

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ANNUAL REPORT

2002

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

OCTOBER 2, 2002

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

81-881 PDF

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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**CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA
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Executive Summary

An evaluation of human rights and the rule of law in China reveals a complex picture of contradictory trends and isolated improvements, overshadowed by the Chinese government's persistent violations of fundamental, internationally recognized human rights. China's leaders have worked to develop a market-oriented economy while maintaining firm Communist Party control. Over the past two decades, China has made important strides toward building the structure of a modern legal system. Chinese citizens today enjoy greater individual autonomy and more personal freedom than they could have imagined during the days of Chairman Mao Zedong. Nevertheless, China's leaders still do not respect fundamental international standards on many human rights for the Chinese people.

A wide gap remains between the law on paper and the law in practice. The Chinese Constitution guarantees freedom of worship, assembly, speech, and other fundamental liberties, but provisions elsewhere in the Constitution undermine such freedoms. Furthermore, the political considerations of central and local leaders often trump constitutional and other legal protections. Chinese authorities often ignore legal protections for suspects and defendants in criminal cases. Although China has passed numerous laws and regulations on working conditions, these protections are frequently ignored by factory managers or go unenforced by local officials. This gap between law and practice is rooted, in part, in the Communist Party's desire to maintain unquestioned authority and power, the Chinese government's deliberate manipulation of the legal system, and a lack of public awareness of the law. The gap is also the result of official corruption, decentralization, and the sheer size of China.

Some believe that long-lasting change in China depends on the expansion of specific legal mechanisms that empower the Chinese people to assert their rights and interests. China's 20-year program of legal construction is accelerating as China implements its World Trade Organization (WTO) commitments requiring greater transparency in the lawmaking process, more effective procedures for challenging administrative action, and greater judicial independence. Although these commitments are aimed primarily at improving the legal framework for commercial transactions, they complement other government efforts designed to provide Chinese citizens with limited remedies for official misconduct. No one can be certain that these legal reforms will spur political liberalization and greater respect for human rights in China. However, they con-

tribute to an essential legal framework in which human rights may be protected.

The Congressional-Executive Commission on China

Congress created the Congressional-Executive Commission on China to monitor China's compliance with international human rights standards, encourage the development of the rule of law, establish and maintain a list of victims of human rights abuses, and promote bilateral cooperation. With Commissioners drawn from both the Congress and the Administration, the Commission has a special role and a unique vantage point in developing recommendations for policy and action. It seeks to mobilize members of Congress and encourage the Administration to act on human rights and rule of law issues, providing a forum where both branches can work together. The Commission's website (www.cecc.gov) informs Americans and others about these issues. The Commission also serves as a scholarly resource on China for the Congress and the Administration. In its annual report and at other times during the year, the Commission recommends legislation and policy and reports on progress in China. The Commission holds hearings, conducts visits to China, and meets with key decision-makers both in China and the United States.

This inaugural report presents the Commission's findings for its abbreviated first year of operation. It is the product of a variety of activities undertaken since February 2002, including three public hearings and twelve staff-led roundtables involving 63 witnesses, staff research and visits to China, and ongoing cooperation and exchange with government agencies and non-governmental organizations (NGOs). Through these activities, the Commission has focused on many of the core issues outlined in its statutory mandate, including religious freedom, labor rights, free flow of information, criminal justice, the rights of ethnic minorities, and the rule of law. The Commission will examine these issues and others in greater depth over the coming year.

This report also includes the Commission's initial set of recommendations for legislative and executive branch action. The Commission believes that the United States should continue to take a dual approach to promote both human rights and rule of law in China. Dialogue and high-level advocacy on human rights and cases of specific political prisoners should be coupled with enhanced financial and technical support for efforts to build a system based on the rule of law that will help protect the human rights of China's citizens. The Commission has highlighted its thirteen priority recommendations at the conclusion of this Executive Summary. These and other recommendations (41 in total) are discussed in greater detail in the body of the report.

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

Findings of the Commission

China has worked vigorously over the last two decades to modernize its economy and improve living standards. To provide a foundation for market reforms and to attract foreign investment, China has undertaken an unprecedented program of legal construction. In its effort to rebuild a legal system left in shambles after the turbulent Cultural Revolution (1966–1976), China has promulgated hundreds of laws, revamped its court system, engaged in a nationwide effort to professionalize and expand its corps of lawyers and judges, and undertaken a host of other reforms.

These reforms have had a profound effect on Chinese society and government. Economic and political power has been gradually shifting from Beijing to provincial and local governments, making it more difficult for the central government to implement many legal reforms from the top down. One result is significant regional variation both in the pace of legal change and in the protection of human rights. The transition from a planned to a market economy has triggered the collapse of inefficient state-owned enterprises, contributing to rising unemployment and a breakdown in social services. Crime and corruption have grown at alarming rates. At the same time, state control over many aspects of daily life has weakened, and citizens have begun to use the law to protect their own interests. Nevertheless, farmers, workers, and religious practitioners are also increasingly taking their dissatisfaction to the streets, demanding their rights through protests and demonstrations. The Chinese government has consistently suppressed these efforts and, at times, arrested the protest leaders.

Despite deepening economic reforms, China's authoritarian government has resisted calls for political liberalization and has made little progress on improving civil and political rights. Although the Chinese government is seeking to ease widespread anger over rampant official corruption by requiring the direct election of village leaders and encouraging official accountability, the Party has overshadowed such promising steps by continuing to suppress any threat to its unchallenged grip on power. The violent suppression of peaceful pro-democracy protesters in Tiananmen Square in 1989 set in motion a renewed period of intolerance of political dissent. The current Chinese leadership appears determined to modernize the economy while keeping a tight lid on political dissent, continuing firm Party rule, and maintaining its vision of social stability.

China's leaders are keenly aware of the role that labor unions played in undermining Communist Party rule in Eastern Europe and are determined to prevent similar challenges in China. The Chinese government forbids independent trade unions, and labor leaders who have tried to organize independent unions have been detained or imprisoned. All unions are subject to the supervision of the All-China Federation of Trade Unions (ACFTU), which is tightly controlled by the Communist Party and serves the interests of the state and the Party. There is no right to strike. Regulations on workplace health and safety, as well as on work hours and overtime pay, are often ignored. The massive migration from rural to urban areas and the increased unemployment from shrinking and

closing state-owned enterprises have seriously exacerbated worker unrest.

The Chinese government and the Communist Party also attempt to maintain strict control over religious groups. All temples, mosques, churches, and monasteries in China are required to register with the state and submit to the supervision of government-controlled religious umbrella organizations. These organizations approve the selection of religious leaders, vet religious texts, and oversee religious education. In many regions, Chinese authorities have engaged in a systematic campaign to root out underground and unsanctioned religious groups and branded some as dangerous "cults." Numerous religious leaders have been detained and imprisoned in this effort. In other regions, authorities have interfered less in unsanctioned religious activity.

In enforcing their vision of "national unity," China's leaders have made ethnic minorities a target of tight control as well. Although the Chinese Constitution grants nominal autonomy to many ethnic minorities, they are not able to exercise this autonomy in practice. A small number of Uighur separatists has committed acts of terrorism, and one Uighur group, the East Turkestan Islamic Movement, has recently been added to a U.S. list of foreign organizations that support terrorism. However, many Tibetans and Uighurs who have protested peacefully for greater autonomy or, in some cases, independence, have been imprisoned and tortured. The Chinese government has not distinguished clearly between separatism and legitimate political, cultural, and religious expression. Thus, its efforts to control ethnic minorities have led to restrictions on the religious and cultural practices of Tibetan Buddhists and Uighur Muslims, including a recent ban on Uighur-language instruction at Xinjiang University and a large public burning of Uighur-language books. China continues to forbid open expressions of loyalty to Tibet's exiled spiritual leader, the Dalai Lama, whom the Chinese government regards as a separatist.

The Chinese Constitution guarantees freedom of assembly, but demonstrations must be approved in advance by police and permission is rarely granted. Authorities often break up demonstrations, such as the worker protests in Daqing, Liaoyang, and Fushun earlier this year, using a combination of detention of demonstration leaders, minor concessions to demonstrators, and, if necessary, force. After a peaceful demonstration by more than 10,000 Falun Gong members in 1999 outside the central leadership compound in Beijing, the Chinese government banned the spiritual movement and launched a nationwide campaign to eradicate "heretical cults." This campaign has resulted in the detention of thousands of practitioners and the torture and death of many Falun Gong leaders and members. The crackdown has led to intensified persecution of other groups as well, including underground Protestant and Catholic "house churches."

Information control in China remains strict. In recent years, authorities have allowed journalists to write about some cases of official malfeasance as part of a government attempt to crack down on corruption. Newspapers and magazines have been quick to capitalize on this opportunity, feeding a public desire for investigative reporting. However, the government still prohibits direct criticism

of the Communist Party and limits reporting on topics it deems sensitive, including workers' protests, rural unrest, Falun Gong, corruption at high levels, and the 1989 Tiananmen Square crackdown. At the same time, the limits of reporting are often arbitrary and unclear. Journalists who cross these undefined lines can face demotion, job loss, and, in some cases, imprisonment. Chinese authorities regularly block foreign government radio and television broadcasts into China.

Chinese leaders have embraced the Internet for its technological and commercial benefits, and there has been exponential growth in the on-line community. But they have also gone to great lengths to control Internet content and access. Authorities regularly block international news websites and have imposed strict registration and content requirements on Internet Service Providers (ISPs). Security networks monitor Internet traffic. In the past year, the government has intensified efforts to control the Internet, recently blocking the AltaVista and Google websites. The government requires Internet businesses to police their customers, and more than 100 Internet businesses, including Yahoo's China subsidiary, recently signed a government-sponsored pledge, agreeing to monitor users and remove "harmful" information. Under Chinese law, any person who posts content that the government has not approved is subject to potential fines and imprisonment. For example, it is illegal to post anything that harms social stability, a vague phrase that authorities use as a pretense to silence those who use the Internet to criticize the Communist Party or its policies.

China's criminal justice system provides the machinery for enforcement of many of the social and political controls discussed above. Despite revisions to the Criminal Procedure Law and Criminal Law, the impact of such reforms on the protection of criminal suspects and defendants has been minimal. China's criminal justice system remains subject to manipulation by authorities. Torture is illegal but remains widespread, and confessions coerced by torture are still admissible as evidence in criminal cases. Chinese authorities frequently ignore legal provisions that guarantee criminal defendants access to lawyers. Criminal defense attorneys who represent their clients zealously may be subject to intimidation and, in some cases, detention and criminal prosecution, particularly in politically sensitive cases. Undergirding the government's manipulation of the criminal process is Party control of the judiciary. Inadequate legal training and the generally low level of education of judges in China are also problems.

In many criminal cases, Chinese authorities ignore even the minimal protections that Chinese law provides. During China's periodic Strike Hard anti-crime campaigns, local criminal justice authorities, under pressure from the central government to produce convictions, often flout basic criminal procedures (for example, by denying defendants access to lawyers) in order to obtain quick convictions. Many Chinese are detained for long periods without trial. The police have the administrative power to send individuals to "re-education through labor" for up to three years, with a possible one-year extension, for a variety of offenses that include prostitution, drug possession, and "disturbing social order." Re-education through labor is frequently used in political cases to circumvent the

formal criminal justice system, a practice of grave concern to the international community.

United States Action on Human Rights and the Rule of Law

The Chinese people themselves will ultimately determine China's direction and the degree to which the Chinese government respects fundamental human rights. The Commission believes that the United States should work to provide China's government and citizens with an enhanced understanding of the law and with a range of legal tools to protect human rights. The United States can achieve this goal in part by supporting legal development programs in China. U.S. NGOs have been at the forefront of these efforts. However, the U.S. government lags far behind other nations in providing technical and financial assistance for rule of law programs in China. This gap represents a missed opportunity by the United States to assist China's reformers.

Human rights advocacy gives hope to those in China who risk their personal liberty, and even their lives, by demanding internationally recognized rights and freedoms. While engaging China through trade, political dialogue, and legal development initiatives, the United States must continue to pressure the Chinese government on both broad human rights and rule of law issues and individual cases of political prisoners. While the United States extends the hand of friendship, it will continue to support those who suffer persecution for asserting their internationally recognized human rights.

Priority Recommendations

Based on the findings presented in this report and the Commission's belief that the United States must continue to pursue a dual policy of high-level advocacy on human rights issues and support for legal reform efforts, the Congressional members of the Commission highlight the following 13 priority recommendations to the Congress and the President:

- The Commission recommends that the President, senior Executive Branch officials, and members of Congress continue to raise human rights issues, as well as individual cases of victims of human rights abuses, including those discussed in this report, whenever they meet with Chinese government officials. The Commission further recommends that the Administration include Commission leaders in any future Presidential visit to China.
- The Commission recommends that the Congress and the Administration expand U.S. government efforts to disseminate human rights, worker rights, and rule of law-related information in China through radio, television, and the Internet.
- The Commission recommends that the Administration continue to work multilaterally to encourage China to cooperate fully with the UN Special Rapporteur on Torture.
- The Commission recommends that the Congress appropriate funds to an American university, NGO, or other organization to train individuals from U.S. faith-based or other organizations with links to religious groups in China to assist Chinese religious leaders in asserting their existing right of free-

dom to practice religion under the Chinese Constitution and international human rights documents.

- The Commission recommends that the Administration sponsor programs with key Chinese officials and policymakers to examine the role of religion in society and to promote the concept of religious tolerance.

- The Commission recommends that the Congress and the Administration provide assistance to legal clinics to expand the availability of legal representation in cases involving worker rights, and that special assistance be provided to legal aid centers in communities with large numbers of migrant workers, and migrant women in particular, to build expertise and capacity in resolving the issues of concern to this vulnerable group.

- The Commission recommends that the Administration facilitate meetings of U.S., Chinese, and third-country companies doing business in a specific locality and industry in China to identify systemic worker rights abuses, develop recommendations for appropriate Chinese government entities, and discuss these recommendations with Chinese officials, with the goal of developing a long-term collaborative relationship between government and business to assist in improving China's implementation of internationally recognized labor standards.

- The Commission recommends that the Congress appropriate funds for suitable U.S. institutions to conduct programs for Chinese criminal defense lawyers on the role of the criminal defense bar outside of China and promote exchanges between Chinese and U.S. criminal defense lawyers.

- The Commission recommends that the Congress authorize the development of programming in popular legal education for groups in China, such as farmers in remote areas and migrant workers, who are unaware of their rights under existing law.

- The Commission recommends that the Congress appropriate funds and earmark them for the Commercial Law Development Program (CLDP) to implement a commercial rule of law training program in China, as authorized by the U.S.-China Relations Act of 2000.

With respect to specific ethnic problems considered by the Commission this year,

- The Commission recommends that the Congress and the Administration continue to urge Chinese leaders to engage in substantive dialogue with the Dalai Lama or his representatives.

- The Commission recommends that the Congress appropriate increased funding for NGOs to develop programs that improve the health, education, and economic conditions of ethnic Tibetans.

- The Commission recommends that the Congress and the Administration continue to emphasize that the war against terrorism is not an excuse for suppression and violations of human rights of ethnic Uighurs in Xinjiang, and recommends that the Congress and the Administration provide funding for NGOs to develop programs that focus on preserving the Uighur culture and language.

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

This report was approved by a vote of 18 to 5.¹

1. Role and Purpose of the Commission

LEGISLATIVE MANDATE

The United States-China Relations Act of 2000² created the Congressional-Executive Commission on China ("the Commission"), established its mandate, and set rules for its operation. (See the Commission's website at www.cecc.gov for the full text of Title III of the statute.) Section 302 describes the functions of the Commission, which may be summarized as follows:

- Monitoring the acts of the government of China to assess its compliance with or violation of international human rights standards, in particular, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
- Monitoring the development of the rule of law in China, with special focus on progress toward development of democratic institutions; reforming legal procedures and processes; improving the transparency of the legal system; treating individuals equally before the law without regard to their citizenship; establishing an independent judiciary with appellate review; and examining the extent to which Chinese laws are drafted and administered in consonance with the requirements of the International Covenant on Civil and Political Rights and other international standards;
- Monitoring and encouraging bilateral cooperation between the U.S. and Chinese governments and private sector organizations in both countries. The focus should be on programs that improve the ability of Chinese citizens to exercise the human rights guaranteed to them in the Chinese Constitution and under international norms of human rights, as well as programs that support the development of the rule of law in China;
- Establishing and maintaining contacts with relevant non-governmental organizations (NGOs) and cooperating with the Special Coordinator for Tibetan Issues at the Department of State;
- Reporting to the President and the Congress each year on the issues in the legislative mandate, and making recommendations for executive or legislative action when necessary; and
- Compiling and maintaining lists of persons who have suffered from Chinese government abuses as a result of seeking to exercise rights guaranteed to them by the Chinese Constitution and existing laws, as well as internationally recognized human rights.

For a complete list of the Commissioners and links to their home pages, please see the Commission's website (www.cecc.gov).

THE ROLE OF THE COMMISSION

The Congressional-Executive Commission on China focuses on human rights and rule of law issues throughout the year. Unlike most other government entities, the Commission's members come from both the legislative and executive branches, providing it with a special role and a unique vantage point on China. The Commission seeks bipartisan Congressional action and encourages Administration activities whenever it can be effective on specific China human rights and rule of law issues.

The Commission recommends legislative and policy action whenever appropriate. Its recommendations normally appear in the annual report to the Congress and the President, laying out an action plan for U.S. policy toward China on issues related to human rights and the rule of law. The Commission works throughout the subsequent year to promote the implementation of these recommendations.

The Commission also serves as a permanent forum for debate, information, and education on key issues in U.S.-China relations. Through its public hearings, issue roundtables, interaction with senior Chinese officials, NGOs, business groups, and academics in both countries, multilateral contacts, and staff research papers, the Commission provides the Congress, the Administration, and the public with current, accurate, and detailed information on human rights and rule of law issues in China. Through its website, the Commission informs not only Americans but also Chinese about human rights and rule of law issues in China.

A full-time staff monitoring and analyzing human rights and rule of law issues serves as a resource for both the Congress and the Administration. The staff includes experts in the areas of human rights, religious freedom, legal reform, worker rights, Tibet, minority affairs, the Internet, media freedom, and commercial law and the WTO. They are available for briefings for members of Congress, their staff, and Administration officials, and can field inquiries on issues related to human rights and legal reform in China.

The Commission will design and maintain a registry of prisoners of conscience in China with a view toward assisting members of Congress, other government officials, and NGOs in the goal of obtaining the release of these prisoners.

Commissioners plan to visit China regularly to exchange views with Chinese officials, legislators, academics, and business leaders and to make firsthand assessments of human rights and rule of law developments in China's rapidly changing political, social, and economic environment. Staff visits designed to build relationships, gather information, and understand the actual situation in China take place on a regular basis.

Through all these activities, the Commission examines the complex forces at work in contemporary China that both favor and resist change, assesses the impact of specific U.S. policies and programs on the reform process in China, and recommends actions that assist in improving human rights and the rule of law in China.

2. Human Rights in the Context of the Rule of Law

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

—Preamble to the Universal Declaration of Human Rights

Human rights cannot be enjoyed without legal structures through which to protect such rights. In theory, the Chinese Constitution provides for a number of the fundamental human rights that are set forth in international human rights documents, such as the right to peaceful assembly.³ Other provisions of the Chinese Constitution undermine such rights, however, and in practice Chinese citizens do not enjoy many of these fundamental rights in their daily lives.⁴ Chinese citizens need legal institutions and mechanisms through which they can enforce their constitutionally prescribed rights and other rights and protections established under law.

As indicated in Sections 302(a) and 302(c) of the Commission's statutory mandate, a rule of law system includes both substantive and structural elements. The substantive elements consist of fundamental human rights and freedoms, such as those listed in Section 302 of the Commission's mandate, including:

- freedom of the press;
- freedom of religion;
- freedom of assembly;
- the right to due process and assistance of counsel in criminal trials;
- the right to participate in systems of democratic governance; and
- internationally recognized worker rights.

The principal structural elements include:

- meaningful limits on the arbitrary exercise of power by state actors supported by processes and institutions through which citizens can challenge state action;
- predictability (*i.e.*, consistent and fair application and enforcement of the law);
- transparency (*i.e.*, laws and lawmaking processes that are clear, public, and accessible);
- equal application of the law to all individuals; and
- an independent judiciary.

The Commission views the development of structural rule of law elements as an essential foundation for the protection of fundamental human rights in China. No one can ensure that the development of the structural elements will lead to greater respect for human rights in China. Authoritarian governments have created legal systems that enforce contract and property rights but still allow flagrant violations of individual rights. However, the development of the structural rule of law elements has contributed to the expansion of substantive rights and freedoms in some political transitions, such as those experienced in South Korea and Taiwan. More important, human rights cannot be effectively protected if the structural elements are not in place.

Given this interplay between protection of human rights and the rule of law, the United States must pursue a dual approach as it seeks to improve human rights conditions in China. As it pressures the Chinese government to protect fundamental human rights in practice, the United States must assist China in strengthening the independence of its judiciary, improving transparency in law-making, and enhancing processes for challenging state action so that China develops a legal framework in which human rights are recognized and protected.

3. Trends in the Development of Human Rights and Rule of Law in China

The Chinese Communist Party's insistence on maintaining its monopoly on power has bled much of the meaning from post-Mao constitutional promises to govern according to law⁵ and to recognize certain fundamental human rights.⁶

Since the Revolution of 1911, various Chinese governments have moved in the direction of adopting elements of a system based on the rule of law. The Republic of China introduced a rules-oriented legal system based on European civil codes in the 1920s, but civil war and the Japanese occupation prevented implementation of the codes in much of the country. In 1948, the Republic of China voted in the UN General Assembly to adopt the Universal Declaration of Human Rights, which expresses a global consensus on the need for states to recognize minimum standards of human rights in the treatment of their citizens.

After 1949, the People's Republic under Mao Zedong abolished existing law and established a Stalinist legal structure emphasizing communist ideology over human rights and the rule of law. During the turbulent years of the Cultural Revolution (1966–1976), respect for the idea of individual human rights, never strong in socialist states, reached a new low. Radical Marxist rhetoric during that decade articulated “bourgeois rights” as a key target, attacking the very idea of law as a tool to restrain the righteous indignation of the masses. Big character posters and slogans urged the people to “smash the Public Security Bureau, the Prosecutors, and the Courts” and proclaimed “the more chaos, the better.”⁷

Origins of Reform

The staggering human and social costs of the Cultural Revolution ultimately resulted in a moderate faction of the Party, led by Deng Xiaoping, coming to power in 1978. Deng introduced an era of social liberalization, economic pragmatism, and legal reform. The atmosphere of change in that moment encouraged some in China, including Deng himself, to consider reform within the political sphere as well. In a 1980 speech, Deng said democracy was needed to allow the people to “supervise political power at the basic level.”⁸ The Central Committee of the Party stated, “There has to be sufficient democracy before correct centralization can be conducted.”⁹ The Party's understanding of the term “democracy,” however, did not include the notion of political criticism or opposition, as demonstrated by the arrest of democracy advocate Wei Jingsheng for his critique of Deng's leadership¹⁰ and the subsequent harsh crack-

down on the “Democracy Wall Movement” in 1979. It became clear that those in control of the government and the Party did not intend to abandon the Party’s monopoly on power.

Within the constraints imposed by the authoritarian one-party system, the process of bringing regularity and predictability to government operations in China has accelerated since 1978. In describing this legal reform process, Professor William Alford of Harvard Law School told the Commission at its first hearing, “Over the past quarter century, the PRC has been engaged in the most concerted program of legal construction in world history.”¹¹

The first steps in establishing the new “socialist legality” included the passage in 1979 of key “organic laws,” formalizing the institutions of the people’s courts, the people’s procuratorate (China’s prosecutorial authority), local people’s congresses, and local people’s governments.¹² The same year saw the resurrection of the Ministry of Justice, abolished in 1959, and legal studies departments and programs at the university level. Many outside observers may not realize that these institutions—the basic requirements of a system based on laws—are so recent. New national legislation also included two important economic laws to facilitate the transition to a “socialist market economy,” the Chinese-Foreign Equity Joint Venture Law, designed to attract foreign investment without losing Chinese control over business decisions and profits, and the Economic Contract Law, aimed at eliminating some of the inefficiencies of central planning by allowing state-owned enterprises to assume responsibility over their mutual business relationships.¹³

In the area of the rights of criminal defendants, this early reform legislation included China’s first formal Criminal Law and Criminal Procedure Law. Although the Criminal Law defined and assigned punishment to a list of specific crimes, the Law failed to fulfill the basic notice requirement of a rule of law system in that it included the notorious Article 79, a catch-all provision for punishing unspecified acts as “crimes” by analogy to the most nearly applicable crime defined elsewhere in the Law. In addition, the first chapter of the 1979 Criminal Law focused on the vague political category of “counter-revolutionary” crimes, defined as “all acts endangering the People’s Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system.”¹⁴ The 1979 Criminal Procedure Law limited the role of the trial court to confirmation of the procuratorate’s pre-trial determination of guilt, turning trials into propaganda displays centered on the drama of the defendant’s confession and repentance rather than an arena for fact-finding and justice. Defense counsel’s most important role under the 1979 Criminal Procedure Law was the presentation of mitigating factors relevant to the sentence.

Despite these severe limitations, and considering the low starting point, the two laws moved in the direction of recognizing the rights of criminal defendants as listed in Article 14 of the International Covenant on Civil and Political Rights and in Section 302 of the Commission’s mandate. Another important development in the Constitution (Article 33) and the Criminal Law (Article 4) was the declaration that all citizens were to be equal before the law—a basic requirement of the rule of law expressed in Article 7 of the

Universal Declaration of Human Rights. These changes were a relief to those who remembered how criminal liability under Mao depended less on whether a crime had been committed than on whether the defendant fell on the correct side of the shifting boundary defining “class enemies.”¹⁵

Treatment of Dissidents

Trials of dissidents and others jailed or exiled by the Party in subsequent years continue to demonstrate that formal enunciation of civil and political rights in the Chinese Constitution and laws mean little when the government considers the defendant to be a political threat. Early examples include those who spoke out for democracy together with Wei Jingsheng, in the late 1970s. Xu Wenli was jailed for 12 years and then released, only to be tried and sentenced to 13 more years in 1998 for his participation in founding the China Democracy Party. Others persecuted for speaking out against government abuses include the renowned investigative reporter Liu Binyan, a Communist Party loyalist who was purged from the Party three times: in 1957 for being a “rightist”; during the Cultural Revolution for being a “counter-revolutionary;” and finally in 1987, for “bourgeois liberalism.” The famous scientist Fang Lizhi, vice president of the Anhui University of Science and Technology, was fired and expelled from the Party for publicly arguing that democracy was the prerequisite for the full development of science in China.

