

# CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

## ANNUAL REPORT

### 2004

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ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

OCTOBER 5, 2004

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



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

95-764 PDF

WASHINGTON : 2004

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**CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA  
2004 ANNUAL REPORT**

**I. Executive Summary and List of Recommendations**

The Commission finds limited progress over the past year in some areas of human rights and rule of law in China, but also finds severe and continuing problems on many of the issues critical to ensuring that its citizens enjoy internationally recognized human rights. Chinese government repression of free religious belief and practice has grown more severe over the past year. The Chinese government has continued its record of violating workers' rights and punishing workers who advocate for change. Chinese authorities continue to expend significant resources to silence their critics and censor information from sources the government cannot control or influence. The Commission notes that China continues to enact legal reforms that may provide the foundation for stronger protection of rights in the future. However, the monopolization of power under a one-party system and the resulting absence of democratic accountability have led to widespread corruption and a loss of faith in government. Together these cascading problems frustrate the efforts of ordinary Chinese citizens to claim their rights under the Constitution and law, and hinder the implementation of legal reforms adopted since 1979.

In March 2004, the National People's Congress amended China's Constitution to guarantee human rights for China's citizens. This step is a positive development, but the Chinese Communist Party will now have to deliver some measurable improvements in human rights to maintain its own legitimacy. The government and Party must also create the legal mechanisms necessary to enforce this and other constitutional guarantees. Without these mechanisms, the Chinese leadership demonstrates its continued unwillingness to allow the Chinese people to exercise their constitutional rights, freely voice their beliefs, desires, and complaints, or take a meaningful role in their government. This reluctance was particularly evident in recent backward-stepping policies designed to move Hong Kong away from the promised "high degree of autonomy" and to delay developing the democratic institutions that most Hong Kong people support.

Since taking office in 2003, China's new leadership has gradually moved away from the "economic growth at any price" strategy of the past and toward a new "populism." This shift has been accompanied by substantial efforts to grapple with HIV/AIDS and a failing public health infrastructure, alleviate poverty, and address serious fiscal and governance issues burdening China's rural poor. Chinese women are benefiting from new economic opportunities, but poverty in rural areas disproportionately harms women. Chi-

nese law has begun to recognize and offer redress for problems like domestic violence, marital rape, and sexual harassment.

The Chinese government continues to detain and imprison Chinese citizens for peacefully exercising their rights to freedom of expression, association, and belief. Coerced confessions, lack of access to defense counsel, law enforcement manipulation of procedural protections, pervasive presumption of guilt by law enforcement officials, judges, and the public, and extra-judicial pressures on courts continue to undermine the fairness of the criminal process in China. In the wake of several abuse scandals, Chinese criminal justice organs launched a coordinated campaign in 2003 and 2004 to improve public relations and assuage public anger over some law enforcement abuses. The campaign has set a more positive tone for discussion of defendant rights and produced some limited results. However, lack of professionalism in many law enforcement agencies and courts, public pressure on the government to address rising crime rates, and leadership efforts to maintain Party power and social stability are likely to limit the impact of these initiatives in the short term. As they debate key reforms to China's criminal justice system, Chinese scholars, judges, and officials continue to look to foreign models and are actively seeking exchange with foreign counterparts on criminal justice issues.

Working conditions in China and the government's lack of respect for internationally recognized worker rights remained largely unchanged over the past year. Government implementation of labor laws, regulations, and policies continues to fall well below international norms in a number of areas. The Chinese government denies Chinese citizens the right to organize freely and to bargain collectively; it continues to imprison labor leaders and suppress worker efforts to represent their own interests; it continues to discriminate against migrant workers; and it has developed a system that encourages forced labor. Child labor remains a significant problem in China. In addition, unhealthy and unsafe conditions are pervasive in Chinese workplaces.

The Party intensified its crackdown against free religious belief and practice during 2003 and expanded the campaign during 2004. The Commission has welcomed China's progress toward developing a system based on the rule of law, but in the case of religion, the Chinese government uses law as a weapon against believers. Hundreds of unregistered believers, and members of spiritual groups such as Falun Gong, have endured severe government repression in the past year. Many unauthorized places of worship have been demolished. The Chinese government has tightened its repression of unregistered Catholic religious practice and believers. Protestant house church congregations have suffered continued government intimidation and harassment, with reports of beatings and killings. The Party continues its ongoing campaign to transform Tibetan Buddhism into a doctrine that promotes patriotism toward China, and repudiates the religion's spiritual leader, the Dalai Lama. The Chinese government continues to strictly regulate Islamic education and practice, particularly in Xinjiang, where authorities prevent Uighur Muslim children from developing a strong Islamic identity and punish adult Muslims for engaging in unauthorized religious activity.

Chinese authorities continue to impose strict licensing requirements on publishing and news reporting. Authorized publishers are subject to censorship; unauthorized publishers are subject to punishment. China's government continues to harass, intimidate, detain, and imprison those who express opinions that the Party deems objectionable. Although the number and variety of government-controlled information sources continue to increase, the Chinese government attempts to prevent Chinese citizens from accessing news from foreign sources, often with help from foreign and Chinese companies that must either impose political self-censorship or be shut down. Chinese citizens must rely on resources and technology that organizations outside of China provide to circumvent government Internet censorship.

Forced evictions in urban areas and the requisition of farmland in rural areas are fueling anger at government officials and developers and generating a growing stream of citizen petitions, legal disputes, and protests across China. Despite central government efforts to curb illegal land transactions and abuses, corruption remains rampant. Procedures and compensation standards are weighted heavily in favor of the government and developers and do not adequately protect the rights and interests of those whose land is requisitioned.

The *hukou* (household registration) system remains a key component of the caste-like divide in Chinese society between urban and rural residents. The Chinese government continues to liberalize the *hukou* regime, but some of these reforms are slowly shifting the existing system into a set of officially-recognized class divisions based on wealth.

Access to justice remains a serious problem in China. Although the government is making strides to enhance the professional quality of the Chinese judiciary, scarce legal resources and the intermingled nature of government and private legal services in rural areas limit equitable access to the legal system. The Chinese judicial system continues to be plagued by both extra-judicial interference and internal administrative practices that constrain the independence of judges and undermine court effectiveness. A closed, non-transparent, and inefficient network of thousands of "letters and visits" offices, where citizens can petition their government, serves as a dysfunctional alternative to the legal system for most Chinese citizens. The Chinese government's progress in establishing a nationwide legal aid system over recent years is a positive step toward developing the rule of law, but government efforts are limited by the failure to fund local institutions properly.

The visit to China by the Dalai Lama's envoys that began on September 12 creates an important opportunity to address obstacles and achieve progress through dialogue. Chinese leaders misrepresent the Dalai Lama's offer to accept *bona fide* autonomy as an attempt to gain independence in a "disguised form," even though he has stated that a solution can be based on China's Constitution. Politically, Tibetan rights to constitutionally guaranteed freedoms of speech, religion, and association are subject to strict constraints, but emerging patterns suggest that local governments in some Tibetan areas are relatively less repressive than others. Economically, most Tibetans live in rural areas where they are

marginalized by low incomes, poor health care, and lack of economic opportunities. Culturally, the increasing Han population in Tibetan areas poses a significant challenge to Tibetan culture and heritage.

#### RECOMMENDATIONS

The Commission is working to implement the recommendations made in the 2002 and 2003 Annual Reports until they are achieved. The Commission makes the following additional recommendations for 2004:

##### *Human Rights for China's Citizens*

- The new CECC Political Prisoner Database is a unique resource for promoting human rights in China. Members of Congress should make full use of the Database by asking delegations from their states and districts that may be traveling to China to present to Chinese officials lists of political and religious prisoners derived from the Database. They should also urge local officials and private citizens involved in sister-state and sister-city relationships with China to use Database information to advocate vigorously for the release of political and religious prisoners.
- The Chinese government made efforts to combat the practice of torture in the past year, but China lacks the public institutions necessary to monitor and expose law enforcement abuses. The President and the Congress should continue to encourage public debate and criticism of torture in China by pressing the Chinese government to fulfill, without further delay, its longstanding commitment to allow an unconditional visit by the U.N. Special Rapporteur on Torture.
- China's *xinfang* ("letters and visits") system is at the center of severe miscarriages of justice, but foreign governments and observers understand it poorly. The President and the Congress should encourage exchanges between Chinese *xinfang* officials and U.S. academics, lawyers, and NGOs directed at regularizing procedures and moving disputes into the legal system.
- Chinese scholars, judges, and officials are debating reforms to China's criminal justice system and actively seeking exchanges with the United States and other countries on criminal justice issues. The President and the Congress should continue to encourage reform of China's criminal justice system by sponsoring more exchanges that focus on the role of defense lawyers and discuss internationally recognized criminal justice standards such as the presumption of innocence and the right to remain silent.
- The future of Tibetans and their religion, language, and culture depends on fair and equitable decisions about future policies that can only be achieved through dialogue. The Dalai Lama is essential to such a dialogue. The President and the Congress should continue to urge the Chinese government to engage in substantive discussions with the Dalai Lama or his representatives.



*Religious Freedom for China's Faithful*

- The freedom to believe and to practice one's religious faith is a universal and essential right. The Chinese leadership must open itself to dialogue on establishing true freedom of religion for all its citizens. The President and the Congress should foster and support such a dialogue by urging Chinese leaders at all levels to meet with religious figures from around the world to discuss the positive impact on national development of free religious belief and religious tolerance, and to urge the release of religious prisoners.
- The Chinese government continues to use anti-cult regulations to oppress believers who choose not to worship within the confines of government-authorized religion, and prohibits the free publication and importation of the Bible, the Koran, and the sacred texts or teachings of other religious and spiritual groups, including those of the Falun Gong. The President and the Congress should continue to urge China's leaders to eliminate all laws and regulations that allow the arbitrary labeling of unregistered religious and spiritual groups as cults, and to eliminate all restrictions and controls on the freedom to produce, read, and distribute the religious or spiritual texts of one's choosing.

*Labor Rights for China's Workers*

- The involvement of Chinese workers is essential to efforts to improve workplace health and safety programs in China. In addition, bringing Chinese workplaces into compliance with international labor standards requires cooperation among governments, the private sector, and NGOs. The President and the Congress should expand U.S. programs to improve worker involvement in workplace health and safety; conduct rule of law training and technical assistance in China to help workers assert their rights under Chinese law; and facilitate cooperation between and among private industry, the NGO sector, and the Chinese and U.S. governments with a view toward bringing Chinese labor standards into compliance with international standards.
- Forced prison labor violates both international labor standards and U.S. laws when the products of forced labor are exported to the U.S. market. The President and the Congress should sponsor and facilitate meetings of U.S. and Chinese officials and NGOs to develop policy recommendations on eliminating the use of forced labor in Chinese prisons and detention facilities and to ensure the full implementation of the 1992 Memorandum of Understanding on Prohibiting Trade in Prison Labor Products with China.

*Free Flow of Information for China's Citizens*

- The rights to freedom of speech and freedom of the press are internationally recognized and constitutionally guaranteed, but Chinese citizens generally remain unaware of the nature of these rights and their government's violation of them. The President and the Congress should fund programs to develop technologies to enable Chinese citizens to access Internet-based

information that the Chinese government currently blocks, as well as educational materials regarding the rights conferred under international human rights law with respect to freedom of speech and freedom of the press.

- The Chinese government uses technology, prior restraints, intimidation, detention, and imprisonment to chill free expression and control China's media. The President and the Congress should urge the Chinese government to eliminate prior restraints on publishing, cease detaining journalists and writers, and stop blocking foreign news broadcasts and Web sites.

*Rule of Law and Civil Society*

- The Chinese leadership has publicly committed itself to moving toward a market economy based on internationally accepted principles of transparency, accountability, and the rule of law. The President and the Congress should support this goal by approving and funding a commercial rule of law technical assistance program for China through the Commercial Law Development Program at the U.S. Department of Commerce. Such a program should emphasize specific WTO commitments, including transparency, deterrent criminal enforcement of intellectual property rights, and national treatment for goods and services.
- Access to justice remains a serious problem, particularly in rural China. The President and the Congress should continue to fund programs directed at improving the capacity of Chinese NGOs to train and support rural legal workers and legal aid organizations.
- Chinese courts evaluate judicial performance by using rote statistics on decided and reversed cases. This has resulted in a passive judiciary dependent on advisory opinions to decide cases. The President and the Congress should encourage exchanges and cooperation between U.S. and Chinese judges and court administrators with a view toward fostering administrative reform in the Chinese judiciary.

*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 20 to 1.<sup>†</sup>*

## **II. Introduction: Corruption—The Current Crisis in China**

Corruption in China is rampant. Large numbers of top-level provincial and ministerial leaders have been driven from office on corruption grounds in recent years. In some cases, the corruption of top leaders has encouraged and sheltered wide-ranging networks of local officials who protect each other against discovery and prosecution.<sup>1</sup> This has led to a loss of confidence on the part of many Chinese citizens in the honesty of government and Party officials, despite the Party's effort to respond to notorious corruption cases with repeated campaigns for clean government.

The one-party system remains the key obstacle to rooting out corruption. China needs broader forms of democratic accountability and free access to information to eliminate official corruption and restore confidence in government. Some leaders within China comprehend the necessity for change and understand that inflexibility, secrecy, and a lack of democratic oversight pose the greatest challenges to rooting out the corruption that threatens China's continued development. While the interim steps taken by the Communist Party to date may generate some improvements at the margins, solving the problem of corruption requires narrowing the gap between China's forward-looking economic reforms and its backward-looking political system.

Corruption in China is growing at all levels and increasingly involves senior officials as well as collusion among officials, or between officials and private entrepreneurs or collaborators overseas.<sup>2</sup> High-level leaders tried and convicted on major corruption charges in the last 12 months include: Wang Xuebing, former president and party secretary of the Chinese Construction Bank;<sup>3</sup> Mai Chongkai, former Chief Justice of the High People's Court in Guangdong;<sup>4</sup> and Wang Huaizhong, former deputy governor of Anhui province.<sup>5</sup> In all, 13 top officials were convicted of corruption in 2003.<sup>6</sup> Such developments have created significant public concern. Before the National People's Congress (NPC) annual meeting in March 2004, Xinhua polled its readers to find out which issue should take priority on the legislative agenda. More than 80 percent of respondents chose corruption.<sup>7</sup> Transparency International ranks China among the worst countries in terms of domestic public corruption.<sup>8</sup> Economists estimate that the annual cost of corruption to China may exceed 14 percent of gross domestic product.<sup>9</sup> A 2004 report by China's Auditor General shows that, far from being limited to provincial officialdom, embezzlement and misuse of public funds affects 41 of the 55 ministries and commissions under the State Council, amounting to at least 1.4 billion yuan (\$169.4 million) missing from the total 2003 budget.<sup>10</sup>

Political protection of corrupt officials is a serious problem in China. Chinese journalists have noted the phenomenon of the local "boss" (*yibashou*) who personally controls positions, wages, and lucrative opportunities for enrichment within his region. Officials operating under the boss's umbrella of influence are often protected from prosecution because the boss controls the anti-corruption institutions themselves. An apparent example of political influence exercised to defeat investigation and prosecution is the Zhou Zhengyi case, discussed below.

Procurator General Jia Chunwang reported to the NPC in March 2004 that his office opened investigations during 2003 into 39,562 cases of abuse of official power involving 43,490 individuals and prosecuted 22,761 cases involving 26,124 individuals.<sup>11</sup> Over the same period, the office opened investigations into 18,515 cases of embezzlement, bribery, and misappropriation of public funds.<sup>12</sup> Procuratorates opened investigations into 2,728 senior officials at or above the county level, as well as 167 cadres in charge of regional bureaus and four cadres of provincial rank.<sup>13</sup> Furthermore, in a report to the NPC in March 2004, Xiao Yang, Chief Justice of the Supreme People's Court, reported that 794 judges were inves-

tigated for corruption in 2003, with 52 cases referred for criminal prosecution.<sup>14</sup>

#### *Corruption in the 2008 Olympics*

The Chinese government has made the 2008 Olympics a centerpiece of its international political program—a symbol of joining the most modern and civilized nations on equal terms. China fought hard to get the Olympics and therefore has a strong incentive to meet the challenge of hosting them. However, early indications of serious graft show that even the Olympics have not been safe from China's corruption crisis.<sup>15</sup> China's Auditor General reported to the NPC Standing Committee in June 2004 that of the 131 million yuan (\$15.8 million) appropriated since 1999 for the work of the Beijing 2008 Olympics organizing committee, 109 million yuan had been improperly diverted to building homes for the committee's staff.<sup>16</sup> According to an official in China's Olympics organizing committee, an earlier review by the special audit department established to monitor Olympic spending failed to disclose the misdeeds, probably because that department's powers do not extend to investigating the Beijing City Sports Bureau, where the fraud occurred.<sup>17</sup> This jurisdictional anomaly in the Olympics auditing process demonstrates the way in which tangles of overlapping laws and supervisory organizations guarantee the opacity that allows corruption to thrive.<sup>18</sup>

The National Audit process that uncovered this fraud in the Olympics may ultimately grow into a corruption-fighting tool. The Chinese Constitution requires that the State Council establish an auditing body to supervise revenues and expenditures of the Council itself and all of its subordinate entities. It further requires that the auditing entity "independently exercise its power to supervise through auditing in accordance with law, subject to no interference by any other administrative organ or any public organization or individual."<sup>19</sup> The National Audit Administration, led by Li Jinhua, the current Auditor General, performs this constitutional supervisory function, and its report this year attracted significant media attention.<sup>20</sup> Although the unitary nature of the Chinese state precludes separation of powers and thus real independence, Deputy Auditor General An Linghu recently said that the last two premiers have never tried to change anything in the reports. While lack of transparency precludes revealing whether audits are adjusted to protect political figures, announced plans to make all audit reports public in the future may help limit such manipulation.<sup>21</sup> According to a Xinhua report attributed to Zhang Qiuxia, a National Audit Administration director, the office plans to include the Central Committee of the Party in future audits.<sup>22</sup>

#### *Corruption in the Countryside*

Corruption in rural areas harms China's poorest citizens. A vivid account of the toll taken by corrupt officials who manipulate taxes and impose random fees on farmers appeared in a recent book, *An Investigation of China's Peasantry*.<sup>23</sup> Officials profiting from their official power to allocate land use have displaced thousands. An example of this kind of abuse is the plight of 20,000 farmers from a minority area in Hebei province who were relocated to make way

for the construction of a reservoir.<sup>24</sup> The municipal Party secretary failed to pay compensation to the displaced farmers and instead used the funds to build luxurious local offices. When a group of farmers traveled to Beijing to petition the central government for redress, they were beaten by police, and some were sentenced to re-education through labor (*laojiao*).

In this and other cases, local officials have used police like a personal militia to suppress questions about their financial dealings, and have used re-education through labor and other forms of administrative detention to silence inconvenient protestors. Such tactics directly undermine the central government's fight against corruption nationwide. Dispatching local police to Beijing to silence petitioners extends local cover-ups to the capital itself. The problem extends well beyond land-taking. Funds transferred to local governments for disaster relief or education subsidies have also been targets for corrupt officials.<sup>25</sup> From 2002 to 2003, disaster funds misused in poverty-stricken Shaanxi province amounted to 5,686,000 yuan (\$688,000).<sup>26</sup> In Guangdong province, altogether 35 officials have been accused this summer of misappropriating educational funds.<sup>27</sup> According to the Guangdong Province Disciplinary Inspection Commission, local education departments used the money for banquets and received kickbacks on the purchase of items like textbooks.

### *Corruption in the Cities*

Corruption in China's cities distorts the urban plan, often harming poorer residents and discarding historical districts in favor of upscale housing and shopping areas. As in rural areas, local officials control the allocation of land use rights and use that control to benefit themselves and their families. In one example, tycoon Zhou Zhengyi obtained low-cost development rights to a project in Shanghai by manipulating the law with the help of local officials, then mortgaged his rights in the property to major banks and used the money to buy Hong Kong listed companies, which would buy the project back.<sup>28</sup> The local officials who had approved Zhou's application for the land ultimately received shares in the listed company that owned the development.<sup>29</sup> When a bank investigation of some of the underlying loans brought the scheme to light, Zhou was arrested and tried in secret in May 2004. He received a relatively mild three-year sentence for falsifying registered capital reports and manipulating share prices. Many Shanghai citizens evicted because of Zhou's development scheme were not satisfied with the small compensation offers he made for their property or the replacement housing in distant suburbs, and some have filed suits against the Shanghai government.<sup>30</sup>

The power to allocate valuable city land for development has been a source of wealth for the Shanghai elite over the past decade. Those who have profited from this power naturally resist any interference with its use. It is therefore not surprising that displaced residents in Shanghai, who are contesting politically connected land developments, have generally been unable to find lawyers to represent them. But former lawyer Zheng Enchong, who had made a practice of advising evicted residents in urban renewal cases, worked with some of the residents evicted from the land in the

Zhou Zhengyi case. His work on eviction cases had earlier resulted in the Shanghai Bureau of Justice refusing to renew his license to practice law.<sup>31</sup> In June 2003, Zheng was arrested and charged with disclosing state secrets. According to an unofficial copy of the judgment in that case, the charge was based on a fax Zheng sent to a New York-based human rights NGO concerning a small demonstration in Shanghai.<sup>32</sup> Zheng's appeal of his three-year sentence was denied in December. In reporting his conviction, Xinhua portrayed Zheng Enchong as a professional outlaw who had been refused his license renewal for cause and not as an "anti-corruption" hero as described in the foreign media.

*Fighting Corruption in a One-Party State: Formal Institutions and Political Controls*

Two separate, but parallel, systems have evolved in China since 1979 for the supervision of state administration and evaluation of cadres for their political integrity: a system of "administrative supervision" within the government and a system of "discipline and inspection" within the Party. In 1993, these two vertical systems were merged at the top, but each continued to operate under separate regulations.<sup>33</sup> Party officials who violate standards of behavior are punished according to the Party charter. Non-Party officials who violate standards of behavior, including those working in Party offices, are punished according to state civil service regulations. This dual-track system is rooted in Leninist theory and tracks a slogan based on the preamble of the Party charter and included in Article 2: "The Party Must Manage the Party (*dang yao guan dang*)." In clinging to this concept, the Party may have fostered a sense of impunity among corrupt cadres.

*Administrative supervision*

The Law on Administrative Supervision, promulgated in 1997, formalized the "administrative supervision" system within government. This law calls for supervising entities to set up "informing and reporting systems" and to hear citizen accusations against public employees. Regulations issued under this law detail procedures for the investigation of tips and handling of evidence, and protection of the investigators and the investigated.<sup>34</sup> The law itself gives supervising entities the jurisdiction to issue the dreaded "dual summons" to public officials under investigation: an order to present themselves at a designated time and place to explain and clarify the matters under investigation.<sup>35</sup> When such an order comes down, the target official knows that much of the investigation of his or her activities has been completed and enough evidence has been found to make sanction or prosecution likely.<sup>36</sup>

While the law seeks to protect state investigators from political revenge, it makes supervisors responsible not only to a higher supervisory entity, but also to the local government—an entity likely to have interests adverse to the project of supervision.<sup>37</sup> The legal authority of the administrative supervisory system is limited to collecting information, issuing cease and desist orders to offenders, and recommending administrative sanctions in certain cases.

*Discipline and inspection*

The Party's new "Inner-Party Supervision Regulations," drafted over the course of 13 years and finally issued in February 2004, are an attempt to systematize constraints on the authority of Party leaders. The linchpin of the regulations is replacement of strict hierarchical controls with "inner-Party democracy," an elaborate system under which Party leaders at all levels accept the supervision of the larger pool of Party members that they represent. For example, Article 13 requires that important decisions, including hiring and firing, be debated by the entire group and put to a vote. This voting exercise is designed to reduce the unilateral power of Party "bosses," who have been able in several notorious cases to use their powers to both enrich themselves and create broad umbrellas of influence. Hu Jintao's highly publicized presentation of the Politburo's work report to the Central Committee for approval in October 2003 was designed to show Party cadres and the public that "inner-Party democracy" applies to all levels. While China's leaders may expect the new regulations to solve the Party's internal problems, given the time required to break down internal resistance to the new constraints on power, and the lack of an independent authority to ensure enforcement, it is unlikely that the Party has found a real solution to the problem of corruption among its leaders.

Two of the most powerful anti-corruption tools in other countries, public disclosure of assets and an independent press, have no real role in the new Supervision Regulations. Article 33 of the regulations lends token support to "supervision by public opinion" by encouraging Party organizations and leading cadres to leverage the news media to fight corruption. However, the next article requires that media engaging in such supervision "uphold the party spirit, observe media discipline and professional ethics and grasp the correct orientation in guiding public opinion"—all phrases long used to limit the free expression of criticism in the press.<sup>38</sup>

The Party also recently updated disciplinary procedures and punishments for cadres at all levels. In February 2004, the Party Central Committee promulgated "Chinese Communist Party Regulations on Disciplinary Punishment," updating temporary regulations issued in 1997. Chapter VI, "Acts in Breach of Political Discipline," lists infractions that may lead to expulsion from the Party. These include such corrupt behaviors as: hiring the children of friends; taking gifts, stealing state property, driving luxury cars, or accepting gambling trips; taking a cut of funds donated for charitable causes or allocated to compensate residents for land requisition; smuggling; and illegally transferring land use rights. The organization of offenses related to corruption is apparently designed to harmonize with the PRC Criminal Law on the same subjects. This parallel list of offenses reminds Party members that the Criminal Law looms beyond a possible expulsion; the Criminal Law provides for capital punishment for the most serious crimes related to corruption.

The current leadership's plans for solving China's corruption crisis lack the crucial element of an independent authority to take final jurisdiction of corruption crimes out of the hands of the Party. Despite continuing efforts at building a control system of "demo-

cratic supervision” within the Party, without transparency and true democratic oversight, it is unlikely that even the most elaborate self-inspection system can be effective.

### III. Monitoring Compliance With Human Rights

#### III(a) RIGHTS OF CRIMINAL SUSPECTS AND DEFENDANTS

##### FINDINGS

- The Chinese government continues to detain and imprison Chinese citizens arbitrarily for exercising their rights to freedom of expression, association, and belief.
- Coerced confessions, lack of access to defense counsel, law enforcement manipulation of procedural rules, pervasive presumption of guilt by law enforcers, judges, and the public, and extra-judicial influences on courts continue to undermine the fairness of the criminal process in China.
- Chinese criminal justice organs launched a coordinated campaign in 2003 and 2004 to improve public relations and assuage public anger over some common law enforcement abuses. The campaign has set a more positive overall tone for defendant rights and produced some limited practical results. However, lack of professionalism in many law enforcement agencies and courts, public pressure on the government to address rising crime rates, and leadership efforts to maintain Party power and social stability are likely to limit the impact of these initiatives in the short term.
- Chinese scholars, judges, and officials are looking to foreign models as they debate key reforms to China’s criminal justice system and are actively seeking exchange with foreign counterparts on criminal justice issues.

#### *China’s “Strike Hard” Anti-Crime Campaign*

Crime rates in China have generally been on the rise in recent years.<sup>39</sup> To address this problem, law enforcement and judicial officials continued China’s “strike hard” anti-crime campaign in late 2003 and 2004.<sup>40</sup> Traditionally, “strike hard” campaigns have been intense national crackdowns of fixed duration associated with unusually harsh law enforcement tactics, quick trials, and violations of criminal procedure.<sup>41</sup> Officially launched in April 2001, the current campaign appears to have evolved into a lower-intensity but permanent feature of the political landscape.<sup>42</sup> Within this overall “strike hard” framework, prosecutors and public security agencies launch periodic crackdowns targeting certain locales or particular crimes.<sup>43</sup> Chinese scholars and lawyers have expressed concern that efforts to meet law enforcement targets during such crackdowns have led to wrongful convictions.<sup>44</sup>

The Party maintains “strike hard” activities in part because it believes that anti-crime campaigns are popular with the public and enhance Party legitimacy. Public complaints about police inefficiency and the handling of several notable criminal cases in the last year suggest significant popular dissatisfaction with the performance of law enforcement agencies and courts.<sup>45</sup> The public also seems to have a limited appetite for procedural protections that re-



sult in lenient treatment for criminals.<sup>46</sup> Numerous polls suggest that the general public rates security as a major concern and supports tough measures to address crime.<sup>47</sup> Thus, while past experience indicates that “strike hard” campaigns have done little to stem the rising tide of crime and corruption in China,<sup>48</sup> the Party perceives them as necessary to maintain legitimacy and satisfy popular demand for strong action.<sup>49</sup>

National Chinese crime statistics offer a mixed picture of law enforcement trends in 2003. According to official sources, Chinese courts handled a total of 735,535 criminal cases in 2003, an increase of 1.2 percent over 2002.<sup>50</sup> Reflecting the leadership’s stated concern with official crime, law enforcement agencies and courts highlighted efforts to combat corruption. Prosecutors claim to have opened investigations of 43,490 individuals for abuse of power and dereliction of duty in 2003.<sup>51</sup> People’s courts report that they adjudicated nearly 23,000 cases involving official crime in the same period.<sup>52</sup> Officially, the number of violent crimes and corruption cases decreased slightly in 2003.<sup>53</sup> Public security officials recently admitted, however, that only 42 percent of 4.39 million reported crimes were solved last year,<sup>54</sup> and many reports suggest that crime is on the rise in specific regions. As such, official claims that the “strike hard” campaign has reduced crime rates should be evaluated with caution.

#### *Political Crimes*

The Chinese Constitution recognizes the rights to freedom of assembly, expression, and association.<sup>55</sup> The Chinese government, however, routinely exploits vaguely defined crimes to detain and charge individuals for the non-violent exercise of these rights.<sup>56</sup> Victims of this practice include Chinese citizens who lead peaceful labor protests, attempt to form political parties, exercise their religious beliefs, post articles on the Internet relating to political reform, or petition for redress of their grievances.<sup>57</sup> Chinese prosecutors often charge these individuals with crimes such as “endangering state security,”<sup>58</sup> “subversion,”<sup>59</sup> or, in the case of Tibetans and Uighurs, “inciting splittism,”<sup>60</sup> even if their acts are non-violent and pose no threat to the state. For example, essayist Luo Yongzhong was sentenced to three years in prison last year for “incitement to subversion” and “attacking the socialist system” after posting essays on the Internet criticizing Jiang Zemin’s “Three Represents” theory.<sup>61</sup>

The definition of crime in the PRC Criminal Law conveys the continued political orientation of the Chinese criminal justice system:

A crime refers to an act that endangers the sovereignty, territorial integrity and security of the State, splits the State, subverts the State power of the people’s democratic dictatorship and overthrows the socialist system, undermines public and economic order, violates State-owned property, property collectively owned by the working people, or property privately owned by citizens, infringes on the citizens’ rights of the person, their democratic or other rights, and any other act that endangers society and is subject to punishment according to law.<sup>62</sup>

A significant number of individuals, including Yao Fuxin, Xiao Yunliang, Rebiya Kadeer, Tenzin Deleg, Su Zhimin, and others continue to serve long prison sentences for political offenses. Chinese authorities released several notable political prisoners over the past year, including Xu Wenli, Wang Youcai, Phuntsog Nyidron, and Liu Di,<sup>63</sup> but authorities also initiated a new wave of arrests and convictions of Internet essayists, legal advocates, journalists, religious adherents, and other political activists. Over the past year, authorities also held numerous individuals incommunicado, and without any apparent legal basis, for peacefully expressing their political views.<sup>64</sup> For a discussion of new arrests and convictions for political crimes, see Section III(c)—Freedom of Religion, Section III(d)—Freedom of Expression, and Section VI—Tibet. While noting significant difficulties in determining the number of individuals currently imprisoned for political crimes, several credible analysts estimate that it is somewhere in the range of 10,000 to 25,000.<sup>65</sup>

Although the National People's Congress (NPC) removed the crime of "counterrevolution" from the PRC Criminal Code in 1997 and replaced it with the crime of "endangering state security,"<sup>66</sup> approximately 500 individuals convicted of "counterrevolution" before 1997 remain imprisoned in China.<sup>67</sup> Under a 1997 Supreme People's Court (SPC) notice that has been applied in practice to counterrevolutionary prisoners, individuals convicted of "endangering state security" are much less likely than other prisoners to receive sentence reductions and parole.<sup>68</sup> Observers had hoped that China would make some progress last year on parole and sentence reductions for prisoners serving time for "counterrevolutionary crimes," arguing that many of these prisoners were convicted for acts that would no longer be considered crimes.<sup>69</sup> However, despite foreign governmental and non-governmental overtures on this issue, the Chinese government has refused to re-evaluate its position.<sup>70</sup>

#### *Arbitrary Detention*

The United Nations Working Group on Arbitrary Detention identifies a detention as arbitrary (1) when there is clearly no legal basis for the deprivation of liberty (for example when individuals 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); (2) when individuals are deprived of their liberty because they have exercised the rights and freedoms guaranteed in certain provisions of the United Nations Declaration on Human Rights (UNDHR) or the International Covenant on Civil and Political Rights; and (3) when non-compliance with the standards for a fair trial set out in the UNDHR and other relevant international instruments is sufficiently grave as to make a detention arbitrary.<sup>71</sup> The International Covenant on Civil and Political Rights provides that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power" and "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order

that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>72</sup>

Arbitrary detention in China takes a number of forms, including detention and incarceration for non-violent political and religious expression, illegal extended detention that violates China’s own procedural laws, and detention that in practice is not subject to prompt judicial review, including incommunicado detention, disappearances and detentions during short-term security sweeps, and forms of administrative detention such as re-education through labor, forced psychiatric commitment, and forced commitment for drug detoxification.

*Illegal extended detention in the criminal process*

Law enforcement authorities often hold criminal suspects and defendants in pre-trial detention for periods exceeding those permitted by Chinese law and international human rights norms and standards. In some cases, they also detain defendants for long periods after trial while courts decide on a judgment. This practice often contravenes provisions in the PRC Criminal Procedure Law that require judgments to be rendered no more than two and one-half months after prosecution. The following cases are selected examples of extended detention in late 2003 and 2004:

- Dissident Yang Jianli waited from August 2003 until May 2004 for a court to hand down a judgment after his trial on charges of illegal entry into China and espionage. Before his trial, Yang was held for nearly 15 months in pre-trial detention, much of it incommunicado. The U.N. Working Group on Arbitrary Detention ruled that his detention was arbitrary and violated international law.<sup>73</sup>
- The Beijing Intermediate People’s Court did not hand down a judgment in the evidence fabrication case of defense lawyer Zhang Jianzhong until December 2003, nearly 11 months after his trial. Before his trial, Zhang was held in detention for nearly ten months, the first two incommunicado.<sup>74</sup>
- In November 2003, authorities released Internet dissident Liu Di after she spent more than a year in detention. Liu had written several Internet articles critical of the government and the Party. Police held her on suspicion of subversion, but prosecutors rejected the case after a year for lack of evidence and never filed formal charges against her.<sup>75</sup>

In the spring of 2003, Chinese courts and law enforcement agencies launched a major public campaign to eliminate “illegal extended detention,”<sup>76</sup> which Chinese authorities have identified as a major source of public discontent with the criminal justice system.<sup>77</sup> Frustrated by lack of progress, law enforcement and court officials intensified the campaign in the fall of 2003, setting time limits for the resolution of extended detention cases and issuing a joint notice on rectifying the problem of extended detention.<sup>78</sup> The notice provided tacit acknowledgement of many of the common abuses of detention limits that outside observers have long criticized.<sup>79</sup> Throughout the campaign, domestic media reported on sometimes shocking instances of extended detention, including the case of a farmer who had been in custody for 28 years but had never been formally charged with a crime.<sup>80</sup> The significant media

effort to promote the campaign has given suspects and their families some official basis to protest extended detention in individual cases.

In March 2004, the Supreme People's Procuratorate (SPP) and the SPC reported that they had handled nearly 30,000 cases of extended detention at all stages of the criminal process and cleared nearly all outstanding cases.<sup>81</sup> Both also announced new reporting and control systems designed to prevent future extended detention cases.<sup>82</sup> Statistics on the number of extended detention cases that have been cleared are impossible to verify, and at least one credible Chinese observer told Commission staff that contrary to media reports, there are still many outstanding cases.<sup>83</sup> Nevertheless, the observer noted a belief that government efforts are sincere. Authorities appear to have made some genuine progress in addressing the procedural issue, although not always with favorable substantive results. For example, two of the most well-known cases of extended detention, those of Yang Jianli and Zhang Jianzhong, were brought to a conclusion in 2003 with guilty verdicts. Despite these developments, extended detention problems continued in sensitive criminal cases throughout last year, and arbitrary administrative detentions and security sweeps continued as they have in previous years.

#### *Disappearances, security sweeps, and house arrests*

Public security has continued to arbitrarily detain or restrict the personal freedom of activists, petitioners, and other perceived security threats in the past year, particularly during important public functions or sensitive anniversaries. For example, during the NPC meetings in March 2004, security authorities reportedly rounded up vagrants and petitioners and held them in a Beijing stadium without any apparent legal basis.<sup>84</sup> In other cases, local police met petitioners who traveled to Beijing for the NPC meetings at train and bus stations and forcibly repatriated them to their home provinces.<sup>85</sup> Similar detentions were reported before the meeting of the Party Central Committee in September 2004.<sup>86</sup> The NPC meetings, the 15th anniversary of the 1989 Tiananmen Square demonstrations, and the Central Committee meeting also brought a disturbing series of arbitrary detentions of dissidents and activists. For example, Dr. Jiang Yanyong, who last year helped to expose the SARS crisis and who wrote a letter in February 2004 calling on authorities to reassess the official verdict on Tiananmen, was detained for nearly seven weeks beginning on June 4.<sup>87</sup> During the Tiananmen anniversary, authorities also placed other activists and dissidents, including Ding Zilin, Zhang Xianling, Yin Min, Huang Jinping, Hu Jia, and Liu Xiaobo, under house arrest or otherwise restricted their freedom of movement.<sup>88</sup> None of these individuals were charged with a crime or brought before a judge for review of the lawfulness of their detention or the restrictions imposed on them.

#### *Re-education through labor*

Under China's administrative detention system, public security officials have the power to send individuals for "re-education through labor" (*laojiao*, or RETL) for terms of up to three years,

with the possibility of a one-year extension. This system violates internationally recognized human rights norms for numerous reasons: (1) suspects are not entitled to a court trial and in practice public security officials serve as investigator, prosecutor, and judge, subject to only minimal judicial oversight that is rarely applied; (2) the definition of offenses subject to RETL are vague and easily manipulated by police to silence individuals exercising their rights to freedom of expression, association, and assembly; (3) RETL detention terms can be longer than those for similar offenses prosecuted under the formal criminal justice system; and (4) the legal basis for RETL is questionable because an administrative regulation established the system, while the PRC Legislation Law requires all restrictions on personal freedom to be established pursuant to national law.<sup>89</sup> Some critics also highlight the fact that RETL detainees are subject to forced labor. [See Section III(b)—Protection of Internationally Recognized Labor Rights—Forced Labor].

Despite these problems, public security agencies have expanded their use of RETL over the past decade. Regulations on RETL issued in 2002 include new offenses not contained in earlier RETL regulations,<sup>90</sup> and the number of RETL detainees has risen. According to several estimates, the number of RETL detainees fluctuated between 150,000 and 200,000 in the early to mid-1990s, but between 1999 and 2002 the number detained ranged from 270,000 to 300,000.<sup>91</sup> Scholars attribute the increase in the number of RETL detainees to rising crime rates, which have increased burdens on the formal criminal justice system, and steady growth in the number and size of social protests and disturbances in China.<sup>92</sup> Some observers also note that the gradual expansion of defendant rights in the formal criminal justice system encourages police to rely more heavily on administrative detention.<sup>93</sup> Finally, the government has used RETL in its repression of Falun Gong adherents and Uighur Muslims in Xinjiang.<sup>94</sup> Chinese observers and U.S. scholars believe that between 2 percent and 10 percent of RETL detainees are political detainees.<sup>95</sup>

In response to a rising tide of public, scholarly, and official criticism and a petition to the NPC Standing Committee challenging the legality of RETL, Chinese authorities appear to be trying to improve public perceptions of RETL and bolster the legal basis for maintaining it.<sup>96</sup> Press reports over the past year have highlighted government initiatives to institute professional and educational training programs in RETL centers, permit spousal visits, and establish a hearing system for RETL cases with legal representation for detainees.<sup>97</sup> The NPC is also working on a national law called the “Law on Correcting Unlawful Acts.” The draft law reportedly introduces reforms to systematize the existing web of local RETL regulations, eliminate outdated RETL offenses, make the definition of remaining RETL offenses less vague, and address the concern that some RETL terms are longer than those for similar acts prosecuted in the criminal justice system.<sup>98</sup> Drafters are also reportedly debating provisions that would give judges, rather than public security officers, the power to hand down RETL sentences.<sup>99</sup> Other pending legislation would eliminate RETL as a form of punishment for selected categories of minor public order offenses.<sup>100</sup> These developments suggest that the government intends to reform rather

than eliminate RETL, at least in the near term.<sup>101</sup> According to Commission sources, significant reform of the RETL system is likely.

#### *Forced psychiatric detention*

Law enforcement authorities have the power to forcibly commit individuals to psychiatric facilities (*ankang*).<sup>102</sup> *Ankang* centers are intended for the custody and treatment of mentally ill offenders, but they have also been used to detain mentally sound individuals who have angered or antagonized authorities. The use or threat of *ankang* to punish dissidents continued in 2004. For example, human rights activist Wang Wanxing continues to be detained in an *ankang* center for unfurling a banner in Tiananmen Square in 1992. His wife has never been given a documented diagnosis of his mental condition.<sup>103</sup> In June 2004, authorities reportedly threatened to commit human rights and AIDS activist Hu Jia to a mental institution for his continued efforts to commemorate the Tiananmen demonstrations.<sup>104</sup> The use of *ankang* for political detentions raises human rights concerns similar to those noted above with respect to other forms of administrative detentions.

#### *Repeal of the custody and repatriation system*

In June 2003, the State Council repealed a controversial form of administrative detention called custody and repatriation (C&R) after a young university graduate named Sun Zhigang was mistakenly detained in the system and beaten to death in custody. Under C&R, public security officials had the power to detain anyone without an identification card, temporary residence permit, or work permit and forcibly repatriate them to their place of registered residence. The system was used to detain indigents, migrants, petitioners, and political activists and was associated with a host of abuses.<sup>105</sup> In August 2003, civil affairs bureaus nationwide began to convert the former C&R detention centers into voluntary aid centers tasked with providing temporary housing and social services to indigents and beggars. As of March 2003, Ministry of Civil Affairs officials reported that 931 of the aid centers nationwide had received a total of 250,000 visits.<sup>106</sup>

Although officials report some challenges in changing the mentality of staff accustomed to administering the coercive C&R system, research and visits by Commission staff, as well as anecdotal evidence, suggest that the new aid system is largely voluntary.<sup>107</sup> Police in several cities have complained that the repeal of C&R has hampered their ability to combat crime.<sup>108</sup> Although restrictions on migrants remain in place, government authorities have made efforts to ease some such controls in the past year [see Section III(f)—Freedom of Residence and Travel].<sup>109</sup> The detention and forced repatriation of petitioners during the NPC meetings in March 2004 suggests, however, that public security officials have other methods at their disposal to detain individuals who in the past may have been subjected to C&R.

#### *Torture and Abuse in Custody*

Despite legal prohibitions on torture<sup>110</sup> and recent campaigns to address law enforcement abuses, torture remains common in

China.<sup>111</sup> In the wake of the widely publicized case of Sun Zhigang [see Repeal of the custody and repatriation system above], Chinese media have reported on numerous cases of torture and coerced confessions.<sup>112</sup> Foreign media, NGOs, and Falun Gong affiliates also reported on the widespread use of torture.<sup>113</sup> Forms of torture identified in such reports include beatings, electric shock, and the suspension or shackling of limbs in painful positions.<sup>114</sup> According to Chinese reports, official abuses including torture resulted in the deaths of 460 people and serious injuries to 117 people in the first ten months of 2003.<sup>115</sup> A recent SPP investigation uncovered more than 4,000 cases of official abuse between 2001 and 2003, including cases involving torture and coerced confessions.<sup>116</sup> The number of torture and abuse cases is likely much higher than indicated by these domestic statistics.<sup>117</sup>

The Chinese government made some public efforts to combat the practice of torture in the past year. In an effort to soothe public anger over law enforcement abuses, senior government leaders and law enforcement officials continued to condemn torture in public statements and launched several campaigns to root out abusive police and prosecutors.<sup>118</sup> These campaigns resulted in a number of well-publicized prosecutions of law enforcement officials for torture.<sup>119</sup> Public security scholars have also discussed the limited utility of torture as an investigative technique in professional exchanges and in scholarly writings.<sup>120</sup> On the regulatory front, the Ministry of Public Security (MPS) issued a new regulation in the fall of 2003 that prohibits the use of torture as an investigative tool in administrative cases.<sup>121</sup> Although some reports described the new provision as an “exclusionary rule” for administrative cases, the provision only states that evidence obtained illegally may not form the basis of a verdict, not that courts must disregard it altogether.<sup>122</sup> While the new regulation is a welcome development, this has long been the technical rule in Chinese criminal cases.<sup>123</sup> In July 2004, the MPS issued another new regulation with the stated purpose of cracking down on interrogation abuses and rectifying the interrogation process.<sup>124</sup> Under the new regulation, police chiefs are to be demoted and responsible officers dismissed if a person subject to interrogation commits suicide or dies of abuse or other “unnatural” causes.<sup>125</sup> Some local governments also introduced limited initiatives to address torture.<sup>126</sup>

Chinese sources acknowledge that the problem of torture is rooted less in a lack of formal prohibitions than in prevailing law enforcement attitudes and an inability or unwillingness to enforce existing laws and regulations. A recent article in China’s *Legal Daily* concludes that the problem persists because many law enforcement officials continue to believe that torture is appropriate if the goal is to uncover evidence or crack down on crime.<sup>127</sup> Prosecutors and courts often ignore such abuses,<sup>128</sup> and illegally obtained evidence is not excluded in Chinese trials.<sup>129</sup> Consequently, prosecutors and public security officials have few disincentives to engage in abusive practices. As a U.S. political scientist concluded at a Commission roundtable, limited improvements on torture may be possible under the current system, but “China, like most authoritarian systems, lacks the institutions to create self-generating or self-sustaining

monitoring of law enforcement abuses, or to generate effective political pressure for reform.”<sup>130</sup>

Theo van Boven, the U.N. Special Rapporteur on Torture, has long negotiated with the Chinese government for permission to make an investigative visit to China. For a number of years, the U.S. government has asked the Chinese government to accept van Boven’s terms and schedule a visit. In March 2004, probably to head off potential support for a U.S.-sponsored resolution on China at the annual U.N. Human Rights Commission meeting, the Chinese government announced that it had agreed to a visit by van Boven.<sup>131</sup> In June 2004, however, China postponed the visit until later in the year, citing the need for additional preparations and the difficulty of coordinating the visit among different local governments and authorities.<sup>132</sup>

#### *“Harvesting” of Organs from Executed Prisoners*

Several new reports of “organ harvesting” from executed prisoners surfaced in 2004. A leading Chinese transplant surgeon told a Hong Kong newspaper that organ harvesting continues and called it “a stain on the history of medical practice in China.”<sup>133</sup> The Lanzhou Morning News reported that the parents of an executed man sued the Dunhuang Detention House because authorities refused to return the corpse of their executed son. According to the report, the man’s organs had been removed. The court accepted the facility administrator’s word that the prisoner had donated his organs voluntarily, even though the official did not produce a document or other written evidence showing that the prisoner had done so. “To patch up a quarrel,” the court awarded the family the amount it had spent hiring people to bring a coffin to the place of execution.<sup>134</sup>

According to Chinese reports, central government authorities are drafting a national law that establishes rules for organ transplants. Chinese sources are unclear whether this law will address the issue of involuntary organ donations from executed prisoners.<sup>135</sup> Local legislation on organ donation enacted in Shenzhen last year did not address this issue.<sup>136</sup>

#### *Access to Counsel and Right to Present a Defense*

Under Chinese law, defendants have the right to hire an attorney,<sup>137</sup> but national law only guarantees *pro bono* legal defense if a defendant is a minor, faces a possible death sentence, or is blind, deaf, or mute.<sup>138</sup> In other cases where defendants cannot afford legal representation, courts may appoint defense counsel or the defendant may apply for legal aid, but the law does not guarantee free legal representation.<sup>139</sup> Chinese authorities are taking steps to improve access to legal aid, but funds are limited and the system provides applicants with lawyers in only a small percentage of cases [See Section V(c)—Access to Justice].<sup>140</sup> Nationwide, only about one-third of Chinese criminal defendants have legal representation.<sup>141</sup> The rate of representation is even lower in many rural areas.<sup>142</sup>

Chinese defense attorneys face numerous obstacles in representing their clients. Under the Criminal Procedure Law, Chinese defendants in theory have the right to meet with counsel after



their first interrogation, or from the day they are subject to detention or arrest, to obtain evidence in possession of the prosecution, and to cross-examine prosecution witnesses at trial.<sup>143</sup> In practice, law enforcement authorities frequently undermine or ignore these and other rights.<sup>144</sup> Authorities often delay responding to requests by lawyers to see their clients, refuse such requests outright, or impose unreasonable restrictions on client access.<sup>145</sup> In some cases, defense attorneys are only granted one or two meetings with defendants, sometimes only hours prior to trial, making it virtually impossible for the attorneys to mount an adequate defense.<sup>146</sup> Defense attorneys also face numerous obstacles in collecting evidence or gaining access to evidence that the prosecution holds. Witnesses often do not appear in court, undermining the right of cross-examination. Often, all defense lawyers can do in the face of such obstacles is to plead for lenient treatment. Chinese officials acknowledged many of these problems in several articles published in the past year.<sup>147</sup> Chinese defense attorneys indicate that their work environment has not improved significantly in the past year and that many of the problems described above have persisted.<sup>148</sup>

Some defense attorneys who represent their clients too aggressively face harassment and prosecution. Authorities have prosecuted defense lawyers on questionable corruption charges or threatened to revoke their licenses.<sup>149</sup> In other cases, they have accused aggressive lawyers of “evidence fabrication.” In December 2003, for example, defense lawyer Zhang Jianzhong was convicted and sentenced to two years’ imprisonment for violating Article 307 of the PRC Criminal Code, a provision on evidence fabrication.<sup>150</sup> Many observers questioned the basis for the charges and believe that Mr. Zhang was targeted for his vigorous defense work.<sup>151</sup> A China Daily editorial published in April 2004 acknowledged that some lawyers face such intimidation, noting that Article 306, another provision on evidence fabrication, is “abused sometimes by police officers and procurators to retaliate against attorneys who have frustrated their case against the accused.”<sup>152</sup>

The Chinese government has begun to take some limited but positive steps to address the concerns of defense attorneys and their clients. In December 2003, for example, the SPP released a new set of regulations designed to improve conditions for defense attorneys.<sup>153</sup> The provisions included specific time limits within which prosecutors must arrange meetings with clients and a requirement that prosecutors act on defense lawyer complaints and respond to requests for evidence.<sup>154</sup> In March 2004, Chinese media announced that the NPC is likely to repeal Article 306 of the Criminal Law.<sup>155</sup> Official statements on the key role of defense attorneys provided a welcome acknowledgment of the need for meaningful representation of criminal defendants.<sup>156</sup> So far, however, the practical impact of these steps appears to be limited. The new SPP provisions on client access do not apply to cases investigated by public security,<sup>157</sup> and defense lawyers complain that prosecutors have manipulated the new rules or ignored them altogether.<sup>158</sup>

#### *Fairness of Criminal Trials*

Criminal courts in China rarely acquit defendants. According to official statistics, the conviction rate in Chinese criminal courts ex-

ceeded 99 percent in 2003.<sup>159</sup> Chinese lawyers and scholars warn that lack of professionalism and legal competence on the part of some law enforcement and court personnel, a prevailing presumption of guilt, and political factors contribute to the high conviction rate.<sup>160</sup> Defendants who appeal their convictions face limited prospects for reversal. Lower courts often seek guidance from higher courts regarding legal issues in cases before them, particularly in sensitive cases. Consequently, many lower court judgments already reflect the view of higher court judges, undermining the purpose of appellate review [see Section V(d)—China’s Judicial System]. Perhaps because of the limited prospects for success, only roughly 15 percent of criminal defendants exercise their right to appeal.<sup>161</sup> In the rare case that a defendant is acquitted, Chinese law provides little finality. Prosecutors may appeal acquittals or request adjudication supervision from higher courts until they obtain a guilty verdict. In fact, they have an incentive to do so, since acquittals may result in official liability for wrongful detention and arrest under China’s State Compensation Law.<sup>162</sup>

The length, openness, and scheduling of Chinese criminal trials also raise questions about the fairness of the trial process. Chinese criminal trials sometimes last only a matter of hours and rarely more than a day, even when they involve sensitive or complex issues or a possible death sentence.<sup>163</sup> Despite rules requiring criminal trials to be open to the public, authorities often restrict access to the courtroom or invoke exceptions involving “state secrets” in order to keep trials closed.<sup>164</sup> Finally, authorities sometimes create obstacles that make it difficult for defense lawyers to represent their clients properly at trial. In the case of Internet dissident Du Daobin, for example, court authorities announced the trial date only three days before the trial. The court refused to reschedule the trial after Du’s defense lawyer notified it that he could not appear in court on that day, forcing the lawyer to submit only a written defense.<sup>165</sup> Du’s other attorney, who was court-appointed, reportedly refused to appear in court unless Du agreed to plead guilty to a subversion charge.<sup>166</sup>

Chinese lawyers and scholars complain that courts often hand down guilty verdicts in criminal cases without adequate evidence.<sup>167</sup> Documents from several high-profile criminal cases decided in the past year provide examples of the questionable evidence on which convictions are sometimes based.

- In May 2004, a Beijing court convicted U.S. dissident Yang Jianli of espionage. The evidence that the prosecution presented appears to have been based almost entirely on Yang’s “confession” that his U.S.-based advocacy group had contacts with a Taiwan organization and provided minor grants to researchers in mainland China. The Ministry of State Security had internally classified the Taiwan organization as an “espionage organization.” The prosecution does not appear to have provided any independent evidence that Yang’s behavior constituted espionage as a matter of law or that he intended to commit the crime of espionage.<sup>168</sup>
- In October 2003, a Shanghai court convicted lawyer Zheng Enchong on charges of “illegally providing state secrets to entities outside of China.” Zheng sent handwritten notes and an

“internal” Xinhua news advisory on local labor and property protests to the New York-based organization Human Rights in China. The prosecution repeatedly did not produce the handwritten notes in court. A public security official classified the information contained in the materials as “state secrets,” despite the fact that both the information on the protest and the news advisory were publicly available.<sup>169</sup>

- California businessman Jude Shao continues to serve a 16-year sentence for falsely issuing value added tax receipts and for tax evasion, despite evidence demonstrating that the tax was paid, a March 2004 audit report to support this finding, and a report on the case by a panel of criminal law experts that raises serious questions about the evidentiary basis for Shao’s conviction.<sup>170</sup> According to advocates for the defense, authorities held Shao incommunicado before his trial. His defense attorney, who was hired only ten days prior to trial, was not permitted to meet with him and was not allowed to review the evidence against Shao before the trial. To date, Chinese courts have refused to accept Shao’s petitions for retrial based on new exculpatory evidence.

Convictions in many cases appear to be based almost entirely on defendant confessions, despite the prevalence of coerced confessions and legal provisions stating that a confession may not be the sole basis for a conviction.<sup>171</sup> In recent years, mainland Chinese and Hong Kong media have reported on numerous cases of defendants convicted and even sentenced to death on the basis of coerced confessions or questionable evidence.<sup>172</sup> Even in the absence of physical coercion, high conviction rates encourage defendants to confess in the hope of receiving more lenient treatment.<sup>173</sup>

Courts are subject to a number of external influences in deciding cases.<sup>174</sup> Local governments exercise influence over judicial work through their control of judicial appointments, salaries, and court finances. Party Political-Legal Committees also supervise the work of the courts and can influence or decide the outcome of trials, particularly in major or sensitive cases.<sup>175</sup> In one example that became public last year, an official legal newspaper announced the verdict in an extortion case that had not yet been tried after it received a Party circular on the case.<sup>176</sup> In another instance, a Shenyang court commuted the death sentence of notorious mafia boss Liu Yong after finding that the confession of a key government witness in his trial had been coerced. In response to a flood of public outrage over the decision, the SPC retried the case and reinstated the death sentence, reportedly under direct orders from the Party Political-Legal Committee and despite the opposition of several SPC judges.<sup>177</sup> Government or Party leaders sometimes feel compelled to interfere in criminal case decisions in response to public and media pressure for convictions. While such public pressure has provided a check on corruption and government misconduct in some cases, in the Liu Yong case and others it has given rise to concerns about mob justice.

#### *Capital Punishment*

The PRC Criminal Law includes 68 capital offenses ranging from murder to bribery and embezzlement.<sup>178</sup> Recent judicial interpreta-

tions and NPC amendments to the Criminal Law appear to have increased the number of capital offenses by authorizing application of the death penalty in certain cases involving acts of terrorism or the unlawful use of toxic chemicals.<sup>179</sup> Although some Chinese scholars have called for the abolition of the death penalty,<sup>180</sup> polls and anecdotal evidence suggest that popular support for capital punishment in China continues to remain strong, and officials continue to view the death penalty as an effective deterrent against crime and corruption.<sup>181</sup> Some scholars have argued that China should consider abolishing the death penalty for economic crimes as a first step.<sup>182</sup>

The Chinese government considers the number of death sentences it carries out each year to be a state secret.<sup>183</sup> Amnesty International compiled published reports on 1,060 executions in 2002 but cautioned that the Chinese media report only a fraction of all executions.<sup>184</sup> In early 2004, the China Youth Daily cited an NPC delegate as stating that China executes nearly 10,000 criminals annually.<sup>185</sup> Although the delegate's statement could be interpreted in different ways,<sup>186</sup> this number is consistent with several other estimates of the annual number of executions in China, including an internal Chinese figure referenced in the book *The Fourth Generation (Disidai)*.<sup>187</sup> According to a recent report, Luo Gan, head of the national Party Political-Legal Committee, has "quietly" ordered Chinese judicial authorities to reduce the number of executions.<sup>188</sup> Some Chinese scholars question whether the directive will have much practical effect in the context of China's continuing "strike hard" campaign.<sup>189</sup>

Both Chinese scholars and international observers continue to express concern about China's system of death penalty review. While the Criminal Procedure Law requires the SPC to review all death sentences, the SPC has delegated this power in cases involving murder, rape, and a number of other crimes to provincial high people's courts.<sup>190</sup> In the 300 death penalty cases it did review in 2003, the SPC changed the original sentence or ordered retrials in 118 cases.<sup>191</sup> The specter of wrongful executions that such high reversal rates raise, along with questions about the legality and appropriateness of the SPC's delegation of power, has sparked considerable debate in Chinese legal circles.<sup>192</sup> In response, Chinese media reported in March 2004 that the NPC and SPC are actively considering proposals to return the power of review in all death penalty cases to the SPC.<sup>193</sup> To deal with the heavy caseload that the SPC would face if such a reform were approved, the proposal reportedly calls for the SPC to hire up to 200 new judges and to establish branch offices in several regional districts to conduct the reviews.<sup>194</sup> Chinese sources suggest that the proposal is in part an effort to blunt international criticism of China's human rights record.<sup>195</sup>

#### *Reform Initiatives and Public Discussion of the Criminal Justice System*

Domestic Chinese media carried extensive reports on law enforcement and judicial reforms over the past year. In addition to the reforms noted above, police, prosecutors, courts, and penal institutions launched a series of initiatives with the stated purpose

of improving transparency and information exchange, enhancing citizen supervision of law enforcement, addressing corruption and abuse in the criminal justice system, and improving the image of penal institutions.

- Police, prosecutors, and courts began holding regular press conferences, appointed press spokespersons, established points of public inquiry, and instituted information disclosure systems and hotlines for complaints.<sup>196</sup>
- The SPP established a new system of citizen supervisors designed to monitor cases and address complaints about the conflict of interest inherent in the procuratorate's dual role as prosecutor and supervisor of the legal process.<sup>197</sup> In June 2004, the SPP also announced new disciplinary punishment rules for prosecutors.<sup>198</sup>
- The MPS launched several drives to address misconduct and official abuse in the police force.<sup>199</sup> In January 2004, the MPS announced that it had fired 387 police and investigated or prosecuted 988 police for misconduct, fired 11,000 for lack of qualifications, and transferred an additional 34,000 unqualified police personnel to new jobs. In April 2004, the MPS announced a training campaign for remaining officers.<sup>200</sup>
- In December 2003, SPC President Xiao Yang announced that courts had disciplined a total of 972 court workers for misconduct following a sweep of the judicial system. One hundred and four of the individuals were convicted of crimes.<sup>201</sup>
- Ministry of Justice (MOJ) officials announced a review of the nation's penal system and a series of new prison reform initiatives, including seminars on protecting prisoner rights, mechanisms to solicit prisoner complaints, and new work and education benefits.<sup>202</sup>
- In May 2004, the SPP, the MOJ, and the MPS announced a crackdown on human rights abuses in the nation's prisons and corruption in the parole and sentence reduction process.<sup>203</sup> The SPP reported in September 2004 that the investigation into the matter revealed more than 13,900 cases in which sentences had been illegally reduced.<sup>204</sup>
- The SPP claimed that it had uncovered 4,029 human rights violations, including torture, coerced confessions, illegal detentions, election tampering, and other abuses, and vowed to continue its investigation for another year.<sup>205</sup>
- Scholars, legislators, and criminal justice officials are reportedly working on a set of joint regulations on evidence exchange<sup>206</sup> and drafting major revisions to the Criminal Procedure Law.<sup>207</sup>

These and other reforms are part of what appears to be a coordinated government campaign to improve the public image of law enforcement agencies and the judiciary. Government officials launched the campaign in mid-2003, in part as a response to public anger over several well-publicized cases of law enforcement abuse in early 2003, which they interpreted as a sign of general public frustration with law enforcement misconduct and corruption.<sup>208</sup> The initiatives also give President Hu Jintao and Premier Wen Jiabao an opportunity to demonstrate progress on citizen rights

and the fight against corruption as they seek to bolster their populist image.<sup>209</sup>

Chinese scholars, law enforcement personnel, lawyers, and judges continued a spirited discussion of criminal justice reform in 2004 through conferences, scholarly and general media publications, online forums, and legal exchanges.<sup>210</sup> Scholars and officials also continued to demonstrate an interest in foreign legal models, engaging in numerous legal exchange programs with foreign counterparts on a broad range of criminal justice issues. These exchanges included conferences on criminal defense, capital punishment, constitutional protection in criminal procedure, pre-trial discovery, plea bargaining, and other subjects. In one such program in the spring of 2004, U.S. lawyers and legal scholars conducted a mock evidence suppression hearing for 300 prosecutors at Beijing's National Prosecutors College.<sup>211</sup> In another, criminal justice scholars from 68 countries met in Beijing in September 2004 to discuss juvenile justice, corruption, criminal procedure, and other criminal law issues.<sup>212</sup> Reform-minded Chinese scholars interviewed by Commission staff encouraged more such exchanges, noting that the programs have had a positive impact and are an important way to encourage further reform of the criminal justice system.<sup>213</sup> Foreign observers monitoring the reform process agreed, noting that the upcoming amendments to the Criminal Procedure Law present an important opportunity to impact the direction of reform through legal exchange.<sup>214</sup>

#### *Implications of Criminal Justice Developments and Prospects for Further Reform*

Events over the past year illustrate the complex nature of criminal justice reform in China. The government's reform initiatives on extended detention, defense lawyers, human rights abuses, and other issues are positive steps. On a rhetorical level, these initiatives and the official statements accompanying them set a tone more conducive to the protection of suspect and defendant rights. They also provide important political cover for defendant complaints in individual cases and for efforts by reformers to push for broader structural changes in the criminal justice system. As continued discussion and legal exchange make clear, many dedicated scholars, judges, and officials recognize the need for reform of China's criminal justice system and are pushing for additional reforms, albeit within the boundaries set by the leadership.

Despite some incremental improvements, however, the immediate practical impact of these initiatives appears to be limited. Although Commission sources have expressed cautious optimism about some reform measures, the continued problems described in this section suggest that implementation of these reforms remains uneven at best. These implementation problems will likely continue for several reasons. First, law enforcement and the courts are under conflicting public and government pressures. The public is angry about law enforcement abuses and corruption in the criminal justice system, but also wants the government to ensure public safety and deal with the growing crime problem. Second, the leadership's commitment to reform seems to be limited, and the government continues to manipulate procedural protections when

expedient in sensitive or major criminal cases. Such acts undermine official statements on the need for a more even balance between the power of the state and the rights of criminal defendants and respect for human rights. Finally, continued arbitrary detentions, controls on judicial independence, and the leadership's apparent reluctance to dismantle the RETL system call into question the Party's commitment to broader reforms. Thus, while the leadership will likely have to deliver some concrete improvements in order to maintain its legitimacy, such improvements are likely to be incremental.

### III(b) PROTECTION OF INTERNATIONALLY RECOGNIZED LABOR RIGHTS FINDINGS

- The Chinese government does not respect the core labor rights of freedom of association and collective bargaining. The Chinese government prohibits workers from forming independent labor organizations to protect their rights and continues to harass and punish workers who attempt to establish such organizations.
- Millions of Chinese workers have no alternative but to work in unsafe and unhealthy conditions.
- Employers frequently withhold wages from Chinese workers. Local governments often fail to help workers collect back wages, triggering frequent worker demonstrations and unrest.

#### *Introduction*

Working conditions in China and the government's lack of respect for internationally recognized worker rights remained largely unchanged over the past year. Working conditions in China's rapidly growing manufacturing sector remain generally poor and do not comply with minimum international standards. As discussed below, implementation of Chinese labor laws, regulations, and policies continues to fall short of international norms. The Chinese government denies Chinese citizens the right to organize freely and to bargain collectively, and over the past year the government has continued to imprison labor leaders and suppress worker efforts to represent their own interests. Government policies toward migrant workers continue to be discriminatory. Over time, the Chinese government's labor and security policies have resulted in the development of a system that encourages forced labor.

Since the late 1970s, the National People's Congress has enacted progressive laws that on paper give Chinese workers rights similar to those that workers in developed countries enjoy. Poor enforcement of these laws, however, contributes to a number of serious problems, the most severe of which is the high rate of injury and death among workers. Deaths in the coal mining industry alone, while on the decline, still average more than 6,000 per year.<sup>215</sup> Even though national and local laws and regulations seek to limit working hours, Chinese government prohibitions on independent labor associations, and workers' lack of knowledge of their legal rights, undermine such legal protections in practice.<sup>216</sup>

A principal cause of the increasing incidence of labor disputes and worker unrest in China is poor government enforcement of ex-

isting labor laws and Chinese workers' lack of knowledge about their rights. To help China address these problems, the United States Department of Labor is funding a \$4.1 million technical co-operation project in China to assist the Ministry of Labor and Social Security with training programs to provide legal education for legal aid workers and to improve employee/employer relations.<sup>217</sup>

#### *Internationally Recognized Labor Standards*

Members of the International Labor Organization (ILO) have acknowledged the existence of a basic set of principles concerning the fundamental rights of workers to associate, to bargain collectively, and to be free from child and forced labor and from discrimination in employment. The ILO Declaration on Fundamental Principles and Rights at Work (the "1998 Declaration") reaffirms the commitment of ILO members to those basic principles. China is a member of the ILO, but frequently does not respect these basic commitments.

The ILO's eight core conventions provide guidance on the full scope of rights and principles enumerated in the 1998 Declaration.<sup>218</sup> China has ratified three of these conventions, including two on child labor and one on equal remuneration for male and female workers.<sup>219</sup> China has not fulfilled its obligations under the 1998 Declaration to respect, support, and promote these rights and principles. One NGO characterized the Chinese government's interaction with the ILO as demonstrating "steadfast refusal to compromise on the issue of freedom to organize and join a trade union of one's choice."<sup>220</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR), ratified by China in 2002, includes a section guaranteeing the rights of workers to organize independent trade unions. China's government, however, has claimed reservations to the ICESCR for provisions that conflict with China's Constitution and labor laws, which bar such organizations.<sup>221</sup>

#### *Freedom of association and collective bargaining*

The Chinese government does not provide workers with the internationally recognized right to join unions of their own choosing, to bargain collectively, or to strike. In spite of government prohibitions, Chinese workers continue to attempt to form their own labor organizations, usually spurred on by incidents involving non-payment of wages, poor working conditions, or corrupt confiscation of state-owned enterprise assets by management. Because workers have no legal means of organizing to help themselves, their ability to express discontent is highly limited. Frustrated by a lack of channels through which to communicate with management on working conditions or wage issues, workers are forced to protest, sometimes through large-scale demonstrations. These demonstrations often result in a repeated cycle of clashes and arrests. The government's repressive labor policies therefore trigger the very unrest that the Party leadership is anxious to avoid.

Revised in 2001, China's Trade Union Law continues to recognize the All-China Federation of Trade Unions (ACFTU), a body closely linked to the Party, as the only national-level trade union in China. Under this law, the establishment of any lower-level trade union



depends upon approval of the next higher-level union body.<sup>222</sup> As a result, the ACFTU exercises an absolute veto over the establishment of any trade union and can block any attempt to establish independent labor associations. The sole legal union representative for the average Chinese worker is his or her local ACFTU branch, even though these branches seldom perform any of the important functions traditionally associated with unions, such as organizing workplaces or advocating for workers in disputes with management.<sup>223</sup> Sometimes, the ACFTU branch actively seeks to prevent workers from pursuing wage claims. For example, in one case a local ACFTU manager formally represented company management, rather than workers, in their appeal of a decision ordering the payment of back wages.<sup>224</sup> One Chinese worker in Shanghai characterized the role of his ACFTU branch this way:

There is a trade union in our workplace simply because it is compulsory and the local government sent out a form to our boss. The management simply filled in the form and that's that—we've got a trade union. It's a common practice.<sup>225</sup>

The ACFTU often frustrates moves by workers to form independent worker organizations. In one case, migrant workers tried to form an independent workers association in 2002 with the support of local officials. After the association enrolled 1,500 workers and helped address worker grievances for three months, ACFTU and labor ministry officials closed it down, claiming that it was an independent union.<sup>226</sup> ACFTU branches are also used as convenient “cover” by local officials seeking to prove their compliance with national and international labor standards. In November 2003, Guangdong provincial labor officials stated that they considered the ACFTU to have successfully set up branches in foreign-owned export factories in the province.<sup>227</sup> Subsequent Commission staff conversations with employees of foreign compliance monitoring organizations working in the same area indicated that the ACFTU branches were having no visible impact on these foreign-invested workplaces and their level of activity was not detectable.<sup>228</sup>

The Chinese government frequently ends worker protests by jailing leaders on a variety of criminal and administrative charges. In February 2004, government authorities suppressed protests by about 2,000 workers of the Tieshu Textile Factory in Suizhou, Hubei province, after the bankrupt state-owned factory failed to pay severance benefits. Authorities began making arrests when protests blocked the city's main rail line and occupied the factory premises. Nine workers were detained. The protests followed a 15-month peaceful campaign to gain back wages and termination pay.<sup>229</sup> Authorities eventually tried Chen Kehai, Zhao Yong, Zhu Guo, and Yang Yongcai for “disturbing public order” under summary procedures limiting their rights to legal defense.<sup>230</sup> Zhu Guo received a one-year sentence and Chen Kehai and Yang Yongcai each received sentences of two and one-half years.

Workers sometimes resort to desperate measures to seek redress of their problems. In July 2004, 23 laid-off coal miners traveled from Hegang, Heilongjiang province, to Beijing to petition the government for compensation. Scaling the roof of a building adjacent to the Supreme People's Court, the miners threatened mass sui-

cide.<sup>231</sup> After they were detained for causing a disturbance, hundreds of fellow miners set off in a convoy in an attempt to reach Beijing to support the 23 petitioners, but were stopped by police.<sup>232</sup>

A prominent U.S. political scientist noted at a Commission roundtable in 2003 that worker protests are increasingly sophisticated and growing in number, particularly in China's northeast region.<sup>233</sup> He cited one police officer who complained that "local protestors now show up having already raised funds for petition drives, hired lawyers, and invited news reporters to the event." He also pointed out that Western experts claim that "the CCP and the State cannot hope to contain social unrest unless they address institutional catalysts including . . . bureaucrats who are corrupt, indifferent, and abusive."<sup>234</sup>

#### *Workplace Health and Safety*

Unhealthy and unsafe conditions are pervasive in the Chinese workplace. In 2003, 963,976 workplace accidents claimed 136,340 lives.<sup>235</sup> The ILO estimates that Chinese workers annually suffer 11.1 accidents per 100,000 workers, a rate more than five times as high as that in the United States.<sup>236</sup> According to one U.S. scholar, China and other developing Asian countries are experiencing what he called "an industrial accident crisis of world-historical proportions."<sup>237</sup> Inadequate training for machinery operators and unsafe handling of chemicals contribute to China's high rate of industrial accidents and injuries. In April 2004, carelessness in the handling of chemicals led to a gas explosion at Chongqing's Tianyuan Chemical Industry plant that killed 243 people and injured more than 9,000.<sup>238</sup>

Accidents are particularly common in Chinese coal mines. While the mining industry is formally subject to provincial and local safety rules and regulations, such provisions are commonly ignored as local operators and officials reopen small, older mines to meet surging demand.<sup>239</sup> Unemployed workers, especially those from the countryside, often seek work in these unsafe mines.<sup>240</sup> Although coal-mining accidents declined 12.8 percent in 2003, more than 6,000 miners still died in accidents.<sup>241</sup> In Jiexiu, Shanxi province, for example, 28 miners were killed in a gas explosion after their manager ordered them to continue working without ventilation. The director of the Jiexiu city Bureau of Work Safety said that the accident was "totally avoidable."<sup>242</sup>

Mine owners have occasionally taken steps to cover up accidents, making it difficult to determine the true accident rate. In June 2004, two Hebei mine owners were arrested for trying to cover up a gas explosion that killed 12 miners. The owners reported only one death, cremated the other bodies, and paid family members to keep quiet. The injured were not sent to hospitals, but were treated privately.<sup>243</sup>

The Chinese government has taken some steps to address the problem of workplace injuries. In April 2003, the State Council passed the Regulations on Insurance for Occupational Injuries, effective January 1, 2004.<sup>244</sup> The regulations establish a workers' compensation insurance system, requiring all companies in China to purchase insurance for work-related injuries.<sup>245</sup> Although the Ministry of Labor and Social Security issued implementing regula-

tions in the fall of 2003, the impact of these regulations is still uncertain. Chinese authorities have also mounted an industrial safety campaign, including a requirement for “safe production licenses.” Obtaining a three-year license requires companies to implement operational safety procedures and training, set up administrative bodies to supervise production, provide equipment meeting safety standards, and prepare emergency plans. Industries failing to comply must halt operations and pay fines ranging from 50,000 yuan (\$6,045) to 100,000 yuan (\$12,091).<sup>246</sup> To measure the success of its safety campaign, the central government plans to institute a national system of safety indices that will be distributed to provincial and local governments.<sup>247</sup> While this new policy is a positive development, the government and industry are unlikely to reduce workplace injuries and deaths until workers can fully participate in the enforcement of health and safety regulations.

Several U.S. government efforts exist to improve Chinese working conditions. The U.S. Department of Labor has funded a program in China, implemented by the National Safety Council, to train miners and mine operators on safe methods and practices. This program addresses only coal mining safety issues, and the need exists for other cooperative programs to address workplace health and safety issues in other industrial sectors. In June 2004, the U.S. Labor Department signed four letters of understanding with the Chinese Ministry of Labor and Social Security and the State Administration of Work Safety, including commitments to cooperate on regulations regarding wages, work hours, mine safety, occupational health and safety, and the administration and oversight of pension programs.<sup>248</sup>

#### *Wages and Work Hours*

##### *Wages*

The legally mandated minimum wage for Beijing is 495 yuan (\$59.77) per month, 570 yuan (\$68.82) for Shanghai, and 600 yuan (\$72.45) for Shenzhen.<sup>249</sup> Many Chinese employers do not pay workers even these modest rates. For example, one footwear factory in Dongguan paid its workers the equivalent of 18 U.S. cents per hour when the legal minimum wage was 31 cents per hour. In the same factory, legally mandated overtime rates were 62 cents per hour, but workers were only paid 24 to 34 cents per hour for overtime that was essentially mandatory. Some workers accumulated up to 31 hours of overtime per week. Workers also had various wage deductions for room and board.<sup>250</sup>

##### *Wage and pension arrears*

Non-payment of wages and pensions is common in China, particularly for workers in financially ailing state-owned enterprises (SOEs). SOE employees are often assured generous retirement benefits while employed, only to be cut adrift when the company experiences problems or goes bankrupt.<sup>251</sup> According to the Minister of Labor and Social Security, unpaid pension benefits in the first five months of 2000 alone amounted to 1.4 billion yuan (\$174.6 million).<sup>252</sup> Migrant workers are also vulnerable to wage withholding practices. Employers induce migrants to work throughout the year

with promises of future payment, only to vanish with the approach of the Chinese New Year.<sup>253</sup> Official sources suggest that over 70 percent of Chinese migrants are owed back wages and that total back wages owed to migrants amounted to 100 billion yuan (\$12.5 billion) at the end of 2003.<sup>254</sup>

Wage withholding generates desperate attempts by workers to recover the money owed to them. Increasingly, this has involved worker suicide attempts or threats.<sup>255</sup> Large-scale worker protests are also common. In June 2004, around five thousand Shenzhen workers clashed with police in protesting wage withholdings by their Hong Kong-owned factory.<sup>256</sup> Some SOE managers impose fines on workers seeking better conditions. In the summer of 2003, a Jiangxi province power company announced a series of escalating fines for workers seeking to discuss wage and benefit issues with local government officials.<sup>257</sup>

The back wage issue has sparked warnings from the central government, the adoption of various local regulations, and numerous clean-up campaigns.<sup>258</sup> The failure of local governments to settle construction industry wage debts has been a significant area of dispute. The central government's pressure on local governments has been effective in addressing a few immediate problems.<sup>259</sup> However, Chinese media reports have noted the ineffectiveness of such sporadic campaigns to resolve the basic issue of wage arrears.<sup>260</sup> Sustained government commitment to improving the legal rights of workers is required. One positive development over the past year was the passage of national Regulations on Legal Aid, allowing workers to seek assistance with legal claims for minimum wage, workers' compensation, and back wages. [See the discussion of legal aid programs in Section V(c)—Access to Justice.]

