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**CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA  
2005 ANNUAL REPORT**

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

The Commission finds no improvement overall in human rights conditions in China over the past year, and increased government restrictions on Chinese citizens who worship in state-controlled venues or write for state-controlled publications. Citizens who challenge state controls on religion, speech, or assembly continue to face severe government repression. The Commission notes that the Chinese government continued to pursue certain judicial and criminal justice reforms that could result in improved protection of the rights of China's citizens. Yet these positive steps were clouded by new detentions and government policies designed to protect the Communist Party's rule and tighten control over society. These detentions and policies violated not only China's Constitution and laws, but also internationally recognized human rights standards.

The Chinese government engaged the international human rights community over the past year, hosting visits by the UN Working Group on Arbitrary Detention, the UN High Commissioner for Human Rights, and the U.S. Commission on International Religious Freedom, permitting the International Committee of the Red Cross to open a regional office in Beijing, and committing to a visit by the UN Special Rapporteur on Torture in November 2005. During her recent visit to China, the UN High Commissioner for Human Rights Louise Arbour said, "China has declared its commitment to human rights and has raised expectations for the country to match its growing prosperity with a firm commitment to advancing human rights." Arbour also expressed concern over China's commitment to human rights and raised several political prisoners of concern with government officials.

China has an authoritarian political system controlled by the Communist Party. Party organizations formulate all major state policies before the government implements them. The Party dominates Chinese legislative bodies such as the National People's Congress and fills important government positions at all levels by an internal selection process. Chinese authorities have introduced limited elements of political participation at the lowest levels of government to enhance their ability to govern. These elements include direct elections for village and residents committees, local people's congress elections, and some popular input into the selection of low-level government and Party officials. The Party controls these selection and electoral processes by screening, and often selecting, the candidates. Chinese citizens are attempting to use the limited political space created by official reforms to protect their rights and interests, but Party officials and local governments often suppress these efforts, leading to social unrest.

After several wrongful conviction scandals this year, the central government permitted a broad public critique of the criminal judicial system. This discourse confirmed the extent to which coerced confessions, police incompetence, pervasive presumptions of guilt, extrajudicial influences on the courts, restrictions on defense attorneys, and other problems undermine the fairness of the criminal process. Domestic reaction to the wrongful conviction scandals created new momentum for some criminal justice reforms. Many Chinese scholars and officials continue to push for reforms within the boundaries set by the Communist Party and Chinese legal culture and seek to engage foreign counterparts in this process. The Chinese government continues to use administrative procedures and vaguely worded criminal laws to detain Chinese citizens arbitrarily for exercising their rights to freedom of religion, speech, and assembly. The United Nations Working Group on Arbitrary Detention noted in December 2004 that the Chinese government has not adequately reformed these practices.

The Chinese government does not recognize the core labor rights of freedom of association and collective bargaining. The government prohibits independent labor unions and punishes workers who attempt to establish them. Wage and pension arrears are among the most important problems that Chinese workers face. The government issued new regulations seeking to address the problem of unpaid wages and pensions, but in many cases Chinese workers continue to struggle to collect wages and benefits because the relevant agencies do not enforce the regulations. Workplace health and safety conditions are poor for millions of Chinese workers. China's state-run news media have reported, with some exceptions, workplace accidents more openly and promptly than in previous years, even when workers have been killed or injured. Forced labor is an integral part of the Chinese administrative detention system, and child labor remains a significant problem in China, despite being prohibited by law.

The Chinese government continues to harass, abuse, and detain religious believers who seek to practice their faith outside state-controlled religious venues. Religious believers who worship within state-controlled channels are subject to government regulation of all aspects of their faith. In 2005, the government and Party launched a large-scale implementation campaign for the new Regulation on Religious Affairs to strengthen control over religious practice, particularly in ethnic and rural areas, violating the guarantee of freedom of religious belief found in the new Regulation.

The religious environment for Tibetan Buddhism has not improved in the past year. The Party demands that Tibetan Buddhists promote patriotism toward China and repudiate the Dalai Lama, the religion's spiritual leader. The intensity of religious repression against Tibetans varies across regions, with officials in Sichuan province and the Tibet Autonomous Region currently implementing Party policy in a more aggressive manner than officials elsewhere. Sichuan authorities sometimes impute terrorist motives to Tibetan monks who travel to India without permission.

The Chinese government continues to repress Catholics. Chinese authorities are currently detaining over 40 unregistered clergy and have taken measures this year to tighten control of registered cler-

gy and seminaries. Despite assurances of its desire to establish diplomatic relations with the Holy See, the Chinese government has not altered its long-standing position that, as a precondition to negotiations, the Holy See must renounce a papal role in the selection of bishops and break relations with Taiwan.

The government continues to strictly regulate Muslim practices, particularly among members of the Uighur minority. All mosques in China must register with the state-run China Islamic Association. Imams must be licensed by the state before they can practice, and must regularly attend patriotic education sessions. Religious repression in Xinjiang is severe, driven by Party policies that equate peaceful Uighur religious practices with terrorism and extremism.

In the past year, the Chinese government continued a campaign begun in 2002 that focused on harassing and repressing unregistered Protestant groups and consolidating control of registered Protestants. Hundreds of unregistered Protestants associated with house churches have been intimidated, beaten, or imprisoned. The Chinese government opposes the relationships that many unregistered Protestant house churches have developed with co-religionists outside China.

Chinese non-profit associations and organizations are growing in number and engaging in valuable educational work and issue advocacy. While some ministries and local governments support these groups, some high-level leaders consider the emergence of an independent civil society a threat to government and Party control. Central authorities use regulations to limit and control the development of civil society in China, forcing many groups to remain unregistered or operate underground. In 2005, Chinese authorities moved to curtail the activities of international and domestic civil society organizations, particularly environmental groups that challenged government policies.

Chinese judicial officials announced ambitious reform goals in 2005 that would address structural problems affecting the Chinese judiciary. These include changes to court adjudication committees, the system of people's assessors, and judicial review of death penalty cases. Party authorities and local governments, however, continue to limit the independence of China's courts. Internal administrative practices of Chinese courts also compromise judicial efficacy and independence. The Chinese judiciary has improved the educational level of Chinese judges and the quality of their judicial opinions. Rural courts, however, are rapidly losing judges to urban areas.

The Chinese government does not respect the freedom of speech and freedom of the press guaranteed in China's Constitution. Chinese authorities allow government-sponsored publications to report selectively on information that, in previous decades, officials would have deemed embarrassing or threatening. But in the past year, officials have become less tolerant of public discussion that questions central government policies. Chinese authorities have tightened restrictions on journalists, editors, and Web sites, and continue to impose strict licensing requirements on publishing, prevent citizens from accessing foreign news sources, and intimidate and imprison journalists, editors, and writers.

Constitutional enforcement remains a politically sensitive topic in China, and the near-term prospects for the establishment of a more robust constitutional enforcement mechanism are remote. The Chinese government has ruled out establishing a constitutional court or giving people's courts the power to review the constitutionality of laws and regulations, but has affirmed the right of citizens to petition the National People's Congress Standing Committee for review of regulations that violate the Constitution or national law. The effect of this right remains limited, however, since Chinese citizens have no right to compel such review or to challenge the constitutionality of government actions. The Chinese government has enacted laws to curb administrative abuses, but Chinese officials retain significant administrative discretion. Existing legal mechanisms provide only limited checks on arbitrary or unlawful government actions.

Minorities that are willing to accept state controls and the official depiction of their ethnic groups and histories have been able to preserve their cultures while joining Party and government ranks. Minorities that demand greater effective autonomy and control over their cultural identities, however, regularly confront government policies that violate the Constitution and the Regional Ethnic Autonomy Law. Government policy in Tibetan areas and in Xinjiang most often contravenes the Chinese Constitution and law. The government grants minorities in southwest China that have accepted central authority, like the Zhuang, Yao, and Yi, more freedom to exercise their lawful rights. Since 2000, China's autonomous regions have experienced increased economic output and improved transportation and communication networks, but central control over development policy and financial resources has weakened economic autonomy in minority areas and disproportionately favored Han Chinese in Tibetan, Uighur, and other border areas. Central government investment has expanded educational access for minorities since 1949, though minority literacy rates and levels of educational attainment remain below those of the Han. Government-sponsored Han migration to minority areas has exacerbated ethnic tensions, particularly in Tibetan areas, Xinjiang, and Inner Mongolia.

The Chinese government promotes conservation, recycling, and the use of renewable energy sources to address environmental degradation and the depletion of natural resources. Weak environmental laws, poor enforcement, and small government budgets for environmental protection hamper these efforts. The Chinese government promotes international cooperation on environmental matters and is receiving foreign technical assistance for environmental projects in China.

The Chinese Constitution and laws provide for the equal rights of women, and a network of women's groups advocate to protect women's rights. But Chinese women have fewer employment opportunities than men, and their educational levels fall below those of men. The government has acknowledged these gender discrepancies and is taking steps to promote women's interests. Chinese women face increasing risks from HIV/AIDS as the disease moves from high-risk groups dominated by men into the general population.



Trafficking of women and children in China remains pervasive despite government efforts to build a body of domestic law to address the problem. China's population control policies exacerbate the trafficking problem. China's poorest families, who often cannot afford to pay the coercive fines that the government assesses when it discovers an extra child, often sell or give infants, particularly female infants, to traffickers.

The two greatest public health challenges facing China today are infectious diseases and rural poverty. The central government is taking steps to improve the public health infrastructure in rural areas, but China's poor lack preventive healthcare, and weak implementation of laws that provide for free vaccinations leave many adults and children unprotected. Central government efforts to address China's HIV/AIDS epidemic continue to expand and deepen, but local governments often harass Chinese activists who work on HIV/AIDS issues. Government controls inhibit the flow of health-related information to the public, potentially affecting public health in China as well as international disease monitoring and response efforts.

The Chinese government continues its population control policy, which is scheduled to continue through the mid-21st century. Coercive fines are the main enforcement mechanism, although reports of local officials using physical coercion to ensure compliance continue, even though this practice violates Chinese law. The severe gender imbalance resulting from the population control policy has grown worse over the past two decades. The Chinese government has established a commission to draft legislation to criminalize sex-selective abortion.

National and local authorities are gradually reforming China's household registration (*hukou*) system. In 2005, central authorities took some steps toward removing work restrictions on migrants in urban areas, but *hukou* discrimination in public services remains prevalent. *Hukou* reforms are enhancing the ability of wealthy and educated citizens to choose their place of permanent residence, but strict economic criteria often exclude poor rural migrants living in urban areas, preventing some of China's most vulnerable citizens from receiving public services.

Chinese citizens resort to thousands of "letters and visits" (*xinfang*) offices for redress of their grievances because of deficiencies in the legal system and the absence of alternative channels for political participation, but only a small fraction of their appeals are resolved. Citizen frustration is finding an outlet in collective petitions that take the form of mass demonstrations or strikes. Because Chinese authorities punish local officials more severely for large protests, citizens think that collective petitioning is more likely to gain results. The government passed new regulations in 2005 designed to make the *xinfang* system more responsive to citizen complaints, but these regulations also expand the role of *xinfang* offices and the incentive for citizens to resort to collective petitioning.

The Dalai Lama has said that he does not seek independence and aims for a solution based on Tibetan autonomy within China. But China's leaders do not seem to recognize the benefits of moving forward in the dialogue with the Dalai Lama or his envoys. Chi-

nese laws on regional ethnic autonomy contain provisions that could benefit Tibetans and their culture, but poor government implementation of these laws largely negates their potential value. Chinese government statistics suggest that Tibetans are not yet prepared to compete in the economic and ethnic environment created by central government policies. The Tibetan rate of illiteracy is five times higher than China's national average. Most Tibetans do not have access to a bilingual education system that can impart skills to help them compete for employment and other economic benefits. Chinese laws and official statements lend credibility to Tibetan concerns that programs such as Great Western Development and projects such as the Qinghai-Tibet railroad will lead to large increases in Han migration. The rights of Tibetans to their constitutionally guaranteed freedoms of religion, speech, and assembly are subject to strict constraint. Government officials persecute prominent Tibetans, especially religious leaders, believed to have links to the Dalai Lama.

The Chinese government forcibly repatriates North Koreans seeking refuge in China from starvation and political persecution, contravening its obligations to handle refugees as required by the 1951 Convention Related to the Status of Refugees and its 1967 Protocol. The Chinese government classifies all North Koreans in China as "illegal economic migrants" and denies the United Nations High Commission for Refugees (UNHCR) access to this vulnerable population. Living conditions of North Koreans in China are harsh, and women and children are particularly vulnerable to trafficking and prostitution. There is a compelling case for the Chinese government to recognize the North Koreans in China as refugees and allow the UNHCR access to them: the North Korean government regularly denies food to particular groups on political grounds, and refugees returned to North Korea face long prison terms, torture, or execution.

The Hong Kong people continue to enjoy an open society in which the freedoms of religion, speech, and assembly are respected, but the Commission is troubled by a continuing pattern of central government interference in Hong Kong local governance through interpretations of the Basic Law. The Commission emphasizes its belief in the importance of the central government's obligation to give Hong Kong the "high degree of autonomy" promised in the Basic Law and strongly supports the provisions of the Basic Law that provide for the chief executive and the entire legislature to be elected through universal suffrage. The Hong Kong judiciary demonstrated its continued independence by protecting the right of citizens to demonstrate in a case overturning the convictions of eight Falun Gong practitioners, despite the central leadership's ongoing campaign to eliminate the Falun Gong movement.

The Chinese government tolerates intellectual property infringement rates that are among the highest in the world, and has not introduced criminal penalties sufficient to deter intellectual property infringement. Steps taken by Chinese agencies in the past 12 months to improve the protection of foreign intellectual property have not produced any significant decrease in infringement activity. The Chinese government has made progress in bringing its laws into compliance with its WTO commitments. Although signifi-

cant flaws remain, the new body of commercial laws has improved the business climate for foreign companies in China. With new, more transparent rules, the Chinese trade bureaucracy has reduced regulatory and licensing delays. The government has not fully implemented the key WTO principles of national treatment, non-discrimination, and transparency in such areas as distribution and agriculture. To address these problems, the Chinese government must continue economic reforms, establish a more transparent and consistent regulatory and licensing system, implement and enforce distribution rights for foreign companies, and strengthen enforcement of intellectual property laws.

#### RECOMMENDATIONS

The Commission is working to implement the recommendations made in the 2002, 2003, and 2004 Annual Reports until they are achieved. 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 Commission makes the following additional recommendations to the President and the Congress for 2005:

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

- The Commission's Political Prisoner Database is a unique resource for promoting human rights in China. Members of Congress should use the Database to support their own advocacy of political and religious prisoners in China, and should ask official and private delegations traveling to China to present officials there with lists of political and religious prisoners derived from the Database. Members should also urge state and local officials and private citizens involved in sister-state and sister-city relationships with China to use the Database to build new advocacy efforts for the release of political and religious prisoners.
- Recent Chinese government regulations on implementing the Regional Ethnic Autonomy Law require all local governments to draft and implement measures to protect minority rights and to teach citizens about their rights under this law. The President should propose, and the Congress should appropriate, funds for U.S.-based NGOs to provide legal and technical training to assist in these efforts. The President and the Congress should continue to urge Chinese officials not to use the global war against terrorism as a pretext to suppress minorities' legitimate, peaceful aspirations to exercise their rights protected by the Chinese Constitution and the Regional Ethnic Autonomy Law.
- Trafficking of women and children in and through China remains pervasive despite government efforts to address the problem. The Chinese government is collaborating with UN agencies and has adopted national measures to control human trafficking, principally by passing criminal laws to punish traffickers and giving public security bureaus the chief responsibility for the elimination of trafficking. The President and the Congress should continue to support international programs to

build law enforcement capacity to prevent trafficking in and through China, and should develop and fund additional programs led by U.S.-based NGOs that focus on the protection and rehabilitation of victims, especially legal and educational assistance programs.

- China's leaders rank social stability as a key priority and have taken some top-down measures to address abusive official behavior that contributes to social unrest. The President and the Congress should encourage the Chinese government to continue these positive steps, but should also press the Chinese leadership for the kinds of bottom-up changes that will ensure a stable future for China, including (1) expanding popular participation in politics by curbing the discretion of election committees; (2) lifting current restrictions on civil society by removing the sponsor organization requirement; (3) removing restrictions on the news media; (4) giving Chinese citizens the power to enforce constitutional protections; (5) and taking decisive steps to make the judiciary independent.

- The future of Tibetans and their religion, language, and culture depends on fair and equitable decisions about future policies that can only be achieved through dialogue. The Dalai Lama is essential to this dialogue. To help the parties build on visits and dialogue held in 2003, 2004, and 2005, the President and the Congress should urge the Chinese government to move the current dialogue toward deeper, substantive discussions with the Dalai Lama or his representatives, and encourage direct contact between the Dalai Lama and the Chinese leadership.

#### *Religious Freedom for China's Faithful*

- The freedom to believe and to practice one's religious faith is a universal and essential right, and the Chinese leadership should allow true freedom of religion for all Chinese citizens. The President and the Congress should foster and support the development of the freedom of religion in China by continuing longstanding U.S. diplomacy on the importance of religious freedom, and urging Chinese government engagement with the UN Special Rapporteur on Religious Intolerance and a continuing dialogue with the U.S. Commission on International Religious Freedom.

- The new Regulation on Religious Affairs adopted in 2005 permits religious organizations to run social welfare enterprises and religious believers and organizations to challenge official violations of their rights. The President should propose, and the Congress should appropriate, funds to permit U.S. NGOs to help develop voluntary, independent social welfare projects and educational initiatives run by religious organizations. The President should also propose, and the Congress should fund, appropriate U.S. legal advocacy organizations to help Chinese believers understand their rights and seek redress for official violations of these rights.

#### *Labor Rights for China's Workers*

- U.S. law prohibits imports into the United States of forced labor products and the Commission is concerned that products

resulting from forced labor in China may be reaching the United States. The President should direct the China Prison Labor Task Force created under Title V of Public Law 106-286 to establish an electronic database of sites in China known to be forced labor camps or production facilities. Imports into the United States of products manufactured in whole or part in facilities listed in this database should be presumptively considered to be the products of forced labor as defined in Section 307 of the Tariff Act of 1930, until an inspection by U.S. customs officials determines otherwise.

- Wage and pension arrears are growing problems in China and cause labor unrest. The President and the Congress should support exchange and training programs with Chinese organizations on orderly systems of wage and pension payments, including the collection and payment of outstanding wages and pensions.

#### *Free Flow of Information for China's Citizens*

- The rights to freedom of speech and freedom of the press are internationally recognized and are guaranteed in the Chinese Constitution, but Chinese citizens generally do not know that they have these rights. The President should propose, and the Congress should appropriate, funds to support U.S. programs to develop technologies that would help Chinese citizens access Internet-based information currently unavailable to them, as well as educational materials about their rights under international law to freedom of speech and freedom of the press.
- The Chinese government uses technology, prior restraints, intimidation, detention, imprisonment, and vague and arbitrarily applied censorship regulations to suppress free expression and control China's media. The President and the Congress should urge the Chinese government to eliminate prior restraints on publishing, cease detaining journalists and writers, stop blocking foreign news broadcasts and Web sites, and specify precisely what kind of political content is illegal to publish.

#### *Rule of Law and Civil Society*

- The Chinese government forcibly repatriates North Koreans seeking refuge in China and denies the Office of the United Nations High Commissioner for Refugees (UNHCR) access to this vulnerable population, contravening its obligations under the 1951 Convention Related to the Status of Refugees and its 1967 Protocol, as well as its 1995 Agreement with the United Nations. The President and the Congress should press the Chinese government to uphold its international agreements and grant the UNHCR unimpeded access to screen North Koreans' refugee petitions.
- The Resident Legal Advisor at the U.S. Embassy in Beijing has provided important analysis of legal reform developments in China and coordination for legal exchanges between the United States and China. Despite this important role, the Advisor position has no permanent funding source. The President

and the Congress should work to create a permanent Resident Legal Advisor position at the U.S. Embassy in Beijing.

- The Chinese government has developed a new body of commercial law since acceding to the WTO in 2001, but many Chinese officials, judges, and lawyers have not been trained on the new laws and do not understand the legal principles. The President should propose, and Congress should fund, a technical assistance program for Chinese officials conducted by the Commercial Law Development Program at the U.S. Department of Commerce. The program should emphasize effective methods of criminal enforcement of intellectual property rights given the persistently high levels of piracy and counterfeiting; the consistent application of trade-related measures at different levels of government; techniques to improve transparent procedures in governance; and the implementation of the key WTO principles of national treatment, non-discrimination, and transparency.

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

*This report was approved by a vote of 18 to 1, with 1 answering "present."*†

## **II. Introduction: Growing Social Unrest and the Chinese Leadership's Counterproductive Response**

### *Growing Social Unrest and the Roots of Instability*

Social unrest in China is growing. According to official Chinese statistics, the number of public protests in China increased every year between 1993 and 2004. In 2003, public security authorities reported 58,000 public protests involving more than 3 million people. In 2004, public security authorities reported 74,000 public protests involving more than 3.5 million people, and a seven-fold rise from the 10,000 protests recorded in 1994. In October 2004 alone, more than 2 million farmers reportedly took part in more than 700 protests.

Many problems fuel China's social unrest. Unlawful land seizures and embezzled compensation payments led to numerous land disputes, with one Chinese social scientist warning of "turbulence" if the government does not solve these problems. Laid off workers and pensioners protested unpaid wages, poor labor conditions, and unemployment, with some incidents involving tens of thousands of protestors. Abusive police behavior sparked large-scale protests in Chongqing, Gansu, Guangdong, Sichuan, and Yunnan last year. Environmental degradation is also a growing cause of citizen protests. The number of collective petitioning efforts, involving hundreds or thousands of protestors trying to present their grievances to officials at successively higher levels of government, is growing. Public anger also manifests itself on the Internet, where reports on law enforcement abuse sometimes generate waves of media criticism and individual commentary.

Most demonstrations begin peacefully, but some turn violent, often in response to government crackdowns. Last fall in Chongqing, for example, an official's alleged abuse of a vendor during a minor street scuffle led to a riot involving more than 10,000 citizens. In November 2004, authorities in Sichuan province dispatched more than 10,000 troops and police to control a demonstration involving nearly 100,000 farmers angry over a hydroelectric project and related land confiscations. In June 2005, hundreds of armed thugs linked to a local development project reportedly killed 10 villagers and seriously wounded more than 100 while trying to evict the villagers from their land in Henan province.

The inability of government institutions and legal mechanisms to address corruption and social conflicts magnifies public anger. Official statistics indicate that the number of citizen petitions to government offices is growing rapidly, but according to Chinese scholars, government agencies address only about 0.2 percent of them. Chinese citizens may sue government officials under the Administrative Litigation Law, but they face a number of obstacles in successfully bringing such claims. These obstacles include a lack of legal representation, weak judicial capacity, Party and government interference in the courts, judicial corruption, and the prospect of official resistance or even retribution. In some cases, authorities specifically instruct courts not to accept too many administrative claims. Chinese law prohibits citizens from forming independent civil society organizations to support citizen complaints, and the Party limits political participation to channels that it designates, monitors, and controls. Without effective administrative, legal, and political channels through which to redress their grievances, citizens often have little choice but to protest.

#### *The Leadership's Counterproductive Response*

China's leaders rank social stability as a key priority, and officials are attempting to address some of the immediate causes of social unrest. In the past year, the government passed laws and initiated campaigns with the stated goals of combating corruption, curbing law enforcement abuse, limiting administrative discretion, and resolving such problems as unlawful land seizures and unpaid wages. In an effort to defuse resentment of law enforcement agencies, for example, the Ministry of Public Security and the Supreme People's Procuratorate initiated campaigns to address corruption, unlawful detention, and torture. The government has also undertaken efforts to ensure that employers pay migrant laborers.

While taking some steps to address public anger, the leadership has also imposed new controls that intensify the underlying causes of social unrest. Over the past year, the Chinese government launched a campaign to increase restrictions on the free flow of information. As part of this campaign, officials banned hundreds of "illegal" political publications, established a licensing system for reporters, and imposed new registration requirements for Web sites. Officials also prosecuted journalists and editors who reported too aggressively on local abuses and prohibited the use of text messaging and other media to circulate "rumors" and other "harmful" information. The Central Propaganda Department prohibited reporting on political and social topics the Party deemed sensitive or

embarrassing. In May 2005, for example, the Department issued a new directive limiting the ability of news media to publish exposés on corruption and abuse in other locales. In late 2004, censors banned reports on land seizures, warning news media against “inducing and intensifying contradictions.” Authorities also restricted public reporting on demonstrations and disturbances. These controls undermine the press, one of the few existing checks on local abuse, and leave officials and powerful private interests free to engage in the corrupt practices that are generating unrest across China.

The government also launched a new crackdown on intellectuals, social critics, and public activists. In the fall of 2004, the Liberation Daily published a critique of “public intellectuals,” declaring that “the concept of public intellectuals had been introduced to drive wedges between intellectuals and the Party and between intellectuals and the general public.” Since then, authorities have harassed, detained, and imprisoned many intellectuals and activists, including some who were working to address social and economic problems that the central leadership had acknowledged. For example, police arrested Li Boguang, who had been helping farmers petition the central government over local land abuses in Fujian province; Yang Tianshui, an advocate for migrant laborers; and Chen Guangcheng, a blind lawyer who had been campaigning against forced sterilizations and abortions in Shandong province. Police also detained Ye Guozhu and Ni Yulan, two Beijing housing activists, after they attempted to follow legal procedures and applied for a permit to protest forced evictions in Beijing.

Similarly, the Chinese government has increased controls over civil society and autonomous social organizations. The government continues to subordinate China’s state-run union to the interests of the Party and prohibit the formation of independent labor unions that could address worker grievances. Early in 2005, authorities took steps to curb the growing activism of environmental groups that had challenged government development decisions by pressuring them to join a government-controlled umbrella organization. Officials also began a crackdown on social groups registered as business organizations and continued to enforce restrictive registration and sponsorship requirements for civil society organizations. Government and Party officials have acknowledged the important role that voluntary social organizations play in helping to address China’s social problems. Instead of supporting the development of civil society organizations that could help resolve social and economic issues, however, the Chinese leadership has imposed new restrictions on these groups that undermine their ability to provide assistance, forcing many to operate underground.

Government repression of unregistered religious believers and ethnic minorities also contributes to instability. In 2005, the Chinese leadership refocused government attention on the traditional Party fear that religion and ethnicity are being used by “hostile outside forces” to infiltrate and destabilize Chinese society. As a result, instead of implementing China’s new Regulation on Religious Affairs in a way that offers new redress to believers against errors and abuses by the state’s religious bureaucracy and encourages faith-based social organizations, the Party directed local officials to



“control” believers. Such tactics force religious expression underground and push otherwise law-abiding believers into conflict with the government.

The Chinese government relies on a combination of top-down rectification campaigns, political controls, and repression to achieve its version of social stability. These measures have failed to control corruption, local abuses, and social unrest, fueling additional resentment on the part of China’s citizens. Citizen efforts to address government abuses are driven underground, while local officials enjoy even greater discretion to violate rights. Without full transparency, free information flow, independent political participation, a vibrant civil society, genuine autonomy for ethnic minorities and religious believers, enforceable constitutional and legal rights, and effective checks on administrative discretion, China’s leaders will not achieve the goal of maintaining a stable internal environment as the foundation for continued national development.

### **III. Monitoring Compliance With Human Rights**

#### **III(a) SPECIAL FOCUS FOR 2005: CHINA’S MINORITIES AND GOVERNMENT IMPLEMENTATION OF THE REGIONAL ETHNIC AUTONOMY LAW**

##### **FINDINGS**

- Minorities that are willing to accept state controls and the official depiction of their ethnic groups and histories have been able to preserve their cultures while joining Party and government ranks. Minorities that demand greater effective autonomy and control over their cultural identities, however, regularly confront government policies that violate the Constitution and the Regional Ethnic Autonomy Law. Government policy in Tibetan areas and in Xinjiang most often contravenes the Chinese Constitution and law. The government grants minorities in southwest China that have accepted central authority, like the Zhuang, Yao, and Yi, more freedom to exercise their lawful rights.
- Since 2000, China’s autonomous regions have experienced increased economic output and improved transportation and communication networks, but central control over development policy and financial resources has weakened economic autonomy in minority areas and disproportionately favored Han Chinese in Tibetan, Uighur, and other border areas. Central government investment has expanded educational access for minorities since 1949, though minority literacy rates and levels of educational attainment remain below those of the Han. Government-sponsored Han migration to minority areas has exacerbated ethnic tensions, particularly in Tibetan areas, Xinjiang, and Inner Mongolia.

#### *China’s Ethnic Minorities and Minority Policy*

China’s ethnic makeup is complex.<sup>1</sup> Fifty-five minority groups speak more than 60 languages<sup>2</sup> and practice a variety of religions. Though they constitute less than 9 percent of the total population, minorities are spread across almost two-thirds of the Chinese landmass, chiefly along international borders. More than 30 minor-

ity groups have ethnic counterparts in neighboring countries,<sup>3</sup> and Communist Party policies in minority areas stress loyalty to China. Government concerns over the loyalty of minorities have increased with the growth of popular movements in neighboring Central Asian states.<sup>4</sup>

Minorities are typically much poorer than members of the Han majority.<sup>5</sup> Chinese authorities argue that tensions between the Han and minorities result primarily from uneven levels of economic development. Officials stress that “all minority problems” can be resolved by promoting socialist development and increasing propaganda on the interdependence of the country’s nationalities and on the “correct interpretation of ethnic histories.”<sup>6</sup> Not all minorities support the central government’s development approach, contending that economic advancements disproportionately favor Han Chinese.<sup>7</sup> Nevertheless, central authorities report marked improvements in social and economic development within the autonomous areas. When the Party assumed power in 1949, less than 20 percent of the minority population had even limited Mandarin language competency, illiteracy rates were high,<sup>8</sup> poverty was widespread, and transportation and communication infrastructure was nearly non-existent. Discrepancies in wealth between minorities and Han Chinese have increased since market reforms began in 1978,<sup>9</sup> and literacy rates in many minority areas remain far below the national average.<sup>10</sup> Central government investment in minority regions has, however, raised overall educational levels,<sup>11</sup> improved transportation and communication networks, and trained a corps of minority cadres willing to work in government.