The split in Party leadership between reform-oriented liberals like Hu Yaobang and Zhao Ziyang and hard-line conservatives was resolved by the hard-liners’ decision to unleash the People’s Liberation Army on student pro-democracy demonstrations, which were centered in Tiananmen Square in 1989. Many leaders and supporters of the student movement, like Wei, Liu, and Fang, now live in exile. Others, like Chen Ziming, who currently lives under house arrest in Beijing, were tried and jailed in China. Among those treated most harshly in the aftermath of the killings in and around Tiananmen Square were the ordinary citizens and workers who had dared to join the demonstrations in support of the students. Of these, Han Dongfang, who tried to set up an independent workers’ federation in Tiananmen Square during the demonstrations, barely survived two years of imprisonment and was finally released because of severe tuberculosis, which was ultimately treated in the United States. When he attempted to return home, he was barred at the border from re-entering China. Now he publishes the *China Labour Bulletin* in Hong Kong and hosts a talk show on Radio Free Asia, receiving calls from people in China about the practical problems faced by workers in the emerging “socialist market economy.”

Along with Xu Wenli and Chen Ziming, individuals currently imprisoned for political expression include China Democracy Party founders Qin Yongmin and Wang Youcai, both sentenced with Xu to long prison terms in December 1998. The same month, labor activist Zhang Shanguang was sentenced to 10 years for describing farmers’ protests to Radio Free Asia. Most recently, Li Dawei, called by some the “cyber dissident,” was sentenced on June 24, 2002, to 11 years in prison for “subverting state power” by downloading pro-democracy texts from the Internet and contacting

“reactionary” organizations abroad. Finally, in an ominous development for the rule of law in China, the prominent criminal defense lawyer Zhang Jianzhong has been arrested for allegedly making a “false statement” in a commercial case. Detained since May 3, 2002, Zhang has been allowed only minimal contact with his family and has met only once with the lawyer he hired. The lawyer his family hired on his behalf has not been permitted to meet with Zhang.

This tale of harsh injustice meted out to political defendants reflects two fundamental flaws in Chinese law—the absence of an independent judiciary willing and able to withstand pressure from the Party, and the lack of an independent bar to defend those targeted by the Party. Abuses by China’s law enforcement and security apparatus present a particularly severe obstacle to the implementation of the internationally recognized human rights of criminal defendants. Police and security agencies, for example, routinely disregard legal limits on the detention and interrogation of criminal suspects and commonly resort to torture and other forms of physical and psychological abuse.

The Growth of Individual Autonomy: Long-term Perspectives

In comparison with the political domain, a more positive picture emerges when one contrasts the economic and social opportunities enjoyed by ordinary individuals in the China of today with the bleak decades before Mao’s death. A distinct shift toward greater individual autonomy is apparent. Social controls exercised through China’s state work units or *danwei*, which once held enormous power over the lives of individual workers, have relaxed as economic reform stimulates growth in the private sector and the state shifts some of the responsibility for social services to local governments. With the decline of the work assignment system, citizens now exercise more choice in employment, although this freedom may seem less attractive now that guarantees once inherent in the socialist “iron rice bowl” are being swept away by massive lay-offs.

The once-restrictive *hukou* system preventing citizens from moving away from their place of registration of permanent residence is weakening. Many city-dwellers now own their residences. In the countryside, farmers have greater say in land use and management, areas previously micromanaged by the communes. For the time being, the intrusive role of neighborhood committees and local party branches has diminished, and citizens are willing to speak more openly about some topics long avoided as too risky, such as local corruption and exorbitant taxes and fees. Unfortunately, the persistent absence of clear definition of the boundaries of politically and legally acceptable speech, particularly under the Law on Protecting State Secrets¹⁶ and the State Security Law,¹⁷ continues to chill the development of true free speech in China.

Many in China and elsewhere believe that the best hope for long-lasting change lies in the expansion of specific legal mechanisms through which the Chinese people are empowered to assert their rights and interests. The state has encouraged this development to a limited extent, if only to rein in its unwieldy and often corrupt bureaucracy. China’s 1989 Administrative Litigation Law, which establishes a procedure for challenging certain administrative ac-

tions, and the 1994 State Compensation Law, under which citizens may seek compensation for a range of illegal official acts, though flawed in some respects, provide basic legal mechanisms through which state action may be challenged.¹⁸ As rapid economic change exposes Chinese consumers to a wide array of new products, public anger at the proliferation of flawed or dangerous goods has led to the creation of the Chinese Consumers' Association and the enactment of frequently-used consumer protection laws.¹⁹

Statistics on the numbers of different kinds of cases filed show that growing numbers of individuals are using the law to protect their personal and property interests. From 1986 to 2000, the number of civil and economic suits handled annually in Chinese courts increased from around 1.3 million to nearly 5 million.²⁰ Such numbers suggest a trend toward legal empowerment in China, at least in areas not considered a threat to state or party power. While the legal aid system is still in its infancy, Article 42 of the 1996 Lawyers Law imposes an affirmative duty on lawyers to furnish legal aid to the indigent.²¹ The Ministry of Justice, many law schools and universities, and a number of foreign and domestic NGOs have set up networks of legal aid centers to meet some of these demands.

New Social Tensions and the State's Desire to Maintain Stability

Economic reforms have given rise to new social tensions and have undermined the legitimacy of the Party. A fiscal system that permits provincial governments to fund their operations through "off-budget" revenues has tempted many local officials to divert unregulated monies into their own pockets. As local revenues grow, local governments attain a measure of fiscal independence, making it difficult for Beijing to implement fully legal reforms and compromising the national uniformity of legal development.

Crime and corruption have grown at alarming rates, leading to local lawlessness and increasingly angry citizen demands for redress against malfeasance and extortionate levies by officials. The central leadership has responded to public perceptions of a crime wave with national campaigns that encourage the police to disregard protections provided by the criminal procedure laws under the slogan "strike hard against crime." The shift to a market economy and the closure of many failing state-owned enterprises have created a mushrooming population of laid-off workers demanding pension and severance packages owed them by former employers. Massive demonstrations have erupted as outrage and anxiety rise. Such problems, together with the government's efforts to control the associated tensions, have widened the gap between legal rights as they exist on paper and the ability to exercise those rights in practice.

Despite increasing willingness to use the rhetoric of "rule of law" and "human rights," the government and the Party's desire to maintain control undermines the promises of the Constitution in the vital areas of the rights to freedom of association, religion, and expression. New social organizations (roughly equivalent in function to NGOs) must find government sponsors, and religion can only be practiced in institutions registered by the state. Restrictions on free expression remain severe, and the government con-

tinues to suppress demonstrations and other challenges to state power, including efforts to organize independent trade unions. In these areas, new regulations and government policy and practice actually roll back freedoms enjoyed under the looser policies of the 1980s.

In summary, two trends have emerged since Deng Xiaoping's reforms began in 1978. On the one hand, Chinese citizens today enjoy more individual autonomy and freedom to pursue economic opportunity and acquire certain property rights, and do so under a more developed legal system and with less interference from the state, than was imaginable in 1978. On the other hand, they are still far from enjoying many of the fundamental rights and freedoms set forth in the Universal Declaration of Human Rights and other international human rights instruments.

4. Commission Activities in 2002: Issues and Recommendations

During this abbreviated initial year of activities, the Commission's focus was to establish a framework within which to examine human rights and the rule of law in China, set a baseline on which to make judgments about progress in the future, and make an initial set of recommendations to the Congress and the Administration. This section describes those areas that the Commission was able to examine in-depth during this period. Section 5 provides an illustrative list, although not an exhaustive one, of additional issues on which the Commission will focus over the coming year.

RELIGIOUS FREEDOM

President George W. Bush told students at Beijing's Qinghua University in February 2002, "Freedom of religion is not something to be feared. It's to be welcomed."²² In his meetings that month in Beijing with President Jiang Zemin, President Bush urged the Chinese leader to grant religious liberty, free jailed Catholic clergy, and pursue dialogue with the Vatican. Nevertheless, despite guarantees in the Chinese Constitution protecting "normal religious activity,"²³ the Chinese government continues to view religious groups as a threat and places strict limitations on religious practice and organizations. However, Beijing's heavy hand has failed to quash what has been called an "astonishing revival" in religious practice and belief in China.²⁴

The Chinese government officially recognizes five religions: Buddhism, Taoism, Islam, Catholicism, and Protestantism. National regulations require that religious organizations and individual places of worship register with the Religious Affairs Bureau, a ministry-level component of the Chinese government.²⁵ All mosques, churches, temples, and monasteries are forced to submit to state-controlled umbrella organizations that approve the selection of religious leaders, vet religious texts, and oversee religious education. These include the Buddhist Association of China, the China Taoist Association, the Islamic Association of China, the Patriotic Association of the Catholic Church in China, and the Three-Self Patriotic Movement Committee of the Protestant Churches of China. (Islam and Tibetan Buddhism are addressed in the report's Xinjiang-

Uighur and Tibet sections, respectively.) Local regulations often are more detailed and restrictive than their national-level counterparts. Foreign domination over religion in China is strictly forbidden.²⁶

Many religious practitioners in China reject the validity of worshipping in religious institutions that fall under the auspices of a government controlled by the officially atheist Communist Party. As a result, underground churches and other unsanctioned religious groups are experiencing dramatic growth, despite the risk of punishment of members. Approximately 13 million Protestants are part of China's state-sanctioned church, but analysts estimate that 50 million or more Protestants worship in unregistered house churches.²⁷ About four million Catholics attend the official church, but perhaps twice that many gather in unregistered churches.²⁸ Other religious movements, with varying degrees of orthodoxy, are also growing dramatically.

In addition to laws and regulations making it illegal to participate in unregistered churches, the Chinese government in recent years has begun labeling many unsanctioned religious groups as "cults." Anti-cult measures enacted in 1999 initially were directed at Falun Gong, a meditation and exercise movement that some critics in China and elsewhere say exhibits mystical overtones. Falun Gong startled China's leaders with a massive demonstration outside the Zhongnanhai leadership compound in Beijing in April of that year. The ban on cults now extends to other groups and movements.

The anti-cult regulations allow local authorities to classify unsanctioned religious practices as threats to social stability. Those who engage in such religious activities can be arrested as criminals and charged with disrupting social order.²⁹ Because local officials often have the discretion to determine which religious practices are "cult-like," implementation of the laws is often arbitrary. Some localities adopt a more tolerant approach to private religious practice; others are repressive. David Aikman, a foreign affairs consultant, told a Commission roundtable that "Hunan Province, for example, which has seen the largest Protestant growth of any part of China in the last 20 years, is particularly harsh upon the unregistered leadership groups in its midst."³⁰

One illustration is the case of Pastor Gong Shengliang, founder of the banned South China Church. The unregistered Christian group he founded has grown rapidly over the course of a decade and now has an estimated 50,000 members in eight provinces in eastern and central China.³¹ Gong was sentenced to death on December 5, 2001, on charges of "establishing [a] cult organization."³² He also was accused by authorities in Hubei Province of "raping women and violating social order,"³³ charges that Paul Marshall of Freedom House told the roundtable were "apparently trumped-up."³⁴ Gong's execution originally was scheduled for January 5, 2002, but has been delayed due to international pressure so that he could appeal. Gong's niece, Li Ying, also a church leader, was given a death sentence, which was suspended for two years.³⁵

Local police often deem as "cult-like" practices that are accepted in mainstream religions in other Asian and Western nations. Praying for the sick, printing religious material, and conducting ecu-

menical relations between churches have all been cited as illegal activities in China. "The result of these new laws and the move against so-called cults has been a marked deterioration in religious freedom in China over the last year," Marshall told the roundtable.³⁶

The Committee for Investigation on Persecution of Religion in China earlier this year released secret documents smuggled out of China that allegedly detail government repression of unauthorized religious groups. The documents, issued between April 1999 and October 2001, indicate a systematic and determined effort by officials at the national, provincial, and local level to suppress religious practice carried on outside of government control. Measures to be taken against banned religious groups include surveillance, interrogation, arrest, and confiscation of property. One document warns that some religious groups had formed political front organizations in an attempt to evade the crackdown: "Discover them quickly, strike them when they appear, and decisively punish them by law, so as to destroy them in the cradle." Falun Gong, the Unification Church, and underground Protestants and Catholics are among the religious groups cited.³⁷

The documents reveal a suspicion within the Chinese leadership that Western nations supported democratic and religious freedoms in China as part of an effort to foment unrest, especially as China prepared to enter the World Trade Organization. In addition, Chinese authorities accuse the Vatican of "waiting for an opportunity" to incite religious believers to rebel.³⁸

China remains reluctant to normalize relations with the Vatican, despite recent overtures from the Holy See. In October 2001, Pope John Paul II issued a statement in which he apologized for past church "errors" and "failings" with respect to China. He also expressed the hope that "concrete forms of communication and cooperation between the Holy See and the People's Republic of China may soon be established."³⁹ China's Foreign Ministry responded by calling on the Vatican to "break relations with Taiwan" and to stop using religion "to interfere in China's internal affairs."⁴⁰ But Thomas Quigley, of the U.S. Conference of Catholic Bishops, told a Commission roundtable that many leaders within China's official Catholic Church have already established links with the Vatican, possibly with Beijing's tacit approval. According to Mr. Quigley, "The vast majority of all the registered bishops have been reconciled with Rome, which the government obviously knows."⁴¹

Meanwhile, Chinese authorities continue to wield a heavy hand against leaders of the underground Catholic Church. In February, the Vatican's official news agency, ZENIT, issued a list of 33 Catholic bishops and priests who were arrested, detained, or placed under house arrest in recent years. The best known, Bishop James Su Zhimin of Baoding, Hebei Province, was reportedly arrested in October 1997. His whereabouts remain unknown.⁴²

Chinese authorities are carrying out a harsh crackdown on Uighur Muslims in the Xinjiang Uighur Autonomous Region in northwest China. The crackdown, carried out under the guise of anti-terrorism measures, extends to "religious extremism" and "illegal religious activities."⁴³ The Chinese government has imposed strict limitations on Muslim worship. Religious education in schools

and universities has been banned, and those under the age of 18 are not allowed to participate in religious activities.⁴⁴ Authorities closely monitor the work of Xinjiang's imams, or Muslim clerics, and in 2001 required them to attend 20-day "patriotic re-education" sessions to study Communist Party ideology and China's "anti-splittism" law.⁴⁵ (See the "Xinjiang-Uighurs" section of this report.) There are 35,000 mosques in China, and more than 45,000 imams, all of whom must be approved by the government.⁴⁶

Three years after Chinese authorities banned Falun Gong, government suppression of the spiritual movement continues. Human rights groups have reported that thousands of practitioners have been arrested or detained for their beliefs. Human Rights Watch noted "substantial evidence that torture and other abuses are common" for Falun Gong practitioners in prisons, re-education camps, and other facilities.⁴⁷ Unconfirmed reports suggest that scores, and possibly hundreds, of Falun Gong practitioners have died in police custody since suppression of the group began in 1999. Erping Zhang, President of the Falun Gong International Committee for Human Rights, told a Commission open forum, "We are . . . sad to report that, in the year 2002, the repression has only worsened."

(Illustrative legal provisions include: PRC Constitution, Article 36; PRC Criminal Law, Article 300—1979, amended 1996; Detailed Rules on Implementing the Provisions on Managing the Religious Activities of Aliens in the PRC—2000; Decision of the Standing Committee of the National People's Congress on Banning Heretical Cult Organizations, Preventing and Punishing Cult Activities—1999; Regulations on the Registration of Social Organizations—1998; Measures for the Annual Inspection of Places of Religious Activity—1996; Measures for the Registration of Places for Religious Activities—1994; Regulations on Managing Places for Religious Activities—1994; Provisions on Managing the Religious Activities of Aliens in the PRC—1994; Implementing Measures on Managing the Registration of Religious Social Organizations—1991)⁴⁸

RECOMMENDATIONS ON RELIGIOUS FREEDOM

The Commission recommends that the Congress appropriate funds to an American university, NGO, or other organization to train individuals from U.S. faith-based or other organizations with links to religious groups in China to assist Chinese religious leaders in asserting their existing right of freedom to practice religion under the Chinese Constitution and international human rights documents.

This program would provide U.S. groups with the tools and skills needed to conduct legal clinics and training sessions in China, using their own resources and networks of contacts. Such a program would include preparation of a Chinese-language handbook with relevant information, such as texts of laws, regulations, the Chinese Constitution, and international human rights documents, and suggested guidelines for action.

The Commission recommends that the Administration sponsor programs with key Chinese officials and policymakers to examine the role of religion in society and to promote the concept of religious tolerance.

Elements would include a program to bring key Chinese individuals to the United States for two to four week visits to see firsthand the role of religion in American society, as well as a series of conferences with Chinese officials, leaders of Chinese religious organizations, and Chinese academics to examine and discuss the role of religion in society. Themes for individual conferences could include the role of religion in civil society; the role of religious groups in the delivery of social services in Western countries; inter-faith dialogue; and the differences between cults, terrorist organizations,

and religious organizations. Participants should be people who support reforms in existing Chinese government religious policies, including officials from the Religious Affairs Bureau, prosecutors' offices, and scholars from think tanks and academia. Participants should include individuals from the provincial as well as central level.

The Commission recommends that the Administration offer its good offices to assist representatives of religious faiths and the appropriate Chinese authorities in discussing ways to improve relations between China and their religious organizations, including the Holy See, without compromising essential religious principles or the Holy See's existing relationship with Taiwan.

Chinese law forbids outside interference in the religious practices of Chinese citizens. However, many Chinese Catholics, in particular, seek guidance and instruction from the Vatican. Catholic bishops and priests in China are serving prison terms for their recognition of the Pope's authority.

The Commission recommends that the Congress urge the Chinese government to allow the import of religious literature without restrictions.

China publishes large quantities of Bibles, Korans, and other religious texts. However, specific versions of religious literature used by faith-based groups often are unavailable. In addition, some religious practitioners oppose using religious material produced under the auspices of the Communist Party-controlled government. Currently, the importation of religious material is illegal.

The Commission recommends that the Administration urge that China approve a follow-up visit to China and Tibet by the UN Special Rapporteur on Religious Intolerance and urge China to implement the Special Rapporteur's earlier recommendations.

The UN Special Rapporteur seeks to highlight and eliminate all forms of intolerance and discrimination based on religion or belief. As a permanent member of the UN Security Council, China should welcome regular visits from the Special Rapporteur, particularly to areas such as Tibet and Xinjiang.

LABOR RIGHTS AND WORKING CONDITIONS

In 1998, China, along with all other members of the International Labor Organization (ILO), adopted the ILO's Declaration on Fundamental Principles and Rights at Work, which obligates members to heed the four core labor standards—freedom of association and the effective recognition of the right to collective bargaining, freedom from forced labor, the effective abolition of child labor, and nondiscrimination in employment. Moreover, China has signed the International Covenant on Civil and Political Rights and ratified the International Covenant on Economic, Social and Cultural Rights. Both of these covenants contain provisions that protect the rights of workers, although China has taken reservations on the latter's section dealing with the right to form free trade unions and the right to strike.⁴⁹

As China has shifted to a market-oriented economy, labor issues have become more prominent. While some workers have benefited from the attendant economic changes, little progress has been made in implementing core labor standards. Efforts to improve compliance with China's own national laws are ongoing, but weak.

Labor unrest has increased in recent years. In the spring of 2002, tens of thousands of workers engaged in protests in the northeastern Chinese cities of Liaoyang, Daqing, and Fushun over issues that included nonpayment of back wages and pensions, loss of benefits, insufficient severance pay, corrupt company and government officials, and the inability of workers to obtain a meaningful hearing on their grievances.⁵⁰ Throughout China, the “iron rice bowl” that once guaranteed workers lifetime employment and benefits is fast disappearing as financially troubled state-owned enterprises downsize, privatize, and shut down.

The unemployed rural workers, farmers, and young women who are flooding into cities, primarily in southern and coastal China in search of jobs in the rapidly growing private sector, exacerbate the labor problem. They have few of the benefits of local residents, and many find jobs in unsafe private factories where wage and hour, and health and safety laws are seldom strictly enforced. Economic and social stresses will grow and become more difficult to manage if Chinese workers are not able to enjoy their internationally recognized labor rights.

Freedom of Association

The ILO’s Declaration on Fundamental Principles and Rights at Work, as well as International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, provide workers the freedom to associate.⁵¹ While the Chinese Constitution guarantees freedom of association,⁵² Chinese law requires that all worker associations be approved by, and subordinate to, the All-China Federation of Trade Unions (ACFTU).⁵³

No free trade unions exist in China today. Although the ACFTU Constitution states that “the major social functions of the Chinese trade unions are to protect the legitimate interests and democratic rights of workers and staff members,”⁵⁴ the government has harassed, arrested, and imprisoned labor activists who attempt to form independent unions or organize strikes or worker protests.⁵⁵ Examples include Hu Shigen and Liu Jingsheng, who are serving sentences of twenty and fifteen years, respectively, for attempting to organize the Free Labor Union of China.⁵⁶

The ACFTU serves more as an instrument of the state and Party than as a body to promote interests of workers, traditionally acting as a vehicle for propaganda and as a benefits managing body. Wei Jianxing, the current head of the ACFTU, is a member of the Standing Committee of the Politburo of the Central Committee of the Chinese Communist Party.⁵⁷ There are signs that some individuals within the ACFTU have tried to take a more proactive approach regarding worker rights.⁵⁸ However, both the Trade Union Law and the ACFTU Constitution continue to require trade unions to abide by the leadership of the Communist Party, promote economic reforms, and safeguard state power.⁵⁹

The Right to Assembly and Strike

The Chinese Constitution, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights provide for freedom of speech and assembly.⁶⁰ Although

Chinese law does not explicitly deny the right to strike, neither does the law protect that right. Authorities generally act against strikes and break up many worker protests, although the response of local security authorities varies widely.⁶¹

According to government figures, which likely understate the scope, there have been protests involving more than 10,000 workers in 31 cities in the last few years.⁶² Most of these were illegal under Chinese laws governing public assembly. Human Rights Watch has detailed the elaborate means used by the government to crack down on worker demonstrations, including targeted arrests and detention and other harsh treatment of the leaders, along with minor concessions to the majority of demonstrators.⁶³ For example, four key leaders of the Liaoyang city protest, Yao Fuxin, Pang Qingxiang, Xiao Yunliang, and Wang Zhaoming, were detained in March 2002, charged with “illegal assembly, marches, and protests,” and now face possible five-year prison terms.

Despite these measures, in order to manage unrest and prevent the formation of independent labor organizations, the government has tolerated some strikes and demonstrations and has even helped workers achieve their demands in a limited number of cases where workers have sought to address narrow economic grievances.⁶⁴

Collective Bargaining

The ILO’s Declaration on Fundamental Principles and Rights at Work guarantees the right of workers to bargain collectively. Official Chinese sources often refer to collective bargaining in reaching labor agreements and cite as evidence the approval of 270,000 collective contracts in 2001.⁶⁵ In some areas in China, local labor authorities develop a standard employment agreement and distribute it to all factories for use as a labor contract. Workers have had little meaningful input into this process.⁶⁶ Without independent labor unions and the ability of workers to organize freely, collective bargaining cannot truly be said to exist in China.

Working Conditions

The International Covenant on Economic, Social and Cultural Rights recognizes the right of workers to safe and healthy working conditions. China has adopted measures to improve conditions at work, including the Labor Law, which requires employers to implement standards for occupational health and safety and to educate workers on safety issues; the Law on the Prevention and Cure of Occupational Diseases; Regulations on Labor Protection in Workplaces Where Toxic Products Are Used; and the Law on Work Safety.⁶⁷

Workplace health and safety continue to be serious problems in China. The State Administration for Work Safety, established in 2001, reported that, “from January to July 2002, 65,350 people lost their lives in a total of 549,939 workplace accidents.”⁶⁸ Safety in mines has become a priority concern, with the Chinese government reporting that 12,000 miners were killed in accidents last year.⁶⁹

Chinese law setting maximum hours for the work week and overtime complies with international standards. However, in practice, Chinese often work hours far in excess of these limits, and compa-

nies frequently require excessive overtime that is not paid properly.⁷⁰

Migrant workers living in dormitories connected with factories in southern China often face conditions of severe overcrowding, lack of proper sanitation facilities, and inadequate fire and safety protection. Many have been denied medical care, access to schools for their children, and other social benefits.

As in many areas covered by this report, the wide discretion that local and provincial officials often have in interpreting and implementing national laws and regulations results in inconsistencies in application and opens the door to corruption. For example, China's Labor Law allows enterprises, with the approval of the local "labor administrative department," to adopt their own rules for working hours⁷¹—an obvious invitation to abuse.

Labor Arbitration and Litigation

The Labor Law and the Regulations for the Handling of Labor Disputes create a three-tier system for handling labor disputes that includes mediation, arbitration, and litigation.⁷² With the help of legal aid and information centers, some Chinese workers have begun to understand their legal rights. In 2001, workers filed 155,000 labor disputes, a 14 percent increase over 2000, although statistics on the issues underlying these disputes are not available.⁷³

Nevertheless, general awareness of China's laws and regulations on the part of workers, management, and even some government officials remains low.⁷⁴ The Hong Kong Christian Industrial Committee, a group that organizes and provides assistance to workers in Hong Kong and China, found that among the workers they interviewed, "Less than half . . . said they knew about labor law. None of the workers knew about other regulations concerning labor rights. Workers had no idea how to use the laws to defend their rights."⁷⁵ Programs for enforcement generally do not exist, and enterprise managers often ignore the regulations even when they are aware of them.⁷⁶

Worker advocates often find themselves in peril. Xu Jian, a labor lawyer in the northern China city of Baotou, who represented laid-off workers seeking redress from two large state-owned enterprises, published pamphlets for workers describing their rights under Chinese law. He was arrested and sentenced in 2000 to four years in prison for "incitement to overthrow state power."⁷⁷ Local authorities in Shenzhen reportedly have ordered Zhou Litai, a lawyer who successfully represented migrant workers injured in the workplace, to close his law practice in that city.⁷⁸

Ultimately, judgments about the success of labor arbitration and litigation can rest only on whether workers receive fair and impartial adjudication of disputes, whether these remedies are made available to laid off workers (not currently entitled to this right under the law),⁷⁹ and to what extent labor advocates are allowed to assist workers to pursue grievances and assert their legal rights.

Child Labor

China ratified ILO Convention 182 on the Worst Forms of Child Labor in August 2002.⁸⁰ China's Law on the Protection of Minors

and related regulations prohibit employment of children under the age of sixteen, except in very limited circumstances. Children between sixteen and eighteen cannot work in hazardous or physically strenuous jobs and are subject to restrictions that include a prohibition on working overtime or at night. These protections are ignored in many workplaces.⁸¹ One well-publicized case in March 2001 involved an explosion at a fireworks factory in Jiangxi Province, where the factory was located inside a school and students manufactured the fireworks. Forty-two people died, mainly children.⁸² Estimates for the number of child laborers in China vary widely.⁸³ In the past, the Chinese government denied that child labor was a problem. However, in October 2001, it established an interagency commission to study the issue. The commission's activities have not been made public.

