



# POLICY FOCUS

## China

### Executive Summary:

The Commission traveled to China August 14-28, 2005 and engaged senior Chinese officials responsible for the protection of human rights in China, including Chinese Vice-Premier Hui Liangyu, senior officials from the Foreign, Justice, and State Ethnic Affairs Ministries, the National People's Congress, the Supreme People's Procuratorate, and the State Administration on Religious Affairs, as well as provincial and local officials from the various Religious and Ethnic Affairs and other relevant bureaus. The delegation also met with leaders from the government-sanctioned Buddhist, Catholic, Taoist, Islamic, and Protestant religious organizations, and representatives of civil society. The Commission traveled to Beijing, Urumqi, Kashgar, Chengdu, Lhasa, and Shanghai.

The Commission finds that the Chinese government continues to systematically violate the right to freedom of thought, conscience, and religion or belief, contravening both the Chinese constitution and international human rights norms. The room for political openness, public activism, and greater civil and individual freedoms is narrowing in China.

For believers registered with one of the five "patriotic religious associations," there is an obvious "zone of toleration" that protects some religious practice and property. Chinese officials stated that they have considered allowing Orthodox Christians, Jews, Mormons, and Baha'is to gain official recognition. Nonetheless, the Chinese government continues to control the financial, leadership and doctrinal decisions of all registered religious groups and has intensified pressure on ethnic minorities and religious communities perceived as threats to "national security" or "social harmony."

The Chinese government is using the "war on terror" as a pretext to monitor and control all Uighur Muslim religious activity. The government also used terrorist concerns to restrict Commission activity in Xinjiang—claiming that "elements of Al-Qaeda" were targeting the Commission and denying its requests to meet with some religious leaders and visit some religious venues.

Crackdowns on religious activity are often harsher in Xinjiang and Tibet than in other parts of China. In Xinjiang, government officials admitted that they themselves must complete political education to avoid "paralyzed thinking" and to "distinguish between normal and illegal religious activities." In Tibet, despite ongoing negotiations with the Dalai Lama's representatives, government officials claimed that one of their goals was to eliminate the influence of the Dalai Lama, and public displays of devotion to the Dalai Lama are considered by the authorities as threats to public order. In both regions, government officials claimed that continued religious practice was either a hindrance to economic development or led to supporting terrorism or "splittism."

Despite promises made to the U.S. government in March 2005 that religious education of minors was not contrary to Chinese law, there remain tight restrictions on the religious education of minors in Xinjiang and Tibet.

The lack of either an independent media or the rule of law in China contributes to the absence of effective constraints on political power and the failure to protect human rights enshrined in the Chinese Constitutions or provide legal redress to victims of government human rights violations.

The Government uses vague "state secrets" provisions to arrest and detain religious leaders, journalists, and others who publicize or criticize government practice or publish materials

*The U.S. Commission on International Religious Freedom was created by the International Religious Freedom Act of 1998 to monitor the status of freedom of thought, conscience, and religion or belief abroad, as defined in the Universal Declaration of Human Rights and related international instruments, and to give independent policy recommendations to the President, Secretary of State, and Congress.*

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deemed embarrassing. The recent cases of Liu Fenggang, a Protestant investigating church destructions in Zhejiang province, and Shi Tao, a journalist reporting on press censorship, illustrate how Chinese law is being used to suppress information, expression, and association. Both were convicted of “supplying state secrets to overseas organizations.” Under such a vague definition anything can be “national secrets,” and “leaking secrets” covers virtually anything that the government does not want people to know or talk about.

Despite some recent legal and judicial reforms, including promises to ratify the International Covenant on Civil and Political Rights, establishment of the “rule of law” is hindered by corruption and the lack of accountability of officials. Lawyers who are outspoken in defense of defendant’s rights are themselves often harassed, threatened or disbarred. The law firm of prominent civil rights lawyer, Gao Zhisheng, was closed recently because he refused to curtail his defense of Falun Gong practitioners and unregistered Protestant pastor Cai Zhouana. Too often, the law is used as a tool to repress dissidents, religious believers, and others seeking to exercise the rights and freedoms protected by the Chinese Constitution and international norms.

China’s new Regulations on Religious Affairs were heralded as a “paradigm shift” in the protection of religious freedom in China. It is the Commission’s position that the new regulations do not adequately protect the rights and security of religious believers and are not fully consistent with international human rights norms. In fact, the Regulations extend the government’s control over almost all religious activity and provides fines and punishment for “unregistered” religious activity.

The Chinese government denied Commission requests for updated information and access to prominent religious prisoners. The Commission was allowed a brief interview with one of the famous Tibetan Buddhist “singing nuns”—Phuntsog Nyidron. Although she was released from prison in 2004, she remains under constant surveillance, is restricted in her movements and associations, and has debilitating health problems that cannot be addressed in her locality. The Chinese government, however, maintains that she is no longer under surveillance and “free to travel.” The Commission will continue to press for her freedom of movement to be restored so that she can get needed medical attention outside of China.

Given the continuing critical human rights problems in China, the Commission believes that these concerns must be raised at the highest levels and that U.S. officials should provide a consistent, candid, and coordinated message about human rights, including religious freedom, in their interactions with Chinese officials. Toward that end, the Commission has recommended policy options to strengthen U.S. human rights diplomacy with China which are highlighted at the conclusion of this report.

In August 2005, the Commission traveled to China to engage senior officials responsible for the management of religious affairs and the protection of human rights in discussions on Chinese policies and practices relating to religious freedom. For the past six years, the U.S. Commission on International Religious Freedom has recommended that China be designated as a “country of particular concern” (CPC) under the International Religious Freedom Act of 1998 (IRFA). Each year, the Secretary of State has followed the Commission’s recommendation, finding that the government of China has engaged in systematic and egregious violations of freedom of religion. The Commission has compiled and published evidence that the Chinese government, as a matter of policy, monitors, controls, and represses the activities of members of all religious communities. The Commission continues to find that the Chinese government systematically violates the right to freedom of thought, conscience, and religion or belief, contravening both the Chinese Constitution and international human rights norms.

Chinese law and policy restrict religious activities to those associated with the five officially sanctioned “patriotic” religious organizations. All other collective religious activities are illegal, and individuals from “unregistered” religious groups are subject to harassment, detention, and arrest. In regard to the officially sanctioned religious bodies, Chinese government agencies concerned with religious affairs maintain the final authority over leadership, financial, and doctrinal decisions. The Communist Party’s recent campaigns to “halt foreign influence,” stamp out “evil cults,” and strike hard against “ethnic separatism and religious extremism” have caused an atmosphere of fear and uncertainty among China’s religious communities and occasioned some of the country’s most brutal

human rights abuses. Particularly vulnerable are Catholics and Protestants engaged in unregistered activities, Tibetan Buddhists, Uighur Muslims, and members of spiritual movements such as the Falun Gong.

