2005 report on China's WTO compliance, opaque regulatory processes and overly burdensome licensing and operating requirements continue to hinder U.S. insurance companies' access to China's insurance market.[96] In its accession agreement, the Chinese government agreed that it would phase out geographic restrictions on all types of insurance operations by 2004.[97] The China Insurance Regulatory Commission (CIRC) approved life insurance operations for U.S. insurers in Beijing municipality, Suzhou city, and Tianjin municipality two years ahead of schedule, in Chongqing municipality one year ahead of schedule,[98] and removed all geographic restrictions in 2004.[99]

Foreign insurance companies may enter the Chinese market as wholly foreign-owned subsidiaries selling insurance policies other than life insurance, but foreign investment in domestic life insurance providers is capped at 51 percent,[100] and the Chinese government does not plan to lift this restriction.[101] To obtain a license, foreign insurance companies must have at least 30 years of experience in the insurance business, have had a representative office in China for no less than two years, and have no less than US$5 billion in total assets.[102]

According to the USTR, every U.S. insurer that has applied to enter the China market has received a license.[103] At the end of 2005, the CIRC had approved 40 overseas insurers, which operated 99 offices and held a combined market share of almost 7 percent.[104] In May 2006, the CIRC authorized subsidiaries of American International Group, Inc. to expand their businesses in Guangdong and Jiangsu provinces and to issue group contracts throughout China covering life insurance, personal accident and health insurance, and other products.[105]

U.S. companies have complained, however, that while domestic insurers can obtain multiple branch licenses at once, the government requires foreign companies to apply for them one at a time.[106] According to a report from the U.S. Embassy in Beijing, while the CIRC claims it does not have any restrictions on opening multiple branch offices, it has denied several U.S. insurance companies' applications to open multiple branch offices, and instead granted approval to open only one branch office.[107]

Securities

The Chinese government currently limits foreign participation to minority stakes in securities joint ventures (49 percent for fund management and 33 percent for securities trading).[108] Joint ventures are permitted to underwrite and trade B-shares and H-shares, as well as government and corporate debt.[109] The Chinese government has allowed foreign institutions to trade in A-shares since December 2002, but only those that have met strict criteria, and then only to a limited extent.[110] "A-shares" refers to shares of companies incorporated in mainland China that are traded in Chinese stock markets and are denominated in local currency. "B-shares" refers to shares of companies incorporated in China that are traded in Chinese stock markets and are denominated in foreign currencies. "H-shares" refers to shares of companies incorporated in China that are listed on the Hong Kong Stock Exchange and foreign stock exchanges.

In its accession agreement, the government agreed that immediately upon WTO accession it would allow foreign securities institutions to engage directly (without a Chinese intermediary) in B-share business. In addition, representative offices in China of foreign securities institutions could become special members of all Chinese stock exchanges. Finally, foreign service providers were permitted to establish joint ventures with foreign investment up to 33 percent to conduct domestic securities investment fund management business, increasing to 49 percent in 2004. Also by 2004, foreign securities institutions were to be permitted to establish joint ventures with up to one-third foreign ownership. These institutions were to be allowed to engage (without a Chinese intermediary) in underwriting A-shares, underwriting and trading of B- and H-shares, government and corporate debts, and launching funds.[111]

The U.S. Securities and Exchange Commission (SEC) and the China Securities Regulatory Commission (CSRC) announced they had established a framework for a dialogue between the two agencies.[112] The objectives of the dialogue included improving cooperation and the exchange of information in cross-border securities enforcement matters, and expanding upon the existing program of training and technical assistance that the SEC provides to the CSRC.

China's Financial Services Environment

Money laundering, embezzlement, bribery, and financial fraud are major problems in China. The International Monetary Fund has estimated that money laundering in China may total as much as US$24 billion annually, while the Asian Development Bank estimates that more than 2 percent of China's gross domestic product

is laundered in mainland China each year. Transparency International, an anti-corruption NGO based in Germany, ranked China 78 out of 158 in its 2005 Corruption Perceptions Index,[113] and reports in Chinese state-run news media indicate that government corruption in China is widespread.[114]

The Chinese government is taking steps to address these issues. In January 2005, China became an observer to the Financial Action Task Force.[115] In October 2005, the National People's Congress ratified the UN Anti-Corruption Convention.[116] In April 2006, the People's Bank of China issued a series of draft regulations for public comment aimed at "beefing up efforts to rein in money laundering across its banking, securities, and insurance sectors."[117] In addition, in February 2006, the China Banking Regulatory Commission issued rules requiring newly established joint stock commercial banks, which have equity owners and are typically smaller institutions, to have at least one foreign shareholder.[118]

Information and Entertainment

The Chinese government made limited commitments in its WTO accession agreements regarding foreign participation in the domestic information and entertainment sectors.[119] The government agreed to permit foreign investors to enter the retail market for books, newspapers, and magazines within one year after accession, and to permit them to import and engage in wholesale distribution of these products within three years of accession. The government also committed to implementing a system in which the relevant regulatory authority for the provision and transfer of financial information would be separate from, and not accountable to, any service suppliers that it regulated.[120]

Although the government initially allowed foreign enterprises to obtain the right to distribute books, newspapers, and magazines,[121] it has recently enacted regulations that appear to restrict this right.[122] In January 2005, the State Council issued a revised Sectoral Guidelines Catalogue for Foreign Investment that, like the version issued in March 2002, placed the importation of books, magazines, and newspapers in the "prohibited" category.[123] The Chinese government maintains that it may impose this restriction based on the general exception for the protection of the public morals in Article XX of the General Agreement on Tariffs and Trade 1994.[124]

The government has not established an independent regulator for financial information service providers, despite its WTO commitment to do so. In 2004, the State Council issued a decision designating the Xinhua News Agency, a government agency directly under the control ofthe State Council, as the regulator of foreign financial information service providers in China.[125] Foreign companies have complained that Xinhua has been using its regulatory authority to increase control over the distribution of content, and has been expanding the definition of a wire service so as to establish a monopoly on the dissemination of sports and financial news.[126] In September 2006, Xinhua issued new measures prohibiting international financial information companies from providing news and information directly to Chinese customers.[127] Instead,

under the new measures, foreign media outlets such as Reuters and Bloomberg may only sell their products through an agency appointed by Xinhua.[128]

U.S. rights holders and industry groups have complained that the government's censorship regime serves as a barrier to entry and encourages IPR violations. In 2005, the American Chamber of Commerce in China wrote that censorship clearance procedures severely restricted the ability to distribute CD, VCD, and DVD products in China and provide an "unfair and unnecessary advantage to pirate producers who bring their products to market long before legitimate copies are available for sale." [129] In its 2006 Special 301 Report, the USTR cited delays created by the Chinese censorship process as a market access restriction. This restriction adversely affects U.S. IPR holders by artificially limiting the availability of foreign content and thereby leading consumers to resort to pirated goods. In addition, U.S. officials noted that rights holders have complained that the government's censorship standards and procedures for video and television broadcasting products are unclear. The U.S. delegation to the WTO's TRIPs Council asked Chinese officials to explain their government's standards and procedures, how WTO members can obtain copies of them, and the inquiry process when a delay in approval occurs. U.S. delegates made similar inquiries about how Chinese authorities screen and censor entertainment software.[130] The Chinese government told the U.S. delegation to "convey these TRIPs non-relevant concerns to the competent committees or councils in the WTO, for example the Committee on Market Access." [131]

Chinese government censorship also makes it difficult for foreign Internet and media companies to operate in China. In February 2006, in testimony before the Subcommittee on Asia and the Pacific and the Subcommittee on Africa, Global Human Rights, and International Operations of the Committee on International Relations of the U.S. House of Representatives, a Google representative said that Chinese government censorship was one of the factors that forced the company to launch a new, self-censoring service.[132] Microsoft has said that Chinese government regulations allow authorities to restrict content on "the kinds of Internet-based services provided by Microsoft's MSN division." [133] Yahoo! no longer owns the Yahoo! China business.[134] In September 2005, the chief executive of Time Warner, Inc., said that his company had withdrawn from a US$50 million Internet venture in January 2004 because the Chinese government insisted that it had the right to monitor all traffic on the service.[135] [See Section V(b)—Special Focus for 2006: Freedom of Expression.]

The government's restrictions on foreign participation in China's media industry reflect growing Party concern that its monopoly is weakening over what Chinese citizens view, read, and listen to. The government has effectively banned all foreign news media from distributing their products in China.[136] When the State Administration of Radio, Film, and Television increased restrictions on foreign participation in China's domestic television and film production in March 2005, it issued a circular saying that regulators must "control the contents of all products of joint ventures in a practical manner, understand the political inclinations and back-

ground of foreign joint venture parties, and in this way prevent harmful foreign ideology and culture from entering the domain of television program production through joint ventures."[137] In August 2005, Chinese government regulators blocked News Corp.'s plan to operate a television channel in China.[138] In June 2006, when News Corp. announced it would sell part of its stake in Phoenix Satellite Television, a channel that the Chinese government permitted to have limited broadcast rights in China, Western news media cited analysts as saying that the deal "underscored Beijing's apparent attempt to limit foreign firms' operations in the sensitive media industry and News Corp.'s efforts to circumvent that."[139] The action coincided with the government's promulgation of several regulations that limit foreign access to China's media industry.[140]

Government Procurement

When China acceded to the WTO, the government made several commitments related to non-discrimination in government procurement. These commitments include providing all foreign suppliers an equal opportunity to participate in procurements that are opened to any foreign suppliers, conducting procurement in a transparent manner, and ensuring procurements would be subject only to regulations of general application and procedures that had been published and made available to the public.[141] In addition, the Chinese government committed to beginning negotiations for membership in the Government Procurement Agreement (GPA) "as soon as possible."[142] China became an observer to the WTO Committee on Government Procurement in February 2002, but has yet to join the GPA. At the April 2006 Joint Commission on Commerce and Trade (JCCT), Chinese officials committed to starting formal negotiations to join the GPA, and to submitting a list of government entities to be subject to GPA coverage no later than December 2007.[143] The government has acknowledged the potential benefits to the domestic commercial environment that joining the GPA represents.[144] Nevertheless, at least one Chinese expert has said that China's government procurement market may remain closed to foreign companies for another four years.[145]

Little government procurement in China is currently open to competitive bidding, and decentralized and individual agency procurement expenditures are growing much more rapidly than centralized government procurement expenditures.[146] According to the state-run media, the current government procurement system suffers from several problems, including officials making procurements without prior authorization and government agencies charged with oversight of procurement not imposing sanctions for violations of existing regulations.[147] These practices in turn hinder the government's ability to make appropriate budget forecasts for procurement.[148] Corruption also continues to be a problem. In April 2006, the Ministry of Finance launched a four-stage program, scheduled to be completed by the end of 2006, to address bribery in government procurement.[149] In April 2006, the Ministry of Finance also established a task force on commercial bribery and launched a hotline for reporting bribery in government procurement.[150]

Agriculture

Agricultural trade with China is "among the least transparent and predictable of the world's major markets," according to Deputy U.S. Trade Representative Karan K. Bhatia.[151] The government's inspection and quarantine system continues to implement discriminatory sanitary and phytosanitary (SPS) measures with questionable scientific bases. The WTO, the United States, and other WTO members have expressed concerns over how the Chinese government handles restrictions on foreign agricultural imports. According to the WTO, the Chinese government's SPS regime and inspection procedures for imports are complex and unclear.[152] The Chinese government maintained bans on Florida citrus and U.S. cherries entering the Chinese market through late 2004, despite the lack of a scientific basis for the decisions.[153] The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) has also set a limit for selenium in U.S. wheat that is lower than the international standard. The requirement, if enforced, could result in a significant decrease in exports of U.S. wheat to China.[154] WTO members have also raised concerns that the Chinese government is apparently using SPS measures to ban imports of affected products from countries rather than just the affected regions within countries.[155] The Chinese government has said however, that its SPS standards are fully compliant with international standards and were based on risk assessment.[156]

According to the USTR, "capricious practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China."[157] In August 2005, the United States expressed concern to the WTO Committee on Import Licensing about requirements that importers must obtain an import inspection permit[158] and quarantine inspection permit[159] prior to signing an import contract.[160] These regulations allow port quarantine authorities to return or destroy any cargoes without a prior import inspection permit. In addition, according to the USTR, AQSIQ uses its discretion to slow down and suspend issuance of quarantine inspection permits, and uses unofficial quantity requirements to reject shipments that are too large, and to limit imports during peak harvest periods.[161] Furthermore, exporters are forced to ship commodities to Chinese ports without quarantine inspection permits because of delays in the issuance of the permits and the limited time purchasers have under the permits to purchase, transport, and discharge cargoes.[162] The inefficiencies lead to demurrage bills for Chinese purchasers.

The Chinese government employs food safety standards for imported commodities in a manner that lacks transparency,[163] and in some cases appears intended as a way to limit imports. With respect to genetically modified agricultural products, international practice is that, once a trait is approved for a product it need not be approved for use in other products, whether singly or combined with other approved traits.[164] The Chinese government, however, not only requires that a trait be reviewed each time it is used in a new product, but also requires combinations of approved traits to be separately approved.[165]

The end result of the Chinese government's implementation of its SPS, import inspection permit, quarantine inspection permit, and

food safety systems has been, according to the U.S. government and the American Chamber of Commerce in China, a source of both significant commercial uncertainty for U.S. exporters as well as higher prices for Chinese importers and consumers.[166] The U.S. government has asked the Chinese government to explain why import inspection permits do not constitute import licenses, but instead fall under the umbrella of SPS measures, as the Chinese government has claimed.[167]

While the soybean industry has not experienced significant problems in these areas in the past two years,[168] U.S. beef exporters continue to be hard hit. At the April 2006 Joint Commission on Commerce and Trade (JCCT), the Chinese government agreed to reopen the Chinese market to U.S. beef, subject to the completion of a technical protocol.[169] China had joined several countries in banning U.S. beef following the discovery of bovine spongiform encephalopathy (BSE) in a cow imported into the United States from Canada in December 2003. Even though the United States repeatedly provided China with extensive technical information on all aspects of its BSE-related surveillance and mitigation measures, China maintained its ban for over two years without providing any scientific justification for the decision or identifying the regulatory steps that the U.S. government needed to pursue to have the ban lifted.[170]

The Chinese government announced in June 2006 that it was lifting the ban on U.S. beef.[171] U.S. government officials and industry sources have said that this will not lead to a resumption of beef exports, because the Chinese government has yet to agree to a technical protocol.[172] Moreover, China's June announcement, even if implemented, would only open the Chinese market to a narrow segment of imports (boneless beef under 30 months of age) rather than all beef, consistent with Organization for Animal Health (OIE) standards. The Chinese government made similar commitments in 2004 and 2005 with respect to bovine semen and embryos, but the U.S. government and industry analysts have noted little or no progress in getting the relevant Chinese agencies to allow imports of those items to resume, as regulatory authorities impose information requirements that are not consistent with OIE standards.[173]

When it acceded to the WTO, the Chinese government committed to establish a transparent tariff-rate quota (TRQ) system that included large and increasing TRQs for imports of wheat, corn, rice, cotton, wool, sugar, vegetable oils, and fertilizer, a portion of which was to be reserved for importation through non-state trading entities.[174] After China joined the WTO, complaints arose that its TRQ system lacked transparency and included burdensome licensing procedures.[175] While the Chinese government eliminated certain unnecessary licensing requirements in 2004,[176] problems with a lack of transparency continue, and there is no publicly available list of quota holders.[177]

Certain aspects of China's value-added tax (VAT) system continue to generate concerns about a lack of national treatment as they relate to agriculture. In October 2005, the United States and China notified the WTO that they had resolved a longstanding dispute over the Chinese government's preferential rebate of a sub-

stantial portion of VAT for domestically designed and produced integrated circuits. Problems remain, however, with respect to fertilizers and agricultural products, as U.S. industry reports state that Chinese producers are able to avoid payment of the VAT on their products, either as a result of poor collection procedures, special deals or even fraud, while the full VAT must be paid on competing imports.[178]

In April 2006, AQSIQ Minister Li Changjiang signed a memorandum of understanding with U.S. Agriculture Secretary Mike Johanns. The signatories agreed to exchange information on food regulations and standards, inspection and quarantine procedures, and other issues such as pests and diseases, harmful residues, and food certification.[179] The same month, the American Soybean Association signed a three-year agreement with China's Chamber of Commerce for Import and Export of Foodstuffs, Native Produce and Animal By-products that included measures on information exchange and training programs.[180]

Automobiles

In March 2006, the United States filed a WTO request for consultations with China, saying that the Chinese government's industrial policy for automobiles discriminates against foreign auto parts in a manner which appears inconsistent with China's WTO commitments.[181] Canada and the European Union also filed similar requests.[182] The U.S. request expressed the understanding that, if imported parts in a vehicle exceed a specified threshold, the Chinese government would assess a charge on the imported auto parts equal to the tariff on complete vehicles, rather than the lower charge otherwise applied to auto parts. The U.S. request says that these measures appear to constitute a charge in excess of rates that the Chinese government committed to in its accession agreement, as well as a subsidy contingent upon the use of domestic rather than imported goods.[183]

Even as it agreed to consultations with the United States, Canada, and the European Union,[184] the Chinese government, speaking through state-run media, said that China should "promulgate a regulation on imports of auto parts in an attempt to prompt foreign partners to produce core auto parts in China, thus reducing the country's dependence on imported components."[185] Consultations were held in May, which were joined by Japan, Mexico, and Australia, but no resolution was reached.[186] In June, the European Union said it would seek another round of consultations. In September, several countries, including the United States, requested the WTO establish a dispute resolution panel to address this issue.[187]

Steel

The National Development and Reform Commission (NDRC) issued a new steel industrial policy in July 2005[188] that, according to the USTR, provides for state management of "nearly every major aspect of China's steel industry."[189] The USTR reports that the policy includes provisions that appear to raise barriers to foreign participation, discriminate against foreign equipment and technology imports, and encourage the use of domestically produced

equipment.[190] The USTR has said that the policy imposes a high degree of government direction and decisionmaking about the allocation of resources into and out of China's steel industry. The USTR reports that this policy is inconsistent with the spirit of China's general WTO obligations, and raises concerns regarding China's WTO commitment not to influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises.[191] The U.S. and Chinese governments held the first Steel Dialogue meeting in March 2006. During this meeting, U.S. officials stressed U.S. steel industry concerns that government direction, not market mechanisms, is driving much of the capacity expansion in China's steel industry.[192]

The policy's requirement that foreign investors possess proprietary technology or intellectual property in the processing of steel also raises concerns. The USTR has said that, because foreign investors are not allowed to have a controlling share in Chinese steel and iron enterprises, this requirement would seem to constitute a de facto technology transfer requirement, in conflict with China's WTO commitments not to condition investment on the transfer of technology.[193]

In May 2005, without prior notification to the WTO, the Chinese government imposed new import licensing procedures for iron ore.[194] In August 2005, the United States submitted questions to the WTO Committee on Import Licensing noting that qualification rules reportedly restrict licenses to 48 traders and 70 steel producers, but that no list of criteria or list of qualified companies had been published.[195] The United States raised the issue of the operation of the import licensing procedures applicable to iron ore during the transitional reviews before the Committee on Import Licensing in September 2005,[196] and before the Committee on Trade-Related Investment Measures in October 2005.[197] The Chinese delegates maintained that the government did not impose any qualifying criteria, but it also acknowledged that two organizations affiliated with the Chinese government had been discussing whether it was necessary to impose industry rules regarding the qualification criteria for enterprises applying for automatic import licenses.[198]

Distribution Services and Trading Rights

When it acceded to the WTO, the Chinese government committed to phase out restrictions on the right of foreign investors to import and export products in and out of China ("trading rights") and to sell products within China ("distribution services") for most sectors by December 2004.[199] While it implemented its trading rights commitments nearly six months ahead of schedule,[200] the government's efforts to implement the distribution services commitments were characterized by "delay and confusion."[201] Although the Ministry of Commerce (MOFCOM) issued regulations on foreign distribution services in April 2004,[202] the Ministry subsequently found it necessary to issue several circulars to clarify issues relating to sales away from a fixed location ("direct sales"),[203] the ability of foreign-invested enterprises in bonded zones to apply for distribution rights,[204] and the procedures for foreign-invested enterprises to expand their business scope to include distribution.[205] The govern-

ment did not issue formal regulations on direct sales until August 2005.[206] According to U.S. government and industry sources, however, these regulations contained several problematic provisions.[207] In February 2006, however, MOFCOM issued the first direct selling license to Avon Products, Inc.,[208] and in April 2006, the government agreed to establish a public-private dialogue designed to facilitate direct sales.[209]

Standards

As part of its WTO accession commitments, the Chinese government became obligated under the WTO Technical Barriers to Trade Agreement to use international standards as the basis for domestic standards except when ineffective or inappropriate, and to refrain from adopting more trade-restrictive standards than necessary.[210] In November 2005, a Chinese representative told the WTO Committee on Technical Barriers to Trade that as the result of an "overhaul" of national standards to ensure their consistency with WTO commitments, the General Administration of Quality Supervision, Inspection and Quarantine and the Standards Administration of China reported that a total of 1,416 national standards had been nullified, among which 114 were mandatory.[211] Nevertheless, according to the WTO, the percentage of China's national standards that are equivalent to international standards has remained unchanged since 2000, at around 32 percent.[212] In May 2006, the U.S. Trade and Development Agency awarded the American Chamber of Commerce in China a US$500,000 technical assistance grant to promote increased cooperation between the United States and China in the development of commercial and industrial standards and regulatory policy.[213]

Despite these positive steps, according to the USTR, the Chinese government continues to pursue "unique national standards in many areas of high technology that could lead to the extraction of technology or intellectual property from foreign rights holders."[214] For example, in May 2003, the Chinese government issued two standards that incorporated the WLAN Authentication and Privacy Infrastructure (WAPI) encryption.[215] WAPI differs from, and cannot function with, the 802.11 standard approved by the International Standards Organization (ISO). In addition, the government was prepared to enforce the standard by providing the algorithms only to a limited number of Chinese companies, requiring foreign competitors to provide specifications of their products if they wished to produce WLAN equipment for the Chinese market.[216] At the April 2004 Joint Commission on Commerce and Trade (JCCT) meeting, Chinese officials agreed to delay WAPI implementation, and submitted a voluntary WAPI standard to the ISO.[217]

In March 2006, the ISO rejected China's proposed WAPI standard.[218] The Chinese government said that the decision had been influenced by "the diplomatic relationship between the United States and other nations," and that "nothing would affect WAPI's domestic application."[219] The Chinese government filed appeals with the ISO in April and May asking it to overturn the vote and accusing the Institute of Electrical and Electronics Engineers (IEEE) of "organizing a conspiracy against the China-developed WAPI, insulting China and other national bodies, and intimidation and threats."[220]

In June, the Chinese delegation walked out of an ISO-organized meeting, saying that only 7 of the 17 countries opposing the WAPI standard had attended the meeting, and that the "monopoly force from the American standard maker IEEE poisoned the voting process and created an unfair atmosphere at the Prague meeting."[221]

Bilateral Cooperation on Commercial Issues

The U.S. Department of Commerce (DOC) promotes bilateral cooperation with relevant Chinese government departments and agencies on market access issues and ensuring compliance with trade agreements. Past DOC programs have offered training to Chinese officials on protection of intellectual property rights, adoption standards, promotion of the rule of law, and improving domestic health care. To improve transparency in the Chinese commercial legal regime, DOC officials, in cooperation with the National People's Congress, held roundtables in three major Chinese cities during 2005 that focused on legislative and regulatory transparency. As the Chinese government works to adopt its first anti-monopoly law, DOC also hosted a Chinese delegation to the United States in November 2005 to discuss the principles of U.S. antitrust law. In July 2006, DOC officials organized a program focusing on the U.S. Federal Register system and regulatory transparency for a delegation from the China Foreign Economic and Trade Gazette. In August 2006, DOC and the Legislative Affairs Commission of China's National People's Congress Standing Committee (NPCSC) jointly organized a seminar on the revision of China's Partnership Enterprise Law. The revisions adopted by the NPCSC later in the month incorporated a number of suggestions made by the U.S. side, thus bringing the Chinese regulatory regime, important to professional services and venture capital firms, closer to international practices. A bilateral Standards and Intellectual Property program held in September 2006 focused on the relationship between standards and intellectual property as well as their impact on innovation and competitiveness.

VIII. Tibet

FINDINGS

- In 2005, the Dalai Lama increased his efforts to explain that he does not seek Tibetan independence from China. The Dalai Lama's envoys traveled to China for a fifth round of dialogue with Chinese officials in February 2006, relaying a request to Chinese leaders to permit the Dalai Lama to visit China. Tibetans could benefit from full implementation of the Regional Ethnic Autonomy Law, but the lack of local self-government in Tibetan autonomous areas of China creates mistrust in the dialogue and demonstrates that authorities are not implementing this law.
- The Chinese government favors accelerating implementation of development initiatives, especially the Great Western Development program, that already erode Tibetan culture and heritage. The Qinghai-Tibet railway began passenger service in July 2006, increasing Tibetan concerns about the railway's potential effects on Tibetan culture and the environment. Edu-

cation levels among Tibetans are much lower than those of ethnic Han Chinese, undermining the ability of Tibetans to compete for employment and other economic advantages in an emerging market economy that attracts an increasing number of Han.

• The Chinese government strictly limits the rights of Tibetans to exercise the constitutionally guaranteed freedoms of religion, speech, and assembly. Communist Party political campaigns promote atheism and strengthen government efforts to discourage Tibetan aspirations to foster their unique culture and religion. Chinese authorities have punished Tibetans, such as Jigme Gyatso, a former monk imprisoned in 1996 who is serving a 17-year sentence and Choeying Khedrub, a monk serving a life sentence since 2000, for peaceful expressions and non-violent actions that officials believe could undermine Party rule. The Commission's Political Prisoner Database listed 103 known cases of current Tibetan political detention or imprisonment as of August 2006, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Based on sentence information available for 70 of the current prisoners, the average sentence is approximately 10 years and 11 months.

Introduction

The Chinese government and the Communist Party give economic development in Tibetan areas of China a higher priority than protecting basic human rights such as the freedoms of religion, speech, and assembly. Chinese officials provide economic statistics[1] to demonstrate Tibetan progress, but Tibetans continue to struggle with poverty, suffer from inadequate education, and face a growing number of better-educated ethnic Han who travel to Tibetan areas and compete for jobs and other economic benefits. The government can strengthen China's ethnic and national unity by improving the implementation of the Regional Ethnic Autonomy Law, and by ensuring that Tibetans can manage their affairs, become equal competitors with their neighbors, and preserve their unique cultural, religious, and linguistic heritage.[2]

The Status of Discussion Between China and the Dalai Lama

U.S. government policy on Tibet recognizes the Tibet Autonomous Region (TAR) and Tibetan autonomous prefectures and counties[3] in other provinces to be a part of China.[4] The State Department's annual Report on Tibet Negotiations detailed the U.S. government's steps to encourage Chinese officials to "enter into a dialogue with the Dalai Lama or his representatives leading to a negotiated agreement on Tibet."[5] The Report described the Dalai Lama as someone who "represents the views of the vast majority of Tibetans," and expressed encouragement that Chinese officials invited the Dalai Lama's envoys to visit China in February 2006 (2005 visits also cited). The Report states, "The Administration believes that dialogue between China and the Dalai Lama or his representatives will alleviate tensions in Tibetan areas and contribute to the overall stability of China." The Report notes, however, that "the lack of resolution of these problems leads to greater tensions inside

China and will be a stumbling block to fuller political and economic engagement with the United States and other nations."[6]

In 2005, the Dalai Lama increased his efforts to explain that he does not seek Tibetan independence from China. During a religious teaching in India in January 2006, the Dalai Lama spoke to some 9,000 Tibetans who traveled from Tibetan areas of China to be among the estimated 90,000 attendees.[7] In his closing remarks, the Dalai Lama told them that he does not seek Tibetan independence, and that he is working for a solution based on the Middle Way Approach[8] and within the existing Chinese constitutional framework.[9] He urged Tibetans returning to China to tell other Tibetans about the importance of his approach for ensuring genuine autonomy for Tibetans.[10]

The Dalai Lama's envoys traveled to China for a fifth round of dialogue with Chinese officials in February 2006.[11] Special Envoy Lodi Gyari[12] and Envoy Kelsang Gyaltsen did not travel to the TAR or one of the Tibetan Autonomous Prefectures (TAPs) in other provinces, as they did during previous trips to China.[13] Instead, they visited the Guangxi Zhuang Autonomous Region to observe "the situation" in one of the other five provincial-level ethnic autonomous regions, and to meet with Zhu Weiqun, the deputy head of the Communist Party's United Front Work Department (UFWD). Gyari explained that as a result of the visit, "today there is a better and deeper understanding of each other's position and the fundamental differences that continue to exist in the position held by the two parties." A Tibetan government-in-exile representative told reporters in July 2005 that the most fundamental difference is over "the definition of Tibet," and explained, "While China sees Tibet as the area included under the Tibet Autonomous Region, Tibetans claim a much larger area[14] where the culture and language are Tibetan."[15]

After the envoys returned to India, the Dalai Lama focused his annual March 10 statement[16] entirely on the dialogue, emphasizing his commitment to the dialogue process and expressing his wish to visit China. He summarized his position by saying, "I have only one demand: self-rule and genuine autonomy for all Tibetans, i.e., the Tibetan nationality in its entirety. This demand is in keeping with the provisions of the Chinese Constitution, which means it can be met."[17] The Dalai Lama stated that his envoys relayed a request to Chinese leaders to permit him to visit China as a religious pilgrim. "As well as visiting the pilgrim sites, I hope to be able to see for myself the changes and developments in the People's Republic of China," he said.[18]

Tashi Wangdi, the Dalai Lama's representative to the Americas, told a Commission roundtable in March 2006 that the Chinese government's basic concern is the "unity, territorial integrity, and economic health of the country." A resolution of the Tibetan issue would contribute to China's national interests, he said, and if the Dalai Lama were to visit China, it would be a "win-win situation" for the Chinese leadership:

> The Middle Way Approach adopted by His Holiness will in fact reinforce and strengthen all this. . . . One of the most effective ways of creating the right atmosphere is through personal contact and face-to-face meetings. It is

> with this in mind His Holiness the Dalai Lama had conveyed to the Chinese government through his envoys his wish to visit some of the holy Buddhist pilgrimage sites in China.[19]

The Tibetan government-in-exile's March 10, 2006, statement declared support for the Dalai Lama's policy, and described Tibetans as "one of China's 55 minority nationalities."[20] The statement noted that "before 1951 [Tibetans] all lived together in small, compact groups in a contiguous chain," and argued that administrative unity of that territory is necessary to protect Tibetan culture:

> In essence, we have always said that the need to have genuine autonomy for the three provinces of Tibet or the entire Tibetan people is the basic principle. We cannot compromise on this principle. . . . Because of these reasons,[21] we have proposed the need to have unification of all the Tibetans, with the status of genuine autonomy. This demand is in accordance with Marxist and Leninist principles and the provisions of the Chinese Constitution.

Chinese officials say that the Dalai Lama's proposal to combine existing areas of Tibetan autonomy[22] and implement genuine autonomy is not consistent with the Chinese Constitution and laws. Lhagpa Phuntsog (Laba Pingcuo), Secretary General of the China Tibetology Research Center and former Vice Chairman of the TAR, told reporters in May 2006 that the Dalai Lama had raised two principal issues, "greater Tibet" and "real autonomy." He said that the Dalai Lama's demands "don't match the history of Tibet," and that changing the status quo would not accord with the Chinese Constitution or the Regional Ethnic Autonomy Law (REAL).[23] Sun Yuxi, the Chinese Ambassador to India, told reporters in October 2005 that the Dalai Lama's request for a legal system "something like that of Hong Kong," is not possible, and that a "larger Tibet, [that would] include part of four more Chinese provinces," is "technically not acceptable."[24] In July 2006, Wu Yingjie, the Vice Chairman of the TAR government, rejected the Dalai Lama's objective that a Tibetan autonomous area should have a democratically elected government, according to a Hong Kong news media report.[25] According to Wu, the Dalai Lama has said[26] that if he returns to China, the Chinese government should create a greater Tibet and allow democracy within it. Wu said that it is not possible for the Chinese government to accept the Dalai Lama's conditions, and that Tibetans enjoy prosperity under Party leadership and are reluctant to see the Dalai Lama return.[27]

Chinese government officials express interest in continuing the dialogue, but blame the Dalai Lama for the lack of substantive progress, claiming that he is attempting to "split the motherland."[28] China's Ministry of Foreign Affairs accused the U.S. Congress on September 14, 2006, of sending a "severely wrong signal to the 'Tibet-independence' forces"[29] after the U.S. House of Representatives passed a bill the previous day authorizing the Dalai Lama to receive the Congressional Gold Medal.[30] After the Dalai Lama's envoys visited China in February, Foreign Ministry spokesperson Qin Gang told reporters that the Dalai Lama "steals his way to this or that corner of the world" in order to "split our moth-

erland."[31] Jampa Phuntsog (Xiangba Pingcuo), Chairman of the TAR government, however, recognized the envoys' visit in frank remarks to reporters in Beijing on March 6: "We cannot call the talks negotiations now. They are just dialogue, or contact, but the channels for communication have always been smooth. . . . We will have further discussions in [the] future. But we haven't yet reached the stage of substantive negotiations."[32]

Tibetans could benefit from full implementation of the REAL, but the lack of local self-government in Tibetan autonomous areas of China creates mistrust in the dialogue and demonstrates that authorities are not implementing this law. The REAL asserts in its Preamble that the practice of autonomy "reflects the state's full respect for and guarantee of ethnic minorities' right to administer their internal affairs."[33] Article 7 of the REAL, however, requires that local autonomous governments "place the interests of the state as a whole above all else and actively fulfill the tasks assigned by state organs at higher levels."[34] A 2004 Harvard University study of autonomy in Tibetan areas of China considered a compilation of 161 laws and regulations, and found that poor implementation negates the value of autonomy legislation and erodes the rule of law.[35] A University of Hong Kong professor pointed out in March 2006 that regional ethnic autonomy is "very restricted" because "Beijing can override it through either legislation or administrative decisions."[36] "Today, the concept is valued primarily for speeding up economic and industrial development, which itself threatens the cultures and languages of minorities," according to the professor's article.

The central government and Party defend the regional ethnic autonomy system, asserting that it is successful. A February 2005 State Council White Paper declared that regional ethnic autonomy is "a correct solution to the issue of ethnic groups," and that more than 50 years of implementation prove that the system is "immensely successful."[37] At a meeting chaired by President and Party General Secretary Hu Jintao in August 2005, the Politburo considered "Tibet work in the new century" and declared that "the ethnic regional autonomy system has been continually consolidated and perfected, and the people of all ethnic groups fully enjoy their rights as masters of the country."[38]

Some Tibetans reject the Dalai Lama's offer to resolve the issue within the framework of the Chinese Constitution and autonomy, and their willingness to speak out is increasing. For example, the chairman of the oldest Tibetan advocacy group in the United States told a Commission roundtable in March 2006 that the dialogue has not resulted in "any tangible progress."[39] He said that he believes most Tibetans want independence, but they support the Middle Way Approach because of their high regard for the Dalai Lama. He warned that Chinese leaders may be mistaken if they expect the Tibet issue to fade away after the Dalai Lama passes away:

> Rather than the issue dying away, there is a greater likelihood that the issue will destabilize, with future generations of very frustrated Tibetans resorting to other means to bring freedom to Tibet. The role and the position of the Dalai Lama has been a great stabilizer for the Ti-

> betan community, the Free Tibet Movement, and even the world.[40]

The Chinese government portrays as terrorists some Tibetans living outside of China who call for independence,[41] but has not provided evidence for this designation. In February 2004, a Chinese public security journal described the Tibetan Youth Congress (TYC), a pro-independence NGO based in India that claims 20,000 members worldwide,[42] as "the extremists among the new generation of the Dalai Lama group."[43] The article claimed, "It can be said that every violent terrorist activity that took place in the Tibetan regions was intricately connected with extremist organizations such as the TYC."[44] An August 2005 article in China's Tibet magazine charged that "[TYC] diehards stick to 'Tibetan independence,' stand for violence, and work hand-in-glove with international terrorists to form terrorist organizations in India."[45]

Some Tibetans, especially the younger generation, are questioning the non-violent message of Buddhist philosophy. TYC President Kalsang Phuntsok acknowledged in December 2005 that "a huge section of the Tibetan youth community" believes that the Tibetan independence movement "is like any other movement:"

> There is no reason for us to restrain ourselves just because we are Buddhist or just because we have a leader of His Holiness's stature. . . . [We] have a youth section which is not so much influenced by the Buddhist philosophy. They are very much attracted by the movements which are going on all over the world, mostly violence-infested movements, and people see they are achieving results. They look around everywhere, whether it's Israel or Palestine or the Middle East—these give them every reason to believe in every [violent] movement that is being waged on this Earth.[46]

A senior broadcaster for the Voice of America summarized the complexities of the outlook for dialogue at a March 2006 Commission roundtable:

> Cumulatively, these disparate variables have had the effect of creating conditions more favorable to a strategy of engagement for Beijing. But while it seems likely that China will, for the time being, continue to pursue talks with the Dalai Lama, it seems equally unlikely that the two parties can expect to begin discussing matters of substance under present circumstances. . . . [T]he question now for Beijing is whether its deferral of substantive negotiations risks forgoing an historic opportunity to reach a lasting solution on the dispute over Tibet.[47]

Culture, Development, and Demography

The Chinese government favors accelerating implementation of development initiatives, especially the Great Western Development program (GWD),[48] that already erode Tibetan culture and heritage. Minister Li Dezhu of the State Ethnic Affairs Commission (SEAC) described GWD in 2000, the first year of implementation, as "the necessary choice for solving China's nationality problems under the new historical conditions."[49] He pointed out that GWD will inte-

grate ethnic minorities into the mainstream of "marketization and socialization," saying, "[E]ach nationality will become more strongly unified with each day under the centripetal force . . . of the large family of the Chinese nation." Implementation of programs such as GWD encourages Han migration into Tibetan and other ethnic areas, a movement that Li described as a westward flow of "human talent" that would result in "clashes and conflicts" between ethnic groups. Li warned that clashes must be "handled well," or there would be a detrimental effect on national unity and social stability.[50]

The Regional Ethnic Autonomy Law (REAL) provides local autonomous governments the right to modify or cancel the implementation of higher-level laws and regulations,[51] but the central government overrides the rights of local governments by passing laws that ensure implementation of central government policies such as GWD. Li said in 2000 that the state "must use legal methods to provide legal guarantees for the implementation of these policies, and safeguard implementation [of GWD] with laws and regulations."[52] A March 2004 State Council paper called on the government to "speed up the pace of law-making as it pertains to the development of the West, to provide a legislative guarantee for the development of the West."[53] In March 2006, Wang Jinxiang, Vice Minister of the National Development and Reform Commission and Deputy Director of the State Council Office of the Leading Group for Western Region Development, said that the National People's Congress is preparing a draft law that "aims to create a favorable legal environment and support for a smooth implementation of the western region development program."[54] If enacted, this law would be the first national law created solely for the development of a single region, according to Wang.

Senior government and Party officials emphasized the importance of hastening the implementation of development policies when they attended a September 2005 ceremony in Lhasa marking the 40th anniversary of the establishment of the TAR.[55] Jia Qinglin, a Politburo Standing Committee member, led the delegation and told an assembly of Party cadres in Lhasa that the pace of change in the TAR must be quickened from "accelerated development" to "development by leaps and bounds."[56] Jia listed priorities that include boosting rural Tibetan living standards and income, increasing infrastructure construction, and consolidating the TAR's ties with China's populous east, along with the political objective of cracking down on expression and activity that the Party characterizes as "separatist and sabotaging activities."[57] The latter descriptions can apply to peaceful expressions of devotion to the Dalai Lama, and Tibetan complaints about Chinese policies. Authorities in Lhasa tightened security before the anniversary and detained as many as 10 Tibetans,[58] including Sonam,[59] a monk employed at the Potala Palace, and Sonam Gyalpo,[60] a Lhasa tailor who had video and printed material in his home featuring the Dalai Lama.

The Qinghai-Tibet railway, officially designated as a key GWD project,[61] began passenger service in July 2006, ahead of scheduled completion in 2007,[62] increasing Tibetan concerns about the railway's potential effects on the Tibetan culture and environment.[63] President Hu Jintao inaugurated the railway at a ceremony in

Golmud city, Qinghai province. Hu described the railway's completion as "an important expression of the constant increase in the comprehensive national strength of our country," and of "very great significance" to speeding up regional economic and social development and "enhancing ethnic solidarity and consolidating the motherland's frontier defense."[64] Ragdi (Raidi), an ethnic Tibetan who is a Vice Chairman of the National People's Congress Standing Committee (NPCSC) and former Chairman of the TAR People's Congress, described the railway during its first week of operation[65] as the Tibetan people's "road to heaven," and predicted that it would "have a profound and far-reaching historical significance."[66] In August, an official announced that the government plans to extend the railway westward from Lhasa to Rikaze, the TAR's second largest city, within three years.[67]

State-run news media reports about the railway's startup rejected assertions that operating the railway will result in increased Han migration into the TAR, or threaten the Tibetan culture and environment. A Xinhua editorial published on July 1 dismissed claims that "an influx of the Han people" would lead to Tibetan "cultural genocide,"[68] countering that the railway will benefit Tibetans by providing them access to "modern civilization."[69] Lhasa mayor Norbu Dondrub said the same day, "Tibetan culture will not disappear when there is market demand for it. The Tibetan culture will not have fundamental changes with the opening of the Qinghai-Tibet Railway. On the contrary, it has a bright future."[70] Wu Yingjie, Vice Chairman of the TAR government and head of the provincial Propaganda Bureau,[71] told foreign reporters in July that, "Tibet's unique natural conditions make it impossible for the Han people and other ethnic groups to settle down here,"[72] a statement that is inconsistent with Chinese census statistics that document the increasing Han population in the TAR.[73] Chinese news reports described the passengers expected to use the new railway as tourists, visitors, or travelers. Chairman of the TAR government Jampa Phuntsog (Xiangba Pingcuo) acknowledged on July 4 that the railway will bring "a lot of travelers" to the TAR and build the tourism industry, but the railway would not have "a great impact" on the Tibetan environment.[74] A TAR tourism official announced in May that 4,000 "tourists"[75] will arrive in Lhasa every day after the railway is operating, and that the railway would bring an additional 400,000 visitors to the TAR during the remainder of 2006.[76] Official estimates are not available of the number of persons the government expects to arrive by train in Lhasa who will seek employment, conduct business, engage in a professional practice, or remain in the area for other reasons.

As the inauguration date of the 33 billion yuan (US$4.12 billion)[77] railway approached, Chinese officials and experts disclosed that thawing permafrost on the Qinghai-Tibet Plateau could adversely affect operation of the railway, but officials did not warn of any immediate risks. Professor Wu Ziwang, an expert at the Chinese Academy of Sciences frozen soil engineering laboratory,[78] said in January 2006 that the permafrost layer on the Qinghai-Tibet Plateau is melting and will continue to deteriorate due to global warming.[79] "I am worried that after ten years the railroad will be unsafe," he said. In February, Wu observed that faster thawing of

the permafrost "might greatly increase the instability of the ground . . . where major projects such as highways or railways run through."[80] La Youyu, the Deputy Director General of the railway's construction headquarters, disclosed in August 2005 that about 340 miles of track crosses frozen earth that "is vulnerable to climate change" and "will thaw in summer and distend the railway base in winter."[81]

Supreme People's Court (SPC) and Party officials opened a conference on June 15 that considered the role the judiciary should play in maintaining social stability following the opening of the Qinghai-Tibet railway in July.[82] SPC Vice President Zhang Jun said that the railway has an important role in the GWD program, and that the inauguration of the rail service would create "new demands regarding the work of the courts." He stressed that courts along the rail line, the principal terminals of which are Lhasa and Xining, the capital of Qinghai province, must strengthen their "communication and cooperation" to coordinate efforts to "resolve problems." The courts of both the TAR and Qinghai province must be active participants in the "comprehensive management of public security" to "assure the harmony and stability of the Qinghai-Tibet area, particularly the safe operation of the railroad," Zhang said.[83] Wang Yibin, a TAR Communist Party Standing Committee member and the head of the TAR Public Security Bureau, also spoke at the conference and provided specific judicial "requirements" linked to the TAR's "current anti-splittist struggle and public security situation."[84] The requirements included: increasing the force of "strikes against all categories of criminal activity;" establishing a legal environment that is "favorable to the safety of the railroad;" and protecting the legal rights and interests of workers while "preventing and appropriately handling mass incident work."[85]

Chinese law, government and Party policies, and official statements increase Tibetan concerns that programs such as GWD[86] and projects such as the Qinghai-Tibet railway will lead to large increases in Han migration. In an unusual statement, a China Daily report in October 2005 described the government's expectation that the railway will "attract tourists, traders, and ethnic Chinese settlers" to the region.[87] The implementation provisions of the REAL issued in May 2005 instruct the state to encourage and support "talents of all categories and classes to develop and pioneer in ethnic autonomous areas."[88] The Provisions require local governments to provide newly arriving "talent" with "preferential and convenient working and living conditions," and to ensure that their dependents and children "enjoy special treatment in employment and schooling."[89] An opinion paper circulated by the Party Central Committee and the government in July 2005 called for "a large number of trained personnel, especially graduates of schools of higher learning, to go to [grassroots areas, especially the western region] to render meritorious service and make a distinguished career."[90] The paper advises the state to offer incentives, such as full repayment of academic loans, to graduates who work for an unspecified number of years in "harsh areas."[91]

The Chinese government hampers objective study of regional social and economic issues by providing inadequate or misleading information about the number of ethnic Han who live, work, and

trade in Tibetan autonomous areas. The Commission's 2005 Annual Report showed that official Chinese census data portray ethnic Han population as decreasing in 10 of 13 Tibetan autonomous areas between 1990 and 2000,[92] a decline that contradicts the visible changes evident in many Tibetan towns and cities, and raises questions about the reliability of the data.[93] Comparing national census data with population data from provincial statistical yearbooks demonstrates that the yearbooks sometimes report even fewer Han in Tibetan areas than the census.[94] Census data for 2000 reports 158,570 Han in the TAR,[95] for example, but a TAR annual statistical yearbook reports only 72,122 Han in the TAR in 2000 (less than half the census figure).[96]

A Chinese academic study conducted in Lhasa in 2005 observed that GWD promotes the flow of "a large number of temporary migrants" into the TAR, and leads to increased competition between a "low quality" local Tibetan workforce and incoming (mostly Han) migrant workers.[97] The authors, Professors Ma Rong and Tanzen Lhundup, examine the migrant population in Lhasa (Tibetan and non-Tibetan), and the role of local authorities in registering and managing the migrant population. The paper concludes that it is difficult to study temporary migrants in the TAR, and that the actual number of temporary migrants is much larger than official records reveal.[98] The authors explain that temporary migrants keep moving seasonally, and usually try to avoid registering with local authorities in order to escape payment of fees and charges. Local governments are understaffed with inexperienced personnel and cannot keep track of the migrants.[99]

Education levels among Tibetans are much lower than those of ethnic Han,[100] undermining the ability of Tibetans to compete for employment and other economic advantages in an emerging market economy that attracts an increasing number of Han. Based on 2000 census data, the Tibetan rate of illiteracy (47.55 percent) is more than five times higher than for Han (8.60 percent), while Han reach senior middle school at more than five times the rate of Tibetans (8.83 percent compared to 1.70 percent).[101] Ma and Lhundup found similar patterns in their study of migrants in Lhasa: the rate of illiteracy among Tibetan migrants (32.3 percent) was almost 10 times higher than for Han migrants (3.3 percent),[102] and Han migrants were better prepared to secure jobs that require skills learned in junior or senior middle school. Of the migrants surveyed, Han reached junior or senior middle school at about twice the rate of Tibetans: 53.7 percent of Han compared to 26 percent of Tibetans reached junior middle school, and 19.4 percent of Han compared to 9 percent of Tibetans reached senior middle school.[103] The survey's population sample shows that the advantage Han migrants enjoy in the Lhasa job market is qualitative, based on their education levels, and also quantitative—there were at least four times as many Han migrants in Lhasa as Tibetan migrants.[104]

The difference in education levels heightens the barrier that rural Tibetans face, even compared to urban Tibetans, when they seek employment or commercial opportunities in urban centers.[105] Tibetans living in towns and cities reached senior middle school at about 12 times the rate of Tibetans living in rural areas, according

to official 2000 census data.[106] Based on the same data, Tibetans with the least access to education—rural Tibetans—outnumbered Tibetan residents of towns and cities by more than five-to-one.[107] The average income of TAR rural residents remains a fraction of urban income, but according to official data the gap has narrowed slightly. In 2000, the average TAR urban per capita income (6,448 yuan) was 4.84 times more than the average rural per capita income (1,331 yuan).[108] In 2005, the average TAR urban per capita income (8,411 yuan) was 4.05 times higher than the average rural per capita income (2,075 yuan).[109]

The Chinese government implements policies intended to improve educational and economic opportunities for rural Tibetans,[110] especially nomadic herders, but programs require Tibetans to participate on the government's terms. In the first three years of a pasture construction and nomadic settlement program launched in 2001, authorities in the TAR relocated 48,000 nomadic herders and settled them in fixed communities.[111] A government program to settle nomadic herders, including Tibetans, in Qinghai province placed about 10,000 families in fixed communities by 2005.[112] In Gansu province, a program started in the late 1990s to settle nomadic herders in Tibetan autonomous areas settled 7,000 families by 2004 and is expected to be complete in 2009.[113] A U.S. Agency for International Development rangeland expert told a Commission roundtable in March 2004 that in his opinion, despite good government intentions,[114] most Tibetan farmers and herders have not been able to participate fully in assessing, planning, and implementing the programs that affect their lives.[115]

Tibetan Culture and Human Rights

The Chinese government strictly limits the rights of Tibetans to exercise the constitutionally guaranteed freedoms of religion, speech, and assembly. Communist Party political campaigns promote atheism and strengthen government efforts to discourage Tibetan aspirations to foster their unique culture and religion. Chinese authorities have punished Tibetans for peaceful expressions and non-violent actions that officials believe could undermine Party rule. The downward trend in the number of known Tibetan political prisoners,[116] compared to an upward trend that peaked in the mid-1990s,[117] suggests that Tibetans are avoiding the risks of direct protest against government policies, and turning to other, sometimes innovative, ways to express and protect their culture.[118]

An example of Tibetan cultural expression, and of the Dalai Lama's influence on Tibetans, emerged after the Dalai Lama told thousands of Tibetans gathered in January 2006 at a religious teaching in India,[119] "I am ashamed and don't feel like living when I see all those pictures of people decorating themselves with skins and furs."[120] He specifically referred to fur trim from rare and endangered animal species that some Tibetans use to decorate traditional garments. "Neither use, sell, or buy wild animals, their products or derivatives," he instructed the attendees. In February and March 2006, Tibetans in Tibetan autonomous prefectures in Qinghai, Gansu, and Sichuan provinces responded by conducting campaigns to collect and burn fur stripped from garments.[121] Security officials detained and questioned the Tibetan organizers of at

least two events and then released them, apparently without charge.[122] At an event in March, the organizers took care to avoid provoking authorities,[123] but participants openly displayed their devotion to the Dalai Lama.[124] Police monitored the scene, but did not detain or question any participants, or prevent the Tibetans from burning the fur.[125]

Chinese authorities carried out 24 known political detentions of Tibetans in 2005, an increase compared to the 15 such detentions in 2004, according to information available in the Commission's Political Prisoner Database (PPD) as of August 2006. Of the political detentions in 2005, 10 took place in the Tibetan Autonomous Region (TAR), 8 in Qinghai province, and 6 in Gansu province. None of the known political detentions of Tibetans in 2005 took place in Sichuan province, although Sichuan was the location of the largest number of new cases from 2001–2004.[126] In January 2006, a court in Gannan Tibetan Autonomous Prefecture in Gansu province sentenced Tibetan monks Dargyal Gyatso and Jamyang Samdrub, and nuns Choekyi Drolma, Tamdrin Tsomo, and Yonten Drolma to up to three years' imprisonment for displaying and distributing letter-sized posters critical of the Chinese government.[127] The nuns are the first nuns known to be imprisoned in Gansu province since this period of Tibetan political activism began in 1987.[128]

The PPD listed 103 known cases of current Tibetan political detention or imprisonment as of August 2006, a figure that is likely to be lower than the actual number of Tibetan political prisoners. Reports of Tibetan political imprisonment often do not reach monitoring groups until at least one or two years after the detentions occur. Approximately 55 of the Tibetans are believed to be detained or imprisoned in the TAR, approximately 25 in Sichuan province, fewer than 15 in Qinghai province, and 6 in Gansu province. Based on sentence information available for 70 of the current prisoners, the average sentence is approximately 10 years and 11 months.

The Commission welcomed the decision by Chinese authorities to permit nun Phuntsog Nyidron to travel to the United States in March 2006 to receive medical treatment.[129] Lhasa authorities imprisoned her for more than 14 years for participating in a peaceful political demonstration, and then for secretly recording songs that criticized the Chinese government's rule of Tibetans while she was in prison.[130] In another development, the Lhasa Intermediate People's Court commuted Bangri Chogtrul's sentence from life imprisonment for "splittism"[131] to a fixed term of 19 years in July 2003, and then reduced his sentence by an additional year in November 2005, according to a February 2006 NGO report.[132] The same court sentenced Nyima Choedron, Bangri Chogtrul's wife, to 10 years' imprisonment on the same charge in September 2000, and subsequently reduced her sentence twice, by 18 months in 2002 and 1 year in 2004. Officials released her on February 26, 2006, after commuting the final year of her sentence.[133] No new developments were reported in the cases of prisoners Ngawang Phuljung (a monk serving a 19-year sentence since 1989), Choeying Khedrub (a monk serving a life sentence since 2000), or Tenzin Deleg (a lama imprisoned in 2002, serving a life sentence). (See Section VI—Tibet of the CECC 2005 Annual Report for more information about these cases.)

Manfred Nowak, UN Special Rapporteur on Torture, reported after his visit to China in late 2005 that TAR authorities opened Qushui Prison, near Lhasa, in April 2005 for male prisoners serving sentences longer than 15 years, as well as prisoners sentenced as a "principal" criminal when more than one person commits a "joint crime."[134] NGO reports of Tibetan political prisoners in Qushui Prison have confirmed few by name, although according to a Commission staff analysis about 25 political prisoners, most of them transferred from Lhasa's TAR Prison (Drapchi), are likely to be imprisoned in Qushui Prison.[135]

Nowak interviewed three Tibetan political prisoners at Qushui Prison: Jigme Gyatso[136] (a former monk imprisoned in 1996 who is serving a 17-year sentence), Bangri Chogtrul,[137] and Lobsang Tsultrim[138] (a monk serving a 14-year sentence since 1995). Each prisoner recounted his personal experience of beating, torture, or other abuse during imprisonment. Jigme Gyatso reported that authorities extended his 15-year sentence by an additional 2 years after he shouted slogans in March 2004 calling for the Dalai Lama's long life.[139] The prisoners told Nowak that conditions in Qushui Prison are harsher than those in TAR Prison, and they said that imprisoned monks are forbidden to pray.[140]

IX. North Korean Refugees in China

FINDINGS

- The Chinese government forcibly repatriates North Korean refugees facing starvation and political and religious persecution in their homeland, contravening its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Chinese authorities detained and returned to the Democratic People's Republic of Korea (DPRK) thousands of North Koreans in 2005. The government classifies all North Koreans who enter China without documents as illegal economic migrants and claims it must return them to the DPRK, even though North Korean defectors meet the definition of refugees under international law. Repatriated North Koreans face long prison sentences, torture, and execution.
- Without legal status, North Korean refugees in China are vulnerable to abuse and exploitation. There are an estimated 20,000 to 50,000 North Koreans currently hiding in northeastern China, and some NGOs estimate that the number of refugees is much higher. The government refuses the UN High Commissioner for Refugees (UNHCR) access to North Korean refugees, and fines and imprisons humanitarian workers who assist North Koreans in China. Officials in Beijing met with UNHCR António Guterres in March 2006 during the first UNHCR visit to China since 1997. In July 2006, the Chinese government for the first time allowed three North Korean refugees to travel directly from the U.S. Consulate in Shenyang, Liaoning province, to the United States to seek asylum.

The Chinese government forcibly repatriates North Korean refugees fleeing starvation and political and religious persecution in their homeland.[1] The U.S. State Department and NGO sources report that Chinese authorities detained and returned to the Demo-

cratic People's Republic of Korea (DPRK) thousands of North Koreans in 2005.[2] The government provides financial rewards to security officials who detain North Koreans and to citizens who reveal the locations of refugees.[3]

The government's repatriation of North Korean refugees contravenes its obligations under the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol. The 1951 Convention and its Protocol mandate that "no Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[4] The government bases its policy of repatriating North Koreans on a 1961 treaty with the DPRK and a subsequent 1986 border protocol,[5] but international law concerning refugees supersedes any such bilateral commitments.[6]

The government classifies all North Koreans who enter China without documents as illegal economic migrants and claims it must return them to the DPRK, even though North Korean defectors meet the definition of refugees under international law. In March, a Ministry of Foreign Affairs (MFA) spokesperson reiterated the government's position that undocumented North Koreans in China are "illegal migrants and not refugees."[7] The 1951 Convention and its Protocol, however, define a refugee as someone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."[8] The UN Special Rapporteur on Human Rights in North Korea also recognized in a 2005 report that North Koreans who have crossed the border into other countries for reasons of livelihood are refugees *sur place,* or those "who did not leave their country of origin for fear of persecution, but who fear persecution upon return."[9]

Repatriated North Koreans face long prison sentences, torture, and execution. Article 233 of the amended North Korean Penal Code states that any citizen "who crosses a frontier of the Republic without permission shall be committed to a detention labor facility for up to two years," and Article 62 says that any citizen "who defects to a foreign country or to the enemy in betrayal of the country and the people shall be committed to a reform institution for not less than five years. In cases where the person commits an extremely grave offense, he or she shall be given life imprisonment in a reform institution, the death penalty or have their property confiscated."[10] According to international NGO sources, the "grave offenses" include leaving the DPRK multiple times,[11] meeting with foreigners, and returning to the DPRK with the intention of becoming Christian missionaries.[12] Testifying before a Commission hearing, an international humanitarian worker said that North Korean officials summarily executed one refugee's repatriated sister and son for converting to Christianity and interacting with Chinese Christians while in China.[13] Conditions in North Korean labor camps and prisons are harsh, and defector testimonies "document

cases of beatings, forced labor, degrading treatment, torture, and execution."[14]

Without legal status, North Korean refugees in China are vulnerable to abuse and exploitation. Jay Lefkowitz, U.S. Special Envoy for Human Rights in North Korea, estimates that at least 20,000 to 50,000 North Koreans currently are hiding in northeastern China.[15] Some NGOs estimate that the number of refugees is much higher.[16] Trafficking in North Korean women, who make up two-thirds of the refugees,[17] is widespread,[18] and the Chinese government has done little to combat the network of traffickers along the North Korean border.[19] International NGOs estimate that traffickers intercept 70 to 80 percent of all North Korean women entering China.[20] Traffickers sell the majority of women into marriage and a smaller number into prostitution[21] [see Section V(e)—Status of Women—Trafficking of Women and Girls]. Few North Korean children and children born in China from Chinese-Korean marriages have access to education,[22] and traffickers have sold babies born to North Korean women in China.[23]

Officials in Beijing met with António Guterres, the UN High Commissioner for Refugees (UNHCR), in March 2006 during the first UNHCR visit to China since 1997. State Councilor Tang Jiaxuan told Guterres that "the Chinese government attaches great importance to the protection of refugees."[24] During Guterres' visit, an MFA spokesperson said that the Chinese government was "considering how to improve and perfect the . . . legal system" pertaining to refugees.[25] The State Council is considering new Regulations on the Administration of Refugees, according to its 2006 Legislative Plan.[26] Guterres said the UNHCR would be "fully engaged in supporting the Chinese authorities to make sure that this legislation is in full compliance with international law."[27]

The government refuses the UNHCR access to North Korean refugees, and Chinese guards outside the UNHCR office in Beijing block access to North Korean and other refugees. This policy contravenes a 1995 agreement between the UN and the Chinese government which provides that "UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation."[28] Chinese security forces that guard the UNHCR office[29] and foreign embassies[30] in Beijing drive away North Koreans who try to present refugee petitions or seek asylum. In a March 30 statement, the White House expressed "grave concern" over China's repatriation of refugee Kim Chun-hee and called upon the Chinese government "not to return North Korean asylum seekers without allowing UNHCR access to these vulnerable individuals."[31] In July 2006, the Chinese government for the first time allowed three North Korean refugees to travel directly from the U.S. Consulate in Shenyang, Liaoning province, to the United States to seek asylum.[32]

The government fines and imprisons international humanitarian workers who assist North Koreans in China. Chinese authorities sentenced South Korean citizen Choi Yong-hun to five years in prison and fined him 30,000 yuan (US$3,750) in May 2003 for assisting North Koreans in China.[33] Authorities in Yanji city in the Yanbian Korean Autonomous Prefecture detained U.S. citizen Phil-

ip J. Buck in May 2005 for his role in assisting North Koreans in China to seek asylum in a third country.[34] In August 2006, authorities convicted Reverend Buck of human smuggling, and sentenced him to deportation and prohibition from returning to China.[35] A South Korean Ministry of Foreign Affairs and Trade report released in September 2005 said that, of the 64 South Koreans detained by Chinese authorities since 2001 for helping North Koreans in China, 15 are still in detention.[36] The government imposes fines of 1,000 yuan (US$125) on Chinese citizens who shelter North Korean refugees[37] and offers financial rewards to citizens who turn in those assisting North Koreans.[38]

X. Developments in Hong Kong

The United States supports a stable, autonomous Hong Kong under the "one country, two systems" formula articulated in the Sino-U.K. Joint Declaration and the Basic Law.[1] The people of Hong Kong enjoy the benefits of an independent judiciary[2] and an open society in which the freedoms of religion, speech, and assembly are respected. The Commission notes, however, that during the past year no steps were taken that would move Hong Kong closer to the "ultimate aim" of universal suffrage as specified in the Basic Law. The Commission strongly supports the provisions of the Basic Law that provide for the election of the chief executive and the entire Legislative Council through universal suffrage, and highlights the importance of the central government's obligation to give Hong Kong the "high degree of autonomy" promised in the Basic Law.