The Chinese Constitution, the 1984 Regional Ethnic Autonomy Law (REAL),<sup>12</sup> and a number of related laws and regulations define minority rights. The Constitution entitles minorities to establish autonomous governments in territories where they are concentrated, but like all Chinese citizens, minorities must accept the leadership of the Party,<sup>13</sup> “safeguard the security, honor, and interests of the motherland,” and place the interests of the state “above anything else.”<sup>14</sup> The REAL grants autonomous governments the authority to formulate regulations reflecting local minority culture as long as they do not directly contravene central policy.<sup>15</sup> The law allows autonomous governments to alter, postpone, or annul national legislation that conflicts with local minority practices, but the next higher level of government must approve such changes and they may not contradict the basic spirit of national policies.<sup>16</sup>

Implementation of the REAL varies greatly by region and by minority group.<sup>17</sup> The Chinese government prohibits all Chinese citizens from expressing sentiments that “incite splittism” or “divide nationality unity,” but monitors minorities more closely than Han Chinese.<sup>18</sup> The government grants a degree of local autonomy to ethnic groups that accept the central government’s authority, but silences those who attempt peacefully to advocate their rights under Chinese law. Mongol activist Hada, for example, is serving a 15 year prison sentence for organizing peaceful demonstrations for rights provided in the REAL. Minorities in the southwest have had more freedom to exercise their autonomy because they rarely challenge central authority.<sup>19</sup> The government tightly restricts religious practices and expressions of cultural identity in Xinjiang,

Tibetan areas, and Inner Mongolia, however. In contrast to southwestern minorities, the Tibetans, Uighurs, and Mongols live in cohesive communities largely separated from Han Chinese, practice major world religions, have their own written scripts, and have supporters outside of China. Relations between these minorities and Han Chinese have been strained for centuries.

The government continued to violate minority rights in Tibetan areas and Xinjiang throughout the year, but elsewhere Chinese authorities took some steps to improve the treatment of minorities. In May 2005, the State Council announced new Regulations on Implementing the Regional Ethnic Autonomy Law (REAL Implementing Regulations). The Regulations include provisions increasing compensation requirements for central government extraction of natural resources from autonomous regions,<sup>20</sup> strengthening the monitoring and reporting mechanisms on REAL implementation,<sup>21</sup> and developing guidelines for penalizing government officials who violate minority rights.<sup>22</sup> The REAL Implementing Regulations also require local governments to educate minorities about their rights and to draft specific measures to protect their rights and interests.<sup>23</sup> A university and several governments in autonomous areas announced new legal aid and social services centers throughout the year.<sup>24</sup> In March, a group of Darhad Mongols successfully invoked rights provided in the REAL, United Nations regulations, and the national Land Administration Law to bar the construction of a Han Chinese-owned Genghis Khan theme park on a site overseen by Mongols since 1696.<sup>25</sup>

Despite these positive steps, the REAL Implementing Regulations also increase the role of the central government in autonomous areas, reflecting a broader national campaign to increase Party controls over society. All of the new State Council measures are binding on autonomous governments, including specific economic development projects, language policies, and migration policies that the autonomous governments previously had the authority to determine themselves.<sup>26</sup> Central authorities also tightened controls over minority cultural representation and launched an extensive propaganda campaign on the role of China's minorities in building a united, multi-ethnic nation.<sup>27</sup> The same campaign stresses that future prospects for minorities depend on cooperating with the Han majority.

#### *Legal Framework For Minority Rights*

Minority rights protected under Chinese law may be roughly divided into seven categories: self-governance and representation, economic autonomy, educational autonomy, religious freedom, cultural expression, language use, and freedom from discrimination. Although the laws themselves contain provisions ensuring central control over minority areas,<sup>28</sup> much of the discontent among minorities with central authority stems from uneven and incomplete implementation of the law rather than flaws in the legal framework itself.

#### *Self-governance and minority representation*

The Constitution entitles minorities living in concentrated communities to establish autonomous governments,<sup>29</sup> though their

autonomy remains limited in practice. The 1984 REAL grants autonomous governments all of the powers awarded other local governments and the right to formulate three additional types of regulations: self-governing regulations, separate regulations,<sup>30</sup> and separate alterations to national laws. None of these regulations may contradict the “basic principles” of national laws or policies, though the local regulations may adapt national laws, regulations, and policies to suit local minority customs.<sup>31</sup> Self-governing regulations establish each autonomous government’s organizational structure and local economic, cultural, and public service development plans. Self-governing regulations must be approved by the next higher-level government before final submission to the National People’s Congress Standing Committee (NPCSC). To date, the NPCSC has not approved any self-governing regulations of the five provincial-level autonomous regions,<sup>32</sup> although 133 of the country’s 30 autonomous prefectures and 120 autonomous counties have issued local self-governing regulations.<sup>33</sup> Most of these self-governing regulations were passed between 1984 and 1992, and a number of their provisions have not kept pace with continuing changes in central government political, economic, and social policies.<sup>34</sup>

Autonomous governments have passed 383 separate regulations and 68 alterations to national laws, but they are vaguely worded and address only a limited set of state-approved topics.<sup>35</sup> Most of these rules lower the legal marriage age for minorities, and only a few give greater fiscal autonomy or control over local natural resources to the local governments.<sup>36</sup> Several Chinese scholars argue that autonomous regulations fail to reflect local minority conditions, rendering the concept of regional autonomy “purely cosmetic.”<sup>37</sup> The inability of autonomous governments to pass effective local regulations, combined with the poor implementation of such regulations and a lack of trained minority legal personnel, undermines the development of the rule of law in minority areas.<sup>38</sup>

Chinese legal analysts note that minorities would better accept the formal legal system if autonomous regulations accurately reflected minority customs.<sup>39</sup> One minority scholar laments that minorities “often simply give up on litigation and handle matters privately, through customary minority practice” because the courts “ignore the existence of minority customs” and lack financial and political independence.<sup>40</sup> Autonomous governments in Muslim areas, for example, have yet to pass legislation to legalize Islamic inheritance customs that directly conflict with the National Inheritance Law.<sup>41</sup>

The Chinese government has passed a number of laws and policies designed to increase minority representation within the government and state-owned enterprises, but minorities remain underrepresented and fill a disproportionate number of low-level positions in the government.<sup>42</sup> The REAL requires that the head of each autonomous government be drawn from the titular minority and that state personnel be drawn equitably from local minority groups. The government has funded 13 institutes of higher education to train minority students and mid-level officials, and promotes minorities with “solid political viewpoints” that match state policies.<sup>43</sup> But the educational level of minority government employees remains lower

than their Han counterparts,<sup>44</sup> and minorities are inadequately represented within economic agencies.<sup>45</sup> Although minorities are well represented in the National People's Congress,<sup>46</sup> the legislature remains subordinate to the Party and individual deputies wield little power.

Chinese law makes no provision for minority representation within the Party apparatus, where minorities constitute only 6.3 percent of the total membership and rarely hold high-level positions.<sup>47</sup> In 2000, each of the 125 regional, prefectural, municipal, and county-level Party first secretaries in Xinjiang was Han, as were the first secretaries of all five provincial-level autonomous regions.<sup>48</sup> Reflecting the sensitivity of the subject, neither the press nor scholarly journals discuss minority representation in the Party.<sup>49</sup> The Party's official atheism, reflected in a rule prohibiting Party members from practicing religion, also undermines minority participation in Party affairs.<sup>50</sup>

The central government continues to place Han Chinese "from the interior" into key technical and political posts in autonomous areas and to encourage Han laborers and farmers to move into these regions.<sup>51</sup> The government contends that this is necessary to "lead" economic development in these areas and combat efforts to undermine ethnic unity by "hostile domestic and foreign forces."<sup>52</sup> The policy has undermined minority autonomy and increased ethnic tensions, most dramatically in Xinjiang and Tibetan areas. Central and local directives emphasize that Han leadership is needed to spur development in autonomous areas due to the dearth of educated minorities,<sup>53</sup> but the government encourages technically trained minorities to leave the autonomous areas while supporting the influx of both skilled and unskilled Han workers.<sup>54</sup> The REAL Implementing Regulations require autonomous governments to "guide and organize" local residents to go to "other areas" in search of jobs and business opportunities.<sup>55</sup> By government decree, officials that have been relocated to autonomous areas are better compensated than local administrators. The REAL Implementing Regulations increase the central government's commitment to transferring Han personnel "from all fields and all levels" to minority areas, extending a policy that the State Ethnic Affairs Commission boasts has already sent "tens of thousands of cadres to the border areas since 1982."<sup>56</sup>

#### *Economic autonomy*

Although the economies of the minority regions have grown substantially since 1949, central authorities often determine development strategies with little input from minority residents. Central authorities provide autonomous governments additional funds and financing options beyond those provided non-autonomous governments.<sup>57</sup> At the same time, autonomous areas have become increasingly dependent on central subsidies to support their local operating budgets, particularly since the launch of the Great Western Development program in 2000.<sup>58</sup> More than 60 percent of Xinjiang's economy is state-owned, for example, and centrally funded infrastructure projects and major natural resource extraction projects since 2000 have increased the central government's share of the Xinjiang economy. Minorities often complain that they are

not benefiting from the central economic development programs,<sup>59</sup> though such allegations are difficult to confirm given tight controls over reporting on certain types of economic information.

Chinese law grants autonomous regions the right to manage and protect their natural resources,<sup>60</sup> but state policies often ignore such provisions. The Chinese Constitution states that all natural resources are owned by “the state, that is, by the whole people,” but the REAL grants autonomous governments the right to assign ownership of the pastures and forests within these areas and requires the state to give minorities some compensation for all natural resources extracted from their territories.<sup>61</sup> Human rights groups and Western analysts note that central government grasslands policies threaten to destroy the nomadic lifestyle of many Mongols and Tibetans. These analysts also say that the minorities have been denied a voice in grasslands management.<sup>62</sup> Increased Han immigration into Xinjiang has increased pressure on scarce water resources and contributed to rapid desertification.<sup>63</sup> Many minorities complain privately that Han developers are stripping away their natural resources and that Han Chinese monopolize high paying jobs in resource extraction projects. The REAL Implementing Regulations require that all natural resource extraction projects in autonomous areas benefit local economic development and employment, though it is too early to tell if the Regulations will result in policy changes. The Regulations also mandate new compliance monitoring and reporting mechanisms and impose administrative and criminal penalties on those violating the Regulations,<sup>64</sup> which may encourage greater compliance with the Regulations by developers.

#### *Educational autonomy*

Although the REAL grants autonomous governments the right to control their educational systems,<sup>65</sup> the central government retains tight control over the curricula and promotes the use of Mandarin Chinese in the classroom. Autonomous governments and the central government have developed an array of special schools and programs for minorities, increasing the total number of ethnic students enrolled in classes more than 17-fold since 1949.<sup>66</sup> Minorities accounted for only 1.4 percent of the total student population in institutes of higher learning in 1949, but the figure rose to 6 percent by 1999.<sup>67</sup> Minorities are allowed to enter universities with lower test scores than Han and are eligible for special scholarships. The government has established special year-long preparatory classes for minorities requiring remedial assistance before they enter universities. More than 9,000 students attended such classes in 2001.<sup>68</sup> The government has also set up special mobile classes catering to nomadic minority communities.

Minorities are entitled by law to set their own curricula, but in practice the central government strictly controls the content of teaching materials in minority classes to ensure “the proper understanding of nationality relations and advanced socialist thinking.”<sup>69</sup> Educators in autonomous areas report that the government controls the content of history textbooks strictly. They complain that textbooks written in the local minority script are translations of the standard Chinese texts.<sup>70</sup> One Western study found that mi-

minority students have difficulty relating to the material in the standard Chinese curriculum and thus lose interest in learning.<sup>71</sup>

### *Religious freedom*

The Constitution entitles minorities, like all citizens of China, to freedom of religious belief, though Uighurs and Tibetans have been effectively stripped of this right. Religion is the central marker of ethnic identity for many minorities, and the government often equates the religious activities of these groups with “ethnic chauvinism” and “local splittism.”<sup>72</sup> The government represses Uighur and Tibetan religious practices [see Section III(d)—Freedom of Religion and Section VI—Tibet], though official policy concedes that minority religious beliefs are a “long-term issue” and “cannot be forcibly resolved in the short-term.”<sup>73</sup> Minorities outside of Xinjiang and Tibetan areas who belong to one of the five officially recognized religions are generally allowed to practice their religions in registered religious venues managed by state-licensed clergy. Many minorities practice religions unique to their ethnic groups (and not one of the five state-recognized religions), which the government tacitly allows as a “minority custom” rather than as a religion per se.<sup>74</sup> Autonomous governments are required to teach “scientific thinking,” a Party catchphrase for atheism, in the public school system and must prevent religion from “infiltrating” the educational system.

### *Cultural expression*

The central government has tightened controls over political expression during the past 12 months throughout the country [see Section III(e)—Freedom of Expression], including in minority areas. The government increased already strict controls over how minority cultural traits, histories, and religions are depicted in popular media and schools as well as in academic circles. Officials also tightened controls on cultural expressions about minority relations with Han Chinese and increased propaganda in 2005 highlighting both the achievements of Party minority policy and the official view of minority relations.<sup>75</sup> In May, Central Chinese Television broadcasted a series of documentaries on the accomplishments of the regional autonomy system and a feature film set in Tibetan areas and Yunnan depicting “the great melding of nationalities into a single whole, bound by blood and affection.”<sup>76</sup> Since 1949, the Party has monitored all forms of expression in autonomous areas to assure that minorities accept official Party historiography.<sup>77</sup> As recently as 2002, authorities held public book burnings of minority-authored works that conflict with official histories depicting relations among the minorities as harmonious.<sup>78</sup> To co-opt the histories of minority groups, the central government has invested in ethnic “cultural enterprise centers” where minorities conduct officially sanctioned research and attend approved cultural festivities and performances.<sup>79</sup> The State Council’s February 2005 White Paper on Regional Autonomy hails the expansion of minority language publications and broadcasts, artistic troupes, museums, libraries, and histories,<sup>80</sup> but also stresses the role of the central government in each of these cultural enterprises.<sup>81</sup>

*Language policy*

The REAL entitles minorities to use and develop their own spoken and written languages,<sup>82</sup> though in practice language policy varies by region and ethnic group.<sup>83</sup> The law says that minorities should use textbooks written in their own languages “whenever possible” and use these languages as the medium of instruction. Though many minorities continued to use their native languages in primary and some middle schools,<sup>84</sup> the central government increased its efforts this year to promote universal competency in Mandarin Chinese throughout the country.<sup>85</sup> In some minority areas, local groups reported decreased government support for minority language use, but few overt restrictions.<sup>86</sup> In Xinjiang the policy appeared more coercive, as discussed later in this section [for more on language policy in Tibetan areas, see Section VI—Tibet]. Upward social, economic, and political mobility is increasingly dependent upon one’s ability to use Mandarin Chinese. Many minority groups welcome the opportunity to develop their Mandarin skills, while emphasizing the importance of promoting their own minority languages.

The Inner Mongolia Autonomous Region government passed a new regulation in May which, if properly implemented, promises to expand the use of the Mongol language. The regulation calls for increased use of Mongolian in regional colleges, economic incentives for students in Mongolian language schools, merit increases for bilingual government workers, and increased Mongolian media broadcasts. It also mandates greater regional funding for minority language publications and broadcasts.<sup>87</sup> The regulation contains more specific provisions for promoting the Mongol language and elevating the status of Mongolian speakers than found in national laws or other local regulations.<sup>88</sup> The new regulation also contains enforcement clauses, making it more likely to be implemented than earlier official statements supporting minority language use.

*Freedom from discrimination*

The Chinese Constitution states that all minorities are equal and prohibits all acts that discriminate against or oppress nationalities. Nevertheless, ethnic discrimination continues to exist throughout China, in both the government’s controls over cultural and religious expression and in private and governmental hiring practices. Many Han Chinese entrepreneurs with businesses in autonomous areas intentionally recruit Han workers from neighboring provinces rather than work with local minorities.<sup>89</sup> Employers favor those with fluent Mandarin language skills and, in some areas, certain job listings bar specific minorities from applying.<sup>90</sup> In the Tibetan Autonomous Region, the highest paying jobs are largely staffed by Han Chinese.<sup>91</sup> The central and Xinjiang governments announced personnel decisions in 2005 that explicitly favored Han Chinese over minorities. In April 2005, for example, the government specified that 500 of 700 new civil service positions in southern Xinjiang, where over 95 percent of the population is Uighur, would be reserved for Han Chinese.<sup>92</sup> The government actively recruited Chinese from outside of Xinjiang to assume key posts in the autonomous region, while providing insufficient incentives to stem the flow since 1979 of more than 200,000 trained personnel from



Xinjiang to the east coast.<sup>93</sup> Han Chinese now constitute over 40 percent of the population in Xinjiang, compared to less than 6 percent in 1949. In April 2005, 9,000 workers from Han-populated poor counties in Gansu accepted “long-term contracts” to work on Production and Construction Corps farms in Xinjiang, despite high levels of unemployment among minorities living nearby.<sup>94</sup>

*Rights Violations in Xinjiang*<sup>95</sup>

Since the Soviet Union dissolved in 1991 and independent states were established in Central Asia, the Chinese government has tightened controls over Uighur expressions of ethnic identity.<sup>96</sup> Since the 9/11 terrorist attacks in the United States, the Chinese government has equated peaceful expressions of Uighur identity with “subversive terrorist plots.”<sup>97</sup> The Xinjiang government has increased surveillance and arrests of Uighurs suspected of “harboring separatist sentiments” since popular movements ousted Soviet-era leaders in Ukraine, Georgia, and Kyrgyzstan.<sup>98</sup> In May 2005, the Xinjiang government intensified its “strike hard” campaign against activities it characterizes as ethnic separatism, religious extremism, or international terrorism.<sup>99</sup> In September 2005, Chinese authorities declared the “East Turkestan forces” the primary terrorist threat in China, and acknowledged that Xinjiang authorities have increased police surveillance and political controls throughout the region this year.<sup>100</sup>

Recent government policies only exacerbate ethnic tensions in Xinjiang. The government’s promotion of rapid economic development in the region disproportionately benefits Han Chinese and, together with restrictions on religious, linguistic, and cultural freedoms, and government-supported, large-scale Han migration into the area, has increased Uighur resentment and fears of coercive cultural assimilation.<sup>101</sup> Although the extensive security apparatus in Xinjiang<sup>102</sup> appears for the present to have crushed Uighur calls for greater autonomy, scholars report that “the majority of Uighurs are unhappy with the system of autonomy and the course of politics.”<sup>103</sup> One prominent Western scholar notes that “repression on this scale may temporarily succeed in subduing the expression of ethnic identity but in the long-term it can only increase the resentment that Uighurs feel . . . and fuel deeper conflict in the future.”<sup>104</sup>

Many of the rights granted by the REAL are given to autonomous area governments rather than to individual citizens, and the government carefully controls the appointment and training of all Uighur officials. According to one U.S. scholar, “in the estimation of ordinary Uighurs, those Uighurs who have risen to top leadership positions have been selected not for their responsiveness to popular concerns but because of their tractability.”<sup>105</sup> Uighur officials, like ethnic officials in Tibetan areas, are subject to rigorous political indoctrination. As part of the ongoing national “Advanced Culture” campaign, the Xinjiang government insists that all Party members, who must be atheists, carefully study the “correct relationship between religion and advanced socialist culture.”<sup>106</sup> A 2004 article in the Party’s main theoretical journal reported that Xinjiang is intensifying political education for all government workers, particularly for those with “paralyzed thinking . . . who fail to

clearly distinguish between legitimate and illegal religious activities.”<sup>107</sup>

The government continued its campaign to restrict the use of the Uighur language in favor of Mandarin Chinese, despite provisions in the REAL protecting the right of minorities to use and promote their own languages. Government efforts to limit Uighur language use began in the 1980s, but have intensified since 2001 and throughout the past year.<sup>108</sup> In May 2002, the Xinjiang government announced that Xinjiang University would change the medium of its instruction to Mandarin Chinese. A March 2004 directive ordered ethnic minority schools to merge with Chinese-language schools and offer classes in Mandarin.<sup>109</sup> Despite a severe shortage of teachers in Xinjiang,<sup>110</sup> the government is forcing teachers with inadequate Mandarin Chinese out of the classroom.<sup>111</sup> Party Secretary Wang Lequan noted in April 2005 that Xinjiang authorities are “resolutely determined” to promote Mandarin language use, which he found “an extremely serious political issue.”<sup>112</sup> The government favored Mandarin speakers when setting school admission requirements and in hiring government personnel.<sup>113</sup>

Uighurs have not been able to determine their own school curricula as provided by the REAL. The government demands that teachers place primary emphasis on political instruction over other subjects.<sup>114</sup> Any mention of religion in the public schools is strictly prohibited. Primary and middle schools are barred from offering Arabic language instruction because according to the government “Arabic has never been a language used by any of our minorities and has only been used as a religious language by a small number of people.”<sup>115</sup> In January 2005, Wang urged the Party to rewrite textbooks and “increase the regulation of classroom instruction, academic forums, seminars, and community activities.”<sup>116</sup> He emphasized the importance of “politicians managing education and politicians operating schools.” Throughout the province, schools became the “battlefront for strengthening the Party.”<sup>117</sup> The Yili Kazakh Autonomous Prefecture Educational Department criticized teachers for “putting too much emphasis on teaching and not enough on politics.”<sup>118</sup> In April 2005, Wang announced that more than 1,700 college teachers had completed 20-day training classes on increasing political controls in schools.<sup>119</sup>

Government controls over expression increased in 2005 as the Xinjiang and central authorities “waged war” against what they called “new plots” to divide the country by those “raising the banner of ‘human rights,’ ‘nationalities,’ and ‘religion.’”<sup>120</sup> A Xinjiang prefectural Party secretary alleged that splittists were using DVDs, popular music, movies, and literature to promote separatism. He also claimed it was necessary to intensify controls over all forms of media and art, increase Party propaganda, use loudspeakers and banners in every village, and remain diligent so that the Party can maintain national unity.<sup>121</sup>

The government continues to arrest Uighur journalists and authors who write news articles or literary pieces that the government charges “incite separatism” or “disclose state secrets.” The Xinjiang authorities define any discussion of “important” ethnic policies as a state secret.<sup>122</sup> In February 2005, the Kashgar Intermediate People’s Court sentenced Uighur author Nurmamet Yasin

to 10 years imprisonment for publishing a short story in the Kashgar Literature Journal allegedly containing allegories “inciting splittism.”<sup>123</sup> Doctoral candidate Tohti Tunyaz continues to serve an 11 year sentence imposed in 1999 for “revealing state secrets” in Japanese publications on Uighur history.<sup>124</sup>

The government has sentenced many Uighurs to long prison terms for peacefully expressing discontent with government policies. In August 1999, a Xinjiang court sentenced a group of 18 Uighurs to prison terms of up to 15 years for alleged separatist activities, none of which involved violence.<sup>125</sup> The alleged leader of the group, Shirmemhemet Abdurishit, is serving a 15 year sentence.<sup>126</sup> Although in March 2005 the government released Uighur businesswoman Rebiya Kadeer several months before the end of her eight year sentence for “leaking state secrets,” hundreds of Uighur prisoners of conscience remain in prison.<sup>127</sup> Authorities began harassing Kadeer’s relatives in Xinjiang after she publicly discussed the plight of the Uighurs from her new home in the United States.<sup>128</sup>

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

#### FINDINGS

- China’s criminal justice system experienced continued upheaval over the past year. After several wrongful conviction scandals, the central government permitted a broad public critique of the criminal justice system. This discourse confirmed the extent to which coerced confessions, police incompetence, pervasive presumptions of guilt, extrajudicial influences on the courts, restrictions on defense attorneys, and other problems undermine the fairness of the criminal process.
- The Chinese government continues to use administrative procedures and vaguely worded criminal laws to detain Chinese citizens arbitrarily for exercising their rights to freedom of religion, speech, and assembly. The UN Working Group on Arbitrary Detention noted in December 2004 that the Chinese government has not adequately reformed these practices.
- Many Chinese scholars and officials continue to push for reforms within the boundaries set by the Communist Party and Chinese legal culture and to engage foreign counterparts in this process. Domestic reaction to recent wrongful conviction scandals has created new momentum for some criminal justice reforms.

#### *China’s “Strike Hard” Campaign and New Scrutiny of the Criminal Justice System*

The Chinese government’s “strike hard” anti-crime campaigns are evolving from periodic and intense national crackdowns into a lower-intensity but permanent feature of the law enforcement landscape. This trend continued over the past year. While stressing the need to maintain “strike hard” efforts, key Chinese law enforcement officials emphasized that “strike hard” must become a “regularized” and “long-term” policy.<sup>1</sup> Some Chinese sources suggest the government is transforming “strike hard” in part because leaders recognize that many criminals simply wait for the periodic cam-

paings to end and then resume their activities.<sup>2</sup> One Chinese source also noted that the intense, short-term campaigns of the past resulted in rights abuses and injustice.<sup>3</sup> Within this evolving “strike hard” framework, public security agencies continued to launch frequent, small-scale anti-crime campaigns targeting particular regions or crimes.<sup>4</sup>

Overall crime rates continued to rise in China in 2004, according to official statistics and regional reports. Public security agencies filed a total of 4.7 million criminal cases and prosecutors approved the arrest of 811,102 people in 2004, both increases of more than 7 percent over the prior year.<sup>5</sup> Courts handled 644,248 criminal cases, an increase of 1.5 percent over 2003.<sup>6</sup> Juvenile crime increased 19.1 percent over 2003 and is one of the fastest growing categories of crime in China.<sup>7</sup> While officials published a few statistics reflecting positive trends, such as a drop in some violent crimes in 2004, leadership statements, public surveys ranking security as a major concern and regional complaints about increases in petty crime all point to a growing crime problem.<sup>8</sup>

In early 2005, Chinese reports on two wrongful murder convictions focused national attention on abuses in the criminal justice system.<sup>9</sup> The first case involved Nie Shubin, who was executed in 1994 for rape and murder. In January 2005, a suspect detained in another case confessed to the murder and provided police with a detailed account of the crime scene. The second case involved She Xianglin, who was convicted of murdering his wife in 1994 after she disappeared. In March 2005, his wife suddenly returned to their village. Both cases reportedly involved coerced confessions, questionable investigative work, and interference by Party officials. In Mr. She’s case, an appeals court rejected the trial verdict four times because of questionable evidence but eventually allowed the conviction to stand after the trial court changed his death sentence to 15 years imprisonment. As news of these cases spread, reports of other wrongful convictions emerged.<sup>10</sup>

Together, the Nie and She cases elicited a strong reaction in the Chinese news media and prompted public scrutiny of the criminal justice system. Although the Chinese government generally tightened information controls over the past year [see Section III(e)—Freedom of Expression], it permitted and in some cases encouraged public critiques of the criminal justice system as the scandals unfolded. Xinhua and the People’s Daily noted that Mr. She’s case had “exposed some holes in the judicial system” and prompted a “rethinking” of human rights protections.<sup>11</sup> Chinese scholars and journalists, invoking these and other wrongful conviction cases, published detailed critiques on many problems in the criminal justice system.<sup>12</sup> As one commentator observed, “as one case of wrongful death sentence after another is exposed, we see cursory, rushed investigations, confessions extorted by torture, unreliable polygraph reports, maliciously manufactured perjury and false evidence, suppression of evidence helpful to the accused, and so on.”<sup>13</sup> The two cases, news of which broke as senior officials were discussing death penalty reform, also intensified public discussion of capital punishment. These discussions offered new insights into China’s criminal justice system and shaped debate over criminal justice reforms.

Law enforcement officials continued to stress the need for both greater efficiency and more accountability. Responding to criticism that the wrongful conviction cases were in part the product of poor investigative work, the Ministry of Public Security (MPS) reportedly launched a nationwide campaign to improve investigative capacity.<sup>14</sup> China has significantly fewer police officers per capita than the international average,<sup>15</sup> and some law enforcement agencies focused on hiring personnel and deploying more officers on the street.<sup>16</sup> Beijing established blacklists of underperforming districts to encourage better policing.<sup>17</sup> Senior Chinese officials also publicized efforts to crack down on corruption and abuses in the criminal justice system and stressed the need to balance “strike hard” efforts and the protection of suspect rights.<sup>18</sup> In December 2004, the UN Working Group on Arbitrary Detention (UNWGAD) noted that official statements on the importance of human rights represented a positive development.<sup>19</sup>

#### *Political Crimes*

The Chinese government continues to imprison, detain, or otherwise harass intellectuals, reporters, dissidents, believers engaged in “illegal” religious activities, unauthorized Internet publishers, and others for the peaceful exercise of fundamental rights guaranteed under China’s Constitution and the Universal Declaration of Human Rights. Although the Chinese government released a small number of political prisoners, including Rebiya Kadeer, Huang Qi, and Xu Guang, many Chinese citizens, including Yao Fuxin, Xiao Yunliang, Su Zhimin, Gong Shengliang and other members of the South China Church, Yang Jianli, Jigme Gyatso, Ngawang Phuljung, Choeying Khedrub, Tohti Tunyaz, Jin Haike, Xu Wei, Yang Zili, Zheng Houhai, Mao Hengfeng, and thousands of others continued to serve long prison or re-education through labor sentences for political offenses.<sup>20</sup> In June 2005, the Chinese government rejected a U.S. appeal for an accounting of prisoners still detained for activities related to the Tiananmen Square democracy protests.<sup>21</sup> The government also launched a new crackdown on dissent that resulted in a wave of political detentions and prosecutions [see Section III(d)—Freedom of Religion and Section III(e)—Freedom of Expression].<sup>22</sup> In many cases, police detained these and other individuals without formal charge or judicial review. Arbitrary detentions intensified during politically sensitive periods, such as the period following the death of former Chinese Premier Zhao Ziyang in January 2005, the annual meeting of the National People’s Congress (NPC) in March 2005, the anniversary of the June 4th Tiananmen democracy protests, and the visit of UN High Commissioner for Human Rights Louise Arbour in September 2005.<sup>23</sup>

Chinese authorities continue to apply vague criminal and administrative provisions to detain citizens for political offenses. In some cases, the government charges political activists with “endangering national security,” “subversion,” or “inciting splittism.”<sup>24</sup> In other cases, public security agencies sentence political offenders to re-education through labor (RETL) or other forms of administrative detention without trial.<sup>25</sup> After its 2004 visit to China, the

UNWGAD noted that the Chinese government had made no significant progress in reforming these mechanisms:

None of the recommendations that the working group formulated in its earlier report have been followed. No definition of the term “endangering national security” in criminal law was adopted, no legislative measures have been taken to make a clear-cut exemption from criminal responsibility of those who peacefully exercise their rights guaranteed in the Universal Declaration of Human Rights, and no real judicial control has been created over the procedure to commit someone to re-education through labor.<sup>26</sup>

The Chinese government took a few positive steps on issues related to political crimes. Late in 2004, the Chinese Foreign Ministry announced that the government had formed a “special task force” on ratification of the International Covenant on Civil and Political Rights (ICCPR).<sup>27</sup> In addition to the prisoner releases noted above, in January 2005, the Chinese government provided new information on paroles, sentence reductions, and potential sentence reductions for a number of Chinese political prisoners.<sup>28</sup> In April 2005, the U.S. State Department announced a Chinese government clarification that there is not a stricter standard for evaluating sentence reductions and parole for “security” crimes. Chinese authorities also pledged to conduct a national review of cases involving political acts that are no longer crimes under Chinese law.<sup>29</sup> China announced the last two steps shortly before the UN Human Rights Commission met in Geneva in March 2005.