#### *Migrant workers and the hukou system*

Migrant laborers often face a range of discriminatory practices under China's household registration (*hukou*) system. For a discussion of these issues, see Section III(f)—Freedom of Residence and Travel.

#### *Overtime*

Chinese labor law limits overtime to three hours per day and no more than nine hours per week over a regular 40-hour workweek.<sup>261</sup> A study of 142 Chinese factories producing goods for international brands showed that over 93 percent of the factories required excessive overtime, defined in the study as work hours exceeding legal limits or 60 hours total.<sup>262</sup>

U.S. companies that purchase goods from Chinese subcontracting factories are aware of excessive overtime practices, but have had limited success in changing them. Factory managers cite inadequate production time and last-minute design changes as the principal cause of excessive overtime.<sup>263</sup> Commission staff and representatives of U.S. and European companies have discussed these issues, and the company officials have shown a growing awareness of the need to address excessive overtime practices before they place orders with suppliers who use subcontracts. Most agree that contract provisions curbing excessive overtime should become part of the supply chain management system.<sup>264</sup> A Con-

gressional survey of labor conditions in China identified a number of different workplace codes of conduct addressing this issue.<sup>265</sup>

#### *Child Labor*

Although the Chinese government adopted regulations in December 2002 banning the employment of children under the age of 16, child labor remains a significant problem in township and village enterprises and in agriculture. While national data is unavailable, foreign NGOs and local governments in China have documented multiple instances of child labor in violation of China's own national laws.<sup>266</sup> Sometimes, educational institutions themselves are complicit in compelling children to work.<sup>267</sup>

Child labor issues sometimes attract national media attention. For the June 13, 2004 edition of the China Central Television Network's (CCTV) "Focus" news program, reporters conducted interviews with workers at a Tianjin knitting factory and revealed that most were under the legal age of 16 years. Not only did factory owners violate the law by employing minors, but they also forced the children to work up to 14 hours a day and withheld the wages of those who failed to keep pace. Some of these children were left homeless after being fired from the factory.<sup>268</sup> Similarly, the People's Daily reported on a handicraft company in Fuzhou that had hired four underage girls, two of whom had just graduated from primary school, and required them to work more than 12 hours per day. After deductions for room and board, one of the children earned only 100 yuan (\$12) for a month's work when she had been promised between 300 and 400 yuan.<sup>269</sup>

#### *Forced Labor*

Reports detailing the use of forced labor in Chinese prisons continue to be published.<sup>270</sup> Several indicate that Falun Gong practitioners and other prisoners detained under China's re-education through labor (RETL) system have been producing goods for local and export markets under highly abusive conditions.<sup>271</sup> Corruption associated with the management of profit-making prisons has generated some national attention within China. In September 2003, the Chinese government announced experimental plans to separate the "production units" from the direct supervision of prison wardens and place them under the control of provincial administrators.<sup>272</sup> For a discussion of the re-education through labor system, see Section III(a)—Rights of Criminal Suspects and Defendants.

The Commission is concerned that products resulting from prison labor may be reaching the United States in violation of U.S. law. The Chinese and U.S. governments signed a memorandum of understanding in 1992 in which the Chinese government agreed to assist in investigating reports of prison labor products reaching the United States. Chinese government willingness to cooperate with the U.S. has been uneven, at best. Between 1996 and 2001, Chinese authorities approved only 3 out of 11 requests for site visits, the last in 2000.<sup>273</sup> During that same time period, U.S. Customs substantiated three allegations of products made with prison labor in violation of Section 307 of the Tariff Act of 1930 (10 U.S.C. § 1307).<sup>274</sup> Section 501 of the United States-China Relations Act of 2000 created a multi-agency U.S. government task force to enforce

the ban on Chinese forced or prison labor products.<sup>275</sup> The task force was reconstituted in 2003 following the integration of the Customs Service into the Department of Homeland Security and began meeting again with Chinese officials in the spring of 2004. Progress to date has been limited to a small number of interactions between U.S. and Chinese officials.

### III(c) FREEDOM OF RELIGION

#### FINDINGS

- Chinese government repression of free religious belief and practice has grown more severe over the past year. The Communist Party intensified its crackdown against unauthorized religious and spiritual groups in 2003 and expanded the campaign during 2004. Hundreds of unregistered religious practitioners, and members of spiritual groups such as Falun Gong, have endured severe government harassment in the past year, with reports of beatings and killings.
- The Party continues its on-going campaign to transform Tibetan Buddhism into a doctrine that promotes patriotism toward China and repudiates the religion's spiritual leader, the Dalai Lama. However, the intensity of religious repression against Tibetan Buddhists may vary across regions. Qinghai province, and possibly Gansu, may be relatively less repressive. The Tibet Autonomous Region (TAR) and Sichuan province currently implement policy in the most aggressive manner.
- The Chinese government has intensified repression of unregistered Christians. Many unregistered Christian churches have been demolished. Protestant house church congregations have increasingly found themselves the target of severe government harassment, with reports of beatings and killings. Over 25 unregistered Catholic bishops, priests, and seminarians have been arrested, and Chinese officials have intensified harassment of unregistered lay Catholics in some areas, often pressuring them to register with the officially sanctioned Catholic Patriotic Association. The Chinese government took no public steps toward renewing diplomatic relations with the Holy See.
- The Chinese government continues to enforce strict regulations repressing Islamic education and practice, particularly in Xinjiang, where regional policies focus on preventing Uighur Muslim children from developing a strong Islamic identity and punishing adult Muslims engaging in ill-defined "illegal religious activity." The Chinese government continues to outlaw private madrassas and mosques, impose travel restrictions on imams, restrict haj pilgrimages, and force Muslims to adhere to Party-sanctioned reinterpretations of the Koran and Hadith.

#### *Doctrinal Hostility Toward Religion*

The Chinese government forbids any religious practice that fails to conform to the Party's views on religion—views shaped by doctrinaire Marxist antagonism toward all things religious. The Party maintains that the world outlooks of Marxism and religion are fundamentally opposed, and that religion is an illusory, inverse reflection of the external world.<sup>276</sup> Party members are instructed to help

the broad masses establish a “correct world outlook.”<sup>277</sup> Since the early 1990s, the Party has attempted to achieve this goal by imposing its views on religion in China’s laws, regulations, and policies. This policy has led to the intimidation, harassment, arrest, detention, torture, and even death of religious practitioners who have chosen not to practice their beliefs in conformity with government mandates.

Current Party doctrine on religion is based on a new socialist religious theory attributed to China’s third generation leadership, specifically former president and Party leader Jiang Zemin. The Party’s new socialist religious theory remains grounded in Marxist antagonism to religion, but adds a theoretical justification for co-opting religion to achieve Party ends in Jiang’s formulation of the “Three Represents.”<sup>278</sup> The Three Represents are best known in the West for providing the theoretical basis for allowing private entrepreneurs and other new social strata to join the Party. Under Jiang’s socialist religious theory, “the broad masses of believers” also have a role to play in “reform and opening up, and socialist modernization.”<sup>279</sup> But only those practitioners who accept “unity and cooperation [with the Party] in political matters” will also enjoy “mutual respect [with the Party] in belief.”<sup>280</sup>

The Party’s limited theoretical tolerance of religion, however, has little to do with respect for religious belief or practice. Instead, the Party sees it as a temporary solution to the longer-term problem of religion itself and the best means devised by the Party to ensure its own continued survival.<sup>281</sup> Party theory dictates that religious belief is a form of delusion and will inevitably be overtaken by rational thinking grounded in science. But Party theory also recognizes that religion can be a powerful force and is better harnessed and controlled than battled. For the present, Party goals are best achieved by guiding religious believers in pursuits that serve the Party’s ends, like developing “production and breeding industries” and launching “public welfare undertakings such as providing assistance to impoverished areas . . . supporting the army and giving preferential treatment to the families of soldiers.”<sup>282</sup>

Party leaders in Beijing publicly embrace this theory-based co-optation of religion, but there is less evidence that Party cadres at the local level can always easily untangle the theoretical knot of what is acceptable belief and practice. These ambiguities have led to “ideological [confusion],”<sup>283</sup> and may partially explain inconsistencies in the tolerance shown for religious practice in different parts of China.<sup>284</sup> Sympathetic Party cadres can take a softer policy line on religious practice in one locality, while hostile cadres launch a local crackdown elsewhere, both finding ample justification in the same Party dogma. Authorities identified increased propaganda and education as the antidote, and the 2004 National Forum on Religious Affairs launched a new “Three Contingents” program to enhance training for “leading government and Party cadres, united front and religious affairs cadres, and (patriotic) religious personages.”<sup>285</sup>

#### *China’s Religious Affairs Bureaucracy*

The highest levels of China’s leadership generate national policies regarding the control of religious affairs.<sup>286</sup> The Party’s United

Front Work Department coordinates these policies, which are implemented by the State Council's State Administration for Religious Affairs (SARA). This national-level bureaucracy is replicated at the provincial and local levels, ensuring rigorous, albeit sometimes inconsistent, monitoring and control over religious affairs. The central mission of this bureaucracy has remained consistent since the early 1950s: "to act as an agent of the Party in controlling religious activities and groups."<sup>287</sup> No one in China may engage in communal worship unless SARA has authorized the group to register with the Ministry of Civil Affairs, and no one may import, produce, or distribute religious material in China unless SARA has vetted and approved it.<sup>288</sup> One Chinese official maintained that this registration requirement ensures that authorized religious groups are treated as legal persons and each enjoys the protections of Chinese law.<sup>289</sup> Chinese authorities also claim that these legal protections provide China's citizens "sufficient" freedom of religious belief.<sup>290</sup>

Since the early 1990s, Chinese authorities have emphasized the creation of a legal framework to control religion, as opposed to the previous framework relying on Party discipline among cadres who were often guilty of being under or over zealous.<sup>291</sup> In a January 2003 People's Daily editorial, the director of SARA, Ye Xiaowen, wrote, "The purpose of managing religious affairs by law is to safeguard legitimate religion, curb illegal cults, resist infiltration, and crack down on crime."<sup>292</sup> The scholar Pitman Potter has succinctly described the limitations of China's more recent legalistic approach to religious control:

In a pattern broadly comparable to circumstances in other societies where law is deployed to privilege dominant belief systems and marginalize those of the minority, regulation of religion in China is used not only to control religious practices but also to express the boundaries of tolerance and repression so as to isolate resistance and privilege communities loyal to the Party/state. Thus, the government promises tolerance for the compliant and repression for the resistant.<sup>293</sup>

The Commission has generally welcomed China's progress toward developing a system based on the rule of law, but in the case of religion, the Chinese government uses law as a weapon against believers. Instead of enjoying legal protections, religious believers in China who choose to practice their faith outside government authorized forums face what Chinese authorities term the "important weapon" of the united front. "United front, religious, public security, cultural, and propaganda" organs should find ways to operate in unison against the believer.<sup>294</sup> Falun Gong practitioners have felt the full brutality of this unified state repression since the 1999 launch of the Party's "protracted, complicated, and intense fight"<sup>295</sup> against their peaceful beliefs and practices.<sup>296</sup> This repression is carried out within the rule by law imposed by the Party on the practice of religion.<sup>297</sup>

#### *New and Developing Trends*

The Party intensified its crackdown on "cults" and expanded the campaign during 2004.<sup>298</sup> The campaign, directed by the State



Council Office for Preventing and Handling Cult Issues,<sup>299</sup> seeks “to prevent cults from breeding and infesting rural villages.”<sup>300</sup> Although the People’s Daily highlighted the spiritual group Falun Gong as a particular target,<sup>301</sup> the campaign is part of a wider crackdown against all unregistered religious groups, including Christians and Buddhists.<sup>302</sup> In late June 2004, a local Party official in Lanzhou noted that cracking “down on free preachers who carry out missionary work illegally and engage in feudal and superstitious activities” must be a key focus for cadres in the new century.<sup>303</sup>

Party fears of religion “poisoning the minds”<sup>304</sup> of China’s youth have been reflected more prominently in the Chinese press since last year’s annual report. One Chinese study of middle school students in Beijing showed that 53 percent demonstrated an affinity for Buddhist prayer, and identified one likely source of this “superstitious” thinking as the Internet, “currently the latent assassin of the ideology of young people.”<sup>305</sup> In response, Chinese authorities have launched anti-cult “education programs” for youth throughout China, including propaganda classes directed at middle and primary school students that encourage the adoption of “scientific atheism” and the rejection of “feudal and superstitious beliefs.”<sup>306</sup> In Xinjiang, more rigorous state-mandated training of young and middle-aged clerics emphasizes political training and discourages “study of religious tenets.”<sup>307</sup> A model program titled “small hands holding big hands” was adopted encouraging students to report unauthorized religious activity by their relatives at home.<sup>308</sup> The Party’s stated goal is to train “a new generation of patriotic religious personages.”<sup>309</sup>

Chinese authorities continue to express fears that “hostile international forces” will use “religion to expand the impact of their values and carry out ideological infiltration” into China,<sup>310</sup> and often portray certain groups, like Falun Gong, as a “tool of the Western anti-China forces.”<sup>311</sup> A recent Party statement on religion found that an important conclusion drawn 40 years ago, that “missionary work cannot be separated from imperialist politics, nor can it be separated from imperialist invasion,” still offers an important lesson for today.<sup>312</sup> Party officials draw on these fears to encourage nationalist sentiment against the religious groups it opposes, as members of the Three Tiers of Servant underground church in Heilongjiang province found when their beliefs were tied to infiltration by “external forces” during mass arrests in April.<sup>313</sup> In Tibetan and Uighur areas, where separatist sentiment often is interwoven with religious conviction, state repression of religion is particularly harsh.<sup>314</sup>

Despite government policies on religion, religious activity in China is surging. Official Chinese statistics indicate that there are more than 140 million practitioners in all authorized faiths, but the true number, including those who worship in private or outside state-controlled channels, is certainly much higher. After strictly-controlled religious practice was permitted once again in the aftermath of the Cultural Revolution, it seems likely the Party overestimated its ability to harness and then propagandize away religion, and underestimated the true depth of the Chinese people’s longing for religious freedom.

*Religious Freedom for Tibetan Buddhists*

Party and state authorities tolerate religious activity by Tibetan Buddhists within the strict limitations of China's Constitution, laws, regulations, and policies. According to a 2002 propaganda manual for "educating" Tibetan Buddhist monks:

Citizens' freedom of religion [sic] belief should not be described as "religious freedom" in which unprescribed religious activity is pursued according to individual whims. It would be improper for the practice of freedom of belief to oppose state laws and policies, and religious activity must be pursued within the confines permitted by the national constitution, law, and policy.<sup>315</sup>

An overwhelming majority of Tibetans are Buddhist. According to data provided to Commission staff by Chinese officials, monks and nuns constitute about two percent of the Tibetan population of the TAR, Qinghai, and Gansu provinces.<sup>316</sup> One official described this fraction as "a proper proportion." Most Tibetans, secular and monastic, strive to maintain their personal faith and avoid running afoul of official proscriptions.

The Party guides an on-going campaign to transform Tibetan Buddhism into a doctrine that promotes patriotism toward China and repudiates the religion's spiritual leader, the Dalai Lama. A TAR manual issued in 2002 that is used in compulsory classes of "Patriotic Education" in monasteries and convents instructs that one of the "fundamental duties of religion work in the new century" is "to forge the over-arching unity of the vast masses of believers of all China's nationalities under the banner of Patriotism."<sup>317</sup> Monks and nuns learn that their religion "must be relentlessly guided in its accommodation with Socialist society."<sup>318</sup> A propaganda manual distributed to TAR cadres and academics in 2002 is aimed at the secular education sphere and counsels that the Party strongly advocates atheism and Marxist materialism because they are "the essence of excellent human civilization."<sup>319</sup> A 2002 "anti-splittism" handbook for monks and nuns targets the Dalai Lama, his international supporters, and the U.S. government with a broad, interrelated set of accusations:

From the 1980s onward, international anti-China forces led by the U.S. made "containing China" the basis of their policy and, taking the "Tibet Issue" as an important strategic objective, overhauled their deceitful methods. Using the issues of ethnicity, religion, culture, human rights, and the environment, they distorted the actual prevailing situation in Tibet and slandered the policies of our country toward its Tibet region, and stepped up support for the Dalai clique [to] no end, and their "Independence" activity became even stronger, which they took as a starting point for their real aims: to attack China's stability, contain its economic development, and ultimately destroy it.<sup>320</sup>

Commission staff delegations visiting Tibetan areas have seen signs that the intensity of religious repression is not uniform, an impression consistent with privately expressed expert opinions. Conditions in Qinghai province, and possibly in Gansu province as well, may be relatively less repressive, especially where the Gelug

sect<sup>321</sup> of Tibetan Buddhism is in the minority. The TAR and Sichuan province currently implement policy in the most aggressive manner. Authorities in Sichuan have targeted popular Buddhist teachers for persecution. One, Sonam Phuntsog of Ganzi county, received a five-year sentence after he advised local Tibetans to “listen whole-heartedly to what the Dalai Lama says.”<sup>322</sup> He is due for release in October 2004. Another, Tenzin Deleg, was sentenced in late 2002 to death with a two-year reprieve on charges of separatism and involvement in causing explosions. Authorities refuse to disclose details about the evidence against him, asserting that it involves state secrets.

State-run political education sessions require that monks and nuns denounce the Dalai Lama’s recognition in 1995 of Gedun Choekyi Nyima as the reincarnation of the Panchen Lama, Tibet’s second-ranking spiritual leader. Chinese authorities installed another boy, Gyalsten Norbu, several months later and demanded that the secular and monastic communities accept his legitimacy. Officials promptly took Gedun Choekyi Nyima, then age six, and his parents into custody and have held them incommunicado since that time. The U.S. government has repeatedly urged China to end restrictions on Gedun Choekyi Nyima and his family, and to allow international representatives to visit them. Meanwhile, Gyaltsen Norbu’s appointment continues to stir widespread resentment among Tibetans.

The Party regards Tibetan Buddhism, like all religions, as a burden on society and requires monasteries and nunneries in Tibetan areas to achieve self-reliance.<sup>323</sup> Charging admission is a common means of generating income for monastic centers in larger towns and cities.<sup>324</sup> The construction of new highways and airports in the vicinity of Tibetan destinations, along with a growing Chinese middle class, has made Han tourism possible on a scale far exceeding that of foreign tourism.<sup>325</sup> Both tourists and tourism disrupt religious activities and create the impression that the government promotes treating Tibetan religious sites as a commodity and cares little about the effect on religion. Credible reports claim that monastic study in some of Tibetan Buddhism’s most respected centers of learning is suffering from an unprecedented onslaught of domestic tourists, many of whom show no awareness that the only purpose of a monastery is to impart a religious education. Reports also assert that monks and nuns face restrictions on religious study and a shortage of qualified teachers. Many risk the perilous trek into exile in order to pursue their studies freely. The Chinese government has demonstrated a commitment to protect religious architecture and art, but it has not demonstrated a similar commitment to respect the sanctity of religious practice.

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

The Chinese government has tightened its repression of unregistered Catholic religious practice and believers, intensifying a campaign begun in 2000. In some provinces, government authorities have stepped up efforts to intimidate and harass unregistered Catholics, often pressing them to register with the Catholic Patriotic Association (CPA).<sup>326</sup> In the most extreme cases, government authorities have destroyed unregistered Catholic church build-

ings.<sup>327</sup> Over 40 unregistered Catholic bishops and priests continue to be in prison, in labor camps, under house arrest, or under strict surveillance. In November 2003, a U.S. NGO that monitors religious freedom for Catholics in China reported that unregistered Catholic Bishop Su Zhimin had been seen under guard in a hospital in Baoding, Hebei province. A frequent subject of official U.S. and international inquiry with the Chinese government since his detention in 1997, Bishop Su's whereabouts and condition are unknown. The same source reports the October 2003 arrest of about a dozen unregistered Catholic priests and seminarians, several 2004 arrests of unregistered Catholic bishops and priests who were soon released, and the arrest of ten unregistered priests and seminarians in August 2004.<sup>328</sup>

Chinese religious authorities generally subject registered Catholics to a milder type of control that concentrates on the seminaries, where the government subjects seminarians to interrogation about their religious and political beliefs and requires their attendance at ideological training courses. In early 2003, the officially sanctioned CPA and the CPA-approved bishops issued three documents that strengthened the role of the CPA in matters previously reserved to the clergy.<sup>329</sup> These matters include the selection of bishops, the running of seminaries and convents, and the training of priests and sisters. The initial implementation of these new policies generally has not been vigorous, and has varied from diocese to diocese, in part because CPA supervision is weak or nonexistent in some areas. In parts of China, CPA officials have been accused of embezzling church property, or selling or renting it for personal gain. Registered Catholics have been permitted to continue developing a fledgling network of social organizations including orphanages, nursing homes, clinics, HIV/AIDS treatment centers, and leprosariums, and to engage in disaster relief activities. Government authorities have also permitted registered Catholics to create Internet Web sites and to offer advanced theological training for registered clergy and courses in basic theology for registered laity.

Relations between China and the Holy See seem to have deteriorated over the past year. The Chinese government clashed with the Holy See over China's attempt to consecrate a large number of official bishops without Holy See approval in January 2000 and responded angrily to the Holy See's October 2000 canonization of 120 Chinese martyrs. But after failing in 2002 to force its own episcopal candidate on the CPA-registered Catholic diocese of Hengshui, Hebei, the Chinese government permitted the consecration of Feng Xinmao, the appointee approved by the Pope, in January 2004.<sup>330</sup> Although in the past, Chinese government officials and intermediaries representing the Holy See met periodically, such contacts have not occurred since the July 2003 visit to Beijing of a senior U.S. Catholic prelate, who held discussions with state and CPA officials.<sup>331</sup> The Chinese government has so far taken no visible steps toward renewing diplomatic relations with the Holy See, which were broken in 1951. The Chinese government remains unwilling to meet the requirements of the Holy See regarding religious freedom for unregistered Catholics, papal selection of bishops, and reduction of the role and authority of the Patriotic Association.

In 2004, the Holy See publicly protested the persecution of Catholic clergy for the first time since the mid-1990s. In March, a spokesman for the Holy See declared that any charges against arrested unregistered Bishop Wei Jingyi “should be made public, as in any lawful state.” In response, a Chinese Foreign Ministry spokesman said that “police authorities have not taken any restrictive measures” against Wei. SARA claimed that Bishop Wei was stopped for questioning after having traveled abroad with a falsified identity card. In April, the Holy See also declared the arrest of unregistered Bishop Jia Zhiguo “inadmissible in a state of law that declares that it guarantees ‘freedom of religion’ and ‘respects and safeguards human rights.’” In both cases the bishops were released.<sup>332</sup> In May, June, and September, Chinese government arrests of additional bishops, priests, and laypeople prompted additional protests from the Holy See.<sup>333</sup>

The situation for China’s Catholics continues to change. The two most important developments are the reconciliation of the official clergy to the Holy See and the growing reconciliation between unregistered and registered Catholics. In 2004, the Vatican announced that 49 of the 79 official bishops have privately established communion with the Holy See.<sup>334</sup> Those who have done so are becoming more forthright. In an interview with a foreign journalist, Li Duan, the CPA-approved Bishop of Xi’an, declared, “The Pope is the head of the Church . . . The Pope has the right to govern and supervise all the Church’s activities, including the election of bishops. We will never deny that the Pope has the right to do so.”<sup>335</sup> A younger generation of registered Catholic priests frequently has refused to be ordained by bishops not in communion with the Holy See or to attend episcopal consecrations performed by them. Yet a minority of the registered Catholic clergy continues to adhere to the Chinese government’s vision of a national Catholic Church independent of the Holy See. In April 2003, the government rewarded Bishop Fu Tieshan of Beijing for his service to this vision by making him a vice-chairman of the National People’s Congress (NPC).<sup>336</sup> Although not discussed openly, the relationship of official bishops to the Holy See framed the discussions at a July 2004 meeting of the National Conference of Chinese Catholic Representatives. Almost half of the registered bishops refused to attend this joint meeting of the CPA and the registered bishops’ conference. Speaking to the Conference, senior Politburo member Jia Qinglin and Ye Xiaowen, Director of SARA, insisted on the “autonomy” of the Chinese Catholic Church in the matter of episcopal ordination.<sup>337</sup> Ordination of bishops is a question of increasing importance to the Catholic Church in China, as many bishops are elderly. In the registered community, many candidates are reluctant to accept episcopal succession in the current atmosphere; in the unregistered community, candidates who have the proper level of theological education are difficult to find within a given diocese.

Despite the difficult issues facing China’s Catholics, the registered and unregistered communities keep moving closer together. The increasingly open loyalty of the registered clergy to the Holy See has earned them growing acceptance from underground Catholics. Some unregistered clergy have urged their members to adopt a conciliatory attitude toward the registered Church, and many

have done so. Most unregistered Catholics, however, continue to refuse to worship with the CPA-approved Catholic community.<sup>338</sup>

*Religious Freedom for China's Muslims*

The Chinese government continues to strictly regulate Islamic education and practice, particularly in Xinjiang, where regional policies on religion are designed in part to ensure that Uighur Muslim children do not develop a strong Islamic identity.<sup>339</sup> Private madrassas and mosques are prohibited in Xinjiang,<sup>340</sup> and children under 18 years of age cannot receive religious instruction, including private Koranic study at home.<sup>341</sup> Chinese authorities impose harsh travel restrictions on imams in Xinjiang,<sup>342</sup> and they must demonstrate "good political quality"<sup>343</sup> before they can participate in the state-run propaganda classes that are mandatory for preaching or leading prayer.<sup>344</sup> The state-authorized China Islamic Association has begun implementing a policy that directs Muslims to interpretations of the Koran and Hadith that conform to Party guidelines.<sup>345</sup>

Following a gradual increase in Party tolerance of religion beginning in 1978, Islamic education and practice surged in Xinjiang. By the late 1980s, regional authorities became concerned that Islam was weakening the Party's influence.<sup>346</sup> In response, the Xinjiang government issued a series of laws and regulations to "control" Islam.<sup>347</sup> These laws and regulations, and their successors, continue to govern Islamic education and practice today. They prohibit Muslims from unauthorized organizing,<sup>348</sup> accepting foreign contributions,<sup>349</sup> or printing or distributing religious materials without explicit permission from authorities.<sup>350</sup> Authorities in Xinjiang have also cracked down on the construction of mosques.

Chinese government rhetoric attempts to cast suspicion on Muslims in Xinjiang. For example, according to one official in Urumqi, before 1999 the number of mosques in Xinjiang far exceeded the "the needs of normal religious activity,"<sup>351</sup> and "nearly all the illegal activities or disturbances in Xinjiang are connected to religion."<sup>352</sup> According to a member of the Xinjiang Academy of Social Sciences, the most prevalent "illegal religious activities" in the region include private underground Koranic study, trans-regional missionary work, and Talib (student) activities.<sup>353</sup>

Chinese authorities seem to be implementing policies likely to generate further Uighur alienation and resentment rather than national unity. A recent Party Central Committee document noted that the major dangers to maintaining stability in Xinjiang are ethnic separatism and illegal religious activity.<sup>354</sup> Chinese authorities accuse "ethnic separatists" of trying to "politicize the problem of religion," and emphasize the importance of drawing a clear distinction between these two "dangers."<sup>355</sup> However, strict and often insensitive Chinese policies toward Uighurs and government efforts to categorize long-held Uighur aspirations for increased autonomy as "splittism" or "terrorism," may be just as responsible for linking the two issues. According to one U.S. scholar, Islamic piety or practice cannot be understood in isolation from politics, but it should also not be simply reduced to politics.<sup>356</sup> "Uighur religiosity has political content, but state interventions have, indeed, politicized it further."<sup>357</sup> Public security officers reportedly arrested a young

Muslim poet in January 2003 for chanting a verse in public. “Security officials told foreign journalists . . . (that) . . . the young man was guilty of ‘spiritual terrorism.’ Officials said the poem ‘attacked our government policy’ regarding ethnic minorities.”<sup>358</sup>

Chinese authorities may have overreached in the continuing crackdown on Uighur “separatism.” According to a recent study by a U.S.-based human rights NGO, “the Chinese authorities are sowing the seeds of an ethnic resentment so profound as to jeopardize the very stability they claim to defend.”<sup>359</sup> Rather than focusing attention on “the extremely small number of ethnic separatists . . . (engaged) in violent terrorist activities,”<sup>360</sup> Chinese authorities have instituted harsh religious policies that discriminate against all Uighurs, based on the false premise that most Uighurs support radical and violent Islamist separatism and terrorism. In fact, Uighurs are “divided from within by religious conflicts, in this case competing Sufi and non-Sufi factions, territorial conflicts, linguistic discrepancies, common-elite alienation, and competing political loyalties.”<sup>361</sup>

#### *Religious Freedom for China’s Protestants*

China’s unregistered Protestant house churches suffer continued government intimidation, harassment, and, in some cases, severe repression.<sup>362</sup> Although the Party justified some of these actions based on claims of church ties to external forces,<sup>363</sup> in fact they are the product of the Party’s concern about the rapid increase in house church membership and the existence of a loose network linking these congregations through the personal ties of some church leaders. One U.S. scholar has suggested that the Party perceives the house church movement as an especially serious threat because membership, estimated in the tens of millions, has grown as churches have become “increasingly Sinicized through the inclusion of features of folk religion and traditional cultural forms.”<sup>364</sup>

Despite the broad appeal of the house church movement, the Party’s fears of a Protestant mass movement challenging its authority seem groundless. Increasing Sinicization has caused division rather than unity among house churches in many cases.<sup>365</sup> The highly sectarian tendencies of some congregations led one group of church leaders in 1998 to condemn heretical teachings and ask the government to “change the definition of a ‘cult’ from meaning simply any Christian group that didn’t register with the (state-authorized) Three Self Patriotic Movement.”<sup>366</sup> Although many house church leaders seek unity among congregations, most have shown little inclination to challenge the state, and “some pastors say their groups are more concerned about internal divisions and attacks by ‘heretics’ and ‘cults’ like the ‘Eastern Lightning’ (whose leader claimed she was the Christ incarnate) than they are about state repression.”<sup>367</sup>

Despite the apparent lack of any real threat to Party authority or public safety, the Party intensified its “anti-cult” crackdown against the house church movement in 2003 and expanded the campaign in 2004. Xiao Biguang, a leader in the South China Church, and Zhang Yinan, a house church historian, were arrested in September 2003. Police cited Zhang’s “hopes for the destruction of Chinese government bodies” during his sentencing to two years

of re-education through labor in October.<sup>368</sup> He was reportedly beaten after arriving at the labor camp.<sup>369</sup> Xiao Biguang, who was organizing the legal defense for imprisoned South China Church founder Gong Shengliang and had revealed that prison authorities had nearly beaten Gong to death, was released from detention in October. Pastor Gong was arrested in August 2001 and charged with premeditated assault, using a cult to undermine the implementation of law, and rape. The cult charges were dropped, and Gong's December 2001 death sentence was commuted to life in prison, but Pastor Gong continues to endure serious abuse from prison authorities in Wuhan.<sup>370</sup>

In October 2003, Zhang Hongmei, a house church member in Shandong province, was reportedly beaten to death after being detained by police for "illegal religious activities." The day before her death, police had demanded that Zhang's family pay the equivalent of a \$362 fine for her release.<sup>371</sup> Three house church leaders—Liu Fenggang, Xu Yonghai and Zhang Shengqi—were tried in secret in Hangzhou, Zhejiang province in March 2004. The original charges of inciting the gathering of state secrets were amended to providing intelligence to organizations outside of China.<sup>372</sup> According to a U.S.-based human rights NGO, the arrests were in response to a report released by Liu detailing the severe repression of Christians in Hangzhou. Xu had printed the report and Zhang had disseminated it on the Internet.<sup>373</sup> On August 6, the Intermediate People's Court in Hangzhou sentenced Zhang, Xu, and Liu to one, two, and three years in prison, respectively. A U.S. NGO that monitors religious freedom in China reported the abduction by police of Three Tiers of Servants church leader Xu Shuangfu in Heilongjiang province and the arrest of scores of his followers during April 2004.<sup>374</sup> One of those arrested, Gu Xianggao, was beaten to death while in police custody.<sup>375</sup> Xu's condition and whereabouts remain unknown.

Compared to the highly vulnerable house churches, China's authorized Protestant congregations operate comfortably within the state's religious bureaucracy, in effect enduring "the constraints imposed on their parishes in exchange for the opportunity to worship in public."<sup>376</sup> Oversight by two Chinese organizations under the SARA, the Three Self Patriotic Movement (TSPM) and the China Christian Council, ensure that China's registered Protestant churches conform to state religious guidelines.<sup>377</sup> Approximately 13,000 Protestant congregations are registered to hold services in China. Registered pastors are paid by the state and are subject to removal if the government believes they have become too evangelical. Church officials often complain in private about state interference and restrictions. According to these officials, SARA decides "how many pastors the TSPM may ordain in any six-month period, how many meetings TSPM pastors can hold in any one-month period, and who is permitted to teach at and graduate from China's 17 official Protestant seminaries."<sup>378</sup>

As in other areas of religious affairs, inconsistencies exist in official policy toward Protestants, and some see a few small signs of hope for limited change. Some house churches have reportedly been successful in appealing to the principles of the Chinese Constitution "to obtain reparations for harm done to their leaders or facili-



ties.”<sup>379</sup> In 2001, the Party seemed prepared to begin allowing house churches to forego registering with the TSPM,<sup>380</sup> but this possibility apparently was abandoned in favor of the current crack-down on house churches.

### III(d) FREEDOM OF EXPRESSION

#### FINDINGS

- China’s Constitution guarantees Chinese citizens freedom of the press, but China’s laws and regulations explicitly prohibit Chinese citizens from exercising this right.
- Chinese authorities continue to impose strict licensing requirements on publishing and news reporting. Authorized publishers are subject to government management and censorship; unauthorized publishers are subject to closure and civil and criminal penalties.
- China’s government continues to intimidate and imprison those who express opinions that Communist Party and government officials deem embarrassing or threatening.
- Chinese authorities continue to attempt to prevent Chinese citizens from accessing news from foreign sources, and are receiving assistance from commercial enterprises, who must either impose political self-censorship or risk being shut down.
- Chinese citizens must rely upon organizations outside of China to circumvent government Internet censorship.
- The flow of government-controlled information continues to increase.

#### *Introduction*

China’s government continues to suppress freedom of the press in a manner that contravenes its own Constitution. China’s Constitution guarantees Chinese citizens freedom of the press, but one prerequisite for a free press is the absence of licensing requirements that act as barriers to engaging in publishing. Chinese authorities continue to impose strict licensing requirements on publishing and news reporting. By requiring publishers to obtain and maintain a license, Chinese authorities control who gets to publish (by refusing to grant a license), ensure that the government is represented in all publications (by requiring an enterprise to have a government sponsor in order to obtain a license), and intimidate and silence those who have been authorized to publish (by revoking, or threatening to revoke, a license).<sup>381</sup> As long as China’s legal system imposes these prior restraints, Chinese citizens will not be able to exercise their right to freedom of the press.

Chinese authorities continue to expend significant human, legal, and technical resources to silence their critics and censor information from sources the government cannot control, influence, or censor.

The Chinese government tolerates discussion of political issues, provided that no criticism is directed at Party and central government actions or policies, and that such discussions are restricted to forums that are either closed to the public or subject to government monitoring and censorship. As the head of the Party’s Central Propaganda Department told the producers of one television news

program, news reporting must be “conducive to implementing the Party’s line, principles and policies” and enhance the “people’s trust in the Party and the government.”<sup>382</sup>

*Promising Developments*

The Commission notes several developments that have had a positive impact on the lives of Chinese citizens. Authorities continue to allow the selective publication of information that previously they would have deemed too embarrassing or threatening, such as corruption, discussions of government policies, and deaths owing to natural and man-made disasters. For example, China’s state media carried reports of the democracy march in Hong Kong in July 2004. Nevertheless, China’s government, and not the press itself, remains the final arbiter of what can be published: none of the state media reports mentioned that the Hong Kong march involved hundreds of thousands of demonstrators who were demanding more democracy.

The Chinese government is allowing citizens more access to different types of government information.<sup>383</sup> Government departments are also increasing the number of official spokespersons available to field news media inquiries.<sup>384</sup> Chinese officials appear prepared, however, to use the spokesperson system to restrict the flow of information to the public by creating a single authorized channel through which the government permits reporters to ask questions of government departments.<sup>385</sup>

Media outlets in China are increasingly operated as commercial enterprises.<sup>386</sup> This change in organization has made the media more responsive to audience demands, but this “enterprization” is not the same as genuine “privatization.” The Chinese government has licensed some private and foreign publication distributors,<sup>387</sup> but private publishing remains illegal,<sup>388</sup> and authorized publishing enterprises remain subject to government management, sponsorship, licensing, and citizenship requirements. Publishers must also obey government orders to censor politically sensitive content.

The government has required most news publications to become financially self-supporting, and this commercialization has caused an increased emphasis on investigative reporting and timely delivery of news. Because the government censors negative reporting on senior officials, investigative reporting is limited to subjects that do not criticize the Party or the central government, such as foreign affairs and local news.<sup>389</sup>

*The Media as a Political Tool: Supervision of Public Opinion, Abuse, Corruption, and New Directions in Media Regulation*

The Chinese government has transformed the concept of “freedom of the press” from the principle that individuals should have the right to publish into an ethical duty to publish and censor for the benefit of the Party.<sup>390</sup> The Party has always viewed publishing as a tool for securing its hold on power, not as an individual right,<sup>391</sup> and the government continues to treat the press as a political tool<sup>392</sup> and to regulate it accordingly.<sup>393</sup> Chinese government authorities ensure that the press fulfills its duty to the Party by requiring that all publishers be licensed by the government. Pub-

lishers must also be sponsored by a government agency,<sup>394</sup> and the General Administration of Press and Publication (GAPP), the National Administration of State Secrets, and the Party's Central Propaganda Department act as the final arbiters of what types of politically sensitive material may be published.<sup>395</sup>

The government continues to treat the press both as a propaganda tool<sup>396</sup> and as an agent for domestic information gathering. Chinese authorities refer to these dual roles of the news media—to act as both the “eyes” and the “mouthpiece” of the government—as “supervision of public opinion.” According to the Party, supervision of public opinion should originate with “the masses of people going through the news media to publicly implement democratic supervision of the Party and the government.”<sup>397</sup> In practice, however, “supervision of public opinion” means that all news media in China must serve the Party in two ways. First, the media monitors public sentiment and reports on certain topics (and censors others) in a manner that allows the Party to manipulate public opinion.<sup>398</sup> For example, after dozens of people died in a public stampede in February 2004, the Beijing municipal Party's propaganda office instructed all local media outlets to publish the same news reports.<sup>399</sup>

The second way that the Chinese government requires the news media to implement supervision of public opinion is by monitoring the public's opinion regarding China's leaders and their policies, and relaying this information back to the leadership. For example, if a journalist in China submits a story that an editor deems too politically sensitive to publish, Chinese law requires the editor to designate the story as “classified,” and, instead of publishing it, treat it as a secret government document.<sup>400</sup> The editor must then pass such documents directly to the government agency that manages the publisher.

Until recently, Chinese authorities could carry out supervision of public opinion easily because the number of news reporting agencies in China was small. The Xinhua News Agency, a government agency directly under the State Council, was the country's primary news gathering and publishing agency.<sup>401</sup> In addition, the government directly managed and subsidized all news publications. News gathering organizations have proliferated rapidly in the past few years, however, and the government expects them to operate as commercial enterprises.<sup>402</sup> The reporting priorities of these commercial publishers differ from directly subsidized publications, and Chinese authorities are seeking to ensure that they continue to channel information that helps the Party maintain power. One method the government employs is establishing relationships between publishers and government agencies outside of the traditional sponsorship hierarchy. For example, in January 2004, the People's Daily reported that several media groups in China had formed an “information sharing” arrangement with the Beijing Municipal Procuratorate.<sup>403</sup> The following month the Procuratorate issued regulations on how they would handle such information.<sup>404</sup>

Chinese authorities require anyone wishing to practice journalism to obtain a license.<sup>405</sup> In conjunction with this requirement, the GAPP (the Chinese government agency primarily responsible for censoring books and periodicals)<sup>406</sup> launched a Web site that

now lists the names of persons who are forbidden to report news.<sup>407</sup> In January 2004, the government launched a campaign to shut down branches of newspapers that had not acquired appropriate government authorizations.<sup>408</sup>

Chinese leaders distract attention from the absence of freedom to publish by focusing propaganda efforts on ethical problems in the news media. Articles appear almost weekly in the state-controlled press decrying the abuses of and by the press and exhorting reporters and editors to engage in supervision of public opinion. But no articles raise the lack of individual freedom to publish, or question whether it is appropriate for the press to be regulated as if it were a government agency.<sup>409</sup>

Because the commercialization of the news media complicates government efforts to implement censorship, authorities have begun to employ new tools to silence and intimidate the news media. For example, for several years the publications of Guangdong province's Southern Group have been among the most liberal, popular, and respected in China. In the past, the government has relied upon "traditional" censorship techniques, based on its licensing and managerial authority, to control Southern Group publications.<sup>410</sup> In January 2004, however, the authorities disciplined the Southern Group's Southern Metropolitan Daily by detaining several current and former senior editors and managers, and charging two with economic crimes.<sup>411</sup> Many scholars and citizens in China objected that the charges were without legal basis, and that Guangdong authorities exploited China's immature financial regulatory system and the news media's "quasi-governmental" status to punish the editors of a newspaper that had embarrassed the provincial leadership.<sup>412</sup> Web sites that protested these prosecutions were accessible for a few weeks, but were taken down when the controversy began to attract increased domestic and international attention.<sup>413</sup>

The Chinese government has also undertaken projects to use the public to improve the reach of its censorship. For example, in January 2004, as part of a "Sweep Away Pornography and Strike Down Illegal Publications" campaign,<sup>414</sup> the Ministry of Public Security set up a nationwide hotline that people could call to report publications with "serious political problems" and receive rewards.<sup>415</sup> In February 2004, Sun Jiazheng, Minister of Culture, said that regional cultural, finance, public security, industry, and commerce departments were to reward people for reporting illegal Internet use, including posting essays calling for democracy and reform.<sup>416</sup> Several provinces have also instituted "media supervisor" systems, in which the government hires private citizens "to monitor local media for accurate reporting and orderly distribution . . . [and] report problems to the provincial propaganda department."<sup>417</sup>

#### *Prior Restraints*

As the Commission noted with respect to religion [see Section III(c)—Freedom of Religion], while China's progress toward developing a system based on the rule of law has been laudable, in the case of freedom of expression, China is using law as a weapon. Instead of protecting freedom of the press, laws in China impose extensive administrative licensing requirements on all forms of

publishing. No one may publish a book, newspaper, magazine, or commercial Web site in China without a government agency sponsor and a license from the GAPP. Individuals cannot legally publish, since Chinese law continues to restrict the right to publish to enterprises with a large amount of registered capital.<sup>418</sup> The government has the authority to revoke any publisher's license and force it to cease publishing.<sup>419</sup>

In October 2003, the GAPP completed a campaign in which it revoked the licenses of over 600 newspapers.<sup>420</sup> In February 2004, Chinese authorities issued an order stating that government agencies that sponsored publications should strengthen their "opinion guidance" over those publications, and publishers should conscientiously accept the supervision and management of their government sponsors.<sup>421</sup>

In January 2004, the GAPP awarded 50 companies licenses to publish on the Internet.<sup>422</sup> Under Chinese law, anyone who operates a commercial Internet publisher without a license is engaged in illegal publishing and may be shut down at any time.<sup>423</sup> For example, in January 2004, a Beijing court refused to hear an appeal by Li Jian, the operator of a civil rights Web site, against a lower court's decision supporting the Beijing Communications Administration's (BCA) closure of his site. While Li Jian said his site was not commercial, and therefore did not have to be licensed, BCA officials said that the government had the right to shut down the site because it included an unlicensed bulletin board system, and Mr. Li had not provided accurate contact information and ID card number when he registered the site.<sup>424</sup>

The government continues to require that all books published in China be assigned "book numbers," and the authorities determine who is allowed to publish through their exclusive control of the distribution of these numbers. In October 2003, the GAPP banned 19 dictionaries.<sup>425</sup> In July 2004, it banned 30 periodicals for illegally using registration numbers belonging to other periodicals.<sup>426</sup> In January 2004, a court in Hefei, Anhui province, sentenced two men to prison terms of nine and seven years for "unlawful operation of a business." Their crime was to publish books of love poems using illegally purchased book numbers.<sup>427</sup>

In addition to the GAPP, numerous other agencies participate in the government censorship regime. The State Administration of Radio, Film, and Television (SARFT) issued regulations reaffirming the requirement that political filmmakers submit their screenplays for approval before releasing their films.<sup>428</sup> The State Meteorological Office issued regulations prohibiting Chinese media outlets from publishing weather reports without prior government authorization.<sup>429</sup> The Ministry of Public Security has increased surveillance of mobile phone short text messages<sup>430</sup> for "false political rumors" and "reactionary remarks."<sup>431</sup> In October 2003, several Party and government agencies jointly established the "Central Leading Group for the Coordination of Work To Improve Publications" to ensure that all publications "do not have problems with political orientation."<sup>432</sup> In March 2004, the Ministry of Culture banned a foreign computer game because it discredited the image of China.<sup>433</sup>

*Government Censorship*

Chinese authorities continue to impose restrictions on who may publish news and who can discuss certain topics. In February 2004, Chinese authorities ordered senior managers at Sina.com, Sohu.com, Netease (163.com), and other Internet portals to close news chat rooms and stop using live Web broadcasts, translating foreign news, and doing online interviews with scholars, artists, and professionals. Managers were instructed to rely exclusively on news from Xinhua, the official news agency.<sup>434</sup>

The government also determines which news topics are completely forbidden. For example, in October 2003, the Minister of Health stated that news media outlets could not publish anything regarding SARS unless the Ministry of Health had first approved the report.<sup>435</sup> In November 2003, the Beijing municipal government issued the “Opinion on Carrying Out the Work of Housing Demolition and Relocation Well to Safeguard Social Stability,” requiring propaganda departments to ensure that all reports on demolition incidents “take social stability as their starting point.”<sup>436</sup> Pursuant to a bilateral agreement, Chinese authorities aired Vice President Cheney’s March 2004 address to students in Shanghai in its entirety, but government censors eliminated references to political freedom and Taiwan, as well as his answers to questions after the speech, from the version posted on state-owned Web sites.<sup>437</sup>

While remaining pervasive and repressive, Chinese government censorship is becoming less monolithic. For example, in August 2003, government officials in Dingnan county, Jiangxi province, removed pages of the People’s Daily before it was distributed in the county. The pages included a report regarding corruption in the county government. In September 2003, China’s national media, including the China Youth Daily, the People’s Daily, and Xinhua, carried a series of reports decrying the Dingnan censorship, which they deemed “appalling.” In another example, China’s State Council included information in one of its reports from organizations such as Human Rights Watch and Reporters Without Borders, even though China’s government prohibits these organizations from operating in China, and attempts to prevent Chinese citizens from accessing their Web sites.<sup>438</sup>

Other examples of Chinese government censorship during the past year include:

- In September, a Chinese scholar published an article critical of local government officials who had enacted regulations prohibiting the media from publishing opinions that contradict court judgments. The scholar did not say, however, which local government he was criticizing.<sup>439</sup>
- In January, the GAPP issued regulations restricting the right to publish books on reforming the Constitution to three publishing houses.<sup>440</sup>
- In March, managers of a state-owned television station in Tibet were punished for showing brief images of the banned flag of independent Tibet.<sup>441</sup>
- In March, Hong Kong media reported that Chinese authorities told Mao Yuanxin, Mao Zedong’s nephew and his special liaison person during the post-Cultural Revolution period, that

he could not publish his memoir because it included “instructions,” “exhortations,” and “comments” by Mao Zedong that had not been made public previously.<sup>442</sup>

- Also in March, another Hong Kong publisher reported that Chinese authorities had forbidden Li Peng from publishing his memoir, which, according to the report “sought to explain how leaders in the central government were divided over what to do about the weeks-long pro-democracy protests in Beijing’s Tiananmen Square.”<sup>443</sup>

- In May, China’s domestic media reported on a journalist attempting to cover unrest relating to demolitions in Chenzhou, Hunan province. According to the reporter, city government officials had issued an order that no municipal agencies were to cooperate with reporters from several television news programs who had recently arrived to cover the story.<sup>444</sup>

- In July, economist Mao Yushi told the South China Morning Post that the publisher of his book, *Give Freedom to Ones You Loved*, had received an order to stop making new prints and to cease distribution of unsold copies.<sup>445</sup>

### *Self Censorship*

Because Chinese authorities can revoke a publisher’s license, the Party and government are able to ensure that Chinese news outlets remain on their side.<sup>446</sup> Chinese news publishers occasionally include comments somewhat critical of China’s central government in their English publications, but edit such comments out of Chinese language versions.<sup>447</sup> Publications often engage in self-censorship after-the-fact, based upon how the government decides a problem should be handled. For example, after Zheng Enchong’s conviction in October 2004, the Web site of the China Economic Times, a publication put out by the State Council’s Development and Research Center, briefly carried an article entitled “Is Demolition a State Secret?” questioning whether the government had the authority to designate information regarding demolition protests as a state secret. The article was quickly removed from the site.

Because Chinese authorities can refuse to allot book numbers, book publishers refuse to publish works unless they can purge them of politically sensitive material.<sup>448</sup> For example, in September 2003, the authorized Chinese publisher of Hillary Clinton’s memoir, *Living History*, censored several passages critical of China from the Chinese translation of her book without her permission.<sup>449</sup> To circumvent China’s book censorship regime, some authors allow mainland Chinese publishers to remove political material that Chinese authorities would find objectionable, but also have the unexpurgated edition published in Hong Kong.<sup>450</sup> A review of recent scholarly literature on the media and journalism demonstrates the hand of both government and self-censorship in China:

- Most books published in China dealing with news media issues ignore the question of China’s lack of freedom of the press.<sup>451</sup>
- Books that discuss how the law protects (or does not protect) journalists discuss the situation in foreign countries,<sup>452</sup> but do not discuss the large number of journalists and other writers currently in prison in China for their writings.<sup>453</sup>

- Books that discuss the problems facing China's domestic news media focus on the lack of ethics and professionalism in China's media, but do not discuss the problems caused by China's licensing and censorship systems.<sup>454</sup>
- Books comparing Chinese and Western news media either ignore the issue of freedom of the press,<sup>455</sup> or only address it in the context of problems facing the foreign media and ignore the issue with respect to China's own legal system.<sup>456</sup>
- Books that address the topic of freedom of the press in China repeat Communist dogma on the topic and reach the conclusion that Chinese journalists do not face any inappropriate restraints on their freedom of expression.<sup>457</sup>

As with the publishers of books and periodicals, China's Internet operators also exercise extensive self-censorship, both to comply with Chinese law, and to avoid offending the government. Internet cafés employ staff to monitor which Web sites their customers are using and to tell them to stop visiting "illegal" sites. Internet Bulletin Boards use software to block posts containing words designated as forbidden by "relevant government agencies." They also employ staff to monitor and delete politically sensitive articles that users try to post, and ban users who attempt to post politically sensitive materials too often.<sup>458</sup> In December 2003, Sina, Sohu, Net Ease and dozens of other Internet news outlets jointly signed an "Internet News Information Service Self-Discipline Pledge" promising to "voluntarily submit to government administration and public supervision."<sup>459</sup>

Self-censorship is highly visible on Internet search engines based in China. While a search for the term "China human rights" on the U.S.-based search engine "Google" returns a mixture of China-based and non-China based Web sites as the top results, the same search on the popular China-based search engine "Baidu" does not return the Web sites of any human rights organizations that are not China-based. A search for "Falun Gong" on Google returns over 400,000 results, while the same search on Baidu returns no results.<sup>460</sup> U.S. companies that operate Internet portals based in China have agreed to Chinese government requirements to monitor users and remove "harmful" information, and must either censor their search engine results or risk being closed down. For example, Yahoo's Internet search engine for users in China ([www.yahoo.com.cn](http://www.yahoo.com.cn) and [www.yisou.com](http://www.yisou.com)) censors search results to exclude sites for the Voice of America, Radio Free Asia, and Human Rights in China, as well as sites discussing Falun Gong, Tibetan independence, and the 1989 Tiananmen Square massacre. Also, Google designed its Chinese language news aggregation service so that users in China do not retrieve results from dissident news Web sites that Chinese authorities have blocked.<sup>461</sup>

#### *Monitoring, Jamming, and Blocking of Outside Information*

Chinese government policies continue to reflect official concern that Chinese citizens increasingly have access to political information from sources the government cannot control, influence, or censor.<sup>462</sup> For example, in May 2004, SARFT issued a notice requiring broadcasters to reject shows that "promote Western values, life-



styles, and social systems,” especially under the guise of educational, scientific or cultural programming.<sup>463</sup>

Chinese authorities continue to devote considerable legal, human, and technical resources to blocking information from foreign sources. For example, in July 2004, Forum 18 released a study showing that many foreign religious Web sites are blocked in China.<sup>464</sup> Chinese authorities also continue to block the Web sites of Voice of America, Radio Free Asia, the Chinese language versions of the BBC, Deutsche Welle, and other foreign news Web sites, and the Web sites of major human rights groups that report on China.<sup>465</sup> In addition, the Chinese government also employs thousands of “Internet police” to enforce laws relating to Internet security and content.

Chinese authorities appear to recognize, however, that they cannot completely stop the influx of information without crippling economic growth.<sup>466</sup> The government’s response has been to allow some Chinese citizens to have limited access to foreign information, provided it does not weaken the Party’s political power. As a result, the government is relaxing restrictions on sources of both non-political information and political information with a limited audience, while tightening controls on sources of political information with a mass audience. For example, while Chinese authorities have begun to allow foreign participation in the distribution of publications, the GAPP says there is no plan to allow foreigners to publish in China.<sup>467</sup> In January 2004, the GAPP vowed to crack down on what it termed “outlaw publications” from Hong Kong that were publishing in China without a license.<sup>468</sup>

In December 2003, the government began to allow foreign firms to hold minority stakes in film studios, and in February 2004 authorities announced that they were lifting the ban on foreign investment in TV production studios.<sup>469</sup> Nevertheless, the Chinese government has stated that foreign companies may not broadcast news in China.<sup>470</sup> The central government continues to attempt to block radio broadcasts by Voice of America, Radio Free Asia, and the BBC.<sup>471</sup> In addition, China’s laws continue to restrict satellite dish ownership,<sup>472</sup> and government rules require foreign news broadcasters to send all their satellite feeds through channels controlled by the government.<sup>473</sup>

Chinese authorities continue to attempt to block human rights, educational, political, and news Web sites without providing public notice, explanation, or opportunity for appeal. The Chinese approach to Internet filtering seems to be based on the theory that censorship does not have to be perfect to be effective. Allowing Chinese citizens limited access to outside sources of information permits the Chinese government to manipulate public opinion while creating the impression that it is not seriously attempting to censor such information. For example, the Chinese government generally allows Chinese Internet users to access some English-language foreign news Web sites, but blocks these sites during politically sensitive times.

At the same time, government authorities generally ignore the attempts of most Chinese citizens to circumvent the government’s information firewall to access blocked foreign Web sites, provided these individuals do not disseminate the information within China.

A relatively small pool of people has access to the Internet and the time, desire, and ability to circumvent the firewall. By making it difficult, but not impossible, to access foreign news sources, and punishing those who distribute that information more widely, Chinese authorities can dilute the impact of uncontrollable information sources and more easily monitor who is willing to devote time and effort to get information critical of the government and the Party.

During the annual National People's Congress (NPC) meetings in March 2004, the government shut down domestic weblog sites<sup>474</sup> and blocked access to foreign weblog sites.<sup>475</sup> Users in China speculated that authorities shut down the sites because some people had employed these forums to publish opinions on Dr. Jiang Yanyong's letter asking for a reassessment of the 1989 Tiananmen Square democracy protests. While domestic weblogs were eventually allowed to reopen, authorities continue to block weblog hosting services outside of China.<sup>476</sup>

Chinese authorities continue to look to technological measures to refine Web site censorship. For example, in February 2004 the GAPP announced plans to invest 50 million yuan (about \$6 million) to create an "Internet Publishing Supervision System" to control the publication of political content on the Internet.<sup>477</sup> Minister of Culture Sun Jiazheng also called for "using long-range computer surveillance systems to carry out 24-hour, real-time monitoring of Internet cafés,"<sup>478</sup> and some locations, such as Shanghai, have begun instituting video surveillance of Internet café users.<sup>479</sup>

To control the flow of information to Chinese citizens, the Customs Office continues to confiscate political and religious materials. Chinese law grants customs officials broad authority to confiscate any publication deemed "harmful to the government."<sup>480</sup> The Customs Office maintains a list of the types of books that may not be imported for political reasons and uses its authority to confiscate religious materials such as the Bible and certain scholarly works and politically sensitive books published abroad, such as *The Tiananmen Papers*.<sup>481</sup> The list, however, is not available to the public. Customs officials also confiscate Chinese language newspapers that individuals attempt to bring into China.<sup>482</sup>

#### *Selectively Enforced National Security Laws*

The Party and government continue to exploit vague national security laws to silence Chinese citizens who criticize them and their policies.<sup>483</sup> The Commission welcomes the release over the past year of several political prisoners,<sup>484</sup> but regrets that during the same period Chinese security and judicial authorities detained or sentenced dozens of individuals for exercising their right to express their political beliefs.

Chinese courts continue to interpret China's laws in a manner that favors protecting the government's image over the right to freedom of expression. For example, in February Chinese authorities imprisoned five people for using the Internet to disseminate a story about the persecution of a Falun Gong practitioner. Published reports did not indicate that the story's dissemination resulted in any actual or potential threat to China's national security or public safety. Nevertheless, the court sentenced these individuals to terms

of 5 to 14 years in prison for “vilifying the government’s image through spreading fabricated stories.”<sup>485</sup>

The government continues to define state secrets to include any information that authorities do not wish the public to know. Chinese authorities have held Uighur businesswoman Rebiya Kadeer imprisoned in the Xinjiang Autonomous Region for over four years for allegedly attempting to disclose published newspaper articles that the government deemed “state secrets” after-the-fact. In October 2003, a Shanghai court sentenced activist and former lawyer Zheng Enchong to three years in prison for reporting labor and property protests to a foreign human rights group. In August 2004, a court in Hangzhou, Zhejiang province sent Liu Fenggang, Xu Yonghai, and Zhang Shengqi to prison for “revealing state secrets” to a foreign organization because they allegedly discussed the razing of several churches with foreign human rights groups.<sup>486</sup> In May 2004, Xinhua reported that a Beijing court sent three individuals to prison for divulging state secrets because they had stolen questions on an English examination.<sup>487</sup>

The following is a partial list of individuals that Chinese authorities have detained and imprisoned during the past year for exercising their right to freedom of expression. Additional information on their cases and others will be available on the Commission’s Political Prisoner Database:

- Detained: Hu Jia, Ding Zilin, Huang Jinping, Zhang Xianling, Lü Jiaping, Kong Youping, Zhang Shengqi, Xu Yonghai, Jiang Yanyong, and Liu Fenggang.
- Sentenced: Ma Yalian, Li Jian, Chen Shumin, Lu Zengqi, Yuan Qiuyan, Yin Yan, Sang Jiancheng, Jiang Lijun, Li Zhi, Yan Jun, Luo Changfu, He Depu, Cai Lujun, Du Daobin, Zheng Enchong, and Luo Yongzhong.

Some people who were detained and released have been monitored by security officers<sup>488</sup> and ordered not to speak to the press.<sup>489</sup> Others have been forced into exile. The Chinese government’s policy of intimidating and arresting those who criticize the Party or the central government or express opinions that contravene official views not only disregards the rights of these individuals to freedom of expression, but also intimidates many others who would speak out but remain silent for fear of being punished.

### III(e) ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

#### III(e)(i) WOMEN’S RIGHTS

##### FINDINGS

- China’s ongoing economic reforms have increased opportunities for women to build their own businesses and gain greater economic power and security. However, in rural areas, the market transition has increased fees, impoverishing some families and harming girls’ access to education. Recent legal reforms have strengthened women’s rural land use rights, which may help build their economic power in the countryside and generally increase the value of daughters in the eyes of the general public.

- Chinese women continue to suffer from domestic violence at home and sexual harassment in the workplace. However, in recent years, central and local governments have set up programs to publicize the problem of domestic violence and punish abusers, and courts have begun to accept cases involving marital rape and assist women complaining of sexual harassment.
- The continued growth of women's associations and women's studies programs are encouraging women to mobilize to solve shared problems. The All-China Women's Federation (ACWF) is playing a positive role in working with some of these groups and in offering legislative remedies for outstanding problems.

Women are succeeding as entrepreneurs in China, in some measures even in comparison to men.<sup>490</sup> According to a 2004 survey of Chinese entrepreneurs summarized in Xinhua, China had 19.59 million women who were owners or legal representatives of enterprises. Personal annual incomes for female entrepreneurs were higher than for males.<sup>491</sup> However, the survey also found that less than a third of the female entrepreneurs took out bank loans, most relying instead on themselves or their families for investment, prompting the question of whether skilled women are treated equally by banks.<sup>492</sup>

A gap still exists between the educational levels of men and women despite significant narrowing since enactment of the 1986 PRC Elementary Education Law. Census figures for 2000 show the gap narrowing dramatically.<sup>493</sup> Among Chinese citizens with higher education, men outnumbered women nearly three to two, but among 20 to 24-year olds, the figures were nearly equal. However, a recent study of gender equity in basic education found that many girls lose their chance for even basic education, particularly in the poor areas in western China, because of parental emphasis on the education of sons.<sup>494</sup>

Traditional rural attitudes toward women, to some extent based on economic factors, devalue daughters. A long-term study of the impact of economic change on rural women in a southern China village found that part of a family's decision to abort or abandon female babies has been that families with sons benefit in the periodic reallocation of village lands.<sup>495</sup> Since the study was completed, however, a Rural Land Contracting Law was enacted that provides farmers with 30-year land use rights and prohibits most readjustment and reallocation of land during that period.<sup>496</sup> If enforced, this law should limit the degree to which village officials can favor sons over daughters in land allocation, improve women's economic position in rural areas, and perhaps reduce son preference.

#### *Domestic Violence and Sexual Harassment*

Chinese citizens have become increasingly aware of the serious problem of domestic violence since it was highlighted at the 1995 Fourth World Conference on Women in Beijing. A survey in late 2003 by the All-China Women's Federation (ACWF) found that more than 50 percent of those surveyed "admitted having been beaten by their partner at least once in the past six months," while more than 20 percent admitted frequent beatings and 1 percent had "experienced systematic domestic violence."<sup>497</sup> Another recent study found that "nearly half of Chinese people believe it is reason-

able for husbands to beat their wives.”<sup>498</sup> With increased awareness, however, attitudes that regard physical abuse of wives as normal are beginning to change. The number of legal cases involving charges of domestic violence is steadily rising. In 2002, the ACWF handled “36,000 appeals for help from wives in distress, nearly 40 percent more than in 2001,” and domestic abuse is now a factor in nearly 60 percent of all divorces.<sup>499</sup>

Law enforcement entities are also becoming more sensitized to the crime of domestic violence. In the past, many officials would not pursue domestic violence cases vigorously, believing they should not intervene in family disputes. Until the mid-1990s, law enforcement authorities commonly handled a wife’s complaint of domestic abuse by referring the couple to mediation.<sup>500</sup> The related crime of marital rape is also beginning to get attention in China.<sup>501</sup> Article 236 of the Criminal Law does not explicitly state a marital exemption for rape and courts have preferred to prosecute marital rape under the more general Section 260 on abuse or maltreatment of family members.<sup>502</sup> The question of marital rape in China is complicated by Article 16 of the 2001 PRC Marriage Law, which provides, “Both husband and wife shall have the duty to practice family planning.” The Supreme People’s Court (SPC) recently held that this “duty” implies a “right” for both spouses to engage in sexual relations.<sup>503</sup> Unwilling to interfere with that implied right, the SPC points to Section 260 as the best way to prosecute marital rape.

A number of initiatives are now underway to combat domestic violence.<sup>504</sup> Community and anti-domestic violence teams, counseling hotlines, and rescue centers are available to victims in some cities and nearby rural areas. Educational programs have been established for judges and police officers, training programs are in place for staff in domestic violence centers, and some localities have begun counseling male abusers.<sup>505</sup>

In recent years, there have been several successful suits by women against employers for sexual harassment. Women have obtained judgments ordering defendants to apologize, desist from harassing women, and, in a few cases, pay damages.<sup>506</sup> According to one survey, 48 percent of women said they had experienced harassment and 13 percent said that men had pressed them for sexual favors in exchange for various benefits.<sup>507</sup> Ninety percent of callers to a women’s hotline complained of harassment by older men who are their superiors in the workplace.<sup>508</sup> The cases have received a great deal of media attention, and articles have since come out in police publications expressing support for women facing this kind of abuse.<sup>509</sup> Last fall, the ACWF submitted a motion to the National People’s Congress Standing Committee suggesting that the PRC Law on Protection of Women’s Rights and Interests be amended to define the offense of sexual harassment and prescribe legal redress.<sup>510</sup>

#### *Women’s Organizations and Women’s Studies*

Even before the Fourth World Conference on Women in 1995, a large number of organizations focusing on women’s issues were active in China. One source indicates that 2,000 such organizations had sprung up nationwide by 1989.<sup>511</sup> The ACWF has played a supporting role in the development of some organizations, while

other organizations have developed relatively independently.<sup>512</sup> Cooperation between the ACWF, a government organization based in Beijing with branches in most regions, and independent grassroots groups can be especially fruitful. For example, cooperation between a grassroots hot-line dealing with rural violence issues in Henan and the local ACWF branch led to a TV program “Keep Violence Far from the Family.”<sup>513</sup> NGOs are likely to have an important role in solving the current deficit in public services to China’s poorest citizens, particularly women.<sup>514</sup> The rapid development of the academic discipline of feminist sociology in China’s universities, with at least 16 new departments established in 2003 alone, should help Chinese women understand the nature of the problems that still confront them and collaborate on solutions.<sup>515</sup>

### III(e)(ii) TRAFFICKING IN HUMAN BEINGS

#### FINDINGS

- Trafficking of women and children in China remains pervasive.
- Most human trafficking in China is domestic, but traffickers also sell Chinese women abroad for commercial sex and sell women from Southeast Asia and Korea into prostitution and forced marriages in China.
- Chinese law enforcement authorities recently broke several cases of large-scale trafficking of infants. This criminal practice is the result in part of the continued coercive enforcement of family planning rules.

Domestic trafficking of women and children in China is a particularly serious human rights abuse. According to a UNICEF estimate in 2002, at least 250,000 women and children in China were victims of human trafficking.<sup>516</sup> Traffickers commonly sell teenage and young adult women into forced marriages to farmers in the countryside or into prostitution in China’s cities.<sup>517</sup> According to some estimates, nearly 50,000 Chinese women currently live in forced marriages nationwide.<sup>518</sup> A 1997 study conducted by the United Nations concludes that, in some villages, 30 to 90 percent of marriages were the result of trafficking.<sup>519</sup> The trafficking of women is acute in impoverished minority areas of Yunnan and Sichuan provinces and the Guangxi Autonomous Region, where recruiters touting lucrative jobs in urban areas lure young, uneducated women out of the countryside, kidnap them, and sell them into prostitution either within China or abroad.<sup>520</sup>

Trafficking in infants also seems to be on the rise in China. In one notorious case in Yulin in Guangxi Autonomous Region, traffickers kidnapped or purchased some 118 infants from families and hospitals and transported them to other provinces for sale.<sup>521</sup> This case shocked the Chinese public when first exposed in a news article detailing how the traffickers drugged dozens of the infants and placed them into travel bags for transport to buyers in Anhui and Henan provinces. At least one infant did not survive, according to the news accounts. Yulin authorities prosecuted the head of the local hospital’s obstetrics department, who put the traffickers in touch with mothers of unwanted infants.<sup>522</sup> But a relative of one of the accused argued that the scheme was humanitarian, because

otherwise the unwanted infants would have been abandoned to starve.<sup>523</sup>

The rising number of trafficking cases in China reflects the confluence of numerous factors, including the “one-child” policy, which has encouraged some parents to abort or abandon female infants in the hope of conceiving a son; the increasing disparity between rich and poor; and a lack of knowledge among ordinary citizens of their legal rights and protections.

The Commission notes that the Chinese government has made some progress in reaching out to the victims of human trafficking, but central, provincial, and local authorities should do more. The U.S. State Department found that China does not fully comply with the minimum standards stipulated in the Trafficking Victims Protection Act of 2000.<sup>524</sup> In addition, the Chinese government has not signed the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. China’s criminal code explicitly prohibits the trafficking of women and children and mandates severe punishment for these crimes,<sup>525</sup> but the law needs to be refined and brought up to date, according to one Chinese legal scholar.<sup>526</sup> In recent years, the Ministry of Public Security has begun several “Strike Hard” campaigns aimed at curbing trafficking in persons.<sup>527</sup> Such campaigns, however, focus on punishment and do not address the causes of the problem, which include continuing pressure to comply with family planning rules, the worsening disparity between rich and poor, inadequate public education in legal rights, and lack of shelter and legal assistance for victims, especially in rural areas.

A U.S. research institute studying the issue distinguishes China from other Asian countries because most of its trade in humans is domestic.<sup>528</sup> But the trafficking of persons from China to other nations is also a global concern. Traffickers sell women from mainland China into the commercial sex industry in the United States, Canada, Europe, and Australia, as well as Singapore, Malaysia, South Korea, Japan, and Taiwan.<sup>529</sup> Cases involving the trafficking of Chinese women for prostitution also have been reported from South Africa and South America.<sup>530</sup> Some trans-border trafficking cases involve multinational criminal syndicates, and rescuing the victims and bringing the traffickers to justice requires close cooperation between countries.<sup>531</sup> The Chinese government has made some progress in building the necessary international cooperation in law enforcement,<sup>532</sup> but most observers believe that Chinese authorities must do more.

### III(e)(iii) PUBLIC HEALTH AND HUMAN RIGHTS IN CHINA

#### FINDINGS

- The Chinese government now recognizes the severity of its HIV/AIDS crisis and has begun to take action, but some local authorities continue to abuse HIV victims to silence their demands for treatment and assistance and detain the activists who support them. More Chinese government attention is required in Xinjiang, where an intravenous drug crisis and a mobile population make the rapid spread of HIV a threat.

- China's aging and poorly-funded health care system hampers its struggle with a number of major diseases, ranging from the new viruses HIV/AIDS and SARS to the traditional threats of tuberculosis and hepatitis.
- China continues to use coercive fines to enforce its birth control policy. Despite legal prohibitions on forced abortion and sterilization, some reports allege that local officials use such tactics and others describe women using the law to resist them.

### *HIV/AIDS*

The Chinese leadership has made significant progress in the past year in recognizing the dimensions of China's HIV/AIDS crisis, formulating new HIV policies, and addressing legal issues. Premier Wen Jiabao illustrated the change in tone when he publicly shook hands with AIDS patients at a Beijing hospital in December 2003. Vice Premier and Health Minister Wu Yi has made high-profile visits to AIDS villages in Henan,<sup>533</sup> and has called on the entire country to confront the epidemic. HIV/AIDS publicity campaigns have emerged in major cities, and the Party has developed a curriculum and text on HIV for use at the Central Party School.<sup>534</sup> Nationwide prime-time television programs on HIV/AIDS emerged in 2004. In February 2004, the State Council formed a national level AIDS Prevention and Care Working Committee, headed by Vice Premier Wu and comprised of 23 central government departments and institutions and leading officials from seven provinces where AIDS is particularly prevalent. The Ministry of Health announced in April that it had begun offering free treatment for HIV/AIDS patients.

In March 2004, China's first local law on AIDS prevention and control took effect in Yunnan. The law protects the legal rights of people living with HIV/AIDS and their families and forbids discrimination against them.<sup>535</sup> In April 2004, the Chinese government established its first legal research center on AIDS-related issues in Shanghai.<sup>536</sup> Vice Premier Wu has emphasized that the government must also determine how to implement the new "Four Free" policy in poor and rural areas: providing free testing, free treatment, free schooling for AIDS orphans, and free treatment to prevent mother-to-child HIV transmission. In May 2004, the State Council issued a circular that outlined a series of urgent measures to slow the spread of HIV/AIDS.<sup>537</sup> The circular requires local governments and leaders to take responsibility for AIDS in their regions, warning "those officials breaching [their] duty or hiding epidemic reports will be severely punished." The circular also orders government at all levels to increase the amount of money dedicated to combating HIV and, most significantly, states that funds must be allocated from the central government when local budgets are insufficient.

Despite these crucial changes in the attitudes and actions of central authorities, local reports continue to surface about mistreatment of people living with HIV/AIDS including discrimination in housing and development. In May, several people living with HIV/AIDS were detained for more than a week in Henan. While local authorities said they detained the villagers for "violating social order," the villagers believe they were arrested because they were



seeking assistance from provincial authorities to compel local officials to carry out their agreements to support disease victims.<sup>538</sup>

Central government money and support is particularly crucial in peripheral areas like Xinjiang. The government agencies that have a part in fighting HIV have not yet developed a coordinated response, and often seem unaware of each other's efforts. For example, in a drug detoxification center run by the local public security bureau, all inmates were tested regularly for HIV. Although the results were forwarded to the Ministry of Health in Beijing, inmates were never told of their HIV status and were not put in touch with programs to help them cope with the disease after their release. Until recently, these agencies in Xinjiang had not received the message that HIV was a priority of the central government.<sup>539</sup> However, the Xinjiang Bureau of Health in Urumqi has conducted valuable work on a shoestring budget, including a hot-line to answer HIV-related questions for commercial sex workers, and HIV intervention projects in minority religious communities.

#### *Other Major Health Challenges*

China suffers from a high rate of hepatitis B, usually spread by exchange of blood or infection from drinking water contaminated by human waste. Some local regulations discriminate against hepatitis B victims in employment. The Ministry of Health estimates that about 20 million people are infected with hepatitis B and as many as 500,000 people become infected with, and half that number die of, hepatitis B-related liver disease each year.<sup>540</sup> Other estimates put the number of infected persons as high as 100 million. While there are no national laws on employment of hepatitis B-infected persons, some central and local governments prohibit the hiring of people with certain varieties of the disease. In a recent case in Anhui province, Zhang Xianzhu successfully sued a government personnel office, complaining that his job application had been unjustly rejected because of his hepatitis. The court held that the personnel office had applied a regulation incorrectly, but did not invalidate the regulation itself.<sup>541</sup>

Severe Acute Respiratory Syndrome ("SARS") re-emerged on isolated occasions in 2004, but did not result in a wider outbreak as in 2003. In contrast to the government's efforts to quash news of the initial SARS epidemic in 2003, health authorities openly announced each case as it became known and quickly contained each infection. Despite laudable official openness in this specific instance, relevant Chinese laws still require journalists to get advance approval before publishing public health information about broad categories of diseases classified as "state secrets."<sup>542</sup>

Apart from infectious diseases, perhaps the greatest health challenge for China today is rural poverty. Chen Guidi and Wu Chuntao's recent book, *A Survey of Chinese Peasants*, includes several accounts of rural residents facing death and financial ruin because of the high cost of sickness.<sup>543</sup> In 2002, Dr. Janos Annus, the WHO representative to China, noted that there is only minimal health insurance in the countryside: "Health insurance coverage for rural people is around seven percent only—people have to pay from their own pocket. . . . The rural healthcare system based on the co-operatives was abolished around the mid 1980s, with the provi-

sion that a new system would be built to replace it. But that system has not been built yet.”<sup>544</sup> The lack of an adequate public health system has hampered China’s response to SARS, and still cripples its fight against HIV/AIDS. In response, the central government decided this May to spend 2.073 billion yuan (\$252 million) for the country’s public health infrastructure.<sup>545</sup>

#### *Population Control and Family Planning*

The Chinese government’s use of coercive fines to enforce its population control policy has not changed in the past year.<sup>546</sup> Under the 2002 Population and Family Planning Law, when a family has a child not allowed by law, family planning officials can assess a fine and have it enforced by the courts.<sup>547</sup> Regulations specify that fines are to be set at the provincial level. In Shanghai, the fine currently specified is three times average annual disposable income in the city (resulting in a fee of more than 35,000 yuan).<sup>548</sup> While the law provides for economic coercion of this kind, it specifically rules out use of physical force in enforcing birth controls and provides for strict punishment of officials who fail to observe this prohibition. Reports, however, indicate continuing resort to physical coercion in some areas and describe a few cases in which women have claimed protection against such coercion under these articles of the law.<sup>549</sup> In addition, as permitted by the law, some localities have passed regulations allowing more couples to have a second child under certain circumstances.<sup>550</sup> Recognizing that one incentive to have many children is to ensure support in old age, other regions have set up funds to compensate one-child families after retirement.<sup>551</sup>

Some Chinese population studies suggest that China will eliminate its coercive policies when economic development has increased the education levels and job opportunities for girls and women. Scholars urge that in areas of declining fertility, rigid quantitative controls be shifted to more indirect and market-based policies.<sup>552</sup> This shift to greater flexibility in implementation of birth controls might help resolve two long-term side-effects of the policy: distorted sex ratios and rapid aging of the population.<sup>553</sup> Unless these two trends are reversed, China will be faced with cascading health challenges in the future, as some youths turn to traffickers to find wives and families without daughters struggle to care for frail elders.