Constitutional Reform and Steps to Universal Suffrage

The National People's Congress Standing Committee (NPCSC) issued a decision in April 2004 prohibiting the people of Hong Kong from electing both the chief executive in 2007 and the members of the Legislative Council (LegCo) in 2008 through universal suffrage.[3] Universal suffrage is described in Articles 45 and 68 of the Basic Law as the "ultimate aim."[4] Currently, the chief executive is selected by the 800-member Election Committee chosen from Hong Kong's 28 functional constituencies, and only half of the 60 legislators in the LegCo are chosen by direct election. In July 2004, hundreds of thousands of Hong Kong citizens staged a demonstration to demand greater democracy, conveying the clear message that most people in Hong Kong want universal suffrage.[5]

The Hong Kong Special Administrative Region's (HKSAR) Constitutional Development Task Force issued its fifth report on October 19, 2005, which proposed modest measures to expand citizen participation in selecting the chief executive in 2007 and forming the LegCo in 2008. The report called for adding 10 new seats to the 60-member LegCo, although the public would directly elect only 5 of the new members. District Councilors elected by the current group of 529 elected and appointed Councilors would fill the other five new seats.[6] The report also called for doubling the size of the Election Committee (EC) that chooses Hong Kong's chief executive from 800 to 1,600 members, and increasing the number of EC members that are professionals in industry, commerce, finance, labor, and social services from 600 to 900.[7] EC members from these functional constituencies are elected by Hong Kong citizens from

their respective professional and industrial sectors. In addition, the report proposed increasing the number of EC members from the LegCo, District Councils, Heung Yee Kuk (a statutory advisory body representing the New Territories), Hong Kong deputies to the National People's Congress, and Hong Kong members of the Chinese People's Political Consultative Conference from 200 to 700.[8] These members either serve in an ex officio capacity, or are selected by members of their constituency.

Hong Kong government leaders pointed to the challenge of meeting citizen demands for universal suffrage, while facing the constraints on policymaking imposed by the April 2004 NPCSC decision. Chief Executive Donald Tsang described the proposals as "a significant step forward in our democratic development," according to the transcript of a press conference posted on the Hong Kong government Web site following the release of the fifth report.[9] Tsang also said that the HKSAR government formulated a package that embodied "democracy and openness to the highest extent possible," but was still consistent with the Basic Law and the decision of the NPCSC.[10] Rafael Hui, Chief Secretary for Administration, who led the Constitutional Development Task Force, explained that "although constitutional development in 2007–2008 will not take us immediately to the ultimate goal of universal suffrage, it is a substantive and significant step toward that goal." [11]

A vigorous public debate on the merits of the Task Force proposals, and their lack of a timetable for universal suffrage, culminated in a December 2005 march by tens of thousands to protest the slow pace of democratization.[12] According to polls at the time, public support for the proposals had fallen to just above 45 percent, down from an initial approval rating of nearly 60 percent following the proposals' release in October.[13] Polling also showed that 60 percent of respondents were in favor of introducing a timetable for universal suffrage.[14] Twenty-four LegCo members voted against the Task Force report on December 21, 2005, blocking its passage.[15] A last-minute package of adjustments offered by the government did not meet the lawmakers' demand for a specific timetable to realize universal suffrage.[16]

Compliance with the International Covenant on Civil and Political Rights

A March 2006 report by the UN Human Rights Committee, which is responsible for reviewing compliance with the International Covenant on Civil and Political Rights (ICCPR), expressed concern about the absence of universal suffrage in Hong Kong, as well as with the implementation of the procedure for interpretation of the Basic Law, a reference, in part, to the April 2004 NPCSC decision to prohibit universal suffrage in the 2007 chief executive and 2008 Legislative Council elections.[17] The report questioned the HKSAR government's compliance with Article 25 of the ICCPR in both situations. Article 25 states that every citizen should have the right and the opportunity, without unreasonable restrictions, to participate in public affairs, either by himself or through a directly elected representative, and to express his political will through universal suffrage.[18] The report concluded that, "All necessary measures should be taken whereby the Legislative Council is elected by

universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant."[19]

XI. Appendix: Commission Activities in 2005 and 2006

Hearings

September 20, 2006 Human Rights and Rule of Law in China

Jerome A. Cohen, Professor of Law, New York University School of Law
John Kamm, Executive Director, The Dui Hua Foundation
Minxin Pei, Director, China Program, Carnegie Endowment for International Peace
Xiao Qiang, Director, China Internet Project, University of California at Berkeley

March 6, 2006 Combating Human Trafficking in China: Domestic and International Efforts

The Honorable Christopher H. Smith, Vice Chairman, Committee on International Relations, U.S. House of Representatives
The Honorable John R. Miller, Ambassador-at-Large and Director, Office to Monitor and Combat Trafficking in Persons, Department of State
Roger Plant, Head, Special Action Program to Combat Forced Labor, International Labor Organization
Wenchi Yu Perkins, Director, Anti-Trafficking and Human Rights Program, Vital Voices
Abraham Lee, Director of Public Relations, Crossing Borders

Roundtables

May 15, 2006 Political Change in China? Public Participation and Local Governance Reforms

Merle Goldman, Professor Emerita of Chinese History, Boston University, and Executive Committee Member, Fairbank Center for East Asian Research, Harvard University
Joseph Fewsmith, Director of East Asian Studies Program and Professor of International Relations and Political Science, Boston University
Xie Gang, Former Senior Program Officer, Law and Governance Programs, Asia Foundation

April 11, 2006 The Lot of Chinese Workers: Do China's Labor Laws Work?

Han Dongfang, Director, China Labour Bulletin
Robin Munro, Director of Research, China Labour Bulletin

March 13, 2006 The China-Dalai Lama Dialogue: Prospects for Progress

Tashi Wangdi, Representative of His Holiness the Dalai Lama to the Americas, Office of Tibet, New York
Sonam Wangdu, Chairman, United States Tibet Committee
Tseten Wangchuk, Senior Broadcaster, Voice of America, Tibetan language service

February 24, 2006 China's Response to Avian Flu: Steps Taken, Challenges Remaining

Dr. John R. Clifford, Deputy Administrator for the Veterinary Services Program, Animal and Plant Health Inspection Services' Veterinary Services program, U.S. Department of Agriculture
Erika Elvander, Office of Asia and the Pacific, Office of Global Health Affairs, U.S. Department of Health and Human Services
Dr. Bates Gill, Freeman Chair of China Studies, Center for Strategic and International Studies

November 16, 2005 China's Changing Strategic Concerns: The Impact on Human Rights in Xinjiang

James A. Millward, Associate Professor of History, School of Foreign Service, Georgetown University
Daniel Southerland, Vice President of Programming/Executive Editor, Radio Free Asia
S. Frederick Starr, Chairman of the Central Asia-Caucasus Institute, School of Advanced International Studies, Johns Hopkins University

November 3, 2005 Working Conditions in China: Just and Favorable?

Judy Gearhart, Program Director, Social Accountability International
Dr. Ruth Rosenbaum, Executive Director, Center for Reflection, Education and Action, Inc.
Dan Viederman, Executive Director, Verité

XII. Endnotes

†Voted to approve: Senators Hagel, Smith, DeMint, Martinez, Baucus, Levin, Feinstein, Dorgan; Representatives Leach, Dreier, Wolf, Pitts, Aderholt, Levin, Kaptur, Brown, and Honda; Deputy Secretary Law, Under Secretary Dobriansky, Under Secretary Lavin, Assistant Secretary Hill, and Assistant Secretary Lowenkron.

Voted not to approve: Senator Brownback.

Notes to Section V(a)—Special Focus for 2006: Freedom of Expression

[1] 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."

[2] "Open Letter From 'Freezing Point' Writers to National People's Congress Standing Committee" [Bingdian zhoukan bufen zuozhe zhi zhengzhiju changwei de gongkaixin], Boxun (Online), 18 Feb 06. The signatories included Cui Weiping, a professor at the Beijing Film Academy; He Weifang, a law professor at Peking University; and Qin Hui, a history professor at Tsinghua University.

[3] "Joint Declaration Concerning the 'Freezing Point' Incident" [Guanyu bingdian shijian de lianhe shengming], Epoch Times (Online), 14 February 06. The signatories included Zhu Houze, former head of the Central Propaganda Department; Li Rui, former secretary to Mao Zedong; Li Pu, former Deputy Director of the Xinhua News Agency; Zhang Sizhi, former Vice Chair of the Beijing Lawyers Association; Hu Jiwei, former editor-in-chief of the People's Daily; and Zhong Peizhang, former head of the China Youth Daily Group.

[4] Liu Yunshan, "In Accordance With the Requirements of Building a Socialist and Harmonious Society: Deepen, Broaden, and Innovate Propaganda Ideological Work" [Anzhao goujian shehuizhuyi hexie shehui yaoqiu shenhua tuozhan chuangxin xuanchuan sixiang gongzuo], Seeking Truth (Online), 1 October 05.

[5] Liu Yunshan, "Earnestly Study and Implement the Spirit of the Fourth Plenary Session of the 16th Chinese Communist Party Central Committee, Strive to Increase the Party's Ability to Lead Ideological Work" [Renzhen xuexi guanche shiliu jie si zhong quanhui jingshen nuli tigao dang lingdao yishi xingtai gongzuo de nengli], Seeking Truth (Online), 16 October 04.

[6] "Long Xinmin: Forcefully Promote the Glorious Development of the News Publishing Industry" [Long Xinmin: dali cujin xinwen chubanye fanrong fazhan], People's Daily (Online), 31 December 05; "Censorship Agency Gets New Director, Calls for 'Uniformity' of Political Ideology," CECC China Human Rights and Rule of Law Update, March 2006, 14.

[7] Liu Yuzhu, "Actively Responding to the Challenge of the Internet Era" [Jiji yingdui wangluo shidai de tiaozhan], Seeking Truth (Online), 1 January 05.

[8] Antoaneta Bezlova, "Big Brother's Book Ban Blues," The Hong Kong Standard (Online), 28 May 05; "Piracy: A Page Hard to Turn for Regulators," Xinhua (Online), 23 May 05.

[9] "Senior Chinese Government, Party, and Business Leaders Deny Internet Censorship," CECC China Human Rights and Rule of Law Update, April 2006, 10; "Wen Jiabao: It Is Necessary to Learn How to Handle the Social Contradictions of the New Age" [Wen Jiabao: yao xuehui chuli xinshiqi de shehui maodun], Xinhua (Online), 14 March 06; Zhao Huanxin, "Regulation of Internet In Line With World Norms," China Daily (Online), 15 February 06; "SCIO—China's Regulation of the Internet Complies With International Standards" [Guo Xinban: Zhongguo guanli hulianwang fuhe guoji tongxing zuofa], Xinhua (Online), 15 February 06; "China Denies Arrest of Any Individual for Releasing Online Comment," Xinhua, reprinted in People's Daily (Online), 15 February 06; "China Denies Harsh Internet Censorship," Xinhua (Online), 14 February 06; "CPPCC Delegate Zhou Jinfeng Calls for Greater Regulation of the Internet" [Zhengxie weiyuan Zhou Jinfeng: Hulianwang youxiao guanli xu youpoyouli], Beijing News, reprinted in People's Daily (Online), 8 March 06. See also "Liu Binjie: China Is One of the World's Countries Richest in Freedom of Expression and Freedom of the Press," People's Daily (Online), 2 November 03, which states: "Currently China is one of the world's countries richest in freedom of speech and freedom of publication. Those outside of China who make claims about China's news, expression, and press are completely without support." See also State Council Information Office, White Paper on China's Progress in Human Rights in 2004, People's Daily (Online), 13 April 05, which states: "Citizens' freedom of information, of speech and of the press is protected by law."

[10] Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217A(III) of 10 December 48 [hereinafter UDHR]. Article 19 of the UDHR states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[11] International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A(XXI) of 16 December 66, entry into force 23 March 76 [hereinafter ICCPR]. China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly.

Article 19 of the ICCPR states: "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

[12] Before the Chinese Communist Party came to power, Party officials, and earlier, Karl Marx and Frederick Engels, wrote that requiring the news media to obtain government permission

to publish is inconsistent with freedom of the press. See, e.g., "Smash Fascist Publishing Laws" [Dasui faxisi de chubanfa], Xinhua Daily, 29 June 46, reprinted in Comment-cn.net (Online), 20 February 06, which states: "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 must also obtain permission in order to engage in distribution under a so-called special permit system; only fascist countries have this sort of evil." See also Mao Zedong's Government Work Report to the Seventh National People's Congress—Discussion of United Government [Mao Zedong zuo qi da zhengzhi baogao—lun lianhe zhengfu], 24 April 45, reprinted in People's Daily (Online), 26 April 01, which states: "We believe that the following demands are appropriate, and furthermore represent the very minimum. . . . We demand the elimination of all reactionary laws that suppress the rights of the people to expression, the press, assembly, association, ideology, belief and personhood, and allowing the people to obtain full freedoms and rights." See also Karl Marx, "Debates on Freedom of the Press and Publication of the Proceedings of the Assembly of the Estates," Rheinische Zeitung, Nos. 135, 139, May 1842, which states: "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. Freedom of the press will certainly not be achieved by a crowd of official writers being recruited by you from your ranks." See also, "The Condition of England: II The English Constitution," Frederick Engels, written March 1844, first published in Vorwörts!, No. 80, 5 October 1844, wherein Engels defines freedom of the press as "the right that any man may publish his opinion without hindrance and without the previous permission of the government."

[13] Jiao Hongchang and Yao Guojian (professors at China University of Politics and Law), "Freedom of Expression," in A Study on the Issues of Ratifying and Implementing of the International Covenant on Civil and Political Rights ["Gongmin quanli he zhengzhi quanli guoji gongyue" pizhun yu shishi wenti yanjiu], ed. Chen Guangzhong (Beijing, China Legal System Publishing, 2002), 388.

[14] UN Press Release, UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, "International Experts Condemn Curbs on Freedom of Expression and Control Over Media and Journalists," 18 December 03. See also UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, "Report on the Mission to the Republic of Korea," E/CN.4/1996/39/Add.1 (1995), 8: "The Special Rapporteur considers that any system of prior restraint on freedom of expression carries with it a heavy presumption of invalidity under international human rights law. Any institutionalization of such restraint adds further weight to this presumption."

[15] Constitutions of Brazil, art. 5(IX), South Korea, art. 21(2). See also the constitutions of: Austria, art. 13(2), The Netherlands, art. 7(1), and Norway, art. 100.

[16] The First Amendment of the U.S. Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . .," and the U.S. Supreme Court has held that: "[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship." Near v. State of Minnesota Ex Rel. Olson, 283 U.S. 697 (1931). See also Talley v. California, 362 U.S. 60 (1960); Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750 (1988); and Lovell v. City of Griffin, GA., 303 U.S. 444 (1938). Similarly, Article 19(1)(a) of India's Constitution states that all citizens are guaranteed the right to freedom of speech and expression, and India's Supreme Court has stated that, "It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media . . . ." Supreme Court of India, L.I.C. vs. Professor Manubhai D. Shah, (1992) 3 S.C.C. 637.

[17] In Sweden, for example, prior restraints on publications are forbidden by Article 2 of Chapter 1 of the Freedom of the Press Act, which states in part that "no publication shall be subject to scrutiny before printing, nor shall the printing thereof be prohibited." Article 5 of Chapter 5 of the Act requires publishers of periodicals to provide the title and place of printing of the periodical, and its publishing schedule, but the government may only refuse registration if the title of the periodical so closely resembles the title of a periodical for which a publishing license has already been issued that the two may easily be confused. The United Kingdom's Newspaper Libel and Registration Act 1881 requires registration, but under the Companies Act of 1985, registration under the Act is not necessary if the publication is owned by a company that is incorporated under corporate law, if the publication is distributed free of charge, and if it is published at intervals exceeding 26 days.

[18] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Ethiopia, 8 March 06.

[19] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Iran, 8 March 06.

[20] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Jordan, 8 March 06.

[21] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Syria, 8 March 06.

[22] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Uzbekistan, 8 March 06.

[23] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights Practices—2005, Yemen, 8 March 06.

[24] Regulations on the Administration of Publishing [Chuban guanli tiaoli], issued 25 December 01, ch. 2 (Establishment and Administration of Publishing Units).

[25] Notice Regarding Prohibiting the Transmission of Harmful Information and Further Regulating Publishing Order [Guanyu jinzhi zhuanbo youhai xinxi jinyibu guifan chuban zhixu de tongzhi], issued 5 November 01: "No one may establish an entity whose primary purpose is to transmit news information and engage in other news publishing activities without permission from the press and publication administration agency."

[26] Regulations on the Administration of Publishing, art. 29.

[27] Guangdong Press and Publication Administration (Online), "Responsible Person at the General Administration of Press and Publication Book Office Reports on the Previous Year's National Book Publishing Administration Work" [Zongshu tushusi fuzeren tongbao qunian quanguo tushuchuban guanli gongzuo], 24 February 05 (saying that authorities should use the opinions provided when screening the selection of topics to determine the distribution of book numbers, because this "reduces the risks relating to orientation").

[28] Article 11(2) of the Regulations on the Administration of Publishing states that publishing work units must have a sponsoring work unit and a managing work unit recognized by the State Council's publishing administration agency. The "sponsoring work unit" must be a government agency of a relatively high level, and the publishing work unit must answer to its sponsoring work unit and managing work unit. Circular Regarding Issuance of the "Temporary Provisions on the Functions of the Sponsoring Work Unit and the Managing Work Unit for Publishing Work Units" [Guanyu fabu "Guanyu chuban danwei de zhuban danwei he zhuguan danwei zhize de zanxing guiding" de tongzhi], issued 29 June 93, arts. 5–6.

[29] Cary Huang, "Incomes Up Over 10pc In Urban, Rural Areas," South China Morning Post (Online), 28 Apr 06.

[30] Regulations on the Administration of Publishing, art. 11(4).

[31] "China Banning Illegal Publications for Overhauling Publications Market, Official Says," Xinhua (Online), 14 May 05.

[32] Communication No. 780/1997, UN Human Rights Committee, UN Doc. CCPR/C/68/D/780/1997 (2000): "In the absence of any explanation justifying the registration requirements [that prior to publishing and disseminating a leaflet with a print run of 200, the publisher must register the publication with the administrative authorities to obtain index and registration numbers] and the measures taken, it is the view of the Committee that these cannot be deemed necessary for the protection of public order (*ordre public*) or for respect of the rights or reputations of others. The Committee therefore finds that Article 19, paragraph 2, has been violated in the present case."

[33] "Officials Ban Dozens of Papers, Seize Thousands of Political Publications, in 2005," CECC China Human Rights and Rule of Law Update, February 2006, 6; Sweep Away Pornography and Strike Down Illegal Publications Task Force (Online), "Inner Mongolia Wuhai City Government Suppression of Unauthorized Political Publications, Firm All-Round Line of Defense" [Neimenggu Wuhaishi jinghua chubanwu shichang si dao fangxian zhu de lao], 11 August 05.

[34] "People's Daily Publishes 2005 Censorship Numbers," CECC China Human Rights and Rule of Law Update, May 2006, 4; Sui Xiaofei and Qu Zhihong, "China's Publishing Sector's Glorious Development Must Move From Being a Big Country to a Great Country" [Woguo chubanye fanrong fazhan; yao cong chuban daguo zouxiang qiangguo], People's Daily (Online), 25 March 06.

[35] Sweep Away Pornography and Strike Down Illegal Publications Task Force (Online), "Luliang City, Shandong Province Bans an Illegal Newspaper [Shandongsheng Luliangshi qudi yi feifa baozhi], 9 August 05.

[36] Hunan Provincial Government (Online), "Hunan Province Bans Three Illegal News Organizations and Two Illegal Periodicals" [Hunan sheng qudi san ge feifa xinwen jigou yiji liang jia feifa baokan], 9 September 05.

[37] Sweep Away Pornography and Strike Down Illegal Publications Task Force, "Inner Mongolia Wuhai City Government Suppression of Unauthorized Political Publications, Firm All-Round Line of Defense."

[38] Article 225 of China's Criminal Law makes it a crime for anyone to commit "illegal acts in business operation and thus disrupt market order."

[39] "Writing Their Own Poems and Self-Publishing Them, Two 'Poets' Are Convicted" [Ziji xieshi ziji chuban "shiren" bei panxing], People's Daily (Online), 17 January 04.

[40] "Farming Woman Imprisoned for Illegally Publishing and Printing Books" [Yinzhi feifa tushu huo xing chufajin], China Court Net (Online), 13 September 04.

[41] "Printing and Publishing an Illegal Periodical: Media Group's Chief Representative Sentenced to Three Years' Imprisonment" [Yinshua chuban feifa qikan chuanmei jituan shouxi daibiao huo xing 3 nian], Legal Evening Report, reprinted in Xinhua (Online), 11 August 05.

[42] "New Regulations on Newspapers and Magazines Go Into Effect December 1," CECC China Human Rights and Rule of Law Update, January 2006, 10; Provisions on the Administration of Newspaper Publishing [Baozhi chuban guanli guiding], issued 30 September 05; Provisions on the Administration of Periodical Publishing [Qikan chuban guanli guiding], issued 30 September 05.

[43] "Guangdong Weekly Reports on How Chinese Authorities Have 'United to Purify the Internet'," CECC China Human Rights and Rule of Law Update, September 2005, 9; Li Liang and Yu Li, "14 Government and Party Agencies Unite to 'Purify' the Internet" [14 buwei lianhe "jinghua" hulianwang], Southern Weekend (Online), 18 August 05.

[44] All commercial Web sites must obtain a government license. Measures for the Administration of Internet Information Services [Hulianwang xinxi fuwu guanli banfa], issued 20 September 00. All non-commercial Web site operators must register. Registration Administration Measures for Non-Commercial Internet Information Services [Fei jingyingxing hulianwang xinxi fuwu bei'an guanli banfa], issued 28 January 05. Because the MII's registration system gives the government discretion to reject an application based on content (i.e., whether the Web site operator intends to post "news," and if so, whether it is authorized to do so), it is qualitatively

different from registration which all Web site operators must undertake with a domain registrar, and constitutes a de facto licensing scheme.

[45] "MII Reports China's Government Has Met its Goals in Private Web Site Crackdown," CECC Human Rights and Rule of Law Update, September 2005, 5; "Ministry of Information Industry: Web Sites That Fail to Register May Be Shut Down," CECC Human Rights and Rule of Law Update, June 2005, 3. According to China's state-run media, the crackdown actually began in July 2004, when authorities launched a "special project" to shut down pornographic Web sites. In November 2004, after the Party issued a document calling for "increasing work on the administration of the Internet," the 14 departments "carried out a large-scale clean up and reorganization of the Internet, and this activity has continued until today." Li Liang and Yu Li, "14 Government and Party Agencies Unite to 'Purify' the Internet." The MII said in a May 30, 2005, announcement posted on its Web site that its authority to launch the campaign was based on the Measures for the Administration of Internet Information Services [Hulianwang xinxi fuwu guanli banfa], issued 20 September 00; Ministry of Information Industry (Online), "Ministry of Information Industry Organizes and Launches Work on Web Site Collective Registration" [Xinxi chanyebu zuzhi kaizhan wangzhan jizhong bei'an gongzuo], 30 May 05. These measures became effective in 2000, however, and the MII did not explain what prompted it to issue the Registration Administration Measures for Non-Commercial Internet Information Services in February 2005 or specify how the measures should be enforced.

[46] OpenNet Initiative (Online), "OpenNet Initiative: Bulletin 011—Analysis of China's Non-Commercial Web Site Registration Regulation," 22 February 06.

[47] Ibid. The Opennet Initiative comprises researchers at the Citizen Lab at the Munk Centre for International Studies, University of Toronto, Berkman Center for Internet & Society at Harvard Law School, the Advanced Network Research Group at the Cambridge Security Programme, University of Cambridge, and the Oxford Internet Institute, Oxford University.

[48] "MII to Monitor Online Content, Sanction Web Sites That Fail to Register," CECC China Human Rights and Rule of Law Update, March 2006, 2; "700,000 Web Sites Already Registered: Three Difficulties in Spotting Illegal Web Sites" [Zhongguo yi you 70 wan jia wangzhan bei'an faxian weifa wangzhan you san nandian], Xinhua (Online), 29 December 05.

[49] "Authorities Begin to Sanction, Permanently Shut Down Web Sites That Failed to Register With the Government," CECC China Human Rights and Rule of Law Update, August 2005, 1; Li Liang and Yu Li, "14 Government and Party Agencies Unite to Purify the Internet."

[50] "Call for Unregistered Web Sites to Be Shut Down" [Yaoqiu guanbi reng wei bei'an de wangzhan], Boxun (Online), 13 December 05. Xinhua reported that Shanghai registered over 150,000 Web sites by October, and that "many" Web sites were shut down for failing to register. "Shanghai Shuts Down 150,000 Illegal Web Sites that Fail to Register" [Shanghai wangzhan yu 15 wan feifa wangzhan bei zanting jieru], Xinhua (Online), 29 December 05. The report also stated that an audit by the Shanghai Communications Administration (SCA) had found that the number of Web sites had increased by 22,000 by December 2005, and a "significant proportion" had not undertaken registration. In response, the SCA contacted the main Internet service providers (defined as anyone who provides "public, shared information to Internet users") in Shanghai, and demanded that they shut down the unregistered Web sites. "MII to Monitor Online Content, Sanction Web Sites That Fail to Register," CECC China Human Rights and Rule of Law Update, March 2006, 2.

[51] "Government Agencies Issue New Regulations Restricting News Reporting on the Internet," CECC China Human Rights and Rule of Law Update, November 2005, 4; Provisions on the Administration of Internet News Information Services [Hulianwang xinwen xinxi fuwu guanli guiding], issued 25 September 05.

[52] These were: "Aegean Sea" [Aiqinhai], "China Worker Net" [Zhongguo gongren wang], "Worker, Farmer, Soldier BBS" [Gong, nong, bing BBS], and "Communist Party People Net" [Gongchandang ren wang]. "Groups Petition Government to Review Constitutionality of Internet News Rules," CECC China Human Rights and Rule of Law Update, July 2006, 6; "Petition on Behalf of 'the Aegean Sea Web Site Et. Al. to Repeal Rules on the Administration of Internet News Information Services'" [Yaoqiu chedi feichu "hulianwang xinwen xinxi fuwu guanli guiding"], Signature Net (Online), 28 March 06.

[53] The cities included Qingdao, Guangzhou, and Beijing. "Qingdao Internet Police: 30 Percent of Web Sites in the City Are Illegal" [Shi gonganju wang jian zhidui: quanshi wangzhan sancheng shi heihu ewang pingan], Qingdao News (Online), 7 July 05; "Guangzhou Requires Private Web Sites to Register with Police, Receive Government Permission to Post News" [Guangzhou: geren wangzhan xu dao jingfang bei'an kanzai xinwen xu pizhun], Xinhua (Online), 29 April 05; "Beijing Requiring Small and Medium Web Sites to Register with Public Security Office" [Beijing gonganju yaoqiu bingdu wangzhan ji zhongxiao wangzhan dao shudi bei'an], Xinhua (Online), 2 June 05. Officials cited provisions of the Measures for the Administration of Security Protection of Computer Information Networks with International Interconnections [Jisuanji xinxi wangluo guoji lianwang anquan baohu guanli banfa], issued 30 December 97, as authorizing this registration requirement, but did not explain why the government had chosen to begin enforcing those provisions at that time, when the Measures were enacted in 1997. Circular Regarding Centralized Handling of Internet Web Site Registration [Guanyu jizhong banli hulian wangzhan anquan bei'an de tongzhi], issued 28 April 05, art. 1.

[54] Provisions on Internet Security Protection Technology Measures went into effect on March 1, 2006. "New Rules to Increase Government Surveillance of Internet News Go Into Effect," CECC China Human Rights and Rule of Law Update, April 2006, 16; Provisions on Internet Security Protection Technology Measures [Hulian wang anquan baohu jishu cuoshi guiding], issued 28 December 05.

[55] Measures for the Administration of Journalist Accreditation Cards [Xinwen jizhezheng guanli banfa], issued 10 January 05; Measures for the Administration of News Bureaus [Baoshejizhezhan guanli banfa], issued 10 January 05; Interim Provisions for the Administration of Those Employed as News Reporters and Editors [Guanyu xinwen caibian renyuan congye

guanli de guiding (shixing)], issued 22 March 05; Interim Implementation Rules for the Administration of Those Employed as Radio and Television News Reporters and Editors [Guangdianzongju yinfa "guangbo yingshi xinwen caipian renyuan congye guanli de shishi fangan (shixing) de tongzhi"], issued 1 April 05; "China Begins To Implement Trial Internet News Editor Qualification Test Areas" [Zhongguo kaishi shixing wangluo bianji renyuan zige kaoshi shidian], Xinhua (Online), 22 October 05; "Internet Editors Can Apply For Professional Certification" [Wangluo bianji ke kao zhiye zigezheng], Beijing News (Online), 13 February 06.

[56] "International Experts Condemn Curbs on Freedom of Expression and Control Over Media and Journalists," UN Press Release, UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, 18 December 03, stating, *inter alia*: "Individual journalists should not be required to be licensed or to register. Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance."

[57] Measures for the Administration of Journalist Accreditation Cards, arts. 7, 13.

[58] Interim Provisions for the Administration of Those Employed as News Reporters and Editors.

[59] Lang is a Taiwan-born professor of finance at the Chinese University of Hong Kong. According to one press account, "Lang's tirades against the sale of state assets struck a nerve in a country increasingly concerned about the corruption involved in the rapid accumulation of wealth by some entrepreneurs in recent years." "SARFT Uses Accreditation Authority to Silence Critical Television Host," CECC China Human Rights and Rule of Law Update, April 2006, 15; "Should We Cautiously Execute Corrupt High Officials?" [Gai bu gai shen sha ju tan gaoguan], Defense Lawyer Net (Online), 17 May 06; Richard McGregor, "Chat Show Economist Forced Off China TV," Financial Times (Online), 14 March 06.

[60] UDHR, art. 29; ICCPR, art. 19(3).

[61] Regulations on the Administration of Publishing, art. 26.

[62] Provisions on the Administration of Internet News Information Services, art. 19.

[63] Measures for the Administration of Security Protection of Computer Information Networks with International Interconnections, art. 5.

[64] PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 105.

[65] See, e.g., Provisions on the Protection of Secrets in News Publishing: [Xinwen chuban baomi guiding], art. 14: "Anyone wishing to provide a foreign news publishing organization a report or publication with contents that relate to the nation's government, economy, diplomacy, technology or military shall first apply to this agency or their supervising organ or unit for examination and approval." See also PRC Law on the Protection of State Secrets [Zhonghua renmin gongheguo baoshou guojia mimi fa], issued 5 September 88, art. 8; Measures for the Implementation of the Law on the Protection of State Secrets [Zhonghua renmin gongheguo baoshou guojia mimi fa shishi banfa], issued 25 April 20, art. 4; and Article 1 of the Explanation of Certain Issues Regarding the Specific Laws to be Used in Adjudicating Cases of Stealing or Spying to Obtain, or Illegally Supplying, State Secrets or Intelligence for Foreigners [Guanyu shenli wei jingwai qiequ, citan, shoumai, feifa tigong guojia mimi, qingbao anjian juti yingyong falü ruogan wenti de jieshi], issued 20 November 00, which states: "The term 'intelligence' in Article 111 of the Criminal Law refers to items which involve the security and interests of the nation, but which are not public or which, according to relevant regulations, should not be made public." See also "Secrets Protection Knowledge" [Baomi zhishi], posted on the Administration for the Protection of State Secrets of Guangdong province Web site, which states: "'Relating to the security and interests of the nation,' means that, if a secret matter were known by people who do not currently know it, it would result in various kinds of harm to the security and interests of the nation." In September 2003, the Guangzhou Daily published a warning to readers that everyone from Internet users to garbage collectors can run afoul of China's state secrets legislation. "If a Nanny Can Disclose State Secrets, Then Average Citizens Should Raise Their Awareness of Preserving Secrets" [Baomu jingran xielou guojia jimi baixing yexu tigao baomi yishi], People's Daily (Online), 5 September 03.

[66] The Supreme People's Court has extended liability for disclosing state secrets negligently. Explanation of Certain Issues Regarding the Specific Laws to be Used in Adjudicating Cases of Stealing or Spying to Obtain, or Illegally Supplying, State Secrets or Intelligence for Foreigners, art. 5, which states: "Any person who knows, or should know, that an item which is not marked secret relates to the security and interests of the nation and steals, acquires through spying or buys it for, or illegally supplies it to, a foreigner, shall be prosecuted and punished under the provisions of Article 111 of the Criminal Law for stealing, acquiring through spying or buying state secrets for, or illegally supplying state secrets to, a foreigner."

[67] Such a standard exists in many representative democracies. See, e.g., Supreme Court of India, Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal and Others, (1995) 2 S.C.C. 161 (stating "the burden is on the authority to justify the restrictions [on freedom of expression]"). The Chinese government appears to have begun to recognize the importance of such a requirement. Compare the statutory language discussed above with that of Article 291(a), which was added to China's Criminal Law in December 2001, which makes dissemination of "terrorist information" a crime, but which requires both that the accused knew the information was fabricated and that the dissemination actually resulted in a disturbance of public order. Third Amendment to the Criminal Law of the People's Republic of China [Zhonghua renmin gonghe guo xingfa xiuzheng an (san)], issued 29 December 01.

[68] "It is Possible to Accidentally Disclose State Secrets Over Your Cell Phone" [Shouji bu kai ye neng xie "tianji" wuyi xiemi keneng panxing], Xinhua (Online), 1 May 05.

[69] The Chinese government formed an interagency group called the National Sweep Away Pornography and Strike Down Illegal Publications Task Force (sometimes translated as the "Office for Eliminating Pornography and Illegal Publications," or the "Office of the National Anti-Piracy and Pornography Working Committee"). It is responsible for investigating and prosecuting illegal publishing, and has 17 members, including the Communist Party Central Propaganda Department, Political and Legislative Affairs Commission under the Central Committee of the Communist Party of China, Ministry of Information Industry, Ministry of Culture, SARFT, GAPP, and the People's Liberation Army General Political Department's Propaganda Department.

[70] "2004 News Publishing Industry Development Report" [2004 nian xinwen chubanye fazhan baogao], People's Daily (Online), 1 February 05.

[71] According to the editor of a major Chinese magazine noted for publishing critical articles without being shut down, "We go up to the line—we might even push it. But we never cross it." David Barboza, "Pushing (and Toeing) the Line in China," New York Times (Online), 18 April 05.

[72] "Also, defense counsel takes the standpoint that Huang Qi has freedom of speech, and may freely express his opinion on a given matter. This court believes that freedom of speech is a political right of the citizens of China, but when exercising this right, no one may harm the interests or security of the nation, and may not use rumor mongering or defamation to incite subversion of the national regime. Therefore, the court takes note that the defense counsel takes a standpoint that only stresses the right of the accused, and ignores his duties." Sichuan, Chengdu Intermediate People's Court Criminal Judgment (2001), Chengdu Criminal First Instance Document No. 49 [Sichuan sheng Chengdu shi zhongji renmin fayuan xingshi panjue shu (2001) cheng xing chu zi di 49 hao], issued 22 February 03.

[73] Shanghai No. 2 Intermediate People's Court Criminal Judgment (2003), Shanghai Second Intermediate Document No. 136 [Shanghai shi di er zhongji renmin fayuan xingshi panjue shu (2003) hu er zhong xing chu zi di 136 hao], issued 5 November 03.

[74] PRC Law on the Protection of State Secrets [Zhonghua renmin gongheguo baoshou guojia mimi fa], issued 5 September 88, art. 11. In addition, Chinese regulations require all news outlets to have personnel and procedures in place to determine whether information intended for public reporting contains state secrets. See, e.g., Notice Regarding Preventing State Secrets from Being Divulged in Publications [Guanyu fangzhi zai chubanwu zhong xielu guojia mimi de tongzhi], issued 12 March 94; Provisions on the Protection of Secrets in News Publishing [Xinwen chuban baomi guiding], issued 13 June 92.

[75] Shanghai High People's Court Criminal Judgment (2003), Shanghai High Document No. 181 [Shanghai shi gaoji renmin fayuan xingshi panjue shu (2003) hu gao xing chu zi di 181 hao], issued 23 August 03.

[76] CECC Staff Testing.

[77] After holding Zhao in custody for almost two years, a Chinese court acquitted him of disclosing state secrets on August 25, 2006, but sentenced him to three years' imprisonment on an unrelated fraud charge, fined him 2,000 yuan (US$250), and ordered him to pay back 20,000 yuan (US$2,500) that it ruled he had acquired through fraud. "China Gives Times Researcher 3 Years," New York Times (Online), 25 August 06; "Journalist Imprisoned For Fraud," China Daily (Online), 26 August 06.

[78] "GAPP: Indoctrination, Prior Restraints, Political Censorship 'Highlights' of '05," CECC China Human Rights and Rule of Law Update, March 2006, 16; "Looking Back on 2005: Focusing on Ten Bright Spots on the Press Battle Lines" [Hui mou 2005: xinwen chuban zhanxian shi da liang dian zhumu], General Administration for Press and Publication (Online), 4 January 06.

[79] "The 'Three Studies Education' Results Are Clear: News Personnel Develop in a Healthy Way" ["San xiang xuexi jiaoyu" chengguo xianzhu xinwen duiwu jiankang fazhan], Xinhua (Online), 1 May 06.

[80] "News Industry Clarifies the Specific Ideology Underlying Propaganda and the 'Eight Glories and Eight Shames'" [Xinwenjie mingque xuanchuan he jianxing "ba rong ba chi" juti silu], Xinhua (Online), 12 April 06.

[81] Ibid.

[82] "Internet Operators in China Agree to Support Hu Jintao, Marxism, and the Party," CECC China Human Rights and Rule of Law Update, May 2006, 9; Philip P. Pan, "The Click That Broke a Government's Grip," Washington Post, 19 February 06, A1.

[83] CECC Staff Interview.

[84] "Chinese Authorities Crack Down on Progressive Newspaper Publisher," CECC China Human Rights and Rule of Law Update, February 2006, 13.

[85] "Pressure on the Press," Newsweek (International Edition), reprinted on MSNBC (Online), 27 June 05.

[86] Extra-territorial (*yidi*) reporting refers to the practice in which a newspaper from one area publishes critical investigative reports about another area, about matters that officials in the investigated area are preventing their local news media from reporting. For additional background, see "Chinese Government Increases Censorship by Restricting 'Extra-Territorial' Reporting," CECC China Human Rights and Rule of Law Update, July 2005, 2.

[87] "Beijing News Reporters Walk Out Over Top Editor's Removal," Reuters, reprinted in China Post (Online), 31 December 05.

[88] Decision Regarding the Handling of the China Youth Daily "Freezing Point Weekly" Mistake in Publishing Modernism and History Text Books [Zhongguo gongqingtuan zhongyang xuanchuanbu "guanyu dui zhongguo qingnianbao 'bingdian zhoukan' cuowu kanfa xiandaihua yu lishi jiaokeshu de chuli jueding"], issued 24 January 06.

[89] "Yuan Weishi Welcomes Freezing Point's Resumption of Publication, Hopes He Can Respond to Criticism" [Yuan Weishi huanying bingdian fukan xi neng huiying piping], Voice of America (Online), 17 February 06.

[90] Decision of the Communist Party Youth League Publishing House Communist Party Committee Regarding Handling the Rectification and Expeditious Relaunch of the "Freezing Point" Weekly [Zhongguo qingnian baoshe dangzu guanyu dui bingdian zhoukan zhengdun he zhengqu zaori fukan de chuli jueding], issued 16 February 06.

The Freezing Point incident also exposed the role of the CPD's Critical Review Committee, which operates under the Central Propaganda Department's News Office, and comprises about 10 officials. The Committee issues on average 800 reports each year, about half of which are negative, that bypass standard reporting channels, and can go directly to senior Party officials or the propaganda offices at provincial and local news media organizations. When the Critical Review Committee celebrated its 10th anniversary in 2004, two senior Central Propaganda Department officials issued a congratulatory statement on behalf of Politburo member Li Changchun and Liu Yunshan, a Communist Party Central Committee member who also serves as Secretary of the Party Secretariat and Director of the Central Propaganda Department. Ji Bingxuan, one of the officials, emphasized that, "Establishing a news critique system was an innovation in news supervision in this new era." "Calls Within the Party To Relax Media Restrictions, The News Reading and Criticizing Group Is Exposed" [Zhonggong dangnei huyu xinwen songbang, xinwen yupingzu baoguang], Asia Weekly (Online), 4 March 06. In their open letter regarding the Freezing Point incident, the 13 former senior government, Party, and news media officials singled out the Critical Review Committee for criticism, saying: "They have not only engaged in stigmatizing and criticizing, but have even gone so far as to manufacture all sorts of "blacklists," carry out secret investigations, waiting for an opportunity to pounce, sometimes carrying out the process of an "execution" with instruction on a single phone call, leaving the target without any right to plead their case. Their methods are incredibly crude, and are not subject to any legal restraints whatsoever." "Joint Declaration Concerning the 'Freezing Point' Incident" [Guanyu bingdian shijian de lianhe shengming], Epoch Times (Online), 14 February 06.

[91] Charles Hutzler, "China Finds New Ways To Restrict Access to the Internet," Wall Street Journal, 1 September 04; Xiao Qiang, "The Words You Never See in Chinese Cyberspace," China Digital Times (Online), 30 August 04.

[92] The Internet in China—A Tool of Freedom or Suppression?, Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations, Committee on International Relations, U.S. House of Representatives, 15 February 06, Written Statement Submitted by Elliot Schrage, Vice President, Global Communications and Public Affairs, Google, Inc.

[93] Ibid.

[94] "Internet Operators in China Agree to Support Hu Jintao, Marxism, and the Party," CECC China Human Rights and Rule of Law Update, May 2006, 9; "14 Web Sites Sign Letter Jointly Calling on Internet to Be Operated in a Civilized Manner" [Beijing 14 jia wangzhan lianhe xiang hulianwangjie fachu wenming ban wang changyishu], People's Daily (Online), 10 April 06. The former phrase refers to President Hu Jintao's "Eight Glories and Eight Shames" propaganda slogan, and the latter phrase means, according to Liu Yunshan, head of the Central Propaganda Department, to: "carry forward a nationalist spirit whose core is patriotism . . . carry forward collectivist and socialist ideology and allow it to become the main stream of modern times and the prevailing fashion of the entire society . . . require the coordination of the lines of propaganda of ideological warfare . . . and pluck the people's heart strings to bring about their sympathetic response. . . ." Liu Yunshan, "Earnestly Study and Implement the Spirit of the Fourth Plenary Session of the 16th Chinese Communist Party Central Committee; Strive to Increase the Party's Ability to Lead Ideological Work."

[95] "GAPP Head Long Xinmin: Reform Does Not Mean Fragmentation" [Xinwen chuban zongshu shuzhang Long Xinmin: gaige budengyu jituanhua], People's Daily (Online), 6 April 06.

[96] Circular on "Self Discipline Agreement for Chinese Radio and Television Announcers and Hosts" [Guangdianzongju guanyu pizhuan zhongguo guangbo dianshi xiehui "Zhongguo guangbo dianshi boyinyuan zhuchiren zilü gongyue" de tongzhi], issued 10 September 05.

[97] As noted above, the UDHR and ICCPR protect the right of citizens to impart information and ideas of all kinds. For examples of how this right is protected by other jurisdictions, see, e.g., Baumgartner v. U.S., 322 U.S. 665 (1944): "One of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." See also Mills v. Alabama, 384 U.S. 214 (1966): "Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." See also European Court of Human Rights, Ekin Association v. France—39288/98 [2001] ECHR 473 (17 July 2001): "Freedom of expression constitutes one of the essential foundations of a democratic society. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society.'" See also European Court of Human Rights, Castells v. Spain—11798/85 [1992] ECHR 48 (23 April 1992): "Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a 'democratic society.'" See also Supreme Court of India, Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal and Others, (1995) 2 S.C.C. 161: "In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware—aware of social, political, economic and other issues confronting them. To enable

them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. Right to receive and impart information is implicit in free speech. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and State." See also Supreme Court of India, L.I.C. vs. Professor Manubhai D. Shah, (1992) 3 S.C.C. 637: "Merely because it is critical of the State Government is no reason to deny selection and exhibition of the film."

[98] "Inter-Agency Task Force Cracks Down on Political Publications," CECC China Human Rights and Rule of Law Update, April 2006, 13. Ji Yanan, "Increase the Force of the 'Sweep Away Pornography and Strike Down Illegal Publications' Campaign" [Jiada "saohuangdafei" lidu], Guangming Daily (Online), 23 Feb 06.

[99] "Senior Censorship Agency Official Says Communist Party Must Control News Media," CECC China Human Rights and Rule of Law Update, January 2006, 16; "Shi Feng: Create a Public Opinion Environment Conducive to a Harmonious Society" [Shi feng: wei hexie shehui jianshe yingzao lianghao yulun huanjing], People's Daily (Online), 15 October 05.

[100] Ji Yanan, "Increase the Force of the 'Sweep Away Pornography and Strike Down Illegal Publications" [Jiada "saohuangdafei" lidu], Guangming Daily (Online), 23 February 06.

[101] Radio, Film, and Television Propaganda Priorities for 2005 [2005 nian guangbo yingshi xuanchuan gongzuo yaodian], issued 22 February 05.

[102] Circular Regarding the Printing and Promulgation of the "Measures on the Recording of Important Topics of Books, Periodicals, Audio/Visual Productions and Electronic Publications" [Guanyu yinfa "tushu, qikan, yinxiang zhipin, dianzi chubanwu zhongda xuanti beian banfa" de tongzhi], issued 10 October 97.

[103] Sui Xiaofei and Qu Zhihong, "China's Publishing Sector's Glorious Development Must Move From Being a Big Country to a Great Country."

[104] Regulations on the Administration of Publishing, art. 3; Circular Regarding Further Strengthening the Administration of Periodicals Relating to Current Affairs and Politics, General Lifestyle, Information Tabloids, and Scientific Theory [Guanyu jinyibu jiaqiang shishi zhengzhi lei, zonghe wenhua shenghuo lei, xinxi wenzhai lei hei xueshu lilun lei qikan guanli de tongzhi], issued 28 June 00.

[105] Circular Regarding Further Strengthening the Administration of Periodicals Relating to Current Affairs and Politics, General Lifestyle, Information Tabloids, and Scientific Theory.

[106] Circular Regarding Further Strengthening the Administration of Selection of Articles for Newspapers and Periodicals [Xinwen chuban zongshu guanyu jiaqiang baokan zhaizhuan gaojian guanli de tongzhi], issued 25 February 05. See also Circular Regarding Certain Problems with Recent Publishing of Periodicals [Guanyu muqian qikan chuban youguan wenti de tongzhi], issued 16 October 98.

[107] Provisions Regarding Strengthening the Administration of Publications Describing Major Party and National Leaders [Guanyu dui miaoxie dang he guojia zhuyao lingdaoren de chubanwu jiaqiang guanli de guiding], issued 5 May 90, art. 2.

[108] Circular Regarding the Printing and Promulgation of the "Measures on the Recording of Important Topics of Books, Periodicals, Audio/Visual Productions and Electronic Publications" [Guanyu yinfa "tushu, qikan, yinxiang zhipin, dianzi chubanwu zhongda xuanti beian banfa" de tongzhi], issued 10 October 97. Circular Regarding Strengthening and Improving the Work of Recording Important Topics [Guanyu jiaqiang he gaijin zhongda xuanti beian gongzuo de tongzhi], issued 9 March 99. Examples of "important topic selections" include the work and life of Party and the government leaders, the history of the PRC, the history of the People's Liberation Army, and foreign relations, and religion. Circular Regarding Further Strengthening the Administration of Relevant Publications [Guanyu jin yi bu jiaqiang dui youguan chubanwu guanli de tongzhi], issued 24 August 98.

[109] Circular Regarding Further Strengthening the Administration of Relevant Publications, art. 1; Provisions Regarding Strengthening the Administration of Publications Describing Major Party and National Leaders, art. 3; Urgent Circular Regarding Reaffirming the Strengthening of the Administration of Books Reflecting the Work and Life Circumstances of the Major Leaders of the Party and the Nation [Guanyu chongshen dui chuban fanying he guojia zhuyao lingdaoren gongzuo he shenghuo qingkuang tushu jiaqiang guanli de jinji tongzhi], issued 24 January 97, art. 3.

[110] Guangdong Press and Publication Administration (Online), "Responsible Person at the General Administration of Press and Publication Book Office Reports on the Previous Year's National Book Publishing Administration Work" [Zongshu tushusi fuzeren tongbao qunian quanguo tushuchuban guanli gongzuo], 24 February 05.

[111] Provisions on the Administration of Newspaper Publishing; Provisions on the Administration of Periodical Publishing.

[112] Circular Regarding Restructuring Inspection and Examination Measures for Important Revolution and Historical Material Movie and Television Projects and Completed Films [Guanyu tiaozheng zhongda geming he lishi ticai dianying, dianshiju lixiang ji wancheng pian shencha banfa de tongzhi], issued 28 July 03.

[113] Circular Regarding Publication of the "Interim Measures on the Administration of the Recording and Notification of Television Program Film Production" [Guangdianzongju guanyu yinfa "dianshiju paishe zhizuo bei'an gongshi guanli zanxing banfa" de tongzhi], issued 6 April 06.

[114] Provisions on the Administration of Television Dramas [Dianshiju guanli guiding], issued 15 June 00, art. 39.

[115] Ding Yang, "'Sweep Away Pornography and Strike Down Illegal Publications' Adopts Measures to Escort the Ship of the Two Holidays and Two Meetings" ["Sahuang dafei" caiqu cuoshi huhang liangjie lianghui], Guangming Daily (Online), 19 January 06; "Authorities Increase News and Political Censorship in Run-Up to NPC, CPPCC Sessions," CECC China Human Rights and Rule of Law Update, May 2006, 13.

[116] Circular Regarding Rectifying the Publishing Market and Cultural Entertainment Market to Create a Good Atmosphere for New Year's, Spring Festival, and the "Two Meetings" [Guanyu jinghua chubanwu shichang ji wenhua yule shichang wei yuandan, chunjie he quanguo "liang hui" zhaokai chuangzao lianghao wenhua huanjing de tongzhi], issued 4 January 06.

[117] Yuan Haizhen, "Increase Supervision of Publications Market, Create a Good Atmosphere for the Two Meetings" [Jiaqiang chubanwu shichang jianguan wei "liang hui" yingzao lianghao huanjing], Henan Daily, reprinted in Xinhua (Online) 23 February 06.

[118] "Court Rejects Writer Zhang Lin's Appeal of Conviction For Subversive Writings," CECC Human Rights and Rule of Law Update, November, 2005, 3.

[119] "Authorities Arrest and Imprison Writers for Online Essays Criticizing Government," CECC China Human Rights and Rule of Law Update, September 2006, 2–3; "Journalist Arrested For Posting Reports About Crackdown On Christians," Reporters Without Borders (Online), 11 August 06.

[120] "Groups Petition Government to Review Constitutionality Of Internet News Rules," CECC China Human Rights and Rule of Law Update, July 2006, 6.

[121] "Two Mainland Web Portals Blocked," South China Morning Post (Online), 20 June 06.

[122] "Government Shuts Down Web Site; Chinese Scholars and Activists Respond," CECC Human Rights and Rule of Law Update, September 2006, 12–13.

[123] "Authorities Close Polls Website for Third Time in Three Months," Reporters Without Borders (Online), 3 August 06.

[124] UDHR, art. 18 (guaranteeing "freedom of thought, conscience and religion"), ICCPR, art. 22, and ICCPR General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), 30 July 93, item 4 of which defines freedom of religion and belief to include "the freedom to prepare and distribute religious texts or publications."

[125] State Council Information Office, White Paper on Freedom of Religious Belief in China [Zhongguo de zongjiao xinyang ziyou zhuangkuang], October 97.

[126] Regulations on the Administration of Printing Enterprises [Yinshuaye guanli tiaoli], issued 2 August 01, art. 31.

[127] Ibid, art. 18.

[128] Ibid.

[129] See, e.g., Provisions on the Administration of Newspaper Publication, art. 27 (requiring all newspapers to strictly abide by "relevant regulations" when publishing or reprinting articles relating to ethnic religious affairs); Circular Regarding the Printing and Promulgation of the "Measures on the Recording of Important Topics of Books, Periodicals, Audio/Visual Productions and Electronic Publications," art. 3(v) (requiring that anyone seeking to publish on "topics which deal with ethnic issues or religious issues" must register their intent to do so in advance with government authorities).

[130] Sui Xiaofei and Qu Zhihong, "China's Publishing Sector's Glorious Development Must Move From Being a Big Country to a Great Country," People's Daily (Online), 25 March 06.

[131] "Xinjiang Cracks Down on 'Illegal' Religious Publications," CECC China Human Rights and Rule of Law Update, April 2006, 9; Wang Lei, "Xinjiang Uighur Autonomous Region Destroys 29 Tons of Illegal Books" [Xinjiang weiwu'er zizhiqu xiaohui 29 dun feifa tushu], Tianshan Net (Online), 6 March 06.

[132] "Tibet 'Sweep Away Pornography and Strike Down Illegal Publications' Campaign Has Clear Results" [Xizang "saohuang dafei" gongzuo chengxiao xianzhu], Xinhua (Online), 18 January 06.

[133] "Church Leaders Arrested, Laypeople Forced to Join Patriotic Group," Union of Catholic Asian News (Online), 24 January 00.

[134] "Suppression of Wenzhou Underground Church Continues During Holy Week and Easter," Union of Catholic Asian News (Online), 4 May 00.

[135] "Two Underground Priests Arrested," Asia News (Online), 28 October 05. UN Commission on Human Rights, Report of the Special Rapporteur on Religious Intolerance, 13 February 01.

[136] "Beijing Court Jails House Church Minister for Giving Away Bibles," CECC China Human Rights and Rule of Law Update, December 2005, 1.

[137] "Chinese Authorities Release House Church Filmmaker After 140 Days in Custody," CECC Human Rights and Rule of Law Update, September 2006, 9.

[138] "Court Imprisons One Tibetan Writer, Party Officials Shut Down Another's Blogs," CECC Human Rights and Rule of Law Update, September 2006, 9.

[139] "Journalist Arrested for Posting Reports About Crackdown on Christians," Reporters Without Borders (Online), 11 August 06; "Urgent Announcement Regarding Independent Chinese Pen Center Member Zan Aizong's Administrative Detention By Hangzhou PSB" [Duli zhongwen bihui jiu huiyuan zan aizong bei Hangzhou gonganju xingzheng kouliu de jiji shengming], Independent Chinese PEN Center (Online), 11 August 06.

[140] UDHR, art. 29; ICCPR art. 19(3).

[141] "State Council Appoints Long Xinmin as New Head of the General Administration of Press and Publication" [Guowuyuan renmian: Long Xinmin wei xinwen chuban zongshu shuzhang tu], Xinhua (Online), 27 December 05.

[142] Liu Yunshan, "In Accordance With the Requirements of Building a Socialist and Harmonious Society: Deepen, Broaden, and Innovate Propaganda Ideological Work" [Anzhao goujian shehuizhuyi hexie shehui yaoqiu shenhua tuozhan chuangxin xuanchuan sixiang gongzuo], Seeking Truth (Online), 1 October 05.

[143] "Shi Feng: Create a Public Opinion Environment Conducive to a Harmonious Society" [Shi feng: wei hexie shehui jianshe yingzao lianghao yulun huanjing], People's Daily (Online), 15 October 05.

[144] Chi Gangyi, Yu Xianting, and Li Hui, "Comprehensively Strengthen the Establishment of University Networks and Firmly Grasp the Initiative in Online Political Ideological Education" [Quanmian jiaqiang gaoxiao xiaoyuanwang jianshe laolao zhangwo wangshang sixiang zhengzhi jiaoyu zhudongquan], Guangming Daily (Online), 12 September 05.

[145] See, e.g., "Strengthen Public Sentiment Work, Safeguard the Security of the Ruling Party's Governance" [Jiaqiang yuqing xinxi gongzuo, weihu dangde zhizheng anquan], Guangming Daily, 26 May 05, B4 (calling on Party cadres to "strengthen the supervision and monitoring of the Internet, cellular phones, and other new forms of media"); "Party Propaganda Chief Calls for Increased Control Over the Media," CECC China Human Rights and Rule of Law Update, December 2005, 14; Liu Yunshan, "In Accordance With the Requirements of Building a Socialist and Harmonious Society: Deepen, Broaden, and Innovate Propaganda Ideological Work" (noting that, while it remains necessary to continue to conduct "ideological education" of workers, farmers, intellectuals, soldiers, and cadres, Party propagandists must also "expand the targets of propaganda ideology work" to new groups).

[146] Liu Yunshan, "In Accordance With the Requirements of Building a Socialist and Harmonious Society: Deepen, Broaden, and Innovate Propaganda Ideological Work."

[147] Ibid.

[148] Shi Fengyan, Xu Ying, and Zhou Honglei, "College Student Groups: An Effective Vehicle for Ideological and Political Education" [Daxuesheng shetuan: sixiang zhengzhi jiaoyu de youxiao zaiti], Seeking Truth (Online), 1 December 05.

[149] Chi Gangyi, Yu Xianting, and Li Hui, "Firmly Grasp the Initiative in Online Political Ideological Education." For an example of how this program was implemented, see Deng Wei, "Tsinghua University Sets Up 'Red Web Site'" [Daxuesheng hongse wangzhan: chuanbo makesizhuyi de zhongyao zhendi], Seeking Truth (Online), 16 February 06.

[150] "As Chinese Students Go Online, Little Sister Is Watching," New York Times (Online), 9 May 06.

[151] Professional Ethical Standards for China Radio and Television Announcers and Hosts [Zhongguo guangbo dianshi boyinyuan zhuchiren zhiye daode zhunze], issued 2 December 04; Professional Ethical Standards for China Radio and Television Editors and Reporters [Zhongguo guangbo dianshi bianji jizhe zhiye daode zhunze], issued 2 December 04.

[152] Notice Regarding Strengthening the Supervision of Radio and Television Discussion Programs [Guanyu jiaqiang guangbo dianshi tanhualei jiemu guanlide tongzhi], issued 10 December 04.

[153] Interim Provisions on the Administration of Those Employed as News Reporters and Editors; "Regulating News Reporting and Editorial Personnel: Implementing a Real Name System When Publishing Articles" [Xinwen caibian renyuan congye guifan: baodao kanfa shi yao shishi shimingzhi], China News Net, reprinted in Xinhua (Online), 22 March 05; "Xinhua Editorial: The Importance of Regulating the Behavior of Those Engaged in News Reporting And Editing" [Xinhua shiping: guifan xinwen caibian renyuan xingweide zhongyao zhidu], Xinhua (Online), 22 March 05.

[154] "Government and Communist Party Move To Increase Regulation of Reporters and Editors," CECC China Human Rights and Rule of Law Update, June 2005, 7; Interim Implementation Rules for the Administration of Those Employed as Radio and Television News Reporters and Editors.

[155] State Administration of Radio, Film, and Television, Circular Regarding Authorizing the China Radio and Television Association's "Self Discipline Agreement for Chinese Radio and Television Announcers and Hosts" [Guangdianzongju guanyu pizhuan Zhongguo guangbo dianshi xiehui "Zhongguo guangbo dianshi boyinyuan zhuchiren zilü gongyue" de tongzhi], issued 10 September 05.