#### *Arbitrary Detention<sup>30</sup> in the Formal Criminal Process*

Despite government statements on the importance of ending unlawful extended detentions, law enforcement authorities continue to hold criminal suspects for long periods without formal charge or trial. Following a two-year campaign, courts and law enforcement agencies claimed in early 2005 that they had cleared all cases of “illegal extended detention.”<sup>31</sup> Such claims are impossible to verify. Even if many such cases have been cleared, Chinese authorities continue to manipulate legal rules and loopholes to “lawfully” hold criminal suspects for long periods without formal charge and trial.<sup>32</sup> In one recent example, after investigating New York Times researcher Zhao Yan for seven months on charges of leaking “state secrets,” police suddenly claimed to have found “evidence” of fraud against him. Law enforcement officials had already invoked several legal exceptions to extend Zhao’s pretrial detention, and the legally permitted detention period was about to expire.<sup>33</sup> Under Chinese law, the new charge permitted police to reset the pretrial detention clock to zero and investigate Zhao for up to another seven months.<sup>34</sup> In practice, with no limit on the number of “new crimes” that police can assert, suspects can be held in pretrial detention for years. Chinese criminal law experts suggest that such provisions are often abused and that abuses are not limited to “sensitive” cases.<sup>35</sup>

Chinese law does not meet minimal international standards for prompt judicial review of criminal detention and arrest. Under the ICCPR, anyone arrested or detained on a criminal charge must be brought before a judge or judicial officer promptly for review of the

lawfulness of his detention or arrest.<sup>36</sup> In December 2004, the UNWGAD found that China's Criminal Procedure Law (CPL) and related regulations on pretrial detention fail to meet this basic standard because (1) Chinese suspects continue to be held for too long without judicial review; (2) procurators, who review arrest decisions, only examine case files and do not hold a hearing; and (3) a procurator cannot be considered an independent judicial officer under applicable international standards.<sup>37</sup>

#### *Administrative Detention*

The Chinese government continues to punish large numbers of offenses administratively without effective judicial review. Public security agencies reported that they punished 5.3 million "public order" offenses in 2004, nearly eight times the number of criminal cases handled by courts.<sup>38</sup> "Public order" offenses include traffic offenses, public disturbances, prostitution, drug use, and other "minor crimes" that the Chinese government typically sanctions with administrative penalties rather than formal criminal sentences.<sup>39</sup> In some instances, public security agencies handle cases administratively because they do not have enough evidence for a formal prosecution,<sup>40</sup> or because it is a convenient method for detaining political offenders.<sup>41</sup> Administrative penalties can range from a disciplinary warning or fine to detention in a RETL center for up to three years, with the possibility of a one-year extension.<sup>42</sup> Forms of administrative detention include short-term detention under China's Public Order Administration Punishment Regulations, RETL, forced psychiatric commitment, "custody and education" of prostitutes and their clients, forced drug detoxification, work study schools, and detention imposed on corrupt officials under Party rules.<sup>43</sup> Although many public order cases probably do not result in a detention, at least 250,000 to 300,000 individuals are currently detained in approximately 300 centers in the RETL system alone.<sup>44</sup>

Public security agencies administer RETL and other forms of administrative punishment without effective judicial review or the minimal protections offered defendants in China's formal criminal justice system.<sup>45</sup> The Chinese government argues that administrative detention decisions are subject to judicial review under China's Administrative Litigation Law (ALL), but the UNWGAD concluded that ALL review is "in light of what happens in reality, of very little value" and that "no real judicial control has been created over the procedure to commit someone to re-education through labor."<sup>46</sup> In its December 2004 report, the UNWGAD found RETL to be a violation of the ICCPR and applicable international standards that require prompt judicial review of the lawfulness of detentions. The UNWGAD report concluded that the Chinese government had made no significant progress in reforming the system over the past seven years.<sup>47</sup> It also noted that RETL violates China's own domestic law, which requires that all deprivations of freedom be authorized by national law, not administrative regulations.<sup>48</sup>

Although the Chinese government is in the process of reforming the administrative punishment system, it is unlikely to be abolished. In August 2005, the NPC Standing Committee (NPCSC) passed a new Public Order Administration Punishment Law to re-

place a corresponding set of regulations.<sup>49</sup> The new law, which becomes effective in March 2006, contains specific statements on the protection of human rights concerns on paper, establishes a limit of 20 days detention for multiple public order offenses (as opposed to the 30 days public security officials reportedly requested), and prohibits torture and the collection of evidence through illegal means.<sup>50</sup> The final version of the law, however, maintains public security as the entity that adjudicates and administers punishments for public order violations within its scope, sets a maximum interrogation period of 24 hours (rather than the 12 hours proposed in an earlier draft), does not provide the accused with the right to a hearing in detention cases or the right to legal representation, and creates new categories of offenses including “inciting or plotting illegal assemblies, marches, or demonstrations.”

Pressure to reform the RETL system is also building, particularly in the NPC.<sup>51</sup> In the fall of 2004, China’s Justice Minister described government efforts to make RETL more humane, but emphasized that the foundations of the current system would remain in place.<sup>52</sup> The government is also reportedly considering a new “Law on the Correction of Unlawful Acts” that would provide a basis in national law for RETL.<sup>53</sup> The draft law reportedly enhances the rights of RETL detainees by setting a maximum sentence of 18 months; permitting defendants to hire a lawyer, request a hearing, and appeal sentences handed down by public security in RETL cases; and making detention centers more open and humane.<sup>54</sup> While the reforms could be a positive step, some observers have noted that the MPS is resisting reform efforts, and that given the rise in crime and the government’s reliance on RETL to maintain public order and punish political offenders, the reforms may have little impact on RETL in practice.<sup>55</sup>

In addition to RETL and short-term detention under the public order administration provisions, law enforcement officials have the power to forcibly commit individuals to psychiatric facilities.<sup>56</sup> The MPS manages a network of at least 30 ankang, or special psychiatric institutions, and in some cases uses these institutions to hold repeat petitioners or political offenders, such as human rights activist Wang Wanxing, along with genuine mental patients.<sup>57</sup> In 2004, the UNWGAD found that the government’s system of confining mentally ill persons is a “form of deprivation of liberty and lacks the necessary safeguards against arbitrariness and abuse.”<sup>58</sup> Treatment in these institutions is sometimes brutal.<sup>59</sup>

Under administrative regulations, police may also forcibly commit drug users to rehabilitation centers for up to one year.<sup>60</sup> Repeat offenders may be sentenced to RETL terms.<sup>61</sup> As of 2003, China maintained a network of at least 583 forced rehabilitation centers and 151 detention centers for drug users.<sup>62</sup> Chinese sources report that in 2004, 273,000 addicts received treatment at forced rehabilitation centers, while 68,000 were “treated” at RETL centers.<sup>63</sup> Drug rehabilitation centers have been associated with numerous problems and abuses, including a relapse rate of over 90 percent, excessive fee collection from detainees, understaffing due to a lack of funding, and violence against detainees.<sup>64</sup> In June 2005, for example, a man was allegedly beaten to death in a Guangdong detoxification center.<sup>65</sup> According to a former detainee,



the center had a reputation for irregular fatalities and had been told to improve its record. Human rights activists allege that such abuses are common.<sup>66</sup>

Before 2003, civil affairs and public security agencies also had the power to administratively detain and repatriate indigents, migrants, and other individuals without proper residence permits under China's custody and repatriation system.<sup>67</sup> After a detainee died in custody in 2003, the State Council abolished this system and replaced it with a system of voluntary aid centers.<sup>68</sup> A surge of indigents and beggars on the streets of some large Chinese cities suggests that the new system has been implemented in some areas,<sup>69</sup> but a recent scandal in Jiangxi province indicates that some smaller cities still practice custody and repatriation.<sup>70</sup> In the Jiangxi case, county officials rounded up indigents and left them in a remote area in the middle of winter. The officials told a reporter that they had not established an aid center as required because they lacked funds and were continuing to detain and repatriate vagrants, a practice they claimed was common in many counties.<sup>71</sup>

#### *Torture and Abuse in Custody*

Although torture is illegal in China, law enforcement torture and abuse remains common. Over the past year, Western news media and NGOs continued to report the widespread use of torture to coerce confessions and to punish detainees.<sup>72</sup> Prompted in part by public outrage over the Nie Shubin and She Xianglin wrongful conviction cases, Chinese news media also published reports indicating that torture and coerced confessions remain widespread,<sup>73</sup> highlighting individual cases of torture and abuse,<sup>74</sup> and examining the roots of the torture problem.<sup>75</sup> Forms of torture and abuse cited in Western and Chinese reports include beating, electric shock, and painful shackling of the limbs.

Chinese analysts blame the torture problem on a number of social, institutional, and legal factors. Social and institutional factors include a lack of legal consciousness, poor training, and weak forensic skills on the part of investigative personnel (problems that lead to an over-reliance on confessions). Prevailing social attitudes towards criminal suspects, a presumption of guilt at all stages of the criminal process, pressure from leaders and society to demonstrate progress in fighting crime and secure convictions in major cases, and the practice of tying law enforcement salaries and promotions in part to case-breaking rates are other factors that contribute to the problem.<sup>76</sup> Among the legal factors cited are the absence of lawyers at interrogations, a general failure to prosecute torture cases, the lack of a legal presumption of innocence and right to remain silent, and the lack of a rule requiring the exclusion of illegally gathered evidence.<sup>77</sup>

Law enforcement agencies claim to be addressing the torture issue through well-publicized crackdowns, enhanced investigative training, and better procuratorial supervision.<sup>78</sup> Procuratorates nationwide reported the prosecution of 1,924 officials for torture, illegal detention, and other violations of human rights between July 2004 and July 2005.<sup>79</sup> In Jiangxi province, an experimental program that requires prosecutors to conduct face-to-face interviews of criminal suspects during the arrest review process reportedly

uncovered several torture cases.<sup>80</sup> In May 2005, the Supreme People's Procuratorate (SPP) publicly claimed that it would make ending torture and coerced confessions a priority in 2005 and announced a new policy of encouraging more vigorous investigation of torture allegations and prohibiting the use of illegally obtained evidence.<sup>81</sup> The MPS announced a requirement that police chiefs personally hear petitions on law enforcement abuse.<sup>82</sup> Finally, in August 2005, UN Special Rapporteur on Torture Manfred Nowak announced that he had reached agreement with the Chinese government for a visit to China in November 2005.<sup>83</sup>

Recent reports suggest that the controversy surrounding the Nie and She cases may also be creating momentum for modest legal reforms. In April 2005, Sichuan province prohibited the use of evidence acquired through illegal means and introduced a requirement that interrogations in "major cases" be taped. Under the new rule, courts must exclude coerced statements and confessions unless police provide a reasonable explanation for the alleged coercion or agree to investigate allegations of abuse.<sup>84</sup> In May 2005, Chinese news media reported that three district public security bureaus were taking part in an experimental program under which criminal suspects may request either the presence of a lawyer during interrogation or the taping of the interrogation.<sup>85</sup>

The wrongful conviction cases have also helped forge a consensus among scholars and officials for making the prevention of torture a priority in upcoming amendments to China's CPL.<sup>86</sup> The NPC Legislative Affairs Commission is currently researching CPL amendment issues.<sup>87</sup> Consideration of a draft amendment proposal is tentatively scheduled for 2006, with final passage slated for 2007.<sup>88</sup> Several of the local experiments described above correspond to proposed amendments to the CPL, suggesting that the government is testing reforms at a local level before implementing them nationwide.<sup>89</sup> Some Chinese legal experts stress that to prevent abuse in practice, reforms should include enhanced rights for defense lawyers, a right to remain silent, an evidence exclusion rule that would bar all illegally obtained evidence (including evidence derived from coerced confessions) from criminal trials, and more vigorous prosecution of officials who resort to torture.<sup>90</sup> Reports of some public security resistance to the local experiments on lawyer access during interrogations and comments in the media indicating that scholarly expectations are too "idealistic" suggest that law enforcement agencies may resist broad rights enhancement for suspects and defendants.<sup>91</sup>

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

Most Chinese defendants go to trial without a lawyer. Chinese law grants criminal defendants the right to hire an attorney, but guarantees pro bono legal defense only if the defendant is a minor, faces a possible death sentence, or is blind, deaf, or mute.<sup>92</sup> In other cases in which defendants cannot afford legal representation, courts may appoint defense counsel or the defendant may apply for legal aid, but the law does not guarantee free legal representation.<sup>93</sup> Legal aid resources for all types of cases expanded in 2004.<sup>94</sup> Lawyers represent criminal defendants in at most about 30 percent of cases, however, and the rate of representation continues

to drop.<sup>95</sup> Domestic sources cite fear of law enforcement retribution and the lack of legal protections for lawyers (along with low fees) as major factors in the low rate of representation.<sup>96</sup>

Even when criminal defendants are able to find lawyers, they often have difficulty meeting with them. Under Chinese law, suspects have a right to meet with their lawyers after police interrogate them or from the first day of their formal detention.<sup>97</sup> Nevertheless, even after the first interrogation, police often manipulate legal exceptions to deny lawyers access to their clients or otherwise obstruct or encumber such access.<sup>98</sup> For example, Sichuan public security officials on several occasions denied requests by detained American businessman David Ji to meet with his attorneys, arguing that such meetings were “inappropriate” or “inconsistent with Chinese law.”<sup>99</sup> Only about 14.5 percent of criminal suspects in Beijing, one of China’s most legally advanced locales, met with an attorney during the first 48 hours of detention.<sup>100</sup> Although public security officials attribute the small number of lawyer meetings to low legal consciousness and economic difficulties on the part of suspects, a Beijing Youth Daily article cited police suspicion of lawyers as the major reason.<sup>101</sup>

Other obstacles make it difficult for lawyers to build and present an adequate defense. Legal aid organizations, which are publicly funded and supply defense lawyers in a significant portion of criminal cases, risk jeopardizing their funding if they offend local officials.<sup>102</sup> In practice, defense lawyers cannot start building a case until the official investigation ends and a case is transferred to the procuratorate.<sup>103</sup> Even then, police and procuratorates often deny lawyers access to government case files and information, despite provisions in the CPL that are intended to guarantee access to those materials.<sup>104</sup> Defense lawyers must obtain permission from procurators and courts to interview witnesses and crime victims.<sup>105</sup> In addition, fewer than 5 percent of witnesses in criminal cases appear in court.<sup>106</sup> One source discussed in detail how law enforcement officials often intimidate or detain defense witnesses or witnesses who change their testimony at trial to the detriment of law enforcement.<sup>107</sup> The inability of defense lawyers to cross-examine witnesses undermines their ability to represent their clients.<sup>108</sup> One Chinese scholar involved in the discussion of upcoming amendments to the CPL suggests that a provision requiring witnesses to appear in court may be written into the law.<sup>109</sup>

Finally, local authorities sometimes harass and even prosecute defense lawyers who work on sensitive cases or defend their clients too vigorously. In February 2005, for example, Shanghai authorities suspended the law license of defense lawyer Guo Guoting and later placed him under temporary house arrest.<sup>110</sup> As a result, Guo was unable to appear in court on behalf of imprisoned journalist Shi Tao in late April. Law enforcement officials sometimes intimidate defense lawyers by charging or threatening to charge them with “evidence fabrication” and other crimes.<sup>111</sup> Most such charges prove to be groundless. According to one prominent Beijing lawyer, over 90 percent of the more than 100 lawyers accused of violating Article 306 of the PRC Criminal Law, a provision on evidence fabrication, have been cleared of wrongdoing.<sup>112</sup> Other statistics indicate that nearly 80 percent of the 500 lawyers detained, accused,

or punished for all reasons between 1997 and 2002 were eventually found innocent of any wrongdoing.<sup>113</sup> Such groundless charges put attorneys on the defensive and have a chilling effect on criminal defense work.<sup>114</sup>

Lawyers in China indicate that their work environment has not improved significantly. In August 2004, one Chinese publication reported that the Beijing Justice Bureau canceled a multi-year study on the work environment for Chinese defense attorneys in 2002 after results from the initial 600 responses revealed major problems.<sup>115</sup> Lawyers interviewed for the article expressed doubt that the environment for defense attorneys would improve much in the near future. Chinese legal experts complain that the relative power of the prosecution and defense is too unbalanced, and that criminal courts rarely give much consideration to defense arguments.<sup>116</sup>

Some Chinese authorities are experimenting with local reforms to improve lawyer access to their clients and allow them to be present during interrogations.<sup>117</sup> Enhanced lawyer involvement at the pre-trial stage could serve as a meaningful check on torture. More lawyer involvement could also improve an innocent suspect's chance of exoneration, since statistics suggest that Chinese suspects have a better chance of avoiding criminal sanction during the investigation stage than during the trial stage of the criminal process.<sup>118</sup> The All-China Lawyers Association (ACLA) has made several recommendations to strengthen defense investigation rights and provide remedies for defense lawyers who encounter official obstacles. ACLA also recommended creating judicial checks on prosecutorial discretion in charging lawyers with evidence fabrication and other crimes, providing lawyers with limited immunity from prosecution, and delegating the responsibility for disciplining lawyers to lawyers associations.<sup>119</sup> Some of these recommendations are reportedly under consideration in upcoming amendments to the Lawyers Law and CPL.<sup>120</sup>

### *Fairness of Criminal Trials and Appeals*

Trials in China nearly always result in convictions. The conviction rate for first-instance criminal cases was over 99 percent in 2004.<sup>121</sup> Chinese defendants exercised their right to appeal convictions in only about 15 percent of criminal cases, and those who did appeal faced limited prospects for reversal.<sup>122</sup> In total, appeals courts changed judgments in about 13.2 percent of cases they reviewed (roughly 2.1 percent of all criminal cases adjudicated in 2004).<sup>123</sup> Because many changed judgments probably involve sentence reductions, the percentage of convictions actually overturned on appeal is likely even lower.<sup>124</sup> In addition, under Chinese law prosecutors have the right to appeal acquittals or request "adjudication supervision" from higher courts until they obtain a guilty verdict.<sup>125</sup> In practice, prosecutors have an incentive to do so, since acquittals may result in official liability for wrongful detention.<sup>126</sup> Prosecutors may request such "adjudication supervision" as a matter of right. Defendants may only do so with the consent of the court, however, as imprisoned American businessman Jude Shao found when the Supreme People's Court (SPC) denied a petition for review of new evidence in his case.<sup>127</sup>

Appeals courts are reluctant to overturn convictions, even when they have misgivings about evidence of guilt. In some cases, appeals courts decide instead to give relatively light sentences or, in the case of a capital crime, suspend a death sentence to “leave room for unforeseen circumstances.”<sup>128</sup> In other questionable cases, appeals courts abuse a procedural provision that allows them to send cases back to first instance courts for retrial.<sup>129</sup> In part because they face potential liability and professional sanction for incorrect decisions, however, trial courts have built-in incentives not to change verdicts.<sup>130</sup> As a result, some cases based on questionable or incomplete evidence bounce back and forth between courts, sometimes for years, until prosecutors can dig up more evidence, the appeals court relents, or courts and prosecutors reach some compromise such as a reduced sentence.<sup>131</sup> Chinese commentators have noted that multiple retrials can lead to wrongful convictions and advocate restricting the number of times a case can be retried or the number of times either prosecutors or defendants can request “adjudication supervision.”<sup>132</sup> Court sources indicate that reform of the retrial system is currently under consideration.<sup>133</sup>

Senior court officials and Party political-legal committees continue to influence judicial decision-making, particularly in sensitive or important criminal cases. In the Nie Shubin wrongful execution case, for example, the original trial judge tried to deflect responsibility for the apparent wrongful conviction by telling Chinese reporters he just follows orders.<sup>134</sup> Domestic accounts of other wrongful convictions and sensitive cases highlight continuing Party interference.<sup>135</sup>

### *Capital Punishment*

Chinese criminal law includes approximately 68 capital offenses, the majority of which are non-violent crimes such as bribery and embezzlement.<sup>136</sup> The Chinese government has reportedly established an “execute fewer, execute cautiously” policy, and at least one Chinese source suggests that the number of executions has dropped in recent years.<sup>137</sup> The government, however, publishes no official statistics on the number of executions, which it considers a state secret.<sup>138</sup> Several Chinese sources have hinted that the annual number of executions in China is in the thousands.<sup>139</sup>

The Chinese government appears willing to reform death penalty practices gradually. An ongoing domestic debate over the death penalty and its scope intensified over the past year, particularly after Chinese news media publicized accounts of wrongful conviction cases.<sup>140</sup> Scholars and commentators expressed concern about wrongful executions and focused on how to prevent them.<sup>141</sup> Chinese sources cite broad popular support for the death penalty and the need for a deterrent against crime as justifications for maintaining it.<sup>142</sup> The government has indicated that while it will maintain capital punishment for the foreseeable future, it will work to ensure fair application of the death penalty by refining death penalty review procedures and gradually reducing application of the death penalty in favor of long-term imprisonment.<sup>143</sup> Some reform advocates suggest that the government could start this process by eliminating capital punishment for economic crimes, or by elimi-

nating the immediate execution of death sentences in favor of suspended death sentences.<sup>144</sup>

In March 2005, SPC President Xiao Yang declared that the SPC will take back the power of reviewing all death penalty decisions next year.<sup>145</sup> Central authorities have called for a review of the necessary legislative changes in October 2005, with implementation of the reform tentatively set for sometime in 2006.<sup>146</sup> The SPC is in the process of establishing three new criminal tribunals and transferring hundreds of judges to Beijing to handle the increased caseload that will result from the reform.<sup>147</sup> Emboldened by public outrage over the Nie and She cases, commentators have called for accelerated implementation of the reform, open hearings during death penalty reviews, and a moratorium on implementation of current death sentences until the SPC can review all current cases.<sup>148</sup> Chinese experts view the return of this power to the SPC as an important step in preventing wrongful executions. While the SPC changed judgments in nearly one-third of the 300 death sentences it reviewed in 2003, provincial high courts changed judgments in only one percent of the death sentences they reviewed.<sup>149</sup>

Several new reports on the use of organs removed from executed prisoners emerged over the past year. One U.S.-based NGO reported that hospitals in Guangzhou, Xucheng, and Zhengzhou continue to harvest organs from executed prisoners and sell them for profit.<sup>150</sup> Several articles in China's domestic news media noted the demand for transplants and highlighted a domestic debate over whether or not condemned prisoners should be permitted to donate their organs, suggesting that the use of prisoner organs is an issue of concern to some Chinese.<sup>151</sup> One legal expert argued that organ donations by prisoners, even if voluntary on their face, should be prohibited because there is no way to rule out coercion by criminal justice officials and because the practice could encourage more executions.<sup>152</sup> In June 2005, the Chinese government announced that it would issue a national regulation on organ transplants that would ban trading in human organs and limit the number of hospitals that are authorized to perform transplants.<sup>153</sup> The government did not make clear whether the new regulations would address the use of organs removed from executed prisoners.

#### *Additional Reform Initiatives and Criminal Justice Exchanges*

In addition to the reforms noted above, the Chinese government reported several criminal justice reform initiatives over the past year. In response to the rise in juvenile crime, many reports focused on reform of the juvenile justice system.<sup>154</sup> Ministry of Justice officials claimed to be engaged in an ongoing effort to improve prison management and conditions.<sup>155</sup> A new directive from the NPCSC requires expert witnesses to be independent agents, not employees of courts or other government departments.<sup>156</sup> The SPP continued a rectification campaign aimed at exposing corruption in the sentencing and parole process.<sup>157</sup> Finally, in addition to draft amendments to the Criminal Procedure Law, scholars and officials discussed amendments to several laws that affect the criminal process, including the Lawyers Law, the State Compensation Law, and the Organic Law of the People's Courts.<sup>158</sup>

Prosecutors and courts also experimented with new citizen supervision mechanisms. Procuratorates nationwide reported implementing a new system of citizen ombudsmen, or people's supervisors. Under applicable regulations passed in 2004, people's supervisors review cases when procuratorates dismiss a case or decide not to prosecute, or when criminal suspects disagree with a procurator's formal arrest decision. People's supervisors may appeal to higher-level procuratorates when they disagree with a procuratorial decision.<sup>159</sup> According to the SPP, by the end of 2004, procuratorates had more than 18,962 supervisors on staff. The supervisors have reportedly reviewed a total of 3,341 cases, appealing prosecutor decisions in 152 cases.<sup>160</sup> In addition, new regulations to re-establish a system of people's assessors in the courts became effective on May 1, 2005.<sup>161</sup> People's assessors are lay judges who sit on a collegial panel of three judges and in theory have an equal vote in deciding the outcome of selected criminal, civil, and administrative cases.<sup>162</sup> As of April 2005, a total of 2,900 courts across China reportedly had selected a pool of 26,917 people's assessors.<sup>163</sup>

Chinese scholars and officials continued to engage foreign governments and legal experts on a range of criminal justice issues over the past year. Chinese law enforcement agencies expressed a growing interest in cooperating with other countries to combat transnational crime and expanded cooperation with U.S. law enforcement agencies on money laundering, drug trafficking, and other issues.<sup>164</sup> Numerous international conferences and legal exchanges with Western NGOs, judges, and legal experts took place, including programs on pre-trial discovery, defense attorneys, evidence exclusion, criminal trials and procedure, pleas and simplified prosecution procedures, bail, sentencing, parole, capital punishment, prison reform, and other subjects.<sup>165</sup> Participants in these programs encouraged more such exchanges.<sup>166</sup>

Finally, the Chinese government continued to engage the international human rights community on issues related to the criminal justice system. In addition to permitting a visit by representatives of the UN Working Group on Arbitrary Detention in September 2004, the Chinese government agreed to host the UN Special Rapporteur on Torture in November 2005.<sup>167</sup> In July 2005, the International Committee of the Red Cross established a regional office in Beijing after signing an agreement with the Chinese government.<sup>168</sup> In August 2005, China hosted a visit by the UN High Commissioner on Human Rights.<sup>169</sup> During the visit, the High Commissioner and the Chinese government signed a Memorandum of Understanding aimed at facilitating China's implementation of the ICCPR,<sup>170</sup> although that achievement was overshadowed by a contemporaneous spate of detentions.<sup>171</sup> Before the UN Human Rights Commission met in Geneva in March 2005, the U.S. government noted China's commitment to open the ICRC office and receive these delegations as signs of progress in its human rights policies.<sup>172</sup>

## III(c) PROTECTION OF INTERNATIONALLY RECOGNIZED LABOR RIGHTS

## FINDINGS

- The Chinese government does not recognize the core labor rights of freedom of association and collective bargaining. The government prohibits independent labor unions and punishes workers who attempt to establish them.
- Wage and pension arrears are among the most important problems that Chinese workers face. Despite new government regulations seeking to address the problem of unpaid wages and pensions, Chinese workers continue to struggle to collect wages and benefits because the relevant agencies do not enforce the regulations.
- Workplace health and safety conditions are poor for millions of Chinese workers, especially those in the coal mining industry. China's state-run news media have reported, with some exceptions, workplace accidents more openly and promptly than in previous years, even when workers have been killed or injured.
- Forced labor is an integral part of the Chinese administrative detention system, and child labor remains a significant problem in China, despite being prohibited by law.