Forced Labor

The ILO's Declaration on Fundamental Principles and Rights at Work and the International Covenant on Civil and Political Rights prohibit forced labor. Yet China's system of re-education through labor (*laojiao*—administrative detention managed outside of the judicial process) and reform through labor (*laogai*—a criminal punishment) encompass several million individuals subject to forced labor. (See the Criminal Justice section for details on re-education through labor.)

Chinese regulations bar the export of goods made with prison labor, and China denies that prison-made goods are being shipped to the United States.⁸⁴ The United States and China signed a Memorandum of Understanding in 1992 to prevent import into the United States of products made using Chinese prison labor. A subsequent agreement in 1994 permitted U.S. officials, with Chinese government permission, to visit prison facilities suspected of producing goods for export to the United States.⁸⁵ U.S. officials have made thirteen requests for site visits. Since 1996, they have been permitted to conduct only three site visits in China and found no proof of prison exports to the United States.⁸⁶ In June 2002, Chinese officials agreed to regular meetings to facilitate implementation of the agreements. China then agreed in September 2002 to allow one previously requested visit to take place.

The United States-China Relations Act of 2000 created a Prison Labor Task Force to monitor and promote effective enforcement of U.S. law in this area.⁸⁷ Its first annual report to Congress stated, "We believe that prison officials frequently provide prison labor to private, quasi-government, or government-owned manufacturing facilities to perform manufacturing and assembly work, and that the remuneration prisons receive for prisoners' services give prison officials no incentive to cooperate in preventing the export to the United States of goods made with prison labor."⁸⁸ Overall, Chinese cooperation in implementing these understandings has been minimal.

(Illustrative legal provisions include: PRC Constitution, Articles 17, 35, 42, 43, 44; PRC Law on Work Safety—2002; PRC Law on the Prevention and Cure of Occupational Diseases—2001; PRC Law on Trade Unions—1992, amended 2001; PRC Labor Law—1994; Regulations on Labor Protection in Workplaces Where Toxic Articles Are Used—2002; Regulations on Enterprise Minimum Wage—1994; PRC Regu-

lations Governing the Settlement of Labor Disputes in Enterprises—1993; Constitution of the Trade Unions of the People's Republic of China—1998)

RECOMMENDATIONS ON LABOR RIGHTS AND WORKING CONDITIONS

The Commission recommends that the Congress and the Administration provide assistance to legal clinics to expand the availability of legal representation in cases involving worker rights, and that special assistance be provided to legal aid centers in communities with large numbers of migrant workers, and migrant women in particular, to build expertise and capacity in resolving the issues of concern to this vulnerable group.

The demand for labor lawyers' services has increased dramatically. Migrant workers, including young rural women who travel to work in urban factories, are especially subject to abuse. They need help not only in learning about their rights but also in asserting them.

The Commission recommends that the Administration facilitate meetings of U.S., Chinese, and third-country companies doing business in a specific locality and industry in China to identify systemic worker rights abuses, develop recommendations for appropriate Chinese government entities, and discuss these recommendations with Chinese officials, with the goal of developing a long-term collaborative relationship between government and business to assist in improving China's implementation of internationally recognized labor standards.

U.S. and other foreign companies with significant sourcing in China focus their workplace compliance efforts on specific suppliers. This program will seek to broaden foreign companies' focus to address the systemic issues that affect them and require Chinese government policy responses.

The Commission recommends that the Secretary of Labor travel to China and engage relevant Chinese officials on labor issues.

Such a visit would raise the profile of labor issues in our bilateral dialogue, confirm to the Chinese that compliance with core internationally recognized labor standards and safe and equitable working conditions are important to the United States, emphasize the importance to the United States of the principles of freedom of association and collective bargaining, and encourage advances made during the 2001 visit to China of the ILO Director General.

The Commission recommends that the Congress appropriate funds for suitable U.S. institutions to conduct programs for Chinese lawyers and law students on labor law, employment law, and international labor standards, and promote exchanges between Chinese and U.S. labor lawyers and academics.

The number of qualified lawyers in China has expanded in recent years, but demand still exceeds supply, particularly with respect to worker rights. The ability of workers to assert their legal rights depends upon access to qualified legal representation.

The Commission recommends that the Congress fund programs to promote improved working conditions and safety at the enterprise level, including the use of worker health and safety councils, whose members would be chosen by the workers.

China's workplace safety record has degraded to the point that Chinese authorities have reached out to the international community for help. The United States should fund programs on workplace safety that over time could be replicated in other Chinese enterprises, starting in a small number

of enterprises in carefully selected locations. The initial focus should be on the mining industry, in which accident rates are exceedingly high, and the toy and footwear industries, in which toxic chemicals are used to produce large volumes of products destined for the U.S. market.

The Commission recommends that the Administration, in conjunction with the governments of other countries that import Chinese goods, organize a series of conferences in key exporting regions in China to emphasize to Chinese manufacturers and exporters the importance of legal and fair working conditions to consumers in overseas markets.

Conferences about global market expectations and the benefits of acceptable working conditions to Chinese factory managers have been well received in China, although they have been aimed mainly at contract suppliers. Chinese companies are beginning to manufacture and export under their own brand names. Seminars describing how to develop, implement, and maintain social compliance programs that conform to international norms would give these Chinese factory managers and owners a basis upon which to implement reforms in their day-to-day operations.

The Commission recommends that the Congress commission a detailed study to analyze the social unrest caused by the decline of China's state-owned enterprises and to recommend how U.S. technical and other support could help alleviate these problems.

Large-scale labor unrest, especially in northern China where many state-owned enterprises are located, has increased as they reduce in size or shut down, often leaving workers without pensions, health care, or other services. There may be ways for U.S. assistance to help these workers, and a thorough study would illuminate the options.

CRIMINAL JUSTICE

The Chinese government revised the Criminal Procedure Law in 1996 and the Criminal Law in 1997.⁸⁹ The revisions promised increased protection for criminal suspects and defendants and a fairer trial process.⁹⁰ The amendments to the Criminal Procedure Law included an expansion of the right to counsel, a more meaningful role for defense attorneys during the pre-trial and trial stages, and other measures to address the problem of “decision first, trial later” (*xian ding hou shen*).⁹¹ The amended Criminal Law abolished the provision on “analogy” contained in the 1979 Criminal Law. Under this provision, a person could be punished for an act that was not explicitly prohibited by law at the time the act was committed by providing for punishment according to the closest analogous provision of the Criminal Law.⁹² The revised Criminal Law also replaced “counterrevolutionary” crimes with “crimes of endangering national security” as part of an effort to depoliticize criminal law, at least on paper.⁹³

But as this report notes repeatedly, a wide discrepancy often exists in China between the law on paper and the law in practice. Criminal suspects and defendants frequently do not enjoy in practice the enhanced protections found in the revised laws. Although the revisions to the Criminal Procedure Law and the Criminal Law reflect progress toward internationally recognized criminal justice standards as set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international human rights documents, the Chinese

criminal justice system still falls far short of international standards.

Absence of an Independent Judiciary

Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights mandate that every individual is entitled to a fair and public hearing by an independent and impartial tribunal.⁹⁴ However, the lack of an independent judiciary is a fundamental problem that China must address before it can meet international human rights standards. The Communist Party exerts significant control over the court system. Party political-legal committees often select judges—decisions that are then simply rubber-stamped by the relevant provincial or local people’s congresses, which have the formal power to appoint judges.⁹⁵ Most senior judges and members of the courts’ adjudication committees are Party members.⁹⁶ The adjudication committees supervise the work of the court and have the ultimate power to decide any case before the court.⁹⁷ Moreover, judges often confer with the relevant political-legal committee in politically sensitive or difficult cases.⁹⁸ As long as the Party controls the courts, a fair and impartial judicial process and protection of the fundamental rights of criminal defendants will remain elusive, particularly in cases of political dissidents or others deemed to be threats to “national security.”

Right to Counsel and Right to Present a Defense

Under the 1979 Criminal Procedure Law, a defendant had no right to legal counsel prior to seven days before the start of the trial. Under the revised Criminal Procedure Law, defendants may retain counsel much earlier in the criminal process—after the first interrogation or from the day he or she is first subjected to “coercive measures” (e.g., pre-arrest detention (*juliu*) and arrest (*daibu*)).⁹⁹ Although a significant improvement over the 1979 Criminal Procedure Law, the revised law fails to conform to international standards. For example, it still leaves a suspect without counsel during a “first interrogation.” Given the widespread problem of torture, coupled with the fact that the law requires suspects to answer investigators’ questions “truthfully,” the absence of counsel at the first interrogation is a serious deficiency in China’s criminal process.¹⁰⁰

Although defense lawyers are entitled under the Criminal Procedure Law to meet with their clients during the investigation of an alleged crime, in practice lawyers are frequently denied access to their clients.¹⁰¹ In cases involving “state secrets,” a term that public security authorities construe expansively, a lawyer must first obtain approval from the relevant investigating authority before meeting with his or her client.¹⁰² The authorities frequently invoke “state secrets” to deny suspects access to a lawyer during the investigation phase.¹⁰³ When actually allowed to meet with their clients, defense lawyers generally get only one brief meeting, which is usually monitored and sometimes recorded by investigators.¹⁰⁴ Article 96 of the Criminal Procedure Law permits such monitoring, “depending on the circumstances and necessities of the case.”

The revised law provides defense counsel greater access to evidence in the possession of the authorities, at least in theory. In practice, the Supreme People's Procuratorate (China's chief prosecutorial authority) has interpreted the relevant provisions of the new law to require access only to formal documents in the file, such as copies of the detention and arrest notices.¹⁰⁵ There is no requirement that prosecutors provide defense counsel access to physical evidence, documentary evidence, crime-scene records, or statements by witnesses or the victim that are in their possession. Moreover, the revised law severely restricts the ability of defense lawyers to collect their own evidence.¹⁰⁶ Another long-standing problem unresolved by the revised Criminal Procedure Law is the absence of witnesses at criminal trials.¹⁰⁷ Although the law requires the testimony of witnesses to be cross-examined at trial, witnesses in criminal cases frequently do not appear in court.¹⁰⁸ Thus, in most trials defense lawyers are faced with the difficult task of trying to contradict written testimony.

Professor Jerome Cohen of New York University Law School told a Commission roundtable that there are disturbing disincentives for lawyers to engage in the practice of criminal defense law. Criminal defense lawyers have encountered intimidation and harassment from the police and prosecutors as they attempt to assist their clients under the revised Criminal Procedure Law.¹⁰⁹ Some defense lawyers have even faced criminal prosecution for zealous representation of their clients. For example, Zhang Jianzhong, a well-known lawyer who has represented some high-profile defendants in major corruption cases, has been detained since May 2002 under circumstances that remain murky. While Mr. Zhang has purportedly been charged with providing a false statement in a commercial case, members of the local criminal defense bar and other observers believe that the authorities are punishing Mr. Zhang for his vigorous criminal defense work.¹¹⁰ Criminal defense lawyers have also been targeted for prosecution under Article 306 of the Criminal Law, which prohibits a lawyer from forcing or inducing a witness to change his or her testimony or falsify evidence. Any lawyer who counsels a client to repudiate a forced confession, for example, risks prosecution under this provision.¹¹¹

Torture

The use of torture to obtain confessions during the investigation stage of the criminal process is still widespread in China. Article 43 of the revised Criminal Procedure Law prohibits the use of torture to coerce confessions, but in contravention of the UN Convention Against Torture, the Criminal Procedure Law does not prohibit the use of confessions obtained by torture from being admitted as evidence in court.¹¹² To curb the high incidence of torture during the investigation stage, many scholars and Chinese reformers advocate the adoption of a rule making illegally obtained evidence inadmissible at trial, as well as rules guaranteeing the right to remain silent and the right against self-incrimination. Professor Murray Scot Tanner of Western Michigan University told a Commission roundtable he believed that although significant progress on the torture problem may be possible within China's current authoritarian political system, more fundamental improvements must

“await a liberalization and democratization of that system.”¹¹³ Professor Tanner explained that over the past several years, a growing number of officials and scholars within China’s law enforcement system (including public security authorities and prosecutors) have begun to criticize China’s serious torture problem and to call for reform. For example, Professor Cui Min of the Chinese People’s Public Security University has written that as long as confessions coerced by torture are admissible for convictions, the Criminal Procedure Law’s prohibition against using torture to coerce confessions exists in name only.¹¹⁴

Administrative Sanctions

One of the most highly touted reforms under the revised Criminal Procedure Law was the abolition of the form of arbitrary detention known as “custody and investigation” (*shourong shencha*), under which the police could detain suspects virtually indefinitely, without trial or judicial review.¹¹⁵ Chinese public security authorities, however, still use other forms of administrative sanctions. Under “re-education through labor” (*laojiao*), for example, an individual can be “sentenced” by public security authorities to three years in a labor camp, with a possible one-year extension, for allegedly committing a variety of relatively minor offenses, such as drug use, prostitution, or offenses deemed to “disturb public order.”¹¹⁶ Suspects assigned to re-education through labor are not entitled to a trial, and therefore do not enjoy even the minimal procedural safeguards provided by the Criminal Procedure Law.¹¹⁷

The public security authorities frequently use re-education through labor in political cases as a convenient tool for circumventing the formal criminal process. For example, authorities gave Li Guotao, one of the organizers of the China Democracy Party, a three-year re-education through labor term for “disturbing social order” after he protested the government’s crackdown on other dissidents.¹¹⁸ Scholars and activists have documented the use of re-education through labor to detain pro-democracy protesters after the Tiananmen crackdown in 1989.¹¹⁹ As of early 2001, approximately 260,000 people were being held in nearly 300 re-education through labor camps.¹²⁰ Although detainees may challenge a re-education through labor term under the 1989 Administrative Litigation Law, Veron Mei-ying Hung of the Carnegie Endowment for International Peace told a Commission roundtable that such efforts are fraught with obstacles.¹²¹ Some legal scholars and others in China have called for the abolition of re-education through labor. Others advocate at least bringing it within the criminal justice system.¹²²

“Custody and repatriation” (*shourong qiansong*), another widespread form of administrative detention designed to “protect urban social order,” targets the urban homeless, undocumented migrant workers, and beggars. Detainees are placed in custody, without trial, until they can pay for their release or are sent home.¹²³ Experts estimate that this form of administrative detention affects nearly two million people every year.¹²⁴ In theory, Chinese authorities consider custody and repatriation to be a form of welfare, but in practice public security authorities detain members of these marginalized groups and warehouse them in facilities, the condi-

tions of which are essentially no different from detention centers or labor camps.¹²⁵ Because both re-education through labor and custody and repatriation are criminal penalties masquerading as administrative sanctions, imposed without judicial procedures, they conflict with basic international criminal justice standards.

Strike Hard Anti-Crime Campaigns

In response to an increase in crime and corruption over the past twenty years, the Chinese government has periodically instituted crackdowns against crime, referred to as Strike Hard anti-crime campaigns. Launched for the first time in 1983, Strike Hard campaigns are now, according to the Lawyers Committee for Human Rights, a “permanent feature of Chinese life.”¹²⁶ Abuses of the criminal justice process, increased use of the death penalty, and summary executions intensify during these campaigns.¹²⁷ During the period from April to July 2001 of the most recent Strike Hard campaign, law enforcement authorities sentenced at least 2,960 people to death and executed 1,781 for crimes ranging from tax evasion to murder.¹²⁸ The use of torture in order to quickly “solve” cases increases during Strike Hard campaigns, as does the use of re-education through labor.¹²⁹

The discussion above illustrates just a few of the problems with China’s criminal justice system. Many other aspects of the system, such as pre-trial detention and appellate review of trial court decisions, fail to conform to international human rights standards. For example, detainees are denied the internationally recognized right to contest the lawfulness of their detention.¹³⁰ Moreover, criminal suspects enjoy neither the presumption of innocence nor the right to remain silent.¹³¹ In addition, the right to a public trial is frequently not honored in China, particularly in cases involving political dissidents.¹³² The Commission will be examining these and other issues relating to the criminal justice system in the coming year.

(Illustrative legal provisions include: PRC Constitution, Articles 33, 35, 37, 53, 123, 125, 126, 128, 129, 131, 133, 135; PRC Criminal Law—1979, amended 1997; PRC Criminal Procedure Law—1979, amended 1996; PRC State Security Law—1993; Ministry of Public Security Rules on the Process of Handling Criminal Cases by Public Security Departments—1998; Supreme People’s Court Interpretation on Several Issues Regarding Implementation of the PRC Criminal Procedure Law—1998; Supreme People’s Procuratorate Rules on the Criminal Process for People’s Procuratorates—1998; PRC Lawyers Law—1996; PRC Administrative Punishment Law—1996; PRC Administrative Litigation Law—1989; PRC Law on Protecting State Secrets—1988; PRC Organic Law of the People’s Courts—1979, amended 1983; Security Administration Punishment Regulations—1957, amended 1986, 1994; Detailed Rules on Implementing the Law in the Administration of Re-education Through Labor—1992; Decision of the State Council Regarding the Question of Re-education Through Labor—1957; Supplementary Decision of the State Council on Re-education Through Labor—1979; Notice of the State Council on Re-Issuing the Ministry of Public Security’s Trial Methods for Implementation of Re-education Through Labor—1982.)

RECOMMENDATIONS ON CRIMINAL JUSTICE

The Commission recommends that the Congress appropriate funds for suitable U.S. institutions to conduct programs for Chinese criminal defense lawyers on the role of the criminal defense bar outside of China and promote exchanges between Chinese and U.S. criminal defense lawyers.

Like judicial exchanges, such exchanges will enhance the professional expertise, solidarity, and prestige of the criminal defense bar. Programming should specifically include case studies in legal ethics, which draw attention to the kinds of challenges faced by lawyers in both countries. Programs should include provisions for electronic follow-up (e.g., a listserv) to build on the dialogue and contacts created in the exchanges, with the goal of establishing long-term interaction and support.

The Commission recommends that the Administration continue to work multilaterally to encourage China to cooperate fully with the UN Special Rapporteur on Torture.

Although the Chinese government invited Theo van Boven, the Special Rapporteur on Torture, to visit in 2003, it has not yet indicated that it will cooperate fully with his investigation. Indeed, during her recent visit to China, Mary Robinson, the UN High Commissioner on Human Rights, stated that the visit was not yet assured.

The Commission recommends that the Congress appropriate funds for a suitable U.S. institution to implement a program that would bring Chinese police and non-police experts on criminal procedure to the United States to learn firsthand the roles various institutions and societal actors (e.g., civilian review boards, courts, NGOs and the press) play in fighting torture and police abuse in the United States.

A growing number of officials and scholars in China, including those within China's law enforcement system, are openly criticizing China's widespread torture problem and debating proposals for reforms designed to combat torture. This program would contribute to such reform efforts and would focus solely on measures to curb torture; it would not include, for example, training on police techniques for suppressing protests or apprehending suspects.

The Commission recommends that the Congress appropriate funds for a suitable U.S. institution to implement a program that would include a series of conferences to which U.S., Chinese and legal experts from other countries would be invited to discuss questions of law relating to internationally recognized criminal justice standards such as the presumption of innocence, the right to remain silent, the right to contest detention, etc.

As with the torture issue, legal officials and scholars in China are openly debating these issues. This program could aid such reform efforts.

The Commission recommends that the Administration and the Congress press the Chinese government to allow U.S. Embassy and Consulate officers to attend trials of political dissidents and individuals charged with "endangering national security," or "revealing state secrets," particularly the trials of individuals who have committed non-violent acts.

Although the U.S. Embassy and Consulates General in China periodically request permission to observe the trials of defendants charged with political offenses, Chinese authorities almost never grant such permission.

The Commission recommends that the Administration encourage the Chinese government to review convictions and sentences of those imprisoned for "counterrevolutionary" crimes in light of revisions to the Criminal Law that eliminated this category of crime.

On February 13, 2002, the Commission sent a letter to President Bush recommending that he urge President Jiang Zemin to take this action, which would address a continuing injustice and likely permit the release of a significant number of prisoners.

FREE FLOW OF INFORMATION

Chinese authorities continue to censor the media despite constitutional guarantees of freedom of speech and of the press.¹³³ China has signed, though not ratified, the International Covenant on Civil and Political Rights, which guarantees freedom of expression.

China's newspapers and magazines have become more free-wheeling in recent years as they struggle to turn a profit in an increasingly competitive market. But the central government still has the last word, and Beijing is aggressive in ensuring that media outlets know where it draws the line. Current sensitive subjects include labor strikes, rural unrest, Taiwan independence, the Falun Gong spiritual movement, the 1989 Tiananmen Square crackdown, criticism of the Communist Party, opposition to Chinese rule in Tibet and Xinjiang, and disclosures of corruption or nepotism within the government and military leadership.¹³⁴ Chinese President Jiang Zemin has said that the news media in China "are the loudspeakers of the Party and the people" and have a duty "to educate and propagate the spirit of the Central Party's committee."¹³⁵ James Mann of the Center for Strategic and International Studies told a Commission roundtable, "The Chinese Communist Party maintains its monopoly on power, and that includes the power over the principal newspapers and television stations."¹³⁶

A recent case in point is *Southern Weekend (Nanfang Zhoumo)*, a newspaper published in Guangdong Province. *Southern Weekend* has long pushed the boundaries of media control in China by reporting frankly on sensitive social problems, including AIDS, crime, and trafficking in women. In the spring of 2002, the newspaper published a story about a criminal gang that killed 28 people in a spree of murder and theft. The article indicated that problems such as poverty and inequality in Chinese society led gang members to a life of crime.¹³⁷

As a result, *Southern Weekend* was accused of painting a negative picture of China's socialist struggle, and its deputy editor-in-chief, front-page editor, and a senior editor were demoted. The news section chief and the reporter who wrote the story also were fired and banned from ever working in journalism again.¹³⁸ Now, the newspaper is significantly tamer. He Qinglian, former editor of China's *Shenzhen Legal Daily*, told a Commission roundtable, "In a free country, the media is expected to criticize the government. In China, it's exactly the opposite; it is the government that criticizes the media."¹³⁹

Foreign media organizations operating in China are not immune from Beijing's control. In July 2002, Chinese authorities blocked BBC World news broadcasts into China after the British network aired a report about the banned Falun Gong spiritual movement.¹⁴⁰ A month earlier, authorities detained and later expelled Canadian journalist Jiang Xueqin after he filmed labor unrest in northeastern China for the U.S. Public Broadcasting Service. Until recently, some major foreign news organizations, such as the *New York Times* and CNN, have had their websites blocked. The Chinese government continues to jam broadcasts of the Voice of America (VOA) and Radio Free Asia (RFA).¹⁴¹

Calling China “the world’s leading jailer of journalists,”¹⁴² the Committee to Protect Journalists (CPJ) reported at the end of 2001 that at least 35 journalists were imprisoned in China.¹⁴³ Kavita Menon of the CPJ told a Commission roundtable, “China is too large and unwieldy for perfect control to be possible, but the Communist Party remains unwilling to cede the battle. Hardliners believe that to relinquish control over information would be to relinquish control of power altogether.”¹⁴⁴

Many Chinese are finding ways around the government’s information control. For example, a growth in purchasing power has allowed large numbers of Chinese citizens to purchase satellite-receiving equipment, even though regulations generally prohibit private use of such equipment. They often use the equipment to receive foreign television broadcasts and more politically open programming from Hong Kong.

Internet use in China has grown rapidly, with an estimated 46 million users at the end of June 2002¹⁴⁵ and analysts predicting that China could have the world’s largest on-line population in two years. Although most Internet users today live in larger cities, Internet cafes are becoming ubiquitous throughout China.

The Chinese government continues to encourage expanded use of the Internet to improve economic efficiency, increase economic growth, and disseminate government information more effectively to the public. But Chinese authorities are also aware that the Internet creates new challenges to information control and are scrambling to meet what they perceive as a threat to that control. The Internet (*e.g.*, e-mail, chat rooms, websites) has given Chinese citizens greater access to information about events inside China and overseas. Some organizational activities have developed over the Internet, perhaps the most well known being a large Falun Gong demonstration outside the government leadership compound at Zhongnanhai in 1999.

The Chinese government policy towards the Internet generally parallels its approach to other media. To some extent, the Internet is harder to control than the print or broadcast media because of its decentralized and personal nature. The “Seven No’s” on media activity issued in August 2001 by the State Press and Publications Administration—including prohibitions against disclosing state secrets, interfering in Communist Party affairs, and criticism of government policies—apply equally to the Internet.¹⁴⁶ Over the past 18 months, the Chinese government has issued an extensive and still growing series of regulations restricting Internet content and placing monitoring requirements on the industry. For example, on August 1, 2002, the Ministry of Information Technology and the State Administration of Press and Publishing issued “Interim Provisions on the Administration of Internet Publishing” that clarify topics prohibited on Internet sites, including the oft-cited prohibitions against anything that will “harm national unity, sovereignty, or territorial integrity” or “reveal state secrets” and “endanger national security.”¹⁴⁷

James Mulvenon of the RAND Corporation pointed out at a Commission roundtable that the Chinese government has used two methods to control the impact of the Internet.¹⁴⁸ High-tech software and hardware can block, monitor, filter, and hack websites

and e-mail. This capability includes blocking offshore dissident sites, foreign news sites, general-purpose search engines such as Google and AltaVista, and VOA's weekly e-mail to China. Internet users in China attempting to access foreign websites have also found themselves redirected to Chinese government-approved websites.

Meanwhile, low-tech methods include a combination of traditional control activities such as surveillance, informants, regulations, searches, and arrests to produce "a regulatory and political climate of self-censorship and self-deterrence" on the part of Internet users and providers. A case in point is the arrest of Internet activists such as Huang Qi, who was arrested in June 2000 after establishing one of China's first human rights websites.

A recent low-tech development is a "Public Pledge on Self-discipline for China's Internet Industry," a voluntary pledge sponsored by the Internet Society of China, an industry organization linked to the Ministry of Information Industry.¹⁴⁹ Under this pledge, Internet Service Providers (ISPs) and Internet Content Providers (ICPs) agree not to post or produce information "that may jeopardize state security and disrupt social stability."¹⁵⁰ Several foreign human rights NGOs have expressed concern that Yahoo's China subsidiary has signed this pledge. Another recent development is an August 2002 action by the Chinese government to halt new approvals for Internet cafes and to stop screening applications for re-registration as the government tries to exert firmer controls over this outlet for the Internet.¹⁵¹

Under this dual high-tech/low-tech strategy, the Chinese government, with minimal resources, has succeeded in limiting use of the Internet for dissemination of what it considers to be undesirable political and social content, including pornography, Falun Gong information, human rights, and political commentary. At the same time, the government has been able to shift much of the responsibility for Internet control from the Ministry of Public Security to ISPs and ICPs.