[156] Notice Regarding Correctly Administering Radio and Television Live Broadcast Reports [Guangdianzongju guanyu qieshi zuo hao guangbo dianshi xianchang zhibo baodao guanli de tongzhi], issued 10 September 05.

[157] Liu Yunshan, "In Accordance With the Requirements of Building a Socialist and Harmonious Society: Deepen, Broaden, and Innovate Propaganda Ideological Work."

[158] "Shi Feng: Create a Public Opinion Environment Conducive to a Harmonious Society" [Shi feng: wei hexie shehui jianshe yingzao lianghao yulun huanjing], People's Daily (Online), 15 October 05.

[159] Supreme People's Court Interpretation Regarding Certain Questions About the Specific Laws to be Used in Adjudicating Criminal Cases of Illegal Publications [Zui gao renmin fayuan guanyu shenli feifa chubanwu xingshi anjian juti yingyong falü ruogan wenti de jieshi], issued 17 November 98.

[160] Supreme People's Court Circular Regarding Striking Hard at Illegal Publishing Activities [Zuigao renmin fayuan guanyu yanli daji youguan feifa chubanwu fanzui huodong de tongzhi], issued 27 March 98.

[161] "Senior Official Claims Foreign Newspapers Raise Threat of Color Revolution in China," CECC China Human Rights and Rule of Law Update, May 2006, 13; Mure Dickie, "Beijing Blocks Foreign Newspapers," Financial Times (Online), 16 November 05.

[162] The rules were known to a number of major publishers, but never published. Western media outlets reported their existence in April 2006, citing an unnamed GAPP official as their source. See, e.g., "GAPP Tightens Restrictions on Foreign Publications," CECC China Human Rights and Rule of Law Update, May 2006, 13; "China Curbs on Foreign Magazines Take Quiet Effect," Reuters (Online), 7 April 06; Geoffrey A. Fowler and Juying Qin, "China Curbs Magazines from Foreign Publishers," Wall Street Journal (Online), 7 April 06.

[163] Interim Provisions on the Administration of Sino-Foreign Joint and Cooperative Ventures in Radio and Television Program Production Operating Enterprises [Zhongwai hezi, hezuo guangbo dianshi jiemu zhizuo jingying qiye guanlin zanxing guiding], issued 28 October 05, art. 12.

[164] "New Regulations Surfaced: Foreign Invested Movie, Television, and Media Corporations Can Only Participate in Joint Ventures" [Xin guiding chutai: waizi yingshi chuanmei zhineng kai yijia hezi gongsi], Shanghai Morning Post, reprinted in People's Daily (Online), 7 March 05; Circular Regarding Matters Relating to the Implementation of the "Interim Provisions on the Administration of Sino-Foreign Investment and Cooperative Joint Venture Television Program

Production Enterprises" Regulations [Guanyu shishi "zhongwai hezi, hezuo guangbo dianshi jiemu zhizuo jingying qiye guanli zanxing guiding" youguan shiyi de tongzhi], issued 25 February 05; Measures on the Administration of Foreign Satellite Television Channel Reception [Jingwai weixing dianshi pindao luodi guanli banfa], issued 18 June 04, art. 12.

[165] Measures for Administering the Release of News and Information in China by Foreign News Agencies [Waiguo tongxunshe zai Zhongguo jingnei fabu xinwen xinxi guanli banfa], issued 10 September 06, art. 4.

[166] Ibid. The new rules repeal rules issued in 1996 allowing licensed foreign news agencies to distribute financial information directly to licensed customers. Ibid., art. 22; Methods for the Exercise of Administration Over Publication in China of Economic Information by Foreign News Agencies and Their Information Subsidiaries [Waiguo tongxunshe jiqi suoshu xinxi jigou zai Zhongguo jingnei fabu jingji xinxi de guanli banfa], issued 15 April 96.

[167] Measures for Administering the Release of News and Information in China by Foreign News Agencies, arts. 11, 12. Article 1 of the Measures say that the rules are intended "to promote the dissemination of news and information in a sound and orderly manner" and a GAPP official has defended the new rules saying that they would not affect the activities of foreign journalists in China. Ibid., art. 1; "Xinhua's Measures Won't Lead to Monopoly," Xinhua (Online), 14 September 06.

[168] Provisions for the Administration of Ground Satellite Television Broadcast Reception Facilities [Weixing dianshi guangbo dimian jieshou sheshi guanli guiding], issued 5 October 93; Measures for the Administration of Foreign Satellite Television Channel Reception, issued 18 June 04.

[169] "Government Regulators Block Foreign Access to China's Media Market," CECC China Human Rights and Rule of Law Update, October 2005, 9; "Six Departments Issue Regulations Restricting Imports of Cultural Products" [Liu bumen xiafa "guanyu jiaqiang wenhua chanpin jinkou guanli de banfa"], People's Daily (Online), 2 August 05 (discussing the Measures Regarding Strengthening the Administration of the Importation of Cultural Products, which froze approvals for new foreign satellite television channels, and will "increase control over content censorship" of imported television programs). See also "Government Regulators Block Foreign Access to China's Media Market," CECC China Human Rights and Rule of Law Update, October 2005, 12. "Five Government Agencies Formulate 'Certain Opinions Regarding the Introduction of Foreign Investment into the Cultural Domain'" [5 buwei zhiding "guanyu wenhua lingyu yinjin waizi de ruogan yijian"], Xinhua (Online), 4 August 05 (prohibiting foreign companies from investing in news organizations or Web sites, radio or television stations, and companies that produce or show films or radio or television programs); State Administration of Radio, Film, and Television Notice Regarding Further Strengthening the Administration of Radio and Television Channels [Guangdianzongju guanyu jin yi bu jiaqiang guangbo pindao guanli de tongzhi], issued 4 August 05 (stipulating that to preserve the government's ability "to make final decisions regarding the contents of propaganda," a controlling share in radio and television stations must be in the hands of the government, and non-government investors may not participate in editorial decisions).

[170] Circular Regarding Reiterating Rules on the Administration of Television International News [Guangdianzongju guanyu chongshen dianshi guojin xinwen guanli guiding de tongzhi], issued 11 April 06; "SARFT Relaxes Censorship of Fiction, Retains it for History, Politics, and News," CECC China Human Rights and Rule of Law Update, May 2006, 9.

[171] State Administration of Radio, Film, and Television, Circular Regarding Further Regulating the Administration of Television International News [Guojia guangbo dianying dianshi zongju guanyu jin yi bu guifan dianshi guoji xinwen guanli de tongzhi], issued 3 April 02.

[172] Zhao Huanxin, "Regulation of Internet in Line with World Norms," China Daily (Online), 15 February 06.

[173] "Internet Filtering in China in 2004—2005: A Country Study," OpenNet Initiative (Online), 14 April 05.

Notes to Section V(b)—Rights of Criminal Suspects and Defendants

[1] In December 2005, the Communist Party Central Committee and State Council ordered stronger controls over society and called on officials to both prevent and promptly "strike" against crime [see Section VII(d)—Democratic Governance and Legislative Reform; "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14–16; Sun Chunying and Zhang Xuefeng, "Committee for Comprehensive Management of Public Security Spokesman Answers Questions From Press on Opinion Carrying Out Stable and Secure Development" [Zhongyang zongzhiban fuzeren jiu guanyu kaizhan pingan jianshe de yijian da jizhe], Legal Daily, reprinted in National People's Congress (Online), 5 December 05]. Politburo member and State Councilor Luo Gan spoke at a national conference on December 5 and 6, 2005, and called for a "harsh crackdown" on criminal activities to create a sound social environment for implementing the 11th Five-Year Program and building a "harmonious society." "Senior official Calls for Harsh Crackdown on All Crimes," People's Daily (Online), 7 December 05. Since early 2006, the Supreme People's Court and Ministry of Public Security have also repeatedly called for application of "Strike Hard" campaigns as a measure to guard against certain categories of crime and to safeguard public order. "People's Courts Will Continue to Uphold 'Strike Hard' Policy in Accordance With Law" [Renmin fayuan jiang jixu jianchi yifa "yanda" fangzhen], Xinhua (Online), 5 January 06; "Ministry of Public Security Emphasizes Need to 'Strike Hard' Against Terrorist Criminal Activities, Protect State Security" [Gonganbu qiangdiao yao yanda kongbu fanzui huodong weihu guojia anquan], Xinhua (Online), 26 January 06; "Ministry of Public Security Urges Use of 'Strike Hard' to Counter Social Unrest," CECC China Human Rights and Rule of Law Update, March 2006, 5–6; Supreme People's Court Work Report [Zuigao renmin fayuan gongzuo baogao], 20 March 06 [hereinafter SPC Work Report]; Ministry of Public Security (Online), "Ministry of Public Security Announces First Quarter 2006 Nationwide Public Security Situation (Direct Feed Tran-

script)" [Gonganbu tongbao 2006 nian di yi jidu shehui zhi'an xingshi (tuwen zhibo)], 11 April 06.

[2] "Officials Ban Dozens of Papers, Seize Thousands of Political Publications, in 2005," CECC China Human Rights and Rule of Law Update, February 2006, 6–7; "Inter-Agency Task Force Cracks Down on Political Publications," CECC China Human Rights and Rule of Law Update, April 2006, 13–14; "Censorship Task Force Meets to Discuss 2006 Spring Campaign," CECC China Human Rights and Rule of Law Update, July 2006, 13.

[3] "Xinjiang Continues Crackdown on Separatism, Terrorism, and Religious Extremism," CECC China Human Rights and Rule of Law Update, March 2006, 15; Han Xiaoyi, "An Iron Fist to Strike Hard Against 'Three Forces' of Splittist Activity" [Tiewan yanda "san gu shili" fenlie huodong], Tianshan Net (Online), 26 June 06.

[4] "Lhasa Conference Considers Judicial Role in Protecting Qinghai-Tibet Railway," CECC China Human Rights and Rule of Law Update, July 2006, 12–13.

[5] One scholar has written that the Communist Party rules by force, and that "police play a critical role in maintaining social order and political stability under the [Party's] rule." Fu Hualing, "Zhou Yongkang and the Recent Police Reform in China," 38 Australian and New Zealand Journal of Criminology 242 (2005). Furthermore, "[w]henever the [Party] perceives that crime and disorder are posing threats to social stability and challenging the Party's legitimacy, it will mobilize the police to act swiftly and harshly to combat these challenges, disregarding most of the legal requirements developed by the routine system." Ibid., 243.

[6] "Power Plant Construction Continues After Government Suppresses Villager Protests in Shanwei," CECC China Human Rights and Rule of Law Update, January 2006, 4–5.

[7] Ibid. Chinese legal advocates Gao Zhisheng and Guo Feixiong expressed outrage over proposals to allow further PAP intervention in mass incidents. Gao Zhisheng and Guo Feixiong, "Proposal to Establish a 'Shanwei Shooting Incident Civilian Fact-Finding Committee'" [Jianyi chengli "Shanwei kaiqiang shijian zhenxiang minjian diaocha weiyuanhui"], Boxun (Online), 11 January 06. International media and NGO sources that reported on the December 6 incident provided a higher death count than the official one and criticized the government's use of violence. Both Human Rights Watch and Amnesty International have called for an independent investigation into the December 6 incident. Human Rights Watch (Online), "China: Dongzhou Killings Need Independent Investigation," 15 December 05; Amnesty International (Online), "China: Police fire on crowd, killing four," 7 December 05. On December 20, 2005, a UN spokesperson reported that Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, had written to the Chinese government to request additional information about the Shanwei land dispute and the government's response. Stephanie Nebehay, "U.N. Sleuth Asks China About Protest Shootings," Reuters (Online), 20 December 05.

[8] "9 Villagers in the Honghai Bay Incident in Shanwei Are Arrested" [Shanwei Honghai wan shijian 9 cunmin bei bu], Ta Kung Pao (Online), 13 December 05. Responsibility for administrative management and command of PAP troops is shared by local public security bureaus and the Central Military Commission. In addition, each director of a local public security bureau simultaneously serves as first political commissar of the PAP troops at the same level. State Council, Central Military Commission Decision on Adjusting the Leadership and Management Systems of China's People's Armed Police [Guowuyuan, zhongyang junwei guanyu tiaozheng Zhongguo renmin wuzhuang jingcha budui lingdao guanli tizhi de jueding], issued 3 May 95, para. 1.

[9] "Gov't calls for more contribution by armed police," Xinhua (Online), 5 January 06; Wu Shuangzhan and Sui Mingtai, "Working Hard to Construct a Politically Reliable, Mighty, and Civilized Army" [Nuli jianshe zhengzhi kekao de weiwu zhishi wenming zhishi], Seeking Truth (Online), 1 January 06. PAP Commander Wu Shuangzhan and Political Commissar Sui Mingtai wrote that: "The reality of the complex struggle against enemies requires that in resolutely striking at the destructive activities of enemy forces, [the PAP] bring into full play our function as a tool of state dictatorship." Ibid. Wu and Sui further emphasized that "Taiwan independence," "Tibetan independence," "East Turkistan," "democracy movement," and "Falun Gong" enemy forces have "continually varied their techniques of carrying out disturbances and destruction, directly threatening our nation's security and social stability." Ibid.

[10] Wang Pan, "Individuals Responsible for Serious Violation of Law in the Honghai Bay Development Zone, Shanwei Incident are Dealt With" [Shanwei Honghai wan kaifaqu yanzhong weifa shijian zeren ren shoudao chuli], Xinhua (Online), 24 May 06.

[11] Ibid.; "Relevant Individuals Responsible for Honghai Bay, Shanwei Incident in Guangdong Sentenced" [Guangdong Shanwei Honghai wan shijian zhong youguan zeren ren bei panxing], Xinhua (Online), 25 May 06.

[12] Maintaining public order is one major objective of the Criminal Law, and actions that "disturb public order" are criminally punishable under numerous provisions. PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 2; ibid., part 2, ch. 6, sec. 1.

[13] "Wen Jiabao Airs Views on China's Rural Issues," Xinhua, 19 January 06 (Open Source Center, 20 January 06); Wei Ran, "Wen Jiabao Cautions Mistakes Cannot be Made in Land Issues" [Wen Jiabao jinggao tudi shang bu neng fan cuowu], Voice of America (Online), 21 January 06; "Chinese PM warns on rural unrest," BBC (Online), 20 January 06.

[14] Ministry of Public Security, "Ministry of Public Security Announces First Quarter 2006 Nationwide Public Security Situation (Direct Feed Transcript)."

[15] "Ministry of Public Security Emphasizes Need to 'Strike Hard' Against Terrorist Criminal Activities," Xinhua.

[16] Ministry of Public Security (Online), "Ministry of Public Security Convenes a News Conference to Announce 2005 Nationwide Status of Public Security and Fires" [Gonganbu zhaokai xinwen fabuhui tongbao 2005 nian quanguo shehui zhi'an xingshi ji huozai xingshi], 20 January 06.

[17] CECC, 2005 Annual Report, 11 October 05, sec. II.

[18] "Beijing Officials Report Increase in Fines and Detentions Under New Public Security Law," CECC China Human Rights and Rule of Law Update, May 2006, 7–8. See also *infra*, "Administrative Detention," and accompanying notes.

[19] Ministry of Public Security (Online), "Ministry of Public Security Convenes Press Conference to Announce the Status of Preparations for Implementing the 'Public Security Administration Punishment Law'" [Gongan bu zhaokai xinwen fabuhui tongbao "zhi'an guanli chufa fa" shishi zhunbei qingkuang], 28 February 06.

[20] Fu, "Zhou Yongkang and the Recent Police Reform in China," 242 (stating that the procuratorates and the courts exercise only "limited supervisory powers" over the police).

[21] PRC People's Police Law, enacted 28 February 95, arts. 42–44.

[22] Ibid., art. 47; Regulations on Public Security Agency Supervision [Gongan jiguan ducha tiaoli], issued 4 June 97, art. 2.

[23] "Police affairs supervision examines and corrects 330,000 cases of unjust enforcement of law over five years" [Jingwu ducha wu nian chajiu zhifa bugong wenti 33 wan jian], Legal Daily (Online), 28 February 06.

[24] Ibid.

[25] Wang Shu, "During Nine-Year Span, Over 10,000 People's Police Who Breached Discipline Were Suspended" [9 nian nei yu wan weiji minjing bei chu tingzhi], Beijing News (Online), 15 February 06.

[26] Chen Peng and Liu Yihui, "3 Hunan Public Security Cadres Who Served as 'Cover' for Criminal Forces are Sentenced" [Hunan 3 ming gongan ganbu chongdang hei e shili "baohu san" bei panxing], Xinhua, reprinted in People's Daily (Online), 16 April 06.

[27] "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12; Lin Shiyu, "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year" [Jiuzheng chaoqi jiya gonggu gongzuo you chengxiao; quanguo qunian xin fasheng chaoqi jiya xiajiang 96.2%], Procuratorial Daily (Online), 21 May 06; "Suspects' Questioning to Be Taped," Xinhua (Online), 18 January 06. See also *infra*, "Arbitrary Detention in the Formal Criminal Process," "Torture and Abuse in Custody," and accompanying notes.

[28] "China Details New Laws of Official Abuse, Torture," Xinhua (Online), 26 July 06; Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Cases [Zuigao renmin jianchayuan guanyu duzhi qinquan fanzui anjian li'an biaozhun de guiding], issued 29 December 05, sec. 2.

[29] "Provincial Procuratorates Investigate Job-Related Crimes, Retrieve Over 21 Million in Economic Losses" [Sheng jiancha jiguan zhencha zhiwu fanzui wanhui jingji sunshi 2,100 duo wan], Hainan News Network, reprinted in Hainan Provincial Government (Online), 24 January 06; Lan Jian, "Respectable Sichuan Woman Accused of Prostitution and Beaten to Death; Husband Receives 270,000 in Compensation" [Sichuan liangjia funü bei zhi maiyin zao ousi zhangfu ling 27 wan peichang], China Court Net (Online), 8 June 06; "Reeducation Through Labor Prisoner Executed for Abusing to Death Fellow Inmate" [Laojiao renyuan nue si tongban bei zhixing sixing], Beijing News (Online), 7 July 06.

[30] Lan Jian, "Respectable Sichuan Woman Accused of Prostitution and Beaten to Death."

[31] "Case of Respectable Sichuan Woman [Accused of] Prostitution Goes to Trial" [Sichuan liangjia funü maiyin an kaiting], Xinhua (Online), 29 April 04.

[32] Gao Yifei, "Prime Culprit in Prison Abuse Sentenced to Death, Reflecting Sanctity of Laws" [Nue yin zhufan bei pan sixing tixian le falü zunyan], Guangming Daily Observer (Online), 7 July 06.

[33] Guo Hongping, "Fighting Dereliction of Duty and Rights Infringement: How Many Case Leads are Waiting to be Unearthed?" [Fan duzhi qinquan: duoshao anjian xiansuo dai fajue?], Procuratorial Daily (Online), 11 July 06.

[34] China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004 speech by Chinese President Hu Jintao before the French National Assembly.

[35] UDHR, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 48, arts. 9–10; ICCPR, adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 9; *infra*, "Arbitrary Detention," and accompanying notes.

[36] "Chinese Authorities Crack Down on Activists Before U.S. President's Visit," CECC China Human Rights and Rule of Law Update, December 2005, 3; "UN Special Rapporteur on Torture Concludes Two-Week Visit to China," CECC China Human Rights and Rule of Law Update, January 2006, 12–13; Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to China, Advance Edited Version, 10 March 06, para. 10 [hereinafter Nowak Report].

[37] "Li Jinping Detained Twice for Attempting to Commemorate Zhao Ziyang's Death," CECC China Human Rights and Rule of Law Update, February 2006, 15; "Authorities Control Commemorations for Zhao Ziyang and Hu Yaobang," CECC China Human Rights and Rule of Law Update, March 2006, 15–16.

[38] "Official Discloses Use of Mass Roundups During NPC, CPPCC Sessions," CECC China Human Rights and Rule of Law Update, April 2006, 5.

[39] "Ministry of Public Security Announces the Status of Preventing Major Public Security Disasters and Accidents, Ensuring Public Security Supervision" [Gonganbu tongbao yufang zhongda

zhi'an zaihai shigu, baozhang gonggong anquan ducha qingkuang], China News Net (Online), 2 March 06.

[40] Crimes that "endanger state security" are listed in Part 2, Chapter 1, and those that "disturb public order" are listed in Part 2, Chapter 6, Section 1 of the Criminal Law.

[41] UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Mission to China, Addendum, 29 December 04, para. 23 [hereinafter UNWGAD Report].

[42] Nowak Report, para. 35.

[43] Ibid., para. 34.

[44] "China State Security Trials 'Find 99 Pct Guilty,'" Reuters (Online), 21 February 06.

[45] PRC Criminal Law, art. 103.

[46] Ibid., art. 105.

[47] In an article published in June 2006, Politburo member and State Councilor Luo Gan called for forceful measures against those who "get involved and take advantage of conflicts among the people to manufacture disturbances" or who "engage in sabotage activities under the pretense of 'rights defense.'" Luo Gan, "Deeply Launch Education in the Notion of Socialist Rule of Law; Conscientiously Strengthen the Ideology of Political and Legal Ranks and Political Construction" [Shenru kaizhan shehui zhuyi fazhi linian jiaoyu qieshi jiaqiang zhengfa duiwu sixiang zhengzhi jianshe], Seeking Truth (Online), 16 June 06.

[48] PRC Criminal Law, art. 290.

[49] Ibid., arts. 290, 291. Article 290 makes it a crime to gather people to "assault a State organ, making it impossible for the State organ to conduct its work." Article 291 makes it a crime to gather people to "resist or obstruct public security administrators of the State from carrying out their duties according to law."

[50] Ibid., art. 292.

[51] Ibid., art. 293.

[52] Ministry of Public Security, "Ministry of Public Security Convenes a News Conference to Announce 2005 Nationwide Status of Public Security and Fires."

[53] "Court Sentences Shaanxi Investor Feng Bingxian to Three Years Imprisonment," CECC China Human Rights and Rule of Law Update, February 2006, 16–17.

[54] "Procuratorate Indicts Feng Bingxian and Three Other Shaanxi Oil Investors," CECC China Human Rights and Rule of Law Update, December 2005, 11.

[55] Ibid.

[56] Ibid.; "Draft Property Law Enters Fourth Deliberation Process" [Wuquanfa cao'an jinru si shen chengxu], Legal Daily (Online), 24 October 05.

[57] PRC Constitution, art. 13 ("the lawful private property of citizens is not to be violated").

[58] See *supra*, "Social Unrest and Coercive Use of the Police Power," and accompanying notes.

[59] "Local Officials Suppress Citizen Effort to Remove Village Committee Head in Guangdong Province," CECC China Human Rights and Rule of Law Update, November 2005, 11.

[60] "Guangzhou Officials Formally Arrest Peasant Rights Activist Guo Feixiong," CECC China Human Rights and Rule of Law Update, November 2005, 6–7; Freedom in China, Staff Roundtable of the Congressional Human Rights Caucus, 3 May 06, Statement of Guo Feixiong. Guo was released in late December 2005, but authorities took him from his home in Guangzhou on September 14, 2006, and have placed him in criminal detention based on accusations of illegal operation of a publishing business. "Guangzhou Police Achieve Results in Launching 'Anti-Piracy Operation'" [Guangzhou jingfang kaizhan "fan daoban xingdong" qude chengxiao], Guangzhou Daily (Online), 15 September 06; "China Detains Top Guangdong Rights Lawyer," Radio Free Asia (Online), 15 September 06.

[61] "Guangdong Public Security Bureau Blames Mass Incidents on Rights Defender Activities," CECC China Human Rights and Rule of Law Update, April 2006, 7–8; "Guangdong Clamps Down on Outside Forces Getting Involved in Rights Protection and Rejects Politicizing of Issues, Inciting Mass Disturbances" [Yue yanfang jingwai shili chashou weiquan chi jiang wenti zhengzhihua shandong qunzhong saoluan], Ming Pao Daily (Online), 24 February 06.

[62] The Commission's Political Prisoner Database includes profiles on more than 500 current and 3,000 past political prisoners based on available information. See *infra*, "Political Prisoner Database," and accompanying notes. Thousands of political prisoners are detained in China's re-education through labor system. See *infra*, "Administrative Punishment," and accompanying notes.

[63] A Global Review of Human Rights: Examining the State Department's 2004 Annual Report, Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations, Committee on International Relations, U.S. House of Representatives, 17 March 05, Written Statement Submitted by Michael Kozak, Assistant Secretary of State for Democracy, Human Rights, and Labor, U.S. Department of State, 41, 54.

[64] "China State Security Trials 'Find 99 Pct Guilty,'" Reuters; John Kamm, Remarks on Crimes Without Victims, Prisoners Without Names, Foreign Correspondents' Club of Hong Kong, 21 February 06 (reporting early release or parole for 30 percent of China's 1.2 million prisoners, including only three known prisoners convicted of state security crimes).

[65] Human Rights Watch (Online), "China: Political Prisoner Exposes Brutality in Police-Run Mental Hospital," 2 November 05; "Shenzhen Public Security Authorities Release Activist and Journalist Liu Shui," CECC China Human Rights and Rule of Law Update, December 2005, 13; "Guangzhou Officials Release Activist Guo Feixiong," CECC China Human Rights and Rule of Law Update, February 2006, 12; "Anti-Corruption Reporter Jiang Weiping Released from Prison One Year Early," CECC China Human Rights and Rule of Law Update, February 2006, 18; "Falun Gong Practitioner Charles Lee Released, Expelled to the United States," CECC China Human Rights and Rule of Law Update, February 2006, 14; "Liaoyang Labor Activist Xiao Yunliang Released From Prison 24 Days Early," CECC China Human Rights and Rule of Law Update, March 2006, 4; "Authorities Release One 1989 Tiananmen Democracy Protester, Detain Another," CECC China Human Rights and Rule of Law Update, March 2006, 6; "Cai Lujun, Imprisoned for Posting Internet Articles, Released at End of Sentence," CECC China Human

Rights and Rule of Law Update, April 2006, 17; "China Democracy Party Member Tong Shidong Released," CECC China Human Rights and Rule of Law Update, April 2006, 14; "Internet Writer Luo Changfu Released After Serving Three Years for Subversion," CECC China Human Rights and Rule of Law Update, April 2006, 18; "Authorities Release Shanghai Lawyer Zheng Enchong, Restrict His Speech and Movement," CECC China Human Rights and Rule of Law Update, July 2006, 2–3; Dui Hua (Online), "Last Known Female Political Prisoner in TAR Released Early," 28 June 06; Cardinal Kung Foundation (Online), "An Underground Catholic Bishop Released After More Than 10 Years in Prison," 25 August 06.

[66] A Global Review of Human Rights, Written Statement Submitted by Michael Kozak, 40, 54.

[67] Nowak Report, para. 60; Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06, sec. 1.e.

[68] UN Commissioner for Human Rights, Fact Sheet #26, the Working Group on Arbitrary Detention. Examples of the first category include individuals who are kept in detention after the completion of their prison sentences or despite an amnesty law applicable to them, or in violation of domestic law or relevant international instruments. The rights and freedoms protected under the second category include those in Articles 7, 10, 13, 14, 18, 19, and 21 of the UDHR, and in Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR. Ibid.

[69] The U.S. State Department characterized house arrest as "complete isolation in one's own home or another location under lock and guard" and noted that "[n]o publicly available laws or regulations governed conditions for house arrest." U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d.

[70] "Population Planning Official Confirms Abuses in Linyi City, Shandong Province," CECC China Human Rights and Rule of Law Update, October 2005, 2; Philip P. Pan, "Rural Activist Seized in Beijing," Washington Post (Online), 7 September 05.

[71] PRC Criminal Procedure Law [hereinafter CPL], enacted 1 January 79, amended 17 March 96, art. 58; Chinese Human Rights Defenders (Online), "Activist Chen Guangcheng's House Arrest Exceeds Legal Limits, with Domestic Remedies Ineffective, CRD Submits Case to UN," 9 March 06.

[72] Chinese Human Rights Defenders, "Activist Chen Guangcheng's House Arrest Exceeds Legal Limits."

[73] Linyi authorities formally arrested Chen on June 21, tried him on August 18, and sentenced him to four years and three months' imprisonment on August 24. "Authorities Sentence Chen Guangcheng After Taking His Defense Team Into Custody," CECC China Human Rights and Rule of Law Update, September 2006, 4–5; "Authorities Formally Arrest Legal Advocate Chen Guangcheng," CECC China Human Rights and Rule of Law Update, July 2006, 2; Maureen Fan, "Chinese Rights Activist Stands Trial After Police Detain Defense Team," Washington Post (Online), 19 August 06.

[74] "Authorities Postpone Trial, Target Relatives and Neighbors of Chen Guangcheng," CECC China Human Rights and Rule of Law Update, August 2006, 1–2; "Authorities Obstruct Publicity and Legal Defense Efforts in Chen Guangcheng Case," CECC China Human Rights and Rule of Law Update, August 2006, 4–5; Steven Ertelt, "China Police Take Chen Guangcheng's Wife, Allow Thugs to Beat Supporter," LifeNews (Online), 11 July 06; "China Formally Arrests Blind Shandong Activist," Radio Free Asia (Online), 21 June 06; Yi Ming, "Central Government Should Guarantee That the Human Rights of Chen Guangcheng and His Lawyers are Safeguarded" [Zhongyang zhengfu ying quebao Chen Guangcheng ji qi lüshi de renquan dedao baozhang], Empowerment and Rights Institute, reprinted in Chinese Human Rights Defenders (Online), 24 June 06; Chinese Human Rights Defenders (Online), "AIDS Activist Released, Blind Activist under Illegal Detention, and More," 30 March 06; Josephine Ma, "Family of Blind Activist Detained Ahead of Press Conference in Beijing," South China Morning Post, 20 June 06 (Open Source Center, 20 June 06); Gillian Wong, "Stay Home, Friends of Activist Told," Associated Press (Online), 20 June 06.

[75] CPL, art. 64 (establishing an exception to this requirement "in circumstances where such notification would hinder the investigation or there is no way of notifying them"). The maximum period of detention prior to approval of a formal arrest is 37 days after taking into account extensions permitted by law. Ibid., art. 69.

[76] Chris Buckley and Benjamin Kang Lim, "Released Chinese Dissident Plans to Sue," Reuters (Online), 29 March 06.

[77] Alexa Olesen, "U.N. Appeals to China Over AIDS Activist," Associated Press (Online), 28 February 06.

[78] Nowak Report, note 34.

[79] Ibid.

[80] "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year," Procuratorial Daily.

[81] In June 2005, Beijing police claimed that they found new evidence of fraud against Zhao, so that they could hold him beyond the seven-month time limit on investigative detention. "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12; "Beijing Court Schedules Trial of New York Times Researcher Zhao Yan for June 8," CECC China Human Rights and Rule of Law Update, June 2006, 2–3. In practice, with no limit on the number of "new crimes" that police can assert under Article 128 of the CPL, suspects can be held in pretrial detention for years. Under a variety of legal exceptions and detention extension provisions such as Articles 69, 124, 126, 127, and 140 of the CPL, a suspect's pretrial detention can be extended for more than seven months even without evidence of new crimes.

[82] "Beijing Court Schedules Trial of New York Times Researcher Zhao Yan for June 8," CECC China Human Rights and Rule of Law Update, June 2006, 2–3; Jim Yardley, "China Moves to Put Jailed Times Researcher on Trial," New York Times (Online), 23 December 05. A Beijing

court acquitted Zhao of disclosing state secrets on August 25, 2006, but sentenced him to three years' imprisonment for fraud. "Beijing Court Sentences Journalist Zhao Yan to 3 Years' Imprisonment," CECC Human Rights and Rule of Law Update, September 2006, 1–2.

[83] "Beijing Court Schedules Trial of New York Times Researcher Zhao Yan for June 8," CECC China Human Rights and Rule of Law Update, June 2006, 2–3; Jim Yardley, "Lawyers for Jailed Aide for the Times Press China for His Release," New York Times (Online), 22 March 06.

[84] "Beijing Court Schedules Trial of New York Times Researcher Zhao Yan for June 8," CECC China Human Rights and Rule of Law Update, June 2006, 2–3; "A Dark Signal From China," New York Times (Online), 21 May 06.

[85] Shen Hua, "Beijing Procuratorate Resumes Prosecution Against Zhao Yan" [Beijing jianchayuan dui Zhao Yan huifu qisu], Radio Free Asia (Online), 15 May 06.

[86] UN Commission on Human Rights, Opinions Adopted by the Working Group on Arbitrary Detention, Opinion No. 33/2005, 19 October 05, 88–90; "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12.

[87] ICCPR, arts. 9(3) and 9(4).

[88] UNWGAD Report, para. 32.

[89] "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year," Procuratorial Daily; "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12.

[90] "Consolidated Work of Correcting Extended Detention Has Been Effective; 96.2 Percent Drop in New Cases of Extended Detention Throughout the Nation Last Year," Procuratorial Daily; "Supreme People's Procuratorate Recognizes Continuing Problem of Extended Detention," CECC China Human Rights and Rule of Law Update, July 2006, 11–12. In 2003, the SPP passed regulations that prohibit the abuse of legal procedures to disguise the extended detention of a criminal suspect. Several Provisions from the Supreme People's Procuratorate Regarding the Prevention and Correction of Extended Detention in Procuratorial Work [Zuigao renmin jianchayuan guanyu zai jiancha gongzuo zhong fangzhi he jiuzheng chaoqi jiya de ruogan guiding], issued 24 September 03, para. 1.

[91] UDHR, arts. 10, 11(1), ICCPR, arts. 9(4), 14.

[92] Ministry of Public Security, "Ministry of Public Security Convenes a News Conference to Announce 2005 Nationwide Status of Public Security and Fires;" Ministry of Public Security (Online), "Ministry of Public Security Announces 2004 Status of Nation's Public Security Agencies' Strike Against Crime and Safeguarding of Public Order" [Gonganbu tongbao 2004 nian quanguo gongan jiguan daji xingshi fanzui weihu zhehui zhi'an qingkuang], 7 February 05.

[93] See, e.g., the broad-ranging and vaguely worded lists of offenses in the Trial Measures on Reeducation Through Labor [Laodong jiaoyang shixing banfa], issued 21 January 82, art. 10; Provisions on Public Security Agencies' Handling of Reeducation Through Labor Cases [Gongan jiguan banli laodong jiaoyang anjian guiding], issued 12 April 02, art. 9; PRC Public Security Administration Punishment Law, enacted 28 August 05, chs. 2–3.

[94] Wu Yihuo and Hong Jun, "Too Few Administrative Law Enforcement Cases Transferred to Judicial Organs—Relevant Anhui Research Reveals Information: Three Major Factors Influence Effective Links Between Administrative Law Enforcement and Criminal Law Enforcement" [Xingzheng zhifa anjian yisong sifa jiguan taishao, Anhui youguan yanjiuban touchu xinxi: san da yinsu yingxiang xingzheng zhifa yu xingshi zhifa youxiao xianjie], Procuratorial Daily (Online), 31 January 05.

[95] Various analysts estimate that between 2 percent and 10 percent of those sentenced to reeducation through labor are political detainees. Veron Mei-Ying Hung, "Reassessing Reeducation Through Labor," 2 China Rights Forum 35 (2003); Randall Peerenboom, "Out of the Frying Pan and Into the Fire," 98 Northwestern University Law Review 991, 1000–01 and accompanying notes (2004); Jim Yardley, "Issue in China: Many in Jails Without Trial," New York Times (Online), 9 May 05.

[96] Trial Measures on Reeducation Through Labor, art. 10; Provisions on Public Security Agencies' Handling of Reeducation Through Labor Cases, art. 9; PRC Public Security Administration Punishment Law, chs. 2–3.

[97] PRC Criminal Law, ch. 3, sec. 1–3.

[98] Nowak Report, para. 64. Article 10.3 of the ICCPR provides that, "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." In response to characterization of forced reeducation as a form of inhuman or degrading treatment, Chinese authorities have maintained that RTL helps transition detainees back into society.

[99] UNWGAD Report, paras. 40, 41. As of March 1, 2006, the Public Security Administration Punishment Law has replaced the Regulations on Public Security Administration Punishment mentioned in the UNWGAD Report.

[100] U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d.

[101] Ibid.

[102] Nowak Report, para. 63; State Council Decision on the Question of Reeducation Through Labor [Guowuyuan guanyu laodong jiaoyang wenti de jueding], issued 3 Aug 57, para. 2; "Last year's rate of resettling those released from prison or reeducation through labor near 90 percent" [Xingshi jiejiao renyuan qunian anzhilü jin jiucheng], China Legal Publicity (Online), 3 March 06; Yardley, "Issue in China: Many in Jails Without Trial."

[103] Nowak Report, para. 62.

[104] "Security Laws Tackle Most Sensitive Issues," China Daily (Online), 2 March 06.

[105] PRC Public Security Administration Punishment Law, art. 27.

[106] Ibid., art. 55.

[107] Ministry of Public Security, "Ministry of Public Security Convenes Press Conference to Announce the Status of Preparations for Implementing the 'Public Security Administration Punishment Law.'"

[108] PRC Public Security Administration Punishment Law, art. 116.

[109] Under Chinese law, punishments that involve a restriction on personal liberty may only be established by national law. PRC Legislation Law, enacted 15 March 00, art. 8(v); PRC Administrative Punishment Law, enacted 17 March 96, arts. 9, 10.

[110] CPL, art. 12.

[111] PRC Constitution, art. 37.

[112] Freedom House (Online), 2005 China Country Report. In its December 2004 report, the UNWGAD found, "The operation of the laws governing decision-making on placement in a [reeducation] through [labor] camp is, however, highly problematic. From reliable sources, including interviews with persons affected, it is clear that in the overwhelming majority of cases, a decision on placement in a [reeducation] center is not taken within a formal procedure provided by law. The commission vested with power to take this decision in practice never or seldom meets, the person affected does not appear before it and is not heard, no public and adversarial procedure is conducted, no formal and reasoned decision on placement is taken (or issued for the person affected). Thus, the decision-making process completely lacks transparency. In addition, recourse against decisions are [sic] often considered after the term in a center has been served." UNWGAD Report, para. 58.

[113] UNWGAD Report, paras. 16, 45; ICCPR, arts. 9, 14.

[114] In 2003, 127 NPC delegates raised the issue of reforming RTL. At the 2004 NPC plenary session, this number increased to 420, or approximately one-tenth of the entire NPC body. NPC delegates at the 2005 plenary session submitted six motions to expedite RTL reform, and in January 2006, the NPC Standing Committee added the draft law for reforming RTL to its legislative plan for 2006. Gao Yifei, "Why NPC Delegates Propose Reforming the Reeducation Through Labor System" [Renmin daibiao weihe tiyi gaige laojiao zhidu], Boxun (Online), 29 April 06.

[115] Liao Weihua, "Reeducation Through Labor System Faces Change; Law on Correction of Unlawful Acts To Be Formulated" [Laojiaozhi mianlin biangai jiang zhiding weifa xingwei jiaozhifa], Beijing News, reprinted in Xinhua (Online), 2 March 05.

[116] Ibid.

[117] "Reeducation Through Labor 'Changes Names'" [Laojiao "gengming"], China Business View (Online), 4 March 05.

[118] Nowak Report, para. 33; U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d.

[119] Gao, "Why NPC Delegates Propose Reforming the Reeducation Through Labor System."

[120] UNWGAD Report, paras. 56, 73. Individuals can appeal under the APL for a reduction in, or suspension of, a RTL sentence, but these appeals are rarely successful. U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d; Hung, "Reassessing Reeducation Through Labor," 37–38.

[121] UNWGAD Report, para. 64.

[122] U.S. Department of State, Country Reports on Human Rights Practices—2005, China, sec. 1.d.

[123] Human Rights in China (Online), "Petitioner Liu Xinjuan Sent to Psychiatric Hospital, Petitioner Xu Zhengqing Loses Appeal on 3-Year Sentence," 20 January 06; Shanghai Places Petitioners Under House Arrest and Detention, Even Sends Them to Psychiatric Hospitals" [Shanghai jiang shangfangzhe ruanjin juliu shenzhi songjin jingshen bing yuan], Radio Free Asia (Online), 28 February 06; Human Rights in China (Online), "Petitioner Liu Xinjuan Forcibly Admitted to Mental Hospital for the Fifth Time," 22 June 06.

[124] Robin Munro, A Question of Criminal Madness: Judicial Psychiatry and Political Dissent in the People's Republic of China, 13, 322–43, September 2004 (doctoral thesis on file with the Commission); Human Rights Watch, "China: Political Prisoner Exposes Brutality in Police-Run Mental Hospital."

[125] Robin Munro, A Question of Criminal Madness; Georg Blume, "Electroshocks Against the Freedom Virus" [Elektroschocks gegen das Virus Freiheit], Die Zeit (Online), 3 November 05.

[126] For a description of sometimes arbitrary and brutal treatment in these institutions, see Robin Munro, A Question of Criminal Madness.

[127] Ya Wei, "Confined to Psychiatric Institute for Many Years, Chinese Dissident Wang Wanxing is Released" [Duo nian bei guan jingshen bing yuan Zhongguo yijianzhe huoshi], Voice of America (Online), 2 November 05.

[128] Blume, "Electroshocks Against the Freedom Virus."

[129] Nowak Report, para. 45; Office of the UN High Commissioner for Human Rights (Online), "Special Rapporteur on Torture Highlights Challenges at End of Visit to China," 2 December 05; "UN Special Rapporteur on Torture Concludes Two-Week Visit to China," CECC China Human Rights and Rule of Law Update, January 2006, 12–13.

[130] Nowak Report, para. 42.

[131] Ibid., paras. 43–44.

[132] Ibid., para. 45.

[133] Shanghai businessman Du Ronglin, an active petitioner against forced eviction, died two days after his release from detention on March 17, 2006. According to a medical report from the hospital that notified Du's family of his death, the cause of death was internal bleeding in his brain and abdomen, resulting from external impact. Du previously wrote in a letter that he had been beaten in the head and stomach. "Man Dies After Torture in Custody: Rights Group," South China Morning Post (Online), 12 April 06; Chinese Human Rights Defenders (Online), "Internet Writer Trial Set to Open, Disappeared Hunger Striker Resurfaces," 9 April 06.

[134] PRC Criminal Law, arts. 247, 248. A "judicial officer" is defined as one who "exercises the functions of investigation, prosecution, adjudication, and supervision and control." Ibid., art. 94. The Special Rapporteur on Torture notes that the Supreme People's Procuratorate, which di-

rectly handles all investigations of torture, restricts application of both Articles 247 and 248 so that law enforcement officials are prohibited from acting or punishable for abuses in just a small number of enumerated cases. Nowak Report, para. 16. New regulations effective July 2006 expand the number of punishable scenarios from five to eight (in cases of coercing a confession under torture) and from five to seven (in cases of acquiring evidence through the use of force and prisoner maltreatment). Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases, sec. II, paras. 3–5.

[135] The Chinese government ratified the CAT in 1988. In addition, Article 5 of the UDHR states: "No one shall be subjected to cruel, inhuman or degrading treatment or punishment."

[136] Nowak Report, para. 17.

[137] Office of the UN High Commissioner for Human Rights (Online), Declaration and Reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 April 04. By contrast, the United States has declared that it recognizes the competence of the Committee against Torture.

[138] Nowak Report, paras. 53–57.

[139] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report—2005, China (includes Tibet, Hong Kong, and Macau), 8 November 05, sec. 2; China Aid Association (Online), "An Open Letter to President Bush from South China Church," 18 November 05; "Videotaped Testimony of Three Tortured Sisters of the South China Church" [San wei shou kuxing de Huanan jiaohui jiemei luxiang jianzheng], Boxun (Online), 8 April 06.

[140] U.S. Department of State, International Religious Freedom Report—2005, China, sec. 2; "Videotaped Testimony of Three Tortured Sisters of the South China Church," Boxun. See also China Aid Association, "An Open Letter to President Bush from South China Church."

[141] Christian Solidarity Worldwide (Online), "China: Current Developments and Cases of Concern," 9 November 05; "An Open Letter to President Bush from South China Church."

[142] "Foreign Ministry Spokesman Qin Gang's Press Conference on 6 December 2005," Ministry of Foreign Affairs (Online), 7 December 05.

[143] In March 2006, the All China Lawyers Association Defense Lawyer Web site included the wrongful convictions of Nie Shubin and She Xianglin among its list of 2005's top criminal cases. "Of Interest: 2005's Major Criminal Cases" [Guanzhu: 2005 zhongda xingshi anjian], Defense Lawyer Net (Online), 28 March 06. For an analysis of the Nie and She cases, see CECC, 2005 Annual Report, sec. III(b).

[144] Liu Dehua, "Statements That Have Been Coerced Cannot Serve as Evidence," [Bi chu lai de kougong bu neng zuowei zhengju], Procuratorial Daily (Online), 13 April 05; "Sichuan High People's Court, Procuratorate, and Public Security Bureau Issue Joint Document Strictly Prohibiting Coerced Confessions Under Torture" [Sichuan gaoyuan jiancha gonganting lianhe fawen yanjin xingxun bigong], Chengdu Economic Daily, reprinted in Defense Lawyer Net (Online), 21 April 05.

[145] Under current Chinese law and judicial interpretations, judges have the discretion to exclude illegally obtained evidence, and such evidence may not form the basis for a judgment. However, they are not required to exclude such evidence. Supreme People's Court Interpretation on Several Issues Regarding Implementation of the PRC Criminal Procedure Law [Zuigao renmin fayuan guanyu zhixing "Zhonghua renmin gongheguo xingshi susong fa" ruogan wenti de jieshi], issued 29 June 98; Nowak Report, para. 37.

In December 2005, Hebei province mandated punishment for officials who use illegal means to acquire evidence and prohibited the use of such evidence as a basis for arrests, prosecutions, or criminal verdicts in that province. "Hebei Provincial Government Issues Opinion Prohibiting Torture to Obtain Evidence," CECC China Human Rights and Rule of Law Update, February 2006, 3. Liu Ruichuan, president of the Hebei provincial high court, acknowledged that the opinion comes in the wake of law enforcement abuses that led to wrongful conviction cases such as Nie Shubin's in Hebei. "Concern and Progress: 2005 Inventory of 'Hebei Progress on Rule of Law'" [Guanghuai yu jinbu—2005 "Hebei fazhi jincheng" niandu jingdian pandian], Yanzhao Metropolis Daily (Online), 27 December 05. The Hebei opinion does not require the exclusion of illegally acquired evidence at trial.

[146] "Suspects' Questioning to Be Taped," Xinhua; Xiao We, "Dividing Into Three Steps Implementation of Synchronized Audio and Video Taping During Interrogation" [Fen san bu tuixing xunwen quancheng tongbu luyin luxiang], Procuratorial Daily (Online), 18 January 06.

[147] "Chinese Legislator Proposes Taping Police Interrogations to Prevent Torture," Xinhua (Online), 6 March 06.

[148] "MPS Supports Taping Interrogations, But Has No Plans for Nationwide Implementation," CECC China Human Rights and Rule of Law Update, June 2006, 7; Ministry of Public Security, "Ministry of Public Security Announces First Quarter 2006 Nationwide Public Security Situation (Direct Feed Transcript)."

[149] "Ministry of Justice Issues Prohibitions to Restrain Prison and RETL Police Abuses," CECC China Human Rights and Rule of Law Update, April 2006, 4.

[150] "Beijing Prison Police Will Implement Six Prohibitions Next Year" [Beijing jianyu jingcha mingnian shishi liu tiao jinling], Xinhua (Online), 15 December 05.

[151] Mo Shaoping, Remarks on Legislative and Implementation Problems in China's Criminal Law, George Washington University Law School, 13 October 05; Qin Xudong, "Who Will Protect the Lawyers?" [Shei lai baohu lüshi], 21st Century Business Herald (Online), 18 April 06.

[152] CPL, arts. 33, 34; Regulations on Legal Aid [Falü yuanzhu tiaoli], issued 16 July 03, art. 12.

[153] CPL, art. 34; Regulations on Legal Aid, arts. 11–13. The SPC reported that it appointed pro bono legal defense to 117,407 criminal suspects meeting conditions for legal aid in 2005. SPC Work Report, 20 March 06.

[154] "Central Government Expands Provision of Legal Aid in Criminal Cases," CECC China Human Rights and Rule of Law Update, December 2005, 5–6; Provisions on Legal Aid Work

in Criminal Litigation [Guanyu xingshi susong falü yuanzhu gongzuo de guiding], issued 28 September 05, art. 4.

[155] Ibid. Article 151(2) of the CPL previously required appointment of pro bono legal defense only at the indictment stage, after receipt of a bill of prosecution from the procuratorate.

[156] "NPC Delegate Zhang Yan Proposes Elimination of Criminal Law Article 306" [Zhang Yan daibiao jianyi feichu xingfa di san bai ling liu tiao], Legal Daily (Online), 9 March 06; Mo Shaoping, Remarks on Legislative and Implementation Problems in China's Criminal Law.

[157] CPL, art. 96.

[158] CECC Staff Interviews; UNWGAD Report, paras. 35–38; Xu Zhusi, "It Is Difficult to Be a Chinese Criminal Lawyer; Mo Shaoping Analyzes Reasons" [Zhongguo xingshi lüshi nan zuo Mo Shaoping pouxi yuanyin], Epoch Times (Online), 13 October 05.

[159] UNWGAD Report, para. 36. Article 96 of the CPL provides: "If a case involves [s]tate secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer."

[160] "Court Sentences Xu Wanping to 12 Years Imprisonment for Inciting Subversion," CECC China Human Rights and Rule of Law Update, February 2006, 17–18.

[161] "Authorities in Jiangsu Arrest Writer Yang Tianshui on Suspicion of Subversion," CECC China Human Rights and Rule of Law Update, March 2006, 19–20.

[162] Ibid. Yang's lawyer stated: "Public security typically uses [the excuse of state secrets]. Actually, in many cases the issue doesn't exist, but under present conditions it is not even possible to verify whether a case involves state secrets." "Special Interview: Defense Lawyer Li Jianqiang Discusses Case of Yang Tianshui" [Zhuanfang: bianhu lüshi Li Jianqiang tan Yang Tianshui an], Epoch Times (Online), 11 February 06. See also "Defending Political Cases Is Too Difficult," Deutsche Welle (Online), 21 April 06.

[163] "Scholars Complete Working Draft of Revised Criminal Procedure Law," CECC China Human Rights and Rule of Law Update, February 2006, 17–18; "Behind the Criminal Procedure Law's Two Revisions Over 10 Years: Witnesses Must Appear to Testify in Court" [Xingshi susong fa shi nian liang ci xiugai beihou: zhengren bixu chuting zuo zheng], CRI (Online), 11 October 05.

[164] Under Article 36 of the CPL, the defense may not examine and duplicate official materials related to the case until after the case is transferred to the procuratorate for prosecution.

[165] CECC Staff Interview; Xu Zhusi, "It Is Difficult to Be a Chinese Criminal Lawyer." See also, e.g., UNWGAD Report, para. 35.

[166] CPL, art. 37.

[167] "Authorities Obstruct Publicity and Legal Defense Efforts in Chen Guangcheng Case," CECC China Human Rights and Rule of Law Update, August 2006, 4–5.

[168] Josephine Ma, "Activist's Lawyer Attacked in Village," South China Morning Post (Online), 28 June 06; Ding Xiao, "Lawyers Take Risks to Videotape in Linyi, Expose Official and Police Persecution of Chen Guangcheng" [Lüshi Linyi maoxian luxiang jie guan jing pohai Chen Guangcheng], Radio Free Asia (Online), 28 June 06.

[169] CPL, art. 37.

[170] Xu Zhusi, "It Is Difficult to Be a Chinese Criminal Lawyer;" Liang Shubin and Cao Jiyang, "What Does a Witness' Unwillingness to Testify Demonstrate?" ["Zhengren bu yuan zuo zheng" shuoming le shenme?], Legal Daily (Online), 6 April 06. At least one Supreme People's Court judge has suggested legislative reform that will provide economic compensation and witness protection to witnesses appearing in court. Wu Jing, "In Some Basic People's Courts, Less Than 1 Percent of Witnesses Appear in Court" [Yi xie jiceng fayuan zhengren chuting lü bu zu 1 percent], People's Daily (Online), 1 June 06.

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[192] See *supra*, "Political Crimes," and accompanying text.

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[195] "Public Security Bureau Compensates She Xianglin for Wrongful Imprisonment," CECC China Human Rights and Rule of Law Update, December 2005, 16.

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China's Court System," New York Times (Online), 20 September 05; "14-Year Miscarriage of Justice: Wife Murderer and 'Liaoning's She Xianglin' Li Huwei Receives State Compensation" [14 nian sha qi yuanan "Liaoning She Xianglin" Li Huwei huo guojia peichang], People's Daily (Online), 15 April 05; Mure Dickie, "Miscarriage of Justice Puts Chinese Police in Dock," Financial Times (Online), 10 June 05.

[197] See, e.g., Zhang Guanghua, "She Xianglin's Lawyer Says That Lessons Should Be Drawn From Unjust Case" [She Xianglin lüshi cheng ying cong yuanan xiqu jiaoxun], Voice of America (Online), 16 February 06.

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[199] "Chongqing Court Exonerates Man Who Retracted Coerced Confession," CECC China Human Rights and Rule of Law Update, April 2006, 13; Qin Liwen, "After Two Years, Cao Hongbing Verdict Ultimately Overturned and Not Guilty" [Lishi liang nian Cao Hongbing zhong bei gai pan wuzui], Legal Daily (Online), 2 March 06.

[200] "Coercion of Confessions by Torture Not Convenient to Use? Beijing Handling of Cases Will Weaken Oral Statements, Strengthen Evidence" [Xingxun bigong bu hao shi le? Beijing ban an jiang ruo kougong qiang zhengju], Beijing Youth Daily, reprinted in Xinhua (Online), 14 February 06.

[201] "Defending Political Cases Is Too Difficult," Deutsche Welle.

[202] Ibid.; CECC Staff Interviews; Veron Mei-Ying Hung, "Judicial Reform in China: Lessons from Shanghai," 58 Carnegie Papers 10–11 (April 2005).

[203] CPL, arts. 181, 185–86.

[204] Under Chinese law, procuratorates may be required to pay criminal compensation for wrongful arrest and prosecution if defendants are found not guilty. PRC State Compensation Law, enacted 12 May 94, art. 15. Procuratorates appealed 10,107 acquittals in 2005. Of these, 2,677 resulted in a change in the original judgment. SPC Work Report, 20 March 06.

[205] In late 2005, Pastor Cai decided not to appeal his conviction after Beijing court officials reportedly threatened him with an increased prison term if he exercised that right. China Aid Association (Online), "Jailed Church Leader Forced to Withdraw Further Appeal; One Defendant Decides to Continue Appeal," 16 November 05.

[206] CPL, art. 180.

[207] Ibid., art. 189.

[208] "Don't Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture" [Bie rang zhengyi zheduan le chibang: cong mianan kan xingxun bigong], Legal Daily (Online), 22 April 05; Liu Binglu, "Misuse of Retrials Is a Major Reason for Unjust Cases" [Lanyong fahui chongshen shi zhi yuanan zhuyin], Beijing News (Online), 4 April 05; Hung, "Judicial Reform in China," 17.

[209] Leng Jilin, "There Should Be Provisions on How Many Times a Second Instance Court Can Return for Remand" [Ying guiding er shen fahui chongshen de cishu], Legal Daily, reprinted in Defense Lawyer Net (Online), 15 May 06; "Don't Allow the Wings of Justice to Break," Legal Daily; Liu Binglu, "Misuse of Retrials Is a Major Reason for Unjust Cases."

[210] Chinese sources note that the number of crimes punishable by death increased from 28 under the 1979 Criminal Law to 68 (approximately one-quarter of the total number of crimes) under the 1997 Criminal Law. Xiong Qiuhong, "Discussing the Defense of Death Penalty Cases" [Lun sixing anjian zhong de bianhu], Justice of China (Online), 20 July 04; Lin Tao, "Study on the Issues in Hearing and Reviewing Death Penalty Cases" ["Sixing" anjian de shenli yiji fuhe zhong de wenti yanjiu], China Legal Publicity (Online), 10 January 06. At least one scholar has characterized 44 (approximately 65 percent) of the crimes punishable by death as non-violent crimes. Jiang Anjie, "Compilation of Viewpoints from the First Period Forum 'Concerning Death Penalty Reform'" ["Guanzhu sixing gaige" shouqi luntan guandian huicui], China Legal Publicity (Online), 29 December 05 (quoting Professor Gao Mingxuan, Renmin University). See also Amnesty International (Online), "Death Penalty Developments in 2005," 20 April 06; "China to Open More Death Penalty Cases to Public," Reuters, reprinted in China Daily (Online), 27 February 26.

[211] "PRC Foreign Ministry Spokesman Defends Keeping PRC Execution Statistics Secret," Agence France-Presse, 5 February 04 (Open Source Center, 5 February 04).

[212] Liu Renwen, a scholar at the Law Institute of the Chinese Academy of Social Sciences, estimates that China carried out about 8,000 executions in 2005. Geoffrey York, "China's Secret Execution Rate Revealed," The Globe and Mail (Online), 28 February 06; Antoaneta Bezlova, "China to 'Kill Fewer, Kill Carefully,'" Asia Times (Online), 31 March 06. In March 2004, an NPC delegate suggested that Chinese courts issue death sentences for immediate execution in "nearly 10,000 cases per year." "41 Representatives Jointly Sign Proposal for the Supreme People's Court to Take Back the Power of Death Penalty Approval" [41 daibiao lianming jianyi, zuigao renmin fayuan shouhui sixing hezhun quan], China Youth Daily, reprinted in People's Daily (Online), 10 March 04.

[213] "China's Supreme Court to Reclaim Death Penalty Review Right from Lower Tribunals," Xinhua, reprinted in People's Daily (Online), 26 October 05. See also *supra*, "Fairness of Criminal Trials and Appeals," and accompanying notes.

[214] "Supreme People's Court Maps Future Judicial Reforms in Five-Year Reform Program," CECC China Human Rights and Rule of Law Update, February 2006, 7–9; "SPC Incorporates Reform of Death Penalty Review into New Five Year Program," CECC China Human Rights and Rule of Law Update, December 2005, 2–3; Second Five-Year Reform Program for the People's Courts (2004–2008) [Renmin fayuan di er ge wu nian gaige gangyao (2004–2008)], issued 26 October 05, para. I.2; "China's Supreme Court to Reclaim Death Penalty Review Right from Lower Tribunals," Xinhua. Although Articles 48 of the Criminal Law and 199 of the Criminal Procedure Law unequivocally require that all death sentences must be approved by the SPC, authority for approving certain death sentences shifted to provincial-level high courts beginning

in 1980. For more information, see "The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," Congressional-Executive Commission on China, 10 February 03.

[215] "Death Penalty Review Power Will Be Consolidated and Returned for Exercise by the Supreme People's Court" [Sixing fuhe quan jiang tongyi shougui zuigao fayuan xingshi], Xinhua (Online), 26 October 05; "China's Supreme Court to Reclaim Death Penalty Review Right From Lower Tribunals," Xinhua. A review of death penalty cases in Beijing, Tianjin, and Hebei revealed a high rate of error among lower courts. High courts found that in 90 percent of death penalty cases that they remanded and overturned, the trial court's conclusions on significant facts and evidence raised reviewable questions. Conclusions on significant facts and evidence posed a problem in 50 percent of the cases that the SPC remanded or overturned. Liao Weihua, "Hearings to be Conducted for All Second Instance Death Penalty Next Year" [Sixing an ershen mingnian xiabannian quan xu kaiting shen], Beijing News (Online), 8 December 05.

[216] "Supreme People's Court Calls for Hearings in Death Penalty Appeals," CECC China Human Rights and Rule of Law Update, December 2005, 2–3; Supreme People's Court Circular Regarding Further Improving Open Court Session Work in Second Instance Death Penalty Cases [Zuigao renmin fayuan guanyu jin yi bu zuo hao sixing ershen anjian kaiting shenli gongzuo de tongzhi], issued 7 December 05, para. 2; Second Five-Year Reform Program for the People's Courts (2004–2008), para. I.1.

[217] Supreme People's Court Circular Regarding Further Improving Open Court Session Work in Second Instance Death Penalty Cases, paras. 3–5.

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[222] Wu Chunping, "Hainan High Court Conducts Hearings in All Second Instance Death Penalty Cases;" Zong Bian, "Since 1979, Beijing High Court Has Conducted Hearings in All Second Instance Death Penalty Cases;" "Tianjin High Court Implements Hearings for Second Instance Death Penalty Review Cases" [Tianjin gaoyuan luoshi sixing di ershen anjian kaiting gongzuo], China Court Net (Online), 23 January 06; Ni Xiao, "Shanghai High Court Conducts Hearings in All Second Instance Death Penalty Cases" [Shanghai gaoyuan sixing ershen an quan kaiting shenli], Legal Daily (Online), 23 January 06.