*Conditions for China's Workers*

The growing number of labor protests during 2004 and 2005 is one indication that many Chinese workers are frustrated by the lack of government action to enforce labor regulations and rules.<sup>1</sup> Some workers protested because they did not receive the wages owed them, others because corrupt officials stole their pension funds.<sup>2</sup> The government often arrests workers who lead peaceful labor protests and detains them without permitting access to a lawyer.<sup>3</sup>

Chinese central, provincial, and local governments adopted regulations during the past year to address the growing problems of wage arrears and unsafe working conditions.<sup>4</sup> These new regulations lack enforcement mechanisms, and most workers lack the money and legal resources to enforce their rights to a minimum wage, overtime pay, or safe working conditions.<sup>5</sup> According to the Procuratorate Daily, workers are vulnerable because they are not aware of their rights.<sup>6</sup> The All-China Federation of Trade Unions (ACFTU), China's sole legal union, with few exceptions, rarely helps workers resolve workplace problems.<sup>7</sup> Chinese news media, however, have reported on the problems that workers have in enforcing their rights.<sup>8</sup>

Some Chinese legislators, academic experts, and labor leaders advocate labor law reform in China. For example, a National People's Congress delegate called for a major revamping of outdated labor laws that he argued are still tied to an economy dominated by state-owned enterprises and no longer relevant in China's developing market economy.<sup>9</sup> A similar opinion piece in the China Daily, also advocating labor law reform, stated the case for more protections for workers, particularly migrants:

There are more than 100 million migrant workers in China's cities. Scattered throughout various sectors, they



work long hours and earn poor salaries. Some of them, such as construction workers, live in shabby temporary housing. Worse, their interests are not adequately cared for. Defaults on their payment are common.<sup>10</sup>

Deaths from accidents in Chinese coal mines have compelled central, provincial, and local government officials to make public statements in support of coal miners.<sup>11</sup> In practice, however, the government has been ineffective in their efforts to improve unsafe working conditions in most mines.<sup>12</sup> Chinese labor laws and regulations do not grant miners the right to refuse to work when conditions are dangerous. For example, before a 2005 mine disaster in Shaanxi province, managers told the miners to return to work after they tried to leave the mine because of dangerous conditions. The miners faced a fine of 100 yuan if they refused to return to work.<sup>13</sup>

#### *Internationally Recognized Labor Standards*

The Chinese government has ratified the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work (the "1998 Declaration") but has not fulfilled commitments under the Declaration. The ILO's Fundamental Principles apply to all members and are a basic set of rights that require governments to allow workers to associate, to bargain collectively, to be free from forced labor, to be free from discrimination in employment, and to take steps to eliminate the worst forms of child labor.<sup>14</sup> China has ratified three of the eight ILO core conventions, which provide guidance on the full scope of the rights and principles in the 1998 Declaration, including two on child labor and one on equal remuneration for men and women.<sup>15</sup> A member of the ILO since its founding,<sup>16</sup> China has been a member of the ILO Governing Board since June 2002.<sup>17</sup>

The Chinese government has adopted a number of regulations that protect such worker rights as the right to receive a wage for work performed but rejects the basic internationally recognized rights of Chinese workers to form independent unions and bargain collectively. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which China ratified in 2002, guarantees the rights of workers to organize independent trade unions. At the time of ratification, the Chinese government took a reservation to ICESCR provisions that conflict with the Chinese Constitution and domestic labor laws.<sup>18</sup>

Despite being a member of the ILO's Governing Board, the Chinese government has avoided discussions with the international labor community on Chinese workers' rights. For example, in December 2004, government officials cancelled a conference involving representatives of the Organization for Economic Cooperation and Development (OECD) that sought to review socially responsible investment in China and the role of longstanding OECD investment guidelines for multinational companies. International trade unionists criticized the cancellation and noted that it reflected the Chinese government's lack of interest in discussing the application of international labor standards to Chinese workers.<sup>19</sup>

### *Freedom of Association and Collective Bargaining*

The Chinese government recognizes the All-China Federation of Trade Unions (ACFTU) as the sole representative of Chinese workers.<sup>20</sup> The ACFTU claims 120 million members, but ACFTU members cannot exercise internationally recognized labor rights. The Communist Party controls the ACFTU; Wang Zhaoguo, the Federation's chairman, is a member of the Party Politburo.<sup>21</sup> The Party's influence prevents the ACFTU from assisting workers in any way that violates Party guidelines.<sup>22</sup> Moreover, Chinese workers are not allowed to freely elect their ACFTU representatives.<sup>23</sup>

The National People's Congress eliminated the right to strike in 1982 when it revised the Chinese Constitution,<sup>24</sup> yet strikes and labor protests continue in China. Strike leaders are subject to arrest by local public security authorities.<sup>25</sup> Local governments usually tolerate small-scale demonstrations and sit-ins, but commonly arrest and imprison the leaders of large protest marches.<sup>26</sup> ACFTU representatives generally do not assist workers during demonstrations or strikes. In one case, a group of migrant workers, who were fired after a conflict with an automobile manufacturer over wages and benefits, sued in court to force ACFTU action. The case was referred to an arbitration committee and is still pending.<sup>27</sup>

Faced with declining membership, the ACFTU has begun to look for new sources of income. By 1999, the union's large bureaucracy was dependent on dues from approximately 87 million members, a decline of some 100 million workers from its membership peak.<sup>28</sup> The ACFTU has recently begun looking to workers in foreign-owned enterprises as a new source of dues, portraying itself as an organization that wants to assist workers employed in foreign-owned facilities.<sup>29</sup> Faced with pressure from the ACFTU and other government officials, one foreign-owned enterprise agreed to permit the ACFTU to represent its workers in one city.<sup>30</sup> In another case, a foreign-owned enterprise initially resisted ACFTU demands, offering instead to recognize the union if the workers requested it.<sup>31</sup>

Some local ACFTU branches are attempting to help workers, within the confines of Party and government policy. For example, the Tianjin Trade Union Council has developed a system to aid workers who have employment problems, to monitor safety problems and accidents, and to deal with employee-employer disputes. The union uses computers to track accidents and conduct prompt investigations to preserve evidence and witness testimony. The union also offers legal aid, represents unpaid workers, and provides low cost clothing, food, and cash subsidies for impoverished workers. The Shenzhen Federation of Trade Unions also offers legal aid for workers in cases of unlawful discharge, occupational injuries, and compensation arrears.<sup>32</sup>

### *Wages and Working Hours*

Several provinces raised the minimum wage over the past year. For example, in December 2004, Guangdong province increased the minimum wage in seven categories by an average of 8.6 percent. Each region within the province sets its own wage category rates, which range from 352 yuan (\$42.60) to 684 yuan (\$82.64) per week.<sup>33</sup> But Chinese employees now have to pay the social security

fee, which the employer once paid. With the social security fee subtracted, the average raise is only 3.73 percent.<sup>34</sup>

One important cause of the increase in labor disputes and protests in China in recent years is underpayment of wages.<sup>35</sup> Despite the minimum wage regulations, many employers ignore mandated wage rates.<sup>36</sup> Auditors hired by foreign purchasers often find that factory managers in China falsify time cards and payroll records to avoid paying the legal minimums. Auditors have also concluded that factory managers are becoming more sophisticated in disguising such misrepresentations. Some company auditors estimate that managers at more than half the factories they visit in China alter at least some of their payroll records.<sup>37</sup>

Chinese law mandates time and a half for work over 40 hours per week and limits overtime to 36 hours per month.<sup>38</sup> According to a trade union official in Jiangsu province, companies should negotiate with the union about overtime, but few companies follow the relevant regulations.<sup>39</sup> A recent China Social Security Center survey showed that, of 1,218 workers surveyed in Beijing, 65.6 percent worked more than eight hours per day, and 20 percent worked more than 10 hours per day. Although many workers think that working long hours has a negative effect on their health, their base pay is so low that most are willing to work overtime for extra pay.<sup>40</sup>

#### *Wage and Pension Arrears*

Unpaid wages and pensions remain serious problems for Chinese workers, and the resulting labor unrest is generating government concern.<sup>41</sup> When the State Council issued a regulation in late 2004 to resolve the wage arrears problem, Cao Kangtai, the Director of the Legal Affairs Office, said that “the regulation was designed to maintain social stability. . . .”<sup>42</sup> A march by 1,000 workers in Shenzhen against the loss of severance pay resulted in blocked roads, traffic jams, and violence when security personnel were deployed to disperse the workers.<sup>43</sup>

Other workers have taken more drastic action. In November 2004 in Shenzhen, factory workers who had not been paid in over two months took the owners hostage.<sup>44</sup> In February 2005, Shenyang construction workers climbed to the top of a building and threatened to jump if the company did not pay their back wages.<sup>45</sup> Government response to such worker action was swift and severe: the workers were arrested, and some received prison sentences.<sup>46</sup>

Some senior government officials have taken action to resolve unpaid wages to workers. In mid-2004, for example, a member of the Chinese People’s Political Consultative Conference (CPPCC) informed Premier Wen Jiabao that the Jixi city government in Heilongjiang province had failed to pay millions of yuan to a local construction company. The arrears caused the company to default on wages owed to hundreds of migrant workers. Premier Wen ordered a State Council investigation that ultimately resolved the case. Premier Wen has intervened in similar cases elsewhere to restore unpaid wages.<sup>47</sup>

The construction industry has one of the worst records on unpaid wages of all Chinese industries and has received the most attention from the government.<sup>48</sup> According to the Ministry of Construction,

construction firms owed workers some 175.588 billion yuan (\$21.214 billion) at the end of 2003. In November 2003, the State Council General Office issued guidelines to settle delayed payments for construction workers.<sup>49</sup> In August 2004, Vice Premier Zeng Peiyan raised the issue of unpaid wages in the construction sector, and called for strengthened enforcement of measures that would protect the rights of workers.<sup>50</sup>

Central, provincial, and local governments sign contracts for construction projects, but frequently fail to pay contractors promptly upon completion of work. As a result, contractors often cannot pay their workers. As of August 2004, Chinese government entities owed over 64.28 billion yuan (\$7.76 billion) for construction projects.<sup>51</sup> Vice Premier Zeng criticized some local governments for building lavish projects to enhance their status and pressed these governments to pay their debts.<sup>52</sup>

Central and local governments took steps in 2004 and 2005 to help migrant workers obtain unpaid wages. In late 2004 in Guizhou province, for example, the local federation of trade unions established a hotline for migrants and helped them recover unpaid wages.<sup>53</sup> The central government also claimed that it had helped migrant workers recover more than 33 billion yuan (\$3.99 billion), some 99 percent of wages owed to migrant workers.<sup>54</sup> Some observers viewed this claim with skepticism, given ACFTU estimates that migrant workers are owed unpaid back wages totaling 100 billion yuan.<sup>55</sup> Some private attorneys in China have begun to accept unpaid wage cases. Such cases are often costly, however, because the courts and the labor arbitration boards may charge 1,000 yuan (\$120) or more to investigate and adjudicate cases. Few workers can afford such fees, but legal aid organizations, NGOs, and in some cases the attorneys themselves pay part of the costs.<sup>56</sup>

### *Workplace Health and Safety*

The Chinese government has begun to pay attention to the country's poor national safety record, especially in the construction industry, where 1,144 accidents with 1,342 deaths occurred in 2004, down 11.46 percent and 13.12 percent, respectively, from 2003.<sup>57</sup> Despite this positive trend in one sector, China has averaged 1 million industrial accidents per year since 2001, according to the State Administration of Work Safety (SAWS). About 140,000 workers died from industrial accidents in 2004, compared with 79,422 deaths in 1991. One Chinese scholar blamed the increase in industrial accidents on China's booming economy and a weak foundation in safety and health programs.<sup>58</sup>

An encouraging change in workplace health and safety in China is the swiftness with which Chinese news media report serious workplace accidents, particularly coal mine disasters. In the past, local officials and mine owners commonly concealed news of coal mine explosions.<sup>59</sup> The increased use of the Internet has made it difficult to hide these disasters from the public.<sup>60</sup> A public outcry over two coal mine disasters in 2004 and 2005, one at the Chenjiashan mine in Shaanxi province that killed 166 miners and a second at the Sunjiawan coal mine in Liaoning province that claimed 214 lives, compelled the central government to take a direct interest in improving safety conditions.<sup>61</sup>

Chinese government officials are considering several measures to improve workplace safety. One project to be jointly implemented by ACFTU and SAWS involves appointing 100,000 senior coal miners as safety supervisors. These supervisors would have the power to stop work if they felt that workers' lives were at risk.<sup>62</sup> A British coal mine expert stressed during a Commission roundtable that safety supervisors and inspectors are vital to coal mine safety. He also pointed out that training mine inspectors is relatively inexpensive. Another British expert who has served on numerous coal mine safety boards said that mine safety supervisors must have statutory authority to take charge of mine safety.<sup>63</sup>

Li Yizhong, the new Director of General Administration of SAWS, suggested a different approach to violations of safety laws and regulation: tough criminal penalties for public servants who are negligent or corrupt. Local officials have said that the criminal law is too lenient because punishment for major accidents is limited to seven years in prison and a fine of 200,000 yuan (\$24,390).<sup>64</sup> Some safety experts suggest that compulsory insurance would increase safety for workers, since companies would have to strengthen safety standards to keep premiums affordable. But one manager from a Chongqing city insurance company explained that operations at coal mines are frequently chaotic, and workers might not be able to prove claims for compensation due to inconsistent records. In addition, with the government failing to supervise work safety in Chinese mines, insurance companies might not underwrite policies for mining companies.<sup>65</sup>

#### *U.S.-China Bilateral Programs*

Bilateral exchange and cooperation on labor issues between the U.S. Department of Labor (DOL) and Chinese government agencies during the past year has been constructive. DOL and its Chinese counterparts are discussing ways to implement letters of understanding signed in June 2004. These agreements contemplate U.S.-China cooperation in the administration of wage and hour laws, mine safety programs, pension program oversight, and occupational safety and health issues.<sup>66</sup> Other bilateral program activities are also underway. For example, the United States and China are collaborating on a rule of law project aimed at developing better laws and regulations governing labor inspections and employment contracts, and providing legal education and services to workers and employers. Staff of the mine safety project began to train Chinese miners and safety managers during 2005. The DOL also funded an "HIV/AIDS in the workplace" program in September 2004 that is currently in the design phase.<sup>67</sup>

#### *Forced Labor*

Forced labor is an integral part of the Chinese administrative detention system. A recent International Labor Organization report discusses prison labor without due process in Chinese re-education through labor (RETL) camps.<sup>68</sup> At least 250,000 to 300,000 individuals are currently detained in approximately 300 centers in the RETL system.<sup>69</sup> Although the Chinese government is in the process of reforming this system, it is unlikely to be abolished [see Section III(b)—Rights of Criminal Suspects and Defendants—for a

detailed discussion of China's administrative detention system]. In response to the Chinese government's 2005 progress report on this issue, the United Nations Committee on Economic, Social, and Cultural Rights recommended that the Chinese government "abolish the use of forced labor as a corrective measure."<sup>70</sup>

In the past, laogai (reform through labor) camps were the source of many forced labor-related human rights abuses. The executive director of a U.S. human rights NGO told a Commission roundtable that, although Chinese officials no longer use the term laogai, forced labor continues in substantially the same form in laojiao (RETL) camps. Laojiao has since developed into one of the most commonly used tools for punishing and suppressing political and religious dissent, and is currently being used to suppress the Falun Gong movement.<sup>71</sup>

An August 2005 news report described interviews with guards at a laojiao facility and employees at a wig factory who alleged that a Chinese hair products company used forced labor from the laojiao camp for products exported to the United States.<sup>72</sup> A U.S.-based Falun Gong practitioner told a Commission Roundtable in June that the same Chinese company used forced labor from Falun Gong practitioners to make products for export to the United States and other countries.<sup>73</sup>

Chinese regulations bar the export of goods made with prison labor, and Section 307 of the Tariff Act of 1930 prohibits the import of goods made by prisoners into the United States. The United States and China signed a Memorandum of Understanding in 1992 to prevent the import into the United States of prison labor products. A subsequent agreement in 1994 permits U.S. officials, with Chinese government permission, to visit facilities suspected of producing prison products for export to the United States. Three visits to prison-related facilities were made in 2004, leading to these three cases being closed. However, at the end of 2004, the backlog of cases remained substantial, and the Chinese government continued to explicitly exclude from the agreements re-education through labor facilities.<sup>74</sup>

Chinese authorities have identified commercialization of the Chinese prison system as a source of official corruption. Minister of Justice Zhang Fusen expressed concern about the commercial use of prison labor in China in an August 2004 speech on prison reform. Zhang emphasized that "administrators of prisons mixed goods from outside enterprises with those made using prison labor. Such practices are the source of allegations of corruption and abuse in the Chinese prison system."<sup>75</sup>

### *Child Labor*

Child labor remains a significant problem in China, despite being prohibited by law.<sup>76</sup> Some manufacturers prefer to employ child workers illegally for their low cost, docility, and dexterity.<sup>77</sup> In addition, low wages and poor working conditions have driven many adult workers away from southern manufacturing zones such as Shenzhen, heightening demand for child labor in these areas.<sup>78</sup>

Statistics on child labor are considered a state secret, a policy that prevents accurate reporting on the extent of the problem.<sup>79</sup> Nevertheless, provincial labor inspection units report having freed

hundreds of child laborers during labor investigations in 2004.<sup>80</sup> Employment of child laborers apparently is concentrated in light, labor-intensive industries requiring low skill. Employers often subject children in such industries to labor abuses such as forced overtime and exposure to hazardous chemicals.<sup>81</sup> In July 2005, the Southern Daily reported that about 300 children were working under abusive conditions at a toy factory in Guangdong province.<sup>82</sup> The factory owner said the shortage of adult workers forced him to ignore the minimum age for hiring. Many rural children work in cottage or family enterprises involving dangerous manufacturing practices, such as assembling fireworks.<sup>83</sup>

The rural educational system in China exacerbates the problem of child labor. A high dropout rate in rural areas creates a stream of underage laborers.<sup>84</sup> In addition, Chinese labor law and policy fails to distinguish between the illegal use of “child labor” and permissible “work-study” programs,<sup>85</sup> allowing unscrupulous public school administrators to use students as low-wage labor.<sup>86</sup> Private schools are also complicit in using child labor.<sup>87</sup> In 2004, authorities discovered that a private middle school in Jiangxi province was sending students to an electronics factory in Shenzhen, where managers forced them to work overtime under harsh conditions.<sup>88</sup>

### III(d) FREEDOM OF RELIGION

#### FINDINGS

- The Chinese government continues to harass, abuse, and detain religious believers who seek to practice their faith outside state-controlled religious venues. In 2005, the government and Party launched a large-scale implementation campaign for the new Regulation on Religious Affairs to strengthen control over religious practice, particularly in ethnic and rural areas, violating the guarantee of freedom of religious belief found in the new regulation.
- The religious environment for Tibetan Buddhism has not improved in the past year. The Party demands that Tibetan Buddhists promote patriotism toward China and repudiate the Dalai Lama, the religion’s spiritual leader. The intensity of religious repression against Tibetans varies across regions, with officials in Sichuan province and the Tibet Autonomous Region currently implementing Party policy in a more aggressive manner than officials elsewhere. Sichuan authorities sometimes impute terrorist motives to Tibetan monks who travel to India without permission.
- The Chinese government continues to repress Catholics. Chinese authorities are currently detaining over 40 unregistered clergy and have taken measures this year to tighten control of registered clergy and seminaries. Despite assurances of its desire to establish diplomatic relations with the Holy See, the Chinese government has not altered its long-standing position that, as a precondition to negotiations, the Holy See must renounce a papal role in the selection of bishops and break relations with Taiwan.
- The government continues to strictly regulate Muslim practices, particularly among members of the Uighur minority. All

mosques in China must register with the state-run China Islamic Association. Imams must be licensed by the state before they can practice, and must regularly attend patriotic education sessions. Religious repression in Xinjiang is severe, driven by Party policies that equate peaceful Uighur religious practices with terrorism and religious extremism.

- In the past year, the Chinese government continued a campaign begun in 2002 focused on harassing and repressing unregistered Protestant groups and consolidating control over registered Protestants. Hundreds of unregistered Protestants associated with house churches have been intimidated, beaten, or imprisoned. The Chinese government opposes the relationships that many unregistered Protestant house churches have developed with co-religionists outside China.

### *Introduction*

Religious believers in China practice their faith in the shadow of government and Party propaganda, control, and harassment. Believers who choose to worship outside state-controlled venues face detention or arrest, and in some cases police abuse. Such repression, while not uniform across China, has created an atmosphere of anxiety and unpredictability for most Chinese believers. The new Regulation on Religious Affairs (RRA),<sup>1</sup> which took effect in 2005, requires local religious affairs officials to “standardize” the management of religion. As a result, local officials measure their success in terms of the number of unauthorized religious venues that they merge, correct, or shut down, or the number of unregistered believers detained and arrested.<sup>2</sup>

### *New Regulation on Religious Affairs*

Government officials initially emphasized that the RRA would liberalize state management of religious affairs, but they subsequently stressed the aspects that strengthen state control. At an international conference in 2004 that took place before the RRA was implemented, Zhang Xunmou, head of the policy and legal department of the State Administration of Religious Affairs (SARA), said the new regulation would bring about a “paradigm shift” in the control of religion in China.<sup>3</sup> He also predicted that the RRA would set clear limits on official power over religion, safeguard religious freedom, and move from a system of direct bureaucratic control over religion to a system of self-government by religious groups.<sup>4</sup> But as the March 1 implementation date drew closer, other senior SARA officials emphasized that the goal of the RRA is to manage religious affairs, and that officials working on religious issues could be held accountable for failing to follow the relevant laws and procedures.<sup>5</sup>

Central government officials also stressed the importance of using the RRA as a shield against foreign religious influence in meetings held throughout China in early 2005. The Tibet Autonomous Region (TAR) government was among the first to hold such meetings. TAR Vice Chairman Gyara Lobsang Tenzin (Jiare Luosang Danzeng) introduced the RRA in a January 2005 speech in which he emphasized “preventing outside powers from using religion to infiltrate China,” and giving religious affairs officials “a



lawful method to deal with more complicated religious issues.”<sup>6</sup> He mentioned protection of religious freedom only briefly.<sup>7</sup> Officials also called for using the RRA to guard against “foreign infiltration” at meetings in Yunnan and Jiangsu provinces in February.<sup>8</sup> And in an April meeting in Henan province, Zhi Shuping, the Henan Deputy Party Secretary, focused on foreign threats and the danger that religion can destabilize society.<sup>9</sup> Zhu also said that, “For those comrades engaged in religious work, the study and implementation of the RRA is a major event; even more, it is a powerful weapon, a one-time favorable opportunity.”<sup>10</sup>

Although the language of the RRA showed early promise, the government implementation campaign this year has emphasized increased control over religion, and reports from U.S. NGOs that monitor religious freedom in China show increased restrictions on registered Christian groups since the RRA was implemented.<sup>11</sup> Before the RRA, Chinese law already contained many of the rights and protections for believers found in the new regulations, such as the protection of “normal” religious activities,<sup>12</sup> safeguards for religious properties,<sup>13</sup> and the right to a democratic election of management organizations for religious venues.<sup>14</sup> Such provisions have been largely ineffective in protecting religious organizations from state interference.<sup>15</sup>

Observers outside China have been divided on the impact of the RRA on religious freedom in China. One U.S. GO representative told a Commission roundtable that the RRA further codifies “the rules restraining religious practice in China and the bureaucratic mechanism used to reinforce those rules.”<sup>16</sup> An American professor was somewhat less pessimistic, but concluded that “the purpose [of the RRA] is to reduce arbitrariness, but for the purpose of better state control.”<sup>17</sup> Another U.S. academic expert had a more positive assessment, saying that the RRA shows “an intent to treat religious organizations equally with other social organizations as a normal part of Chinese society and culture.”<sup>18</sup> A Catholic scholar in Hong Kong saw some benefit in the RRA provisions on religious property and redress against abusive officials.<sup>19</sup> Another Catholic analyst noted a few improvements, such as the requirement in Article 15 for officials to respond promptly to applications for registration, protections for religious properties in Articles 30 to 33, and the authorization in Article 34 for organizations to establish social service groups. The analyst expressed concern, however, about the punishments that Articles 43 and 45 imposed against believers and organizations that break RRA rules.<sup>20</sup> Other outside observers said the regulation does nothing new.<sup>21</sup>

Important questions about the RRA remain to be answered. Such issues as whether the government will invoke Article 14 to prevent Protestant churches located close to each other from registering, and whether Articles 8 and 9 permit religious groups to establish religious schools, are of particular concern.<sup>22</sup> Since the RRA went into effect, some unregistered Protestants report that authorities have increased harassment of house churches, but registered Protestants report little change.<sup>23</sup> For the first time, the RRA authorizes churches and other religious entities to offer social services and raise funds to support them, requiring that the religious entity use any proceeds for “activities commensurate with the aims of the

religious organization as well as the relevant social services.”<sup>24</sup> Article 35 allows religious entities to accept foreign donations to support “activities commensurate” with the entity’s goals. The RRA also provides for religious organizations to be governed by the “Regulations on the Management of Registration of Social Organizations” (RSO).<sup>25</sup> These regulations impose restrictive and burdensome requirements on social organizations, and do not guarantee organizational autonomy. A Ministry of Civil Affairs official said, however, that the RSO requirement to register with a government sponsor would be loosened in the case of religious organizations.<sup>26</sup>

The RRA does not clearly restrict either religious organizations or venues for religious activities to the “five categories of religion”—Buddhism, Catholicism, Daoism, Islam, and Protestantism—permitted by law since 1949.<sup>27</sup> Some scholars have interpreted this lack of specificity as a decision to allow new categories of religious practice.<sup>28</sup> A senior Chinese academic expert commented that an important current issue is the ambiguous status of the fast-growing “folk” belief systems not included in the five official categories.<sup>29</sup> Another Chinese religion expert who advised the drafters of the RRA said the absence of a definition of “religious belief” in the final product shows continuing government caution about expanding the number of recognized religions. The Orthodox Church hopes that the government will permit it to operate in China under the RRA.<sup>30</sup> Believers in traditional forms of Chinese “folk” religion, which the Party has long disdained as feudal superstitions, also hope that a category for popular religion may be added to the official five.<sup>31</sup>

#### *Government Persecution of Falun Gong*

Chinese authorities continue to persecute practitioners of Falun Gong and other qigong disciplines that the government has designated “cults.” A Party-led anti-cult campaign that targeted religious and spiritual activities in rural areas, including Falun Gong practitioners, continued through late 2004.<sup>32</sup> In 2005, the Party continued to campaign across China,<sup>33</sup> seeking to persuade the public that the groups labeled as “cults” claim to be religious or spiritual, but in fact are “anti-social.” Documents of the “610” offices, which are local government offices that keep track of such groups, reveal an organized bureaucratic scheme for rewarding local officials who uncover, re-educate, and detain practitioners. Officials who fail to perform these tasks receive demerits on their periodic work evaluations. In June 2005, diplomat Chen Yonglin, assigned to the Chinese Consulate General in Sydney, Australia, requested asylum in Australia on the grounds that he would be persecuted for having failed to report and follow up on Falun Gong and dissident activity in Australia.<sup>34</sup> Government repression has not succeeded in eliminating Falun Gong in China. Rather, according to a U.S. scholar, it has “shifted the struggle to virtual reality,” as repressed groups rely on the Internet to organize and communicate with each other.<sup>35</sup>

#### *Religious Freedom for Tibetan Buddhists*

The environment for the practice of Tibetan Buddhism has not improved in the past year. The Party does not allow Tibetan Bud-

dhists the freedom to practice their religion in a meaningful way, and instead tolerates religious activity only within the strict limitations imposed under the Chinese government's interpretation of the Constitution, laws, regulations, and policies. The Chinese leadership refuses to acknowledge the Dalai Lama's role as the spiritual leader of Tibetan Buddhists.

China's new RRA may lead to more administrative intrusion into Tibetan Buddhist affairs by underscoring the state's right to supervise the effects of religion on society.<sup>36</sup> If the RRA leads to further restrictions on teaching and assembly in Tibetan monasteries, on association between the Tibetan clergy and laity, and on small prayer gatherings of the Tibetan laity, the result will further erode the traditionally close ties between the Tibetan monastic and secular communities. Tibetan Buddhism forms the core of self-identity for most Tibetans and is integrated throughout the activities of daily life. Official regulations that interfere with the practice of Tibetan Buddhism harm the Tibetan common identity.

Each Tibetan monastery and nunnery has a Democratic Management Committee (DMC)<sup>37</sup> that functions as its administrative interface with the state. Authorities expect DMCs to ensure that monks and nuns obey laws and regulations governing religion, and uphold national and ethnic unity.<sup>38</sup> A group of DMC leaders from TAR monasteries completed a training course on the new religious affairs regulations in May 2005. At the closing ceremony, each one pledged individually, "When we go back, we will use the knowledge we have gained in our practical work, further improve the democratic management of our local temples, lead the masses of monks and nuns to love the nation and love the religion, and make more contributions to building a harmonious Tibet."<sup>39</sup>

The attitudes of DMC members toward religion vary within each monastery and across regions.<sup>40</sup> Some DMC members try to facilitate the religious purpose of a monastery by working to maintain a disciplined program of scriptural study, but a shortage of qualified teachers and state control undercut Tibetan monastic study.<sup>41</sup> Party and government pressure most heavily affects monasteries and nunneries that follow the Tibetan Buddhist tradition most directly associated with the Dalai Lama, the Gelug.<sup>42</sup> Monasteries associated with other traditions, such as the Kargyu, Sakya, and Nyingma, may encounter less official interference in their monastic affairs.<sup>43</sup>

The intensity of religious repression varies across regions, with officials in Sichuan province and the TAR currently implementing policy in a more aggressive manner than elsewhere.<sup>44</sup> According to data available in the CECC Political Prisoner Database (PPD) in June 2005,<sup>45</sup> the TAR, the location of the majority of Tibetan political protests from the late 1980s to mid-1990s, holds more than half of the Tibetan political prisoners known to be currently imprisoned. About 60 percent of them are monks. But in recent years, Sichuan province authorities have detained more than three times as many Tibetans for political reasons than either the TAR or Qinghai province. About two-thirds of the Tibetan political prisoners detained from 2002 onward are in Sichuan province, according to the PPD. Half of them are monks. In Qinghai province, there

are fewer Tibetan political prisoners than in the TAR or Sichuan province, but all except one of them are monks.

Authorities wary of devotion to the Dalai Lama sometimes accuse monks who travel to India for pilgrimage or religious study without obtaining official permission<sup>46</sup> of splittist or terrorist motives. A Chinese public security journal, *Policing Studies*, reported in 2004 that “‘pro-Tibetan independence’ extremists pose the greatest threat to Sichuan province’s anti-terrorism work.”<sup>47</sup> The article focuses on “the Dalai Lama separatist gang” and estimates that since 1980, over 6,000 Tibetans from Sichuan province have traveled illegally “to undergo training and then returned to engage in separatist sabotage.” The risk of terrorist attacks by “believers in religion in the Tibetan autonomous prefectures in Sichuan” can be eliminated only by “long-term arduous efforts to eliminate the Dalai Lama’s religious influence in these prefectures,” according to the analysis.

The same article exploits the security concerns of the post-September 11th era by depicting religious devotion to the Dalai Lama as a terrorist menace to China’s national security. Tenzin Deleg (A’an Zhaxi),<sup>48</sup> a Buddhist teacher, is named as the head of a “violent terrorist gang” who used his status to “hoodwink and instigate others” into setting off bombs. The article emphasizes that Tenzin Deleg traveled illegally to India, where the Dalai Lama recognized him as a reincarnated lama. The article warns that Tibetan Buddhists who “returned to these regions illegally,” or who have been punished for taking part in political demonstrations, or who have been “dismissed after the reorganization of monasteries,”<sup>49</sup> will “very easily become violent terrorists under the instigation and organization of the Dalai Lama’s separatist group.”

Sichuan province authorities released Sonam Phuntsog, a popular Tibetan Buddhist teacher, from prison in October 2004 when his sentence was complete. He was imprisoned after being convicted on charges of splittism after he led prayers for the Dalai Lama’s well-being. Sonam Phuntsog’s official sentencing document states that police detained him “on suspicion of taking part in a bombing incident,” but the court found him guilty because he urged “crowds of people to believe in the Dalai Lama and recite long life prayers” for him.<sup>50</sup> The document describes as evidence against Sonam Phuntsog a trip he made to India, where he met the Dalai Lama.

The Chinese government asserts the right to “[safeguard] the normal order of Tibetan Buddhism” by supervising the selection of reincarnations of important Tibetan lamas.<sup>51</sup> State-run political education sessions require that monks and nuns denounce the Dalai Lama’s recognition in 1995 of Gedun Choekyi Nyima as the reincarnation of the Panchen Lama, the second-ranking Tibetan spiritual leader. Officials promptly took Gedun Choekyi Nyima, then age six, and his parents into custody and have held them incommunicado since that time. Chinese authorities installed another boy, Gyalsten Norbu, several months later and demanded that secular and monastic communities accept his legitimacy. President Hu Jintao met with Gyaltsen Norbu in February 2005 and called on him to be “a model of loving the country and loving religion,”<sup>52</sup> the same patriotic formula impressed upon all Tibetans. Gyaltsen

Norbu's appointment continues to stir widespread resentment among Tibetans.<sup>53</sup> The U.S. government has repeatedly urged China's government to end restrictions on Gedun Choekyi Nyima and his family and to allow international representatives to visit them.