### Commission Travel to China

The Commission's visit to China followed several years of diplomatic effort by the U.S. government. An invitation was first promised during the 2002 U.S.-China human rights dialogue; however, two subsequent attempts to travel to China were postponed due to unacceptable conditions placed on these trips by Beijing, including denial of access to Hong Kong by the Chinese government.<sup>1</sup> Following further requests by the U.S. State Department, congressional leaders, and the White House, the Chinese government issued another invitation to the Commission in 2005. The Commission delegation was led by Chair Michael Cromartie and Vice-Chair Felice D. Gaer and included Commissioners Preeta D. Bansal, Archbishop Charles Chaput, Dr. Richard Land, Dr. Elizabeth Prodromou, and Bishop Ricardo Ramirez. During the two week visit, the Commission traveled to the cities of Beijing, Shanghai, Chengdu, Urumqi and Kashgar in Xinjiang, and Lhasa in Tibet. The delegation met with Chinese Vice-Premier Hui Liangyu, senior officials from the Foreign, Justice, and State Ethnic Affairs Ministries, the National People's Congress, the Supreme People's Procuratorate, and the State Administration on Religious Affairs, as well as provincial and local officials from the various Religious and Ethnic Affairs and



USCIRF Delegation and Buddhist Monks in Beijing

management of religious affairs, Chinese policies concerning unregistered religious organizations and the religious education of minors, new regulations on cults and religious affairs, the situations in Tibet and Xinjiang, and the conditions facing North Korean asylum-seekers in China. The Commission also raised several specific cases of concern with law enforcement officials and others. Notably, when in Lhasa, the delegation was allowed to meet briefly with recently released Tibetan Buddhist nun Phuntsog Nyidron, who was recently released after 15 years in prison and who remains restricted in her movements by the Chinese authorities.

and activities were monitored and controlled by government representatives.

Commissioners sought to have candid, comprehensive, and constructive discussions on international human rights norms and Chinese law and practice. The delegation recognizes the effort of several Chinese officials to respond to the Commission's questions. Unfortunately, however, discussions were often far from candid. Chinese government officials were present at all meetings, including those with religious leaders and others who were not part of the government. At one meeting, the Catholic Bishop from Shenyang, affiliated with the government approved Catholic Patriotic Association, responded to a Commission question stating that he was aware of the harassment and arrest of neighboring Bishop Wei Jingyi, who was associated with the unregistered Catholic Church. Chinese officials present at the meeting did not allow the remarks to be translated and immediately ended the Bishop's presentation.<sup>2</sup> Moreover, the delegation was not able to meet and talk freely and privately with interlocutors of its own choosing. The Commission's requests for access to prominent religious prisoners were denied.

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other relevant bureaus. The Commission also met with Chinese academics and lawyers, UN officials, and representatives of the government-sanctioned Buddhist, Catholic, Islamic, Protestant, and Taoist religious organizations.

During the visit, the Commission raised questions on Chinese law and international human rights norms, the

The Commission appreciated the opportunity to gain familiarity with several places in China, including Xinjiang and Tibet, as well as the efforts of its Chinese hosts, the State Administration on Religious Affairs and the Ministry of Foreign Affairs, to arrange meetings with a range of senior national and local officials. Nevertheless, virtually all of the delegation's interactions

### The "Patriotic Religious Associations"

The Commission met with representatives of the five officially recognized "patriotic" religious organizations, visited various religious

sites associated with these organizations, and observed their use. Chinese government officials and religious leaders told the Commission delegation that the number of religious believers associated with the five recognized groups was growing steadily.

In order to operate legally, all religious organizations and “venues” for religious activities must be registered with the appropriate government agency. In order to do so, they must be affiliated with one



USCIRF Delegation Meets with Vice Premier Hui Liangyu

of the five officially recognized religious organizations. Registration is thus limited in practice to the five recognized religions— Buddhism, Catholicism, Islam, Protestantism, and Taoism. In response to Commission inquiries as to whether the Chinese government would allow other religious communities to register organizations or sites for religious activities, Chinese officials told the delegation that they are considering accepting registration from Orthodox Christians, Jews, Mormons, and Baha'is. The Commission was unable to verify with leaders from these communities whether Chinese officials have approached them to discuss this possibility.

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Registered religious organizations submit to government monitoring of their activities and the requirement of government approval of several religious activities—such as selecting a leader, printing materials, building or renovating religious venues, inviting religious leaders from other provinces, or holding a joint religious ceremony—that are explicitly protected from government interference under international human rights standards. In addition, most religious activities can only be conducted at registered venues. Religious groups that are legally registered in China have also accepted restrictions on what doctrines and traditions can be conveyed and taught. There are numerous credible reports, for example, of Christian leaders having to refrain from teachings involving the second coming of Jesus, divine healing, the practice of fasting, and the virgin birth because these doctrines or practices are considered by the government to be superstitious or contrary to the Chinese Communist Party's social policies.<sup>3</sup>

In meetings with government officials in attendance, religious leaders in the government sanctioned religious organizations denied that any restrictions were placed on what they could preach or teach. They claimed, however, that direct criticism of government policy was disruptive to “social harmony,” and that they tried to emphasize the aspects of their faith traditions that, in their view, “strengthened socialistic society.” This is in line with official Chinese policy that religion must adapt to the development of a socialist society.

Over the last decade, the Chinese government and the Communist Party have made some accommodation for the spiritual aspirations of the people of China, and have openly praised the contributions to society of government sanctioned religious organizations. The Commission was able to observe a “zone of toleration” where members of the approved religious organizations, working within the limitations described above, are given some latitude to practice their religion. The delegation was told that Chinese law now protects the property of registered groups, allows them to bring charges against abusive government officials, and permits them to perform some charitable and social service work in local communities. Religious leaders from the government approved organizations believed that these legal reforms were beneficial, though most could not be independently verified by the delegation. Commissioners met with religious leaders

conducting social welfare work, noting that several programs of this nature have been started or are under development.

Government relations with the five patriotic religious associations appear to differ from religion to religion and region to region. For example, official tolerance for Buddhism (among Han Chinese) and Taoism appears to be greater than for other groups in China. Religious leaders from these communities claimed that they face few restrictions. Nevertheless, Tibetan Buddhists and Uighur Muslims (see page 6), have more difficulties than their religious counterparts in other parts of the country, despite being affiliated with the government sanctioned religious organizations.

Commissioners were able to gain some insight into the relationship between the Catholic patriotic religious organization and the Chinese government through their discussions with representatives of the government sanctioned Catholic Patriotic Association. Commissioners were told there was a growing communion between the Vatican and the clergy of the officially sanctioned church. At recent ordination ceremonies, clergy from the government approved church openly pledged fidelity to the Holy See. Catholic religious leaders in China told Commissioners that, though difficulties and suspicions remain, there was some reconciliation between the officially registered church and unregistered Catholics. However, most unregistered Catholics will not worship in churches of the Catholic Patriotic Association unless the bishop or priest is known to be in communion with Rome. The Chinese government does not allow Catholics to run schools or recognize openly the authority of the Papacy in many fundamental matters of faith and morals. In September 2005, Bishop Wei and three other Chinese bishops were invited to Rome by Vatican officials to participate in a Vatican synod in October, but the Chinese government denied them travel visas, citing the need for Vatican consultation directly with the Catholic Patriotic Association for such invitations.

The Chinese government continues to insist, as a precondition for establishing diplomatic relations, that the Vatican renounce the Papal role in the selection of bishops and break all relations with Taiwan. The Commission was told that the Chinese government's insistence on approving and selecting bishops has made the ordination process very slow. At least twelve bishops are needed to fill current openings. The Commission learned that



Daoist Monk in Beijing

in the last year, the Chinese government has quietly arranged for the ordination of at least some bishops approved by the Holy See. In Shanghai and Xi'an, auxiliary bishops from the "unregistered" Catholic Church were chosen with the full right of succession and with the approval of both the Chinese Catholic Patriotic Association and the Vatican. During its meeting with two bishops of the Catholic Patriotic Association in Shanghai, the Commission was told that the Chinese government and the Holy See cooperated quietly to reconcile the registered and unregistered Catholic communities in the Shanghai diocese.