(Illustrative legal provisions include: PRC Constitution, Articles 35, 41; PRC Law on Protecting State Secrets—1998; PRC Criminal Law—1979, amended 1997, Article 111; Specific Measures for Taking Action on Cases Involving Internet Cafes and other Internet Access Service Business Establishments—2002; Interim Provisions on the Administration of Internet Publishing—2002; Measures on the Administration of Internet Information Services—2001; Regulations on the Administration of Publishing—2001; Telecommunications Regulations—2000 Decision of the Standing Committee of the National People's Congress on the Protection of Internet Security—2000; Interim Provisions on the Administration of Internet Sites Engaging in News Publication Services—2000; Provisions Governing the Administration of Internet Electronic Bulletin Board Services—2000; Supplementary Decision of the NPC Standing Committee Concerning Punishing Crimes of Leaking Important State Secrets—1988; Regulations on the Scope and Classification Level of State Secrets Concerning the Work of the Public Security Organs—1986)

RECOMMENDATIONS ON FREE FLOW OF INFORMATION

The Commission recommends that the Congress and the Administration expand U.S. government efforts to disseminate human rights, worker rights, and rule of law-related information in China through radio, television, and the Internet.

On topics such as worker rights and religious freedom, foreign radio transmissions and the Internet provide a crucial external link for both reformers and citizens attempting to learn about basic rights and efforts within China

to promote such rights. In addition, China's WTO membership requires that it improve dissemination and accessibility of laws and regulations. Overall, the public's lack of awareness of legal rights impedes legal reform, particularly in rural areas, including Tibet. The Commission's website (www.cecc.gov) serves as an important medium for disseminating human rights and rule of law related information in China. (See Appendix 1—Website Summary.) VOA and RFA management should increase programming to China that emphasizes essential human rights-related topics such as religious freedom, labor rights, freedom of expression, legal rights and the legal system at the grassroots level, and other human rights issues. VOA should create a Uighur language service to provide news and information to Uighurs in Xinjiang.

The Commission recommends that the Administration urge China to end restrictions on foreign journalists based in China.

Restrictions include limits on the number of journalists issued correspondent visas, as well as regulations requiring government approval for foreign journalists to conduct interviews and to travel outside of their host cities to investigate stories.

The Commission recommends that the Administration pursue political and technical ways to prevent China from blocking U.S. government Internet sites and e-mail and to make it easier for Chinese users to access them.

The development of democracy in China depends upon people having access to unfiltered information. People in China are increasingly turning to the Internet and e-mail for news about China and the world at large, but China's government continues to try to ensure that its monopoly on such information extends to these media. Although Chinese authorities employ increasingly sophisticated means to censor the Internet, as the technology for blocking access improves, so do the methods for circumventing such blocks. The United States should complement its diplomacy on this issue by using state-of-the-art methods to ensure that Chinese users can access U.S. government sites and receive e-mail from U.S. government agencies.

VILLAGE ELECTIONS

China began experimenting with village elections in the early 1980s. Despite opposition from hard-line factions within the Communist Party, the National People's Congress passed a provisional law on rural self-governance in 1987.¹⁵² Following the Tiananmen Square democracy movement in 1989, the idea of expanding democracy in rural areas fell out of favor in Beijing. However, grassroots efforts to develop democratic activities continued in China throughout the 1990s, and in 1998 the Organic Law on the Village Committees, revised to include widely recognized election procedures, was finally enacted.

As a result, all of China's approximately 730,000 administrative villages are required by law to conduct direct, competitive elections every three years. These elections involve hundreds of millions of rural voters.¹⁵³ China's leaders hope competitive village elections will reduce corruption by making local officials more accountable to the people they serve and can help prevent social unrest in the Chinese countryside. In addition, Beijing often encourages officials elected by the villagers to join the Communist Party in an attempt to infuse the Party with a new credibility.

U.S. and other international observers have monitored village elections in China for nearly a decade and generally believe that the balloting they have witnessed has been free and fair.¹⁵⁴ However, outside observers have been able to monitor only a small frac-

tion of the villages where elections occur, and Chinese government officials generally supervise the observation visits. As a result, it is difficult to determine whether the vast majority of village elections in China adhere to democratic principles. In addition, there has been little analytical work by international observers on the impact of the elections on actual governance at the village level. Professor Anne Thurston of The Johns Hopkins University's School of Advanced International Studies told a Commission roundtable, "One of the great frustrations of anyone trying to make sense of these village elections is that we simply do not know how widespread they are—how well and how universally they have actually been implemented."¹⁵⁵

Critics of the process say that the Communist Party often manipulates the outcome, and that reform at the village level has little impact on the spread of democracy at higher government levels. While there is talk that elections may be extended to the township level,¹⁵⁶ Beijing still has no plans to let people vote for city mayors, provincial governors, the national president, or Party leaders. Chinese President Jiang Zemin has said that China's people are too uneducated to be given that responsibility any time soon.¹⁵⁷

Nevertheless, supporters say the elections are important because they familiarize China's villagers with some of the tools of democracy, including ballot boxes, voter registration, and candidate nomination. Liu Yawei of The Carter Center's China Village Elections Project told the roundtable that the election process "has cultivated a new value system, a much-needed sense of political ownership and rights awareness among the Chinese peasants who do not have any leverage in bargaining with the heavy-handed government."¹⁵⁸

In 1998, the remote rural township of Buyun, in Sichuan Province, conducted China's first direct election for a township leader. Local authorities allowed the unprecedented election in an effort to appease simmering peasant anger over rampant corruption and an onerous tax burden. The balloting, apparently carried out without formal approval from Beijing, was later declared unconstitutional. But last year Buyun tried again, this time finessing the constitutional issue by allowing voters to nominate one candidate to challenge the incumbent. (The incumbent won by a narrow margin.) Liu Yawei told the roundtable, "There probably will be more cases in China in the near future to model their elections after Buyun. We are still holding our breath to see if this is going to spread."¹⁵⁹

In 1999, China began expanding the village election concept to some urban areas. Over the last few years, a dozen or so pilot cities have held elections for positions on urban neighborhood committees, the lowest level of organized government in Chinese cities.¹⁶⁰ Regulations for the urban community elections have not yet been standardized, and local officials have a great deal of autonomy in carrying them out.

(Illustrative legal provisions include: PRC Constitution, Articles 34, 111; Organic Law on the Village Committees—1998; Organic Law on the Village Committees (Provisional)—1987)

RECOMMENDATIONS ON VILLAGE ELECTIONS

The Commission recommends that members of Congress and the Administration who visit China request to observe village elections.

Village elections in China remain in the developmental stages and are fraught with problems. Nevertheless, they expose tens of millions of Chinese peasants to an essential element of democracy. To date, Chinese authorities have encouraged foreigners to observe these elections, and the Administration and the Congress should show support for these early and tentative steps toward democracy by asking to visit election sites.

The Commission recommends that the Congress require an analysis of the impact of village elections on village governance when making recommendations for future government funding to organizations promoting and monitoring village elections in China.

Congress needs objective assessments of the impact of U.S. NGO activity in China, especially when those activities receive U.S. government funding. (See similar recommendation under section on Rule of Law Programs.)

The Commission recommends that the Administration encourage the expansion of democratic reforms to higher levels of government in China. The Commission also recommends that the Congress support expanding technical assistance to elections at higher government levels in China.

Chinese authorities have shown little inclination to introduce democratic principles, such as direct representative elections, at higher levels of government. Representative, democratically elected government has proven to be the best safeguard against corruption and abuse of power. The United States should do all it can to encourage the spread of democracy in China.

TIBET

Defining geographical Tibet can be confusing, if not contentious. Although Tibetans make up barely a half percent of China's population, areas designated by the Chinese government as Tibetan account for 23 percent of China's total land mass.¹⁶¹ They include the Tibet Autonomous Region (TAR, sometimes called "Tibet"), which has the same rank as a province. In addition, there are ten Tibetan Autonomous Prefectures and two Tibetan Autonomous Counties located in Qinghai, Gansu, Sichuan, and Yunnan Provinces.

China's claim to sovereignty over Tibetan areas derives from the Mongol ascendancy over much of Central and East Asia in the thirteenth century. After crushing Chinese imperial troops, the Mongol Khans established the Yuan Dynasty and ruled their empire from a newly built capital in Beijing. Tibetans avoided conflict with the Mongols, exchanging spiritual instruction by Tibetan lamas for protection by Mongols in a relationship that was later known as "priest and patron." Today, China argues that Mongols were not conquerors, but unifiers, and that Beijing should exercise sovereignty over lands where Tibetans once deferred to Mongols. The Tibetan government-in-exile, based in Dharamsala, India, asserts that Tibet is an "occupied country"¹⁶² and that the exiled government "is recognized by Tibetans, both in and outside Tibet, as their sole and legitimate government."¹⁶³ The Dalai Lama seeks a resolution that would accept Chinese sovereignty over Tibetan lands in exchange for genuinely functional Tibetan autonomy.

Beijing defends its modern administration of Tibetan areas with contentions that under the Chinese Constitution and the Regional National Autonomy Law, Tibetans are "the masters of their state and society."¹⁶⁴ Chinese leaders say that the human rights of Tibetans are fully protected and that economic and social develop-

ment is proceeding rapidly with generous aid from the central government.

The Chinese government asserts that Tibetans are but one of the 56 “nationalities” comprising the multi-ethnic state of China. Tibetan and other non-Han Chinese groups account for only eight percent of China’s population, with the Han Chinese making up the rest.¹⁶⁵ The Chinese Constitution and the Regional National Autonomy Law stipulate that local areas of “regional autonomy,” administered by local “organs of self-government,” should be established in areas where minority nationalities live in “concentrated communities.”¹⁶⁶ Officials claim that autonomy functions successfully. In practice, the law provides local governments no alternative but to accept and implement directives from above: “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.”¹⁶⁷

The call for independence is the most uncompromising expression of Tibetan interest, and even non-violent, pro-independence activism has been largely crushed by the government. The Chinese Constitution provides the basis for calling “separatists” criminals and requires that citizens protect national and ethnic unity.¹⁶⁸ Repercussions increase as the state broadens its perceptions of threat. Many Tibetans seek a path to modernity that would sidestep struggle with Beijing but allow retention of a functional Tibetan identity. They believe that operational, rather than nominal, autonomy could achieve this. Samdhong Rinpoche, elected last year by Tibetans in exile as their first prime minister,¹⁶⁹ said during his July 2002 visit to the United States, “Political separation from China is not important. What is important is to restore Tibetan civilization.”¹⁷⁰

Conflict between Tibetan aspirations and Chinese policy is found within cultural, religious, and educational spheres. Party and government are hostile to any practice or expression that they perceive as nourishing a self-identity that suggests that being Tibetan is not the same as being Chinese. As the Chinese government seeks to diminish or eliminate aspects of Tibetan culture that it regards as threatening, the peaceful exercise of internationally recognized human rights is systematically suppressed.

China’s prime requirement is unity and stability for the nation and among ethnic groups. This is enforced by constraining Tibetan political, cultural, educational, and religious life. Human rights and rule of law in Tibet are configured to accommodate party and state interests. Dr. Dong Yunhu, a senior human rights official in the State Council Information Office, explained the Chinese position: “The West stressed personal and individual rights; we stress the need for harmony between the individual and the collective.”¹⁷¹

Despite unrelenting effort by the Chinese government to discourage or prevent expressions of loyalty and devotion to the Dalai Lama, he remains the most respected and influential Tibetan anywhere. More than any other figure or institution, he is seen to embody not just Buddhism but vital elements of Tibetan identity. The Chinese government regards any expression of support for him as a form of opposition to official policy. Zhu Xiaoming, a senior Party

official with oversight on Tibetan policy, told visiting Commission staff, “The Dalai Lama uses religion as a pretext for harming the country. He carries people away [from the Motherland] under the signboard of religion.”¹⁷² An ethnic Tibetan Communist Party official in Lhasa described the Dalai Lama as “just a person who is engaged in politically subversive activities,” adding that “he has never done anything for the Tibetan people in 40 years.”¹⁷³

Professor Elliot Sperling of Indiana University told a Commission roundtable that he believes Chinese leaders are awaiting the Dalai Lama’s death and intend to choose a successor who will be molded to suit the interests of the state.¹⁷⁴ The State Council’s management of the enthronement of Gyaltzen Norbu as Panchen Lama in 1995 may provide a model. He was enthroned a few months after the Dalai Lama recognized then five-year-old Gedun Choekyi Nyima as the true reincarnation of the Panchen Lama—after the Dalai Lama, the most important figure in the dominant sect of Tibetan Buddhism. Infuriated, Beijing rejected the Dalai Lama’s decision and installed Gyaltzen Norbu instead. Chinese officials continue to assert that Gedun Choekyi Nyima, held incommunicado along with his parents for the last seven years, is living a “normal” life. His current location is unknown and his status is unverified. If waiting for the Dalai Lama’s death is the strategy of the Chinese government, it could exacerbate tension as Tibetans focus on what they may perceive as a destructive affront to their heritage and religion. In the belief that both sides will benefit, the Congress and the Administration have repeatedly urged Chinese leaders to engage in substantive dialogue with the Dalai Lama or his representatives.

Due to sustained repression and harsh punishment, fewer Tibetans risk any form of peaceful protest. The number of Tibetan political prisoners has declined since 1996 to less than 200 according to a recent report by the Tibet Information Network (TIN),¹⁷⁵ a London-based independent news organization that monitors human rights inside Tibet. Three-quarters are Buddhist monks and nuns. Approximately 100 Tibetan political prisoners are known to be currently serving sentences at TAR Prison No.1 in Lhasa, better known as Drapchi. They include high-profile cases such as monks Ngawang Phuljung, Jamphel Jangchub, and Ngawang Oezer, and nuns Ngawang Sangdrol and Phuntsog Nyidrol, all of whom have served at least ten years of sentences which range from 16 to more than 20 years for counterrevolutionary activities. According to the Tibet Information Network report, 22 of Drapchi’s political prisoners have died as a result of severe abuse since 1989.

As political detention decreases and China becomes more adept at blocking information flow, fewer new reports of mistreatment of political prisoners emerge. Abuses experienced by Tibetans attempting to cross the Tibet-Nepal frontier without proper documentation are common on both sides of the border. Several releases on medical parole of Tibetan political prisoners have occurred this year.¹⁷⁶ Former prisoners remaining in Tibet are subject to close police control, and if they were released on medical parole they risk return to prison until their sentences have expired.

Article 36 of the Chinese Constitution provides for the freedom of “normal” religious practice. Party official Zhu Xiaoming ex-

plained to Commission staff that this must be based on seamlessness between religion and patriotism. “Loving the country is identical to loving religion,” he said. The “Patriotic Education” campaign, carried out from 1996 to 2000, resulted in the expulsion or displacement of thousands of monks and nuns. Although the formally designated campaign is reportedly complete, routine forms of patriotic education continue at monasteries, nunneries, schools, and workplaces.

The Chinese government exercises administrative authority over each Tibetan monastery and nunnery indirectly through a Democratic Management Committee (DMC) made up primarily of monks and nuns elected from among themselves. A DMC generally includes at least one representative of the local government, and local authorities must approve important decisions. Members of the DMC of Sera Monastery in Lhasa told Commission staff that boosting monastic enrollment depends primarily on whether income from monastery-run commercial enterprises is rising. The view held widely by officials and many Han Chinese citizens—that religious institutions and practitioners are unproductive and hinder economic development—underlies this requirement.

Official hostility toward religion also may play a role in a series of detentions of locally popular Buddhist figures implicated or charged with links to violence. They include Sonam Phuntsog and Tenzin Deleg of the Ganzi Tibetan Autonomous Prefecture (Tibetan: Kardze) in Sichuan Province and Jigme Tenzin of Lhasa. Officials have shown a tendency to equate separatism and terrorism. Details about charges or legal proceedings are unavailable for these cases.

Although there is conspicuous evidence that material living standards of Tibetans are rising, statistics showing sustained double-digit increases in local economic production¹⁷⁷ and massive infusions of government funding¹⁷⁸ are misleading. Article 9 of the Constitution appropriates natural resources as state property.¹⁷⁹ Government policy compels farmers and herders to sell their meat and grain to the government at low, fixed prices. Thus, after the government has taken much of the value of both extracted natural resources and agricultural production, the local Tibetan economies have little left.

Some academics and experts, including those who testified at a Commission roundtable, observe that Chinese authorities favor projects in natural resource extraction and large-scale infrastructure construction, and that beneficiaries of current development practices are concentrated among the urban, largely non-Tibetan population.¹⁸⁰ For economic development to benefit the 80 percent majority of Tibetans who live in rural areas,¹⁸¹ small-scale models are needed that are environmentally and culturally friendly. Arthur Holcombe of the Tibet Poverty Alleviation Fund pointed out at the roundtable that Chinese statistics show urban per capita income rising much faster than rural incomes.¹⁸² Bhuchung Tsering of the International Campaign for Tibet told the roundtable that economic development must not further dilute Tibetan identity.¹⁸³

The Great Western Development campaign (*Xibu Da Kaifa*) has the most profound implications for western China of any official policy formulation to emerge in the post-Deng era. Ten provincial

entities making up more than half of China's total area will be integrated into the national mainstream at a sharply accelerated pace through economic and social transformation. Of particular concern to indigenous populations is Western Development's effort to boost the influx of Han Chinese into the region under the rubric of promoting "two-way population flow." Li Dezhu, Minister of the State Council Commission on Ethnic Affairs stated, "There will be some changes in the proportions of the nationalities. There will also be some conflicts and clashes in their contacts. If this is not handled well, it will have a deleterious effect on national unity and social stability."¹⁸⁴

The project raising the greatest alarm is construction of a rail link between Golmud (in Qinghai Province) and Lhasa scheduled for completion in 2007. Arthur Holcombe told the roundtable, "The new railway to Tibet will only intensify existing migratory trends, exacerbate ethnic income disparities and further marginalize Tibetans in traditional economic pursuits."¹⁸⁵

China has made progress at establishing public education infrastructure across a vast, lightly populated area. Credible reports, however, explain that poverty, as well as fees introduced during the 1990s, create significant barriers to school attendance.¹⁸⁶ A senior Tibetan academic at the Chinese Center for Tibetan Studies in Beijing disputed this, telling Commission staff that Tibetan schools are "free for all the people." Parents and students, however, contend that public schools in Tibetan areas impart low levels of literacy in both the Tibetan and Chinese languages, leaving students disadvantaged within their own culture and in China's economic mainstream. Educational models are needed that will prepare Tibetans for entry into a job market largely created and dominated by Han Chinese, yet facilitate retention of their self-identity, especially through competence in the Tibetan language. Witnesses before the Commission expressed their belief that international and U.S. government assistance is vital as Tibetans seek to acquire the educational tools to cope with a competitive, bicultural environment.

(Illustrative legal provisions include: PRC Constitution, Articles 36, 51, 52, 53, 54, 112–122, and 134; PRC Law on Regional National Autonomy—1984, amended 2001, Article 7; PRC Criminal Law—1979, amended 1997, Articles 13 and 102–113. For an illustrative list of national laws and regulations affecting religious organizations, see the Religious Freedom section.)

RECOMMENDATIONS ON TIBET

The Commission recommends that the Congress appropriate increased funding for NGOs to develop programs that improve the health, education and economic conditions of ethnic Tibetans.

Programs should continue to promote modernization and prosperity while respecting Tibetan culture and language; create direct benefits for Tibetans, especially in rural areas where most Tibetans live; be environmentally sound and sustainable; and do nothing to encourage or facilitate an influx of non-indigenous persons. Economic development programs should continue to include small-scale projects and enterprises, including micro-financing opportunities for Tibetans. Educational programs should continue to include primary, secondary, and tertiary levels; and international education exchange programs should continue to be for Tibetans from Tibetan areas who will return to Tibetan areas. Application for this funding should be open and competitive.

The Commission recommends that the Congress and the Administration continue to urge Chinese leaders to engage in substantive dialogue with the Dalai Lama or his representatives.

There is mutual benefit to be achieved for Tibetans and Chinese. An agreement could foster greater prosperity and stability in Tibetan areas of China as well as a more secure, robust future for Tibetan culture. The Dalai Lama recently said, "Genuine autonomy should cover all the Tibetan territory, all the Tibetan ethnic group's areas." "I'm not seeking separation," he said. "Our top most concern is preservation of Tibetan culture, Tibetan spirituality, and Tibetan involvement."

The Commission recommends that members of Congress and Administration officials continue to urge that China end restrictions on Gedun Choekyi Nyima, the boy identified by the Dalai Lama as the 11th Panchen Lama, and his family members, and request that representatives of international observer organizations visit the boy and his family.

The family should make its own decisions on matters of residence and education, maintain normal correspondence with others, and be free to visit others and receive visitors.

XINJIANG—UIGHURS

The Chinese government supports the U.S.-led global war on terrorism, but critics argue that Beijing is using terrorism as an excuse to crack down on human rights and religious freedoms of the Uighur Muslim population in Xinjiang.

The Uighurs, a Muslim Turkic people, are the dominant ethnic group in China's westernmost region, the Xinjiang Uighur Autonomous Region. They have a different ethnic, cultural, historical, and linguistic background than Han Chinese and have resisted Beijing's authority since Qing Dynasty troops first took control of the Uighurs' homeland in 1759.¹⁸⁷ Resistance to Chinese rule continued after the Qing officially gained control of the area in 1884 and renamed it Xinjiang.¹⁸⁸ Uighurs managed to regain independence briefly in the 1930s and again in the 1940s.¹⁸⁹ Many Uighurs today identify more strongly with their Central Asian neighbors than with China. However, while many Uighurs are unhappy with Beijing's controls, they manifest their discontent through different means, from deep personal immersion into Islamic traditions to advocating independence through violent methods.¹⁹⁰ Yet "only a very few Uighurs have turned to militancy," as Dr. Justin Rudelson, former executive director of the University of Maryland's Institute for Global Chinese Affairs, told a Commission roundtable.¹⁹¹

Uighur separatists have committed occasional acts of violence in recent years, and a few have been linked to terrorist groups. In August 2002, the U.S. government designated the East Turkestan Islamic Movement as a foreign organization that supports terrorism and placed this obscure Xinjiang separatist group under an executive order blocking its financial transactions and freezing its assets in the United States.¹⁹² China's state-controlled media have alleged that Osama bin Laden is an active sponsor of Xinjiang separatists.¹⁹³ However, there is little evidence to substantiate the Chinese government's claims that thousands of Uighurs are associated with al-Qaeda and other terrorist organizations,¹⁹⁴ or that "the majority of [Xinjiang] separatists are engaged in terrorist activities,"

as asserted by Zhang Guobao, vice-chairman of China's State Development Planning Commission.¹⁹⁵ President Bush has cautioned Chinese President Jiang Zemin that "the war on terrorism must never be an excuse to persecute minorities."¹⁹⁶

According to China's official 2000 census, approximately 45 percent of the 19 million people in Xinjiang are Uighurs. The Han Chinese population has swelled to around 40 percent now, up from approximately six percent in 1949. In the past, the increase in the Han Chinese population was largely due to government-initiated migration to Xinjiang. Now, however, many Han Chinese workers are moving to Xinjiang in search of new economic opportunities, as development there has become a priority for the central government under the Great Western Development campaign.¹⁹⁷ This demographic shift is a source of the growing tension and resentment Uighurs feel towards Han Chinese and the Chinese government. A July 2002 *Financial Times* article stated, "Settlers and migrant workers are pouring in from the east at such a rate . . . that Uighurs are beginning to feel like aliens in their own land."¹⁹⁸

Although Xinjiang has benefited from the central government's economic development policies, Uighurs contend that Han Chinese are the primary beneficiaries, often depriving Uighurs of jobs.¹⁹⁹ Uighurs are also concerned about the economic and environmental impact of large extraction projects, such as a \$5.6 billion, 2,500 mile pipeline to transport natural gas from the Tarim Basin in Xinjiang to Shanghai.²⁰⁰ They believe it will simply exploit the region's natural resources and provide little economic benefit to local Uighur people.²⁰¹ Many observers also question the pipeline's viability.²⁰²

Events in May 2002 amplified Uighur concerns. Article 4 of the Chinese Constitution guarantees cultural and linguistic protections for all nationalities. However, the practical effect of such protections is questionable. Western media reports describe a massive book-burning rally in the Xinjiang city of Kashgar in May.²⁰³ Officials claim that the books promoted separatism and threatened stability. Uighurs claim that the books related to their history and culture. Also in May, officials reportedly ordered Xinjiang University, the largest in the region, to cease all instruction in the Uighur language.²⁰⁴ Nearly half of the 32,000 students are from ethnic minority groups, mainly Uighur,²⁰⁵ making this ban a threat to Uighur linguistic preservation and Uighur identity.

Uighur separatist activity, both non-violent and violent, occurred long before September 11, 2001, and Chinese government campaigns to suppress separatist actions and religious extremism have been in full effect for years. The government justifies its actions under Chinese law, such as Article 52 of the Chinese Constitution, which requires all Chinese citizens "to safeguard the unity of the country and the unity of its nationalities," Article 36, which protects only "normal religious activities" as determined by the state, and Article 13 of the Criminal Law, which criminalizes separatist beliefs.

In April 2001, the Chinese government renewed its Strike Hard anti-crime campaign. While on the national level the campaign targets crime (see the "Criminal Justice" section of this report), in Xinjiang the crackdown extends to separatists and "illegal religious

activities.”²⁰⁶ Abulahat Abdurixit, chairman of the regional government, told the *Xinjiang Legal Daily* in April 2001 that the Strike Hard campaign in Xinjiang would specifically target “national splittists,” “violent terrorists,” and “religious extremists.” In January 2002, Abdurixit announced that artists, writers, performers, historians, and others who advocate separatism through art would also become Strike Hard targets.²⁰⁷ The campaign exacerbated the rate of sentencing and arrests in the region. Official accounts note that in May 2001, more than 3,000 cases were undergoing prosecution in Xinjiang and massive public sentencing rallies were held throughout the region, with attendance reaching over 300,000.²⁰⁸

Strike Hard intensified in Xinjiang after September 11, 2001. Within a month, authorities announced heightened measures against separatists, terrorists, “illegal religious activities,” and “extremist religious forces.”²⁰⁹ Senior Xinjiang Justice Department officials told visiting Commission staff in Urumqi that “illegal religious activities include splitting the country and endangering national security and unity under the pretext of religion.”²¹⁰ Punishable activities targeted during the crackdown include looting, rioting, possessing and publishing materials containing separatist views, engaging in campaigns for religious wars, illegally setting up organizations, and anything perceived by authorities to be “endangering state security or unity.”²¹¹ Participation in such activities can lead to long prison sentences or execution. Senior Xinjiang Justice Department officials also told Commission staff that approximately 1,000 people are currently in prison in Xinjiang for “carrying out concrete activities toward splitting or endangering the country,” mostly through violent means.²¹² The sweeping scope of such charges makes it difficult to discern which cases are legitimate and peaceful and which may be criminal and violent.

The case of Rebiya Kadeer exemplifies the nebulous legal environment. Kadeer is a prominent Uighur businesswoman who was active in organizing grassroots campaigns to address Uighurs’ social concerns.²¹³ She is also a former member of the provincial-level Chinese People’s Political Consultative Conference and was a Chinese government-appointed delegate to the 1995 United Nations World Conference on Women in Beijing. In August 1999, Chinese authorities arrested her while she was on her way to meet a visiting U.S. Congressional staff delegation. In March 2000, a Xinjiang court sentenced her to eight years in prison for “passing state secrets” to foreigners. According to an official Chinese news report, the alleged “state secrets” included local newspaper articles and names of people whose cases the courts had handled.²¹⁴ Many observers believe Kadeer was targeted for her activism in the Uighur community and for her husband’s support in the United States for Uighur causes and involvement with Radio Free Asia.