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

China's new RRA has not brought greater government respect for the religious freedom of Chinese Catholics.<sup>54</sup> Since the new regulations went into force in March, harassment and detention of unregistered Catholics has increased, and even registered priests are now obliged to report weekly to their local SARA office on all of their activities.<sup>55</sup> The RRA permits foreign professors to teach in registered Chinese seminaries, which have for years relied on the professors' expertise. In the past year, however, officials have prevented foreign professors from teaching at almost all registered seminaries, and students lacking graduate degrees must teach many seminary courses.<sup>56</sup>

The Chinese government continues to detain unregistered Catholic clerics. According to a U.S. NGO that monitors the unregistered Catholic community in China, 41 unregistered bishops and priests are in prison, labor camps, or under house arrest or surveillance.<sup>57</sup> Many of the detentions reported over the past 12 months were for short periods. Some were accompanied by attempts to pressure the cleric to register with the Catholic Patriotic Association. Other detentions probably were intended as warnings against public gatherings, such as the 10 detentions during the two-month period of the papal transition. Jia Zhiguo, unregistered bishop of Zhengding diocese in Hebei province and a leading figure among unregistered Catholic bishops, has been detained five times in the past 12 months.<sup>58</sup> The condition and whereabouts of Su Zhimin, the unregistered Catholic bishop of Baoding diocese in Hebei, remain unknown.<sup>59</sup>

The Chinese government continues to interfere in the life of the registered Catholic community. The government seeks to interfere in the process of selecting bishops, promoting clerics who acquiesce in government control of the registered Catholic community.<sup>60</sup> But other registered bishops and priests have resisted this interference, and in recent years many candidates to become bishops have privately sought and received the approval of the Holy See before their ordination. The Chinese government has acquiesced in the ordination of candidates approved by the Holy See.<sup>61</sup> Twice in the past 12 months, in Shanghai and Xi'an, the registered bishop ordained an auxiliary bishop with right of succession. In both cases the Chinese government and the Catholic Patriotic Association officially denied the role of the Holy See. Although the Holy See did not comment, Catholic bishops abroad and Catholic news agencies confirmed its role in the ordination.<sup>62</sup> According to informed sources and analysts, the Chinese government and the Holy See cooperated to prepare the unification of the registered and unregistered Catholic communities in the Shanghai diocese: after the death of the current registered and unregistered bishops of Shanghai (both men are 90 years old and ill), no replacement will be appointed, so that the registered bishop's new auxiliary bishop will become the "single point of reference" for both communities.<sup>63</sup>the

process of mutual adaptation has been accompanied by considerable tension between the government and the Church. A generation of elderly bishops is rapidly passing, and, due to the loss of a generation of priests during the Cultural Revolution, the candidates to replace them are often in their thirties or early forties. These men could well lead the Church in China for 50 years.<sup>64</sup> In the past year, 14 registered bishops have died and only two have been replaced.<sup>65</sup> The Chinese government monitors and inspects the registered seminaries, where it is forbidden to teach anything contrary to Party policy, including Catholic moral teaching on abortion, euthanasia, contraception, and divorce.<sup>66</sup>

Some forms of Chinese government interference are relatively mild. Having declared that the Catholic Church needs to improve the “quality” of its clergy, the government has permitted and promoted the expansion of educational opportunities for religious congregations of women and programs to improve priestly formation.<sup>67</sup> As part of its larger policy to encourage private initiatives in social welfare, the Chinese government has continued to permit the registered Catholic community to expand its social service programs.<sup>68</sup>

The most important recent developments in the life of the Catholic Church in China are the restoration of communion between many members of the registered clergy and the Holy See, and the growing reconciliation of unregistered with registered Catholics. But in the past year registered clerics have rarely manifested their fidelity to the Holy See publicly, leading observers to ask whether progress has slowed. Some analysts speculate that Church leaders have decided to maintain a lower profile, to allow the Chinese government to “save face.”<sup>69</sup> A letter written by a Holy See diplomat to all the unregistered bishops, and released by one of the latter to a U.S.-based NGO, surprised many by saying that “obviously, the Patriotic Association has the characteristic of being in schism” and detailing the reconciliation procedures demanded of priests registered with the Patriotic Association.<sup>70</sup> Most observers report that the reconciliation between unregistered and registered Catholics continues. Although most unregistered Catholics continue to refuse to worship with the registered Catholic community, some do so with registered bishops and priests privately in communion with the Holy See.

Despite assurances of its “sincere” desire to establish diplomatic relations with the Holy See, the Chinese government has not altered its long-standing position that the Holy See must break relations with Taiwan and renounce a papal role in the selection of bishops. In late March 2005, senior Chinese leaders reportedly held substantive discussions with a senior European Catholic prelate in Beijing. The government generally responded to the papal transition with perfunctory recognition by granting the events minimal media coverage, but public security officials also increased harassment of Catholics, detaining 13 clerics. Chinese authorities also blocked discussion of the transition on domestic and international Web sites. Since May 2005, the Chinese government has made some conciliatory public statements. Since April 3, the Holy See has not publicly protested the detention of Catholic clergy, and Pope Benedict XVI has also made conciliatory public statements.<sup>71</sup>

The U.S. government has repeatedly encouraged the Chinese government to establish diplomatic relations with the Holy See.

*Religious Freedom for China's Muslims*

The Chinese government strictly controls the practice of Islam, and severely represses Islamic worship among members of the Uighur minority population in Xinjiang [see Section III(a)—Special Focus for 2005: China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law]. All public mosques throughout the country must register with the state-run China Islamic Association. The government bans all private mosques, as it does private religious venues of any faith. Before they can practice, imams must be licensed by the Chinese government, and afterward must attend patriotic education sessions regularly. The China Islamic Association's Islamic Affairs Steering Committee, established by the central government in March 2001, continues to author suggested sermons and to censor Islamic religious texts to ensure that all published interpretations properly reflect "socialist development and advanced culture."<sup>72</sup>

Several provinces are running Ethnic Unity and Advancement Campaigns demanding that religious organizations decrease their financial dependence on the state while also accepting fewer contributions from their practitioners.<sup>73</sup> The government continues to subsidize religious personnel who "ardently love their country,"<sup>74</sup> but several mosques have been forced to charge visitors admission fees or lease out portions of their facilities.<sup>75</sup> To fund its growing debts last summer, the Religious Management Committee of the Guangyuan mosque in Sichuan province reportedly allowed private investors to convert two stories of the mosque into an "Arabian Nights Bar and Discotheque."<sup>76</sup> The new RRA provisions that allow foreign and domestic donations to religious organizations may ease some financial pressures, but all of their revenue and expenditures must be reported to SARA.<sup>77</sup>

Outside of the Xinjiang Uighur Autonomous Region, the government allows some Muslim groups to run private schools for minors in poor areas and to engage in other social welfare programs.<sup>78</sup> A government-run Web site highlighted in 2005 the achievements of a privately run Islamic school in Gansu province,<sup>79</sup> for example, and the Qinghai press praised the Dongguan mosque's contributions of food and shelter to the needy.<sup>80</sup> Outside of Xinjiang, the government allows some mosques<sup>81</sup> registered with the China Islamic Association to manage religious schools for those 18 years and older.<sup>82</sup> As the government notes the positive contributions of Islamic groups, officials may allow them to assume greater responsibility for the nation's growing social welfare needs.

Within Xinjiang, the Chinese government conflates private Uighur Islamic practices with "religious extremism" and "ethnic splittism."<sup>83</sup> Islam is a key component of Uighur ethnic identity, and the government is concerned it may be used to build support for greater effective autonomy. Uighurs face more restrictions on their religious life than other Muslims, including non-Uighurs living in Xinjiang.<sup>84</sup> According to a member of Xinjiang's Academy of Social Sciences, Xinjiang has more religious regulations than any other province, providing the government a "powerful legal weap-

on” to control religion.<sup>85</sup> In a major policy statement in January, Xinjiang General Secretary Wang Lequan declared that the Party “must unremittingly make education in atheism part of the effort to transform social customs, guide the masses to develop a scientific, civilized, and healthy way of life, and promote nationality development and progress.”<sup>86</sup> Xinjiang leaders hail China’s new RRA as a “prime opportunity” to increase religious management in the struggle against religious extremism and splittism.<sup>87</sup>

The current crackdown on Uighur Islamic practices began with the collapse of the Soviet Union in 1991 and has increased in intensity in the post-September 11 era.<sup>88</sup> Central and provincial authorities developed a set of religious regulations in the early 1990s that impose restrictions in Xinjiang not found elsewhere in China.<sup>89</sup> These restrictions continue to determine policy today. The Party Central Committee imposed “severe controls on the building of new mosques”<sup>90</sup> in 1996, the same year that Xinjiang authorities targeted “religious extremists and ethnic separatists” for arrest<sup>91</sup> during a national “strike hard” campaign against general crime.<sup>92</sup> New regulations in October 1998 required all imams in Xinjiang to attend mandatory “patriotic education” courses each year to renew their accreditations.<sup>93</sup> In 2001, the Xinjiang local people’s congress amended the central government’s 1994 Regulations on the Management of Religious Affairs restricting religious observances to those who “safeguard the unification of the motherland and national solidarity, and oppose national splittism and illegal religious activities.”<sup>94</sup>

The government arrested more than 200 Muslims in July and August 2005 for possessing “illegal religious texts.”<sup>95</sup> The Xinjiang government prohibits state-sanctioned religious groups below the provincial level from publishing religious materials without receiving prior approval from the Xinjiang State Administration of Religious Affairs.<sup>96</sup> Individuals and groups are strictly prohibited from publishing or disseminating any material with “religious content” without government permission.

Central government officials assured the foreign press in March 2005 that minors are allowed to worship freely in China,<sup>97</sup> but the Xinjiang government prohibits children under 18 years of age from entering mosques or receiving religious instruction even in their own homes.<sup>98</sup> Students may not observe religious holidays, fast during Ramadan, or wear religious clothing in public schools. The government requires teachers to report students who pray or observe Ramadan.<sup>99</sup> The government regulates the construction of mosques and has closed hundreds of them since the mid-1990s.<sup>100</sup> The government outlaws all private religious classes (madrassas) and mosques in Xinjiang.

Government controls on religious belief and practice in Xinjiang not only violate the freedom of religion of Xinjiang’s minority people, but also their freedom of expression and the right of each minority to protect and develop its own culture that is conferred by the 1984 Regional Ethnic Autonomy Law.<sup>101</sup> Government policies also contravene several international conventions to which China is a signatory.<sup>102</sup> The government’s refusal to recognize the Uighurs’ constitutionally guaranteed right to practice their religion freely has exacerbated tensions in the region [see Section III(a)—Special



Focus for 2005: China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law]. A recent Human Rights Watch report warns that unless the government eases controls on Uighur religious activities, the policy "will likely alienate Uighurs, drive religious expression further underground, and encourage the development of more radicalized and oppositional forms of religious identity."<sup>103</sup>

#### *Religious Freedom for China's Orthodox Christians*

Orthodox Christian life is slowly reawakening in China, although the community is small and has no priests to conduct divine liturgy.<sup>104</sup> The central government has refused to grant Orthodoxy the same status as the five "official" religions, but local authorities have registered Orthodox communities in Ghulja, Harbin, Labdarin, and Urumqi.<sup>105</sup> Many observers think that the absence of a provision in the new RRA restricting official recognition of religions to a list of five was meant to ease the path of Orthodoxy to recognized status.<sup>106</sup> The government has held talks with representatives of the Russian Orthodox Church, which is urging Chinese officials to permit Chinese seminarians studying for the priesthood in Russia to exercise their ministry in China.<sup>107</sup>

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

The new RRA has not improved religious freedom for Chinese Protestants, with those worshipping in unregistered house churches continuing to be targeted for official repression. The government has continued a campaign begun in 2002 focused on harassing and repressing unregistered Protestant groups and consolidating control of registered Protestants.<sup>108</sup>

Although the RRA applies equally to all religions, some of its provisions address issues of primary concern to Protestants. Article 6 appears to permit Protestant house churches to register with the Ministry of Civil Affairs without also registering with the SARA or the Three Self Patriotic Movement (TSPM), the official national Protestant organization. Some Western analysts believe that the new registration system was designed to address complaints by unregistered Protestant groups that local SARA offices ignore their applications. Whatever its purpose, the new system has resulted in a difference of opinion among house church leaders.<sup>109</sup> Some house churches want the security of legal recognition and the opportunity to establish approved kindergartens and health clinics, as well as to run seminaries and exchanges with foreign countries. Other house church leaders fear that their churches will not be able to maintain independence from the TSPM if they register, or that the government will tighten repression against those churches that refuse to register.<sup>110</sup>

Government authorities committed human rights abuses against unregistered Protestants during the past year. Hundreds of unregistered Protestants associated with the house church movement have been intimidated, beaten, or detained. A US-based NGO that monitors the persecution of Chinese Protestants reported mass detentions of house church leaders and members in February, May, June, July and August of 2005. These detentions included American missionary workers and often involved the physical abuse of

detainees.<sup>111</sup> Cai Zhuohua, a house church pastor in Beijing, and several of his relatives were detained in September 2004 when the government discovered a large stock of religious literature in their possession. The government tried them in July 2005 for “illegal business practices,” but the court has not yet issued a judgment.<sup>112</sup> Zhang Rongliang, leader of the Fangcheng Fellowship of house churches and co-author of the 1999 “House Churches of China’s Confession of Faith and Declaration,” has been detained since December 2004.<sup>113</sup> Tong Qimiao, a Christian businessman, was beaten by public security officials in Xinjiang and later visited by officials who threatened to ruin his business if he did not sign an affidavit stating that he had not been beaten.<sup>114</sup> Several cases from previous years continued to develop. The United Nations Working Group on Arbitrary Detention (UNWGAD) took up the case of Zhang Yinan, a house church historian sentenced to re-education through labor, and in December 2004 the UNWGAD found that government deprivation of Zhang’s liberty was arbitrary and contravened the Universal Declaration of Human Rights (UDHR).<sup>115</sup> Gong Shengliang, pastor of the South China Church, continues to serve a life sentence; nine of the state’s witnesses against Pastor Gong now say that their testimony was extracted from them under torture.<sup>116</sup>

Recent government directives on religion have responded to the growth of Protestantism by re-emphasizing longstanding policies that require subservience to the state. In August 2004, the government reiterated that Party members may not believe in any religion, prohibited religious activity at universities, and clarified what is not permitted when dealing with foreign religious organizations.<sup>117</sup> A particularly insistent part of the campaign to make registered Protestants conform to state policies has been the TSPM’s imposition of a “theological construction” that will, in the words of TSPM Chairman Ding Guangxun, “weaken those aspects within Christian faith that do not conform with the socialist society.”<sup>118</sup> Such aspects include justification by faith, Christ as the sole path to salvation and the inerrancy of Scripture, which are fundamental beliefs of most Chinese Protestants. Some professors and students who have challenged this imposed theology have been removed from seminaries.<sup>119</sup>

The Chinese government opposes the relationships that many unregistered Protestant house churches have developed with co-religionists outside China. Many house churches are organized into networks that receive overseas support, especially from evangelical groups in the United States.<sup>120</sup> Many detentions of house church worshipers follow contacts with foreigners, and the government frequently charges house church leaders with maintaining illicit connections abroad.<sup>121</sup> House churches generally do not pursue these overseas connections for political reasons, but rather to obtain financial support and training. These relationships also help house church leaders publicize abuses against unregistered Christians.<sup>122</sup> At the same time, the Chinese government permits the leadership of the TSPM to maintain extensive relations abroad with interdenominational “mainline” Protestant organizations. In May 2005, a TSPM delegation attended the World Council of Churches Conference on World Mission and Evangelism for the first time.<sup>123</sup>

Protestantism is becoming an important influence on Chinese society and culture. Estimates of the total number of Protestants in China range from 30 to 100 million.<sup>124</sup> Despite their relatively small number compared to China's total population, Protestants are a growing presence in many eastern provinces and cities and at many universities. Most Protestants in these areas are young people, and the majority of them are women.<sup>125</sup> Unregistered and registered Protestants generally respect the authority of the Chinese government and most house church leaders hope for evolutionary rather than revolutionary changes in China. Both unregistered and registered Chinese Protestants hope to play a role in shaping China's future.<sup>126</sup>

The Chinese government seeks to blunt many of the effects and influences of Protestantism, but it welcomes others. The Chinese government sees threats to social "harmony" and Party control over religion in certain ideas spreading in house church circles, particularly the reintroduction of Protestant denominational distinctions and Protestant evangelicalism and Pentecostalism.<sup>127</sup> But the government welcomes the social service projects undertaken by the Amity Foundation, a well-established Protestant foundation that in the past has sponsored projects in rural development, leadership training, public health, AIDS clinics, care for the elderly, and orphanages.<sup>128</sup> The Chinese government has also permitted several Protestant schools to open and supported the plans of a U.S.-based NGO to open China's first post-1945 privately-run university with an openly Christian mission.<sup>129</sup> Some officials at the local level have recognized the stabilizing influence of religion on Chinese society.<sup>130</sup>

### III(e) FREEDOM OF EXPRESSION

#### FINDINGS

- Chinese authorities allow government-sponsored publications to report selectively on information that, in previous decades, officials would have deemed embarrassing or threatening. Nevertheless, the Chinese government does not respect the freedom of speech and freedom of the press guaranteed in China's Constitution.
- In the past year officials have become less tolerant of public discussion that questions central government policies and have tightened restrictions on journalists, editors, and Web sites.
- Chinese authorities impose strict licensing requirements on publishing, prevent citizens from accessing foreign news sources, and intimidate and imprison journalists, editors, and writers.

#### *Increased Government Control of Political Speech*

Chinese citizens face increased government regulation and suppression of their freedom of speech and freedom of the press, which are guaranteed in China's Constitution.<sup>1</sup> Over the past year public security authorities have detained or imprisoned over two dozen journalists, editors, and writers, including Zhao Yan, a researcher for the New York Times, and Ching Cheong, a reporter with the Singapore Straits Times. Officials have confiscated hundreds of

thousands of publications for having illegal political content, banned hundreds of newspapers and magazines for publishing without government authorization, and shut down one quarter of the private Web sites in China for failing to register with the government.

In May 2005, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) awarded Chinese newspaper editor Cheng Yizhong the Guillermo Cano World Press Freedom Prize. The Chinese government prohibited Cheng from attending the award ceremony (in the previous year, government and Party officials detained Cheng, had him dismissed from his job, and expelled him from the Party). In an acceptance speech, read in his absence at the ceremony, Cheng said:

Terror is everywhere. Lies are everywhere. We have been deceiving ourselves further and further down this path. I believe that in the near future, we will look back and find this insane and absurd episode to be absolutely unthinkable. If we accept the prevalent evil as normal, we will be co-conspirators in our own oppression.<sup>2</sup>

China's leaders hope to generate economic growth by harnessing domestic consumer demand for information and entertainment, but at the same time they expend significant human, legal, technical, and financial resources to ensure that commercialization of China's media does not diminish the government's ability to manipulate public opinion. Government agencies have consolidated control over all forums of political discourse by censoring newspapers, magazines, television news broadcasts, radio, Web sites carrying news and information, and, most recently, personal Web pages. When unable to block opinions with which they disagree, Chinese authorities have employed government and Party personnel to channel and direct public opinion surreptitiously.

#### *Government and Party Use of the Media to Control Public Opinion*

The Communist Party uses "political techniques to effectively regulate and control all types of mass media," according to a report published by Xinhua and the State Council Information Office.<sup>3</sup> These techniques include allowing only state-sponsored media to publish or broadcast news, criminalizing unlicensed journalism, and requiring news editors to provide politically sensitive news stories to Party and government censors for vetting.<sup>4</sup> According to the same report, the Party uses its authority over the news media to "steer public opinion" and "create conformity among the increasingly diverse thoughts and perspectives" in China's society. The Party achieves this goal by requiring news media to publish stories that praise central Party and government policies and portray central Party and government officials as working for the best interests of ordinary citizens.<sup>5</sup> For example, when Chinese authorities issued regulations in March 2005 that restricted who may engage in journalism, media outlets such as Xinhua (which is controlled by the State Council) and the People's Daily (which is owned and operated by the Communist Party) began a propaganda campaign to deflect claims that the regulations interfered with freedom of expression. Xinhua, the People's Daily, and other state run media claimed that the regulations were needed to stop unethical journal-

ists and allow ethical journalists to protect the public.<sup>6</sup> The same campaign portrayed Western news media, particularly U.S. news media, as corrupt and government-controlled.<sup>7</sup>

The Party considers journalists to be its agents, and uses them to investigate provincial and local officials.<sup>8</sup> If a journalist writes an article about corruption or a natural or man-made disaster, an editor may publish it, provided it shows that the situation has been resolved in a manner that reflects well on the Party, or that otherwise conforms to a particular official's agenda.<sup>9</sup> The government and the Party, acting through the General Administration of Press and Publication (GAPP) and the Central Propaganda Department, respectively, prohibit editors from publishing stories that would tarnish the image of the central government, the top leadership, the Party, or their policies.<sup>10</sup> Instead, editors must treat such politically sensitive stories as internal intelligence reports, and forward them to relevant officials.<sup>11</sup>

There is some variation among local news media as to what censors deem "politically sensitive,"<sup>12</sup> but central authorities move quickly to silence anyone they perceive as threatening their control over political discourse. For example, in early September 2004, a publication of the Southern Group (whose editors are known, and have been imprisoned, for testing government and Party censors) published a story that listed 50 Chinese citizens who were "activists who advise society and participate in public affairs."<sup>13</sup> After the *Liberation Daily* (a publication of Shanghai's Communist Party Committee) criticized the concept of "public intellectuals" as intended to "drive a wedge between the intellectuals and the Party,"<sup>14</sup> officials moved against Chinese intellectuals who had disagreed in public with the government or the Party. The campaign against public intellectuals resulted in at least seven detentions, censorship of the term "public intellectuals," and the blacklisting of several prominent social commentators.<sup>15</sup>

In another example of Chinese authorities silencing "public intellectuals," in May 2005 the government abruptly and without explanation ordered the cancellation of an academic conference organized by Fordham University and the China University of Political Science and Law.<sup>16</sup> Participants at the conference, entitled "Constitutionalism and Political Democratization in China—an International Conference," had planned to discuss sensitive topics such as "The Different Meanings of Democracy," "Democratization and Constitutionalism: China in Comparative Perspective," "Law and Development of Constitutional Democracy: Is China a Problem Case?" and "Which Path Should We Choose Toward Chinese Democracy?" Scheduled speakers included Western and Chinese experts well-known in China for doing work in sensitive areas, such as migrant labor and criminal defense.<sup>17</sup> A *People's Daily* editorial published during the government crackdown on public intellectuals illustrates the attitude of Chinese authorities that likely contributed to their cancellation of the conference:

[W]hat has not changed is that Western hostile forces are trying to carry out their planned conspiracy to westernize and divide us, what has not weakened is the influence of various types of anti-Marxist trends of thought,

and what has not stopped is the corrosive effect of corrupt capitalist thinking and feudalism's vestigial ideology.<sup>18</sup>

The government and the Party are concerned that Chinese citizens have increased access to foreign news sources through satellite broadcasts, the Internet, and cellular phones, which may dilute the Party's control over public opinion.<sup>19</sup> Senior officials portray the Internet as "a battlefield for the Communist Party's propaganda ideology work" that must either be occupied or lost to "Western countries, headed by the United States."<sup>20</sup> The Party has said it must win the battle for Internet propaganda supremacy, otherwise "not only will it influence China's image and investment environment, but more importantly, it will influence the image of the Party and the government."<sup>21</sup>

In the past year the Party has improved its ability to silence and control political discussion on the Internet. Until recently, authorities have focused on blocking information from outside China and silencing critical Web sites inside China. While their efforts have been effective, the government recognizes that it cannot silence all politically sensitive information that it finds objectionable. For example, Chinese citizens wishing to express themselves without submitting to government censorship resort to posting articles on foreign Web sites and issuing "open letters" in the hope they will be published outside China. Internet users in China then circulate these materials. Authorities call this practice "re-infiltration," and have said it threatens their control over public opinion.<sup>22</sup> Among their reactions has been to train and employ "Internet propagandists" to pose as ordinary Internet users and post opinions and information on the Internet to "guide" public opinion in the direction the government desires.<sup>23</sup>

Government use of the news media to control public opinion was particularly evident during periods of heightened political sensitivity in late 2004 and during 2005:

- Before the Fourth Plenary Session of the 16th Central Committee of the Communist Party in September 2004, officials shut down the popular "Big Mess" (yitahutu) Internet chat room, and the Central Propaganda Department ordered media outlets to publish certain stories, and censor others, to create an atmosphere beneficial to the fourth plenum.<sup>24</sup>
- When officials announced the death of former Party General Secretary Zhao Ziyang in January 2005, censors blacked out foreign satellite TV broadcasts whenever Zhao's name was mentioned.<sup>25</sup>
- In March 2005, authorities announced that they would enforce 24-hour monitoring over the Internet during the annual plenary meeting of the National People's Congress.<sup>26</sup>
- In April 2005, Chinese authorities used their control of newspapers, Web sites, Internet forums, and cell phones to stop anti-Japanese protests in several cities.<sup>27</sup>
- Just before the International Labor Day holiday on May 1, Guangdong province's Communication Administration Office, Government News Department, and Public Security Office issued a joint notice that required Internet content providers to monitor user identities, and limit users to a number that would allow them to be managed.<sup>28</sup>

Chinese authorities are encouraging China's television and Internet news outlets, all of which are government sponsored, to increase their ability to influence public opinion abroad regarding China.<sup>29</sup> Chinese authorities are also trying to increase their influence over bodies responsible for setting policies for Internet governance.<sup>30</sup> For example, in March 2005, Zhao Houlin, a former telecommunications official in the Chinese government, and currently director of the International Telecommunication Union's Telecommunication Standardization Bureau, said: "Today the management by the Internet Corporation for Assigned Names and Numbers (ICANN) [is something that] people consider to be management by the United States, by one government. People definitely want to see some changes."<sup>31</sup> In June 2005, an article in China's state-run press rationalizing that country's crackdown on private Web sites cited a Chinese delegate to the United Nation's Working Group on Internet Governance, Hu Qiheng, as saying she hopes China's Internet governance experience can act as a lesson for global Internet governance.<sup>32</sup>

#### *Government Censorship*

No one may legally publish a book, newspaper, magazine, news Web site, or Internet publication in China without significant registered capital, a government sponsor, and government authorization.<sup>33</sup> The government has the authority to revoke any publisher's license and force it to cease publishing.<sup>34</sup> Those who violate Chinese publishing regulations are subject to heavy fines and long prison terms.<sup>35</sup> Senior officials at the GAPP advocate this "rule by law" approach as a means to control public opinion.<sup>36</sup>

The Party and the government are increasingly using the law as a weapon to silence political speech that they believe may "provoke trouble," or "confuse public opinion."<sup>37</sup> Three events in the past year highlight that Chinese authorities value control of political discourse over the freedom of the press guaranteed in China's Constitution. First, the Chinese government cracked down on Internet expression. According to state-run media, China's government has "put together the world's most extensive and comprehensive regulatory system for Internet administration,"<sup>38</sup> and has "perfected a 24-hour, real-time situational censorship mechanism for Internet publishing content."<sup>39</sup> Throughout 2005, authorities shut down private Web sites because of their political content.<sup>40</sup> In March 2005, government agencies began enforcing a four-year-old regulation requiring all private Web sites to register with the Ministry of Information Industry and disclose whether their sites include restricted content such as news and cultural information.<sup>41</sup> Some localities also began enforcing a 1997 regulation requiring private Web sites to register with public security bureaus.<sup>42</sup> As part of these new enforcement procedures, the Ministry of Information Industry and public security bureaus have deployed software to locate and block Web sites that failed to register,<sup>43</sup> and so far have censored tens of thousands of private Web sites.<sup>44</sup>

Second, in the past year Chinese government agencies promulgated several regulations to ensure that the government and the Party retain their control over journalists and editors. While the government claims these regulations are necessary to address prob-

lems caused by a “minority of news gatherers and editors,”<sup>45</sup> in fact, the new regulations allow the government to determine who may engage in journalism, what their political orientation must be, and when they must submit to government and Party censorship:

- In December 2004, the State Administration of Radio, Film, and Television (SARFT) issued two notices that regulate the political ideology of television editors, reporters, and hosts.<sup>46</sup> A week later, SARFT announced that it would require television stations in China to increase control over what television interview program hosts say on the air, and only air programs that “comply with propaganda discipline” produced by government-licensed production companies and screened by relevant officials.<sup>47</sup>
- In January 2005, the GAPP issued two new regulations limiting “lawful” news gathering and editorial activities to those holding a government-issued journalist accreditation card.<sup>48</sup>
- In March 2005, the Central Propaganda Department, GAPP, and SARFT jointly issued a set of regulations requiring news reporting and editing personnel to support the leadership of the Party, focus on “correct propaganda” as their guiding principle, and have a firm grasp of “correct guidance of public opinion.”<sup>49</sup>
- In April 2005, SARFT issued rules requiring radio and television reporters and editors to “put forth an effort to safeguard the interests and the image of the nation,” “give priority to positive propaganda,” and “carry out China’s foreign policies.”<sup>50</sup>

Finally, in June 2005, the Hong Kong press reported that Party propaganda officials had issued a directive restricting “extra-territorial reporting,”<sup>51</sup> a practice in which a domestic newspaper publishes a critical investigative report on events in another area of China that local news media have been prevented from reporting. A Chinese media professor called extra-territorial reporting “the best hope for liberalizing the news media,” and one report cited unnamed Chinese editors and analysts as saying the ban had dealt a serious blow to investigative reporting.<sup>52</sup>

In addition to cracking down on Web sites, journalists, and extra-territorial reporting, Chinese authorities continue to enforce and enact laws that impose extensive administrative licensing requirements on all news media. As the number of news publications in China has grown, so has the scope of government regulation and repression:

- Between January and September 2004, Chinese authorities had closed down and rescinded the registrations of 642 news bureaus, deferred the registration of 176 others, and prosecuted 73 illegally-established news bureaus.<sup>53</sup>
- In 2004, officials seized over 200 million “illegal publications.”<sup>54</sup> A Commission review of official Chinese reports shows that authorities seized hundreds of thousands of these publications solely because of their political content.<sup>55</sup> The government also sanctioned 73 organizations for illegally “engaging in news activities,” punished 213 publishers for “violating regulations,” and banned 170 publications because they had



“problematic topic selections.”<sup>56</sup> Authorities also sanctioned 91 work units as part of “investigatory activities into map propaganda products and imported map products.”<sup>57</sup>

- In 2004 and 2005, Chinese authorities undertook four campaigns to ban unauthorized newspapers and magazines, shutting down 169 publications,<sup>58</sup> and formed a special working group to ensure that banned newspapers did not reopen.<sup>59</sup> A senior GAPP official referred to the banned publications, which had titles such as “Prosperous China” and “Chinese and Foreign Legal Systems,” as “the garbage of the cultural industry.”<sup>60</sup>

- In 2005, the GAPP issued a notice reminding Chinese citizens that “newspapers and magazines may only be published by publishing work units approved by publishing administration agencies,” and informing them that “in order to safeguard China’s periodical publishing order, illegal foreign language publications shall be banned in accordance with the law.”<sup>61</sup>

China’s leaders also strictly control who may publish books and impose harsh regulatory and criminal penalties to deter individuals from attempting to engage in private publishing. The government requires that all books published in China have serial numbers and that officials regulate who may publish by exercising exclusive control of the distribution of these numbers.<sup>62</sup> In March 2005, new regulations became effective that prohibit the publication, and allow the confiscation, of any book that “harms the honor of China,” “propagates superstition,” or “disturbs social order.” The regulations also empower the GAPP to strip violators of their authorization to publish.<sup>63</sup> While these provisions are less vague than those of the regulations they supersede, the new language echoes provisions in China’s national security laws that is used to imprison journalists and authors.