[223] Wang Doudou, "Death Penalty Appeals Hearings Enter Their Fortification Stage" [Sixing ershen anjian kaiting jinru gongjian jieduan], Legal Daily (Online), 29 May 06; "China's Supreme Court to Review All Death Penalty Cases," Xinhua, reprinted in China Daily (Online), 3 April 06.

[224] "Organ Transplants: A Zone of Accelerated Regulation" [Qiguan yizhi: jiakuai guizhi de didai], Caijing Magazine (Online), 28 November 05. The magazine reports that over 95 percent of organs transplanted in China come from executed prisoners.

[225] "Health Official Denies Random Transplant of Organs From Executed Criminals," Xinhua, reprinted in People's Daily (Online), 11 April 06; "Organs Taken 'With Consent of Prisoners,'" Agence France-Presse, reprinted in South China Morning Post (Online), 29 March 06.

[226] "British Transplantation Society Criticizes the Alleged Use of Organs Without Consent from Prisoners Executed in the People's Republic of China," The British Transplantation Society (Online), 19 April 06; David Matas and David Kilgour, Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 6 July 06.

[227] World Health Organization, Guiding Principle 3, "Guiding Principles on Human Organ Transplantation," adopted May 1987.

[228] "Provisions Issued on Organ Transplants, Fail to Address Executed Prisoners," CECC China Human Rights and Rule of Law Update, May 2006, 10–11; Temporary Provisions on Human Organ Transplant Clinical Practice Management [Renti qiguan yizhi jishu linchuang ying yong guanli zanxing guiding], issued 27 March 06.

[229] Temporary Provisions Regarding the Use of Corpses or Organs from Executed Prisoners [Guanyu liyong sixing zuifan shiti qiguan de zanxing guiding], issued 9 October 84, para. 3.

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[232] CECC Staff Interviews and Correspondence. For news reports on some of these programs, see, e.g., "China—Canada New Cooperation Programme," International Centre for Criminal Law

Reform and Criminal Justice Policy (Online); "The Present Situation and Prosperous Future of China Clinical Legal Education," Global Alliance for Justice Education (Online), 1 August 05; "World Law Conference Convenes in Beijing," China Daily, reprinted in China Internet Information Center (Online), 5 September 05; "Highlights of the 22nd World Congress on Law" [Er shi er jie shijie falü dahui jingcai liangdian], Legal Daily (Online), 5 September 05; Jiang Anjie, "How to Improve Procedures for Death Penalty Review" [Sixing fuhe chengxu ruhe wanshan], Legal Daily (Online), 1 December 05; "Third Session of Program Between Nanjing Normal University Law School and University of Maryland to Cooperate in Developing a Masters Degree in Criminal Justice (MCJ)" [Nanjing shifan daxue yu meiguo malilan daxue hezuo peiyang xingshi sifa xue shuoshi (MCJ) xiangmu di san qi], Nanjing Normal University Law School (Online), May 2006.

[233] CECC Staff Interviews and Correspondence.

[234] UN High Commissioner for Human Rights, "Special Rapporteur on Torture Highlights Challenges at End of Visit to China;" "UN Special Rapporteur on Torture Concludes Two-Week Visit to China," CECC China Human Rights and Rule of Law Update, January 2006, 12–13. See also *supra*, "Torture and Abuse in Custody," and accompanying notes.

[235] UN High Commissioner for Refugees (Online), "Statement to Media by United Nations High Commissioner for Refugees António Guterres, on Conclusion of His Mission to the People's Republic of China," 23 March 06; "High Commissioner for Refugees Visits China, Object to North Korean Repatriation," CECC China Human Rights and Rule of Law Update, May 2006, 2–3.

[236] "China 'More Aware' of Torture Use," BBC (Online), 22 November 05; "Statement to Media by UN High Commissioner for Refugees António Guterres."

[237] UN High Commissioner for Human Rights, "Special Rapporteur on Torture Highlights Challenges at End of Visit to China;" "UN Special Rapporteur on Torture Concludes Two-Week Visit to China," CECC China Human Rights and Rule of Law Update, January 2006, 12–13. The Ministry of Foreign Affairs "denied Nowak's allegations that public security officers had monitored his activities and tried to stop torture victims from meeting with him." Louisa Lim, "China Denies UN Torture Findings," BBC (Online), 6 December 05.

[238] United Nations (Online), "General Assembly Elects 47 Members of New Human Rights Council," 9 May 06.

[239] These include the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the CAT. PRC Aide Memoire, reprinted in United Nations (Online), 13 April 06.

[240] Ibid.

[241] "China Vows to Further Contribute to Human Rights Course," Xinhua (Online), 10 May 06.

[242] United Nations, "General Assembly Elects 47 Members of New Human Rights Council;" Warren Hoge, "New U.N. Rights Group Includes Six Nations With Poor Records," New York Times (Online), 10 May 06; Chen Xulong, "Reforming Rights Protection," Beijing Review (Online), 11 May 06.

Notes to Section V(c)—Protection of Internationally Recognized Labor Standards

[1] ILO Declaration on Fundamental Principles and Rights at Work, 18 June 98, International Labour Organization, art. 2 [hereinafter ILO Declaration].

[2] CECC, 2005 Annual Report, 11 October 05, 37.

[3] "Fundamental ILO Conventions," International Labour Organization (Online), 20 October 00.

[4] 122 countries have ratified all of the fundamental conventions, while 57 countries have not. Ratifications of the ILO Fundamental Conventions, International Labour Organization (Online), 23 August 06. The United States has ratified two of the eight ILO core conventions, but even without ratification, the conventions already are largely incorporated into U.S. law. The ILO Declaration "[d]eclares that all Members, even if they have not ratified the Conventions in question, 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, namely: (a) freedom of association and the effective recognition of the right to collective bargaining . . . ."

[5] Ratifications of the ILO Fundamental Conventions, International Labour Organization.

[6] "China: Forced Labor and Trafficking: the Role of Labour Institution in Law Enforcement and International Cooperation," International Labour Organization (Online), August 2005.

[7] PRC Labor Law [Zhonghua renmin gongheguo laodong fa], enacted 5 July 94, amended 10 October 01.

[8] Trial Measures on Reeducation Through Labor [Laodong jiaoyang shixing banfa], issued 21 January 82; Provisions on Public Security Agencies' Handling of Reeducation Through Labor Cases [Gongan jiguan banli laodong jiaoyang anjian guiding], issued 12 April 02; PRC Public Security Administration Punishment Law, enacted 28 August 05.

[9] ILO Convention (No. 105) Concerning the Abolition of Forced Labour, 25 June 57, 320 U.N.T.S. 291; ILO Convention (No. 29) Concerning Forced or Compulsory Labour, 28 June 30, 39 U.N.T.S. 55.

[10] China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004 speech by Chinese President Hu Jintao before the French National Assembly.

[11] Statement Made By China Upon Ratification of the ICESCR, Office of the UN High Commissioner for Human Rights (Online), 27 March 01. Article 10 of China's Trade Union Law establishes the All-China Federation of Trade Unions as the "unified national organization," and Article 11 mandates that all unions must be approved by the next higher-level union body, giving the ACFTU an absolute veto over the establishment of any local union and the legal authority to block independent labor associations. PRC Trade Union Law, enacted 3 April 92, amended 27 October 01, arts. 10, 11.

[12] Trini Leung, "ACFTU and Union Organizing," China Labour Bulletin (Online), 26 April 02.

[13] PRC Trade Union Law, art. 4.

[14] "Wang Zhaoguo Speaks at Presidium Meeting of All-China Federation of Trade Unions," Xinhua, 4 July 05 (Open Source Center, 4 July 05); PRC Trade Union Law, art. 11.

[15] PRC Trade Union Law, arts. 10, 11.

[16] Constitution of the Trade Unions of the People's Republic of China, adopted 24 October 98, art. 15.

[17] Leung, "ACFTU and Union Organizing."

[18] Hong Kong Liaison Office of International Free Labor Trade Unions (Online), "ACFTU and Trade Unions," March 2006.

[19] Ibid.

[20] Ibid.; "Total Grassroots Union in China Total 1,174,000" [Wo guo jiceng gonghui shuliang da 117.4 wan], Xinhua (Online), 5 July 06.

[21] "China Plans to Unionize 60% of Foreign Firms," Asia Times (Online), 1 April 06; Hai Tao, "Chinese Government Plans to Pressure Foreign Enterprises to Establish Unions" [Zhongguo zhengfu jihua cu waizi qiye sheli gonghui], Voice of America (Online), 25 July 06.

[22] Hai Tao, "Chinese Government Plans To Pressure Foreign Enterprises To Establish Unions."

[23] "Total Grassroots Union in China Total 1,174,000," Xinhua.

[24] "Foreign Firms Should Be Compelled to Unionize," China Daily (Online), 6 July 06.

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Notes to Section V(d)—Freedom of Religion

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[2] PRC Constitution, art. 36.

[3] For examples of protections in Chinese law, see, e.g., the PRC Regional Ethnic Autonomy Law, enacted 31 May 84, amended 28 February 01, art. 11, the PRC Education Law, enacted 18 March 95, art. 9, and the PRC Labor Law, enacted 5 July 94, art. 12. Article 251 of the PRC Criminal Law penalizes state officials who infringe on citizens' right to freedom of religious belief. PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 05.

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[5] See, e.g., Cheng Ming, "One-Third of CPC Members Attend Religious Activities," 1 November 05, 8–9 (Open Source Center, 24 May 06); Communist Party Committee Handan City People's Government State Property Supervision Board of Management (Online), "Communist Party Members Cannot Believe in Religion" [Gongchangdangyuan buneng xinyang zongjiao], 13 March 06. While Party membership is not mandatory in China, it can further career opportunities and social advancement. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, International Religious Freedom Report—2005, China (includes Tibet, Hong Kong, and Macau), 8 November 05.

[6] State Administration for Religious Affairs (Online), "Fourth Operation Office" [Yewu sisi], last visited 5 September 06.

[7] Some government documents have referred to the five religions as China's "main" religions. In practice, the state has created a regulatory system that institutionalizes only these five religions for recognition and legal protection, even though neither the Constitution nor national Chinese law restricts the definition of religion to these five belief systems. See, e.g., State Council Information Office, White Paper on Freedom of Religious Belief in China, 16 October 97 (stating that China's "main religions" are Buddhism, Daoism, Islam, Catholicism, and Protestantism). Officials told a visiting U.S. delegation in August 2005 that they were considering at the national level whether to allow some other religious communities to register to establish organizations or religious activity venues, but no decisions in this area have been reported. U.S. Commission on International Religious Freedom (USCIRF), "Policy Focus: China," 9 November 05, 4. See also Human Rights Watch (Online), "A Year After New Regulations, Religious Rights Still Restricted, Arrests, Closures, Crackdowns Continue," 1 March 06.

[8] There is some limited tolerance outside this framework for some ethnic minority and "folk" religious practices, as well as some regional variation in the recognition of other religious groups. See, e.g., discussions on regional variations in implementation of religious policy and government policy toward folk religions, *infra*; "Religious Freedom for China's Orthodox Christians," *infra*; Kim-Kwong Chan, "Religion in China in the Twenty-first Century: Some Scenarios," 33 Religion, State & Society, No. 2, 87, 92; and Putian City Licheng District Ethnic and Religious Affairs Bureau (Online), "Putian Patriotic Religious Organizations" [Putian zongjiao aiguo tuanti], last visited 14 September 06.

[9] See, e.g., Hebei Province Regulation on Religious Affairs [Hebeisheng zongjiao shiwu tiaoli], issued 18 July 03, art. 2.

[10] State Council Information Office, White Paper on Freedom of Religious Belief in China.

[11] Local religious regulations have specified that individuals (and in some cases "members of a family") may carry out religious activities at home or "live a religious life" at home, but none have extended this to relatives and friends. See, e.g., Shanxi Province Regulation on Religious Affairs [Shanxisheng zongjiao shiwu tiaoli], issued 29 July 05, art. 22. One local regulation allows some limited religious activity at home for participation by relatives and friends, but it appears to limit activities to rites related to illness, funerals, and memorials. Guangxi Zhuang Autonomous Region Temporary Provisions on the Administrative Management of Religious Work

[Guangxi zhuangzu zizhiqu zongjiao shiwu xingzheng guanli zanxing guiding], issued 22 March 94.

[12] Local authorities' actions toward such "house churches" have varied. In some places, local authorities have tolerated such services, while in other places have shut them down. U.S. Department of State, International Religious Freedom Report—2005, China. The government reportedly has instructed registered Protestant organizations to hold services at home, in response to the growth of such services by unregistered groups. See "Religious Freedom for China's Protestants," *infra*.

[13] Leung, "China's Religious Freedom Policy," 897. The patriotic religious associations are "mass organizations" established under the Communist Party.

[14] See, e.g., "Clear Tasks, Carrying Out Our Functions: Thoughts on the Issue of Completely Bringing into Play the Functions of the Islamic Associations" [Mingque renwu lüxing zhineng—guanyu chongfen fahui yixie zuoyong wenti de sikao], 2 China Muslim, 25–27 (2005); "Catholic Patriotic Association Leaders Deny Bishops Permission to Attend Synod in Rome," CECC China Human Rights and Rule of Law Update, October 2005, 7.

[15] U.S. Commission on International Religious Freedom, "Policy Focus: China," 9 November 05, 4.

[16] U.S. Department of State, International Religious Freedom Report—2005, China.

[17] PRC Constitution, art. 36.

[18] Chinese laws and regulations have not provided an explicit definition of this term. Article 36 of the Constitution does not clearly define the scope of "normal religious activity." It notes only, "No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state." Some local regulations have indicated what activities constitute "religious activities" but not explicitly "normal" religious activities. See, e.g., Shanxi Province Regulation on Religious Affairs, art. 20. It is unclear whether such lists, which describe activities including Buddhist worship, Ramadan observance, and baptism, are exclusive. While such an exclusive list would at least provide citizens with more notice of what activities are protected under law, this would also contravene international human rights standards, which define religion to include a broad range of practices beyond specific acts (like Ramadan or Buddhist worship). General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), 30 July 93, para. 4.

[19] U.S. Department of State, International Religious Freedom Report—2005, China.

[20] Ibid. See also, "Religious Freedom for China's Orthodox Christians," *infra*.

[21] The State Department reports that such folk practices "are tolerated to varying degrees as loose affiliates of Taoism, Buddhism, or ethnic minority cultural practices." U.S. Department of State, International Religious Freedom Report—2005, China.

[22] It also refers to such activities simply as "superstitions." Some activities related to "superstitions" or "feudal superstitions" are penalized under the Criminal Law and administrative regulations. See, e.g., PRC Criminal Law, art. 300; PRC Public Security Administration Punishment Law, enacted 28 August 05, art. 27(1).

[23] See, "Government Persecution of Falun Gong," *infra*, for more information. The government also has labeled some unregistered religious groups as cults. See, e.g., "UN Petition Submitted for Jailed Ailing Church Leader; Medical Parole Appeal Filed by Family Members," China Aid Association (Online), 6 March 06 (describing the case of Pastor Gong Shengliang, whom authorities sentenced in a first-instance trial for crimes including cult-related activities).

[24] Provisions on the Management of the Religious Activities of Foreigners within the PRC [Zhonghua renmin gongheguo jingnei waiguoren zongjiao huodong guanli guiding], issued 31 January 94, art. 4.

[25] See, e.g., China Development Brief (Online), "NGOs: the Diverse Origins, Changing Nature and Growing Internationalisation of the Species," 31 December 04; China Development Brief (Online), "Muslim Hands Reach Out to Gansu," 6 May 05.

[26] Detailed Implementing Rules for the Provisions on the Management of the Religious Activities of Foreigners Within the PRC [Zhonghua renmin gongheguo jingnei waiguoren zongjiao huodong guanli guiding shishi xize], issued 26 September 00, art. 17.

[27] Regulation on Religious Affairs (RRA) [Zongjiao shiwu tiaoli], issued 30 November 04.

[28] Nailene Chou Wiest, "Religious Groups Get More Room to Move," South China Morning Post (Online), 20 October 04, (quoting Zhang Xunmou, Policy and Law Department of SARA).

[29] For a listing of national and local regulations as of 2005, see Chan and Carlson, Religious Freedom in China, 27–42.

[30] RRA, art. 2.

[31] Ibid., art. 3.

[32] See, e.g., RRA, arts. 8, 13–15, 27. Some provisions permit certain acts in accordance with other regulations, such as Article 7, which permits religious organizations to publish religious materials in accordance with relevant national regulations. The relevant regulations referred to require approval to publish religious materials. See, e.g., Regulation on the Administration of Printing Enterprises, arts. 7, 15, 18, 30–31; Provisions Regarding the Administration of Contracts to Print Bible Texts [Guanyu chengjie "shengjing" yinshua de guanli guiding], issued 22 November 94.

[33] See, e.g., Hubei Province United Front Department (Online), "Xiangfan City Makes Great Efforts in Study Sessions for the Regulation on Religious Affairs" [Xiangfanshi zhashi zhuahao zongjiao shiwu tiaoli de xuexi peixun], 25 February 05; Shenzhen Luohu District E-Government Affairs (Online), "Luohu District Party Committee and Government Adopt Multiple Steps to Practically Strengthen Religious Work Under Their Jurisdiction" [Luohuquwei, quzhengfu caiqu duoxiang cuoshi qieshi jiaqiang xiaqu zongjiao gongzuo], 9 June 05.

[34] See, e.g., Jilin Province Ethnic Affairs Commission and Religious Affairs Bureau (Online), "Provincial Religious Affairs Bureau Launches a Circuit Study Tour at the Grassroots Level" [Sheng zongjiaoju shenru jiceng kaizhan xunhui jiaoxue], 18 April 06; Henan Province Ethnic Affairs Commission and Religious Affairs Bureau (Online), "Zhengzhou Launches 'Religious

Work Enters the Community' Activity" [Zhengzhoushi kaizhan "zongjiao gongzuo jinshequ" huodong], 21 March 06.

[35] Under Article 6 of the RRA, religious organizations must register in accordance with the rules established under the Regulations on the Registration and Management of Social Organizations [Shehui tuanti dengji guanli tiaoli], issued 25 October 1998. In addition to provisions within the RRA on the registration of venues for religious activity, new Measures on the Examination, Approval, and Registration of Venues for Religious Activity [Zongjiao huodong changsuo sheli shenpi he dengji banfa], issued 21 April 05, also govern this process.

[36] Management of Venues for Religious Activity [Zongjiao huodong changsuo guanli tiaoli], issued 31 January 94 (repealed); Measures on the Registration of Venues for Religious Activity [Zongjiao huodong changsuo dengji banfa], issued 13 April 94 (repealed); Implementing Measures on the Management of the Registration of Religious Social Organizations [Zongjiao shehui tuanti dengji guanli shishi banfa], issued 6 May 91. For registration requirements in local regulations, see, e.g., Beijing Municipality Regulation on Religious Affairs [Beijingshi zongjiao shiwu tiaoli], issued 18 July 02, amended 28 July 06, arts. 6, 18.

[37] RRA, arts. 6, 12–15.

[38] Regulations on the Registration and Management of Social Organizations, art. 10.

[39] RRA, art. 14(2).

[40] General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), para. 4.

[41] RRA, art. 12.

[42] See, e.g., Shanxi Province Regulation on Religious Affairs, art. 22.

[43] General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), para. 4.

[44] RRA, arts. 7, 21.

[45] See, e.g., Regulations on the Administration of Printing Enterprises, arts. 18, 30–31; Provisions Regarding the Administration of Contracts to Print Bible Texts.

[46] RRA, art. 27.

[47] Ibid.

[48] Ibid., arts. 38–46.

[49] Ibid., art. 38. In addition to providing disciplinary sanctions, this provision also states that where a crime has been committed, criminal liability shall be investigated.

[50] See, e.g., Ibid., arts. 40–45.

[51] Ibid., art. 43. Article 1 of an earlier Circular of Provisions on Self-Funded Pilgrimages [Guanyu zifei chaojin ruogan guiding de tongzhi], issued 28 January 01 (partly annulled) states only that no organization other than those authorized by the circular may organize pilgrimages. Local regulations on religion do not mention restrictions on pilgrimages or penalties for their organization, except for a 2001 amendment (not yet made public in China) to the 1994 Xinjiang Uighur Autonomous Region Regulation on the Management of Religious Affairs, which states that no organization or individual other than authorized government organizations may organize pilgrimages. Human Rights Watch and Human Rights in China (Online), "Devastating Blows: Religious Repression of Uighurs in Xinjiang," April 2005, 39, 87. Although the RRA's articulation of which specific acts constitute violations of the regulation promotes more transparency, it also may indicate new national restrictions.

[52] RRA, art. 34. See, e.g., Beijing Municipality Regulation on Religious Affairs, art. 8.

[53] RRA, art. 35.

[54] Earlier local regulations have not stated this provision in such clear terms. See, e.g., Jiangsu Province Regulation on Religious Affairs [Jiangsusheng zongjiao shiwu tiaoli], issued 5 February 02, art. 34 (stating only that donations received from abroad be handled in accordance with national regulations); Beijing Municipality Regulation on Religious Affairs, arts. 36, 39 (allowing organizations and venues to receive contributions but not specifying that they may come from overseas, and stating that donations received from abroad be handled in accordance with national regulations).

[55] RRA, art. 46.

[56] See, e.g., Hebei Province Regulation on Religious Affairs, arts. 2, 8. In some cases, the RRA refers to the national-level association of a particular religion but does not use the patriotic association's precise name or make reference to all the associations. See, e.g., RRA, arts. 11, 27.

[57] For example, some observers have suggested that the lack of mention of five religions within the RRA may indicate that the government will recognize more religious groups. See, e.g., Lauren Homer, "The New Regulation on Religious Affairs in China: A Legal Analysis," presented at the Christian Leadership Exchange and Fuller Theological Seminary Forum on China's Religious Regulations 2005 (Online), March 2005.

[58] The RRA states only that the 1994 national Regulation on the Management of Venues for Religious Activity is annulled. RRA, art. 48. On April 21, 2005, the State Administration for Religious Affairs issued new Measures on the Examination, Approval, and Registration of Venues for Religious Activity.

[59] RRA, arts. 6, 13–15. The wording of the local regulations varies, but the requirements imposed generally track those in the national regulation. Shanghai Municipality Regulation on Religious Affairs [Shanghaishi zongjiao shiwu tiaoli], issued 30 November 95, amended 21 April 05, arts. 7, 17; Henan Province Regulation on Religious Affairs [Henansheng zongjiao shiwu tiaoli], arts. 7, 8, 16–18; Zhejiang Province Regulation on Religious Affairs [Zhejiangsheng zongjiao shiwu tiaoli], issued 6 December 97, amended 29 March 06, arts. 9, 22–23; Shanxi Province Regulation on Religious Affairs, arts. 8–9, 12–13; Beijing Municipality Regulation on Religious Affairs, arts. 6, 18; Anhui Province Regulation on Religious Affairs [Anhuisheng zongjiao shiwu tiaoli], issued 15 October 99, amended 29 June 06, art. 9. But see Anhui Province Regulation on Religious Affairs, art. 19. Amendments to the Anhui regulation change only two provisions in the original 1999 regulation. According to Article 19, which was unchanged by the amendments, the establishment of a religious venue must be done in accordance with the Regu-

lation on the Management of Venues for Religious Activity, which was annulled by the RRA. For an overview of four of the new or amended regulations, see "Zhejiang and Other Provincial Governments Issue New Religious Regulations," CECC China Human Rights and Rule of Law Update, June 2006, 9–10.

[60] Henan Province Regulation on Religious Affairs, art. 2.

[61] Compare the amended Shanghai Municipality Regulation on Religious Affairs and the original Shanghai Municipality Regulation on Religious Affairs, issued 30 November 95, art. 3.

[62] Shanghai Municipality Regulation on Religious Affairs, amended 21 April 05, art. 27; Henan Province Regulation on Religious Affairs, art. 21; Zhejiang Province Regulation on Religious Affairs, amended 29 March 06, art. 36; Shanxi Province Regulation on Religious Affairs, art. 22; Beijing Municipality Regulation on Religious Affairs, art. 23; Anhui Province Regulation on Religious Affairs, art. 28. The Zhejiang, Henan, Beijing, and Anhui regulations permit citizens to "live a religious life" (guo zongjiao shenghuo) within their homes, and the Shanghai Municipality Regulation specifies that religious members of a family may do so. In contrast, the Shanxi regulation uses different language, stipulating in Article 22 that religious citizens may "carry out normal religious activities (jinxing . . . zhengchang zongjiao huodong) within their own residence that are participated in by religious members of a family." See also "Zhejiang and Other Provincial Governments Issue New Religious Regulations," 9–10.

[63] See the amended Shanghai Municipality Regulation on Religious Affairs, arts. 51–61 and the original Shanghai Municipality Regulation on Religious Affairs, arts. 54–59.

[64] Henan Province Regulation on Religious Affairs, art. 26. Compare to the Shanghai Municipality Regulation on Religious Affairs, amended 21 April 05, art. 60; Zhejiang Province Regulation on Religious Affairs, amended 29 March 06, art. 49; Shanxi Province Regulation on Religious Affairs, art. 34; Beijing Municipality Regulation on Religious Affairs, art. 49; and Anhui Province Regulation on Religious Affairs, art. 53. Article 51 of the original Zhejiang regulation contained a similar provision to the one in the amended Zhejiang regulation, but it applied only to state officials from religious affairs bureaus, whereas Article 49 in the amended version applies to all state officials acting in the course of religious work. See the original Zhejiang Province Regulation on Religious Affairs, issued 6 December 97, art. 51.

[65] State Administration for Religious Affairs (Online), "China Religious Culture Communication Association Established in Beijing" [Zhonghua zongjiao wenhua jiaoliu xiehui zai jing chengli], 30 December 05; "New Religious Exchange Association Disseminates Government Views of Religion," China Human Rights and Rule of Law Update, February 2005, 11.

[66] See the SARA Web site at www.sara.gov.cn. Although the Web site provides citizens with another forum for access to religious information, its content is limited. The Web site does not provide a comprehensive posting of all local regulations on religion and provides only select news. Web sites from local religious affairs bureaus are often more thorough.

[67] "Why Are Religious People Still Buying Tickets To Enter Their Own Places of Worship?" [Zongjiao renshi jin ben zongjiao changsuo weihe hai maipiao?], China Ethnicities News (Online), 7 February 06.

[68] For example, Article 36 of the Constitution protects religious activities that the state considers "normal," that do not "interfere" with the state's educational system, and that are not subject to "foreign domination." Article 3 of the Regulation on Religious Affairs requires religious citizens to "abide by the Constitution, laws, regulations and rules, and safeguard unification of the country, unity of all nationalities and stability of society," and not to engage in "activities that harm State or public interests."

[69] Additional information about the Chinese government's and Party's application of the Constitution and law is available in CECC Annual Reports 2002–2005.

[70] Tibetan Centre for Human Rights and Democracy (Online), "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions," 13 October 05. Teams of officials began conducting patriotic education classes at Sera Monastery in April, at Taglung Monastery and Gyabdrag Nunnery in June, at Drepung Monastery in October, and at Shugsib Nunnery at an unspecified time. (Although the patriotic education campaign began in April 2005, public reports were not available until October. Unpublished information referred to patriotic education activity at Gaden Monastery and Garu Nunnery. Information is not available on whether or not the patriotic education campaign affected all Lhasa area monastic institutions, or if the campaign extended beyond the Lhasa area.)

[71] Ibid. During the session at Sera, officials required the monks to study six texts in preparation for examinations: "Handbook of History of Tibet," "Handbook on Crushing the Separatists," "Handbook of Policies on Religion," "Handbook on Law," "Handbook of Contemporary Policies," and "Handbook on Ethics for the Masses."

[72] "Zhang Qingli Becomes New Party Chief of Tibet," Xinhua (Online), 29 May 06. The Party Central Committee appointed Zhang Qingli Secretary of the TAR Party Committee on May 29, 2006, after appointing him acting TAR Party secretary in November 2005. Between October 1999 and March 2005, Zhang held (at different times) senior positions in the Xinjiang Uighur Autonomous Region (XUAR) that included deputy secretary of XUAR Party Committee, Vice Chairman of the XUAR government, and commander of the Xinjiang Production and Construction Corps (also known as the Bingtuan).

[73] Monks or nuns who administer a monastery or nunnery form the Democratic Management Committee (DMC). DMC members must implement Party policies on religion and ensure that monks and nuns obey government regulations on religious practice.

[74] "Zhang Qingli Delivers Major Address at Opening of Party Conference in Tibet," Tibet Daily, reprinted in Xinhua (Online), 16 May 06. (Some of the Party officials attending the meeting also hold senior positions in the provincial government or people's congress. For example, Party executive deputy secretary Jampa Phuntsog (Xiangba Pingcuo) is Chairman of the TAR government, and Legchog (Lieque) is Chairman of the TAR People's Congress.)

[75] Regulation on Religious Affairs (RRA) [Zongjiao shiwu tiaoli], issued 30 November 04.

[76] "Standing Committee of Tibet Autonomous Regional People's Congress Holds Special Meeting to 'Expose and Criticize Dalai Lama's Separatist Group,' Calls for Steadfastness in Fighting Separatism," Sing Tao Daily, 10 June 06 (Open Source Center, 11 June 06). The meeting took place "a few days" before Sing Tao published the article.

[77] "Spiegel Interview With Tibet's Communist Party Chief: Dalai Lama 'Deceived His Motherland,'" Spiegel Magazine (Online), 16 August 06.

[78] Tibetan Centre for Human Rights and Democracy, "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions." (No additional information about the reported expulsions and detentions of the Sera monks in July 2005 is available.)

[79] In Tibetan Buddhist monasteries and nunneries, a "disciplinarian" supervises monks and nuns who participate in religious ceremonies or attend monastic assemblies.

[80] "Tibetan Monk Detained, Another Expelled, Amid Chinese Crackdown," Radio Free Asia (Online), 18 November 05. (The report does not specify whether the period of surveillance is "residential surveillance" or "public surveillance." The maximum period of residential surveillance is six months (Criminal Procedure Law, Article 58), compared to a maximum period of two years of public surveillance (PRC Criminal Law, Article 38).

[81] Ibid. Tsering Dondrub "disappeared" immediately after the prayer request, according to RFA, but police later detained him and held him in the Lhasa PSB Detention Center (Gutsa). Tibetan Centre for Human Rights and Democracy (Online), "Human Rights Situation in Tibet, Annual Report 2005," 21 February 06, 24. According to Tibetan Centre for Human Rights and Democracy, police detained Tsering Dondrub because they suspected him of putting up pro-independence posters. (No further information about his case is available.)

[82] Tibetan Centre for Human Rights and Democracy (Online), "Monk Dies Following Dispute with Patriotic Education Instructors," 8 November 05. Monks who discovered Ngawang Jangchub's body speculated that he committed suicide. He apparently refused to comply with a requirement to denounce the Dalai Lama as a "splittist" and pledge loyalty to the Chinese government, and defended the Dalai Lama's role as a Buddhist leader. In addition, he said that Tibet is not a historical part of China.

[83] Tibetan Centre for Human Rights and Democracy (Online), "Five Monks from Drepung Monastery in Lhasa Arrested After Conduct of 'Patriotic Reeducation' Campaign," 30 November 05.

[84] Tibetan Centre for Human Rights and Democracy (Online), "Mass Silent Protest in Tibet's Drepung Monastery Following China's Continued Implementation of 'Patriotic Education,'" 29 November 05. TCHRD reported that "more than four hundred monks sat on a peaceful solidarity protest." "Tibetan Monks Arrested, Monastery Closed Amid Protests," Radio Free Asia (Online), 29 November 05. RFA reported that "an unknown number of monks from Drepung monastery staged a rare protest in which they gathered at the monastery cathedral courtyard and sat in silence."

[85] "Tibetan Monks Arrested, Monastery Closed Amid Protests," Radio Free Asia. A Drepung official confirmed that the monastery was closed for two days, and said security officials, regular PSB officers, and People's Armed Police "conducted fire drills and completed the annual inspection of cultural items" in the monastery.

[86] Tibetan Centre for Human Rights and Democracy, "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions." According to the report, more than 40 of the 50 nuns at Gyabdrag Nunnery (in Linzhou county) refused to pose for photographs that they believed would be used for propaganda. Officials canceled their enrollment permits and demanded that nunnery officials expel them. (No additional information is available about the alleged 13 expulsions at Shugsib Nunnery, located in Qushui county.)

[87] "New Panchen Lama Enthroned at Ceremony, 8 December Events Summarized," Xinhua, 8 December 95 (Open Source Center, 8 December 95). The enthronement ceremony in Rikaze (Shigatse) was on December 8, 1995. "The ceremony was jointly presided over and monitored by Li Tieying, the representative of the State Council and a State Councilor, Gyalcan Norbu [Gyaltsen Norbu], special commissioner and chairman of the Tibet Autonomous Regional People's Government, and Ye Xiaowen, special commissioner and director of the State Council's Religious Affairs Bureau."

[88] "Tibet Marks Panchen Lama's Enthronement Anniversary," Xinhua (Online), 8 December 05. The report on the tenth anniversary of the December 8, 1995, enthronement states that Gyaltsen Norbu "became the highest ranking figure in Tibetan Buddhism" when he was enthroned at age six, and that the past decade has seen him change from "grow-up [sic] from a child to the leader of Tibetan Buddhism."

[89] Tibetan Government-in-Exile, "Chronology of Events Surrounding Recognition of 11th Panchen Lama," 2002. The 10th Panchen Lama (Lobsang Trinley Choekyi Gyaltsen, or Qoigyi Gyaincan) died on January 28, 1989.

[90] "'Excerpts' of Li Ruihuan's Speech at the Third Meeting of the Leading Group for Locating the Panchen Lama's Child Reincarnation in Beijing on 10 November," Xinhua, 12 November 95 (Open Source Center, 12 November 95).

[91] State Council Information Office, "Tibet—Its Ownership and Human Rights Situation," People's Daily (Online), September 1992.

[92] "An Historical Study of the Communist Party of China's Theory and Policy Concerning Religion," People's Daily, 14 November 03 (Open Source Center, 14 November 03). The article cites a 1990 Party Central Committee Circular on Enhancing United Front Work that said, "We must guide patriotic religious groups and persons to integrate love of religion and love of country, to bring religious activities within the scope of the constitution and law, and adapt to the socialist system."

[93] "Tibet Marks Panchen Lama's Enthronement Anniversary," Xinhua.

[94] "11th Panchen Lama Vows to Serve Motherland," Xinhua (Online), 15 December 05.

[95] "Panchen Lama Makes Rare Public Appearance," Associated Press, reprinted in Yahoo! (Online), 13 April 06.

[96] "Panchen Lama Calls for Self-cultivation for World's Harmony," Xinhua (Online), 13 April 06.

[97] "Harmony With the Environment Through Buddhism," Xinhua (Online), 14 April 06. The Buddhist Association of China and the China Religious Culture Communication Association jointly organized the forum.

[98] "Dalai Lama's Presence at Buddhist Forum Disharmonious: Official," Xinhua (Online), 12 April 06. Qi Xiaofei is the Vice President of the China Religious Culture Communication Association, according to the report.

[99] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06. "The government continued to refuse to allow access to Gendun Choekyi Nyima . . . and his whereabouts were unknown. . . . All requests from the international community to access the boy, in order to confirm his well-being, have been refused."

[100] "It Is Both Illegal and Invalid for the Dalai Lama to Universally Identify the Reincarnated Soul Boy of the Panchen Lama," People's Daily, 1 December 95 (Open Source Center, 1 December 95).

[101] UN Office of the High Commissioner for Human Rights, Committee on the Rights of the Child (Online), "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations," 30 September 05.

[102] UN Commission on Human Rights (Online), "Summary of Cases Transmitted to Governments and Replies Received," 27 March 06, 24–25. The Special Rapporteur on Freedom of Religion or Belief sent a request to the Chinese government for information about Gedun Choekyi Nyima on June 9, 2005. The Chinese government provided a response on September 7, 2005.

[103] "Beijing Pledge on Next Dalai Lama," South China Morning Post (Online), 19 July 05. Jampa Phuntsog, the deputy Party secretary of the TAR, told reporters in Hong Kong, "The choice [of reincarnated lamas] has never been arranged by the Chinese Communist Party."

[104] Ibid.

[105] "Selection of 10th Panchen Lama Announced," Xinhua, 29 November 95 (Open Source Center, 29 November 95).

[106] Ministry of Foreign Affairs (Online), "Did Tibet Become an Independent Country after the Revolution of 1911?," 15 November 00. "In 1792 the Twenty-Nine Article Imperial Ordinance was issued. It stipulated in explicit terms for the reincarnation of the Living Buddhas in Tibet as well as the administrative, military and foreign affairs." (The edict sought to impose Qing control over religious, administrative, military, fiscal, commercial, and foreign affairs. The edict demanded that the Amban, the "Resident Official" representing the imperial court, would have equal status to the Dalai and Panchen Lamas, and function as the supervisor of the Tibetan administration.)

[107] Tibet Information Network, "Search Party Abbot and Assistant 'Held Incommunicado' for 12 Days," 31 May 95. "The ferocity of Chinese anger at the Dalai Lama's pre-emptive announcement has taken observers by surprise, but much of Beijing's claim to rule Tibet rests on its right to appoint the Dalai Lama and the Panchen Lama. China had no involvement in the selection of the 13th Dalai Lama, and its claim to have had a hand in the selection of the current, 14th, Dalai Lama was rubbished by Ngawang Ngapo Jigme, then the seniormost Tibetan official in China, in a newspaper article in China in 1991."

[108] RRA, art. 27, translated on the Web site of China Elections and Governance. "The succession of living Buddhas in Tibetan Buddhism shall be conducted under the guidance of Buddhism bodies and in accordance with the religious rites and rituals and historical conventions, and be reported for approval to the religious affairs department of the people's government . . . ." (At the December 1995 installation of Gyaltsen Norbu, his parents reportedly expressed support for the policy of drawing lots from a golden urn to select the Panchen Lama. They used wording similar to that which appears in Article 27: "We resolutely support the drawing of lots from the golden urn in front of the statue of the Buddhist patriarch, who will choose the soul boy. This conforms to religious ritual and historic convention.") "Panchen Soul Boy Comes From Ordinary Family," Ta Kung Pao, 11 December 95 (Open Source Center, 12 December 95).

[109] The CECC Annual Report for 2005 referred to the period 2002–2004 saying, "About two-thirds of the Tibetan political prisoners detained from 2002 onward are in Sichuan province, according to the PPD. Half of them are monks."

[110] Based on PPD information current in August 2006, there were a total of 14 cases of known political detentions of Tibetan monks and nuns in Gansu and Qinghai provinces in 2005. In comparison, the largest total for any of the years 2000–2004 was six.

[111] Tibetan Centre for Human Rights and Democracy, "China Recommences 'Patriotic Education' Campaign in Tibet's Monastic Institutions." For example, as many as eight Sera monastery monks reportedly detained in July 2005 remain unidentified. (In addition, reports about disagreements between monks and nuns and patriotic education officials at other Lhasa area monasteries and nunneries remain vague.)

[112] "Buddhism Exam in Tibet," People's Daily (Online), 29 July 04. Preliminary examinations for the Geshe degree resumed on July 28, 2004.

[113] Tibetan Government-in-Exile (Online), "The Geshe Degree," last visited 30 August 06. The Geshe degree was established by the 5th Dalai Lama in the 17th century. Of the four levels of Geshe, Lharampa is the highest.

[114] The Gelug tradition, established in the late 14th century, is the largest of several traditions of Tibetan Buddhism that are currently practiced. The Dalai Lama and Panchen Lama are the most revered spiritual teachers of the Gelug.

[115] China Tibet Information Center (Online), "Six Tibetan Monks Receive Geshe Lharampa," 28 June 05. Six monks received the Geshe Lharampa degree on June 27, 2005. (The examinations apparently took place during June, not during the traditional Monlam Chenmo period that spans several days during the first lunar month.) "China Exclusive: Lamas Honored Highest Tibetan Buddhism Degree," Xinhua, 22 March 06 (Open Source Center, 22 March 06). Seven

monks received the Geshe Lharampa degree on March 22, 2006. (The monks reportedly passed examinations during the Monlam Chenmo, the traditional period when the examinations take place. Monlam Chenmo was March 11–15 in 2006.)

[116] Tibetan Centre for Human Rights and Democracy (Online), "Human Rights Situation in Tibet, Annual Report 2005," 21 February 06, 104. "Due to a policy introduced by Chinese authorities, applicants for the degree have to study six books on political thoughts known as 'Love Your Country, Love Your Religion' which are taught in the 'patriotic reeducation' campaign."

[117] The Gu-Chu-Sum Movement of Tibet, "Tibetan Envoy Newsletter," September 2004.

[118] Ibid.

[119] "Buddhism Exam in Tibet," People's Daily. "The exam has been suspended for 16 years after a separatist group headed by Dalai Lama took advantage of this religious event in 1988 to start a riot." (According to eyewitness accounts, the "riot" was a large, peaceful pro-independence demonstration that developed during a religious procession led by Jokhang Temple monks on March 5, 1988. People's Armed Police suppressed the resulting confrontation with overwhelming force.)

[120] The Catholic Church in China is divided into unregistered and registered communities. This division resulted from the government's formation of a "patriotic" Catholic community independent from the Catholic Church in the rest of the world. In the late 1950s the Chinese government established the Catholic Patriotic Association (CPA), a mass organization under Party control, gave it control of all Church property, and convinced a small group of bishops to register with and subordinate themselves to the CPA. Since that time, the government has worked to persuade and coerce Catholic clergy and laity to do the same. The majority of the Catholic clergy refused to register with the CPA and went "underground." Yet it should be noted that in recent years the Chinese government has permitted three "underground" bishops to register with the SARA without registering with the CPA. Roman Malek, "Normalization 'de Jure' and 'de Facto': Remarks on Sino-Vatican Relations," Tripod (Online), Vol. 26, No. 141, Summer 2006. On the situation of the Catholic Church in China today, see Betty Ann Maheu, "The Catholic Church in China: Journey of Faith. An Update on the Catholic Church in China: 2005," paper presented at the 21st National Catholic China Conference, Seattle, Washington, 24 June 05 (available at the Web site of the U.S. Catholic China Bureau).

The Hong Kong diocese's Holy Spirit Study Centre estimates that there are 12 million Catholics in China. "Estimated Statistics for China's Catholic Church (October 2005)," Tripod (Online), Vol. 25, No. 139, Winter 2005. Other foreign analysts give higher estimates. Sandro Magister, "The Bishop of Xi'an's Long March to Rome," L'espresso (Online), 15 March 04 (12–15 million); "China's Christians Suffer for Their Faith," BBC (Online), 9 November 04 (15–20 million). The Chinese government says there are slightly more than 5 million Catholics, but excludes the unregistered community. "Chinese Catholics Mourn for Pope, Better Ties With Vatican Hoped," People's Daily (Online), 4 April 05.

[121] Most detention reports for Catholic clerics originate from the Cardinal Kung Foundation, a U.S. NGO which monitors religious freedom for unregistered Chinese Catholics. In the past year two detention reports have originated from AsiaNews, an Italian Catholic news agency. "Two Underground Priests Arrested," AsiaNews (Online), 28 October 05 (two priests detained in Zhejiang province); "Underground Roman Catholic Bishop Jia Zhiguo Arrested Again in China; Two Other Underground Priests of the Same Diocese Also Arrested," Cardinal Kung Foundation (Online), 9 November 05 (one bishop and two priests detained in Hebei province); "Underground Roman Catholic Priest and Ten Seminarians Arrested," Cardinal Kung Foundation (Online), 17 November 05 (one priest and ten seminarians detained in Hebei province); "Six Underground Roman Catholic Priests Arrested," Cardinal Kung Foundation (Online), 28 November 05 (six priests detained in Hebei province); "Underground Catholic Priest and Seven Deacons Abducted," AsiaNews (Online), 7 December 05 (one priest and seven deacons detained in Hebei province); "An Underground Roman Catholic Priest Arrested in Hebei; Another Underground Bishop Has Disappeared," Cardinal Kung Foundation (Online), 4 January 06 (one priest detained in Hebei province—missing bishop was already in detention); "Two Underground Roman Catholic Priests Arrested in Hebei; Bishop Jia Zhiguo is Still in Detention," Cardinal Kung Foundation (Online), 23 February 06 (two priests detained in Hebei province); "Underground Bishop Jia Zhiguo is Arrested Again," Cardinal Kung Foundation, 6 July 06 (one bishop detained in Hebei province); "Underground Catholic Bishop Yao Liang is Arrested Again in China; Another Priest and Some 90 Catholics Are Also Arrested," Cardinal Kung Foundation, 2 August 06 (one bishop, one priest, 90 Catholic laypersons detained in Hebei province); "Hebei Priest Tortured and Bishop Arrested To Stop Pilgrimage," AsiaNews, 11 August 06 (one priest missing in Hebei province).

[122] In October, there was one incident in Zhejiang; in November, five incidents in Hebei; in December, one incident in Hebei; and in February, one incident in Hebei. Regarding Hebei, see Xing Guofang, "A New Wave of Persecution Against Hebei Catholics," AsiaNews (Online), 27 September 05; Han Li, "Persecution Strengthens Underground Church in Hebei Province," AsiaNews (Online), 29 November 05.

[123] "Two Underground Priests Arrested," AsiaNews.

[124] "Church Destroyed in Fujian, Another To Follow Shortly," AsiaNews (Online), 4 September 06.

[125] "Underground Roman Catholic Bishop Jia Zhiguo Arrested Again in China," Cardinal Kung Foundation.

[126] Ibid; "Bishop Jia of Zhengding Reportedly Released After Five-Month Detention," Union of Catholic Asian News (Online), 25 April 06.

[127] Bernardo Cervellera, "A Vatican Delegation Goes to Beijing," AsiaNews (Online), 27 June 06; "Underground Bishop Jia Zhiguo is Arrested Again," Cardinal Kung Foundation.

[128] "Re-Arrest of Bishop Su Zhimin, Underground Catholic Bishop of Baoding, in Hebei Province, China," Cardinal Kung Foundation (Online), 11 October 97.

[129] "An Underground Catholic Bishop Released After More Than 10 Years of Detention," Cardinal Kung Foundation (Online), 25 August 06; "Monsignor Francis An Shuxin Released After 10 Years," AsiaNews (Online), 26 August 06.

[130] "Überfall auf Ordensschwestern in Xi'an und andere 'Harmoniebrüche'" [Attack on Nuns in Xi'an and Other "Breaches of Peace"], China heute. Informationen über Religion und Christentum im chinesischen, Vol. 24, No. 142, 2005, 198–200.

[131] "Xi'an: 16 Nuns Brutally Beaten for Having Defended a School of the Diocese," AsiaNews (Online), 28 November 05. "Nuns Beaten in Xi'an: the Government Asks the Diocese to Pay for the School That It Already Owns," AsiaNews (Online), 30 November 05; Philip P. Pan, "Five Chinese Nuns Hospitalized After Land Dispute," Washington Post (Online), 2 December 05; "Nuns Beaten in Xi'an: 11 of 40 'Thugs' Under Police Detention," AsiaNews (Online), 12 December 05. A government-controlled Xi'an newspaper also reported the incident. "November 23 Wuxing Jie Catholic Church: The Case of the Beaten Nun Has Been Broken Open," Xi'an Evening News (Online), 8 December 05. In recent years, some local Chinese officials have resorted to hiring "thugs" to intimidate or beat activists, critics, lawyers, journalists, or citizens who challenge corrupt practices. Paul Wiseman, "Young Chinese Make a Living Through Fists," USA Today (Online), 22 November 05.

[132] "Chinese Priests Brutally Beaten in Tianjin: Like the Nuns of Xi'an," AsiaNews (Online), 19 December 05; "The Priests of Taiyuan Call for Justice After Attack," AsiaNews (Online), 19 December 05; "Shanxi Catholics Appeal to Beijing to Get Church Property Back," AsiaNews (Online), 20 December 05; "Priests Return to Shanxi; Government Promises to Defend Church's Property Rights," AsiaNews (Online), 2 January 06. A government-controlled Shanghai newspaper also reported the incident. "Church Land Dispute Solved," Shanghai Daily (Online), 24 December 05.

[133] Cervellera, "Vatican Delegation Goes to Beijing."

[134] The relaxation of control is evident in the authorities permitting the consecration of bishops who had, prior to their consecration, secured Holy See approval. Carol Glatz, "Hong Kong Bishop Calls Ordinations 'Breakthrough' in Chinese Affairs," Catholic News Service (Online), 21 October 05; "New Bishop of Suzhou First of Several Ordinations Expected This Year," Union of Catholic Asian News (Online), 21 April 06.

[135] Anthony Lam, "A Review of Catholic Real Estate Issues in China," Tripod (Online), Vol. 26, No. 140, Spring 2006.

[136] State Council Authorization of the Report by the Religious Affairs Office, National Basic Construction Committee, and Other Agencies Regarding Carrying Out Religious Groups' Real Property Policies and Other Issues [Guowuyuan pizhuan zongjiao shiwuju, guojia jiben jianshe weiyuanhui deng danwei guanyu luoshi zongjiao tuanti fangchan zhengce deng wenti de baogao], issued 16 July 80.

[137] Forum 18 (Online), "The Economics of Religious Freedom," 16 August 06. See also the analyses in the reports of the news agency AsiaNews (Online).

[138] Lam, "Review of Catholic Real Estate Issues in China;" "Elderly Bishop Spends Birthday Attending to Church Property Duties," UCAN (Online), 26 June 06. "Church Endures Economic Persecution as Patriotic Association Tries to Seize Church Property," AsiaNews (Online), 1 September 06.

[139] "Bishop With Papal Blessing," Beijing Review (Online), 11 May 06; "Independent Ordination of Bishops Right Path for China," Xinhua (Online), 16 May 06. See also "China Defends Ordination of Catholic Bishops," Xinhua (Online), 6 May 06; "Criticism on Bishops Ordination Unfounded: FM," Xinhua (Online), 7 May 06; "Ordination of Bishops in Line With Rules: Chinese Catholics," Xinhua (Online), 12 May 06. For an account of official intimidation and manipulation in the process of selecting bishops, see Zhen Yan, "New Challenges Facing the Catholic Church in Mainland China," Tripod (Online), Vol. 26, No. 141, Summer 2006. CPA domination of the registered Catholic community has extended beyond the selection of Catholic bishops and priests to altering Catholic moral teaching. In 1995, the registered bishops issued a pastoral letter approving the government's population planning policy. "Dignity and Responsibility of Women," Catholic International, Vol. 7, No. 1, January 1996, 24–27. Insisting that the Holy See lacks the authority to select bishops, the government does not permit unregistered bishops to be buried as priests. "No Solemn Funeral Service for Mgr. Guo Wenzhi, Underground Bishop of Qiqihar," AsiaNews (Online), 30 June 06.

[140] Ren Yanli, "China and the Vatican Will Create a Win-Win Situation by Improving Bilateral Ties," Ming Pao, 22 June 06 (Open Source Center, 22 June 06) (authored by a Chinese academic); "A New Chinese Bishop Consecrated With Vatican Approval," AsiaNews (Online), 19 October 05; "Government Approves New Bishop After Six Year Wait," Hong Kong Sunday Examiner (Online), 30 April 06.

[141] "Chinese Government Selects Catholic Bishops Over Holy See Objections," CECC China Human Rights and Rule of Law Update, May 2006, 2; Anthony Lam, "Unauthorized Ordinations An Obstacle to Sino-Vatican Relations," Tripod (Online), Vol. 26, No. 141, Summer 2006.

[142] "Nine Bishops Take Part in Episcopal Ordination Lacking Papal Mandate," Union of Catholic Asian News (Online), 1 May 06; "New Bishop Ordained in Anhui Without Pope's Permission," AsiaNews (Online), 3 May 06; "Zhan Silu, a Bishop Against Everything and Against Everyone," AsiaNews (Online), 15 May 06.

[143] "Young Bishops Arrive in Beijing to Attend Government-Organized Meeting," Union of Catholic Asian News (Online), 20 May 06; "State Officials Say China Will Ordain More of Its Own Bishops," Union of Catholic Asian News (Online), 24 May 06.

[144] "Clandestinely Ordained Bishop Taken Away by Force," Union of Catholic Asian News (Online), 14 September 06. "Rome-Approved Bishop Defies Ban," South China Morning Post (Online), 29 May 06; Bernardo Cervellera, "Beijing Has to Free Itself of the Ridiculous Politics of the Patriotic Association," AsiaNews (Online), 29 May 06.

[145] Betty Ann Maheu, "The Catholic Church in China," America (Online), 7 November 05; "Estimated Statistics for China's Catholic Church," Tripod (138 dioceses and 103 bishops, 64 reg-

istered, 39 unregistered); Jeroom Heyndrickx, "Confrontation and Lack of Dialogue Cause a New China-Vatican Conflict," Union of Catholic Asian News (Online), 8 May 06; "China to Defy Rome, Ordain Second Bishop in Days," Reuters (Online), 2 May 06.

[146] Maheu, "Catholic Church in China."

[147] CECC Staff Interviews; Ibid.

[148] CECC Staff Interview.

[149] Hans Waldenfels, S.J., "La Cina sta aprendo: Impressioni di un viaggio" [China Is Opening Up: Impressions from a Journey], La Civilta Cattolica, No. 3278, 15 October 05, 186–196.

[150] CECC Staff Interviews. In March 2004, a Vatican journal stated that 49 of 79 registered bishops had been approved by the Holy See. "C'è un Risveglio Religioso in Cina?" [Is There a Religious Reawakening in China?], La Civiltà Cattolica Vol. 155, No. 3689, 6 March 04. See also, Maheu, "Catholic Church in China."

[151] "Catholics Regret Over Vatican Decision," China Daily (Online), 12 September 05; Bernardo Cervellera, "Chinese Bishops Invited to Rome: Government Has the Last Word," AsiaNews (Online), 12 September 05; "Negotiations Still On for Chinese Bishops' Rome Visit," AsiaNews (Online), 16 September 05.

[152] CECC Staff Interview. Dorian Malovic, Le Pape Jaune: Mgr. Jin Luxian, Soldat de Dieu en Chine Communiste [The Yellow Pope: Monsignor Jin Luxian, Soldier of God in Communist China], (Paris, 2006), 255.

[153] CECC Staff Interviews; China Church Quarterly (Online), nos. 64 (Fall 2005), 65 (Winter 2006). Verbiest Koerier/ Christenen en China (Online), March 2006; China heute. "First Catholic-Run Non-Profit Organization Registered With Government," UCAN (Online), 3 August 06; "La Riconciliazione Non è un'Utopia" [Reconciliation Is Not a Utopia], Mondo e Missione (Online), August–September 06 (Caritas groups established in Beijing parishes).

[154] Malek, "Normalization 'de Jure' and 'de Facto': Remarks on Sino-Vatican Relations."

[155] One analyst has pointed out that signs indicating that the Chinese government was hardening its attitude toward the Holy See began to accumulate in July and August of 2005. Cervellera, "Beijing Has to Free Itself of the Ridiculous Politics of the Patriotic Association."

[156] Ambrose Leung, "Stay Out of Politics, Beijing Warns Cardinal Zen," South China Morning Post (Online), 24 February 06; Ambrose Leung, "Cardinal Unfazed by Beijing Warning," South China Morning Post (Online), 25 February 06. The government's warning led to an exchange between CPA head Liu Bainian and Cardinal Zen; Ambrose Leung, "'Scaremonger' Is Denounced by Zen: Cardinal Says 'Self-Proclaimed' Catholic Spokesman Is Fearful of Sino-Vatican Ties," South China Morning Post (Online), 10 March 06; "Chinese Catholic Official Says Hong Kong's Zen Bad for Ties With Vatican," Apple Daily (Online), 13 March 06; "Joy in the Church, Fears in Beijing Over Msgr. Zen's Nomination as Cardinal," AsiaNews (Online), 24 March 06; "Gentle Cleric's Stature Grows As He Risks Ire of China," New York Times (Online), 8 July 06.

[157] "China, Vatican in Contact for Restoring Ties," People's Daily (Online), 3 April 06.

[158] "Beijing's Bishop Is a Slap in the Vatican's Face," South China Morning Post (Online), 1 May 06. "Dichiarazione del Direttore della Sala Stampa della Santa Sede, Dr. Joaquín Navarro-Valls, circa le Ordinazioni Episcopali nella Cina Continentale" [Declaration of the Director of the Press Office of the Holy See, Dr. Joaquín Navarro-Valls, Regarding the Episcopal Ordinations in Mainland China], Press Office of the Holy See, 4 May 06; "Usurping Proper Authority," Hong Kong Sunday Examiner (Online), 14 May 06.

[159] Bernardo Cervellera, "A Vatican Delegation Goes to Beijing," AsiaNews (Online), 27 June 06; Ambrose Leung, "No Consensus in Secret Beijing-Vatican Talks," South China Morning Post (Online), 21 July 06.

[160] The Islamic Association encompasses a national-level association and local associations at the provincial level and lower.

[161] See, e.g., "Clear Tasks, Carrying Out Our Functions: Thoughts on the Issue of Completely Bringing into Play the Functions of the Islamic Associations" [Mingque renwu lüxing zhineng—guanyu chongfen fahui yixie zuoyong wenti de sikao], China Muslim, Vol. 2, 2005, 25–27; "Strengthen Quality on the Inside, Cultivate Good Form on the Outside, Lead Muslims of All Ethnicities to Establish a Socialist Harmonious Society—Work Report from the 7th Session of the 3rd Standing Committee of the Islamic Association of China" [Nei qiang suzhi wai shu xingxiang dailing gezu musilin gongjian shehuizhuyi he hexie shehui—zai Zhongguo yixie qijie sanci changweihui huiyishang de gongzuo baogao], China Muslim, Vol. 6, 2005, 7–11; "Committee to Spread True Koran," China Daily (Online), 24 April 01; "Islamic Association of China Islamic Affairs Steering Committee Holds Second Meeting in Beijing" [Zhongguo yisilanjiao jiaowuzhidao weiyuanhui dierjie huiyi zai jing juxing], China Muslim, Vol. 6, 2005, 12.

[162] Regulation on Religious Affairs (RRA) [Zongjiao shiwu tiaoli], issued 30 November 04, art. 11.

[163] RRA, art. 43.

[164] "China Exclusive: Chinese Muslims to Get Mecca Service," Xinhua, 13 May 06 (Open Source Center, 13 May 06).

[165] "Islamic Association of China Islamic Affairs Steering Committee Holds Second Meeting in Beijing," China Muslim.

[166] "The Management Science of Chinese Mosques: Employing Mosque Personnel" [Zhongguo qingzhensi de guanli kexue: qingzhensi jiaozhi renyuan pinren shanggang], China News Agency (Online), 12 May 06. See also "Islamic Congress Establishes Hajj Office, Issues New Rules," CECC China Human Rights and Rule of Law Update, June 2006, 12–13.

[167] These groups are the Hui, Uighur, Kazak, Dongxiang, Kirgiz, Salar, Tajik, Bonan, Uzbek, and Tatar.

[168] State Ethnic Affairs Commission (Online), "State Ethnic Affairs Commission Opens First Consulting Work Group Meeting of the Leading Group for Drafting 'State Council Regulation on Managing Halal Foods'" [Guojia minwei zhaokai "Guowuyuan qingzhen shipin guanli tiaoli" qizao gongzuo lingdao xiaozu diyici guwen gongzuo huiyi], 15 November 05.

[169] Circular on Comprehensively Examining Publications Regarding Islam [Guanyu quanmian jiancha sheji yisilanjiao de chubanwu de tongzhi], issued 15 October 93; Dru Gladney, "Islam in China: Accommodation or Separatism," 174 China Quarterly 451, 461 (2003).

[170] Circular of Provisions on Self-Funded Pilgrimages [Guanyu zifei chaojin ruogan guiding de tongzhi], issued 28 January 01 (partly annulled), art. 5.

[171] Elisabeth Allès, "Muslim Religious Education in China," 45 Perspectives Chinoises (Online) (January–February 2003); Will Religion Flourish Under China's New Leadership? Staff Roundtable of the Congressional-Executive Commission on China, 24 July 03, Testimony of Dr. Jacqueline M. Armijo-Hussein, Assistant Professor, Department of Religious Studies, Stanford University; Jackie Armijo, "Islamic Education in China," 9 Harvard Asia Quarterly (Online), (Winter 2006). Armijo reports that, according to some of her informants, authorities have not permitted independent Islamic colleges to be established in recent years.

[172] China Development Brief (Online), "Local Resources, Government, Are Keys to Sustainability for Muslim NGOs," 21 March 06.

[173] One charity organization has established an office in Gansu. Another organization, which supports projects in the XUAR, does not have a direct presence there and works with local Chinese charity organizations. See China Development Brief, "Muslim Hands Reach Out to Gansu" (Online), 6 May 05; "MH in China: 70 Kids have Cleft Lip Correction," Muslim Hands Feedback 2004 (Online); CECC Staff Correspondence.