Restrictions on religious activity in Xinjiang have a serious impact on Uighurs, whose culture and ethnic identity are closely tied to Islam. Regulations tightly control places of worship, activities of religious leaders, religious education, and participation in religious activities.²¹⁵ Officials restrict the building of mosques in Xinjiang, and, according to unofficial reports, mosques have been torn down as part of a crackdown on religious activity.²¹⁶ The Chinese government closely monitors and guides activities of Islamic religious

leaders (imams), all of whom must be approved by local branches of the state-controlled Islamic Association of China. From March through December 2001, the government implemented an imam “patriotic re-education” campaign in Xinjiang. Imams were required to attend 20-day sessions to study patriotism, Communist Party ideology, and how to combat separatism.²¹⁷ The China Islamic Affairs Steering Committee was set up in March 2001 under the administration of the Islamic Association of China to conform Islam to Chinese political ideology.²¹⁸ The Committee is charged with translating religious texts in accordance with Chinese law and Islamic doctrine, and preparing sermons for distribution, according to the *China Daily*, “to help the imams improve themselves.”²¹⁹

According to unofficial sources, no one under the age of 18 is allowed to enter mosques, and official sources verify that religious education is tightly restricted,²²⁰ under the Chinese government’s assumption that religion interferes with education per Article 36 of the Chinese Constitution. Heavy restrictions on religious activities extend to teachers and university students. Dr. Tashpolat Tiyp, Vice President of Xinjiang University, told visiting Commission staff that at Xinjiang University, “We do not allow for religious activities inside the school” and that any student found participating in religious activities at the university would be dismissed. “They all obey the school rules and none participates in religious activities.”²²¹

(Illustrative legal provisions include: PRC Constitution, Articles 36, 51, 52, 53, 54, 112–122, and 134; PRC Law on Regional National Autonomy—1984, amended 2001, Article 7; PRC Criminal Law—1979, amended 1997, Articles 13 and 102–113. For an illustrative list of national laws and regulations affecting religious organizations, see the Religious Freedom section.)

RECOMMENDATIONS ON XINJIANG—UIGHURS

The Commission recommends that the Congress and the Administration continue to emphasize that the war against terrorism is not an excuse for suppression and violations of human rights of ethnic Uighurs in Xinjiang, and recommends that the Congress and the Administration provide funding for NGOs to develop programs that focus on preserving the Uighur culture and language.

While the U.S., Chinese, and other governments have linked some Uighur separatists in Xinjiang to terrorist groups elsewhere, the Chinese government’s broader claims against the Uighur minority in Xinjiang have not been proven. Combating terrorism and separatism in Xinjiang has resulted in intensifying repression against Uighurs, escalating violations of their human rights (especially the right to religious freedom), and undermining local efforts to preserve Uighur culture and language. Programs to preserve Uighur culture should promote Uighur language and literature.

The Commission recommends that the Congress and the Administration urge the Chinese government to lift restrictions on religious activity for Uighurs, allowing Uighurs of all ages to participate in religious activities and receive religious education.

Restrictions on religious freedom in China particularly resonate with Uighurs, as they consider Islam inseparable from their culture and identity. Current Chinese restrictions on religious activities are notably stringent for Uighurs in Xinjiang, especially since an intensified government campaign against terrorism and separatism has also extended to religious extremism. Uighurs of all ages should be allowed to worship freely, receive religious instruction, and obtain and study the Koran and other religious texts.

The Commission recommends that the Congress and the Administration continue to press the Chinese government to allow U.S. Embassy and Consulate officers, as well as other international observers, to attend trials of individuals charged with “endangering national unity or security” in Xinjiang, particularly of individuals who have committed non-violent acts.

Xinjiang Justice Department officials told visiting Commission staff that it is “permissible and normal” for foreign diplomats to attend the trials of those accused of these offenses. In practice, however, the procedures for doing so are opaque and court authorities evidently do not consider it normal for foreign observers to attend. Thus, few U.S. Embassy officers have been permitted to attend these trials in the past. Because charges of “endangering national unity or security” against Uighur separatists are common, the Commission believes it is particularly important to press the Chinese government to permit U.S. and international observers to attend these trials.

IMPACT OF THE WORLD TRADE ORGANIZATION ON THE DEVELOPMENT OF THE RULE OF LAW

On December 11, 2001, China formally became a member of the WTO. In doing so, China agreed to abide by the rules governing trade relations among most of the nations of the world. U.S. trade analysts and business leaders expect China’s accession to the WTO to provide greater opportunities and a more stable economic environment for American businesses operating there. More important, although some believe that increased trade may serve to strengthen the existing power structure in China, many others believe that the changes that the Chinese government must make to implement its WTO commitments will help foster the broader development of the rule of law.

In joining the WTO, China has demonstrated an unprecedented willingness to make fundamental changes to its system of governance in response to the dictates of an international body. This decision itself is an important step in moving toward a system of government based on the rule of law. As U.S. Undersecretary of Commerce for International Trade Grant Aldonas stated to the Commission, “Observance of the law in any society has to become a habit.”²²² Reform-minded elements within the Chinese leadership have been eager to demonstrate China’s commitment to compliance and the institutional changes that are expected to result from accession.²²³ Early in 2002, Long Yongtu, Vice Minister of Foreign Trade and Economic Cooperation, announced that WTO accession will help China build “a stable, transparent and predictable law system.”²²⁴

The WTO agreements and China’s accession documents contain many core elements of the rule of law. The WTO imposes transparency on its members by requiring that all laws, regulations, judicial decisions, and administrative rulings relating to trade be published promptly.²²⁵ WTO agreements also require that all trade-related measures be administered in a uniform, impartial and reasonable manner,²²⁶ and that those measures not be enforced before they are officially published.²²⁷ Further, WTO members must maintain tribunals or procedures for the prompt, independent review of trade-related administrative actions.²²⁸ WTO

members must incorporate these requirements into their own legal systems.

The Chinese leadership has viewed the WTO as a vehicle for promoting economic reforms that were already regarded as desirable but politically difficult to achieve, including reforms that involve the same rule of law elements found in China's WTO commitments. Professor Donald Clarke of the University of Washington Law School told a Commission hearing that "accession is part of a larger strategy of massive and fundamental economic reform."²²⁹ Recognizing the importance of the changes WTO membership would bring to its larger economic reform policies, China began amending and abolishing laws and regulations inconsistent with the WTO before it became a member. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) reported that 2,300 laws and regulations had been "cleaned up" due to WTO non-compliance as of May 2002, and of these 830 had been abolished.²³⁰ Efforts to undertake reform of China's administrative law regime and its judiciary also began long before China joined the WTO.

Reform of Lawmaking and Rulemaking Processes

In joining the WTO, China has agreed to honor transparency commitments by publishing trade-related measures in an official journal and providing an opportunity for the public to comment on drafts before those measures are implemented.²³¹ The Legislation Law passed in 2000 provides for the possibility of publishing drafts of "important" bills and of seeking opinions from various parties through public hearings, although it does not mandate releasing draft bills to the public at large.²³² Similarly, the State Council's Procedural Rules for Formulating Administrative Regulations require that the State Council gather opinions from relevant government bodies, associations, and citizens, but does not require the release of draft regulations to the public at large.²³³

Some administrative bodies have published regulations and other measures in draft form for public comment; administrative bodies that regularly issue rules and regulations involving trade and investment, such as the China Securities Regulatory Commission, have done so more consistently.²³⁴ Other administrative bodies also have made public a limited number of proposed regulations, including some without obvious connections to trade.²³⁵ Some measures are shared in draft form with a limited Chinese audience, further promoting concerns among foreign investors and trading partners about discrimination and selective transparency. However, Chinese government authorities promulgate most measures in final form without distributing drafts and allowing public comment. This practice demonstrates that, on the whole, Chinese administrative bodies are far from achieving full compliance with China's transparency commitments.

As expected, progress in implementing WTO rules on transparency varies widely at the provincial and local levels. A large number of laws and regulations at these levels need to be revised or rescinded. China's most commercially advanced provinces and cities lead the rest of the country in these reforms. For example, in 2000, the Shanghai people's government instituted an action plan that included a review of local measures for WTO compat-

ibility. Shanghai also has begun holding open hearings on some draft legislation. In 2002, the Beijing people's government adopted measures that permit publishing draft rules and holding public hearings.²³⁶ Although a few other provinces and municipalities have set up WTO compliance centers and have taken significant steps toward revising laws and rules and improving transparency,²³⁷ many provincial and local governments continue to lack the will or knowledge necessary to embrace the changes that WTO membership requires.

Administrative Law Reform

China lacks comprehensive procedures for making administrative rules and regulations, which leads to inconsistent rulemaking practices among administrative bodies.²³⁸ China also lacks adequate methods for challenging administrative actions, either internally or through the courts. Many administrative bodies have no procedures or personnel in place to hear and decide administrative appeals.²³⁹ The Administrative Litigation Law allows citizens to sue government officials in a court of law for violation of their "legitimate rights and interests."²⁴⁰ However, the law limits the types of actions that can be challenged, and the courts have defined "legitimate rights and interests" narrowly.²⁴¹ With the support of the Asia Foundation and U.S. legal scholars, the China Administrative Law Research Group, a group of Chinese legal scholars and government officials, is drafting a new law on administrative procedure that is to be completed by December 2003. Many Chinese and foreign observers hope that the new law, together with reform of all laws and regulations inconsistent with WTO requirements, will bring about a more uniform system of enforcing trade-related measures through administrative appeals and improved mechanisms for judicial review of administrative actions.

Judicial Reform

Many argue that the weakness of China's judiciary poses one of the biggest obstacles to effective judicial review of administrative actions.²⁴² The most significant development in judicial reform resulting from China's WTO membership has been the establishment of new procedures to handle transnational disputes, whereby foreign entities may have their cases heard before intermediate courts without first appearing before lower level courts.²⁴³ Similar procedures have been established for intellectual property cases. Judges assigned to these cases have begun training in business law, intellectual property, and legal English. For WTO-related cases, these new procedures may lessen the impact of corruption and lack of professional competence, problems that critics find throughout China's judicial ranks.²⁴⁴

Some critics argue these new court procedures show that the Chinese government will attempt to limit the impact of WTO accession to the commercial sphere. Others argue that China's commitment to provide independent and impartial judicial review for WTO-related actions may be having a broader impact. For example, in the past year, the Chinese government established the first uniform national examination for new judges, lawyers, and prosecutors, and the Supreme People's Court issued a circular calling

for standardized selection processes and improved professional competence at all levels of the judiciary.²⁴⁵ It is too early, however, to assess whether these calls for reform and efforts to improve the competence of China's judges will lead to beneficial changes in the judicial process, either within the realm of commercial law or more broadly.

U.S. Government Activities

The United States Trade Representative (USTR) coordinates the Administration's monitoring efforts through chairmanship of the interagency Trade Policy Staff Committee (TPSC) subcommittee on China WTO compliance, which consists of officials from those federal agencies most concerned with WTO commitments, including the Departments of Commerce, State, Agriculture, Labor, and Treasury and the U.S. Patent and Trademark Office. In China, the State Department, the International Trade Administration, the Foreign Agricultural Service, and U.S. Customs monitor compliance. The U.S.-China Relations Act of 2000 requires the USTR to submit an annual report on China's compliance with its WTO commitments, including the findings of the Department of Commerce's compliance monitoring program. The first report is due by December 11, 2002.²⁴⁶ Moreover, the Senate Finance and House Ways and Means Committees have tasked the General Accounting Office (GAO) with a four-year project to examine China-WTO implementation issues.

In China, U.S. government agencies provide limited technical assistance for WTO implementation and compliance, but there is little coordination among them. U.S. diplomats have held training courses for Chinese government officials at various levels. The Department of Commerce has conducted a number of seminars throughout China, mostly on industry-specific topics. U.S. agencies currently conducting programs have little experience in offering technical assistance. Moreover, agencies carry out existing programs without funds appropriated for this specific purpose, and the programs are not designed to address China's WTO commitments relating to rule of law development. The U.S.-China Relations Act of 2000 authorizes the Department of Commerce to establish a commercial rule of law and technical assistance program related to commercial activities in China.²⁴⁷ If carried out, this program could help China meet its WTO rule of law commitments. However, the Congress has not appropriated funds for this specific purpose, and, consequently, the Department of Commerce has not established a comprehensive commercial rule of law program in China.

Foreign Government Assistance

In contrast to the United States, other governments, including the European Union, individual European states, Australia, Canada, and Japan, have committed to provide significant technical assistance to China on WTO compliance and the development of the rule of law. The European Union has been the largest donor for training programs. Its WTO-related projects, reportedly estimated at about \$100 million, are being phased in over a number of years as part of the EU's larger strategic plan for relations with China.²⁴⁸ Commission hearing witnesses have cautioned that the

United States should not cede to other governments the opportunity to prioritize the content of technical assistance to China, as doing so may result in a Chinese legal system that favors other countries' interests to the detriment of the United States.²⁴⁹

It is too soon to determine whether China will adhere to its commercial rule of law commitments, given the sweeping structural changes required. China's capacity to implement the changes necessary for WTO compliance continues to be debated vigorously in China, the United States, and elsewhere. Some doubt whether MOFTEC is capable of coaxing the other ministries into action.²⁵⁰ Analysts also question Beijing's ability to force provincial and local governments to change their policies and practices after having enjoyed significant autonomy for so long, despite the strong interest to comply among China's most senior leaders.²⁵¹

(Illustrative legal provisions include: Accession of the People's Republic of China to the World Trade Organization, Decision and Protocol—2001; Marrakesh Agreement Establishing the World Trade Organization—1994, Annex 1B (General Agreement on Trade in Services), Annex 1C (Agreement on Trade-Related Aspects of Intellectual Property Rights); General Agreement on Tariffs and Trade—1947)

RECOMMENDATIONS ON IMPACT OF THE WTO ON THE DEVELOPMENT OF THE RULE OF LAW

The Commission recommends that the Administration develop a comprehensive plan for WTO-related technical assistance to China.

Although China has undertaken its own training efforts, officials there have stressed that a lack of expertise and capacity to meet China's training needs has hampered progress in WTO implementation. The need is particularly acute in training for judges, administrators, and bureaucrats in WTO rules and processes.²⁵² A comprehensive U.S. government plan should focus on WTO implementation areas that not only will have an impact on commercial rule of law, but also will accelerate the development of the rule of law more broadly. In particular, technical assistance should be geared to transparency in the legal system, administration of laws in a transparent and reasonable manner, and the provision of fair, impartial, and independent judicial procedures. Since existing programs have focused principally on training national-level officials, new training programs should target provincial and municipal officials, in addition to addressing the training needs of national-level officials more systematically.

The Commission recommends that the Congress appropriate funds and earmark them for the Commercial Law Development Program (CLDP) to implement a commercial rule of law training program in China, as authorized by the U.S-China Relations Act of 2000.

The Department of Commerce's Commercial Law Development Program (CLDP) focuses on all aspects of laws, regulations, and administrative practices affecting trade. It has worked with foreign governments, academics, and NGOs to conduct commercial rule of law programs all over the world, including many programs focusing on WTO accession and implementation issues. The Congress should make funding for a CLDP China program available either through a direct appropriation to the Department of Commerce or through the U.S. Agency for International Development (USAID). It appears that there are no legislative obstacles to providing CLDP with the funding, through USAID or otherwise, to carry out commercial rule of law or technical assistance programs in China. A CLDP China program should be part of the comprehensive plan in the previous recommendation.

RULE OF LAW PROGRAMS

From a small start in the late 1970s, provision by foreign entities of technical assistance to promote the development of the rule of

law in China has accelerated. The spiraling number of programs and their increasing variety have made it difficult to sort out what kinds of efforts have been most effective and where governmental and non-governmental help in the future might be best deployed to achieve the desired goals. To untangle these issues, the Commission has begun to construct a database of rule of law programs that will be available on the Commission's website.

The U. S. government lags behind other nations in supporting these kinds of programs.²⁵³ The bulk of government-funded assistance furnished so far has come from Europe, including a large program funded by the European Union itself, along with programs by individual European states. Other major assistance comes from the governments of Canada, Australia, New Zealand, Japan, and South Korea.

Conversely, U.S. NGOs have been at the forefront of efforts to develop rule of law programs and have played key roles in developing creative ways to provide assistance. The Commission roundtable "Promoting the Rule of Law in China" introduced examples of ongoing U.S.-based rule of law programs. The Temple University School of Law was the major direct recipient of U.S. government funds for rule of law development in China, authorized for the first time in fiscal 2000. Its cooperative Masters of Law program with Qinghua University and other universities has already turned out more than 70 graduates, including judges, high-level officials, and private lawyers. U.S. faculty members are currently participating in drafting workshops with staff of the National People's Congress and the Supreme People's Court on new torts and property laws, as well as a code of judicial ethics.

Robert Kapp, President of the U.S.-China Business Council, presented testimony at a Commission roundtable about the U.S.-China Legal Cooperation Fund. The Fund sponsors small-scale cooperative projects in areas ranging from legal support for women in cases of domestic violence to the drafting of a code of legal ethics for the All-China Lawyers Association. At the same Commission roundtable, Nancy Yuan of the Asia Foundation presented some of the Foundation's grassroots rule of law projects. These and other grassroots initiatives, such as those of the Ford Foundation, address issues of concern to the average Chinese citizen and promote rights awareness in the areas of environmental protection, public health, HIV/AIDS, worker rights, property law, family law, trafficking in women and children, and consumer protection.

NGOs from other nations work on rule of law programs in China. Multilateral organizations such as the UNDP, the Asian Development Bank, UNICEF, UNESCO, and the World Bank have also offered assistance in this area. Twice a year, foreign entities supporting legal reform and human rights work in China meet in Beijing to exchange ideas, avoid duplication of effort, and evaluate obstacles and opportunities.

The Commission has concluded that popular legal education and legal aid programs are some of the most promising areas for future promotion of the rule of law in China. The staff members of existing legal assistance programs, including hotlines and drop-in clinics, say that demand for grassroots legal information and help far exceeds their ability to satisfy it. The large number of people seek-

ing help to assert their rights in a legal context belies the assertions of some foreign scholars that China's lack of an "indigenous rights tradition" makes it unlikely that the concept of human rights can ever prosper in China. To the contrary, it appears that once they know the law, the Chinese people are no less willing than the people in other nations to seek legal means to protect their rights and interests.

RECOMMENDATIONS ON RULE OF LAW PROGRAMS

The Commission recommends that the Congress authorize the development of programming in popular legal education for groups in China, such as farmers in remote areas and migrant workers, who are unaware of their rights under existing law.

Programs of this type should involve cooperation with local organizations and legal aid centers and focus on specific rights under Chinese law. Programs in minority areas should be offered in the relevant languages.

The Commission recommends that the Congress authorize and strengthen judicial training programs and exchanges between the United States and China.

Judicial exchanges and training programs enhance the expertise and professional prestige of judges in China, a vital component of the culture of judicial independence. Such programming should include discussion of case studies in judicial ethics pointing out the challenges faced by judges in both countries. Programs must include mechanisms for building lasting communication and support networks (such as email lists and electronic bulletin boards).

The Commission recommends that the Congress and the Administration provide special assistance to legal aid centers serving marginalized populations in China, such as the disabled, laid-off workers, victims of unsafe working conditions, and individuals harmed by environmental pollution.

Many members of these marginalized groups should benefit from existing Chinese laws that in principle extend legal protections to them, but most members know little about existing law and lack the resources to obtain useful legal assistance.

The Commission recommends that the Congress instruct the GAO to review and analyze the effectiveness of all U.S. government-funded programs promoting the rule of law, human rights, and democracy in China.

Some existing programs have not been evaluated by external auditors to assess their performance. Some programs have no evaluation process at all. Diligent external evaluation can lead to more effective future programming.

General Recommendations

The Commission recommends that the President, senior Executive Branch officials, and members of Congress continue to raise human rights issues, as well as individual cases of victims of human rights abuses, including those discussed in this report, whenever they meet with Chinese government officials. The Commission further recommends that the Administration include Commission leaders in any future Presidential visit to China.

Our nation's political leadership, in both the Congress and the Administration, should reinforce to Chinese counterparts at every opportunity that the

international community expects China (and all nations) to abide by internationally recognized human rights practices.

The Commission recommends that the Administration explore additional ways to build multilateral support to put pressure on China to improve human rights practices and legal protection of citizens.

All 18 Congressional members of the Commission signed a letter to President Bush on April 18, 2002, urging him to work with members of the United Nations Human Rights Commission (UNHRC) to pass a resolution on China's human rights practices. In part because the United States had no seat at the UNHRC in 2002, no China resolution was introduced in the 2002 UNHRC session. In addition to diplomacy at the UNHRC, the Commission believes that the United States could usefully explore additional multilateral approaches, including applicable United Nations human rights mechanisms.

The Commission recommends that the Administration require that all Commerce Department officials assigned to China complete a course on human rights issues and their relationship to U.S. business activities in China.

Many U.S. businesses bring American values to China with their operations. Commerce Department officials can play a critically important role in sensitizing business leaders to human rights issues and to appropriate responses.

The Commission recommends that the Administration urge the Chinese government to ratify the International Covenant on Civil and Political Rights.

China has signed but not sent this covenant to the National People's Congress for ratification. On February 13, 2002, the Commission sent a letter to President Bush recommending that he urge President Jiang Zemin to direct his government to complete the process of ratification.

The Commission recommends that Congress authorize funds for technical assistance to China to slow the spread of HIV/AIDS and to mobilize national and local policy responses to the HIV epidemic based on the epidemiology of HIV in China and on "best practices" identified through international experience.

An uncontrolled epidemic of HIV/AIDS in China will cripple the capacity of the already battered public health system in China to respond to normal public health demands. Technical assistance on coping with HIV/AIDS could include cooperation on drafting model codes on the national, provincial, county, township, and municipal levels to address the epidemic without infringing on basic human rights.

5. Commission Activities for the Next Year

This section provides a partial list of additional issues that the Commission will examine over the coming year. It is illustrative and is not intended to be comprehensive.

HUMAN RIGHTS AND THE BEIJING 2008 OLYMPICS

On July 13, 2001, Beijing was awarded the right to host the 2008 Summer Games. The International Olympic Committee (IOC) selected Beijing despite vociferous criticism of China's human rights record. The IOC maintained that hosting the Games would spur improved civil liberties in China.²⁵⁴ The Secretary General of Beijing's bid committee, Wang Wei, encouraged that perception, vowing that the Beijing Games would "improve all facets of life in

China, including education, health, and human rights.”²⁵⁵ But Kevin Wamsley, Director of the International Centre for Olympic Studies at the University of Western Ontario, said the impact of the Olympics on the host country is overblown: “I’m sure in the years leading up to the Games political prisoners will be released, but it will be for the wrong reason,” Wamsley said. “It will be to save face, not to preserve humanity. Let’s face it, a three-week festival can’t change political, cultural, and historical traditions.”²⁵⁶

The Commission will look at what, if any, effect hosting the Olympics will have on China’s human rights practices and how the U.S. government might encourage positive results.

CORPORATE SOCIAL RESPONSIBILITY

Many NGOs argue that foreign businesses operating in China focus on earning profits with little regard for the promotion of human rights. Businesses respond by saying that a U.S. corporate presence is the best way to promote democratic values in China. In recent years, companies around the world have instituted corporate social responsibility programs intended to strike a balance between financial success, relations with host governments, and the well-being of their surrounding communities. In China, as part of such programs, some U.S. companies and industrial associations have established guidelines governing their practices with respect to working conditions, environmental protection, community involvement, and other aspects of their corporate activities.

There is debate regarding whether such social responsibility programs have a significant impact on business practices in China. NGOs have criticized multinational corporations for touting their programs while failing to establish mechanisms to implement them fully. The Commission will examine these corporate social responsibility programs and policies, focusing on the “American values” that U.S. businesses purport to bring to China and what those values embody. The Commission will also work to identify best practices and to determine whether foreign companies in China have lived up to the commitments they have made to adopt procedures and policies that will have a positive impact on China.

WOMEN’S RIGHTS

Article 48 of the Chinese Constitution states, “Women in the People’s Republic of China enjoy equal rights with men in all spheres of life.”

Despite this guarantee of equality, the transition from a planned to a market economy in China has resulted in particular hardships for women. The one child policy, even in its somewhat milder current form, has had a severe and unequal impact on women, including in some instances forced sterilization and abortion. In addition, the continuing preference for sons has resulted in selective abortion and sometimes infanticide of baby girls, causing a skewed male-female ratio in the general population. The growing problem of HIV/AIDS (see below) will have a substantial impact on women who too often do not have the legal and political standing to demand protection from their sexual partners.

Other issues the Commission will address include women's access to justice, women in the migrant workforce, trafficking in women, women's health issues, and family planning law and policy.

HIV/AIDS

The United Nations Theme Group on HIV/AIDS in China's 2001 update, "HIV/AIDS: China's Titanic Peril," warns of "a catastrophe that could result in unimaginable human suffering, economic loss, and social devastation." The United Nations estimates that up to 1.5 million people are infected with HIV in China, nearly double the official Chinese estimate of 850,000 cases at the end of 2001. The *New York Times* quoted UN officials as saying that "there could be as many as six million cases already in China, with 20 million expected by the end of the decade if nothing is done."²⁵⁷ Yet in some regions, low percentages of Chinese citizens are even aware of the disease and how it is spread. Unofficial news reports describe Chinese authorities as continuing to suppress information about HIV/AIDS in some parts of China.²⁵⁸

The UN's Office of the High Commissioner for Human Rights identifies HIV/AIDS as an undeniable human rights concern:

There is clear evidence that where individuals and communities are able to realize their rights—to education, free association, information, and, most importantly, non-discrimination—the personal and societal impact of HIV and AIDS are reduced. The protection and promotion of human rights are therefore essential to preventing the spread of HIV and to mitigating the social and economic impact of the pandemic.²⁵⁹

The Commission will examine the development of HIV/AIDS in China, the Chinese government's interest and effectiveness in addressing this issue, and the human rights implications of the disease.

REFORM THROUGH LABOR (*Laogai*)

Before 1997, among the punishments that Chinese courts meted out at the end of China's criminal justice process was "reform through labor" or *laogai*, which purported to reform unacceptable social and political behavior by inculcating "socialist values" through rigorous labor. Due to international criticism of this aspect of China's penal system, the Chinese government officially purged the term *laogai*, and the corresponding formal institutions, from China's criminal law in 1997. Nevertheless, the forced labor sites that the former term *laogai* described continue to operate, modernize, and boost production of goods. Today's forced labor penal system produces manufactured goods, commodities, and agricultural produce in state-owned and operated farms, ranches, mines, and factories. Experts differ as to whether these sites operate at a profit or constitute a drain on the Chinese government budget. They also disagree on the scope of these sites and the number of inmates, and whether export of prison labor products to the United States is rising, falling, or remaining static. (U.S. law forbids prison labor imports into the United States.) China has numerous penal sites that were created as penal reform institutions that can

also accommodate some productive labor. China also continues to operate hundreds of forced labor sites (camps and other facilities) created solely for commercial production using prisoners as the workforce. The Commission will examine these issues during the coming year.