Also in Shanghai, the Commission was told of improved educational and spiritual formation opportunities for clergy and nuns and of expanding Catholic social service programs. The Commission was shown a new government sanctioned Catholic seminary in Beijing and was told that it would expand the number and quality of clergy. The Commission noted, however, that the Chinese government monitors and inspects all the registered seminaries and has severely restricted foreign professors from teaching at these institutions. In addition, the transmission of traditional Catholic moral teaching on such subjects as abortion, contraceptives, and divorce is forcefully suppressed as contradicting official Communist Party policy.

### The Problem of the Unregistered

Most of China's religious practice occurs outside the system of government approved religious organizations. Yet, the Chinese government actively seeks to control and suppress the activities of "unregistered" religious organizations to prevent the rise of sources of authority outside the control of the government and the Communist Party. The Commission raised concern over these

practices with Chinese government officials, but did not seek to meet with leaders of "unregistered" religious groups because concerns were raised regarding their safety and their continued ability to operate in the country.

Chinese law bans unregistered religious organizations and provides severe penalties for engaging in unregistered religious activities. The Commission pointed out to government officials that under international human rights standards, failure to register cannot alone justify government imposed limitations on religious activities, or the harassment, detention, and imprisonment of members of unregistered religious groups. A senior official with the Communist Party's United Front Works Department said that because the process of registering all religious groups under the new Regulations on Religious Affairs (see page 8) would take time, he did not think unregistered groups should be harassed or punished during that process. Nevertheless, Chinese officials confirmed that unregistered activity was illegal and would continue to be suppressed.

Indeed, in the past several years, unregistered religious activity has been increasingly targeted for official repression. Protestants, Catholics, and members of spiritual movements such as the Falun Gong have experienced the most severe problems, including arrests, numerous detentions, torture, irregular trials, and imprisonment, often in the notorious "re-education through labor" system of detention. Protestant and Catholic leaders, in particular, have come under increased pressure to register their churches and affiliate with one of the government approved organizations. Those who refuse, for theological or other reasons, are subject to intimidation, extortion, harassment, detention, arrest, and the closing of their religious sites. Security forces have recently targeted leadership training sessions, university Bible studies, missionary activity, and the religious activity of China's intellectuals. Religious leaders who print reports or send information abroad about church destructions or arrests have been arrested themselves and sentenced on charges of "divulging state secrets." Government relations with unofficial Catholic churches remain tense. There are at least 33 bishops and priests in prison for their religious activity.

Since March 2005, there have been several large-scale raids resulting in the destruction of property of unregistered

Protestant groups in Jilin, Henan, Xinjiang, and Shanxi provinces. While the Commission was traveling in China, there were credible reports of arrests and detentions of Protestant leaders in Hubei and of Protestant and Muslim leaders in Xinjiang for engaging in unregistered activities. Reports of arrests and detention have continued since the Commission's trip and suggest that a concerted crackdown is underway targeting China's unregistered religious communities.

Although Chinese law clearly prohibits unregistered religious activity, the actual conditions under which China's

*The largest share of China's religious practice occurs outside the system of government approved religious organizations.*

unrecognized religious communities operate vary from place to place, and the intensity of repression is not uniform throughout the country. For example, despite tensions, there is some reconciliation between registered and unregistered communities of Catholics in some parts of China. In areas of Yanbian Korean Autonomous Prefecture and some parts of Zhejiang province, Protestant churches are allowed to operate without government registration. In other areas, some unregistered groups are allowed to operate with minimal supervision and often



Three Self Christian Bookstore in Shanghai

share clergy, buildings, and religious and educational materials with registered groups. These conditions, however, do not exist everywhere and are often subject to change as a result of political conditions or arbitrary enforcement of restrictions by security forces or local officials.

In addition to legal provisions that prohibit unregistered activity, the Chinese government also has reserved for itself the right

aspect of ethnic identity for both Tibetans and Uighurs, Chinese government officials told the Commission that fervent religious practice among these groups was an impediment to economic modernization and an organizational pole around which terrorists or “splittists” may gather.

There are similarities in the methods used by the Chinese government to control the practice of religion by Uighur Muslims and Tibetan Buddhists. The Commission delegation was told that “patriotic education” of religious leaders continues to occur in both Tibet and Xinjiang. Muslim imams and Tibetan monks and nuns are required to attend patriotic education sessions, all religious publications are controlled, and there are tight restrictions on religious celebrations, the religious education of minors, as well as the number of religious venues and religious leaders. In Xinjiang, even government officials must participate in “patriotic education.” The Commission was told that government officials dealing with religious affairs in Xinjiang must complete political education to avoid “paralyzed thinking” and to “distinguish between normal and illegal religious activities” and, as in all other areas of China, are required to be atheists.

#### XINJIANG

In Xinjiang, all collective home worship services, afterschool religious instruction, and other unauthorized religious instruc-

tion are strictly prohibited. The Commission was informed that Uighur Muslims have not received permission to build new mosques for the past six years. The Commission was also told that all imams are required to undergo yearly political training seminars in order to retain their licenses. Commissioners learned of the existence of an “Islamic Affairs Steering Committee,” which is reported to author and approve sermons and censor religious texts and any material with religious content. The purpose of such oversight by the government is to create Muslim religious leaders who will “ardently love their country.”<sup>24</sup>

Chinese authorities in Xinjiang use the “war on terror” as a pretext to monitor and control Uighur Muslim religious activity. This manipulation of terrorist concerns was evident during the Commission’s visit. Upon arrival in Xinjiang, provincial officials announced to the Commission delegation that “elements of Al-Qaeda” were targeting the Commission itself during its visit. The Commission requested that such threats be reported through official channels, and the unspecified threat, found later not to be credible by U.S. and Chinese security officials in Beijing, seemed to have been issued to restrict Commission activities and to monitor its contact with local people not approved by government officials. Commission requests to visit specific mosques, imams, and churches in Xinjiang were subsequently denied. There was particularly tight control on Commission movement during its visit to the city of Kashgar.

At least nine different official campaigns to root out “illegal religious activities” have been carried out in Xinjiang over the past decade, including last year’s “strike hard” campaign against “separatism and



A Conversation with Bishop Jin of Shanghai

to determine that religious activities should be suppressed because they are “heretical” or “cultic.” Groups determined to be “cults” are brutally suppressed, as is evidenced by the crackdown on the Falun Gong and other spiritual movements. In recent years, some unregistered Protestant and Catholic church groups have been banned and their activities suppressed following official designation as “cults.”

#### Tibet and Xinjiang

Tibetan Buddhists and Uighur Muslims face serious restrictions on the free practice of their respective religions and severe abuses of their human rights. China’s policies on religious affairs have produced ongoing tensions between the government and these religious communities in regions where they predominantly reside, including the Tibet Autonomous Region (TAR or Tibet) and Sichuan province for Tibetans and the Uighur Autonomous Region, or Xinjiang, for Uighurs. Because the Chinese government fears secessionist activities and recent calls for greater autonomy in these regions, crackdowns on religious activities in Xinjiang, Sichuan, and the TAR are often harsher than in other parts of China. Although religion is an important



Heitkar Mosque, Kashgar, XUAR



Chanting at Drepung Monastery

religious extremism.” Government officials, as well as teachers, professors, and university students, are barred from engaging in daily prayers, wearing head coverings, distributing religious materials, and observing Ramadan.<sup>5</sup>

In March 2005, the Chinese government issued a press statement declaring that Chinese law does not prohibit the religious education of minors. Yet in Xinjiang, the Commission was told by provincial officials that the religious education of minors in mosques, madrassas, or any type of multi-family setting was prohibited until the child has completed the requisite nine years of compulsory general education. Officials stated that minors who have completed their education but were not selected to attend university could receive religious training and attend mosque, and that parents could give private religious instruction to their children. While the Commission delegation was in China, security forces arrested a woman in Xinjiang for teaching a religious class on the Koran. She was reportedly detained for “illegally possessing religious material and subversive historical material.”