Chinese authorities restrict the activities of foreign journalists<sup>64</sup> and try to prevent foreign news media from investigating stories that might harm the image of the government and the Party.<sup>65</sup> These restrictions are designed in part to protect the Party’s image abroad, but the primary concern is that Chinese citizens will learn information from foreign news sources that is censored in China. According to one GAPP official “various enemy forces strongly coordinate with each other, and take those things that cannot be published domestically abroad to be published, and then these once again infiltrate domestically.”<sup>66</sup> Recent examples of Chinese authorities attempting to discourage the free flow of information to and from China include:

- In September 2004, public security officials detained Zhao Yan, a researcher for the New York Times, for “illegally providing state secrets to foreigners.” Sources said the “state secret” in question was information that former President Jiang Zemin had offered to resign from the Central Military Commission. This fact was later reported in the official press.<sup>67</sup>
- In October 2004, SARFT promulgated regulations that allow the government to forbid the rebroadcasting into China of information that has been previously broadcast outside China by designating the broadcast’s content a state secret.<sup>68</sup>

- In April 2005, a Chinese court sentenced journalist Shi Tao to 10 years imprisonment and two years deprivation of political rights for “illegally providing top state secrets to overseas organizations.” According to Xinhua, the state secrets consisted of information he learned at a meeting of the editorial board of the newspaper at which he worked.<sup>69</sup>
- Between April and August 2005, the Central Propaganda Department and government media regulators issued six opinions and regulations designed to restrict foreign participation in China’s media market.<sup>70</sup>

The Chinese government continues to implement measures it claims will allow citizens increased access to government information. Officials say that initiatives such as requiring government spokespersons to respond to press inquiries and legal safeguards of journalists’ right to investigate officials prove that the government respects freedom of expression.<sup>71</sup> The state-run media’s discussion of the advantages of open government is a positive development, but the measures adopted by the government do not protect freedom of expression for ordinary citizens. Instead, they impose a duty on a group that speaks on behalf of the government (spokespersons) to be more forthcoming with a group whose work may be censored by the government (journalists). As noted above, the Party requires editors to treat politically sensitive reporting as internal (neibu) information and forward it to relevant officials rather than publish it. Therefore, unless the government lifts current restrictions on news reporting, the Party will be the primary beneficiary of these measures, since the increased responsiveness of spokespersons will allow Party officials to better use journalists to monitor provincial and local governments.

In 2004, the Commission noted that some news media in China are being operated as commercial enterprises, and that the government is allowing limited private and foreign participation in some aspects of periodical and book production and distribution. This trend continues,<sup>72</sup> but Chinese authorities say that these reforms are limited to “cultural” publications,<sup>73</sup> and have moved to close loopholes that foreign businesses had been using to provide radio, television, film, periodical, and book content to China’s citizens.<sup>74</sup> Moreover, the Party will continue to have a leadership role in enterprises with private investment,<sup>75</sup> and Party officials have no plans to relax editorial control over publishers<sup>76</sup> and journalists.<sup>77</sup>

Although the Chinese government generally tightened restrictions on expression and dissent over the past year, officials continued to allow Chinese publications to report selectively on corruption and other information that in previous decades would have been deemed too embarrassing or threatening to government or Party officials. For example, during the Nie Shubin and She Xianglin controversies [see Section III(b)—Rights of Criminal Suspects and Defendants], Chinese news media published articles criticizing problems in the criminal process and recommending reforms to the criminal justice system as a whole. In another example, the China Youth Daily published a strongly worded report and editorial criticizing local officials in a Jiangxi town for rounding up local indigents in violation of national regulations and leaving them in a remote area in the middle of winter.

China has a thriving underground publishing industry, and banned books, such as the “Survey of the Chinese Peasantry,” are easily purchased from unlicensed publishers and retailers.<sup>78</sup> By forcing unlicensed publishers to become criminals, however, the government is eroding respect for intellectual property and rule of law, as these illegal publishers are also de facto copyright violators (the illegal works are “pirated,” since authors cannot collect royalties on them) and must bribe corrupt officials in order to keep operating.

### *Self-Censorship*

Some of the government’s restrictions on freedom of expression, such as the prohibition on publishing news without prior government authorization, are stated explicitly in laws. Relevant laws and regulations, however, do not provide clear guidance about what kind of political or religious expression is illegal. For example, regulations prohibit publishing or disseminating anything that “harms the honor of China,” but no legislative or judicial guidance exists to guide publishers as to what constitutes a violation of this prohibition. Instead, Chinese authorities rely upon detaining writers, indoctrinating publishers, and banning publications to encourage companies, institutions, and individuals to “choose” not to use certain words or publicize certain views that a government official might deem politically unacceptable. According to the editor of a major Chinese magazine noted for publishing critical articles without being shut down, “[w]e go up to the line—we might even push it. But we never cross it.”<sup>79</sup> Chinese citizens who cross the line and fail to censor themselves are detained by public security officials or dismissed from their jobs:

- Chinese authorities closed the prominent bi-monthly diplomacy journal *Strategy and Management* in September 2004 after it published an article strongly criticizing the North Korean government and urging a revised strategy in China-North Korea relations.<sup>80</sup>
- Also in September, authorities fired magazine editor Xiao Weibin for publishing an interview with former Guangdong Party leader Ren Zhongyi, wherein Ren criticized the Chinese government for suppressing freedom of expression.<sup>81</sup>
- After then-professor Jiao Guobiao published an article on the Internet criticizing the Party Central Propaganda Department’s control over China’s media, Beijing University officials refused to allow him to teach. They subsequently dismissed him after he went to the United States “without permission” at the invitation of the U.S. National Endowment for Democracy.<sup>82</sup>
- After editor Cheng Yizhong’s newspaper published articles on SARS and government abuses of people’s civil rights, authorities detained Cheng for five months without charges, dismissed him from his job, expelled him from the Communist Party, and prevented him from traveling abroad to receive the 2005 UNESCO/Guillermo Cano World Press Freedom Prize.<sup>83</sup>
- Government authorities suspended lawyer Guo Guoting’s license to practice law after he published articles on the Internet advocating on behalf of his clients, including Zheng Enchong,

Shi Tao, Zhang Lin, and Huang Jinqiu, whom Chinese authorities had prosecuted for exercising their freedom of expression.<sup>84</sup>

- Officials dismissed journalist Wang Guangze from the 21st Century Business Herald after he returned to China from the United States, where he gave a speech at Trinity College entitled “The Development and Possible Trends of China’s Political Ecology in Cyber Times.”<sup>85</sup>

Chinese journalists seem to be increasingly chafing at government restrictions on press freedom. As an editor of one of China’s largest newspapers put it: “Although one must submit to controls, one must nevertheless try to achieve something meaningful.”<sup>86</sup> In order to do so, however, journalists and editors must adopt techniques to circumvent government and Party censors. The aforementioned editor went on to say:

When something cannot be criticized, the reporter approaches it from a complimentary angle. They don’t write about accidents, they write about rescuing people. They don’t write about thieves running rampant, they write about police heroism in capturing criminals. When they cannot write news, they write editorials. If they cannot discuss an issue in their locale, then they approach the issue in the context of another place. In the end, if they fail completely, they can always pass on the story (or the actual report) to another media [outlet], wait for them to publish it, and reprint the story.<sup>87</sup>

Universities in China also censor themselves.<sup>88</sup> In April 2005, the Shanghai Evening Post reported how Internet forums at several universities “used relatively strict supervision, [and] set up specific screening mechanisms for harmful information” when anti-Japanese demonstrations were taking place in several cities in China:

- Fudan University’s “Sun Moon Brilliance” Internet forum was closed between midnight and 8 a.m., which, according to forum managers, made it more difficult for “harmful information” to be posted on the forum from outside the university.
- Shanghai Jiaotong University implemented 24-hour monitoring and used “technical means” to implement keyword filtering of its e-mail and Internet forum systems.
- Shanghai Normal University’s “Lakeside Contemplations” Internet forum managers undertook 24-hour monitoring, and took turns inspecting and controlling the “expression situation” on the entire Internet forum between April 15 and 17.<sup>89</sup>

Internet and software companies must either employ censorship technologies in their products or risk a government order to close. For example, although no Chinese law or regulation forbids specific words, companies such as Tencent and MSN embed a list of banned words and phrases, including “freedom” and “democracy,” in their Internet applications.<sup>90</sup> The China-based search engines of Yahoo! and MSN filter results for searches relating to the Voice of America, Radio Free Asia, and human rights. Google designed its Chinese-language news aggregation service so that users in China

cannot view materials from dissident news Web sites that Chinese authorities have blocked.

*Monitoring, Jamming, and Blocking of Information*

The government continues to restrict Chinese citizens' access to political information from sources outside of China that the government cannot control, influence, or censor. The central government attempts to block radio broadcasts by Voice of America, Radio Free Asia, and the BBC. China's laws restrict satellite dish ownership,<sup>91</sup> and regulations require foreign news broadcasters to send all their satellite feeds through government-controlled channels. Foreign newspapers may be distributed only at foreign hotels and to "authorized subscribers."<sup>92</sup> In October 2004, SARFT issued regulations prohibiting joint ventures from producing programs on "political news."<sup>93</sup> In March 2005, SARFT issued an interpretive notice on these regulations limiting foreign companies to investing in a single joint venture, saying:

[W]e must control the contents of all products of joint ventures in a practical manner, understand the political inclinations and background of foreign joint venture parties, and in this way prevent harmful foreign ideology and culture from entering the realm of our television program production through joint investment and cooperation.<sup>94</sup>

Chinese officials seem especially concerned that Chinese citizens may gain increased access to information on the Internet that the Party and government cannot censor. In January 2005, the official journal of the Party Central Committee published an article calling on authorities to "strengthen supervision of international Internet gateways; filter out foreign, external Web sites that provide harmful information that threatens state security, disrupts social stability, and spreads obscene content; and adopt diplomatic and legal measures to attack these Web sites."<sup>95</sup> Chinese agencies block the Web sites of many human rights, educational, political, and news-gathering institutions without providing public notice, explanation, or opportunity for appeal. According to a study by researchers at Harvard University, Cambridge University, and the University of Toronto, Chinese authorities operate "the most extensive, technologically sophisticated, and broad-reaching system of Internet filtering in the world" to prevent access to "sensitive" religious or political material on the Internet. The report also stated that authorities utilize "a complex series of laws and regulations that control the access to and publication of material online."<sup>96</sup>

Government monitoring is highly visible in its regulation of Internet cafes:

- In January 2005, the city government of Jinan, the capital of Shandong province, deployed a system that allows monitors to view the information running on any computer in the city's Internet cafes at any time. The system is part of a "cultural monitoring platform" established to monitor the online activity of Internet cafe customers, which is capable of monitoring the identity of the person registered to use the computer and of filtering "illegal Web sites."<sup>97</sup>

- In February 2005, the Ministry of Education issued a notice requiring Internet forums at universities around China to prohibit anonymous logins from IP addresses outside the schools.<sup>98</sup>
- In March 2005, Xinhua reported that the Anhui provincial government intended to implement a “fingerprint recognition system” in Internet cafes.<sup>99</sup>
- In April 2005, Xinhua reported that 15 software companies in China had begun to develop Internet monitoring platforms that would allow government employees at remote locations to stop Internet cafe customers from accessing specific Web sites and determine precisely from which computer in which Internet cafe the access attempt is being made.<sup>100</sup>

In September 2005, a human rights NGO that focuses on freedom of expression reported that Yahoo!’s Hong Kong subsidiary had complied with a request from Chinese authorities to furnish account information for the journalist Shi Tao.<sup>101</sup> A Chinese court cited that information as one piece of evidence used to convict Shi of disclosing state secrets to a foreigner.<sup>102</sup> Yahoo! responded that its local country sites must operate within the laws, regulations and customs of the country in which they are based.<sup>103</sup>

*Political Detentions, Harassment, and Selectively Enforced National Security Laws*

Chinese officials continue to detain Chinese citizens who criticize them and their policies, and the Committee to Protect Journalists has dubbed China “the world’s leading jailer of journalists.”<sup>104</sup> The Commission welcomes the release over the past year of several political prisoners, but regrets that during the same period Chinese security and judicial authorities detained or imprisoned dozens of individuals for exercising their right to peacefully express their political beliefs.

The following list names some individuals that Chinese authorities have detained and imprisoned during the past year for exercising their constitutionally guaranteed freedom of expression:

- Detained: Chen Min, Ching Cheong, Hu Jia, Li Boguang, Li Guotao, Li Guozhu, Li Jinping, Liang Yuling, Liu Xiaobo, Qi Zhiyong, Shen Yongmei, Wang Qiaojuan, Wang Tingjin, Xu Zhengqing, Yan Zhengxue, Yang Weiming, Yang Zheng, Yu Jie, Zhang Zuhua, Zhao Yan, Zheng Peipei, Zheng Yichun.
- Imprisoned: Huang Jinqiu (aka Qing Shuijun), Kong Youping, Ning Xianhua, Nurmemet Yasin, Shi Tao, Zhang Lin, Zhang Ruquan, Zhang Zhengyao, Zheng Yichun.

Additional information on these cases and others is available on the Commission’s Political Prisoner Database [see Section IV—Political Prisoner Database].

In addition to detaining and imprisoning those who speak out against them, Chinese authorities continue to monitor activists and order them not to speak to the press.<sup>105</sup> An illustrative case is the government’s treatment of Dr. Jiang Yanyong. Authorities detained Jiang in June 2004, and although they released him the following month, for several months afterward officials prohibited him from speaking with reporters, traveling overseas, and attending activi-

ties at the invitation of foreign groups or individuals.<sup>106</sup> During the visit of United Nations High Commissioner for Human Rights and the eighth European Union-China Summit in late August and early September 2005, Chinese authorities placed human rights activists Liu Xiaobo, Zhang Zuhua, Liu Di, and Hu Jia under 24-hour police surveillance<sup>107</sup> and raided the offices of Chinese Rights Defenders, an informal grouping of activists and dissidents.<sup>108</sup>

### III(f) STATUS OF WOMEN

#### FINDINGS

- The Chinese Constitution and laws provide for the equal rights of women, and a network of women's groups advocate to protect women's rights. Such groups focus on providing education, protection, and legal assistance to women.
- Chinese women have fewer employment opportunities than men, and their educational levels fall below those of men, but the government has acknowledged these gender discrepancies and is taking steps to promote women's interests. Chinese women face increasing risks from HIV/AIDS as the disease moves from high-risk groups dominated by men into the general population.
- Trafficking of women and children in China remains pervasive despite government efforts to build a body of domestic law to address the problem. China's population control policies exacerbate the trafficking problem. China's poorest families, who often cannot afford to pay the coercive fines that the government assesses when it discovers an extra child, often sell or give infants, particularly female infants, to traffickers.

#### *Laws and Institutions*

The Chinese Constitution and laws provide for the equal rights of women. Article 48 of the Constitution declares that women are equal to men, and names women as a "vulnerable social group" requiring special protection. As a result, the government has passed a substantial body of protective legislation, particularly in the area of labor law and regulation. A U.S. scholar of women's issues in China argues that protective regulations can work against women's interests, however, since they may make employing women more expensive for employers and give managers an incentive to lay off women first.<sup>1</sup> The Labor Insurance Regulations provide for the retirement of women at a younger age than men. Some women in China have urged that the retirement ages of men and women should be made the same because the regulations put women at a disadvantage by reducing women's effective working lives for the purposes of wages and seniority.<sup>2</sup>

The National People's Congress (NPC) enacted the Law on the Protection of Women's Rights and Interests (LPWRI) in 1992 to "protect women's lawful rights and interests, and promote equality between men and women."<sup>3</sup> The 1992 law provided for government action to protect women but did not permit women to assert their own rights.<sup>4</sup> In August 2005, the NPC Standing Committee passed amendments to the LPWRI, including stronger provisions requiring government entities at all levels to take action against abuse of

women's rights and giving women assistance to assert their rights in court.<sup>5</sup> The amended law, to take effect in December 2005, also outlaws sexual harassment, giving the victim the right to complain to her employer, seek punishment by the police under administrative punishment regulations, and bring a civil suit for damages.<sup>6</sup> Passage of the amendments capped a month of high-level attention to women, including the release of a white paper on gender equality,<sup>7</sup> an exhibition on women's progress,<sup>8</sup> and a conference commemorating the 1995 Fourth World Conference on Women.<sup>9</sup>

Central government institutions that focus on women and children, such as the State Council Working Committee on Women and Children<sup>10</sup> and the All-China Women's Federation (ACWF),<sup>11</sup> have been advocates for legal reform in the areas of domestic violence, sexual harassment, and women's education.<sup>12</sup> The Working Committee recently developed the State Council's Ten-Year Program for the Development of Chinese Women (2001–2010), which focuses government attention on eight areas, including women's education, health, and participation in political and economic life.<sup>13</sup> As a Party organization, however, the ACWF is not able to effectively promote women's interests when countervailing Party interests intervene. For example, the ACWF has been silent about the abuses of Chinese government population control policies and remains complicit in coercive enforcement of birth limits.<sup>14</sup>

A number of independent women's NGOs have existed since the early 1990s and a new women's movement seems to be growing. Several Chinese women's organizations were founded in conjunction with the 1995 World Conference on Women in Beijing, including the Center for Women's Law Studies and Legal Services at Beijing University, and the Maple Women's Psychological Consulting Center. In April 2005, several Chinese women leaders jointly founded the advocacy project Women's Watch—China.<sup>15</sup>

### *Trafficking of Women and Girls*

Trafficking of women and children in China remains pervasive. Traffickers are often linked to organized crime and specialize in abducting infants and young children for adoption and household service. They also abduct girls and women both for the bridal market in China's poorest areas and for sale as prostitutes. This is caused, in part, by the skewed sex ratios growing out of China's population control policy [see Section III(i)—Population Planning]. One Chinese scholar noted that China's gender imbalance has created a flow of women from ethnic areas into Han areas to meet the demand for women.<sup>16</sup>

Other aspects of China's population control policies exacerbate the trafficking problem. China's poorest families, who often cannot afford to pay the coercive "social compensation" fine that the government assesses when it discovers an extra child, often sell or give infants, particularly female infants, to traffickers.<sup>17</sup> When police rescue them, many families do not come forward to claim their children because they are afraid of both the police and local family and population planning officials.<sup>18</sup> Authorities place some of these children in foster care, but many are eventually assigned to government-run orphanages. In 2004, police searching a bus found 28 newborn female infants who had been acquired by hospital staff in



Guangxi province and then taken by middlemen to be sold in Henan and Anhui provinces.<sup>19</sup>

China has supported some international initiatives against trafficking and built up a framework of domestic law to address the problem.<sup>20</sup> Chinese experts and officials have cooperated with the Mekong Sub-Regional Project to Combat Trafficking in Children and Women, founded by the International Labor Organization, to reinforce the anti-trafficking provisions of the ILO Worst Forms of Forced Labor Convention.<sup>21</sup> In domestic law, the 1997 revision of the Criminal Law abolished an older provision on "Trafficking in People" and inserted one on "Trafficking in Women and Children."<sup>22</sup>

Despite these government efforts, some 250,000 victims were sold in China during 2003, according to UNICEF.<sup>23</sup> Statistics reported from the Fourth National Meeting on Women's and Children's Work, held in August 2005, reveal that over 50,000 women and children were rescued by police in four years. Together, these figures suggest that only about 5 percent of victims are rescued by the police.<sup>24</sup> Zhu Yantao, a Ministry of Public Security official, recently noted that "with its huge population, China is likely to become the center of international human trafficking."<sup>25</sup> Zhu explained that the prevalence of the crime in China is the result of economic disparities between men and women that force young rural women looking for work to move to the cities, where they fall into the hands of traffickers.<sup>26</sup>

#### *Gender Disparities*

Chinese women have fewer employment opportunities than men.<sup>27</sup> Although women have a generally high rate of participation in the work force, fewer women than men seek opportunity and advancement in China's growing private sector.<sup>28</sup> To change this dynamic, the State Council's Women's Development Program has proposed that women without jobs be encouraged to work by offering them access to loans, land, skills training, information, and equality of access to village land contracts.<sup>29</sup>

The educational levels of Chinese women fall well below those of men, according to a statistics cited by the State Council.<sup>30</sup> Although 99 percent of girls attend elementary school and 95 percent enter lower middle school, according to these statistics, only 75 percent go on to higher middle school. The UN Common Country Assessment for China 2004 reports figures of 89.0, 88.3, and 80.2 for the ratio of girls to every 100 boys in primary, secondary, and tertiary education.<sup>31</sup> Women comprise 70 percent of China's 85 million illiterates. Improving equal access to education is one of the goals laid out in the Ten-Year Program for the Development of Chinese Women.<sup>32</sup>

Chinese women face increasing risks from HIV/AIDS. As HIV/AIDS moves from high-risk groups dominated by men into the general population, a larger percentage of those infected are women. A U.S. study published in December 2004 predicted that the proportion of HIV positive women in China would rise,<sup>33</sup> a prediction that official Chinese government news media confirmed in 2005.<sup>34</sup> Women's lack of access to education, vulnerability to violence (especially in trafficking for the sex trade), increasing participation in

the migrant work force, and increasing intravenous drug use all exacerbate this trend.<sup>35</sup>

### III(g) THE ENVIRONMENT

#### FINDINGS

- The Chinese government promotes conservation, recycling, and the use of renewable energy sources to address environmental degradation and the depletion of natural resources. Weak environmental laws, poor enforcement, and small government budgets for environmental protection hamper these efforts.
- The Chinese government promotes international cooperation on environmental matters, and is receiving foreign technical assistance for environmental projects in China.

#### *State of the Chinese Environment*

Rapid development without effective environmental safeguards has resulted in severe environmental degradation. Poor soil and water conservation practices and government inattention to polluting industries exacerbates these problems. Many Chinese citizens suffer from respiratory diseases caused by air pollution.<sup>1</sup> Acid rain affects about one-third of the country.<sup>2</sup> Deforestation and erosion leading to loss of arable land, landslides, and sedimentation of waterways are widespread.<sup>3</sup> Water pollution and poor conservation practices have led to water shortages in many areas, leaving millions in urban areas and one-third of the rural population without access to clean drinking water.<sup>4</sup>

#### *Government Response to Environmental Degradation*

The Chinese government is pursuing sustainable development domestically by encouraging recycling, conservation, and the use of renewable energy resources.<sup>5</sup> Externally, Chinese officials favor international technology transfers and seek cooperation with international environmental protection agencies and groups.<sup>6</sup> These are positive measures, but Chinese authorities continue to overlook environmental protection provisions already present in national development plans,<sup>7</sup> compounding problems with China's weak and poorly enforced environmental laws.<sup>8</sup> In June 2005, the State Environmental Protection Administration (SEPA) identified a number of continuing barriers to environmental protection in China, including gaps in environmental legislation, the absence of time limits for compliance, delays in issuing laws and regulations governing administrative permits and environmental inspections; a lack of provisions governing legal responsibility for environmental violations, a single category of administrative punishment for polluters specifying a relatively small fine, and a lack of enforcement authority among environmental protection departments.<sup>9</sup>

Despite these problems, SEPA has demonstrated an inclination to enforce laws that may pit the agency against the central government and Party leadership. In January 2005, SEPA officials halted 30 construction projects for violating the Environmental Impact Assessment (EIA) Law and ordered 46 polluting power plants to install desulfurization equipment.<sup>10</sup> Three of the 30 projects are

managed by the Three Gorges Development Corporation and are part of national development plans promoted by the central leadership. The projects were only halted for a short time, but SEPA's efforts to enforce the EIA Law have continued.<sup>11</sup>

SEPA has taken other steps to improve China's environmental legislation and environmental policymaking. SEPA has called for revisions to China's environmental laws, including some provisions that would increase the accountability of polluters and government officials for environmental degradation<sup>12</sup> and would establish an environmental public interest prosecution system.<sup>13</sup> Some of these efforts have generated support within the National People's Congress.<sup>14</sup> In February 2005, SEPA called for an environmental protection fund in the national budget, citing insufficient investment as a hindrance to its work.<sup>15</sup> SEPA also announced that the Chinese government will encourage foreign investment in environmental protection.<sup>16</sup> Finally, SEPA suggested incorporating environmental issues into the evaluation of local officials, and began a trial "Green GDP" program to include the cost of environmental degradation in the calculation of local GDP.<sup>17</sup>

#### *Public Participation in Environmental Protection*

SEPA has sought public support in environmental protection work and has encouraged and supported environmental NGO activism.<sup>18</sup> In 2005, SEPA held a public hearing to encourage citizen interest and NGO activism.<sup>19</sup> Although the hearing participants were pre-selected and pre-screened,<sup>20</sup> the promotion of citizen involvement in government decisionmaking is an uncommon phenomenon in China.<sup>21</sup> The National People's Congress has taken steps to consider expert opinion in drafting environmental legislation.<sup>22</sup> NGOs have provided expert opinions on the drafting and revision of laws such as the Renewable Resources Law.<sup>23</sup>

Chinese environmental NGOs are broadening their focus beyond initial efforts at public education and awareness.<sup>24</sup> In recent years, Chinese environmental groups have assisted pollution victims in pursuing redress through the legal system, lobbied businesses to adopt energy efficiency codes, and mobilized public participation in and support for environmental protection.<sup>25</sup>

Official efforts during 2005 to impose greater control over environmental NGOs is threatening to stifle environmental activism. In May 2005, the Chinese government created the All-China Environmental Federation, a national federation of Chinese environmental NGOs,<sup>26</sup> asserting that the new organization would ensure better cooperation on environmental matters between government agencies. But the government compelling SEPA and domestic NGOs to operate within a larger, state-controlled organization may limit their ability to challenge central government environmental or development policies [see Section V(a)—The Development of Civil Society, for a discussion of the role of mass organizations in Chinese society].

## III(h) PUBLIC HEALTH

## FINDINGS

- The two greatest public health challenges facing China today are infectious diseases and rural poverty. The central government is taking steps to improve the public health infrastructure in rural areas, but China's poorest citizens lack preventive healthcare, and weak implementation of laws that provide for free vaccinations leave many adults and children unprotected.
- Central government efforts to address China's HIV/AIDS epidemic continue to expand and deepen, but local governments often harass Chinese activists who work on HIV/AIDS issues.
- Government controls inhibit the flow of health-related information to the public, potentially affecting public health in China as well as international disease monitoring and response efforts.