[174] The government's 2000 census listed Uighurs as 45.21 percent of the XUAR population and the Han population as 40.57 percent, out of a total population of 18.46 million. Statistics cited in Stanley Toops, "Demographics and Development in Xinjiang after 1949," East-West Center Washington Working Papers No. 1, May 2004, 1.

[175] Xinjiang Uighur Autonomous Region Implementing Measures for the Law on the Protection of Minors [Xinjiang weiwuer zizhiqu shishi "weichengnianren baohufa" banfa], issued 25 September 93, art. 14.

[176] The national law on the protection of minors includes no such provision. PRC Law on the Protection of Minors, enacted 4 September 91. Other provincial-level regulations have dealt with aspects of religious practice among minors but are not as restrictive as the XUAR measures. See, e.g., Fujian Province Implementing Measures on the Law on the Protection of Minors [Fujiansheng shishi "Zhonghua renmin gongheguo weichengnianren baohufa" banfa], issued 21 November 94, amended 25 October 97, art. 33. See also Human Rights Watch and Human Rights in China, "Devastating Blows: Religious Repression of Uighurs in Xinjiang," April 2005, 58.

[177] The 2001 amendments, obtained by Human Rights Watch and Human Rights in China, have not been made public. Human Rights Watch, "Devastating Blows," 33–34.

[178] Ibid., 33–42. This protection for normal religious activities is stated in Article 36 of China's Constitution, as well as in national and regional regulations on religion. See, e.g., RRA, art. 3.

[179] Human Rights Watch, "Devastating Blows," 31–32, 42–47.

[180] Cited in Graham E. Fuller and Jonathan N. Lipman, "Islam in Xinjiang," in Xinjiang: China's Muslim Borderland, ed. S. Frederick Starr (Armonk, NY: M.E. Sharpe, 2004), 331.

[181] "Teacher and 37 Students Detained for Reading Koran in China," Agence-France Presse (Online), 15 August 05; Uyghur Human Rights Project (Online), "Three Detained in East Turkistan for 'Illegal' Religious Text," 3 August 05.

[182] Human Rights Watch, "Devastating Blows," 62–63; "China Cracks Down on Its Muslims," Agence France-Presse, reprinted in the Washington Times and posted on the East Turkistan Information Center Web site, 23 November 01; "China Steps Up Religious Controls Over Muslim Uyghurs," Radio Free Asia (Online), 17 November 04.

[183] Authorities expelled a university student in 2001 after they found her praying in her dorm room. "China Cracks Down on Its Muslims," Agence France-Presse.

[184] "China Bans Officials, State Employees, Children from Mosques," Radio Free Asia (Online), 6 February 06. Will Religion Flourish Under China's New Leadership?, Testimony of Dr. Jacqueline M. Armijo-Hussein.

[185] Human Rights Watch, "Devastating Blows," 52, 55–57.

[186] While the authorities permit authorized religious leaders and some groups to take part in social programs, they ban *meshrep,* which are small informal social gatherings with religious overtones that traditionally discuss and address social issues such as drug abuse. See, e.g., Jay Dautcher, "Public Health and Social Pathologies in Xinjiang," in Xinjiang: China's Muslim Borderland, 285–86; U.S. Commission on International Religious Freedom (USCIRF), Policy Focus: China, 9 November 05, 7.

[187] USCIRF, Policy Focus: China, 6.

[188] "China Bans Officials, State Employees, Children from Mosques," Radio Free Asia.

[189] "Chinese Communist Party Takes Strict Precautions Against Separatist Activities at Mosques During Kurban" [Zhonggong yanfang xinjiang qingzhensi zai ku'erbangjie gao fenlie huodong], Central News Agency, reprinted in Epoch Times (Online), 9 January 06.

[190] "Urumqi Strikes Against Illegal Activities in Minority Language Publishing Market" [Wulumuqishi daji minzu yuyan chubanwu shichang feifa huodong], Tianshan Net (Online), 15 February 06.

[191] "Xinjiang Uighur Autonomous Region Destroys 29 Tons of Illegal Books" [Xinjiang weiwuer zizhiqu xiaohui 29 dun feifa tushu], Tianshan Net (Online), 16 March 06.

[192] "Wang Lequan Points Out, Resolutely Resist the Use of Religion to Carry Out Infiltration from Outside," Xinjiang Daily, 3 April 06 (Open Source Center, 3 April 06).

[193] U.S. Department of State, Country Reports on Human Rights Practices—2005, China.

[194] "Uighurs Face Extreme Security Measures; Official Statements on Terrorism Conflict," CECC China Human Rights and Rule of Law Update, May 2005, 12.

[195] Ibid. See also U.S. Department of State, Country Reports on Human Rights Practices—2005, China.

[196] Human Rights Watch, "Devastating Blows," 71–75.

[197] The term is also referred to as the "three forces." Chinese sources list "extremism" as one of the three forces and use the term to mean religious extremism. See, e.g., "Establishing a Harmonious Society Cannot Be Separated From an Environment of Good Social Order" [Goujian hexie shehui libukai lianghao de shehui zhi'an huanjing], Xinjiang Daily, reprinted in Tianshan Net (Online), 13 January 06.

[198] See, e.g., Human Rights Watch, "Devastating Blows," 14–21; Nicolas Becquelin, "Xinjiang in the Nineties," No. 44, The China Journal, (July 2000), 65, 69. Becquelin and Human Rights Watch and Human Rights in China pinpoint the 1990 Baren uprising as the "turning point" for government policies in the XUAR. Becquelin notes unrest also took place throughout the 1980s, although these are less documented.

[199] Human Rights Watch, "Devastating Blows," 73.

[200] State Administration for Ethnic Affairs (Online), "Important Meaning" [Zhongyao yiyi], 13 July 04. See also Gardner Bovingdon, "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent," East-West Center Washington 2004, Policy Studies 11, 44; Becquelin, "Xinjiang in the Nineties," 74–76; Stanley W. Toops, "The Demography of Xinjiang," in Xinjiang: China's Muslim Borderland, 247; "Some Suggestions of the State Council on Continuing to Press Ahead with the Development of the Western Region," Xinhua, 22 March 04 (Open Source Center, 22 March 04).

[201] See, e.g., Bovingdon, "Autonomy in Xinjiang," 11, 29–30, 44; "Xinjiang Will Recruit Through Examination 700 Civil Servants to Enrich Cadre Ranks in Southern Xinjiang" [Xinjiang jiang mianxiang shehui zhaokao 700 ming gongwuyuan chongshi nanjiang ganbu duiwu], Xinjiang Daily, reprinted in Tianshan Net (Online), 7 April 05; "947 'Assist Xinjiang' Cadres Leave for North and South of the Tianshan" [947 ming yuanjiang ganbu fenfu tianshan nanbei], Xinjiang Daily, reprinted in Tianshan Net (Online), 1 September 05.

[202] "Xinjiang Focuses on Reducing Births in Minority Areas to Curb Population Growth," CECC China Human Rights and Rule of Law Update, April 2006, 15–16; "Xinjiang Reports High Rate of Population Increase," CECC China Human Rights and Rule of Law Update, March 2006, 16–17. The government did not acknowledge Han migration as the primary cause of the region's population growth, but demographer Stanley Toops has noted that Han migration since the 1950s is responsible for the "bulk" of the XUAR's high population growth in the past half-century. Toops, "Demographics and Development in Xinjiang after 1949," 1.

[203] The government's language program, which it calls "bilingual education," focuses on transitioning students away from using minority languages in school. See, e.g., "Xinjiang Government Promotes Mandarin Chinese Use Through Bilingual Education," CECC China Human Rights and Rule of Law Update, January 2006, 17–18; "Xinjiang Official Describes Plan to Expand Use of Mandarin in Minority Schools," CECC China Human Rights and Rule of Law Update, March 2006, 13; "Craze for Studying Mandarin on Rise in Artush" [Atushi xingqi xue hanyu re], Xinjiang Daily, 11 July 06.

[204] "Chinese Court Jails Uyghur Editor for Publishing Veiled Dissent," Radio Free Asia (Online), 10 November 05.

[205] See the CECC Political Prisoner Database for more information on these cases.

[206] "Xinjiang Authorities Question Rebiya Kadeer's Son, Name Him A Criminal Suspect," CECC China Human Rights and Rule of Law Update, May 2006, 5–6; "Rebiya Kadeer's Children Held in Custody, Beaten," CECC China Human Rights and Rule of Law Update, June 2006, 2.

[207] "Rebiya Kadeer's Sons Charged with State Security and Economic Crimes," CECC China Human Rights and Rule of Law Update, July 2006, 3–4.

[208] "Rebiya Kadeer's Children Held in Custody, Beaten," CECC China Human Rights and Rule of Law Update, June 2006, 2; Uyghur Human Rights Project (Online), "Rebiya Kadeer's Youngest Son 'Confesses' to Crimes under Torture," 6 July 06.

[209] Uyghur Human Rights Project (Online), "Two of Rebiya Kadeer's Sons Arraigned, Trial Imminent," 12 July 06.

[210] "Rebiya Kadeer's Sons Charged with State Security and Economic Crimes," CECC China Human Rights and Rule of Law Update, July 2006, 3.

[211] Russian Orthodox Church claims that there are about 12,000 Chinese Orthodox, most of them Chinese citizens of Russian or mixed-Russian descent. Most of them are located in northern China, Beijing, or Shanghai. "The Revival of the Orthodox Church in China Is in the Hands of Our Lord," No. 15, Sobornost (Online), (April 2006); "Keeping the Faith," South China Morning Post (Online), 28 March 05; "About Orthodoxy in China: Interview with Archpriest Nikolai Balashov," RIA Novosti (Online), 13 October 04.

[212] In December 2005, Father Dionisy Pozdnyaev, a Russian Orthodox priest in Hong Kong, met with SARA officials in Beijing. "A Priest of the Russian Orthodox Church Visited the Religious Affairs Bureau of the People's Republic of China," Orthodoxy in China (Online), 19 December 05. In May 2006, a senior SARA official met with Russian Orthodox clerics in Moscow. "Metropolitan Kyrill Met with Delegation of PRC's Religious Affairs Bureau," Orthodoxy in China (Online), 26 May 06. In July 2006, on the occasion of the World Summit of Religious Leaders, Ye Xiaowen, Director of the SARA, met with Russian Orthodox clerics in Moscow. According to the South China Morning Post, "Ye Xiaowen pledged to 'resolve issues of concern'" but made it clear that a re-established Orthodox Church in China would have to be self-governing, self-supporting, and self-propagating.

[213] "Zhejiang and Other Provincial Governments Issue New Religious Regulations," CECC China Human Rights and Rule of Law Update, June 2006, 9–10. The South China Morning Post reported that SARA has established an office of Orthodox affairs, headed by Wang Yanming. "Visit Points to Revival of Orthodox Church," South China Morning Post (Online), 7 July 06.

[214] AsiaNews reported that the Russian Orthodox Church will build a chapel in Beijing within the perimeter of the Russian Embassy, and Northeast reported that a Russian Orthodox church will be rebuilt in Harbin city, Heilongjiang province to house an exhibition of Russian arts and crafts. "Russian Orthodox Church To Be Set Up in Beijing Shortly," AsiaNews (Online), 6 July

06; "'Saint Nicholas Church' To Be Recreated in Bingcheng" ["Sheng nigula jiaotang" jiang zaixian bingcheng], Northeast (Online), 6 July 06.

[215] "China's Isolated Xinjiang Religious Minorities," Forum 18 (Online), 15 August 06.

[216] CECC Staff Interview; "Visit Points to Revival of Orthodox Church," South China Morning Post; "Russian Orthodox Church To Be Set Up in Beijing Shortly," AsiaNews.

[217] The China Aid Association, which monitors official treatment of house church members, reported on June 25, 2006 that between May 2005 and May 2006, officials detained 1,958 house church members and leaders. "Persecution Report by Province in China Released Today," China Aid Association (Online), 25 June 06. For reports of torture and abuse in 2005, see, "China Torture and Abuse Report Released Today; Attention on Religious Freedom in China Urged by US Rights Organizations," China Aid Association (Online), 18 April 06. Regarding the campaign against house church Protestants and others which began in 2002, see, David Murphy, "Mass Appeal," Far Eastern Economic Review (Online), 27 December 01; Sandro Magister, "Lo Strano Ritiro Spirituale di Jiang Zemin e Compagni" [The Strange Spiritual Retreat of Jiang Zemin and His Companions], L'espresso (Online), 15 January 02. For earlier documents dating from 1999–2001, see, "Report Analyzing Seven Secret Chinese Government Documents," Freedom House (Online), 11 February 02; CECC, 2002 Annual Report, 2 October 2002.

[218] "24 House Church Leaders Missing After Police Raid; CAA Releases the Defense Statement of Religious Group Leader Xu Shuangfu by His Lawyers," China Aid Association (Online), 17 March 06.

[219] "House Church Pastor Detained in Hubei for Religious Study; 15 House Church Leaders Still Detained After Brutal Police Raid in Henan; Prominent Rights Lawyers Intervene," China Aid Association (Online), 21 March 06; "5 Christians Receive Formal Arrest Notifications from Xiaoshan Zhejiang Police, 3 Christians Suffer Broken Ribs in Prison, Christian Reporter Fired," China Aid Association (Online), 9 August 06.

[220] "Massive Arrest of Church Leaders including Americans in Yunnan Province; CAA Issues Heartbreaking True Stories on Persecution inside China," China Aid Association (Online), 19 April 06.

[221] "Persecution Report by Province in China Released Today," China Aid Association.

[222] Ibid. 823 of 1,958 detentions between July 2005 and May 2006. CECC Staff Interview; "Six House Church Leaders Arrested in Henan; Arrested Church Leaders in Hunan Drugged for Information," China Aid Association (Online), 7 November 05; "Registered Church Raided in Henan; Prominent Musician in Beijing under House Arrest over Christian Fears; Multiple Arrests of House Church Leaders Occurred in Xinjiang and Shanxi," China Aid Association (Online), 10 March 06.

[223] "Nearly 50 House Church Leaders Arrested in Hebei; Some Beaten," China Aid Association (Online), 20 October 05; "Lawyer for House Church Pastor Asked to Leave Beijing Before U.S. Presidential Visit; One Well-Known House Church Leader Kidnapped in Beijing; Eight More House Church Pastors and Believers Arrested," China Aid Association (Online), 18 November 05; "On Christmas Day, Christmas Services Stopped in Xinjiang; House Church Leaders Arrested; Persecution Against Beaten Christian Businessman Intensified," China Aid Association (Online), 27 December 05; "House Churches in Beijing and Jilin Raided; Public Security Denied Jailed Beijing Pastor to Meet with His Mother; Five Detained Church Leaders in Xinjiang Released," China Aid Association (Online), 16 January 06; "Chinese Public Security Bureau Close School with Mass Arrests in Anhui Province; Government Crack Down on Independent House Church Movement Intensified," China Aid Association (Online), 1 March 06.

[224] "Large House Church Destroyed in Zhejiang; Hundreds of Christians Wounded and Arrested," China Aid Association (Online), 31 July 06; "Zhejiang Officials Demolish House Churches, Beat and Detain House Church Members," CECC China Human Rights and Rule of Law Update, September 2006, 6.

[225] "Jailed Church Leader Sentenced to Three Years for Printing Christian Literature," China Aid Association (Online), 8 November 05.

[226] "Beijing Pastor Forced to Withdraw Further Appeal; Only One Defendant Decides to Appeal," China Aid Association (Online), 16 November 05.

[227] "Officials Arrest Third House Church Pastor for Giving Away Bibles," CECC China Human Rights and Rule of Law Update, July 2006, 9.

[228] "Senior Chinese House Church Leader Arrested; More Churches Raided Before Christmas," China Aid Association (Online), 10 December 04.

[229] Timothy Chow, "Chinese House Church Pastor Sentenced to 7.5 Years," Compass Direct (Online), 6 July 06; "Prominent House Church Leader Zhang Rongliang Sentenced to Seven and a Half Years in Prison; Family Members Concerned About His Health; CAA Released Prosecution Paper," China Aid Association (Online), 8 July 06.

[230] "Message from Pastor Gong Shengliang's Daughters Regarding His Health," China Aid Association (Online), 27 March 06; "Petition for Medical Parole for Pastor Gong by Family Members," China Aid Association (Online), 6 April 06; "South China Church Senior Leader Abused Again in Prison," China Aid Association (Online), 2 June 06.

[231] "House Church Members in Henan, Inner Mongolia, Jilin, and Sichuan Accused of Cult Activities," CECC China Human Rights and Rule of Law Update, September 2006, 7.

[232] "Three Controversial Religious Leaders Sentenced to Death; One More House Church Leader Arrested in Sichuan," China Aid Association (Online), 6 July 06; "China Sentences Sect Members to Death for Murders," Reuters (Online), 7 July 06.

[233] Regulation on Religious Affairs [Zongjiao shiwu tiaoli], issued 30 November 04, art.12.

[234] For discussion of discouraged practices (including praying for the sick), discouraged sermon subjects (including the redemptive value of suffering, heavenly life, and the return of Christ at the end of time), as well as of the occasional accommodation of denominational differences within the TSPM, see, "Three Self Patriotic Movement Churches," OMF International (Online), undated. For discussion of the theological directions in which the TSPM has applied pressure on

its members, see, Li Xihyuan, Theological Construction—or Destruction, An Analysis of the Theology of Bishop K.H. Ting (Ding Guangxun) (Streamwood, Illinois: Christian Life Press, 2003).

[235] Ding Guangxun, "A Call for Adjustment of Religious Ideas," Chinese People's Political Consultative News, 4 September 98, reprinted in Li Xinyuan, Theological Construction—or Destruction, 109–111. For further indications of the pressure to make Protestant theology conform to state ideology, see Chinese Theological Review 19 (2005); "Voices in the Dark: Quotes from the Suffering Church," Compass Direct (Online), 29 August 05.

[236] Other aspects which "theological construction" would weaken include belief in the centrality of salvation, the importance of faith, and the divinity of Jesus. Chinese Theological Review 17–19 (2003–2005).

[237] Articles collected in the 2005 edition of Chinese Theological Review do not propound "theological construction" as directly as those in the 2004 and 2003 editions. The 2005 edition of Chinese Theological Review acknowledges the opposition to the official theological approach and asks for "tolerance," in effect, for "theological construction."

[238] "Registered Church Raided in Henan; Prominent Musician in Beijing Under House Arrest Over Christian Fears; Multiple Arrests of House Church Leaders Occurred in Xinjiang and Shanxi," China Aid Association.

[239] Henan Regulation on Religious Affairs [Henan zongjiao shiwu tiaoli], issued 30 July 05, art. 15. See also, "Three Self Patriotic Movement Churches," OMF International (Online), undated.

[240] "China's Isolated Xinjiang Religious Minorities," Forum 18 (Online), 15 August 06; "Authorities Raid House Churches, Arrest 80," Compass Direct (Online), 28 July 06.

[241] "The Economics of Religious Freedom," Forum 18 (Online), 16 August 06.

[242] Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 6(i).

[243] "Massive Arrest of Church Leaders Including Americans in Yunnan Province; CAA Issues Heartbreaking True Stories on Persecution inside China," China Aid Association (Online), 19 April 06; "Multiple Arrests Occurred in Shandong and Jiangsu; One South Korea Missionary Expelled from China; Prominent Chinese Legal Scholar Banned to Go Abroad," China Aid Association (Online), 16 May 06 (one Korean expelled).

[244] CECC Staff Interviews. "Multiple Arrests Occurred in Shandong and Jiangsu; One South Korea Missionary Expelled from China; Prominent Chinese Legal Scholar Banned to Go Abroad," China Aid Association. Regarding Zhang Rongliang's alleged travel and punishment, see Chow, "Chinese House Church Pastor Sentenced to 7.5 Years."

[245] See, e.g., "Becoming a Believer," Beijing Review (Online), 1 June 06. Some observers consider that the Party fears Christianity more than other religions. Gerolamo Fazzini, "Cina. Se il Partito Teme la Fede" [China: If the Party Fears the Faith], Mondo e Missione (Online), February 2006.

[246] As an example of a theological statement produced by the house church movement, see the "Confession of Faith of the China House Church Alliance," China Aid Association (Online), 10 February 06. There are early signs of an emerging denominational consciousness, sometimes developing over disagreements as to religious practices, and the growing theological sophistication of the unregistered house churches. CECC Staff Interviews. "Threat of Denominationalism Requires Vigilance," Amity News Service (Online), August 2004. On evangelicalism and Pentecostalism in China, see David Aikman, Jesus in Beijing: How Christianity Is Transforming China and Changing the Global Balance of Power (Washington, D.C.: Regnery, 2003); Samuel Pearson, "Jesus in Beijing: A Review Essay," Encounter LXV (Autumn 2004), 393–402.

[247] Jason Kindopp and Carol Lee Hamrin, eds., God and Caesar in China: Policy Implications of Church-State Tensions (Washington, D.C.: Brookings Institution, 2004), 137–139.

[248] "China Exclusive: China Launches Association to Promote Outbound Religious Exchanges," Xinhua (Online), 30 December 05. Some of the most prominent contacts in the last year were made in connection with the Bible Ministry Exhibition which toured the United States in the first six months of 2006. TSPM leaders spoke at a number of events promoting the exhibit. "Bible Ministry Exhibition of Church in China to Be Held in US," Xinhua (Online), 18 April 06; "Chinese Central Government Launched Religious Propaganda Campaign in the US," China Aid Association (Online), 20 May 06.

[249] Regulation on Religious Affairs, arts. 35–37.

[250] "China's Prosperity Inspires Rising Spirituality," Christian Science Monitor (Online), 9 March 06.

[251] Paul Hattaway, Brother Yun, Peter Xu Yongze, and Enoch Wang, Back to Jerusalem: Three Chinese House Church Leaders Share Their Vision to Complete the Great Commission (Carlisle, UK: Piquant, 2003), 13 (80–100 million); Gianni Criveller, "Pechino nuova Antiochia?" [Beijing, the New Antioch?], Mondo e Missione (Online), July-August 2005 (less than 30 million); "Millions All Over China Convert to Christianity," Telegraph (Online), 3 August 05; "Just How Many Christians and Communists Are There in China?" Ecumenical News International (Online), 14 September 05; Caroline Fielder, "The Growth of the Protestant Church in China," paper presented at the 21st National Catholic China Conference, Seattle, Washington, 27 June 05 (available at the Web site of the U.S. Catholic China Bureau). As to estimates in official Chinese sources, see Ni Yanshuo, "Religious Training Remains Challenge in China," Beijing Review (Online), 2 June 06 (16 million Protestants in China).

[252] "China to Try New Maneuver to Wrestle with House Churches," China Information Center (Online), 9 March 06.

[253] Fazzini, "Cina. Se il Partito Teme la Fede" [China: If the Party Fears the Faith]; Wang Zhicheng, "Communist Party in Crisis: 20 million Members Go to Church or Temple," AsiaNews (Online), 28 February 06; Gerolamo Fazzini, "Non c'è Società Senza Religione" [There Is No Society Without Religion], Mondo e Missione (Online), February 2006.

[254] Fazzini, "Cina. Se il Partito Teme la Fede" [China: If the Party Fears the Faith]; Magister, "Twenty Million Communists at Prayer."

[255] Ibid.

[256] Angelo Lazzarotto, "Religione Censurata a Metà" [Religion Censored Halfway], Mondo e Missione (Online), April 2006.

[257] CECC Staff Interviews; You Bin, Wang Aiguo, and Gong Yukuan, "Christianity in a Culture of Ethnic Pluralism: Report on Christianity Among the Minorities of Yunnan," 19 Chinese Theological Review 100–124 (2005).

[258] See the Web site of the Amity Foundation at www.amityfoundation.org. The TSPM also encourages the church in "participating in important social tasks to eliminate poverty." Wang Peng, "Koinonia and Ethical Thought in Paul's Epistles," 19 Chinese Theological Review 81 (2005).

[259] CECC Staff Interview.

[260] "The Economics of Religious Freedom," Forum 18 (Online), 16 August 06.

[261] "House Church Lawyers Promote Religious Freedom Through the Rule of Law," CECC China Human Rights and Rule of Law Update, July 2006, 3; "Yu Jie: Author Who Fights for Those Who Fear to Speak Out," AsiaNews (Online), 15 July 06; "Christian Activists Visit 'Petitioners' Village in Beijing," AsiaNews (Online), 19 July 06; "More Civic Activists Are Becoming Christian and Finding Support for Their Causes in the Bible," Newsweek (Online), 24 July 06; "Intellectuals and Religious Freedom," Forum 18 (Online), 2 August 06; David Aikman, "A More Practical Approach," Christianity Today (Online), 16 August 06.

[262] Eric Eckholm, "China Enacts Tough Law to Undercut Banned Cult," New York Times (Online), 30 October 99.

[263] "Harbin Police Kill [Falun Gong Practitioner], Destroy Corpse; Zhang Yanchao's Remains are Too Horrible to Look At" [Ha'erbin jing sha ren mieshi; Zhang Yanchao yiti canburenmu], Epoch Times (Online), 25 April 06; "20 Practitioners Kidnapped and Given Injections; Xinjiang Falun Gong Calls for Investigation" [20 wei xueyuan zao banjia dazhen; Xinjiang falun gong huyu checha], Epoch Times (Online), 24 April 06; "Letter to the Media: With My Own Eyes I Saw Two Female Falun Gong Practitioners Beaten to Death" [Toushu: wo qinyan kandao liang ming falun gong nü xueyuan bei guan si], Epoch Times (Online), 24 April 06; Amnesty International, Report 2006: The State of the World's Human Rights, 25 May 06; David Matas and David Kilgour, Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 6 July 06; "Mentally Ill Falun Gong Practitioner Sentenced to 2.5 Years, Second Trial Upholds Original Sentence," [Huan jingshenbing de Falun Gong renshi bei panxing liang nian ban; ershen weichi yuanpan], Radio Free Asia (Online), 3 July 06.

[264] Based on data in the CECC Political Prisoner Database.

[265] "List and Case Description of the 2932 Falun Gong Practitioners Who Have Been Killed in the Persecution," Clear Wisdom (Online), 3 June 06.

[266] Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Mission to China, Advance Edited Version, 10 March 06.

[267] "China Lashes Falun Gong Followers' Lies on Sujiatun 'Concentration Camp,'" People's Daily (Online), 12 April 06; "No One Will Believe Falun Gong Followers' Lies: FM," Xinhua (Online), 29 March 06; U.S. Department of State (Online), Daily Press Briefing, 31 March 06.

[268] Matas and Kilgour, "Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China," 41: "Based on what we now know, we have come to the regrettable conclusion that the allegations are true."

[269] China has signed, but not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005 statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004 speech by Chinese President Hu Jintao before the French National Assembly.

[270] International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A(XXI) of 16 December 66, entry into force 23 March 76 [hereinafter ICCPR], art. 18. The official General Comment 22 to Article 18 states, "The right to freedom of thought, conscience, and religion (which includes the freedom to hold beliefs) in article 18(1) is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."

[271] UN Commission on Human Rights, Opinions Adopted by the Working Group on Arbitrary Detention, Opinion No. 32/2005, 2 September 05 [hereinafter UNWGAD Opinions]; "Student Imprisoned for Falun Gong Activities Becomes Eligible for Parole," CECC China Human Rights and Rule of Law Update, July 2006, 5; PRC Constitution, art. 36.

[272] UNWGAD Opinions, Opinion No. 32/2005.

[273] PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 300. After Falun Gong practitioners staged a demonstration involving 10,000 people outside the central government leadership compound in Beijing, the National People's Congress Standing Committee (NPCSC) issued Article 300 of the Criminal Law, which outlaws organizing or using a cult to undermine implementation of the law. This charge carries a penalty from three to seven years in prison, or, in "serious" cases, over seven years. Supreme People's Court Circular on Thoroughly Implementing NPC "Decision on Banning Cults, Guarding Against and Punishing Cult Activities" and "Supreme People's Court/Supreme People's Procuratorate Judicial Interpretation," [Zuigao renmin fayuan guanyu guanche quanguo renda changweihui "guanyu qudi xiejiao zuzhi, fangfan he chengzhi xiejiao huodong de jueding" he "liang yuan" sifa jieshi de tongzhi], issued 30 Oct 99. The Supreme People's Court issued this circular to clarify that Article 300 would be used against "cults, especially Falun Gong." The NPCSC issued a decision to articulate a need to separate the small number of "criminal offenders" who organize and use heretical sects to engage

in illegal activities from the majority of practitioners who are "cheated" into following the sect. The former should be punished according to the Criminal Law, whereas the latter should receive education, which is provided for under the administrative punishment system. "Student Imprisoned for Falun Gong Activities Becomes Eligible for Parole," CECC China Human Rights and Rule of Law Update, July 2006, 5. National People's Congress Standing Committee Decision on Banning Heretical Sects, Guarding Against and Punishing the Activities of Heretical Sects [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu qudi xiejiao zuzhi, fangfan he chengzhi xiejiao huodong de jueding], issued 30 October 99.

[274] PRC Public Security Administration Punishment Law (PSAPL), enacted 28 August 05, art. 27. At a February 2006 press conference, public security officials asserted that Falun Gong practitioners are subject to punishment under the PSAPL. Ministry of Public Security (Online), "Ministry of Public Security Convenes Press Conference to Announce the Status of Preparations for Implementing the 'Public Security Administration Punishment Law'" [Gongan bu zhaokai xinwen fabuhui tongbao "zhi'an guanli chufei fa" shishi zhunbei qingkuang], 28 February 06. Article 27 of the PSAPL stipulates punishment for those who organize heretical sects or secret societies or use superstitious cults or *qigong* activities to disrupt public order or harm the health of another. Those who violate this article are subject to 5 to 15 days of detention and a fine of up to 1,000 yuan (US$125). "Falun Gong Practitioners to be Punished under New Administration Punishment Law," CECC China Human Rights and Rule of Law Update, May 2006, 6.

[275] U.S. Department of State, Country Reports on Human Rights Practices—2005, China; Human Rights Watch, "China Uses 'Rule of Law' to Justify Falun Gong Crackdown," 9 November 99.

[276] Supreme People's Court, Supreme People's Procuratorate Interpretation on Some Questions of Which Concrete Laws to Use when Dealing With the Crimes of Organizing and Using a Cult to Undermine Implementation of the Law [Zuigao renmin fayuan zuigao renmin jianchayuan guanyu banli zuzhi he liyong xiejiao zuzhi fanzui anjian juti yingyong falü ruogan wenti de jieshi], issued 9 October 99.

[277] "Student Imprisoned for Falun Gong Activities Becomes Eligible for Parole," CECC China Human Rights and Rule of Law Update, July 2006, 5. Based on data available in the CECC Political Prisoner Database.

[278] Philip P. Pan, "China Shutters Prominent Lawyer's Firm; Rights Activist Had Refused To Disavow Letter Defending Religion, Falun Gong," Washington Post (Online), 6 November 06.

[279] Xin Fei, "Exclusive Interview with Attorney Yang Zaixin—Walk Along with Attorney Gao," Epoch Times (Online), 30 January 06.

[280] "China Condemns Falun Gong but Spares U.S. Criticism," Reuters (Online), 25 April 06.

[281] "Hebei Province To Distribute Free Anti-Cult Illustrated Posters to Villages and City Districts [Hebei sheng jiang xiang nongcun he chengshi shequ mianfei fafang fan xiejiao manhua guatu], China Anti-Cult Net (Online), 2 March 06.

[282] "People's Daily Publishes 2005 Censorship Numbers," CECC China Human Rights and Rule of Law Update, May 2006, 5.

[283] 873 "Information Network Security Has Aroused Worldwide Concern," PLA Daily, 21 February 06 (Open Source Center, 21 February 06).

Notes to Section V(e)—Status of Women

[1] PRC Constitution, art. 48.

[2] PRC Law on the Protection of the Rights and Interests of Women, enacted 3 April 92, amended 28 August 05, arts. 11, 39, 40, 46, 58, respectively [hereinafter LPRIW]. Article 58 gives victims of sexual harassment and domestic violence the right to seek redress under administrative punishment regulations and also to bring a civil suit against the harassers for damages.

[3] "Henan To Introduce Anti-Domestic Violence Regulation" [Henan jiang chutai fan jiating baoli fagui chengzhi shibao zhe], China Youth Daily, reprinted in Xinhua (Online), 30 March 06. In March 2006, the Henan province Local People's Congress proposed a regulation mandating police response to domestic violence calls. "Henan Has New Regulation: Police Must Respond Quickly to Complaints of Domestic Violence" [Henan xin fagui: Jia-bao shouzhe qiujiu; jingcha xu xunsu chujing], China Youth Daily (Online), 31 March 06. Shaanxi, Hainan, Chongqing, Shenzhen, and Shanghai also have domestic violence regulations in various stages of the legislative process. "Xinjiang Three-Year Old Girl Suffers Physical Abuse From Parents and has Both Feet Amputated—Thoughts on Laws Difficult To Bring Into Operation; Suffering Caused by Domestic Violence Won't Go Away" [Xinjiang 3 sui nütong canzao fumu nuedai zhi shuangzu jiezhi; fagui nan caozuo; jiating baoli tong nan xiao], Legal Daily (Online), 19 January 06.

[4] "Xinjiang Three-Year Old Girl Suffers Physical Abuse From Parents," Legal Daily; "How Can Chinese Women Defend Their Own Rights and Interests" [Zhongguo funü ruhe weihu zishen quanyi], Radio Free Asia (Online), 25 March 06 (quoting Song Meiya, editor of "Women's News"); "Domestic Violence Cases Still a Thorny Issue for Courts To Get Involved With" [Sifa jieru jiating baoli yiran jishou], Legal Daily (Online), 24 November 05. According to lawyer Chen Mei at China Law School, there is no provision on domestic violence under the criminal law, so if a woman wishes to bring a domestic violence case, she must prove "abuse" (nuedai zui).

[5] "How Can Chinese Women Defend Their Own Rights and Interests," Radio Free Asia (quoting Wu Qing, retired professor at Beijing Foreign Language Institute).

[6] "Same Domestic Violence Accusation, Different Results in Shanghai and Baotou Court Cases; Expert Calls for Unified Standard" [Tongshi shou nüesha fu Shanghai Baotou pan butong zhuanjia: tongyi biaozhun], Legal Daily (Online), 30 March 06.

[7] "Revisions to Retirement Regulations Requiring Women to Retire Before Men Suggested to NPC Standing Committee" [Nannü tuixiu butong nian guiding quanguo renda changweihui tiqi weixian shencha jianyi shu], Women Watch—China (Online), 10 March 06.

[8] "Revisions to Retirement Regulations Requiring Women to Retire Before Men Suggested to NPC Standing Committee," Women Watch—China; "Gender Retirement Issue to Go Before NPC" [Nannü gongwuyuan tongling tuixiu de tiaojian yijing jubei], China Woman (Online), 13 March 06. Due to a 1978 regulation that contravenes the LPRIW, employers can mandate that women retire five years before men, limiting their opportunities for promotion and better pensions. The Center for Women's Law and Legal Services of Peking University has consulted 118 women on this issue since 1995, raised the issue before the NPC, and is awaiting a response.

[9] "Women Sue Village Committees for Denying Them Land Rights," CECC China Human Rights and Rule of Law Update, July 2006, 8.

[10] Ibid.; "Seeking Equal Treatment with Men: 28 Hohhot Women Who Married Out of Their Village Sue the Village Committee" [Qiu yu nanxing cunmin tong daiyu hu shi 28 wei chujia nü gao cunweihui], Xinhua (Online), 15 May 06; "Half the Sky Doesn't Mean Half the Earth" [Banbian tian debudao banbian di], China Youth Daily (Online), 22 May 06. Village regulations based on traditional social structures that favor men trump national laws that protect women's property rights in theory, but lack systematic implementing measures. "Implement Village Land Rights Equally for Men and Women: It Is the Responsibility of Society" [Shixian nongcun tudiquan nannü pingdeng shi quan shehui de gongtong zeren], Women Watch—China (Online), 30 April 06.

[11] Liaoning province increased 2006 funding for the Double Learning, Double Emulation (*shuangxue shuangbi*) program, a successful women's microfinance program. "Liaoning Invests Heavily in Program to Economically Empower Rural Women" [Liaoning zheng toufang baiwan bangzhu nongcun funü yinjin zhifu xiangmu], China Woman Paper (Online), last visited 24 March 06. Provincial and city ACWF branches fund shelters for victims of domestic violence. "Domestic Violence and Public Discussions: Why Do Many Shelters Not Help Enough?" [Jiating baoli nan yu renyan funü bihusuo weihe duo zao lengyu], Xinhua (Online), 19 December 06.

[12] "Number of Rural Chinese Women in Abject Poverty Down to 12 Million," Xinhua, 11 April 06 (Open Source Center, 12 April 06).

[13] "Seventy Percent of Injured Women Don't Understand How To Defend Their Rights; Related Departments Open Passageways" [Qi cheng shou shanghai funü bu dong weiquan youguan bumen pi tongdao], Yangzi Wanbao (Online), 26 February 06. Police in Beijing have agreed to work with district-level Women's Federations to ensure police response to domestic violence complaints and gather evidence to convict offenders. "Beijing Police to Interfere in Domestic Violence Cases: Police to Respond to 100 Percent of Wife-Beating Cases" [Beijing jingfang ganyu jiating baoli da laopo shijian 100 percent chu jing], China Times (Online), reprinted in Women Watch—China (Online), 22 February 06.

[14] The women's rights activist is Guo Jianmei of the Center for Women's Law and Legal Services of Peking University. "A Lawsuit That Overturned the 'Home Village Regulations' on Women's Property Rights" [Yi chang yinfa dianfu "xiangtu guize" de nongcun funü tudi quanyi guansi], China Philanthropy Times, reprinted in Women Watch—China (Online), 23 November 05.

[15] CECC, 2005 Annual Report, 11 October 05, Section V(f)—Status of Women.

[16] "First Women's Legal Aid Foundation Established" [Shou xiang funü falü yuanzhu jijin sheli], Beijing News, reprinted in Women Watch—China (Online), 10 March 06.

[17] "Same Domestic Violence Accusation," Legal Daily (citing to Peking University Law School professor Chen Xingliang). The expert is China Law School domestic violence expert, lawyer Chen Mei. "Domestic Violence Cases Still a Thorny Issue for Courts To Get Involved With," Legal Daily (Online); "Beijing Sexual Harassment Case Settled Out of Court; Defendant Pays Plaintiff 6000 Yuan" [Beijing xingsaorao diyi an tingwai hexie beigao xiang mote peichang 6000 yuan], Beijing Morning Times, reprinted in Women Watch—China (Online), 4 November 05; "First Sexual Harassment Lawsuit Since Amendment to Women's Law," CECC China Human Rights and Rule of Law Update, December 2005, 16; "Domestic Violence and Public Discussions: Why Do Many Shelters Not Help Enough?" Xinhua (Online); "A Lawsuit that Overturned the 'Home Village Regulations' on Women's Property Rights," China Philanthropy Times.

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[42] China's Response to Avian Flu, Written Statement Submitted by Dr. John R. Clifford, Deputy Administrator for the Animal and Plant Health Inspection Services' (APHIS) Veterinary Services program, U.S. Department of Agriculture. The Ministry of Agriculture has not shared any virus samples from infected poultry with the World Health Organization since 2004, despite agreeing to do so in March 2006. The genetic information contained in the samples could help develop a more effective vaccine. Shai Oster, "China Acknowledges Delay in Sharing Bird-Flu Samples," Wall Street Journal (Online), 5 September 06; "Beijing to Give WHO Bird Flu Samples," South China Morning Post (Online), 23 March 06; "Credit Dispute: How Academic Flap Hurt World Effort on Chinese Bird Flu," Wall Street Journal (Online), 24 February 06.

[43] China's Response to Avian Flu, Written Statement Submitted by Erika Elvander.

[44] Emergency Response Regulations for Major Epidemics of Animal Diseases [Zhongda dongwu yiqing yingji tiaoli], issued 18 November 05, Ch. 3, art. 17.

[45] Ibid. Liaoning provincial officials arrested the head of veterinary services in Badaohao township in November 2005, for attempting to cover up the illnesses of chickens at local farms following avian flu outbreaks. Provincial authorities also disciplined seven other officials for dereliction of duty. Geoffrey York, "Reforms Critical for China To Win Bird-Flu Fight," Toronto Globe and Mail (Online), 29 November 05. Five local officials in Dazhu county, Sichuan province were fired in May 2006 for mishandling a January outbreak of bird flu in poultry. "Five Officials Fired for Mishandling Bird Flu Outbreak in Poultry," South China Morning Post (Online), 12 May 04.

[46] Ministry of Health (Online), April 25, 2006. The MOH issued a statement warning authorities that cover-ups or delays could risk spreading the disease. The statement said that some medical institutes had "failed to quickly report on pneumonia cases with unknown causes, some local governments failed to urge their institutes to do their job in time; some health authorities failed to respond quickly to reports, and some pneumonia patients who had had contact with sick or dead poultry were moved to other hospitals without guidance, risking the spread of infectious diseases." Nicholas Zamiska, "China Finds Possible Cases of Bird Flu Go Unreported," Wall Street Journal (Online), 26 April 06; "Health Ministry Warns Against Cover Ups in Pneumonia Report," Xinhua (Online), 26 April 06. World Health Organization officials have also expressed concern about China's practice of reporting only confirmed cases of bird flu in humans, and have encouraged the Chinese government to act with greater transparency. Nicholas

Zamiska, "WHO Questions China's Policy on Reporting Bird-Flu Cases," Wall Street Journal (Online), 23 March 06.

[47] Chris Buckley, "China Responds to Bird Flu Under Shadow of SARS," Reuters (Online), 10 November 05; Bill Savadove, "Beijing Playing Down Situation at Home," South China Morning Post (Online), 28 October 05; Josephine Ma, "Beijing Tightens Control on Media Reports," South China Morning Post (Online), 2 November 05.

[48] Hu Shuli, "Caijing Article Says Local Officials Not Open About Avian Influenza," Finance Magazine, 31 October 05 (Open Source Center, 15 November 05).

Notes to Section V(h)—Population Planning

[1] "Solving China's Population Problem by Focusing on People's Overall Development" [Yi ren de quanmian fazhan tongchou jiejue woguo renkou wenti], Seeking Truth (Online), 28 April 06. The particular circumstances under which women may bear a second child are governed by provincial-level regulations. See PRC Population and Family Planning Law of the People's Republic of China, enacted 29 December 01, art. 17.

[2] John S. Aird, Slaughter of the Innocents: Coercive Birth Control in China (Lanham, Maryland: AEI Press, 1990).

[3] Human Rights in China: Improving or Deteriorating Conditions?, Hearing of the Subcommittee on Africa, Global Human Rights and International Operations, U.S. House of Representatives, 19 April 06.

[4] "Solving China's Population Problem by Focusing on People's Overall Development," Seeking Truth.

[5] Chinese authorities have admitted to the coercive nature of the system of fines. Shanghai Municipal Government (Online), "What are Social Compensation Fees?" [Shenme shi shehui fuyangfei?], Undated.

[6] Measures for Collection of Social Compensation Fees [Shehui fuyangfei zhengshou guanli banfa], issued 2 September 02, arts. 3, 7, 10, 14.

[7] Beijing Methods for Managing the Collection of Social Compensation Fees [Beijing shi shehui fuyangfei zhengshou guanli banfa], issued 5 November 02, arts. 5–7, 10–12.

[8] In Shandong, the fine is waived when the firstborn child is "identified as disabled" and permission to have a second child is received. Shandong Province Methods for Managing the Collection of Birth Control Social Compensation Fees [Shandongsheng jihua shengyu shehui fuyangfei zhengshou guanli banfa], issued 1998, arts. 2–5, 8, 10, 17. Since a disabled child will, in most cases, require more state assistance, this indicates that the primary purpose of the fine is coercive and not to compensate the state for "the corresponding increase in social undertakings and public finances engendered by having more than one child." Shanghai Municipal Government, "What are Social Compensation Fees?"

[9] "Wuyang Court Specially Assigns Case Concerning Social Compensation Fees Screening 15 Cases and Deciding on 10" [Wuyang fayuan zhuanxing zhixing shehui fuyangfei anjian shaixuan 15 anjie 10 an], China Court Net (Online), 29 May 06.

[10] CECC Staff Interview; Human Rights Violations under China's One-Child Policy, Hearing of the International Relations Committee, U.S. House of Representatives, Testimony of John S. Aird, former Chief of the China Branch and Senior Research Specialist on China at the Bureau of the Census, 14 December 04.

[11] Beijing Declaration and Platform for Action (1995), para. 17; Cairo International Conference on Population and Development (1994), Programme of Action of the International Conference on Population and Development, para. 7.2. On the concept of "illegal pregnancy" and its use in practice, see Elina Hemminki, et. al., "Illegal Births and Legal Abortions—The Case of China," Reproductive Health 2, no. 5 (2005).

[12] PRC Population and Family Planning Law, art. 41; "Calls for Strict Birth Control Win Backup," Xinhua (Online), 8 March 06. According to the U.S. State Department, although Chinese law requires officials to get court approval to forcibly collect social compensation fees, this is not always followed. Bureau of Human Rights, Democracy, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06.

[13] U.S. Department of State, Country Reports on Human Rights Practices—2005, China (the 7 provincial-level governments that require "termination" of pregnancies are Anhui, Hebei, Heilongjiang, Hubei, Hunan, Jilin, and Ningxia; the 10 that require unspecified "remedial measures" are Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan).

[14] Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social, and Cultural Rights, arts. 10, 13. China denies out-of-plan children basic health care, education, and the right to marry, while it grants educational and financial privileges to the child of parents who could have had two children according to the policy but limited themselves to one, and a special pension to parents who have a daughter but no son. Human Rights in China: Improving or Deteriorating Conditions?, Testimony of Steven W. Mosher; "Easing Family Planning Rules Leads to Fewer Abortions and More Baby Girls, Chinese Province Finds," UNFPA, 15 December 05 (discussing pensions for those who have no sons but have daughters); Steven W. Mosher, "China's One-Child Policy: Twenty-five Years Later," Human Life Review 32, no. 2 (Winter 2006), 77f; Hemminki, "Illegal Births and Legal Abortions." In order to discourage the sex-selective abortion of girls, officials have reduced school fees for girls. "China's Gender Imbalance Still Growing," CBS News (Online), 17 April 06.

[15] Cairo International Conference on Population and Development (1994), Programme of Action of the International Conference on Population and Development, para. 7.12. In 2006, the government announced national population targets of 1.37 billion for 2010 and 1.5 billion for 2020. "China Pledges To Keep Its Population Below 1.37 Billion by 2010," Xinhua (Online), 6 January 06. The Chinese government has set population targets through the mid-21st century. State Council Information Office, White Paper on China's Population and Development in the

21st Century, December 00. The NPFPC has denied discrimination against "out-of-plan" children. "Solving China's Population Problem by Focusing on People's Overall Development," Seeking Truth.

[16] PRC Population and Family Planning Law, art. 4 provides that offiicials "shall perform their administrative duties strictly in accordance with law, and enforce the law in a civil manner, and they may not infringe upon legitimate rights and interests of citizens."

[17] "Hebei Falun Gong Practitioner Forced To Abort," Epoch Times (Online), 26 December 05; "Chongqing Family Planning Office Forces 25-Year-Old Man To Be Sterilized," Boxun (Online), 3 January 06 (events reported occurred in 2002); Heda Bayron, "Experts: China's One-Child Population Policy Producing Socio-Economic Problems," Voice of America (Online), 7 March 06 (forced sterilization of a woman from Fujian).

[18] "Chinese Woman Fleeing Forced Abortion Dies in Hospital Fall," Associated Press (Online), 1 July 06.

[19] The official communications of Chinese authorities to local family planning officials also allow the latter to understand that local officials will not be punished for coercive measures. "Human Rights Violations under China's One-Child Policy," Testimony of John S. Aird; Women's Rights and China's New Family Planning Law, Staff Roundtable of the Congressional-Executive Commission on China, Testimony of John S. Aird, 23 September 02; Hemminki, "Illegal Births and Legal Abortions;" Hannah Beech, "Enemies of the State?," Time (Online), 12 September 05 (Beijing legal activist reports: "One set of bad population figures can stop an official from getting promoted").

[20] In 2006, two welfare workers were sentenced to terms of probation and one welfare worker to a suspended jail sentence for ordering hysterectomies on two mentally challenged girls living in a girls' care home. The lawyer for one of the defendants argued that such operations were common in China. "Light Penalties for Forced Hysterectomies in China," Reuters (Online), 6 July 06.

[21] Human Rights in China: Improving or Deteriorating Conditions?; China: Human Rights Violations and Coercion in One Child Policy Enforcement, Hearing of the Committee on International Relations, U.S. House of Representatives, 14 December 04.

[22] Mosher, "China's One-Child Policy," 88f.

[23] Steven W. Mosher, "The Passion and Mrs. Wong," Global Family Life News, March-May 05, 3, 9f.

[24] In recent years, authorities have subjected Mao Hengfeng, a woman who has protested against the government's population planning policy, to detention and torture. "One-Child Policy Opponent Tortured," Human Rights in China (Online), 5 October 04. "Violence Against Women," in 2005 Report, Amnesty International (Online) (covering events from January to December 2004).

[25] Officials detained over 100,000 people in "population schools" where forced sterilizations and abortions were performed. U.S. Department of State, Country Reports on Human Rights Practices—2005, China. "7,000 Forcibly Sterilised in Eastern China," Agence France-Presse (Online), 12 September 05; Beech, "Enemies of the State?"

[26] "Activist Who Exposed Birth Control Abuses Jailed," South China Morning Post (Online), 24 August 06 (officials convicted Chen on charges of "willfully damaging property and organizing a mob to disturb traffic").

[27] National Population and Family Planning Commission of China (Online), "Comments of Yu Xuejun, spokesperson for NPFPC and Director General of the NPFPC Department of Policy and Legislation on the Preliminary Results of Investigating Family Planning Practices in Linyi City of Shandong Province," 19 September 05. In 2003, the State Family Planning Commission was renamed the National Population and Family Planning Commission and given enlarged responsibilities for research on population issues. Peng Xizhe, Director of the Institute of Population Research at Fudan University, claimed that the renaming demonstrated "the wider administrative and coordination functions assigned it by the State Council." Peng Xizhe, "Is It Time To Change China's Population Policy?" China: An International Journal 2, no.1 (2004), 135–49.

[28] "Forced Abortions in China," Telegraph (India) (Online), 24 October 05 (reporter discovers evidence that coercive abortions continue in Linyi); Jonathan Watts, "Under House Arrest: Blind Activist Who Exposed Forced Abortions," Guardian (Online), 3 February 06.

[29] PRC Population and Family Planning Law, art. 39.

[30] Officials denied the accusations and said that some of the children had been illegally adopted. "United in Grief, Farmers Lament Loss of Children 'Stolen' by Officials," South China Morning Post (Online), 21 March 06; "Forced Removal of Children Should Not Be Tolerated," South China Morning Post (Online), 22 March 06.

[31] "13 Officials in Shaanxi Punished for Family Planning Failure," Xinhua (Online), 5 May 06.

[32] "Rich Men Challenge Family Planning Policy," China Daily (Online), 16 December 05 (large families have become status symbols for those who can afford to pay fines); "Calls for Strict Birth Control Win Backup," Xinhua (Online), 8 March 06.

[33] "Solving China's Population Problem by Focusing on People's Overall Development," Seeking Truth.

[34] "Abortion Law Amendment To Be Abolished," Xinhua (Online), 26 June 06 (ratio 119:100); "Over 1 Million Grassroot Organizations Provided Family Planning Services in China," Xinhua (Online), 9 January 06 (male-female birth ratio of 119:100); U.S. Department of State, Country Reports on Human Rights Practices—2005, China (male-female birth ratio for second births is 152:100); Qu Jian Ding, Therese Hesketh, "Family Size, Fertility Preferences, and Sex Ratio in China in the Era of the One Child Family Policy: Results from National Family Planning and Reproductive Health Survey," British Medical Journal, 333, 371–373 (2006) (finding a sex ratio at birth of 123:100 for 1996 to 2001); Elaine Wu, "Population Rises 3.2% over Past Five Years to 1.306 Billion," South China Morning Post (Online), 17 March 06 (experts believe the true population is tens of millions greater and the male-female birth ratio even more lopsided than is reported). China's population planning policy has also resulted in infanticide of female infants,

though the rate at which female infants are killed or die of neglect is uncertain. U.S. Department of State, Trafficking in Persons Report—2005, China.

[35] In June and July 2006, the state-controlled Chinese press reported a male-female birth ratio of 119:100. "Abortion Law Amendment To Be Abolished," Xinhua (Online). In August 2006, the Chinese Academy of Social Sciences said the ratio had reached 121.2:100. "Alarm Sounded on Gender Imbalance," South China Morning Post (Online), 18 August 06; "Selective Abortion Still Legal," South China Morning Post (Online), 26 June 06 (the Chinese government had previously reported a male-female birth ratio of 117:100); "China's Gender Imbalance Still Growing," CBS News (Online), 17 April 06 (Zhao Baige, Vice Minister of the NPFPC, tells Lesley Stahl that even with all the incentives and government programs, the sex ratio imbalance is getting worse); "Serious Birth Gender Imbalance Inflicts 9 Chinese Regions," People's Daily (Online), 25 August 04 (sex ratio imbalance is worsening in both rural and urban areas). The sex ratio at birth was 108.5:100 in 1982, 110.9:100 in 1987, 111.3:100 in 1990, 115.6:100 in 1995, and 116.9:100 in 2000. Peng Xizhe, "Is It Time To Change China's Population Policy?" China: An International Journal 2, no. 1 (2004). The state-run media have reported a study claiming that several ethnic minorities have male-female ratios ranging from 400:100 to 1,000:100, but attributes this to minority women marrying or being trafficked outside their ethnic groups. "Poverty and Gender Imbalance Threaten Some Ethnic Minorities," China.org (Online), 10 May 06 (referring to the Lahu, Wa, Hani, and Lisu minorities).

[36] PRC Population and Family Planning Law.

[37] "Criminal Law Amended for Gender Balance," China Daily (Online), 26 December 05.

[38] "Solving China's Population Problem by Focusing on People's Overall Development," Seeking Truth.

[39] "Lawmakers Resume Debate on Sex Identification," Xinhua (Online), 25 April 06.

[40] "Abortion Law Amendment To Be Abolished," Xinhua (Online).

[41] Andrew Yeh, "China Retreats on Selective Abortion Law Plan," Financial Times (Online), 25 June 06.

[42] "Beijing Split Over Abortion Policy," Financial Times (Online), 11 July 06.

[43] "North China Province Closes 201 Clinics Guilty of Gender Selection," Xinhua (Online), 31 May 06; "More Efforts Urged To Curb Gender Imbalance," China Daily (Online), 11 July 06; "Nation To Launch Monitoring of Birth Gender Ratios," Xinhua (Online), 12 July 06; "Hebei Worries Growing Gender Inequality," China Daily (Online), 13 July 06; "China Not To Relax Fight Against Selective Abortions," Xinhua (Online), 1 August 06; "Health Ministry Warns Against Abortion Crimes," Xinhua (Online), 2 August 06; "China's Rising Gender Imbalance May Leave Millions of Men With No Wives," People's Daily (Online), 12 August 06.

[44] "Gender Imbalance May Leave Millions of Men With No Wives," Xinhua (Online), 11 August 06.

[45] "Solving China's Population Problem by Focusing on People's Overall Development," Seeking Truth. Some Chinese demographers agree. Peng Xizhe, "Is It Time To Change China's Population Policy?"

[46] "China Has Not Relaxed Family Planning: Official," Xinhua (Online), 1 May 06, which states: "The government offers around 1,200 yuan (US$150) a year to rural couples who have only one child or two daughters, as an acknowledgment of their contribution to the birth control drive." See also "China Focus: China Adopts More Human-Centered Way in Poverty Reduction," Xinhua (Online), 27 October 05, which states: "Last year, the Chinese government began to adopt a new policy of offering more than 600 yuan to couples above 60 years old who have only one child or two daughters." See also "More Rural Senior Couples To Be Awarded for Practicing Family Planning Policy," Xinhua (Online), 23 October 05, which states: "A new family planning reward policy is to be introduced in 23 provinces, municipalities and autonomous regions across the country this year. According to the new policy, rural couples with only one child or two daughters will be eligible for a cash reward of no less than 600 yuan (US$72) each year when they are 60 years old. The reward will last for the rest of their lives." National Population and Family Planning Commission (Online), "W. China Combines Family Planning with Poverty Alleviation," 10 November 05.

[47] Ibid.

[48] "China Focus: Family Planning Policy—A Controversial Topic in China," Xinhua (Online), 29 December 05; "One-Child Policy Questioned as Population Ages Rapidly," AsiaNews (Online), 2 January 06.

[49] A senior official on the China National Committee on Aging has stated that social services cannot meet the rising demands for medical care and pensions for elderly people. "China Focus: China Feels the Pressure of Growing Elderly Population," Xinhua (Online), 23 February 06; National Population and Family Planning Commission (Online), "Coping With Aging Society," 21 January 06; "China's Aging Population Will Create Losses for Existing Positive Economic Development" [Laolinghua jiang shi zhongguo jingji fazhan shiqu xianyou youshi], China Youth Daily (Online), 21 August 06.

[50] See, for example, the regulations of Shanghai and Jiangsu provinces. Peng Xizhe, "Is It Time To Change China's Population Policy?"

[51] "China Focus: Family Planning Policy—A Controversial Topic in China" Xinhua (Online), 29 December 05; Zhang Feng, "Minister Says One-Child Rule Will Remain in Coming Years," Beijing Daily (Online), 7 January 06 (Open Source Center, 7 January 06); National Population and Family Planning Commission (Online), "Coping With Aging Society;" Larry Teo, "China Is Worrying About Baby Shortage," Straits Times (Online), 2 March 06 (characterizing NPFPC Minister Yu Xuejun as saying "that two-children families are a more suitable option for China. But he hastened to add that a sudden switch is not advisable . . .," and characterizing a report by Chinese demographer Zeng Yi as suggesting the phasing-in of a two-child policy over an eight-year period); "One-Child Policy Questioned as Population Ages Rapidly," AsiaNews (Online), 2 January 06; "China to Keep Family Planning Policy Stable," Xinhua (Online), 23 April 06.

[52] "China to Keep Family Planning Policy Stable," Xinhua. The official apparently referred to the coming of age of the generation born after the 1984 permission for rural couples to have a second child if the first was female. "China Prepares for Fourth Baby Boom," China Daily (Online), 3 May 06.

Notes to Section V(i)—Freedom of Residence and Travel

[1] "China's Household Registration System: Sustained Reform Needed To Protect China's Rural Migrants," Topic Paper of the Congressional Executive-Commission on China, 7 October 05, 1–3.

[2] Ibid., 3.

[3] Ibid., 2.

[4] "'Report on Rural Migrant Workers:' The Average Age of Migrant Workers is 28.6 Years Old" [Zhongguo nongmingong diaoyan baogao: nongmingong pingjun nianling wei 28.6 sui], Xinhua, reprinted in China Internet Information Center (Online), 16 April 06. Other statistics list the total number of migrants as high as 140 million. PRC Bureau of Statistics, 2004 National Statistical Report on Economic and Social Development [2004 Nian guomin jingji he shehui fazhan tongji gongbao], 28 February 05; "Migrant Population Hits 140 Million," Associated Press (citing Xinhua), 6 January 05.

[5] "China's Household Registration System: Sustained Reform Needed to Protect China's Rural Migrants," 4.

[6] Ibid., 4–5.

[7] Ibid., 7–10.

[8] Tang Yaoguo, "Hukou Reform Blocked by Local Governments, Benefits Behind Hukou Are the Core of the Problem" [Huji gaige shouzu defang zhengfu hukou beihou liyi shi wenti genben], Outlook Weekly, reprinted in Sohu (Online), 21 November 05; Zhao Jie, "Opinion of Ministry of Public Security on Hukou Reform Will Be Clear, Expert: Need Large Hukou Reform" [Gonganbu huji gaige yijian jiang mingliang zhuan jia: yao da huji gaige], China Economic Net, reprinted in Xinhua (Online), 24 November 05.

[9] Supreme People's Court's Judicial Interpretation Regarding Compensation Cases for Personal Injuries [Zui gao renmin fayuan guanyu shenli renshen sunhai peichang anjian shiyong falu ruogan wenti de jiejue], issued 4 December 03, art. 29.

[10] PRC Election Law of the National People's Congress and Local People's Congresses, [Zhonghua renmin gongheguo quanguo renmin daibiao dahui he difang geji renmin daibiao dahui xuanju fa], enacted 1 July 79, amended 27 October 04, art. 12.