The Commission noted that the Chinese government does allow some Muslim groups in Xinjiang to engage in social welfare programs. Commissioners met with imams who participate in alcohol, drug, and HIV/AIDS education programs. The Chinese government has praised the positive contributions of such officially approved religious organizations in meeting China’s growing social welfare and medical needs.

## TIBET

The Chinese government continues to control tightly religious activity, including education and places of worship, in Tibet. Although the Commission was able to observe instances of private religious devotion at Tibetan Buddhist temples and monasteries, the activities and education of monks and nuns are closely monitored, monasteries are governed by government approved management committees, and the Communist Party continues to insist on approving the designation and training of all reincarnate lamas. In addition, Commissioners learned that monks and nuns are required to renounce the Dalai Lama as the spiritual leader of Tibetan Buddhists. When asked why this is required, government officials answered either that the Dalai Lama supported independence or “splittist” activities, or that continued public religious devotion to the Dalai Lama and his “clique” was a hindrance to economic modernization. Government officials claimed that the Dalai Lama’s influence had to be eliminated to protect “social harmony” and to raise the standard of living in Tibet and other regions with Tibetan Buddhist populations.

Commissioners asked whether Tibetans were permitted to own or display pictures of the Dalai Lama or his chosen Panchen Lama, Gendun Choekyi Nyima, or hold prayer ceremonies for them. Religious leaders responded that Tibetans may own pictures of the Dalai Lama and hold private devotions for him, but that they may not publicly display or distribute the portrait or engage others in their ceremonies. In a separate meeting, public security officials agreed that private ownership of his portrait was not a punishable offense, only its public display was. Security officials conceded that no provision of Chinese law specifically prohibited arranging a prayer for the Dalai Lama, but told the Commission that the Dalai Lama’s political activities rendered any public recognition of him a threat to public order and social harmony and thus was prohibited. Owning pictures or holding ceremonies for the Dalai Lama’s chosen Panchen Lama was prohibited, they stated.

During its visit, the Commission asked to meet with the Dalai Lama’s chosen Panchen Lama. The young man has not been seen in more than a decade after being kidnapped by Chinese officials upon receiving recognition by the Dalai Lama. The Commission’s request was denied. Chinese government officials claimed that he was safe and studying Tibetan Buddhism but that his family was “unwilling for him to

have a public life.” The Commission urged Chinese officials to end restrictions on access to the young man and his family and to allow them to receive visits from international representatives.

On the subject of the religious education of minors in Tibet, Commissioners were told that, with the exception of boys approved by the government and formally designated as reincarnate lamas, persons under the age of 18 were not permitted to receive religious education. Tibetan children must spend their time in public education and there was no time for both. When pressed on this issue by the delegation, one Chinese official said that “Tibet cannot be developed by chanting.” Yet, religious education of minors apparently goes on in some places despite official prohibitions. There have been reports of monastic schools in some remote parts of the TAR and other provinces with significant Tibetan populations. Government officials insisted, however, that such schools were prohibited from teaching religious subjects to minors.

During a visit to Drepung monastery in Lhasa, one of the largest in Tibet, the Commission was able to observe that a monk, sitting near where the delegation passed, was visibly younger than the other monks. When questioned in private by a Tibetan-speaking member of the delegation, the monk acknowledged that he was 14 years old. He also said that he was a fulltime monk and had been at Drepung for “a few years,” and that there were some 20 monks under the age of 18 at the monastery. Religious leaders at the monastery did not have any insight on the apparent



Public Security Bureau Substation Located Directly Behind Drepung Monastery



Drepung Monastery, Lhasa, Tibet

discrepancy between official pronouncements on religious education of minors and monastery practice.

Despite some ambiguity regarding the religious education of minors in Tibet, it is the Commission's conclusion that Chinese government controls on religious practice in Tibet and Xinjiang contravene both

*Too often, the law is used as a tool of repression to harass, detain, and imprison dissidents, religious practitioners, the disadvantaged, or the politically suspect.*

China's own constitution and its international human rights obligations. Policies enforced by Chinese officials that restrict human rights in order ostensibly to protect "national unity" or "national security" exceed those restrictions permitted under international standards and override other protections in Chinese law. Like other governments, the Chinese government does have a duty to protect its nationals from terrorist attacks, but it too often conflates peaceful political opposition or efforts to maintain religious and ethnic identity

with violent separatist activity, extremism, and terrorism.

### The National Regulations on Religious Affairs

In March 2005, the Chinese government officially implemented new National Regulations on Religious Affairs. The regulations were introduced in order to clarify a patchwork of laws, ordinances, and regulations regarding religious practice. Chinese leaders heralded the regulations as "a significant step forward in the protection of Chinese citizens' religious freedom." However, when the new regulations were officially implemented, a senior official from the State Administration of Religious Affairs emphasized that the primary goal of the new regulations was to help expand government management of religious affairs.<sup>6</sup>

The new regulations have not been in place long enough to assess their implementation and actual impact. However, it is important to note that one year prior to the announced implementation of the present regulations and until the present, the crackdown targeting unregistered Christians intensified in several parts of China. It is the Commission's position that until it is clear how the provisions of the new rules are interpreted and implemented, the new regulations threaten the rights and

security of religious believers and are not fully consistent with international norms on freedom of thought, conscience, and religion or belief.

The new regulations contain provisions that could be used to limit the activities of registered religious groups and punish those who engage in unregistered activities. For example, criteria for the approval of registration of a site for religious activities includes an official determination that there is a "need" for local religious practitioners to "frequently carry out collective religious activities," as well as that the site is "rationally located without interfering with the normal production and livelihood" of the local area.<sup>7</sup>

The new regulations also make clear on a national level that religious activities can only be conducted by registered religious bodies at approved religious sites.<sup>8</sup> As noted above, Chinese officials confirmed to the Commission that religious activities conducted by unregistered groups are illegal under the new regulations,<sup>9</sup> which provide for civil fines for individuals who engage in such activities.<sup>10</sup> The Public Security Bureau is also authorized to impose penalties if religious activity is being carried out at a venue that has not been properly registered with the relevant authorities.<sup>11</sup> In addition, the Religious Affairs Department is authorized to disband any religious group that fails to gain official approval for its leadership, membership or management procedures; accepts donations without receiving prior approval; or refuses "to accept supervision and administration conducted by the Religious Affairs Department according to law."<sup>12</sup> Individuals who participate in religious activities not authorized under the new regulations are subject to criminal punishment.<sup>13</sup>

In discussions with Chinese officials, the Commission raised questions about the clarity of the registration requirements in the regulations, the language used in regulating religious publications, and the



Commission Delegation Meets with Officials in Shanghai





Commissioners Ramirez, Gaer, Bansal and Prodmou with Imams at a Mosque in Urumqi

official oversight required with regard to leadership decisions.

The new regulations do include several provisions that are, on their face, potentially significant advances. These include establishing conditions under which religious organizations can provide social services in local communities, protect their property, bring complaints against abusive government officials, accept donations from overseas religious groups, and receive prompt responses from government agencies on registration applications. However, a group must be registered in order to engage in these activities or take advantage of the provisions under the regulations.

It may be a positive step that the planned release of implementation guidelines for Shanghai was withdrawn, reportedly so that Chinese government officials could study reservations raised by the Commission and other international legal scholars and commentators. The Commission plans to offer Chinese officials a detailed analysis of the new regulations and to compare them with international human rights standards regarding the freedom of thought, conscience, and religion or belief.