### III(f) FREEDOM OF RESIDENCE AND TRAVEL

#### FINDINGS

- The Chinese household registration (*hukou*) system contributes to discrimination in access to social services. This discrimination exacerbates China’s stark economic divide between urban and rural residents.
- National and local authorities are gradually reforming the *hukou* system, but some of these measures are slowly shifting the existing system into a set of officially-recognized class divisions based on wealth, with an urban underclass composed of rural migrants.

The household registration (*hukou*) system remains a key component of the caste-like divide in Chinese society between urban and

rural residents. Massive rural-urban migration continues to put heavy pressure on the system. Under this pressure, Chinese national and local authorities are liberalizing the *hukou* regime, but rural migrants continue to suffer significant regulatory discrimination with regard to basic social services. This discrimination exacerbates the economic hardships they face on a range of issues such as back wages, property rights, and the education of their children.<sup>554</sup>

Chinese migrants are frequently the targets of a wide range of unfair practices. Urban employers often exploit the tenuous social status of migrants and their unfamiliarity with their rights. Chinese factory managers also often require workers to pay a “deposit” to secure a job. Workers lose these deposits if they return home without permission or before their contract expires.<sup>555</sup> Migrants sometimes suffer discrimination in their home villages, particularly with respect to their property rights. For example, a large number of legal cases have been brought recently in Shaanxi province that pertain to the rights of individuals who have left their village either temporarily or permanently (such as migrants to urban areas, or women who have married out of the village), but continue to retain their rural *hukou* identification with the village. When the village distributes money from collective assets, such as government compensation for the requisition of village land, the villagers often deny these migrants a share because they are perceived as outsiders.<sup>556</sup>

Migrants also face official discrimination as a result of their residence status. In some cases, a regulation explicitly bars access to social services. Until 2003, for example, numerous provincial regulations limited legal aid only to individuals having either a local *hukou* or a temporary residence permit.<sup>557</sup> As Chinese critics have noted, migrants who wish to obtain a temporary residence permit often must pay substantial fees, both over and under the table, to various government agencies.<sup>558</sup> Consequently, millions of migrants remain unregistered and cut off from social services. According to the Chinese news media, fewer than 3 percent of migrant applicants actually receive legal aid.<sup>559</sup> Such regulatory obstacles have resulted in a rural migrant underclass in Chinese cities that is deprived of many of the social services their urban neighbors enjoy.<sup>560</sup>

Central government measures adopted recently attempt to eliminate some of the most blatant discrimination with regard to social services. For example, the State Council passed national legal aid regulations in 2003 that do not condition legal aid on the residence status of applicants.<sup>561</sup> Despite such moves, financial resources of local governments often limit their actual ability to offer these social services to migrants.<sup>562</sup> For example, pilot medical projects in western China aimed at addressing the collapse in rural health care often exclude migrants because of cost.<sup>563</sup> In contrast, relatively well-off southern localities have begun to allow rural *hukou* holders to buy into health plans run by urban governments, with local governments sometimes subsidizing the migrants’ share.<sup>564</sup>

Despite central government measures, the *hukou* system continues to facilitate local discrimination because it divides Chinese society into clear categories and provides a convenient method for

local authorities and residents to identify migrants. This phenomenon is particularly evident with regard to the education of the approximately 20 million migrant children in China. Many city governments see migrant children as an unwelcome and expensive nuisance, and therefore simply forbid them from attending public schools, or charge their parents substantial additional fees.<sup>565</sup> Over 80 percent of migrant children pay more than their urban counterparts to attend school.<sup>566</sup> Private schools for migrants often find themselves in conflict with local governments and residents seeking to close them.<sup>567</sup> Although the State Council took steps to ensure a measure of equal treatment in September 2003 by ordering urban public schools to assume the responsibility of accepting and educating migrant children,<sup>568</sup> the forward progress represented by this shift in central policy has been undercut by the ability of local officials to discriminate on the basis of *hukou* identification. In some areas, central government pressure on local schools to admit migrant students has led to the extortion of additional fees.<sup>569</sup> Sometimes such pressure prompts even more creative forms of discrimination. Facing central pressure to admit migrant children to local public schools, township governments in Ningbo have responded by adopting a “separate but equal” policy. Local authorities have designated one particular public school as the “migrant” school, replaced the full-time teachers with part-time instructors, and redirected local government education subsidies to the schools serving local students.<sup>570</sup>

The Chinese government has improved the general treatment of migrants. The State Council’s formal abolition of the custody and repatriation system in 2003 was a step forward [see Section III(a)—Rights of Criminal Suspects and Defendants]. The Hangzhou Public Security Bureau has eliminated mass dragnet sweeps aimed at rounding up migrants.<sup>571</sup> A new national identification card law limits the ability of the police to request identification in certain situations.<sup>572</sup>

A significant number of local governments have begun to experiment with various forms of *hukou* reform.<sup>573</sup> A few have announced the abolition of temporary residence permits.<sup>574</sup> But many of these reform measures merely allow a limited number of relatively well-off rural *hukou* holders to obtain urban residence status by demonstrating they have a fixed place of residence and a “relatively stable source of support.”<sup>575</sup> These requirements are heavily weighted against low-income rural migrants. Nanjing’s new regulations, issued in June 2004, define “fixed place of residence” as ownership of an apartment or possession of one issued by a work unit.<sup>576</sup> Hebei province excludes applicants for local *hukou* from living in rented apartments.<sup>577</sup> Both sets of regulations define “relatively stable source of income” as holding either a professional job or one providing income above the government-established minimum wage.<sup>578</sup> Similar restrictions are common in many other local *hukou* reforms.<sup>579</sup> These are difficult for poor rural migrants to fulfill. Such measures are gradually shifting the *hukou* system into a set of formal class divisions based on wealth, giving an official stamp of approval to the creation of an urban migrant underclass barred from receiving many social services.

Fundamental reform faces significant obstacles. Guangzhou public security officials indicate they continue to regard the residence permit system as an indispensable tool of social control, particularly of migrants.<sup>580</sup> Although the NPC is currently considering draft proposals for a Law on the Protection of Peasant Rights,<sup>581</sup> similar legislation has been under study for years without much progress.<sup>582</sup> Instead, Chinese leaders have favored administrative pronouncements to address the status of Chinese migrants.<sup>583</sup> As one Chinese critic notes, “[Central government] policy attention cannot completely replace legal protection. Protecting the interests of peasants requires [that] the law give them corresponding rights, rather than merely letting peasants run around from place to place seeking protection by waving national ‘policy documents.’”<sup>584</sup> Unless the Chinese government affords effective legal protections to migrants and ends the social inequalities perpetuated by the *hukou* system, discrimination against migrants will continue to create serious social problems.

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

The Commission is pleased to announce the completion of the first phase of development of its Political Prisoner Database (PPD). The Commission is now populating the database with political prisoner information provided by reliable sources in China, the United States, and elsewhere. For additional information about the Commission’s standards for political prisoner information, please see [ppd.cecc.gov](http://ppd.cecc.gov). The Commission has developed the PPD pursuant to Section 302(b) of Public Law No. 106–286 [22 USC § 6912(b)], which requires that the Commission compile and maintain lists of victims of human rights abuses.

The Political Prisoner Database provides a new and powerful research tool for U.S. advocacy on behalf of Chinese citizens imprisoned for the exercise of rights guaranteed to them by international law. Although primarily designed for official U.S. government use for advocacy and issue research, the PPD will also assist private human rights researchers, non-governmental organizations, scholars, and other advocates in tracking prisoner case information, monitoring individual cases, and assessing trends in the Chinese government’s treatment of prisoners of conscience over time. As both communities of users become more familiar with the PPD’s features and gain experience in using it, the Commission expects to develop additional features for the PPD in the future.

Beginning at 12:00 noon EST on Monday, November 1, 2004, the general public may query the PPD through a public access feature found on the Commission’s Web site: [ppd.cecc.gov/pap.asp](http://ppd.cecc.gov/pap.asp). Queries to the database will return information to the requestor in the form of a Portable Document Format (pdf) document. Members of the general public who register on the PPD site may save their search results there for subsequent use. Visitors who prefer not to register may also use the query feature, but will not be able to save their search results on the World Wide Web.

## V. Development of Rule of Law and the Institutions of Democratic Governance

### V(a) CONSTITUTIONAL REFORM

#### FINDINGS

- In March 2004, the National People's Congress adopted amendments to China's Constitution that in theory confirm the state's protection of human rights and enhance property rights. Having adopted such language, the government will have to deliver some limited practical improvements in the human rights arena or risk damaging its legitimacy.
- Chinese citizens lack a legal mechanism through which to enforce their constitutional rights, and the Chinese government is unlikely to create such a mechanism in the near-term.
- Chinese lawyers and scholars continue to discuss constitutional reform and constitutional enforcement in conferences, scholarly journals, and in some online forums. Chinese citizens are making use of language in the recent constitutional amendments to promote further reform and protest violations of their rights. The government has harassed some reform advocates for discussions on constitutional reform that it considers too far-reaching.

#### *The 2004 Constitutional Amendments*

In March 2004, the National People's Congress (NPC) passed a slate of constitutional amendments that the Central Committee of the Communist Party approved in October 2003.<sup>585</sup> The 14 amendments include new provisions that, on paper, enhance constitutional protections for private property and declare explicitly that "the State respects and safeguards human rights."<sup>586</sup> Other provisions incorporate Jiang Zemin's "Three Represents" theory into the Constitution as a guiding ideology of the state,<sup>587</sup> clarify the state's role in directing the private economy, and call for the implementation of "political civilization," a term widely associated with the rule of law and more accountable governance.<sup>588</sup>

Foreign observers and some Chinese experts reacted to the constitutional amendments with caution, welcoming them as a symbolic step forward but warning that their practical impact would be minimal without a working constitutional enforcement mechanism.<sup>589</sup> In interviews with Commission staff, other Chinese scholars attached greater significance to the amendments, arguing that even without an enforcement mechanism in place, the amendments will encourage the discussion of human rights issues and lay a foundation for further reform.<sup>590</sup> One leading scholar told Commission staff that the human rights amendments would provide a necessary theoretical basis for ratification of the International Covenant on Civil and Political Rights (ICCPR).<sup>591</sup>

The adoption of the 2004 amendments capped an active year of discussion over the scope of constitutional reform. Some of this discussion was too far-reaching for authorities. In mid-2003 and again in January, the Chinese government issued directives to curtail unauthorized publication on or discussion of constitutional amendments, and it harassed reform advocates such as Cao Siyuan after

senior leaders became concerned that academic and media discourse was raising expectations for broad-ranging reform.<sup>592</sup> In addition, the Party Central Committee's General Office reportedly issued a document warning that "hostile forces" had infiltrated the domestic debate on constitutional reform and directing Chinese organizations to exercise caution in rule of law exchanges with foreign entities.<sup>593</sup> Official papers and Web sites promoted the "bottom-up" nature of the Party-approved constitutional amendment proposals and expert commentary on the need for constitutional "stability."<sup>594</sup>

While continuing to exert controls over the media and expression [see Section III(d)—Freedom of Expression], however, the government tolerated some discourse on constitutional issues that was critical of the limited nature of official reform efforts. For example, the *Legal Daily*, a Ministry of Justice newspaper, and *Caijing*, a liberal-minded financial weekly, published relatively candid articles calling for the establishment of a working constitutional enforcement mechanism and noting that citizens should have the right to compel constitutional review.<sup>595</sup> At academic conferences, in legal journals, and in some online forums, leading Chinese scholars discussed the nature of constitutionalism and mechanisms of constitutional enforcement.<sup>596</sup> Reform advocates maintained a progressive Web site called the "Open Constitution Initiative" until the government shut it down in 2004 (most likely because it criticized the prosecution of the editors of the *Southern Metropolitan Daily*), then re-established it in Hong Kong on a site that is currently accessible to mainland Internet users.<sup>597</sup> Finally, average citizens began to draw on new constitutional provisions as they protested official abuses and made efforts to protect their rights. Property rights protestors in Hangzhou, Beijing, Henan, and Guangzhou, for example, explicitly invoked new constitutional protections in pressing their claims against developers and local governments.<sup>598</sup> Some of these protests received favorable coverage in the Chinese press.<sup>599</sup> Free expression advocates have also invoked constitutional protections to challenge the application of anti-subversion laws.<sup>600</sup>

#### *Constitutional Enforcement*

President Hu Jintao's emphasis on constitutional supremacy in late 2002 raised hopes that the Chinese government would take steps to establish a working constitutional mechanism in 2004. The NPC Standing Committee has the formal power to supervise enforcement of the Constitution and invalidate laws and regulations that conflict with it, but has failed to fulfill this constitutional role in practice.<sup>601</sup> This failure has long been a key complaint of legal reformers in China and came into sharper relief in 2004, as many asked what good new constitutional rights would be without a mechanism through which to enforce them.

Chinese scholars have discussed several models of constitutional enforcement, including improved constitutional enforcement by the NPC Standing Committee, a special constitutional committee under the NPC Standing Committee, a German-style constitutional court, and proposals to vest China's courts with the power of constitutional review.<sup>602</sup> Many scholars seem to agree that in the current political climate, constitutional enforcement powers are unlikely to

be wrested from the NPC. These experts see an NPC constitutional committee composed of legal experts as the mechanism most likely to be adopted.<sup>603</sup>

The Chinese government has taken some limited steps toward this initial goal. During the March 2004 NPC meeting, a Chinese report suggested that “relevant departments” were considering proposals to establish a human rights commission within the NPC and the Chinese People’s Political Consultative Conference.<sup>604</sup> There has been little public discussion of this proposal in the Chinese news media, however, and it is unclear what powers such a commission would have if it were established.<sup>605</sup> More recently, in June 2004, the NPC Standing Committee announced the creation of a special legislative review panel tasked with reviewing legislation and regulations for consistency with the Constitution.<sup>606</sup> The creation of this panel may improve the handling of citizen petitions on conflicts between the Constitution and laws or regulations and could be a first step toward more robust constitutional enforcement.

Over the past year, reform-minded scholars, lawyers, and judges have also continued their efforts to establish case precedents for constitutional review by the courts. At present, Chinese courts lack the power to apply constitutional provisions to individual cases or to strike down laws or regulations that are inconsistent with the Constitution.<sup>607</sup> Nevertheless, advocates at legal aid centers in Beijing and Chengdu are actively searching for and bringing test cases with constitutional claims as their basis.<sup>608</sup> For example, lawyers have filed lawsuits challenging local government policies that prohibit the employment of individuals with hepatitis B or require job applicants to be a certain height, claiming that such policies violate the equal protection clause of China’s Constitution.<sup>609</sup> Other cases have involved unlawful property seizures. In several of these cases, plaintiffs have achieved success in the form of settlements or court victories on non-constitutional grounds, and some of the lawsuits have prompted legislative remedies to address the problems at issue.<sup>610</sup> To date, however, courts have been unwilling to accept or apply legal arguments based on the Constitution. Although some legal scholars have criticized the courts for this reluctance, others promoting constitutional litigation believe the courts are wise to take a cautious approach in order to avoid unnecessary political conflicts that could set back reform efforts.<sup>611</sup>

One notable legal case last year provided an example of such potential political conflicts. In September 2003, an intermediate court judge in Luoyang ruled that a Henan regulation on seed prices was invalid because it conflicted with the national “Seed Law.”<sup>612</sup> The decision elicited an angry response from the Henan Provincial People’s Congress Standing Committee, which charged that the judge had exceeded her power and demanded that she be disciplined for her “illegal” review of the local regulation.<sup>613</sup> Although the case did not involve a constitutional question, the controversy over judicial power had clear constitutional overtones, and it sparked a national debate in legal circles on the problem of constitutional review in China.<sup>614</sup> In addition, four lawyers filed a petition with the NPC Standing Committee challenging the effectiveness of the local seed price regulations and calling on the NPC Standing Committee to



resolve the legislative conflict.<sup>615</sup> At the time of publication, neither the case itself, which was appealed, nor the petition, had been resolved.

Despite these developments and continued discussion of constitutional issues, progress on constitutional enforcement is likely to be slow. The creation of the NPC legislative review panel is a positive step toward this goal, but the principal function of the panel appears to be to review existing laws and regulations for consistency with the Constitution, rather than to review constitutional violations in individual cases.<sup>616</sup> The NPC is unlikely in the near term to create a broader constitutional enforcement mechanism with these powers and responsibilities. In May 2004, a member of the NPC Legal Committee explicitly ruled out the possibility that a constitutional court would be established.<sup>617</sup> According to Commission sources, the Party leadership has not yet put forth any concrete proposals for a broadly empowered constitutional review institution and is not expected to approve plans for such an institution in the near future.<sup>618</sup>

#### *Implications of Developments in Constitutional Law*

Constitutional reform developments in 2003–4 should be interpreted with caution. Despite official statements on rights protection, the NPC's adoption of the new constitutional amendments should be seen more as an attempt to shore up Party legitimacy than a move to enhance individual rights in practice. A Party communiqué lists strengthening Party leadership, maintaining national unity and social stability, and promoting economic reform as the principal purposes for amending the Constitution, not enhancing and enforcing individual rights.<sup>619</sup> That senior Chinese leaders have not taken any concrete steps toward establishing a constitutional enforcement mechanism, and appear unlikely to do so in the near future, counsels caution in assessing leadership motives for the new amendments and official pronouncements on human rights.

The constitutional reforms should not be viewed as merely empty rhetoric, however. Not long ago, the Party rejected discussion of "human rights" altogether.<sup>620</sup> By incorporating human rights into the Constitution and publicizing official human rights campaigns, the government has legitimized discussion of human rights in China. This rhetoric provides important political cover for reformers both inside and outside the government and Party. Interviews by Commission staff suggest that the amendments have already helped to lay the groundwork for ratification of the ICCPR, to withstand calls to reinstate a controversial form of administrative detention that was abolished last year, and to promote other reform initiatives.<sup>621</sup> Moreover, several cases over the past two years demonstrate that reformers outside the government are adept at co-opting official rhetoric and casting their initiatives as efforts to advance the leadership's goals.<sup>622</sup> The constitutional revisions will provide additional cover for such efforts.

More importantly, the adoption of the amendments and publicity on constitutional reform have raised public expectations for change. In the short term, China's leaders will have to show some modest practical improvements in the areas addressed by the constitu-

tional amendments to sustain Party legitimacy and diffuse social anger over issues such as property seizures and law enforcement abuse. In the long term, the amendments and accompanying discussion are likely to contribute to grassroots pressure for the government to deliver a working mechanism for constitutional enforcement. As a writer in the official China Youth Daily declared last October, “rights without guarantees are worthless. We need to strengthen our effort to perfect mechanisms for [challenging] violations of rights. Only if we do this will the rights of citizens be more than ‘rights on paper.’”<sup>623</sup> As citizens mobilize to protect their property interests and challenge abuses that seem inconsistent with new constitutional guarantees, such calls are likely only to grow.

#### V(b) NONGOVERNMENTAL ORGANIZATIONS AND THE DEVELOPMENT OF CIVIL SOCIETY

##### FINDINGS

- New regulations on foundations demonstrate some change and liberalization, but maintain the principle of firm government control present in other civil society regulations.
- Chinese civil society organizations continue to suffer from significant internal problems, such as limited organizational capacity and poor self-governance.

Since the onset of economic reform in the late 1970s, Chinese government domination over the economic and social life of its citizens has diminished. Non-profit associations and organizations with varying links to the Communist Party and government have begun to grow as the role of government in society recedes. The growth of these organizations suggests the gradual emergence of a more pluralistic Chinese society. But numerous factors hamper the development of Chinese civil society, including a restrictive regulatory environment, lack of funding, and limited capacity for self-governance.<sup>624</sup> Two main developments affecting Chinese civil society occurred over the past year: the passage of national Regulations on the Management of Foundations (Foundation Regulations)<sup>625</sup> and the deepening reform of China’s public institutions.

The Foundation Regulations attempt to channel the resources of a growing economy into addressing social problems by defining a framework for both private and public foundations. The Foundation Regulations are the first major change to the legal framework governing Chinese civil society since the government issued rules regulating two other types of non-governmental organizations in 1998.<sup>626</sup>

The Foundation Regulations maintain the Chinese government’s continued control over civil society institutions.<sup>627</sup> The Foundation Regulations retain the requirement that a foundation must find a sponsor organization in order to register.<sup>628</sup> This requirement, also present in the 1998 regulations, is one of the most substantial restrictions on the development of an independent civil society in China. The government limits qualified sponsor organizations to government bureaus and Party mass organizations.<sup>629</sup> Sponsors provide “guidance” for the civil society organizations they supervise and participate in their annual review.<sup>630</sup> Control over sponsorship

gives Chinese authorities an effective weapon against organizational activities they deem to be dangerous. Many Chinese civil society organizations remain appendages of their sponsors,<sup>631</sup> inhibiting the emergence of an independent civil society and limiting the ability of Chinese civil society organizations to check government power.<sup>632</sup> Although some officials and academics debate the wisdom of the tight controls over civil society that the sponsor requirement imposes, its retention in the Foundation Regulations indicates firm support by the Chinese leadership.<sup>633</sup>

Despite the sponsor requirement, the Foundation Regulations contain some change and liberalization. The Foundation Regulations lack the restrictions of prior civil society regulations which bar the registration of more than one organization addressing the same issue in a particular administrative region.<sup>634</sup> The Foundation Regulations also differ from the 1998 regulations on other civil society organizations by permitting representative offices of foreign foundations to register and be treated like Chinese foundations.<sup>635</sup> Equal treatment is a mixed blessing, however, since the Foundation Regulations also explicitly extend the sponsor requirement to the representative offices of foreign foundations operating in China.<sup>636</sup>

Chinese officials assert that the Foundation Regulations represent the first step in an overhaul of all Chinese civil society regulations. Revisions to the 1998 regulations should be completed by 2005.<sup>637</sup> According to these officials, these revisions should parallel the Foundation Regulations in explicitly providing for the registration of other foreign NGOs in China.<sup>638</sup>

Born in the 1950s, public institutions historically have been state-controlled organizations that provide public services in science, education, culture, health, and sports.<sup>639</sup> As of 2001, more than 1 million Chinese public institutions existed, employing some 25 million people.<sup>640</sup> Market reforms have created serious economic pressures on Chinese public institutions, many of which are heavily dependent on state funding. Over the past 15 years, and particularly since the end of the 1990s, the Chinese government has been gradually reducing the level of financial support for public institutions.<sup>641</sup> This policy has resulted in the gradual privatization of a number of public institutions, including arts troupes, Xinhua bookstores, and basic health care providers.<sup>642</sup> These organizations increasingly function as private economic actors seeking independent revenue, rather than as administrative units of the Chinese state.<sup>643</sup> This gradual independence may lead public institutions to evolve into a component of a more diverse Chinese civil society.

At present, the government does not have a coherent reform plan for public institutions in China.<sup>644</sup> This vacuum, combined with the scattered efforts of public institutions to raise funds, has led to serious declines in certain essential public services. One example is the collapse of rural health care and health monitoring.<sup>645</sup> Some government officials and scholars recently have proposed structural reforms that would gradually transform some public institutions into enterprises, some into governmental entities, and others into civil society organizations.<sup>646</sup>

Many Chinese civil society organizations continue to suffer from internal weaknesses as well. Chinese civil society organizations

may become dominated by a few individuals whose actions are seldom constrained by formal rules.<sup>647</sup> Corruption, poor organizational capacity, lack of planning, and weak institutional continuity sometimes have also been problems.<sup>648</sup> Over the past decade, the beginnings of a more diverse Chinese civil society have emerged, but its future development depends on removing regulatory obstacles and building organizational and management capacity.

### V(c) ACCESS TO JUSTICE

#### FINDINGS

- Access to justice remains a serious problem, particularly in rural China. Scarce legal resources, combined with the intermingled nature of government and private legal services in rural areas, limit equitable access to the legal system.
- In most of China, a secretive, opaque, and inefficient network of thousands of “letters and visits” (*xinfang*) offices serves as a dysfunctional proxy for the legal system.
- The *xinfang* system is at the center of severe miscarriages of justice and human rights abuses in China.
- China’s gradual establishment of a nationwide legal aid system is a positive step toward developing the rule of law.
- Legal aid in China remains severely limited, owing to government failure to fund local institutions adequately, particularly in rural China.

#### *The Xinfang System: Petitioning for Justice*

The formal legal system is almost entirely absent from the lives of most of China’s citizens. According to one survey of rural Chinese grievances, less than two percent involve a lawyer, a court, or any office of the formal legal system, significantly lower than corresponding figures for either the United States or Chinese cities.<sup>649</sup> Even in Chinese urban areas, lack of legal representation is extremely common.<sup>650</sup> The vast majority of Chinese disputes end up in quasi-formal channels. One primary channel is the system of “letters and visits” (*xinfang*) offices, accessed by the traditional practice of petitioning progressively higher levels of government for assistance.<sup>651</sup>

The roots of the *xinfang* system can be traced back to centuries of imperial Chinese rule. China has traditionally lacked any clear division between administrative and judicial authority.<sup>652</sup> The lowest imperial official, the district magistrate, simultaneously performed functions as varied as ensuring the collection of taxes, managing the local militia, and meting out justice in local legal cases.<sup>653</sup> Appeals of magistrate legal decisions consisted of consecutive petitions up the government hierarchy in a repeated effort to enlist the assistance of higher-level officials in reversing lower-level decisions. Central authorities employed such petitions as a means of ensuring justice in individual cases, but also as an information channel on grassroots conditions and a performance review of local magistrates.<sup>654</sup> Frequent struggles broke out between aggrieved petitioners attempting to reach higher authorities and local government officials attempting to defend or cover up their decisions.<sup>655</sup> As a last resort, petitioners would travel to Beijing, prostrating them-

selves before the centers of imperial power in an effort to gain the attention of key officials or the emperor himself.<sup>656</sup> Obtaining justice in these situations was not merely a legal question, but also required connections, sheer persistence, and the political ability to mobilize popular support to put pressure on central authorities to reverse local decisions.<sup>657</sup>

This traditional Chinese petition system has survived the founding of the PRC in the form of the *xinfang* system. Established in the early 1950s, *xinfang* offices initially provided a means for central officials both to address abuses by local government officials and to obtain information on grassroots conditions. Aggrieved citizens would approach Party cadres in designated provincial *xinfang* bureaus and lodge complaints about the behavior or decisions of lower-level officials. Successful complaints might result in the dispatch of investigation teams or the discipline of offending cadres.<sup>658</sup> Since the beginning of China's decentralization of power in the late 1970s, *xinfang* bureaus have proliferated in a wide range of organizations. These include offices of the local police, government, Party, procuracy, people's courts, people's congresses, and the news media. Petitioners often contact any official or bureau they perceive as having the ability to intervene and assist with their problems, regardless of whether the official or bureau has formal responsibility or authority over the subject matter.

Despite the gradual development of a formal Chinese legal system, Chinese citizens continue to rely heavily on petitioning to resolve their grievances. According to estimates from officials in the national *xinfang* bureau, total petitions (both letters and visits) to Party and government *xinfang* bureaus at the county level and higher are about 11.5 million per year, compared to the six million legal cases handled annually by the judiciary.<sup>659</sup> The 2003 Supreme People's Court Work Report states that the entire Chinese judiciary handled 42 million petitions during the preceding five years, as compared to approximately 30 million formal legal cases.<sup>660</sup> The Supreme People's Court (SPC) alone handled 120,000 petitions in the past year, compared with 3,567 formal appeals.<sup>661</sup> The *xinfang* bureau of the National People's Congress (NPC) reported receiving 76,868 petitions during 2003, and all levels of the Chinese procuracy handled 527,332.<sup>662</sup>

Petitioning is partly a political protest, partly an appeal for justice in an individual case, partly a request for aid, and partly an attempt to grab the attention of higher-level officials.<sup>663</sup> Individual petitioning may be as simple as the repeated visits of one dissatisfied individual to multiple government offices.<sup>664</sup> Collective petitioning is more organized and has political overtones. As one scholar has noted, it often involves "formal, written complaints physically carried by a group of villagers to higher levels (usually the township or county town)," that are accompanied by documentary evidence and statements of witnesses.<sup>665</sup> It may also employ demonstrations, speeches, and processions. The primary use of petitions is not to express displeasure with national government policies, but rather to oppose the actions and policies of local government officials.<sup>666</sup>

Although much petitioning is extra-legal in nature, it often overlaps with the formal legal system. Lawsuits under the Administra-

tive Litigation Law are often “preceded, accompanied, or followed” by collective petitions.<sup>667</sup> Chinese courts frequently hold reception days to hear citizen petitions.<sup>668</sup> Citizens often petition higher courts outside the appeals process, seeking independent review of lower court cases.<sup>669</sup> Losing parties in legal cases also often bypass the formal appeal process in favor of direct petitions to local people’s congress delegates.<sup>670</sup> Petitioning is not limited to low-level government organs or by subject matter. At least one patent case at the high people’s court level is the subject of individual petitions.<sup>671</sup>

Precisely because groups of petitioners represent an implicit threat to the social order, petitioning can prove effective. The arrival of several thousand rural petitioners or extreme actions by individuals, such as suicide threats or violence, can sometimes compel high government officials to intervene (via legal means or otherwise) to reverse local policies or decisions. The overwhelming majority of individual petitioners, however, find themselves lost in a Kafkaesque shuffle from bureau to bureau and city to city, facing years of red tape without any real resolution to their problems.<sup>672</sup>

Resolving individual grievances is not the main focus of most *xinfang* bureaus, despite the heavy reliance by Chinese citizens on petitioning. Instead, *xinfang* bureaus operate as a “tripwire” to inform officials on general or emergency issues of popular concern, attempt to calm angry petitioners, and report on severe local government abuses. In a limited number of cases, they may conduct some joint negotiations with various government bureaus to resolve particular disputes.<sup>673</sup> The practice of petitioning also allows Chinese leaders to give the appearance of responsiveness to individual citizen complaints. In one such example in 2004, Premier Wen Jiabao intervened in a back wage dispute presented by a Sichuan farmer.<sup>674</sup> Publicizing such actions in the news media presents an image of responsiveness at the top that increases citizen expectations and encourages further petitioning.<sup>675</sup>

*Xinfang* bureaus have numerous faults from the standpoint of a rules-based system of providing justice. They lack formal power, have no systematic set of rules to decide particular cases, and can often only resolve disputes by prompting the extra-legal intervention of higher-level officials.<sup>676</sup> National and provincial *xinfang* bureaus are secretive, closed institutions closely tied with the Party.<sup>677</sup> *Xinfang* officials often see their goal as “maintaining order” in conjunction with public security authorities, rather than fairly resolving problems.<sup>678</sup> *Xinfang* bureaus effectively reward organized political activity by ensuring that large groups of petitioners have their demands met, while simultaneously viewing such protests as threats to the social order.<sup>679</sup> The *xinfang* system also allows Chinese leaders to identify and address particular social problems, either through repressive measures or limited concessions. This “early warning” aspect may allow the government to temporarily deflect popular pressures for more democratic rule and access to a transparent legal system.<sup>680</sup>

Despite national and local regulations theoretically protecting the rights of petitioners to approach *xinfang* bureaus, file grievances, and receive responses, abuses are common.<sup>681</sup> Local officials

often repress petitioners to conceal the severity of social problems from higher authorities. Examples include:

- Arbitrary government detention and expulsion of thousands of petitioners from Beijing in March and September, prior to meetings of the NPC and Party Central Committee.<sup>682</sup>
- Shaanxi court sentence of a petitioner representative for distributing publicly available national government circulars on lowering the rural tax burden to groups of farmers.<sup>683</sup>
- Detention of four petitioners in a Henan village hard-hit by AIDS by local officials attempting to prevent them from contacting the central government.<sup>684</sup>
- Henan court sentence of petitioner representatives protesting misconduct in village elections and seeking to deliver provincial rulings on the issue to county officials.<sup>685</sup>

The gradual development of the formal legal system may be displacing *xinfang* channels.<sup>686</sup> National regulations direct government *xinfang* bureaus to leave justiciable issues to the courts,<sup>687</sup> and some courts are directing petitions into legal channels.<sup>688</sup> Government legal aid programs and the spread of legal services are also a partial effort to address some of the problems discussed above. However, the continued presence of *xinfang* channels and petitioning activity reflects the reality that most Chinese disputes are still resolved by the personal power of high officials, rather than by law.

#### *Legal Services and Legal Aid*

Since the 1990s, the Chinese government has made progress in developing a national legal aid system. Legal aid has helped promote the development of rule of law in China by increasing the ability of average citizens to use the legal system. However, U.S. scholars note that some Chinese government officials appear to focus more on building a bar of registered lawyers in urban areas than on coherently addressing rural legal needs.<sup>689</sup> Lack of central government funding has also led to uneven development of legal aid programs. Wealthy urban areas are developing formal legal aid institutions, but in rural areas local governments lack the resources to support them.

Wiped out in the Cultural Revolution, the Chinese legal profession has grown steadily since the beginning of reforms in the 1970s. Originally defined as socialist state workers, lawyers emerged under the 1996 Lawyers Law as private economic actors providing legal services, albeit managed by the Ministry of Justice (MOJ) and subject to a mandatory *pro bono* requirement.<sup>690</sup> The Chinese bar has grown, from 43,533 registered lawyers in 1989 to 122,585 in 2001.<sup>691</sup> Relative to the population as a whole, their numbers remain low by Western standards. At present, there is roughly one lawyer for every 10,000 individuals in China, compared to a ratio of about 1 to 550 in the United States.<sup>692</sup>

Despite the growth of the Chinese bar, lawyers are almost completely absent in rural China. One survey found only one practicing lawyer at the township level, while one out of ten rural Chinese counties lack any lawyers at all.<sup>693</sup> A range of paraprofessionals consequently dominates the legal services market in Chinese rural areas. These include basic-level workers in legal services offices

and local judicial bureaus, in addition to a significant number of unlicensed, self-trained individuals who serve as legal advisors for rural residents.<sup>694</sup>

Basic legal service workers often lack formal legal education or training, but local judicial bureaus or courts license them to practice.<sup>695</sup> Although China's approximately 100,000 basic legal service workers number only somewhat fewer than the total number of lawyers, they handle many more cases.<sup>696</sup> Workers provide consultations, engage in mediation, represent parties in civil cases, may collect fees, and may organize to form legal services offices. They may not represent defendants in criminal cases.<sup>697</sup> Since the early 1990s, government authorities have privatized legal services offices. They now function more or less as law firms, dominating the market in rural legal services and competing against law firms in the urban market.<sup>698</sup>

Local judicial bureaus are the county and township level branches of the MOJ.<sup>699</sup> They supervise and often provide training for basic legal service workers, as well as oversee local mediation and legal aid efforts.<sup>700</sup> Pursuant to central government efforts to reduce local expenditures, many judicial bureaus have opened legal services offices as a source of additional revenue. As one Chinese scholar characterized it, "In all the counties I surveyed, the local judicial bureau and the local legal services office were a case of 'one person, two signs,' with the head of the local legal services office being a member of the local judicial bureau . . . and the identity of these individuals unclear, part official, part private."<sup>701</sup>

Such blurring of boundaries intermingles "government" and "private" functions at the local level. Heads of local judicial bureaus (in their capacity as government officials) may designate a basic-level legal worker to mediate an end to a contentious dispute between villagers. If mediation fails, the same worker may shift into a fee-for-service role providing legal assistance to one (or both) parties via consultation, drafting legal documents, or court representation.<sup>702</sup> The lack of formal legal training in China's countryside also blurs the lines between courts and other judicial organs. Just as local judicial bureaus train basic-level legal workers, so do local courts train local judicial bureau personnel. Judges organize conferences and training sessions on new laws for local judicial bureau personnel, and invite them to observe and participate in court mediation.<sup>703</sup> Such interlocking roles, combined with the inevitable personal and financial relationships, effectively prevent rural residents from accessing independent legal services.

Beginning in the early 1990s, concern with access to justice generated significant Chinese government interest in legal aid.<sup>704</sup> Privatization of legal services led to government efforts to enlist China's growing number of lawyers in an effort to tackle social problems. Central government encouragement of legal aid efforts led to a rapid increase in the number of government-run legal aid centers (from several hundred in the late 1990s to 2,774 by the end of 2003).<sup>705</sup> In Shaanxi province, for example, the provincial government, all major metropolitan areas, and some 72 out of 108 county-level governments have opened legal aid centers.<sup>706</sup> Various quasi-independent legal aid organizations associated with universities or Party organizations have also developed.<sup>707</sup>



In 2003, the State Council issued a set of national Legal Aid Regulations, providing a formal framework for the further development of provincial and local legal aid efforts.<sup>708</sup> The Legal Aid Regulations formally make providing legal aid a government responsibility under the MOJ.<sup>709</sup> But the central government has allocated almost no money to support local governments in establishing legal aid centers.<sup>710</sup> MOJ officials rely on a mix of orders and cajoling to persuade local authorities to establish centers.<sup>711</sup>

The Legal Aid Regulations also establish a set of eligibility guidelines for legal aid applicants that represent a relatively limited set of cases, and in criminal cases allow an individual to apply for legal aid only after initial police investigation is complete.<sup>712</sup> The Legal Aid Regulations allow local authorities a degree of discretion in refusing cases. They also grant local legal aid centers flexibility in structuring their programs.<sup>713</sup> The Legal Aid Regulations only require legal aid centers to provide *pro bono* assistance in criminal cases in which a defendant faces a possible death sentence, is a minor, or is blind, deaf, or mute.<sup>714</sup> Except for these cases, applicants for legal aid must also meet a locally set standard of economic hardship.<sup>715</sup>

Chinese legal aid centers rely heavily on mandatory *pro bono* representation, although MOJ personnel also represent clients directly.<sup>716</sup> MOJ personnel generally run the intake process, distribute qualified cases to private lawyers, and supervise the cases. Private lawyers generally handle one or two legal aid cases per year.<sup>717</sup> The Legal Aid Regulations authorize legal aid centers to subsidize lawyers handling these cases, but forbid lawyers from receiving fees from their clients.<sup>718</sup> Chinese legal aid officials cite the lack of money to pay these subsidies to private lawyers as a serious obstacle to the development of legal aid.<sup>719</sup>

The failure of the central government to provide funding for legal aid has led to severely uneven development of programs.<sup>720</sup> In relatively well-off urban areas, some municipal governments have appropriated funding to support legal aid centers run by full-time staff.<sup>721</sup> Such urban centers are often relatively institutionalized and professional.<sup>722</sup> In contrast, legal aid services in rural areas are generally an additional duty shouldered by the local judicial bureau.<sup>723</sup> Often, the same MOJ employee in a given rural county simultaneously runs the local judicial bureau, his own private legal services office, and provides legal aid services out of the same location.<sup>724</sup> The legal aid services provided in such circumstances are limited and their *pro bono* nature subject to question.

Demand for legal aid in China remains far higher than supply. According to legal aid officials in Chengdu, Sichuan province, only about one-third of applicants receive legal aid each year.<sup>725</sup> MOJ statistics show legal aid centers handling 166,433 cases during 2003, or fewer than 3 percent of the total number of cases decided by the Chinese court system in 2003.<sup>726</sup> Lawyers do not necessarily represent legal aid applicants. According to government statistics, less than half of China's full-time legal aid workers have a lawyer's license.<sup>727</sup> Yet legal aid representatives appear to win civil cases for their clients relatively often.<sup>728</sup> Official Chinese statistics for

outcomes in criminal cases against legal aid recipients are unclear.<sup>729</sup>

Legal aid in China is focused on the type of problems faced by low-income urban workers rather than the rural poor. One example is that labor and support payment cases dominate the civil side, rather than disputes over land and taxation. On the criminal side, cases involving the death penalty and those with underage defendants predominate.<sup>730</sup> Civil cases constitute 57 percent of all legal aid cases, criminal cases 41 percent, and administrative cases 2 percent.<sup>731</sup>

Despite many successes in individual legal cases, legal aid programs do not broadly challenge established policies.<sup>732</sup> They reflect government interests because the government funds and operates them. Some urban legal aid centers rely on media reports to identify ongoing legal cases receiving critical coverage, then actively approach clients to see if they need representation.<sup>733</sup> Chinese government-funded legal aid centers are not an external constraint on government action, but another element in the dispute resolution process. For example, Xi'an legal aid personnel participated along with the courts, labor bureau, and other ministries in a recent conference designed to reach consensus on how to practically address a series of labor law disputes.<sup>734</sup> Because they often represent underserved groups in society, legal aid centers may bring some latent problems to the surface and help check local abuses. Quasi-independent public interest law organizations affiliated with universities often advocate broader change more vigorously.<sup>735</sup>

Workers at Chinese legal aid organizations have few opportunities for training. Some provincial centers hold occasional sessions for lower-level MOJ personnel, but the only trainings that the Ministry itself has organized have been in cooperation with foreign NGOs.<sup>736</sup> Foreign NGOs seeking to enhance Chinese legal aid efforts should consider programs that strengthen the capacity of the MOJ Legal Aid Center to conduct its own training.<sup>737</sup> To strengthen Chinese civil society, such efforts should also concentrate on non-governmental organizations providing legal aid services.<sup>738</sup> Programs directed at rural needs should also focus on training and organizing basic legal services workers.<sup>739</sup>

#### V(d) CHINA'S JUDICIAL SYSTEM

##### FINDINGS

- The Chinese judiciary continues to be plagued by internal administrative practices which constrain the independence of individual judges and undermine court effectiveness.
- The Chinese government is making significant strides in increasing legal training and the professional quality of the Chinese judiciary through new programs and employment practices. However, many of these efforts ignore the practical needs of rural Chinese courts.

##### *Internal Judicial Administration*

Internal administrative practices commonly used in Chinese courts reduce the independence of individual judges and create a passive cadre of judges. Three examples are the "responsibility sys-

tem for wrongly decided cases,”<sup>740</sup> the use of case closure rates to evaluate judicial performance,<sup>741</sup> and the extensive reliance on *qingshi* (internal advisory opinion) procedures.

Court responsibility systems, which sanction judges for errors in deciding cases, began in the late 1980s as a means to curb corruption.<sup>742</sup> In practice, responsibility systems differ by province and by court. Some define “wrongly decided cases” as those in which mistakes in procedure, determination of the facts, or application of law have resulted in “incorrect” outcomes.<sup>743</sup> One Sichuan court censures judges for any error whatsoever, not only for procedural or legal violations, but also grammatical or spelling errors in their opinions.<sup>744</sup> Disciplinary measures also vary. Depending on the number and seriousness of the mistakes in “wrongly decided cases,” a judge may face internal criticism, fines, slower promotions, critical notations in his or her personnel file, or, in extreme cases, criminal sanctions.<sup>745</sup> In some courts, sanctions are automatic and linked to reversal on appeal.<sup>746</sup> Other courts have internal mechanisms in which a judge’s peers review reversed cases to determine the severity of the error and the need for punishment.<sup>747</sup> Some courts employ these measures frequently, others not at all.<sup>748</sup>

Court responsibility systems limit judicial independence and efficiency, particularly in linking disciplinary punishment to ordinary appellate reversals.<sup>749</sup> They force Chinese judges to consider their self-interest in conducting essential judicial duties, such as hearing difficult cases, applying the law in unclear situations, or clearly expressing their judicial opinions in writing.<sup>750</sup> These systems prompt Chinese judges to pressure parties into agreeing to mediation, because, as one judge said, “mediation can’t be appealed, and there is no ‘incorrect case’ rate.”<sup>751</sup>

Some Chinese government officials are aware of these problems. The Supreme People’s Court (SPC) set out national guidelines in 1998 that explicitly exempt judges from responsibility for incorrect judgments arising from errors in legal understanding or mistaken factual findings, or for reversals on appeal that result from amendments to the law or new evidence.<sup>752</sup> These guidelines have had some impact, as some courts have revised their systems to include these exemptions.<sup>753</sup> But some courts do not follow the SPC guidelines.<sup>754</sup> Other responsibility systems retain a degree of ambiguity, making the extent of judges’ freedom to decide cases difficult to determine. For example, 1999 court rules for one Beijing Intermediate People’s Court include the 1998 SPC exemptions for judicial sanctions related to “errors,” but expressly sanction judges for “distortions” of fact or law.<sup>755</sup> Uncertainty over such distinctions, combined with the penalties of the responsibility system, creates an environment hostile to judicial independence and creativity, resulting in a generally passive cohort of Chinese judges.

The common administrative practice of using the “case closure rate” to evaluate court performance creates similar pressures. The annual review process Chinese courts and judges undergo often considers the percentage of closed versus filed cases for a given year as a means to evaluate overall judicial efficiency.<sup>756</sup> Individuals and courts with low ratings may suffer in terms of slower promotions and budget allocations.<sup>757</sup> Given this incentive structure, Chinese courts self-report staggeringly high case closure rates,

often greater than 99 percent,<sup>758</sup> and often generate these rates through unscrupulous means. For example, Chinese courts commonly refuse to accept cases submitted in December, knowing that these cases would remain undecided at the end of the year and consequently reduce their case closure rate.<sup>759</sup> Judges often also pressure parties to mediate rather than litigate if the case might continue past the end of the year.<sup>760</sup> As Chinese critics have noted, these practices injure the rights of parties, harm the image of the Chinese judiciary, and undermine the procedural time limits for litigation set in the administrative, civil, and criminal laws.<sup>761</sup> They also reflect an effort to manage the Chinese judiciary as an administrative agency rather than allow judges to independently exercise judicial authority.

Fear of censure under court responsibility systems creates incentives for Chinese court judges to seek advance guidance before issuing their decisions, contrary to principles of judicial independence. Judges seek such guidance through a well-developed system of requesting internal advisory opinions (*qingshi*).<sup>762</sup> The request may be as informal as asking the tribunal head for his views on a particular case, or as formal as sending a written request to a higher court. Chinese judges maintain that they never use the practice to ask courts to make factual findings, but rather ask for advisory opinions only in cases in which the law is unclear or they are uncertain how to apply it to a particular set of facts.<sup>763</sup> But when lower courts frequently send detailed case information to higher courts, questions arise about whether the lower courts are properly exercising their trial authority. Databases of Chinese laws and regulations contain many examples of replies to *qingshi* requests from all levels of the Chinese judiciary.<sup>764</sup> These differ little in form and content from similar requests from lower-level administrative agencies to higher-level departments. *Qingshi* requirements are often very lax, allowing judges themselves to decide when it is appropriate.<sup>765</sup> Chinese trial practice liberally accommodates *qingshi* procedures, including tolling the legally required time limits for deciding a case.<sup>766</sup> Higher courts often have a research bureau formally responsible for responding to *qingshi* requests from below.<sup>767</sup> Individual judges also may perform this role.<sup>768</sup> *Qingshi* requests factor into the drafting of formal judicial interpretations. The SPC relies on *qingshi* requests from lower-level courts to determine which areas of law are unclear and need formal judicial interpretation.<sup>769</sup> Excessive reliance on the *qingshi* process is emblematic of the top-down, overly administrative management structure of the entire Chinese judiciary.

Many in China criticize the *qingshi* system. As one procuratorate official bluntly put it, the system “is the embodiment of violations of law, regulation, and correct procedure in court management.”<sup>770</sup> No legal basis exists for the *qingshi* system, which appears to violate provisions of the Chinese Constitution and Judge’s Law guaranteeing courts the independent exercise of judicial authority.<sup>771</sup> The closed, internal nature of the process also violates principles of openness and transparency in judicial decision-making and conflates the appellate and trial procedures, often rendering the appeal a formality. Moreover, the continued use of the *qingshi* system breeds passivity, dependency, and a lack of independent thought by

Chinese lower court judges. They simply pass difficult or unclear cases up the judicial hierarchy.<sup>772</sup>

Chinese courts have made some limited moves to curb the use of *qingshi*. The SPC notice issued in response to public outcry surrounding cases of extended detention directs lower courts to “progressively eliminate” the use of *qingshi*, except in “difficult cases involving the application of law.”<sup>773</sup> Certain local courts have issued similar instructions.<sup>774</sup> However, the use of *qingshi* is difficult to eliminate in practice.<sup>775</sup> Under the pressure of administrative measures such as responsibility systems, Chinese judges adopt a passive approach to dispute resolution. They prefer to use the *qingshi* process to refer any difficult case up to higher authorities rather than decide it themselves and risk censure. Fundamental administrative reforms are necessary to curb the dependence of the Chinese judiciary on advisory opinions.

#### *External Pressures on the Chinese Judiciary*

Numerous external actors, such as the Party, local governments, and local people’s congresses (LPCs), impose limits that stifle the development of an independent Chinese judiciary.<sup>776</sup> Courts encounter interference from LPCs in the form of individual case supervision.<sup>777</sup> According to Chinese sources, as many as 70 percent of individual petitions to some local LPC *xinfang* bureaus represent appeals of final court decisions.<sup>778</sup> Formal structures exist to facilitate “supervision” of particular cases in which LPC delegates take an interest.<sup>779</sup> Some Chinese courts have LPC liaison offices present in their buildings to aid in such interventions.<sup>780</sup> According to Chinese scholars, SPC regulations require that any case that individual National People’s Congress delegates raise with the Court must be reviewed and the results must be reported back to the delegates.<sup>781</sup> Although LPCs formally intervene in only a limited number of cases, “status requests” on ongoing court cases are relatively common.<sup>782</sup> This contributes to an overall atmosphere that is not conducive to judicial independence.

Chinese courts face similar pressure from the media. Because Chinese judges lack professional standards and often are influenced by factors other than the law, courts may decide cases in line with their view of prevailing public opinion, particularly when press coverage is vigorous.<sup>783</sup> Chinese courts may ignore normal legal protections or questionable facts in issuing quick death sentences, such as in the Liu Yong case [see Section III(a)—Rights of Criminal Suspects and Defendants]. In addition, the internal government reports prepared by the Chinese media may also generate high-level interventions in particular cases.<sup>784</sup>

#### *Judicial Professionalism*

Although the Chinese government is making significant strides in increasing the professional quality of the Chinese judiciary through training programs and new employment practices, many of these efforts ignore the practical needs of rural Chinese courts. Educational requirements for judges have been tightened, and the SPC has announced ambitious plans to use higher court judges to carry out educational lectures on new laws and regulations for China’s roughly 150,000 basic court judges.<sup>785</sup> Such projects ignore the

realities of rural Chinese courts, which often lack the financial resources to attract university graduates and must struggle to merely retain the judges they do have.<sup>786</sup> The highly academic educational and training programs organized by national and provincial judicial training programs appear similarly misdirected, given the heavy emphasis of basic-level Chinese courts on mediation.<sup>787</sup> Many local Chinese judges express a desire for more practically oriented, skills-focused training sessions.<sup>788</sup>

Observers also detect signs of a shift toward a more professional administrative structure and recruiting process. Traditionally, Chinese judges have risen to the bench through an internal promotion process, starting first as a judicial secretary and gradually progressing to a full judgeship.<sup>789</sup> This system results in significant mixing of clerical and judicial duties,<sup>790</sup> and creates internal pressures to promote unqualified senior clerical staff to judgeships.<sup>791</sup> The result is a highly imbalanced judiciary: approximately two-thirds of the roughly 300,000 Chinese court personnel are judges, with only 40,000 judicial secretaries.<sup>792</sup> In the fall of 2003, the SPC took positive steps to stop this practice, with newly issued regulations that redefine the position of judicial secretary as a purely support function, rather than a step on the career track to becoming a judge.<sup>793</sup> If fully implemented, this should gradually increase judicial professionalism.<sup>794</sup> Many Chinese courts, with the encouragement of the SPC, are also beginning to experiment with selecting judges from among lawyers and other experienced legal professionals.<sup>795</sup>

#### *Quality and Availability of Judicial Decisions*

The quality and availability of Chinese judicial decisions remains a concern. Decisions often lack any legal reasoning and are frequently unavailable to the public. This is partly a result of the generally low educational levels of Chinese judges and the heavy emphasis in basic-level courts on mediation rather than formal trials.<sup>796</sup> The excessively administrative nature of the Chinese judiciary also plays a role. Judges indicate that they frequently avoid listing reasons for their decisions in clear judicial opinions out of fear of censure under the responsibility systems.<sup>797</sup>

The Chinese judiciary is taking steps to improve the quality of judicial opinions. SPC directives requiring the publication of judicial decisions are an effort to increase transparency and compel judges to write better decisions in the face of public scrutiny.<sup>798</sup> Several court Web sites, including those in Beijing, Shanghai, and Hainan province, allow users to download judicial decisions.<sup>799</sup> The intellectual property tribunal of the Beijing High People's Court has begun publishing all of its opinions online.<sup>800</sup> Review by Commission staff reveals that while many of these online opinions continue to lack legal reasoning, a few contain short analyses of relevant legal principles and facts. Some Chinese judges have indicated that pressure to publish opinions is encountering internal opposition within Chinese courts, as less-skilled judges resist the pressure to publish decisions out of concern for their public image or fear of punishment under court responsibility systems.<sup>801</sup>

## V(e) COMMERCIAL RULE OF LAW AND THE IMPACT OF THE WTO

## FINDINGS

- The WTO transparency obligations have had a positive effect on local governance by providing cover to reformers and raising public and official awareness of administrative, judicial, and legislative reform efforts.
- The Chinese government has adopted a series of industry development policies that reorganize domestic industries and frequently discriminate in favor of domestic products, sometimes in contravention of China's WTO commitments.
- Only rhetorical progress has been made toward reducing the extremely high level of intellectual property rights infringement in China in the past year and the situation continues to severely injure U.S. intellectual property industries.

The implementation of China's World Trade Organization (WTO) accession obligations remains a key measure for China's development of commercial rule of law. Although there has been progress in many areas, the Chinese government frequently finds that it lacks the capacity to implement many of the commitments requiring changes to its legal system both effectively and immediately. Moreover, market interventionist policies, often under the guise of industry development policies, frequently discriminate against goods and services of foreign origin, which generally runs afoul of WTO rules. The U.S. government will need to closely monitor China's progress in meeting all of its WTO commitments at the national and local levels to ensure that lower-profile measures that may deny foreign firms market access do not become standard bureaucratic practice.

Continued engagement on trade issues, particularly WTO implementation and compliance, is an important means to foster the rule of law in China. Because of internationally binding trade commitments and the economic realities of foreign direct investment, Chinese authorities cannot avoid meaningful discussion when confronted with economic and investment-related issues. This situation makes engagement on trade among the most constructive vehicles for the U.S. government to address the rule of law and legal reform in China. Continued engagement on trade issues has been the basis of a strong and surprisingly stable bilateral relationship.

*Commercial Rule of Law Beyond the WTO*

The systemic changes required to implement China's WTO commitments also affect other areas of rule of law development in China, especially the capacity building of the Chinese judiciary and bureaucracy that many of China's WTO accession commitments have mandated. In the judiciary, the Supreme People's Court (SPC) has begun seeking comments on its draft interpretations through its online services. In addition, some intermediate courts are now experimenting with publication of all their decisions.<sup>802</sup> The significance and reasons for this change extend beyond the requirements of WTO accession, but the need to provide reasoned decisions for trade-related actions plays a role in this reform.<sup>803</sup>

Provincial and local government bodies and provincial people's congresses continue to make notable progress in transparency.

Some have been publishing draft legislation, for both trade-related laws and other types of legislation. For example, the Sichuan Provincial People's Congress has published draft laws since the early 1990s.<sup>804</sup> The Guangdong Provincial People's Congress has interpreted the 2000 Law on Legislation to require that the Congress seek opinions on legislation from relevant stakeholders.<sup>805</sup> The Guangdong People's Congress and the Sichuan People's Congress publish all legislation on their Web sites before formal approval.<sup>806</sup>

An increasing number of local legislatures have made open calls to the general public for input on legislation. Some have developed official procedures for considering suggestions. These regulations have been developed to implement certain provisions of the 2000 Law on Legislation.<sup>807</sup> Shenzhen began soliciting legislative proposals through its Web sites in 2004.<sup>808</sup> The Guangdong Provincial People's Congress solicits comments on legislation through newspapers, its Web site, direct invitations to particular constituencies, and open hearings.<sup>809</sup> Some local people's congresses have attempted to use hearings to obtain public views on legislation. But people's congresses also seem to be having problems putting into practice previously adopted rules outlining how they will conduct a hearing. The few legislative hearings held so far demonstrate that Chinese legislators still need to address issues such as witness selection and public and official attendance.<sup>810</sup>

Provinces and municipalities are developing innovative measures to distinguish themselves as forward-leaning in governmental transparency and business efficiency. In Chongqing, officials established the Chongqing Industrial Business Administration Office to be a "one-stop" office for licensing.<sup>811</sup> The Internet also provides a regular means of interaction between the government and its citizens on a wide variety of issues. In Wuhan, the government has created a bulletin board for airing grievances, and Beijing's government solicits input on public works online.<sup>812</sup> Shanghai's legislature has sought to expand its experience with hearings beyond the legislature itself with a proposal to enact a local regulation that would set up a hearing mechanism for the local government.<sup>813</sup>

Although not directly required by China's WTO commitments, local governments have cited WTO transparency commitments as a factor affecting changes in the civil service system. According to interviews with Commission staff, the Guangdong Provincial Personnel Department responded to WTO accession by recruiting for civil servants from a wider pool of applicants, without regard to their social status. The entire process of hiring, promotion, and firing has become more transparent, using a standard examination for hiring decisions and protecting the right of the public to file complaints against prospective high-level appointees.<sup>814</sup>

Recent changes like these that bring greater transparency in government administration owe much to the general requirements and increases in capacity that WTO accession has required. While many problems have arisen in China's implementation of its specific commitments, that implementation has benefited many U.S. companies doing business in China and provided U.S. trade officials with much more comprehensive tools for addressing problems that arise in the bilateral relationship.



*Transparency*

China has not made progress over the last year on WTO commitments related to transparency. According to USTR, transparency is the most important of all of the WTO obligations.<sup>815</sup> Because transparency affects a wide range of industries, the Chinese government's failure to implement the commitments causes harm in a number of sectors and trade areas. As soft commitments, the transparency obligations are some of the most difficult to comply with, because they involve the cooperation of government departments and agencies at all levels. A government organization seeking to comply with the transparency commitments must also reckon with the interests of the Communist Party, which may not always correspond. Despite these difficulties, some observers are optimistic that the Chinese government will eventually meet its commitments on transparency, and the general level of U.S. industry concern has decreased.<sup>816</sup>

In its accession agreement, China also agreed to participate in an annual review for the first eight years of its WTO membership with a final review in the tenth year.<sup>817</sup> This Transitional Review Mechanism (TRM) has now completed two cycles through the Committees and Councils of the WTO, ending with a consolidating session in the WTO General Council. In the first year, the results of the TRM disappointed many observers, who expected it to have great potential to assist WTO implementation in China.<sup>818</sup> The Chinese government refused to provide written answers to questions and requests that the United States and other WTO members had made in advance. Because decision-making in WTO Committees and Councils operates by consensus, the Chinese delegation also blocked the adoption of any official report on the TRM. Monitoring progress with China's implementation in its second year of membership, the U.S. government declared that the 2003 TRM process was less contentious and more productive.<sup>819</sup> The 2003 TRM, however, had all the same negative features of the earlier TRM process, with no written responses from the Chinese delegation or final report of any kind. The Chinese delegation appears to have succeeded in lowering expectations for the outcome of the TRM. As a result, the TRM process does not work to the benefit of China, the United States, or other WTO members, and suggests that Chinese central government authorities responsible for trade matters are not dedicated to implementing WTO transparency commitments.

*Industry Development Policies*

China's government has pursued a variety of policies since WTO accession to improve the capacity for innovation in Chinese industry. These policies and the measures used to implement them often exploit broad WTO rules and soft commitments requiring systemic changes to China's bureaucracy to favor Chinese industry.<sup>820</sup> Following its long tradition of economic planning, China's leaders intervened in these industries to generate global competitiveness, often targeting Chinese producers lagging significantly behind global competitors.<sup>821</sup> Four particularly noteworthy cases from the past year detailed below have been the subject of bilateral discussions between the U.S. and Chinese governments with varying degrees of success. Some of these cases were resolved using specific com-

plaints tied to individual WTO obligations, but in other cases, little progress has been made in combating discriminatory Chinese policies exploiting vague WTO rules despite threats of specific action from China's trading partners.

Chinese government efforts to use industry policies to protect or develop Chinese industries at the expense of foreign firms may grow more acute as obvious barriers to trade are eliminated and more subtle barriers succeed. This shift to more defensible or less transparent tactics in industrial policies may take several years, as the Chinese still must replace specifically WTO-inconsistent development policies built on technology transfer and import substitution. U.S. policymakers will have to be vigilant to prevent discrimination against U.S. products and service providers and to ensure that China's WTO obligations are helping China create a robust commercial legal system.

*Value added tax rebate on integrated circuits*

Efforts by the United States convinced the Chinese government to abandon its value added tax (VAT) rebate policy for domestically-produced integrated circuits in July 2004. The policy had the potential to devastate the U.S. industry by forcing it to relocate both semiconductor fabrication and research and development to China to achieve lower production costs and gain access to the rapidly expanding Chinese market. On March 18, 2004, the United States formally sought consultations with China under Articles 1 and 4 of the WTO Dispute Settlement Understanding (DSU) regarding the Chinese government's practice of providing a partial VAT rebate to semiconductor manufacturers designing and fabricating integrated circuits (ICs) in China.<sup>822</sup> This challenge was the first invocation of the WTO dispute settlement mechanism against China since the latter's accession to the WTO in December 2001.

China established its VAT rebate policy before acceding to the WTO through the State Council's promulgation of a Notice on June 24, 2000.<sup>823</sup> This Notice provided that firms manufacturing ICs in China should receive a rebate of 11 percent of China's normal VAT rate of 17 percent, reducing the effective VAT rate to 6 percent.<sup>824</sup> The policy only granted rebates to firms manufacturing ICs in China. Chinese tax authorities continued to assess the full VAT of 17 percent for sales of imported ICs. The United States asserted that the policy violated Article III of the General Agreement on Tariffs and Trade (GATT 1994), which prohibits the imposition of "internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products."<sup>825</sup>

Consultations at the WTO between the Chinese and U.S. governments began in April 2004. Although the 60-day period during which a complaining WTO member cannot seek the formation of a panel expired before the end of May, the United States refrained from requesting a panel at the June meeting of the WTO Dispute Settlement Body and continued consultations with the Chinese government on the policy. On July 8, 2004, the Chinese government agreed not to certify any additional enterprises for preferential treatment and to phase out the policy for existing beneficiaries by April 1, 2005.<sup>826</sup>

*Wireless local area network (WLAN) architecture and privacy infrastructure (WAPI)*

U.S. government action, culminating in the April 21, 2004 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT), also prevented a commercially onerous set of standards from injuring the U.S. wireless networking industry. In this case, the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) sought to implement standards that not only deviated from a corresponding set of international standards but also had the potential to force the transfer of technology from U.S. computer manufacturers to their Chinese competitors as a requirement of importation.<sup>827</sup> In July 2003, AQSIQ and the Standards Administration of China (SAC) met and determined that after December 1, 2003, wireless networking equipment imported, manufactured, or sold in China would have to comply with two Chinese standards for wireless local area networks (WLAN).<sup>828</sup> These standards differ from an adopted international series of WLAN standards designated 802.11 by the International Standards Organization.<sup>829</sup> Specifically, the encryption algorithms for the Chinese standards, known as WLAN Architecture Privacy Infrastructure (WAPI), could not function with 802.11-compliant hardware or software. Through the WTO Agreement on Technical Barriers to Trade (TBT Agreement), China committed 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.<sup>830</sup> Yet, under China's proposed standard, hardware products that operate according to internationally accepted standards would not function on a network using the Chinese standards. Moreover, the implementation by SAC and the State Encryption Management Commission (SEMC), a sub-unit of AQSIQ, would have required foreign computer manufacturers to provide their products to 24 Chinese computer firms for preparation to enter the market.<sup>831</sup> Those Chinese firms would have loaded the WAPI algorithms on the foreign firms' hardware and controlled the conformity assessment process for the foreign firms' equipment.

Although AQSIQ later adjusted the date the policy would take effect from December 1, 2003 to June 1, 2004, the lack of transparency and the unpublished algorithm for the standard made this policy particularly problematic for foreign computer manufacturers. The U.S. government responded to the promulgation of this policy by both requesting a delay in implementation and seeking its revocation.<sup>832</sup> At the April 2004 meeting of the JCCT, Vice Premier Wu Yi agreed that the Chinese government would suspend the implementation of the new standards indefinitely; work to revise the standard and its implementation, taking into account the comments provided by a variety of parties; and participate in the processes of international standards making bodies dealing with wireless encryption.<sup>833</sup>

*Export controls on coke*

In 2004, another potential WTO dispute settlement case arose in the context of the Chinese government's export quota on coke, a key input in steel production. Although China is the world's largest

coke producer, it exports only a small percentage of its overall output.<sup>834</sup> This type of export restriction, which a WTO member may only impose to remedy a critical shortage, to implement a legitimate standard used in international trade, or to implement a legitimate environmental objective, became a problem in 2004 because China's increased demand for raw materials has contributed to steadily rising commodity prices globally.<sup>835</sup> As a result, the Chinese export quota has begun to affect U.S. steel producers.

The European Union apparently reached an agreement with China in May 2004 guaranteeing the same level of quota in 2004 as it received in 2003, but such an arrangement may not guarantee enough Chinese coke to satisfy U.S. demand in 2004.<sup>836</sup> The U.S. trade agencies continue to negotiate with their Chinese counterparts to reach an acceptable resolution of this problem.

#### *Automobile Industry Development Policy*

China's new Automobile Industry Development Policy poses serious market access problems for the U.S. automobile industry through new controls on in-country investment and a variety of obstacles to and discrimination against imports. In 2003, China's National Development and Reform Commission (NDRC) issued a draft of the Automobile Industry Development Policy.<sup>837</sup> In May 2004, the NDRC issued the final version of the policy. Foreign industry complaints about the draft policy centered on the requirements that foreign-invested enterprises participating in the particular manufacturing covered by the policy, including automobile and motorcycle assembly and auto parts manufacture, faced high minimum capital requirements and a prohibition on majority ownership.<sup>838</sup> While NDRC addressed some of these restrictions in the final version, it still presents concerns for small and medium-sized U.S. auto parts manufacturers.

Much of the policy addresses changes designed to create Chinese automobile brands through consolidation and higher barriers to market entry. This brand-creation part of the policy will also have inevitable effects on foreign investment in the automobile and motorcycle sectors, as it limits the number of joint venture partners available for U.S. firms. While not prohibiting automobile imports, the policy places significant functional limitations on sales and distribution channels for importers by requiring them to establish complete distribution networks for their products.<sup>839</sup> Finally, the subsidization of China's automobile industry, mostly through loans from China's state-run banking system, changes the competitive landscape by bolstering Chinese automobile firms at the expense of their foreign competitors.

#### *Intellectual Property Rights: Laws and Enforcement*

The Chinese government has not made progress toward effective enforcement of intellectual property rights (IPR). After the cancellation of the World Intellectual Property Organization (WIPO) summit in 2003 due to the Severe Acute Respiratory Syndrome outbreak, China ceased making even rhetorical progress toward the goal of improving IPR protection in China. After the summit's cancellation, all indications that China would make concrete progress by, for example, joining the WIPO Copyright and Performances and

Phonograms Treaties (collectively, WIPO Internet Treaties), evaporated. Instead, extremely high rates of piracy and counterfeiting continued in 2003 and U.S. rightholders noted the resurgence of exports of counterfeit goods from China.<sup>840</sup> In November 2003, the U.S. Ambassador to China convened the second annual IPR Roundtable in Beijing and the U.S. Embassy in Beijing unveiled its online IPR Toolkit to provide advice on protecting intellectual property in China.<sup>841</sup> In spite of these constructive overtures by the United States, the Chinese government failed to take actions showing a serious intent to reduce counterfeiting and piracy, instead disputing the seriousness of the problem.<sup>842</sup>

Beginning at the end of 2003, and continuing through the meeting of the JCCT in April 2004, the Chinese government began to make the type of personnel assignments and broad commitments that have resulted in improved IPR protection in other countries.<sup>843</sup> In November 2003, the Chinese government designated Vice Premier Wu Yi the leader of the State Council's "Leading Group on IPR Protection."<sup>844</sup> At the JCCT meeting in April 2004, Vice Premier Wu committed China to improving both the IPR legal regime and government enforcement of IPR.<sup>845</sup> If implemented, these commitments may reduce the rate of piracy and counterfeiting in the Chinese market and help conform China's IPR protection regime to the commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).<sup>846</sup> Close vigilance by U.S. trade officials is necessary to ensure that China meets these commitments.

Unfortunately, the central government has not demonstrated a capacity or desire to implement these commitments. Implementing the commitment to increase the range of IPR violations subject to the criminal law, for example, requires only that the SPC lower the criminal enforcement threshold, but the Court has not yet taken that simple step.<sup>847</sup> And because most infringement occurs far from the center of government in Beijing, IPR violators avoid sanction through a combination of bureaucratic barriers, local protectionism, and corruption.<sup>848</sup> Moreover, several highly publicized IPR-related events have attracted the attention of foreign observers and caused U.S. businesses to question whether they can risk bringing their intellectual property into the China market.<sup>849</sup>

The developing capacity of Chinese courts with respect to private IPR cases is a positive sign and worthy of greater U.S. attention. In a number of cases, foreign rightholders have successfully sued Chinese infringers in intermediate people's courts.<sup>850</sup> While difficult to quantify, the increasing speed and reliability of intermediate people's courts in handling IPR infringement cases reflect the results of government policies seeking to improve judicial competence on IPR law, as well as generally rising standards in the Chinese judiciary.<sup>851</sup>

#### *Agricultural Market Access*

China has become one of the largest foreign markets for U.S. agricultural products, but market access issues limit this important component of U.S.-China trade relations. China's administration of its tariff rate quota (TRQ) system raised market access concerns almost from the moment China entered the WTO.<sup>852</sup> The Chinese

government has sought to address these concerns with quota administration, although with mixed success. The quota administration authorities adopted a series of regulations in 2003 that should have resolved these concerns, but renewed complaints in 2004 have called into question whether the relevant Chinese authorities are implementing the regulations.<sup>853</sup>

There has also been a lack of progress in resolving problems with AQSIQ's administration of the quarantine process for plant and animal products. Problems identified by U.S. industry have lingered on without satisfactory reason despite negotiations between AQSIQ and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS).<sup>854</sup> The Commission has heard testimony that China's failure to use science-based standards in its sanitary and phytosanitary inspection process impedes imports of U.S. agricultural products.<sup>855</sup> Specifically, U.S. beef and poultry cannot enter China's market if any pathogens are present and arbitrarily enforced Chinese quarantine procedures adversely affect trade in U.S. soybeans, grains, and oilseeds. The American Chamber of Commerce in China asserted that AQSIQ does not apply the same stringent standards to China's domestic agricultural products.<sup>856</sup> Although problems with individual products are resolved periodically, the glacial pace of approvals feeds the impression that AQSIQ uses quarantine as a barrier to trade.

#### *Services: Distribution Services and Trading Rights*

Two of China's most important WTO accession commitments were pledges to end restrictions on distribution services and trading rights.<sup>857</sup> While other barriers to market access still exist, the end of these specific limitations will dramatically change the way U.S. and other foreign companies do business in China. China's commitments required eliminating the restrictions on majority foreign-owned companies to obtain trading rights and engage in certain segments of distribution services by December 11, 2003, two years after accession.<sup>858</sup> The Ministry of Commerce (MOFCOM) did not complete its draft of the Foreign Trade Law, which covers trading rights, or the Regulations on Foreign Investment in the Commercial Sector, which covers most distribution services, until the spring of 2004. When the Chinese government published the measures, however, it caught up with overdue commitments and, on paper, granted trading and distribution rights to wholly foreign-owned companies ahead of schedule.<sup>859</sup> The coming year will tell whether the implementation of these measures will have the effect of eliminating these significant barriers to trade, producing a positive impact for U.S. companies doing business in China.

#### *U.S. Government and Other WTO Member Technical Assistance to China*

China has received technical assistance from the United States aimed at assuring compliance with WTO commitments and requirements. The principal vehicle for this type of assistance is a U.S. Commerce Department program that began in September 2000. Continuing programs focus on WTO commitments where China's implementation has lagged, including IPR enforcement. In addition to traditional technical assistance programs run by the

Commerce Department's International Trade Administration (ITA), innovative programs such as the U.S.-China Legal Exchange and annual Standards Workshops have broadened the program to reach different audiences.

U.S. programs have been overshadowed by other WTO members who have committed far greater funds and personnel to their systematic technical assistance programs to China than the United States. The EU, Japan, and Canada significantly outspend the United States, which spends about the same as Australia.<sup>860</sup> The impact of this funding gap is not academic: on many trade issues on which the United States disagrees with its trading partners, such as the recognition of geographical indications (GIs) and the treatment of genetically modified organisms (GMOs), the larger presence of other WTO members as primary resources for training, source materials, ideas, and policy approaches will likely prejudice U.S. companies that confront these issues in China.

#### V(f) FORCED EVICTIONS AND LAND REQUISITIONS

##### FINDINGS

- Forced evictions in urban areas and the requisition of farmland in rural areas are fueling a wave of popular anger at officials and developers and a growing number of citizen petitions, legal disputes, and social protests across China.
- Despite strong central government initiatives and some local efforts to curb illegal land transactions and abuses related to land transfers, procedures and compensation standards for the government requisition of land use rights and buildings continue to be weighted heavily in favor of the government and developers.
- Existing procedural protections are inadequate to protect the rights and economic interests of urban residents and farmers whose land is requisitioned and to check endemic corruption in the land sector. Petitioners and some legal representatives seeking redress of grievances related to evictions and land requisitions have been detained or harassed.