RIGHTS OF FARMERS AND RURAL MIGRANTS

Farmers and rural migrant workers, who comprise the vast majority of China's population, suffer additional injustices beyond those encountered by urban residents. Hou Wenzhuo, a Visiting Fellow at Harvard Law School, told a Commission open forum that the Chinese household registration system (*hukou*) has bifurcated China's population into the urban first world and the rural third world. Although reform of the household registration system has begun in some areas of China, rural migrant workers are still denied social services in the cities and are generally treated as second-class citizens because of their rural status. Rural migrant workers face unequal rights in employment, job security, and health and safety, and women migrant workers encounter additional discrimination in the form of sexual harassment, pregnancy discrimination, and unequal pay for equal work. Rural Chinese remaining in the countryside face significant problems such as arbitrary and excessive taxation and a lack of social services. While land-use rights have improved under China's 1998 Land Management Law, the law is often not adequately implemented. Corruption in village governments and local law enforcement agencies is widespread. Human trafficking is also a serious problem for rural women and children.

In the coming year, the Commission will examine these and other human rights issues affecting farmers and rural migrants.

INDIGENOUS CHINESE "NGOS"

As China has moved from central planning toward a market economy, the state has retreated from many areas of social life where it once played a dominant role. A variety of social organizations has sprung up to help provide services once guaranteed by the state and to give a voice to new constituencies shaped by the changing economy. Education and health care are two examples of vital state functions now sometimes performed by non-state organizations. A 2001 report by the editors of *China Development Brief* lists 250 Chinese NGOs, ranging from the huge Party-led "mass organizations," founded soon after 1949, to specialized local associations founded much more recently. They include the Shanghai Cancer Recovery Club and the Women's Legal Services Centre in Qianxi County.²⁶⁰

Observers disagree on whether the term NGO, which implies a degree of autonomy from government control, should be applied to Chinese social organizations (called "social associations" under relevant Chinese legislation).²⁶¹ Some point out that these organizations are ultimately under state control and, therefore, should not be considered as truly "non-governmental" organizations. They contend that strict state supervision and suppression have led these groups to adopt an attitude of cautious deference to the govern-

ment, rather than one of criticism and public advocacy. Others disagree, seeing them as nascent NGOs, at least in substance, if not in form. Some Chinese associations even argue that their connection with state sponsors can translate into more effective influence on government policy.

The Commission will examine this issue and determine if and how such entities can help promote the rule of law and human rights in China and whether the U.S. government might play a role in assisting their development.

HONG KONG

Five years after Hong Kong's reversion to China on July 1, 1997, many in Hong Kong and elsewhere continue to voice concerns about the direction of the territory's development as a Special Administrative Region (SAR) of China. The PRC-UK Joint Declaration of 1984, together with the Basic Law adopted by China's National People's Congress (NPC) in 1990, declared that Hong Kong would enjoy "a high degree of autonomy" after reversion under the rubric "One Country, Two Systems." Some remain uneasy about developments since reversion while admitting that the transition itself has been generally successful, permitting Hong Kong to maintain its autonomy and unique character. Most analysts agree that Hong Kong's long-term success will depend on preserving the quality and integrity of Hong Kong's highly respected civil service, maintaining and strengthening the rule of law and an independent judiciary, and building the vigilance of an informed and public-spirited populace. The Chinese government's continued commitment to accepting the spirit and letter of the Joint Declaration and Basic Law will also be of critical importance.

Critics of the current Hong Kong government accuse it of adopting policies and making decisions that it believes will be pleasing to the Chinese government in Beijing, most frequently without any informal or formal expression of views by the latter. Some are concerned about the SAR's 1999 decision to refer a decision of the Hong Kong Court of Final Appeal in cases involving the right of abode in Hong Kong to the NPC Standing Committee. Some critics cite the seemingly abrupt retirement of longtime Chief Secretary Anson Chan in 2001 as evidence that the integrity of the Hong Kong civil service is at risk. Such fears were fueled in 2002 when Chief Executive Tung Chee-hwa announced an "accountability system" permitting him to create a cabinet of appointed "principal officials" to lead government departments. In addition, many were unsettled by the process that gave Mr. Tung a second five-year term in early 2002, worrying that the method used to determine his candidacy called into question whether the government intends to meet the Basic Law's commitment to extend universal suffrage and directly elect the Chief Executive and all members of the Legislative Council by 2008. Recent statements by senior Chinese leaders fuel these concerns about Hong Kong's autonomy.

The Hong Kong government is studying whether to adopt legislation under Article 23 of the Basic Law that deals with subversion and sedition. Some fear that the new law could become a legal device to limit public discussion or activities that the government may deem sensitive to the authorities in Beijing. Many have called

on the Hong Kong government to ensure that any such legislation adheres to international human rights standards and that the government promote broad public debate and consultation in its drafting.

DEVELOPMENT OF PRISONER DATABASE AND REGISTRY

During the coming year, the Commission intends to make substantial progress to meet the requirements of the legislative mandate to establish and maintain lists of victims of human rights abuses in China. This will entail the creation of a database of information on political and religious prisoners. A custom software application will be developed because no off-the-shelf product can provide the features, security, or interface needed. An Internet interface will provide access to information via a page on the Commission website. Development is expected to take at least 12 months. Until the database is operating, the Commission will monitor the key systemic issues underlying political imprisonment, identify individual prisoners who represent these systemic abuses, and take measures on their behalf.

The design of the database will allow collection and analysis of a wide variety of information types for prisoners. Categories will include biographical and personal information, details about detention and imprisonment, the role and behavior of police, prosecutors and courts, as well as health, maltreatment and torture.

The database will provide a powerful tool for the Congress, the Executive Branch, state and local government, NGOs, scholars, and the public to access information about individuals currently detained as a consequence of exercising internationally recognized human rights. The structure of the database will allow diverse queries, including about broad groups of victims based on any of many parameters, as well as searches based on very specific criteria. Whether a focus is defined by the reason for arrest, legal process, a geographic area, a period of time, a prison, or a religion, the Commission database will provide an invaluable tool for seeking information on current political imprisonment in China.

6. Additional Views of Commission Members

DISSENTING VIEWS OF SENATOR SAM BROWNBACK

While I strongly support the efforts of the Commission to monitor the People's Republic of China's compliance with international human rights norms, it is my view that the report has some significant hurdles to overcome before I can be satisfied that it is fulfilling its mandate.

The report identifies United States assistance and PRC cooperation on rule of law reform as the solution to changing the human rights situation in China. By directing the report's criticism away from the deliberate policies of the PRC Government that undermine international human rights norms, the Commission does a disservice. It is well known that the Government routinely uses the absence of rule of law to explain away human rights abuses, while also denying that they exist.

As well, I have deep concerns with China's well-known reliance on forced sterilizations and abortions as part of its aggressive enforcement of its' population targeting programs.

Earlier this year, in commenting on China's enforcement of its population programs, Secretary of State Colin Powell said in a letter dated July 21, 2002, "Regrettably, the PRC has in place a regime of severe penalties on women who have unapproved births. This regime plainly operates to coerce pregnant women to have abortions . . ."

The problem of coercive abortions and forced sterilizations in China is more than a serious problem, it is an international outrage. I would hope that the Commission would conduct a very thorough and intensive review of this issue and deal more substantially with these concerns in its report next year.

For these reasons, I am unable to support this report. I would hope that next year's report will address these concerns more fully.

DISSENTING VIEWS OF REPRESENTATIVE FRANK WOLF

While this first report by the Congressional Executive Commission on China (CECC) contains some worthwhile recommendations and observations on the continued human rights abuses in the People's Republic of China, I do not believe it sufficiently describes and addresses the degree to which these human rights abuses can be laid at the feet of the Government of China.

In a recent letter to all CECC commissioners, human rights advocate Harry Wu outlined several human rights issues in China that should have been included or discussed with more vigor and analysis in this report. I share in Mr. Wu's analysis.

For example, the section of the report on village elections gives the impression that the practice of village elections may be a positive development in a transition to democracy in China, without seriously analyzing whether or not the Communist Party may use village elections as a method of establishing control in the rural regions. The report says that "critics of the process say that the Communist Party manipulates the outcome [s]," but it does not adequately assert that China's rulers may use village elections as part of a strategy to maintain control.

On another matter which Mr. Wu raises, it is perplexing that the report fails to reflect the debate this year in Congress and in the Bush Administration about China's planned birth policy, particularly regarding whether or not the Administration would withhold funding from the United Nations Population Control Fund. This important issue is not addressed in this, the first, report of the commission and is conspicuous by its absence. The commission recently held a hearing on this subject, and I believe the report should address in detail China's planned birth policy.

Similarly, I agree with Mr. Wu that the report fails to discuss China's state-sponsored harvesting and trafficking of prisoners' organs, where a common thief can be executed in order for his organs to be sold for transplanting. Can you imagine being imprisoned for a minor offense and ending up being shot in the head and having your kidneys or corneas removed to be sold? Congress has held numerous hearings on this issue and the news media has written

about this issue, but the report fails to discuss this horrible practice.

I also believe the recommendations on religious freedom should be stronger. While these recommendations may be well-intentioned, they lack the necessary depth of discussion in addressing the Chinese Government's continued persecution of believers of all faiths—Roman Catholics, Protestants, Falun Gong practitioners, Muslim Uighurs, and Tibetan Buddhists.

Furthermore, I am concerned that this commission may not be willing to be a direct advocate on behalf of human rights and religious freedom, through letters or conversations with Chinese officials.

As I stated at a commission hearing this year, this panel should follow the model of the Helsinki Commission and be vocal in its advocacy for individual cases and human rights in general. I agree with John Kamm, president of the Dui Hua religious freedom organization, who has done more than almost anyone I know for human rights in China, who said at a commission hearing, "The model should be the Helsinki Commission . . . I foresee a day when this commission . . . is an arsenal of human rights."

The Helsinki Commission does not hesitate to write directly to leaders of member countries advocating human rights and religious freedom. The Helsinki Commission has done more than almost any other entity to bring freedom, hope and democracy to the former Soviet Union and the Eastern Bloc countries. The CECC ought to follow this successful model. But, clearly, this has not yet occurred, and it is almost as if the CECC is afraid that it will offend the China Government.

If I were a prisoner in China today, I wonder if I would have the same amount of trust and hope in the CECC to take up my case with Chinese officials as Soviet dissidents had in the Helsinki Commission, which was a tireless advocate with officials in the former Soviet Union.

While there are those of us on the commission on differing sides of the China PNTR issue, I am concerned with the perception that many of the commission's staff are more skilled in the areas of business and trade than in the area of human rights. As the law that created the CECC states, monitoring China's compliance on respecting human rights is a primary task of the commission. I believe the commission's efforts would be enhanced if staff expertise were more balanced, especially to include more staff who have the passion for promoting human rights in China. While I know that the commission staff is composed of competent and skilled professionals, and they are people of integrity, I have been very disappointed with their shortcomings in human rights and religious freedom advocacy.

For the reasons outlined above, I believe this report has some serious gaps in its coverage of human rights in China and I cannot sign the report.

This commission was created with a mandate to promote human rights in China. Unfortunately, I do not see this happening. Human rights organizations have expressed similar concerns to me and some have even questioned whether the commission should

continue to exist. I have similar questions regarding the continued viability of the commission.

Lastly, an observation: the fundamental problem in China in regard to the government's human rights abuses and restriction on human liberty is not the "law" in China, but the "regime" in China. The root problem in China is not just a faulty legal system, but a corrupt, totalitarian, oppressive, communist ruling regime that consistently violates human rights and religious freedom of its own citizens—Roman Catholics, Protestants, Falun Gong practitioners, Muslim Uighurs, Tibetan Buddhists or almost anyone who strives to worship and live with liberty.

ADDITIONAL VIEWS OF REPRESENTATIVE SANDER LEVIN

The Congressional-Executive Commission on China was created to play an active role to both engage and pressure China to create a more open society with greater respect for human rights, worker rights and rule of law. The importance of this effort is underlined by the vital strategic role of the United States and the increasing significance of China. The United States and China are the largest and third largest economies in the world, respectively. The relationship between our countries is of crucial importance and is becoming increasingly more so.

Although China is different from the former Soviet Union, and specific strategies and techniques will need to vary, the effective and activist role undertaken by the Helsinki Commission succeeded in focusing a spotlight on human rights and rule of law issues. In these ways, the Helsinki Commission served as an example in the establishment of this high-level Congressional-Executive Commission and should provide encouragement for it to meet its necessary and important challenge. The Commission has the potential to become a new meeting place for ideas on China and add an important new dimension to our bilateral relationship.

In its inaugural year, the China Commission has held several important hearings, a number of staff roundtables and staff have visited China. The coming year provides the Commission an opportunity to accelerate, and enhance its efforts both at the Commissioner and staff levels. In this regard, the following are activities that would enhance the Commission's role:

- Regular visits by Commissioners and staff to China to meet with key Chinese government and party officials to engage the Chinese in difficult issues regarding human rights and rule of law.
- Prominent participation by Commissioners in senior level Chinese official visits to the United States and in developing an on-going relationship with the Chinese Ambassador to the United States and his staff.
- Through its political prisoner project, not only pursuing the important task of collecting names of political prisoners but also developing strategies to seek the release of specific prisoners and addressing the larger systemic issues that these prisoners symbolize.
- Exploring all multilateral avenues to pressure China on violations of international standards, such as working through

the U.N. Commission on Human Rights, the International Labor Organization, as well as reaching out to other countries with ties to China. Without other countries' support and concurrence, our efforts to press China to improve its compliance with international human rights and worker rights standards will be less effective over the long term.

- Continuously throughout the year, anticipating, responding to and providing analysis of significant human rights and rule of law events and developments in China and proposing creative and constructive policy and legislative responses.

- Becoming an important forum for its Congressional Commissioners to air their broad spectrum of views on China, to forge a bipartisan consensus and thereby strengthen the Commission.

- Becoming an important forum for exchange of views between Congress and the Executive Branch through its Commissioners from each branch.

- Focusing concerted attention and analysis on a few carefully selected broad, crosscutting human rights and rule of law issues of particular current relevance in China. In the coming year, such themes might include workers rights and corporate social responsibility.

- Energetically reaching out to the broad spectrum of constituencies that work on human rights and rule of law issues in China, such as the NGO community and providing a forum for exchange of views and as a key conduit for these groups to work with Congress and where appropriate, finding means to support Chinese human rights and workers rights activists, either directly or through agencies working on their behalf.

In the coming year, I look forward to working with the Commissioners and Commission staff to bring to fruition key activities and to achieve the Commission's potential to play a vital role in shaping the U.S.-China relationship and improving human rights, worker rights, and the rule of law in China.

ADDITIONAL VIEWS OF REPRESENTATIVE SHERROD BROWN

I joined this Commission in May 2002. As a member who stood in staunch opposition to extending most favored nation treatment to the People's Republic of China by granting permanent normal trade relations (PNTR), I harbored my own misgivings over the Commission's focus. But I was committed, and remain committed, to helping make trade work between the U.S. and China.

The Commissioners and staff put forward great effort in creating this report. It is clear to me that several members made significant leaps in reaching compromises on various issues. But even after such endeavors, I must reluctantly oppose the final draft of the Commission's annual report. I do not oppose the observations made in this report. In fact, the signatures on this report represent a sea change among members of Congress and the Administration in recognizing the state of affairs in China. In the upcoming years, I am encouraged that this commission can work together and might develop itself into a force for change.

My concern with the report, and my reason for not signing, is that the report does not do enough to promote change. These recommendations will do little to create tangible changes in China. To adequately address the concerns of the Chinese people, the Commission must aggressively push Congress, the Administration, the Chinese government, and the American business community.

I commend the Commission for identifying corporate responsibility as a specific topic to be debated in the upcoming year, but I regret that the overall report falls short in recognizing the unmistakable role many American companies play in China's abuse of human rights. Why should another year pass before the Commission speaks out on this issue? This should have been a major topic for this year's agenda and should not have been omitted from the main body of this work. As we strive to encourage democracy in developing nations, something is obviously amiss in our China policy if American companies simply promote the status quo in China.

During the PNTR debate, as CEOs of multi-national corporations lobbied to eliminate virtually any standards or rules governing trade with China, they talked about access to the 1.2 billion customers in China. What they did not say is that their real interest is 1.2 billion Chinese workers—workers whom they pay cents to the dollar in comparison to American workers.

Many executives claim that increasing trade with China will force China to improve its human rights record. But history shows that engagement alone will not necessarily bring democracy to China. As we engage with developing countries in trade and investment, democratic countries in the developing world have been losing ground to more authoritarian countries, where people enjoy far fewer freedoms and a working environment often hostile to discussion of labor rights and unions.

In the Post-Cold War decade, the share of developing country exports to the U.S. for democratic nations fell from 53.4 percent in 1989 to 34.9 percent in 1998, a decrease in 18.5 percentage points.

It goes without saying that western corporations are interested in investing in countries that have below-poverty wages, poor environmental standards, no worker benefits, and no opportunities to bargain collectively. As developing nations make progress toward democracy, as they increase worker rights and create regulations to protect the environment, the American business community too often plays a counter-productive role of punishing these countries by transferring their trade and investment elsewhere in search of more accommodating regimes that may ignore environmental degradation, inadequate health care, limits on human rights, widespread poverty, or worse.

The People's Republic of China ignores the United Nations High Commission for Human Rights. They ignore the U.S. Commission on International Religious Freedom and the State Department's country reports. They ignore the agreements of the International Labor Organization. By only discussing these issues, our inaction would only encourage China's less than desirable behavior.

This Commission should be making recommendations to American companies, such as advocating for worker empowerment and the right to assemble and bargain collectively. We should address the complicated issue of sub-contracting, where American compa-

nies can take advantage of oppressive working conditions without being held directly responsible. We should recommend that the US government encourage companies to adopt and follow a progressive code of conduct. The Secretary of Commerce, OPIC, and the Export Import Bank should be directed to give preference to companies that have a strong code of conduct and prove they have been following it in their business practices.

We must also keep in mind that most reforms in Chinese law are meant to maintain stability in the country. They are not a result of philosophical changes in the government's agenda. To fully understand China's disdain for rules that impinge on their authority, simply look at the promises China has not kept as a new member of the World Trade Organization.

Recently the United States, Japan, the EU, Australia, Taiwan, and Canada have confronted the Chinese at the WTO, demanding adequate responses to inquiries over market access and tariff-rate quota commitments in areas such as cars, fertilizers, machinery, newsprint, photographic material and beer. Instead, Chinese officials have brushed off these demands and characterized other WTO members as "troublemakers."

This Commission needs to become an agent for change, similar to the Helsinki Commission and the role it played with the Soviet Union. We should encourage all American companies to apply to their operations in China the ideals our nation embraces. As we move forward, the Commission should measure any changes in China on an on-going basis and hold the People's Republic of China accountable for the promises it has made to the United States, the international community, and most importantly, its own citizens.

7. Appendix

APPENDIX 1.—WEBSITE SUMMARY

The Congressional-Executive Commission on China is committed to promoting the development of human rights and the rule of law in China. A crucial part of that task is providing information about these issues to the public in the United States, China, and around the world. To that end, the Commission maintains a website (www.cecc.gov) with comprehensive information about the Commission and its activities. This website is a useful resource, allowing a wide range of people to access information easily and to increase their understanding of issues related to human rights and the rule of law in China. The information on the website currently includes:

- The 2002 Annual Report issued by the Commission;
- The Executive Summary of the 2002 Annual Report in Chinese;
- Prepared testimony and complete transcripts from the Commission's hearings;
- Prepared testimony and complete transcripts from the Commission's staff-led roundtables;
- The Commission's upcoming activities;
- Background information on the Commission's members and staff; and

- Links related to the U.S. government, the Chinese government, U.S.-China organizations, human rights, religion, labor, news media, Tibet, Uighurs, and the rule of law.

The database of rule of law and human rights programs of national governments, NGOs, and multilateral organizations in China will soon be available on the website. This database will be continuously updated as the Commission receives new information. Suggestions for corrections or additions are welcome, and should be emailed to Samantha Palans at: samantha.palans@mail.house.gov.

In the future, the website also will permit users to request information from the prisoner database and registry.

APPENDIX 2.—COMMISSION ACTIVITIES IN 2002

Hearings

- February 7 Human Rights in the Context of the Rule of Law
 William Alford, Harvard Law School
 James V. Feinerman, Georgetown University Law Center
 Mike Jendrzeczyk, Human Rights Watch
 Xiao Qiang, Human Rights In China
- April 11 Taming the Dragon: Can Legal Reform Foster
 Respect for Human Rights in China?
 John Kamm, The Dui Hua Foundation
 Jonathan Hecht, Yale Law School
 T. Kumar, Amnesty International
 Michael Posner, Lawyers Committee For Human Rights
- June 6 WTO: Will China Keep Its Promises? Can It?
 Susan S. Westin, General Accounting Office
 Christian Murck, American Chamber of Commerce in
 China
 Donald C. Clarke, University of Washington, Seattle
 Grant D. Aldonas, Under Secretary of Commerce for Inter-
 national Trade
 Jeffrey L. Fiedler, Food and Allied Service Trades Depart-
 ment, AFL-CIO
 Jon M. Huntsman, Deputy U.S. Trade Representative

Roundtables

- March 4 Open Forum on Human Rights and the Rule of Law
 Wenzhuo Hou, Harvard Law School
 Ignatius Y. Ding, Silicon Valley for Democracy in China
 G. Eugene Martin, Foreign Affairs Consultant
 Raj Purohit, Lawyers Committee For Human Rights
 Erping Zhang, Falun Gong International Committee for
 Human Rights
- March 18 Labor Rights in China
 Bama Athreya, International Labor Rights Fund
 Mark Hankin, American Center for International Labor
 Solidarity, AFL-CIO
 Tony Freeman, International Labor Office
- March 25 Religious Freedom
 Paul Marshall, Center For Religious Freedom, Freedom
 House
 Thomas E. Quigley, U.S. Conference of Catholic Bishops
 Joseph Kung, Cardinal Kung Foundation
 David Aikman, Foreign Affairs Consultant
- April 15 Wired China: Whose Hand is on the Switch?

- Kathryn Hauser, Technology Industry Council
Sharon K. Hom, Human Rights in China
Edward Kaufman, Broadcasting Board of Governors
James C. Mulvenon, RAND Center for Asia-Pacific Policy
- May 24 **Promoting Rule of Law in China**
Nancy Yuan, Asia Foundation
Robert Reinstein, Temple University School of Law
Robert Kapp, U.S.-China Business Council
William Sullivan, Syracuse University
- June 10 **Ethnic Minorities in China: Tibetans and Uighurs**
Bhuchung Tsering, International Campaign for Tibet
Elliot Sperling, Indiana University
Arthur Holcombe, Tibet Poverty Alleviation Fund
Justin Rudelson, University of Maryland
Dolkun Kamberi, Radio Free Asia
- June 24 **Restrictions on Media Freedom in China**
James Mann, Center for Strategic and International Studies
Kavita Menon, Committee to Protect Journalists
He Qinglian, Princeton University
- July 8 **Village Elections**
Liu Yawei, Carter Center
Anne Thurston, School of Advanced International Studies,
The Johns Hopkins University
Elizabeth Dugan, International Republican Institute
- July 26 **China's Criminal Justice System**
Jerome A. Cohen, New York University School of Law
Murray Scot Tanner, Western Michigan University
Veron Mei-Ying Hung, Carnegie Endowment for International Peace
Jonathan Hecht, Yale Law School
- August 5 **Open Forum on Human Rights and the Rule of Law**
Christine Shea, Amnesty International
Shiyu Zhou, University of Pennsylvania
Enhebatu Togocho, Southern Mongolian Human Rights Information Center
Sokrat Saydahmat, Uyghur American Association
Derek Wong, University of Pennsylvania
Kathy Polias, Uyghur Human Rights Coalition
- September 9 **HIV/AIDS in China: Can Disaster Be Averted?**
Bates Gill, Center for Strategic and International Studies
Don des Jarlais, Beth Israel Medical Center
Joan Kaufman, Harvard Law School
- September 23 **Women's Rights: China's New Population and Family Planning Law**
Edwin A. Winckler, Columbia University
Stirling Scruggs, United Nations Population Fund
Bonnie Glick, Member, 2002 U.S. Assessment Team to China
Susan Greenhalgh, University of California, Irvine
John Aird, Bureau of the Census, Retired
- Other**
- February 13 **Chairman Max Baucus and Co-Chairman Doug Bereuter write a letter to President Bush urging human rights dialogue with Beijing.**
- March 13 **The Commission's 18 Congressional members send**

- a letter to President Bush urging United States support for a China resolution at the United Nations Human Rights Commission (UNHRC) meeting in Geneva.
- April 11 Co-Chairman Doug Bereuter delivers a speech to the Washington International Trade Association.
- May 6–18 Staff Director Ira Wolf, Senior Advisor Steve Marshall, and Specialist on Ethnic Minorities Anne Tsai visit Beijing, Chengdu, Lhasa, and Urumqi.
- July 2 Commissioners' staffers meet with Han Dongfang, Editor of the *China Labour Bulletin*

APPENDIX 3.—CHINA'S INTERNATIONAL HUMAN RIGHTS
COMMITMENTS

FOUNDATIONAL UNITED NATIONS INSTRUMENTS RELATED TO HUMAN
RIGHTS

- United Nations Charter
- Universal Declaration of Human Rights

CORE UNITED NATIONS INSTRUMENTS RELATED TO HUMAN RIGHTS SIGNED, RATIFIED OR
ACCEDED TO BY CHINA

Convention or Protocol	Ratification Status	Reservations
International Covenant on Economic, Social and Cultural Rights	Ratified March 27, 2001	The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China.
International Covenant on Civil and Political Rights	Signed October 5, 1998 Not yet ratified	
International Convention on the Elimination of All Forms of Racial Discrimination	Acceded to December 29, 1981	The People's Republic of China has reservations on the provisions of article 22 of the Convention and will not be bound by it.
International Convention on the Suppression and Punishment of the Crime of Apartheid	Acceded to April 18, 1983	
International Convention Against Apartheid in Sports	Signed October 21, 1987 Not yet ratified	
Convention on the Elimination of All Forms of Discrimination Against Women	Ratified November 18, 1980	The People's Republic of China does not consider itself bound by paragraph 1 of article 29 of the Convention.