## The Rule of Law

Although Communist Party leaders have made it clear that they intend to strengthen the one-party state, they have also promised to move toward a system governed by the rule of law. Similar promises were expressed in almost all of the Commission's meetings with Chinese government officials. However, although many statements have been made about legal reform and establishing the rule of law in China, few concrete steps have actually been taken, particularly in the area of protecting the rights of the individual. Thus, despite promises of legal reform, redress for violations of human rights by government officials is not available on a consistent basis. Reform of the legal system

is an important issue, both for the expansion of business practices as well as for the rights of individuals. Engagement in the global economy has forced Chinese leaders to review some of their laws and practices. Legal reforms in the areas of commercial law and property rights have played a role in sustaining economic growth in China and lifting portions of the population out of poverty.

There has been some discussion by Chinese officials of extending greater legal protections to individuals. In 2002, the Chinese government called for a complete review of its civil, administrative, and criminal procedure codes. In recent years, the Chinese government has also

*The Commission is convinced that many reforms are needed to bring Chinese law in the areas of religious affairs and protections for human rights into conformity with international standards.*

shown a willingness to permit some independence of the courts in cases involving official corruption, to hold qualifying examinations to raise the competency level of judges, and to consider amending laws to protect detained suspects. Notably, in March 2004, China amended its Constitution to include a provision that the state should protect human rights. This last measure is largely symbolic because the Constitution is not enforceable in Chinese courts, but it signals, at the very least, a growing awareness in official circles of human rights concerns. It represents an important commitment, but at present there is no way to require its implementation.

In the last year, the Chinese government has permitted public criticism of the criminal justice system after cases of wrongful prosecution and death in police custody became national scandals. In response to the scandals, the Supreme People's Procuratorate (SPP) has taken steps to investigate cases of illegal detentions and to punish law enforcement officers who use torture to extract confessions. These reforms may bring more badly needed transparency and accountability into legal proceedings.

Yet, Chinese legal reforms appear to be hindered by the widespread and persistent corruption and lack of official accountability. The Chinese legal system does not provide individuals the means to seek full or fair redress for human rights

violations though the courts. In addition, the criminal system still relies on confessions, which are frequently obtained through torture; lawyers who are outspoken in defense of defendants' rights are themselves often threatened, disbarred, or imprisoned. Too often, the law is used as a tool of repression to harass, detain, and imprison dissidents, religious practitioners, the disadvantaged, or the politically suspect. For example, vague criminal law provisions prohibiting acts "endangering national security," "subversion," or "inciting splittism" are often used to detain individuals for political offenses.

One of the more significant steps that could be taken by the Chinese government

to provide legal protections for human rights is to ratify and implement the International Covenant on Civil and Political Rights (ICCPR), which was signed by China in 1998. In response to questions about the status of ratification, the Commission delegation was told that, while China intended to ratify the ICCPR at some point, changes to the legal system had to be considered first in order to bring Chinese law into line with international standards. The parameters of needed legal reforms are, the Commission was told, currently under study by the National People's Congress and others. Despite



Commissioners After Meeting with Protestants at Chongwenmen Church in Beijing

specific questions, no one could identify for the Commission the items in need of further study or provide a timetable for the ratification process.

The Commission is convinced that many reforms are needed to bring Chinese law in the areas of religious affairs and protections for human rights into conformity with international standards. China's Constitution, its new regulations on religious affairs, and its Criminal Code are all at odds with standards set forth in the ICCPR. Prompt legal reforms in these areas, rather than being delayed for further discussion, should be implemented. Prompt ratification of the ICCPR would demonstrate China's commitment to protecting the rights of individuals.

The Commission discussed the issue of arbitrary detention and the use of torture to gain confessions with senior officials of the Justice Ministry and the SPP. The Commission discussed potential changes to Article 306 of the Criminal Procedure Code, which provides penalties for lawyers whose clients are accused of perjury and has been used to curtail the active legal defense of individuals accused of political crimes. Noting allegations of irregular trial procedures and/or reported evidence of torture in the cases of Pastor Gong Shengliang of the South China Church and Tibetan Buddhist Tenzin Delek Rinpoche, the Commission reiterated requests by the U.S. government and others in the international community for a review of the cases by the Supreme People's Court. The Justice Ministry and the SPP agreed to accept further evidence from the Commission in these two cases. One senior official stated that investigations should be opened if there was evidence of torture and legal irregularities in these cases.

### Religious Persecution: A Sampling of Cases in the PRC

#### LIU FENGGANG

**Background:** House Church leader arrested and tried in secret on charges of "gathering and illegally providing state intelligence to foreign entities." Sentenced to three years imprisonment in 2004.

**Chinese government response:** Liu Fenggang was imprisoned on charges related to "spying." The trial was conducted in secret in accordance with PRC criminal law regarding national security cases.

**USCIRF assessment:** Response from the Chinese government includes no new information. Implies evidence of the use of national security provisions to quell information that may be deemed embarrassing to the government. Liu Fenggang was actually arrested for publishing a story about church destructions in Zhejiang province. Using such vague definitions of "state secrets," authorities can charge persons with criminal activity for virtually anything that the government does not want people to know or to discuss.

#### WEI YUMEI AND WEI YUFEN

**Background:** Sisters and Falun Gong practitioners. Arrested in May 2004 after they were found producing and distributing Falun Gong literature. Both were convicted of "using a cult to undermine implementation of the law" and sentenced to 10 years imprisonment.

**Chinese response to USCIRF:** Both taken into custody "on suspicion of committing a crime" and sentenced to 10 year terms on charges as specified above.

**USCIRF assessment:** Response from the Chinese includes no new information. Fails to detail the justification for the government's restriction on the manifestation of religion or belief, Chinese criminal law contains vague restrictions related to so-called "cults."

#### GEDUN CHOEKYI NYIMA

**Background:** Recognized by the Dalai Lama on May 14, 1995 as the Panchen Lama. Chinese officials denounced the choice as "illegal and invalid" and named another boy as Panchen Lama. Gedun Choekyi Nyima and his parents were taken into Chinese custody on May 17, 1995 and remain in incommunicado detention. The Chinese government has not revealed the precise location where they are being held, nor has anyone been permitted to meet with them.

**Chinese response:** Request to meet with him denied. The boy's parents do not want him to have a public life. The boy, age 16, is studying and in the care of his parents.

**USCIRF assessment:** Response from the Chinese government includes no new information. Continues pattern of repeated denials for access by international observers to Gedun Choekyi Nyima. Shows government interference with leadership decisions of a religious community, as well as the rights of Gedun Choekyi Nyima.

#### TOHTI TUNYAZ

**Background:** Uighur historian sentenced in 1999 to 11 years imprisonment on charges of inciting splittism and illegally acquiring state secrets for compiling documents used in his thesis on Chinese government policies towards ethnic minorities. In 2001, the UN Working Group on Arbitrary Detention ruled that the detention of Tohti Tunyaz was arbitrary.

**Chinese response to USCIRF:** Regarding this case and all other enquiries involving Uighurs, the Chinese government gave no response, continuing a pattern of failure to comment on Uighur prisoners.

**USCIRF assessment:** Policies that restrict human rights in order to protect "national unity" or "national security" in Xinjiang Uighur Autonomous Region exceed international standards and often override other protections in Chinese law. The Chinese government should establish a mechanism for reviewing cases of persons detained under suspicion of, or charged with, offenses relating to state security, disturbing social order, "splittist" activities, or organizing or participating in "illegal" gatherings or religious activities.

#### BISHOP SU ZHIMIN

**Background:** Unregistered Catholic bishop arrested in 1996 along with auxiliary Bishop An Shuxin. Neither have been seen publicly since 1997, nor has the Chinese government offered information on their status or whereabouts.