##### *Land Ownership in China*

Under China's Constitution and the PRC Land Management Law, the state owns urban land and peasant collectives own most rural and suburban land.<sup>861</sup> Within the framework of urban state ownership, state entities, private entities, and citizens may be granted or allocated land use rights.<sup>862</sup> Although in the past, work units assigned housing to most urban residents without charge or for nominal rent, in the mid-1990s the central government adopted policies that encouraged urban residents to purchase apartments from their work units, often at heavily subsidized rates or with limited transfer rights.<sup>863</sup> In rural areas, the PRC Rural Land Contracting Law gives farmers 30-year land use rights to individual plots of land free from local readjustments.<sup>864</sup> In both urban and rural contexts, individuals hold a land use right and may own buildings or fixtures, but ownership of the land itself remains in the hands of the state or the collective.<sup>865</sup>

Over the last decade, rapid economic growth, skyrocketing land prices, and urban renewal have resulted in the large-scale redevelopment and expansion of China's urban centers.<sup>866</sup> To make room for new infrastructure and private developments, urban authorities are tearing down older residential areas and relocating residents to new housing or providing them with nominal compensation. The scale of the redevelopment and relocations is enormous. From 1991 to 2003, for example, Shanghai city authorities relocated nearly 900,000 households, or 1.2 million people.<sup>867</sup> In 2002 alone, Beijing authorities relocated 86,000 people, and city officials plan to displace 300,000 more in the next several years as they prepare for the 2008 Olympics.<sup>868</sup> The same pattern is evident in urban areas across China.<sup>869</sup>

In the countryside, authorities are converting large tracts of farmland to accommodate urban expansion and village economic initiatives. To proceed with such projects, the state must first requisition arable land from and compensate peasant collectives according to a detailed legal process set out in the Land Management Law and related regulations.<sup>870</sup> After the state compensates the collective for requisitioned land, it may then use the land or sell land use rights to private developers.<sup>871</sup> According to official estimates, nearly 5 percent of the country's arable land has been lost as a result of urbanization and development over the past seven years, and more than 40 million peasants have been displaced by such development over the past 20 years.<sup>872</sup> This trend has alarmed Chinese authorities, who view landless, unemployed peasants as a threat to social stability.<sup>873</sup>

#### *Problems in Urban Relocations and Rural Land Requisitions*

Although many relocations take place without incident,<sup>874</sup> a number of problems and abuses have been associated with relocations and land requisitions in China. Urban residents are supposed to be paid the market value of their land use rights and structures.<sup>875</sup> But most of the value of urban property lies in the land itself, which the state owns, and not in the dilapidated structures that often stand on it or the limited land use rights held by many residents (if they hold any formal land use rights at all).<sup>876</sup> As such, in many cities, relocation and resettlement compensation is not sufficient for residents to purchase new homes in comparable locations. Resettlement housing is often located in distant suburbs, detached from the social and business networks in which residents have lived and worked for years.<sup>877</sup> Such displacement angers many residents.<sup>878</sup> In rural areas, collectives retain much of the compensation that the state provides when it requisitions arable land, and the small amount that farmers do receive is significantly less than the economic value of the 30-year land use right that the Rural Land Contracting Law guarantees to farmers.<sup>879</sup> As a result, farmers end up landless and, once they have exhausted their small subsidies, unemployed and without a source of income.<sup>880</sup>

State transfers of land also create significant incentives for corruption. Because compensation is low under existing legal standards, local government entities can compensate residents and farmers or provide resettlement housing at nominal cost and then sell land use rights to developers at a significant profit.<sup>881</sup> In some cases,



corrupt officials, developers, and demolition companies siphon off funds intended for compensation or resettlement, fail to provide promised resettlement housing, or unfairly reduce compensation amounts through fraudulent appraisals or other tactics.<sup>882</sup> The large number of illegal land transactions in China is one indication of the extent of such corruption. Last year alone, the government identified more than 178,000 illegal or irregular land transactions, and in August 2004 it announced that it had suspended work on 4,800 illegal development zones.<sup>883</sup>

Procedures for urban demolitions and rural land requisitions lack transparency and are heavily weighted in favor of the government and developers. Generally, government authorities do not give urban residents an opportunity to comment on or challenge general development plans or specific demolition decisions before they are made.<sup>884</sup> In most cases, officials simply inform residents that they will be relocated and give them a limited time to negotiate compensation and move.<sup>885</sup> Residents may challenge the amount of compensation offered, but cannot stop the demolition process once government arbitration panels rule on compensation disputes, even if they appeal the arbitration decision to a people's court.<sup>886</sup> In many rural areas, courts often refuse to accept land disputes altogether.<sup>887</sup> New regulations obligate land officials to hold hearings on a limited range of land requisition decisions, and farmers may request a hearing to comment on compensation plans or plans to convert agricultural land for non-agricultural use.<sup>888</sup> In practice, however, urban and rural residents have little chance of overturning a demolition or land requisition decision or challenging the purpose for which land is taken, and at most can hope only to improve their compensation.<sup>889</sup>

Finally, as documented in Chinese and Western media, reports by international human rights organizations, and Chinese government circulars, government officials, developers, and demolition companies often employ abusive tactics to deal with recalcitrant residents. According to such reports, developers and demolition personnel have cut off water and electricity, used physical threats and other forms of intimidation, and resorted to violence to deal with residents who refuse to move or who hold out for additional compensation.<sup>890</sup> Although the central government has issued stern warnings for such "uncivilized" demolitions and land seizures to stop and has prosecuted some companies and individuals for abuses,<sup>891</sup> reports of violent evictions and coercion continue to emerge.<sup>892</sup>

#### *Social Conflicts Related to Property Takings*

Over the past year, property seizures and relocations in China's cities and the requisition of farmland for development in rural regions have become two leading causes of social discontent in China. According to official statistics, the Ministry of Land and Resources received more than 18,620 complaints related to relocation in the first half of 2004 alone, compared with 18,071 complaints in all of last year.<sup>893</sup> In December 2003, Supreme People's Court (SPC) President Xiao Yang reported that the fastest growing categories of administrative lawsuits in China relate to "urban construction" and "land resources."<sup>894</sup> More disturbing to government and Party offi-

cials, demonstrations, social protests, and violent confrontations related to property seizures are on the rise.<sup>895</sup> In one shocking incident last year, several individuals burned themselves in Tiananmen Square to protest the demolition of their homes.<sup>896</sup> A leading Chinese social scientist reports that property rights have now displaced tax burdens as the primary focus of peasant activism.<sup>897</sup> State Council circulars and official statements acknowledge that property protests are serious, widespread, and “influencing social stability and the normal order of production and life.”<sup>898</sup>

Alarmed by such social unrest, central government leaders have expressed growing concern about land abuses and taken a series of steps to address the problem and demonstrate sympathy with popular grievances. Over the past year, the National People’s Congress (NPC) adopted a new constitutional amendment to enhance the protection of property rights and is reportedly working on a Property Law, a Law on the Protection of Peasant Rights, and revisions to the Land Management Law.<sup>899</sup> Observers expect these new legislative initiatives to increase compensation standards for land requisitions and address some of the most common complaints related to relocations. The government appointed a high-level policymaker to oversee demolition and land requisition reforms and has issued numerous regulations and circulars in an attempt to address common public complaints about evictions and improve procedures.<sup>900</sup> Central authorities also attempted to rein in land corruption by removing the Minister of Land and Resources and undertaking a series of investigation and rectification campaigns in both urban and rural areas.<sup>901</sup>

Some local governments and lawyers associations have also taken positive steps to address land conflicts. In Shanghai, for example, the government has worked to publicize information regarding resident rights and re-evaluate local compensation standards, while the local lawyers association has introduced a city-wide legal assistance project to provide *pro bono* representation for displaced residents.<sup>902</sup> In July 2004, Shanghai also announced that it was raising the minimum standard compensation for relocations, although residents have complained that even the new compensation level is not in line with market standards.<sup>903</sup>

At the same time, government authorities have used severe tactics in an effort to suppress public dissent and unrest related to land transactions. For example, central authorities issued a directive instructing local officials to keep land petitioners out of Beijing during the 2004 NPC session and arbitrarily detained or repatriated some petitioners who managed to enter the city.<sup>904</sup> Both the State Council and local authorities have instructed the news media to limit reporting on relocation disputes to avoid “intensifying conflicts.”<sup>905</sup> In some cases, activists and legal advocates for displaced residents have also been harassed or prosecuted.<sup>906</sup> In one recent example, a court in Shanghai convicted Zheng Enchong, a lawyer who represented evicted residents in a sensitive demolition case, of “disclosing state secrets.” In the wake of Zheng’s conviction, Shanghai lawyers expressed concern about taking on property rights cases that involve direct challenges to the government.<sup>907</sup> In other cases, land petitioners have reportedly been sent to re-education through labor camps.<sup>908</sup>

Although central government concern about land abuses appears to be genuine,<sup>909</sup> the many government circulars on urban demolitions and rural land requisitions and reports on protests suggest that forced evictions continue to be a problem. As senior Chinese legislators noted in June 2004, local governments are resisting efforts to curb abuses.<sup>910</sup> According to foreign and Chinese experts, additional changes will be necessary to address the relocation and land transfer problem. First, they argue that more precise guidelines are needed for when land can lawfully be taken by the government and sold for redevelopment.<sup>911</sup> Compensation standards, the key issue in the majority of relocation disputes, need to be enhanced.<sup>912</sup> Finally, procedures for urban demolitions and rural land requisitions remain stacked in favor of the government and developers. Chinese experts note that demolition and relocation disputes should be resolved through a neutral judicial process, and not by administrative agencies with connections to developers.<sup>913</sup> Until the government implements such protections, high land values are likely to continue to fuel local corruption and further unrest.

## VI. Tibet

### FINDINGS

- Envoys representing the Dalai Lama visited China in September 2004. This visit, the third in recent years, creates an important opportunity to address obstacles and achieve progress through dialogue.
- Chinese leaders misrepresent the Dalai Lama's offer to accept *bona fide* autonomy under Chinese sovereignty as an attempt to gain independence in a "disguised form." The Dalai Lama has stated that a solution can be based on China's Constitution.<sup>914</sup>
- Increasing Han population in Tibetan areas poses a significant challenge to Tibetan culture and heritage. Authorities deny that the ethnic mix is changing, or that there is a negative effect on Tibetan culture.
- Most Tibetans live in rural areas where their incomes average one-fifth of those in Tibetan towns and cities. Central government subsidy of development projects in Tibetan areas drives economic growth at a brisk pace, but the Han population benefits disproportionately because most funding is channeled into infrastructure construction or urban development.
- Tibet development projects that are discussed, researched, and planned in an open and objective manner, that are based on actual local circumstances, and that take into account the views of the Tibetan stakeholders, will have the best chance to help Tibetans protect their cultural, religious, and environmental heritage.
- The rights of Tibetans to constitutionally guaranteed freedoms of speech, religion, and association are subject to strict constraint. Authorities invoke "state security" to justify repression or punishment of peaceful expression even when there is no threat to the state. However, emerging patterns suggest

that local governments in some Tibetan areas are relatively less repressive than others.

*The Status of Discussion between China and the Dalai Lama*

U.S. policy recognizes the Tibet Autonomous Region (TAR) and Tibetan autonomous prefectures and counties in other provinces to be a part of the People's Republic of China.<sup>915</sup> An important objective of the U.S. government is encouraging direct and substantive discussions between the Dalai Lama and the Chinese government.<sup>916</sup>

The Dalai Lama is in an unmatched position to help ensure the survival and development of Tibetan culture, and to contribute to China's stability and prosperity. Envoys representing the Dalai Lama visited China, including Tibetan areas, in September 2002 and May 2003. Special Envoy Lodi Gyari expressed cautious optimism after the visits but observed that disagreements are substantial, and that mutual understanding and trust are lacking.<sup>917</sup> On September 11, 2004, the Tibetan government-in-exile announced that the envoys would depart for China the following day on their third visit.<sup>918</sup> During the past year, Chinese officials have amplified previous criticism of political and territorial formulations raised by the Dalai Lama or the Tibetan government-in-exile.<sup>919</sup>

*Autonomy*

In May 2004, as the Dalai Lama's envoys waited for permission to travel to China, Beijing published a White Paper<sup>920</sup> that vigorously defends China's system of ethnic autonomy. The timing and tone of the publication may underscore Chinese government resolve to keep any discussion of Tibetan governance within the parameters of the PRC Regional National Autonomy Law.<sup>921</sup> The White Paper is aimed directly at the Dalai Lama and concludes on a note that is blunt and personal:

It is hoped that the Dalai Lama will look reality in the face, make a correct judgment of the situation, truly relinquish his stand for "Tibet independence," and do something beneficial to the progress of China and the region of Tibet in his remaining years.

In theory, the Regional National Autonomy Law aims to balance central and local interests, and subordination with self-government. In fact, the same law that codifies the autonomous rights of local self-governments sharply curtails them by requiring that they bow to state interests and "fulfill the tasks assigned by state organs at higher levels."<sup>922</sup> The White Paper declares that "under the unified leadership of the state," ethnic minorities in autonomous areas exercise "the right of self-government to administer local affairs."<sup>923</sup> The law authorizes local people's congresses to enact new laws, as well as modifications, partial exemptions, and postponements to statutes promulgated by higher levels of government.<sup>924</sup> According to the paper, the TAR legislature has enacted 220 laws tailored to protect local interests since the region was established in 1965, including laws that lower the minimum marriage age, create local holidays, and regulate foreign mountain climbers.<sup>925</sup> Examples such as these point to the insufficient au-

thority Tibetans have over their social, economic, and political environment.

As the Dalai Lama told Canadian Prime Minister Paul Martin, “Tibet should be given autonomy, or self-rule, which the Chinese Constitution provided.”<sup>926</sup> But the official Chinese formulation subordinates local interests to the state: “Minorities, organizations, associations, localities, etc., apart from being subordinate to the leadership of the state, government, or upper-level unit to which they belong, exercise definite rights with respect to their own general affairs.”<sup>927</sup> According to the Times of India, Samdhong Rinpoche, the first prime minister elected by Tibetans living in exile, said last year that his concept of autonomy would provide “a little more” than Hong Kong citizens are promised under “one county, two systems.”<sup>928</sup> The Tibetan government-in-exile expresses support for the Dalai Lama’s initiatives, but asserts that, “The Tibetan people, both in and outside Tibet, look to the [Tibetan government-in-exile] as their sole and legitimate government.”<sup>929</sup>

Chinese authorities commingle the Dalai Lama’s statements with other voices in the Tibetan community, including those of the Tibetan government-in-exile. They hold the Dalai Lama accountable for inevitable contradictions and accuse him of seeking “independence in disguised forms.”<sup>930</sup> An official in a Tibetan part of China told a Commission staff delegation in September 2003, “In our view, the Dalai and the exiled government are part and parcel of the same group. People here believe that the exiled government is the same as the Dalai, and that the Dalai is the same as the exiled government. They are one and the same.” In Beijing, an official of the CCP’s United Front Work Department (UFWD) referred to the spectrum of views in the exiled Tibetan community and told a Commission staff delegation, “The Central Government doesn’t know what’s on the Dalai Lama’s mind.”<sup>931</sup> The Dalai Lama, who turns 70 next year, has said that he wants to meet Chinese officials face-to-face in an effort to reduce suspicions.<sup>932</sup>

Recent statements by the Dalai Lama underscore the extent of his efforts to initiate a productive dialogue that takes into account the constitutional and geographic framework already shaped by Chinese authorities. His remarks focus on 13 autonomous areas<sup>933</sup> set up by China where Tibetans are entitled, according to Chinese law, to practice local self-government. According to a 2003 interview with the Voice of America, the Dalai Lama does not claim that the entirety of territory where Tibetans live was a unified administration under Lhasa’s control when the People’s Liberation Army arrived there.<sup>934</sup> He believes that a case can be made within Chinese law for consolidating contiguous areas of Tibetan autonomy.<sup>935</sup> The Dalai Lama proposes improving the system of autonomy, not discarding it.

#### *Tibetan Culture and Human Rights*

China has not initiated major new campaigns across Tibetan areas in the past year. However, existing policy initiatives are gaining momentum, especially the Great Western Development program, formulated to accelerate economic development in China’s western provinces and speed their integration into the political and social mainstream.<sup>936</sup> Government policies that favor atheism and

promote strict adherence to a national identity defined in Beijing discourage Tibetan aspirations to maintain their distinctive culture and religion. Rights outlined in the Regional National Autonomy Law are weak in practice.

The central government attempts to ensure that policy is consistent among the five provinces where Tibetans live, but Commission staff and other experts observe that modest distinctions may be emerging in local conditions. Current levels of known political imprisonment of Tibetans have fallen to low levels in Qinghai and Gansu provinces. In Sichuan, the opposite is the case. In the TAR, Tibetan culture and religion continue to face daunting challenges, although the number of known political prisoners is gradually declining.<sup>937</sup> Concurrent with the lower level of political imprisonment in Qinghai and Gansu, the apparent conditions for religion and education may be relatively less repressive than in Sichuan or the TAR.<sup>938</sup>

#### *Culture, Demography, and Development*

A significant number of Tibetans seeking increased stewardship over their future avoid the dangers of political expression and focus on protecting their culture and natural environment, or on developing education and sustainable economic resources. Tibetan citizens and NGOs work on the periphery of well-funded government programs<sup>939</sup> that have the capacity to undermine or overwhelm Tibetan culture. Individuals and NGOs understand the risks of researching, planning, and implementing projects that the Party and state could perceive as a challenge. Careful planning can make economic development and cultural preservation coexist, and not be mutually exclusive.

A USAID rangeland expert emphasized the importance of ensuring that development models are sound, sustainable, and create real benefits for their target group. He told a Commission roundtable in March 2004:

In my opinion, the key issues for sustainable development in the Tibetan pastoral areas are widespread poverty, rangeland degradation, unsustainable livestock production practices, poor market development, weak community participation, and lack of integration in addressing all of these problems. The development challenge now is determining how to target funding better to address these issues and to ensure that resources allocated for development and poverty reduction actually reach the Tibetan farmers and nomads.<sup>940</sup>

Almost 90 percent of the Tibetans in China live in rural areas and engage in farming and herding.<sup>941</sup> Their incomes are rising, but residents of towns and cities have incomes five times higher.<sup>942</sup> The gap deepens the relative poverty of farmers and herders and serves to marginalize them. TAR officials briefing Commission staff delegations in September 2003 and April 2004 said repeatedly that government policy seeks ways to boost the income of rural families.

Tibet's rural areas urgently need significant investment of government money, but greater government largesse will not resolve the long-term cultural crisis facing Tibetans. A short-term solution for many rural Tibetans is sending a family member to find work

in the infrastructure construction boom. At the same time, Tibetans encounter intense competition from Chinese migrants in those labor markets. Professor Melvyn Goldstein told the Commission roundtable:

With respect to such work, we found widespread frustration and anger in the villages about the difficulties villagers face in finding jobs. Villagers commonly complain that there are not enough jobs for them and that, because their skill levels are low, most of the jobs they find pay poorly. The villagers overwhelmingly lay the blame for this on the unrestricted influx of non-Tibetan migrant laborers.

Rural Tibetans now find themselves in competition for construction jobs with large numbers of more skilled and experienced Chinese workers, and given the current policy, this competition will certainly increase. How Tibetans will fare in the future, therefore, is less clear. There are some positive signs, but it is hard to be very optimistic. What is really needed is a change in government policy that will give much greater priority to securing jobs for Tibetans, perhaps through a large-scale system of set-aside contracts for them over some period of time.<sup>943</sup>

Central government spending fills the gaping shortfall between local government revenue and expenditure.<sup>944</sup> Coupled with development projects funded by other provinces, this spending fuels rising incomes, especially in towns and cities, and creates jobs. This situation creates limited opportunities for Tibetans and attracts a substantial influx of additional Chinese migrants. No infrastructure project is accorded a higher priority or larger budget than the Qinghai-Tibet railroad,<sup>945</sup> scheduled for completion in 2007. In April 2004, an official involved in the project told Commission staff that Tibetans made up 6,000–8,000 of the 30,000 workers in Qinghai and the TAR. Last year the figure was 6,000 Tibetans in a total of nearly 38,000 workers. Reliable reports also suggest that Tibetans earn significantly less than Han workers; an unskilled Tibetan might earn about \$210 per month, but a Han worker of similar skills earns about \$700.<sup>946</sup>

Ragdi (Chinese: *Raidi*), former head of the TAR People's Congress and now a Vice-Chairman of the NPC Standing Committee, denied that Chinese influx into Tibetan areas is taking place or that Tibetan culture is threatened.<sup>947</sup> Other senior Tibetan officials acknowledge but play down the rise of migrant populations. Jampa Phuntsog, chairman of the TAR government, observed last year, "[T]he migrant population in the region is increasing with economic development and the construction of a railway into the region." But, he said, "bad weather and geographical conditions" will keep them from staying permanently, and "the ratio of ethnic groups in Tibet will not change dramatically."<sup>948</sup>

An official in Lhasa responded to a Commission staff comment about the apparent understatement of Han population in census data.<sup>949</sup> "Every day there are more than 200,000 [Han] mobile population in all of [the TAR]," he acknowledged. "Their number is highest from June through October." Some officials were willing to concede that the sustained presence of a substantial non-permanent population can convey significant impact on an indigenous

culture, even if the membership of the non-permanent group is in constant flux.

Tibetans speaking privately often express grave concern about the changing population mix. Many fear that the completion of the railroad could result in a transformation similar to that of Inner Mongolia, where rail links were built before the PRC was established,<sup>950</sup> and Han today outnumber Mongols by nearly five to one.<sup>951</sup> In the TAR, there are 15 times as many Tibetans as Han, according to the census. Outside the TAR there are only three autonomous Tibetan areas that have been penetrated by rail lines. In all, the Han population surpasses the Tibetan population by multiples.<sup>952</sup>

Ragdi, a member of the Party Central Committee and an honorary president of the newly created Association for the Protection and Development of Tibetan Culture,<sup>953</sup> endorsed the White Paper on autonomy and described the changes to the TAR and its “social look” as “earth-shaking.”<sup>954</sup> If Tibetan culture is to withstand the profound transformation, Tibetans will need a fully functional role in their future—from legislation and governance, down to grass-roots implementation. A USAID expert told the Commission round-table on Tibetan development:

To date, most Tibetan farmers and nomads have not participated fully in the assessment, planning, and implementation of development programs and the policies that affect their lives. 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.<sup>955</sup>

#### *Human Rights, Law, and Religion*

The Chinese government severely restricts the rights of Tibetans to exercise constitutionally guaranteed human rights, including the freedoms of speech, press, association, and religion. China’s constitution also bans actions deemed “detrimental to the security, honor and interests of the motherland.”<sup>956</sup> The state represses or punishes peaceful expression by Tibetans deemed to “endanger state security”<sup>957</sup> or to be “splittist,”<sup>958</sup> even if the expression is non-violent and poses no threat to the state.

An official in Beijing explained the Chinese view of the roles of “violence” and “consequence” in crime to Commission staff in September 2003. “There is not a distinct line between violent and non-violent,” he said. “A non-violent action can result in eventual violence. If someone advocates an idea that could later become a threat to the country, then the statement is a form of violence, and it is a crime to be punished . . . *Social consequence* determines whether it is a crime (emphasis added).” A provincial official told Commission staff, “All criminal acts must have four elements to be crime.” One of the elements, he said, is “consequence.” But he emphasized that in the case of Tibetans, “You have to understand the background. It is necessary to take Tibetan history into account. Tibetans combine religion and politics.” Another official defended the notion of crimes without consequence succinctly: “Some actions that are crimes have consequences. Some don’t.”<sup>959</sup>



The number of known Tibetan political prisoners serving sentences or awaiting disposition of their cases is almost unchanged from a year ago, according to a February 2004 report by Tibet Information Network (TIN).<sup>960</sup> According to TIN, a surge of Tibetan political imprisonment in Sichuan has offset declines elsewhere and stalled the overall decline in political prisoner numbers that began in 1997. Two-thirds of the 145 prisoners listed are monks or nuns. About 60 are serving sentences of ten years or longer. In April 2004, an official in Lhasa indicated to Commission staff that roughly 75 Tibetans are serving sentences in the TAR for endangering state security, or counterrevolution for convictions before 1997.<sup>961</sup> Most of them are incarcerated in Lhasa's TAR Prison, also known as Drapchi, and formerly as TAR Prison No. 1.

Authorities released Buddhist nun Phuntsog Nyidrol from TAR Prison on February 24, 2004, after she served more than 14 years of a sentence extended from nine to 17 years, which was then reduced for good behavior. After she joined other nuns in a peaceful demonstration in Lhasa in 1989, an intermediate people's court convicted her of counterrevolution. Her sentence extension was punishment for helping to smuggle a cassette recording of imprisoned nuns singing songs with politically tinged lyrics out of the prison. Fourteen nuns received sentence extensions for the cassette incident. She was the first detained and the last released. According to a report in August 2004, she is kept under constant police surveillance and is not permitted to leave her home without an escort.<sup>962</sup>

Commission staff discussed cases of current Tibetan political prisoners with provincial officials in the TAR, and in Sichuan, Qinghai, and Gansu provinces, during visits in 2003 and 2004. The level of known political imprisonment in Qinghai and Gansu provinces has dropped to pre-1989 levels.<sup>963</sup> Authorities in Qinghai, Gansu, and the TAR provided information about the general prison situation and commented on some individual cases. Staff discussions with officials in Sichuan province were less constructive.

Buddhist lama Tenzin Deleg (Chinese: *A'an Zhaxi*) is Sichuan's best-known Tibetan political prisoner. In December 2002, he was sentenced to death along with another Tibetan, Lobsang Dondrub (Chinese: *Luorang Dengzhu*), after a closed trial on charges of causing a series of explosions and inciting separatism. Authorities executed Lobsang Dondrub a few weeks later despite assurances to senior officials of the U.S. and other governments that the Supreme People's Court (SPC) would review his sentence. SPC officials in Beijing told Commission staff that the case was prosecuted in full accordance with Chinese law, and dismissed suggestions that evidence may have been inadequate and legal procedures were flawed. In Chengdu, authorities told Commission staff that China Central Television (CCTV) broadcast a show featuring Tenzin Deleg admitting guilt and comparing the prosecutors and judges to "his own mother" since they "helped him and taught him." In September 2003, Commission staff requested the assistance of the Sichuan authorities to obtain a copy of the alleged CCTV broadcast. The Commission has not received a tape or transcript. Authorities confirmed that Tenzin Deleg's two-year reprieve of execution would expire in January 2005.<sup>964</sup>

State restrictions on religion, including devotion to the Dalai Lama, interfere with the normal practice of religion for Tibetans. Suspicious authorities can impute subversive motives to Tibetans' dedication to their religion, as well to their enthusiasm for Tibetan culture, language, and self-identity. Provinces where political imprisonment rates are lower, however, also appear to have a somewhat less repressive environment for Tibetan culture. Conversely, provinces where political detention rates are higher are known to deal with Tibetans and their culture more harshly.

The unrestricted power that the Party and state enjoy to characterize peaceful expression as a threat to state security, when in fact no threat or consequence to the state is present, undermines Tibetan human rights. Modern states regularly update assessments of actions that could pose a *bona fide* threat to state security and adjust levels of tolerance and response accordingly. Prosecuting and punishing peaceful expression are inconsistent with international human rights practices and the rule of law. If Chinese police, prosecutors, and courts successfully implement China's constitutional articles and laws that protect human rights and the rule of law, then Tibetans and Chinese will both benefit.

## VII. North Korean Refugees in China

### FINDINGS

- The Chinese government forcibly repatriates North Korean refugees seeking employment and escape from starvation and repression.
- Because China does not classify North Korean migrants as refugees, the Chinese government denies access to this vulnerable population by the United Nations High Commissioner for Refugees (UNHCR).
- North Korean refugees deported from China to the Democratic People's Republic of Korea (DPRK) face punishment ranging from detention in labor camps to long imprisonment to execution.
- Women are among the most vulnerable of the North Korean refugees in China, at risk of exploitation and abuse at the hands of human traffickers.

### *Introduction*

An estimated 50,000 to 100,000 North Korean refugees may currently live in northeastern China. Observers have noted that more precise figures cannot be obtained because China does not allow international aid agencies to work in the border region.<sup>965</sup> The Chinese government forbids the U.N. High Commissioner for Refugees (UNHCR) office from visiting areas thought to have relatively high North Korean populations to evaluate and identify genuine refugees among China's growing population of North Korean migrants. The government evidently fears that granting North Korean migrants refugee status would encourage an even greater flood of migrants across the border. Instead, authorities on China's side of the border routinely force North Koreans to return to the DPRK, where they face imprisonment, torture, and sometimes execution.

*Chinese Repression of North Koreans*

Although many North Koreans in China have fled political persecution and severe food shortages in the DPRK, Chinese officials classify them as “irregular migrants” or “economic migrants,” not as refugees. By refusing to grant North Koreans refugee status, Chinese authorities deny them the internationally recognized right to seek UNHCR assistance. In testimony before the U.S. House of Representatives Subcommittee on Asia and the Pacific, a U.S. analyst said China’s classification has no legal basis. He told the subcommittee, “There is no principle in refugee law that does what China purports to do, which is to declare an entire people as *prima facie* not refugees.” He called China’s treatment of North Koreans “evidence of prohibited discrimination on the basis of race and national origin.”<sup>966</sup>

As a state party to the 1951 Geneva Convention Relating to the Status of Refugees (1951 Convention) and the 1967 Protocol Related to the Status of Refugees,<sup>967</sup> the Chinese government is obligated to grant North Korean refugees the following:

- Protection from discrimination on the basis of race, religion, or nationality (Article 3).
- Freedom to choose a place or residence and to move freely within the territory (Article 26).
- Immunity from prosecution for illegal entry for those who came from a territory where their life or freedom was threatened (Article 31).
- Protection from expulsion from the country (Article 32).
- Protection from forcible return to a territory where life or freedom would be threatened (Article 33).

Despite these obligations, one witness told a Commission roundtable in April 2004 that, “North Koreans in China are extremely vulnerable to arbitrary arrest and deportation back to North Korea, where they endure sentences ranging from several months in labor training centers to long-term imprisonment to execution.” By arresting and deporting North Koreans, China is honoring a treaty obligation with the DPRK. However, these repatriations contravene China’s obligations as a signatory of the 1951 Convention. When a migrant is repatriated, DPRK authorities reserve the most severe penalties for those who are known to be Christian activists or who contact South Koreans about the possibility of reaching the South.

A report by the Committee on International Relations found that, “North Korean women and girls, particularly those who have fled into China, are at risk of being kidnapped, trafficked, and sexually exploited inside China.”<sup>968</sup> And one U.S. NGO representative told an April 2004 Commission roundtable that, “Over 50 percent of North Korean women [migrants] have been subjected to human trafficking, sold as wives to Chinese farmers, sold as sex slaves to brothels, and sexually exploited . . . These statistics are now believed to be much higher, because now it is not just Chinese that are selling North Korean women and young girls but even desperate North Koreans are selling their own citizens.”<sup>969</sup>

Chinese authorities have detained, arrested and imprisoned aid workers who attempt to assist North Korean refugees. In December 2003, the Rev. Choi Bong-il was sentenced to nine years of impris-

onment and Mr. Kim Hee-tae to seven. These sentences are likely the longest that Chinese courts have given to aid workers for helping North Koreans in China.<sup>970</sup> The International Relations Committee report found that the court proceedings did not comply with Chinese law or international standards.<sup>971</sup> In addition, Park Yong-chol, a North Korean, was arrested in January 2003 for trying to help other North Koreans leave China by boat. Mr. Park was sentenced to two years of imprisonment for human trafficking and is incarcerated in Weifang Prison in Shandong province. Upon release, he faces deportation to North Korea.<sup>972</sup> His co-defendant, Choi Yong-hun, a South Korean, was sentenced to five years of imprisonment for human trafficking. Choi is also jailed at Weifang Prison.<sup>973</sup> South Korean photojournalist Jae Hyun Seok was also detained with them and the court gave him a two-year sentence. Jae was released in March 2004 and deported to South Korea, but Chinese officials have not dropped the charges against him.<sup>974</sup>

### **VIII. Developments During 2004 in Hong Kong**

The United States continues to have important interests in Hong Kong, principally in the areas of trade, investment, counterterrorism, law enforcement cooperation, and human rights. The U.S.-Hong Kong Policy Act of 1992 structures U.S. relations with the Hong Kong Special Administrative Region (HKSAR).<sup>975</sup> Americans broadly support the principles of the Sino-U.K. Joint Declaration and the Basic Law,<sup>976</sup> and had high hopes that the central government in Beijing would take steps to give Hong Kong the “high degree of autonomy” promised in the latter. The United States and China both have an interest in the success of the “one country, two systems” formula articulated in the Joint Declaration and Basic Law.<sup>977</sup> In addition, the United States has long supported a stable, autonomous Hong Kong with an open society, open markets, and a strong rule of law. In particular, the U.S. government has supported the provisions of the Basic Law that provide for universal suffrage for the people of Hong Kong.<sup>978</sup>

In light of these U.S. interests and policy concerns, developments in Hong Kong over the past 12 months have been troubling. Policies announced by the central government and the Hong Kong SAR government’s own priorities seem designed to move Hong Kong away from the promised “high degree of autonomy” and to delay developing the democratic institutions that most Hong Kong people support. The Hong Kong SAR government’s October 2003 withdrawal of proposed legislation to implement Article 23 of the Basic Law was an important positive step, but other developments during the past year have diminished U.S. hopes that Hong Kong’s leaders soon would be elected by universal suffrage. On April 6, 2004, the National People’s Congress Standing Committee (NPCSC) interpreted the Annexes of the Basic Law to give itself overarching power to decide whether or not there is a need to amend, and how to amend, procedures for selecting the Hong Kong chief executive and forming the Hong Kong Legislative Council.<sup>979</sup> On April 26, 2004, the NPCSC exercised this power and issued a decision dictating that the people of Hong Kong are prohibited from electing either the chief executive in 2007 or the members of the Legislative Council in 2008 through universal suffrage, and

mandated that the one-to-one ratio of legislators directly elected by geographical constituencies to those elected by professional and business groups shall not change in the 2008 election. The decision added encouragingly that “the final goal will surely be reached . . . that the chief executive will be elected through universal suffrage . . .”<sup>980</sup> However, these recent actions by the central government setting limits on constitutional development in Hong Kong are inconsistent with the “high degree of autonomy” promised by the central authorities in the Basic Law and detailed in the Annexes.

A series of incidents in 2004 suggest that some political forces in mainland China and Hong Kong wish to intimidate democracy advocates. In mid-spring, PLA Navy vessels sailed into Hong Kong’s main harbor; many democracy activists saw this show of military force as a Chinese government warning about excessive zeal for democracy.<sup>981</sup> In May, several radio talk show hosts whose programs favored democratic development resigned suddenly, complaining of threats against them and their families. And in June, arsonists struck at the office of outspoken pro-democracy legislator Emily Lau.<sup>982</sup> Police said tins of gas and alcohol were used in the blaze and a hate message saying, “all traitors must die” was scrawled on an outside wall. Although the Hong Kong police warned that resorting to intimidation or damaging property would be prosecuted fully,<sup>983</sup> the attack unsettled democracy supporters in Hong Kong.

Despite this uncertain environment, however, many in Hong Kong continue their advocacy of democracy. A poll taken in January by a group of university researchers found that nearly 80 percent of the Hong Kong populace supports direct elections.<sup>984</sup> In January 2004, about 100,000 people marched to demand universal suffrage and direct election of the chief executive in 2007 and the Legislative Council in 2008, conveying the clear message that most people in Hong Kong want universal suffrage and a democratic political system.<sup>985</sup> On July 1, 2004, citizens staged another demonstration in Hong Kong, taking to the streets to demand greater democracy, despite the Chinese government having ruled out direct elections for the territory’s next chief executive.<sup>986</sup> Organizers of the march estimated the crowd at 530,000, while the Hong Kong police estimates put the attendance figure at about 200,000.<sup>987</sup>

In September 2004, a record 1.7 million Hong Kong voters went to the polls to elect 30 of the 60 members of the Legislative Council directly for the first time. Pro-democracy reformers won 18 of the directly elected seats and attracted enough support among deputies representing professional groups that they now control some 25 seats in the legislature. Candidates favoring PRC government policies won 12 of the directly elected seats and now control a total of 34 seats in the body. An independent holds one seat. Democrats said that the results demonstrated that Hong Kong people want democracy, but their opponents argued that the people proved at the polls that they value stability and harmony first. More broadly, as a political matter, the Hong Kong SAR government has not made the case to the central government that Hong Kong would thrive with a more democratic political system. According to one Hong Kong expert, “The government of Hong Kong isn’t presenting a more reasonable view of democracy and why people want it. The

consequence is that the Chinese Government is still hung up on a very suspicious view of democracy.”<sup>988</sup>

Chinese government officials have attacked some Hong Kong democracy advocates on the grounds that they are not “patriotic.”<sup>989</sup> For example, after longtime democracy advocate and opposition legislator Martin Lee, former leader of the Democratic Party of Hong Kong, traveled to the United States to testify before the Senate Foreign Relations Committee, an angry Chinese government statement labeled him a traitor.<sup>990</sup> The same statement admonished the U.S. government for interfering in internal Chinese affairs. One senior PRC official quoted the late Deng Xiaoping as saying that “a patriot was one who respected his own race,” and reminded Hong Kong citizens that, “We need to respect and love our race, love our country, and love Hong Kong.”<sup>991</sup>

The Commission supports the people of Hong Kong and their continued efforts to preserve their autonomy and the freedoms that accompany it. The United States strongly supports the development of democracy in Hong Kong through electoral reform and universal suffrage. These reforms are essential to Hong Kong’s continuing prosperity and stability within the “one country, two systems” framework.

## IX. Appendix: Commission Activities in 2003 and 2004

### Hearings

- June 3, 2004      15 Years After Tiananmen: Is Democracy in  
China's Future?  
Randall Schriver, Deputy Assistant Secretary of State for  
East Asian and Pacific Affairs, Department of State  
Wang Youcai, Former Student Leader and founder of the  
China Democracy Party  
Lu Jinghua, Former Worker's Federation Leader  
Andrew J. Nathan, Professor and Chair of the Department  
of Political Science, Columbia University  
Sharon Hom, Executive Director, Human Rights in China,  
and Professor of Law Emeritus, City University of New  
York School of Law
- September 23, 2004      Hong Kong After the Elections: The Future  
of One Country, Two Systems  
Randall Schriver, Deputy Assistant Secretary of State for  
East Asian and Pacific Affairs, Department of State  
Michael Davis, Professor, Notre Dame Law School  
Veron Hung, Associate, China Program, Carnegie Endow-  
ment for International Peace  
William H. Overholt, Asia Policy Chair, Center for Asia  
and Pacific Policy, RAND Corporation

### Roundtables

- October 20, 2003      China's Mounting HIV/AIDS Crisis: How  
Should the United States Respond?  
Amarmath Bhat, Director, Office of Asia and the Pacific,  
Office of Global Health Affairs, U.S. Department of Health  
and Human Services  
Wan Yanhai, Director, Beijing Aizhi Education Institute,  
and World Fellow, Yale University  
Kevin Robert Frost, Vice President, Clinical Research and  
Prevention Programs, American Foundation for AIDS Re-  
search  
Philip Nieburg, Senior Associate, HIV/AIDS Task Force,  
Center for Strategic & International Studies
- October 27, 2003      After the Detention and Death of Sun Zhigang:  
Prisons, Detention, and Torture in China  
James Dulles Seymour, Senior Research Scholar, East  
Asian Institute, Columbia University  
Murray Scot Tanner, Senior Political Scientist, RAND Cor-  
poration
- March 19, 2004      Development Projects in Tibetan Areas of  
China: Articulating Clear Goals and Achiev-  
ing Sustainable Results  
Daniel Miller, Agricultural Officer, U.S. Agency for Inter-  
national Development  
Melvyn Goldstein, John Reynold Harkness Professor of  
Anthropology, Case Western Reserve University  
Arlene M. Samen, Founder and Executive Director, One  
H.E.A.R.T., and Nurse Practitioner, Maternal Fetal Medi-  
cine Division, School of Medicine, University of Utah
- March 26, 2004      China and U.S. Agriculture: Sanitary and  
Phytosanitary Standards, A Continuing Barrier  
to Trade?  
Peter Fernandez, Associate Administrator, Animal and  
Plant Health Inspection Service, U.S. Department of Agri-  
culture

- Merlyn Carlson, Director, Nebraska Department of Agriculture  
Paul Dickerson, Vice President, Overseas Operations, U.S. Wheat Associates
- April 2, 2004 **Influencing China's WTO Compliance and Commercial Legal Reform: Beyond Monitoring**  
Henry Levine, Deputy Assistant Secretary for Asia Pacific Policy, U.S. Department of Commerce  
Linda Wells, Chief Counsel for Commercial Law Development, U.S. Department of Commerce  
Leslie Griffin, Director, Asian Affairs, U.S. Chamber of Commerce
- April 19, 2004 **The Plight of North Korean Migrants in China: A Current Assessment**  
Joel Charny, Vice President for Policy, Refugees International  
Suzanne Scholte, President, Defense Forum Foundation  
Kim Sang Hun, Activist on Behalf of North Korean Refugees
- May 17, 2004 **Practicing Islam in Today's China: Differing Realities for the Uighurs and the Hui**  
Jonathan Lipman, Professor of History, Mount Holyoke College  
Gardner Bovingdon, Assistant Professor of Central Eurasian Studies, Indiana University at Bloomington  
Kahar Barat, Lecturer, Department of Near Eastern Languages and Civilizations, Yale University
- June 21, 2004 **Property Seizure in China: Politics, Law, and Protest**  
Sara (Meg) Davis, Researcher, Asia Division, Human Rights Watch  
Jacques deLisle, Professor of Law, University of Pennsylvania Law School  
Roy Prosterman, President, Rural Development Institute
- July 12, 2004 **Access to Justice in China**  
Kevin O'Brien, Professor of Political Science, University of California, Berkeley  
Benjamin Liebman, Associate Professor of Law and Director of the Center for Chinese Legal Studies, Columbia Law School
- September 17, 2004 **Catholics and Civil Society in China**  
Janet Carroll M.M., Program Associate, U.S. Catholic China Bureau  
Richard Madsen, Professor of Sociology, University of California at San Diego

### **Web Resources**

The Commission maintains a Web site at [www.cecc.gov](http://www.cecc.gov), which features announcements of upcoming events, topical news items on issues within the Commission's mandate, transcripts of hearings and roundtables, and basic source materials on human rights and the rule of law.

In addition, the Commission launched a new feature in June 2004: the CECC Virtual Academy ([www.cecc.gov/virtualAcad/index.phpd](http://www.cecc.gov/virtualAcad/index.phpd)). The Virtual Academy provides users with more convenient access to a wide array of news, useful Web links, and information about China prepared by Commission staff and other experts. Organized by topic area, the Virtual Academy currently has information on freedom of expression; commercial rule of law;



criminal justice; labor rights; freedom of religion; China's Uighur minority; and Tibet. The Virtual Academy also provides timely summaries of stories from English and Chinese-language news media on important developments in human rights and rule of law, updated throughout the day. For those interested in learning more about China, the Virtual Academy includes extensive information on China's history, culture, and government. The Commission hopes over time to attract original scholarly writing from both U.S. and Chinese sources about issues relating to China for the Virtual Academy.

## X. Endnotes

<sup>†</sup>Voted to approve: Representatives Leach, Dreier, Wolf, Pitts, Levin, Kaptur, Brown, and Wu; Senators Hagel, Thomas, Roberts, Smith, Baucus, Levin, Feinstein, and Dorgan; Deputy Secretary Law, Undersecretaries Dobriansky and Aldonas, and Assistant Secretary Kelly.

Voted not to approve: Senator Brownback.

<sup>‡</sup>For sources cited more than once within a lettered subsection, or, in the case of Sections II, VI, VII, and VIII, within a numbered section, full citation format is used in the first citation, and an abbreviated format is used in subsequent citations. Readers who encounter a citation in abbreviated format may always find a citation in full form within that lettered subsection or, for the sections indicated above, numbered section.

<sup>1</sup>“Corrupt Officials’ Political Mentality Viewed From Their Confessions and Proposal,” People’s Daily Online, 5 November 03 (FBIS, 5 November 03).

<sup>2</sup>See, e.g., Ren Hui-wen, “New Features of Corruption and New Anti-Corruption Moves,” Hsin Pao, 3 October 03 (FBIS, 17 November 03).

<sup>3</sup>Kang Weiping, “Top Banker Sentenced to 12 Years in Prison,” Finance [Caijing], 26 December 03 (FBIS, 5 January 04). See also Han Qiao, “Judicial Cadres Protest Against Light Punishment of Wang Xuebing,” Cheng Ming, 1 January 04 (FBIS, 1 January 04). Wang Xuebing had been general manager of the New York branch of the Bank of China from 1988 to 1993. The Treasury Department’s Office of the Controller of the Currency found that during this time, serious misconduct had occurred in the branch, for which it assessed a fine of \$20 million.

<sup>4</sup>“Public Trial of Mai Chongkai, Former President of the High People’s Court of Guangdong Province, Suspected of Taking Bribes,” Xinhua, 19 December 03 (FBIS, 19 December 03). Mai was ultimately convicted and sentenced to 15 years for taking more than one million yuan in return for favoring donors in his judicial work. “Former Provincial Court President Sentenced to 15 Years in Prison for Bribery,” Xinhua, 24 December 03 (FBIS, 24 December 03).

<sup>5</sup>“PRC Court Sentences Former Official to Death with Reprieve for Taking Bribes,” Xinhua, 19 November 03 (FBIS, 19 November 03). See also Guo Nei, “Further on Ex-Vice-Governor of Anhui Province Sentenced To Death,” China Daily, 29 December 03 (FBIS, 30 December 03).

<sup>6</sup>“In 2003, China Strictly Administers its Officials, Punishing One Ranking Official at Provincial-Ministerial Level Every Month,” People’s Daily, 29 December 03 (FBIS, 2 February 04).

<sup>7</sup>“Campaign on Corruption Focus of Sessions,” China Daily, 12 March 04, <www.chinadaily.com.cn>. An analysis of a survey done by the China Social Research Institute [Zhongguo shehui diaochasuo] on the eve of the winter 2004 meetings found that the top three concerns of respondents in 10 top cities were: jobs, social security, and corruption, in that order. The percentage wanting stricter punishment of corruption amounted to 94.7 percent. Yan Xiaohong, “SSIC Opinion Research Shows 96.2 Percent of People Are Focusing on the ‘Two Meetings,’” The “Two Meetings’ Affect Public Sentiment” [SSIC minyi diaocha biaoming 96.2% de gongzhong guanzhu ‘lianghui,’ ‘lianghui’ qiandong minxin], China Manufacturing Economic News Report [Zhongguo changjing xinwenbao], 05 March 04. See also Mark Magnier, “Chinese Seize Upon a Chance to Sound Off,” Los Angeles Times, 4 March 04, <www.latimes.com>.

<sup>8</sup>Transparency International, 2004 Global Corruption Report, 25 March 04, 177.

<sup>9</sup>Wang Yukai, “Further on How Provincial CPC Committee Secretaries should be Supervised: Should Supervision be Conducted Through Systems or Self-Restriction?” News Weekly [Xinwen zhoukan], 15 September 03 (FBIS, 27 October 03).

<sup>10</sup>“2003 Work Report of Auditor General Li Jinhua,” [Li jinhua shentao zhengzhuo 2003 niandu shentao gongzuo baogao (chuan wen)], Xinhua, 23 June 04, <www.xinhuanet.com>.

<sup>11</sup>“Top Procurator Focuses on Job-Related Crimes,” Xinhua, 10 March 04, <www.xinhuanet.com>; Supreme People’s Procuratorate Work Report, 19 March 04.

<sup>12</sup>SPP Work Report, March 2004.

<sup>13</sup>Ibid.

<sup>14</sup>“Highlights: PRC Legal, Judicial Developments,” Foreign Broadcast Information Service, 26 April 04 (FBIS, 4 May 04).

<sup>15</sup>Transparency International’s Global Corruption Report 2004 notes that one response of the Chinese government to the Olympic challenge was the passage of the PRC Government Procurement Law, enacted 1 January 03.

<sup>16</sup>“China Uncovers Olympic Corruption,” BBC News, 24 June 04, <www.news.bbc.co.uk/>.

<sup>17</sup>“China Sports Officials Misuse 2008 Olympics Funds—Report,” Dow Jones Newswires, 24 June 04, <www.djnewswires.com>. Much of the auditing work done in China today is hampered by an inherent lack of independent authority. For example, Article 109 of the PRC Constitution states that “[l]ocal auditing bodies at different levels independently exercise their power to supervise through auditing in accordance with law” but adds that they “are responsible to the people’s government at the corresponding level . . .” Interestingly, the Beijing Municipal Audit Bureau has recently announced its plan to audit nine entities involved in construction for the Olympics, not as a result of the National Audit’s disclosures, but as part of a “national accountability campaign.” David Fang, “PRC Government Agencies with Access to Beijing Olympics Funds To Undergo Audits,” South China Morning Post, 07 July 04, <www.scmp.com>. Again, these audits will not reach the Beijing Olympics Organizing Committee.

<sup>18</sup>See *infra*, Fighting Corruption in a One-Party State: Formal Institutions and Political Controls.

<sup>19</sup>PRC Constitution, art. 91. See also the PRC Audit Law, enacted 31 August 94, and Temporary Measures for Inspecting the Audit of the Circumstances of the Implementation of the Central Government Budget [Zhongyang yusuan zhixing qingkuang jiandu shenji zaxing banfa], issued 19 July 95.

<sup>20</sup>Li Jinhua, “Promoting Auditing Work with the Spirit of Seeking the Truth and Being Pragmatic,” Seeking Truth [Qushi], 01 May 04 (FBIS, 3 June 04). PRC Constitution, arts. 91 and 109; PRC Audit Law; and Temporary Measures for Audit and Supervision of the Implementa-

tion of the Central Government Budget. The 1982 Constitution provided for the establishment of auditing bodies at the central and local levels, and auditing offices have existed since 1983. See *infra*, Fighting Corruption in a One-Party State: Formal Institutions and Political Controls for further discussion of the audit system.

<sup>21</sup>Zhong Xuebing, "National Audit Administration Plans for Reform to Publish Audit Reports on All Projects in the Future—Two Premiers Both Lay Stress on Audit Work; They Never Delete or Change Any Parts of Audit Reports," China Youth Daily [Zhongguo qingnian bao], 06 July 04 (FBIS, 07 July 04). Not long after this report, however, an unnamed source in the Audit Office seemed to draw back from the promise to publish by noting that the Office is part of the government, and therefore less arms-length than similar reviews in the United States. Jane Cai, "State Auditor's Probes to Remain 'Family Business,'" South China Morning Post, 08 July 04, <www.scmp.gov>.

<sup>22</sup>"China to Audit More State-Funded Institutions to Curb Corruption," Xinhua, 06 July 04 (FBIS, 07 July 04).

<sup>23</sup>Joseph Kahn, "Exposé of Peasants' Plight Is Suppressed by China," New York Times, 09 July 04, <www.nytimes.com>.

<sup>24</sup>The Tangshan case has been a topic of frequent bulletins from Human Rights in China. See, e.g., Human Rights in China Press Release, "Journalist Pursued for Aiding Peasants," 12 July 04, and "Tangshan Petitioners Persecuted," 2 July 04.

<sup>25</sup>Zhou Hailiang, "Do the People's Disasters Become Money Trees for Local Governments?" [Baixing huonan chengwei difang zhengfu yaoqianshu?], People's Daily [Renmin ribao], 2 July 04, <http://zg.people.com.cn/>.

<sup>26</sup>Ibid.

<sup>27</sup>Liu Weifeng, "7 Provincial Officials May Face Trial for Alleged Educational Fund Abuse," China Daily, 7 July 04 (FBIS 7 July 04).

<sup>28</sup>Zhang Liwei, "The Collapse of Zhou Zhengyi's 'Shanghai Empire'" [Zhou zhengyi 'shanghai wangguo' bengta], China Business Post [Caijing shibao], 7 June 04, <www.caijingshibao.com.cn>.

<sup>29</sup>Ling Huawei, "The Rise and Fall of Zhou Zhengyi," [Zhou zhengyi xing shuai], Finance [Caijing], 20 Jun 03, <www.caijing.com.cn>.

<sup>30</sup>Human Rights in China Press Release, "Lawsuit Alleges Corruption in Shanghai," 30 May 03. Their suit was eventually dismissed, but it may have helped bring Zhou Zhengyi's legal improprieties to the attention of the authorities.

<sup>31</sup>Commission Staff Interview.

<sup>32</sup>Some details about the court's judgment against Zheng are included in Human Rights in China Press Release, "HRIC's Statement on the Conviction of Zheng Enchong," 5 November 03. Although Zheng had copied the information in the fax from a Xinhua report, the procuracy charged him with "illegally obtaining state secrets" and transmitting them to foreigners. The procurator offered as proof the fact that the report was part of a Xinhua product called Selected Internal Briefing, and Zheng had himself described the information as such by writing on the fax: "Xinhua News Agency, Internal Draft." However, as noted in an opinion submitted to the court by the defense team, a regulation issued jointly by the Ministry of Public Security and the Bureau of State Secrets in 1995 provides for a clear distinction between matters relating to police work that are "internal" and those that qualify as state secrets. Regulation on the Specific Scope of Public Security Work in State Secrets and Secrets Classification [Gongan gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding], issued 20 February 95, art. 3.

<sup>33</sup>Regulation on the Specific Scope of Public Security Work in State Secrets and Secrets Classification, art. 6.

<sup>34</sup>Measures for Supervisory Organs' Work in Receiving Reports [Jiancha jiguan jubao gongzuo banfa], issued 28 March 03.

<sup>35</sup>Measures for Supervisory Organs' Work in Receiving Reports, art. 20 (3).

<sup>36</sup>Supervision scholar Li Yongzhong discussed the *shuanggui* system in an interview in "Two Summons: A Special Organizational Procedure and Investigative Tool" [Shuanggui: teshu de zuzhi cuoshi he diaocha shouduan], China News Net [Zhongguo xinwen wang], 19 October 03, <www.chinanews.com.cn>. See also the Notice issued by the General Office of the Central Disciplinary Inspection Commission on the Temporary Measures on the Method for Disciplinary Inspection Organs to Use the "Two Summons," [Zhongyang jiwei bangongting guanyu yinfa 'Guanyu jiwei jiguan shiyong 'lianggui' cuoshi de banfa (shixing)' de tongzhi], issued 20 January 00.

<sup>37</sup>Temporary Measures on the Method for Disciplinary Inspection Organs to Use the "Two Summons," art. 7.

<sup>38</sup>Chinese Communist Party's Inner-Party Supervision Regulations [Zhongguo gongchandang dangnei jiandu tiaoli (shixing)], issued 17 February 04, art. 34.

#### Notes to Section III(a)—Rights of Criminal Suspects and Defendants

<sup>39</sup>Josephine Ma, "Falun Gong Still Biggest Threat, Says Minister," South China Morning Post, 03 August 04 (FBIS, 3 August 04) (citing Central Party School article which identified "rapid increase in crime" as a major threat to social stability). See also Randall Peerenboom, "Out of the Frying Pan and into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China," 98 Northwest University Law Review 991, 1049 (2003). For examples of reports on rising crime rates in 2003, see Chow Chungyan, "Guangdong Blames Crime Surge on Migrants," South China Morning Post, 22 July 04 (FBIS, 22 July 04); Leu Siew Ying, "Extra Police for Crime-hit Guangzhou," South China Morning Post, 9 September 03 (FBIS, 9 September 03); "Official Crime Rate Still High in China," Xinhua, 22 December 03 (FBIS, 22 Dec 03); Chow Chungyan, "More Police Promised As Crime Rate Soars 57 percent in Shenzhen," South China Morning Post, 14 January 04 (FBIS, 14 January 04); Leu Siew Ying, "Guangzhou Police Rue Passive Role on Migrants," South China Morning Post, 8 October 04, <www.scmp.com>; Shi Jiangtao, "Rethink Police Vagrancy Powers,"

South China Morning Post, 13 January 04 (FBIS, 13 January 04); Josephine Ma, "Falun Gong Still Biggest Threat, Says Minister," South China Morning Post, 03 August 04 (FBIS, 3 August 04).

<sup>40</sup>See, e.g., Zhu Daqiang, "China Goes All Out to Safeguard Social Stability," Zhongguo Xinwen She, 24 December 03 (FBIS, 24 December 03)(noting that a recent execution had "demonstrated China's determination to intensify the 'Strike Hard' campaign"); "Chinese Courts to Go on 'Striking Hard' Serious Crimes," Xinhua, 10 March 04 (FBIS, 10 March 04)(claiming that "Chinese courts in 2004 will adhere to the principle of 'striking hard,"); and Zhang Qizhi and Shen Lutao, "At National Conference on Work of Comprehensive Management of Public Security, Luo Gan Stresses: Do an Earnest Job in Work of Investigating, Ascertaining, and Handling Contradictions and Disputes and Create a Harmonious and Stable Social Environment for Reform and Development," Xinhua, 12 June 04 (FBIS, 12 June 04)(citing Zhou Yongkang, Minister of Public Security, as urging departments to implement the "strike hard" principle).

<sup>41</sup>Susan Trevaske, "Courts on the Campaign Path in China: Criminal Court Work in the 'Yanda 2001' Anti-Crime Campaign," 42 Asian Survey 673-93 (September/October 2002); Craig S. Smith, "Chinese Fight Crime With Torture and Executions," New York Times, 9 September 01, <www.nytimes.com>.

<sup>42</sup>An August 2003 article in the People's Daily argues that that the leadership should transform "strike hard" from a periodic campaign into a continuously applicable general principle, suggesting that this change is intentional. Du Yonghao, "Strike Hard Should Embody the Spirit of Rule of Law" [Yanda geng ying tixian fazhi jingsheng], People's Daily [Renmin ribao], 25 August 03, <www.people.com.cn>. See also, Yu Bin, "New Arrangements for Public Security Prevention and Control," Outlook [Liaowang], 9 February 04 (FBIS, 18 February 04).

<sup>43</sup>For examples of references to localized or periodic crackdowns, see Zhang Changfeng, "Public Security Work Should Adhere to the Guiding Ideology of 'Waging an Active War,'" Security Studies [Gongan yanjiu], 10 December 2003 (FBIS, 9 October 03); Zheng Caixiong, "Guangdong Solves Thousands of Crimes," China Daily, 29 March 04, <www.chinadaily.com.cn>; "China Set to Crack Down on Muslim Northwest," Reuters, 24 September 03.

<sup>44</sup>Shi Jiangtao, "Legal Scholars Have Diverse Interpretations of Figures," South China Morning Post, 11 March 04 (FBIS, 11 March 04). According to Xinhua, Minister of Public Security Zhou Yongkang ordered police to stop using arrest quotas in July 2003. "Zhou Yongkang Tells Police to End Arrest Quotas, Shed Business Interests," Xinhua, 31 July 03 (FBIS, 31 July 03).

<sup>45</sup>According to public security officials in one major city, recent increases in the number of vagrants and beggars on the streets have led to public complaints that police are not doing their jobs effectively. Commission Staff Interview. The number of indigents increased following the repeal of a controversial form of administrative detention called custody and repatriation that police had often employed to detain such individuals. [See infra, Arbitrary Detention—Repeal of the Custody and Repatriation System]. In Beijing, 66 percent of respondents in an online survey expressed dissatisfaction with police, while only 2 percent approved of the work of judicial departments. "Poll Shows Overwhelming Numbers of Beijingers 'Dissatisfied' with Government," Agence France-Presse, 21 November 03 (FBIS, 21 November 03). Reactions to several notable cases illustrate the level of public frustration with law enforcement.

- In November 2003, five officials were sacked for negligence after police in Henan finally caught a serial killer who had kidnapped and tortured 17 high school students over the course of three years. Reports that police had ignored pleas from parents about their missing children for two years sparked public outrage, and more than 40,000 citizens reportedly gathered outside of the courthouse on the day of the alleged killer's trial. "Five Officials Punished for Negligence in Serial Murder Case," Xinhua, 29 November 03 (FBIS, 29 November 03); Irene Wang, "Trial of Suspected Serial Killer to Begin," South China Morning Post, 9 December 03, <www.scmp.com>; "Up to 50,000 Gather Outside Court for Trial of Chinese Serial Killer," Agence France-Presse, 9 December 03 (FBIS, 9 December 03).

- In late 2003, authorities reopened the case of a Harbin woman who was given a suspended sentence for "accidental traffic disturbance" after she hit and killed a farmer's wife. Witnesses reported that the woman became enraged after her BMW was damaged by the farmer's cart. The light sentence fueled a storm of public anger and rumors that the woman had an influential husband who had secured lenient treatment for her. Jim Yardley, "Chinese Go Online in Search of Justice Against Elite Class," New York Times, 16 January 04, <www.nytimes.com>. In March 2004, a local court upheld the sentence. Irene Wang, "'BMW Incident' Sentence Upheld," South China Morning Post, 29 March 04, <www.scmp.com>.

- In July 2004, more than 15,000 Qingdao residents reportedly surrounded a people's court to protest the lenient treatment of a provincial official's son in a murder case. Hai Feng, "More than 10,000 People Surround Qingdao City People's Court," Cheng Ming, 16 July 04 (FBIS, 11 August 04).

<sup>46</sup>In the fall of 2003, a Shenyang court commuted the death sentence of notorious mafia boss Liu Yong after finding that the confession of a key government witness had been coerced. In response to a flood of public outrage over the decision, the Supreme People's Court retried the case and reinstated the death sentence, which was carried out immediately. Legal scholars lamented that the case had "set reform of the criminal justice system back 10 years." John Pomfret, "Execution Reveals Party's Grip on China," Washington Post, 23 December 03, <www.washingtonpost.com>; Yan Xizao, "Investigation Vital To Rebuild Confidence," China Daily, 22 December 03, <www.chinadaily.com.cn>.

<sup>47</sup>Trevaske, "Courts on the Campaign Path in China," 673-93; Peerenboom, "Out of the Frypan and into the Fire," 1049.

<sup>48</sup>Trevaske, "Courts on the Campaign Path in China," 687-90. Chinese scholars who have studied past campaigns conclude that they have had little impact on crime rates. Craig S. Smith, "China's Efforts Against Crime Make No Dent," New York Times, 26 December 01, <www.nytimes.com>.

<sup>49</sup>For an interesting domestic discussion of the problems faced by public security and concerns about the deteriorating relationship between law enforcement agencies and the public, see Yu Bin, “New Arrangements for Public Security Prevention and Control.”

<sup>50</sup>Supreme People’s Court Work Report, 19 March 04.

<sup>51</sup>Supreme People’s Procuratorate Work Report, 19 March 04. According to the report, 18,515 “major” cases of corruption, embezzlement, and bribery were investigated in 2003. 9,720 administrative law enforcement and judicial personnel and 14,844 employees of state-owned enterprises were investigated for corruption. 1,408 state employees were investigated for abuses of power such as torture, illegal extended detention, and interfering in elections, and 7,160 state employees were investigated for dereliction of duty and abuse of power that resulted in safety related incidents.

<sup>52</sup>SPC Work Report, March 2004.

<sup>53</sup>“Serious Crimes in China in 2003 Are Down Compared to Last Year [2003 nian zhongguo yanzhong xingshi fazui anjian bi qiannian yousuo jianshao],” Xinhua, 23 February 04, <www.xinhuanet.com>; “Corruption, Bribery Cases Drop 2.2 Percent Over 2003,” People’s Daily [Renmin ribao], 8 January 04, <www.peopledaily.com.cn>.

<sup>54</sup>“Dismal Record of China’s Police Force Made Public,” Agence France-Presse, 12 June 04 (FBI, 12 June 04). The official blamed poor investigation work, rising crime rates, official corruption, and new restraints on police as factors.

<sup>55</sup>PRC Constitution, art. 35.

<sup>56</sup>Crimes of endangering state (or national) security are found in the PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, and 28 December 02, arts. 102–113. The most notable are Article 105, which prohibits organizing, plotting, or carrying out a scheme to subvert state power or overthrow the socialist system or inciting others to do the same, and Article 103, which prohibits organizing, plotting, or carrying out a scheme to split the state or undermine the unity of the country or inciting others to do the same.

<sup>57</sup>A recent article published by the Central Party School reportedly ranked Falun Gong, ethnic, and religious activities ahead of terrorism and the rapid increase in crime as threats to social stability. Josephine Ma, “Falun Gong Still Biggest Threat, Says Minister.”

<sup>58</sup>PRC Criminal Law. Articles 101–113 deal with “endangering state security.”

<sup>59</sup>Ibid., art. 105.

<sup>60</sup>Ibid., art. 103.

<sup>61</sup>Jilin Province, Changchun City Intermediate People’s Court, Criminal Judgment in the Case of Luo Yongzhong, 14 October 03 (on file with the Commission).

<sup>62</sup>PRC Criminal Law, art. 13.

<sup>63</sup>Wang Youcai, a founding member of the China Democracy Party, was serving a 12-year sentence for “endangering state security.” He was released on medical parole and flown to the United States in March 2004. Phuntsog Nyidron, one of the “singing nuns of Lhasa,” was serving a sentence for “counterrevolutionary propaganda and incitement.” She was released on medical parole and flown to the United States in February 2004. Liu Di, the “stainless steel mouse,” had been held in detention for more than one year in connection with a series of Internet essays she had written. In November 2003, prosecutors ordered her released on the grounds of insufficient evidence for prosecution.

<sup>64</sup>See *infra*, Arbitrary Detention: Disappearances, Security Sweeps, and House Arrests.

<sup>65</sup>Commission Staff Correspondence. For the estimate of one such analyst, see *After the Detention and Death of Sun Zhigang: Prisons and Detention in China*, Staff Roundtable of the Congressional-Executive Commission on China, 27 October 03, Testimony of James Dulles Seymour, Senior Research Scholar, East Asia Institute, Columbia University. Note that this estimate is highly qualified by a variety of unknowns and uncertainties.

<sup>66</sup>For the removal of the crime of counterrevolution from the PRC Criminal Code, see Lawyers Committee for Human Rights, *Wrongs and Rights: A Human Rights Analysis of China’s Revised Criminal Law*, December 1998, 2930, 41–45.

<sup>67</sup>Commission Staff Interview.

<sup>68</sup>Supreme People’s Court, Notice on “Regulations on Certain Concrete Practical Questions Related to Sentence Reduction and Parole,” [Zuigao renmin fayuan yinfa “Guanyu banli jianxing, jiajie anjian juti yingyong falü ruogan wenti de guiding” de tongzhi], issued 29 October 97. Under the 1997 Notice, sentence reduction and parole for all cases involving crimes of “endangering state security” are to be “strictly handled.” Although the notice superceded a 1991 SPC notice that required sentence reduction and parole for crimes of “counterrevolution” to be “strictly handled,” the SPC argues that because the crime of endangering state security is equivalent to the crime of counterrevolution, the new notice should continue to apply to individuals serving sentences for counterrevolution. Commission Staff Interviews.

<sup>69</sup>The corollary to this argument is that the SPC notice on “strictly handling” sentence reduction and parole for crimes of endangering state security should not be applied to prisoners convicted of a crime that no longer exists.

<sup>70</sup>Commission Staff Interviews.

<sup>71</sup>United Nations Commissioner for Human Rights, Fact Sheet #26, *The Working Group on Arbitrary Detention*, <www.unhcr.ch/html/menu6/2/fs26.htm#IV>. The Working Group’s mandate “extends to deprivation of freedom either before, during or after the trial (a term of imprisonment imposed following conviction), as well as deprivation of freedom in the absence of any kind of trial (administrative detention). The Group also regards as forms of detention measures of house arrest and rehabilitation through labor, when they are accompanied by serious restrictions on liberty of movement.”

<sup>72</sup>International Covenant on Civil and Political Rights, arts. 9(3) and 9(4).

<sup>73</sup>Philip P. Pan, “China Gives Prison Term To Dissident Based in U.S.,” *Washington Post*, 14 May 04, <www.washingtonpost.com>. For a discussion of Yang’s pre-trial detention, see Congressional-Executive Commission on China, 2003 Annual Report, October 2003, 17.

<sup>74</sup> Congressional-Executive Commission on China, Zhang Jianzhong Case Update, March 2004, <www.cecc.gov>; Congressional Executive Commission on China, Defense Lawyers Turned Defendants, Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China, 27 May 03.

<sup>75</sup> “Recently Released PRC Dissident Liu Di Told Not to Meet With Foreign Journalists,” Agence France-Presse, 1 December 03 (FBIS, 1 December 03); “Held for Over a Year, Procuratorate Rejects Public Security Bureau Position for Lack of Evidence,” World Journal [Shijie ribao], 7 November 03, <www.worldjournal.com>.

<sup>76</sup> Chinese official sources define “illegal extended detention” as the detention of criminal suspects and defendants by law enforcement agencies or courts beyond domestic statutory time limits for handling criminal cases.

<sup>77</sup> “China’s Public Prosecutors Crack Down on Illegal Prolonged Detention,” Xinhua, 22 July 03 (FBIS, 22 July 03); Zhu Daqiang “China Moves Against Extended Detention,” China News Agency [Zhongguo xinwen she], 3 August 03 (FBIS, 3 August 03).

<sup>78</sup> Supreme People’s Court, Supreme People’s Procuratorate, and Ministry of Public Security, Notice on Strictly Enforcing the Criminal Procedure Law and Rectifying Extended Detention in Practice [Zuigao renmin fayuan, zuigao renmin jianchayuan, gonganbu guanyu yange zhixing xingshi susongfa, qieshi jiufang chaoqi jiya de tongzhi], issued 11 November 03. Supreme People’s Court, Notice on Issues Related to Clearing Cases of Extended Detention [Zuigao renmin fayuan guanyu qingli chaoqi jiya anjian youguan wenti de tongzhi], issued 29 July 03. Authorities publicly expressed frustration with the persistence of the extended detention problem, which they blamed on lack of legal consciousness on the part of police, prosecutors, and judges. Cui Zhenping, “Two Yuan Jointly Answer Reporters Questions on the ‘Notice on Rectifying Extended Detention,’” [Liang yuan yibu jiu ‘jiufang chaoqi jiya tongzhi’ da jizhe wen], People’s Court Daily [Fayuan ribao], 12 November 03.

<sup>79</sup> Among other things, the Notice prohibits manipulating criminal provisions on “supplementary investigation” and withdrawals of prosecution or jurisdiction transfers to extend detention in “disguised form,” calls on law enforcement organs to make full use of provisions on bail and residential surveillance where time limits for detention have expired by investigation or adjudication is incomplete, and stresses that defendants must be released if a crime cannot be proven or a judgment cannot be reached within the legal time limits. Note, however, that investigators and courts may apply to the SPC or SPP for an “interpretation” of the Notice in complex or foreign-related cases or cases involving the crime of endangering state security.

<sup>80</sup> The man, a farmer from Guangxi, had initially been detained in 1974 on suspicion that he possessed an “enemy” leaflet. “Chinese Peasant Detained Without Charges for 28 Years,” Agence France-Presse, 26 June 03 (FBIS, 26 June 03), citing Southern Weekend [Nanfang zhounuo]. A public security investigation found 64 cases involving extended custody that exceeded three years. “All of the Extended Custody Cases in the Public Security System Rectified in 2003” [2003 nian gongan xitong suoyou chaoqi jiya anjian quanbu dedao jiuzheng], Xinhua, 20 January 04, <www.xinhua.org>.

<sup>81</sup> SPC Work Report, March 2004; SPP Work Report, March 2004. The SPP reported that it had handled 25,181 cases of extended detention. The SPC reported that it had handled 4,100 cases of extended detention involving 7,658 individuals. It is possible that there is some overlap between the cases handled by the SPC and the SPP. The SPC claimed that a few cases of extended detention remained unresolved for “legal reasons.” A January report in Xinhua suggested that there were still 91 outstanding cases. “Except for 91 Cases, All Cases of Extended Detention Have Been Cleared Up,” [Chu 91 jian anjian wai, quanguo suoyou chaoqi jiya anjian rui xingli wanbi], Xinhua, 1 January 04, <www.news.xinhuanet.com>.

<sup>82</sup> SPC Work Report, March 2004; SPP Work Report, March 2004.

<sup>83</sup> Commission Staff Interview.

<sup>84</sup> Commission Staff Interviews. See also “China Rounds Up Disgruntled Petitioners, Herds Them to Gym and Stadium,” Agence France-Presse, 9 March 04 (FBIS, 9 March 04); Human Rights in China Press Release, “Dissidents Detained and Beaten as NPC Opens,” 5 March 04; Josephine Ma, “Petitioners Rounded Up in Police Raids,” South China Morning Post, 11 March 04, <www.scmp.com>.

<sup>85</sup> Joe McDonald, “China Mobilizes to Silence Dissent,” Associated Press, 11 March 04; Ralph Jennings, “PRC Police Block National Complaint Office,” Kyodo World News Service, 10 March 04 (FBIS, 10 March 04).

<sup>86</sup> Matt Pottinger, “Petitioning Beijing,” Wall Street Journal, 10 September 04, A11; Human Rights in China Press Release, “Massive Crackdown on Petitioners in Beijing,” 8 September 04.

<sup>87</sup> For an overview of Jiang’s activities, see “SARS Whistleblower Urges Reassessment of Tiananmen Massacre,” South China Morning Post, 8 March 04, <www.scmp.com>. His letter urging an official reassessment of the verdict on the Tiananmen demonstrations is available at <http://journalism.berkeley.edu/projects/chinadn/en/archives/002276.html#more>. Jiang and his wife went missing on June 1. Chan Siusin, “Joint Appeal for Doctor’s Release,” South China Morning Post, 11 June 04, <www.scmp.com>. His wife was released on June 16 and Jiang was released in late July. According to Commission sources, Jiang was taken by public security to an undisclosed location for “discussions” regarding his June 4 activism.

<sup>88</sup> Ralph Jennings, “China Police Lodge Troublemakers at Resorts to Foil Protests,” Kyodo World Service, 11 March 04 (FBIS, 11 March 04); Human Rights in China Press Release, “Mass House Arrests Before June 4,” 28 May 04; Audra Ang, “Dissidents Detained as Tiananmen Anniversary Approaches,” South China Morning Post, 28 May 04; “Leading AIDS Activist and Tiananmen Dissident Roughed Up by Chinese Police,” Agence France-Presse, 2 June 04 (FBIS, 2 June 04). Some dissidents were instructed to leave Beijing or their home cities, prevented from moving freely, or otherwise harassed.

<sup>89</sup> Jonathan Hecht, “Reforming Re-education Through Labor,” October 2003 (draft manuscript on file with the Commission); Veron Mei-ying Hung, “Improving Human Rights in China: Should Re-Education Through Labor Be Abolished,” 41 Columbia Journal of Transnational Law

303 (2003). But see Peerenboom, "Out of the Frying Pan and into the Fire," 1010–1046 (note that Peerenboom disputes the basis for these contentions and argues that in many cases, RETL detainees would be worse off in the formal criminal justice system). Although re-education through labor subjects in theory have the legal right to request judicial review of their detention by a people's court under the PRC Administrative Litigation Law, such review rarely takes place in practice. Hung, "Improving Human Rights in China," 317–23.

<sup>90</sup> Hecht, "Reforming Re-education Through Labor."

<sup>91</sup> After the Detention and Death of Sun Zhigang, Written Statement of James D. Seymour, Senior Research Scholar, Weatherhead East Asian Institute, Columbia University; Hecht, "Reforming Re-education Through Labor"; Hung, "Improving Human Rights in China," 303; Peerenboom, "Out of the Frying Pan and into the Fire," 999.

<sup>92</sup> Hecht, "Reforming Re-education Through Labor." For an excellent study on the growing number of social protests in China, see Murray Scott Tanner, "China Rethinks Unrest," 27 *Washington Quarterly* 137 (2004).

<sup>93</sup> Commission Staff Interview.

<sup>94</sup> Philip Pan, "Easing of Penal System Part of Change in China," *Washington Post*, 18 January 04, <www.washingtonpost.com>. According to one government source cited by Pan, a subcommittee on reforming RETL suspended its work after the government's campaign against Falun Gong was launched in 1999.

<sup>95</sup> Hecht, "Reforming Re-education Through Labor."

<sup>96</sup> In the fall of 2003, six members of the Guangdong CPPCC Provincial Committee reportedly submitted a proposal questioning the legality of the RETL system and calling for it to be abolished in Guangdong. Guo Guosong, "Members of the CPPCC Guangdong Provincial Committee Point Out that the Country's Re-education Through Labor System Lacks Legal Basis," *Southern Weekend* [Nanfang zhoumo], 4 September 03 (FBIS, 8 September 03). According to one Commission source, legal scholars filed a petition with the NPC Standing Committee last year arguing that regulations on RETL should be repealed as unconstitutional. Reportedly, the NPC Standing Committee denied the petition and authorities barred the Chinese media from reporting on it. In another instance, the South China Morning Post reported that dissident Li Guotao was detained in September 2004, prior to the Party Central Committee meeting in Beijing, for organizing a petition drive calling for the abolition of RETL. Bill Savadove, "Petition Sees Dissident Put Under House Arrest," *South China Morning Post*, 14 September 04, <www.scmp.com>. For RETL reform discussions, see also "Several Problems in the Reform of Judicial Administration" [Sifa xingzheng gaige de ruogan falü wenti], *Legal Daily* [Fazhi ribao], 12 August 04, <www.legaldaily.com.cn>.

<sup>97</sup> See, e.g., "Husbands and Wives of Laojiao Detainees Can Enjoy the Pleasure of Being Fish in Water," [Laojiaosuo nei fuqi ke xiangyushuihuan], *Southern Metropolitan Daily* [Nanfang dushibao], 22 October 03, <www.nanfangdaily.com.cn>; Liang Jie, "Preliminary Results Achieved in Special Work for Re-education Through Labor" [Laojiao yu tese gongzuo chujian chengxiaoxiao], *Guangming Daily* [Guangming ribao], 17 November 03, <www.gmw.com.cn>; "Beijing Public Security Organs Hold the Country's First Public Question and Answer for a Re-Education through Labor Subject" [Beijing gonganju zai guonei shouci duini laojaoren juxing gongkai lingxun], *Xinhua*, 5 September 03, <www.news.xinhuanet.com>. In August 2003, the Ministry of Public Security issued regulations reforming the procedures for handling RETL and other administrative detention cases. Regulations on Procedures for Public Security Handling of Administrative Cases [Gongan jiguan banli xingzheng anjian chengxu guiding], issued 26 August 03, art. 26.

<sup>98</sup> "Standardizing the Re-Education Through Labor System: The NPC Drafts a New Law" [Guifan laoiaozhi: renda qicao xinfalü], *World Journal* [Shijie ribao], 9 March 04, <www.worldjournal.com>; "The Re-Education Through Labor System Is to Be Transformed in a Major Way" [Laojiao zhidu jiang zuo zhongda biange], *Southern Metropolitan Daily* [Nanfang dushibao], 8 March 04, <www.nanfangdaily.com.cn>.

<sup>99</sup> Pan, "Easing of Penal System Part of Change in China."