[11] "Compensation 120,000 Less Only Because of Rural Hukou" [Zhiyin nongcun hukou peichang shao 12 wan], Beijing News (Online), 14 February 06; Guo Yuxiang and Lu Yilin, "Migrant Worker Dies in City, Hai'an Court Decision Uses Urban Resident Standard for Compensation" [Jin cheng nongmingong siwang hai'an fayuan panjue jie chengzhen jumin biaozhun peichang], China Court Net (Online), 16 February 06; Tang Zhongming, "Three Young Girls Killed in Car Accident, Because Hukou 'Same Fate, Different Price' [Compensation] Difference of 120,000" [San shaonu zao chehuo yinwei hukou "tongming butong jia" xiangcha 12 wan], Youth Daily, reprinted in Procuratorial Daily (Online), 24 Jan 06.

[12] "Hukou Blamed for Discriminatory Compensation," China Daily, reprinted in Xinhua (Online), 27 Jan 06.

[13] "'11.5' Program Series Forum" [Shiyi wu guihua zhuti xilie luntan], 21st Century Business Herald (Online), 17 October 05; Zhao Xiao and Wang Benjian, "Break Up of Two-Tiered Structure of Chinese Real Estate Industry Needed for Healthy Development" [Dapo eryuan jiegou Zhongguo fangdichanye cai neng jiankang fazhan], Southern Weekend (Online), 20 October 05; "National Temporary Registered Population 86,730,000, Merger Planned For Rural-Urban Hukou Management" [Quanguo dengji zanzhu renkou 8673 wan chengxiang huji guanli ni tongyi], Legal Daily, reprinted in Xinhua (Online), 26 October 05.

[14] Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside [Zhonggong zhongyang guowuyuan guanyu tuijin shehui zhuyi xin nongcun jianshe de ruogan yijian], issued 31 December 05.

[15] Ibid.

[16] Press Conference on Building New Socialist Countryside, Xinhua, reprinted in PRC Central People's Government (Online), 23 February 06.

[17] "General Offices of the CCP Central Committee and State Council Reissuance of 'Opinion on Deeply Carrying out Peaceful Construction,'" [Zhong ban, Guo ban zhuanfa "Guanyu shenru kaizhan ping'an jianshe de yijian], Xinhua, reprinted in PRC Central People's Government (Online), 4 December 05; "Government Calls for Building Social Stability, Security," Xinhua (Online), 4 December 05.

[18] Ministry of Justice (Online), Sun Chunying, "County (City, District) Key Points in Order to Establish Stability" [Xian (shi, qu) wei chuangjian ping'an zhongdian], 6 December 05.

[19] For a detailed analysis of prior reform efforts, see the Commission's topic paper: "China's Household Registration System: Sustained Reform Needed to Protect China's Rural Migrants."

[20] "National Temporary Registered Population 86,730,000, Merger Planned for Rural-Urban Hukou Management," Legal Daily; Wang Qiang, "11 Provinces Begin Integrating Urban and Rural Hukou, Beijing Temporarily Not Included" [11 ge shengshi kaishi tongyi chengxiang hukou beijing zan wei lieru qizhong], Beijing Evening News, reprinted in Procuratorial Daily (Online), 28 October 05. For a partial list of such efforts through the end of 2004, see the Freedom of Residence and Travel page on the Commission's Web site.

[21] Zhao Jie, "Opinion of Ministry of Public Security on Hukou Reform Will Be Clear, Expert: Need Large Hukou Reform." Some Chinese and U.S. media incorrectly characterized the provincial reforms as eliminating all legal distinctions between urban and rural residents. Zheng Caixiong, Wu Yong and Guo Nei, "Rural Dwellers to be Granted Urban Rights," China Daily (Online), 2 November 05; Joseph Kahn, "China to Drop Urbanite-Peasant Legal Differences" New York Times (Online), 3 November 2005.

[22] "National Temporary Registered Population 86,730,000, Merger Planned for Rural-Urban Hukou Management," Legal Daily. Many provinces and municipalities that have adopted similar criteria have interpreted them strictly to exclude low-income migrant workers, even those that have been resident in urban areas for many years. "China's Household Registration System: Sustained Reform Needed to Protect China's Rural Migrants," 4–5.

[23] "National Temporary Registered Population 86,730,000, Merger Planned for Rural-Urban Hukou Management," Legal Daily; Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside.

[24] State Council Office Notice Regarding Improving Employment Prospects for Migrants in Urban Areas [Guowuyuan bangongting guanyu jin yi bu zuo hao gaishan nongmin jincheng jiuye huanjing gongzuo de tongzhi], issued 27 December 04.

[25] Ministry of Labor and Social Security (Online), Migrants Rights Handbook (2005 edition) [Nongmingong weiquan shouce (2005)], "Migrant Workers Need Not Obtain Work Registration Card" [Nongmingong waichu wugong wuxu ban jiuye zhengka le], Xinhua (Online), 26 September 05.

[26] "Beijing Eliminates Regulations on the Management of Migrants" [Beijing feizhi wailai renyuan guanli tiaoli], Beijing News (Online), 26 March 05.

[27] "National Temporary Registered Population 86,730,000, Merger Planned for Rural-Urban Hukou Management," Legal Daily.

[28] Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside.

[29] "Amended Compulsory Education Law Would Assure Migrant Children the Right to Attend School" ["Yiwu jiaoyufa" xiuding cao'an baozhang liudong renkou zinu shangxue], CCTV (Online), 1 May 06. Note that this is a codification of a prior State Council directive, rather than an entirely new policy. "China's Household Registration System: Sustained Reform Needed to Protect China's Rural Migrants."

[30] Ministry of Health (Online), "Nationwide AIDS Education Project Announced for Rural Migrant Workers" [Quanguo nongmingong yufang aizibing xuanchuan jiaoyu gongcheng jiang qidong], 29 November 05; "Migrant Workers to Get Basic Job Healthcare" Xinhua, (Online), 24 April 06; "Health of Migrants Goes Under Microscope" South China Morning Post (Online), 26 April 06; "PRC: Health Official Says Migrant Children Due Same Inoculations as Urban Peers," Xinhua (Online), 10 April 06; "Migrant Children Eligible for Free Vacination: Province Health Department: Treat Migrant Children Equally Without Discrimination" [Liudong ertong ye keyi mianfei mianyi jiezhong: sheng weisheng ting: dui wailai liudong ertong yi shi tong ren], Southern Daily (Online), 25 April 06.

[31] Tang Yaoguo, "Hukou Reform Blocked by Local Governments, Benefits Behind Hukou Are the Core of the Problem;" Zhao Jie, "Opinion of Ministry of Public Security on Hukou Reform Will Be Clear, Expert: Need Large Hukou Reform."

[32] "Population Approaching Limit, Shenzhen to Control Migrant Population" [Renkou bijin jixian Shenzhen jiang kongzhi wailai renkou], Beijing News (Online), 31 July 05; Shenzhen Municipal Government (Online), "Shenzhen Population Management '1+5' Document to be Published and Implemented in the Near Future" [Wo shi renkou guanli "1+5" wenjian jiang yu jinqi banbu shishi], 1 August 05.

[33] "Looking at China's Urbanization from the Standpoint of Beijing Resident's Calls for Limiting Migrants," [Cong Beijing shimin huyu xianzhi wailai renkou kan woguo de chengshihua], Sina, reprinted in News.fiji.com, 15 August 05; "The 'Proposal on Reducing the Number of Migrants to Beijing' Leads to Controversy" ['Jianshao waidiren ru jing jianyi' yin zhengyi], Southern Metropolitan Daily (Online), 10 August 05.

[34] Zhao Jie, "Opinion of Ministry of Public Security on Hukou Reform Will Be Clear, Expert: Need Large Hukou Reform."

[35] "No Uniform Standard To Be Required for Rural Hukou Reform" [Nongcun huji gaige bu zuo tongyi guiding], Ta Kung Pao (Online), 23 February 06.

[36] "Farmers Who Enter Cities and See a Doctor Can Be Reimbursed" [Nongmin jincheng kanbing ke xiangshou baoxiao], Beijing News (Online), 23 August 05.

[37] "Henan High People's Court Leads Way In Declaring 'The Same Price For The Same Fate' In Cases of Death Compensation" [Henan gaoyuan shuaixian guiding chengxiang peichang biaozhun 'tongming tongjia'], Xinhua (Online), 23 June 06.

[38] Yu Yiyong and Wen Sanqing "The Phenomena of 'Same Fate, Different Price' Tests Legal Fairness in Personal Injury Cases" [Renshen sunhai peichang 'tongming bu tong jia' kaowen falü gongping], Sichuan Daily, reprinted in Sichuan Online, 21 April 06.

[39] The Supreme People's Court is currently accepting suggestions for a new judicial interpretation on compensation for accidental injury and death. The Guangxi regional government's Legislative Affairs Office (LAO) is considering new legislation on accidental injury and death compensation. The Guangxi LAO is deliberating whether or not to apply urban compensation standards for all who are injured or killed in traffic accidents, or whether to limit urban compensation amounts to urban residents and rural residents who have lived in urban areas for one or more years and have a "stable place of residence." The Chongqing High People's Court is currently soliciting comments on a draft guiding opinion that stipulates that rural hukou holders who are disabled or killed in a traffic accident may be compensated according to urban standards if they meet certain criteria on income, ownership of housing, or length of residence in an urban area. "Henan To Use Same Compensation Standards for Urban Residents, Qualified Migrants," CECC China Human Rights and Rule of Law Update, September 2006, 16.

[40] Zhang Peiyan, "China Economic Times: Hoping That Rural Migrant Workers Will Not Again Be 'Observers' of Their Rights" [Zhongguo jingji shibao: qidai nongmingong bu zai shi quanli pangtingsheng], China Economic Times, reprinted in People's Daily (Online), 17 January 06.

[41] "Shenyang to Start Using New 'Temporary Residence Permit' System, Resuming 29 Months After Cancelling It" [Shenyang jiang qiyong xin "zanzhuzheng" quxiao zanzhuzheng 29 yue hou

huifu], Xinhua, reprinted in Procuratorial Daily (Online), 14 December 05. Temporary residence requirements are the source of many migrant complaints regarding police corruption and abuse. "Riot Erupts in Guiyang After Migrant is Beaten," CECC China Human Rights and Rule of Law Update, August 2006, 3–4.

[42] PRC Law on Passports [Zhonghua renmin gongheguo huzhao fa], enacted 29 April 06, art. 26.

[43] Ibid., art. 13. Article 13(4) has been interpreted to mean that prisoners such as Tibetan nun Phuntsog Nyidron and journalist Jiang Weiping can be denied a passport after their release from prison, if they are additionally subject to deprivation of political rights. John Kamm, Remarks on Crimes Without Victims, Prisoners Without Names, Foreign Correspondents' Club of Hong Kong, 21 February 06. However, the Criminal Law does not include the right to travel or obtain passports as one of the enumerated "political rights" that can be deprived. PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, 28 February 05, 29 June 06, art. 54.

[44] Ibid., art. 13(7).

[45] PRC Regulations on Passports and Visas [Zhonghua renmin gongheguo huzhao, qianzheng tiaoli], issued 13 May 80, art. 4.

[46] "Two Rights Lawyers Denied Passports For Defense In Wang Wenyi Case" [Wei Wang Wenyi an bianhu de liangwei weiquan lushi huzhao jujue], Radio Free Asia (Online), 21 June 06.

[47] Open Forum on Human Rights and the Rule of Law in China, Staff Roundtable of the Congressional-Executive Commission on China, 9 December 02, Written Statement of Christina Fu, spouse of Yang Jianli; Jerome Cohen and Jared Genser, "Tyranny in China: The Ongoing Quest to Free Yang Jianli," Washington Times (Online), 25 April 03.

[48] See CECC Political Prisoner Database.

Notes to Section VI—Political Prisoner Database

[1] Users may search for prisoners by name, using either the Latin alphabet or Chinese characters. Users may construct queries to include personal information (ethnic group, sex, age, occupation, religion), or information about imprisonment (current status of detention, place of detention, prison name, length of sentence, legal process).

[2] The Tibet Information Network (TIN) ceased operations in September 2005.

Notes to Section VII(a)—Development of Civil Society

[1] Building a "Harmonious Society" in China: Non-Governmental and Faith-Based Organizations as Agents of Social Change and Stability, 26 September 05, Oral Statements of He Daofeng, Vice President and Executive Director of the China Foundation for Poverty Alleviation; Qiu Zhonghui, General Secretary, Amity Foundation; Chen Taiyong, China Director, Heifer International. According to Ministry of Civil Affairs (MOCA) statistics, the number of registered social organizations increased from 153,000 in 2004 to 169,533 in 2006, non-governmental, non-commercial enterprises (NGNCEs) increased from 135,000 to 146,432, and foundations from 936 to 1035. "Ministry of Civil Affairs Releases 2004 Statistical Report on the Development of Civil Affairs Work" [Minzheng bu gongbu 2004 nian minzheng shiye fazhan tongji baogao], Xinhua (Online), 11 May 05; Ministry of Civil Affairs (Online), "Ministry of Civil Affairs Releases First Quarter 2006 Statistical Report on the Development of Civil Affairs Work" [Minzheng bu gongbu 2006 nian diyi jidu minzheng shiye fazhan tongji baogao], 21 April 06; "Inspiration From an 'Alternative Form of Defending Rights'," Liaowang, 16 May 05, (Open Source Center, 19 Aug 05).

[2] CECC, 2005 Annual Report, 11 October 05, 81.

[3] "Ministry of Civil Affairs Releases 2004 Statistical Report on the Development of Civil Affairs Work," Xinhua; Ministry of Civil Affairs, "Ministry of Civil Affairs Releases First Quarter 2006 Statistical Report on the Development of Civil Affairs Work;" Zhao Ling and Dong Shuhua, "New Regulations on Social Organizations to be Issued This Year: Civil Society Organizations to Receive Appropriate Encouragement" [Xin shetuan tiaoli nian nei chutai: minjian zuzhi jiang huo shidu guli], Southern Weekend (Online), 18 May 05.

[4] "China Encourages NGO's Participation in Fight Against AIDS," Xinhua (Online), 22 March 06; "Six NGOs in China To Receive State Funding for Poverty Relief," China Daily, 22 February 06, (Open Source Center, 22 February 06).

[5] "Chinese NGO's Wish to be Helpful to Government," Xinhua, reprinted in People's Daily (Online), 7 May 06.

[6] "Government Changes Needed To Clarify NGO's Role in China," Beijing Review (Online), 31 March 06; "Six NGOs in China To Receive State Funding for Poverty Relief," China Daily (Online), 22 February 06.

[7] Regulations on the Registration and Management of Social Organizations [Shehui tuanti dengji guanli tiaoli], issued 25 October 98, art. 6; Temporary Regulations on the Registration and Management of Non-Governmental, Non-Commercial Enterprises [Mingong feiqiye danwei dengji guanli zanxing tiaoli], issued 25 September 98, art. 5.

[8] The 2004 annual MOCA review of approved national social organizations lists their corresponding sponsor organizations and illustrates the Party and government links with Chinese civil society organizations. Ministry of Civil Affairs (Online), Report on the 2004 Annual Review of National Social Organizations [2004 niandu quanguoxing shehui tuanti nianjian jieguo gonggao], 3 May 05. See also Ministry of Civil Affairs Circular Regarding Who May Serve as a Sponsor Organization [Minzheng bu guanyu chongxin shehui tuanti yewu guanli danwei de tongzhi], issued February 00, art. 4.

[9] Article 20 of the UDHR and Article 5 of the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also generally guarantee the freedom of association and assembly.

[10] Ministry of Civil Affairs Temporary Measures on the Suppression of Illegal Civil Society Organizations, issued 6 April 00, art. 2; The Societies Registration Act, issued 1860, arts. 1–3; The Johns Hopkins University Center for Civil Society Studies, "Defining the Nonprofit Sector: South Korea," 2002, 6, 16. The European Court of Human Rights (ECHR) has interpreted language in Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms that is nearly identical to Article 22 of the ICCPR as endowing citizens with "the right to form a legal entity in order to act collectively in a field of mutual interest." Sidiropolous v. Greece, ECHR (57/1997/841/1047) (Chamber decision, July 10, 1998), 19. It has barred states from refusing legal status to groups absent a specific showing that the association seeking registration would threaten territorial integrity, national security, or public order. Ibid, 20. It has also barred efforts by states to dissolve associations or political parties absent similar findings. See, e.g., The United Communist Party of Turkey v. Turkey—19392/92 [1998] ECHR 1 (30 January 1998), which states that, in relation to the "democratic society" clause, "there can be no democracy without pluralism." The U.S. Supreme Court has upheld against constitutional challenge government registration schemes imposing criminal penalties on Communist organizations that are found "under the direction, domination, or control of certain foreign powers" and fail to register. Unlike existing Chinese law, these registration schemes do not deny legal status to organizations. In addition, in upholding these schemes, the Supreme Court specifically noted that the relevant legislation required that government findings "be made after full administrative hearing, subject to judicial review which opens the record for the reviewing court's determination whether the administrative findings as to fact are supported by the preponderance of the evidence." Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 86–7 (1961).

[11] Regulations on the Registration and Management of Social Organizations, arts. 11(2), 35; OSCE, "Freedom of Association: The Question of NGO Registration (1998)," 11; The Societies Act, enacted 1966, arts 9(3), 14.

[12] Yang Shi, "2768 Groups: Getting to the Bottom of Environmental NGOs" [2768 jia: Mo di huanbao NGO], 21st Century Business Herald (Online), 25 April 06.

[13] Ibid.

[14] Ibid.

[15] "Official: China to Further Support Charities by Tax Exemption Policies," Xinhua, 17 June 05 (Open Source Center, 17 June 05); Jiang Yanxin, "China May Legislate on Charitable Contributions" [Shankuan zhipei youwang lifa], Beijing News (Online), 22 November 05.

[16] Trial Regulations on Enterprise Income Tax [Zhonghua renmin gongheguo qiye suodeshui zanxing tiaoli], issued 13 December 93, art. 6(4) (specifying the 3 percent cap); Ministry of Finance Circular on Distributing the "Implementation Details for the Trial Regulations on Enterprise Income Tax" [Caizheng bu guanyu yinfa "Zhonghua renmin gongheguo qiye suodeshui zanxing tiaoli shishi xize" de tongzhi], issued 4 February 94, art. 12 (designating the Chinese Red Cross, All-China Foundation for the Elderly, Project Hope, five other groups, and "other non-profit, public-interest organizations allowed to be established by the Ministry of Civil Affairs). Tax authorities have periodically approved other organizations as authorized recipients of tax-deductible contributions. See Ministry of Finance and State Administration of Taxation Circular on Tax Policy Regarding Contributions To China's Foundation for Work With the Elderly and Seven Other Work Units [Caizheng bu guojia shuiwu ju guanyu zhongguo laoling shiye fazhan jijinhui deng 8 jia danwei juanzeng suodeshui zhengce wenti de tongzhi], issued 6 June 06; State Tax Administration Circular Regarding Tax-Exempt Contributions to the Chinese Association For the Promotion of Ethnic Unity [Guojia shuiwu ju guanyu nashui ren tongguo zhonghua minzu tuanjie jinbu xiehui gongyi jiuji juanzeng shuiqian kouhe wenti de tongzhi], issued 21 May 04.

[17] Circular of the General Offices of the Communist Party Central Committee and State Council on Strengthening the Management of Civil Society Organizations [Zhonggong zhongyang bangongting guowuyuan bangongting guanyu jinyibu jiaqiang minjian zuzhi guanli gongzuo de tongzhi], issued 1 November 99, art. 2.

[18] Ibid., para. 7; Central Party Circular on Problems Related to the Creation of Party Organizations in Social Organizations [Zhonggong zhongyang zuzhi bu, minzheng bu guanyu zai shehui tuanti zhong jianli dang zuzhi you guan wenti de tongzhi], issued 1998, art. 1.

[19] Circular of the General Offices of the Communist Party Central Committee and State Council on Strengthening the Management of Civil Society Organizations; Circular of the General Offices of the Communist Party Central Committee and State Council on Strengthening the Management of Social Organizations and Non-Governmental, Non-Commercial Enterprises, issued 28 August 96; CECC, 2005 Annual Report, 83.

[20] See the Commission's Political Prisoner Database. Chinese authorities released Tong Shidong on March 9, 2006, at the expiration of his sentence. Qin Yongmin, Xu Wei, Jin Haike, Yang Zili, and Zhang Honghai remain imprisoned.

[21] Yang Shi, "2768 Groups: Getting to the Bottom of Environmental NGOs."

[22] "Farmer Cooperatives: Urgently Awaiting Resolution of the Difficult Question of Their 'Black Status'" [Nongmin hezuo jidai pojie "heihu" nanti], Beijing News (Online), 8 March 06.

[23] Chen Xiangyang, "PRC: Journal Views NGO Challenges to China, Warns of Western Infiltration Through NGOs," China Economic Daily, 26 May 05 (Open Source Center, 27 May 05).

[24] CECC Staff Interview.

[25] "Investigation Sends Chill Through Activist Groups," Associated Press, reprinted in South China Morning Post (Online), 31 August 06.

[26] "China Activist Quits Amid Crackdown on NGOs," Reuters (Online), 7 February 06.

[27] "Investigation Sends Chill Through Activist Groups," Associated Press.

[28] Liao Hong, "Speech at the Forum of Evaluating the Work of Some Provincial and Municipal Civil Society Organizations" [Zai bufen shengshi minjian zuzhi pinggu gongzuo zuotanhui shangde jianghua], China NPO Network (Online), 28 March 06.

[29] "Ministry of Civil Affairs To 'Rate' Domestic NGOs" [Minzhengbu jiang gei minjian zuzhi 'dafen'], Beijing News (Online), 31 August 05.

[30] Liao Hong, "Speech at the Forum of Evaluating the Work of Some Provincial and Municipal Civil Society Organizations."

[31] Ministry of Civil Affairs (Online), "Jiangxi Provincial Civil Affairs Department Positively Guides and Helps Civil Society Organizations To Raise Their Overall Quality" [Jiangxi sheng minzhengting jiji yindao bangzhu minjian zuzhi tigao zhengti suzhi], 15 March 06.

[32] "Ministry of Civil Affairs To 'Rate' Domestic NGOs," Beijing News; Liao Hong, "Speech at the Forum of Evaluating the Work of Some Provincial and Municipal Civil Society Organizations."

[33] Ministry of Civil Affairs (Online), "Number of Social Organizations Reaches 289,000, Regulating Their Development Has Become an Urgent Task" [Minjian zuzhi dadao 28.9 wan guifan fazhan cheng poqie renwu], 31 August 05.

[34] Guo Xiaojun, "NGOs May Not Require a Sponsor Organization In Order To Register" [NGO zhuce you wang wu xu zhuguan danwei], Beijing News (Online), 18 October 04; "Three Chinese Think Tanks Advise on Civil Society Legislation; Is the Spring for Grassroots NGOs Coming?" [Sandazhiku jianyan shehui guanli lifa, caogen NGO de chuntian lailin?], 21st Century Business Herald (Online), 29 November 04.

[35] "Beijing Review Profiles Development, Social Role of NGOs in China," Beijing Review, 1 July 05 (Open Source Center, 1 July 05).

[36] Ibid.; "New Regulations on Social Organizations To Be Released This Year, Non-Governmental Groups to Receive Moderate Support" [Xinshetuan tiaoli niannei chutai, minjian zuzhi jiang huo shidu guli], Southern Daily (Online), 19 May 05.

[37] Ibid.

[38] The 2004 Regulations on Foundations created a channel for foreign foundations to register representative offices in China. Regulations on the Management of Foundations [Jinjinhui guanli tiaoli], issued 8 March 04, art. 13. This contrasts with the corresponding 1998 regulations governing social organizations and NGNCEs. Some foreign NGOs have registered as for-profit corporations, some have obtained specific individual approval for their activities, and others operate without any official registration. CECC Staff Interview.

[39] Carl Minzner, "New Chinese Regulations on Foundations," 2 International Journal of Civil Society Law 110 (April 2004).

[40] "Farmer Cooperatives: Urgently Awaiting Resolution of the Difficult Question of Their 'Black Status,'" Beijing News; CECC Staff Interview, Karla Simon, Professor of Law, Catholic University of America.

[41] "Farmer Cooperatives: Urgently Awaiting Resolution of the Difficult Question of Their 'Black Status,'" Beijing News.

[42] CECC, 2005 Annual Report, 82; "Rural Cooperative Organizations Obtain Legal Status" [Nongmin hezuo zuzhi shouhuo faren shenfen], Beijing News (Online), 10 May 05.

[43] Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside [Zhonggong zhongyang guowuyuan guanyu tuijin shehui zhuyi xin nongcun jianshe de ruogan yijian], issued 31 December 05.

[44] "Farmer Cooperatives: Urgently Awaiting Resolution of the Difficult Question of Their 'Black Status,'" Beijing News.

Notes to Section VII(b)—Institutions of Democratic Governance and Legislative Reform

[1] State Council Information Office, White Paper on Building of Political Democracy in China, Xinhua (Online), 19 October 05.

[2] "Jiangxi Party Authorities Support Judicial Independence, But Under Party Control," CECC China Human Rights and Rule of Law Update, February 2006, 12.

[3] Notice on Reissuance of Implementing Opinion on Zhejiang Province, City, County, and Township Organizational Reform [Guanyu yinfa 'Zhejiang sheng shi xian xiang jigou gaige shishi yijian' de tongzhi], issued 2 March 01, art. 3(3); Standing Committee of Jinan People's Congress (Online), [Jinan] Report Regarding the Turnover Election Work Situation During 2002 for the City's Town and Township Local People's Congresses [Guanyu 2002 nian quan shi xiang zhen renda huanjie xuanju gongzuo anpai qingkuang de huibao], 27 November 01, art. 4; Taizhou Government (Online), Taixing Launches Comprehensive Town and Township Reforms, Personnel of Public Institutions To Be Reduced by 502 [Taixing qidong xiangzhen zonghe peitao gaige jiguan shiye danwei bianzhi jiang jianshao 502 ming], 17 October 05.

[4] CECC, 2005 Annual Report, 11 October 05, 93–94.

[5] PRC Constitution, art. 25. Party congresses meet only once every five years. Ibid., art. 24.

[6] Political Change in China? Public Participation and Local Governance Reforms, Staff Roundtable of the Congressional-Executive Commission on China, 15 May 06, Written Statement Submitted by Joseph Fewsmith, Director of East Asian Studies Program and Professor of International Relations and Political Science, Boston University.

[7] China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004 speech by Chinese President Hu Jintao before the French National Assembly.

[8] "White Paper on Building of Political Democracy in China," 19 October 05. "The CPC's leadership and rule is an objective requirement of the country's development and progress. . . . The CPC's leadership and rule is needed for safeguarding China's unification and keeping Chinese

society harmonious and stable. . . . The CPC's leadership and rule is needed for making the state power stable." Ibid.

[9] Shi Jiangtao, "One Campaign 'Won't End Protests'," South China Morning Post (Online), 8 July 05; "Central Organization Department Introduces the Situation of the Advanced Education Campaign for Communist Party Members" [Zhongzubu jieshao baochi gongchan dangyuan xianjinxing jiaoyu huodong qingkuang], Xinhua, reprinted in PRC Central People's Government (Online), 7 July 05.

[10] Political Change in China? Public Participation and Local Governance Reforms, Written Statement Submitted by Joseph Fewsmith. Party regulations vest Party committees with control over elections. Communist Party Regulations on the Work of Grassroots Rural Organizations [Zhongguo gongchang dang nongcun jiceng zuzhi gongzuo tiaoli], issued February 99, arts. 8, 9.

[11] Wang Mei, "In Nine Years, Almost 10,000 Police Have Been Suspended For Disciplinary Violations" [9 Nian nei yu wan wei ji minjing bei chu ting zhi], Beijing News (Online), 15 February 06.

[12] Philip Pan, "Chinese Peasants Attacked in Land Dispute," Washington Post (Online), 15 June 05; "Local Party Secretary Receives Life Sentence for Authorizing Villager Shootings," CECC China Human Rights and Rule of Law Update, March 2006, 12.

[13] Ministry of Public Security (Online), "Public Order Stable Throughout China During 2005, Serious Violent Crimes Show Clear Decline" [2005 nian quanguo shehui zhi'an wending yanzhong baoli fanzui mingxian xia jiang], 19 January 06.

[14] "Rise in Collective Disputes Attributed to Weak Protections of Worker Rights," CECC China Human Rights and Rule of Law Update, December 2005, 13.

[15] CECC, 2005 Annual Report, 97.

[16] "State and Party-Run Web Sites Publish Op-Ed Critical of Local Censorship," CECC China Human Rights and Rule of Law Update, March 2006, 17.

[17] Kim Hunter Gordon, "Ssh, Don't Mention It to the Emperor," The Observer, 4 December 05; "Wen Jiabao Writes to Russian Premier Regarding Songhua Incident" [Wen Jiabao jiu songhua jiang shijian zhi xin e zongli], Beijing News (Online), 7 December 05.

[18] "Chinese Government Increases Censorship by Restricting 'Extra-Territorial' Reporting," CECC China Human Rights and Rule of Law Update, July 2005, 2.

[19] "White Paper on Building of Political Democracy in China," 19 October 05.

[20] See *infra*, (notes 24–29, 33–45) and accompanying text.

[21] Ibid.

[22] Political Change in China? Public Participation and Local Governance Reforms, Written Statement Submitted by Xie Gang, Former Senior Program Officer, Law and Governance Programs, Asia Foundation.

[23] "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14; "General Offices of the CCP Central Committee and State Council Reissuance of 'Opinion on Deeply Carrying Out Peaceful Construction'" [Zhong ban, Guo ban zhuanfa "Guanyu shenru kaizhan pingan jianshe de yijian"], Xinhua, reprinted in PRC Central People's Government (Online), 4 December 05. Chen Jiping, general office director of the Committee for Comprehensive Management of Public Security, called for the implementation of similar social order measures in a December 27, 2004 interview. "Central Committee for the Comprehensive Management of Public Security Responds to Journalists Questions Regarding Deepening Peaceful Construction" [Zhongyang zongzhiban fuzeren jiu guanyu kaizhan pingan jianshe de yijian da jizhe], Legal Daily, reprinted in PRC Central People's Government (Online), 5 December 05.

[24] "News Department Holds Press Conference on the Situation of Promoting Rural Advanced Education" [Xinwen ban jiu tuijin nongcun xianjin jiaoyu huodong qingkuang juxing fabuhui], China Net, reprinted in PRC Central People's Government (Online), 1 March 06.

[25] Ibid.

[26] Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside [Zhonggong zhongyang guowuyuan guanyu tuijin shehui zhuyi xin nongcun jianshe de ruogan yijian], issued 31 December 05. Village committees (VCs) are the lowest level of governance in Chinese rural and urban areas, underneath township (*xiang/zhen*) or street committees (*jiedaochu*). VCs and RCs serve as tools of top-down social control. They keep tabs on local residents, provide information to local police, and monitor compliance with government policies such as birth control and taxation requirements. However, VCs and RCs also operate as community institutions addressing local needs. They provide basic social services, mediate civil disputes, and offer a forum for residents to address local problems. CECC, 2005 Annual Report, 91, endnote 15.

[27] Communist Party Central Committee Opinion on Strengthening the Work of the Chinese People's Political Consultative Conference [Zhonggong zhongyang guanyu jiaqiang renmin zhengxie gongzuo de yijian], issued 8 February 06; "Party Calls for Stronger National Consultative Body To Enhance Party Governance," CECC China Human Rights and Rule of Law Update, May 2006, 8–9. "White Paper on Building of Political Democracy in China," 19 October 05. Party directives issued in 2004 and 2005 also directed Party officials to strengthen the role of the CPPCC and the National People's Congress, to help the public participate more in the legislative process, to make it easier for delegates to comment on legislative issues, and to assist in the oversight of government operations.

[28] Pan Haitao, "Li Junru: The Chinese People's Political Consultative Conference Offers Unique Advantages in Responding to the 'Color Revolutions'" [Li Junru: yingdui "caise geming" zhongguo zhengxie juyou dute youshi], China Net (Online), 10 March 06.

[29] "Units the CPPCC is Composed of," China Net (Online), 20 May 03.

[30] Pan Haitao, "Li Junru: The Chinese People's Political Consultative Conference Offers Unique Advantages in Responding to the 'Color Revolutions'."

[31] Communist Party Central Committee Opinion on Strengthening the Work of the Chinese People's Political Consultative Conference.

[32] Ibid., art. 1.

[33] Ibid., art. 5.

[34] Ibid. The Opinion calls for Party members to respect the right of non-Party CPPCC members to participate in discussions and proposals about major government decisions, proposes a "relatively larger" number of non-Party members in the CPPCC, and recommends a "certain number" of non-Party members in CPPCC leadership positions.

[35] Audra Ang, "Chinese Advisors May Tackle Rural Unrest," Associated Press, reprinted in Guardian (Online), 2 March 06; Luo Qiping, Wang Shengke, and Zhang Liwei, "No. 5 Document and New Space for the CPPCC" [Wu hao wenjian yu zhengxie xin kongjian], 21st Century Business Herald (Online), 6 March 06.

[36] National Policy Foundation [Guogai yanjiu baogao], Communist China Reform of Party-Government Relations [Zhonggong zhengfu dangzheng guanxi gaige], issued 31 March 03; China's State Control Mechanisms and Methods, Hearing of the U.S.-China Security and Economic Review Commission, 11 April 02, Written Statement Submitted by Richard Baum, Director, UCLA Center for Chinese Studies.

[37] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06; Ministry of Civil Affairs Notice Regarding Carrying Out Election Work for the 2005 Villager Committee Elections [Minzheng bu guanyu zuohao 2005 nian cunmin weiyuanhui huanjie xuanju gongzuo de tongzhi], issued 18 January 05, art. 2.

[38] Central Party Committee Decision on Strengthening the Party's Ruling Capacity [Zhonggong zhongyang guanyu jiaqiang dang de zhizheng nengli jianshe de jueding], issued 19 September 04, art. 5(5). The Decision links this practice with the goal of reducing the numbers of government officials. Ibid.

[39] "Anhui Province Expands Merger of Party and Government Posts," CECC China Human Rights and Rule of Law Update, November 2005, 13.

[40] Media reports depict the program as requiring township Party secretaries to serve as township heads. Ibid.; Fan Lixiang, "In Anhui Experiment, The Burden of the Township Head and Party Secretary Is Carried By the Same Person" [Anhui shidian xiangzhenzhang dangwei shuji yi bang tiao], 21st Century Business Herald, 19 October 05. The text of the underlying Party and government directive uses the term "promotes." Opinion of the General Offices of the Anhui Provincial Party Committee and Anhui Provincial Government Regarding Deepening Comprehensive Rural Reform and Constructing New Experimental Grassroots Work Mechanisms [Zhonggong Anhui sheng wei bangongting Anhui sheng renmin zhengfu bangongting guanyu kaizhan nongcun zonghe gaige shidian jianli nongcun jiceng gongzuo xin jizhi de yijian], issued 27 June 05, art 2(2).

[41] Fan Lixiang, "In Anhui Experiment, the Burden of the Township Head and Party Secretary Is Carried by the Same Person."

[42] "Anhui Province Expands Merger of Party and Government Posts," CECC China Human Rights and Rule of Law Update, November 2005, 13. The Anhui program may represent an experiment that Chinese officials are considering expanding on a larger scale to handle the financial pressures on local government generated by the abolition of the agricultural tax. Authorities designated Anhui province as an experimental province for agricultural tax reform prior to the rest of the country. Anhui authorities abolished the agricultural tax in 2004, and began experimenting with government restructuring at the same time. Ibid. The 2005 Anhui efforts to reduce the numbers of government officials resemble calls made in 2006 by Chinese central authorities for a reduction in the number of township and town government personnel between 2006 and 2011 as part of rural reform goals, in conjunction with the central government's abolition of the agricultural tax in 2006. Central Party Committee, State Council Opinion on Promoting the Construction of a New Socialist Countryside, art. 24.

[43] Maria Edin, "State Capacity and Local Agent Control in China: CCP Cadre Management from a Township Perspective," 173 China Quarterly 35, 38–40 (2003).

[44] Relevant Opinions of the General Office of the State Council on Promoting the Use of Administrative Enforcement Responsibility Systems [Guowuyuan bangongting guanyu tuixing xingzheng zhifa zerenzhi de ruogan yijian], issued 27 July 05.

[45] "State Council Emphasizes Implementation of Responsibility Systems, Rooting Out Use of Intellectual Property To Carry Out Local Protectionism" [Guowuyuan qiangdiao luoshi zerenzhi yanchu zhishi canquan gao difang baohu], China Court Net (Online), 26 April 06.

[46] Qie Jianrong, "Nine Ministries Join Together To Halt Illegal Mines" [Jiu bumen lianhe zhengdun weifa caikuang], Legal Daily (Online), 3 April 06.

[47] Shen Ying, "To Serve As an Official, One Must Pass the Environmental Barrier" [Dang guan yao guo huanbao guan], Southern Weekend (Online), 29 September 05.

[48] "Central Committee for the Comprehensive Management of Public Security Responds to Journalists Questions Regarding Deepening Peaceful Construction" [Zhongyang zongzhiban fuzeren jiu guanyu kaizhan pingan jianshe de yijian da jizhe], Legal Daily, reprinted in PRC Central People's Government (Online), 5 December 05. The language resembles a December 27, 2004 statement made by Chen Jiping, general office director of the Central Committee for the Comprehensive Management of Public Security, who asserted that all levels of the Chinese bureaucracy need to construct cadre responsibility systems that make the maintenance of public order a key component of their official performance evaluations. "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14.

[49] Electoral reforms began in the 1980s involving village and residents' committee (VC and RC) and local people's congress (LPC) elections. Party authorities have ensured that these reforms, as with those discussed in the text, have remained limited and do not challenge core principles of Party control. CECC, 2005 Annual Report, 91–94.

[50] Official efforts to allow a limited degree of public participation and transparency to improve governance have occurred in other fields as well. Regarding the use of open hearings in the criminal justice system, see Section V(b)—Rights of Criminal Suspects and Defendants. On the use of people's assessors in the regular judicial system, see CECC, 2005 Annual Report, 88.

[51] Political Change in China? Public Participation and Local Governance Reforms, 15 May 06, Written Statement Submitted by Joseph Fewsmith, Director of East Asian Studies Program and Professor of International Relations and Political Science, Boston University.

[52] Ibid.

[53] "General Offices of the CCP Central Committee and State Council Reissuance of 'Opinion on Deeply Carrying out Peaceful Construction.'"

[54] Regulations on the Selection of Leading Party and Government Cadres (Tentative) [Dang zheng lingdao ganbu xuanba renyong gongzuo zanxing tiaoli], issued 9 February 95, arts. 10(6), 15; Regulations on the Selection of Leading Party and Government Cadres [Dang zheng lingdao ganbu xuanba renyong gongzuo tiaoli], issued 9 July 02, art. 12(6).

[55] Regulations on the Selection of Leading Party and Government Cadres (Tentative), art. 9; Regulations on the Selection of Leading Party and Government Cadres, art. 17.

[56] "News Department Holds Press Conference on the Situation of Promoting Rural Advanced Education" [Xinwen ban jiu tuijin nongcun xianjin jiaoyu huodong qingkuang juxing fabuhui], China Net, reprinted in PRC Central People's Government (Online), 1 March 06.

[57] Regulations on the Selection of Leading Party and Government Cadres, arts. 13–17, 35–36.

[58] Wang Xingxia and Zhang Xi, "Zhuzhou: First Case of Public Nomination, Direct Election for Township Party Leaders" [Zhuzhou: shouci gongtui zhixuan xiangzhen dangwei banzi], Xiaochen Chenbao, reprinted in Xinhua (Online), 27 February 06.

[59] CECC, 2005 Annual Report, 92.

[60] Meng Nuo, "China's Highest Legislative Authority Holds Hearing for the First Time" [Zhongguo zui gao lifa jiguan shouci juxing tingzhenghui], Xinhua (Online), 27 September 06.

[61] PRC Environmental Impact Assessment Law [Huanjing yingxiang pingjia fa], issued 28 October 02, arts. 11 and 21.

[62] PRC Administrative Licensing Law [Xingzheng xuke fa], issued 27 August 03, art. 19.

[63] Trial Measures on Public Participation in Environmental Impact Assessments [Huanjing yingxiang pingjia gongzhong canyu zanxing banfa], issued 14 February 06; Xu Yuanfeng, "Shenyang Releases First Government Measures, Guarantees Public Participation in Environmental Protection" [Shenyang shuaixian chutai zhengfu guizhang banfa, baozhang gongzhong canyu huanbao], People's Daily (Online), 22 December 05.

[64] Allison Moore and Adria Warren, "The Double Edge of Legal Advocacy in Environmental Public Participation in China: Raising the Stakes and Strengthening Stakeholders," China Environment Series, Issue 8, Woodrow Wilson Center, forthcoming 2006.

[65] Ibid.

[66] Jim Yardley, "Seeking a Public Voice on China's 'Angry River,'" New York Times (Online), 26 December 05.

[67] "Three Gorges Project Given Go Ahead for Construction," China Daily (Online), 18 April 05.

[68] Joint Notice of the General Offices of the Party Central Committee and State Council Regarding Promoting Systems of Openness of Political Affairs In All Town and Township Political Institutions [Zhonggong zhongyang bangongting, guowuyuan bangongting guanyu zai quanguo xiangzhan zhengquan jiguan quanmian tuixing zhengwu gongkai zhidu de tongzhi], issued 6 December 00.

[69] Opinion of the General Offices of the Central Committee and the State Council Regarding Taking Further Steps To Promote Transparency in Political Affairs [Zhonggong zhongyang bangongting, guowuyuan bangongting guanyu jinyibu tuixing zhengwu gongkai de yijian], issued 24 March 05.

[70] CECC Staff Interview. Xu Ming and Wei Yongzheng, "Looking at Open Government Systems from the Perspective of New Regulations" [Cong difang xin gui kan zhengfu xinxi gongkai zhidu de jianli], China Daily (Online), 15 February 06.

[71] "Limited Political Reforms in One Zhejiang County Help Check Local Abuses," CECC China Human Rights and Rule of Law Update, February 2006, 10. Wuyi officials cited a central policy document on increasing transparency in village affairs as giving them the authority to implement these policies. Ibid.; Joint Opinion of the General Offices of the Central Party Committee and the State Council on Perfecting Systems of Transparency and Democratic Governance [Zhonggong zhongyang bangongting guowuyuan ban gongting guanyu jianquan he wanshan cunwu gongkai he minzhu guanli zhidu de yijian], issued 22 June 04.

[72] "Limited Political Reforms in One Zhejiang County Help Check Local Abuses," CECC China Human Rights and Rule of Law Update, February 2006, 10.

[73] Ibid.; Li Liang, "Zhejiang Wuyi: Separation of Powers to Govern a Village" [Zhejiang wuyi: fen quan zhi cun], Southern Weekend (Online), 19 May 05.

[74] Zou Shengwen and Yang Weihan, "National People's Congress Standing Committee Sets Legislative Plan For Next Year, Will Review 39 Draft Laws" [Quanguo renda changweihui queli mingnian lifa jihua jiang anpai shenyi 39 jian falü caoan], Xinhua, reprinted on the National People's Congress Web site (Online), 28 December 05.

[75] "Ministry Proposes Revisions to the Laws on Villagers and Residents Committees," CECC China Human Rights and Rule of Law Update, December 2005, 7.

[76] Communist Party Regulations on the Work of Grassroots Rural Organizations [Zhongguo gongchang dang nongcun jiceng zuzhi gongzuo tiaoli], issued February 99, arts. 8–9. Party control of VCs is also highlighted in the joint 2005 Party and State Council Opinion, which calls for strengthening village autonomous institutions (including elected VCs) that are "brimming with vitality," but "under village Party leadership." "General Offices of the CCP Central Committee and State Council Reissuance of 'Opinion on Deeply Carrying Out Peaceful Construction.'"

[77] Li Lihua, "The Party Branch Secretary Should Play a Core Leadership Role in Village Committee Elections" [Dang zhibu yao zai cunweihui huanjie zhong zuo hexin], China Elections and Governance Web site (Online), 20 March 06.

[78] PRC Organic Law on Village Committees, enacted 4 November 98, art. 16.

[79] Local Officials Suppress Citizen Effort to Remove Village Committee Head in Guangdong Province, CECC China Human Rights and Rule of Law Update, November 2005, 11.

[80] Ibid.; Edward Cody, "In Chinese Uprisings, Peasants Find New Allies," Washington Post (Online), 26 November 05.

[81] "Activists, Lawyers Denounce Results of Taishi LPC Election," CECC China Human Rights and Rule of Law Update, June 2006, 9; Leu Siew Ying, "New Setback in Taishi's Struggle for Democracy," South China Morning Post (Online), 29 March 06.

Notes to Section VII(c)—Access to Justice

[1] The accompanying general comment notes that this language does not necessarily require a judicial remedy, but that "[i]n relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential" and "[a]dministrative remedies should be accessible, affordable, timely, and effective. An ultimate right of judicial appeal from administrative remedies . . . would also often be appropriate." General Comment No. 9.

China has signed, but has not yet ratified, the ICCPR. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China's top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004 speech by Chinese President Hu Jintao before the French National Assembly.

[2] "Supreme People's Court Maps Future Judicial Reforms in Five Year Reform Program," CECC China Human Rights and Rule of Law Update, February 2006, 7–9.

[3] Zong Bian, "Central Political and Legal Affairs Committee Issues Circular Calling For Increased Attention To Resolving the Problem of Enforcement of Court Decisions" [Zhongyang zhengfawei tongzhi yaoqiu jiada lidu qieshi jiejue zhixing nan], China Court Net (Online), 23 January 06. Similarities between the circular and an October joint Party and State Council opinion suggest that they are part of a coordinated effort. The circular also directs local Party committees for the comprehensive management of public security to coordinate efforts at enforcing court judgments and to include the quality of enforcement work in the responsibility systems used to evaluate the performance of local officials. The national Political and Legislative Affairs Committee and the Committee for Comprehensive Management of Public Security prepared a December 2005 Party and State Council joint opinion to stem social unrest and to reduce the number of "mass incidents" such as riots, demonstrations, or collective petitions directed at government authorities. "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14–15. The Political and Legislative Affairs Committee circular directive to coordinate with the local CCMPS branches suggests that this enforcement campaign may be a specific effort to implement the earlier joint opinion.

[4] "Supreme People's Court Maps Future Judicial Reforms in Five Year Reform Program," CECC China Human Rights and Rule of Law Update, February 2006, 7–9.

[5] Ibid.

[6] PRC Constitution, art. 104.

[7] CECC, 2005 Annual Report, 11 October 05, 81.

[8] Second Five-Year Reform Program for the People's Courts (2004–2008) [Renmin fayuan di er ge wu nian gaige gangyao (2004—2008)], issued 26 October 05.

[9] CECC, 2005 Annual Report, 81.

[10] "Beijing No. 1 Intermediate People's Court Abolishes Responsibility System for Wrongly Decided Cases, Believes It Impedes Fairness" [Beijing di yi zhongji fayuan quxiao cuo'an zhuijiu zhi renwei you'ai gongping], The First, reprinted in Xinhua (Online), 21 November 05.

[11] Ibid.; "Beijing Court Announces Reform of Judicial Disciplinary System," CECC China Human Rights and Rule of Law Update, January 2006, 3.

[12] "Beijing No. 1 Intermediate People's Court Abolishes Responsibility System for Wrongly Decided Cases, Believes It Impedes Fairness," The First.

[13] Decision of the Jiangsu Party Committee on Further Strengthening the Work of the Courts and Procuratorate [Guanyu jinyibu jiaqiang fayuan jianchayuan gongzuo jueding], issued 12 August 04; Decision of the Yancheng City Party Committee on Further Strengthening the Work of the Courts and Procuratorate [Guanyu jinyibu jiaqiang fayuan jianchayuan gongzuo jueding], issued 4 November 04.

[14] Jiangxi High People's Court (Online), "Party Committee Issues 'Decision on Taking Further Steps To Strengthen the Work of Courts and Procuratorates'" [Sheng wei xia fa "guanyu jin yi bu jiaqiang fayuan jianchayuan gongzuo de jueding"]; "Jiangxi Party Authorities Support Judicial Independence, but Under Party Control," CECC China Human Rights and Rule of Law Update, February 2006, 12.

[15] "Supreme People's Court Maps Future Judicial Reforms in Five Year Reform Program," CECC China Human Rights and Rule of Law Update, February 2006, 7–9; Second Five-Year Reform Program for the People's Courts (2004–2008). These reform plans parallel those announced in earlier SPC work reports and media analysis. See CECC, 2005 Annual Report, 87–88.

[16] "Supreme People's Court Comes Out With Judicial Interpretation Promoting Reform of Adjudicatory Supervision" [Zuigaofa ni chutai sifa jieshi tuidong shenpan gaige], Defense Lawyer (Online), 28 November 05.

[17] "Justice Ministry Takes Steps To Improve the Independence of Expert Factual Determinations," CECC China Human Rights and Rule of Law Update, November 2005, 12.

[18] "The Rise In Youth Crime Is Startling" [Weichengnianren fanzui sheng fu jingren wo guo yunniang jian shaonian fayuan ping], Xinhua (Online), 13 March 05.

[19] Ningbo City Party Committee Decision Regarding the Construction of a Ningbo Ruled By Law [Zhonggong Ningbo shiwei yu jianshe fazhi Ningbo de jueding], issued 27 April 06; Henan Provincial Party Committee and Henan Provincial Government Circular Regarding the "Program for the Construction of a Peaceful Henan" [Henan shengwei shengzhengfu guanyu "Pingan Henan jianshe gangyao" de tongzhi], issued 26 April 06.

[20] Ministry of Justice (Online), Wu Aiying, "Provide Strong and Effective Legal Guarantees to Build a Harmonious Socialist Society" [Wei goujian shehuizhuyi hexie shehui tigong qiang you li de falü baozhang], 8 February 06.

[21] Ministry of Justice (Online), "Introduction to Judicial Administration Work" [Sifa xingzheng gongzuo jieshao], 24 March 03; CECC, 2005 Annual Report, 75–78.

[22] Li Qing and Huang Hun, "Construction of Local Judicial Bureaus Moves Into High Tide, Every Level of Government and Every Area Experience Success" [Sifa suo jianshe xian gaochao ge de ge ji jun you gaozhao], Legal Daily (Online), 16 May 05.

[23] "Standing Committee of the State Council Reviews and Approves in Principle the 'Construction Plan for West-Central China Area Basic-Level Police Stations, Town and Township Judicial Offices and People's Courts'" [Guowuyuan changwuhuiyi shenyi bing yuanze tongguo "zhongxibu diqu jiceng paichusuo, xiangzhen sifasuo, renmin fating jianshe guihua"], Department of Guiding Grassroots Work (Online), 7 February 06.

[24] "Ministry of Justice Sets 'Four Targets' for Serving the Construction of the Socialist Countryside" [Sifabu ding "sixiang renwu" fuwu shehui zhuyi xin noncun jianshe], Xinhua (Online), 5 May 06.

[25] Consultations increased from 1.9 million in 2003 to 2.66 million in 2005. "In One Year Over 430,000 People Assisted by China's Legal Aid System" [Yi nian yuanzhu 43 wan duoming qunzhong wo guo falu yuanzhu zhidu jiancheng tixi], Xinhua (Online), 1 January 06; CECC, 2005 Annual Report, 76–77.

[26] Ministry of Justice (Online), "All-China Environmental Federation to Provide Legal Aid to Pollution Victims" [Zhonghua huanbao lianhehui biaoshi wei wuran shouhaizhe tigong falü yuanzhu], 24 July 05.

[27] Shanghai Municipality Decisions on Legal Aid [Shanghai shi falü yuanzhu ruogan guiding], issued 9 May 06, art. 5. Article 6 provides that applicants seeking legal aid may obtain a statement proving economic need either from authorities in their place of hukou registration or actual place of residence. This appears to allow migrant applicants greater access to legal assistance in their actual place of residence. Provincial regulations issued before the 2003 National Regulations on Legal Aid had made access to legal aid conditional on local hukou status. CECC, 2004 Annual Report, 63.

[28] 2006 Report on the Policy for Development of China's Legal Profession [2006 nian Zhongguo lüshi ye fazhan zhengce baogao], issued 16 January 06; "ACLA, Justice Bureau Opinions Restrict Lawyer Involvement in Sensitive, Mass Cases," CECC China Human Rights and Rule of Law Update, June 2006, 4–5.

[29] Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature [Zhonghua quanguo lüshi xiehui guanyu lüshi banli qunti xing anjian zhidao yijian], issued 20 March 06, sec. I(1); "ACLA, Justice Bureau Opinions Restrict Lawyer Involvement in Sensitive, Mass Cases," CECC China Human Rights and Rule of Law Update, June 2006, 4–5.

[30] Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature, sec. III(2)-(3).

[31] Ibid., sec. I(2)-(3).

[32] Ibid., sec. IV(8).

[33] "ACLA, Justice Bureau Opinions Restrict Lawyer Involvement in Sensitive, Mass Cases," CECC China Human Rights and Rule of Law Update, June 2006, 4–5; "Henan Justice Bureau Bans Lawyers From Using Media in Sensitive Cases," CECC China Human Rights and Rule of Law Update, June 2006, 5–6; "Henan Justice Bureau Establishes a Rule for Lawyers: No Stirring Up of Sensitive Cases" [Henan sifating wei lüshi ding "guiju" mingan anjian jin chaozuo], Henan Daily, reprinted in Xinhua (Online), 10 April 06.

[34] "ACLA, Justice Bureau Opinions Restrict Lawyer Involvement in Sensitive, Mass Cases," CECC China Human Rights and Rule of Law Update, June 2006, 4–5; "Shenyang Lawyers Must Seek Advisory Opinions When Handling Sensitive Cases" [Shenyang lüshi chengban mingan anjian xu qingshi], Legal Daily (Online), 19 April 06.

[35] PRC Constitution, arts. 62, 67, 128.

[36] Working Procedures for the Filing and Review of Judicial Interpretations [Sifa jieshi beian shencha gongzuo chengxu], issued 16 December 05; "NPC Standing Committee Establishes Constitutional Review System for Regulations and Judicial Explanations" [Renda changweihui jianli fagui he sifa jieshi beian shencha zhidu], Xinhua (Online), 19 December 05.

[37] CECC Staff Interview.

[38] "The NPC Revises Constitutional Review Procedures, Review Processes Should Draw Lessons from Foreign Countries' Experiences" [Renda xiuding weixian shencha chengxu shencha caozuo xu jiejia waiguo jingyan], Southern Metropolitan News (Online), 21 December 05; "Constitutional Review and the Strengthening of Judicial Power" [Hexianxing shencha yu sifaquande qianghua], China Social Science, Vol. 2, 2002; Zhu Xiaoqing, "Legal Research Must Be Based on China's Situation" [Faxue yanjiu ya lizu yu zhongguo shiji], Seeking Truth, 16 March 06.

[39] "NPC Explains Constitutional Review System, Any Citizen Can Petition for Constitutional Review" [Renda jie weixian shenchazhi, renhe gongmin ke tiqing weixian shencha], Beijing News, reprinted in Xinhua (Online), 2 December 04; "My Country Implements the Constitution by NPC Supervision, Constitution Still Cannot Be the Basis of Litigation" [Wo guo you renda

jiandu xianfa shishi, xianfa reng buneng chengwei susong genju], People's Daily (Online), 1 December 04.

[40] See Zhu Xiaoqing, "Legal Research Must be Based on China's Situation," which states: "We absolutely may not use 'the Constitution may be studied and amended' as an excuse to wittingly or unwittingly take the constitutional systems of certain Western countries as our example, or to question or censure our country's constitutional system."

[41] Ibid.; Cheng Xiangqing, "A Discussion of Perfecting National People's Congress Supervision System" [Lun wanshan renda jiandu zhidu], People's Daily (Online), 15 July 04.

[42] Zhu Xiaoqing, "Legal Research Must be Based on China's Situation."

[43] PRC Legislation Law, enacted 15 March 00, art. 90.

[44] "New NPC Body to Address Law Conflicts," China Daily (Online), 21 June 04. China's state-run media has said this system is justified because "the issues raised by the State Council and the other five types [of government agencies] are more important," and because the large number of proposals that could be submitted by average citizens necessitated a "filtering procedure" before they were forwarded to the NPCSC. "National People's Congress Standing Committee Clarifies Constitutional Review Procedure" [Quanguo renda mingque weixian shencha chengxu], Beijing News (Online), 20 December 05. One Chinese scholar, however, has characterized this "government first, citizens second" approach as "giving one the feeling that the state is above the people, more important than the people, and seems inconsistent with nature of a socialist country." Wang Zhenmin, "China's Constitutional Review System" [Zhongguo weixian shencha zhidu] (Beijing: China Law and Politics University Publishing, 2004), 130.

[45] Working Procedures for the Filing and Review of Administrative Rules, Local Rules, Autonomous Region and Special Purpose Regulations, and Special Economic Zone Rules [Xinzheng faqui, difangxing fagui, zizhi tiaoli he danxing tiaoli, jingji tequ fagu beian shencha gongzuo chengxu], issued 16 October 00.

[46] Ding Aiping and Fei Zhiming, "Constitutional Review Takes a Big Step Forward" [Weixian shencha you xiang qian mai chule yi bu], Democracy and Legal System Times (Online), 17 April 06. See also, Luo Jing, "The Structure and Weaknesses of China's Press Legal System" [Woguo xinwen lingyu falu tixide goucheng yu quexian], The Journalist Monthly (Online), 1 February 06, which says that the absence of means for redress is the reason no cases have been filed by "people suing the government" in the area of media control, and that even if someone wished to file such a law suit, there is no law on which such a suit could be based; "Chinese Media, Scholars Criticize Lack of Legal Protections for Journalists," CECC China Human Rights and Rule of Law Update, March 2006, 15.

[47] "Groups Petition Government To Review Constitutionality Of Internet News Rules," CECC China Human Rights and Rule of Law Update, July 2006, 6.

[48] See "Legal Expert: Improve Legislative Filing and Review, Safeguard the Unity of the Nation's Legal System" [Faxue zhuanjia: wanshan fagui beian shencha weihu guojia fazhi tongyi], China Youth Daily (Online), 22 December 05, which quotes Cai Dingjian as saying: "Currently our country's local protectionism and departmental protectionism commonly causes a lack of unity laws and regulations, and legislative conflicts lead to citizens' rights suffering harm." See also Tong Dahuan, "How To Realize 'Procedural Rule by Law'" ["Chengxu fazhi" ruhe shixian], China Economic Times (Online), 22 December 05; "Heilongjiang's Compulsory Marriage Examination is Not Illegal," [Heilongjiang qianzhi hun jian bing bu weifa], Procuratorate Daily (Online), 1 August 05, 5 (citing Tai Qianhong: "Furthermore it is difficult bring about social groups and citizens submitting suggestions, and this is also significantly related to the fact that the current constitutional review mechanism is imperfect, and procedures are difficult to operate."); Cheng Xiangqing, "A Discussion of Perfecting National People's Congress Supervision System" ("[O]ur nation's constitutional supervision duty has never been effectively exercised. One reason for this is that the constitutional review mechanisms and procedures continues to need improvement."); "Several Problems with the National People's Congress' Constitutional Review Procedures" [Guanyu quanguo rendachangweiyuanhui fagui beian shencha gongzuode jige wenti], People's Daily (Online), 15 July 04.

[49] "I think they should conclude each case with a formal written judgment supported by adequate reasons, instead of solving the problem behind close doors.'" "New NPC Body to Address Law Conflicts," China Daily (Online) (quoting Wang Zhenmin); Sun Ruizhuo, "Three Suggestions Regarding the 'Constitutional Review' Procedure" [Dui "weixian shencha" chengxu de san dian jianyi], Da He Bao, reprinted in People's Daily (Online), 21 December 05; "Legal Expert: Improve Legislative Filing and Review, Safeguard the Unity of the Nation's Legal System" (citing Cai Dingjian as suggesting that the government tell the citizens within a fixed time whether or not an application for review has been accepted, whether or not they are launching a review, the specific process of the review, or if it is rejected, the reason for not accepting it); Tong Dahuan, "How to Realize 'Procedural Rule by Law,'" China Economic Times.

[50] "National People's Congress Standing Committee Clarifies Constitutional Review Procedures," Beijing News (Online), (citing Jiang Mingan, director of the Beijing University Constitutional and Administrative Law Research Center).

[51] "Constitutional Law Expert: Establishing a Constitutional Review Agency is an Important Step" [Xianfa xue quanwei zhuanjia: chengli weixian shencha jigou shi zhongda jinbu], China Youth Daily (Online), reprinted in the People's Daily (Online), 22 June 04, quoting Han Dayuan, China People's University Law School Vice Dean, Chinese Academy of Social Sciences Constitutional Law Association Vice-President:

[T]he general consensus with our country's constitutional community is that the National People's Congress Standing Committee should establish a dedicated Constitutional Commission, with rank at least equal to that of the NPC's specialist commission, and appoint authoritative legal scholars, experienced judges, and experienced lawyers to the specialist committee to serve as review commissioners. It would then directly review whether laws and regulations were unconstitutional or illegal, and report directly to the NPC Standing Committee, after which review procedures would be launched, and this method is relatively more suited to our country's situa-

tion.See also, "Experts Suggest The National People's Congress Establish a Constitutional Commission" [Zhuanjia jianyi quanguo renda zengshe xianfaweiyuanhui], China Youth Daily, reprinted in Xinhua (Online), 3 December 05.