**Chinese response:** Relevant departments have taken no coercive action to punish the Bishops and they are not under Chinese government control.

**USCIRF assessment:** Response from the Chinese government includes no new information. Both Bishop Su and Bishop An were detained without trial and have been in custody without acknowledgement by the Chinese government for nearly a decade. Commission requests to meet with them were denied. Bishop Jin of Shanghai told the USCIRF delegation that Bishop Su was in good health and was being held in a government rest home in Hebei.



Commissioners Land, Gaer, Bansal and Ramirez  
After Meeting with Phuntsog Nyidron (center)

## Meeting with Phuntsog Nyidron and Cases of Special Concern

During its visit to China, the Commission raised a number of individual cases with Chinese authorities of alleged arbitrary detention or “enforced disappearance” on

the Chinese government eventually formally transmitted to the Commission on the status of the individuals on its list was cursory, adding nothing to previous statements by the Chinese government on the status of these persons. The Commission also did not receive any information on the list of Uighur prisoners it submitted to Chinese officials. In a formal response to the Commission, the Chinese government continued to claim that “no one has ever been punished by law or put into prison for his/her religious belief” and that information on “criminals involved in separatist activity...was an internal affair” of China. Such responses clearly indicate that Chinese law and practice do not fully allow for religious activities that are protected by international human rights treaties to which China is a signatory, not least because such activities

in private. In 1989, Phuntsog Nyidron was sentenced to nine years in prison for holding a peaceful demonstration celebrating the Dalai Lama’s Nobel Peace Prize award. Her sentence was extended by eight years after she recorded songs about Tibet and the Dalai Lama that were smuggled from prison. According to numerous witnesses, Phuntsog Nyidron and the other nuns imprisoned with her were beaten during their imprisonment.

During the interview, Phuntsog Nyidron told the Commission that she had debilitating health problems that required special medical attention and limited her ability to make a living as a farmer in the village where she now resides. She was unable to address these health concerns, however, because of a lack of money and restrictions on her movement. In response to the Commission’s question of whether a passport might facilitate needed medical treatment, she said that it was impossible for her to travel because of her conviction on “counterrevolutionary crimes.” She also stated that due to her status as a “counterrevolutionary criminal,” security officials accompany her at all times. She did not discuss whether she was subjected to other restrictions.

The day after the meeting, ostensibly to “clarify” Phuntsog Nyidron’s statements, government officials told Commissioners that public security officials no longer accompany her because her parole was completed in February 2005. Commissioners were also told that she was now “free to travel.” If she is indeed “free to travel,” the Commission believes Phuntsog Nyidron should be issued a passport immediately.

*The space for political openness, public activism, and greater civil and individual freedoms is narrowing in China. Over the past year, the Communist Party has tightened its control over religious leaders as well as journalists, intellectuals, the Internet, and non-governmental organizations.*

account of religious belief or practice or of other religious freedom violations in China. The Commission discussed in detail with Chinese officials a list of known religious prisoners, including Buddhists, Muslims, Protestants, Catholics, and members of the Falun Gong. The delegation asked for information on the current status of these cases and requested they be considered for immediate review and/or release. The Commission also asked to meet with several prominent religious figures whose detention or disappearance has raised international concern, including the Dalai Lama’s chosen Panchen Lama, Gedun Choekyi Nyima; Catholic Bishops Su Zhimin and An Shuxin; Tibetan Buddhist monk Ngawang Phuljung; Protestant “house church” leader Cai Zhuohua; and Uighur historian Tohti Tunyaz. The Commission also asked to meet with former Tibetan nun Phuntsog Nyidron, in light of reports that her freedom of movement and association remain highly restricted, despite her release from prison a year earlier.

The Commission’s requests to meet with all but one of these prisoners were denied. In addition, the information that

are often interpreted by the government as illegal political acts of subversion or separatism. The Commission called on the Chinese government to release all those imprisoned or detained on account of the manifestation of religious belief in contravention of international human rights standards, and to establish a mechanism for a full and fair review of cases of persons detained under suspicion of, or charged with, offenses relating to state security, disturbing social order, “counterrevolutionary” or “splittist” activities, or organizing “illegal” gatherings or religious activities. This mechanism should also review cases of detained or imprisoned religious leaders, many of whom have been charged with specious criminal offenses related to national security.

The Commission was granted a brief interview with Phuntsog Nyidron in the presence of Chinese officials, who rejected the Commission’s request to conduct the interview



Zhongnanhai, Where Chinese Leaders Live And Work

## North Korean Asylum Seekers

The Commission raised with Chinese officials the issue of North Koreans in China, who, after fleeing starvation and persecution, face harsh conditions when they cross the border into China. Many have been forcibly repatriated to North Korea, where they face severe penalties upon their return.

The Chinese government refuses to allow representatives of the UN High Commissioner for Refugees (UNHCR) to interview North Koreans. China views North Koreans as “economic migrants” and therefore does not recognize them as asylum seekers under international law. This policy, coupled with China’s active repatriation of North Koreans to their country of origin where they face reprisals, contravenes China’s obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol which states that “no Contracting States shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>14</sup> Forced return to a country where they face a risk of torture would also contravene the Convention Against Torture to which China is a party. In addition, Chinese policy violates the 1995 UN-Chinese Agreement stating that “UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation.”<sup>15</sup>

Chinese security forces reportedly guard the UNHCR office in Beijing and a number of foreign consulates in order to prevent North Koreans from entering them and seeking asylum. Chinese officials told the Commission that they must repatriate North Koreans under terms of a 1961 agreement with North Korea.<sup>16</sup> Commissioners responded that repatriated North Koreans face harassment, mistreatment, detention, torture, and possible execution.

Chinese officials claimed that they had no evidence of such conditions and have repeatedly asked North Korean officials not to mistreat those repatriated. Some officials suggested that the fact that North Koreans often enter and re-enter China numerous times was evidence that they did not face bodily harm if repatriated.

The Commissioners reiterated to Chinese officials that North Koreans in China should be considered refugees, either as persons who have a well founded fear of persecution had they remained in North Korea, or as persons who may not have fled persecution in the first place but who nonetheless are refugees because they risk persecution upon return to their country of origin. In addition, Commissioners offered to provide Chinese government officials

*In the past, Chinese officials have argued that slow progress on civil and political rights was a temporary trade-off to achieve economic modernization. Given China’s impressive economic growth, this argument can no longer be sustained.*

with evidence that significant numbers of North Koreans face persecution because of their family connections, political views, or religious beliefs. The Commissioners also discussed the ways in which the vulnerable status of North Koreans in China encourages human smugglers, trafficking in women and children, and a host of other social problems. At least one Chinese official, Minister Li Dezhu of the State Ethnic Affairs Commission, acknowledged in a meeting with the Commission the growing problems associated with North Korean asylum seekers in China and expressed the need to find humane solutions to these and other problems occurring on the border.<sup>17</sup> Nevertheless, Commissioners pressed Chinese officials on the need for representatives of the UNHCR to be allowed access to North Koreans in China and for unimpeded humanitarian assistance to the affected regions.

### Human Rights and the U.S.-China Relationship

The space for political openness, public activism, and greater civil and individual freedoms is narrowing in China. Over the

past year, the Communist Party has tightened its control over religious leaders as well as journalists, intellectuals, the Internet, and nongovernmental organizations. President Hu, in a speech to the Central Committee in September 2004, warned against “hostile forces” seeking to undermine the Party by “using the banner of political reform to promote...parliamentary democracy, human rights, and the freedom of the press.” The Chinese President warned that the Soviet Union fell because of the policies of “openness and pluralism” and because of “international monopoly capital with the United States as its leader.”<sup>18</sup> Chinese political leaders view pressure to guarantee individual and political rights as evidence of a “strategic plot to Westernize and split China.” From the Chinese perspective,

global concerns regarding human rights are at worst subversive and at best peripheral to improving economic ties.