<sup>100</sup> According to both mainland Chinese and Hong Kong reports, the Internal and Judicial Affairs Committee of the NPC is considering a new "Law on Security Administration Punishments" to replace the 1987 Security Administration Punishment Regulations. "China is Mulling Over the Abolition of Re-education Through Labor," *Tai Yang Pao*, 29 July 04 (FBIS, 30 July 04); Li Yan, "Security Punishments Expected to Abolish Re-education Through Labor," [Zhian chufa youwan quxiaojiao], *Southern Metropolitan Daily* [Nanfang dushibao], 28 July 04, <www.nanfangdaily.com.cn>. The State Administration Punishment Regulations permit authorities to detain individuals for up to 15 days for a wide variety of minor public order offenses. PRC Security Administration Punishment Regulations [Zhian guanli chufa tiaoli], issued 5 September 86. Some violators may be subject to RETL under the regulations and local rules for repeat offenders.

<sup>101</sup> Enshrining RETL in a national statute, as opposed to an administrative regulation, would undermine the arguments that the domestic legal basis for RETL is flawed. At least one Western China scholar argues that calls for repeal are misguided. Peerenboom, "Out of the Frying Pan and into the Fire," 991. Others note that if the new law provides RETL detainees with rights to judicial review, legal representation, and other protections that are in theory afforded to criminal defendants, it would still be a significant positive step. Commission Staff Interview.

<sup>102</sup> CECC, 2003 Annual Report, Section III(a).

<sup>103</sup> Commission Staff Interview.

<sup>104</sup> Human Rights in China, *Forced Psychiatric Treatment Threatened for AIDS Activist Hu Jia*, 9 June 04; Chan Siusin, "Activist Fears Being Put in Mental Home," *South China Morning Post*, 11 June 04, <www.scmp.com>.

<sup>105</sup> See CECC, 2003 Annual Report, Sections III(e) and V(e), for a discussion of custody and repatriation and the reasons for its repeal.

<sup>106</sup> Approximately 80 percent of the aid centers are converted C&R centers, while 20 percent are newly constructed. In several large cities such as Shanghai and Chengdu, civil affairs departments have established a network of small feeder centers in the city center and larger facilities on the city outskirts. The feeder centers accept aid recipients and transfer them to the larger centers if they want to receive housing and aid there. Commission Staff Interviews.

<sup>107</sup> Pan Congwu, "Four Big Problems Vexing Aid Stations" [Si da nanti kunrao juzhuzhan], China Legal Publicity [Zhongguo pufa wang], 18 August 04, <www.legalinfo.gov.cn>. For increases in indigent populations, see also Li Xueju (Minister of Foreign Affairs), "New Social Relief System To Emphasize Voluntary Acceptance of Assistance, Put Equal Stress on Aid and Management," Seeking Truth [Qiushi], 1 April 04 (FBIS, 15 April 04); Pan Haixia, "Beggars Can't be Choosers of Shelters," China Daily, 12 January 04, <www.chinadaily.com.cn>; Josephine Ma, "Beijing Ponders How to Tackle Surge in Beggars," South China Morning Post, 9 October 03, <www.scmp.com>; Shi Jiangtao, "Rethink Police Vagrancy Powers." Some civil affairs officials complain that one of the biggest problems with the new aid system is that of repeat and ineligible visitors and acknowledge the growing number of indigents. Commission Staff Interviews. For a contrary view on the new aid measures, see American Federation of Labor and Congress of Industrial Organization, Section 301 Petition before the United States Trade Representative, 34.

<sup>108</sup> Li Xueju, "New Social Relief System To Emphasize Voluntary Acceptance of Assistance, Put Equal Stress on Aid and Management"; Leu Siew Ying, "Guangzhou Police Rue Passive Role on Migrants"; Shi Jiangtao, "Rethink Police Vagrancy Powers." According to officials in some Chinese cities, the begging problem has become so pervasive that the public is criticizing police and aid centers for failing to do their jobs. Commission Staff Interview; Pan Congwu, "Four Big Problems Vexing Aid Stations." Although some Chinese newspapers expressed concern about a backlash and the possibility that C&R would be re-instituted in a different form, Chinese scholars and officials expressed confidence that the old system of coercive repatriation would not be re-instated. Commission Staff Interviews.

<sup>109</sup> Public security officials in at least one major Chinese city told Commission staff that even unregistered migrant laborers are largely being left alone unless they commit crimes. Commission Staff Interview.

<sup>110</sup> PRC Criminal Law, arts. 247–248; PRC Criminal Procedure Law, enacted 1 July 79, amended 17 March 96, art. 43.

<sup>111</sup> According to Murray Scot Tanner, an American political scientist who tracks domestic reporting and debate on public security and in particular on the issue of torture, torture is a problem that "even many [Chinese] law enforcement officials concede is pervasive." After the Detention and Death of Sun Zhigang: Prisons and Detention in China, CECC Roundtable, Testimony and Written Statement of Murray Scot Tanner. One recent Procuratorial Daily article, while noting that only a "minority" of investigators participate in torture, nonetheless called it a "chronic disease" that elicited "serious negative reaction from the populace." Fu Kuanzhi, "The Three Factors That Must be Present to End the Extortion of Confessions Through Torture" [Jujue xingxun bigong xu jubei san ge yinsu], Procuratorial Daily [Jiancha ribao], 11 August 04, <www.jcrb.com.cn>.

<sup>112</sup> See, e.g., Cheng Honggen, "Former Deputy Director of a Sub-bureau Under the Hebei City Public Security Bureau Gets a 13-Year Jail Term on Charges of Torturing and Causing the Death of a Person," Xinhua, 16 May 04 (FBIS, 17 May 04); "A Wenzhou 'Criminal Sentenced to Death' Who Sat in Jail For Eight Years Wants State Compensation" [Wenzhou yi "sixingfan" chuzuo ba nian dajian tichu yao guojia peichang], Xinhua, 14 April 03, <www.xinhuanet.com>; "Chongqing Resident Obtains 130,000 in State Compensation for Wrongful Murder Judgment and Seven Years in Prison" [Chongqing yi shimin bei cuopan sharenzui fuxing qi nian huo guojia peichang shisanwan], Procuratorial Daily [Jiancha ribao], 10 November 03, <www.jcrb.com.cn>; Irene Wang, "Police Officers Jailed Over Torture Deaths," South China Morning Post, 17 December 03, <www.scmp.com> (citing a story in a Shenyang paper describing the death of two detainees); Chen Lei, "Dialing 110 Unexpectedly Invites Fatal Accident; Bengbu's Barbarous Patrolmen Publicly Beat to Death Man Making Police Report," China News Service, 29 August 03 (FBIS, 29 August 03); Chen Hong, "Police, Prosecutors Have Image Problem," China Daily, 22 July 04, <www.chinadaily.com.cn>.

<sup>113</sup> See, e.g., "Chinese Police Officer Gets Death for Killing, Secretly Burying Detainee," Agence France-Presse, 26 June 04 (FBIS, 26 June 04); Wang Chien-min, "Reflecting on Prisoner Abuse by US Forces, Beijing Will Strictly Investigate Savage Torture," Asia Weekly [Yazhou zhoukan], 30 May 04 (FBIS, 20 May 04); Chan Siu-sin, "Injured Man's Family Seeks Payout," South China Morning Post, 21 November 03, <www.scmp.com>; "Deceased Tibetan Monk Leaves Letter Detailing 'Torture' by Chinese Jailers," Agence France-Presse, 7 October 03 (FBIS, 7 October 03); Chi Shuo-ming, "Case Outside Disputed Case of British Espionage Involving Xinhua News Agency," Asia Weekly [Yazhou zhoukan], 30 May 04 (FBIS, 28 May 04); Amnesty International, Executed According to Law—The Death Penalty in China, 17 March 04; Irene Wang, "New Twist in Convicted Killers' Fight for Justice," South China Morning Post, 7 August 04, <www.scmp.com>. Falun Gong affiliates actively report on alleged cases of torture. See, e.g., "62 Cases of Falun Gong Practitioners Killed from Torture, Abuse Reported in April and May 2004," Falun Dafa Information Center, 9 June 04, <www.faluninfo.net>; "Death of 25 Falun Gong Practitioners Verified in March," Falun Dafa Information Center, 20 April 04, <www.faluninfo.net>; "30 Torture and Severe Abuse-Related Deaths of Falun Gong Practitioners Reported in February," Falun Dafa Information Center, 25 March 04, <www.faluninfo.net>; "64 Falun Gong Deaths from Torture in China Reported in Three Months," Falun Dafa Information Center, 12 February 04, <www.faluninfo.net >.

<sup>114</sup> Ibid. For an alleged castration case, see Chan Siu-sin, "Injured Man's Family Seeks Payout," South China Morning Post, 21 November 03, <www.scmp.com>.



<sup>115</sup>“Violations of Law by Administrative Law Enforcement Officials Result in More Than 650 Million Yuan in Losses and 460 Deaths” [Xingzheng zhifa renyuan fazui zaocheng sunshi 6.5 yi duo yuan siwang 460 ren], Xinhua, 10 October 03, <www.xinhuanet.com>.

<sup>116</sup>Chan Siusin, “Authorities Responsible for 4,000 Cases of Abuse,” South China Morning Post, 27 May 04, <www.scmp.com>.

<sup>117</sup>Commission Staff Interview.

<sup>118</sup>See *infra*, Reform Initiatives and Public Discussion of the Criminal Justice System.

<sup>119</sup>Chen Honggen, “Former Deputy Director of a Sub-bureau”; “Guangdong Baishi Police Substation Ordered to Pay 56,000 Yuan in Compensation for Extorting a Confession from Art Student Through Torture” [Guangdong baishi paichusuo xingxun bigong yixiao xuesheng bei panpei 5.6 wan yuan], Information Times [Xinxi shibao], 15 November 03, reprinted in <www.sohu.com>.

<sup>120</sup>Murray Scot Tanner, “Shackling the Coercive State: China’s Ambivalent Struggle Against Torture,” Problems of Post-Communism XV, No. 5 (September/October 2000), 13–30. After the Detention and Death of Sun Zhigang, Testimony and Written Statement of Murray Scot Tanner; Commission Staff Interview.

<sup>121</sup>Regulations on Procedures for Public Security Handling of Administrative Cases [Gongan jiguan banli xingzheng anjian chengxu guiding], issued 26 August 03, art. 26. Local governments also announced new measures against torture.

<sup>122</sup>Article 26, clause 2 of the new regulation states, “It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit, or other unlawful means. Evidence obtained through unlawful measures may not be taken as the basis for determining a case.”

<sup>123</sup>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 susongfa ruogan wenti de jieshi], issued 29 June 98.

<sup>124</sup>Provisions on Application of Continuing Interrogations by Public Security Organs [Gongan jiguan shiyong jixu panwen guiding], issued 12 July 04. For a description of the new regulations, see Xin Wen, “The Ministry of Public Security Promulgates Provision on the Application of Continuing Interrogations by Public Security Agencies,” Ministry of Public Security, 3 August 04 (FBIS, 11 August 04); and Zhang Weina, “If a Person Being Interrogated Commits Suicide the People’s Police Officer Directly Responsible Must Be Dismissed” [Bei panwenren zisha yao kaichu zhijie zeren minjing], China Court Net [Zhongguo fayuan wang], 4 August 04, <www.chinacourt.org.cn>.

<sup>125</sup>Provisions on Application of Continuing Interrogations by Public Security Organs, art. 39.

<sup>126</sup>See, e.g., “Zhejiang: Public Security Officers Who Extort Confessions Through Torture in Handling Cases to be Dismissed Without Exception” [Zhejiang: Gongan mingjing zai ban’an guocheng zhong xingxun bigongzhe yi lu kaichu], Xinhua, 22 September 03, <www.xinhuanet.com>.

<sup>127</sup>Yan Yang, “Why It Is So Difficult to Convict Someone for Extorting Confessions Through Torture,” [Xingxun bigong weihe nanyi xingzui], Legal Daily [Fazhi ribao], 23 October 03, <http://news.china.com>. A similar discussion based on comments by Chinese judges and scholars may be found in Wang Chien-min, “Reflecting on Prisoner Abuse by US Forces.” One Chinese scholar quoted in this article refers to the “stinking bean curd” theory of torture that is prevalent in Chinese judicial circles. This type of bean curd “stinks but tastes good when you eat it.” Law enforcement officials may view torture as unseemly, but they find it useful and like the results.

<sup>128</sup>Yan Yang, “Why It Is So Difficult to Convict Someone for Extorting Confessions Through Torture.”

<sup>129</sup>Fu Kuanzhi, “The Three Factors That Must be Present to End the Extortion of Confessions Through Torture.”

<sup>130</sup>After the Detention and Death of Sun Zhigang, Testimony and Written Statement of Murray Scot Tanner.

<sup>131</sup>“China Lets UN Rights Expert Visit Detention Centers,” Wall Street Journal, 31 March 04, <www.wsj.com>.

<sup>132</sup>“UN Rights Expert’s Visit Postponed,” Xinhua, 16 June 04 (FBIS, 16 June 04).

<sup>133</sup>“Shanghai Seeks to Curb Illegal Organ Trade,” South China Morning Post, 17 January 2004, <www.scmp.com>.

<sup>134</sup>“Gansu Prisoners on Death Row Forced to ‘Donate’ Organs,” Tai Yang Pao, 24 September 03 (FBIS, 24 September 03) (citing the Lanzhou Morning News). The Dunhuang case is significant as a judicial recognition of rules relating to organ harvesting. In 1984, the Chinese government issued the “Temporary Rules Concerning the Utilization of Corpses of Organs from the Corpses of Executed Prisoners.” These regulations provided for the use of organs of executed criminals if no one claims the corpse, the family consents to the use of the corpse, or the executed criminal voluntarily donates his organs, but stipulated that, “Where the executed criminal has volunteered to have his corpse provided to a medical treatment unit for use, there should be a formal written certificate or record signed by the criminal and deposited at the people’s court where it can be inspected.” Temporary Rules Concerning the Utilization of Corpses of Organs from the Corpses of Executed Prisoners [Guanyu liyong sixing zuifan shiti huo shiti qiguan de zanxing guiding], issued 9 October 84, clause 3.

<sup>135</sup>“Law Urged on Organ Transplant,” China Net [Zhongguo wang], 15 November 03, <http://china.com.cn>; “Shanghai Seeks to Curb Illegal Organ Trade,” South China Morning Post, 17 January 04, <www.scmp.com>.

<sup>136</sup>“Shenzhen: First Domestic Regulations Passed on the Donation and Transplantation of Human Organs” [Shenzhen: Guonei shoubu renti zigan sunxian yizhi tiaoli huo tongguo], People’s Daily [Renmin ribao], 22 September 03, <www.people.com.cn>.

<sup>137</sup>PRC Criminal Procedure Law, art. 33.

<sup>138</sup>PRC Criminal Procedure Law, art. 34; Regulations on Legal Aid [Falü yuanzhu tiaoli], issued 16 July 03, art. 12.

<sup>139</sup> PRC Criminal Procedure Law, art. 34; Regulations on Legal Aid, chapter 2.

<sup>140</sup> In 2002, 180,000 out of a total 600,000 applicants for all types of cases were granted legal aid. Yan Ting, "New Regulation Standardizes Legal Aid," South China Morning Post, 1 August 03, <www.scmp.com>. According to official statistics, courts appointed counsel for 77,199 criminal defendants in 2003 (11,864 blind, deaf, or mute defendants, 28,868 minor defendants, 24,052 defendants facing the death penalty, and 12,415 other defendants). Legal aid organizations approved applications for an additional 8,991 criminal defendants. Ministry of Justice Legal Aid Center, 2003 Annual Report on Legal Aid Work [2003 Falü yuanzhu gongzuo nianbao], January 2004, 25. The total number of legal aid applications for 2003 is not available. However, official statistics indicate that courts nationwide imposed sentences on 933,967 criminal defendants in 2003. SPC Work Report, March 2004. For a detailed description of legal aid in China, see Section V(c)—Access to Justice and Legal Aid.

<sup>141</sup> The Legal Daily, a newspaper published by the Ministry of Justice, reported in January 2003 that the percentage of criminal defendants represented by counsel dropped from 40 percent in 1996 to 30 percent in 2001. Cha Qingjiu, "Lawyers Turn Pale at the Mention of Defending Criminal Suspects—Worries Arising from the Decreasing Percentages of Criminal Cases with Defense Lawyers [Lüshi tan xingbian er sebian, xingshi anjian bianhu lü xiajiang zhi you]," Legal Daily [Fazhi ribao], 13 January 03, <www.legaldaily.com.cn>. A professor at the National Judicial College confirms that in many courts, fewer than 30 percent of criminal defendants are represented by counsel. Wang Jin, "Are Defense Lawyers Able to Enjoy 'Special Rights,'" [Xingshi lüshi nengfou hengshou 'tequan'] Beijing Youth Daily [Beijing qingnianbao], 22 May 01. Surprisingly, the percentage of criminal defendants represented by counsel dropped between 1996 and 2002, even as the number of attorneys in China increased by over 20 percent.

<sup>142</sup> Commission Staff Interviews; Wang Jin, "Are Defense Lawyers Able to Enjoy 'Special Rights'" (noting that in some areas, the percentage of defendants represented by counsel is as low as 10 percent). According to Minister of Justice Zhang Fusen, 206 counties in China do not have a single lawyer at all. Li Weiwei, "206 Counties in My Country Do Not Have a Single Lawyer" [Wo guo 206 ge xian meiyou yiming lüshi], Xinhua, 23 March 04, <www.chinacourt.org>. At a recent national meeting of Chinese justice officials, one commentator identified lack of access to lawyers in rural and minority areas as an especially pressing problem. "Several Problems in the Reform of Judicial Administration," Legal Daily.

<sup>143</sup> PRC Criminal Procedure Law, arts. 36, 47, 96

<sup>144</sup> See CECC, 2003 Annual Report, Section III(a)—Criminal Justice, Access to Counsel; CECC, 2002 Annual Report, Criminal Justice.

<sup>145</sup> In the case of dissident Yang Jianli, for example, Chinese officials refused his lawyer's repeated requests to meet with him until July 2003, a year and a half after his detention. Yang Jianli, Closing Statement in Court, 4 August 03 (on file with the Commission). Alleged spy Chen Yulin was reportedly held for nearly one year before being permitted to meet with his lawyer. Chi Shuoming, "Case Outside Disputed Case of British Espionage Involving Xinhua News Agency," Asia Weekly [Yazhou zhoukan], 30 May 04 (FBIS, 28 May 04). When suspects are permitted to meet with a lawyer, their conversations are often monitored and recorded by authorities.

<sup>146</sup> Commission Staff Interviews. In the Yang Jianli case, Yang was only permitted to meet with his defense attorneys three times, and each of these meetings was recorded. Prosecutors had nearly a year and a half to prepare their case against Yang. Yang Jianli, Closing Statement in Court, 4 August 03 (on file with the Commission).

<sup>147</sup> See, e.g., "Several Problems in the Reform of Judicial Administration," Legal Daily; "New Rules Enshrine Rights of Lawyers in Criminal Cases," Xinhua, 4 March 04 (FBIS, 5 March 04); "Chinese Procuratorate Moves to Protect the Rights of the Accused," Xinhua, 11 March 04 (FBIS, 11 March 04).

<sup>148</sup> Commission Staff Interviews.

<sup>149</sup> Commission Staff Interviews; Ping Yu, "Glittery Promise vs. Dismal Reality: The Rule of a Criminal Defense Lawyer in The People's Republic of China After the 1996 Revision of the Criminal Procedure Law," 35 Vanderbilt Journal of Transnational Law 827 (2002).

<sup>150</sup> CECC, Zhang Jianzhong Case Update.

<sup>151</sup> CECC, Defense Lawyers Turned Defendants, Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China.

<sup>152</sup> Xiao Yang, "Scrapping Article 306 Would Make Law Fairer," China Daily, 12 April 04. Chinese judicial officials also publicly acknowledged the problem in August 2004. "Several Problems in the Reform of Judicial Administration," Legal Daily.

<sup>153</sup> Provisions on People's Procuratorates Safeguarding Lawyers Carrying Out Professional Work According to Law During the Criminal Process [Guanyu renmin jianchayuan baozhang lüshi zai xingshi susong zhong yifa zhiye de guiding], issued 30 December 03.

<sup>154</sup> For example, the new provisions require prosecutors to inform defense attorneys when a suspect has been detained and of the place of detention, and to "arrange" a meeting between lawyers and clients within 48 hours of a request by either party.

<sup>155</sup> Xiao Yang, "Scrapping Article 306 Would Make Law Fairer"; "New Rules Enshrine Rights of Lawyers in Criminal Cases," Xinhua; "Chinese Procuratorate Moves to Protect the Rights of the Accused," Xinhua; "Several Problems in the Reform of Judicial Administration," Legal Daily.

<sup>156</sup> See, e.g., Xiao Yang, "Scrapping Article 306 Would Make Law Fairer."

<sup>157</sup> Prosecutors conduct initial investigations in only a limited number of cases. This function is usually carried out by public security. The Ministry of Public Security is reportedly drafting a similar set of regulations, but it is unclear when these regulations will be released. "China in Need of More Good Lawyers," Xinhua, 23 March 04 (FBIS, 23 March 04). Several attorneys complained that the regulations have had no impact in practice.

<sup>158</sup> For example, prosecutors undermine the spirit of the provision on client access by concluding "arrangements" for a client meeting within 48 hours but setting the actual date for meetings much later. Chinese attorneys suggested to Commission staff that the regulations have not yet had a meaningful impact in practice. Commission Staff Interviews.

<sup>159</sup>In 2003, Chinese courts imposed sentences on 933,967 criminal defendants and declared 4,835 defendants not guilty. SPC Work Report, March 2004. A conviction rate of 99 percent raises obvious questions about the fairness of criminal trials. High conviction rates are not uncommon in other parts of Asia. For example, police in Japan report very few suspects who are not convictable, and about 99 percent of those who are prosecuted are convicted. However, defendants in Japan are treated with extraordinary leniency. According to one expert, defendants are often punished with only minor fines, and courts suspend criminal sentences in almost 50 percent of cases. John Owen Haley, *Authority Without Power, Law and the Japanese Paradox* (Oxford: Oxford University Press, 1991), 125–33, 135–38, reprinted in John Henry Merryman, David S. Clark, John Owen Haley, eds. *The Civil Law Tradition* (Charlottesville: Michie, 1994), 1119–21.

<sup>160</sup>Shi Jiangtao, “Legal Scholars Have Diverse Interpretations of Figures.” One particularly egregious example of the presumption of guilt was described in the *Beijing Youth Daily*. A criminal named Wang Youen was tried and retried a total of four times for murder. At his third trial, the judge was reported to have asked, “What evidence do you have that you didn’t commit the murder?” Six years after he was first detained, Wang was finally exonerated by the Heilongjiang High People’s Court. Amnesty International, *Executed According to Law*, (citing “Condemned Prisoner wins 140,000 in compensation,” *Beijing Youth Daily*, 28 April 02).

<sup>161</sup>In 2000, for example, people’s courts of first instance nationwide handled a total of 560,111 criminal cases, while courts of second instance handled 86,619 cases (giving a rough appeal rate of approximately 15 percent). 2001 China Law Yearbook [2001 Zhongguo falü nianjian], (Beijing: Legal Press, 2001), 1256, 1258. In 2001, people’s courts of first instance nationwide handled a total of 623,792 criminal cases, while courts of second instance handled 98,157 cases (also a rough appeal rate of approximately 15 percent). 2002 China Law Yearbook [2002 Zhongguo falü nianjian], (Beijing: Legal Press, 2002), 1,238 and 1,240. These figures provide only a rough estimate of the rate of defendant appeals. Not all of the second instance cases handled in a year correspond to first instance cases handled that same year. Moreover, in China, prosecutors have the right to appeal a verdict of not guilty. Chinese law also permits “private prosecutions” in some cases and allows private prosecutors to appeal not guilty verdicts. PRC Criminal Procedure Law, arts. 180–1. Overall, the SPC places the rate of appeal in China at about 12 percent for all cases (civil, criminal, and administrative). “Chinese Grassroots Courts Adjudicate 5.2 Million Cases Each Year,” *Xinhua*, 6 July 04 (FBIS, 6 July 04). In December 2003, dissident Yang Jianli declined to exercise his right to appeal, arguing in a written statement that the process was a sham. “U.S.-Based Dissident Yang Refuses to Appeal Sentence for Espionage Charges,” *Agence France-Presse*, 25 May 04 (FBIS, 25 May 04). In February 2004, serial killer Yang Xinhai waived his right to appeal after an hour-long trial, despite the fact that he had been sentenced to death. “Death for China’s Serial Killer,” *BBC News*, 2 February 04, <[www.news.bbc.co.uk](http://www.news.bbc.co.uk)>.

<sup>162</sup>PRC Criminal Procedure Law, arts. 181, 203–207. Although decisions by appeals courts are supposed to be “final,” provisions on “adjudication supervision” in the Criminal Procedure Law require people’s courts to retry cases when prosecutors find a “definite error in a legally effective judgment or order” and protest to the court. In fact, China’s State Compensation Law creates a perverse incentive for prosecutors to continue appealing, as a verdict of not guilty may subject them to criminal compensation liability for wrongful arrest and prosecution. State Compensation Law, adopted 12 May 94, art. 15. Chinese scholars have noted this unintended effect of the State Compensation Law. De Hengbei, “An Analysis of Basic Concepts in the Controversy over Seeking the Criminal Liability of Lawyers.”

<sup>163</sup>There are numerous examples of trials in sensitive or complex cases that lasted only hours or a day, including those of Internet dissident Du Daobin (20 minutes), serial killer Yang Xinhai (one hour), democracy activist He Depu (two hours), entrepreneur Sun Dawu (six hours), Zhang Jianzhong (one day), dissident Yang Jianli (one day), and resident activist and advocate Zheng Enchong (one day). While the length of a trial alone cannot be taken as the sole indicator of fairness, such short trials in key cases, when considered along with the many other problems and statistics raised in this section, suggest that trials are little more than a formality.

<sup>164</sup>Under Article 152 of the Criminal Procedure Law, all criminal cases of first instance, except those involving “state secrets,” the “private affairs of individuals,” or minors, are required to be held in public. If a case is not to be held in public, the court must announce the specific reason at the proceeding. Authorities sometimes restrict access to trials not falling within such exceptions. For example, the trials of Zhang Jianzhong and the officials charged with dereliction of duty in the death of Sun Zhigang were restricted, despite the fact that these cases did not involve state secrets.

<sup>165</sup>Human Rights in China Press Release, “Internet Activist Du Daobin Goes to Trial,” 17 May 04.

<sup>166</sup>*Ibid.*

<sup>167</sup>Shi Jiangtao, “Legal Scholars Have Diverse Interpretations of Figures.”

<sup>168</sup>City of Beijing, Bureau of National Security Opinion Recommending Prosecution, 4 June 03; Defense Statement in Trial of First Instance of Yang Jianli, 4 August 03 (on file with the Commission).

<sup>169</sup>Shanghai No. 2 Intermediate Court, Criminal Judgment in the Case of Zheng Enchong, 28 October 03; Defense Statement in Trial of First Instance of Zheng Enchong, 28 August 03 (on file with the Commission).

<sup>170</sup>Shao’s conviction appears to have been based primarily on a Judicial Accounting Audit commissioned by public security, Shao’s alleged confession, and the statements of other witnesses, including two import agents who themselves were implicated in the case. Both Shao and a panel of legal experts have raised compelling questions about the reliability of the Judicial Accounting Audit. Shao denies confessing to any crimes, and the police interrogation record produced at trial reportedly contained no record of his confession. Police have refused to release the original interrogation records. According to the trial court judgment, several witnesses who

were also charged with crimes and who implicated Shao were given lenient treatment for their cooperation. Shao maintains that he was prosecuted because he refused to pay bribes to local tax auditors. An extensive collection of documents relevant to the case, including the indictment and the trial court judgment, is on file with the Commission.

<sup>171</sup> Under Article 46 of the Criminal Procedure Law, "Confession by the defendant only, without other evidence, cannot be used to determine that the defendant is guilty and to make any sentencing."

<sup>172</sup> See, e.g., "A Wenzhou 'Criminal Sentenced to Death' Who Sat in Jail For Eight Years Wants State Compensation," Xinhua. In the Wenzhou case, Dong Wenlie was sentenced to death for drug crimes. He reportedly confessed after two days of torture. No witnesses appeared at his trial and no documentary evidence of his crimes was submitted to the court. See also, "Chongqing Resident Obtains 130,000 in State Compensation for Wrongful Murder Judgment and Seven Years in Prison," [Chongqing yi shimin bei cuopan sharenzui fuxing qi nian huo guojia peichang shisanwan], Procuratorial Daily [Jiancha ribao], 10 November 03, <www.jrb.com.cn> (citing the case of Dong Liming, who was convicted for murder and sentenced to death on questionable evidence and confessions that were later withdrawn), and Pan, "Easing of Penal System Part of Change in China" (citing the case of Li Ping, a migrant worker convicted of murder and sentenced to death on the basis of a confession obtained through torture and later released by authorities); Irene Wang, "New Twist in Convicted Killers' Fight for Justice," South China Morning Post, 7 August 04, <www.scmp.com>.

<sup>173</sup> Peerenboom, "Out of the Frying Pan and into the Fire," 1,034.

<sup>174</sup> CECC, 2003 Annual Report, Section V(e).

<sup>175</sup> One Chinese legal scholar recently decried the influence of Political-Legal Committees on the judiciary. "Scholar Accuses Political-Legal Committees of Obstructing the Independence of the Judiciary—The Courts Sink to the Level of 'Prisoners' and Constitutional Violations Should be Eliminated," Ming Pao, 30 July 03 (FBIS, 30 July 03).

<sup>176</sup> John Pomfret, "Child's Death Highlights Problems in Criminal Justice," Washington Post, 3 July 03, <www.washingtonpost.com>.

<sup>177</sup> John Pomfret, "Execution Reveals Party's Grip on China," Washington Post, 23 December 03, <www.washingtonpost.com>.

<sup>178</sup> PRC Criminal Law, Yang Shilong, "How Much Longer Until China Abolishes the Death Penalty" [Zhongguo li feichu sixing haiyou duo yuan?], Huanqiu [Globe], 1 June 04 (an interview with scholar Liu Renwen). According to one recent NGO report, there is some disagreement among scholars on the exact number of capital offenses in China. Amnesty International, Executed According to Law, 10. The majority of offenses for which individuals may be subject to the death penalty are non-violent economic offenses. "Is There a Limit to Deterrence of Corruption? Experts Say We Can Consider Abolishing the Death Penalty for Economic Crimes," [Fubai weishe you xian? Zhuanjia cheng ke kaocha feizhi jingji fanqi sixing], China News Net [Zhongguo xinwen wang], 10 August 04, <www.news.china.com>.

<sup>179</sup> Amendment III to the PRC Criminal Procedure Law, adopted 29 December 01. Supreme People's Court, Supreme People's Procuratorate, Interpretation on Several Questions Related to Specific Law to Be Applied in Handling Criminal Cases Involving the Illegal Production, Sale, Transport, and Storage of Strong Rat Poison and Other Prohibited Deadly Chemicals [Zuigao renmin fayuan, zuigao renmin jianchayuan, guanyu banli feifa zhizao, maimai, yunshu, chucun dushuqian deng jinyun judu yuaxueping xingshi anjian juti yingyong falu ruogan wenti de jieshi], issued 29 August 03. Supreme People's Court, Supreme People's Procuratorate, Interpretation on Certain Problems of Concretely Applying the Law in Handling Criminal Cases Involving Impairment of the Prevention or Control of Outbreaks of Contagious Diseases and Epidemics and Other Disasters [Zuigao renmin fayuan, zuigao renmin jianchayuan guanyu banli fanghai, kongzhi tufa zhuanranbing yiqing deng zaihai de xingshi anjian juti yingyong falu ruogan wenti de jieshi], issued 13 May 03.

<sup>180</sup> Yang Shilong, "How Much Longer Until China Abolishes the Death Penalty"; Guo Guangdong, "The Death Penalty: Keep It or Abolish It?" [Sixing: Baoliu? Feichu?], People's Daily [Renmin ribao], 10 January 03.

<sup>181</sup> Peerenboom, "Out of the Frying Pan and into the Fire," 1050 (citing various polls taken between 1995 and 2001 indicating public support for heavy punishments and the death penalty). In December 2002, one scholar tracked messages posted to an Internet chat room in response to media stories about a scholarly conference on the death penalty. According to the scholar, more than 80 percent of the respondents supported the death penalty, while 76 percent called for the number of capital crimes to be increased. Reportedly, only 13 percent of the submissions favored abolishing capital punishment. "Death Row Lawyer Heads China's Execution Debate," Reuters, 4 February 02, <www.asia.cnn.com>. The strong public outcry in response to the decision by a Shenyang court to change the death sentence of mafia boss Liu Yong also suggests strong support for capital punishment. See supra, China's "Strike Hard" Anti-Crime Campaign and the accompanying note on the Liu Yong case. For one recent article that reflects mainstream views on the efficacy on the death penalty, see "Death Sentences in Major Corruption Cases Terrify Corrupt Individuals" [Jutan bei pan sixing ran fubazhe danzhanxinging], Legal Evening News [Fazhi wanbao], 26 August 04. In August 2004, Reuters reported that more than 50 individuals in Xinjiang were executed as part of a government crackdown on separatists and alleged terrorists. John Ruwitch, "China Convicts 50 to Death in 'Terror Crackdown,'" 13 September 04. Chinese scholar Liu Renwen contends that public support of the death penalty is problematic, however. If the public were informed about the number of executions and wrongful judgments involving death sentences, experts were allowed to discuss materials and problems related to the death penalty openly, and the public was not constantly bombarded with propaganda about the positive impact of the death penalty, he argues, the public would likely have a different view. Yang Shilong, "How Much Longer Until China Abolishes the Death Penalty."

<sup>182</sup> "Is There a Limit to Deterrence of Corruption? Experts Say We Can Consider Abolishing the Death Penalty for Economic Crimes," China News Net. Even senior Chinese officials who

oppose abolition of the death penalty now acknowledge that the trend is for capital punishment to be phased out. Commission Staff Interview.

<sup>183</sup>“PRC Foreign Ministry Spokesman Defends Keeping PRC Execution Statistics Secret,” Agence France-Presse, 5 February 04 (FBIS, 5 February 04).

<sup>184</sup>Amnesty International, *Executed According to Law*, 1.

<sup>185</sup>Huang Yong, “Forty-One National People’s Congress Deputies Submit a Joint Proposal Calling on the Supreme People’s Court To Reclaim the Power To Examine and Approve Death Sentences” [41 daibiao lianming jianyi zuigao renmin fayuan shouhui sixing hezhunquan], China Youth Daily [Zhongguo qingnianbao], 12 March 04. According to the report, the NPC delegate also stated that China executes five times the total in all other countries combined each year.

<sup>186</sup>It is possible that the delegate could have been referring to cases in which death sentences were handed down as opposed to cases in which death sentences were actually carried out. Some death sentences are suspended for two years or commuted to life imprisonment.

<sup>187</sup>John Kamm of the Dui Hua Foundation estimated in 2003 that there are at least 10,000 executions in China each year. Disidai [The Fourth Generation], a book purportedly written by an internal Chinese government source, cites a Party dossier on Luo Gan as indicating that 15,000 people a year were executed between 1998 and 2002. Andrew Nathan and Bruce Gilley, *China’s New Rulers: The Secret Files*, NYREV, Inc., 2003.

<sup>188</sup>Benjamin Kang Lim, “China Security Czar Orders Fewer Executions,” Reuters, 9 March 04. Luo is reported to have issued a directive stating that “If it’s possible to execute fewer people, then execute fewer people” and “If it’s possible not to execute people, then don’t execute people.” One Chinese expert confirms that while this is the policy on paper, it is not concrete enough to affect practice, particularly in the context of the leadership’s “strike hard” effort.

<sup>189</sup>Yang Shilong, “How Much Longer Until China Abolishes the Death Penalty.”

<sup>190</sup>Congressional-Executive Commission on China, *The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality*, 10 February 03, 5–10.

<sup>191</sup>SPC Work Report, March 2004. According to the work report, of 300 cases involving the review of death sentences, the original sentence was sustained in 182 cases, the sentence was changed in 94 cases, and 24 cases were remanded to lower level courts for retrial. One Chinese scholar reports that the annual rate of reversal for death sentences reviewed by the SPC fluctuates between 20 percent and 29 percent. Yang Shilong, “How Much Longer Until China Abolishes the Death Penalty” (citing Liu Renwen as putting the range from 20 to 29 percent). See also, Pan, “Easing of Penal System Part of Change in China” (citing Chen Xinliang as placing the rate between 25 percent and 30 percent).

<sup>192</sup>Yang Shilong, “How Much Longer Until China Abolishes the Death Penalty”; Pan, “Easing of Penal System Part of Change in China.”

<sup>193</sup>Huang Yong, “Forty-One National People’s Congress Deputies Submit a Joint Proposal,” “Response to the Delegates’ Motion to Take Back the Power to Approve Death Sentences: The Supreme People’s Court is Considering Establishing Branch Chambers to Review Death Sentences” [Huiying daibiao shouhui sixing yian: zuigao renmin fayuan kaocha shefenyuan zhuanhe sixing], Southern Metropolitan Daily [Nanfang dushibao], 12 March 04, <www.nanfangdaily.com.cn>. There is some debate as to whether the SPC can do this unilaterally or whether the NPC Standing Committee must approve the change. “Who Should Determine Whether to Recall the Power of Death Penalty Review” [Shouhui sixing hezhunquan ying shui shuo le suan], Procuratorial Daily [Jiacha ribao], 17 March 04, <www.jcb.com.cn>. A senior judicial official interviewed by Commission staff indicated that the NPC would have to resolve the issue. Commission Staff Interview.

<sup>194</sup>Response to the Delegates’ Motion to Take Back the Power to Approve Death Sentences,” Southern Metropolitan Daily; Pan, “Easing of Penal System Part of Change in China.”

<sup>195</sup>A People’s Court Daily article listed “benefits to China’s international human rights struggle” as one of the four principal reasons the SPC is considering the move to take back review of death sentences. Wang Lianying, “Give the Power to Review and Approve Death Sentences Back to the Supreme People’s Court” [Jiang sixing anjian hezhunquan shougui zuigao fayuan], People’s Court Daily [Renmin fayuanbao], 12 March 04. This and other reform proposals were announced shortly before the UN Human Rights Commission met in Geneva in April 2004.

<sup>196</sup>See, e.g., Chow Chung-yan, “Mainland Police Vow to Open Up to Media,” South China Morning Post, 3 January 04; Liu Renwen, “Social Order Information Disclosure System: Public’s Right to Know About Situation,” Study Times, 19 January 04 (FBIS, 23 January 04); Sun Chingwen, “Academics Expect CPC Central Committee to Institute Spokesman System,” Ta Kung Pao, 12 October 03 (FBIS, 13 October 03); “Supreme People’s Procuratorate Sets Up Spokesman System for Quarterly News Briefings,” Xinhua, 23 July 03 (FBIS, 23 July 03); Li Xu, “Beijing Municipal Procuratorate Unveils ‘Extended Custody Reporting Telephone Hotline,’” Xinhua, 2 August 03 (FBIS, 2 August 03); “China’s Supreme People’s Procuratorate Establishes Hotlines to Hear Human Rights Complaints,” Xinhua, 27 June 04 (FBIS, 27 June 04).

<sup>197</sup>Under the program, citizen supervisors participate in the investigation of cases involving procuratorial misconduct, review case files and charging decisions upon the request of a defendant, submit opinions on the handling of cases, and appeal to higher level procuratorial organs in cases of concern. Wu Huanqing, “3000 Citizen Supervisors Begin Work in 10 Provinces” [3000 ming renmin jianduyuan 10 sheng shanggang], Xinhua, 30 October 03; “200 Cases Are Subjected to Monitoring Procedure by People’s Monitors” [Er bai yu anjian jinru renmin jianduyuan jian du chengxu], Guangming Daily [Guangming ribao], 12 December 03, <www.gmw.com.cn>. In March 2004, the SPP reported that a total of 4,944 citizen supervisors had handled nearly 500 cases. SPP Work Report, March 2004. One leading defense lawyer critical of other reform efforts expressed optimism about the citizen supervisor program. Commission Staff Interview.

<sup>198</sup>Regulations on Disciplinary Measures for Prosecutors [Jianchayuan jili chufen tiaoli], issued 21 June 04. For a brief introduction to the measures, see “Disciplinary Punishment Rules for Prosecutors,” Xinhua, 13 August 04, (FBIS, 13 August 04).

<sup>199</sup>In the summer of 2003, Minister of Public Security Zhou Yongkang launched a campaign to address a backlog of citizen complaints about public security organs and to investigate the “seven major problems in public security.” “The Ministry of Public Security Will Concentrate on Settling the Backlog of Seven Major Complaints About Public Security” [Gonganbu jiang jizhong qingli fanying gongan zi da wenti de jubao jiyajian,” Xinhua, 13 August 03, <www.xinhuanet.com>. According to official reports, public security organs at all levels dispatched more than 20,000 inspection teams to root out abuses. “China Sacks 387 Policemen for Misconduct in 2003,” Xinhua, 15 January 04 (FBIS, 15 January 04).

<sup>200</sup>“China Sacks 387 Policemen for Misconduct in 2003”; Chow Chungyan, “Thousands of Rogue Police Officers Sacked,” South China Morning Post, 8 January 04, <www.scmp.com>; “PRC State Councilor Zhou Yongkang Calls For Police Force,” Xinhua, 9 April 04 (FBIS, 9 April 04).

<sup>201</sup>“China Punishes 972 Court Staff for Violating Discipline, Law,” Xinhua, 15 December 03 (FBIS, 15 December 03).

<sup>202</sup>New initiatives announced include work release programs, legal aid for prisoners, degree equivalency and other professional training, limited remuneration for prison laborers, spousal visits, societal rehabilitation programs, and programs to improve production safety for prison laborers. “In Jail But Helped by Society,” Xinhua, 28 December 04 (FBIS, 28 December 04); Verna Yu, “Extension of Community Service Scheme Applauded,” South China Morning Post, 30 July 04 (FBIS, 30 July 04); “China Holds First Seminar On Protecting Prisoners’ Rights,” Xinhua, 10 September 03 (FBIS, 10 September 03); “China Pays Salary to Prisoners at Labor Camp,” Xinhua, 25 September 04, (FBIS, 25 September 04); Alice Yan, “Prison Initiative Gives Ex-Convicts a Helping Hand in Finding Work,” South China Morning Post, 27 January 04, <www.scmp.com>; “Work of the Ministry of Justice Unit on Prison Production Safety” [Sifabu bushu jianyu anquan shengchan gongzuo], Legal Daily [Fazhi ribao], 18 February 04, <www.legaldaily.com.cn>; “Legal Assistance Provided to Prisoners in Beijing,” Xinhua, 19 March 04 (FBIS, 19 March 04); “Convict ‘Hearings’ Come to China’s Prisons” [Fanren “tingzhenghui” zoujin zhongguo jianyu], Procuratorial Daily [Jiancha ribao], 30 March 04, <www.jcrb.com.cn>.

<sup>203</sup>“China’s Top Judicial Body Sets Timetable for Curbing Prison Irregularities,” Xinhua, 24 May 04 (FBIS, 24 May 04), “Addressing Concerns on Treatment of Prisoners,” China Daily, 19 May 04 (FBIS, 19 May 04). In June 2004, the SPC announced a nationwide review of parole and sentence reduction decisions

<sup>204</sup>Sun Haifeng, “National Procuratorial Investigation Reveals: 13, 961 Sentence Reductions Illegal” [Quanguo jiancha jiguan qingcha faxian: 13,961 ren jianxing shuyi weifal], Xinhua, 10 September 04. The authors note that problem illegal sentence reductions has been a major flashpoint for public anger.

<sup>205</sup>Chan Siusin, “Authorities Responsible for 4,000 Cases of Abuse,” South China Morning Post, 27 May 04, <www.scmp.com>; “Protecting Human Rights,” China Daily, 1 July 04, <www.chinadaily.com.cn>.

<sup>206</sup>“China in Need of More Good Lawyers,” Xinhua, 23 March 04 (FBIS, 23 March 04).

<sup>207</sup>Commission Staff Interviews. For an example of some of the broad ranging changes to the Criminal Procedure Law that have been proposed by one Chinese legal scholar, see Yan Xianghua, Han Hongxing, “The Time is Already Ripe for Another Revision to the Criminal Procedure Law” [Xingshi susongfa zai xiugai shiji yijing chengshu], Procuratorial Daily [Jiancha ribao], 17 December 03, <www.jcrb.com.cn>.

<sup>208</sup>In April 2004, a university graduate named Sun Zhigang was mistakenly detained by police in Guangzhou and beaten to death while in custody. The case sparked a national outcry and forced the government to repeal a controversial form of administrative detention called custody and repatriation that had been applied in Sun’s case. CECC, 2003 Annual Report, Sections III(a) and V(e). In July 2003, a three-year old girl named Li Siyi died of thirst or starvation when public security officials sent her mother to a drug detoxification center and ignored the mother’s pleas that her daughter was home alone. Pomfret, “Child’s Death Highlights Problems in Chinese Justice.” The story caused public outrage when it broke. In the wake of the Sun Zhigang and Li Siyi cases, stories of law enforcement abuses and public criticism of authorities proliferated in domestic Chinese media and in Internet chatrooms. Commission Staff Monitoring. In mid-2003, as the law enforcement public relations campaign was launched, Minister of Public Security Zhou Yongkang admonished police officers nationwide to “resolutely stop malignant violations that offend the heavens and reason and stir up public indignation.” Hu Kui, Sun Zhan, “A Powerful Drive To Exercise Management Over the Police,” News Weekly [Xinwen zhoukan], 4 August 03 (FBIS, 11 August 03). According to one Chinese government report, the public provided only 6,073 tips on crimes in 2003 (as opposed to 216,000 in 1983), a development Chinese analysts attributed in part to corruption and “unhealthy trends” in law enforcement. Yu Bin, “New Arrangements for Public Security Prevention and Control.” For official acknowledgement of public anger at and distrust of law enforcement agencies, see also Chen Hong, “Police, Prosecutors Have Image Problem,” China Daily, 22 July 04, <www.chinadaily.com.cn>; Xin Wen, “The Ministry of Public Security Promulgates ‘Provisions on the Application of Continuing Interrogations by Public Security Agencies,’” Ministry of Public Security, 3 August 04 (FBIS, 16 August 04).

<sup>209</sup>On August 20, banner headlines on Xinhua’s Chinese-language Web site lauded recent reforms as symbols of “new governance” and the government’s concern for the lives of average citizens. “Focusing China’s ‘New Governance’: Taking People as the Basis, Paying Attention to People’s Lives” [Zhujiao zhongguo ‘xin zheng’: yi ren wei ben, guanzhu rensheng], Xinhua, 8 August 03, <www.xinhuanet.com>. Wen Jiabao’s work report to the National People’s Congress in March 2004 stressed these populist themes. PRC Government Work Report, 5 March 04. For external analysis of Hu and Wen’s motives, see “Congress to Reveal Leaders’ Way Forward,”

South China Morning Post, 5 March 04, <www.scmp.com>; and “China’s Hu Jintao Begins Working on Image in Quest To Consolidate Power,” Agence France-Presse, 20 October 03 (FBIS, 20 October 03).

<sup>210</sup> Commission Staff Monitoring.

<sup>211</sup> In some programs, Chinese counterparts held mock Chinese trials to demonstrate Chinese procedure to visiting American scholars and officials. According to Commission sources, mock hearings and trials encouraged an atmosphere of mutual exchange and generated significant interest and goodwill on the part of Chinese counterparts.

<sup>212</sup> Seventeenth International Penal Law Conference Opens in Beijing” [Di shiqi jie guoji xingfa dahui zai jing zhaokai], Legal Daily [Fazhi ribao], 13 September 04, <www.legaldaily.com.cn>.

<sup>213</sup> Commission Staff Interviews. Commission staff were struck by the unanimity of Chinese scholars and reformers on this issue and the enthusiasm with which they encouraged further exchange.

<sup>214</sup> Commission Staff Interviews.

**Notes to Section III(b)—Protection of Internationally Recognized Labor Rights**

<sup>215</sup> Boris Cambreleng, “Roaring Demand For Coal Exacts Steep Price in Human Lives,” South China Morning Post, 20 April 04, <www.scmp.com>.

<sup>216</sup> Active Society in Formation: Environmentalism, Labor, and the Underworld in China, Program of the Woodrow Wilson Center, 18 May 04, Paper and Speech of Ching Kwan Lee, Professor at the University of Michigan.

<sup>217</sup> “U.S. Secretary of Labor Elaine L. Chao and the USDOL Delegation Meet with Chinese Academic Experts to Discuss Chinese Labor Laws,” U.S. Department of Labor Web site, 6 June 04, <www.dol.gov>.

<sup>218</sup> These eight conventions (available at <www.ilo.org>) are:

- No. 29 Concerning Forced or Compulsory Labor
- No. 87 Concerning Freedom of Association and Protection of the Right to Organize Collectively
- No. 98 Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively
- No. 100 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

- No. 105 Concerning the Abolition of Forced Labor
- No. 111 Concerning Discrimination in Respect of Employment and Occupation
- No. 138 Concerning Minimum Age for Admission to Employment
- No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

<sup>219</sup> The United States has ratified only two of the eight ILO Core Conventions. U.S. State Department officials point out that, even without ratification, the Conventions largely are already present within U.S. law.

<sup>220</sup> “China and the ILO,” China Labour Bulletin, Issue No. 58, Jan-Feb 2001, <http://www.china-labour.org.hk>.

<sup>221</sup> Thomas Lum, Congressional Research Service, Workplace Codes of Conduct in China and Related Labor Conditions, 23 April 03, 3.

<sup>222</sup> PRC Trade Union Law, enacted 3 April 92, amended 27 October 01, art. 11.

<sup>223</sup> Anita Chan, “China and the International Labour Movement,” 15 August 04, <www.gbcc.org.uk>.

<sup>224</sup> Gerard Greenfield and Tim Pringle, “The Challenge of Wage Arrears in China,” International Labor Organization Labor Education 2002/3, No. 128, 31–3 <www.ilo.org>.

<sup>225</sup> Hong Kong Confederation of Trade Unions, Chinese Labour and the WTO, June 2004, 33–43 (discussing the role of the ACFTU).

<sup>226</sup> Phillip P. Pan, “When Workers Organize, China’s Party-Run Unions Resist,” Washington Post, 15 October 02, A11.

<sup>227</sup> Commission Staff Interview.

<sup>228</sup> Ibid.

<sup>229</sup> “Six Textile Workers Formally Arrested for Alleged Involvement in 8 February Mass Workers Protest in Suizhou, Hubei,” China Labour Bulletin, 28 February 04, <www.china-labour.org.hk>.

<sup>230</sup> Four other detained workers were released in April 2004, and one women detainee was released because of ill health. “Criminal Trials of the Detained Tieshu Workers Begins: Two Tried, Two More Awaiting Trial,” China Labour Bulletin, 24 April 04, <www.china-labour.org.hk>.

<sup>231</sup> “Petitioners Attempt Mass Suicide in Beijing,” Radio Free Asia, 12 July 04, reprinted in Asian Labour News, 14 July 04, <www.asianlabour.org/>. Their central complaint was that the mining bureau had distributed only a quarter of the \$10,000 per worker set aside for layoffs.

<sup>232</sup> “Beijing Police Turn Back Hundreds of Heilongjiang Miners,” Radio Free Asia, 19 July 04, reprinted in Asia Labour News, 20 July 04, <www.asianlabour.org/>.

<sup>233</sup> Murray Scott Tanner, “China Rethinks Unrest,” 27 Washington Quarterly 141 (2004).

<sup>234</sup> Ibid., 147.

<sup>235</sup> David Fang, “Industrial Accidents on Mainland Drop 13PC,” South China Morning Post, 14 June 04, <www.scmp.com>.

<sup>236</sup> Ibid.; Tony Fung Kam Lam, “Occupational Safety and Health in China,” Asia Monitor Resource Center, November 2000, <www.amrc.org.hk>.

<sup>237</sup> John Fabian Witt, “Can China Improve Work Safety?” Bangkok Post, 8 May 04.

<sup>238</sup> Shi Jiangtao, “Industrial Safety Still a Distant Dream,” South China Morning Post, 19 April 04, <www.scmp.com>.

<sup>239</sup> David Fang, “Industrial Accidents on Mainland Drop 13PC.”

<sup>240</sup>Peter S. Goodman, "In China, Miners Pay a High Toll," *Washington Post*, 22 March 04, A1.

<sup>241</sup>David Fang, "Industrial Accidents on Mainland Drop 13PC."

<sup>242</sup>"News Review: Reported Coal Mine Accidents in March 2004," *China Labour Bulletin*, 2 April 04, <[www.china-labour.org.hk](http://www.china-labour.org.hk)>.

<sup>243</sup>"Mine Owners Arrested Over 'Cover-Up,'" *China Labour Bulletin*, 14 June 04, <[www.china-labour.org.hk](http://www.china-labour.org.hk)>.

<sup>244</sup>Regulations on Insurance for Occupational Injuries [Gongshang baoxian tiaoli], issued 27 April 03.

<sup>245</sup>*Ibid.*, art. 2.

<sup>246</sup>"China to Establish Work Safety Indexes this Year," *Xinhua*, 24 February 04, reprinted in *China Net*, <[www.china.org.cn](http://www.china.org.cn)>.

<sup>247</sup>The State Administration of Work Safety will issue indexes for seven categories: the national death toll from industrial accidents, the death rate per 100,000 yuan of GDP, the death rate per 100,000 people, the death rate for industrial accidents per 100,000 people, the death toll per 100,000 for industrial enterprises, and the death toll for coal mines and the death rate per one million tons of coal. The death tolls and rates will be published every quarter. *Ibid.*

<sup>248</sup>"U.S. China to Broaden Cooperation on Safety, Workers' Rights," U.S. Department of State Web site, 21 June 04, <<http://usinfo.state.gov/>>. Under one agreement, relevant agencies will broaden their cooperation on wage and hours regulations, the enforcement of wage and hours laws, and the analysis of wage and hour enforcement data. In another agreement on mine safety and health, the governments pledged to broaden cooperation in emergency responses to coal mine accidents. The third agreement assures the broadened cooperation in areas of occupational health and safety, particularly regarding the handling of hazardous chemicals, emergency response procedures in workplace accidents, private insurance promoting health and safety, and the collection of data and analysis of occupational safety and health. The fourth agreement covers administration and oversight of pension programs.

<sup>249</sup>"Minimum Wage System Set Up," *Xinhua*, 26 July 04, <[www.xinhuanet.com](http://www.xinhuanet.com)>.

<sup>250</sup>National Labor Committee, Putting a Human Face on the Global Economy, 15 August 04, <[www.nlnet.org](http://www.nlnet.org)>. One survey shows that full time beggars in Beijing average more than 600 yuan per month. Leil a Fernandez-Stembridge and Richard Madsen "Beggars in the Socialist Market Economy," in *Popular China*, eds. Perry Link, Richard Madsen, and Paul Pickowicz (Lanham: Rowman & Littlefield, 2002), 215.

<sup>251</sup>Gerard Greenfield and Tim Pringle, "The Challenge of Wage Arrears in China," 31-3.

<sup>252</sup>*Ibid.*, at 32.

<sup>253</sup>Anthony Kuhn, "A High Price to Pay For a Job," *Far Eastern Economic Review*, 22 January 04, <[www.feer.com](http://www.feer.com)>.

<sup>254</sup>*Ibid.* Some experts estimate that as many as 90 percent of Chinese migrants work without contracts. "Scheme to Help Recover Back Pay," *South China Morning Post*, 19 March 04 (FBIS, 19 March 04). Other sources provide even higher numbers. Anthony Kuhn, "Migrant Workers Are Owed Billions in Unpaid Wages, Sparking Demand for Justice," *Wall Street Journal*, 19 January 04 (FBIS, 19 January 04).

<sup>255</sup>Josephine Ma, "Workers Face a Long Wait For Justice," *South China Morning Post*, 21 January 04, <[www.scmp.com](http://www.scmp.com)>.

<sup>256</sup>"Five Thousand Workers Besiege Hong Kong Factory in Buji," *Tai Yang Pao*, 6 June 04 (FBIS, 6 June 04).

<sup>257</sup>"Jiangxi SOE Workers Protest Prohibition on Appealing to Higher Authorities," *Ming Pao*, 17 September 03 (FBIS, 17 September 03).

<sup>258</sup>Numerous localities are preparing legislative responses. The Beijing city government has prepared local regulations on the payment of wages. Under the new regulations, to take effect January 22, wage payments are not to be delayed more than 30 days. "Beijing: Back Wages May Not Be Delayed More Than 30 Days" [Beijing: tuo qian gongzi bu dei chaoguo 30 tian], *China Youth Daily* [Zhonghua qingnian bao], reprinted in *Xinhua*, 27 December 03, <<http://news.xinhuanet.com>>. The Guangdong vice-governor has set a three-year timeframe for resolving the back-wage issue. "Province Will Resolve Back Wages Within Three Years" [Quansheng sannian jiejie gongcheng kuan], *Southern Metropolitan Daily* [Nanfang dushi bao], 10 December 03, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>. For one illustrative case that required eight years and the intervention of Wen Jiabao himself to resolve, see "Hundreds of Migrants Chase Wages for 8 Years" [Shubai mingong 8 nian zhuixin], *Southern Metropolitan Daily* [Nanfang dushi bao], 10 December 03, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>. The issue has attracted the attention of top leaders. One member of the Political Bureau of the CPC and vice premier of the State Council has publicly emphasized the importance of the issue and criticized the slowness with which certain localities have been addressing it. "Zeng Peiyan: Firmly Grasp [the Goal of] Returning Last Year's Migrant Back Wages in the Construction Sector" [Zeng Peiyan: Zhua jin duixian jianshe lingyu quonian tuoqian de mingong gongzi], *Xinhua*, 2 January 04, reprinted in *Sina.com*, <<http://news.sina.com.cn>>.

<sup>259</sup>Josephine Ma, "Workers Face a Long Wait For Justice" (citing the Chinese Minister of Construction as stating that various levels of government account for at least a quarter of debts owed to construction companies).

<sup>260</sup>Critical voices have emerged in the Chinese media, raising key questions of accountability and oversight for government construction projects, many of which are undertaken to raise prestige. "Curing the Problem of Migrant Back Wages, Challenging the Career Development Model" [Genzhi nongmingong qianxin nanti, tiaozhan zhengji fazhan moshi], *21st Century Business Herald* [21 shiji jingji baodao], 17 January 04, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>.

<sup>261</sup>PRC State Council Decision on Amending the "State Council Regulations on Work Hours for Laborers" [Guowuyuan guanyu xiugai "guowuyuan guanyu zhigong gongzuo shijian de guiding" de jue ding], issued 25 March 95, arts. 1 and 2.



<sup>262</sup> Verité, Inc., A Persistent Problem: Excessive Overtime in Chinese Supplier Factories Worker and Management Perceptions of the Causes and Impacts, July 2004, 4, <www.verite.org>.

<sup>263</sup> Ibid., 21.

<sup>264</sup> Commission Staff Interview.

<sup>265</sup> Thomas Lum, Workplace Codes of Conduct in China and Related Labor Conditions, 10.

<sup>266</sup> China Labour Bulletin, Child Labour in China: Causes and Solutions, 26 November 03, <www.china-labour.org.hk>.

<sup>267</sup> In 2001, 42 people, many children as young as eight, perished in an explosion in a rural school in Jiangxi province that had forced the students to manufacture fireworks to earn money to support the school. "China's 'Fireworks School' Yields Its Dead," CNN Web site, 7 March 01, <www.cnn.com>; "China Announces New Crackdown on Dangerous Fireworks Production," Associated Press Worldstream, 26 November 03. See also "Private Schools Organize New Students to Engage in Child Labor" [Minban xuexiao zuzhi xinsheng jiti zuo tonggong], New Beijing News [Xin jingbao], 15 September 04, <www.thebeijingnews.com>.

<sup>268</sup> "Focus 13 June Reports on Knitting Mill Illegally Hiring Child Workers, CCTV Beijing, 13 June 04 (FBIS, 13 June 04).

<sup>269</sup> "Fujian Company Fined in Child Labor Case," Xinhua, 13 January 03, <www.peopledaily.com.cn>. The local Labor Supervision Detachment fined the company 30,000 yuan. Ibid.

<sup>270</sup> See, e.g., reports published on the Laogai Research Foundation Web site at <www.laogai.org>.

<sup>271</sup> World Organization to Investigate the Persecution of the Falun Gong, WOIPFG Report on Products Practitioners Are Forced to Manufacture in China's Labor Camps, 16 October 03, <www.upholdjustice.org>; China: The 15th Anniversary of the Tiananmen Square Crackdown, Hearing of the Congressional Human Rights Caucus, 3 June 04, Testimony of Erping Zhang, Executive Director, Association of Asian Research (noting "over 100,000 Falungong practitioners serving in labor camps, jails, and mental institutions").

<sup>272</sup> "China to Reform Prisons; 'Productive Units' Separated From Prisons," ANSA English Media Service, 22 September 03 (FBIS, 22 September 03).

<sup>273</sup> U.S.-China Economic and Security Review Commission, Policy Paper on Prison Labor and Forced Labor in China, U.S.-China Economic Security Commission Report, 2002, <www.uscc.gov/researchreports/2000-2003/reports/pris-02.htm>.

<sup>274</sup> Bilateral Trade Policies and Issues Between the United States and China, Hearing of the U.S.-China Economic and Security Review Commission, 2 August 01, Testimony of Charles Winwood, Customs Commissioner on Chinese Prison Labor.

<sup>275</sup> 22 USC § 501.

#### Notes to Section III(c)—Freedom of Religion

<sup>276</sup> "Chinese Communist Party Policy on Religion Outlined by Party Paper," People's Daily [Renmin ribao], 14 November 03 (BBC Monitoring, 26 November 03).

<sup>277</sup> Ibid.

<sup>278</sup> Jiang perfected the solution, but the formulation traces its roots to Deng Xiaoping. In 1982, China's Constitution was amended to protect "normal religious activities," a guarantee that would provide "sufficient" religious freedom for the five faiths officially recognized by the Chinese government (Buddhism, Taoism, Islam, Catholicism, and Protestantism) while enlarging the Party's mass base of support. Deng's new thinking was designed to energize the productive capacity of religious believers by tempering the unrelenting hostility toward religion that had grown out of the Cultural Revolution. The new Party policy on religion was laid out in the 1982 document, "The Basic Viewpoint and Policy on the Religious Question during Our Country's Socialist Period (Document 19)." Mickey Spiegel, "Control and Containment in the Reform Era," in God and Caesar in China: Policy Implications of Church-State Tensions, eds. Jason Kindopp and Carol Hamrin (Washington, D.C.: Brookings Institution Press, 2004); Pitman B. Potter, "Belief in Control: Regulation of Religion in China," 174 China Quarterly 317, 319-321 (2003).

<sup>279</sup> Sun Chengbin, "During Hebei Inspection, Jia Qinglin Emphasizes Commanding Religions Work Through the Important Thinking of the 'Three Represents,' Leading Masses of Religious Believers to Devote Themselves to Comprehensively Building Well-off Society," Xinhua, 10 November 03 (FBIS, 10 November 03).

<sup>280</sup> Chen Songshao, "Ruling Party and Religion: An Extremely Important Theoretical Issue," China Religion [Zhongguo zongjiao], 26 January 04 (FBIS, 29 April 04).

<sup>281</sup> Ibid.

<sup>282</sup> Ma Xuejun, "Do a Good Job of Religious Work in the New Period," Gansu Daily [Gansu ribao], 30 June 04 (FBIS, 2 July 04).

<sup>283</sup> Ibid.

<sup>284</sup> Ambiguity has challenged Party policy on religion from the start. Even Mao commended the anti-religious activities of peasants, while he warned that "it is wrong" for anyone to "cast aside the idols" or "pull down the temples" of others. Mao Zedong, "An Investigation into the Peasant Movement in Hunan," in Selected Works of Mao Tse-tung, Vol. 1 (Beijing: Foreign Languages Press: 1975), 23-29. See also, Michael A. Lev, "China Touts New Churches, But Rules Crimp Faithful; Government Still Controls Religion," Chicago Tribune, 3 March 04.

<sup>285</sup> Wang Yan, "Uphold the Use of Important Thinking of the 'Three Represents' to Lead Religious Work," Heilongjiang Daily [Heilongjiang ribao], 25 May 04 (FBIS, 28 May 04); Ma Xuejun, "Do a Good Job of Religious Work in the New Period"; Hu Shaojie, "Together They Strike Up the Magnificent Melody of Religious Work," China Religion [Zhongguo zongjiao], 26 March 04 (FBIS, 10 June 04).

<sup>286</sup> China's current "socialist religious theory" is routinely attributed to the third generation leadership, specifically Jiang Zemin, in the Chinese press. At the same time, China's fourth generation leadership under President and General Secretary Hu Jintao has embraced the theory, and "stressed using the important thinking of the 'Three Represents' to command religion work."

“Study Session of Provincial Leading Cadres on Religious Work Opens in Beijing,” Xinhua, 3 June 04 (FBIS, 3 June 04).

<sup>287</sup> The official Party line pursued during the Cultural Revolution, the elimination of religion, stands out as an aberration in an otherwise consistent policy focus on “control of religion” since the early 1950s. Holmes Welch surveyed the role of the religious affairs bureaucracy as it was created and institutionalized in the early 1950s. Although the title of the national-level organization has now changed to the State Administration for Religious Affairs, little else regarding doctrinal hostility toward religion or SARA’s implementing guidelines has changed. See, in particular, Homes Welch, *Buddhism Under Mao* (Cambridge, Mass.: Harvard University Press, 1972), 35.

<sup>288</sup> See, e.g., regulations posted on the Hunan Provincial Religious Affairs Bureau Web site, <<http://zjsw.hunan.gov.cn>>, and the United Front Work Department’s Web site, <[www.zyztb.cn](http://www.zyztb.cn)>.

<sup>289</sup> “Chinese Religious Leaders Condemn U.S. Religious Freedom Report,” Xinhua, 21 May 04 (FBIS, 21 May 04).

<sup>290</sup> “China Foreign Ministry Spokesman Refutes U.S. Accusations Against Religious Policy,” Xinhua, 14 May 04 (FBIS, 14 May 04).

<sup>291</sup> These laws and regulations include: Implementing Measures on Managing the Registration of Religious Social Organizations [Zongjiao shehui tuanti dengji guanli shishi banfa], issued 6 May 91; Regulations on Managing Places for Religious Activities [Zongjiao huodong changsuo guanli tiaoli], issued 31 January 94; Measures for the Registration of Places for Religious Activities [Zongjiao huodong changsuo dengji banfa], issued 13 April 94; Provisions on Managing the Religious Activities of Aliens in China [Zhonghua renmin gongheguo jingnei waiguoren zongjiao huodong guanli guiding], issued 31 January 94; Measures for the Annual Inspection of Places of Religious Activities [Zongjiao huodong changsuo niandu jiancha banfa], issued 30 July 96; and Detailed Rules on Implementing the Provisions on Managing the Religious Activities of Aliens in the People’s Republic of China [Zhongguo jingnei waiguoren zongjiao huodong guanli guiding shishi xize], issued 26 September 00. For an in-depth analysis of the Chinese legal structure controlling religion, see Potter, “Belief in Control: Regulation of Religion in China.” Also see the CECC Web site, [www.cecc.gov](http://www.cecc.gov), for a more complete listing of these laws and regulations, with translations.

<sup>292</sup> Ye Xiaowen’s statement as referenced in, Magda Hornemann, “China: Religious Freedom and the Legal System: Continuing Struggle,” Forum 18 News Service, 28 April 04, <[www.forum18.org](http://www.forum18.org)>.

<sup>293</sup> Potter, “Belief in Control: Regulation of Religion in China.”

<sup>294</sup> “PRC Official on ‘Three Represents’ Commanding Religion in China,” Xinhua, 3 June 04 (FBIS, 3 June 04), Ma Xuejun, “Do a Good Job of Religious Work in the New Period.”

<sup>295</sup> Yu Kai, “Hubei Holds Forum on ‘Cults’ in Wuhan, Remarks Against Falungong, Li Hongzhi,” Hubei Daily [Hubei ribao], 3 Jul 04 (FBIS, 6 July 04).

<sup>296</sup> For an extensive treatment of PRC government abuses against Falun Gong practitioners, see Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, *Country Reports on Human Rights Practices—2003, China* (including Tibet, Hong Kong and Macau), 25 February 04.

<sup>297</sup> For an analytical treatment of the impact of the Party’s handling of the Falun Gong movement on criminal justice reform in China, see Ronald C. Keith and Lin Zhiqiu, “The ‘Falun Gong Problem’: Politics and the Struggle for the Rule of Law in China,” 175 *China Quarterly* 623 (2003).

<sup>298</sup> “Beijing Steps up Campaign Against ‘Cults’ in Rural Areas,” Foreign Broadcast Information Service, 21 May 04 (FBIS, 21 May 04). See in particular the FBIS reference to a Politburo-level commentator in the 17 April 2004 edition of People’s Daily calling for more localities to enforce the crackdown.

<sup>299</sup> See analytical comments in “Beijing Steps up Campaign Against ‘Cults’ in Rural Areas,” Foreign Broadcast Information Service. See, in particular, the FBIS description of an article on the Web site of the Beijing Association of Science Technology referencing a central directive titled “Circular on Launching Anti-Cult Warning Education in Rural Areas Throughout the Country.”

<sup>300</sup> Xu Hong, “China Anticult Association Holds Ninth Public Lecture and Academic Symposium in Chengdu to Discuss Ways to Prevent Cults From Breeding and Infesting Rural Villages,” Sichuan Daily [Sichuan ribao], 30 May 04 (FBIS, 02 June 04). See analytical comments in “Beijing Steps up Campaign Against ‘Cults’ in Rural Areas,” Foreign Broadcast Information Service. See in particular FBIS description of an article on the Web site of the Beijing Association of Science Technology referencing a central directive titled “Circular on Launching Anti-Cult Warning Education in Rural Areas Throughout the Country.”

<sup>301</sup> The U.S.-based Falun Dafa Information Center reported that one of the highest tolls in official violence and indoctrination against China’s Falun Gong practitioners occurred in April 2004. “62 Cases of Falun Gong Practitioners Killed from Torture, Abuse Reported in April and May 2004,” Falun Dafa Information Center, 9 June 04, <[www.faluninfo.net](http://www.faluninfo.net)>.

<sup>302</sup> See analytical comments in “Beijing Steps up Campaign Against ‘Cults’ in Rural Areas,” Foreign Broadcast Information Service. See, in particular, the FBIS reference to a Politburo-level commentator in the 17 April 2004 edition of People’s Daily identifying Falun Gong as a target of the campaign, and the FBIS description of an article posted on the PRC Ministry of Agriculture Web site outlining the campaign. The crackdown in Deqing county, Zhejiang province resulted in 10 small churches and 392 temples being closed between September and October 2003. “Deqing County in Zhejiang Province Has Closed Down 392 Temples and 10 Churches,” Hong Kong Information Center for Human Rights and Democracy, 8 November 03 (FBIS, 12 November 03).

<sup>303</sup> Ma Xuejun, “Do a Good Job of Religious Work in the New Period.”

<sup>304</sup> Wu Qingcai, "Beijing Experts Call for Emphasis on Education in Scientific Atheism Directed at Youth," China News [Zhongguo xinwen], 31 May 04 (FBIS, 2 June 04).

<sup>305</sup> Ibid.

<sup>306</sup> Ibid. See also, Tian Yu, "It is the Good Spring Time in Jiaodong—What I Have Seen and Heard About the Anti-Cult Education Campaign Through Admonition and Instruction in the Rural Areas of Yantai City, Shandong Province," Xinhua, 16 April 04 (FBIS, 21 April 04).

<sup>307</sup> Ghupur Reshit, "Reflections on the Work of Cultivating Patriotic Religious Personnel," Social Sciences in Xinjiang [Xinjiang shehui kexue], 25 November 03 (FBIS 08 January 04).

<sup>308</sup> Tian Yu, "It is the Good Spring Time in Jiaodong—What I Have Seen and Heard About the Anti-Cult Education Campaign Through Admonition and Instruction in the Rural Areas of Yantai City, Shandong Province."

<sup>309</sup> Ma Xuejun, "Do a Good Job of Religious Work in the New Period."

<sup>310</sup> Yue Zong, "Constantly Raise the Level of Religious Work and Resist Foreign Religious Infiltration," Southern Metropolitan Daily [Nanfang dushibao], 22 May 04 (FBIS, 22 May 04); Chen Songchao, "Ruling Party and Religion—An Extremely Important Theoretical Issue," China Religion [Zhongguo zongjiao], 26 January 04 (FBIS, 29 April 04).

<sup>311</sup> Yu Kai, "Hubei Holds Forum on 'Cults' in Wuhan, Remarks Against Falungong, Li Hongzhi."

<sup>312</sup> "Chinese Communist Party Policy on Religion Outlined by Party Paper," People's Daily.

<sup>313</sup> Wang Yan, "Uphold the Use of Important Thinking of the 'Three Represents' to Lead Religious Work."

<sup>314</sup> For a more extensive treatment of this subject, see the CECC 2003 Annual Report. See also *infra*, Religious Freedom for Tibetan Buddhists and Religious Freedom for China's Muslims.

<sup>315</sup> TAR Leading Committee for Patriotic Education in Monasteries, TAR Patriotic Education for Monasteries Propaganda Book No. 4. Handbook for Education in Policy on Religion, May 2002, Section 2, 14(d). (The International Campaign for Tibet obtained an official Tibetan-language version as distributed in the monasteries. English translation by ICT on file with the Commission.)

<sup>316</sup> Commission Staff Interviews. An official in the TAR said there are 46,000 monks and nuns in the TAR, and that this figure "accounts for two percent of the Tibetan population." (46,000 would be about 1.9 percent of the TAR's 2.43 million Tibetans in 2000.) An official in Qinghai said there are about 21,000 Tibetan monks and nuns in the province. (21,000 would be about 1.9 percent of Qinghai's 1.09 million Tibetans in 2000.) An official in Gansu said there are about 10,000 Tibetan monks and nuns. (10,000 would be about 2.3 percent of Gansu's 443,000 Tibetans in 2000.)

<sup>317</sup> TAR Patriotic Education for Monasteries Propaganda Book No. 4, Section 1, Question 7.

<sup>318</sup> Ibid., Question 8(i).

<sup>319</sup> Propaganda Department of the Committee of the Communist Party of the TAR, A Reader for Advocating Science and Technology and Doing Away with Superstitions, 2002, Section 1, Question 17. (The International Campaign for Tibet obtained an official Chinese-language version of the Reader after it had been distributed to county-level Education Offices in the TAR. English translation by ICT on file with the Commission.)

<sup>320</sup> TAR Leading Committee for Patriotic Education in Monasteries, TAR Patriotic Education for Monasteries Propaganda Book No. 2. Handbook for Education in Anti-Splittism, May 2002, Section 2, 2(d). (The International Campaign for Tibet obtained an official Tibetan-language version as distributed to monasteries. English translation by ICT on file with the Commission.)

<sup>321</sup> The Gelug sect's spiritual head is the Dalai Lama. There are three other major sects of Tibetan Buddhism: the Kagyu, Sakya, and Nyingma.

<sup>322</sup> The Dui Hua Foundation, "Criminal Verdict of the Sichuan Province Ganzi Tibetan Minority Autonomous Prefecture Intermediate People's Court, 2000. Ganzi Intermediate Court Verdict No. 11," in Selection of Cases from the Criminal Law, August 2003, 42–55. Dui Hua's translation of the official sentencing document shows that the court agreed that Sonam Phuntsog had not explicitly called for "Tibetan independence," but nonetheless sentenced him for inciting splittism because he "incited the masses to believe in the Dalai Lama."

<sup>323</sup> TAR Patriotic Education for Monasteries Propaganda Book No. 4. Handbook for Education in Policy on Religion, Section 3, Question 29: "How should the internal management of monasteries be strengthened?" The answer, in part: "Monasteries are not permitted to impose any burden on ordinary people by whatever means." Section 4, Question 42: "What is the general procedure for diligently guiding the adaptation of Tibetan Buddhism to Socialist society in the Tibet region?" The answer, in part: "The monks and nuns in general became self-sufficient workers in the Socialist family, and the economic burden on the masses was reduced by an ascertained measure." (The International Campaign for Tibet obtained an official Tibetan-language version as distributed to monasteries. English translation by ICT on file with the Commission.)

<sup>324</sup> Entry fees are rising rapidly. "New Metal Barricades in Lhasa's Jokhang Control Access to Inner Temple," Tibet Information Network, 12 May 04, <[www.tibetinfo.net](http://www.tibetinfo.net)>. Lhasa's Jokhang Temple, Tibetan Buddhism's oldest and most important temple, charges 70 yuan for entry, 10 yuan more than Beijing's Forbidden City. Metal barricades have been erected to control Tibetan worshippers and ensure that non-Tibetans, including Han, pay the steep fee.