[52] PRC Legislation Law, arts. 90 and 91.

[53] "Beneath the conflict of legislation lies the conflict of interests of different departments and local administrations and, in a word, power distribution." "New NPC Body to Address Law Conflicts," (quoting Wang Zhenmin); Cai Dingjian, "China Takes a Step Forward in Constitutional Review" [Zhongguo xian weixian maijin], Southern Weekend (Online), 22 December 05 (saying China's legal system is characterized by local and departmental protectionism); "Heilongjiang's Compulsory Marriage Examination is Not Illegal," Procuratorate Daily (Online) (quoting Tai Qianhong: "[S]tate agencies rarely submit suggestions for reviewing laws and regulations, and this is because a given state agency is often the law enforcement entity, and the law or regulation is often connected with their own interests."); Fu Dalin, "Using Openness and Gamesmanship to Prevent 'Legislative Balkanization'" [Yi gongkai he boyi fangzhi "lifa geju"], Guangming Daily (Online), 28 March, 06:[S]ituations arise where there are fights between legal standards. Looking into the reason, it is basically because it is very easy for agencies to influence the legislative process, and when legislating some administrative agencies "fight for what is in their interests, oppose what is against their interests, drag their feet in what is in others' interests, and refuse anything that divides their interests," this creates a situation of administrative legislation separatism that is unjust and unharmonious.

[54] "Legal Expert: Improve Legislative Filing and Review, Safeguard the Unity of the Nation's Legal System," China Youth Daily (Online), quoting Cai Dingjian:[O]ur country's legislative filing and review system primarily reviews whether local regulations and administrative regulations conflict with the Constitution and laws. . . . It is related to a constitutional review system, but it has a major difference, as the core of modern constitutional review systems will resolve whether the laws formulated by national legislative bodies are unconstitutional, and it safeguards the authority of law and the rights of citizens. Legislative filing and review systems do not include reviewing problems of NPC formulated laws conflicting with the Constitution. . . .

[55] Zhang Qianfan, "A Symbol of the Beginning of China's Constitutional Government Era" [Zhongguo xianzheng shidai kaishi de biaozhi], Legal Daily (Online), 28 June 04; "Constitutional Law Expert: Establishing a Constitutional Review Agency Is an Important Step," China Youth Daily (Online), (quoting Han Dayuan: "the Legislation Review and Filing Office is an agency subordinate to the Legislative Affairs Commission, and does not have any practical authority to rescind unconstitutional or illegal laws and regulations."); "National People's Congress Standing Committee Clarifies Constitutional Review Procedures," Beijing News (Online) (citing Jiao Hongchang).

[56] PRC Administrative Reconsideration Law, enacted 29 April 99, art. 17; PRC Administrative Procedure Law, enacted 4 April 89, art. 11.

[57] Compare original Legislation Procedures article 13 ("After legislative review work has been completed, the NPCSC General Office shall be responsible for notifying in writing the work unit or individual who raised the review request or review proposal") with amended Legislation Procedures article 14 ("After legislative review work has been completed, the NPCSC General Office may, as necessity dictates, notify in writing the government agencies or social organization, business enterprise, organization, or citizen who raised the review request or review proposal.")

[58] Ding Aiping and Fei Zhiming, "Constitutional Review Takes a Big Step Forward" ("Even though unconstitutional and illegal laws and regulations are commonplace, the National People's Congress and its Standing Committee has yet to rescind a single law or regulation. Soon after three academics petitioned regarding the Sun Zhigang incident, the State Council abolished the custody and repatriation measures, but it did not begin constitutional review procedures, nor did it provide any feedback to the public or the petitioners regarding the situation.").

[59] For example, officials have said that Chinese legislators replaced earlier regulations with the Public Order Administration Punishment Law to comply with the requirements of the Legislation Law. PRC Public Security Administration Punishment Law, issued 28 August 05; "National People's Congress Legislative Affairs Commission Report on the Results of the Consideration of the 'Draft People's Republic of China Public Order Administration Punishment Law'" [Quanguo renda falüweiyuanhui guanyu "zhonghua renmin gongheguo zhi'an guanli chufa fa (cao'an)" shenyi jieguode baogao], enacted 28 August 05.

[60] Liu Wuhou, "Hoping That Constitutional Review Procedures Will Commence as Soon as Possible," [Qidai weixian shencha chengxu jinkuai qidong], Jiangnan Times, reprinted in People's Daily (Online), 23 December 05; Liao Weihua, "Experts Suggest Establishing a Special Constitutional Committee" [Zhuanjia jianyi she xianfa zhuanmen weiyuanhui], Beijing News (Online), 21 September 04.

[61] The 2005 amendment to Legislative Procedures added the phrase " . . . in order to safeguard the unity of the nation's legal system." See also, "Legal Expert: Improve Legislative Filing and Review, Safeguard the Unity of the Nation's Legal System," China Youth Daily (Online) (quoting Cai Dingjian: "[I]ts primary goal is to safeguard the unity of the nation's legal system.").

[62] PRC Constitution, arts. 62, 67; PRC Legislation Law, arts. 90–91; Cheng Xiangqing, "A Discussion of Perfecting National People's Congress Supervision System" ("Our country's system differs from the three powers separation implemented in Western countries, in that we implement a system whereby all power belongs to the people through the People's Congress. . . . Our country's Constitution stipulates that the sacred duty of supervising the implementation of the Constitution lies only with the National People's Congress and its Standing Committee.").

[63] China's leaders have nevertheless acknowledged that unrestrained power leads to abuse and corruption, and that mechanisms are required to ensure citizens have a means to achieve redress of violations of their constitutional and legal rights. See, e.g., Zhu Xiaoqing, "Legal Research Must Be Based on China's Situation" ("[E]very country believes that, if power is not subject to restraint and supervision, it must lead to corruption"); Cheng Xiangqing, "A Discussion

of Perfecting National People's Congress Supervision System" ("History, both ancient and modern, foreign and domestic, proves that if those who hold power are not restrained, they will necessarily abuse their authority and become corrupt."); Hu Jintao, "Speech in the Capital Commemorating the Twentieth Anniversary of the Promulgation and Implementation of the Constitution" [Zai shoudu gejie jinian zhonghua renmingongheguo xianfa gongbu shixing ershi zhou nian dahui de yanjiang], Guangming Daily (Online), 4 December 02 ("As a result of problems with flawed laws and systems and the ill-adapted quality of law enforcement personal, there remain many problems of laws not being complied with, laws not being strictly enforced, and violations of law not being prosecuted, and there continues to exist some unconstitutional situations at different levels. We must expeditiously study and implement constitutional supervision mechanisms and further clarify constitutional supervision procedures in order to redress all violations of the Constitution.").

[64] Ding Aiping and Fei Zhiming, "Constitutional Review Takes A Big Step Forward."

[65] Under the national Regulations on Letters and Visits (RLV), citizens may "give information, make comments or suggestions, or lodge complaints" to *xinfang* (letters and visits) bureaus of local governments and their departments. Regulations on Letters and Visits [Xinfang tiaoli], issued 10 January 05, arts. 3, 6. The Law on Administrative Supervision allows citizens to file complaints of illegal behavior of government officials with Ministry of Supervision (MOS) officials. PRC Law on Administrative Supervision, enacted 9 May 97, art. 6. Party discipline bureaus handle similar accusations regarding Party members' violation of Party discipline. Regulations on Intra-Party Supervision [Dangnei jiandu tiaoli], issued 17 February 04, arts. 8, 25–26. None of the above channels allows citizens to challenge the underlying legality of regulations.

[66] PRC Administrative Reconsideration Law, enacted 29 April 99, arts. 6, 14. The Chinese administrative law system speaks in terms of "concrete" acts, which refer to actions by a government official or agency against a specific target with regard to a specific matter. "Abstract" acts refer to universally binding documents issued by administrative agencies to regulate behavior.

[67] Ibid., art. 14; PRC Administrative Procedure Law, arts. 2, 11.

[68] PRC State Compensation Law, enacted 12 May 94, art. 9.

[69] Shaanxi Provincial Party Disciplinary Commission and Bureau of Supervision (Online), "Record of Jinhua Open Hearing of Party and Government Disciplinary Violations" [Jinhua gongkai shenli dangji zhengji anjian jishi], 24 March 05.

[70] Defined as "regulatory documents below the level of rules" [Guizhang yixiade guifanxing wenjian]. See National People's Congress (Online), "Explanation Regarding the Administrative Reconsideration Law of the People's Republic of China" [Zhonghua renmin gongheguo xingzheng fuyi fa shiyi], 18 October 00. "Rules" are defined in article 2 of the Regulation for Filing Local and Administrative Rules [Fagui guizhang bei'an tiaoli], issued 14 December 01, as "Those rules [guizhang] formulated by State Council ministries and commissions, the People's Bank of China, the Auditing Administration, and subordinate agencies having executive administration capacity in accordance with laws and State Council's administrative regulations [xinzheng fagui], decisions, and orders within the scope of their authority pursuant to the Regulation on the Procedures for the Formulation of Rules. Article 6 of the Regulation on the Procedures for the Formulation of Rules [Guizhang zhiding chengxu tiaoli], issued 16 November 01, states that the names of rules generally include "provisions" [guiding] and "measures" [banfa], but not "regulations" [tiaoli].

[71] PRC Administrative Reconsideration Law, art. 7.

[72] National People's Congress, "Explanation Regarding the Administrative Reconsideration Law."

[73] Legislative Affairs Office of the State Council (Online), "2005 Analytical Report on Administrative Reconsideration and Administrative Litigation in Hubei Province" [2005 nian Hubei sheng xingzheng fuyi ji xingzheng yingsu qingkuang fenxi de baogao], 29 March 06.

[74] Ibid.

[75] 2006 Supreme People's Court Work Report, 11 March 06; 1995 Law Yearbook of China [1995 Zhongguo falü nianjian] (Beijing: China Law Yearbook Press, 1995), 958.

[76] Provisions on the Administration of Internet News Information Services [Hulianwang xinwen xiaoxi fuwu guanli guiding], issued 25 September 05.

[77] The groups claimed that the Provisions granting the SCIO the authority to license Web sites violated article 35 of the Constitution, and various provisions of the PRC Administrative Licensing Law, issued 27 August 03. "Petition on Behalf of the Aegean Sea Web Site Et. Al. to Repeal Rules on the Administration of Internet News Information Services" [Aiqinhai shijian weixian shencha shenqing daibiao tuan deng], Signature Net, issued 28 March 06.

[78] Decision of the State Council Establishing Administration Examination and Approval Matters That Must Remain Subject to Administrative Licensing [Guowuyuan dui quexu baoliu de xingzheng shenpi xiangmu sheding xingzheng xuke de jueding daohang], issued 29 June 04.

[79] PRC Administrative Reconsideration Law, art. 5.

[80] PRC Administrative Procedure Law, art. 12(2) states that "people's courts shall not accept actions initiated by citizens, legal persons or other organizations concerning any of the following matters: administrative rules and regulations, or decisions and orders with general binding force formulated and promulgated by administrative organs." PRC Administrative Reconsideration Law, art. 7 stipulates that "rules of departments and commissions under the State Council, and local people's governments" are excluded from administrative reconsideration review.

[81] PRC Administrative Procedure Law, arts. 52 and 53 state that, in adjudicating administrative disputes, people's courts shall "rely upon" national laws and State Council and local regulations, and shall "refer to" the rules of State Council ministries, commissions, and local governments.

[82] Wang Zhenmin, "China's Constitutional Review System" ("But if the Legislation Law is strictly implemented, [Article 90] in fact clearly negates the constitutional review power of the Supreme People's Courts and the lower level courts, and requires that, if the Supreme People's Court runs into a situation where a rule or regulation is unconstitutional, it must temporarily

suspend adjudication proceedings and apply to the NPCSC to undertake constitutional review of the rule or regulation . . . .").

[83] CECC, 2005 Annual Report, 95–98; Carl Minzner, "Xinfang: An Alternative to Formal Chinese Legal Institutions," 42 Stanford Journal of International Law 103, 115–6 (2006).

[84] Regulations on Letters and Visits, arts. 3, 6.

[85] CECC, 2005 Annual Report, 95.

[86] "The Growth of Xinfang Cases Has Been Turned Back" [Wo guo xinfang zongliang chixu pansheng shitou huo ezhi shangfang geng quxiang lixing], China National Radio (Online), 29 April 06.

[87] SPC Work Report, 11 March 06. Note that since 2005, the SPC work report has included "executed" (*zhixing*) cases in its annual computations of judicial cases, raising the total numbers of cases handled by the Chinese judiciary by 2 million a year. CECC, 2005 Annual Report, 177, endnote 9.

[88] Zhou Zhanshun, Director of the State Bureau of Letters and Calls stated in a 2003 interview that the total number of petitions received had risen regularly since 1993. "Director of the State Bureau for Letters and Calls: 80 Percent of Petitioners Are Justified," Outlook, reprinted in the China Internet Information Center (Online), 20 November 03. In 2006, Chinese authorities noted that the total number of petitions had declined in 2005 for the first time in 12 years. "The Growth of Xinfang Cases Has Been Turned Back," China National Radio.

[89] SPC Work Report, 11 March 06.

[90] "In the Past Three Months, Public Security Organs Have Resolved 163,000 Xinfang Problems from the Masses" [Guoqu 3 ge yue gongan jiguan jiejue qunzhong xinfang wenti 16.3 wan qi], People's Daily (Online), 18 August 06.

[91] Provisions on the Letters and Visits Work of Public Security Agencies [Gongan jiguan xinfang gongzuo guiding], issued 18 August 05, arts. 8, 38(5).

[92] "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14–15. Party leaders have set a 2006 goal to decrease the number of "mass incidents" such as strikes, marches, demonstrations, or collective petitions directed at government authorities. Ibid.

[93] "Communist Party, State Council Order Stronger Controls Over Society," CECC China Human Rights and Rule of Law Update, January 2006, 14–15.

[94] "The Growth of Xinfang Cases Has Been Turned Back," China National Radio; "In the Past Three Months, Public Security Agencies Have Resolved 163,000 Xinfang Problems of the Masses," People's Daily.

[95] "The Growth of *Xinfang* Cases Has Been Turned Back," China National Radio. Official statistics also report a 20.7 percent decline in the number of collective petitions to national *xinfang* authorities and a 22.5 percent decrease in the number of collective petitioners approaching provincial *xinfang* authorities. Ibid. Chinese courts recorded a 5 percent decline in the total number of petitions in 2005. SPC Work Report, 11 March 06.

[96] Reports state that authorities closed out 92.6 percent of those received, and successfully resolved more than 90 percent of the conflicts examined. "A Look Back at the New Xinfang Regulations" ["Xinfang tiaoli": changtong youxu kai yanlu wushi gaoxiao jie min you], People's Daily (Online), 2 May 06.

[97] Zhao Ling, "Xinfang Reform Triggers Controversy" [Xinfang gaige yinfa zhengyi], Southern Weekend (Online), 18 November 04.

[98] Provisions on the Letters and Visits Work of Public Security Agencies, arts. 8, 38(5).

[99] Regulations on Letters and Visits, art. 6.

[100] For example, the *xinfang* responsibility system adopted in February 2006 by the Ningnan county government in Sichuan province provides that local authorities receive a warning if 10 or more petitioners from their jurisdiction collectively petition provincial or higher authorities, if 20 or more petitioners collectively petition prefectural authorities, or if 30 or more petitioners do so at the county level. If petitioners present three or more collective petitions within a year to provincial or national officials, local officials lose eligibility for promotion or other awards. Ningnan County Party and Government Xinfang Responsibility System [Zhonggong ningnan xian wei ningnan xian renmin zhengfu guanyu luoshi xinfang gongzuo zeren zhi he zeren zhuijiu zhi de shishi yijian], issued 27 February 06. See also Implementation Details For The Municipal 2005–2007 Xinfang Evaluation System [Guanyu yinfa "2005–2007 nian quan shi jijian jiancha xinfang jubao gongzuo mubiao guanli kaoping xize" de tongzhi], issued 2 August 05; Lujiang County Trial Regulation on Implementing Xinfang Responsibility System [Lujiang xian shixing xinfang gongzuo guocuo zeren zhuijiu zhi de zanxing guiding], issued 9 December 05.

[101] Minzner, "Xinfang: An Alternative to Formal Chinese Legal Institutions," 156–58, 172–74.

[102] Human Rights Watch, "China: Rampant Violence and Intimidation Against Petitioners," 8 December 05.

[103] Human Rights Watch, "'We Could Disappear at Any Time'—Retaliation and Abuses Against Chinese Petitioners," December 2005, 47.

[104] "Ministry of Public Security Issues Notice Regarding the Situation of Preventing Serious Public Security Incidents, and Ensuring the Supervision of Public Security" [Gonganbu tongbao yufang zhongda zhi'an zaihai shigu, baozhang gonggong anquan ducha qingkuang], China Internet Information Center (Online), 2 March 06. See also "Official Discloses Use of Mass Roundups During NPC, CPPCC Sessions," CECC China Human Rights and Rule of Law Update, April 2006, 5. At the same time, Chinese authorities raided an area in Beijing where petitioners live and detained more than 400 people. Ibid.

[105] "U.S. NGO Reports That Official Abuse of Petitioners Is Rampant in China," CECC China Human Rights and Rule of Law Update, January 2006, 7–8.

[106] "Supreme People's Court To Strengthen Handling of Citizen Petitions by Trial Judges," CECC China Human Rights and Rule of Law Update, December 2005, 6.

[107] The 2005 Regulations on Letters and Visits require county-level and township governments to establish "leadership reception days" where petitioners may individually approach government leaders regarding the resolution of their grievances. Regulations on Letters and Visits, art. 10. The regulations also require local governments to adopt responsibility systems that make officials' success in handling these petitions a component of their regular performance evaluations. Ibid, art. 7.

[108] "Supreme People's Court to Strengthen Handling of Citizen Petitions by Trial Judges," CECC China Human Rights and Rule of Law Update, December 2005, 6.

Notes to Section VII(d)—Commercial Rule of Law and the Impact of the WTO

[1] U.S. Department of State (Online), "U.S.-China Trade Lacks 'Balance in Opportunity,' Official Says," 4 April 06.

[2] English, French, and Spanish. Includes all laws, regulations, and measures pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights, or the control of foreign exchange.

[3] World Trade Organization, Report of the Working Party on the Accession of China, WT/MIN(01)/3, 10 November 01, para. 334.

[4] Ibid., para. 332; World Trade Organization, Protocol on the Accession of the People's Republic of China, WT/L/432, 23 November 01, para. 2(C)2.

[5] Ibid.

[6] U.S. Department of State, "U.S.-China Trade Lacks 'Balance in Opportunity,' Official Says," 4 April 06.

[7] World Trade Organization, Committee on Import Licensing: Report to the Council for Trade in Goods on China's Transitional Review, G/LIC/14, 2 November 05. para. 3.10 (citing the representative of China as saying that, while all the procedures and requirements relating to TRQ administration were available on the Ministry of Commerce and National Development and Reform Commission Web sites, owing to huge resource restraints and language difficulties it was difficult for his authorities to have all procedures and requirements in English and make them available on the Web sites).

[8] Coalition of Service Industries, Letter to USTR and Department of Commerce Regarding 2006 JCCT Plenary, 21 March 06; CECC Staff Interview.

[9] Circular Regarding Further Carrying Out the Work Relating to Implementing Transparency Provisions of China's World Trade Organization Protocol [Guanyu jinyibu zuohao lüxing wo guo jiaru shijie maoyi zuzhi yidingshu toumingdu tiaokuan xiangguan gongzuo de tongzhi], issued 30 March 06. When China acceded to the WTO, it stated that the "full listing of official journals" was as follows: Gazette of the Standing Committee of the National People's Congress of the People's Republic of China; Gazette of the State Council of the People's Republic of China; Collection of the Laws of the People's Republic of China; Collection of the Laws and Regulations of the People's Republic of China; Gazette of MOFTEC of the People's Republic of China; Proclamation of the People's Bank of the People's Republic of China; and Proclamation of the Ministry of Finance of the People's Republic of China. World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01, para. 330. MOFCOM first began issuing the Bulletin in November 2002.

[10] MOFCOM has made its Gazette available at the following URL: http://www.mofcom.gov.cn/static/column/b/g.html/1.

[11] Hearing of the U.S.-China Economic and Security Review Commission, 5 February 04, Testimony of James J. Jochum, Assistant Secretary of Commerce for Import Administration.

[12] Agreement on Subsidies and Countervailing Measures, 15 April 94; Marrakesh Agreement Establishing the World Trade Organization, arts. 25.1 and 25.9.

[13] U.S. Department of State, "U.S.-China Trade Lacks 'Balance In Opportunity,' Official Says," 4 April 06.

[14] World Trade Organization, Committee on Subsidies and Countervailing Measures—Subsidies: China Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, G/SCM/N/123/CHN, 13 April 06.

[15] "Senior Official Credits WTO Accession for Advancing Transparency," CECC China Human Rights and Rule of Law Update, November 2005, 8; "Giving the Public Open Access," Beijing Review (Online), 13 October 05.

[16] "Changzhou City Government Adopts WTO-Inspired Transparency Measure," CECC China Human Rights and Rule of Law Update, January 2006, 8; "Changzhou: No Effect for Unpublicized Laws" [Changzhou: bu gongbu de zhengce guifan bu neng shengxiao], Legal Daily (Online), 8 December 05; Circular Regarding the Program To Submit Proposals to the City Government's 2006 Plan for Drafting Regulatory Documents [Guanyu baosong shi zhengfu 2006 nian zhiding guifanxing wenjian jihua jianyi xiangmu de tongzhi], issued 7 November 05.

[17] "China Clamped Down on Rampant Piracy Last Year," Xinhua (Online), 10 March 06.

[18] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[19] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[20] U.S. Department of State, "U.S. Boosting IPR Enforcement in China, Commerce Official Says," 10 March 06.

[21] "China's Piracy Crackdown Praised," Reuters (Online), 30 March 06.

[22] "China Vows To Bar Software Piracy," International Herald Tribune (Online), 27 March 06. See also, "US-China Meet Could Yield Some Progress on Piracy," Reuters (Online), 11 April 06. A Chinese government-backed study claimed that only 26 percent of the software packages installed on computers in China in 2005 were illegal, pirated copies. "Twenty-six Percent of China's Software Illegal," China Daily (Online), 18 May 06.

[23] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[24] Motion Picture Association of America, Inc., "Comprehensive Snapshot of Film Theft Provides International Anti-Piracy Roadmap," 3 May 06.

[25] "Hollywood Urges China Reforms Before Olympics," Reuters (Online), 13 December 05.

[26] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[27] Office of the U.S. Trade Representative, China Top-to-Bottom Review, 1 February 06.

[28] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[29] "China Results Mixed in Antipiracy Efforts," Variety (Online), 26 October 05.

[30] "Ministry of Public Security Targets Intellectual Property Infringement with Remarkable Success" [Quanguo gongan jiguan daji qinfan zhishi chanquan fanzui chengxiao xianzhu], Xinhua (Online), 15 November 05; "Major Headway Made in IPR Protection," China Daily (Online), 28 March 06.

[31] World Trade Organization, Report to the General Council by the Chair, Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/39, 21 November 05, para. 8.

[32] "Ministry of Public Security: Inspection Reveals 200 Illegal Optical Disc Production Lines Are from United States and Europe" [Gonganbu: chahuo de 200 tiao feifa guangpan shengchanxian jun laizi Oumei], People's Daily (Online), 17 November 05.

[33] "US Exaggerates IPR Violations: Experts," Xinhua (Online), 4 March 06.

[34] State Council Information Office (Online), "State Council Information Office Holds Press Conference To Discuss Strengthening of Intellectual Property Rights Administrative Law Enforcement" [Guo xinban jiu jiaqiang zhishi chanquan xingzheng zhifa deng qingkuang juxing fabuhui], 27 March 06 (quoting Gong Zheng, deputy director of the General Administration of Customs).

[35] According to China's state-run media, Chinese authorities destroyed 106 million pirated discs and books in 2005. "Major Headway Made in IPR Protection," China Daily (Online), 28 March 06. Between September 2004 and September 2005 Chinese authorities handled over 50,000 infringement cases with fines of up to 376 million yuan (US$46.36 million). During that period authorities seized over 50 million illegal audio-visual products and 19,000 illegal businesses were closed down, in addition to handling 3,176 cases of counterfeit patents. "Chinese State Council IP Office Director Touts China's IP Protection Effort," Xinhua (Online), 3 November 05.

[36] "United States and China Conclude Annual Bilateral Trade Meeting," CECC Human Rights and Rule of Law Update, May 2006, 14. In April 2006, the Ministry of Information Industry, National Copyright Administration, and Ministry of Commerce jointly issued a circular requiring all computers manufactured and sold in China to have legitimate copies of an operating system installed before they reach consumers. Circular Regarding Certain Issues Relating to the Pre-installation of Computer Operating System Software [Guanyu jisuanji yu zhuang zhengban caozuo xitong ruanjian youguan wenti de tongzhi], issued 6 April 06. Between January and April 2006, the government investigated 48 optical disc-copying enterprises, and found 14 were operating illegally. It rescinded six licenses and ordered eight enterprises to shut down and "make adjustments." "China Punishes 14 Companies for Illegal Disc Copying," People's Daily (Online), 27 March 06.

[37] Examples include: Trademark Examination Rules [Shangbiao pingshen guize], issued 26 September 05; Interpretation of Relevant Issues of Handling Criminal Cases of Infringing Upon Copyright Concerning Audio-visual Fixation [Guanyu banli qinfan zhuzuoquan xingshi anjian zhong sheji luyin luxiang zhipin you guan wenti de pifu], issued 13 October 05; Working Plan for Regional Punishment Campaign To Strike Hard Against Illegal Piracy Conduct [Yanli daji qinquan daoban weifa fanzui huodong quyuxing zhengzhi xingdong gongzuo fangan], issued 28 October 05; Regulations on the Administration of Entertainment Venues [Yulechangsuo guanli tiaoli], issued 29 January 06 (banning pirated products for commercial use in these places); Measures on the Resolution of Domain Name Disputes [Yuming zhengyi jiejue banfa], issued 14 February 06. In November 2005, the State Intellectual Property Office announced that it had commenced work on the third amendment to China's Patent Law. "Patent Law Reform Set in Motion," China Daily (Online), 24 November 05.

[38] Ministry of Commerce (Online), "China's Action Plan on IPR Protection 2006" [2006 Zhongguo baohu zhishi chanquan xingdong jihua], 8 March 06.

[39] Regulation on the Protection of Network Information Broadcasting Rights [Xinxi wangluo chuanboquan baohu tiaoli], issued 10 May 06; "China Vows To Better Protect Copyright on Internet," Xinhua (Online), 31 May 06.

[40] "Vice Premier, Senior Official Say China Moving to Join WIPO Internet Treaties," CECC Human Rights and Rule of Law Update, May 2006, 14; "Liu Binjie: China To Enter Into WTO Internet Treaties in Second Half of Year" [Liu Binjie: Zhonguo jiangyu xiabannian jiaru guoji hulianwang gongyue], Xinhua (Online), 12 April 06; U.S. Department of Commerce, Press Conference with Gutierrez and Wu Yi at the Annual Meeting of the U.S.-China Joint Commission on Commerce and Trade, 11 April 06.

[41] "Supreme Court Publicizes and Seeks a Review of Four Draft Interpretations" [Zuigaofa jiu si ge sifa jieshi gao gongkai zhengqiu yijian], Xinhua (Online), 21 November 05. See Interpretation Regarding Certain Laws To Be Used in Adjudicating Disputes Relating to Music Television Copyright Civil Disputes (Draft for Comment) [Guanyu shenli sheji yinyue dianshi zhuozuoquan minshi jiufen anjian sheyong falü ruogan wenti de jieshi (zhengqiu yijian gao)], issued 18 November 05; Interpretation Regarding Certain Laws To Be Used in Adjudicating Disputes Relating to Unfair Competition Civil Disputes (Draft for Comment) [Guanyu shenli bu zhengdang jingzheng minshi jiufen anjian sheyong falu ruogan wenti de jieshi (zhengqiu yijian gao)], issued 18 November 05; Interpretation Regarding Certain Laws To Be Used in Adjudicating Disputes Relating to Intellectual Property Rights Conflicts Civil Disputes (Draft for Comment) [Guanyu shenli sheji zhishi chanquan quanli chongtu minshi jiufen anjian sheyong falü ruogan wenti de jieshi (zhengqiu yijian gao)], issued 18 November 05; and Interpretation Regarding Certain

Laws To Be Used in Adjudicating Disputes Relating to Plant Variety Rights Infringement Disputes (Draft For Comment) [Guanyu shenli qinfan zhiwu xinpin zhong quan jiufen anjian sheyong falü ruogan wenti de jieshi (zhengqiu yijian gao)], issued 18 November 05. The comment period concluded in March 2006. "SPC Strengthens Judicial Interpretation Work in Intellectual Property Adjudication" [Zuigao fayuan jiaqiang zhishi chanquan shenpan sifa jieshi gongzuo], China Court Net (Online), 10 March 06.

[42] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[43] Office of the U.S. Trade Representative, The U.S.-China Joint Commission on Commerce and Trade (JCCT), Outcomes On Major U.S. Trade Concerns, 11 July 05.

[44] "Major Headway Made in IPR Protection," China Daily (Online), 28 March 06.

[45] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[46] PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 1 October 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, arts. 213—20. U.S. Chamber of Commerce, The AmCham-China White Paper: American Business in China, 16 May 05, 48 ("The most glaring deficiency in the current IPR regime is the one key law not revised when China joined the WTO— its criminal code. This should be revised to provide stronger protection, enhanced penalties and further clarification of standards.").

[47] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06. See also, "IPR Protection in 2005," China Daily (Online), 28 March 06.

[48] Agreement on Trade-Related Aspects of Intellectual Property Rights, Marrakesh Agreement Establishing the World Trade Organization, 15 April 94, art. 61.

[49] "IPR Judicial System in Need of Review, Says Legal Expert," China Daily (Online), 16 February 06.

[50] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[51] See, e.g., "First Instance Court Decision Made on Major Intellectual Property Rights Violation Case of 'Counterfeiting the Registered Trademark of the American Cisco Technology, Inc.'" ["Jiamao Meiguo sike gongsi zhuce shangbiao an" yi shen panjue], Xinhua (Online), 29 August 05; Ministry of Commerce, 2005–2006 Awards for Best Cases of IPR Protection [2005–2006 niandu zhishi chanquan baohu zuijia anli jiang], 12 April 06.

[52] "U.S. Companies to Test China's Criminal IPR Enforcement Regime," Inside U.S.-China Trade (Online), 21 September 05.

[53] Interpretation Concerning Certain Questions of Using the Criminal Law To Handle Violations of Intellectual Property Rights [Guanyu banli qinfan zhishichanquan xingshi anjian juti yingyong falü ruogan wenti de jieshi], issued 8 December 04.

[54] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[55] U.S. Chamber of Commerce, China's WTO Implementation and Other Issues of Importance to American Business in the U.S.-China Commercial Relationship, September 05, 36.

[56] World Trade Organization, Communication from the United States to China, Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/W/453, 5 October 05.

[57] World Trade Organization, Report to the General Council by the Chair, Council For Trade-Related Aspects of Intellectual Property Rights, IP/C/39, 21 November 05.

[58] Opinion Regarding the Timely Transfer of Cases in Administrative Enforcement That Are Suspected of Involving Crimes [Guanyu zai xingzheng zhifa zhong jishi yisong shexian fanzui anjian de yijian], issued 27 March 06.

[59] Ibid.; Temporary Provisions Regarding Strengthening Linkages and Cooperation During Striking Criminal Copyright Violation Work [Guanyu zai daji qinfan zhuzuoquan weifa fanzui gongzuo zhong jiaqiang xianjie peihe de zanxing guiding], issued 20 March 06; Temporary Provisions Regarding Strengthening Linkages and Cooperation During Striking Criminal Trademark Exclusivity Violation Work [Guanyu daji qinfan shangbiao zhuanyongquan weifa fanzui gongzuo zhong jiaqiang xianjie peihe de zanxing guiding], issued 13 January 06; and Temporary Provisions Regarding Strengthening Intellectual Property Law Enforcement Cooperation [Guanyu jiaqiang zhishi chanquan zhifa xiezuo de zanxing guiding], issued 24 March 06. The agencies were the Ministry of Supervision, State Administration of Industry and Commerce, National Copyright Administration, and General Administration of Customs.

[60] Office of the U.S. Trade Representative, 2006 Special 301 Report, 28 April 06.

[61] Ibid.; "Legal Experts Say IPR Judicial System in Need of Review," China Daily (Online), 16 February 06; "Piracy Has No Place in China's Hi-Tech Dream," South China Morning Post (Online), 12 January 06.

[62] "Starbucks Wins China Trademark Fight," Associated Press, reprinted in International Herald Tribune (Online), 2 January 06. See also, "Hennessy Wins China Piracy Case," BBC (Online), 30 November 05.

[63] "Viagra Ruling in Beijing Lifts Foreign Firms' Hopes," Wall Street Journal (Online), 5 June 06. Twelve Chinese drug companies appealed the verdict. "Chinese Firms Appeal Ruling Over Viagra," China Daily (Online), 20 June 06.

[64] "Fight on Piracy Is for China's Own Good, Says Official," Reuters (Online), 23 February 06.

[65] "Yearender: China To Strengthen IPR Protection To Encourage Innovation," Xinhua, reprinted in People's Daily (Online), 27 December 05.

[66] Organization for Economic Co-operation and Development, "OECD Finds That China Is Biggest Exporter of Information Technology Goods in 2004, Surpassing US and EU," 12 December 05. Includes computers, mobile phones, and digital cameras.

[67] "China Overtakes U.S. As Tech Supplier," International Herald Tribune (Online), 12 December 05 (stating that "Figures from the Chinese Ministry of Commerce show that companies that had received overseas investment accounted for almost 90 percent of 2004 exports of high technology products."). See also "Learning from China's Export Boom," Business Week, 19 January 06 (Roughly 60 percent of exports are made by foreign-invested enterprises, and the percentage progressively rises with the technology level.).

[68] "First Chinese IT Company with Independent IPR Appears on NASDAQ," Xinhua, reprinted in People's Daily (Online), 11 November 05.

[69] "A Realistic View Into the IPR Issue: Comment," People's Daily (Online), 29 March 06; "China To Continue Efforts in Combating Piracy, FM Spokesman," Xinhua, reprinted in People's Daily (Online), 23 February 06.

[70] Intellectual Property Protection as Economic Policy: Will China Ever Enforce Its IP Laws?, Staff Roundtable of the Congressional-Executive Commission on China, 16 May 05, Testimony of Daniel C.K. Chow. See also, "Copyright Forum Hears of Advances and Failures," South China Morning Post (Online), 27 April 06 (quoting Yan Xiaohong, deputy commissioner of the National Copyright Administration, as saying: "Local protectionism has resulted in rampant piracy and counterfeiting, which tainted the country's international image.").

[71] Regulations on the Protection of the Olympic Symbol [Aolinpike biaozhi baohu tiaoli], issued 4 February 02.

[72] "Yes, Beijing Can Stop Counterfeiters," Newsweek (Online), 10 January 06. Another example is the Chinese government's repression of the Falun Gong spiritual movement. Before the state banned Falun Gong in 1999, the spiritual group's materials were found throughout China. Since the crackdown, the only publicly available materials in China that discuss Falun Gong are anti-Falun Gong materials published by the government.

[73] International Trade Commission, Recent Trends in U.S. Services Trade: 2006 Annual Report, June 06.

[74] Ibid.

[75] "China's Banking Industry Enters Global Integration," China Daily (Online), 20 December 04.

[76] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01.

[77] Ibid.

[78] The schedule required the Chinese government to permit foreign banks to conduct local currency business in Shantou, Ningbo, Shenyang, and Xi'an by December 2005. The government opened the latter two cities in December 2004, and the former two and Harbin, Changchun, Lanzhou, Yinchuan and Nanning in December 2005. World Trade Organization, Secretariat Report—Trade Policy Review: China, WT/TPR/S/161, 28 February 06, para. 179.

[79] Public Notice Regarding Further Opening Up China's Banking Industry [Guanyu jin yi bu duiwai kaifang yinhangye xiangguan shixiang de gonggao], issued 8 December 05, art. 2.

[80] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[81] Measures Governing Foreign Debts of Domestic Foreign Funded Banks [Jingnei waizi yinhang waizhai guanli banfa], issued 27 May 04; Robert Vastine (President of the Coalition of Service Industries), Statement to the Trade Policy Staff Committee, U.S. Trade Representative, 14 September 05.

[82] PRC Commercial Bank Law, issued 10 May 95, amended 27 December 03, art. 13.

[83] Detailed Rules for the Implementation of the Regulations on the Administration of Foreign-funded Financial Institutions [Waizi jinrong jigou guanli tiaoli shishi xize], issued 26 July 04, arts. 31–36.

[84] Regulations on the Administration of Financial Institutions with Foreign Investment [Waizi jinrong jigou guanli tiaoli], issued 12 December 01, arts. 6 and 8. US$20 billion in the case of foreign bank branch.

[85] Ibid., art. 6. The Chinese government has stated it will waive the representative office requirement for foreign banks that directly apply for the establishment of operational branches in western China (Shaanxi, Gansu, Qinghai, Sichuan, Yunnan, and Guizhou provinces, Chongqing municipality, and the Ningxia Hui, Xinjiang Uighur, and Tibet Autonomous Regions). "China Announces New Policies to Encourage Foreign Banks to Enter Western Regions," Xinhua, reprinted in People's Daily (Online), 22 September 05.

[86] Detailed Rules for the Implementation of the Regulations on the Administration of Foreign-Funded Financial Institutions, arts. 31.

[87] PRC Commercial Bank Law, arts. 19–20.

[88] Detailed Rules for the Implementation of the Regulations on the Administration of Foreign-Funded Financial Institutions, art. 17.

[89] Regulations on the Administration of Financial Institutions with Foreign Investment, art. 7. US$20 billion in the case of a foreign bank branch.

[90] Measures on the Administration of Foreign Financial Institutions Taking Equity Stakes in Chinese Invested Financial Institutions [Jingwai jinrong jigou touzi rugu zhong zijin jinrong jigou guanli banfa], 8 December 03, arts. 8 and 9.

[91] "Citigroup Expected To Land China Deal," New York Times (Online), 31 December 05.

[92] "China Cap on Foreign Investment in Banks May Change Soon—Central Huijin," Forbes (Online), 22 June 06; "China May Raise Caps on Banks," Wall Street Journal (Online), 23 June 06; "China Govt Official: Studying Easing Bank Investment Cap," Wall Street Journal (Online), 21 April 06. But see also, "China Bank Investment Caps To Stay: Regulator," Reuters (Online), 21 April 06; "Official: Opening up Further to Foreign Banks To Have 'Big Impact' on PRC Banks," China Daily (Online), 9 March 06 (citing Shi Jiliang, Vice Chairman of the China Banking Regulatory Commission, as saying that China will continue to limit foreign banks' investment to two domestic banks because strategic investors "do not need too many partners," and that current restrictions on foreign investment in local banks are appropriate and will probably not be changed before the end of 2006).

[93] "China CBRC Says Guandong Devt Deal Will Not Be Exempt from Foreign Stake Rules," Forbes (Online), 19 April 06.

[94] "Foreign Investors' Bank Bid Left Hanging," China Daily (Online), 25 April 06.

[95] "Hope for a Breakthrough in the Guangdong Development Bank Reorganization Deadlock," Ta Kung Pao (Online), 12 July 06.

[96] Office U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[97] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II —Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01.

[98] Office of the U.S. Trade Representative, 2004 Report to Congress on China's WTO Compliance, 11 December 04.

[99] Public Notice Regarding Implementation of WTO Accession Commitments [Guanyu lüxing rushi chengnuo de gonggao], issued 11 December 04.

[100] Ibid.

[101] World Trade Organization, Secretariat Report—Trade Policy Review: China, WT/TPR/S/161, 28 February 06, para. 190.

[102] Regulation on the Administration of Foreign-Funded Insurance Companies [Waizi baoxian gongsi guanli tiaoli], issued 5 December 01.

[103] U.S. Department of State (Online), Jon Shaffer, "Huge Unrealized Opportunities Remain in China's Services Sectors," 6 May 05.

[104] "China Approves 40 Overseas Insurers," Xinhua (Online), 2 March 06.

[105] "AIA Receives Approvals To Conduct Group Insurance Business in China," American International Group Press Release, 26 May 06; "AIG Subsidiaries Receive Approvals from Chinese Regulators for Guangdong and Jiangsu Provincial Expansion," American International Group Press Release, 15 May 06.

[106] "Schumer Delays Schwab USTR Confirmation Over China Trade Complaint," China Trade Extra (Online), 26 May 06.

[107] Jon Shaffer, "Huge Unrealized Opportunities Remain in China's Services Sectors."

[108] Rules for Establishment of Securities Companies with Foreign Equity Participation [Waizi cangu zhengquan gongsi jianli guize], issued 1 June 02, art. 10; Measures for the Administration of Securities Investment Fund Management Companies [Zhengquan touzi jijin guanli gongsi guanli banfa], issued 12 August 04, art. 10; Circular Regarding Certain Questions Regarding the Implementation of the "Measures for the Administration of Securities Investment Fund Management Companies" [Guanyu shishi "Zhengquan touzi jijin guanli gongsi guanli banfa" ruogan wenti de tongzhi], issued 21 September 04, art. 1(7).

[109] Rules for Establishment of Securities Companies with Foreign Equity Participation [Waizi cangu zhengquan gongsi jianli guize], issued 1 June 02, art. 5.

[110] "Joint Venture Securities Companies Enter the A-Share Business" [Hezi quanshang jieru A gu yewu], Shanghai Securities Report, reprinted in State Council Information Office (Online), 13 December 02; Office of the U.S. Trade Representative, 2005 National Trade Estimate Report on Foreign Trade Barriers, 30 March 05.

[111] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01.

[112] Securities and Exchange Commission (Online), "SEC and CSRC Announce Terms of Reference for Enhanced Dialogue," 2 May 06.

[113] Transparency International, Corruption Perceptions Index 2005, 18 October 05.

[114] At a December 2005 meeting of Asian and European prosecutors in Shenzhen, Deputy Procurator General Wang Zhenchuan said that procuratorates nationwide prosecuted and punished 50,000 corrupt officials from 2003 to 2005. "50,000 Officials Punished in Anti-Corruption Campaign," Xinhua (Online), 11 December 05. In 2005, Chinese news media reported on "China's biggest political scandal," in which more than 260 government officials were alleged to have connections with Ma De, a senior official in Heilongjiang province convicted in July 2005 for taking bribes. "Official on Trial for Selling High-level Jobs," China Daily (Online), 23 March 05.

[115] An inter-governmental body established by the G-7 nations in 1989 to develop and promote national and international policies to combat narcotics trafficking-related money laundering and terrorist financing.

[116] "China Ratifies UN Convention against Corruption," Xinhua (Online), 27 October 05.

[117] "Government Considering New Anti-Money Laundering Regulations to Address Corruption, Improve Commercial Environment," CECC Human Rights and Rule of Law Update, June 2006, 16–17; "New Rules against Money Laundering Proposed," Xinhua (Online), 13 April 06; Anti-Money Laundering Provisions for Insurance Financial Organizations (Draft for Soliciting Opinions) [Baoxianye jinrong jigou fan xiqian guiding (zhengqiu yijian gao)], issued 12 April 06; Anti-Money Laundering Provisions for Securities and Commodities Financial Organizations (Draft for Soliciting Opinions) [Zhengquan, qihuoye jinrong jigou fan xiqian guiding (zhengqiu yijian gao)], issued 12 April 06. Anti-Money Laundering Provisions for Banking and Financial Organizations (Draft for Soliciting Opinions) [Yinhangye jinrong jigou fan xiqian guiding (zhengqiu yijian gao)], issued 12 April 06.

[118] Measures on Implementing the Items Subject to Administrative Licensing for China-Funded Commercial Banks [Zhongzi shangye yinhang xingzheng xuke shixiang shishi banfa], issued 12 January 06, art. 7(4). See also, "China Sets New Bank Rules," Wall Street Journal (Online), 24 February 06.

[119] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01.

[120] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01; Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06, 133.

[121] For example, the Measures on the Administration of Foreign-Invested Book, Magazine, and Newspaper Distribution Enterprises [Waishang tuozi tushu, baozhi, qikan fenxiao qiye guanli

banfa], issued 17 March 03; and the Measures on the Management of Foreign Investment in the Commercial Sector [Waishang touzi shangye lingyu guanli banfa], issued 16 April 04.

[122] For example, the Measures on the Administration of the Subscription of Imported Publications [Ding hu ding gou jinkou chubanwu guanli banfa], issued 31 December 04; Certain Opinions Regarding the Introduction of Foreign Investment Into the Cultural Domain [Guanyu wenhua lingyu yinjin waizi de ruogan yijian], issued 6 July 05. See, Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05; "Moving Forward on Distribution," China Business Review (Online), September-October 2005.

[123] Catalogue for the Guidance of Foreign Investment Industries [Waishang touzi chanye zhidao mulu], issued 30 November 04, Part 3(VIII)(2). It also included in the "prohibited" category news agencies and television program production.

[124] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[125] Decision of the State Council Establishing Administration Examination and Approval Matters That Must Remain Subject to Administrative Licensing [Guowuyuan dui xu baoliu de xingzheng shenpi xiangmu sheding xingzheng xuke de jueding daohang], issued 29 June 04.

[126] U.S. Chamber of Commerce, The AmCham-China White Paper: American Business in China, 16 May 05, 126; Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06, 133.

[127] Measures for Administering the Release of News and Information in China by Foreign News Agencies [Waiguo tongxunshe zai zhongguo jingnei fabu xinwen xinxi guanli banfa], issued 10 September 06.

[128] Michael Connolly, "Beijing Curbs Media to Protect Their Rights?," Wall Street Journal (Online), 11 September 06.

[129] U.S. Chamber of Commerce, China's WTO Implementation and Other Issues of Importance to American Business in the U.S.-China Commercial Relationship, September 2005, 39.

[130] World Trade Organization, WTO Communication from the United States to China, Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/W/453, 5 October 05.

[131] World Trade Organization, Report to the General Council by the Chair, Council for Trade-related Aspects of Intellectual Property Rights, IP/C/39, 21 November 05.

[132] The Internet in China: A Tool for Freedom or Suppression?, Hearing of the Committee on International Relations, U.S. House of Representatives, Testimony of Elliot Schrage, Vice President, Global Communications and Public Affairs, Google Inc., 15 February 06.

[133] Ibid., Testimony of Jack Krumholtz, Associate General Counsel and Managing Director, Federal Government Affairs, Microsoft Corporation.

[134] Ibid., Testimony of Michael Callahan, Senior Vice President and General Counsel, Yahoo!.

[135] "Murdoch Says News Corp. Has Hit 'Brick Wall' in China," Bloomberg News (Online), 19 September 05.

[136] "Government Regulators Block Foreign Access to China's Media Market," CECC Human Rights and Rule of Law Update, October 2005, 9; "New SARFT Rules Further Restrict Cooperation and Interaction Between Domestic Radio and Television Stations and Foreign Counterparts," CECC Human Rights and Rule of Law Update, August, 2005, 4; Notice Regarding Further Strengthening the Administration of Radio and Television Channels [Guanyu jin yi bu jiaqiang guangbo dianshi pindao guanli de tongzhi], issued 4 August 05 (stipulating that to preserve the government's ability "to make final decisions regarding the contents of propaganda," and that "controlling shares in radio and television stations must be in the hands of the government, and non-government investors may not participate in editorial decisions."); Certain Opinions Regarding the Introduction of Foreign Investment into the Cultural Domain [Guanyu wenhua lingyu yinjin waizi de ruogan yijian], issued 6 July 05; "Five Government Agencies Formulate the 'Certain Opinions Regarding the Introduction of Foreign Investment Into the Cultural Domain'" [5 bu wei zhiding "guanyu wenhua lingyu yinjin waizi de ruogan yijian"], Xinhua (Online), 4 August 05 (stating that the "Certain Opinions" document "prohibits foreign businesses from investing in businesses that engage in book, magazine, or newspaper publishing, distribution, or importation, businesses that publish, produce, distribute, or import audio-visual products and electronic publications, as well as businesses that utilize information networks to launch audio-visual programming services, news Web sites, and Internet publishing.").

[137] "New Rules Issued: Foreign-Invested Film and Television Media May Only Open One Joint Venture Company" [Xin guiding chutai: waizi yingshi chuanmei zhi neng kai yi jia hezi gongsi], People's Daily (Online), 7 March 05; Notice Regarding Matters Relating to the Implementation of the "Temporary Provisions on the Administration of Sino-Foreign Investment and Cooperative Joint Venture Television Program Production Enterprises" [Guanyu shishi "zhongwai hezi, hezuo guangbo dianshi jiemu zhizuo jingying qiye zanxing guiding" youguan shiyi de tongzhi], issued 7 March 05. For additional examples, see Section III(a)—Special Focus for 2006: Freedom of Expression.

[138] "Media Executives Court China, But Still Run Into Obstacles," New York Times (Online), 29 August 05.

[139] "News Corp. Sells Phoenix TV Stake to China Mobile," Washington Post (Online), 8 June 06. News Corp. had been distributing the National Geographic Channel, a music channel, and other programming to local cable television companies without government permission.

[140] Certain Decisions Regarding Non-Public Investment in Cultural Industries [Guowuyuan guanyu feigongyou ziben jinru wenhua chanye de ruogan jueding], issued 13 April 05 (prohibiting the importation of newspapers, magazines, movies, and television shows); Circular Regarding Promulgation of the "Provisions on the Administration of Radio, Film, and Television Systems' Local Foreign Affairs Work" [Guanyu yinfa "guangbo yingshi xitong difang waishi gongzuo guanli guiding" de tongzhi], issued 7 July 05 (prohibiting television and radio stations from leasing their channels to foreign companies, and from cooperating with foreign companies in station operations); Measures Regarding Strengthening the Administration of the Importation of Cultural Products [Guanyu jiaqiang wenhua chanpin jinkou guanli de banfa], issued 28 April 05

(freezing approvals for new foreign satellite television channels). See, e.g., "China Exclusive: China Issues Regulations to Protect Cultural Security," People's Daily (Online), 12 August 05; "Policies in the Cultural Area Are Continuously Issued Promoting the Health Development of the Culture Sector" [Wenhua lingyu xiangguan zhengce luxu chutai cujin wenhua chanye jiankang fazhan], Xinhua (Online), 21 August 05. Also in late 2005, the GAPP issued an internal rule limiting approvals for the introduction of foreign magazines to science and technology publications. "GAPP Tightens Restrictions on Foreign Publications," CECC Human Rights and Rule of Law Update, May 2006, 13; Geoffrey A. Fowler and Juying Qin, "China Curbs Magazines from Foreign Publishers," Wall Street Journal (Online), 7 April 06.

[141] World Trade Organization, Report of the Working Party on the Accession of China, Schedule CLII, Part II —Schedule of Specific Commitments on Services List of Article II MFN Exemptions, WT/MIN(01)/3/Add.2, 10 November 01.

[142] Ibid.

[143] U.S. Department of Commerce, "The U.S.-China Joint Commission on Commerce and Trade (JCCT) Outcomes on U.S. Requests," 11 April 06.

[144] "China's Government Procurement Market Will Open" [Zhongguo zhengce caigou shichang jijiang duiwai kaifang], Economic Information Daily, reprinted in China Finance and Economy News (Online), 3 August 05.

[145] "Drafter Predicts: Government Procurement To Open Up to Foreign Companies in Four Years" [Qicaozhe yuce: Zhongguo zhengfu caigou 4 nian hou kaifang], Beijing Business Today (Online), 27 April 06.

[146] "Industry Expert Expects Procurement Market To Remain Closed Four More Years," CECC Human Rights And Rule Of Law Update, June 2006, 17.

[147] "There Exists a Phenomenon in Government Procurement Where There Is Law But It Is Not Being Obeyed" [Zhengfu caigou cunzai you fa bu yi fa xianxiang jianguan gongzuo jidai jiaqiang], Xinhua (Online), 30 November 05.

[148] "Government Procurement: Who Has Market Opportunity?" [Zhengfu caigou: shichang jihui luo shei jia?], People's Daily (Online), 4 July 02.

[149] "Ministry of Finance Launches Project to Combat Bribery in Government Procurement and Commercial Enterprises" [Caizhengbu qidong zhengfu caigou lingyu shangye huilu zhuanxiang zhili gongzuo], Xinhua (Online), 1 April 06.

[150] "Ministry of Finance Begins Accepting Reports of Commercial Bribery in Government Procurement" [Caizhengbu kaishi shouli zhengfu caigou lingyu shangye huilu jubao], Xinhua (Online), 21 April 06.

[151] U.S. Senate Finance Committee, Testimony of Karan K. Bhatia, Deputy U.S. Trade Representative, 29 March 06.

[152] World Trade Organization, Secretariat Report—Trade Policies and Practices by Measure, WT/TPR/S/161, 28 February 06, para. 4; World Trade Organization, Secretariat Report—Contents and Summary Observations, WT/TPR/S/161, 28 February 06, para 12.

[153] These two bans ended in late 2004, except for cherries from California. Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[154] The maximum residual level has not been enforced yet. Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06. World Trade Organization members may avoid a claim that their phytosanitary measure lacks a scientific basis if they rely on an international standard. World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, arts. 3.1 and 3.3.

[155] World Trade Organization, Secretariat Report—Contents and Summary Observations, WT/TPR/S/161, 28 February 06, para 85.

[156] Ibid.

[157] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[158] Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff, 4 December 01.

[159] Administrative Measures for Entry for Animal and Plant Quarantine [Jinjing dongzhiwu jianyi shenpi guanli banfa], issued 2 August 02.

[160] World Trade Organization, Questions from the United States to China, World Trade Organization Committee on Import Licensing, G/lic/q/chn/16, 16 August 05, para. 3.

[161] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[162] In June 2004, the General Administration of Quality Supervision, Inspection and Quarantine issued Public Notice 2004[73] [Guojia zhiliang jiancha yancha zongju gonggao 2004 nian di 73 hao], which extended the period of validity for quarantine permits from three months to six months.

[163] American Chamber of Commerce in China, 2006 White Paper, 74.

[164] Ibid., 76; Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[165] American Chamber of Commerce in China, 2006 White Paper, 76.

[166] Ibid., 74; Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[167] World Trade Organization, Questions from the United States to China, World Trade Organization Committee on Import Licensing, G/lic/q/chn/16, 16 August 05, para. 3.

[168] U.S.-China Economic Relations, Hearing of the Senate Finance Committee, Testimony of Gary Joachim, Vice President, American Soybean Association, 29 March 06.

[169] U.S. Department of Commerce, The U.S.-China Joint Commission on Commerce and Trade (JCCT) Outcomes on U.S. Requests, 11 April 06.

[170] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[171] Ministry of Agriculture Public Notice Number 678 [Nongyebu gonggao di 678 hao], issued 29 June 06 (provided that it has been stripped of spines, brains, and other parts).

[172] "U.S.: No Deal on Beef Trade with China," Business Week (Online), 30 June 06; "U.S. Says China Announcement on Beef Market Opening Is Meaningless," Inside U.S.-China Trade (Online), 5 July 06.

[173] "U.S., China Cite Progress on Beef, GPA, Subsidies; But Questions Remain," Inside U.S.-China Trade (Online), 12 April 06; "U.S. Considering Next Steps in Bid to Open China's Beef Market," Inside U.S.-China Trade (Online), 12 July 06; Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[174] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[175] Ibid.

[176] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[177] American Chamber of Commerce in China, "White Paper 2006," 76; Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[178] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[179] U.S. Department of Agriculture (Online), "Johanns Signs Agreement With China on Food Safety and Plant and Animal Health," 13 April 06.

[180] American Soybean Association, "ASA and Chinese Officials Sign Agreement in Washington D.C.," 11 April 06.

[181] World Trade Organization, Request for Consultations by the United States: China—Measures Affecting Imports of Automobile Parts, WT/DS340/1, 3 April 06.

[182] World Trade Organization, Request for Consultations by Canada: China—Measures Affecting Imports of Automobile Parts, WT/DS342/1, 19 April 06.; World Trade Organization, Request for Consultations by the European Communities: China—Measures Affecting Imports of Automobile Parts, WT/DS339/1, 3 April 06.

[183] The request also notes that Chinese regulations appear to assess tariffs on certain specified parts and assemblies as though they are complete vehicles. According to the request, these appear to be inconsistent with the Article 2 of the TRIMs Agreement, Articles II and III of the GATT 1994, Article 3 of the SCM Agreement; and China's Protocol on the Accession. The request cited the following rules as providing for the aforementioned treatment: Auto Industry Development Policy [Qiche chanye fazhan zhengce], issued 21 May 04; Management Measures for Imports of Auto Parts Having the Characteristics of a Complete Automobile [Goucheng zhengche tezheng de qiche lingbujian jinkou guanli banfa], issued 28 February 05; and Rules for Determining Whether Imported Automotive Parts and Components Constitute Complete Vehicles [Jinkou qiche lingbujian goucheng zhengche tezheng heding guize], issued 28 March 05.

[184] "Nation Agrees To Hold Talks on Auto Parts," China Daily (Online), 10 April 06.

[185] "China Becomes Victim of Trade Protectionism," China Daily (Online), 10 April 06.

[186] "Consultation Over Auto Parts Tariffs May Continue," Xinhua (Online), 16 June 06; "U.S. To Move Quickly Toward WTO Auto Parts Case," ChinaTradeExtra (Online), 7 June 06.

[187] "U.S. Department of State, "Trade Dispute Panel Sought on Auto Parts Exports to China," 15 September 06.

[188] Steel Industry Development Policy [Gangtie chanye fazhan zhengce], issued 20 July 05.

[189] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[190] "NDRC Issues Steel Industry Development Policy," CECC Human Rights and Rule of Law Update, August 2005, 8; Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05. The policy encourages domestic enterprises to "use domestic facilities and technology" while importing only "equipment and technology that cannot be made domestically or for which domestic supply is unable to satisfy the requirements." Steel Industry Development Policy, art. 18. The policy prohibits foreign control over domestic steel enterprises and restricts foreign investment in the steel industry. Steel Industry Development Policy, art. 23. Foreign companies wishing to invest in the domestic steel industry must have produced either 10 million tons of steel or 1 million tons of high-alloy specialty steel during the previous year. Ibid. If the foreign company can fulfill these requirements it may invest in existing Chinese steel facilities, but may not create new ones.

[191] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05. See also, "Report of the Working Party on the Accession of China," WT/MIN(01)/3, para. 46.

[192] Congressional Steel Caucus Hearing, Statement by Timothy Stratford, Assistant U.S. Trade Representative for China Affairs, 14 June 06.

[193] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05. See also, Report of the Working Party on the Accession of China, WT/MIN(01)/3, para. 49.

[194] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[195] World Trade Organization, Questions from the United States to China, Committee on Import Licensing, G/LIC/Q/CHN/16, 16 August 05.

[196] World Trade Organization, Minutes of the Meeting Held on 28 September 05, Committee on Import Licensing, G/LIC/M/22, 2 November 05.

[197] World Trade Organization, 2005 Transitional Review Mechanism, for the Council for Trade-Related Investment Measures, Committee on Trade-Related Investment Measures, G/L/751, 24 October 05.

[198] World Trade Organization, Minutes of the Meeting Held on 28 September 05, Committee on Import Licensing, G/LIC/M/22, 2 November 05. The organizations were the China Steel In-

dustry Association and the Commercial Chamber for Metals, Minerals and Chemicals Importers and Exporters.

[199] Protocol on the Accession of the People's Republic of China, World Trade Organization Document WT/L/432 (23 November 01), para. 5; "Report of the Working Party on the Accession of China, Schedule CLII, Part II—Schedule of Specific Commitments on Services List of Article II MFN Exemptions," WT/MIN(01)/3/Add.2, 10 November 01.

[200] PRC Foreign Trade Law, issued 1 July 04.

[201] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05.

[202] Measures on the Management of Foreign Investment in the Commercial Sector [Waishang touzi shangye lingyu guanli banfa], issued 16 April 04.

[203] Circular Regarding Certain Issues with Foreign-Invested Non-Commercial Enterprises Expanding the Scope of Retail Operations [Guanyu waishang touzi fei shangye qiye zengjia fenxiao jingying fanwei youguan wenti de tongzhi], issued 2 April 05.