CORE UNITED NATIONS INSTRUMENTS RELATED TO HUMAN RIGHTS SIGNED, RATIFIED OR
ACCEDED TO BY CHINA—Continued

Convention or Protocol	Ratification Status	Reservations
Convention on the Rights of the Child	Ratified March 3, 1992	The People's Republic of China shall fulfill its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People's Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People's Republic of China.
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Signed March 15, 2001 Not yet ratified	
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	Signed September 6, 2000	
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratified October 4, 1988	<ol style="list-style-type: none"> 1. The Chinese Government does not recognize the competence of the Committee against Torture as provided for in article 20 of the Convention. 2. The Chinese Government does not consider itself bound by paragraph 1 of article 30 of the Convention.
Convention relating to the Status of Refugees	Acceded to September 24, 1982	<p>[Subject to] reservations on the following articles:</p> <ol style="list-style-type: none"> 1. The latter half of article 14, which reads "In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence." 2. Article 16 (3).
Protocol Relating to the Status of Refugees	Acceded to September 24, 1982	
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified April 18, 1983	

SELECTED INTERNATIONAL LABOR ORGANIZATION CONVENTIONS RATIFIED BY OR ACCEDED TO BY
CHINA

No.	Convention	Date of Ratification
C.11	Right of Association (Agriculture) Convention, 1921	1984*
C.14	Weekly Rest (Industry) Convention, 1921	1984*
C.19	Equality of Treatment (Accident Compensation) Convention, 1925	1984*
C.26	Minimum Wage-Fixing Machinery Convention	1984*
C.45	Underground Work Women Convention, 1935	1984*
C.80	Final Articles Revision Convention, 1946	1984*
C.100	Equal Remuneration Convention, 1951	Ratified November 11, 1990
C.122	Employment Policy Convention, 1964	Ratified December 17, 1997
C.138	Minimum Age Convention, 1973	Ratified April 4, 1999
C.144	Tripartite Consultation International Labor Standards Convention, 1976	Ratified November 2, 1990
C.150	Labor Administration Convention, 1978	Ratified March 7, 2002
C.159	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	Ratified February 2, 1988
C.167	Safe and Health in Construction Convention, 1978	Ratified March 7, 2002
C.170	Chemical Convention, 1990	Ratified January 11, 1995
C.182	Worst Forms of Child Labour Convention, 1999	Ratified June 29, 2002

* In a letter dated July 11, 1984, the Minister of Foreign Affairs of the People's Republic of China informed the ILO that China agreed to recognize this convention, which was ratified before October 1, 1949 by the then Chinese government.

Endnotes

- ¹This report was approved by a vote of 18 to 5.
Voted to approve: Senators Baucus, Levin, Feinstein, Dorgan, Bayh, Hagel, and Hutchinson, Representatives Bereuter, Leach, Dreier, Pitts, Levin, and Davis, Undersecretaries Dobriansky and Aldonas, Deputy Secretary Findlay, Assistant Secretaries Craner and Kelly.
Voted not to approve: Senators Smith and Brownback, Representatives Wolf, Kaptur, and Brown.
- ²United States-China Relations Act, Public Law No. 106-286, div. B, title III, sec. 301, 114 Stat. 895 (2000) [hereinafter “2000 China Relations Act”].
- ³Constitution of the People’s Republic of China, ch. II [hereinafter “Chinese Constitution”].
- ⁴Chinese Constitution, arts. 36, 51–54.
- ⁵See, e.g., *ibid.*, art. 4.
- ⁶Chinese Constitution, ch. II.
- ⁷Albert Hung-ye Chen, *An Introduction to the Legal System of the People’s Republic of China* (Hong Kong: Butterworths, 1992), 32.
- ⁸Deng Xiaoping, *Selected Works of Deng Xiaoping (1975–1982)* (Beijing: Foreign Languages Press, 1984), 282.
- ⁹See, e.g., *Communique of the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China* (Hong Kong: Joint Publishing Co., 1978).
- ¹⁰Wei Jingsheng, *The Courage to Stand Alone: Letters from Prison and Other Writings* (New York: Viking, 1997).
- ¹¹*Human Rights in the Context of the Rule of Law: Hearing Before the Congressional-Executive Commission on China*, 7 February 2002 [hereinafter “*Human Rights in the Context of the Rule of Law: Commission Hearing*”], Written Statement Submitted by William Alford, Henry L. Stimson Professor of Law and Director of East Asian Legal Studies Program, Harvard Law School.
- ¹²Organic Law of the People’s Courts of the People’s Republic of China [Zhonghua renmin gongheguo renmin fayuan zuzhifa], adopted 1 July 1979; Organic Law of the People’s Procuratorates of the People’s Republic of China [Zhonghua renmin jianchayuan zuzhifa], adopted 5 July 1979; Organic Law of Local People’s Congresses and Local People’s Governments of the People’s Republic of China [Zhonghua renmin gongheguo difang geji renmin daibiao dahui he difang geji renmin zhengfu zuzhifa], adopted 4 July 1979.
- ¹³Chinese-Foreign Equity Joint Ventures Law of the People’s Republic of China [Zhonghua renmin gongheguo zhongwai hezi jingying qiyefal], adopted 1 July 1979; Economic Contract Law of the People’s Republic of China [Zhonghua renmin gongheguo jingji hetongfal], adopted 13 December 1981.
- ¹⁴As is noted below in the section on criminal justice, the 1997 revisions to the Criminal Law eliminated the category of counter-revolutionary crimes. However, many of the political acts once prosecuted as “counter-revolutionary” are now handled under the provisions on endangering state security or disrupting public order. Criminal Law of the People’s Republic of China [Zhonghua renmin gongheguo xingfal], adopted 1 July 1979, amended 14 March 1997, part II, chs. I, II, and VI.
- ¹⁵See Mao Zedong’s 1957 speech “On the Correct Handling of Contradictions Among the People,” in *Selected Works of Mao Tse-tung*, Vol. 5 (Beijing: Foreign Languages Press, 1977), 384–421.
- ¹⁶Law of the People’s Republic of China on Protecting State Secrets [Zhonghua renmin gongheguo baoshou guojia mimifa], adopted 5 September 1988.
- ¹⁷State Security Law of the People’s Republic of China [Zhonghua renmin gongheguo guojia anquan fa], adopted 22 February 1993.
- ¹⁸Administrative Litigation Law of the People’s Republic of China [Zhonghua renmin gongheguo xingzheng susongfa], adopted 4 April 1989 [hereinafter “Administrative Litigation Law”]; State Compensation Law of the People’s Republic of China [Zhonghua renmin gongheguo guojia peichangfa], adopted 12 May 1994.
- ¹⁹Consumer Rights Protection Law of the People’s Republic of China [Zhonghua renmin gongheguo xiaofeizhe quanyi baohufa], adopted 31 October 1993.
- ²⁰2001 Law Yearbook of China [2001 Zhongguo falü nianjian] (Beijing: Law Yearbook of China Press, 2001), 864; 1987 Law Yearbook of China [Zhongguo falü nianjian] (Beijing: Law Yearbook of China Press, 1987), 883.
- ²¹Lawyers Law of the People’s Republic of China [Zhonghua renmin gongheguo lüshifa], adopted 15 May 1996.
- ²²President Bush at Tsinghua (Qinghua) University, White House News Release, 22 February 2002, <<http://www.whitehouse.gov/news/releases/2002/02/20020222.html>> (12 September 2002).
- ²³Chinese Constitution, art. 36.
- ²⁴*Religious Freedom in China: Staff Roundtable of the Congressional-Executive Commission on China* [hereinafter “*Religious Freedom in China: Commission Roundtable*”], 25 March 2002, Testimony of Paul Marshall, Senior Fellow, Center for Religious Freedom, Freedom House.
- ²⁵Regulations on Managing Places for Religious Activities [Zongjiao huodong changsuo guanli tiaoli], issued 31 January 1994.
- ²⁶Chinese Constitution, art. 36.
- ²⁷*Religious Freedom in China: Commission Roundtable*, Marshall Testimony.
- ²⁸*Religious Freedom in China: Commission Roundtable*, Testimony of Thomas E. Quigley, U.S. Conference of Catholic Bishops.
- ²⁹Decision of the Standing Committee of the National People’s Congress on Banning Heretical Cult Organizations, Preventing and Punishing Cult Organizations [Guanyu chudi xiejiao zuzhi, fangfan he chengzhi xiejiao huodong de jue ding], issued 30 October 1999.

³⁰*Religious Freedom in China: Commission Roundtable*, Testimony of David Aikman, Foreign Affairs Consultant.

³¹Center For Religious Freedom, "Freedom House Calls On President Bush To Protest China's Plan To Execute Christian Leader," 3 January 2002, <<http://www.freedomhouse.org/religion/news/bn2002/bn-2002-01-03.htm>> (20 August 2002).

³²Embassy of the People's Republic of China in the United States, "Chinese Embassy Spokesman: Gong Shengliang is Guilty of Establishing Cult Organization and Raping Women," 9 January 2002, <<http://www.china-embassy.org/eng/23472.html>> (2 August 2002).

³³*Ibid.*

³⁴*Religious Freedom in China: Commission Roundtable*, Marshall Testimony.

³⁵Embassy of the People's Republic of China in the United States, "Gong Shengliang is Guilty of Establishing Cult Organization and Raping Women."

³⁶*Religious Freedom in China: Commission Roundtable*, Marshall Testimony.

³⁷The Committee for Investigation on Persecution of Religion in China, "Religion and National Security in China: Secret Documents from China's Security Sector," 11 February 2002, <<http://religionfreedomforchina.org/English/docs/Final%20Report.htm>> (31 July 2002).

³⁸*Ibid.*

³⁹Message of Pope John Paul II to China, 24 October 2001, <<http://www.hsstudyc.org.hk/tri-pod-4.htm>> (3 September 2002).

⁴⁰*Religious Freedom in China: Commission Roundtable*, Quigley Testimony.

⁴¹*Ibid.*

⁴²Center for Religious Freedom, "List of 33 Bishops and Priests Arrested or Restricted in China," 21 February 2002, <http://freedomhouse.org/religion/country/china/china_2002_list_of_33_detained_priests.htm> (31 July 2002).

⁴³See, e.g., Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, "Country Report on Human Rights Practices—2001, China, including Hong Kong and Macau," 4 March 2002, 7, <<http://www.state.gov/drl/rls/hrrpt/2001/eap/8289.htm>> (20 March 2002) [hereinafter "State Department Human Rights Report, China"]; Human Rights Watch, Human Rights Concerns in Xinjiang, October 2001; Amnesty International, "China's Anti-Terrorism Legislation and Repression in the Xinjiang Uighur Autonomous Region," March 2002, 10–12, <[http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA170102002ENGLISH/\\$File/ASA1701002.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA170102002ENGLISH/$File/ASA1701002.pdf)> (1 April 2002).

⁴⁴Commission Staff Meeting with senior officials of the Legal System Committee of the People's Congress of Xinjiang Uighur Autonomous Region, and the Xinjiang Uighur Autonomous Region Justice Department, 16 May 2002 [hereinafter "Staff Meeting with Xinjiang People's Congress and Justice Department"].

⁴⁵See, e.g., Vivien Pik-Kwan Chan, "Mosque Leaders' Re-education Campaign Stepped Up," *South China Morning Post*, 14 November 2001, <http://www.uygur.org/wunn21/2001_11_14.htm> (1 August 2002); Human Rights Watch, *China Human Rights Update*, February 2002, 11.

⁴⁶BBC, "Islam in China," <<http://www.bbc.co.uk/religion/religions/islam/history/china/china4.shtml>> (23 September 2002).

⁴⁷Human Rights Watch, *Dangerous Meditations: China's Campaign Against Falungong*, January 2002, 4.

⁴⁸The discussion of each issue in Section 4 of the report is followed by a list of key national laws, regulations, and decisions related to that issue area. The lists are not exhaustive, but rather illustrative, and are intended to provide the reader with a starting point for understanding relevant law. For example, local laws and regulations, which often are more detailed and more restrictive than their national-level counterparts, are not included.

⁴⁹International Labour Organization Declaration on Fundamental Principles and Rights at Work, adopted 19 June 1998 [hereinafter "ILO Declaration"], art. 2; International Covenant on Civil and Political Rights, entered into force 23 March 1976 [hereinafter "ICCPR"]; International Covenant on Economic, Social and Cultural Rights, entered into force 3 January 1976 [hereinafter "ICESCR"]. China ratified the ICESCR on March 27, 2001 with reservations (see Appendix 2).

⁵⁰See, e.g., Human Rights Watch Report, *Paying the Price: Worker Unrest in Northeast China*, p. 2.

⁵¹ILO Declaration on Fundamental Principles and Rights at Work, adopted 19 June 1998, art. 2; Universal Declaration of Human Rights, adopted 10 December 1948, art. 20 [hereinafter Universal Declaration]; ICESCR, arts. 21, 49.

⁵²Chinese Constitution, art. 35.

⁵³Trade Union Law of the People's Republic of China [Zhonghua renmin gongheguo gonghuiifa], adopted 3 April 1992, amended 27 October 2001, arts. 4, 9, 11.

⁵⁴Constitution of the All China Federation of Trade Unions [Zhonghua quanguo zong gonghui zhangcheng], General Principles, para. 4.

⁵⁵*Human Rights in the Context of Rule of Law: Commission Hearing*, Written Statement Submitted by Mike Jendrzeczyk, Washington Director, Human Rights Watch Asia.

⁵⁶Jiang Xueqin, "Fighting to Organize," *Far Eastern Economic Review*, 6 September 2001, 72.

⁵⁷*People's Daily*, "Wei Jianxing," 24 September 2002 <<http://english.peopledaily.com.cn/data/people/weijianxing.shtml>> (20 August 2002).

⁵⁸Anita Chan, "China and the International Labour Movement," *China Review* (Summer 2001); Commission Staff Meeting with John Chamberlin, First Secretary, Labor Affairs, Economic Section, Embassy of the United States in Beijing, 23 July 2002.

⁵⁹Constitution of the All China Federation of Trade Unions, General Principles, para. 6.

⁶⁰Chinese Constitution, art. 35; ICCPR, arts. 19, 21; ICESCR, art. 8(d).

⁶¹"Deprived Groups May Be the Greatest Threat to Society," *South China Morning Post*, 6 February 2002.

- ⁶²“Labour Unrest Spreads to 16 Provinces and Municipalities,” *Hong Kong Cheng Min*, 1 April 2002, translated in FBIS, Doc ID CPP20020404000066.
- ⁶³Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China*, August 2002, 15–38.
- ⁶⁴Thomas Lum, Congressional Research Service, *China: Labor Conditions and Unrest*, Report for Congress, 15 October 2001, 13.
- ⁶⁵PRC Ministry of Labor and Social Security, “2001 Annual Statistical Report on the Development of Labor and Social Security Work,” 3, <<http://www.molss.gov.cn/tongji/gb/GB2001.htm>> (20 August 2002).
- ⁶⁶Guangdong Province Labor and Social Security Office, Guangdong Province Workers’ Labor Contract (Non-Local Personnel: Temporary Employment) (on file with the Commission).
- ⁶⁷Labor Law of the People’s Republic of China [Zhonghua renmin gongheguo laodongfa], adopted 5 July 1994 [hereinafter “PRC Labor Law”], arts. 52, 53–55, 56; Law of the People’s Republic of China on the Prevention and Cure of Occupational Diseases, adopted 27 October 2001; PRC Regulations on Labor Protection in Workplaces where Toxic Products Are Used, issued 12 May 2002; and the Work Safety Law of the People’s Republic of China, adopted 29 June 2002. China has also promulgated regulations on administrative penalties for violations of the Labor Law and ascertaining responsibility for serious industrial accidents. See Administrative Penalty Measures for Violating the Labor Law [Weifan zhonghua renmin gongheguo laodongfa xingzheng chufa banfa], adopted 26 December 1994; Regulations on Ascertaining Administrative Responsibility for Extremely Serious Accidents Due to Negligence of Production Safety [Guowuyuan guanyu teda anquan shigu xingzheng zeren zhuiqiu de guiding], issued 21 April 2001.
- ⁶⁸“Workplace Safety Poses Major National Challenge,” *China Daily*, 8 August 2002.
- ⁶⁹State Department Human Rights Report, China, 37.
- ⁷⁰See, e.g., Philip Pan, “Worked Till They Drop Few Protections for China’s New Laborers” *The Washington Post*, 13 May 2002, Section A1.
- ⁷¹PRC Labor Law, art. 39.
- ⁷²PRC Labor Law, arts. 77–83; PRC Regulations on Settlement of Labor Disputes [Zhonghua renmin gongheguo qiye laodong zhengyi chuli tiaoli], issued 11 June 1993.
- ⁷³PRC Ministry of Labor and Social Security, “2001 Annual Statistical Report on the Development of Labor and Social Security Work,” 3.
- ⁷⁴Gerard Greenfield and Tim Pringle, “The Challenge of Wage Arrears in China,” *ILO Labor Education* (2002).
- ⁷⁵Hong Kong Christian Industrial Committee, *Report on the Labor Rights and Occupational Safety and Health Conditions of Toy Workers in Foreign Investment Enterprises in Southern Mainland China*, 67.
- ⁷⁶Verité, *Country Labor and ILO Compliance Assessment Series: People’s Republic of China*, draft report to be published in October 2002, 13 (on file with the Commission) [hereinafter Verité, *Country Labor and ILO Compliance Assessment Series*].
- ⁷⁷China Labor Bulletin, “Release Xu Jian—Background Information and Addresses,” <http://iso.china-labour.org.hk/iso/article.adp?article_id=42> (20 September 2002).
- ⁷⁸See, e.g., Craig S. Smith, “China Tells Lawyer Who Aids Injured Workers to Close His Office,” *The New York Times*, 3 January 2002.
- ⁷⁹Philip P. Pan, “Chinese Workers’ Rights Stop at Courtroom Door,” *Washington Post*, 28 June 2002, A1.
- ⁸⁰International Labor Organization, “Ratification Map of Convention No. 182,” <<http://www.ilo.org/public/english/standards/ipecc/ratification/map/asia1.htm>> (20 August 2002).
- ⁸¹Verité, *Country Labor and ILO Compliance Assessment Series*, 7.
- ⁸²ABC News, “A Classroom Into a Grave,” 8 March 2001, <http://abcnews.go.com/sections/world/DailyNews/china010308_explosion.html> (15 September 2002).
- ⁸³Calum and Lijia MacLeod, “Never Seen, Never Heard,” *South China Morning Post*, 12 July 2000, 2, 3.
- ⁸⁴Task Force on the Prohibition of Importation of Products of Forced or Prison Labor from the People’s Republic of China, *2002 Annual Report*, August 2002 [hereinafter, “Prison Labor Task Force, *Annual Report*”].
- ⁸⁵See 1992 Memorandum of Understanding on Prohibiting Trade in Prison Labor Products with China dated 7 August 1992; the Statement of Cooperation on the Memorandum of Understanding on Prohibiting Trade in Prison Labor Products with China, dated 14 March 1994.
- ⁸⁶*Ibid.*
- ⁸⁷2000 China Relations Act, sec. 501 et seq.
- ⁸⁸Prison Labor Task Force, *Annual Report*.
- ⁸⁹Criminal Procedure Law of the People’s Republic of China [Zhonghua renmin gongheguo xingshi susongfa], adopted 1 July 1979, amended 17 March 1996 [hereinafter “Criminal Procedure Law”]; Criminal Law of the People’s Republic of China [Zhonghua renmin gongheguo xingfa], adopted 1 July 1979, amended 14 March 1997 [hereinafter “Criminal Law”].
- ⁹⁰See generally Lawyers Committee for Human Rights, *Opening to Reform? An Analysis of China’s Revised Criminal Procedure Law*, October 1996 [hereinafter, “LCHR, *Opening to Reform?*”]; Lawyers Committee for Human Rights, *Wrongs and Rights: A Human Rights Analysis of China’s Revised Criminal Law*, December 1998 [hereinafter “LCHR, *Wrongs and Rights*”].
- ⁹¹See LCHR, *Opening to Reform?*, 53–60.
- ⁹²See LCHR, *Wrongs and Rights*, 1, 33–41. In theory, the abolition of analogy brings the Criminal Law into conformance with the principle of *nullum crimen sine lege* (no crime without law making it so), which is expressed in Article 11 of the Universal Declaration of Human Rights: “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.”
- ⁹³See LCHR, *Wrongs and Rights*.

⁹⁴ Universal Declaration, art. 10; ICCPR, art. 14.

⁹⁵ Lawyers Committee for Human Rights, *Lawyers in China: Obstacles to Independence and the Defense of Rights*, March 1998, 2 [hereinafter "LCHR, *Lawyers in China*"].

⁹⁶ *Ibid.*, 2–3.

⁹⁷ *Ibid.*

⁹⁸ For a discussion of the Party's influence on the courts, see generally Stanley Lubman, "Bird in a Cage: Chinese Law Reform After Twenty Years," *Northwest Journal of International Law and Business* 20 (2000): 395–398; LCHR, *Lawyers in China*, 1–10.

⁹⁹ Criminal Procedure Law, art. 96; LCHR, *Opening to Reform?*, 39.

¹⁰⁰ See LCHR, *Opening to Reform?*, 42; Criminal Procedure Law, art. 93.

¹⁰¹ Human Rights in China, *Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice*, March 2001, 25–26 [hereinafter "HRIC, *Empty Promises*"]; *Challenges for Criminal Justice in China: Staff Roundtable of the Congressional-Executive Commission on China*, 26 July 2002 [hereinafter "*Challenges for Criminal Justice in China: Commission Roundtable*"], Written Statement Submitted by Jerome A. Cohen, Professor, New York University School of Law.

¹⁰² Criminal Procedure Law, art. 96.

¹⁰³ LCHR, *Opening to Reform?*, 41. In cases involving "state secrets," a suspect must first obtain approval from authorities before he or she may even retain counsel. Criminal Procedure Law, art. 96.

¹⁰⁴ *Challenges for Criminal Justice in China: Commission Roundtable*, Cohen Written Statement.

¹⁰⁵ HRIC, *Empty Promises*, 31–34. The people's procuratorates are the legal supervisory organs of the state. Chinese Constitution, art. 129. The functions of the people's procuratorates include approving arrests made by public security authorities and supervising their investigatory activities, as well as prosecuting cases. See Margaret Y. K. Woo, "Law and Discretion in the Contemporary Chinese Courts," *Pacific Rim Law and Policy Journal* 8 (1999): 606–07.

¹⁰⁶ See HRIC, *Empty Promises*, 30–34.

¹⁰⁷ *Challenges for Criminal Justice in China: Commission Roundtable*, Cohen Written Statement.

¹⁰⁸ Criminal Procedure Law, art. 47; *Challenges for Criminal Justice in China: Commission Roundtable*, Cohen Written Statement.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* Mary Robinson, the United Nations High Commissioner for Human Rights, raised Zhang Jianzhong's case with the Ministry of Justice, noting that he has not been accorded many of the legal protections required by the Criminal Procedure Law. Elisabeth Rosenthal, "U.N. Official, in Beijing, Tells of Worry Over Rights," *New York Times*, 21 August 2002, <<http://www.nytimes.com/2002/08/21/international/asia/21RIGH.html>> (28 August 2002).

¹¹¹ HRIC, *Empty Promises*, 36–39. Chinese criminal defense lawyers and observers believe that Article 306 may also possibly be implicated in Zhang Jianzhong's case, but the facts of his case remain unclear. See *Challenges for Criminal Justice in China: Commission Roundtable*, Cohen Written Statement.

¹¹² Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on June 26, 1987, provides that "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceeding." LCHR, *Opening to Reform?*, 68–69.

¹¹³ *Challenges for Criminal Justice in China: Commission*, Written Statement Submitted by Murray Scot Tanner, Professor of Chinese and East Asian Politics, Western Michigan University.

¹¹⁴ *Ibid.*

¹¹⁵ HRIC, *Empty Promises*, 41–42.

¹¹⁶ Human Rights in China, *Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns*, February 2001, 1 [hereinafter "HRIC, *Reeducation Through Labor (RTL)*"].

¹¹⁷ "Re-education through labor" (*laojiao*) should be distinguished from "reform through labor" (*laogai*). Whereas re-education through labor is an administrative ("non-criminal") sanction, reform through labor is a form of criminal punishment given after a defendant is found guilty after a trial.

¹¹⁸ HRIC, *Reeducation Through Labor (RTL)*, 8; *Challenges for Criminal Justice in China: Commission Roundtable*, Written Statement Submitted by Dr. Veron Mei-ying Hung, Associate, Carnegie Endowment for International Peace.

¹¹⁹ Lawyers Committee for Human Rights, *Criminal Justice with Chinese Characteristics: China's Criminal Process and Violations of Human Rights*, May 1993, 73–74; Hungdah Chiu, "China's Criminal Justice System and the Trial of Pro-Democracy Dissidents," *New York University Journal of International Law and Politics* 24 (1992): 1200.

¹²⁰ HRIC, *Empty Promises*, 51–52.

¹²¹ *Challenges for Criminal Justice in China: Commission Roundtable*, Hung Written Statement.

¹²² *Ibid.*

¹²³ See Human Rights in China, *Not Welcome at the Party: Behind the "Clean-Up" of China's Cities—A Report on Administrative Detention Under "Custody and Repatriation,"* September 1999.

¹²⁴ *Ibid.*, 1.

¹²⁵ *Ibid.*, 17–18.

¹²⁶ LCHR, *Opening to Reform?*, 5.

¹²⁷ "Human Rights Watch World Report 2002: Asia: China and Tibet," 7, <<http://www.hrw.org/wr2k2/asia4.html>> (22 July 2002).

¹²⁸ Amnesty International Press Release, "China: 'Strike Hard' Anti-crime Campaign Intensifies," 23 July 2002.

¹²⁹HRIC, *Reeducation Through Labor (RTL)*, 1; Human Rights in China, *Impunity for Torturers Continues Despite Changes in the Law: Report on Implementation of The Convention Against Torture in the People's Republic of China*, April 2000, 6.

¹³⁰See International Covenant on Civil and Political Rights, art. 9(4) ("Anyone 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."); LCHR, *Opening to Reform?*, 33; *Challenges for Criminal Justice in China: Commission Roundtable*, Cohen Written Statement.

¹³¹LCHR, *Opening to Reform?*, 60, 63.

¹³²Chiu, "China's Criminal Justice System and the Trial of Pro-Democracy Dissidents," 1197.

¹³³Chinese Constitution, art. 35.

¹³⁴*Restrictions on Media Freedom in China, Staff Roundtable of the Congressional-Executive Commission on China*, 24 June 2002 [hereinafter "*Restrictions on Media Freedom in China: Commission Roundtable*"], Testimony of James Mann, Senior Writer in Residence, Center for Strategic and International Studies.

¹³⁵Statement by Chinese President Jiang Zemin, 11 January 2001, quoted in a written statement by Reporters Sans Frontieres International, submitted to the United Nations Economic and Social Council, 18 January 2002, <[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2002.ngo.140.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2002.ngo.140.En?Opendocument)> (22 August 2002).

¹³⁶*Restrictions on Media Freedom in China: Commission Roundtable*, Mann Testimony.