<sup>325</sup> "Tibet Receives More Tourists in First Half," Xinhua, 31 July 04, <<http://news.xinhuanet.com>>. 505,000 tourists visited the TAR in the first half of 2004. 470,000 were from elsewhere in China; 37,000 were from "overseas regions and countries." (Tourists from inside China outnumbered those from outside China by nearly 13 to 1.)

<sup>326</sup> In the late 1950s, the Chinese government organized the Catholic Patriotic Association (CPA), gave it control of all Church property, and convinced a small group of bishops and priests to proclaim their independence from the Holy See and subordinate themselves to the CPA. Since that time, the government has worked to persuade and coerce Catholic clergy and laity to register with this "official Church." The majority refused to do so and went "underground," where,

persisting in their fidelity to the Holy See, they refused to attend Masses offered by priests of the "official Church." China today has an estimated 8 million unregistered and 4 million registered Catholics.

<sup>327</sup> "Beijing Says the Bishop Went Abroad Illegally," AsiaNews, 11 March 04, <www.asianews.it>; Bernardo Cervellera, P.I.M.E., "New Churches Built to Destroy Even More," AsiaNews, 4 February 04, <www.asianews.it>; Teresa Ricci, "Forced Demolitions: an Attempt on Man and Culture," AsiaNews, 2 March 04, <www.asianews.it>; "Dramatic Account of a Church Destroyed in Zhejiang," AsiaNews, 26 February 04, <www.asianews.it>. Li Junru interview with Chen Songshao, "Ruling Party and Religion-an Extremely Important Theoretical Issue" [Zhizhengdang yu zongjiao: Yi ge ji qi zhongyao de lilun wenti zuanfang zhonggong zhongyang dangxiao fuxiaozhang li junru], China Religion [Zhongguo zongjiao], 26 January 04.

<sup>328</sup> Cardinal Kung Foundation, "Prisoners of Religious Conscience for the Underground Roman Catholic Church in China," 27 May 04, <www.cardinalkungfoundation.org>; "In Custody: People Imprisoned for Their Religious Beliefs," China Rights Forum, No. 4, 2003, 93-123; Cardinal Kung Foundation, "Underground Bishop of the Roman Catholic Church in China 'Lost' for More than 6 Years Found Very Ill in Government Detention," 19 November 03, <www.cardinalkungfoundation.org>; Cardinal Kung Foundation, "Approximately A Dozen Underground Roman Catholic Priests and Seminarians Were Arrested and Another Church Was Demolished in China," 26 October 03, <www.cardinalkungfoundation.org>; Cardinal Kung Foundation, "Another Arrest of an Underground Catholic Bishop," 8 March 04, <www.cardinalkungfoundation.org>; Cardinal Kung Foundation, "Another Arrest of an Underground Catholic Bishop," 6 April 04, <www.cardinalkungfoundation.org>; Cardinal Kung Foundation, "Arrest of Two Young Underground Roman Catholic Priests," 16 May 04, <www.cardinalkungfoundation.org>.

<sup>329</sup> The documents, entitled A Management System for Catholic Dioceses in China, Work Regulations for the Catholic Patriotic Association and The System for the Joint Conference of Chairpersons of the Chinese Catholic Patriotic Association and of the Bishops Conference of the Catholic Church in China, are available in Tripod XXIII, No. 130 (Autumn 2003), <www.hsstudyc.org.hk>.

<sup>330</sup> On the control of registered Catholics, see "Year 2003 Witnesses Greater Control Over Open Church," UCAN, 29 December 03, <www.ucanews.com>; Bernardo Cervellera, P.I.M.E., *Missione Cina: viaggio nell'impero tra mercato e repressione* (Milan: Ancora, 2003), 157ff. On Catholic charitable activity see the Web site of Beifang Jinde Catholic Social Service Center at <www.chinacatholic.org>; Angelo Lazzarotto, "Mature Laity in the Faith: an Urgent Matter in the Chinese Church," AsiaNews, 3 December 04, <www.asianews.it>. On Web sites, see "Catholic Web sites Flourish Despite Obstacles," UCAN, 11 August 03, <www.ucanews.org>. On Feng Xinmao see, "First Bishop Ordained in Decades With Graduate Degree," AsiaNews, 8 January 04, <www.asianews.it>. The Commission has received reliable private reports of CPA corruption.

<sup>331</sup> John Paul II, "Message of His Holiness Pope John Paul II for the Fourth Centenary of the Arrival in Beijing of the Great Missionary and Scientist Matteo Ricci, S.J.," 24 October 01, <www.vatican.va>. Nailene Chou Wiest, "U.S. Cardinal Tests Water on Visit to Beijing," South China Morning Post, 2 August 03, <www.scmp.org>; "Chinese and U.S. Catholic Leaders Meet in Beijing," Xinhua, 30 July 03, <www.xinhuanet.com/english>; Theodore Cardinal McCarrick, "China," Catholic Standard, 31 July 03, <www.catholicstandard.org>.

<sup>332</sup> "Holy See Statement on Bishop Arrested in China," Vatican Information Service, 10 March 04; "Bishop Wei Jingyi released last March 14," AsiaNews, 16 March 04, <www.asianews.it>; "Press Office Statement on Bishop Imprisoned in China," Vatican Information Service, 7 April 04; "Underground Bishop Julius Jia Zhiguo Released," AsiaNews, 14 April 04, <www.asianews.it>; Sandro Magister, "The Bishop of Xi'an's Long March from Beijing to Rome," L'Espresso Online, 15 March 04, <www.chiesa.espressoonline.it>; Cardinal Kung Foundation, "Prisoners of Religious Conscience for the Underground Roman Catholic Church in China"; Cardinal Kung Foundation, "Underground Bishop of the Roman Catholic Church in China 'Lost' for More than 6 Years Found Very Ill in Government Detention"; Cardinal Kung Foundation, "Approximately A Dozen Underground Roman Catholic Priests and Seminarians Were Arrested and Another Church Was Demolished in China"; Cardinal Kung Foundation, "Another Arrest of an Underground Catholic Bishop"; Cardinal Kung Foundation, "Arrest of Two Young Underground Roman Catholic Priests."

<sup>333</sup> "Abducted Bishops Forced to Obey Government and Not Pope," AsiaNews, 25 June 04, <www.asianews.it>.

<sup>334</sup> "C'è un risveglio religioso in Cina?" La Civiltà Cattolica 155, no. 3689 (6 March 04) (every line of this authoritative Vatican journal is approved by the Secretary of State prior to publication).

<sup>335</sup> "Allegiance to Peter at All Costs: an Interview with Anthony Li Du'an, Bishop of Xi'an," in Sandro Magister, "The Bishop of Xi'an's Long March from Beijing to Rome."

<sup>336</sup> "First Catholic Named Vice Chairman of National People's Congress," UCAN, 8 April 03, <www.ucanews.com>.

<sup>337</sup> "Re-election of the Jiang Zemin Era Leadership at the National Congress of Catholics," AsiaNews, 15 July 04, <www.asianews.it>; "National Catholic Congress Re-elects Top 'Open' Church Leaders," UCAN, 13 July 04, <www.ucanews.com>.

<sup>338</sup> Joseph Han Zhihai, Bishop of Lanzhou, "Letter to my Friends," published in Tripod XXIII, No. 131 (winter 2003), <www.hsstudyc.org.hk>; "A Time for Reconciliation," Hong Kong Sunday Examiner, 21 March 04, <sundayex.catholic.org.hk>; "'Open' and 'Underground' Communities Hold Separate Services Side-by-Side," UCAN, 16 April 04, <www.ucanews.com>; "Division in Church Pains Both 'Open' and 'Underground' Communities," UCAN, 22 January 04, <www.ucanews.com>.

<sup>339</sup> See, e.g., "Chairman Simayi Tielwaerdi Promotes National Unity Education Month Drive," Xinjiang Daily [Xinjiang ribao], 09 May 04 (FBIS, 22 June 04) and Ma Pinyan, "A Study of

Xinjiang's Opposing Illegal Religious Activities," Social Sciences in Xinjiang [Xinjiang shehui kexue], 25 August 03 (FBIS, 1 December 03).

<sup>340</sup>The Xinjiang Regional Government issued a "special regulation" in 1988 "strictly prohibiting underground Koran schools and classes on the Koran." Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>341</sup>Practicing Islam in Today's China: Differing Realities for the Uighurs and the Hui, Testimony of Jonathan Lipman, Professor of History, Mount Holyoke College.

<sup>342</sup>The Provisional Regulations for Controlling Religious Activity in the Xinjiang Uyghur Autonomous Region state, "professional religious personnel cannot engage in missionary activity across prefectures, municipalities or counties without the approval of the religious affairs bureau of the government." Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>343</sup>Zhao Zhiyun, "Ismail Tiliwaldi: Actively Protect Stability, Guide Religion for The Benefit of the Country," Tianshan Net [Tianshan wang], 15 July 03 (FBIS, 26 July 03).

<sup>344</sup>Ibid.

<sup>345</sup>"Hui Liangyu Speech at China Islamic Association's 50th Founding Anniversary," China Religion [Zhongguo zongjiao], 26 November 03 (FBIS, 20 January 04). See also, Practicing Islam in Today's China, Testimony of Kahar Barat, Lecturer in Near Eastern Languages and Civilizations, Yale University.

<sup>346</sup>Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>347</sup>These include Provisional Regulations for Managing Venues for Religious Activities in the Xinjiang Uyghur Autonomous Region, issued 1988, Provisional Regulations for Managing Religious Activity in the Xinjiang Uyghur Autonomous Region, issued 1990, Provisional Regulations for Managing Religious Professional Personnel in the Xinjiang Uyghur Autonomous Region, issued 1990, and Ordinances for Managing Religious Affairs in the Xinjiang Uyghur Autonomous Region, issued 1990. Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>348</sup>Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>349</sup>These activities are governed by the Regulations on the Control of the Religious Activity of Foreigners Within the Territory of the People's Republic of China. Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>350</sup>Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>351</sup>Ibid.

<sup>352</sup>Ghupur Reshit, "Reflections on the Work of Cultivating Patriotic Religious Personnel."

<sup>353</sup>Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>354</sup>This document is cited in Ma Pinyan, "A Study of Xinjiang's Opposing Illegal Religious Activities."

<sup>355</sup>Ibid.

<sup>356</sup>Practicing Islam in Today's China, Testimony of Gardner Bovingdon, Assistant Professor of Central Eurasian Studies, Indiana University at Bloomington.

<sup>357</sup>Ibid.

<sup>358</sup>Robert Marquand, "Pressure to Conform in West China," Christian Science Monitor, 29 September 03.

<sup>359</sup>Nicholas Becquelin, "Criminalizing Ethnicity: Political Repression in Xinjiang," China Rights Forum No. 1, 2004, 39.

<sup>360</sup>Hui Liangyu, "Inheriting Fine Traditions and Writing a New Chapter of History," China Religion [Zhongguo zongjiao], 26 November 03 (FBIS, 20 January 04).

<sup>361</sup>Dru C. Gladney, "Islam in China: Accommodation or Separatism," 174 China Quarterly 451, 457 (2003).

<sup>362</sup>For information on a crackdown against house church members in Guangxi Autonomous Region in November 2003, see "Christians Sent to Chinese Labor Camps for Owning Bibles," Agence France-Presse, 25 November 03 (FBIS, 25 November 03). For information on a crackdown launched against the "Little Flock" in Zhejiang province in December 2003 and the Tu Du Sha Church in June 2003, see Bill Savadove, "Little Flock is Resisting State Control From Pastures New," South China Morning Post, 1 December 03 (FBIS, 20 January 03), and "Chinese Government Officials Bulldoze God's House," AgapePress, 24 February 04, <www.agapepress.org>. For information on Henan province house church arrests during January, March, and August 2004, see "Three Christian Leaders Arrested in China in Crackdown," Wall Street Journal, 16 February 04; "House Church Leader Zeng Guangbo Re-Arrested; Deborah Xu Confirmed in Custody," ChinaAid, 10 March 04, <www.chinaaid.org>; "More Than 100 House Church Leaders Arrested in Henan," ChinaAid, 06 August 04, <www.chinaaid.org>. For information on the arrest and later release of a house church pastor in Anhui province during May 2004 and earlier arrests in February 2004, see Center for Religious Freedom, "China Releases Some Christian Leaders," 1 June 04, <www.freedomhouse.org> and "One Chinese House Church Leader on the Run, Three Others Formally Prosecuted," ChinaAid, February 04, <www.chinaaid.org>. For information on the arrest and later release of China Gospel Fellowship members in Hubei province, see "More Than 100 More House Church Leaders Arrested: High Level Government Meeting in Religion Reported," ChinaAid, 13 June 04, <www.chinaaid.org>. For information on the arrest and beating death while in custody of a house church member in Guizhou province in July 2004, see "Chinese Woman Beaten to Death After Arrest for Handing Out Bibles," Agence France-Presse, 4 July 04. For information on a mass arrest of Christians in Xinjiang Autonomous Region during July 2004, see "Relatives Arrested in Henan; One More Leader Held in Anhui," ChinaAid, 18 August 04, <www.chinaaid.org> and "More than 100 House Church Leaders Arrested in Xinjiang; Once Arrested Leader Tortured in Henan," ChinaAid, 20 July 04, www.chinaaid.org.

<sup>363</sup>Rooting out "foreign infiltration" is a particular goal of the campaign. Note the Heilongjiang reference in Wang Yan, "Uphold the Use of Important Thinking of the 'Three Represents' to Lead Religious Work."

<sup>364</sup> Potter, "Belief in Control: Regulation of Religion in China," 334.

<sup>365</sup> For more information on the development of sectarianism in rural house churches, see Daniel H. Bays, "Chinese Protestant Christianity Today," 174 *China Quarterly* 488, 493–497 (2003).

<sup>366</sup> In 1998, a number of house church leaders produced a document calling on the government "to change the definition of a 'cult' from meaning simply any Christian group that didn't register with the Three Self . . . (and) to stop attacking the house churches." David Aikman, *Jesus in Beijing: How Christianity Is Transforming China and Changing the Global Balance of Power* (Washington, D.C.: Regnery Publishing, 2003), 90. See also Daniel H. Bays, "Chinese Protestant Christianity Today."

<sup>367</sup> Magda Hornemann, "China: For Religious Freedom, Patience May Be a Virtue," *Forum 18 News Service*, 31 March 04, <[www.forum18.org](http://www.forum18.org)>.

<sup>368</sup> "Zhang Sentenced to Two Years in Labor Camp," *Voice of the Martyrs News*, 3 November 03, <[www.persecution.com](http://www.persecution.com)>.

<sup>369</sup> *Ibid.*

<sup>370</sup> China Aid Association, 2 April 04, "The Life of Imprisoned House Church Pastor in Danger: Just Come Pick Up My Corpse," 19 May 04, <[www.chinaaid.org](http://www.chinaaid.org)>.

<sup>371</sup> "A Christian in Shandong Was Beaten to Death by the Public Security Personnel," *Hong Kong Information Center for Human Rights and Democracy*, 4 November 03 (FBIS, 5 November 03).

<sup>372</sup> Human Rights in China Press Release, "Christians Face Long Sentences in Secret Trial," 16 March 04, <[www.hrichina.org](http://www.hrichina.org)>.

<sup>373</sup> *Ibid.*

<sup>374</sup> The Committee for Investigation on Persecution of Religion in China, *China: Crackdown on a Million-Member House Church—The Leader Kidnapped, Over 50 Co-Workers Arrested, and One Tortured to Death*, 14 May 04, <[www.china21.org](http://www.china21.org)>.

<sup>375</sup> *Ibid.*

<sup>376</sup> Jason Kindopp, "Policy Dilemmas in China's Church-State Relations: An Introduction," 3.

<sup>377</sup> For a more detailed discussion of the Three-Self Patriotic Movement and the China Christian Council, see Yihua Xu, "Patriotic Protestants: The Making of an Official Church," and Jason Kindopp, "Fragmented Yet Defiant: Protestant Resilience under Chinese Communist Party Rule," in *God and Caesar in China*, eds. Jason Kindopp and Carol Lee Hamrin.

<sup>378</sup> David Aikman, *Jesus in Beijing*, 175.

<sup>379</sup> Jeff M. Sellers, "Crushing House Churches: Chinese Intelligence and Security Forces Attack Anew," *Christianity Today*, 13 January 04, <[www.christianitytoday.com](http://www.christianitytoday.com)>.

<sup>380</sup> *Ibid.*

#### Notes to Section III(d)—Freedom of Expression

<sup>381</sup> The only exception to the licensing requirement for publishers is non-commercial Internet publishers, which are only required to register with the government. However, such publishers are prohibited by law from reporting news unless explicitly licensed to do so, and Chinese authorities continue to shut down non-commercial Web site operators who become known for being critical of the Communist Party and the central government.

<sup>382</sup> "Li Changchun Goes to See the 'Focus' Program Group, Emphasizes Continuously Raising the Level of Public Opinion Supervision, Centering Round the Central Task and Serving the Overall Situation," *Xinhua*, 16 April 04 (FBIS, 16 April 04).

<sup>383</sup> See, e.g., Jamie P. Horsley, "Shanghai Advances the Cause of Open Government Information in China," *Yale China Law Center*, 20 April 04, <<http://chinalaw.law.yale.edu>>. See also "More Light Need To Reach a Secret World," *South China Morning Post*, 27 January 04 (FBIS, 27 January 04).

<sup>384</sup> See, e.g., "China Establishes a Training System for Media Spokespersons, Plans to Train One Thousand Individuals" [Woguo jiang jianli sanji xinwen fayaren zhidu peixun shu qian ren], *Xinhua*, 3 June 03, <<http://news.xinhuanet.com>>.

<sup>385</sup> In July, the head of Shenzhen's Propaganda Department issued "5 Demands" to television news anchors during a government mandated training session, including the demand that reporters must "respect the government spokesperson system." He also told them that there are separate but parallel lines of authority for issuing government statements and carrying out government administration, and reporters should not try approach the incorrect party when trying to get information. "Shenzhen Requests Media Spokespeople: Don't Issue Accurate but Useless Statements" [Shenzhen yaoqiu xinwen fayaren: bu shuo zhengque dan meiyong de feihua], *China Youth Daily* [Zhongguo qingnian bao], 14 July 04, reprinted in *People's Daily* [Renmin ribao] <[www.people.com.cn](http://www.people.com.cn)>.

<sup>386</sup> Gao Shan, "All of China's Publishing Houses Other than the People's Publishing House, are Becoming Private Enterprises" [Quanguo suoyou chubanshe chu renmin chubanshe wai dou jiang zhuanxing wei qiye], *China Youth Daily* [Zhongguo qingnian bao], 6 April 04, reprinted in *Sina.com* [Xinwen zhongxin], <<http://news.sina.com.cn>>.

<sup>387</sup> "China Gives Green Light To Private Publication Dealers," *Xinhua*, 31 December 02 (FBIS, 31 December 02). But see "Private Bookstores Seek Equal Footing," *Xinhua*, 25 February 04, <<http://fpeng.peopledaily.com.cn>> ("Because it is privately run, a [private] bookstore has to go through more red tape and is bound by more restrictions than state-run outlets such as *Xinhua*").

<sup>388</sup> "China Gives Green Light To Private Publication Dealers," *Xinhua*: "Although private publishers are forbidden, a number of private publication companies have cooperated with state-owned publishers in commissioning and marketing publications." See also "Developments in PRC Central, Provincial Media," *Foreign Broadcast Information Service*, 12 February 04 (FBIS, 12 Feb 04) (citing *Economic Daily* [Jingji ribao], 17 February 04, as stating that in any media enterprise which breaks up operations to attract investment, the state must maintain "absolute holding").

<sup>389</sup> See, e.g., Li Xiguang, *Deformed Press [Jibian de meiti]* (Shanghai: Fudan University Press, 2003), 49.

<sup>390</sup> See, e.g., Xu Jigang, Editor-in-Chief, *Su Qian Daily*, “Carry Out the ‘Three Represents’ and Strengthen Supervision of Public Opinion” [Shixian “sange daibiao” qianghua yulun jiandu], *Su Qian Daily [Suqian ribao]*, 15 October 02, <[www.sqdaily.com](http://www.sqdaily.com)>, stating that some contradictions and problems are subject to the limitations and restrictions of objective and practical conditions, and not only do the masses have opinions and perspectives that the leaders also know about, but they are difficult to resolve at the time because of practical conditions. With regard to [this] situation, supervision should not be carried out, because supervision cannot resolve the problem, and will only add to the discontent of the masses, and will interfere with the normal working order of the leaders at the local levels and in the units.

<sup>391</sup> “[E]nsure that literature and art fit well into the whole revolutionary machine as a component part, that they operate as powerful weapons for uniting and educating the people and for attacking and destroying the enemy, and that they help the people fight the enemy with one heart and one mind.” Mao Zedong “Talks at the Yanan Forum on Literature and Art, *Mao Zedong Selected Works*, Vol. III, (May 1942), 70.

<sup>392</sup> “Our country’s press, radio, television, and so on are the mouthpiece of the party, the government, and the people. This not only defines the nature of journalistic work, but also defines its extremely important status and role in the work of the party and the state.” Xu Guangchun (deputy head of Central Propaganda Department and Director of State Administration of Radio, Film, and Television), “Core Content of Jiang Zemin Thinking on Journalism,” *Xinwen Zhanxian*, 1 February 04 (FBIS, 1 February 04).

<sup>393</sup> “Publishing businesses shall adhere to the path of serving the people and serving socialism, adhere to the guidance of Marxism, Leninism, Mao Zedong Thought and Deng Xiaoping Theory, promulgate and accumulate scientific technology and cultural knowledge that is advantageous to economic development and social progress, honors outstanding culture, promotes international cultural exchange and enriches and enhances the spiritual lives of the people.” Regulations on the Administration of Publishing [Chuban guanli tiaoli], issued 25 December 01, art. 3. English translations of other selected provisions of China’s publishing regulations are available on the CECC Virtual Academy at <[www.cecc.gov/pages/virtualAcad/exp/explaws.php](http://www.cecc.gov/pages/virtualAcad/exp/explaws.php)>

<sup>394</sup> Article 11 of the Regulations on the Administration of Publishing states that publishing units must have a sponsoring unit and a managing unit recognized by the State Council’s publishing administration agency.

<sup>395</sup> For an illustration of this, see the flow chart illustrating publishing restrictions in China on the CECC Virtual Academy <[www.cecc.gov/pages/virtualAcad/exp/bookflow.php](http://www.cecc.gov/pages/virtualAcad/exp/bookflow.php)>.

<sup>396</sup> “Directing public opinion toward the correct direction is the primary task for our propaganda . . . We must pay attention to hot topics and take the initiative in guiding reports on sudden incidents for the sake of social stability . . . we should constantly direct public opinion in the correct direction by answering questions from the masses and removing doubts.” Wang Shaoxiong (member of the Sichuan Provincial CPC Committee and Director of the Propaganda Department), “Persisting in the ‘Three Close-To’s and Serving the Building of a Well-Off Society,” Seeking Truth [Qishi], 1 January 04 (FBIS, 1 January 04).

<sup>397</sup> Propaganda Department of the Chinese Communist Party Central Committee, “Notice Regarding the Publication of the ‘Summary Findings of the Propaganda Department’s News Research Group,” 6 March 1989, quoted in Wei Chao, “The Negative Impact of Shallow Reporting” [Qianxi jieru shi baodao de “fu xiangying”], *China Journalism Review [Zhongguo xinwen chuanbo xue pinglun]*, 22 September 03, <[www.zjol.com.cn](http://www.zjol.com.cn)>.

<sup>398</sup> “News work must uphold the principle of leading correct public opinion, continue to rouse enthusiasm for unity and stability and squarely face the guiding principle of propaganda,” President Hu Jintao, quoted in “China’s President Stresses Importance of Control over Public Opinion,” *Channel News Asia*, 8 December 03, <[www.channelnewsasia.com](http://www.channelnewsasia.com)>.

<sup>399</sup> “Capital’s Media Instructed to Toe the Line on Reports,” *South China Morning Post*, 7 February 04, <[www.scmp.com](http://www.scmp.com)>. Other examples include the war in Iraq and Falun Gong.

<sup>400</sup> Regulations on the Protection of Secrets in News Publishing [Xinwen chuban baomi guiding], issued 13 June 92. For example, in April 2003, two editors at the Xinhua news agency were fired for publishing a news report about SARS that had been classified as secret. “Two Chinese Editors Sacked over Confidential SARS Document,” *South China Morning Post*, 29 April 2003, <[www.scmp.com](http://www.scmp.com)>.

<sup>401</sup> The Xinhua news agency is an institution directly under the State Council. See the CECC Virtual Academy, <[www.cecc.gov/pages/virtualAcad/gov/statestruct.php](http://www.cecc.gov/pages/virtualAcad/gov/statestruct.php)>.

<sup>402</sup> “China: Keep Government, Party Organs Away from Press Distribution,” *Xinhua*, 15 February 04, <<http://english1.peopledaily.com.cn>>.

<sup>403</sup> “Joint Efforts Between the Procuratorate and the Media to Root Out Bad Media Reporting Are Now Considered as Criminal Evidence Gathering” [Jianchayuan yu meiti lianshou fan fu meiti jubao bei liewei zhencha xiansuo], *People’s Daily [Renmin ribao]*, 17 January 04, <[www.people.com.cn](http://www.people.com.cn)>.

<sup>404</sup> “The Procuratorate Issues Regulations on How to Handle Leads from News Organizations” [Jianchayuan chutai shouli xinwen danwei yisong anjian xiansuo guize], *Xinhua*, 26 February 04, <<http://news.xinhuanet.com>>.

<sup>405</sup> “Reporters, Police, Miners are the Three Most Hazardous Occupations” [Jizhe, jingcha, kuanggong tong lie san da weixian zhiye], *People’s Daily [Renmin ribao]*, 19 January 04, <[www.people.com.cn](http://www.people.com.cn)>, stating that, along with coal mining and police work, journalism was among the top three most dangerous professions in China.

<sup>406</sup> For a description of the GAPP and its responsibilities, see the CECC Virtual Academy, <[www.cecc.gov/pages/virtualAcad/exp/expcensors.php](http://www.cecc.gov/pages/virtualAcad/exp/expcensors.php)>.

<sup>407</sup> “Web site on Chinese Reporters Opens, 4 Xinhua Journalists Blacklisted” [Zhongguo jizhe wang kaitong si ming xinhuashe jizhe shang le heimingdan], *People’s Daily [Renmin ribao]* [Beijing yule xinbao], 2 January 04, <[www.people.com.cn](http://www.people.com.cn)> (citing *Star Daily*).

<sup>408</sup> Qu Zhihong, "China Launches Comprehensive Effort to Clean-up Publishers" [Quanguo baokan she jizhe zhan qingli zhengdun gongzuo quanmian zhankai], Xinhua, reprinted in China Youth Daily [Zhongguo qingnian bao], 14 January 04, <<http://zqb.cyol.com>>. According to reports, reporter stations that have been set up without government approval will be shut down, and journalist licenses will not be re-issued to the reporters working at local reporter stations during the campaign.

<sup>409</sup> See, e.g., transcripts of the online discussion on "Freedom of Expression in the Internet Space" held by the Chinese Academy of Social Sciences on 3 September 03, available at <<http://news.xinhuanet.com/newmedia/2003-10/09/content-1115386.htm>>. The introduction to the transcript states that the discussion was moderated by three senior CASS scholars and was intended to cover the "value of freedom of expression; how big the Internet space for freedom of expression is; the international standard for freedom of expression in the Internet space; and problems with China's Internet and freedom of expression." While the transcript covered over 20 pages, there was no discussion of how prior restraints influence freedom of expression, nor any mention of the large number of Internet writers imprisoned for expressing their opinions on the Internet.

<sup>410</sup> In early 2003, authorities replaced the deputy editor of Southern Metropolitan Daily with the former head of Guangdong Communist Party Propaganda Department and shut down the 21st Century Global Herald.

<sup>411</sup> Yu Huafeng and Li Mingyong were sentenced to prison terms of 12 and 10.5 years, respectively. Wu Jun and Dong Faxuan, "Two Southern Metropolitan Weekend Editors are Convicted of Corruption and Bribery" [Nanfang dushi bao liang zhubian yin tanwu, shouhui bei panxing], Xinhua, 19 March 04, <[www.xinhua.org](http://www.xinhua.org)>. Yu was convicted of embezzling \$200,000 of the company's money, and Li was convicted of bribery. On appeal, these sentences were reduced to 8 and 6 years, respectively. Cheng Yizhong was released on August 28, 2004, after the procuratorate issued a 'no indictment' decision allowing him to go free after five months in detention. The charges were not reported on the Web site of the parent of the Southern Metropolitan Daily until one week after their arrests. "Southern Metropolitan Daily Editor Cheng Yizhong Arrested on Suspicion of Corruption" [Nanfang dushi bao Cheng Yizhong yin shexian tanwufanzui bei yifa daibu], People's Daily [Renmin ribao], 9 April 04, <[www.people.com.cn](http://www.people.com.cn)> (citing Nanfang wang).

<sup>412</sup> See, e.g., Xu Zhiyong, "What We Cannot Run Away From—An Explanation Regarding the Southern Metropolitan Daily Case" [Women wufa taobi—guanyu nanfang dushi bao shijian de shuoming], Open Constitution Initiative, 10 April 04, <[www.oci.org.cn](http://www.oci.org.cn)>.

<sup>413</sup> "The Open Constitution Initiative" <[www.oci.org.cn/](http://www.oci.org.cn/)>, <[www.nandushijian.org](http://www.nandushijian.org)> and <[wangshengs.tongtu.net](http://wangshengs.tongtu.net)>.

<sup>414</sup> Chinese authorities set up a Web site for this campaign: <[www.shdf.gov.cn](http://www.shdf.gov.cn)>.

<sup>415</sup> "China Opens up a Phone Hotline as Part of its Campaign to Crackdown on Pornography, Offering Ample Rewards to Those Who Provide Helpful Information" [Quanguo saohuang da fei jubao dianhua kaitong jubao yangong zhe you zhongjiang], Xinhua, reprinted in China Legal Publicity [Zhongguo pufa wang], 16 January 04, <[www.legalinfo.gov.cn](http://www.legalinfo.gov.cn)>.

<sup>416</sup> "Public Told to Report Radical Chat Rooms," South China Morning Post, 28 February 04, <[www.scmp.com](http://www.scmp.com)>.

<sup>417</sup> "Jiangxi Employs 100 Individuals as Media Supervisors" [Jiangxi pin bai ren jiandu meiti], World Journal [Shijie ribao] (citing Nanchang News [Nanchang xun]), 25 March 04, <[www.worldjournal.com](http://www.worldjournal.com)>. See also "43 Accept Job Offers as Media Supervisors in Wuhan Yesterday" [43 ming xinwen xing feng jiandu yuan zuo shoupin], Wuhan Evening News [Wuhan wanbao], reprinted in Sina.com [Xin wen zhong xin], 18 March 04, <<http://news.sina.com.cn>>.

<sup>418</sup> Article 11 of China's Publishing Regulations specifically requires that anyone wishing to publish a newspaper or magazine must have registered capital of at least RMB 300,000 (about US\$35,000), a prohibitive amount of money in China, where the workers make less than US\$100 a month. See Regulations on the Administration of Publishing.

<sup>419</sup> For example, when the government shut down the 21st Century Global Herald in March 2003 after the paper published an article referring to democracy in China as "fake" democracy, it revoked the newspaper's license on the grounds that the publication had exceeded its license in publishing on domestic issues, because the license only permitted it to publish stories on international issues. Commission Staff Interview.

<sup>420</sup> The campaign was carried out pursuant to the Notice Concerning the Abuse and Misuse of Administrative Power in the Circulation of Periodicals, Lessening the Burden on Rural Farmers [Guanyu jinyibu zhili dangzheng bumen baokan san lan he liyong zhiquan faxing, jianqing jiceng he nongmin fudan de tongzhi], issued July 2003. See "China Closes 677 State Newspapers, Saving 1.8 Billion Yuan," Xinhua, 15 March 04 (FBIS, 15 March 04). The justification for this campaign was that these publications had shown they could not support themselves commercially and represented a burden on Chinese citizens by requiring various agencies to subscribe to them. While it seems this was a problem, the manner in which Chinese authorities solved this problem demonstrates that China's government is willing and able to use the publishing licensing regulatory system to exercise direct control over who gets to publish. As one Chinese scholar who hailed the campaign as representing "the most profound transformation in the press since the market economy of socialism came into China in 1992" conceded, "the plan to 'separate operations from management' has ensured that the media will continue to be led by the Communist Party." Chen Lidian, "A Look at the Effects of Recent Reforms of Party and Government Newspapers and Periodical Publications, and the Example They Set for Domestic Press Reform" [Zuijin zhili dangzheng bumen baokan dui woguo baokan tizhi gaige de qishi], Ruanzixiao.myrice.com, 4 January 04, <<http://ruanzixiao.myrice.com>>.

<sup>421</sup> Circular on Strengthening Management of Separating the Management From Operation of Newspapers and Periodicals and Dissociating Operation of Newspapers and Periodicals [Guanyu dui guan ban li he huazhuan baokan jiaqiang guanli de tongzhi], issued 6 February 04.



<sup>422</sup> Liu Yang, "50 Companies Awarded Licenses to Publish on the Internet, Three Major Internet Portals are Included" [Shoupi 50 jiagong huo wangluo chubanshan san da menhu wangzhan minglie qizhong], Shanghai Morning Post [Xinwen chenbao], reprinted in Xinhua, 7 January 04, <<http://news.xinhuanet.com>>.

<sup>423</sup> Interim Provisions on the Administration of Internet Publishing [Hulianwang chuban guanli zanxing guiding], issued 1 August 02, art. 6.

<sup>424</sup> "Court Refuses to Hear Suit Against Telecommunications Office for Closure of Civil Rights Web site" [Zhuanggao tongxin guanliju zao bohui wei quan wang bei leling guanbi], Beijing News [Xin jingbao], reprinted in Tech.tom.com, 18 January 04, <<http://tech.tom.com>>.

<sup>425</sup> "GAPP Announces List of 19 Dictionaries That Do Not Meet Standards" [Zhongguo guojia xinwen chuban zongshu baoguang 19 zhong buhege cishu (mingdan)], China News Services [Zhongguo xinwenshe], 17 October 03, <<http://chinanews.com>>.

<sup>426</sup> Ji Yanan, "Thirty Periodical Publishers Are Punished for Illegally Using Non-locally Registered Publication Numbers" [30 jia liyong jingwai zhuce kanhao de feifa chuban qikan bei qudi], Guangming Daily [Guangming ribao], 14 July 04, <[www.gmw.com](http://www.gmw.com)>.

<sup>427</sup> "Write Poems Yourself, Publish Yourself; Two 'Poets' Are Sentenced" [Ziji xie shi ziji chuban liang 'shiren' bei panxing], People's Daily [Renmin ribao], 17 January 04, <[www.peopledaily.com](http://www.peopledaily.com)>.

<sup>428</sup> Alice Yan, "Officials Loosen Grip on Movie Producers," South China Morning Post, 4 November 03, <[www.scmp.com](http://www.scmp.com)>. In addition, during the past year, SARFT issued the "Temporary Measures for the Qualifications To Be Allowed To Produce, Distribute and Display Movies," [Dianying zhipian, faxing, fanying jingying zige zhunru zhanxing guiding], issued 29 October 03, which restricts the right to produce movies to enterprises with a registered capital of at least 100,000 yuan.

<sup>429</sup> Zhang Dongcao, "Administration of Weather Forecast Reporting and Broadcasting: Media Outlets who Violate Norms on Publishing Weather Reports are Subject to Fines up to 10,000 Yuan" [Zhongguo qixiang ju: meiti bu guifan kanbo qixiang qubao zuigao fa wanyuan], China Youth Daily [Zhongguo qingnian bao], reprinted in People's Daily [Renmin ribao] 2 February 04, <[www.people.com.cn](http://www.people.com.cn)>.

<sup>430</sup> Elaine Kurtenbach, "China Extends Text Message Surveillance," Washington Post, 2 July 04, <[www.washingtonpost.com](http://www.washingtonpost.com)>.

<sup>431</sup> "Beware, SMS Unda Ctrl [sic]," Reporters Without Borders, 1 July 04, <[www.rsf.org](http://www.rsf.org)>.

<sup>432</sup> "Central Group To Inspect Work To Improve Publications in Localities," Xinhua, 22 October 03 (FBIS, 22 October 03).

<sup>433</sup> "Computer Game Cracked Down on for Discrediting China's Image," Xinhua, 19 March 04 (FBIS, 19 March 04).

<sup>434</sup> Robert Marquand, "China Mutes Online News," Christian Science Monitor, 10 March 04, <[www.csmonitor.com](http://www.csmonitor.com)>.

<sup>435</sup> Wu Yi, "Speech from the National SARS Prevention Televised Teleconference" [Zai quanguo yufang feidian gongzuo dianshi dianhua huiyi shangde jianghua], People's Daily [Renmin ribao], 9 October 03, <[www.peopledaily.com.cn](http://www.peopledaily.com.cn)>.

<sup>436</sup> Beijing City People's Government, Opinion on Carrying Out the Work of Housing and Demolition Well to Safeguard Social Stability [Beijing shi renmin zhengfu guanyu zuohao fangwu chiqian gongzuo weihu shehui wending de yijian], issued 10 November 03.

<sup>437</sup> Joseph Kahn, "Chinese Gave Cheney Speech Their Own Form of Openness" New York Times, 19 April 04, <[www.nytimes.com](http://www.nytimes.com)>.

<sup>438</sup> See, e.g., an article posted on the People's Procuratorate Daily's Web site entitled "Human Rights Watch Claims U.S. Violating International Law in Iraq," 15 January 04, <<http://www.jcrb.com>>.

<sup>439</sup> Wei Yongzheng, "Rules Prohibiting the Publication of Remarks Contrary to Court Decisions Cannot Stand" [Zhun fabiao 'yu panjue xiangfan pinglun' de guiding bugongzipol], MediaChina.net [Zhonghua chuanmei wang], reprinted in Xinhua, 9 September 03, <<http://news.xinhuanet.com>>.

<sup>440</sup> Notice Regarding Guiding the Publication of Books on Reforming the Constitution [Guanyu jiaqiang dui sheji xiugao xianfa fudao duwu chuban guanli de tongzhi], issued 19 Jan 04.

<sup>441</sup> "China Censures Tibetan TV Station," New York Times, 26 March 04, <[www.nytimes.com](http://www.nytimes.com)>.

<sup>442</sup> Yi Lan, "Publication of Mao Yuanxin's New Reminiscences Banned," Cheng Ming, 1 March 04 (FBIS, 1 March 04).

<sup>443</sup> Chiang Hsun, "The Crux of Li Peng's 'The Crucial Moment,'" Yazhou Zhoukan, 28 March 04 (FBIS, 28 March 04).

<sup>444</sup> "Arrest Warrants Approved for Three Evicted Families in Jiahe County" [Jiahe san chaiqianhu bei pibu], Beijing News [Xin jingbao], reprinted in Guangming Daily [Guangming ribao], 17 May 04, <[www.gmw.com](http://www.gmw.com)>.

<sup>445</sup> Josephine Ma, "Economist Baffled by Ban on his Book," Asia Pacific Media Network (citing South China Morning Post), 24 July 04, <[www.asiamedia.ucla.edu](http://www.asiamedia.ucla.edu)>. Other examples of censorship in the last year include:

- According to the Tibet Information Network, in March, Chinese authorities banned Notes on Tibet, a book written in Chinese by the Tibetan author Oser. "London-based Rights Group Says China Banned Book by Tibetan Author Oser," Agence France-Presse, 17 March 04 (FBIS, 17 March 04).

- In March, Chinese authorities arrested two people for publishing a Communist Party handbook without authorization. "Two Detained for Violating Copyrights of Two Recent Communist Party Regulations," Xinhua, 27 March 04 (FBIS, 27 March 04).

<sup>446</sup> "Seven Media Heavyweights Make a Self-Discipline Pact" [Qi dameiti dingding zilu gongyue], World Journal [Shijie xinwen wang], 7 November 03, <[www.worldjournal.com](http://www.worldjournal.com)>.

<sup>447</sup> Compare the following two Xinhua stories: English version: Han Qiao, "Foreign Journalists See Room for Improvement for PRC Spokesman System," Xinhua, 22 May 04 (FBIS, 22 May

04). “Chinese spokesmen of different ministries are getting better, but still need to improve,” said Philip Pan, a journalist with the Washington Post. Chinese version: Han Qiao and Zhao Lei, “Change is Happening: China’s New Spokesperson System in the Eyes of Foreign Reporters” [Bianhua zhengzai fasheng: waiguo jizhe yanzhong de zhongguo xinwen fayanren], Xinhua, 24 May 04, <<http://news.xinhuanet.com>>. According to Philip Pan of the Washington Post, “The situation now is much better than when I first arrived in China, it is a step forward that the government is establishing a news spokesperson system.”

<sup>448</sup> Commission staff interviews with authors who have published books in China.

<sup>449</sup> “China Admits Censoring Hillary,” BBC News, 27 September 03, <<http://news.bbc.co.uk>>. As a result, Former President Bill Clinton insisted on the right to review and reject any Chinese translation of his forthcoming memoirs as a condition of agreeing to publish in China. “Clinton Insists on Conditions for Memoirs,” South China Morning Post, 8 January 04, <[www.scmp.com](http://www.scmp.com)>.

<sup>450</sup> Commission Staff Interview.

<sup>451</sup> See, e.g., the series Internet Law Review [Wanglu falü pinglun], published by the Law Press [Falü chubanshe], which carries articles discussing almost every issue relating to Internet law—intellectual property, privacy rights, defamation, e-commerce—but nothing regarding how China’s government blocks Web sites or imprisons Internet essayists.

<sup>452</sup> See, e.g., Chen Huanxin, Legal Protections for Freedom of Expression [Fabiao ziyou de falü baozhang] (Beijing: China Social Science Press, 2003).

<sup>453</sup> The Qinghua University Media School web page ([www.media.tsinghua.edu.cn/](http://www.media.tsinghua.edu.cn/)) regularly posts articles by Chinese and foreign authors critical of the way foreign governments infringe on freedom of the press, but as far as the CECC has been able to determine, that site has never carried any article expressing similar concerns about the restrictions China’s government imposes on foreign journalists.

<sup>454</sup> See, e.g., Li Xiguang, Deformed Press [Jibian de meiti] (Shanghai: Fudan University Press, 2003), a book that discusses the most urgent problems facing China’s media without ever addressing China’s prior restraint system or the government’s intimidation of journalists.

<sup>455</sup> See, e.g., Yao Lijun, A Comparison of Sino-Western News Writing [Zhong xi xinwen xiezuo bijiao] (Beijing: China Television Broadcast Press, 2002).

<sup>456</sup> See, e.g., Gu Qian, Chinese and Western News Broadcasting: Conflicts, Combinations, and Co-existence [Zhong xi fang xinwen chuanbo: chongtu, jiaorong, gongcun] (Shanghai: Fudan University Press, 2003).

<sup>457</sup> See, e.g., Chen Lidan, A Summary of Marxist News Thought [Makesi zhuyi xinwen sixiang gailun] (Shanghai: Fudan University Press, 2003).

<sup>458</sup> “Internet Tutors Employed in North China Province To Improve Café Service,” Xinhua, 4 April 04 (FBIS, 4 April 04).

<sup>459</sup> “Major Chinese News Web sites Reach an Agreement on Family Standards for Publishing” [Woguo hulianwang xinwen xinxi chuanbo ye dingli jiagui], People’s Daily [Renmin ribao], 9 December 03, <[www.people.com.cn](http://www.people.com.cn)>.

<sup>460</sup> Commission Staff Testing.

<sup>461</sup> Commission Staff Testing. “Google-Yahoo Battle Threatens Freedom of Expression,” Reporters Without Borders, 26 July 04, <[www.rsf.org](http://www.rsf.org)>; Bill Xia, “Google Chinese News Censorship Demonstrated,” Dynamic Internet Technology, Inc., 16 September 04, available at [www.dit-inc.us/report/google200409/htm](http://www.dit-inc.us/report/google200409/htm).

<sup>462</sup> “Unswervingly Unfold ‘Fight Against Pornography and Illegal Publications’ and Create A Fine Social and Cultural Environment for Building A Well-Off Society In An All-Round Way,” Xinhua, 15 January 04 (FBIS, 15 January 04).

<sup>463</sup> “Implementation Program for Television and Movies Strengthening and Improving the Establishment of Moral Thought for Minors” [Guangbo yingshi jiaqiang he gaijin weichengnianren sixiang daode jianshe de shishi fangan], issued 13 May 04.

<sup>464</sup> Felix Corley and Magda Hornemann, “China: Government Blocks Religious Web sites,” Forum 18 News Service, 21 July 04, <[www.forum18.org](http://www.forum18.org)>.

<sup>465</sup> Commission Staff Testing. See also “China Blocks Chinese Web sites of Wall Street Journal, Deutsche Welle,” Agence France-Presse, 11 March 04 (FBIS, 11 March 04).

<sup>466</sup> For example, in September the People’s Liberation Daily told readers that “International and overseas spy organizations use the Internet as an important means to get intelligence; they frequently set online ‘traps’ to obtain intelligence. Although we have set up ‘fire walls’ and other measures to ward off such harmful information, there is some information we cannot ‘ward off’ or ‘fend off.’” Dai Yongjun, “Build a Firm Ideological ‘Fire Wall,’” [Zhu lao sixiang shangde ‘fanghuoqiang’], PLA Daily [Jiefangjun bao], 27 September 03, <[www.pladaily.com.cn](http://www.pladaily.com.cn)>.

<sup>467</sup> “GAPP Deputy Director States GAPP Has Not Allowed Foreign Magazines to Publish in Chinese in China” [Xinwen chubanshe zongshu fushu shuzhang: mei pizhun guo yi jia guowai zazhi zhongwenban], China-media.com.cn [Zhonghua xinwenban], reprinted in Xinhua, 30 September 03, <<http://news.xinhuanet.com>>.

<sup>468</sup> Vivien Cui, “Paper is Probed Before It Appears,” South China Morning Post, 9 January 04, <[www.scmp.com](http://www.scmp.com)>.

<sup>469</sup> “China Eases Ban on Foreign TV Investment,” Washington Post, 9 February 04, <[www.washingtonpost.com](http://www.washingtonpost.com)>.

<sup>470</sup> Ibid.

<sup>471</sup> “Jamming of BBC Must Stop: British Minister Tells China,” Agence France-Presse, 18 December 03 (FBIS, 18 December 03).

<sup>472</sup> Regulations for the Management of Ground Satellite Television Broadcasting Receptors [Weixing dianshi guangbo dimian jieshou sheshi guanli guiding], issued 5 October 93. English translations of the relevant provisions are available on the CECC Virtual Academy at <[www.cecc.gov/pages/virtualAcad/exp/explaws.php](http://www.cecc.gov/pages/virtualAcad/exp/explaws.php)>.

<sup>473</sup> Measures on the Administration of Foreign Satellite Television Channel Reception [Jingwai weixing dianshi pindao luodi guanli banfa], issued 4 December 03. English translations

of the relevant provisions are available on the CECC Virtual Academy at <www.cecc.gov/pages/virtualAcad/exp/explaws.php>.

<sup>474</sup> Weblogs have become increasingly popular among Internet users around the world as a means for individuals to express their views on any topic that interests them. Weblog technology enables every Internet user to become a private publisher.

<sup>475</sup> Juliana Liu, "China Shuts Down Two Internet 'Blog' Sites," Reuters, 18 March 04, <www.reuters.com>.

<sup>476</sup> Commission staff testing indicates that Chinese authorities continue to block Blogspot.com.

<sup>477</sup> "GAPP Plans to Invest 50 Million into Strengthening Media Supervision" [Xinwen chubanshu jiaqiang hulianwang jianguan jihua touru wu qianwan], Mediainchina.org.cn (Zhongguo jizhe wang), 9 February 04, <www.mediainchina.org.cn>.

<sup>478</sup> "Public Told To Report Radical Chat Rooms," South China Morning Post, 28 February 04, <www.scmp.com>.

<sup>479</sup> "Shanghai Cameras Spy on Web Users," BBC, 22 April 04, <http://news.bbc.co.uk>.

<sup>480</sup> Regulations on Customs' Administration of Printed Materials and Audio/Visual Materials Imported or Exported by Individuals Via Carriage or Post [Haiguan dui geren xiedai he youji yinshuapin ji yinxiang zhipin jinchu jing guanli guiding], issued 10 July 91. English translations of the relevant provisions are available on the CECC Virtual Academy at <www.cecc.gov/pages/virtualAcad/exp/explaws.php>. In one incident reported in China's media last year, Customs authorities confiscated a book from a returning Chinese citizen. The citizen, a professor, took the Customs Office to court claiming that they had violated Chinese law by failing to provide him with grounds for confiscating book. A lower court found for the Customs Office, but a higher court overturned that decision and said that the Customs Office was obliged to provide an explanation of the facts and legal basis for confiscating the book. "The Story of a Banned Book's Journey Through Customs" [Jinshu' guoguan susong shimo], Xinmin Weekly [Xinmin zhouban], reprinted in Sina.com [Xinwen zhongxin], 25 September 03, <www.sina.com.cn>.

<sup>481</sup> Commission Staff Interviews.

<sup>482</sup> Commission Staff Interviews.

<sup>483</sup> Detailed information regarding these laws can be found in the Commission's 2003 Annual Report, the Commission's topic paper "Information Control and Self-Censorship in the PRC and the Spread of SARS," and on the CECC Virtual Academy at <www.cecc.gov/pages/virtualAcad/exp/expsecurity.php>.

<sup>484</sup> For example, Wang Youcai, Wu Yiran, Liu Di, Li Yibin, Ma Shiwen, and Fang Jue.

<sup>485</sup> Huang Huo, "Chen Shumin and Others Sentenced for Using a Cult to Jeopardize the Enforcement of the Law" [Chen Shuming deng liyong xiejiao zuzhi pohuai falu shishi bei panxing], Xinhua, <www.cq.xinhuanet.com>.

<sup>486</sup> "China Formally Charges Two Christians With 'Revealing State Secrets,'" Agence France-Presse, 25 February 04 (FBIS, 25 February 04). "Activists Who Tracked Crackdown on Churches Face Secrets Charges," South China Morning Post, 26 February 04, <www.scmp.com>.

<sup>487</sup> Zhang Tao and Ping Song, "Three Teachers Involved in Leaking Fourth Grade English Exams Are Sentenced to Three and Two Year Sentences" [Xielou yingyu si ji shijuan: 3 ming she an jiaoshi bei panxing 3 nian he 2 nian], People's Daily [Renmin ribao], 3 June 04, <www.people.com.cn>.

<sup>488</sup> For example, the government posted security officers outside the house of Liu Di (also known as the "Stainless Steel Mouse") during the annual meeting of the National People's Congress and on 15th anniversary of the Tiananmen massacre. Jim Yardley, "A Chinese Bookworm Raises Her Voice in Cyberspace," New York Times, 24 July 04, <www.nytimes.com>.

<sup>489</sup> For example, according to his wife, Dr. Jiang Yanyong was under a gag order not to speak with reporters. Benjamin Kang Lim, "China SARS Hero Freed After Weeks in Custody," Reuters, 20 July 04, <www.reuters.com>.

#### Notes to Section III(e)—Economic, Social, and Cultural Rights

<sup>490</sup> Jia Ling, "Women More Likely than Men to Succeed as Entrepreneurs," Xinhua, 19 May 04, <www.xinhuanet.org>. The survey of entrepreneurs was published in the "Success Rate of Female Entrepreneurs Higher Than That of Males" [Zhongguo de nu qiyejia de chengonglu gao yu nanxing], Workers' Daily [Gongren ribao], 17 May 04, <www.grrb.com.cn>.

<sup>491</sup> "Success Rate of Female Entrepreneurs Higher Than That of Males," Workers' Daily.

<sup>492</sup> Ibid.

<sup>493</sup> Population Census Office under the State Council and Department of Population, Social, Science and Technology Statistics, National Bureau of Statistics of China, Tabulation on the 2000 Census of the PRC [Zhongguo 2000 nian quanguo renkou pucha ziliao], (Beijing: China Statistics Press, 2002), 599. Among all Chinese people with higher education degrees, half again as many men earned degrees than women (17,320,758 to 11,664,728), but among 20 to 24 year olds, the figures were much more equal: 2,531,419 men compared to 2,409,749 women.

<sup>494</sup> "PRC Official Says Gender Birthrate Disparity 'Serious' Threat to Well-Off Society," China Daily, 8 July 04, <www.chinadaily.com.cn>. However, current reforms, particularly fiscal efforts to reduce farmers' burdens, are likely to increase the number of families sending their daughters to school. Zheng Chao, "One Fee System To Be Carried Out in Nationwide Compulsory Education" [Quanguo yiwu jiaoyu tuixing "yi fei zhi" zhi shou zafei bu shou xuefei], Beijing Star Daily [Beijing yule xinbao], 2 March 04, <www.stardaily.com.cn>. Bai Xu and Gan Lu, "Education Brings Hope for Rural Girls," China Daily, 1 June 04, <www.chinadaily.com.cn>.

<sup>495</sup> In the village studied, there were a number of families who practiced a form of marriage in which a daughter's husband moved in and became part of her family (as opposed to the standard Chinese pattern of daughters moving into their husbands' families). The decision not to allocate land to these live-in sons-in-law was made by "village leaders," who explained that they feared that both daughters and sons would stay in the village and the population would grow too rapidly. Lural Bossen, Chinese Women and Rural Development: Six Years of Change in Lu Village, Yunnan (New York: Rowman & Littlefield, 2002), 95–8.

<sup>496</sup> PRC Rural Land Contracting Law, enacted 29 August 02.

<sup>497</sup> Alice Yan, "Dramatic Rise in Violence Against Women Revealed in New Study," South China Morning Post, 19 November 03, <www.scmp.com>. Medical researchers have begun to focus on violence against pregnant and postpartum women. A recent study examined 12,044 mothers in Tianjin City and in Liaoning, Henan, and Shaanxi provinces. The researchers found an abuse rate of 12.6 percent for periods before, during, and after pregnancy, and in most cases the abuse was an ongoing phenomenon in the marriage. The researchers concluded that screening for domestic abuse should be made routine in maternity clinics. Guo Sufang, Wu Jiuling, Wu Chuanyan, and Yan Renying, "Domestic Abuse on Women in China Before, During and After Pregnancy," 117 Chinese Medical Journal, 2004, 331-6.

<sup>498</sup> "Domestic Violence Rises Over Holidays," China Daily, 3 February 04, <www1.chinadaily.com.cn/>. Unisumoon and Daragh Moller, "Domestic Violence Law Urged," 26 November 03, Chinanews, <www1.china.org.cn>.

<sup>499</sup> "Domestic Violence on Rise in China," Xinhua, 19 September 03, <news.xinhuanet.com/>.

<sup>500</sup> In one case, a people's mediator boasted of having persuaded a woman to save her marriage by apologizing to the husband who had beaten her regularly for years. Personal visit, 1983. In a 1998 case handled by the Center for Women's Legal Research and Services at Beijing University, a woman's husband, enraged at seeing her come home late, had poured gasoline on her and set it alight. When she later asked the police for help, they refused, saying that he had suspected her of infidelity, so the problem must be a family affair. "Domestic Violence Is Not a Family Dispute" [Jiating baoli bushi jiawu jiu fen], 28 July 03, <www.woman-legalaid.org.cn>.

<sup>501</sup> Zheng Chenying, "Several Issues Relating to the Amendment of the Law on the Protection of Women's Rights and Interests" [Guanyu xiugai funü quanyi baozhangfa de jige wenti], Chinese Women's Movement [Zhongguo fuyun], No. 3, 2004, 37-9, 32.

<sup>502</sup> For example, Section 260 was the basis for a 1999 Shanghai case holding a husband guilty of rape of his former wife after their divorce had been granted but before the effective date of the decree and a Heilongjiang case in which a man was sentenced to three years for raping his wife. "How Much Marital Rape is there in Modern Life?" [Xiandai shenghuo you duoshao hunnei qiangjian?], Sina, 12 July 04, <www.sina.com.cn>.

<sup>503</sup> Liu Duanduan, "Marital Rape Constitutes What Crime?" [Hunnei 'qiangjian' gai dang he zui], People's Procuratorate Daily [Jiancha ribao], 6 July 04, <www.jcrb.com/>.

<sup>504</sup> These directives identify domestic violence as a problem affecting the entire society and strongly urge state and social institutions to promote prevention programs. In Heilongjiang Province, the city and county-level governments must provide aid and rescue for victims of domestic violence. Heilongjiang Province People's Congress Standing Committee's Decision on Preventing and Stopping Domestic Violence [Heilongjiang sheng renmin daibiao dahui changwu weiyuanhui guanyu he zhizhi jiating baoli de jue ding], issued 20 June 03, art. 12. Some of these directives indicate that the scope of domestic violence can be expanded to include psychological abuse like threats and insults. Shaanxi Province People's Congress Standing Committee's Decision on Preventing and Stopping Domestic Violence [Shanxi sheng renmin daibiao dahui changwu weiyuanhui guanyu yufang he zhizhi jiating baoli de jue ding], issued 27 September 03, art. 1; Hunan Province People's Congress Standing Committee's Decision on Preventing and Stopping Domestic Violence [Hunan sheng renmin daibiao dahui changwu weiyuanhui guanyu he zhizhi jiating baoli de jueyi], issued 31 March 03, art. 23; Anhui Province People's Congress Standing Committee's Decision on Preventing and Stopping Domestic Violence [Anhui sheng renmin daibiao dahui changwu weiyuanhui guanyu he zhizhi jiating baoli de jueyi], issued 20 February 04. Other provincial decisions focus on education initiatives to inform women of domestic violence laws and sources of assistance. In Ningxia and Heilongjiang, regulations provide legal assistance to victims of domestic violence and require a fair division of property in related divorce cases. Hebei province established the first judicial chamber in China to specifically hear domestic violence cases. "Courtroom Set up to Hear Domestic Violence Cases," People's Daily, 8 March 04. In addition, by May 2003, authorities had accredited more than 11,000 officials from women's federations around the nation to sit as people's assessors in domestic violence cases. "Domestic Violence Facing Social Scrutiny in China," People's Daily, 22 August 03, <www.chinaorg.cn>.

<sup>505</sup> However, in more remote areas, victims have limited means of response and self-protection; most go to relatives or village leaders for mediation, some take revenge, and very few report the abuse to law enforcement.

<sup>506</sup> Liu Li, "City's First Harassment Case Heard," China Daily, 7 November 03, <www.chinadaily.com.cn>. Wang Huiming, "Glancing Back: 10 Important Cases of Sexual Harassment in 2003" [Jin shi huimou: 2003 nian shi da xing saorao an], 9 January 04, Jinshi wang <www.jxgdw.com/>. See also the summary of cases in Chen Xinxin, "Sexual Harassment—A Matter of Social Concern," China Today, 3 December 03, <www.chinadaily.com.cn>.

<sup>507</sup> Chen Xinxin, "Sexual Harassment—A Matter of Social Concern."

<sup>508</sup> Ibid.

<sup>509</sup> Li Haixia, "Say 'No' to Sexual Harassment" [Xiang xing saorao shuo 'bu'], Journal of Sichuan Police College [Sichuan jingguan gaodeng zhuanke xuexiao xuebao], No. 15, 2003, 63-5; Cao Lihui, "Sexual Harassment On Legislative Docket for the First Time" [Xingsaorao shouci jinru lifa chengxu], Guangzhou Daily [Guangzhou ribao], 15 June 03, <www.gzdaily.dayoo.com>.

<sup>510</sup> M. Ulric Killian, "Post-WTO China: Quest for Human Right Safeguards in Sexual Harassment Against Working Women," 12 Tulane Journal of International and Comparative Law 201 (2004).

<sup>511</sup> Jin Yihong, "Organizations of the All-China Women's Federation: Accepting the Future's Challenge" [Fu lian zuzhi: tiaozhan yu weilai], Collection of Women's Studies [Funü yanjiu luncong], No.2, March 2000, 28-32, as cited in Xu Yushan, "A Preliminary Analysis of the Relationship between the Women's Federation and Other Women's Organizations" [Qianxi fulian yu qita funü zuzhi de guanxi], Collection of Women's Studies [Funü yanjiu luncong], No. 2, March 2004, 44-8.

<sup>512</sup> Xu Yushan, "A Preliminary Analysis of the Relationship Between the Women's Federation and Other Women's Organizations."

<sup>513</sup> Ibid.

<sup>514</sup> Zhuang Ping, "Non-Governmental Organizations and Women's Development" [Fei zhengfu yu funü fazhan], Shandong University Paper—Philosophy and Sociology Edition [Shandong daxuexuebao—Zhixue shehui kexue ban], No. 2, 2004, 139–46.

<sup>515</sup> Wang Jinling, "The Present Conditions of the Course of Female Sociology on Chinese Mainland, and its Trend of Development" [Zhongguo dalu nüxing shehuixue kecheng jianshe xianzhuang yu fazhan qushil], Collection of Women's Studies [Funü yanjiu luncong], No. 2, 2004, 39–43.

<sup>516</sup> "Trafficking of Women is a Severe Problem in China" [Zhongguo guaimai funü wenti yanzhong], Voice of America Mandarin Service, 22 April 02, <www.rfa.org>.

<sup>517</sup> Ibid.

<sup>518</sup> John Hopkins School of Advanced International Studies Protection Project, A Human Rights Report on Trafficking of Persons, Especially Women and Children: China, 2002, <www.protectionproject.org>.

<sup>519</sup> "Trafficking of Women is a Severe Problem in China," Voice of America Mandarin Service.

<sup>520</sup> Big cases of infant trafficking have recently been broken by local procuratorates in Yunnan's Honghe Hani and Yi minority areas, Guanxi's Yulin City, Hohhot in Inner Mongolia, and in central Henan. "A Yunnan Court Begins Hearing the Nation's Largest Trafficking Case" [Yunnan kaiting shenli chuanguo zui da guaimai renkou an], People's Procuratorate Daily [Jiancha ribao], 20 August 04, <www.jcrb.com.cn>; "Baby Traffickers Sentenced to Death, Life Imprisonment," China Daily, 24 July 04, <www.chinadaily.com.cn>; Huang Mu, "Country's Largest Human Trafficking Case Solved, 150 Women and 27 Children Were Harmed" [Quan guo zuida renkou an gaopo—150 ming funü 27 ming ertong shou hail], Beijing Star Daily [Beijing yule xinbao], 15 November 03; "China Halts Baby Trafficking Ring," BBC News, 13 July 2004, <http://news.bbc.co.uk>; "Woman Sentenced to Death in China for Trafficking in Babies," Agence France-Presse, English, 19 June 2004 (FBIS, 21 June 2004).

<sup>521</sup> "Guangxi Province Yulin City's Large Child Selling Case is Decided" [Guangxi yulin teda fanyingan zhong shenpanjue-fanying zhenxiang dabai tianxia], Xinhua, 24 July 04. <www.xinhua.org>.

<sup>522</sup> "Baby Business," Beijing China Daily (Hong Kong edition), English version, 28 October 03, http://www.chinadaily.net/.

<sup>523</sup> Ibid.

<sup>524</sup> State Department Office to Monitor and Combat Trafficking in Persons, 2003 Report on Human Trafficking, 11 June 03, <www.state.gov>. China is currently classified as a Tier 2 country by the State Department, meaning it has not complied with the minimum standards stipulated in Section 108 of the Act (22 USC 7106), but is making significant efforts to do so.

<sup>525</sup> PRC Criminal Law, enacted 1 July 79, amended 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, arts. 240–241; Decision Concerning Severely Punishing Criminals for The Abduction and Kidnapping of Women and Children [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu yancheng fuaimai, cangjia funü, ertong de fanzuiyifen de jue ding], issued 4 September 91.

<sup>526</sup> Zhu Jianmei, "Several Problems in the Criminal Statute against Trafficking in Women and Children" [Guaimai funü, ertong zui de jige wenti], Journal of Jiangsu Police Officer College [Jiangsu jingguan xueyuan xuebao], Vol. 19, No.2, March 2004.

<sup>527</sup> From 2001 to 2003, 20,360 cases were solved involving 42,215 trafficking victims. "20,000 Cases Involving Female and Children Trafficking are solved, 40,000 victims are set free" [Zhongguo san nian po guaimai funü ertong an yue liangwan qi, si wan duo ren huo jiejiu], China News, 3 March 03, <www.chinanews.org.cn>.

<sup>528</sup> Johns Hopkins School of Advanced International Studies Protection Project, A Human Rights Report on Trafficking of Persons.

<sup>529</sup> State Department Office to Monitor and Combat Trafficking in Persons, 2003 Report on Human Trafficking.

<sup>530</sup> "Chinese Women Sold Into the Sex Industry—Police Go to South Africa For Arrest" [Zhonggong qingnian bei guaimai congshi seqingye-jingfang yuan fu nanfei zhui bul], New People's Evening Newspaper [Xinmin wanbao], 12 April 04, <www.xmwb.com.cn>.

<sup>531</sup> "Demand from China Fuels Women Trafficking from Vietnam," Deutsche Press-Agentur, 22 June 04.

<sup>532</sup> In particular, China participated in a research symposium with officials from Vietnam and NGOs in March 2003. Li Qiaoping, "The Current Situation and Related Questions for Sino-Vietnamese Prevention of Transnational Trafficking of Women and Children" [Zhong yue shuang bian yufang kuaguo guaimai funü ertong gongzuo shishi qingkuang ji xiangguan gongzuo], Southeast Asia Review [Dongnanya zongheng], No. 6, 2004, <http://www.gxi.gov.cn>. On June 3, 2004, China and Vietnam announced a joint campaign with UNICEF to combat trafficking. "China, Vietnam, UN Team Up to Fight Human Trafficking," UN Wire, 3 June 04.

<sup>533</sup> Congressional Executive Commission on China, 2003 Annual Report, 2 October 03, 46.

<sup>534</sup> Commission Staff Interview.

<sup>535</sup> Zhang Zizhuo, "Yunnan AIDS Prevention and Control Law to Take Effect in March," Spring City Daily [Chun Cheng ribao], 05 February 04, <www.china-aids.org/>.

<sup>536</sup> "China Sets First AIDS Legal Research Center," People's Daily, 07 April 04, <http://english.peopledaily.com.cn/>.

<sup>537</sup> "State Council Circular Concerning Effective Strengthening of AIDS Prevention and Control," Xinhua, 9 May 04, (FBIS, 12 May 04). The circular also mandates that middle schools and colleges offer education in HIV/AIDS, public transportation departments publicize AIDS prevention and control to passengers, entertainment venues distribute and display printed HIV/AIDS education materials to clients, and medical workers routinely advise their patients on HIV/AIDS prevention and condom use.

<sup>538</sup>Chan Siu-sin, "Four Residents of Henan AIDS Village Obstructed from Petitioning Beijing," *South China Morning Post*, 04 July 04, <www.scmp.com>.

<sup>539</sup>In 2003, CECC staff traveled to Xinjiang Province to investigate the HIV/AIDS epidemic and its implications for human rights. In particular, staff focused on central government AIDS policy, central and local resources, and whether assistance was reaching remote areas like Xinjiang, where reports had indicated the need for action was particularly acute.

<sup>540</sup>"280,000 Chinese Die of Hepatitis B Each Year," *Xinhua*, 5 May 04, <www.xinhuanet.org>.

<sup>541</sup>"Court Confirms Rights of Hepatitis B Carrier," *China Daily*, 3 April 04, <www.chinadaily.com.cn>.

<sup>542</sup>See, e.g., "Explanation" on the "Regulation on the Specific Scope of the National State Secrets Law and Classification of State Secrets in Health Work" [Weisheng gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding], issued jointly by the Ministry of Health and the Bureau of State Secrets, enacted 1 March 91.

<sup>543</sup>Wenran Jiang, "Prosperity Based on Poverty and Disparity [sic]," *China Review Magazine*, 28 Spring 04, <www.gbcc.org.uk>.

<sup>544</sup>Duncan Hewitt, "China Rural Health Worries," *BBC News*, 4 July 02, <http://news.bbc.co.uk>.

<sup>545</sup>"China Invests One Billion Yuan in Rural Health Care," *Xinhua*, 23 May 04, <www.chinadaily.com>.

<sup>546</sup>CECC, 2003 Annual Report, 47.

<sup>547</sup>PRC Population and Family Planning Law, enacted 29 December 01, art. 41.

<sup>548</sup>"Fines to be Imposed for Illicit Births," *Xinhua*, 3 February 04, <www.xinhuanet.com>.

<sup>549</sup>Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights: China: 2003*, 25 February 04.

<sup>550</sup>Yong Da, "Two Children Good as One, For Some People," *China Daily*, 13 April 04 (FBIS, 13 April 04); "Shanghai Makes it Easier to Have a Second Child," *People's Daily*, 7 November 03, <http://english.people.com.cn>.

<sup>551</sup>Qiu Quanlin, "Fund Urged to Compensate One-Child Parents," *China Daily*, 14 June 04 (FBIS June 14); Jia Chun and Zheng Hua, "Agree to Have One Child? Get a Nice Cash Reward," *China Daily*, 9 June 04 (FBIS, 9 June 04); "Government to Pay Bonus to Villagers for Family Planning," *Xinhua*, 3 February 04 (FBIS, 3 February 04).

<sup>552</sup>Ren Yuan, "From Lowering Fertility to Stabilizing Low Fertility: A Research on Factors Associate[d] with Fertility Rate and Policy Implications in Context of Negative Natural Increase in Shanghai" [Cong jiangdi shengyu shuai dao wending de shengyu shuai], 10 *Market and Economic Analysis* [Shichang yu jingji fenxi], No.1, 2004, 48-54.

<sup>553</sup>Nancy E. Riley, "China's Population: New Trends and Challenges," 59 *Population Bulletin* 2, 17-8 (2004). Riley's report includes unpublished data from the 2000 Census.

#### **Notes to Section III(f)—Freedom of Residence and Travel**

<sup>554</sup>The Commission's 2003 report contains a thorough review of China's hukou regime. Congressional-Executive Commission on China, 2003 Annual Report, 2 October 03, 50-3. For even more comprehensive treatment as to the origins of reforms to the hukou system, at least through the late 1990s, see Kam Wing Chan and Li Zhang, "The Hukou System and Rural-Urban Migration in China: Processes and Changes," 160 *China Quarterly* 818 (1999).

<sup>555</sup>AFL-CIO, Section 301 Petition of American Federation of Labor and Congress of Industrial Organizations, 16 March 04, 38, <www.afcio.org>.

<sup>556</sup>Wang Gang, "How Should the Law Address the 'Village Within the City' Dispute Over Division of Interest?" [Falü ruhe yingdui 'chengzhongcun' liyi fenpei jiu fen?], *Shaanxi Daily* [Shaanxi ribao], 18 November 03, <www.sxdaily.com.cn>. The situation is further complicated by local village committees, which often take actions legitimizing discrimination against migrants who leave the village. Local residents who remain in the village often support these actions. This creates tensions between ensuring the right to village self-rule on one hand (according to the 1998 Organic Law on Village Committees) and, on the other, protecting the legal rights of migrants. Chinese courts find it particularly difficult to negotiate these competing interests. *Ibid.* For the views and proposed treatment of one local Shaanxi court, see Yang Kesheng, "Analytical Discussion Regarding Disputes Over the Division of Allocated Amounts in the Countryside" [Guanyu nongcun fenpei kuan jiu fen anjian de fenxi tantao], 8 July 03, <www.court-shaanxi.gov.cn>.

<sup>557</sup>Guangdong Province Legal Aid Regulations [Guangdong sheng falü yuanzhu tiaoli], issued 20 August 99, article 10(1); Zhejiang Province Legal Aid Regulations [Zhejiang sheng falü yuanzhu tiaoli], issued 29 October 00, article 7; Shaanxi Province Legal Aid Regulations [Shaanxi sheng falü yuanzhu tiaoli], issued 25 September 01, article 8.

<sup>558</sup>Hua Hua, "Migrant Population Deserves Better," *China Daily*, 18 November 03 (FBIS, 18 November 03).

<sup>559</sup>"Of 1000 Migrant Workers, Less Than 3 Percent Are Actually Able to Receive Legal Aid" [1000 Waidi mingong zhong, zhenzheng nenggou huode falü yuanzhu de buzhu 3 percent], *Xinhua*, 12 January 04, <http://news.xinhuanet.com>. Numerous other factors are responsible for the problems migrants face in obtaining legal aid as well, including difficulties collecting evidence and problems getting migrant plaintiffs to sign power-of-attorney forms. *Ibid.* In comparison, official Chinese statistics give an approval rate of 75 percent for all civil legal aid applications. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work, 29. Officials in Chengdu legal aid centers estimate that about one-third of applicants are able to receive aid. Jiang Hua, "6 Cents to Change Destiny" [Gaibian mingyun de 6 fen qian], *Southern Daily* [Nanfang ribao], 13 November 03, <www.nanfangdaily.com.cn>.

<sup>560</sup>The Chinese media has taken note of this problem. "The Migrant Workers' Exodus," *China Daily*, 30 July 04 (FBIS, 30 July 04). Although American national and local regulations often condition receipt of social services, barring non-residents or non-citizens (as is the case with federally-funded legal aid programs), they are much less likely than their Chinese counterparts to

create permanently excluded sub-classes. American public schools, for example, often require extremely limited and easily-established proof of residency, but not proof of citizenship. Sean Salai and Matthew Cella, "Schools Will Not Report Illegals," *Washington Times*, 9 June 04, <[www.washingtontimes.com](http://www.washingtontimes.com)>. Federal funding for hospitals would require inquiries as to immigrants' status, but does not condition emergency services on the responses. Robert Pear, "U.S. is Linking Immigrant Patients' Status to Hospital Aid," *New York Times*, 10 August 04, <[www.nytimes.com](http://www.nytimes.com)>.

<sup>561</sup> Regulations on Legal Aid [Falü yuanzhu tiaoli], issued 21 July 03.

<sup>562</sup> Despite the national legal aid regulations, many local legal aid centers still appear to condition receipt of legal aid on the applicant's residence status. See, e.g., the Xiamen government Web site <[www.xm.gov.cn/xminfo/flzh/default.asp?id=8&id2=39](http://www.xm.gov.cn/xminfo/flzh/default.asp?id=8&id2=39)> (referencing local regulations requiring a local hukou or temporary residence permit as a prerequisite for receiving legal aid).

<sup>563</sup> Zhang Feng, "Improved Rural Medical Care Still Far Away," *China Daily*, 17 March 04, (FBIS, 17 March 04).

<sup>564</sup> For information on such a plan in Guangdong, see "Nanhai Peasants Will Enjoy Health Insurance Coverage" [Nanhai nongmin xiangshou yibao], *Southern Rural Daily* [Nanfang nongcun bao], 25 December 03, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>. Under the plan, rural residents are required to contribute up to 57 yuan a year of their own money, with village and township government providing the remainder. *Ibid.*

<sup>565</sup> Human Rights in China, "China's Education System: Reading Between the Lines," in *China Rights Forum*, No. 1, 2004, 49. The local government in the place where a family has hukou registration has traditionally had responsibility for primary and secondary education of the children. The HRIC report also contains a very thorough discussion of the general problems faced by migrant children in terms of education.

<sup>566</sup> "Almost 20 Million Migrant Children, Only Half in School" [Liudong ertong jin 2000 wan, banshu wei ruxue], *World Journal* [Shijie ribao], 7 November 03, <[www.worldjournal.com](http://www.worldjournal.com)>.

<sup>567</sup> Some seek to close these often ill-equipped schools out of honest concern for health and safety code violations. Others use these arguments as pretexts to rid their neighborhoods of the perceived "evils" of migrant youth. Wan Lixia, "Where Have Beijing's Schools For Migrant Youth Gone?" [Beijing dagong zidi xuexiao dao nali qu le], *21st Century Business Herald* [21 shiji jingji baodao], 18 February 04, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>.

<sup>568</sup> State Council Notice on the Opinion of the Education and Other Ministries Relating to Further Work on Migrant Children's Compulsory Education [Guowuyuan bangongting zhuanfa jiaoyubu deng bumen guanyu jin yibu zuohao jincheng wugong jiuye nongmin zinu yiwu jiaoyu gongzuo yijian de tongzhi], issued 17 September 03.

<sup>569</sup> Zhou Yang, "Compulsory Education For Migrant Children Will Receive 'Urban Resident' Treatment" [Mingong zinu yiwu jiaoyu jiang huo 'shimin daiyu'], *21st Century Business Herald*, [21st shiji jingji baodao], 14 January 04, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>.

<sup>570</sup> "Do Migrant Children Suffer 'Apartheid' in Education?" [Mingong zinu shangxue zaoyu "geli zhengce?"], *Southern Weekend*, [Nanfang zhoubao], 3 June 04, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>. Central government pressure on local schools to meet national targets may also result in local schools barring easily identifiable, and poorer-performing, migrant children from participating in educational testing in order to boost school scores. *Ibid.*

<sup>571</sup> "Hangzhou Eliminates Migrant Sweeps" [Hangzhou quxiao wailai renkou qingcha xingdong], *Southern Metropolitan Daily* [Nanfang dushi bao], 31 October 03, <[www.nanfangdaily.com](http://www.nanfangdaily.com)>.