In the past, Chinese officials have argued that slow progress on civil and political rights was a temporary trade-off to achieve economic modernization. Given China’s impressive economic growth, this argument can no longer be sustained. The Chinese government has embraced some of the benefits of the free market with dramatic results. The Chinese people now have greater mobility, increased property rights, and somewhat greater access to information than in the past. These advances have raised the aspirations of the Chinese people and the international community, but fulfilling these hopes will require a commitment to respect civil and political rights, in addition to economic and social rights. It will also require an acknowledgment that human rights are indeed universal and are currently not protected in Chinese law and practice, despite the Chinese government’s international commitments in this regard.

Respect for human rights is also important for regional security and prosperity, both in China and throughout theregion. Such respect is a critical element in any



Tibetan Prayer Flags

peaceful outcome to the Taiwan issue, successful management of Hong Kong under Beijing's control, and final resolution of security concerns on the Korean peninsula. Any social or political crises in these areas will certainly involve Western and other actors in spheres China considers its exclusive national interests.

Human rights concerns remain on the agenda of U.S.-China bilateral relations. In the past, critics of a vigorous human rights diplomacy have argued that economic liberalization would eventually lead to political change. This has not happened. Although China has gotten richer, economic freedom has not led to political liberalization. China's achievements in the economic sphere represented a key component in Beijing's successful bid to host the Olympic Games in 2008. After securing the right to host the games, Chinese officials made promises to create an open and free environment. The Chinese government should now be held to those promises. Clearly, reliance on market forces alone will not secure progress toward human rights and political openness. Given the continuing critical human rights problems in China, the Commission concludes that these concerns must be raised at the highest levels and that U.S. officials should provide a consistent, candid, and coordinated message about human rights, including religious freedom, in their interactions with Chinese officials. The U.S. government should therefore continue to pursue broad-ranging policy options and discussions to ensure that progress on human rights and the rule of law remain core components of the bilateral relationship with China.

How the Chinese government responds to the aspirations of its own people is important for the future of China itself, for the flexibility and scope of future U.S.-China relations, and for China's standing in the international community. The United States should continue to help foster political, economic, and legal reforms in China. To this end, the Commission presents the following recommendations for U.S. policy to strengthen the protection of human rights, in particular the freedom of thought, conscience, and religion or belief, in China.

# Recommendations to Advance U.S. Human Rights Diplomacy with China

## I. Ending Human Rights Abuses in China

### 1. The U.S. government should urge the Chinese government to end severe violations of religious freedom and other human rights.

To this end, the U.S. government should urge the Chinese government to:

- end its current crackdown on religious and spiritual groups throughout China, including harassment, surveillance, arrest, and detention of persons on account of their manifestation of religion or belief; the detention, torture, and ill-treatment of persons in prisons, labor camps, psychiatric facilities, and other places of confinement; and the coercion of individuals to renounce or condemn any religion or belief;
- release all those imprisoned or detained on account of their manifestation of religious belief in contravention of international human rights standards; and
- establish a mechanism for reviewing cases of persons detained under suspicion of, or charged with, offenses relating to state security, disturbing social order, “counterrevolutionary” or “splittist” activities, or organizing or participating in “illegal” gatherings or religious activities. This mechanism should also review cases of detained or imprisoned religious leaders, many of whom have been charged with specious criminal offenses.

### 2. The U.S. government should raise publicly concerns about Chinese human rights abuses in multilateral fora, including at appropriate UN bodies or other international and multi-national fora, and ensure that preparations for such actions be made at appropriately high levels.

### 3. The U.S. government should fully implement the March 2005 bilateral agreement between the Chinese Ministry of Foreign Affairs and the U.S. Department of State. To this end, the U.S. government should urge the Chinese government to:

- issue a national decree guaranteeing the right of minor children to manifest their religion or belief and the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;
- undertake measures to ensure that this decree is implemented fully and fairly in all regions of the country and among members of all religious groups;
- provide a clear definition of “religious gatherings at home,” including the circumstances under which such gatherings are required to register as religious venues; and
- determine dates for a visit to China by the new UN Special Rapporteur on Freedom of Religion or Belief, in accordance with the terms of reference required by the Special Rapporteur.

## II. Building on Existing Efforts to Improve the Rule of Law in China

### 4. The U.S. government should make the promotion of the rule of law a greater priority of U.S. human rights diplomacy in China.

To this end, the U.S. government should continue to urge the Chinese government to:

- ratify and implement the International Covenant on Civil and Political Rights (ICCPR), which China signed in 1998;
- amend or repeal Article 306 of the Criminal Procedure Code, which has been used against attorneys who have vigorously defended the rights of their clients;
- amend or repeal Article 111 of the Criminal Procedure Code, which labels as “state secrets” any published information deemed embarrassing to the government, and raise the issue of China’s use of “state security” as a rationale for suppressing dissent in bilateral and multilateral discussion;
- investigate allegations of abuses of power by law enforcement officials and the use of torture to extract confessions in criminal cases, including the cases raised by the Commission with the Ministry of Justice and the Ministry of Foreign Affairs, report publicly on the results of the investigations, and punish those found responsible for such abuses; and
- end the use of government filters on Web sites and e-mail and remove official restrictions on Internet message boards and text messaging, including blockage of access to certain Web sites related to religion, belief, or human rights; revise the September 2000 State Council regulations on Internet Content Providers (ICP) and offer ICP’s clear and consistent guidelines for Web site content and usage to ensure that Chinese law and practice in this area conform to international standards on the freedoms of opinion and expression.

### 5. The U.S. government should appoint a new Counselor for Human Rights and the Rule of Law at the U.S. Embassy in Beijing.

China’s leadership has publicly committed to ratify the ICCPR and carry out legal and other reforms to enhance the rule of law in China. In order to support these goals and to manage the growing number of rule of law programs funded by the U.S. government, a new permanent Counselor for Human Rights and Rule of Law should be established at the U.S. Embassy in Beijing. This individual would identify and oversee projects that seek to enhance judicial independence; promote human rights awareness among the Chinese people; monitor direct elections at the village level; support judicial, legal, administrative, and regulatory reform in the areas of human rights, including freedom of religion; promote citizen participation in local government and civil society; and provide technical assistance to Chinese lawyers and officials to promote understanding of international human rights norms. The Counselor would

also ensure that U.S.-funded rule of law programs advance the priorities of U.S. human rights diplomacy, including the promotion of religious freedom, with China.

### 6. The U.S. government should vigorously promote international human rights norms in legal reform and religious affairs.

Because the Chinese government has publicly committed to promote the rule of law in the areas of criminal procedure and religious affairs and to review its laws and consider legal reforms as necessary to ratify the ICCPR, the U.S. government should support and encourage a wider and more effective array of activities in this area, including:

- programs with U.S. human rights experts and Chinese government officials, academics, representatives of religious communities, and non-governmental organizations on international standards relating to the right of freedom of religion or belief, and the importance and benefits of upholding human rights, including freedom of thought, conscience, and religion or belief;
- programs with international human rights experts and Chinese scholars, judges, attorneys, and government officials on reforms to the Chinese criminal justice system, including planned changes in the criminal procedure code, the role of defense lawyers, and international norms on criminal justice standards; and
- consultations between international human rights experts and Chinese officials and others on the compatibility of Chinese laws, regulations, and practices with ICCPR standards on freedom of religion or belief. These consultations should occur within the 2006 calendar year.