¹³⁷Committee to Protect Journalists, "Asia 2001, China," <<http://www.cpj.org/attacks01/asia01/china.html>> (31 July 2002) [hereinafter "CPJ, 'Asia 2001, China'"].

¹³⁸*Ibid.*

¹³⁹*Restrictions on Media Freedom in China: Commission Roundtable*, Testimony of He Qinglian, former editor, *Shenzhen Legal Daily*, author of *China's Pitfalls*.

¹⁴⁰Ted Anthony, "China Axes BBC After Falun Gong Item," *Associated Press*, 6 July 2002, <<http://www.clearharmony.net/articles/5577.html>> (16 September 2002).

¹⁴¹*Wired China: Whose Hand is on the Switch?: Staff Roundtable of the Congressional-Executive Commission on China*, 15 April 2002 [hereinafter "*Wired China: Commission Roundtable*"], Written Statement submitted by Edward E. Kaufman, Member of the Broadcasting Board of Governors.

¹⁴²Committee to Protect Journalists, "Ten Enemies of the Press for 2001," 3 May 2001, <http://www.cpj.org/enemies/enemies_01.html> (31 July 2002).

¹⁴³CPJ, "Asia 2001, China."

¹⁴⁴*Restrictions on Media Freedom in China: Commission Roundtable*, Testimony of Kavita Menon, Asia Program Director, Committee to Protect Journalists.

¹⁴⁵China Internet Network Information Center, *10th Statistical Survey Report on the Development of Internet in China*, July 2002, 5.

¹⁴⁶Compare "Government Issues New List of Banned Media Topics" <<http://www.cpj.org/news/2001/China10aug01na.html>> with "Measures on the Administration of Internet Information Services" [Hulianwang xinxi fuwu guanli banfa], issued 25 September 2000, art. 15 and "Interim Provisions on the Administration of Internet Publishing" [Hulianwang chuban guanli zanzing guiding], effective 1 August 2002, art. 17.

¹⁴⁷Interim Provisions on the Administration of Internet Publishing" [Hulianwang chuban guanli zanzing guiding], effective 1 August 2002, art. 17.

¹⁴⁸*Wired China: Commission Roundtable*, Written Statement submitted by James C. Mulvenon, Deputy Director, Center for Asia-Pacific Policy, RAND.

¹⁴⁹<<http://www.isc.org.cn>>.

¹⁵⁰"Public Pledge on Self-Discipline for China Internet Industry" [Zhongguo hulianwang zilugongyue], issued 26 March 2002, art. 9.

¹⁵¹People's Daily, "Three Departments Jointly Issue Notice: Approvals for New Internet Cafes Will Cease Prior to the End of August," 13 August 2002 <<http://www.people.com.cn/GB/kejiao/39/20020813/798648.html>>.

¹⁵²*Village Elections in China: Staff Roundtable of the Congressional-Executive Commission on China*, 8 July 2002 [hereinafter "*Village Elections in China: Commission Roundtable*"], Testimony of Liu Yawei, Associate Director, The Carter Center's China Village Elections Project.

¹⁵³*Village Elections in China: Commission Roundtable*, Liu Testimony.

¹⁵⁴*Village Elections in China: Commission Roundtable*, Testimony of Anne Thurston, Associate Professor, The Johns Hopkins University's Paul H. Nitze School of Advanced International Studies.

¹⁵⁵*Ibid.*

¹⁵⁶The township government is one level above the village and is charged with administering several by villages.

¹⁵⁷Rebecca MacKinnon, "China's Experiments with Rural Democracy," *CNN.com*, 28 May 1999, <<http://www.cnn.com/WORLD/asiapcf/9905/28/china.democracy>> (31 July 2002).

¹⁵⁸*Village Elections in China: Commission Roundtable*, Liu Testimony.

¹⁵⁹*Ibid.*

¹⁶⁰*Village Elections in China: Commission Roundtable*, Testimony of Elizabeth Dugan, Regional Program Director, Asia and the Middle East, International Republican Institute (IRI).

¹⁶¹Steven D. Marshall and Susette Ternent Cooke, *Tibet Outside the TAR: Control, Exploitation and Assimilation: Development with Chinese Characteristics* (Washington D.C.: Self-published CD-ROM, 1997), 2564–66. Table 7 provides land area figures cited to seven Chinese sources including provincial statistical yearbooks. The thirteen areas designated as Tibetan and autonomous total 2.24 million square kilometers (865,000 square miles). Complete 2000 census data for ethnic populations in China is not yet available. The official 1990 census reported a total population of 1.13 billion, including 4.59 million Tibetans (0.4 percent of the total), of whom 2.09 million resided in the TAR. China's area is approximately 9.6 million square kilometers (3.7 million square miles).

¹⁶² Tibetan Government-in-Exile, "Facts—Occupied Tibet," <<http://www.tibet.net/eng/tgie/tibet/>> (7 August 2002). The area of "occupied Tibet" is reported as 2.5 million square kilometers (965,000 square miles). Political status is given as "occupied country." The Tibetan population is reported as six million, 2.09 million of which is in the TAR.

¹⁶³ Tibetan Government-in-Exile, "Background," <<http://www.tibet.net/eng/tgie/background/>> (7 August 2002).

¹⁶⁴ Information Office of the State Council of the People's Republic of China, "New Progress in Human Rights in the Tibet Autonomous Region," February 1998, <<http://english.peopledaily.com.cn/whitepaper/19.html>> (20 August 2002).

¹⁶⁵ Population Census Office, National Bureau of Statistics of the People's Republic of China, *Major Figures on 2000 Population Census of China*, 1 June 2001, 30. Han population for the 2000 census is given as 1.159 billion of a total population of 1.266 billion [mainland China].

¹⁶⁶ Law of the People's Republic of China on Regional National Autonomy [Zhonghua renmin gongheguo minzu quyufa], adopted 31 May 1984, amended 28 February 2001, art. 2 [hereinafter "Regional National Autonomy Law"]. "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."

¹⁶⁷ Regional National Autonomy Law, art. 7.

¹⁶⁸ Chinese Constitution, art. 52. "It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities."

¹⁶⁹ Department of Information and International Relations, Tibetan Government-in-Exile, Dharamsala, India, "It is Samdhong Rinpoche," 20 August 2001, <<http://www.tibet.net/eng/diir/flash/0801/200801.html>> (20 August 2002) (Samdhong Rinpoche received about 29,000 votes, 85 percent of those cast). According to "Tibet in Exile at a Glance," <<http://www.tibet.com/exileglance.html>> (20 August 2002), the exiled government reports that 131,000 Tibetans are in exile and that 125,000 of them are in India or Nepal.

¹⁷⁰ Barbara Crossette, "Tibetan Monk Prepares Exiles for a Political Shift," *The New York Times*, 21 July 2002, Section A4.

¹⁷¹ Erik Eckholm and Elisabeth Rosenthal, "The Bright Young Stars of China's Future," *The New York Times*, 28 September 1999, Section A1.

¹⁷² Commission Staff Meeting with Zhu Xiaoming, Deputy Secretary-General, United Front Work Department, 9 May 2002.

¹⁷³ Commission Staff Meeting with Shoulang Rezhin (Tibetan: Sonam Rigzin), Vice-Director, United Front Work Department, TAR Communist Party Committee, 13 May 2002.

¹⁷⁴ *Ethnic Minorities in China: Tibetans and Uighurs: Staff Roundtable of the Congressional-Executive Commission on China*, 10 June 2002 [hereinafter "*Ethnic Minorities in China: Commission Roundtable*"], Written Statement Submitted by Professor Elliot Sperling, Associate Professor of Tibetan Studies and Chair, Department of Central Eurasian Studies, Indiana University.

¹⁷⁵ Steven D. Marshall, *In the Interests of the State: Hostile Elements III—Political Imprisonment in Tibet, 1987–2001* (London: Tibet Information Network, 2002), 3.

¹⁷⁶ Ngawang Choephel, an ethnomusicologist who had studied in Vermont, was released and allowed to return to the United States in January 2002. Nuns Gyaltzen Drolkar, Tenzin Thubten, Ngawang Choekyi and Ngawang Chozom were released during March–June 2002 and remain in Tibet. The elderly Tagna Jigme Zangpo was released in March and allowed to travel to the United States in July 2002.

¹⁷⁷ *China Today*, "Tibet: Nearer and Nearer—an interview with Raidi, Chairman of the Standing Committee of the People's Congress of [the] Tibet Autonomous Region," May 2001, <<http://www.chinatoday.com.cn/English/english/tibet1.htm>> (20 August 2002). According to Raidi [Tibetan: Ragdil], "Over the past six years [1994–2000] Tibet's [GDP] has increased at a rate of more than 10 percent annually, averaging 12.9 percent, ranking [it] at the national forefront."

¹⁷⁸ "Tibet Chairman Legqog on Ways Tibet Will Use Assistance from Other Parts of Nation," *Ta Kung Pao*, 10 August 2001, translated in FBIS, Doc. ID CPP20010810000064. Legqog [Tibetan: Legchog], Chairman of the TAR Government states that "the central treasury's assistance and subsidies for Tibet during the Tenth Five-Year Plan period will reach 37.9 billion yuan," or doubling the amount provided under the Ninth Five-Year Plan (1996 to 2000). This is to say that each of the region's 2.62 million people will receive 26,700 yuan of assistance on the average."

¹⁷⁹ Chinese Constitution, art. 9. "Mineral resources, waters, forests, mountains, grassland, unclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grassland, unclaimed land and beaches that are owned by collectives in accordance with the law. . . . The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited."

¹⁸⁰ See generally, *Ethnic Minorities in China: Commission Roundtable*.

¹⁸¹ *China County and City Population Statistics 1992* (Beijing: China Statistical Publishing House, 1993). Statistics from the 1990 census show 3.43 million Tibetans living in Tibetan autonomous areas classified as rural and 854,000 living in Tibetan autonomous areas classified as urban.

¹⁸² *Ethnic Minorities in China: Commission Roundtable*, Written Statement Submitted by Arthur Holcombe, President, Tibet Poverty Alleviation Fund. Holcombe states that authorities "estimated average per capita family income in urban areas of Tibet to be the equivalent of \$606 in 1996, in comparison to only \$117 in rural areas, and growing at about 5 times the rate in rural areas."

¹⁸³ *Ibid.*, Testimony of Bhuchung Tsering, Director, International Campaign for Tibet.

¹⁸⁴ Li Dezhu, "Large-Scale Development of Western China and China's Nationality Problem," *Beijing Qushi*, 1 June 2000, translated in FBIS, Doc. ID CPP20000615000057.

- ¹⁸⁵ *Ethnic Minorities in China: Commission Roundtable*, Holcombe Written Statement.
- ¹⁸⁶ Catriona Bass, *Education in Tibet: Policy and Practice Since 1950* (London: Tibet Information Network and Zed Books, 1998), 90–92, 123.
- ¹⁸⁷ James Millward and Peter Perdue, “Political History and Strategies of Control, 1884–1978,” Address at the Conference of the JHU–SAIS Central Asia Caucasus Institute on Xinjiang: Muslim and Turkic Unrest in China’s “New Territory,” 27 March 2002.
- ¹⁸⁸ Dewardric McNeal, Congressional Research Service, *China’s Relations with Central Asian States and Problems with Terrorism*, Report for Congress, 17 December 2001, 1.
- ¹⁸⁹ James Millward and Peter Perdue, “Political History and Strategies of Control, 1884–1978,” Address at the Conference of the JHU–SAIS Central Asia Caucasus Institute on Xinjiang: Muslim and Turkic Unrest in China’s “New Territory,” 27 March 2002.
- ¹⁹⁰ *Ethnic Minorities in China: Commission Roundtable*, Testimony of Justin Rudelson, Executive Director, Institute for Global Chinese Affairs, University of Maryland.
- ¹⁹¹ *Ibid.*
- ¹⁹² Press Briefing of Richard Boucher, Spokesman, U.S. Department of State, 26 August 2002.
- ¹⁹³ “Fresh Claims of bin Laden link to Uyghur Separatists Emerge,” *South China Morning Post*, 25 July 2002, <<http://china.scmp.com/chimain/ZZZGBFX1X3D.html>> (26 July 2002).
- ¹⁹⁴ See, e.g., Dewardric McNeal, Congressional Research Service, *China’s Relations with Central Asian States and Problems with Terrorism*, Report for Congress, 17 December 2001, 7–12; Chien-peng Chung, “China’s War on Terror: September 11 and Uyghur Separatism,” *Foreign Affairs* (July/August 2002): 8–12; Dexter Roberts, “Beijing Stokes the Fires of Ethnic Tensions,” *Business Week*, 29 May 2002, <http://www.businessweek.com/bwdaily/dnflash/may2002/nf20020529_1844.htm> (31 May 2002); Human Rights Watch, *China Human Rights Update*, 10.
- ¹⁹⁵ Vivien Pik-Kwan Chan, “Top Cadre Issues Xinjiang Warning,” *South China Morning Post*, 17 October 2001, <<http://special.scmp.com/apec01/news/ZZZAEIMFRSC.html>> (1 August 2002).
- ¹⁹⁶ President George W. Bush, “U.S., China Stand Against Terrorism,” Remarks at the Press Conference of President Bush and President Jiang Zemin, 19 October 2002, <<http://www.whitehouse.gov/news/releases/2001/10/20011019-4.html>> (3 September 2002).
- ¹⁹⁷ See, e.g., State Department Human Rights Report, China, 32; Matthew Forney, “One Nation—Divided,” *TIME Asia*, 25 March 2002, <<http://www.time.com/time/asia/features/xinjiang/cover.html>> (20 March 2002).
- ¹⁹⁸ John Congreve, “Enter the Dragon,” *Financial Times*, 27 July 2002, <<http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=1028039809097&p=1012571727169>> (30 July 2002).
- ¹⁹⁹ See, e.g., State Department Human Rights Report, China, 32; Congreve, “Enter the Dragon.”
- ²⁰⁰ Agence France-Presse, “ExxonMobil to Take Stake in 4,000 km Chinese Gas Pipeline Project,” 1 July 2002, <<http://www.uyghurinfo.com/viewNews.asp?newsid=6259>> (3 July 2002). \$5.6 billion is the investment for just the gas pipeline’s construction. Another estimated \$3.1 billion will be spent on gas extraction, and up to \$9.6 billion will be spent on construction of the distribution network.
- ²⁰¹ *Ethnic Minorities in China: Commission Roundtable*, 10 June 2002, Testimony of Dolkun Kamberi, Director of the Uyghur Service, Radio Free Asia.
- ²⁰² See, e.g., John Schauble, “China’s \$A40b Gas Line is on the Way,” *The Age*, 6 June 2002, <<http://www.theage.com.au/articles/2002/06/05/1022982718963.html>> (6 June 2002); Agence France-Presse, “ExxonMobil to Take Stake in 4,000 km Chinese Gas Pipeline Project,” 1 July 2002, <<http://www.uyghurinfo.com/viewNews.asp?newsid=6259>> (3 July 2002).
- ²⁰³ See, e.g., “China Orders End to Instruction in Uyghur at Top Xinjiang University,” *Agence France-Presse*, 28 May 2002, in FBIS, Doc. ID CPP20020528000103; Radio Free Asia News Release, “Chinese Authorities Burn Thousands of Uyghur Books,” 5 June 2002; *Ethnic Minorities in China: Commission Roundtable*, Kamberi Testimony.
- ²⁰⁴ See, e.g., “China Orders End to Instruction in Uyghur at Top Xinjiang University,” *Agence France-Presse*, 28 May 2002, in FBIS, Doc. ID CPP20020528000103; “Xinjiang University Drops Instruction in Uyghur Language,” *RFA Reports*, June 2002, 3; *Open Forum Staff Roundtable of the Congressional-Executive Commission on China*, 5 August 2002, Written Statement Submitted by Sokrat Saydahmat, Member, Board of Directors, Uyghur American Association.
- ²⁰⁵ Commission Staff Meeting with Dr. Tashpolat Tiyp, Vice President of Xinjiang University, 16 May 2002 [hereinafter “Staff Meeting with Dr. Tashpolat Tiyp”].
- ²⁰⁶ See, e.g., State Department Human Rights Report, China, 7; Human Rights Watch, *Human Rights Concerns in Xinjiang*; Amnesty International, “China’s Anti-Terrorism Legislation and Repression in the Xinjiang Uyghur Autonomous Region,” March 2002, 10–12, <[http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/SA170102002ENGLISH/\\$File/ASA1701002.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/SA170102002ENGLISH/$File/ASA1701002.pdf)> (1 April 2002).
- ²⁰⁷ Human Rights Watch, *China Human Rights Update*, 11.
- ²⁰⁸ State Department Human Rights Report, China, 31.
- ²⁰⁹ Amnesty International, “China’s Anti-Terrorism Legislation and Repression in the Xinjiang Uyghur Autonomous Region.”
- ²¹⁰ Staff Meeting with Xinjiang People’s Congress and Justice Department.
- ²¹¹ *Ibid.*
- ²¹² *Ibid.*
- ²¹³ See, e.g., State Department Human Rights Report, China, 31; Amnesty International, “China: Uyghur Businesswoman Rebiya Kadeer Sentenced to Eight Years After Secret Trial,” 10 March 2000, <<http://web.amnesty.org/802568F7005C4453/0/5D1C4EAFB6642952802568A30069E912?Open>> (20 March 2002).
- ²¹⁴ State Department Human Rights Report, China, 31.
- ²¹⁵ See, e.g., Regulations on Managing Places for Religious Activities [Zongjiao huodong changsuo guanli tiaoli], issued 31 January 1994; Measures for the Registration of Places for Re-

ligious Activities [Zongjiao huodong changsuo dengji banfa], issued 13 April 1994; State Department Human Rights Report, China, 21.

²¹⁶ Human Rights Watch, *China Human Rights Update*, 11.

²¹⁷ See, e.g., Vivien Pik-Kwan Chan, "Mosque Leaders' Re-education Campaign Stepped Up," *South China Morning Post*, 14 November 2001, <http://www.uygur.org/wunn21/2001_11_14.htm> (1 August 2002); Human Rights Watch, *China Human Rights Update*, 11.

²¹⁸ See, e.g., "Committee to Spread True Koran," *China Daily*, 24 April 2002; Human Rights Watch, *China Human Rights Update*, 11.

²¹⁹ "Committee to Spread True Koran."

²²⁰ Staff Meeting with Xinjiang People's Congress and Justice Department.

²²¹ Staff Meeting with Dr. Tashpolat Tiyip.

²²² *WTO: Will China Keep its Promises? Can it?: Hearing Before the Congressional-Executive Commission on China*, 6 June 2002 [hereinafter "*WTO: Will China Keep its Promises?: Commission Hearing*"], Testimony of Grant Aldonas, Undersecretary of Commerce for International Trade.

²²³ See, e.g., *WTO: Will China Keep its Promises?: Commission Hearing*, Testimony of Susan Westin, Managing Director of International Affairs and Trade, U.S. General Accounting Office.

²²⁴ "Long Yongtu on 'Three Changes' from China's WTO Entry," *People's Daily*, 28 March 2002, <http://english.peopledaily.com.cn/200203/28/print20020328_93016.html> (2 August 2002).

²²⁵ See, e.g., General Agreement on Tariffs and Trade (GATT), 30 October 1947, as amended through 1966, art. X(1); General Agreement on Trade in Services (GATS), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, art. III.

²²⁶ See, e.g., GATT, art. X(3)(a), GATS, art. VI(1).

²²⁷ GATT, art. X(2).

²²⁸ GATT, art. X(3)(b).

²²⁹ *WTO: Will China Keep its Promises?: Commission Hearing*, Testimony of Donald C. Clarke, Professor of Law, University of Washington Law School.

²³⁰ "Laws Revised to Meet WTO," *China Daily*, 25 May 2002, <www.chinadaily.com.cn> (26 May 2002).

²³¹ Protocol on the Accession of the People's Republic of China to the World Trade Organization, art. 2(c)(1).

²³² Legislation Law of the People's Republic of China [Zhonghua renmin gongheguo lifafa], adopted 15 March 2000, arts. 34, 35.

²³³ Procedural Rules for Formulating Administrative Regulations [Xingzheng fagui zhiding chengxu tiaoli], issued 11 November 2000, arts. 12, 19, 20, 22.

²³⁴ See, e.g., The China Securities Regulatory Commission Seeks Public Opinions on Revising the "Notice on Further Increasing the Standardization of New Stock Issuances by Listed Companies" (draft for comment) [Zhongguo zhengquanhui gongkai zhengqiu "Guanyu jinyibu guifan shangshi gongsi zengfa xingtu de tongzhi" (zhengqiu yijian gao) de xiugai yijian], issued 21 June 2002; China Securities Regulatory Commission Notice Soliciting Public Opinion Regarding "Interim Provisions on Foreign Organizations Buying Stock and Participating in the Establishment of Fund Management Companies," (draft for comment) [Jingwai jigou cantou canyu faqi sheli jijin guanli gongsi zaxing guiding (zhengqiu yijian gao)], issued 20 December 2001.

²³⁵ See, e.g., Notice on Seeking Opinions Regarding "Sanitation Standards on the Quality of Drinking Water in Drinking Water Pipelines" (draft for comment) [Guanyu zhengqiu dui "Shenghuo yinyongshui guanli fenzhi zhi yinshui weisheng guifan" (zhengqiu yijian gao)], issued 27 June 2002; State Drug Administration Notice on Seeking Opinions to Revise "Methods for Managing Anesthetic Drugs" (revised draft for comment) and "Methods for Managing Psychotherapeutic Drugs" (revised draft for comment) [Guanyu zhengqiu dui "Mazui yaopin guanli banfa" (xiuding zhengqiu yijian gao) "jingshen yaopin guanli banfa" (xiuding zhengqiu yijian gao) xiugai yijian de tongzhi], issued 24 April 2002.

²³⁶ Beijing People's Government Measures for Formulating Rules [Beijing shi renmin zhengfu guizhang zhiding banfa], issued 21 May 2002.

²³⁷ See, e.g., Chongqing City Regulations on Unemployment Insurance (draft for comment) [Chongqing shi shiye baoxian tiaoli (zhengqiu yijian gao)], issued 28 January 2002; "Shenyang Adapts to WTO Regulations by Establishing 'Work Office for Administrative Approvals'" [Shenyang zaoying WTO guize "Xingzheng shenpi ban shi da ting"], 6 July 2002, <www.chinanews.com.cn/2002-07-06/201105.html> (15 July 2002); "Zhejiang Adapts to Entering WTO by Abolishing 76 'Red Head [Internal] Documents'" [Zao ying ru xingshi Zhejiang feizhi 76 ge hongtou wenjian], 19 April 2002, <www.chinanews.com.cn/2002-04-26/179554.html> (15 July 2002); "MOFTEC Vice Minister Long Yongtu to Serve as Advisor on WTO Related Affairs," *Beijing Zhongguo Xinwen She*, 9 April 2002, translated in FBIS, Doc. ID CPP20020409000221 (announcing the establishment of the Guangdong Provincial Consulting Council on Affairs Related to the WTO).

²³⁸ This inconsistency is illustrated by the varying policies that ministries have with respect to transparency, as discussed above.

²³⁹ Randall Peerenboom, "Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China," *Berkeley Journal of International Law* 19 (2001): 232.

²⁴⁰ Administrative Litigation Law, art. 2.

²⁴¹ Peerenboom, 235.

²⁴² See, e.g., *ibid.*

²⁴³ *WTO: Will China Keep its Promises?: Commission Hearing*, Westin Testimony; see also "Beijing Sets Up New Court System to Handle Foreign Cases, WTO Matters," *China Daily*, 5 February 2002, in FBIS, Doc. ID CPP20020205000018.

²⁴⁴ See *WTO: Will China Keep its Promises?: Commission Hearing*, Clarke Written Statement; *Human Rights in the Context of the Rule of Law: Commission Hearing*, Written Statement Sub-

mitted by Stanley Lubman, Visiting Scholar, Center for Law and Society and Lecturer in Law, School of Law, University of California (Berkeley), 7 February 2002.

²⁴⁵ “PRC Supreme Court Circular Calls for Raising Judges’ Professional Competence,” *Xinhua*, 5 August 2002, translated in FBIS, Doc. Id. CPP20020728000031.

²⁴⁶ 2000 China Relations Act, secs. 413(b)(2), 421.

²⁴⁷ 2000 China Relations Act, sec. 511(a).

²⁴⁸ *WTO: Will China Keep its Promises?: Commission Hearing*, Responses of Aldonas to Questions from Senator Max Baucus. The German Technical and Cooperation Corporation’s training of MOFTEC lawyers and the Canadian International Development Agency’s Canada-China World Trade Organization Capacity Building Project are examples of other large-scale programs that incorporate WTO compliance training into larger rule of law efforts. For a list of rule of law programs, including programs related to WTO technical assistance, see the Congressional-Executive Commission on China website, www.cecc.gov.

²⁴⁹ *WTO: Will China Keep its Promises?: Commission Hearing*, Aldonas Testimony.

²⁵⁰ *WTO: Will China Keep its Promises?: Commission Hearing*, Testimony of Jon M. Huntsman, Jr., Deputy U.S. Trade Representative.

²⁵¹ *Ibid.*; Clarke Testimony; Written Statement Submitted by Chris Murck, Chairman, American Chamber of Commerce of China.

²⁵² *WTO: Will China Keep its Promises?: Commission Hearing*, Westin Testimony.

²⁵³ *Promoting the Rule of Law in China: Staff-Led Roundtable of the Congressional-Executive Commission on China*, 24 May 2002, Testimony of Nancy Yuan, Director, Asia Foundation.

²⁵⁴ Human Rights Watch, “Olympics and Human Rights: Beijing in 2008,” 8 February 2002, <<http://www.hrw.org/press/2002/02/china0208.htm>> (5 August 2002).

²⁵⁵ Matthew Forney, “Beijing Bags It,” *TIME Asia*, 23 July 2001, <<http://www.time.com/time/asia/arts/magazine/0,9754,167611,00.html>> (22 August 2002).

²⁵⁶ Jim Kernaghan, “All Eyes on Beijing,” *London Free Press*, 14 July 2001, <http://www.canoe.ca/Slam010714/col_kernaghan-sun.html> 20 August 2002.

²⁵⁷ Elisabeth Rosenthal, “U.N. Publicly Chastises China for Inaction on H.I.V. Epidemic,” *New York Times*, 27 June 2002, <<http://www.nytimes.com/2002/06/28/international/asia/28CHIN.html>> (27 June 2002).

²⁵⁸ “Not For General Release,” *Far Eastern Economic Review*, 15 August 2002, 31.

²⁵⁹ United Nations Office of the High Commissioner for Human Rights, “HIV/AIDS & Human Rights: What is a Human Rights Approach to HIV/AIDS?” <<http://www.unhchr.ch/hiv/index1.htm#relation>> (28 June 2002).

²⁶⁰ China Development Brief, *250 Chinese NGOs: Civil Society in the Making*, August 2001.

²⁶¹ Regulations for Managing the Registration of Social Organizations [Shehui tuanti dengji guanli tiaoli], adopted 25 September 1998.