<sup>572</sup> The new PRC Law of Citizen Identification Cards [Zhonghua renmin gongheguo shenfenzheng fa], issued 28 June 03, bars private organizations and individuals from requiring individuals to display their ID cards. *Ibid.*, art. 15. The police are allowed to check identification in certain designated situations. *Ibid.*

<sup>573</sup> According to news reports, over half of Chinese provincial-level administrative regions have undertaken some form of *hukou* reform. "China Reforms Household Registration System To Bridge Urban-Rural Gap," *Xinhua*, 4 December 03 (FBIS, 4 December 03).

<sup>574</sup> Wuhan Will Eliminate Temporary Residence Permits, Specific Implementation Plans Are Being Prepared [Wuhan jiang quxiao zanzhuzheng, juti shishi fang'an shang zai yunniang], *Wuhan government Web site*, 2 September 04, <[www.wuhan.gov.cn](http://www.wuhan.gov.cn)>; Hua Keji and Lu Bingbing, "Shenzhen 'Blue Book' Issued, Temporary Residence Permit System For Migrants to be Gradually Eliminated" [Shenzhen "lanpishu" wenshi, wailai renkou jiang zhubu quxiao zanzhuzheng], *Southern Daily* [Nanfang ribao], 11 May 04, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>; Zhang Jing, "Shenyang Eliminates Temporary Residence Permits" [Shenyang quxiao zanzhuzheng], *Sina*, 22 July 03, <[www.sina.com.cn](http://www.sina.com.cn)>.

<sup>575</sup> For information on the content of some of these reforms, see "Can Get Urban Hukou With a Fixed Place of Residence" [You guding zhusuo ke ban chengzhen hukou], *Southern Metropolitan Daily* [Nanfang dushi bao], 21 October 03, <[www.nanfangdaily.com.cn](http://www.nanfangdaily.com.cn)>; "Why Unified Urban-Rural Residence Status Faces an Uphill Battle," [Cheng xiang tongyi huji weihe lengchang], *Finance* [Caijing], 19 June 04, <[www.caijing.com.cn](http://www.caijing.com.cn)>. Granting urban residence permits to individuals in small urban areas possessing a "fixed place of residence" and a "stable source of income" has been government policy since 2001. Joe Young, "Hukou Reform Targets Rural-Urban Divide," *The China Business Review*, May-June 2002.

<sup>576</sup> Nanjing City Issues Regulations on Implementation Details for Residence Permit System Reforms" [Nanjing shi chutai huji zhidu gaige xiangxi guiding], *Sina*, 24 June 04, <[www.sina.com.cn](http://www.sina.com.cn)>.

<sup>577</sup> Li Zhanyong, "Hebei Releases Implementation Details on Residence Status Reform" [Hebei chutai huji gaige shishi xize], *People's Daily* [Renmin ribao], 26 September 03, <[www.people.com.cn](http://www.people.com.cn)>.

<sup>578</sup> National government policy supports extending urban hukou status to highly educated individuals. "Decision of the CPC Central Committee and State Council on Further Strengthening

Work Concerning Skilled Personnel,” Xinhua, 26 December 03 (FBIS, 9 January 04) (urging promotion of skilled workers and liberalizing hukou restrictions as applied to them).

<sup>579</sup> Examples include Chengdu, “Large Revisions to Chengdu Residence Permit Policy, From June 1, Barrier to Entering the City Will Be Relaxed” [Chengdu huji zhengce da tiaozheng 6 yue 1 ri qi jincheng menlan jiangdi], 30 May 03, Xinhua, <www.xinhua.com.cn>; Guangzhou, “Beginning Next Year, Guangzhou’s Residence Permit System Will Have Major Changes” [1 yue 1 ri Guangzhou huji zhidu gaige zai mai da bu], 23 December 03, Xinhua, <www.xinhua.com.cn>; Shanghai, “As of October, Shanghai Residence Permits Will Expand to Include ‘Ordinary’ Non-Locals” [Shanghai juzhuzheng 10 yue qi kuoda dao putong wailai renyuan], China Youth Daily [Zhongguo qingnian bao], 3 September 04, <www.cyd.com.cn>. The frequent description in Chinese media of the “elimination” of rural and urban hukou divisions is somewhat misleading. The reform measures described above and in the text are shifting the residence permit system away from one based on rural/urban labels to one based on specific place of residence. However, registration criteria such as that described above still hinders the ability of rural migrants to actually obtain both local hukou in the urban areas they move to and unfettered access to the social services available there.

<sup>580</sup> “Guangdong: Temporary Residence Permit Not Amenable to Elimination” [Guangdong: zanzhuzheng buyi quxiao], Southern Metropolitan Daily [Nanfang dushi bao], 20 October 03, <www.nanfangdaily.com.cn>.

<sup>581</sup> “China Expects First Ever Farmer Protection Law,” People’s Daily [Renmin ribao], 12 July 04, <www.people.com.cn>.

<sup>582</sup> The Chinese government’s own White Paper on its human rights record touts the drafting of a “Law on the Protection of Peasants Rights.” Chinese Government White Paper, “2003 Progress in Chinese Human Rights Work,” [2003 Nian zhongguo renquan shiye de jinzhuan], <www.china-un.ch>. See also “This Year Will See Drafting of Law on the Protection of Peasants Rights” [Jinnian jiang qicao nongmin quanyi baohu fa], Beijing Youth Daily [Beijing qingnian bao], 15 March 04, <www.lawyerstep.cn>; “Five Long Years for ‘Law on the Protection of Peasant Rights’: To Give Peasants the Rights of Citizens?” [“Nongmin quanyi baohu fa” wu nian changpao: gei nongmin guomin daiyu?], 21st Century Business Herald [21 shiji jingji baodao], 3 March 04. The content of these proposals appears to vary wildly. Some represent grandiose promises of total equality of treatment between urban residents and migrants, others specific efforts to redirect monetary compensation for land seizures to local governments to pay for social services. Ibid. Other proposals appear to condition a change in hukou status on the exhaustion of social service benefits in migrants’ home areas. Chen Kencheng and Shu Ying, “Landless Peasants Increase by 20 Million Every Year—Shanghai Social Welfare Chief Submits Proposal to NPC” [Shidi nongmin nianzeng 200 wan shanghai shebao juzhang tijiao renda yian], 21st Century Business Herald [21 shiji jingji baodao], 3 March 04, <www.nanfangdaily.com.cn/>.

<sup>583</sup> Many of these administrative notices do attempt to curb local abuses associated with the hukou system. Zhao Cheng and Liu Zheng, “9 National Ministries Jointly Issue Notice to Clean Up and Wipe Out Discriminatory Regulations Directed at [Migrants] Coming Into the City to Work” [Guojia 9 buwei lianhe xiafa tongzhi, qingli quxiao zhendui jincheng wugong nongmin de qishixing guiding], Xinhua, 4 August 04. However, such directives fail to give migrants legal rights they can assert against discrimination. They also do not address the basic social separation created by the hukou labels.

<sup>584</sup> “Five Long Years For ‘Law on the Protection of Peasant Rights’: To Give Peasants the Rights of Citizens?” 21st Century Business Herald.

#### Notes to Section V(a)—Constitutional Reform

<sup>585</sup> The NPC made only three minor changes to the text of the amendments approved at the Third Plenum of the 16th CCP Central Committee in October 2003.

<sup>586</sup> A chart detailing the amendments and the minor changes made by the NPC is available at <www.cecc.gov/pages/virtualAcad/rol/NPCApproveConstAmendChart.pdf>.

<sup>587</sup> According to the Theory of Three Represents, the Party must represent advanced productive forces, advanced culture, and the fundamental interests of the majority of China’s citizens. It is intended to provide a theoretical basis for incorporating the entrepreneurs into the Party. The other guiding ideologies of the state are Marxism-Leninism, Mao Zedong Thought, and Deng Xiaoping Theory. Notably, Jiang Zemin is not mentioned by name in the amendment.

<sup>588</sup> Commission Staff Interviews; Yin Jinhua, “There Will be No Political Civilization in the Absence of the Rule of Law,” Study Times [Xuexi ribao], 16 February 04 (FBIS, 3 April 04).

<sup>589</sup> See, e.g., Robert Saiget, “Scholars Say Amendments to PRC Constitution Fall Far Short of Expectation,” Agence France-Presse, 12 October 03 (FBIS, 12 October 03); Freda Wan, “Changes Could Be Just Symbolic, Observers Fear,” South China Morning Post, 15 March 04, <www.scmp.com>; Veron Hung, “China’s Constitutional Amendment Is Flawed,” International Herald Tribune, 4 March 04, <www.iht.com>.

<sup>590</sup> Commission Staff Interviews.

<sup>591</sup> Commission Staff Interview. China signed the ICCPR in 1998, but the National People’s Congress has yet to ratify it. The scholar predicts that the NPC will ratify the ICCPR within two years.

<sup>592</sup> According to CECC sources, the Propaganda Department issued a directive banning discussion of the “three unmentionables,” (constitutional amendments, political reform, and June 4) in news reports and in unapproved “academic papers or forums on constitutional amendment.” Authorities reportedly harassed vocal constitutional reform advocates such as Cao Siyuan and Jiang Ping in the wake of the directive. Jiang Xun, “Scholar Put Under Round-the-Clock Watch for Voicing Opinion of Constitutional Reforms,” Asia Weekly [Yazhou zhoukan], 26 October 03 (FBIS, 22 October 03); Jason Leow, “‘Banned’ Economist Returns to China,” The Straits Times, 13 July 04 (FBIS, 13 July 04). In January, the General Administration on Press and Publication issued a directive explicitly prohibiting the unauthorized publication of books, articles, and audio or video materials concerning “amendment of the Constitution.” Notice on Strengthening



the Administration of Guidance Over Published Material Relating to Constitutional Amendment [Guanyu jiaqiang dui sheji xiugai xianfa fudao duwu chubian guanli de tongzhi], issued 21 January 04.

<sup>593</sup> Kathy Chen, "China Cracks Down on Growing Debate Over Political Reform," Wall Street Journal, 24 September 03, <www.wsj.com>.

<sup>594</sup> Zhuang Huining, "Include Important Theoretical Viewpoints, Principles, and Policies Established at the 16th CPC National Congress Into the Constitution; Play a Better Role of the Basic Law of the Country—Three Noted Legal Experts on Constitutional Amendments," Outlook [Liaowang], 20 October 03 (FBIS, 28 October 04); Hua Hua, "Balance Between Consistency, Adaptability," China Daily, 30 October 03 (FBIS, 30 October 03).

<sup>595</sup> Ji Weidong, "From Emphasizing Private Property Rights to Improving Governance: Interpreting the Draft of the Fourth Amendment of the Constitution," Finance [Caijing] (English Edition), 12 January 04, <www.caijing.com.cn>; Hu Jianmiao, Jin Chengdong, "The Predicament of a Right to Call for Review of Laws and Regulations for Constitutional Violations" [Fagui weixian shencha jianyiquan de kunjing], Legal Daily [Fazhi ribao], 12 February 04, <www.legaldaily.com.cn>. Although more reserved, the China Daily also called for a more robust system of constitutional review. "Laws Must Fit Constitution," China Daily, 16 January 04, <www.chinadaily.com.cn>. See also Chen Feng, "Rights Without Guarantees Are Worthless" [Meiyou baozhang de quanli dengyu ling], China Youth Daily [Zhongguo qingnian bao], reprinted in Guangming Daily [Guangming ribao], 17 October 03. Although the China Youth Daily article discussed the failure to respect the rights of criminal suspects and not specifically constitutional reform, it closed with a general warning that "Rights without guarantees are worthless. We need to strengthen our effort to perfect mechanisms for [challenging] violations of rights. Only if we do this will the rights of citizens be more than 'rights on paper.'"

<sup>596</sup> Commission Staff Interviews. See, e.g., Li Yajing, "China Stands At the Entrance of the Constitutional Age" [Zhongguo zhan zai xianzheng jieduan menkou], Southern Metropolitan Daily [Nanfang dushibao], 31 July 04 (discussing the ideas of Professor Cai Dingjian, a leading constitutional scholar). Professor Cai believes that four forces will push forward the development of constitutionalism in China: (1) the challenges of judicial practice and the need for constitutional review; (2) a high degree of spontaneous, direct participation by citizens; (3) participation by the media and public debates as checks on government power; and (4) local experiments with democracy.

<sup>597</sup> The Open Constitution Initiative is a non-profit law center established by a Beijing legal scholar. The Web site was shut down in June 2004 following a series of aggressive stories on the prosecution of reporters from the Southern Metropolitan Daily [see Section III(d)—Freedom of Expression]. The site has been reposted at [www.xianzheng.org](http://www.xianzheng.org).

<sup>598</sup> Commission Staff Interview; "Retired Hangzhou Teacher Detained for 10 Days for 'Promoting the Constitution'" [Hangzhou tuixiu laoshi shenchuan bai dagua xuanchuan xianfa bei juliu 10 tian], Peacehall Web site, 25 January 04, <www.peacehall.com>; "Resisting Demolition and Relocation, 38 Residents Bring Out the Constitution" [Ju chaiqian, 38 hu jumin banchu xianfa], Chengdu Evening News [Chengdu wanbao], 30 April 04; Bao Limin, "An Old Man in Beijing Defies Relocation Order with a Copy of the Constitution in Hand," China Youth Daily, 5 April 04 (FBIS, 6 April 04); "Guangdong Homeowners Use Constitution to Fight Eviction," Agence France-Presse, 5 April 04 (FBIS, 5 April 04). Some Chinese scholars have expressed concern that in the wake of the constitutional amendments on property rights, the PRC Land Administration Law and other statutes conflict with the Constitution. Ye Xinfeng, Gu Xiuyan, Gong Chang, "How to Link the Amended Constitution and the 'Land Administration Law'" ["Tudi guanli fa" zenme yu xiuxian xianfa], Theoretical Exploration [Lilun yu tansuo], No. 5, 2004, 28–9.

<sup>599</sup> For example, the Chengdu Evening News and China Youth Daily stories cited above painted such protests in a positive light.

<sup>600</sup> Jim Yardley and Chris Buckley, "Chinese Reformers Petition for Review of Subversion Law," New York Times, 1 February 04, <www.nytimes.com>. The petitions are available at <<http://sky.prohosting.com/liudiorg/DuDaobin01e.htm>>.

<sup>601</sup> Congressional-Executive Commission on China, Annual Report 2003, 2 October 03, Section V(e).

<sup>602</sup> Commission Staff Interviews. In April 2004, Commission staff members also completed a survey of Chinese scholarly articles on constitutional enforcement mechanisms published in 2002 and 2003. A list of such articles is available on the Commission Web site at <[www.cecc.gov/pages/virtualAcad/rol/JournalArticlesIndex.pdf](http://www.cecc.gov/pages/virtualAcad/rol/JournalArticlesIndex.pdf)>.

<sup>603</sup> Commission Staff Interviews. One criticism of such a committee is that it is unlikely that citizens would be able to compel review. See also Liu Yunlong, "On Constitutional Lawsuits and Their Application to China" [Yelun xianfa susong ji qi zai woguo de yingyong], Law Review [Faxue pinglun], No. 13, 2002, 21–2. One prominent constitutional law scholar suggests that if such a committee is formed, it is likely to evolve into a German-style constitutional court in the long term. Commission Staff Interview.

<sup>604</sup> Wang Chenbo and Sun Zifa, "An Interview with Lin Bocheng, Secretary General, China Foundation for Human Rights Development—Where Does the Road of Human Rights in China Lead After These Rights Are Written Into China's Constitution?," China News Agency [Zhongguo xinwen she], 11 March 04.

<sup>605</sup> This story was published during the NPC meetings and could have been intended to deflect criticism that the constitutional amendments adopted at the meeting were merely symbolic. The Chinese government could also have been posturing to create the impression that it was making progress on human rights in the run-up to the meeting of the UN Human Rights Commission in Geneva in April, 2004. According to China law expert Randall Peerenboom, several Asian countries have established national human rights commissions, including Thailand, Indonesia, India, the Philippines, and Sri Lanka, but on the whole, the effectiveness of such domestic com-

missions in enforcing human rights protections has been mixed. Randall Peerenboom, Posting to China Law Net, 1 June 04 (cited with permission of author).

<sup>606</sup>Meng Yan, "New Agency to See to Constitution Application," China Daily, 21 June 04, <www.chinadaily.com.cn>; "China Sets Up New Agency to See to Constitutional Application," Xinhua, 21 June 04 (FBIS, 21 June 04). Reports differ on the number of staff members that the panel will have. The China Daily reports that the panel will have 10 staff members. The Xinhua report puts the number at 50.

<sup>607</sup>Commission Staff Interviews. In 2001, the Supreme People's Court authorized a court in Shandong province to rely on constitutional provisions on the right to education in deciding a case. Shen Kui, "Is it the Beginning or the End of the Era of the Run of the Constitution? Reinterpreting China's First Constitutional Case," 12 Pacific Rim Law & Policy Journal 200, 209–10 (January 2003). Although it was considered a potentially precedent-setting case on judicial application of the Constitution, the case involved a tort claim between two private parties and not a claim against the government or an effort to overturn a law or regulation. The power to directly apply constitutional provisions in the absence of concrete implementing legislation has not been given to the courts generally.

<sup>608</sup>The Human Rights Legal Research Center at Sichuan University in Chengdu and the Constitutional Law and Civil Rights Center at Qinghua University in Beijing are both involved in such work. The Qinghua center operates in cooperation with the Constitutional and Human Rights Committee of the Beijing Lawyers Association. Commission Staff Interviews.

<sup>609</sup>Commission Staff Interviews. At least two height discrimination cases have been filed, one in Sichuan against a branch of the People's Bank, and one against the Supreme People's Procuratorate. "Authentic Records of the Court Hearing for China's First Constitutional Equal Protection Case" [Zhongguo xianfa pingdengquan diyi an tingshen shilu], China Lawyer Net [Zhongguo lüshi wang], 12 December 02, <www.chineselawyer.com.cn>; Commission Staff Interviews.

<sup>610</sup>The Sichuan height discrimination case was dismissed on the grounds that the plaintiff had no standing to sue under the Administrative Litigation Law. The SPP case is pending. A Hepatitis B case in Anhui is currently being appealed. At least six other provinces, including Zhejiang, Guangdong, Guizhou, Sichuan, Jiangxi, and Hunan, have lifted bans on hiring non-infectious Hepatitis B carriers. Commission Staff Interviews; "One More Chinese Province Discontinues Hepatitis Discrimination in Civil Service," Xinhua, 17 May 04 (FBIS, 17 May 04); Alice Yan, "Hunan Lifts Ban on Hiring Hepatitis B Carriers," South China Morning Post, 5 March 04, <www.scmp.com>. The Chinese government is reportedly drafting guidelines on health qualifications for employment that would bar discrimination against Hepatitis B and C carriers. Liang Chao, "Law Drafted to Help Fight Discrimination," China Daily, 11 August 04 (FBIS, 11 August 04).

<sup>611</sup>Commission Staff Interviews.

<sup>612</sup>For a description of the case, see Meng Yan, "Judge Sows Seeds of Lawmaking Dispute," China Daily, 24 November 03 (FBIS, 24 November 04); Guo Guosong, "A Judge Declares a Local Regulation Invalid: Violating the Law or Upholding the Law" [Faguan pan difangxing fagui wuxiao: weifa haishi hufa] Southern Daily [Nanfang ribao], 20 November 03.

<sup>613</sup>Judge Li's presiding judge status was revoked by the court Party committee, and she was eventually dismissed from her job. After an outcry from legal experts and calls for leniency, however, she was quietly invited back to work in early 2004. According to Commission sources, she declined to return. Commission Staff Interview.

<sup>614</sup>See, e.g., Cheng Jie, "How to Understand LPC Supervision Over the Courts—Some Thoughts on the Li Huijuan Case" [Ruhe lijie difang renda dui fayuan de jiandu—li huijuan shijian falü sikao zhi san], 21st Century Economic Herald [21 shiji jingji baodao], 3 December 03, <www.nanfangdaily.com.cn>; He Weifang, "NPC Supervision and Judicial Independence" [Renda jiandu yu faguan duli shenpan], China Lawyer Net [Zhongguo lüshi wang], 4 December 03, <www.chineselawyer.com.cn>. Legal scholars at Qinghua University held a conference to discuss the implications of the case. "Qinghua Conference: Many Scholars Discuss the Judge Li Huijuan Incident" [Qinghua huiyi: zhong xuezhe fenshuo "li huijuan faguan" shijian], 21st Century Economic Herald [21 shiji jingji baodao], 26 November 03, <www.nanfangdaily.com.cn>.

<sup>615</sup>Tian Yi, Wang Yin, "Four Lawyers Petition the National People's Congress to Examine a Local Regulation" [Si lüshi shangshu quanguo renda shencha difang fagui], 21st Century Business Herald [21 shiji jingji baodao], 24 November 03, <www.nanfangdaily.com.cn>. Under Article 90 of the PRC Legislation Law, citizens have the right to petition the National People's Congress for review of administrative regulations that conflict with national law or the Constitution. PRC Legislation Law, enacted 15 March 00, art. 90.

<sup>616</sup>Chinese legal scholars praised the government for creating the new panel, but suggested that the NPC consider creating a constitutional committee or constitutional court to undertake a function similar to that of judicial review in the United States and Great Britain. "NPC Body to Address Conflicts," China Daily, 21 June 04, <www.chinadaily.com.cn>.

<sup>617</sup>Harry Doran, "Beijing Rules Out Constitutional Court," South China Morning Post, 22 May 04, <www.scmp.com>.

<sup>618</sup>In its 2003 Annual Report, the Commission reported that the Party, the NPC, and the SPC were studying reforms related to constitutional review. According to Commission sources, however, no concrete proposals are likely to be made in the near future.

<sup>619</sup>Communiqué of the Third Plenum of the 16th Central Committee of the Chinese Communist Party, approved 14 October 03. Specifically, the amendments are intended to "be helpful in strengthening and improving the Party's leadership, bringing into play the superiority of the socialist system, mobilizing the enthusiasm of the broad masses of the people, maintaining national unity, ethnic unity, and social stability, and promoting economic development and overall social progress."

<sup>620</sup>See the introduction to the Commission's 2003 Annual Report for a summary of the evolving Party stance toward "human rights." CECC, 2003 Annual Report, October 2003, 5–10.

<sup>621</sup> Commission Staff Interviews. In Chengdu, for example, public security officials cited the new amendment on human rights as justification for loosening controls on migrant workers.

<sup>622</sup> Last year, for example, reformers deftly seized on public anger over the death in custody of a young man named Sun Zhigang, government rhetoric promoting the rule of law, and an embryonic legal mechanism for NPC Standing Committee review of legislative conflicts to create pressure that led the State Council to abolish a controversial form of administrative detention called custody and repatriation. CECC, 2003 Annual Report, October 2003, Section V(e).

<sup>623</sup> Chen Feng, "Rights Without Guarantees Are Worthless."

#### Notes to Section V(b)—Nongovernmental Organizations and the Development of Civil Society

<sup>624</sup> Congressional-Executive Commission on China, Annual Report 2003, 2 October 03, 54–7; Sharon Liang, "Walking the Tightrope: Civil Society Organizations in China," China Rights Forum, No. 3, September 2003, 11–5. Although the discussion in the text focuses on broad trends, the Commission continues to monitor individual issues and cases related to Chinese civil society. Although the general trend has been toward less government intervention in civil society, examples of arbitrary government control do exist. "Three National Social Organizations Suspended" [Sange quanguoxing shetuan bei tingzhe], Southern Metropolitan Daily, [Nanfang dushi bao], 12 November 03, <www.nanfangdaily.com.cn> (reporting that the Ministry of Civil Affairs (for the first time since 1950) suspended three national social organizations—the Chinese Behavioral Law, Life Sciences, and Decorative Architecture Associations—for establishing unauthorized sub-branches).

<sup>625</sup> Regulations on the Management of Foundations [Jijinhui guanli tiaoli], issued 8 March 04. They represent a revision of the prior, relatively vague 1988 rules on the same topic. Rules on the Management of Foundations [Jijinhui guanli banfa], issued 27 September 88.

<sup>626</sup> Companion regulations on social organizations (shehui tuanti) (SOs) and non-governmental, non-commercial enterprises (minban feiqiye danwei) (NGNCEs) were issued in 1998. Regulations on the Registration and Management of Social Organizations [Shehui tuanti dengji guanli tiaoli], issued 25 September 98; Temporary Regulations on the Registration and Management of Non-Governmental, Non-Commercial Enterprises [Minban fei qiye danwei dengji guanli zanzheng tiaoli], issued 6 November 98. SOs are voluntary associations such as academic or professional groups, while NGNCEs are nongovernmental service providers, such as schools, hospitals, sports organizations, or employment service organizations. See, e.g., To Serve the People: NGOs and the Development of Civil Society in China, Staff Roundtable of the Congressional-Executive Commission on China, 24 March 03, Written Statement of Qiusha Ma, Assistant Professor, East Asian Studies, Oberlin College.

<sup>627</sup> For an extensive discussion of the Foundation Regulations and their content, see Carl Minzner, "New Chinese Regulations on Foundations," International Journal of Civil Society Law, April 2004, 110–5.

<sup>628</sup> Regulations on the Management of Foundations, art. 9. In Chinese, sponsor organizations are "yewu zhuguan danwei." The prior 1988 rules provided for industry supervision of foundation activities by the People's Bank of China. However the sponsor requirement language in the Regulations has been imported from the prior 1998 regulations on SOs and NGNCEs.

<sup>629</sup> The Foundation Regulations technically allow State Council bureaus and organizations "so authorized" by the State Council to serve as sponsor organizations. Regulations on the Management of Foundations, art. 7. Similar language exists in the SO and NGNCE regulations. Chinese sources indicate the only actual approved sponsor organizations are government bureaus and mass organizations. The 2003 annual review of approved national social organizations lists their corresponding sponsor organizations and illustrates the party/government links with Chinese civil society organizations. Ministry of Civil Affairs (MOCA), "Report on the 2003 Annual Review of National Social Organizations," [Quanguoxing shehui tuanti 2003 niandu jiancha qingkuang gonggao], 3 June 2004, <www.chinanpo.gov.cn>.

<sup>630</sup> Regulations on the Management of Foundations, art. 35.

<sup>631</sup> Commission Staff Interview.

<sup>632</sup> Sponsorship creates other difficulties for Chinese civil society as well. The bureaucratic difficulty of finding a sponsor constrains the formation of completely apolitical organizations (i.e., bird-watching associations). It also raises problems of corruption by giving government and Party organs a political tool to extract money or favors from organizations they sponsor. Wealthy organizations, such as industry associations in eastern China, are able to capitalize on their economic clout to purchase or extort a measure of independence from their sponsors and the local government. Industry associations around Shanghai have been successful in gradually shaking free of government restrictions. "Shanghai: China's Largest NGO Reform" [Shanghai: quanguo zui da guimo NGO gaige], Southern Weekend [Nanfang zhoumo], 25 March 04, <www.nanfangdaily.com.cn>. In contrast, weaker organizations, or those unable or unwilling to find sponsors, must either register as businesses or operate as illegal, unregistered groups.

<sup>633</sup> According to Chinese news reports, although initial MOCA drafts of the Regulations omitted the sponsorship requirement, the Legal Affairs Office of the State Council expressly insisted on its inclusion. "Who is Stopping China's Wealthy From Becoming Philanthropists?" [Shei zuai le zhongguo furen chengwei cishan jia], 21st Century Business Herald [21 shiji jingji baodao], 1 March 04, <www.nanfangdaily.com.cn>; Commission Staff Interview.

<sup>634</sup> More specifically, prior regulations bar the registration of multiple SO or NGNCE seeking to address the same problem in a particular administrative area, theoretically allowing but one environmental SO to be registered for a particular province, for example. The Commission's 2003 Annual Report noted that such "type-locality" limits posed a significant impediment to further developments of Chinese civil society. CECC, Annual Report 2003, 56.

<sup>635</sup> Regulations on the Management of Foundations, art. 13. Many foreign NGOs present in China, including foundations, have long operated in a grey legal zone, since MOCA has long been unwilling to register foreign NGOs without general regulations about how to manage them.

This has been MOCA practice since at least 1990. Response of MOCA's Social Organization Management Division Regarding the Establishment of a Japanese Social Organization in Beijing [Minzheng bu shetuan guanli si guanyu riben ren zai jing chengli riben ren huishi de daful, issued 20 February 90 (stating that MOCA will "maintain contact" with organizations consisting of non-Chinese nationals operating "publicly" and will not "actively" seek to make contact with organizations which are "not yet operating publicly" as long as they respect relevant Chinese laws). Such organizations are to be informed that they cannot yet register as social organizations, but that relevant regulations are in the process of being drafted. Ibid. Some foreign NGOs have registered as for-profit corporations and some have been granted specific individual approval for their registration, while others operate without any official registration. Commission Staff Interview.

<sup>636</sup> Regulations on the Management of Foundations, art. 7. How the Chinese government will actually apply this requirement remains to be seen. MOCA may conceivably play the role of both sponsor and registration organ for foreign foundations. Commission Staff Interview.

<sup>637</sup> According to Chinese sources, this should encompass revisions to the 1998 regulations governing both SOs and NGNCEs. Commission Staff Interview.

<sup>638</sup> Commission Staff Interview. Whether these proposed revisions will also apply the sponsor requirement to foreign NGOs is currently unclear.

<sup>639</sup> Project Team on "Reform of China's Public Institutions and Development of China's Non-Profit Organizations," "Reform of China's Public Institutions," *International Journal of Civil Society Law*, January 2004, 7–8. Examples include hospitals, schools, arts groups, and academic research organs. As state-sponsored, state-funded service providers, they technically differ from the SOs and NGNCEs, the latter being theoretically independent of the state (but in reality heavily influenced via the system of sponsorship). In reality, the decrease in state funding for public institutions and their increasingly independent behavior has meant that the border between them and NGNCEs (which are privately operated service providers) is increasingly vague. The division between China's public and private schools is a good example. Many Chinese public schools manage NGNCE schools on the side in order to earn money.

<sup>640</sup> Ibid., 8.

<sup>641</sup> Ibid., 9–12.

<sup>642</sup> "Xi'an Public Institution Reform: Members of the Yisu Troupe Search For the Future" [Xi'an shiye danwei gaige: yisushemen xunzhao weilai], *21st Century Business Herald* [21 shiji jingji baodaol], 21 April 04, <www.nanfangdaily.com.cn>.

<sup>643</sup> Ibid.

<sup>644</sup> Project Team, "Reform of China's Public Institutions," 14.

<sup>645</sup> Joshua Muldavin, "China's Poor Left Behind," *International Herald Tribune*, 8 May 03, <www.iht.com>.

<sup>646</sup> For a discussion of some possible alternatives, see Ge Yunsong, "Nonprofit Organizations and the Reform of China's Public Institutions," *International Journal of Civil Society Law*, January 2004, 33–8; Fan Hengshan, "Smoothly and Orderly Promoting the Reform of China's Public Institutions" [Pingwen youxu tuijin zhongguo shiye danwei gaige], *Finance* [Caijing], 20 April 04, 82–4.

<sup>647</sup> Qiusha Ma, "Classification, Regulation, and Managerial Structure: A Preliminary Enquiry on NGO Governance in China," July 02, 28–30, <www.jhu.edu/istr/conferences/capetown/volume/ma.pdf>.

<sup>648</sup> Commission Staff Interview. Organizations seeking to support the growth of Chinese civil society might attempt to address these issues through training programs that provide both structure and responsibility to nascent Chinese NGOs.

#### Notes to Section V(c)—Access to Justice

<sup>649</sup> Ethan Michelson, "Causes and Consequences of Grievances in Rural China," (draft manuscript on file with the Commission), 28 March 04, 26. Other studies on China find the percentage to be even lower. Studies on the United States have found that approximately 10 percent of U.S. grievances involve lawyers. Survey data from Beijing suggest that 10 percent of "disputes" end up in court. Ibid. This suggests a somewhat greater importance of formal legal institutions in Chinese urban areas.

<sup>650</sup> Even in Beijing, only 9 percent of civil cases brought to court have legal representation. Ethan Michelson, "How Much Does Law Matter in Beijing," 28 May 02, <www.indiana.edu/emsoc/Publications/Michelson—HowMuchDoesLawMatter.PDF>.

<sup>651</sup> Different English terms are often used to translate the Chinese term *shangfang*. "Petitioning" captures its mixed legal and political dimensions, and its traditional roots, most closely.

<sup>652</sup> John R. Watt, *The District Magistrate in Late Imperial China* (New York: Columbia University Press, 1972), 11–13.

<sup>653</sup> Ibid., 11–13, 212–213.

<sup>654</sup> Jonathan Ocko, "I'll Take it All the Way to Beijing: Capital Appeals in the Qing," 47(2) *Journal of Asian Studies* 291, 292, 298–299.

<sup>655</sup> For one such vivid example, see Guanyuan Zhou, "Illusion and Reality in the Law of the Late Qing," 19(4) *Modern China* 427 (1993).

<sup>656</sup> Jonathan Ocko, "I'll Take it All the Way to Beijing: Capital Appeals in the Qing," 294.

<sup>657</sup> Guanyuan Zhou, "Illusion and Reality in the Law of the Late Qing."

<sup>658</sup> Laura Luehrmann, "Facing Citizen Complaints in China, 1951–1996," 43(5) *Asian Survey* 845, 849, 852 (2003). Although eliminated during the Cultural Revolution, *xinfang* offices re-emerged in the late 1970s with additional responsibilities: the redress of grievances accumulated during the prior decade and the rehabilitation of "class enemies." Ibid., 854–6; Andrew Nathan, *Chinese Democracy* (Los Angeles: University of California Press, 1986), 26.

<sup>659</sup> "National Xinfang Bureau Chief: 80 percent of Petitioners Are Correct" [Guojia xinfang juzhang: 80 percent de shangfang you daoli], *Bimonthly Discussion* [Banyue tan], 20 November

03, <www.china.org.cn/>; Supreme People's Court Work Report, 10 March 04. "Petitions" here is used as a shorthand for all *xinfang* items, both letters and visits.

<sup>660</sup> Supreme People's Court Work Report, 11 March 03. The 2004 work report lists total "litigation-related" (*shesu*) letters or visits for the entire Chinese court system as 3,970,000 for the year, compared to 5,687,905 decided cases. SPC Work Report, March 2004. Naturally, such statistics must be evaluated carefully.

<sup>661</sup> *Ibid.*

<sup>662</sup> "NPC *Xinfang* Bureau Releases Issues of Public Concern" [Renda *xinfang* ju gongbu minyi jiaodian], Southern Metropolitan Daily [Nanfang dushi bao], 29 February 04, <www.nanfangdaily.com.cn/>; Supreme People's Procuratorate Work Report, 10 March 04.

<sup>663</sup> National regulations give an expansive definition to *xinfang* activities, including any opinion, suggestion, or demand made of a government office, as well as criticism or revelation of illegal behavior on the part of government organs and workers and accusations of violation of ones own legal rights. Regulations on Letters and Visits [Xinfang tiaoli], issued 28 October 95, arts. 7–8. Petitioning, however, has become heavily dominated by the expression of violations of individual or collective rights.

<sup>664</sup> For a vivid film portrayal of individual petitioning activity, see "The Story of Qiu Ju," Zhang Yimou (1992). For an example of slightly more organized, but still small-scale, petitioning activity, see "Retired Hanzhou Teacher Wears White Coat, Promotes the Constitution, and Is Detained 10 Days" [Hangzhou tuiyi jiaoshi shenchuan baidapao xuanchuan xianfa bei juliu 10 tian], Boxun, 25 January 04, <www.peacehall.com/>.

<sup>665</sup> Kevin J. O'Brien and Lianjiang Li, "The Politics of Lodging Complaints in Rural China," 143 *China Quarterly* 756, 758 (1995).

<sup>666</sup> *Ibid.*, 759.

<sup>667</sup> Kevin O'Brien and Lianjiang Li, "Suing the Local State: Administrative Litigation in Rural China," 51 *China Journal* 75, 77 (2004).

<sup>668</sup> Such activities often go by the Chinese name of "yuanzhang jiedairi" (Court President Reception Day), or more simply "jiedairi," and offer the opportunity for at least some petitioners to speak directly with higher-court officials. Received petitions are often converted into formal cases, if appropriate. Citizen complaints regarding existing cases are also heard. For the relevant court regulations of one intermediate people's court, see Beijing First Intermediate People's Court, Work Measures Regarding Court President and Tribunal Heads Receiving the Visits of the Masses [Beijing shi diyi zhongji renmin fayuan yuan, tingzhang jiedai qunzhong laifang gongzuo banfa], August 1998, <www.bj148.org/firstcourt/>.

<sup>669</sup> This is generally accomplished by applying for the extremely flexible procedure of trial supervision (*zaishen*, *tishen*), which give courts wide ability to reopen and review closed cases upon the discovery of new evidence, legal error, or judicial misconduct. See, e.g., PRC Civil Procedure Law, enacted 9 April 91, arts. 177–92. These channels are frequently the targets of individual or group petitioning activity. Commission Staff Interview. Some idea of the overlap between *xinfang* activity and the *zaishen/tishen* procedures is evident in the 2004 SPC Work Report statement that, of the 120,000 letters and visits handled by the SPC in 2003, the SPC reviewed 2,089 cases of *shensu* and *zaishen*, in accordance with basic principles of *xinfang* work. This not only suggests the tight linkage between the *xinfang* process and court *zaishen* activity, but also provides an intriguing numerical comparison with the 3,587 appeals handled by the SPC in 2003. SPC Work Report, March 2004.

<sup>670</sup> Cai Dingjian, "The Basic Situation of LPC Individual Case Supervision" [Renda ge'an jiandu de jiben qingkuang], Academic Research Network Of People's University [Renda yanjiu xueshu qikan wang], <www.rdyj.com.cn/>.

<sup>671</sup> Commission Staff Interview.

<sup>672</sup> Access to Justice, Staff Roundtable of the Congressional-Executive Commission on China, 12 July 04, Testimony of Kevin O'Brien, Professor of Political Science, University of California, Berkeley.

<sup>673</sup> Regulations on Letters and Visits, arts. 24 (instructing *xinfang* bureaus to operate as a "tripwire" for explosive issues) and 36 (instructing higher level organs to generally review issues raised by *xinfang* bureaus); Laura Luehrmann, "Facing Citizen Complaints in China, 1951–1996," 43(5) *Asian Survey* 845, 858 (2003); Isabelle Thireau and Hua Linshan, "The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices," 50 *China Journal* 83, 87 (2003). Young Nam Cho, "Symbiotic Neighbor or Extra-Court Judge?" 176 *China Quarterly* 1068, 1075 (2003).

<sup>674</sup> Verna Yu, "Pay Day at Last After Premier Aids a Peasant," *South China Morning Post*, 29 October 03, <www.scmp.com/>.

<sup>675</sup> In reality, as Chinese commentators themselves note, the chance of success through the *xinfang* system is akin to that of winning the lottery. Zhao Lisha, "Liaowang: How Can Popular Opinion Smoothly Come Up [to the central government]? Bottlenecks In the Xinfang System Await a Breakthrough" [Liaowang: minyi ruhe shunchang shangda? *xinfang* tizhi pingjin dai tupu], Shenzhen News Network [Shenzhen xinwen wang], 12 October 03, <www.sznews.com/>. Those few individuals desperate, persistent, or lucky enough to get central attention may receive redress and compensation, while the vast majority of petitioners find nothing but disappointment and repression.

<sup>676</sup> Regulations on Letters and Visits. *Xinfang* regulations often specify that bureaus may investigate (*jiancha*), supervise and urge (*ducu*), and guide (*zhidao*) the process. Actual decision-making power is absent. See, e.g., Zhejiang Province Letters and Visits Regulations [Zhejiang sheng *xinfang* tiaoli], issued 16 January 04, art. 19.

<sup>677</sup> *Xinfang* bureaus are significantly less open to exchanges with outside organizations (Chinese or foreign) than other government agencies. Commission Staff Interview. Contact information for *xinfang* bureaus is often quite difficult to obtain. Addresses and phone numbers for national government organs and local Beijing district bureaus are available at: <www1.cei.gov.cn/

serve/doccopy/wnjgm/b/ba/010/bad/bad001.htm.> Identical information is also available on the Virtual Academy portion of the Commission's Web site, <www.cecc.gov>.

<sup>678</sup>Regulations on Letters and Visits, art. 22; Emergency Notice on National Land Resources Letters and Visits Work During the NPC Session [Guanyu lianghui qijian guotu ziyuan *xinfang* gongzuo de jinji tongzhi], issued 11 February 04, art. 7.

<sup>679</sup>Compare Regulations on Letters and Visits, art. 12 (limiting groups of petitioners to no more than five individuals) with art. 5 (instructing the heads of government organs to personally receive "important" petitions and receive "important" groups of petitioners).

<sup>680</sup>More ominously, it also appears to create a class of individuals adept at petitioning and organized protest activity, creating an escalating use of increasingly organized protest tactics to resolve local problems. Observers have noted an increase in the frequency and scale of recent petitioning activity. Access to Justice, Testimony and Prepared Statement of Kevin O'Brien.

<sup>681</sup>For national protection of petitioner rights, see Regulations on Letters and Visits, arts. 8, 29. Additional examples of various problems and abuses associated with the *xinfang* system include: (1) Violent police repression of thousands of Hubei petitioners seeking back wages from state-owned companies. "Over 20 Workers Detained in Bloody Clash after Massive Protests Continue in Tieshu Textile Group Factory," China Labor Action Express, 12 February 04, <www.cld.org.hk/>. (2) National banning of a book detailing the suffering of petitioners protesting a hydroelectric dam on the Xiao River in southwest China. Kelly Haggart and Yang Chongqing, "Reservoirs of Repression," 4 China Rights Forum Journal 26, 28 (2002). The full text of author Ying Xing's work, "A Tale of Migrants Displaced by the Dahe Dam," (Dahe yimin shangfang de gushi), The Three Gorges Probe is available at <www.threegorgesprobe.org/>. (3) Self-immolations of aggrieved petitioners seeking adequate compensation for the demolition of their houses. Cindy Sui, "AFP Examines PRC Media Coverage of Two Recent Self-Immolation Protests," 17 September 03 (FBIS, 17 September 03); "Behind the Self-Immolation of Zhu Zhengliang in Beijing" [Zhu zhengliang beijing zifen zhi hou], Southern Metropolitan Daily [Nanfang dushi bao], 23 September 03, <www.nanfangdaily.com/>. (4) RETL sentences for petitioners posting their grievances on the Internet. Human Rights in China Press Release, "Petitioner Sentenced for Internet Postings," 31 March 04.

<sup>682</sup>Robert Saiget, "Chinese Finding It Harder to Find Justice, Despite Human Rights Guarantee," South China Morning Post, 15 April 04, <www.scmp.com>; "Thousands' of 'Disgruntled Petitioners' Rounded Up in Beijing During NPC," Agence France-Presse, 9 March 04 (FBIS, 9 March 04); Adina Matisoff, "News Update Mid-February-Early May 2004," Human Rights in China, <http://iso.hrichina.org/>; "Massive Crackdown on Petitioners in Beijing," Human Rights in China, 8 September 04, <http://iso.hrichina.org/>.

<sup>683</sup>Shaanxi schoolteacher Ma Wenlin was arrested and served a 4-year prison term in the process of petitioning for a group of over 10,000 peasants seeking a reduction in their tax burden. A local court convicted him of disturbing the social order for playing a recording of a public national State Council circular urging a reduction in the tax burden at an assembly of peasants. "Shaanxi Peasants Request Release of Their Legal Representative" [Shaanxi nongmin yaoqiu shifang falu daiyanren], Voice of America, 6 June 02, <www.voia.gov/>. Ray Cheung, "PRC Teacher Jailed for Helping Farmers, Petitions Court To Clear Name," Sunday Morning Post, 6 October 03 (FBIS, 6 October 03).

<sup>684</sup>"SCMP: Four Residents of Henan AIDS Village Obstructed From Petitioning Beijing," South China Morning Post, 14 July 04 (FBIS, 14 July 04).

<sup>685</sup>"Investigation Into the Arrest of Village Petitioners" [Cunmin shangfang bei zhua shijian diaocha], Xinhua, 16 April 03, <http://news.xinhuanet.com/>.

<sup>686</sup>Speeches by government leaders include vague references to assisting petitioners in using legal channels to uphold their interests. Shen Lutao, "National Xinfang Work Discussion Session Opens In Beijing" [Quanguo xinfang gongzuo zuotanhui zai jing zhaokai, wang gang, hua jian min jianghua], Xinhua, 13 May 04, <http://news.xinhuanet.com/>. Conceivable reform measures might include shifting the *xinfang* offices into a system of administrative courts or regularizing *xinfang* appeals to the LPCs into more clear legislative constituent service functions.

<sup>687</sup>Regulations on Letters and Visits, art. 9.

<sup>688</sup>Beijing First Intermediate People's Court, Work Measures Regarding Court President and Tribunal Heads Receiving the Visits of the Masses. Other scattered local reforms of various kinds are also taking place. In some cities, a single building houses both the municipal *xinfang* bureau and a legal services office, with efforts being made to direct more cases to the latter. Commission Staff Interview. Guangdong has begun rotating newly appointed deputy-directors of various government bureaus to three-month stints at various *xinfang* bureaus in an effort to improve handling of complaints. "System Beefed Up to Help Those Who Have a Beef," China Daily, 1 March 04 (FBIS, 1 March 04).

<sup>689</sup>Access to Justice, Written Statement of Benjamin Liebman, Associate Professor and Director of the Center for Chinese Legal Studies, Columbia Law School.

<sup>690</sup>PRC Lawyer's Law, enacted 15 May 96, arts. 2, 4, and 42.

<sup>691</sup>Figures on Chinese lawyers for 1989 and 2001 are provided in the 1990 and 2002 China Law Yearbook [1990, 2002 Zhongguo falu nianjian], (Beijing: Legal Publishing House, 1990, 2002), 1009 and 1253, respectively.

<sup>692</sup>According to U.S. government statistics, there were 516,220 lawyers in 2003. Bureau of Labor Statistics, U.S. Department of Labor, May 2003 National Occupational Employment and Wage Estimates, May 03, <www.bls.gov>. The total number employed in legal occupations, including judges, paralegals, and law clerks, is 951,510. Ibid.

<sup>693</sup>Zhu Suli, Sending Law to the Countryside [Songfa xia xiang], (Beijing: Chinese University of Politics and Law Press, 2000), 301-6. A survey of Chinese townships (xiang/zhen), found but one licensed lawyer, who was in the process of leaving to take a position at the county seat. Ibid., at 308; "National Lack of Lawyers, 206 Counties Have No Lawyers" [Quanguo zhiye lushi duanque, 206 xian meiyou lushi], Southern Daily [Nanfang ribao], 24 March 04, <www.nanfangdaily.com.cn>.

<sup>694</sup> Benjamin Liebman, "Legal Aid and Public Interest Law in China," 34 *Texas Journal of International Law* 211, 217–18 (1999); Access to Justice, Written Statement Submitted by Benjamin Liebman; Zhu Suli, *Sending Law to the Countryside*, 301–6.

<sup>695</sup> Basic-level legal service workers are often self-taught in the law, while some have gained experience through working in the local justice bureau. Local courts often provide some training as well. *Ibid.*, 304–312.

<sup>696</sup> Access to Justice, Written Statement of Benjamin Liebman, Commission Staff Interview.

<sup>697</sup> Zhu Suli, *Sending Law to the Countryside*, 305.

<sup>698</sup> *Ibid.*, 305–6. In urban areas, basic level legal workers constitute competition for registered lawyers. As a result, the Chinese bar has been pressing for limitations on their role, with some success. Access to Justice, Written Statement Submitted by Benjamin Liebman. There are approximately 27,000 legal services offices nationwide, compared with around 10,000 law firms. *Ibid.* 2002 China Law Yearbook, 1,253.

<sup>699</sup> Workers in local judicial bureaus are commonly known as judicial assistants (*sifa zhuyiyuan*). According to Chinese statistics, they numbered 48,682 in 2001, down from 57,029 in 1997. 2002 China Law Yearbook, 1,253.

<sup>700</sup> A view into the diverse responsibilities of county-level judicial bureaus (*sifaju*), and their subordinate township organs (*sifasuo*), is available at the following Web sites: Sangzhi county, Hunan: <[www.sangzhi.gov.cn/zfbm/sfj.htm](http://www.sangzhi.gov.cn/zfbm/sfj.htm)>, Yongjia county, Zhejiang: <[www.yongjia.org.cn/government/zffw/zffw-1-sfj-2.asp](http://www.yongjia.org.cn/government/zffw/zffw-1-sfj-2.asp)>; Haizhu district, Guangdong city: <[www.hzpf.net/main/sifasuo.htm](http://www.hzpf.net/main/sifasuo.htm)>; Yunnan province: <[www.sft.yn.gov.cn/details.asp?ARTID=1026&COLID=109](http://www.sft.yn.gov.cn/details.asp?ARTID=1026&COLID=109)>.

<sup>701</sup> Zhu Suli, *Sending Law to the Countryside*, 306. The privatization of judicial functions is not an isolated trend. Substantial government functions in rural China are being transferred from the hands of government authorities to those of private actors. This includes presumably core public functions such as the provision of security. To take one example, local police stations and village assemblies in a rural Shaanxi county found themselves overwhelmed with a (relative) crime wave in the late 1990s, with significant vandalism of hydroelectric works, farm structures, and orchards. In response, the local village assembly put the protection of these assets out to public bid, with private individuals and groups assuming the contractual responsibility of providing for their protection. The successful bidder signs a contract with the village assembly, witnessed by the police, and turns over a certain amount of collateral, presumably to be forfeited in case of the asset being stolen or damaged. In return, the contractor receives an ongoing salary for the protection of the asset. Qin Hua, "Dali County Institutes 'Pay for Protection' Security System" [*Dali xian shishi zhian fangfan youchang chengbao zeren zhi*], *Shaanxi Daily* [*Shaanxi ribao*], 13 January 04, <[www.sxdaily.com.cn/](http://www.sxdaily.com.cn/)>. In numerous Chinese villages, similar developments have led to the capture of local government power by local strongmen or criminal gangs. For a vivid example, see the discussion of Daqiu village in United States Institute of Peace, Anne Thurston, *Muddling Toward Democracy: Political Change in Grassroots China*, August 98, <[www.usip.org/](http://www.usip.org/)>.

<sup>702</sup> Zhu Suli, *Sending Law to the Countryside*, 306.

<sup>703</sup> *Ibid.*, 307.

<sup>704</sup> For an excellent general treatment, see Benjamin Liebman, "Legal Aid and Public Interest Law in China," 218–22. See also The Asia Foundation, Allen Choate, *Legal Aid In China—Working Paper #12*, April 2000.

<sup>705</sup> According to one Western scholar, China had established 180 legal aid centers as of 1998. Benjamin Liebman, "Legal Aid and Public Interest Law in China," 212. 2003 statistics from the Legal Aid Center of the Chinese Ministry of Justice list 445 centers as of 1998. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work [*Falu yuanzhu gongzuo nianbao*], 17. Certain well-off local governments, such as Guangzhou, independently developed legal aid organs even prior to the issuance of the Lawyer's Law. Benjamin Liebman, "Legal Aid and Public Interest Law in China," 225.

<sup>706</sup> Commission Staff Interview.

<sup>707</sup> *Ibid.* Some such legal aid organs are run by quasi-government organizations. The Qianxi Women's Law Center, for example, operates under the umbrella of the All-China Women's Federation, to provide legal aid to poor rural women. Other legal aid organizations are affiliated with universities, such as the Wuhan University Center for the Protection of Disadvantaged Citizens, <[www.cprdc.org](http://www.cprdc.org)>, and the Center for Women's Law Studies and Legal Services at Peking University <[www.woman-legalaid.org.cn](http://www.woman-legalaid.org.cn)>. A large number of student-run legal aid organizations operate at Chinese law schools, with varying degrees of teacher involvement. These organizations often take a corporatist approach (unlike U.S. NGOs) to promoting change. Some scholars have found this effective. Michael Dowdle, "Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Education in China," 24 *Fordham International Law Journal* 56, 78–82 (2000). Numerous U.S.-based organizations have been involved in various legal aid projects in China. The Asia Foundation has an ongoing legal aid project in China, the Ford Foundation is managing a substantial clinical legal education program, and the American Bar Association has sponsored several related trainings. The U.S. State Department, Bureau of Democracy, Human Rights, and Labor, has also funded several legal aid initiatives.

<sup>708</sup> Regulations on Legal Aid, [*Falu yuanzhu tiaoli*], issued 16 July 03.

<sup>709</sup> *Ibid.*, art. 4. Provincial and local MOJ branches bear the responsibility for organizing legal aid efforts within their jurisdictions. *Ibid.* On the national level, the MOJ's Legal Aid Center carries out general drafting, research, and training related to legal aid. MOJ Legal Aid Center Introduction [*Sifa bu falu yuanzhu zhongxin jieshao*], China Legal Publicity [*Zhongguo pufa wang*], 26 November 03, <[www.legalinfo.gov.cn/flyz/2003-11/26/content-61744.htm](http://www.legalinfo.gov.cn/flyz/2003-11/26/content-61744.htm)>.

<sup>710</sup> Commission Staff Interview. The central government has established a National Legal Aid Foundation, which has just recently begun active fundraising efforts. *Ibid.*

<sup>711</sup> *Ibid.*

<sup>712</sup>In civil cases, individuals may apply for legal assistance in claims involving state compensation, government benefits, support payments, labor compensation, or other undefined measures in the public interest. Regulations on Legal Aid, art. 10. In criminal cases, defendants may apply for legal assistance: (1) after the first interrogation; (2) after a case of public prosecution has been transferred to the procuratorate for review and prosecution; (3) in cases of private prosecution, after the case has been accepted (*li an*) by a people's court. *Ibid.*, art. 11. The Regulations only represent minimum guidelines. They expressly allow local authorities to issue regulations regarding civil legal aid that are more expansive than the national ones. *Ibid.*, article 10. A few provincial regulations (most of which pre-date the national regulations) do explicitly define broader contours for legal aid than those of the national regulations. For example, regulations from Heilongjiang and Shaanxi delineate "women upholding their legal rights," (Heilongjiang Provincial Legal Aid Regulations [Heilongjiang sheng falü yuanzhu tiaoli], issued 26 December 01, art. 7(6)) and "women seeking tort compensation" (Shaanxi Provincial Legal Aid Regulations [Shaanxi sheng falü yuanzhu tiaoli], issued 26 September 01, art. 11(3)) as included within the scope of legal aid. However, these are exceptions. Most provincial legal aid regulations differ slightly, if at all, from the national regulations. This is particularly true as to criminal defense. It is worth noting that Article 11 of the national regulations does not contain language explicitly allowing lower-level governments to create more expansive rules for legal aid in criminal cases, as article 10 does for civil cases.

<sup>713</sup>Regulations on Legal Aid, art. 5.

<sup>714</sup>*Ibid.*, art. 12.

<sup>715</sup>This standard differs significantly between areas, from 500 yuan per month in Guangdong to less than 180 a month in Shaanxi. "Things to Know About Legal Aid" [Falü yuanzhu xuzhi], Guangzhou Legal Aid Center Online [Guangzhou fayuan zaixian], <www.gzlac.net.cn/>; Commission Staff Interview.

<sup>716</sup>Commission Staff Interview. Chinese judges themselves have raised issues with the quality of mandatory *pro bono* services, noting that many private lawyers compelled to provide services do not provide adequate representation. See Jiang Hua, "The Last Rights of Two Prisoners Sentenced to Death" [Liangge sixing fan de zui hou quanli], Southern Weekend [Nanfang zhoubao], 13 November 03, <www.nanfangdaily.com.cn/>.

<sup>717</sup>Commission Staff Interview. Young attorneys seeking to make a name for themselves often handle more. *Ibid.*

<sup>718</sup>Regulations on Legal Aid, arts. 24, 26(2). Compensation varies between regions. In Guangzhou, lawyers receive between 400 and 600 yuan for each criminal case they handle, and between 500 and 700 for each civil case. Guangzhou City Temporary Measures Legal Aid Case Work Subsidy [Guangzhou shi falü yuanzhu anjian gongzuo butie fangzhang banfa], <www.gzlac.net.cn/>. In Shaanxi, subsidies range from 300 to 500 yuan per case. Commission Staff Interviews.

<sup>719</sup>Commission Staff Interviews.

<sup>720</sup>An additional institutional problem faced by Chinese legal aid efforts is administrative divisions within MOJ. Basic legal service workers have historically been managed by the MOJ Basic Level Work Supervision Department (Jiceng gongzuo zhidao si), a separate, but administratively co-equal, entity from the Legal Aid Center. Revisions under discussion aim at shifting responsibility for basic legal service workers to other MOJ departments, but it remains to be seen if this represents a coherent response to rural legal needs. *Ibid.*

<sup>721</sup>The annual budget for the Xi'an municipal legal aid center is roughly 300,000 yuan, roughly the same amount as that of the Shaanxi provincial legal aid office. Commission Staff Interviews. For further information on one such relatively developed center, see the Web site of the Guangzhou legal aid center, <www.gzlac.net.cn/>. Guangdong, an exceptionally well-developed province, has considerable resources to carry out legal aid work. According to one report, Guangdong has 588 full-time staff workers in legal aid bureaus, 9,000 private lawyers, and 4,000 basic-level legal workers. "Legal Aid in Guangdong" [Falü yuanzhu zai guangdong], China Legal Publicity [Zhongguo pufa wang], 27 February 04, <www.legalinfo.gov.cn/>.

<sup>722</sup>The Xi'an legal aid center, for example, has a 12-person staff conducting a wide range of activities associated with legal aid, including monitoring *pro bono* representation by private attorneys, client representation, editorializing in the local papers, and collective participation with other government agencies in legislative drafting and dispute resolution. Commission Staff Interview.

<sup>723</sup>Commission Staff Interviews. The Regulations on Legal Aid only require the establishment of legal aid centers at the county level and higher. However, the National Legal Aid center has been encouraging county legal aid centers to establish "legal aid work stations" (falü yuanzhu gongzuo zhan). These stations are often staffed by personnel of the local judicial bureau (sifasuo) and assume some case responsibilities (including conducting initial interviews and referrals). However, MOJ officials indicate that they transfer cases to the county legal aid centers for formal "handling" (ban'an). *Ibid.*

<sup>724</sup>Zhu Suli, Sending Law to the Countryside, 304–6; Commission Staff Interview.

<sup>725</sup>Jiang Hua, "6 Cents to Change Destiny" [Gaibian mingyun de 6 fen qian], Southern Daily [Nanfang ribao], 13 November 03, <www.nanfangdaily.com.cn/>. These numbers paint a very different picture from official Chinese statistics, which assert that 75 percent of applications for civil legal aid are approved. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work, 24. No corresponding statistics are given for criminal cases.

<sup>726</sup>MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work. Consultations (*zixun*) numbered 1,936,675. The MOJ statistics provide no clear distinction in terms of definition between cases and consultations. However, the Work Report provides an approval rate of 75 percent for civil legal aid applications and places the total number of such applications at 135,929. *Ibid.* Using these figures generates a number of approvals of approximately 100,000, a number quite close to the MOJ statistics for total civil legal aid "cases." This suggests that MOJ may count the number of formal higher-level approvals in order to determine case statistics, regard-



less of whether the case goes to trial. “*Zixun*” presumably covers all other forms of contact with legal aid bureaus. According to official statistics, legal aid cases totaled 166,433 in 2003, while Chinese courts handled 5,687,905 cases in 2004. *Ibid.*, 23; SPC Work Report, March 2004.

<sup>727</sup> According to MOJ statistics, out of 9,457 full-time employees engaged in legal aid work, 4,555 have a lawyer’s license. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work, 23. Those lacking legal qualifications often receive special certification by local courts or justice bureaus to handle legal aid cases. Commission Staff Interview.

<sup>728</sup> Chinese statistics report an 89 percent victory rate in the 56,619 represented civil cases which went to trial. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work, 24.

<sup>729</sup> MOJ statistics list a total of 90,406 “received” (*shouli*) criminal cases. Of “concluded” cases, the opinions of legal aid lawyers were “completely accepted” (*quanbu caina*) by the court in 24,447 cases, “partially accepted” (*bufen caina*) in 30,602, and “not accepted” (*wei caina*) in 12,758. No further information is given. *Ibid.*, 25.

<sup>730</sup> Cases involving wages or support payments account for over half of the total number of civil cases approved for legal aid, while criminal cases involving minors and death penalty cases each account for about 30 percent of the total number of “accepted” (*shouli*) criminal legal aid cases. *Ibid.*

<sup>731</sup> MOJ Statistics list a total of 166,433 “closed” cases (*jean*) (95,053 civil, 67,807 criminal, and 3,573 administrative) for 2003. *Ibid.*

<sup>732</sup> In this, China’s government-funded legal aid organizations resemble more closely their contemporary American counterparts, rather than either current independent American public interest law organizations or the early American government-funded legal aid groups of the 1960s. Individual victories are numerous. In Beijing, lawyers providing legal aid assisted 500 migrant workers recover over 5 million yuan (\$600,000) in back wages from an Anhui construction company. “2003 Large Legal Aid Cases Announced” [2003 Nian shi da falü yuanzhu anjian gongbu, Southern Network [Nanfang wang], 15 January 04, <www.southcn.com>. In Guangdong, legal aid lawyers working through the local women’s federation aided a worker suffering leukemia as a result of chemical exposure at her employer’s plant to recover medical expenses. “I Found New Life in the Midst of [Others’] Care’ The Hand of Legal Aid Extends to Women” [‘Wo zai guan’ai zhong huode xinsheng’ falü yuanzhu zhi shou shen xiang kunnan funü], Southern Daily [Nanfang ribao], 1 March 04, <www.nanfangdaily.com.cn>. In Sichuan, court-appointed lawyers successfully won a suspended death sentence for a murder suspect in the face of what the trial judge characterized as overwhelming community support for his immediate execution. Jiang Hua, “The Last Rights of Two Prisoners Sentenced to Death” [Liangge sixing fan de zui hou quanli], Southern Daily [Nanfang ribao], 13 November 03, <www.nanfangdaily.com.cn>.

<sup>733</sup> Commission Staff Interview. As another example of legal aid programs being used to further government goals, note that legal aid lawyers won the labor law victory cited in the previous footnote in the middle of a sustained government campaign to clean up debts owed to migrant workers before the beginning of the Chinese New Year holiday.

<sup>734</sup> Commission Staff Interview.

<sup>735</sup> See discussion above on quasi-independent legal aid organizations and accompanying notes.

<sup>736</sup> Commission Staff Interview. MOJ materials list several meetings in 2003–4 to “study” the newly-issued Regulations on Legal Aid, but the only practical training sessions appear to have been in conjunction with foreign NGOs. MOJ Legal Aid Center, 2003 Annual Report on Legal Aid Work, 6–15.

<sup>737</sup> Such programs might also help address the inadequate central funding of legal aid programs by requiring the MOJ to bear a significant amount of the cost. Procedurally, programs might usefully focus not on “training the trainer,” but rather on “training the trainer on how to train,” since the organizational ability to run practical skills training programs for any Chinese legal professional (not just public interest lawyers) is almost non-existent. Self-identified needs by Chinese legal aid organizations include: (1) knowledge of Chinese law; (2) training on how to deal with clients; and (3) training on techniques of handling cases. Commission Staff Interview.

<sup>738</sup> The Regulations on Legal Aid explicitly encourage the involvement of civil society organizations in providing of legal aid. Regulations on Legal Aid, arts. 8–9; Access to Justice, Testimony of Benjamin Liebman.

<sup>739</sup> Scholars have questioned whether any legal aid program based solely on representation by lawyers can successfully address China’s rural needs. *Ibid.* See also the interview with Mo Shenxian, director of the Wuhan Center For the Protection of the Rights of the Disadvantage, in Shen Ying, “Legal Aid Needs Legal Aid” [Falü yuanzhu xuyao yuanzhu], Southern Weekend [Nanfang zhoumo], 13 November 03, <www.nanfangdaily.com/>.

#### Notes to Section V(d)—China’s Judicial System

<sup>740</sup> In Chinese, “*cuo’an zeren zhidu*.” Chinese names for the responsibility systems differ by court and region. One alternative name is “*cuo’an zeren zhuijiu zhidu*.”

<sup>741</sup> In Chinese, case closure rates are known as “*jean liu*.”

<sup>742</sup> Chen Xiangjun, “On The Court’s Responsibility System For Wrongfully Decided Cases” [Lun renmin fayuan cuo’an zeren zhuijiu zhi], Sunshine Net [Yangguang wang], <www.jc.gov.cn/personal/ysxs/fnsx3/fnsx2980.htm>.

<sup>743</sup> Note that such systems often also apply to other organs such as the procuratorate and the public security bureaus. Hainan Province Regulations on the Courts, Procuratorate, and Public Security Organs Responsibility System for Wrongfully Decided Cases [Hainan sheng geji fayuan, renmin jianchayuan, gongan jiguan cuoan zhuijiu zeren zhuijiu tiaoli], issued 22 October 97, art. 2; Huainan City Regulations on the Judicial Organs Responsibility System for Wrongfully Decided Cases [Huainan shi sifa jiguan zhuijiu cuo’an zeren tiaoli], issued 27 December 94, amended 26 July 97, art. 6.

<sup>744</sup> Wu Yumiao and Li Yongwen, "Six Chongqing Judges Face Criticism [Punishment] for Spelling Errors In Opinions" [Panjueshu shang xiecuo zi chongqing liuming faguan ai chufa shou tongbao piping], Xinhua, 12 March 04, <www.hicourt.gov>; Hu Dongqiang, Bu Shihui, and Su Dan, "Chongqing, Hechuan (City) Implements [System Where] Judges Face Impeachment If They Have Three Wrong Cases in a Year" [Chongqing hechuan shixing faguan yinian bancuo sanqi anjian jiu yao zao bamian], Chongqing Evening Post [Chongqing wanbao], 26 March 04, <http://news.rednet.com>.

<sup>745</sup> Ibid.; Implementation Details for the Responsibility System for Illegal [Behavior] of Trial Officers of the Beijing City First Intermediate People's Court [Beijing shi di yi zhongji renmin fayuan shenpan renyuan weifa shenpan zeren zhuijiu shishi zize (shixing)], 7 April 99, <www.bj148.org/firstcourt>; Commission Staff Interview.

<sup>746</sup> "A Shandong Court Experiments With Clean Government, Trial Responsibility Fund System" [Shandong yi fayuan changshi lian Zheng, shenpan zeren jijin zhidu], 21st Century Business Herald [21 shiji jingji baodao], 2 February 04, <www.nanfangdaily.com.cn>. Particularly noteworthy, in addition to the text of the local court rules, is the statement of one local Shandong court official that, "Under this current judicial system, the only feasible method is the use of higher court decisions to make determinations of 'wrongfully decided cases,' even though the higher court decision, from a theoretical standpoint, is not always correct." Ibid. For other references to the use of responsibility systems to discipline judges for legal error reversed on appeal, see Shaanxi Provincial Regulations on Courts, Procuratorate, and Public Security Organs Responsibility System for Wrongfully Decided Cases [Shaanxi sheng geji fayuan, renmin jianchayuan, gongan jiguan cuoan zhuijiu zeren zhuijiu tiaoli], issued 27 March 96, art. 2, and the report of Ma Shuanzhi, "Shaanxi Hight People's Court Report on Work Regarding Trial Supervision and Responsibility for Illegal [Behavior]" [Shaanxi sheng gaoji renmin fayuan guanyu shenpan jian du shenpan jian du gongzuo he weifa shenpan zeren zhuijiu gongzuo qingkuang de baogao], 20 November 02, <www.sxrd.gov.cn/> (identifying cases reversed on appeal, "reversed cases which the lower court disagrees with," "cases identified by higher leaders," and "cases receiving an intense reaction from media or parties to the case" as four key types of cases at which the local responsibility system is directed.)

<sup>747</sup> Ibid. Not surprisingly, lower court judges will often excuse their colleagues from serious punishment for errors of law if they disagree with an appellate ruling or feel the issues raised are particularly difficult. Commission Staff Interview.

<sup>748</sup> Commission Staff Interview.

<sup>749</sup> This problem is not simply an artifact of Chinese civil law tradition. The German judiciary, which also has a highly administrative structure analogous to the Chinese system, protects judicial activity within the "core decisional process" from disciplinary measures, while "sanctions can be applied against a judge who fails to apply a well-known general statute, who applies a formally repealed statute, or who ignores a binding decision from the Federal Constitutional Court." David Clark, "The Selection and Accountability of Judges in West Germany," 61 Southern California Law Review 1,795, 1,840 (1988). Despite the recent SPC guidelines discussed below, most Chinese court responsibility systems appear to lack this degree of clarity in practice.

<sup>750</sup> Chinese commentators criticize the responsibility system for contributing to judges' failure to apply express legal protections for individuals in a number of fields, from divorce to criminal law, for fear of possible consequences should their decisions be reversed. Yao Yong, "Divorce Courts, Mistresses, and Domestic Violence" [Lihun chengben, bao er nai, jiating baoli], <www.lib.pku.edu.cn/>; Li Fujin, "Difficulties and Responses on Deepening of the Reform of the Trial System" [Shenhua shenpan fangshi gaige de nandian ji duice], Eastern Legal Observer Web site [Dongfang fayuan], 18 November 03, <www.dffy.com/>.

<sup>751</sup> Qiang Shigong and Zhao Xiaoli, "Legal Interpretation Under the Dual Institutional System-A Survey of 10 Chinese Judges" [Shuangchong jigouhua xia de falu jieshi-dui shi ming zhongguo faguan de diaocha], in Explanation of Legal Problems, ed. Liang Zhiping (Beijing: Law Press), <www.usc.cuhk.edu/>.

<sup>752</sup> SPC Responsibility System for Illegal [Behavior] of Trial Officers of the People's Courts (Experimental) [Renmin fayuan shenpan renyuan weifa shenpan zeren zhuijiu banfa (shixing)], issued 4 September 98, art. 22.

<sup>753</sup> Guangdong Provincial High People's Court Implementation Details for the Responsibility System for Illegal [Behavior] of Trial Officers (Experimental) [Guangdong sheng gaoji renmin fayuan guanyu weifa shenpan zeren zhuijiu de caozuo zize (shixing)], issued 26 December 03, <www.gdcourts.gov.cn>, Implementation Details for the Responsibility System for Illegal [Behavior] of Trial Officers of the Beijing City First Intermediate People's Court (Experimental).

<sup>754</sup> For example, the 2003 Shandong court rules cited above appear to directly conflict with the SPC guidelines. "A Shandong Court Experiments With Clean Government, Trial Responsibility Fund System," 21st Century Business Herald.

<sup>755</sup> Implementation Details for the Responsibility System for Illegal [Behavior] of Trial Officers of the Beijing City First Intermediate People's Court (Experimental), art. 10.

<sup>756</sup> Li Xuan, "[Use of] the 'Annual Case Closure Ratio' Should Be Halted" [Nianzhong jian lu' yingdang xiu yi], Legal Daily [Fazhi ribao], 30 December 03, <www.legaldaily.com.cn/>.

<sup>757</sup> Tonghai County People's Court Reward and Punishment System for Target Goals [Tonghai xian renmin fayuan gangwei mubiao guanli zeren zhi ban'an jiangcheng kaohe banfa], issued 25 November 02, <http://fy.tonghai.gov.cn/fygg/fyggnr4.htm> (setting annual case closure targets of 98 percent, 95 percent, and 70 percent for the criminal, civil/administrative, and enforcement tribunals, respectively. Failure to reach these targets results in loss of the annual salary bonus for the entire tribunal).

<sup>758</sup> For two examples of court aggressiveness in meeting target goals, see 2004 Yanling County [Hunan Province] People's Court Work Report [2004 Yanling xian renmin fayuan gongzuo baogao], 9 February 04, <www.yanlingnet.com/> (reporting a case closure rate of 99.95 percent, 627 out of 633 cases [note that on this data, the actual percentage should be 99.05 percent]); 2004 Yantian [Guangdong Province] Basic People's Court Work Report [2004 Yantian jiceng

fayuan gongzuo baogao], 11 March 03, <www.yantian.gov.cn/>, (reporting a case closure rate of 99.6 percent, or 1,274 out of 1,280 cases [note that for this data, the actual percentage should be 99.53 percent]).

<sup>759</sup> Li Xuan, “[Use of] the ‘Annual Case Closure Ratio’ Should Be Halted”; Commission Staff Interview.

<sup>760</sup> Ibid.

<sup>761</sup> Xu Guanghui and Xi Xiaofeng, “Don’t Chase ‘Annual Case Closure Rate’” [Bu ying zhuiqiu ‘nianzhong jian lü’], People’s Court Daily [Renmin fayuan bao], 10 June 04, <http://rmfyb.chinacourt.org/>.

<sup>762</sup> Zhu Suli, “Sending Law to the Countryside,” 72–77. *Qingshi* practices are many and varied. In some cases internal to the court, they involve nothing more than briefly consulting the head of the tribunal or the court president to sound out their opinion. More formally, lower-level courts also submit *qingshi* requests to higher courts with a brief factual description of the case, then pose the problem they seek assistance in resolving. According to Chinese sources, formal responses (*pifu* or *dafu*) to *qingshi* come in a variety of forms. These include entirely secret instructions, instructions to the tribunal, entirely open responses that have heavy persuasive value for lower courts, and formal judicial interpretations. Commission Staff Interview.

<sup>763</sup> Commission Staff Interview. Courts also use *qingshi* requests to determine how to handle politically sensitive cases such as the Ouyang Yi case. “Rights Group Says Sentencing of Cyber-Dissident Delayed Over Lack of Evidence,” Agence France-Presse, 16 December 03 (FBIS, 16 December 03).

<sup>764</sup> Results generated by searching for “*qingshi*” in www.law-lib.com/law/.

<sup>765</sup> Hainan Provincial High People’s Court, Regulations on Appellate Hearings of Civil and Economic Cases [Hainan sheng renmin fayuan di er shen minshi jingji shenpan guizhang], issued 17 October 95, amended 9 July 97, arts. 57(2), 65, <www.hicourt.gov.cn/>.

<sup>766</sup> Hainan Provincial High People’s Court, Temporary Regulations Regarding Supervision of Time Limits for Trying Cases [Hainan sheng renmin fayuan, shenpan anjian shenxian jiandu zanzhiguiding], issued 10 May 00, art. 6(3), <www.hicourt.gov.cn/>.

<sup>767</sup> See, e.g., the description of the research bureau of the Intermediate People’s Court of Tongliao, Inner Mongolia, “Work Status” [Gongzuo dongtai], 15 November 02, <www.tongliao.gov.cn/>; Commission Staff Interview.

<sup>768</sup> Commission Staff Interview.

<sup>769</sup> Ibid.

<sup>770</sup> Li Quanyi and Zhu Geyang, “A Brief Discussion of the Internal *Qingshi* [Process] of the People’s Courts and Its Defects” [Qianyi taolun renmin fayuan neibu anjian qingshi ji biduan], Criminal Law Watch Web site [Xingshi falü liaowang], <www.clreview.com/artview.asp?editid=516>.

<sup>771</sup> The Chinese Constitution, the Organic Law of the People’s Courts, and the Judge’s Law guarantee Chinese courts and judges the independent exercise of judicial power, “not subject to interference from administrative organs, public organizations, or individuals.” PRC Constitution, art. 126; PRC Organic Law of the People’s Courts [Zhonghua renmin gongheguo renmin fayuan zuzhi fa], enacted 1 July 79, amended 2 September 83, arts. 4, 8(2); PRC Judge’s Law [Zhonghua renmin gongheguo faguan fa], enacted 28 February 95, art. 8(2). Both the PRC Constitution and the Organic Law of the People’s Courts subject lower courts to a relatively undefined “supervision” by higher courts. PRC Constitution, art. 127; Organic Law of the People’s Courts, art. 16. However, Chinese judges, scholars, and observers frequently express the view that the excessive use of the *qingshi* process to carry out such supervision (as opposed to reliance on ordinary appellate procedure) violates basic principles of judicial independence. See the China court bulletin board, supervised by the Supreme People’s Court of China, <http://bbs.chinacourt.org/index.php?showtopic=53483>; Bi Dongsheng, “On Internal Court Supervision” [Lun fayuan neibu jiandu], Window on Chinese Judges (Web site) [Zhongguo faguan zhi chuang] <www.chinajudge.com/0710/lfynbjd.htm>; Li Quanyi and Zhu Geyang, “A Brief Discussion of the Internal *Qingshi* [Process] of the People’s Courts and Its Defects”; Commission Staff Interviews.

<sup>772</sup> This also increases the workload of higher courts, which often complain about the inability of lower courts to resolve issues themselves.

<sup>773</sup> Supreme People’s Court Notice on Promoting 10 Rules to Practically Prevent the Occurrence of New Cases of Extended Detentions [Zuigao renmin fayuan guanyu tuixing shi xiang zhidu qieshi fangzhi chansheng xin de chaoqi jiya de tongzhi], issued 1 December 03, clause 4. For critical Chinese media commentary on the *qingshi* system, see “Eliminating Internal *Qingshi* Helps Fairness in Judicial Decisions” [Quxiao neibu qingshi youli gongzheng panjue], Southern Metropolitan Daily [Nanfang dushibao], 3 December 03, reprinted in Sina.com, <www.sina.com.cn>. Some experts have suggested that broader limits on *qingshi* system may be planned. Commission Staff Interview. This, however, would require a significant willingness on the Chinese authorities to address serious institutional issues regarding the role of the judiciary.