### 7. The U.S. Congress should authorize the State Department’s Human Rights and Democracy Fund to initiate new human rights and rule of law programs on freedom of religion or belief, targeting both religious and ethnic minorities.

Authorizations should be commensurate with ongoing rule of law programs funded by the State Department regarding the rights of Chinese workers, women, and public interest law training. In formulating all such programs described in recommendations 6 and 7, the Administration should consult with the Commission and with the Ambassador-at-Large for International Religious Freedom.

## III. Strengthening International Coordination for Technical Assistance Programs

### 8. The U.S. government should encourage international coordination of internationally funded technical assistance programs in China.

Mirroring coordination efforts of countries engaged in bilateral human rights dialogues with China, the State Department should organize regular meetings of the approximately 15 donor countries that currently fund technical assistance, rule of law, and economic development programs in China in order to coordinate programs already in place, share “best practices,” and to ensure that programs advance 1) Chinese compliance with its international human rights

commitments, and 2) the objectives of the bilateral and multilateral human rights initiatives with China.

#### IV. Expanding U.S. Outreach and Public Diplomacy in Tibet and Xinjiang

##### 9. The U.S. government should work to increase the U.S. diplomatic presence in Tibet and Xinjiang.

The U.S. government should urge the Chinese government to allow a U.S. government presence, such as a consulate, in Lhasa, Tibet and Urumqi, Xinjiang to monitor religious freedom and other human rights conditions.

##### 10. The U.S. government should strengthen its efforts to highlight conditions faced by Uighur Muslims and Tibetan Buddhists.

The U.S. government should continue to raise the profile of the conditions experienced by Uighur Muslims and Tibetan Buddhists by:

- addressing religious freedom and other human rights concerns in bilateral discussions;
- increasing the number of educational opportunities in the United States that are available to religious and other leaders from these regions, in order to enhance their understanding of religious freedom and other human rights according to international standards;
- creating legal clinics to assist those in areas of high concentrations of Uighur Muslim and Tibetan Buddhist populations to enforce their human rights under the Chinese Constitution and international law, building on existing programs that serve other ethnic minority areas in China;
- expanding ongoing assistance to civil society programs that promote Tibetan culture, language, and social welfare and develop similar programs for Uighurs;
- increasing the number and frequency of broadcasts in the Tibetan and Uighur languages by the Voice of America and Radio Free Asia; and
- using official U.S. delegations traveling in the region and other means to disseminate among local populations documents on international human rights standards in local languages.

#### V. Enhancing the U.S.-China Bilateral Human Rights Dialogue

##### 11. The U.S. Congress should ensure that congressional oversight of U.S.-China Bilateral Human Rights Dialogue is maintained.

Because the U.S.-China bilateral dialogue has been criticized in the past for not producing sufficient concrete results, the U.S. Congress should require the State Department to submit an annual public report to the appropriate congressional committees detailing issues discussed at the previous year's U.S.-China

human rights dialogue and describing progress made toward a series of "benchmarks" specified by Congress.

#### VI. Addressing the Conditions of North Koreans in China

##### 12. The U.S. government should continue to urge the Chinese government to protect North Koreans in China.

To this end, the U.S. government should urge the Chinese government to:

uphold its international obligations to protect asylum seekers by (1) working with the United Nations High Commissioner for Refugees (UNHCR) to establish a mechanism to confer at least temporary asylum on those seeking such protection; (2) providing the UNHCR with unrestricted access to interview North Korean nationals in China; and (3) ensuring that any migrants who are being returned pursuant to any bilateral agreement are not potential asylum seekers refouled in violation of China's obligations under the 1951 Refugee Convention and its 1967 Protocol;

- grant legal residence to the North Korean spouses of Chinese citizens and their children; and
- allow international humanitarian organizations greater access to North Koreans in China to address growing social problems experienced by this vulnerable population, including child and sexual trafficking and forced labor.

##### 13. The U.S. government should place a higher priority on working with China and other countries in the region to provide safe haven, secure transit, and clear resettlement procedures for North Koreans.

##### 14. The Department of State and the Department of Homeland Security should work with China, South Korea, and other countries in the region to resolve quickly the remaining technical and legal issues surrounding the resettlement of North Koreans in the United States and other countries.

## ENDNOTES

<sup>1</sup> The Commission traveled to Hong Kong in January 2004, at the invitation of the Hong Kong government.

<sup>2</sup> Attempts by Commissioners to gain further information about this incident were rebuffed. The Commission remains concerned about the safety and independence of Bishop Wei and other Chinese bishops and will continue to monitor this situation closely.

<sup>3</sup> United States Commission on International Religious Freedom, *Annual Report 2001*, "China", May 2001.

<sup>4</sup> ["PRC: Qinghai Enhances Religious Work to Guard Against Separatist Infiltration," Qinghai Daily, 8 September 04 (FBIS, 11 January 05). Ma Pinyan, "The Implementation of the Party's Religious Policy in Xinjiang," *Xinjiang Social Sciences*, No. 1, 2005, 49–55.

<sup>5</sup> "Devastating Blows: Religious Repression of Uighurs in Xinjiang," Human Rights Watch/Human Rights in China, March 2005.

<sup>6</sup> Nailene Chou Wiest, "Religious Groups Get More Room to Move," *South China Morning Post* (Online), 20 October 04. Wang Zuoan, "Establish the Idea of Managing Religious Affairs According to Law," *Chinese Religions*, 26 February 05 (FBIS, 26 February 05).

<sup>7</sup> See Regulations on Religious Affairs, Article 14.

<sup>8</sup> See Regulations on Religious Affairs, Article 20.

<sup>9</sup> The only exception to this were ad-hoc home meetings among family members that occurred on a non-regular basis to read the Bible and sing hymns, although the precise description of what was permitted varied and was nowhere contained in the new regulations or otherwise committed to written law or regulations.

<sup>10</sup> See Regulations on Religious Affairs, Articles 43, 44, 45. See also Congressional Executive Commission on China, "China's New Regulations on Religious Affairs; A Paradigm Shift," Transcript of Congressional testimony from March 14, 2005.

<sup>11</sup> See Regulations on Religious Affairs, Articles 41, 43, 46.

<sup>12</sup> See Regulations on Religious Affairs, Articles 39, 43.

<sup>13</sup> Criminal law provisions regularly used to prosecute those associated with unregistered religious activity include the Regulations on the Registration and Management of Social Organizations; the Law on Assembly, Procession and Demonstration, Regulations on Public Order Control and Punishment; the Law on Protecting State Secrets; and Chinese Criminal Code Articles 111, 277, 282, 300, 398. See: Human Rights Watch. "Appendix II: Laws and Regulations to Crackdown on Falun Gong," from *Dangerous Minds: China's Campaign Against the Falun Gong*, January 2002 (<http://hrw.org/reports/2002/china/China0102-09.htm>).

<sup>14</sup> The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them, Report issued by the U.S. Department of State Bureau of Population, Refugees and Migration pursuant to section 301 of the North Korean Human Rights Act of 2004 (P.L. 108-333) (March 11, 2005).

<sup>15</sup> Agreement Between the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China (December 1, 1995), (United Nations Treaty Series Vol. 1899-1-32371).

<sup>16</sup> 1961 China-DPRK agreement entitled "Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas."

<sup>17</sup> Minister Li invited the Commission to travel to the China-North Korea border on a return visit and provide him with information on both humanitarian need and ongoing human rights abuses.

<sup>18</sup> Philip Pan, "Hu Tightens Party's Grip on Power," *Washington Post*, April 24, 2005.

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