*Rural Poverty and Public Health*

The central government is taking steps to address public health issues associated with a crumbling rural health infrastructure and rural poverty. During the 1980s, the government abolished its previous rural healthcare system, which was based on village clinics staffed by "barefoot doctors" and financed by cooperative insurance. Central government authorities, however, did not establish a substitute system to replace the old healthcare regime. As a result, most Chinese farmers could not afford the high cost of treatment.<sup>1</sup> By 2002, the central government was encouraging the formation of rural healthcare cooperatives,<sup>2</sup> which receive local government subsidies and cover the medical expenses of any farmer who can pay a modest annual premium.<sup>3</sup> The central government established 12 rural medical cooperatives in Liaoning province in early 2005,<sup>4</sup> and provincial governments announced similar programs at the same time in other areas of China,<sup>5</sup> including pilot programs in five cities and counties in Sichuan province. By April, about 1.04 million farmers in Sichuan had received reimbursement for medical expenses.<sup>6</sup> The success of this program has stimulated local government efforts to build township medical centers that would provide a higher level of healthcare after citizens exhaust the resources available from local medical cooperatives.<sup>7</sup>

While these efforts at reconstructing the rural healthcare system are promising, senior Chinese officials have acknowledged that serious challenges remain. Critical evaluations of China's healthcare system began to cascade into the public view beginning in late July 2005, when Ge Yanfeng, a senior State Council researcher, questioned the fairness and efficiency of the medical and health system.<sup>8</sup> The poorest residents in rural areas frequently do not enroll in the cooperatives because they cannot afford the required fee. For participants, the cooperative plan covers only between 30 and 40 percent of hospitalization costs,<sup>9</sup> leaving many farming families in debt after serious illness. As many as 50 percent of farmers who fall ill do not seek healthcare for economic reasons, according to a number of reports,<sup>10</sup> and half of all children who die in rural areas have not received medical treatment.<sup>11</sup> Malnourishment among rural children also remains a serious problem. As many as

29.3 percent of children in China's poorest areas may be malnourished, according to one news account.<sup>12</sup>

### *Infectious Disease and Public Health*

Among the results of underinvestment in healthcare has been the persistence of diseases that require a coordinated and long-term investment of funds and organization to control. One such disease, tuberculosis (TB), is one of China's worst health problems, with 4.5 million patients with active TB, 1.45 million newly diagnosed cases, and 130,000 deaths each year.<sup>13</sup> Some provinces have registered sharply rising rates of TB, with the incidence in Zhejiang province, for example, rising 30 percent in 2004 compared to 2003.<sup>14</sup> A few provinces have responded by instituting "directly observed treatment methods" to fight the development of drug-resistant disease when patients fail to pursue a full course of treatment.<sup>15</sup>

Naturally occurring infectious diseases are a serious threat in China, according to senior Chinese healthcare experts.<sup>16</sup> Despite strong reported immunization statistics and the 2005 regulation on state-funded immunizations,<sup>17</sup> the child vaccination program as implemented has not been effective, since several outbreaks of preventable diseases occurred in 2005.<sup>18</sup> The Ministry of Health (MOH) reported a sharp rise in both cases and deaths from measles in the first quarter of 2005.<sup>19</sup> The Ministry concluded that the outbreak resulted from the government's failure to address the health problems of the migrant population and failure to vaccinate with effective vaccines.<sup>20</sup> Anhui statistics for the first quarter of 2005 showed that one of the top five diseases causing death was infant tetanus; routine postnatal and pediatric vaccination can prevent this disease.<sup>21</sup>

China continues to have a high rate of Hepatitis B infection, with one-third of the world's total reported 385 million chronic Hepatitis B carriers. Notwithstanding these figures, only 70 percent of the population has been vaccinated for the disease, according to a Chinese expert.<sup>22</sup> At the same time, the Chinese government has made progress since 2004 on eliminating discrimination against Hepatitis B carriers in government employment.<sup>23</sup> The new Law on the Prevention and Control of Infectious Diseases also prohibits discrimination against carriers of infectious diseases.<sup>24</sup>

### *HIV/AIDS*

The central government has become more active on HIV/AIDS issues during the past year.<sup>25</sup> In June 2005, Premier Wen Jiabao chaired a State Council meeting on anti-AIDS work that reinforced earlier decisions promising free antivirals to HIV carriers, free anonymous testing, free medicine for pregnant women, free schooling for the orphans of AIDS victims, and help for families afflicted with AIDS.<sup>26</sup> Premier Wen also reiterated the need to "protect the legitimate rights and interests of HIV carriers and oppose discrimination against them," as well as to educate them about their responsibility to prevent further spread of the disease.<sup>27</sup> Since late 2003, the Central Party School in Beijing, which provides leadership training for senior Communist Party cadres, has offered a course on responding to HIV/AIDS. In September 2004, the State

Council HIV/AIDS Prevention Work Committee issued guidelines making AIDS education mandatory for secondary and university students in 2005.<sup>28</sup>

Several provinces and localities undertook new programs in 2005 to address HIV/AIDS-related public health problems. Hubei province began a program in May 2005 to prevent accidental occupational exposure to HIV.<sup>29</sup> Programs to educate mid-career officials about HIV/AIDS are growing after the Central Party School held similar seminars for future Party leaders.<sup>30</sup> Yunnan province joined with two prestigious universities to train senior provincial officials about drug control and AIDS prevention,<sup>31</sup> and Jiangxi province launched an education campaign in May 2005 on AIDS and venereal disease prevention.<sup>32</sup> The Guangzhou city education department released a regulation in January 2005 that promised free education for all children affected by HIV, and guaranteed such children confidentiality and protection against discrimination.<sup>33</sup> The central government has also taken steps to support these local and provincial efforts. The MOH, for example, began a program to disseminate AIDS prevention information to high-risk groups such as intravenous drug users, homosexuals, and prostitutes.<sup>34</sup> In addition, in August 2004 the MOH and the National Development and Reform Commission invested 230 million yuan in 1,004 mobile hospitals to reach victims of HIV and other diseases in remote parts of China.<sup>35</sup>

Some local anti-AIDS initiatives, however, still show an official tendency to address the problem by using coercive measures.<sup>36</sup> In Yunnan province, new rules require mandatory annual HIV tests for people working in the entertainment industry.<sup>37</sup> The head of the provincial health department said that such testing in 2004 had led to the detection of 13,000 HIV positive individuals, but the China coordinator for the UN anti-AIDS program warned that mandatory testing can lead to discrimination against those infected.<sup>38</sup>

Local government harassment of Chinese NGOs dealing with HIV/AIDS has undermined efforts to combat the disease. A U.S. NGO report described the violent closure of a privately-run orphanage for children with AIDS in Henan province, and also reported other incidents in which Henan officials and police detained, beat, or otherwise obstructed Chinese activists working on HIV issues.<sup>39</sup> Another U.S. group reports that local authorities in Henan province have organized militias to prevent journalists and NGO observers from visiting AIDS victims.<sup>40</sup> Li Xiang, the Director of the Mangrove Support Group, notes that cumbersome government regulations complicate the work of Chinese NGOs working on AIDS.<sup>41</sup>

#### *State Control of Information Relating to Health*

The State Secrets Law and related regulations<sup>42</sup> hinder the free flow of information on public health matters both within China and to the outside world. Some government agencies have worked to improve the internal flow of information from local governments to the center. In Jiangxi province, for example, authorities built a system for county, town, and township medical entities to make direct online reports to higher authorities about health issues.<sup>43</sup> Delayed and inaccurate reporting by provincial authorities continues, how-

ever, reflecting an official tendency to cover up health problems and the outbreak of disease. Many local officials fear that such news will discourage investment and affect local economic growth, which remains the most important factor in the annual performance evaluations of officials.<sup>44</sup>

Government control over the flow of information has hampered an international effort to combat the spread of a new strain of avian flu virus. In May, the Ministry of Agriculture confirmed the first evidence of deaths of migratory birds in Qinghai province, apparently from an avian flu virus, more than two weeks after the initial deaths. In June, a U.S. newspaper reported that Chinese officials were encouraging farmers to protect their flocks by using amantadine, an antiviral drug meant only for use in humans.<sup>45</sup> Foreign scientists criticized the Chinese government, saying that such use of antivirals leads to resistant strains of the disease.<sup>46</sup> A spokesman for the Ministry of Agriculture denied encouraging the misuse of amantadine,<sup>47</sup> but he also announced that the Ministry would send out inspection teams to check on the possibility that it had been misused.<sup>48</sup> The most recent assessments of dead birds in Qinghai and Xinjiang reveal that the strains that killed the birds are not yet resistant to the amantadine.<sup>49</sup>

In July 2005, the WHO and other international health organizations complained that Chinese authorities had not shared key details about three outbreaks of avian flu in western China. The information sought by these international bodies included virus samples, genetic analysis, and information about the extent of the outbreaks and Chinese government efforts to contain them.<sup>50</sup>

### III(i) POPULATION PLANNING

#### FINDINGS

- The Chinese government continues its population control policy, which is scheduled to continue through the mid-21st century. Coercive fines are the main enforcement mechanism, although reports of local officials using physical coercion to ensure compliance continue, even though this practice violates Chinese law.
- The severe gender imbalance resulting from the population control policy has grown worse over the past two decades. The Chinese government has established a commission to draft legislation to criminalize sex-selective abortion.

The Chinese government continues to maintain a coercive population control policy that violates internationally recognized human rights standards in three ways. First, the Population and Family Planning Law limits the number of children that women may bear.<sup>1</sup> Second, this law coerces compliance by penalizing women who illegally bear a child with a “social compensation fee,” a fine that often exceeds an average family’s annual income.<sup>2</sup> Third, although physical coercion to ensure compliance with population control requirements is illegal in China, reports persist of local officials using physical coercion to ensure compliance, and in one case Chinese officials attempted to physically coerce a visiting Hong Kong woman to have an abortion.<sup>3</sup> In December 2004, the International Relations Committee of the U.S. House of Representatives

heard credible testimony that compliance with the Chinese government's population control policy continues to be enforced through coercive fines and loss of employment, as well as physical coercion including forced abortion, forced sterilization, forced implants of contraceptive devices, and other violent abuses against pregnant women or their families.<sup>4</sup> These abuses create an atmosphere of fear in which most women feel they have little choice but to comply.<sup>5</sup>

Local officials who fail to meet provincial and central government birth rate targets face loss of bonuses and denial of promotions. These practices implicate China's central and provincial government in the abuse that occurs at the local level. Physical coercion against women by local officials seeking to meet population planning goals has continued over the past year, according to credible reports.<sup>6</sup> For example, credible sources reported in August and September that population planning officials in Linyi city, Shandong province, administered forced abortions, sterilizations, prison sentences, and beatings during the spring of 2005. A September 19 statement from a National Population and Family Planning Commission official acknowledged that a preliminary investigation had disclosed that "some persons did commit practices that violated law and infringed upon legitimate rights and interests of citizens while conducting family planning work. Currently the responsible persons have been removed from their posts."<sup>7</sup>

Chinese citizens who publicly oppose the Chinese government's population control policies also face possible detention and abuse. Linyi officials abducted Chen Guangcheng, who brought news media attention to the abuses there, in Beijing and returned him forcibly to Linyi, where he allegedly has been beaten and remains under house arrest.<sup>8</sup> Mao Hengfeng, who opposed the government's population control policy and protested against it, was sentenced to 18 months of re-education through labor in April 2004. Mao has been protesting on her own behalf as well as for others since she was dismissed from her job in Shanghai in 1988 for becoming pregnant in contravention of the population control policy. She reportedly was tortured in October and November 2004, and her sentence was increased by three months in December 2004.<sup>9</sup>

#### *Changes to Population Control Policy*

Since its inception in the early 1980s, China's population control policy has been adjusted periodically, as population planners fine-tune local rules and quotas.<sup>10</sup> Couples living in cities have almost always been limited to one child, but provincial officials have permitted exceptions in various circumstances, such as for rural couples whose first child is female.<sup>11</sup> In the past year, the population control policy has been under discussion again. Although some officials have recommended moving toward a "two-child policy," this proposal seems unlikely to be adopted soon. Chinese officials have emphasized that the government will continue to decide how many children its citizens may have and when they may have them.<sup>12</sup>

At the same time, the government's population control policy is already changing, chiefly as a result of impending social crises caused by the policy itself. Since the early 1990s, ultrasound testing has been widely available in China, and many parents deter-



mined to have sons have used it to establish the sex of the fetus and to abort female fetuses. As a result of this sex selection, the ratio of male to female newborns is about 120:100 in China, and in many rural areas of China the ratio is 130:100 or even 140:100.<sup>13</sup> Experts consider a ratio of about 105:100 to be normal. In addition, since the introduction of the one child policy, the rate of female infanticide and death of female infants due to neglect appears to have risen sharply.<sup>14</sup> The government has belatedly attempted to address these problems in various ways. The 2002 Law on Population and Family Planning forbids prenatal sex identification and sex-selective abortion, but imposes no criminal penalties on parents or doctors and is widely ignored.<sup>15</sup> In January 2005 the government established a commission to draft changes to the criminal law that will make selective abortion a criminal offense.<sup>16</sup> In a legislative experiment intended to prevent sex-selective abortion, the city of Guiyang banned all abortions after the 14th week of pregnancy—before the point when ultrasound technology can detect the sex of a fetus.

Second, the Chinese government has begun to move toward a population control system that will financially reward compliance, while continuing to punish non-compliance.<sup>17</sup> In 2004, the government launched a pilot project granting a small sum of money to rural couples over 60 years old who have only one son or two daughters.<sup>18</sup> Introduced in five provinces in 2004, the project is expected to be extended to 23 provinces by the end of 2005 and to the entire country in 2006. Similarly, in an ethnic Hui region of Ningxia province, the government began a program to persuade Hui couples to have contraceptive surgery after the birth of their first child, in exchange for a financial reward.<sup>19</sup> These changes respond to the rapid aging of the Chinese population, another consequence of the one-child policy. The Chinese government estimates that the number of people 60 years and older in China will grow from 7 percent of the population in 2005 to 11.8 percent in 2020, and that by the mid-21st century China will have over 400 million people 65 years and older and more than 100 million people 80 years and older.<sup>20</sup> Many of China's elderly do not have a family member that can care for them and few of them have pensions. The government has assured elderly people that they will be cared for, but does not currently have a system of social security and public services adequate to this task and has not undertaken financial commitments on a national level.<sup>21</sup>

Third, provinces and cities have been given the authority to authorize more second children, and many have used this authority.<sup>22</sup> Reacting to birthrates below the replacement level, Shanghai and some other cities with particularly low birth rates have permitted new categories of couples to have second children and ended mandatory waiting periods between children.<sup>23</sup> Other cities, including Beijing, have maintained the one-child policy.<sup>24</sup> The Ministry of Education has lifted the ban on marriage and childbearing for university students.<sup>25</sup>

## III(j) FREEDOM OF RESIDENCE AND TRAVEL

## FINDINGS

- National and local authorities are gradually reforming China's household registration (*hukou*) system. In 2005, central authorities took some steps towards removing work restrictions on migrants in urban areas, but *hukou* discrimination in public services remains prevalent.
- *Hukou* reforms are enhancing the ability of wealthy and educated citizens to choose their place of permanent residence, but strict economic criteria often exclude poor rural migrants living in urban areas, preventing some of China's most vulnerable citizens from receiving public services.

*Hukou* Reforms and Continuing Barriers to Migrants

Since the late 1990s, Chinese authorities have deepened and expanded prior reforms to the *hukou* system, which since the 1950s has limited ordinary Chinese citizens' ability to change their permanent place of residence.<sup>1</sup> These efforts have occurred sporadically, most recently in 2001 and 2003–2004, and have been followed by central directives to slow the pace of change.<sup>2</sup> Recent reforms include relaxing previous limits on migration to small towns and cities and streamlining *hukou* registration in some provinces and large cities. Since late 2004, central authorities have also taken steps to eliminate discriminatory local regulations that limit urban employment prospects for migrants.<sup>3</sup>

Reforms generally provide preferential *hukou* treatment for the wealthy and educated, while maintaining significant barriers against poor migrant workers. State Council directives issued in 1997 and 2001 allow rural migrants to obtain local *hukou* in small towns and cities, but require them to have a “stable job or source of income” and a “fixed place of residence.”<sup>4</sup> Provincial and municipal regulations enacted since 2001 also contain these requirements.<sup>5</sup> The definitions of these terms often exclude low-income rural migrants. For instance, Nanjing municipal regulations define “stable place of residence” as private ownership of a house or residence.<sup>6</sup> Hebei provincial regulations bar migrants who live in rented apartments from receiving local *hukou*.<sup>7</sup> Many local regulations exclude poor workers with incomes under set limits.<sup>8</sup>

Many provincial and municipal regulations grant local *hukou* in urban areas based on educational or financial criteria. Zhejiang province directs large and medium-size towns to grant local *hukou* to individuals able to purchase homes of a certain size or price. Those with higher educational levels enjoy similar benefits.<sup>9</sup> Chongqing municipality grants local *hukou* to persons with a two-year college degree (*dazhuan*) or higher who purchase a house or apartment that measures 30 square meters or more.<sup>10</sup> One city in Zhejiang province grants local *hukou* to unskilled laborers only after five years of residence, in addition to requiring a fixed residence and a stable source of income, but applies no time limits to skilled and educated individuals.<sup>11</sup>

Migrants who do not qualify for local *hukou* usually cannot obtain public services on an equal basis with other residents.<sup>12</sup> In

May 2005, the UN Committee on Economic, Social and Cultural Rights registered:

deep concern [with] the de facto discrimination against internal migrants in the fields of employment, social security, health service, housing and education that indirectly result[s], inter alia, from the restrictive national household registration system (*hukou*) which continues to be in place despite official announcements regarding reforms.<sup>13</sup>

Such discrimination severely restricts migrant children's access to education. The State Council has required local governments to take responsibility for educating migrant children.<sup>14</sup> But some local governments require children who hold non-local *hukou* to be educated in their place of *hukou* registration rather than their place of actual residence, even if this requires them to be separated from their parents.<sup>15</sup> Both national and local regulations permit schools to charge additional educational fees to migrant children lacking local *hukou*.<sup>16</sup> Government schedules often set these fees at several hundred yuan per semester, which is a large part of the average migrant's annual earnings.<sup>17</sup> Many public schools levy additional unauthorized charges that can total several thousand yuan per year.<sup>18</sup> Some Chinese officials have made laudable efforts to curb such practices.<sup>19</sup> Efforts by migrants to establish private schools to educate their children continue to face local opposition in many cities.<sup>20</sup>

#### *Practical Impact of Reform*

Income and home ownership criteria limit the practical impact of recent *hukou* reforms. In the city of Ningbo in Zhejiang province, officials expect only 30,000 people out of a total migrant population of 2 million to meet the stable income and permanent residence requirements set in 2001 for obtaining a local urban *hukou*.<sup>21</sup> After similar reforms in Shijiazhuang city in Hebei province, only 11,000 applicants out of a total migrant population of 300,000 migrant workers filed applications.<sup>22</sup> Municipal plans to grant local *hukou* on the basis of investment criteria are even more limited in impact. More than two months after implementation began of Beijing's 2001 reforms granting local *hukou* to wealthy investors, only one person applied who could meet the requirements.<sup>23</sup>

Local government officials often portray reforms as eliminating *hukou* discrimination because they have ended distinctions between different *hukou* types.<sup>24</sup> For example, Jiangsu province announced in March 2003 that it planned to end the labeling of *hukous* as agricultural and non-agricultural, thereby "breaking" urban-rural divisions.<sup>25</sup> Similar reforms have been announced in other provinces.<sup>26</sup> These changes do not abolish *hukou* identification entirely, however. They leave intact the remaining element of *hukou* identification: registration by permanent residence. Migrants must still satisfy the criteria set by local authorities to obtain a local *hukou* in a given urban area.

#### *Government Measures To Address Abuse of Migrants*

Chinese authorities have adopted a variety of measures to address abuse of migrants. Some measures reflect public concern with police abuses.<sup>27</sup> In 2003, after the death of a young migrant in po-

lice custody sparked a national outcry, the State Council abolished the coercive custody and repatriation system often used to detain unregistered migrants.<sup>28</sup> In Hangzhou city in Zhejiang province, the public security bureau announced an end to mass dragnet sweeps conducted to round up undocumented migrants.<sup>29</sup> In Shenyang, police announced the elimination of the temporary residence permit system and all associated fees (reducing the ability of police to extort additional payments from migrants) in favor of an automatic “sign-in” registration system for migrants arriving in the city.<sup>30</sup> Chinese authorities have also taken steps to eliminate work restrictions that discriminate against migrants. In December 2004, the State Council issued a directive to eliminate discriminatory measures that limit employment prospects for migrants in urban areas.<sup>31</sup> In early 2005, the Beijing municipal government followed suit, abolishing long-standing regulations that prohibited renting apartments and office space to migrants and excluded them from certain occupations.<sup>32</sup> Although scholars and citizens have called for more comprehensive legislation to protect the rights of migrants, Chinese officials have so far taken no concrete steps to respond to these demands.<sup>33</sup>

#### **IV. Political Prisoner Database**

The CECC Political Prisoner Database (PPD) is a unique and powerful resource that became globally accessible via the Internet in November 2004. The PPD is designed to serve as a tool for individuals, educational institutions, NGOs, and governments that wish to research political and religious imprisonment in China or advocate on behalf of prisoners. During the PPD’s first eight months of operation, about one-third of the requests for prisoner information originated from government Internet domains (.gov).

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

The PPD allows users to conduct queries on 19 types of prisoner information. Users may search for prisoners by name, using either the Roman alphabet or Chinese characters. Users may construct queries to include personal information (ethnic group, sex, age, occupation, religion), or information about imprisonment (current status of detention, place of detention, prison name, length of sentence, legal process).

Each prisoner’s record describes the type of human rights abuse by Chinese authorities that led to his or her detention. These abuses include violations of freedom of speech, religion, and association, for example, as well as issues related to democracy, labor rights, and ethnicity. Each record includes a short summary of the case. Users may download information about prisoners from the PPD as Adobe Acrobat files or Microsoft Excel spreadsheets.

As of September 2005, the PPD contained more than 3,600 records of political and religious imprisonment in China. The Dui Hua Foundation, based in San Francisco, and the Tibet Informa-

tion Network, based in London, shared their extensive experience and data on political and religious prisoners in China with the Commission to help establish the database. The Commission also relies on its own staff research for prisoner information, as well as on information provided by other NGOs and groups that specialize in promoting human rights and opposing political imprisonment.

Commission staff regularly updates the information in the PPD. The Commission staff also works to upgrade the PPD software periodically, to improve performance, and to provide PPD users with access to more data.

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

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

### **V(a) THE DEVELOPMENT OF CIVIL SOCIETY**

#### **FINDINGS**

- Chinese non-profit associations and organizations are growing in number and engaging in valuable educational work and issue advocacy. While some ministries and local governments support these groups, some high-level leaders consider the emergence of an independent civil society a threat to government and party control.
- Central authorities use regulations to limit and control the development of civil society in China, forcing many groups to remain unregistered or operate underground. In 2005, Chinese authorities moved to curtail the activities of international and domestic civil society organizations, particularly environmental groups that challenged government policies.

#### *Civil Society Activism and Government Controls*

Chinese civil society organizations are growing in number and engaging in valuable educational work, social welfare service provision, and issue advocacy.<sup>1</sup> These groups include national mass organizations that Party authorities created and fund, smaller citizen associations registered under national regulations, and loose networks of unregistered grassroots organizations.<sup>2</sup> Civil society organizations have been particularly active in environmental protection and HIV/AIDS work, issues on which the Chinese government has been more tolerant of nongovernmental activity in recent years.<sup>3</sup> For example, civil society groups operate orphanages for the children of AIDS victims, run Web sites disseminating information on AIDS to at-risk groups, and advocate on behalf of HIV-positive individuals.<sup>4</sup>

A restrictive regulatory environment continues to hamper the development of Chinese civil society. National regulations require that non-governmental organizations have a government-approved “sponsor organization” to register.<sup>5</sup> Official Chinese sources indicate that only designated Party and government bureaus and mass organizations may sponsor non-governmental organizations.<sup>6</sup> Chinese scholars and prominent Chinese civil society organizations have criticized this requirement.<sup>7</sup> As the director of the Qinghua

University NGO research institute noted, "China has 3 million social organizations, but only 280,000 are registered. Why? Because the sponsor requirement is too strict, most social organizations can't find sponsors."<sup>8</sup> As a result, many citizen groups ignore the registration requirements. According to one academic survey, only 22 percent of organizations to which rural residents belong are formally registered.<sup>9</sup> In practice, unregistered groups generally experience little or no government interference as long as they avoid financial misdeeds or overt political challenges.<sup>10</sup> Chinese citizens, however, cite difficulties in registering as a significant obstacle to establishing even relatively nonpolitical, civic-minded organizations, such as those directed at helping Beijing prepare for the 2008 Olympics.<sup>11</sup>

Central authorities have long tried to keep civil society organizations under tight official control, but some Chinese officials support reducing restrictions and allowing them to play a more active social and political role. Both the Ministry of Civil Affairs (MOCA) and the State Environmental Protection Agency have been particularly supportive of civil society organizations.<sup>12</sup> MOCA officials have suggested publicly that the sponsorship requirement should be eliminated and have submitted multiple draft civil society regulations to the State Council that would remove it. The State Council, however, has rejected these proposals.<sup>13</sup> Chinese news reports suggest that upcoming revisions to the 1998 regulations on social organizations will liberalize current rules somewhat, but will not change the sponsor organization requirement.<sup>14</sup>

National and local authorities also sometimes disagree on how to manage civil society organizations. In 2004, Zhejiang provincial authorities passed a relatively liberal set of rules governing the operation of farmers' cooperatives. These rules do not require cooperatives to have a sponsor organization to register.<sup>15</sup> The Zhejiang rules appear to conflict with national guidelines that require local government bureaus to sponsor farmers' cooperatives and call for a greater degree of official supervision over the cooperatives.<sup>16</sup> Whether local experiments such as Zhejiang province's will be successful when they conflict with national policies is unclear, as other local efforts to liberalize registration requirements for farmers' cooperatives have run into problems with banks and tax bureaus because of their ambiguous status.<sup>17</sup>

Individual civil society organizations and activists risk official retaliation when they directly challenge government decisions. In March, Chinese authorities ordered the Beijing AIDS Institute of Health Education, a registered non-governmental organization, to eliminate the terms "Health Education" and "AIDS" from its name or be closed. Institute sources voiced concern that this order would affect the group's financial operations and limit its AIDS prevention efforts. Although officials asserted that the terms violated NGO naming rules, they issued the order a week after the Institute released a report alleging that government plans for using international AIDS funds lacked adequate public participation and representative patient sampling.<sup>18</sup> Similarly, local authorities in Henan province detained and arrested AIDS activists who criticized local government actions and attempted to contact higher-level government authorities.<sup>19</sup>

Structural problems also affect Chinese civil society groups. Many remain dependent on foreign funding, which can amount to over 90 percent of the budget of some organizations.<sup>20</sup> China's civil society organizations are tax-exempt in theory, but the absence of implementing regulations hinders their ability to raise funds.<sup>21</sup> Local government agencies also seeking to raise money sometimes compete with revenue-generating civil society organizations for the same sources of funding.<sup>22</sup> Chinese civil society groups generally have a weak capacity for self-governance.<sup>23</sup>

*2005: Central Government Effort to Curtail Civil Society*

In early 2005, senior Chinese leaders mounted a wide effort to curtail activist civil society organizations. Articles in academic journals linked to the State Council pressed officials to prevent "Western countries from carrying out infiltration and sabotage of China through political NGOs."<sup>24</sup> International NGOs with U.S. ties have experienced more government interference in recent months.<sup>25</sup> Editorials in the state-sponsored press stressed the need for civil society organizations to carry out Party policies and ideology.<sup>26</sup> Central authorities ordered certain social science research groups that had attempted to operate outside of regular controls by registering as for-profit companies to reregister with MOCA or be closed.<sup>27</sup>

In April 2005, top Chinese leaders established the All-China Environment Federation (ACEF), a state-run alliance of civil society organizations controlled by current and former government officials. Official reports indicate that the ACEF is aimed at ensuring better cooperation between ministries on environmental issues and offering regular channels for Chinese civil society organizations to provide policy input.<sup>28</sup> Nevertheless, the ACEF resembles traditional mass organizations, such as the All-China Women's Federation or the All-China Federation of Trade Unions, that Chinese leaders use to co-opt and regulate social groups that might challenge Party control. Chinese environmental activists state that the government has pressured them to join the ACEF and pay mandatory dues. They also state that many regard the move as an attempt to restrict the growing activism of environmental organizations.<sup>29</sup>

V(b) LEGAL RESTRAINTS ON STATE POWER

FINDINGS

- The Chinese government has affirmed the right of citizens to petition the National People's Congress Standing Committee for review of regulations that violate the Constitution or national law. The effect of this right remains limited, however, since Chinese citizens have no right to compel such review or to challenge the constitutionality of government actions.
- Constitutional enforcement remains a politically sensitive topic in China, and the near-term prospects for the establishment of a more robust constitutional enforcement mechanism are remote. The Chinese government has ruled out establishing a constitutional court or giving people's courts the power to review the constitutionality of laws and regulations.

- The Chinese government has enacted laws to curb administrative abuses, but Chinese officials retain significant administrative discretion. Existing legal mechanisms provide only limited checks on arbitrary or unlawful government actions.

### *Constitutional Enforcement*

Over the past year, Chinese leaders continued to emphasize the importance of the Constitution, but focused primarily on constitutional study and government-supervised implementation measures. In his annual report in March 2005, for example, Wu Bangguo, Chairman of the National People's Congress Standing Committee (NPCSC), stressed the importance of implementing and studying the Constitution.<sup>1</sup> In December 2004, authorities made constitutional consciousness the subject of a national legal awareness day.<sup>2</sup> Government statements stressed the significance of March 2004 constitutional amendments, which included a new provision stating explicitly that "the State respects and safeguards human rights." Official statements also highlighted legislation and rectification campaigns designed to implement these amendments.<sup>3</sup>

The Chinese government has affirmed the right of citizens to petition the NPCSC for review of regulations that conflict with the Constitution and national law. Under the Constitution, the power of constitutional enforcement rests with the NPCSC.<sup>4</sup> Chinese experts have long criticized the NPCSC for failing to exercise this function.<sup>5</sup> In 2004, the NPCSC announced the formation of a new office to assist it in reviewing regulations that conflict with the Constitution and national law.<sup>6</sup> An NPC official publicly confirmed in December 2004 that citizens have the right to petition the office for review of regulations.<sup>7</sup> Official news media published accounts of at least one such petition and encouraged citizens to submit petitions in other cases.<sup>8</sup>

To date, however, the practical impact of the right to petition for NPCSC review remains limited. As one Chinese legal expert notes, the office is only empowered to make recommendations to the NPCSC;<sup>9</sup> it is not required to act on citizen petitions, and citizens have no power to request review of "unconstitutional acts" by officials or laws passed by the NPC.<sup>10</sup> Whether the office has a set of review procedures in place or has yet taken any formal action to invalidate a regulation is unclear. One Commission source suggests that in several cases, the NPCSC has worked behind the scenes to have inconsistent local regulations repealed, perhaps to avoid publicly embarrassing local authorities with a formal decision.<sup>11</sup>

Chinese courts do not have the power either to apply constitutional provisions in the absence of concrete implementing legislation or to strike down laws or regulations that are inconsistent with the Constitution.<sup>12</sup> In recent years, however, lawyers have worked to establish case precedents for judicial application of constitutional principles by incorporating constitutional arguments into legal cases.<sup>13</sup> At a Commission hearing in 2005, a respected American expert on Chinese law suggested that even if the NPCSC is unwilling to permit Chinese courts to review the validity of laws or regulations, courts could be given the power to apply constitutional provisions in settling disputes related to administrative or private actions.<sup>14</sup>



Reform-minded scholars and lawyers continued to raise constitutional issues in Chinese courts over the past year. In November 2004, the All-China Lawyer's Association announced the formation of a Constitutional and Human Rights Committee to research constitutional implementation, train lawyers, and "use individual cases to help promote China's constitutional litigation."<sup>15</sup> One such case arose in April 2005, when two Henan lawyers cited constitutional protections in a lawsuit they filed against the Shenzhen public security bureau. The bureau had posted a banner encouraging Shenzhen residents to report on "Henan" criminals, an act the plaintiffs argued was discriminatory.<sup>16</sup> Constitutional arguments were raised in other cases as well.<sup>17</sup> Although efforts to encourage courts to apply constitutional principles in specific cases have been largely unsuccessful, lawyers also promoted efforts to incorporate constitutional protections into national laws, which courts are permitted to apply in their decisions.<sup>18</sup>

Prospects appear remote for the establishment of a more robust constitutional enforcement mechanism in the near term. Constitutional enforcement remains a sensitive topic, and senior Party leaders have warned officials to guard against efforts to promote Western-style constitutional reform.<sup>19</sup> In December 2004, the government ruled out establishing a constitutional court or some other mechanism for judicial review of the constitutionality of laws and official acts and stated that the Constitution is not a basis for litigation.<sup>20</sup> Although scholars continued to study constitutional enforcement and held several conferences on the issue, authorities forced the cancellation of an international conference on constitutionalism and human rights in May 2005.<sup>21</sup> In April 2005, authorities also shut down a Beijing consultancy that planned to assist citizens in enforcing their human rights.<sup>22</sup> Chinese scholars suggest that if the government introduces any new constitutional enforcement mechanism in the near-term, it is most likely to be a special constitutional enforcement commission under the National People's Congress.<sup>23</sup>

#### *Administrative Litigation and State Compensation*

China's 1989 Administrative Litigation Law (ALL) and 1994 State Compensation Law (SCL) provide citizens with limited checks on arbitrary government action, but growth in the number of cases brought under the two laws appears to be leveling off. The ALL gives Chinese citizens the right to file lawsuits to challenge "concrete" administrative acts that violate their lawful rights and interests.<sup>24</sup> The SCL provides citizens with the right to obtain compensation in a limited number of situations in which administrative or criminal justice agencies engage in illegal conduct.<sup>25</sup> After reaching a peak of 98,759 cases in 1999, the number of administrative lawsuits handled in Chinese courts has fluctuated and declined slightly since 2000, with courts handling 92,192 cases in 2004.<sup>26</sup> The number of SCL cases handled by people's courts has remained low and leveled off at about 3,000 cases per year.<sup>27</sup> Over the same period, the number of citizen petitions and social protests has grown considerably.<sup>28</sup> In comparison to the more than 11 million citizen petitions filed in 2003 [see Section V(e)—Access to Justice], the number of ALL and SCL claims is relatively small.