<sup>774</sup> According to Chinese media, one Intermediate People’s Court in Jiangsu ordered subordinate Basic People’s Courts to halt the use of *qingshi*, except in certain cases involving the application of law. “Yangzhou Takes Lead in Eliminating ‘Individual’ Internal *Qingshi*” [Yangzhou shuaxian quxiao ‘ge’an’ neibu qingshi], China Jiangsu Net [Zhongguo jiansu wang], 8 March 04, <www.jschina.com.cn/>. Note that, according to the article, this is the first decision of its kind in the entire province.

<sup>775</sup> Even in tribunals that have experimented with eliminating or limiting the sweep of the responsibility systems, some Chinese tribunal heads (*tingzhang*) complain that junior judges continue to seek their advice. Reasons given include: (1) a lack of trust in higher assurances that they would not suffer ill-effects for reaching particular decisions, and (2) an inability to independently reach conclusions in difficult legal cases. Commission Staff Interview.

<sup>776</sup>Several types of external interference, including that of the Communist Party, are discussed in the Commission's 2003 Report. Congressional-Executive Commission on China, Annual Report 2003, 2 October 03, 65–6.

<sup>777</sup>In Chinese, individual case supervision is often referred to as *ge'an jian du*. LPC supervision of the courts is permitted under the PRC Constitution. PRC Constitution, arts. 3, 104.

<sup>778</sup>Cai Dingjian, "The Basic Situation of LPC Individual Case Supervision" [Renda ge'an jian du de jiben qingkuang], Academic Publication Research Net of People's University [Renda yanjiu xueshu qikan wang], <www.rdyj.com.cn/>.

<sup>779</sup>Ibid.

<sup>780</sup>Commission Staff Interview.

<sup>781</sup>Cai Dingjian, "The Basic Situation of LPC Individual Case Supervision." Cai identifies 1,140 such cases raised by NPC delegates with the SPC in 2002. Local LPCs apparently have similar requirements as well. Ibid.

<sup>782</sup>Cai divides LPC interference into four types: (1) rote transfers of petitions to the courts; (2) requests for status reports on the handling of a cases; (3) independent case investigations conducted by LPC staff resulting in suggestions on how the case should be handled and pressure on the courts; (4) formal supervision carried out by the full LPC or its Standing Committee. Statistics for cases falling in the second category range from 3 to 18 percent of petitions to given LPCs involving the courts. Only a handful of cases appear to fall in the third and fourth category. Cai argues that only these latter categories constitute LPC individual case supervision (*ge'an jian du*) because (1) the first category merely represents cases being transferred to courts to handle and (2) courts often ignore requests for status reports (figures indicated that courts respond to only 20–50 percent of such requests). Ibid. This is consistent with Commission sources who have indicated a substantial difference in treatment of "ordinary LPC requests" with regard to individual cases and "VIP" requests. For the purposes of evaluating judicial independence, this suggests the true problem posed by LPC interference is not one of frequent interference in routine case management. Rather, the difficulty arises from (1) specific LPC intervention in high-profile cases and (2) a relatively regularized framework for intervention which engenders self-censorship on the part of Chinese judges.

<sup>783</sup>Fan Qing, "Media Supervision and Judicial Independence" [Yulun jian du yu duli shenpan], Legal Daily [Fazhi ribao], September 2003, <www.legaldaily.com.cn>. For further discussion of media influence on court decisions, see Benjamin Liebman, "Watchdog or Demagogue? The Media in the Chinese Legal System," Columbia Law Review, (forthcoming January 2005), 60–80. Liebman notes that individual citizen petitions to the media which are referred over to the courts do not tend to generate pressure on judges. Ibid., 96.

<sup>784</sup>Ibid., 19–21, 106–110.

<sup>785</sup>CECC, 2003 Annual Report, 65–66, footnote 323. "Supreme Court To Help Train Judges in Western China," Xinhua, 17 February 04 (FBIS, 17 February 04).

<sup>786</sup>Local Chinese judges express skepticism that ambitious central goals can be met. Commission Staff Interviews.

<sup>787</sup>A vast disparity exists in the actual day-to-day work of different Chinese courts. As Chinese scholars have noted, basic-level Chinese courts outside of major urban areas rely heavily on a variety of less-formal practices and place very heavy emphasis on mediating disputes. Zhu Suli, "Sending Law to the Countryside," 316–21. Even at the level of the Baoji Intermediate People's Court in Shaanxi province, judges estimate that approximately half of their time is spent out of the courtroom and in the community meeting with parties, conducting site visits, and mediating disputes. Commission Staff Interview. In contrast, the work at the high people's court level is much more formal. Ibid.

<sup>788</sup>Commission Staff Interview.

<sup>789</sup>"Shujiyuan Can No Longer Transition to Become Judges" [Shujiyuan bu neng zai guodu wei faguan], Southern Metropolitan Daily [Nanfang dushi bao], 28 October 03, <www.nanfangdaily.com.cn/>. Although the term shujiyuan is often translated as "judicial clerk," it is translated here as "judicial secretary" to distinguish the post from the newly created "*faguan zhuli*" discussed below.

<sup>790</sup>For criticism of this practice, see He Weifang, "Shujiyuan Will No Longer Be 'Judicial Reserves'" [Shujiyuan bu zai shi faguan de yubei dui], Southern Weekend [Nanfang zhoubao], 30 October 03, <www.nanfangdaily.com.cn/>.

<sup>791</sup>"Shujiyuan Can No Longer Transition to Become Judges," Southern Metropolitan Daily.

<sup>792</sup>"China's Courts To Hold Stricter Standards for Judges," Xinhua, 27 October 03 (FBIS, 27 October 03).

<sup>793</sup>CCPC Organization Bureau, Personnel Bureau, and SPC Notice Regarding 'Management Rules for Judicial Secretaries in the People's Courts (Experimental)' [Zhonggong zhongyang zuzhi bu, renshi bu, zui gao renmin fayuan guanyu yinfa 'shujiyuan guanli banfa (shixing)'], issued 20 October 03. See also "Shujiyuan Can No Longer Transition to Become Judges," Southern Metropolitan Daily.

<sup>794</sup>According to one estimate, roughly 20 percent of the 45,714 judicial secretaries might be able to pass the judicial examination and become judges, 60 percent would transfer to the new (and undefined) position of "judicial clerk," (*faguan zhuli*), and the remaining 20 percent would either remain as judicial secretaries or leave the judiciary entirely. Ibid. The precise definition of how the judicial clerk position might differ from the current judicial secretary position is unclear. At least some have suggested it might involve the analytical and writing responsibilities currently assumed by more senior judicial secretaries, but without the secretarial duties. Commission Staff Interview. It may also represent an alternative career track for judges. Whether these changes will actually be implemented remains to be seen. As of the spring of 2004, some local Chinese courts were unaware of the change in policy. Commission Staff Interview. A similar move toward erasing some of the administrative hierarchy present in the Chinese judiciary is found in the efforts of at least one Beijing High Court, which announced the creation of the post of "senior judge," with benefits and responsibilities similar to those of the court president

and tribunal heads. Qiu Wei, "Beijing Court Will Establish Senior Judge System This Year" [Beijing fayuan jinnian jiang jianli zishen faguan zhidu], Xinhua, 1 March 03, <[www.chinacourt.org/](http://www.chinacourt.org/)>. Questions do exist as to how this change will be implemented in rural China. In many rural courts, the post currently serves as an apprenticeship for younger personnel to learn practical legal skills not taught in Chinese law schools, such as mediation.

<sup>795</sup> "Taking Notice of the Trend of 'Judges Arising Out of Experienced Lawyers'" [Guanzhu: "faguan you zishen lushu chu" de qushi], Yanzhao Metropolitan Daily [Yanzhao dushi shixun], 5 June 04, <[www.yzdsb.com.cn/](http://www.yzdsb.com.cn/)>; Commission Staff Interview.

<sup>796</sup> For a detailed discussion of the nature of judicial work in the basic level courts, see Zhu Suli, *Sending Law to the Countryside*, 316–321.

<sup>797</sup> Qiang Shigong and Zhao Xiaoli, "Legal Interpretation Under the Dual Institutional System—A Survey of 10 Chinese Judges"; Commission Staff Interviews.

<sup>798</sup> CECC, 2003 Annual Report, 64–5.

<sup>799</sup> For Beijing, see <<http://bjgy.chinacourt.org/>>; Shanghai, <[www.hshfy.sh.cn/](http://www.hshfy.sh.cn/)>; Hainan, <[www.hicourt.gov.cn/court/](http://www.hicourt.gov.cn/court/)>.

<sup>800</sup> Jing Bo, "Beijing Courts To Begin Gradually Making Opinions Public" [Beijing fayuan caipan wenshu jiang zhubu gongkai], 3 November 03, <[www.hicourt.gov.cn/](http://www.hicourt.gov.cn/)>; see also <<http://bjgy.chinacourt.org/cpws/>>.

<sup>801</sup> Commission Staff Interviews.

#### Notes to Section V(e)—Commercial Rule of Law and the Impact of the WTO

<sup>802</sup> The Beijing High People's Court Web site (<<http://bjgy.chinacourt.org/cpws/>>) publishes all IP-related decisions and many other decisions from Beijing's two intermediate people's courts and from the Beijing High People's Court itself.

<sup>803</sup> "Establishing a WTO-compatible Judicial Review System: An Empirical Study on the Role of the Chinese Judiciary in Implementing the Law of the WTO," (draft manuscript on file with the Commission) Section II.1.

<sup>804</sup> Commission Staff Interview.

<sup>805</sup> *Ibid.*

<sup>806</sup> Commission Staff Interviews.

<sup>807</sup> *Ibid.*

<sup>808</sup> "Internet Helps Public Affairs Decision-making," Xinhua, reprinted in China Daily Online, 28 January 04, <[www.chinadaily.com.cn/](http://www.chinadaily.com.cn/)>.

<sup>809</sup> Commission Staff Interview.

<sup>810</sup> The Guangdong People's Congress has detailed regulations. Several cities within the province, such as Guangzhou, Shenzhen, and Shantou, have their own regulations on public hearings. The Sichuan Standing Committee Legal Affairs Commission has established regulations to set up procedures for hearings that explain how to select participants, how to select attendees, how records from hearings are to be published, and how to report the results of the hearing so that the Standing Committee may consider the hearing contents in its deliberations. The Standing Committee then invites citizens to attend its meetings, on a first-come, first-served basis. In spite of all the regulations, the Guangdong People's Congress and the Sichuan People's Congress have actually held only one hearing each. Some of the cities have held more. Guangzhou has held three, and Shenzhen has held four or five. Commission Staff Interviews.

<sup>811</sup> Chongqing Industrial Business Administrative Management Office Web site [Chongqing gongshang xingzheng jingli ju wangzhan], <[www.cqgs.cn/index.asp](http://www.cqgs.cn/index.asp)>.

<sup>812</sup> "Internet Helps Public Affairs Decision-making," Xinhua.

<sup>813</sup> Xiao Liang, "System for People to Oversee City Hall," China Daily, reprinted in China Daily Online, 23 February 04, <[www.chinadaily.com.cn/](http://www.chinadaily.com.cn/)>.

<sup>814</sup> Commission Staff Interviews.

<sup>815</sup> U.S.-China Trade: Preparations for the Joint Commission on Commerce and Trade, Hearing of the Subcommittee on Commerce, Trade and Consumer Protection of the House Committee on Energy and Commerce, 31 March 04, Testimony of Charles Freeman, Deputy Assistant USTR for China.

<sup>816</sup> China and the WTO: Compliance and Monitoring, U.S.-China Security and Economic Review Commission, 5 February 04, Testimony of Terence Stewart, Managing Partner, Stewart and Stewart Law Offices. Also, the U.S.-China Business Council reported in its assessment of China's second year in the WTO that transparency was one of the bright areas in a year in which there seemed to have been a loss of momentum among the Chinese leadership. China and the WTO: Compliance and Monitoring, U.S.-China Security and Economic Review Commission, 5 February 2004, Testimony of Robert A. Kapp, President, U.S.-China Business Council. But see Trade Policy Staff Committee Hearing, 10 September 03, Testimony of Robert A. Kapp, President, U.S.-China Business Council (noting the loss of momentum and decrying the continued transparency problems). Interestingly, when GAO sought to determine the areas of implementation that U.S. businesses were most interested in, they found that the importance placed on implementation of transparency commitments fell in an 18-month period from the third most important concern to the ninth most important concern out of twenty-six concerns with implementation. Compare General Accounting Office, World Trade Organization: Selected U.S. Company Views about China's Membership, GAO-02-1056, 23 September 02, 9 with General Accounting Office, World Trade Organization: U.S. Companies' Views on China's Implementation of Its Commitments, GAO-04-508, 24 March 04, 10.

<sup>817</sup> Protocol, WT/L/432, Part I.18, 11.

<sup>818</sup> Trade Policy Staff Committee Hearing, Testimony of Robert A. Kapp, 5.

<sup>819</sup> U.S.-China Trade, Testimony of Charles Freeman; Office of the United States Trade Representative, 2003 Report to Congress on China's WTO Compliance, 10.

<sup>820</sup> Soft commitments, as the term is used in this report, are general, systemic requirements for which the Chinese government must develop a capacity throughout the bureaucracy. Soft commitments present the greatest challenge to both the Chinese government (as it seeks to im-

plement them) and the U.S. government's trade bureaucracy (as it seeks to use these commitments to guarantee market access for U.S. firms). The Chinese government frequently finds, however, that it lacks the capacity to implement the soft WTO commitments both effectively and promptly.

<sup>821</sup> In 2003 and 2004, the Chinese government continued to issue and enforce rules governing investment and participation in specific industries that limited market access for foreign firms by placing restrictions or conditions on personnel or financing decisions. Industries affected include automobile financing, construction, and construction design. In each of these industries, high prudential requirements, large minimum investments, and the requirement that significant foreign management staff be resident in China limit market access, especially for small and medium size firms.

<sup>822</sup> China-Value-Added Tax on Integrated Circuits-Request for Consultations by the United States, WT/DS309/1, 23 March 04.

<sup>823</sup> State Council Notice Concerning the Issuance of Certain Policies Encouraging the Development of the Software and Integrated Circuit Industries [Guowuyuan guanyu yinfa guli ruanjian changye he jicheng dianlu changye fazhan ruogan zhengce de tongzhi], issued 24 June 00.

<sup>824</sup> *Ibid.*, art. 41. The policy was adjusted to provide a 14 percent rebate to firms that designed and manufactured ICs in China while the 11 percent rebate was maintained for firms that designed ICs in China but, due to lack of capacity, manufactured outside China. Notice of the Ministry of Finance and the State Administration of Taxation Regarding Furthering Tax Policies to Encourage the Development of the Software Industry and Integrated Circuit Industry [Caizhengbu guojia shuiwu zongju guanyu jinyibu guli ruanjian changye he jicheng dianlu changye fazhan shuishou zhengce de tongzhi], issued 10 October 02; Notice of the Ministry of Finance and the State Administration of Taxation Regarding Tax Policies for Imports of Integrated Circuit Products Domestically Designed and Fabricated Abroad [Caizhengbu guojia shuiwu zongju guanyu bufen guonei sheji guowai liupian jiagongde jicheng dianlu chanpin jinkou shuishou zhengce de tongzhi], issued 25 October 02.

<sup>825</sup> General Agreement on Tariffs and Trade (1994) [hereinafter GATT], art. III.2. Many GATT and WTO panel decisions have analyzed the meaning of "like products." See, e.g., WTO Appellate Body Reports in Korea—Taxes on Alcoholic Beverages, WT/DS75/AB/R and WT/DSS4/AB/R, 18 January 99, § 118; Canada—Certain Measures Involving Periodicals, WT/DS31/AB/R, 30 June 97, 21–25; and Japan—Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, and WT/DS11/AB/R, 4 October 96, 18–24.

<sup>826</sup> China-Value-Added Tax on Integrated Circuits—Joint Communication from China and the United States, WT/DS309/7, 16 July 04. In the agreement by which WTO dispute settlement was avoided, China also agreed to eliminate the policy granting a partial rebate to firms designing ICs in China but manufacturing abroad before October 1, 2004.

<sup>827</sup> Technology transfer requirements as a condition of importation are proscribed by commitments China made in its WTO accession documents. Working Party Report on the Accession of the People's Republic of China, WT/MIN(01)/3 ["Working Party Report"], §§ 49, 203; Protocol on the Accession of the People's Republic of China, WT/L/432 ["Protocol"], Part I.7.3, 5.

<sup>828</sup> The two standards were issued by the Standards Administration of China, a part of the State Council, after review by the Ministry of Information Industries, on May 12, 2003. Notice No. 2003–110 Concerning the Implementation of Mandatory Wireless Local Area Network National Standards [Guanyu wuxian juyuwang qiangzhixing biaoqun shishi de gonggao], issued 26 November 04.

<sup>829</sup> A series of 802.11 standards govern different parts of the hardware and software puzzle with earlier versions designated by the addition of early letters of the alphabet and later versions designated by later letters of the alphabet. The IEEE has addressed the different parts of the puzzle and submitted its standards to ISO for adoption. For a complete technical discussion of the 802.11 standard and its development, see the IEEE 802.11 Working Group Web site at <<http://grouper.ieee.org/groups/802/11>>.

<sup>830</sup> WTO Agreement on Technical Barriers to Trade ["TBT Agreement"], arts. 2.2, 2.4.

<sup>831</sup> Those 24 companies were announced in three tranches during December 2003. Wang Yichao and Zhang Fan, "The WAPI Battle: Who Caused Us to Fall into a Double Loss Situation?" [Hai yuan WAPI zhi zheng: shei shi women xianru shuang shu zhi ju], Finance [Caijing], 5 April 04, <[www.caijing.com.cn](http://www.caijing.com.cn)>.

<sup>832</sup> AQSIQ granted an extension to the effective date that permitted companies to continue to ship some hardware to China after December 1, 2003 until June 1, 2004. AQSIQ and the State Certification and Accreditation Administration (CNCA) Notice 2003–113. This was later mooted by the indefinite suspension of the policy.

<sup>833</sup> Office of the United States Trade Representative, The U.S.-China JCCT: Outcomes on Major U.S. Trade Concerns, 21 April 04, 1, available at <[www.ustr.gov](http://www.ustr.gov)>. Following JCCT, AQSIQ, the Certification and Accreditation Administration of the PRC (CNCA), and SAC issued a notice indefinitely postponing implementation of the standards. Announcement No. 2004–44 [Gonggao], issued 29 April 04.

<sup>834</sup> In 2003, China produced 190 million tons of coke and exported only 14.75 million tons of that production. China's coke exports in 2003 included 4.4 million tons to the countries in the EU and 910,000 tons to the United States. "Sino-European Coke Export Crisis" [Zhong ou jiaotan chukou pei'e fengbo], Finance [Caijing], 29 May 04, <[www.caijing.com.cn](http://www.caijing.com.cn)>.

<sup>835</sup> GATT, Arts. XI.1, XI.2, XX.

<sup>836</sup> In the first 5 months of 2004, exports of Chinese coke to the United States increased 14.9 percent over the same period in 2003, according to Chinese customs statistics. "China's Coke Export Statistics for the First Five Months of 2004" [2004 nian 5 fen woguo jiaotan chukouliang tongji], Customs Consolidated News and Information Network [Haiguan zonghe xinxi zixun gang], 21 June 04, <[www.china-customs.com](http://www.china-customs.com)>.

<sup>837</sup> NDRC as a government entity under the State Council is the new name of the slightly reorganized State Development and Planning Commission, the entity responsible for formulating the plan in the socialist part of the economy.

<sup>838</sup> Automobile Industry Development Policy [Qiche chanye fazhan zhengce], issued 21 May 04, arts. 47, 48.

<sup>839</sup> Automobile Industrial Development Policy, art. 34. See also Article 59, which proscribes imports for waste metal reclamation purposes.

<sup>840</sup> International Intellectual Property Alliance, 2004 Special 301 Report: China, 15 February 04, 31.

<sup>841</sup> IPR Toolkit, <[www.usembassy-china.org.cn/ipr/](http://www.usembassy-china.org.cn/ipr/)>.

<sup>842</sup> Proceedings of Ambassador Randt's Second Annual IPR Roundtable, contributions of Chinese government officials, 18 November 03.

<sup>843</sup> Improvement in economies such as Hong Kong have occurred when the government has provided significant resources to an organized enforcement effort and pursued criminal enforcement against the organized infringers reaping significant profits from the infringement. Office of the United States Trade Representative, Special 301 Report, 3 May 04, 35–44. Compare International Intellectual Property Alliance, 2004 Special 301 Report: Hong Kong, 15 February 99, <[www.ippa.com/rbc/1999/rbc-hong-kong-301-99.html](http://www.ippa.com/rbc/1999/rbc-hong-kong-301-99.html)> with International Intellectual Property Alliance, 2004 Special 301 Report: Hong Kong, 15 February 04, 401–2.

<sup>844</sup> Yu Zhong, "China Attaches More Importance to Protecting Intellectual Property Rights" [Zhongguo yuelaiyue zhongshi baohu zhishi chanquan], China IPR News and Developments [CNIPR xinxi dongtai], 14 May 04, <[www.cnipr.com](http://www.cnipr.com)>.

<sup>845</sup> The commitments included reducing the overall level of infringement; changing the law so that more IPR offenses are subject to criminal enforcement; improving enforcement in the country and at the border; and joining the WIPO Internet Treaties "as soon as possible." The United States will monitor progress toward these commitments through a new U.S.-China Intellectual Property Rights Working Group under the JCCT. Office of the United States Trade Representative, The U.S.-China JCCT: Outcomes on Major U.S. Trade Concerns, 21 April 04, 2.

<sup>846</sup> WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), arts. 41–61.

<sup>847</sup> The U.S. government has advocated adjusting the criminal threshold for transfer of counterfeiting and piracy cases to criminal enforcement for several years. Office of the United States Trade Representative, Special 301 Report, 3 May 04, 11–12; Office of the United States Trade Representative, Special 301 Report, 1 May 03, 11; Office of the United States Trade Representative, Special 301 Report, 30 April 02, 17.

<sup>848</sup> Office of the United States Trade Representative, 2003 Report to Congress on China's WTO Compliance, 11 December 03, 50.

<sup>849</sup> Twelve Chinese generic pharmaceutical manufacturers brought an action before SIPO alleging that sildenafil citrate, the active ingredient in Viagra, lacked novelty. SIPO instead invalidated Pfizer's Chinese patent on a technicality, asserting that the patent examiner had erred in relying on Pfizer's data demonstrating that sildenafil citrate treated or prevented erectile dysfunction in animals. The decision calls into question the overall Chinese commitment not to bend the rules to protect Chinese producers. While the rampant production and sale of counterfeit Viagra has damaged legitimate sales tremendously and tough restrictions on Pfizer's marketing authorization have limited the size of the legitimate market, the systemic concerns raised by this decision eclipse the relatively small financial impact it is likely to have. "Viagra" Patent is Declared Invalid ["Wan'aikē" zhuanli bei xuangao wuxiao], China's State Intellectual Property Office Web site, 10 July 04, <[www.sipo.gov.cn](http://www.sipo.gov.cn)>.

<sup>850</sup> Some judgments in civil cases involving U.S. rightholders are available (in Chinese only) at <[www.chinainprlaw.com/spxx/spxx.htm](http://www.chinainprlaw.com/spxx/spxx.htm)>.

<sup>851</sup> The SPC has assigned numerous intermediate courts to hear patent cases. The authorizations include Supreme People's Court Authorization Regarding Assigning Shandong Province Weifang Municipal Intermediate People's Court to Accept Patent Cases [Zuigao renmin fayuan guanyu tongyi zhiding Shandong sheng weifang shi zhongji renmin fayuan shenli bufen zhuanli ju fen anjian de pifa], issued 2 February 04; Supreme People's Court Authorization Regarding Assigning Zhejiang Province Ningbo Municipal Intermediate People's Court to Accept Patent Cases [Zuigao renmin fayuan guanyu tongyi zhiding zhejiang sheng ningbo shi zhongji renmin fayuan shenli bufen zhuanli ju fen anjian de pifa], issued 15 April 03; Supreme People's Court Authorization Regarding Assigning Jiangxi Province Jingde County and County Intermediate People's Court to Accept Patent Cases [Zuigao renmin fayuan guanyu tongyi zhiding zhejiang sheng ningbo shi zhongji renmin fayuan shenli bufen zhuanli ju fen anjian de pifa], issued 31 December 2002.

<sup>852</sup> "U.S. Warns China on Farm TRQs, Pleased with Progress on Soybeans," China Trade Extra, 20 December 2001, <[www.ChinaTradeExtra.com](http://www.ChinaTradeExtra.com)>.

<sup>853</sup> "Agriculture TRQs Still a Problem in China Despite USTR Report," Inside U.S.-China Trade, 14 April 04, 8.

<sup>854</sup> China and U.S. Agriculture: Sanitary and Phytosanitary Standards, A Continuing Barrier to Trade?, Commission Staff-Led Roundtable, 26 March 04, Testimony of Dr. Peter Fernandez, Associate Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, 31.

<sup>855</sup> *Ibid.*, 23–24.

<sup>856</sup> 2003 White Paper: American Business in China, The American Chamber of Commerce People's Republic of China and The American Chamber of Commerce in Shanghai, August 03, 108–109.

<sup>857</sup> Protocol, Part I.5, 4.

<sup>858</sup> Working Party Report, para. 83(c).

<sup>859</sup> Working Party Report, para. 83(d). The PRC Foreign Trade Law provides that all enterprises, foreign, foreign-invested, and domestic have trading rights in China. PRC Foreign Trade

Law, enacted 6 April 04, art. 14. The Regulations on the Management of Foreign Investment in the Commercial Sector permit foreign-invested and wholly foreign-owned companies to provide distribution services. The Regulations on the Management of Foreign Investment in the Commercial Sector [Waishang tuozi shangye lingyu guanli banfa], issued 16 April 04. Regulations for direct selling are expected later this year.

<sup>860</sup> Even before some recent initiatives announced by the EU and Japan, just the reported figures available as part of the Doha round's trade capacity building efforts indicate that Japan contributed over 9 million U.S. dollars, Canada provided over 3 million U.S. dollars, and Australia over 1 million U.S. dollars. The most telling comparison with the United States, however, was the EU's contribution of nearly 15 million U.S. dollars. Note also that the EU's contribution does not include additional amounts contributed by its Member States, including Germany, which maintains a full-time staff of trainers in Beijing. Congressional Research Service, Memorandum on WTO-Related Foreign Assistance and Technical Training in China, 23 March 04.

#### **Notes to Section V(f)—Forced Evictions and Land Requisitions**

<sup>861</sup> PRC Constitution, art. 10; PRC Land Management Law, adopted 25 June 86, amended 29 December 88, and 29 August 98. None of the Constitution, the Land Management Law, and other relevant regulations and interpretations clearly define the nature of collective ownership. Collectively owned land is typically managed and administered by village committees. Peter Ho, "Who Owns China's Land? Policies, Property Rights, and Deliberate Institutional Ambiguity," 177 *China Quarterly* 394, 397–401 (August 2001).

<sup>862</sup> PRC Urban Real Estate Management Law, adopted 5 July 94.

<sup>863</sup> Commission Staff Interviews; Property Seizures in China: Politics, Law and Protest. Staff Roundtable of the Congressional-Executive Commission on China, 21 June 04, Written Statement of Patrick A. Randolph, Professor of Law, University of Missouri at Kansas City. In other cases, residents who had been living on urban property for years were simply permitted to continue residing in old homes and buildings without any formal land use rights or transfer of interest. Commission Staff Interviews.

<sup>864</sup> PRC Rural Land Contracting Law, adopted 29 August 02. Article 5 states that "members of rural collective economic entities have the right to contract rural land that is allocated through contracting by their own rural collective economic entity." Article 20 states the contracting term for arable land is 30 years.

<sup>865</sup> PRC Constitution; PRC Land Management Law; PRC Urban Real Estate Management Law.

<sup>866</sup> For one English-language account of China's growing cities, see Howard W. French, "New Boomtowns Change Path of China's Growth," *New York Times*, 28 July 04, <www.nytimes.com>. A recent Xinhua story notes that Chinese cities will need a total of 200 million square meters of additional living space annually until 2020 to accommodate urban growth. "Research Estimates 200 Million Square-Meter Annual Need in New Urban Residences," Xinhua, 2 June 04 (FBIS, 2 June 04). China currently has more than 15,000 highway projects underway that will add more than 162,000 kilometers of road to the country. Ted Fishman, "The Chinese Century," *New York Times*, 4 July 04, <www.nytimes.com>.

<sup>867</sup> Official statistics provided in Commission Staff Interview. Shanghai has announced plans to relocate an additional 80,000 families in 2004. "Developer Calling for Halt to Urban Renovation in Shanghai," Xinhua, 4 February 04, <news.xinhuanet.com>.

<sup>868</sup> Didi Kirsten Tatlow, "Claims of Olympic Eviction Denied," *South China Morning Post*, 11 March 04, <www.scmp.com>. The Geneva-based Center on Housing Rights and Evictions claims that 300,000 have been evicted in preparation for the Olympics. The head of the Beijing Municipal Administration of State Land denied this, claiming that 18,000 people would be relocated for this purpose, but added that 300,000 individuals would be relocated as part of an overall urban renewal effort in Beijing. According to Mr. Miao, more than 400,000 households have been relocated in Beijing since 1991. Liu Li, "City Denies Reports on Large-Scale Evictions," *China Daily*, 11 March 04, <www.chinadaily.com.cn>.

<sup>869</sup> For example, in 2003 alone, 24,000 families were relocated in Chengdu. Commission Staff Interview. In 2003, between 200,000 and 300,000 people were relocated in Tianjin, a number equal to the total for the prior five years. "Seeking the Locus of China's Urban Property Housing Price Comprehensive Rise in 2004" [2004 xunzhao zhongguo chengshi fangjia quanmian shangyan de guiji], 21st Century Business Herald [21 shiji jingji baodao], 25 May 04, <www.nanfangdaily.com.cn>.

<sup>870</sup> PRC Land Administration Law, chapter V.

<sup>871</sup> PRC Land Administration Law, chapter V; PRC Urban Real Estate Management Law, art. 8.

<sup>872</sup> "China's Farmland Dwindles by 6 Million Ha in Seven Years," Xinhua, 25 June 04 (FBIS, 25 June 04).

<sup>873</sup> "CPC General Secretary Calls for Strict Farmland Protection," Xinhua. Chinese officials have expressed concern that landless, jobless farmers could threaten "social stability." "China's Farmland Dwindles by 6 Million Ha in Seven Years," Xinhua.

<sup>874</sup> Both governmental and non-governmental sources in China contend that in many cases, relocations take place without incident and residents are willing to move because they are provided with resettlement housing that is better than their dilapidated homes in city centers. Commission Staff Interviews.

<sup>875</sup> See, e.g., Urban Housing Demolition and Relocation Management Regulations [Chengshi fangwu chaiqian guanli tiaoli], issued 6 June 01, art. 24; Guidance Opinion for Urban Housing Demolition and Relocation Appraisal [Chengshi fangwu chaiqian pinggu zhidao yijian], issued 1 October 03, arts. 3, 12, 14.

<sup>876</sup> Commission Staff Interviews.

<sup>877</sup> Commission Staff Interviews. "Forced Demolitions Blur Rights," *China Daily*, 21 April 04 (FBIS, 21 April 04).



<sup>878</sup> Commission Staff Interviews. Some residents and observers interviewed by Commission staff noted that many residents are willing to relocate because they typically have a higher standard of living in resettlement housing. They note if transportation networks were better, other displaced residents who are unhappy would not feel so disadvantaged. See also Bill Savadove, "Shanghai Increases Payout for Eviction," *South China Morning Post*, 23 July 04 (FBIS, 23 July 04) (noting complaints by relocated Shanghai residents that "low-cost housing is located far outside the city centre with poor transport and other infrastructure") and Leu Siew Ying, "Doomed Art Village Group Take Battle to the Top," *South China Morning Post*, 22 July 04 (FBIS, 22 July 04) (quoting one displaced resident who complained that "The compensation won't be enough to buy a house half the size of my present house, let alone land for the garden. But it's not just a question of money. We have put a lot in to build our home.")

<sup>879</sup> Under the PRC Land Administration Law, when the state requisitions farmland from the collective, it pays compensation for loss of land, crops and fixtures and a resettlement subsidy. PRC Land Management Law, art. 47. According to Professor Roy Prosterman, even if all of this amount were paid directly to the farmers, under current compensation standards, it would be insufficient to compensate them for the economic value of a 30-year land use right. Property Seizures in China: Politics, Law and Protest, Testimony and Written Statement of Roy Prosterman, President, Rural Development Institute. In practice, most of the compensation funds are kept by the local governments and collectives and only a small amount is paid directly to farmers. Tang Min, "New Rules Protect Farmers Who Lose Land," *China Daily*, 15 February 04, (FBIS, 15 February 04) (noting that according to official statistics, 60 to 70 percent of the compensation for land requisitions goes to local governments, 25 to 30 percent to village collective units, and less than 10 percent to the farmers themselves); "Delegates Discussing National Affairs," *China Daily*, 11 March 04 (FBIS, 11 March 04) (citing a senior official as noting that farmers receive little compensation and local governments attempt to profit from land seizures). Land officials interviewed by the Commission acknowledged that the economic value of the 30-year land use right is not fully compensated for when rural land is requisitioned, but argued that farmers who lose their land are taken care of in other ways. Commission Staff Interviews.

<sup>880</sup> "China's Farmland Dwindles by 6 Million Ha in Seven Years," *Xinhua*. There are some experiments under way to alleviate this problem. Authorities in Chengdu are experimenting with higher compensation standards and a social security system to provide basic living necessities for farmers who have lost their land. Commission Staff Interviews.

<sup>881</sup> Han Baojiang, "Farmland Wastage Must End," *China Daily*, 22 March 04 (FBIS, 22 March 04); "The Land Beneath Their Feet," *China Daily*, 16 March 04 (FBIS, 16 March 04); "Delegates Discussing National Affairs," *China Daily*. According to one *Xinhua* article, "Some local governments lavished land use rights just to fill up their coffers. According to statistics, proceeds from land auctions by some governments at county and city levels made up about 35 percent of their fiscal income." "Effective Actions Called for to Constrain Fast Loss of Arable Land in China," *Xinhua*, 12 March 04 (FBIS, 12 March 04). For a detailed English-language discussion of these and other problems, see Philip P. Pan, "Chinese Fight a New Kind of Land War," *Washington Post*, 14 September 03, <www.washingtonpost.com>.

<sup>882</sup> For a detailed description of corruption related to land transfers and relocations, see Human Rights Watch, "Demolished: Forced Evictions and the Tenant's Rights Movement in China," March 2004, and Property Seizures in China: Politics, Law and Protest, Testimony of Sara (Meg) Davis, Senior Researcher, Human Rights Watch. Such corruption has also been noted by many domestic Chinese sources. See, e.g., "The Land Beneath Their Feet," *China Daily*; Robert J. Saiget, "PRC Vice Minister Says 'Great Deal' of Corruption in Property Market," *Agence France-Presse*, 18 September 03 (FBIS, 18 September 03) (citing Liu Zhifeng, vice minister of construction, as stating "at present there is indeed a great deal of corruption in real estate development especially in the relocation of people and city planning."). According to Sheng Huaren, vice chairman of the NPC Standing Committee, farmers are owed at least 9.88 billion yuan (1.2 million US dollars) in unpaid land requisition compensation and relocation fees. "China's Farmland Dwindles by 6 Million Ha in Seven Years," *Xinhua*. According to Commission sources, there are often close personal and business relationships between land officials and developers. Commission Staff Interviews.

<sup>883</sup> Zhang Shaoli, "The National Land Ministry Announces Illegal Land Cases, Local Governments are the Focus of Investigation," [Guotubu gongbu tudi weifa anjian, difang zhengfu chen chachu zhongdian], *Procuratorial Daily [Jiancha ribao]*, 24 March 04, <www.jcrb.com.cn>; "China's Farmland Dwindles by 6 Million Ha in Seven Years," *Xinhua*. According to Chinese sources, permits for 3,763 of these zones have been revoked; "China Alert To Severe Farmland Reduction in Urbanization Process," *Xinhua*, 9 July 04 (FBIS, 9 July 04); Cao Daosheng, "China Cancels 4,800 Development Zones," *China Daily*, 24 August 04, <www.chinadaily.com.cn>. According to official reports, China filed more than 30,000 cases involving illegal land transactions in the first half of 2004. Xie Dengke, "More Than 30,000 Illegal Land Cases Investigated and Prosecuted in the First Half of the Year" [Shang ban nian chachu tudi weifan yu 3 wan jian], *Guangming Daily [Guangming ribao]*, 19 July 04, <www.gmw.cn>.

<sup>884</sup> Human Rights Watch, *Demolished: Forced Evictions and the Tenant's Rights Movement in China*. Chinese officials in three cities and in relevant national-level ministries confirmed that there is no notice and comment period during which affected urban residents are entitled to express their views on general city planning and development decisions or approvals for specific projects that may affect them. Commission Staff Interviews. In a recent article in *Southern Weekend*, one reporter argued that citizens should be involved in city planning, noting that citizen participation is the foundation of the planning process in many developed countries. Gu Haibing, "City Residents Should be Allowed to Participate in 'Overall City Planning'" ["Chengshi zongti guihua" yinggai rang shimin canyu], *Southern Weekend*, 1 April 04, <www.nanfangdaily.com.cn>.

<sup>885</sup> Commission Staff Interviews; Urban Housing Demolition and Relocation Management Regulations, arts. 7–17.

<sup>886</sup> Urban Housing Demolition and Relocation Management Regulations, arts. 16; Urban Housing Demolition and Relocation Arbitration Work Rules [Chengshi fangwu chaqian xingzheng caijue gongzuo guicheng], issued 30 December 03, arts. 17–21.

<sup>887</sup> Chang Hongxiao, “Firming Up the Rural Land Contracting Law.”

<sup>888</sup> Regulations on Land and Resources Hearings [Guotu ziyuan tingzheng guiding], issued 9 January 04. Under the regulation, land officials must hold public hearings when they (1) establish or revise benchmark land prices, (2) prepare or revise a land use master plan and mineral resources plan, (3) establish or revise regional compensation standards for land requisition, or (4) upon the request of an effected landowner, if a requisition involves (a) a plan for formulating compensation standards and resettlement packages for intended land requisition projects or (b) a plan for using basic agricultural land for non-agricultural development. Although the regulation applies to both urban and rural areas, its language suggests that it is primarily intended to cover requisitions of agricultural land.

<sup>889</sup> Under the PRC Constitution and the PRC Land Management Law, the state has the power to requisition land for public purposes. PRC Constitution, art. 10; PRC Land Administration Law, chapter V. Under the PRC Urban Real Estate Management Law, a land use right granted to a land user may be recovered by the state “under special circumstances and in light of the need of social and public interests.” PRC Urban Real Estate Management Law, art. 19. In theory, an urban resident or farmer could use the PRC Administrative Litigation Law to challenge an administrative decision to requisition land, recover a granted land use right, or demolish property and relocate residents. However, relevant land laws and regulations do not define “public interest,” leaving officials with broad discretion to make such determinations. Rural Development Institute Memorandum, “Land Takings in China: Policy Recommendations,” 5 June 03 (available at [www.cecc.gov/pages/roundtables/062104/memo.pdf](http://www.cecc.gov/pages/roundtables/062104/memo.pdf)). Urban and rural residents can also petition to government officials through the letters and visits system. As discussed in Section V(c), however, such petitions are rarely successful. One national land official told Commission staff that farmers have no right to challenge decisions to requisition agricultural land. According to multiple Commission sources, in practice most residents who raise complaints dispute the amount of compensation, not the underlying relocation or requisition decision. Commission Staff Interviews.

<sup>890</sup> For reports by international human rights organizations on such tactics, see, e.g., Human Rights Watch, *Demolished: Forced Evictions and the Tenant’s Rights Movement in China*, and Liu Qing, “The Legal Time Bomb of Urban Development,” *China Rights Forum*, No. 2 (2003), 68–72 (both making extensive use of Chinese sources, including legal experts, residents, and media reports). According to international monitors, in some cases, homes have been bulldozed without the required legal notice or administrative review, or while residents are still inside, resulting in injuries and even some deaths. Chinese and foreign media have reported extensively on abusive eviction tactics. See, e.g., “Forced Evictions Blur Rights,” *China Daily*; “A Hundred People Barbarically Pull Down Houses in Shenyang,” *Taiyang Pao*, 13 November 03 (FBIS, 13 November 03); Yang Li, “Respect for Residents’ Rights,” *China Daily*, 30 September 03, <[www.chinadaily.com.cn](http://www.chinadaily.com.cn)>; Li Jing, “Developers Held Over Demolitions,” *China Daily*, 31 October 03; “Chinese Legal Experts, Scholars Strongly Oppose Government Developers,” *Agence France-Presse*, 10 September 03, (FBIS, 10 September 03) (citing the *China Economic Times* as stating that in some places, the mafia is used to threaten residents, or electricity or water is shut off to force people out); Pan, “Chinese Fight a New Kind of Land War.” Government circulars explicitly prohibiting such abusive tactics also suggest that they have been common problems. For an example of one such circular, see Notice on Controlling the Scale of Urban Housing Demolition and Relocation and Strictly Managing Demolition and Relocation [Guowuyuan banggongting guanyu kongzhi chengzhen fangwu chaqian guimo, yange chaqian guanli de tongzhi], issued 6 June 04 (strictly prohibiting demolition entities and relevant units from engaging in uncivilized demolition and relocation, illegal demolition and relocation, cutting off water, electricity, gas, or heat, obstructing movement, or other tactics to forcibly remove residents subject to demolition and relocation).

<sup>891</sup> See, e.g., Notice on Controlling the Scale of Urban Housing Demolition and Relocation and Strictly Managing Demolition and Relocation. In November 2003, Beijing arrested five developers and rescinded the qualifications of 13 demolition companies for illegal demolitions and abuses. Li Jing, “Developers Held Over Demolitions,” *China Daily*, 31 October 03; Wang Jun, “Qualifications for 13 Demolition Units are Canceled,” [Beijing 13 ren chaqian danwei be chexiao zizhi], *Xinhua*, 5 November 03, <[www.xinhuanet.com](http://www.xinhuanet.com)>.

<sup>892</sup> See, e.g., “Evicted Chinese Residents Clash With Authorities in North China’s Xi’an,” *Agence France-Presse*, 27 May 04 (FBIS, 28 May 04). Even in Shanghai, considered one of China’s most legally advanced locales, reports of violent demolition tactics continue to circulate. For one example, see the entry for Tuesday, May 11, 2004 on the weblog of a foreign reporter in Shanghai, describing a recent incident in which more than “300 policemen and people who were probably hired by a relocation company, entered the neighbourhood and started to beat the inhabitants, to make them move.” The “China Herald” Weblog, [www.chinaherald.net/2004-05-09-chinaherald—archive.html#108432203174288450](http://www.chinaherald.net/2004-05-09-chinaherald—archive.html#108432203174288450) (source provided by Sara (Meg) Davis, Senior Researcher, Human Rights Watch). In July 2004, a local Shanghai television station reported that demolition workers pulled down an occupied house, injuring three people. Bill Savadove, “Shanghai Increases Payout for Eviction,” *South China Morning Post*, 23 July 04 (FBIS, 23 July 04). In August 2004, authorities of Cangshan township, near Fuzhou, reportedly sent police and a group of convicted criminals to Wanli village to demolish homes and intimidate residents who refused to relocate. Human Rights in China Press Releases, “Police and Thugs Suppress Fujian Peasant Protest,” 25 August 04, and “Protesting Peasants Under Siege in Wanli Village,” 9 September 04. These are but a few examples of intimidation tactics that continue to be applied despite central government prohibitions on such behavior.

<sup>893</sup> Liu Feng, “Petitions on Land Requisition and Demolition and Relocation in the First Half of this Year Exceeded the Number for All of Last Year,” [Jinnian shang ban nian zhengdi

chaiqian shangfang chaoguo qu nian zongliang], People's Daily [Renmin ribao], 6 July 04, <www.peoplesdaily.com.cn>. Chinese activists believe even this number is too low. Jane Cai, "Surge in Property Demolition Complaints," South China Morning Post, 6 July 04, <www.scmp.com>. In the fall of 2003, the National Letters and Visits Office in Beijing reported that it had received more than 11,600 complaints regarding relocation issues in the first eight months of 2003, a 50 percent increase over last year. Commission staff visiting Beijing in the spring of 2003 noted long lines of petitioners in front of the Ministry of Land and Resources. According to one Beijing reporter, land complaints constitute the largest category of complaints in the letters and visits system. Commission Staff Interview.

<sup>894</sup>"This Year the Number of Suits by People Against Government Exceed 100,000, Urban Construction Administrative Suits Constitute the Largest Increase" [Jinnian "ren gao si" tupo 10 wan, chengjianlei xingzheng an zenzhang zuida], Xinhua, 16 December 04, <www.news.xinhuanet.com> (noting that the number of administrative lawsuits related to urban construction in the first 11 months of 2003 increased 31.77 percent over the same period last year, while the number of lawsuits related to land and resources increased 31.3 percent).

<sup>895</sup>One Hong Kong article cited "relevant departments" as stating that between January and November 2003, more than 1,500 incidents of violence, suicide, and demonstration related to demolitions and relocations had occurred across the country. "Explosive Public Indignation Arising From Forced Evictions Alarms Central Government," Ming Pao, 12 November 03 (FBIS, 12 November 03). Reports of such incidents appear almost daily in the Chinese and foreign press. For a list of more than 50 incidents related to relocation that have been reported over the past year, visit the Property Rights page of the Commission Web site at <www.cecc.gov/pages/virtualAcad/rol/propres.php>.

<sup>896</sup>"Explosive Public Indignation Arising From Forced Evictions Alarms Central Government," Ming Pao; "More on Anhui Farmer Attempts at Self-Immolation in Tiananmen Square Over Forcible Relocation," Xinhua, 15 September 03 (FBIS, 15 September 03).

<sup>897</sup>Zhao Ling, "An Interview With Rural Development Researcher Yu Jianrong of the Chinese Academy of Social Sciences" (translated by Manfred Elfstrom, available at www.chinaelections.org/en).

<sup>898</sup>See, e.g., Urgent Notice on Conscientiously Carrying Out the Work of Housing Demolition and Relocations in Cities and Towns to Safeguard Social Stability [Guanyu renzhen zuohao chengzhen fangwu chaiqian gongzuo weihu shehui wending de jinji tongzhi], issued 9 September 03 (noting that "disputes and collective petitions sparked by demolition and relocation have been on the rise and have even triggered some terrible incidents, influencing social stability and the normal order of production and life"); Notice on Controlling the Scale of Urban Housing Demolition and Relocation and Strictly Managing Demolition and Relocation (noting that relocations have resulted in a large number of citizen petitions and influenced social stability and calling on local governments to curb abuses and reduce the number of demolitions). For concerns about the growing number of rural disputes and an excellent review of the implementation of the PRC Rural Land Contracting Law, see, Chang Hongxiao, "Firming Up the Rural Land Contracting Law" [Yinghua tudi chengbaofa], Finance [Caijing], 20 July 04, <www.caijing.com.cn>.

<sup>899</sup>Commission Staff Interviews. For the Law on the Protection of Farmer's Rights, see "China Expects First Ever Farmer Protection Law," Xinhua, 12 July 04 (FBIS, 12 July 04). The Supreme People's Court is also reportedly drafting an interpretation on handling land dispute cases. Chen Si, "Judicial Interpretation on Cases Involving the Transfer of Collective Land and Compensation for Land Requisitions to Appear Next Year" [Jiti suoyouzhi tudi liuzhuan he zhengdi buchang anjian de sifa jieshi mingnian chutai], People's Court Daily [Renmin fayuan wang], 4 March 04, <www.chinacourt.org>. The Supreme People's Court is also reportedly drafting an interpretation to guide courts in their handling of rural land disputes. However, Chinese observers indicate that the draft interpretation that has been circulated is problematic and will not adequately address core issues such as compensation. Chang Hongxiao, "Firming Up the Rural Land Contracting Law." As some Chinese scholars have observed, the Land Administration Law must be amended in part because it is in conflict with the revised Constitution. Ye Xinfeng, Gu Xiuyan, Gong Chang, "How to Link the Amended Constitution and the 'Land Administration Law'" ["Tudi guanli fa" zenme yu xiuxian xianan], Theory and Inquiry [Lilun yu tansuo], No. 5, 2004, 28-9.

<sup>900</sup>Following several self-immolations in Tiananmen Square, the State Council appointed Vice Premier Zeng Peiyan to temporarily supervise large-scale demolition and land requisition work. "Explosive Public Indignation Arising From Forced Evictions Alarms Central Government," Ming Pao, 12 November 03 (FBIS, 12 November 03). In June 2004, Chinese media reported that Premier Wen Jiabao chaired a State Council meeting on the problem of urban relocations. "Wen Jiabao Chairs State Council Meeting on Urban Housing Relocation Issues," Xinhua, 4 June 04 (FBIS, 4 June 04). For regulations issued, see e.g. Urgent Notice on Conscientiously Carrying Out the Work of Housing Demolition and Relocations in Cities and Towns to Safeguard Social Stability [Guanyu renzhen zuohao chengzhen fangwu chaiqian gongzuo weihu shehui wending de jinji tongzhi], issued 19 September 03; State Council General Office, Notice on Controlling the Scale of Urban Housing Demolition and Relocation and Strictly Managing Demolition and Relocation [Guowuyuan banggongting guanyu kongzhi chengzhen fangwu chaiqian guimo, yange chaiqian guanli de tongzhi], issued 6 June 04; Measures on Administering the State Land and Resources System for the People [Guotu ziyuan guanli xitong xingzheng wei min cuoshi], issued 14 January 04; Prohibitions on State Land and Resources Management Personnel, [Guotu ziyuan guanli xitong gongqiao renyuan jinling], issued 14 January 04; Urgent Notice on Carrying Out Land and Resources Petition Work Well During the Period of the "Two Meetings" [Guanyu zuohao "lianghui" qijian guotu ziyuan xinfang gongzuo de jinji tongzhi], issued 11 February 04; State Council General Office, Notice on Controlling the Scale of Urban Housing Demolition and Relocation and Strictly Managing Demolition and Relocation [Guowuyuan banggongting guanyu kongzhi chengzhen fangwu chaiqian guimo, yange chaiqian guanli de tongzhi], issued 6 June 2004 (calling on local government to reduce demolitions and relocations

in the coming year). Procedural regulations tightened appraisal and arbitration procedures for land requisitions and urban demolitions. Guidance Opinion on Urban Housing Demolition; Relocation Appraisal and Urban Housing Demolition and Relocation Arbitration Work Rules. The government also established a new hearing system for land requisitions. Regulations on Land and Resources Hearings [Guotu ziyuan tingzheng guiding], issued 9 January 04.

<sup>901</sup>Tian Fengshan was removed in October 2003 on suspicion of corruption. Andrew K. Collier, "Land Minister Is Suspended for Alleged Graft," South China Morning Post, 22 October 03, <www.scmp.com>. According to Chinese reports, immediately after his appointment as demolition and relocation czar, Zeng Peiyan led an investigation team to look into the illegal requisition of peasant land in Zhejiang and Hunan. "Explosive Public Indignation Arising From Forced Evictions Alarms Central Government," Ming Pao. In the fall of 2003, an NPC inspection visited Fujian, Shaanxi, Sichuan, Hebei, Jiangsu, and Jilin to investigate the implementation of the Rural Land Contracting Law. Shen Lutao, "Land Contract and Management Rights of Chinese Peasants Protected Effectively," Xinhua, 4 November 03 (FBIS, 4 November 03). Other investigation and rectification efforts have focused on illegal development projects. Zhang Shaoli, "The National Land Ministry Announces Illegal Land Cases, Local Governments are the Focus of Investigation," [Guotubu gongbu tudi weifa anjian, difang zhengfu chen chachu zhongdian], Procuratorial Daily [Jiancha ribao], 24 March 04, <www.jcrb.com.cn>. In the spring of 2003, official Chinese sources reported that the Ministry of Land and Resources launched an "unprecedented" nationwide probe of illegal land transactions. Tang Min, "Ministry Probes Land Abuses," China Daily, 15 March 04, <www.chinadaily.com.cn>. China Daily reported in August 2004 that seven ministries were involved in the campaign, include the ministries of land and resources, finance, agriculture, construction, and supervision, the State Development and Reform Commission, and the National Audit Office. Dian Tai, "Regulation of Land Use Starts to Show Progress," China Daily, 14 August 04 (FBIS, 14 August 04). In addition to these measures, central authorities punished some abusive demolition companies, established complaint and legal consultation hotlines for urban residents and farmers, reformed the land management bureaucracy so that local land officials report directly to provincial land bureaus instead of to local governments, announced that they would enforce legal provisions requiring all land to be bid at auction, and instituted an experimental program for blacklisting construction companies that have given bribes to government offices. For hotlines and legal consultation measures, see Measures on Administering the State Land and Resources System for the People [Guotu ziyuan guanli xitong xingzheng wei min cuoshi], issued 14 January 04; Notice on Effectively Strengthening Transparency of Government Information on Land Resources Through the Internet in Practice and Publicly Promoting Administration According to Law and Administration for the People [Guanyu qieshi jiaqiang guotu ziyuan zhengwu xinxi wangshang gongkai cujin yifa xingzheng he xingzheng wei min de tongzhi], issued 20 May 04; "China Curbs Illegal Land and Resources Deals," Xinhua, 7 January 04 (FBIS, 7 January 04); Tang Min, "'Hotline' to Land Ministry Enhances Client Assistance," China Daily, 19 December 03. For reforms to the bureaucracy, see Tang Min, "Land Allocation Abuses Probed," China Daily, 28 December 03 (FBIS, 28 December 03); Andrew K. Collier, "State to Approve Capital's Land Sales," South China Morning Post, 18 June 04; Tang Min, "Ministry Probes Land Abuses." For auctions, see Tang Zheng, "Beijing Developers Scramble for Land," Finance [Caijing], 28 June 04 (FBIS, 28 June 04) (noting that "after an August 31 deadline set by the Ministry of Land and Resources and the Ministry of Supervision, all rights for commercial land use projects must be obtained through auctions or tender bids."). The deadline has reportedly caused a panic among Beijing developers, who have benefited from the capital's failure to fully implement the auction requirement. For the bribery blacklist, see Li Jinrong, "China Adopts Blacklist System to Tackle Construction Bribes," China Net, 14 June 04 (FBIS, 15 June 04).

<sup>902</sup>Commission Staff Interviews. According to Shanghai officials, approximately 100 "relocation centers" have been established around Shanghai. The centers handle relocations for a designated area and are supposed to clearly post approvals for the relocation project as well as compensation standards and a list of resident rights. Commission staff visited one such center in the spring of 2003. The Shanghai lawyers association has worked actively with local government bureaus to address some of the more sensitive issues related to demolition and relocation, particularly the issue of compensation standards. Lawyers association officials report that local lawyers have handled about 6,000 relocation cases in the last several years. According to these officials, about 70 percent of the cases arose after residents were relocated and involved issues related to resettlement housing.

<sup>903</sup>Bill Savadove, "Shanghai Increases Payout for Eviction," South China Morning Post, 23 July 04 (FBIS, 23 July 04).

<sup>904</sup>Urgent Notice on Carrying Out Land and Resources Petitions Work Well During the Period of the "Two Meetings." For treatment of land petitioners, see Section III(a)—Rights of Criminal Suspects and Defendants, Disappearances, Security Sweeps, and House Arrests.

<sup>905</sup>Urgent Notice on Carrying Out the Work of Housing Demolition and Relocations in Cities and Towns Well to Safeguard Social Stability; Beijing City People's Government, Opinion on Carrying Out the Work of Housing and Demolition Well to Safeguard Social Stability [Beijing shi renmin zhengfu guanyu zuohao fangwu chaiqian gongzuo weihu shehui wending de yijian], issued 10 November 03.

<sup>906</sup>In addition to the Zheng Enchong case discussed below, see "Zhu Donghui, Litigation Representative for Shanghai Households Subject to Demolition and Relocation, Sentenced to Two Years of Re-education Through Labor" [Shanghai chaiqianhu susong dairen Zhu Donghui bei pan liaojiao liangnian], Radio Free Asia, 7 July 04 (reprinted at www.boxun.com).

<sup>907</sup>Jane Cai, "Lawyers Team Up to Fight Property Rows in Shanghai," South China Morning Post, 23 September 03. See also Human Rights Watch, Demolished: Forced Evictions and the Tenant's Rights Movement in China, 17 (citing interviews with concerned Shanghai lawyers).

<sup>908</sup>"China Jails Woman for Internet Article in Crackdown on Petitioners," Agence France-Presse, 1 April 04 (FBIS, 1 April 04); Human Rights in China Press Releases "Journalist Pur-

sued for Aiding Peasants,” 12 July 04; “Tangshan Petitioners Persecuted,” Human Rights in China, 2 July 04.

<sup>909</sup>Unlawful or abusive property seizure is an issue that has sparked anger in both urban and rural residents and, as indicated above, is contributing to social instability. Party and government leaders have an interest in controlling the problem. In addition, the Hu Jintao and Wen Jiabao leadership team has sought to bolster its image by taking action to protect human rights, battle corruption, and improve the living standards of rural Chinese. Initiatives to curb land abuses dovetail with these general efforts.

<sup>910</sup>“Inspectors Claim Initial Success with Land Laws,” South China Morning Post, 25 June 04 (citing a report by NPC vice-chairman Sheng Huaren, which notes that local governments have failed to comply with central government initiatives to address corruption in land transactions); Li Jing, “Legislator: Keep an Eye on Unlawful Use of Land,” China Daily, 26 June 04 (FBIS, 26 June 04) (citing NPC chairman Wu Bangguo as stating that while rectification campaigns related to land abuses have yielded preliminary results, local officials are “still displaying a lust for diverting cultivated land”).

<sup>911</sup>Property Seizures in China: Politics, Law and Protest, Testimony and Written Statement of Roy Prosterman, President, Rural Development Institute; Jia Hepeng, “‘Public Interest’ Not a Free Pass,” China Daily, 12 July 04 (FBIS, 12 July 04).

<sup>912</sup>The need to increase compensation is widely acknowledged by Chinese officials and commentators. See, e.g., “Forced Demolitions Blur Rights,” China Daily.

<sup>913</sup>“Neutral Party Is Needed,” China Daily, 31 May 04 (FBIS, 31 May 04); “Forced Demolitions Blur Rights,” China Daily.

#### Notes to Section VI—Tibet

<sup>914</sup>International Campaign for Tibet, “Dalai Lama Explains His Position on China’s Pre-conditions on Negotiations on Tibet,” 15 September 03, <www.savetibet.org>. Interview conducted by reporter Zhang Jing, Voice of America Mandarin Service, 11 September 03. In response to a question on the state of China-Tibet relations, the Dalai Lama responded, in part, “. . . [W]ithin the Chinese constitutional framework, I see there is a way to solve this unhappy situation . . .”

<sup>915</sup>U.S. Department of State, “Report on Tibet Negotiations,” 23 June 04, <www.state.gov>.

<sup>916</sup>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 substantive discussions aimed at resolution of differences at an early date, without pre-conditions.”

<sup>917</sup>Tibetan Government-in-Exile, “Statement by Special Envoy Lodi Gyari, Head of the Delegation sent by His Holiness the Dalai Lama to China,” 11 June 03, <www.tibet.com>: “Both sides agreed that our past relationship had many twists and turns and that many areas of disagreement still exist. The need was felt for more efforts to overcome the existing problems and bring about mutual understanding and trust.”

<sup>918</sup>Tibetan Government-in-Exile, “Two Envoys of His Holiness the Dalai Lama to Visit China in Continuation of the Process to Deepen Contacts With the Chinese,” 11 September 04, <www.tibet.net>.

<sup>919</sup>“On Dalai Lama’s ‘Greater Tibet,’ China’s Tibet,” Tibet Magazine, No.1, 2004, <www.tibetmagazine.net>: “Referring to the point of the ‘middle road’ made by the 14th Dalai Lama, there is a concept of ‘Greater Tibet’ which covers the existing Tibet Autonomous Region, the entire area of Qinghai province, one-fifth of Xinjiang Uygur Autonomous Region, two-thirds of Gansu province, two-thirds of Sichuan province and half of Yunnan province, with an area extending 2.4 million square kilometers and taking up nearly a quarter of the total territory of China.”

<sup>920</sup>State Council Information Office, “Regional Ethnic Autonomy in Tibet,” Xinhua, 23 May 04, <http://news.xinhuanet.com>.

<sup>921</sup>PRC Law on Regional National Autonomy, adopted 31 May 1984, amended 28 February 2001, art. 2: “Regional autonomy shall be practiced in areas where minority nationalities live in concentrated communities. National autonomous areas shall be classified into autonomous regions, autonomous prefectures and autonomous counties. All national autonomous areas are integral parts of the People’s Republic of China.”

<sup>922</sup>Ibid., art. 7: “The organs of self-government of national autonomous areas shall place the interests of the state as a whole above anything else and make positive efforts to fulfill the tasks assigned by state organs at higher levels.”

<sup>923</sup>“Regional Ethnic Autonomy in Tibet,” Xinhua, 24 May 04: “Regional ethnic autonomy means, under the unified leadership of the state, regional autonomy is exercised and organs of self-government are established in areas where various ethnic minorities live in compact communities, so that the people of ethnic minorities are their own masters exercising the right of self-government to administer local affairs and the internal affairs of their own ethnic groups.”

<sup>924</sup>Regional National Autonomy Law, arts. 19, 20. Article 19 provides, “The people’s congresses of national autonomous areas have the authority to formulate autonomous regulations and specific regulations in light of the characteristics of the politics, economy, and culture of local nationalities. After being submitted to and approved by the Standing Committee of the National People’s Congress (NPC), these autonomous regulations and specific regulations can become effective.” Article 20 provides, “If the resolutions, decision, orders, and directives of higher-level state organs are not suitable for the actual conditions of national autonomous areas, organs of self-government can report this to higher-level state organs for approval to flexibly enforce or stop enforcing them. The higher-level state organs should give a reply within 60 days of the reception of this report.”

<sup>925</sup>“Regional Ethnic Autonomy in Tibet,” Xinhua.

<sup>926</sup>Canadian Broadcasting Corporation, “Prime Minister Meets with Dalai Lama,” 23 April 04, <www.cbc.ca/>.

<sup>927</sup>“Minorities, organizations, associations, localities, etc., apart from being subordinate to the leadership of the state, government, or upper-level unit to which they belong, exercise definite rights with respect to their own general affairs.” Chinese Dictionary [Hanyü da cidian] (Shanghai: Chinese Dictionary Press, 1997), 5,284 (Definition 5).

<sup>928</sup>“Options in Exile,” Times of India, 6 June 03, <<http://timesofindia.indiatimes.com>>. The interviewer asked Samdhong Rinpoche, “What does ‘genuine autonomy’ mean?” He replied, “A little more than what Hong Kong enjoys. For visiting Hong Kong, you need a special permit. For going to the mainland, a visa or a permit is necessary. This controls population influx. But Hong Kong also has a considerable degree of democracy and a free press.”

<sup>929</sup>Tibetan Government-in-Exile, “An Introduction: Central Tibetan Administration,” and “Facts—Occupied Tibet,” <[www.tibet.net](http://www.tibet.net)>. The Web site describes Tibet as an “occupied country” with an area of 2.5 million square kilometers (965,000 square miles).

<sup>930</sup>“Signed Article Criticizing U.S. Policy on Tibet,” Xinhua, 9 June 03 (FBIS, 9 June 03). “At present, the ‘Tibet issue’ would not exist, if the United States and other western countries don’t support the Dalai clique, if the Dalai clique gives up its intention of seeking ‘Tibet independence’ or independence in disguised forms, and stops activities of splitting the country.”

<sup>931</sup>Commission Staff Interviews with Chinese officials.

<sup>932</sup>“Dalai Lama Seeks Talks with China over Tibet,” Reuters, 16 March 04, <[www.reuters.com](http://www.reuters.com)>. The Dalai Lama said in an interview conducted in India, “It’s very important to have face-to-face meetings . . . The best way to eliminate suspicion is to meet face to face.”

<sup>933</sup>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 autonomous areas include the provincial-level Tibet Autonomous Region (TAR) as well as ten Tibetan autonomous prefectures and two Tibetan autonomous counties located in Qinghai, Gansu, Sichuan, and Yunnan provinces. The 13 areas are contiguous and total 2.24 million square kilometers [865,000 square miles].

<sup>934</sup>“Dalai Lama Reiterates He Will Not Seek Tibetan Independence,” Hong Kong Journal [Hong Kong Kai Fang], 1 August 03 (FBIS, 13 August 03). Responding to a question about the scope and political status of Tibetan territory, the Dalai Lama referred to “the areas directly ruled by the original Tibetan government.” When asked if he meant the TAR, he said that he was referring to “the areas under the control of the Tibetan government at the time of the signing of the 17-Article Agreement.” He explained that in 1951 that territory did not include areas such as Chamdo, the far eastern end what is today the TAR, or the Tibetan territory east of the Jinsha River (Tibetan: Drichu) in what is today Sichuan province.

<sup>935</sup>International Campaign for Tibet, “Dalai Lama Explains His Position on China’s Pre-conditions on Negotiations on Tibet,” 15 September 03, <[www.savetibet.org](http://www.savetibet.org)>. Interview conducted by Voice of America, Mandarin Service, 11 September 03. Responding to a question about his views on consolidating autonomous Tibetan areas in different provinces, the Dalai Lama responded, in part, “. . . [S]ince I’m asking for a certain right which the Constitution of the People’s Republic of China provided, [I’m asking that] within 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 . . .”

<sup>936</sup>Li Dezhu, “Large-Scale Development of Western China and China’s Nationality Problem,” Seeking Truth [Qushi], 15 June 00 (FBIS, 15 June 00) (addressing social and ethnic implications of the campaign that Jiang Zemin launched in 1999).

<sup>937</sup>“Current Trends in Tibetan Political Imprisonment: Increase in Sichuan, Decline in Qinghai and Gansu,” Tibet Information Network, 6 February 04, <[www.tibetinfo.net](http://www.tibetinfo.net)>. The report listed a total of seven Tibetan political prisoners for Qinghai and Gansu provinces. TIN listed 106 Tibetan political prisoners in the TAR in a March 2003 report, compared to 90 in February 2004. The number reported for Sichuan province rose from 34 in the 2003 report to 46 in 2004.

<sup>938</sup>Commission staff visited Malho (Chinese: Huangnan) Tibetan Autonomous Prefecture in Qinghai province in September 2003 and Kanlho (Chinese: Gannan) Tibetan Autonomous Prefecture in April 2004. Sites visited included secondary and tertiary ethnic Tibetan educational facilities as well as Buddhist monasteries. Commission staff have heard assessments from experts and regular visitors.

<sup>939</sup>Commission Staff Interview. For example, officials said that in 2001–05, 117 peer-to-peer projects set up between other parts of China and the TAR will spend 70 billion yuan (\$8.5 billion) on infrastructure projects, including roads, schools, and medical facilities. The figure does not include spending on the Tibet-Qinghai railroad.

<sup>940</sup>Development Projects in Tibetan Areas of China: Articulating Clear Goals and Achieving Sustainable Results, 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.

<sup>941</sup>“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). The total Tibetan population in China was 5,416,021. 5,373,339 were classified as either “agricultural” or “non-agricultural.” Of that number, 4,792,676 (88.5 percent of the total Tibetan population) were designated “agricultural.” In the TAR, the total population was 2,616,329. 2,427,168 (92.8 percent) were Tibetan. The total agricultural population in the TAR, including all ethnic groups, was 2,185,851 (83.5 percent of the total TAR population).

<sup>942</sup>“Tibet Ranks 2nd in W. China Urban Residents’ Income,” Xinhua, 17 May 04, <<http://news.xinhuanet.com>>. Urban income in the TAR (8,058 yuan) was second only to Chongqing

(8,093 Yuan). Rural income in the TAR averaged 1,690 yuan. (Based on these figures, urban income was 4.8 times higher than rural income.)

<sup>943</sup>Development Projects in Tibetan Areas of China, Testimony of Melvyn Goldstein, Professor of Anthropology at Case Western Reserve University.

<sup>944</sup>Commission Staff Interview. For example, an official said that TAR government revenues should reach 800 million yuan in 2004, but expenditures will be 12.9 billion yuan.

<sup>945</sup>Commission Staff Interview. An official said that the total Central Government investment spending in the TAR for 2003 had been 17 billion yuan. Of that, 3.5 billion yuan was for work on the Qinghai-Tibet railroad. The cost of the railroad is currently estimated at 30 billion yuan (\$3.6 billion).

<sup>946</sup>Philip P. Pan, "Tibet Torn Between Tradition and China's Bounty," Washington Post, 10 September 03.

<sup>947</sup>"Raidi Meets Hong Kong Journalists, Gives Interview," Lhasa Tibet Daily [Lhasa xizang ribao], 7 August 01 (FBIS, 9 August 01). "[S]ome people say that with immigration, the Tibetan population is greatly reduced and Tibetan culture will be extinguished. There is absolutely no basis for such talk."

<sup>948</sup>"No Immigration of Other Ethnic Groups: Tibetan official," Xinhua, 26 September 03, <<http://news.xinhuanet.com>>.

<sup>949</sup>Tabulation on Nationalities 2000 Population of China. 158,570 Han residents were recorded in the TAR.

<sup>950</sup>John K. Fairbank and Roderick MacFarquhar, eds., *The Cambridge History of China*, Vol. 14, (New York: Cambridge University Press, 1978), 368: "Map 7. Railway Construction between 1949 and 1960." The railroads linking Jining, Hohhot, and Baotou in Inner Mongolia were built before the PRC was founded.

<sup>951</sup>Tabulation on Nationalities of 2000 Population Census of China. Total population of the Inner Mongolia Autonomous Region in 2000 was 23,323,347. Han numbered 18,465,586 and Mongols 3,995,349.

<sup>952</sup>Tabulation on Nationalities of 2000 Population Census of China. In Tsonub (Haixi) Mongol and Tibetan Autonomous Prefecture, Qinghai province, Han numbered 215,706 and Tibetans 40,371, a ratio of about five-to-one. In Pari (Tianzhu) Tibetan Autonomous County, Gansu province, Han numbered 139,190 and Tibetans 66,125, a ratio of about two-to-one. In Tsojang (Haibei) Tibetan Autonomous Prefecture, Qinghai, there were 94,841 Han and 62,520 Tibetans, a ratio of about 1.5 to one.

<sup>953</sup>"Leaders of Tibetan Culture Protection Association Elected," Xinhua, 23 June 04, <<http://news.xinhuanet.com>>. The Association for the Protection and Development of Tibetan Culture was established on 21 June 2004 and is headed by senior Tibetan and Han officials from the Party, NPC, Chinese People's Political Consultative Conference, etc.

<sup>954</sup>"Regional Ethnic Autonomy Accords with Interests of Tibetans," People's Daily, 24 May 04, <<http://english.peopledaily.com.cn>>.

<sup>955</sup>Development Projects in Tibetan Areas of China, Testimony of Daniel J. Miller.

<sup>956</sup>PRC Constitution, art. 54.

<sup>957</sup>PRC Criminal Law. Articles 101–113 deal with "endangering state security."

<sup>958</sup>PRC Criminal Law, art. 103. Punishment is set out for "those who organize, plot or carry out the scheme of splitting the State or undermining unity of the country."

<sup>959</sup>Commission Staff Interviews in 2004.

<sup>960</sup>"Current Trends in Tibetan Political Imprisonment: Increase in Sichuan, Decline in Qinghai and Gansu," Tibet Information Network, 6 February 04, <[www.tibetinfo.net](http://www.tibetinfo.net)>.

<sup>961</sup>Commission Staff Interview. An official said that a total of about 2,500 prisoners are in the TAR's three formally designated prisons: TAR Prison, Lhasa Prison, and Bomi Prison. Three percent have sentences that include counterrevolution or endangering state security.

<sup>962</sup>Human Rights Watch, "Another 'Singing Nun' Home But Not Free," 3 August 04, <[www.hrw.org](http://www.hrw.org)>.

<sup>963</sup>TIN records contain seven cases of Tibetan political imprisonment in Qinghai and Gansu in 1987–88.

<sup>964</sup>Article 51 of the PRC Criminal Law specifies that a two-year reprieve of execution is "counted from the date the judgment becomes final." Article 208 of the PRC Criminal Procedure Law specifies that the judgment becomes effective in the case of a death sentence with two-year reprieve when it is affirmed by the provincial High People's Court. Tenzin Deleg's sentence was affirmed by the Sichuan Province High People's Court on 26 January 2003. Article 50 of the PRC Criminal Law stipulates that a prisoner who "commits no intentional crime during the period of suspension" will receive a commutation to life imprisonment, and that a prisoner who "truly performed major meritorious service" will receive commutation to a fixed term of 15 to 20 years imprisonment.

#### Notes to Section VII—North Korean Refugees in China

<sup>965</sup>The Plight of North Korean Migrants in China: A Current Assessment, Staff Roundtable of the Congressional-Executive Commission on China, 19 April 04, Testimony of Suzanne Scholte, <[www.cecc.gov](http://www.cecc.gov)>.

<sup>966</sup>North Korea: Human Rights, Refugees, and the Humanitarian Challenges, Hearing of the Subcommittee on Asia and the Pacific, Committee on International Relations, U.S. House of Representatives, 28 April 04, Testimony of Tarik M. Radwan.

<sup>967</sup>China is also a member of UNHCR's Executive Committee.

<sup>968</sup>H.R. Rep. No. 108–478 (2004) (Report of the House International Relations Committee on the North Korea Human Rights Act, H.R. 4011).

<sup>969</sup>The Plight of North Korean Migrants in China: A Current Assessment, Testimony of Suzanne Scholte.

<sup>970</sup>North Korea: Human Rights, Refugees, and the Humanitarian Challenges, Testimony of Timothy A. Peters.

<sup>971</sup> U.S. House of Representatives Committee on International Relations report to accompany the North Korea Human Rights Act of 2004, H.R. 4011.

<sup>972</sup> Christian Solidarity Worldwide, North Korean Man's Terror of Repatriation and Execution Upon Release from Chinese Prison, 23 April 04.

<sup>973</sup> Ibid.

<sup>974</sup> Committee to Protect Journalists, China: South Korean Photographer Released, 19 March 04.

**Notes to Section VIII—Developments During 2004 in Hong Kong**

<sup>975</sup> United States-Hong Kong Policy Act of 1992, Public Law No. 102-383, as enacted 4 April 90.

<sup>976</sup> 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.

<sup>977</sup> James A. Leach, "Decentralized Democracy: A Model for China," address to Library of Congress Symposium, 6 May 04. (Rep. Leach is the Chairman of the CECC and the address may be viewed at <www.cecc.gov>.)

<sup>978</sup> Richard Boucher, U.S. State Department Daily Press Briefing, 26 March 04.

<sup>979</sup> Interpretation of the Annexes of the Hong Kong Basic Law by the NPC Standing Committee, [Chuangou renda changweihui jieshi xianggang jibenfa fujian], 6 April 04.

<sup>980</sup> "NPC Standing Committee Decision on Selecting HK Chief Executive," Xinhua, 26 April 04.

<sup>981</sup> Min Lee, "Eight Chinese Warships Close Hong Kong Visit," Associated Press, 6 May 04.

<sup>982</sup> House Committee on International Relations, Subcommittee on Asia and the Pacific, U.S. Policy on South Asia: Hearing Before the Subcommittee on Asia and the Pacific, 108th Con., 2nd sess., 22 June 04.

<sup>983</sup> Police Report No. 2, 24 June 04, Police Public Relations Branch, Hong Kong Police, Police Public Relations Branch, Police Report No.2, 24 June 04.

<sup>984</sup> Andrew Batson, "Hong Kong Overhaul Talks to Begin," Dow Jones Newswires, 26 January 04 (citing a poll taken by the "Hong Kong Transition Project," a group of university researchers).

<sup>985</sup> Philip P. Pan, "Hong Kong Postpones Timetable for Reform," Washington Post, 08 January 04, <www.washingtonpost.com>.

<sup>986</sup> Mei Fong, Andrew Browne, and Matt Pottinger, "Massive Protest In Hong Kong Challenges China," Wall Street Journal, 2 July 04.

<sup>987</sup> For different crowd estimates, see Michael DeGolyer, "Numbers Speak," The Standard, 08 July 04; "Exaggerated Rally Figures Aim to Fool the Hong Kong people," Hong Kong China Daily, 8 July 04.

<sup>988</sup> Andrew Batson, "Hong Kong Overhaul Talks to Begin," (quoting University of Hong Kong law professor Michael Davis).

<sup>989</sup> Michael Ng, "Tripping Over Words in the Race to Be Patriotic," The Standard, 14 February 04, <www.thestandard.com.hk>

<sup>990</sup> Cannix Yau, "Minister Slams Lee, Turns on Journalists," The Standard, 8 March 04.

<sup>991</sup> Michael Ng, "Tripping Over Words in the Race to Be Patriotic" (quoting Basic Law drafter Xiao Weiyun).