[204] Circular Regarding Issues Regarding the Administration of Trade in Bonded Zones and Bonded Logistic Parks [Guanyu baoshui qu ji baoshui wuliu yuanqumaoyi guanli youguan wenti de tongzhi], issued 28 July 05. See also, "Moving Forward on Distribution," China Business Review, September-October 05.

[205] Circular Regarding Certain Issues with Foreign-Invested Non-Commercial Enterprises Expanding the Scope of Retail Operations; Ministry of Commerce (Online), "Ministry of Commerce Promulgates Set of Provisions on the Handling Procedures for Establishing the Scope of Projects for Foreign-Invested Commercial Enterprises" [Shangyebu banbu sheli waishang touzi shangye lingyu xiangmu banli chengxu deng xilie guiding], 5 August 05.

[206] Regulation on the Administration of Direct Selling [Zhixiao guanli tiaoli], issued 23 August 05.

[207] Office of the U.S. Trade Representative, 2005 Report to Congress on China's WTO Compliance, 11 December 05; "Companies Hope Direct Sales Approval for Avon Leads to Others," Inside US-China Trade (Online), 8 March 06.

[208] "Avon Grabs China's First License for Direct Sales," Xinhua, reprinted in People's Daily (Online), 5 March 06.

[209] U.S. Department of Commerce, Remarks as Prepared by Commerce Secretary Carlos Gutierrez on Behalf of the U.S. Delegation, 11 April 06.

[210] World Trade Organization, Agreement on Technical Barriers to Trade, arts. 2.2 and 2.4.

[211] World Trade Organization, Minutes of the Meeting of 2 November 2005, Committee on Technical Barriers to Trade, G/TBT/M/37, 22 December 05.

[212] World Trade Organization, Secretariat Report—Trade Policies and Practices by Measure, WT/TPR/S/161, 28 February 06, para. 4.

[213] U.S. Trade and Development Agency, USTDA Initiative Promotes U.S.-China Cooperation in Industrial Standards Policy and Regulatory Development, 23 May 06.

[214] Office of the U.S. Trade Representative, 2006 National Trade Estimate Report on Foreign Trade Barriers, 31 March 06.

[215] Ibid.

[216] Office of the U.S. Trade Representative, 2005 National Trade Estimate Report on Foreign Trade Barriers, 30 March 05.

[217] Ibid.

[218] "ISO Votes Down China Encryption System," Associated Press, reprinted in China Daily (Online), 14 March 06.

[219] "China Resolved to Use Home-Grown WLAN Security Technology," Xinhua (Online), 13 March 06.

[220] "China Appeals to ISO Against Intel-Dominated Wireless Encryption Standard," Xinhua, reprinted in People's Daily (Online), 29 May 06.

[221] "Chinese WAPI Delegation Quits Prague Meeting," Xinhua, reprinted by the Ministry of Commerce (Online), 9 June 06.

Notes to Section VIII—Tibet

[1] "Tibet Sees Record High Per Capita GDP in 2005," Xinhua (Online), 13 January 06. Jampa Phuntsog (Xiangba Pingcuo) told reporters that the TAR GDP grew to 25.04 billion yuan in 2005, an increase of more than 12 percent for the fifth consecutive year.

[2] Office of the Special Coordinator for Tibetan Issues, U.S. Department of State, Report on Tibet Negotiations, April 2006. U.S. policy urges China to "respect the unique religious, linguistic, and cultural heritage of its Tibetan people and to respect fully their human rights and civil liberties." Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06. The report observes, "The preservation and development of the unique religious, cultural, and linguistic heritage of Tibetan areas and the protection of Tibetan people's fundamental human rights continued to be of concern." See also, CECC, 2003 Annual Report, 2 October 02; Teaching and Learning Tibetan: The Role of Tibetan Language in Tibet's Future, Staff Roundtable of the Congressional-Executive Commission on China, 7 April 03.

[3] Steven Marshall and Susette Cooke, Tibet Outside the TAR: Control, Exploitation and Assimilation: Development with Chinese Characteristics (Washington D.C.: self-published CD-ROM, 1997), Table 7. The 13 Tibetan autonomous areas include the provincial-level Tibet Autonomous Region (TAR), with an area of 1.2 million square kilometers (463,320 square miles), as well as 10 Tibetan autonomous prefectures (TAP) and two Tibetan autonomous counties (TAC) located in Qinghai, Gansu, Sichuan, and Yunnan provinces. Qinghai province: Yushu TAP, 197,791 square kilometers (76,367 square miles); Guoluo (Golog) TAP, 78,444 square kilometers (30,287 square miles); Huangnan (Malho) TAP, 17,901 square kilometers (6,912 square miles); Hainan (Tsolho) TAP, 41,634 square kilometers (16,075 square miles); Haibei (Tsojang) TAP, 52,000 square kilometers (20,077 square miles); Haixi (Tsonub) Mongol and Tibetan AP,

325,787 square kilometers (125,786 square miles). Gansu province: Gannan (Kanlho) TAP, 45,000 square kilometers (17,374 square miles); Tianzhu (Pari) TAC, 7,150 square kilometers (2,761 square miles). Sichuan province: Ganzi (Kardze) TAP, 153,870 square kilometers (59,409 square miles); Aba (Ngaba) Tibetan and Qiang AP, 86,639 square kilometers (33,451 square miles); Muli (Mili) TAC, 11,413 square kilometers (4,407 square miles). Yunnan province: Diqing (Dechen) TAP, 23,870 square kilometers (9,216 square miles). The Table provides areas in square kilometers; conversion to square miles uses the formula provided on the Web site of the U.S. Geological Survey (USGS): one square kilometer = 0.3861 square mile. Based on data in the Table, the 10 TAPs and two TACs have a total area of approximately 1.04 million square kilometers (402,000 square miles). The TAR and the Tibetan autonomous prefectures and counties are contiguous and total approximately 2.24 million square kilometers (865,000 square miles). Xining city and Haidong prefecture, located in Qinghai province, have a total area of 20,919 square kilometers (8,077 square miles) and are not Tibetan autonomous areas.

[4] Office of the Special Coordinator for Tibetan Issues, U.S. Department of State, Report on Tibet Negotiations, April 2006. The Report is mandated by Section 611 of the Foreign Relations Authorization Act, 2003. See, Committee on International Relations (Online), U.S. House of Representatives, "Survey of Activities, Week of April 17, 2006," last visited 6 September 06. The Survey of Activities lists receipt of the Report on Tibet Negotiations by the Committee on International Relations on April 14, 2006.

[5] Ibid. "Encouraging substantive dialogue between Beijing and the Dalai Lama is an important objective of this Administration. The United States encourages China and the Dalai Lama to hold direct and substantive discussions aimed at resolution of differences at an early date, without preconditions."

[6] Ibid.

[7] Tibetan Government-in-Exile (Online), "Education Will Help Tibetans to Fight for Their Rights," 17 January 06. The Dalai Lama led an 11-day teaching known as the Kalachakra.

[8] Tibetan Government-in-Exile (Online), "The Middle-Way Approach: A Framework for Resolving the Issue of Tibet," last visited 30 August 06. The explanation of the Middle-Way Approach lists eight "important components." The first three are: (1) Without seeking independence for Tibet, the Central Tibetan Administration strives for the creation of a political entity comprising the three traditional provinces of Tibet; (2) Such an entity should enjoy a status of genuine national regional autonomy; (3) This autonomy should be governed by the popularly-elected legislature and executive through a democratic process.

[9] Tibetan Government-in-Exile, "Education Will Help Tibetans to Fight for Their Rights."

[10] International Campaign for Tibet (Online), "The Kalachakra in India: Dalai Lama Tells Tibetans From Tibet They Are Key to Future," 11 January 06. "The Dalai Lama opened the Kalachakra teachings this week in Amravati, India, with a powerful statement urging Tibetans from inside Tibet to tell Tibetans when they return about the importance of the 'Middle Path' approach towards a genuine autonomy for Tibet."

[11] Tibetan Government-in-Exile (Online), "Statement by Special Envoy Lodi Gyari, Head of the Delegation Sent by His Holiness the Dalai Lama to China," 25 February 06. Special Envoy Lodi Gyari and Envoy Kelsang Gyaltsen traveled with two senior aides, Sonam N. Dagpo and Bhuchung K. Tsering. The delegation visited China from February 15 to 23, 2006.

[12] In addition to serving as the Dalai Lama's Special Envoy, Lodi Gyari is the Executive Chairman of the International Campaign for Tibet (ICT). According to the ICT mission statement, ICT "promotes self-determination for the Tibetan people through negotiations between the Chinese government and the Dalai Lama." The ICT Web site describes Tibet as an "occupied" country of 2.5 million square kilometers (965,000 square miles) with Lhasa as its capital.

[13] The envoys traveled to China in September 2002, May-June 2003, and September 2004. (In addition to visiting Beijing and other major Chinese cities, they visited Lhasa in 2002, Dechen (Deqen) Tibetan Autonomous Prefecture (Yunnan province) in 2003, and Kardze (Ganzi) TAP (Sichuan province) in 2004. They met with Chinese officials in Bern, Switzerland in late June to early July 2005.)

[14] 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.

[15] "Spokesman: Differences on Tibet's Definition Persist Between China, Dalai Lama," Associated Press, reprinted in Phayul (Online), 8 July 05.

[16] The Dalai Lama has made a statement on the anniversary of the 1959 Lhasa uprising on March 10 of every year that he has lived in exile, beginning in 1960.

[17] Office of His Holiness the Dalai Lama (Online), "Statement of His Holiness the Dalai Lama on the Forty-Seventh Anniversary of the Tibetan National Uprising Day, 10 March 2006," 10 March 06. The Dalai Lama listed the unique characteristics of Tibetans: "Tibetans—as one of the larger groups of China's 55 minority nationalities—are distinct in terms of their land, history, language, culture, religion, customs, and traditions."

[18] Ibid.

[19] The China-Dalai Lama Dialogue: Prospects for Progress, Staff Roundtable of the Congressional-Executive Commission on China, 13 March 06, Written Statement and Testimony of Tashi Wangdi, Representative of His Holiness the Dalai Lama to the Americas.

[20] Tibetan Government-in-Exile (Online), "Statement of the Kashag on the 47th Anniversary of the Tibetan People's Uprising Day, 10 March 2006," 10 March 06.

[21] Ibid. "[T]oday [Tibetans] are either scattered or live in these areas with a majority nationality. Therefore, [they] are reduced to minority [status] in their own areas, [and] it is not pos-

sible to protect their unique characteristics. . . . Therefore, if things go in this direction it would be nothing but similar to the system of 'divide and rule' practised under imperialism."

[22] The Dalai Lama explained in an interview with the Voice of America Mandarin Service on September 11, 2003, that the existing areas of Tibetan autonomy should be joined together to form a single administrative area. International Campaign for Tibet (Online), "Dalai Lama Explains His Position on China's Preconditions on Negotiations on Tibet," 15 September 03. Transcript of Voice of America Mandarin Service interview with the Dalai Lama conducted by Zhang Jing, 11 September 03. Responding to a question about his concept of the "Tibet" that should have genuine autonomy, the Dalai Lama responded, in part, "But since I'm asking for a certain right which the Constitution of the People's Republic of China provided, within that [constitutional right], [I'm asking that] they be joined from small pieces, like autonomous regions, autonomous districts, autonomous prefectures, like that. So instead of many small, small autonomies, the self-administration, actually, as far as work is concerned, or effectiveness, is concerned, is more difficult. So a broader administration could be more effective."

[23] "Dalai Lama's Demands Are Obstacle to Talks: China," Reuters, reprinted in Washington Post (Online), 26 May 06; "Dalai Returning to China—Experts Are Not Optimistic About It," Wen Wei Po, 27 May 06 (Open Source Center, 30 May 06). Wen Wei Po reported the same remarks by Lhagpa Phuntsog: "Dalai's proposal of building a great Tibet region and his demand of implementing a high degree of autonomy in Tibet are not in accord with the history of Tibet, China's Constitution, and the law governing regional national autonomy."

[24] "Tibet No Longer a Chink in Bilateral Ties: China," Indo-Asian News Service (IANS), reprinted in Phayul (Online), 28 October 05.

[25] "Dalai's Return Based on What He Says and Does," Wen Wei Po, 5 July 06 (Open Source Center, 7 July 06). "Wu pointed out that at present, the Dalai Lama's continual launching of anti-Chinese political activities has undermined the peace and stability of Tibet. He [Dalai Lama] stated clearly that if he returned, the central government must accept two conditions: to build a great Tibet region, and to hold democratic elections in Tibet—and that seems to be definitely impossible."

[26] Tibetan Government-in-Exile, "The Middle-Way Approach: A Framework for Resolving the Issue of Tibet." The Dalai Lama's Middle Way Approach calls for "the creation of a political entity comprising the three traditional provinces of Tibet," for the political entity to "enjoy a status of genuine national regional autonomy," and that "autonomy should be governed by the popularly-elected legislature and executive through a democratic process."

[27] "Dalai's Return Based on What He Says and Does," Wen Wei Po. "He added that in recent years under the CPC leadership Tibetans enjoy a standard of living just as prosperous as 'the blossoming of sesame seeds,' and thus they are reluctant to see the Dalai Lama return."

[28] "Central Government Opens Door to Communicate with Dalai Lama: Says Tibetan Autonomous Regional Chairman," Xinhua (Online), 14 March 06. "For many years, the Chinese central government has made great efforts and showed sincerity to help facilitate negotiations, Qiangba Punco [Jampa Phuntsog] told Xinhua in an exclusive interview in Beijing. But the talks between the two sides have not achieved results. The responsibility for this totally rests with the Dalai Lama side for their failure to truly recognize the situation, Qiangba Punco said. . . . Judging from the communication between the central government and the Dalai Lama, it is obvious that although the Dalai Lama has been changing his tactics, he has not changed his 'Tibet independence' stance and his efforts to split the motherland, Qiangba Punco said."

[29] Ministry of Foreign Affairs (Online), "Foreign Ministry Spokesman Qin Gang's Regular Press Conference on 14 September 2006," 15 September 06; "China Strongly Opposes U.S. Awarding Congressional Gold Medal to Dalai Lama," Xinhua, reprinted in People's Daily (Online), 15 September 06.

[30] The U.S. Senate passed S.2784, the Fourteenth Dalai Lama Congressional Gold Medal Act, on May 25, 2006. The U.S. House of Representatives passed its companion legislation (H.R.4562) on September 13, 2006.

[31] Ministry of Foreign Affairs (Online), "Foreign Ministry Spokesperson Qin Gang's Press Conference on 16 February 2006," 16 February 06.

[32] "China Says No Progress in Talks with Dalai Lama," Reuters (Online), 6 March 06.

[33] Regional Ethnic Autonomy Law [hereinafter REAL], enacted 31 May 84, amended 28 February 01, Preamble.

[34] REAL, art. 7: "Institutions of self-government in ethnic autonomous areas shall place the interests of the state as a whole above all else and actively fulfill all tasks assigned by state institutions at higher levels."

[35] China's Regional Ethnic Autonomy Law: Does it Protect Minority Rights?, Staff Roundtable of the Congressional-Executive Commission on China, 11 April 05, Written Statement and Testimony of David L. Phillips, Senior Fellow, Council on Foreign Relations. Phillips told the roundtable that a study of Tibetan autonomy laws and regulations that he co-authored in 2004 considered "a compilation of 161 laws and regulations concerning autonomy arrangements in the ethnic Tibetan areas of [the Tibet Autonomous Region, and Sichuan, Qinghai, Gansu, and Yunnan provinces]." Theodore C. Sorenson and David L. Phillips, Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case (Cambridge, Mass.: Harvard University, Belfer Center for Science and International Affairs, 2004), 45. The report lists seven areas of concern about the practice of ethnic minority rights of Tibetans in China: basic freedoms, access to information, economy, religion, education, healthcare, and environment. The report states, "Shortcomings in implementation of laws on autonomy and ethnic minority rights give rise to the above concerns. Faulty implementation [of laws and regulations] negates the value of legislation and erodes the rule of law."

[36] Yash Ghai, "China's Constitution: Which Model of Autonomy for Tibet?" South China Morning Post (Online), 3 March 06. Professor Ghai is an honorary professor at the University of Hong Kong. (His remark refers to provisions for regional ethnic autonomy under Chapter III, Section 6, of the Constitution.)

[37] State Council Information Office, White Paper on Regional Autonomy for Ethnic Minorities in China, Xinhua (Online), 28 February 05. The White Paper states in its conclusion, "The practice of more than half a century has proved that the system and practice of China's regional ethnic autonomy have been immensely successful. Regional ethnic autonomy is a correct solution to the issue of ethnic groups in China, and is in keeping with China's actual conditions and the common interests of all ethnic groups."

[38] "CPC Central Committee Politburo Holds Meeting to Look Into Further Doing a Good Job in Tibet Work in the New Century and New Stage; CPC Central Committee General Secretary Hu Jintao Chairs Meeting," Xinhua, 26 August 05 (Open Source Center, 26 August 05).

[39] The China-Dalai Lama Dialogue: Prospects for Progress, Written Statement and Testimony of Sonam Wangdu, Chairman, United States Tibet Committee.

[40] Ibid.

[41] Tibetans living outside of China generally do not face imprisonment for peacefully advocating Tibetan independence. The U.S. Department of State Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), however, observes that the Tibetan community in Nepal faces restrictions on the freedom of assembly, including a ban on celebrating Tibetan Democracy Day. Inside China, Tibetans who peacefully advocate Tibetan independence could face imprisonment under Article 103 of the Criminal Law, which sets out punishment for persons who "organize, plot or carry out the scheme of splitting the State or undermining unity of the country," as well as for someone who "incites others to split the State or undermine unity of the country."

[42] Tibetan Youth Congress (Online), "About Us," site last visited 31 August 06. According to the TYC Web site, the TYC is the largest and most active Tibetan NGO in exile.

[43] Liu Yuxiang and Wu Kun, "Analysis on Threats of Violent Acts of Terror Presently Facing Sichuan Province," Policing Studies, No. 2, 10 February 04 (Open Source Center, 17 May 04). The authors claim that TYC members "have repeatedly engineered violent terrorist activities both inside and outside Sichuan, such as bomb attacks, assassinations, and arson."

[44] Ibid. In the same article, the authors modify their description, saying, "At present, violent terrorist organizations such as the TYC are still at a lower level in general and have not yet evolved into a terrorist organization with international leverage."

[45] Chen Fan, "Lies Do Not Hold Water," China's Tibet (Online), No. 4, 2005.

[46] "Dalai Lama Rejects Tibetan Buddhist Praise of China," Reuters (Online), 29 December 05.

[47] The China-Dalai Lama Dialogue: Prospects for Progress, Written Statement and Testimony of Tseten Wangchuk, senior broadcaster, Voice of America, Tibetan language service.

[48] Li Dezhu, "Large-Scale Development of Western China and China's Nationality Problem," Seeking Truth, 15 June 00 (Open Source Center, 15 June 00). Li Dezhu (Li Dek Su) addresses the social and ethnic implications of the program that Jiang Zemin launched in 1999. Li states that the program is intended to "accelerate economic and social development of the western region and the minority nationality regions in particular."

[49] Ibid.

[50] Ibid. "In carrying out the strategy of large-scale western development, development of the west will be greatly accelerated and human talent will flow westward if the country favors the western regions in policy and capital. . . . In keeping with the increased population flow of the various ethnic groups, there will be some changes in the proportions of the nationalities. There will also be some conflicts and clashes in their contacts. If this is not handled well, it will have a deleterious effect on national unity and social stability, and should draw a high level of attention."

[51] REAL, art. 20. "If a resolution, decision, order or instruction of a state organ at a higher level does not suit the actual conditions in an ethnic autonomous area, an autonomous agency of the area may report for the approval of the state organ at the next higher level to either implement it with certain alterations or cease implementing it altogether. The next higher level state agency must give its decision within sixty days of receiving the report."

[52] Li Dezhu, "Large-Scale Development of Western China and China's Nationality Problem."

[53] State Council, "Some Suggestions of the State Council on Continuing to Press Ahead with the Development of the Western Region," Xinhua, 22 March 04 (Open Source Center, 29 March 04).

[54] "Law on Western Development in Pipeline," China Daily (Online), 14 March 06. Vice Minister Wang Jinxiang said the Legislative Affairs Office of the State Council was working on the 14th version of the bill, and that it will be the first time a law is created for the development of a single region. The law is based on the experience of the U.S., Japan, Canada, Germany, and France in promoting the development of their poor regions, according to the report.

[55] "Masses of All Ethnic Groups in Tibet Hold a Rally to Celebrate the 40th Founding Anniversary of the Tibet Autonomous Region; Hu Jintao Writes a Congratulatory Inscription; Jia Qinglin Attends and Addresses the Rally," Xinhua, 1 September 05 (Open Source Center, 4 September 05).

[56] "A Cadres Meeting Was Held To Mark the 40th Anniversary of the Founding of the Tibet Autonomous Region," Xinhua, 31 August 05 (Open Source Center, 7 September 05).

[57] Ibid.

[58] TibetInfoNet (Online), "Detentions Before 40th Anniversary of TAR," 8 September 05. According to the report, details are not available about nine of the detainees or the reasons that security officials detained them. State Security Bureau ransacked Sonam Gyalpo's home on August 28 and found photos of the Dalai Lama, video cassettes of the Dalai Lama conducting Buddhist teaching, and other books and printed matter.

[59] Human Rights Watch (Online), "Tibet: Monk Spirited Away by Security Forces," 17 September 05. According to the report, a confidential Human Rights Watch source characterized the detention as "politically motivated."

[60] TibetInfoNet (Online), "Detentions Before 40th Anniversary of TAR," 8 September 05.

[61] "Report on the Outline of The 10th Five-Year Plan for National Economic and Social Development by Chinese Premier Zhu Rongji at the Opening of the Fourth Session of the Ninth National People's Congress at the Great Hall of the People in Beijing," China Central Television, 5 March 01 (Open Source Center, 5 March 01). Premier Zhu said, "During the Tenth Five-Year Plan period, we need to place emphasis on key projects for a good beginning to the program. . . . We must focus on a number of major projects of strategic significance, such as the transmission of natural gas and electricity from western to eastern regions and the planned Qinghai-Tibet Railway." State Council Office of Western Region Development, "Implementation Opinions Concerning Policies and Measures Pertaining to the Development of the Western Region," Xinhua, 20 December 01 (Open Source Center, 15 January 01). "Resources must be concentrated on the construction of a host of major projects that impact the development of the western region as a whole, such as the "West China-East China Gas Pipeline Project," the "West China-East China Power Transmission Project," the Qinghai-Tibet Railway, major state highways, and the proper exploitation, conservation, and utilization of water resources."

[62] "Qinghai-Tibet Railway Ready for Operation on July 1," Xinhua (Online), 29 June 06. Zhu Zhensheng, the vice director of an office managing the railway, said that the railway startup is one year ahead of schedule due to "good construction, environment, and safety conditions." Guo Aibing, "Full Steam Ahead for World's Highest Railway," China Daily (Online), 8 November 01. The article, published in the year when railway construction started, reports that completion was due in 2007. "US$660m Poured into Qinghai-Tibet Railway," China Daily (Online), 1 December 04. The article reports that increased funding "was needed to ensure the rail link could open to the public on schedule in 2007." "Tibet Rail Construction Completed," China Daily (Online), 15 October 05. The article indicated that commercial passenger service would begin early in 2007, saying, "Once signaling and track testing is completed in the next 15 months, it will be possible to travel from Beijing to Lhasa in 48 hours."

[63] "Tibetans in Tibet Speak Against Qinghai-Tibet Railway," Phayul (Online), 29 June 06. A Phayul representative interviewed seven recently arrived Tibetan refugees about Tibetan views about the railway. They expressed concerns about increased ethnic Han migration, the loss of farm of grazing land, natural resource exploitation, and adverse effects on the environment and Tibetan culture. "Tibet Braces for Wave of Newcomers as Rail Link Opens," Radio Free Asia (Online), 30 June 06. The article reports the concerns of NGOs based outside of China. International Campaign for Tibet (Online), "Political Repression Intensifies as Tibet Railway Opens," 30 June 06. The report provides information about the railway's construction, and Chinese and Tibetan views on the railway's potential impact on Tibetan culture.

[64] "Hu Jintao's Speech at a Rally To Celebrate Putting the Qinghai-Tibet Railway Into Service on 1 July 2006," Xinhua, 1 July 06 (Open Source Center, 01 July 06).

[65] "China Arranges First Five Scheduled Trains to Tibet," Xinhua (Online), 5 May 06. Deputy General Manager Ma Baocheng of the Qinghai-Tibet Railway Company announced on May 5, 2006, that the first five trains to Lhasa would depart from Beijing, Shanghai, Guangzhou, Chengdu, and Xining, and that they were all sold out. "Tibetan Railway Ticket Price Confirmed," China Tibet Information Center (Online), 26 June 06. "[S]ources from the 8th conference of the leading group for Qinghai-Tibet Railway construction" announced that the scheduled railway service would link Lhasa with Beijing, Chengdu, Chongqing, Lanzhou, and Xining. The report did not explain why Shanghai and Guangzhou departures were not included as part of initial operations.

[66] "Tibetan Legislator Calls Railway 'Road to Heaven' for Tibetans," Xinhua (Online), 6 July 06.

[67] "Tibet's New Railway To Extend to Xigaze Next Year: Official," Xinhua (Online), 9 August 06. Yu Yungui, a senior official in the Rikaze (Shigatse) prefectural government in the TAR, said that the 270 kilometer (170 mile) extension is expected to take three years.

[68] "Dalai Lama: Rail Link 'Cultural Genocide'," Associated Press, reprinted in Washington Post (Online), 12 September 05. Referring to the Qinghai-Tibet railway, then under construction, the Dalai Lama told reporters in Idaho, "Some kind of cultural genocide is taking place. In general, a railway link is very useful in order to develop, but not when politically motivated to bring about demographic change." "China Opens World's Highest Railway to Tibet," Agence France-Presse, reprinted in Yahoo! (Online), 1 July 06. Thupten Samphel, a spokesman for the Tibetan government-in-exile indicated that the Dalai Lama conditionally supports the railway. Samphel told reporters, "If there is no political motivation and no hidden political agenda, the railway will be good for Tibet. This is why his holiness the Dalai Lama has declared his support for the project."

[69] "People Should Have a More Worldly Eye on Tibet Railway," Xinhua (Online), 1 July 06.

[70] "Railway Makes Room for Tibetan Culture: Experts," Xinhua (Online), 1 July 06.

[71] "Tibet Tourism Impact Fears Rejected," South China Morning Post (Online), 6 July 06. In addition to naming Wu Yingjie as the Vice Chairman of the TAR government, the article describes Wu as the region's "propaganda chief."

[72] "Railway Won't Bring Influx of Settlers to Tibet: Official," Xinhua (Online), 12 July 06.

[73] Tabulation on China's Nationality: Data of 1990 Population Census, Department of Population Statistics of State Statistical Bureau and Economic Department of State Nationalities Affairs Commission (Beijing: China Statistical Press, May 1994), Table 2–1. Tabulation on Nationalities of 2000 Population Census of China, Department of Population, Social, Science and Technology Statistics, National Bureau of Statistics, and Department of Economic Development, State Ethnic Affairs Commission (Beijing: Ethnic Publishing House, September 2003), Table 10–1. According to census data, Han population in the TAR increased from 80,837 in 1990, to 158,570. Bureau of Human Rights, Democracy, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06. According to the report, the Chinese 2000 census does not provide a complete count of ethnic Han in the TAR: "However, TAR census figures did not include a large number of long-

term Han residents, such as cadres, skilled workers, unskilled laborers, military and paramilitary troops, and their dependents."

[74] "Qinghai-Tibet Railroad No Harm to Environment," China Daily (Online), 06 July 06.

[75] "Qinghai-Tibet Railway to Transport 4,000 More Tourists Each Day," Xinhua (Online), 21 May 06.

[76] "Qinghai-Tibet Railway to Bring More Visitors to Tibet," China News Service (Online), 22 May 06.

[77] Cao Deshung, "Tibet Rail Construction Completed," China Daily (Online), 15 October 05.

[78] "Frozen Soil Thawing Faster, Endangering Qinghai-Tibet Railway," Xinhua (Online), 5 February 06.

[79] "Experts at the Chinese Academy of Sciences Are Concerned That Disaster Could Strike Ten Years from Now" [Dongtu tui rong jiang weixie qing zang tielu anquan], Beijing News (Online), 22 January 06.

[80] "Frozen Soil Thawing Faster, Endangering Qinghai-Tibet Railway," Xinhua.

[81] "New Height of World's Railway Born in Tibet," Xinhua (Online), 24 August 05: "About 550 kilometers of the railway runs on frozen earth."

[82] "Conference Opens on Judicial Response to Opening of Qinghai-Tibet Railroad," China Court Net (Online), 16 June 06.

[83] Under the Criminal Law, acts of sabotage against trains and railways are crimes under Articles 116, 117, and 119, and gathering crowds to disturb order at railway stations, along railway lines, or to harm or obstruct business operation are crimes under Articles 290 and 291.

[84] "Conference Opens on Judicial Response to Opening of Qinghai-Tibet Railroad," China Court Net (Online).

[85] Ibid.

[86] PRC State Council, "Some Suggestions of the State Council on Continuing To Press Ahead with the Development of the Western Region." The paper states that the success of GWD depends on sending a substantial number of personnel to live and work in the western region: "The key to the great development of the West is qualified personnel, especially leading cadres and high-level professionals. . . . Each year we should select a fairly large number of cadres at the appropriate levels and send them to the Western region to work among leading groups above the county level. . . . We need to establish a system that regularly sends scientific, technical, educational, public health, and cultural personnel and other professionals to the Western region to support work in the rural areas." The paper advises that the government must establish "regional economic growth nodes" that will "promote the development of an entire area."

[87] "Tibet Rail Construction Completed," China Daily (Online), 15 October 05. "The gigantic project, which involves an investment of 33 billion yuan (US$4.7 billion), is part of the nation's efforts to build up the underdeveloped western regions. . . . The line is expected to attract tourists, traders and ethnic Chinese settlers who currently have to take either expensive flights to Lhasa or bone-shaking bus rides."

[88] Provisions of the State Council for Implementing the Law on Regional Ethnic Autonomy of the People's Republic of China, issued 11 May 05, art. 29.

[89] Ibid.

[90] "Responsible Comrades from the Organization Department of the CPC Central Committee, the Ministry of Personnel, and the Ministry of Education Answer Reporter's Questions on Guiding and Encouraging Graduates of Schools of Higher Learning To Seek Employment in Grass-Roots Areas," Xinhua, 13 July 05 (Open Source Center, 22 July 05). "While continuing to carry out the 'plan for encouraging university students to serve the western region voluntarily,' the 'Opinions' have clearly demanded that in the next five years starting from 2005, a certain number of graduates of schools of higher learning will be recruited every year and organized to carry out the work of supporting education, supporting agriculture, supporting medical care, and assisting the poor in towns and townships. After serving for two to three years, they will be assisted by relevant departments to independently choose their career in the market." ("Opinions on Guiding and Encouraging Graduates of Schools of Higher Learning to Seek Employment in Grassroots Areas" explains that the government will not rely solely on volunteers, but will recruit graduates to work in the GWD region.)

[91] Ibid.

[92] Tabulation on China's Nationality: Data of 1990 Population Census, Table 2–1. Tabulation on Nationalities of 2000 Population Census of China, Table 10–1. According to census data, Han population decreased in 10 areas of Tibetan autonomy (listed in order of size of decrease): Guoluo prefecture (Qinghai), -25.0 percent; Hainan prefecture (Qinghai), -22.7 percent; Haibei prefecture (Qinghai), -20.2 percent; Huangnan prefecture (Qinghai), -19.2 percent; Yushu prefecture (Qinghai), -16.9 percent; Muli county (Sichuan), -16.1 percent; Aba prefecture (Sichuan), -14.3 percent; Haixi prefecture (Qinghai), -9.0 percent; Ganzi prefecture (Sichuan), -7.9 percent; Tianzhu county (Gansu), -0.9 percent.

[93] Census day was July 1 in 1990, and November 1 in 2000. The population of transient Han workers and vendors in Tibetan areas peaks during summer and is declining by November, undermining the reliability of direct comparison of 1990 and 2000 data.

[94] The national census uses a method of enumeration that attempts to record more of the population as present in the locations where they actually are, rather than at the location recorded on their permanent residence registration certificates. Provincial annual statistical yearbooks instead rely on data compiled by the Public Security Bureau (PSB).

[95] Tabulation on Nationalities of 2000 Population Census of China, Table 10–1.

[96] Tibet Statistical Yearbook 2005 (Beijing: China Statistics Press, 2005), Table 3–4, "Population Nationality," 33. The Yearbook reports that there were 93,306 Han in the TAR in 2004, the most recent year for which data were reported. The figure is substantially lower than the number of Han reported in the TAR by the 2000 census.

[97] Ma Rong (Professor and Chair, Department of Sociology, Peking University) and Tanzen Lhundup (Research Fellow and Vice Director, Institute of Social Economic Development, Chi-

nese Center for Tibetological Studies), "Temporary Migrants in Lhasa in 2005," unpublished conference paper, Section IV(4.5). The authors surveyed 1,470 migrants: 68.1 percent of them had arrived in Lhasa in the period 2000–2005, and 72.5 percent of them had been in Lhasa for more than one year. Ibid., Section IV(4.6). Of the 1,470 migrants, the Tibetan total is 235 and the Hui total is 163. (The paper does not state a total number of Han migrants surveyed.) Ibid., Section IV(4.8). Education levels are known for 965 Han migrants. (The paper provides ethnicity for 1,363 of the 1,470 migrants. Because none of the remaining 107 migrants are Tibetan or Hui, it is likely that most of them are Han.)

[98] Ibid., Section IV(4.1). 11,185 temporary migrants applied for a "Temporary Residence Certificate" in 2000. In 2005, 52,812 migrants registered with the Lhasa Urban District PSB, while [migrants] renting apartments numbered 69,924. "It is clear that a large number of temporary migrants did not apply for a "certificate" or report their "renting" activities. The real number [of migrants] is much larger." The Lhasa PSB estimated that the number of temporary migrants in Lhasa varied between 100,000 and 200,000, according to the paper.

[99] Ibid., Section IV(4.1).

[100] See CECC, 2005 Annual Report, 11 October 05, Section VI—Tibet—Culture, Development, and Demography, for more information about Tibetan educational levels.

[101] Tabulation on Nationalities of 2000 Population Census of China, Table 2–3. Based on 2000 census data for persons aged 15 and over, the rate of illiteracy of Tibetans (47.55 percent) is 5.24 times higher than China's national average (9.08 percent), and 5.53 times higher than the rate of illiteracy for Han (8.60 percent). Tabulation on the 2000 Population Census of the People's Republic of China (Beijing: China Statistics Press, August 2002), Table 2–2. Based on 2000 census data, of 1,061,196,336 Han aged six and over, 93,677,240 (8.83 percent) reached senior middle school. Of 4,791,241 Tibetans aged six and over, 81,366 (1.70 percent) reached senior middle school. Based on the data, Han reached senior middle school at 5.19 times the rate of Tibetans.

[102] Ma Rong and Tanzen Lhundup, "Temporary Migrants in Lhasa in 2005," Section IV(4.8), Table 14.

[103] Ibid., Section IV(4.8), Table 14.

[104] Ibid. The survey sample included 1,470 temporary migrants. Table 14 provides data on educational level and ethnicity for 1,373 participants: 965 Han, 235 Tibetan, 146 Hui, and 27 other. In section 4.6, "Religion and Political Status of Temporary Migrants," the report states that 235 Tibetans and 163 Hui were included in the survey. (The paper does not state a total number of Han surveyed. It is likely that many of the 97 participants not accounted for in Table 14 are Han since the report specifies the total number of Tibetan and Hui.)

[105] The disparity between urban and rural education that adversely affects rural Tibetans is consistent with a nationwide problem in China. Levels of Tibetan educational attainment in cities, towns, and rural areas are, however, lower than national averages. See CECC, 2005 Annual Report, 11 October 05, Section VI—Tibet—Culture, Development, and Demography, for more information about Tibetan educational levels.

[106] Tabulation on Nationalities of 2000 Population Census of China. Table 2–1a shows that 8,845 of 137,545 TAR Tibetans aged six and over, and classified as "city" residents, reached senior middle school as their highest level of educational attainment; Table 2–1b shows that 5,400 of 211,990 TAR Tibetans aged six and over, and classified as "town" residents, reached senior middle school; Table 2–1c shows that 5,999 of 1,808,859 TAR Tibetans aged six and over, and classified as "rural" residents, reached senior middle school. Based on these figures, 14,245 of the 349,535 Tibetans (4 percent) aged six and over who were residents of towns and cities reached senior middle school, compared to 5,999 of the 1,808,859 Tibetans (0.33 percent) aged six and over who were rural residents.

[107] Ibid. Based on the data in Tables 2–1a, 2–1b, and 2–1c, there were 5.18 times as many rural Tibetans aged six and over as there were town and city Tibetans.

[108] "Milestone in Tibet's Reform, Development, and Stability," People's Daily, 19 July 01 (Open Source Center, 19 July 01).

[109] "Tibetans Report Income Rises," Xinhua, 31 January 06 (Open Source Center, 31 January 06).

[110] "A Cadres Meeting Was Held To Mark the 40th Anniversary of the Founding of the Tibet Autonomous Region," Xinhua, 31 August 05 (Open Source Center, 7 September 05). Jia Qinglin listed priorities for the TAR that include improving income and living conditions for farmers and herdsmen, and improving education and healthcare for all TAR residents. "Tibet to Improve Rural School Conditions," China Radio International (Online), 4 May 03.

[111] "More Nomadic Tibetan Herders Settle Down," Xinhua (Online), 2 September 04. The program was one of the "numerous key aiding-Tibet projects" established by the Fourth Forum on Work in Tibet, held by the Communist Party Central Committee in June 2001 in Beijing.

[112] Hamish McDonald, "China Anxious To Prove Settled Life is Better for Tibetan Nomads," Sydney Morning Herald (Online), 5 October 05. "A Qinghai official, Wang Zeshan, said about 10,000 nomadic households—or about 60,000 people—Mongols and Kazaks as well as Tibetans, had been settled in this way, which he said was 89.2 percent of the nomad population before the scheme started three years ago."

[113] CECC Staff Interviews. The nomad families lived in Gannan (Kanlho) TAP and Tianzhu (Pari) Tibetan Autonomous County.

[114] Development Projects in Tibetan Areas of China: Articulating Clear Goals and Achieving Sustainable Results, Staff Roundtable of the Congressional-Executive Commission on China, 19 March 04, Testimony of Daniel J. Miller, Agriculture Development Office, U.S. Agency for International Development, 3. Miller pointed out, for example, that in the past 20 years, the government had achieved agricultural and rural growth, reduced poverty, and addressed environmental and natural resource degradation issues.

[115] Ibid., 3. Miller noted the transformation that has taken place because of nomad settlement, privatization and fencing of rangelands, and infrastructure development. But, according to Mil-

ler: "Government development programs have generally taken a top-down approach and, despite many of their good intentions, have often been hampered because Tibetan farmers and nomads were not involved in both the design and implementation of activities. Many of the government's efforts have also been not as effective because of faulty assumptions that have been made about poverty and Tibetans' traditional agricultural and livestock production practices."

[116] CECC Annual Reports for 2002–2005 provided the number of Tibetan political prisoners detained or imprisoned, according to then-current information: 2002 (fewer than 200 prisoners); 2003 (approximately 150 prisoners); 2004 (approximately 145 prisoners); 2005 (approximately 120 prisoners). Data for 2002–2004 are based on Tibet Information Network (TIN) reports. Data for 2005 was drawn from the CECC Political Prisoner Database (PPD).

[117] Steven D. Marshall, In the Interests of the State: Hostile Elements III—Political Imprisonment in Tibet 1987–2001 (London: Tibet Information Network, 2002), 3. There were nearly 700 known or likely Tibetan political prisoners by the end of 1995.

[118] See CECC, 2005 Annual Report, 11 October 05, Section VI—Tibet—Tibetan Culture and Human Rights, for discussion of how Tibetans use of literature to lament cultural loss and advocate ethnic ambitions.

[119] Tibetan Government-in-Exile (Online), "Education Will Help Tibetans to Fight for Their Rights," 17 January 06. An estimated 90,000 persons attended the January 5–15 Kalachakra teaching. About 9,000 attendees were Tibetans who traveled from Tibetan areas of China.

[120] Wildlife Trust of India (Online), "Tibetans at Kalachakra Vow for Wildlife Protection," 17 January 06.

[121] TibetInfoNet (Online), "Tibetans Burn Animal Skins in Rebkong," 10 February 06. The report provides information about burning fur at Rongbo Monastery in Tongren (Rebgong), the capital of Huangnan (Malho) TAP in Qinghai province, and the role of the organizer, Tseten Gyal. The incident was apparently the first of its kind. "Tibetans Swear Off Endangered Furs After Dalai Lama Appeal," Radio Free Asia (Online), 13 February 06. The article provides additional detail about the incident organized by Tseten Gyal in Tongren (Rebgong). TibetInfoNet (Online), "Burning of Wildlife Skins Prohibited as Tensions Rise in Rebkong," 14 February 06. According to the report, local authorities in Tongren banned fur-burning and the "situation" in the area was "tense." "Tibetan Youths Detained Over Anti-Fur Campaign," Radio Free Asia (Online), 21 February 06. The article reports on organized fur-burning in Aba (Ngaba) and Ruo'ergai (Dzoege) counties in Aba Tibetan and Qiang Autonomous Prefecture, Sichuan province. TibetInfoNet (Online), "Accounts of Wildlife Skins Burning," 17 March 06. The report provides details of fur-burning in Aba and Ruo'ergai (Dzoege) counties in Aba prefecture, Sichuan province. TibetInfoNet (Online), "Fur Burning Incidents in Gansu," 29 March 06. The report provides a detailed account of fur-burning in Hezuo (Tsoe), the capital of Gannan (Kanlho) TAP in Gansu.

[122] "Tibetans Swear Off Endangered Furs After Dalai Lama Appeal," Radio Free Asia. According to the report, a source told RFA, "Soon after [fur-burning activity on February 8] national security officials and local public security officials confronted [Tseten Gyal] and demonstrated their dislike. That very night he was taken to the public security bureau office and interrogated for a long time." Officers asked him repeatedly if he had any "political motives" for the campaign, according to the report. (The account provides further information establishing that Tseten Gyal was released.) "Tibetan Youths Detained Over Anti-Fur Campaign," Radio Free Asia. The article reports the detention of eight men in February who organized fur-burning at Kirti Monastery in Aba county. Authorities interrogated the men, but none of them were "punished or beaten," according to the account, and the men denied that the fur-burning was done "under outside influence" (a term Chinese officials often use to refer to the Dalai Lama). Authorities permitted relatives to visit the detainees. (According to subsequent, unpublished information, all of them were released after an unspecified period of time.)

[123] TibetInfoNet (Online), "Fur Burning Incidents in Gansu," 29 March 06. (The event took place in Gannan TAP.) According to the report, the organizers, some of whom were local government staff, initially planned to conduct the event on March 10. The date coincides with the anniversary of the 1959 Lhasa Uprising, and the organizers were concerned that a public gathering that day would be "politically sensitive" and a "potential deterrent" to attendees. They rescheduled it for March 14, a date coinciding with a Tibetan Buddhist festival on which Tibetans customarily make offerings at monasteries. The organizers staged the event at Kharguthog Monastery in Hezuo (the capital of Gannan TAP) because they thought the monastic site would be less likely to embarrass the authorities.

[124] Ibid. According to the TibetInfoNet report, "While the furs were burning, some people were seen chanting prayers for the Dalai Lama, while others shot videos and stills of the scene with the express intention of letting the outside world know about the event. The general consensus in Tsoe is that the main purpose of the event was to please the Dalai Lama, and people asked that reports about the event be communicated to him."

[125] Ibid.

[126] According to PPD data current in August 2006, there were 59 known cases of political imprisonment of Tibetans in Sichuan province in 2001–2004 compared to 46 in the TAR. One case of Tibetan political imprisonment is recorded in Sichuan in 2000.

[127] Free Tibet Campaign (Online), "Four Monks and Nuns Arrested for Displaying Dalai Lama Poster," 30 January 06. According to the report, the posters "called for the independence of Tibet, for the Chinese authorities to enter into negotiations, and reportedly said that China should not host the 2008 Olympics until the Tibet question is peacefully resolved." Security officials detained the monks and nuns in May 2005.

[128] On September 27, 1987, 21 monks from Drepung Monastery staged a peaceful protest march in Lhasa, calling for Tibetan freedom. Security officials detained all of them. It was the first Tibetan political protest in China in the post-Cultural Revolution period that was internationally reported. A few days earlier, on September 21, the Dalai Lama introduced his Five Point Peace Plan in a speech before the U.S. Congressional Human Rights Caucus in Washington, D.C. Reports at the time did not portray the September 27 political protest in Lhasa

to be a consequence of the Dalai Lama's address in Washington. According to a report ("Fall of a Nation") available on the Web site of the Tibetan government-in-exile, Chinese authorities in Lhasa began an anti-Dalai Lama campaign after he spoke to the Congress, and staged mass political rallies and a public sentencing that caused widespread resentment among Tibetans.

[129] The Dui Hua Foundation (Online), "Dui Hua Welcomes Phuntsog Nyidron's Arrival in the United States," 15 March 06.

[130] According to information available in the CECC PPD, Phuntsog Nyidron, a nun at Mechungri Nunnery, was detained on October 14, 1989 and sentenced to nine years' imprisonment for "counterrevolutionary propaganda and incitement" the following November. In September 1993, she was convicted along with 13 other nuns for committing additional counterrevolutionary crime and sentenced to an additional eight years after the nuns secretly recorded songs on a cassette tape that was smuggled out of the prison. She received a one-year sentence reduction for good behavior in March 2001. The remainder of her sentence was commuted on February 26, 2004 and she was released from prison.

[131] Lhasa Municipal Intermediate People's Court, Criminal Court Judgment, No. 52 (2000). Bangri Chogtrul (also known as Bangri Tsamtrul or Jigme Tenzin Nyima) was sentenced to life imprisonment on September 26, 2000, on charges of "attempting to split the country."

[132] The Dui Hua Foundation (Online), "Clemency Granted to Tibetan Monk, Labor Activist," 28 February 06. The Lhasa Intermediate People's Court commuted Bangri Chogtrul's sentence from life imprisonment to 19 years on July 31, 2003, and further reduced the sentence by 1 year on November 17, 2005. His 18-year sentence will expire on July 30, 2021.

[133] The Dui Hua Foundation (Online), "Last Known Female Political Prisoner in TAR Released Early," 28 June 06.

[134] UN Commission on Human Rights (Online), "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Mission to China," 10 March 06 [hereinafter Nowak Report]. "The Special Rapporteur was informed that Qushui prison is for very serious crimes (i.e. sentences of over 15 years), and holds the principal criminal actors while accessories are held in Drapchi." PRC Criminal Law, art. 25. "A joint crime refers to an intentional crime committed by two or more persons jointly." PRC Criminal Law, art. 26. "A principal criminal refers to any person who organizes and leads a criminal group in carrying out criminal activities or plays a principal role in a joint crime."

[135] International Campaign for Tibet, "New Prison in Lhasa: Increased Surveillance for Political Prisoners, 'Oppressive' Cell-blocks," 20 January 06. According to the ICT report, "at least 25 political prisoners" were transferred from TAR Prison (Drapchi) to Qushui Prison in summer 2005. The figure concurs with CECC staff analysis of likely transferees.

[136] CECC, Annual Report 2005, 112. Jigme Gyatso was sentenced in 1996 to 15 years' imprisonment for counterrevolution. Chinese officials told a UN Working Group on Arbitrary Detention (UNWGAD) delegation in September 2004 that he was guilty of "planning to found an illegal organization and seeking to divide the country and damage its unity." Another UNWGAD opinion on the case found that "there is nothing to indicate that the 'illegal organization' . . . ever advocated violence, war, national, racial, or religious hatred, and that Jigme Gyatso was "merely exercising the right to freedom of peaceful assembly with others in order to express opinions."

[137] Tibetans often add the honorific "Rinpoche" after Bangri Tsogtrul's name, signifying his status as a reincarnated lama.

[138] According to information available in the CECC PPD, monk Lobsang Tsultrim of Drongsar Monastery was one of three monks detained in 1995 for removing signboards on a government office building and damaging them, and putting up posters opposing China's rule of Tibet and supporting the legitimacy of the boy the Dalai Lama recognized as the Panchen Lama. The Changdu Intermediate People's Court sentenced the monks to imprisonment on charges of inciting counterrevolutionary propaganda.

[139] Nowak Report. "In one incident in March 2004, [Jigme Gyatso] yelled out, 'Long live the Dalai Lama,' for which he was kicked and beaten, including with electric batons. The electric batons were used on his back and chest with painful effect, and ceased once the Chief of Police came and stopped it. After this incident his sentence was extended for an additional two years."

[140] Ibid. According to the prisoner interviews, Qushui Prison's cells are hotter in summer and colder in winter than those in TAR Prison, and are poorly lit and ventilated.

Notes to Section IX—North Korean Refugees in China

[1] Bill Powell, "Long Walk to Freedom," Time Magazine (Online), 23 April 06; U.S. Committee for Refugees and Immigrants (Online), "World Refugee Survey 2006," China section, 14 June 06. In August 2005, Chinese authorities detained seven North Koreans seeking asylum in a South Korean international school in Yantai and repatriated them in September. For the two years before the incident, North Korean refugees had been largely successful in seeking asylum on international school grounds in China. Park Song-wu, "China Hands Over 8 NK Refugees," Korea Times (Online), 11 October 05; "China Changes Tack on Asylum," Seoul JoongAng Daily (Online), 11 October 05.

[2] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices—2005, China (includes Tibet, Hong Kong, and Macau), 8 March 06. More than one-third of the 65 North Korean refugees in Yanbian interviewed by Refugees International in 2003 and 2004 had been repatriated at least once, and 14 percent had been repatriated multiple times. Joel Charny, "Acts of Betrayal: The Challenge of Protecting North Koreans in China," Refugees International, April 2005, 11.

[3] Life Funds for North Korean Refugees (Online), "Mother of 5-year-old Repatriated to North Korea," 1 March 06; Joel Charny, "North Korean Asylum Seekers in China Face Heightened Risk of Deportation," Refugees International (Online), 27 August 04. In June 2004, public notices posted throughout Yanji asked residents to be on the lookout for illegal North Korean migrants and to turn in any to local police for deportation. Charny, "Acts of Betrayal," 9.

[4] Convention relating to the Status of Refugees, 28 July 51 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 50, art. 33. China acceded to the Convention on September 24, 1982.

[5] Democratic People's Republic of Korea Ministry of State Security, People's Republic of China Ministry of Public Security, Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Area, Rescue the North Korean People Urgent Action Network (RENK), 12 August 86. The protocol commits each side to treat as illegal those border crossers who do not have certificates, except in cases of "calamity or unavoidable factors." According to James Seymour, RENK obtained and translated the document in December 2002. Seymour writes that "this document cannot be authenticated, but it does not seem implausible." James Seymour, "China: Background Paper on the Situation of North Koreans in China," commissioned by the UNHCR, Protection Information Section, January 2005, 13.

[6] Seymour, "China: Background Paper on the Situation of North Koreans in China," 5.

[7] Ministry of Foreign Affairs (Online), "Foreign Ministry Spokesperson Qin Gang's March 21, 2006 Press Conference" [2006 nian 3 yue 21 ri waijiaobu fayanren Qin Gang zai liexing jizhehui shang da jizhe wen], 21 March 06. The UNHCR distinguishes between refugees and economic migrants by defining the latter as someone who "leaves a country voluntarily to seek a better life. Should he or she elect to return home they would continue to receive the protection of their government." UNHCR, "The 1951 Refugee Convention: Questions & Answers," July 2003, 10.

[8] Convention relating to the Status of Refugees, art. 1.

[9] The UN Special Rapporteur on Human Rights in North Korea, "Question of the Violation of Human Rights and Fundamental Freedom in any Part of the World: Situation of Human Rights in the Democratic People's Republic of Korea," 10 January 05, 13.

[10] DPRK Penal Code, amended 2004, arts. 233, 62. For an English translation of the quoted sections of these articles, see Norma Kang Muico, "An Absence of Choice: The Sexual Exploitation of North Korean Women in China," Anti-Slavery International, 9 November 05, 2. Sometime during and after the 1995–1998 famine, the North Korean government began to distinguish between repatriated North Koreans who sought political refugee status in China and those who simply crossed the border in search of food or employment. The government seems to have reduced the standard sentence for those in the latter category to less than six months. Charny, "Acts of Betrayal," 12.

[11] Liberty in North Korea (Online), "LiNK Team Returns From China," 6 December 05.

[12] Charny, "Acts of Betrayal," 2.

[13] Combating Human Trafficking in China: Domestic and International Efforts, Hearing of the Congressional-Executive Commission on China, 6 March 06, Testimony and Written Statement Submitted by Abraham Lee, Director of Public Relations, Crossing Borders; Muico, "An Absence of Choice," 10.

[14] Muico, "An Absence of Choice," 12.

[15] North Korea: Human Rights Update and International Abduction Issues, Joint Hearing of the Subcommittee on Africa, Global Human Rights and International Operations and Subcommittee on Asia and the Pacific, Committee on International Relations, U.S. House of Representatives, 27 April 06, Testimony and Written Statement Submitted by Jay Lefkowitz, Special Envoy for Human Rights in North Korea, U.S. Department of State.

[16] Joel Charny points out that although the most common estimate of North Koreans in China is 100,000 to 300,000, the estimate is "problematic" given the lack of publicly available data and the fact that many North Koreans in China move back and forth across the border seeking temporary employment rather than political asylum. Charny, "Acts of Betrayal," 5.

[17] Mikyoung Kim, "Beijing's Hot Potato: North Korean Refugees and Human Rights Debates," Association for Asian Research (Online), 16 March 05.

[18] Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, 2006 Trafficking in Persons Report, 5 June 06.

[19] Combating Human Trafficking in China, Written Statement and Testimony of Wenchi Yu Perkins, Director, Anti-Trafficking and Human Rights Program, Vital Voices, Written Statement and Testimony of Abraham Lee.

[20] Ibid.; Life Funds for North Korean Refugees (Online), "Speech to Joint Session of NGOs and Lawmakers of 4 Nations," 1 Aug 05. According to Norma Kang Muico, "[t]raffickers seek out North Korean women to exploit at river crossings, train stations, or markets." Muico, "An Absence of Choice," 3. In addition to the high number of trafficked North Korean women in China, many women are trafficked multiple times, escaping only to be caught again. Combating Human Trafficking in China, Written Statement and Testimony of Abraham Lee.

[21] Muico, "An Absence of Choice," 3, 5, 6. Traffickers rely on deception and coercion to force North Korean women into marriage or prostitution. Combating Human Trafficking in China, Written Statement and Testimony of Abraham Lee. There is a considerable market for wives in the Yanbian Autonomous Region, where the male-female ratio among the unmarried age group after schooling is 14:1. Charny, "Acts of Betrayal," 11.

[22] Most of these children do not have access to education because they are not Chinese citizens. The Chinese government does not recognize Chinese-North Korean marriages and does not grant citizenship to children born from these marriages. Charny, "Acts of Betrayal," 11; Life Funds for North Korean Refugees (Online), "Border Report January 2006," January 2006.

[23] Life Funds for North Korean Refugees (Online), "Interview with Our Local Staff Members in China," January 2006.

[24] "State Councilor: China To Continue Strengthening Cooperation With UNHCR," People's Daily (Online), 23 March 06.

[25] "Foreign Ministry Spokesperson Qin Gang's March 21, 2006 Press Conference."

[26] "The State Council's Legislative Plan for 2006" [Guowuyuan 2006 nian lifa jihua], Eastday (Online), 30 March 06.

[27] UNHCR (Online), "Statement to Media by UN High Commissioner for Refugees António Guterres, on Conclusion of His Mission to the People's Republic of China," 23 March 06.

[28] Article III(5) United Nations (United Nations High Commissioner for Refugees) and China, Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Office in the People's Republic of China, UNTS Vol. 1898/1899, I-3237, 1 December 95, 61–71. Excerpted text available at: North Korea: Human Rights, Refugees, and Humanitarian Challenges, Hearing of the Subcommittee on Asia and the Pacific, Committee on International Relations, U.S. House of Representatives, 28 April 04, Written Statement Submitted by Tarik M. Radwan, Assistant Professor of Law, Handong International Law School, Pohang, Korea, and Advocate with Jubilee Campaign.

[29] Bureau of Population, Refugees, and Migration, U.S. Department of State, The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them, 11 March 05.

[30] Benjamin Kang Lim, "Women Most Vulnerable of North Korean Refugees," Reuters, posted on the Crossing Borders Web site, 27 July 05.

[31] White House (Online), "Statement on China's Treatment of Kim Chun-hee," 30 March 06; "High Commissioner for Refugees Visits China, Objects to North Korean Repatriation," CECC China Human Rights and Rule of Law Update, May 2006, 2–3.

[32] "The Lucky Ones," Wall Street Journal (Online), 4 August 06. In 2005, the Chinese government allowed several hundred North Koreans to travel to South Korea after they had sought refuge at diplomatic compounds or international schools in China. Nevertheless, most North Koreans hiding in China who wish to seek asylum have to travel to a third country to seek asylum or resettlement as refugees. In May 2006, six refugees arrived in the United States as the first North Koreans to be granted asylum under the North Korean Human Rights Act of 2004. The six North Koreans had traveled secretly through China to a Southeast Asian country to seek refuge in a U.S. Embassy. U.S. Department of State, Country Reports on Human Rights Practices—2005, China; Melanie Kirkpatrick, "The New Underground Railroad," Wall Street Journal (Online), 12 May 06.

[33] The Plight of North Korean Migrants in China: A Current Assessment, Staff Roundtable of the Congressional-Executive Commission on China, 19 April 04, Written Statement Submitted by Kim Sang Hun, activist on behalf of North Korean refugees.

[34] David Chircop, "Everett Pastor Out of Chinese Prison," Everett Daily Herald (Online), 21 Aug 06.

[35] David Chircop, "Everett Missionary Hopes to Shine a Light on China," Everett Daily Herald (Online), 23 Aug 06.

[36] "Fifteen South Koreans Detained in China for Aiding N.K. Defectors," Yonhap News (Online), 23 September 05.

[37] U.S. Committee for Refugees and Immigrants, "World Refugee Survey 2006."

[38] Life Funds for North Korean Refugees, "Speech to Joint Session of NGOs and Lawmakers of 4 Nations."

Notes to Section X—Developments in Hong Kong

[1] United States-Hong Kong Policy Act of 1992, Public Law No. 102–383, enacted 4 April 90; The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, enacted 4 April 90; Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, adopted 19 December 84.

[2] CECC, 2005 Annual Report, 11 October 05, 115–116.

[3] CECC, 2004 Annual Report, 5 October 04, 104–6. Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008, 26 April 2004.

[4] The Basic Law of the Hong Kong Special Administrative Region of the PRC, arts. 45 and 68.

[5] CECC, 2004 Annual Report, 105.

[6] Of the 529 District Councilors, 427 are directly elected and 102 appointed. Constitutional Affairs Bureau, the Government of the Hong Kong Special Administrative Region, The Fifth Report of the Constitutional Development Task Force: Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008, 20 October 05.

[7] Ibid.

[8] Ibid.

[9] Constitutional Affairs Bureau, the Government of the Hong Kong Special Administrative Region (Online), "Transcript of the Media Session by the Chief Executive, Mr. Donald Tsang, on the Fifth Report of the Constitutional Task Force," 19 October 05.

[10] Ibid.

[11] Constitutional Affairs Bureau, the Government of the Hong Kong Special Administrative Region (Online), "Statement by CS on the Fifth Report of the Constitutional Development Task Force," 19 October 05.

[12] K.C. Ng, "Crowd Rallies for Democracy in Hong Kong," Washington Post (Online), 5 December 05.

[13] Gary Cheung, "Drop in Public Support for Reform Plan," South China Morning Post (Online), 29 November 05.

[14] Ibid.

[15] "Hong Kong Unveils Reform Package Adjustments," China Daily, 20 December 05 (Open Source Center, 21 December 05).

[16] "Hong Kong Lawmakers Reject First Stage of Government's Reform Proposal," Agence-France Presse, 21 December 05 (Open Source Center, 22 December 05).

[17] The Sino-British Joint Declaration states that the provisions of the ICCPR still remain in force in Hong Kong after the territory's reversion to the PRC. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Section XIII; International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76 [hereinafter ICCPR]; Ravina Shamdasani, "Basic Law Interpretations 'Concern' UN Rights Panel," South China Morning Post (Online), 28 March 06.

[18] See ICCPR, art. 25.

[19] UN Human Rights Committee, Concluding Observations of the Human Rights Committee—Hong Kong Special Administrative Region (HKSAR), 30 March 06.