The limited scope of the ALL and SCL and official resistance to both laws have limited their practical utility. The ALL only applies to “concrete” administrative decisions, not government-issued directives or rules, while compensation standards under the SCL remain rigid and the amounts awarded are small.<sup>29</sup> Chinese sources also cite complicated procedures, legal loopholes that facilitate official resistance to claims, the failure of administrative defendants to attend trials, administrative interference with the courts, and citizen fears of official retribution as problems that undermine the effectiveness of both laws.<sup>30</sup> In a November 2004 article, China Youth Online noted that citizen plaintiffs won about 21 percent of the administrative cases filed in the first nine months of 2004, but suggested that success rates should be higher because most citizens are cautious about suing officials.<sup>31</sup> In the case of the SCL, plaintiffs have reportedly won compensation in about one-third of the state compensation cases that people’s courts have adjudicated since 1995.<sup>32</sup> Several Chinese reports demonstrate that government departments often refuse to honor compensation awards, however, with one commentator concluding that the SCL “sounds good but is of no use.”<sup>33</sup> The Chinese government is considering amendments to both laws that may address some of these concerns.<sup>34</sup>

#### *Additional Administrative Law Developments*

China’s Administrative Licensing Law (Licensing Law) has created new legal limits on administrative discretion. The Licensing Law, which came into effect in July 2004, is intended to improve administrative efficiency and curb corruption by controlling the number of administrative agencies with licensing power. The law also limits the matters subject to licensing requirements, clarifies and enhances the transparency of licensing procedures, and provides time limits within which authorities must act on licenses.<sup>35</sup> Official news media have argued that the Licensing Law is a significant step toward the rule of law, declaring that it “prompted the government to start a revolution with respect to limiting its authority and protecting private rights.”<sup>36</sup> In March 2005, the People’s Daily reported that the State Council had canceled or rectified more than 1,795 administrative licenses since the Licensing Law became effective.<sup>37</sup> Although the law is potentially a significant development in limiting bureaucratic discretion, most of its enforcement provisions emphasize government supervision and inspection, rather than citizen enforcement through the courts.<sup>38</sup>

The Chinese government continues to work on a comprehensive Administrative Procedure Act (APA), but the law appears to be mired in drafting debates.<sup>39</sup> The APA would be the first comprehensive national law on administrative procedure and is expected to fill gaps in China’s existing administrative law framework. Drafts of the law have been under consideration for several years.<sup>40</sup> The law was not included in the 2005 legislative plan for the NPC, however, and sources with knowledge of the drafting process suggest that it could be several years before it is enacted.<sup>41</sup>

*Implications of Developing Legal Constraints on State Power*

The Chinese government has placed heavy rhetorical emphasis on respect for the Constitution and “administration according to law,”<sup>42</sup> and some of the laws and policies described above are positive steps toward these goals. Government officials retain enormous discretion, however, and existing legal mechanisms neither permit Chinese citizens to enforce their constitutional rights nor provide a consistent and reliable check on arbitrary administrative acts. Given such problems and the limited independence of Chinese courts [see Section V(c)—China’s Judicial System], prospects are limited for the development of true legal restraints on state power.

V(c) CHINA’S JUDICIAL SYSTEM

FINDINGS

- Chinese judicial officials announced ambitious reform goals in 2005 that would address structural problems affecting the Chinese judiciary. These include changes to court adjudication committees, the system of people’s assessors, and judicial review of death penalty cases.
- Communist Party authorities and local governments continue to limit the independence of China’s courts. Internal administrative practices of Chinese courts also compromise judicial efficacy and independence.
- The Chinese judiciary has improved the educational level of Chinese judges and the quality of their judicial opinions. Rural courts, however, are rapidly losing judges to urban areas.

*Plans for Ongoing Reform*

Judicial reform plans that Chinese authorities currently are considering appear to be aimed at addressing a range of structural problems in the Chinese judiciary. Recent efforts by senior Chinese leaders to tighten social and political control raise questions about whether these plans will actually be implemented.<sup>1</sup> An important test of official intent to reform the judiciary in a meaningful way will be whether the Supreme People’s Court (SPC) Five-Year Plan for court reform, which has yet to be released, includes details on how to implement the reforms discussed below.

In 2005, Chinese court authorities set out a framework for continuing judicial reform.<sup>2</sup> According to both the SPC work report and media reports on the contents of the draft SPC Five-Year Plan (2005-10), reform goals include:

- Changes to judicial review of death penalty cases. Chinese officials and domestic sources indicate that the government has already decided to return the power of reviewing all death penalty decisions to the SPC [see Section III(b)—Rights of Criminal Suspects and Defendants].
- Revisions to the court adjudication committee system. Judicial authorities are considering structural reforms to the system of court adjudication committees. These committees of court presidents and other administrative personnel are the highest authority in Chinese courts, but their practices challenge principles of judicial independence. They often are the

vehicle for outside pressure to reverse decisions in individual cases, for court officials to overrule the decisions of trial judges, or for trial judges to seek internal advisory review of cases before them. Officials and scholars currently are divided over different plans for reforming these committees.<sup>3</sup>

- Changes to rehearing procedures. Rehearing procedures permit courts and adjudication committees to reopen and review final decisions with few practical limits.<sup>4</sup> Extensive use of rehearing procedures undermines the finality of court decisions.<sup>5</sup> Proposed reforms may limit the number of times a case may be reviewed, but may also make it easier for parties to request a rehearing.<sup>6</sup>

- Strengthening the people's assessor system. In May, an SPC directive entered into force regularizing the practice of using ordinary citizens selected by court personnel to participate in court hearings. The directive clarifies that these laypersons enjoy the same powers as judges, including determining the facts and interpreting the law. Chinese authorities promote this practice as an anti-corruption device allowing popular supervision of the judiciary.<sup>7</sup>

- Regularizing the use of forensic determinations and expert testimony. A National People's Congress decision issued in February 2005 bars courts and justice bureaus from establishing for-profit forensics centers to provide expert testimony.<sup>8</sup> This practice has raised substantial ethical and legal questions concerning the fairness of trials.<sup>9</sup> Many Chinese courts, however, commonly depend on the revenue generated by these centers to support their operations.<sup>10</sup>

Party interests continue to influence judicial reforms. For example, Ministry of Justice efforts to strengthen the role of local judicial bureaus in resolving local disputes are directly linked to the Party's "harmonious society" campaign aimed at reducing social unrest.<sup>11</sup> In December 2004, two well-known legal scholars gave unusually candid public interviews about judicial reform proposals they had prepared at the SPC's request. The scholars noted the expansive nature of their proposals, which included guaranteeing independence for Chinese judges in deciding cases and forbidding court officials and adjudication committees to interfere in trial judge deliberation.<sup>12</sup> Despite having commissioned the proposals, the SPC publicly distanced itself from the authors and criticized them.<sup>13</sup> The People's Daily noted that the "Supreme People's Court has ruled out the scenario of radical judicial reform in the short term."<sup>14</sup> These responses suggest that judicial authorities remain wary of creating perceptions that they are trying to "Westernize" China and are being careful to curtail excessively independent reform efforts.<sup>15</sup>

#### *Growing Professionalism, But Continuing Structural Problems*

The Chinese judiciary continues to improve the educational levels of judges and the quality of their judicial opinions. According to SPC statistics, about 40 percent of Chinese judges had earned a 4-year university degree in 2003, a 21 percent increase since 1998.<sup>16</sup> Pursuant to SPC directives, local courts continue to experiment with publishing their decisions online and providing state-

ments of legal reasoning supporting their decisions.<sup>17</sup> Central government efforts to compel rural courts to meet national standards for judicial qualifications and a wide gap in judicial salaries between rich urban areas and poor rural ones have weakened rural courts. Rural courts are losing talented judges to urban areas and facing difficulties hiring new ones, leading to the aging and thinning of the ranks of the rural judiciary.<sup>18</sup>

Chinese judges are subject to external interference that limits their independence. Local governments influence courts through their control over judicial funding and appointments, and frequently use this influence to protect local interests.<sup>19</sup> Party authorities often intervene in politically sensitive cases and routinely screen court personnel decisions.<sup>20</sup> Since the early 1990s, local people's congresses have exercised increasing influence over court decisions.<sup>21</sup> Public opinion is an increasing source of pressure on Chinese courts, through sensationalistic media reporting on cases.<sup>22</sup>

Internal administrative practices commonly used in Chinese courts also reduce judicial effectiveness and independence. Chinese courts frequently evaluate judicial efficiency and assign bonuses or sanctions by using "case closure ratios"—the ratio of closed to filed cases during a given year.<sup>23</sup> To generate high ratios, Chinese courts often resort to unscrupulous means, including pressuring parties to agree to mediated outcomes and refusing to accept cases filed late in the year. Court responsibility systems discipline judges for a range of errors, including appellate reversals for legal error. Punishments include criticism, fines, limited career prospects, and criminal sanctions.<sup>24</sup> These systems encourage judges to rely on internal advisory requests (*qingshi*) to ask for advance guidance from higher court authorities about how to decide cases in order to avoid punishment.<sup>25</sup> As both Chinese officials and scholars have noted, this practice harms judicial fairness by separating actual court decisions from trials, and by making subsequent appeals (to the same entity that responded to the request for review) a formality.<sup>26</sup>

#### V(d) DEMOCRATIC GOVERNANCE AND LEGISLATIVE REFORM

##### FINDINGS

- China has an authoritarian political system controlled by the Communist Party. Party organizations formulate all major state policies before the government implements them. The Party dominates Chinese legislative bodies such as the National People's Congress and fills important government positions at all levels by an internal selection process. China lacks meaningful elections for significant political positions.
- Chinese authorities have introduced limited elements of political participation at the lowest levels of government to enhance their ability to govern. These elements include direct elections for village and residents committees, local people's congress elections, and some popular input into the selection of low-level government and Party officials. The Party controls these selection and electoral processes by screening, and often selecting, the candidates.

- Chinese citizens are attempting to use the limited political space created by official reforms to protect their rights and interests, but Party officials and local governments often suppress these efforts, leading to social unrest.

### *Introduction*

Since the 1980s, Chinese leaders have introduced and pursued limited policies to encourage popular participation in local political institutions. These include village and residents' committees (VCs, RCs), local people's congresses (LPCs), and various systems allowing some popular input into the selection of lower-level government and Party officials. Chinese leaders introduced these reforms to enhance the Party's ability to govern, limit the power of individual cadres, and improve China's international image, among other policy goals.<sup>1</sup> Such reforms partially check the behavior of local officials, since they must consider public opinion in addition to the demands of their superiors.<sup>2</sup>

The Party has refused, however, to compromise the principle of Party control over all key political institutions and policies. Central authorities also suppress local reforms that cross boundaries that they have set, such as direct popular elections for township government leaders.<sup>3,9</sup> Party officials channel political participation into outlets that the Party can monitor and control.<sup>4</sup> Without free and open public participation, implementation of certain reforms remains piecemeal and pro forma.<sup>5</sup>

The Party has initiated these political reforms to strengthen Party rule by co-opting popular political participation, rather than pursuing it as an independent good. The official communiqué of the Communist Party's 4th Plenum in September 2004 emphasized this goal, stating that the Party should:

continue to enforce and improve the existing practices of democratic recommendation and democratic evaluation of officials, multi-candidate competitive selections for official posts, opinion solicitation prior to appointment of new officials, and voting by all members of a Party committee (rather than arbitrary decisionmaking by committee heads).<sup>6</sup>

The focus on recommendation rather than nomination, selection rather than election, and decisionmaking by all members of a Party committee, rather than by representative vote, indicates the Party's intent to use popular participation as a utilitarian tool of governance, rather than as a stepping stone to representative democracy.<sup>7</sup>

The impact of political reforms at the local level has been limited. In some cases, reforms have produced competitive elections for local office and have exposed citizens to electoral processes.<sup>8</sup> Reforms have also created limited public forums for local residents to challenge some local government actions<sup>9</sup> and created popular expectations for changes in other areas, such as cadre recruitment.<sup>10</sup> Limited public participation and continued tight Party control, however, generate problems and conflict in the Chinese political system.<sup>11</sup> Organizations having some popular legitimacy, such as directly elected village committees, frequently clash with Party officials and higher-level governments.<sup>12</sup> In September 2005, township authorities suppressed a popularly elected recall committee in

Taishi village, Guangdong province, that was part of a citizen effort to use national election laws to remove the village committee head.<sup>13</sup> Without independent political organizations or open campaigning, some candidates rely on clan ties to win elections.<sup>14</sup> The refusal of central officials to allow meaningful citizen political participation above the lowest levels of the political system blocks the expansion of political freedom while generating internal tensions.

*Village/Residents' Committee Elections*

The Chinese government has attempted to reinvigorate local governance by supporting the direct election of VCs since the 1980s and urban RCs since the 1990s.<sup>15</sup> After local experiments with VC elections in the early 1980s, the central government formally approved them in a 1987 experimental law.<sup>16</sup> With support from the Ministry of Civil Affairs (MOCA) officials and grassroots efforts by rural residents, direct VC elections spread nationally during the 1990s.<sup>17</sup> Since 1998, national law has required direct elections to select VC members, although this requirement has not been implemented everywhere.<sup>18</sup> Urban RC elections only developed recently, despite prior 1989 legislation permitting local experiments in direct RC elections. In 1999, MOCA organized a pilot project for holding direct RC elections in 12 selected cities.<sup>19</sup> The reform has been extended and major urban centers such as Beijing and Shanghai have held direct RC elections.<sup>20</sup> Guangxi province adopted a province-wide requirement for direct RC elections in 2002.<sup>21</sup>

VC and RC elections remain subject to Party and government controls. Party authorities and township governments control electoral procedures by using county election leadership groups and village election commissions to supervise election proceedings, certify lists of candidates, and approve the results.<sup>22</sup> Election committee members often are designated by existing village committee heads or appointed by township governments. Heads of village election committees generally must be Party members.<sup>23</sup> According to one study of local elections in Jilin province, 66 percent of officials surveyed said that the village Party secretary himself headed their local election committee.<sup>24</sup> As one Chinese scholar noted, this "Party-controlled system not only facilitates the intervention of the village Party secretary in the electoral process, but it also suppresses the inclination of villagers to actively participate in the elections."<sup>25</sup>

Structural problems continue to limit both the fairness of VC and RC elections and the independence of these institutions. Migrants often remain excluded from local elections, particularly where the allocation of local land rights is at stake.<sup>26</sup> Regulations limit the ability of candidates to conduct many campaign activities.<sup>27</sup> Despite MOCA efforts to limit their use, proxy voting and floating ballot boxes call into question the fairness of many VC and RC elections.<sup>28</sup> As MOCA officials acknowledge, current law does little to protect the electoral rights of Chinese citizens.<sup>29</sup> Many local governments delegate administrative tasks to VCs and RCs and control them by fiat.<sup>30</sup>

Central authorities have not permitted direct elections beyond local levels in order to prevent any challenge to Party control. In 2000, central government officials suppressed efforts in Sichuan

province to organize direct elections for a township government, which is one level above the village level.<sup>31</sup> Unlike the 1990s, when they actively supported VC elections, MOCA officials currently appear less inclined to support expansion of urban RC elections. MOCA officials say that only 10 percent of all RCs nationwide are currently chosen through direct elections, and expanding that percentage will depend on the interest of local authorities.<sup>32</sup> Some local governments have made RC elections a long-term priority. According to the five-year development plan issued by the Shenzhen government in February 2005, at least 70 percent of municipal RCs are to be chosen through direct election by 2010.<sup>33</sup>

Despite these limitations, some Chinese officials are working to ensure a degree of transparency and openness in VC and RC elections. One study conducted in Fujian province found that village representative assemblies controlled selection of the electoral commission in 75.6 percent of the villages surveyed.<sup>34</sup> Nationally, MOCA officials are seeking revisions to existing laws governing RCs and VCs and have hosted hearings calling for greater RC and VC independence. MOCA officials also advocate greater flexibility for candidates to campaign for office.<sup>35</sup>

#### *Local People's Congresses*

The authority of local people's congresses (LPCs), the legislative branch of local government, has grown since the early 1990s, in part as a result of Party decisions to enlarge their role. LPCs have also expanded their power by exercising their right to supervise and review the actions of local governments and courts.<sup>36</sup> LPCs appraise and criticize local officials, require government agencies to respond to requests for information, and form special commissions to investigate issues of public concern.<sup>37</sup> LPCs also increasingly use public hearings (codified under the 2000 Legislation Law) as a means to solicit public views on pending legislation.<sup>38</sup>

Although relatively more powerful than in the past, LPCs remain handicapped by infrequent meetings, biases against rural and migrant populations, a lack of resources, and continuing Party control over important decisions.<sup>39</sup> County and township LPC delegates serve five-year terms but meet in annual plenary sessions lasting only a few days.<sup>40</sup> Real LPC authority resides in two leadership groups, the standing committee and the presidium.<sup>41</sup> Membership in both of these groups is tightly controlled. For example, previous LPC leaders generally select LPC presidium members in advance and vet their choices with local Party authorities.<sup>42</sup> LPC membership discriminates against migrants and rural residents. Under national law, rural LPC deputies represent four times as many constituents as their urban counterparts.<sup>43</sup> Voter registration requirements often inhibit migrants from voting in their places of actual residence, although some localities have undertaken initiatives to reduce these barriers.<sup>44</sup>

The government and Party have ensured that LPCs do not develop into fully representative legislative bodies. Township LPCs have been directly elected since 1953, and county LPCs since 1979, but these elections remain subject to regulatory controls and direct Party interference. Party leaders see electoral reform as a threat



to their control. For example, during a brief flirtation with political reform in 1979–80, authorities relaxed LPC election rules to allow a degree of competition and campaigning.<sup>45</sup> In the ensuing 1980 elections, student and democracy activists used this leeway to debate political issues and challenge government authority. Chinese authorities responded with a general crackdown on elections and adopted restrictive amendments to relevant laws that removed the competitive, democratic elements from LPC elections.<sup>46</sup>

Officials employ a variety of techniques to limit the democratic nature of LPC elections. Election laws allow the Party and the mass organizations that it controls to submit lists of approved cadres for LPC positions.<sup>47</sup> While election laws permit groups of 10 or more voters to nominate LPC candidates, nomination procedures often raise obstacles to independent candidates, thus ensuring that only Party-nominated candidates survive the nomination process and reach the election.<sup>48</sup> Election regulations impose very short deadlines for holding elections. Official candidate lists need only be released five days before the election,<sup>49</sup> limiting a candidate's opportunity to campaign for voter support. Practices commonly associated with election fraud, such as the use of floating ballot boxes and proxy voting, plague many LPC elections.<sup>50</sup>

Party officials use local election committees to maintain direct control over LPC elections. Formalized in a 1983 NPC directive, but never incorporated into national election laws, election committees determine voter eligibility, issue candidate lists, conduct elections, and report the results.<sup>51</sup> Party-led county election leadership groups direct local election committees<sup>52</sup> and are headed by township Party secretaries. Election committee members are often themselves candidates for LPC seats.<sup>53</sup> Thus, election committees often have an interest in limiting competition and in assuring that LPCs remain relatively passive. Rules granting election committees nearly unlimited discretion in how to select final candidates facilitate this result.<sup>54</sup> Election committees often resort to screening processes that are neither transparent nor democratic to narrow the candidate field to an acceptable few.<sup>55</sup> As the NPC Legal Affairs Office has noted, these procedures "easily lead in practice to behind-the-scenes manipulation of elections."<sup>56</sup> Chinese scholars have criticized such practices, noting that "[c]ontrols and limitations on LPC candidate nominations ensure that individuals nominated by LPC presidiums win, and that candidates nominated by the Party win. Organizational tactics and outright illegal conduct in handling LPC candidate nominations have in practice meant that many township LPC elections lack any democratic nature. . . ." <sup>57</sup>

The practices used to elect LPC members discriminate against individuals who run as independent candidates. During the 2003 Beijing district LPC elections, for example, 23 independent candidates attempted to run under the independent nomination procedure.<sup>58</sup> These candidates included scholars and activists who had gained notoriety for their challenges to government policies.<sup>59</sup> Only two were actually elected.<sup>60</sup> Government restrictions prevented candidates from independently making public speeches and meeting the voters.<sup>61</sup> Local electoral commissions used designated

groups of voters to screen potential candidates, preventing many independent candidates from appearing on the ballot.<sup>62</sup>

In October 2004, the NPC amended the LPC election law, introducing several minor reforms.<sup>63</sup> The amended law expressly allows electoral commissions to use primary elections to narrow the candidate list.<sup>64</sup> The amended law also permits the electoral commission itself to organize public events to allow the candidates to respond to questions from the public.<sup>65</sup> These reforms create a vaguely defined zone of authorized political participation in LPC elections that future reformers might use to press for greater accountability. Both reforms resulted from pressure by local activists in the 2003 LPC elections.<sup>66</sup>

Despite these positive changes, the 2004 amendments represent only a small step towards making China's LPC elections more competitive and democratic. The reforms merely reintroduce electoral processes, such as limited campaign events and open primaries, that Chinese authorities had abolished after the 1980 elections discussed above. Moreover, many provincial regulations already permitted these electoral processes.<sup>67</sup> The reforms do not address the deeper structural problems of continued Party domination of LPC electoral systems, such as Party control of nomination procedures and electoral commission discretion over candidate lists.<sup>68</sup>

#### *Selection of Local Party and Government Officials*

Party organizations use internal elections to fill leadership positions. Local Party committees must submit proposed lists of candidates to higher authorities for clearance before holding such elections. Candidates must undergo background checks for political reliability. Party authorities frequently convene small groups of Party members in advance to elicit their views about candidates, using this information to narrow the candidate list. This process ensures that the election is merely a ratification of the Party leadership's choices.<sup>69</sup>

Since the early 1990s, many Chinese localities have experimented with more open forms of Party elections.<sup>70</sup> One system in wide use for selecting village Party secretaries is an open primary system in which both Party and non-Party members are allowed to nominate candidates. Voting in the Party election, however, is limited to Party members alone.<sup>71</sup> A 2004 experiment in Sichuan province relied on a weighted election to generate two final candidates for village Party secretary. The votes of local Party members counted for 50 percent of the total, local officials for 25 percent, and other citizens in the village for the remaining 25 percent. Village Party members then selected the ultimate winner.<sup>72</sup>

In recent years, other localities have adopted similar techniques for the selection of low-level government officials.<sup>73</sup> Despite official claims to the contrary, their actual democratic nature remains limited. Officials retain the power to decide the final outcome. For example, in 2004, Jiangsu province chose 295 officials, ranging from county government heads to the deputy chief of the provincial development commission, through a "public nomination/public selection" procedure. Actual public participation included only passive observation of candidate speeches and minimal input by chosen officials and citizens into the selection process.<sup>74</sup>

These reforms are an effort to improve the Party's governance of society by permitting limited public participation and do not indicate an underlying commitment to democracy. As one Chinese commentator noted, "these reforms are an improvement, but remain but a transitional mechanism. [They] are not actually a reform of the political system, but merely an internal, technical adjustment of the system of cadre management."<sup>75</sup>

## V(e) ACCESS TO JUSTICE

### FINDINGS

- Chinese citizens resort to thousands of "letters and visits" (*xinfang*) offices for redress of their grievances because of deficiencies in the legal system and the absence of alternative channels for political participation.
- More citizens are petitioning *xinfang* offices, although only a small fraction of grievances are resolved. Citizen frustration is finding an outlet in collective petitions that take the form of mass demonstrations or strikes. Because Chinese authorities punish local officials more severely for large protests, citizens think that collective petitioning is more likely to gain results.
- The Chinese government passed new regulations in 2005 designed to make the *xinfang* system more responsive to citizen complaints, but these regulations also expand the role of *xinfang* offices and the incentives for citizens to resort to collective petitioning.

### *Citizen Reliance on Petitioning*

Since the 1950s, "letters and visits" (*xinfang*) offices have been a channel for citizen requests for assistance in resolving grievances and appeals of government decisions outside the judicial system.<sup>1</sup> *Xinfang* offices are found throughout the Chinese bureaucracy, including offices of the Communist Party, police, government, procuracy, courts, and people's congresses. *Xinfang* offices help central leaders administer the country, serving as a channel for them to obtain information on grassroots conditions and allowing them to use public input to monitor the actions of lower-level officials.<sup>2</sup> Individual petitioning may be as simple as one dissatisfied individual visiting multiple government *xinfang* offices.<sup>3</sup> Collective petitioning may involve organized demonstrations, speeches, and marches of hundreds or thousands of people seeking to present their grievances to officials.<sup>4</sup>

Citizen petitioning of *xinfang* offices reflects a number of structural problems in the Chinese political and legal systems. Particularly in rural China, a single Party secretary often holds virtually unchallenged political power. Ordinary citizens have no ability under current law to organize independent organizations to protect their rights,<sup>5</sup> and have only limited means to participate in the selection of local officials.<sup>6</sup> Moreover, judicial institutions are subject to extensive local Party and government interference and provide limited protection for citizen rights.<sup>7</sup> Without effective political or legal channels of redress, citizens often have little choice but to petition higher authorities repeatedly to seek help in resolving their grievances.

Despite the gradual development of the formal Chinese legal system, Chinese citizens continue to rely heavily on petitioning to resolve their grievances. According to estimates by national *xinfang* officials, petitions to Party and government *xinfang* bureaus at the county level and higher total about 11.5 million per year.<sup>8</sup> In contrast, the entire Chinese judiciary handled 6 million legal cases in 2004, of which only 91,192 were administrative cases.<sup>9</sup> Even within formal legal institutions, citizens commonly resort to petitioning to resolve their grievances; petitioners presented 4.2 million *xinfang* petitions to Chinese courts in 2004.<sup>10</sup>

Petitioning practices and institutions challenge the development of the rule of law in China. Petitioners often contact any official or bureau that they think may be able to intervene and assist them, regardless of whether or not the official or bureau has formal authority over the issue. Similarly, official resolution of petitions often depends on the willingness of high officials to intervene rather than on the legal merits of the case.<sup>11</sup> Many petitions are appeals of court decisions outside of formal legal channels.<sup>12</sup> As one Chinese observer has noted, “*Xinfang*—a mechanism originally established to resolve political problems, has gradually evolved into a system of assistance serving as a replacement for the judicial system.”<sup>13</sup> Despite heavy citizen reliance on *xinfang* offices, individual petitioning rarely resolves underlying grievances. According to a 2004 survey of the *xinfang* system conducted by the Chinese Academy of Social Sciences, government bureaus address only 0.2 percent of petitions filed. Over half of petitioners surveyed experienced beatings or other reprisals by government officials as a result of their petitioning.<sup>14</sup> *Xinfang* offices lack authority to resolve petitions, frequently refer petitioner cases from bureau to bureau without resolution, handle petitions under opaque and secretive procedures, and are the source of a wide range of human rights abuses.<sup>15</sup> Lacking other channels for redress of grievances, petitioners sometimes spend years or decades living in poverty in Beijing slums as they pursue their petitions.<sup>16</sup>

Although individual petitioners rarely succeed under the *xinfang* system, collective petitioning efforts occasionally compel officials to act on citizen grievances.<sup>17</sup> This result occurs in part because local officials who experience collective petitions face punishment under official *xinfang* responsibility systems.<sup>18</sup> These systems apply progressively harsher disciplinary sanctions to government officials depending on the scale of the mass petitions and the bureaucratic level to which they are directed, rather than linking punishment solely to the legal merit of the complaints.<sup>19</sup> For example, Anhui provincial regulations impose formal criticism on local officials who face mass petitions (over 50 petitioners at the provincial capital or over 20 at the national level) that remain for more than 48 hours at government agencies.<sup>20</sup> Mass petition movements of over 100 people to the provincial capital (or over 30 to Beijing) result in suspension of the responsible official.<sup>21</sup>

*Xinfang* responsibility systems create an incentive system that encourages petitioners to organize larger petition movements directed at increasingly higher levels of government. Because the systems apply harsher disciplinary sanctions to officials who experience larger and more frequent mass petitions, petitioners have an

incentive to take their grievances to the streets to force officials to act. Local officials have an interest in suppressing collective petition movements and preventing petitioners from approaching higher authorities. Foreign NGOs have documented the efforts by local and national officials to suppress mass petition movements violently.<sup>22</sup> This cat-and-mouse struggle between petitioners and local authorities appears to be producing a group of experienced petition leaders who are capable of operating in secrecy and mobilizing large groups of petitioners.<sup>23</sup>

The incentive structure described above appears to be causing a rapid increase in the number of citizen petitions. Officials at the national *xinfang* bureau report that the total number of petitions has increased every year since 1993.<sup>24</sup> Petitions to the Supreme People's Court increased by 23.6 percent in 2004.<sup>25</sup> Petitioners are focusing on higher levels of government. In 2003, the national *xinfang* bureau registered a 14 percent increase over 2002 in the total number of petitions, but provincial and local bureaus only registered minimal increases. Similarly, national-level government agencies received 46 percent more petitions in 2003 than in 2002, while provincial and local agencies had only minor increases.<sup>26</sup> Collective petitions are increasing as a percentage of total petitioning activity. While the total numbers of letters and in-person visits by individual petitioners in one surveyed set of villages remained relatively stable between 1995 and 2000,<sup>27</sup> the numbers of collective petitions nearly tripled during the same period.<sup>28</sup>

#### *2005 Amendments to Xinfang Regulations*

In January 2005, the State Council responded to criticism of the *xinfang* system by amending the national *xinfang* regulations.<sup>29</sup> The amended regulations clarify that officials must resolve petitions in accordance with laws and regulations.<sup>30</sup> Petitioners must raise violations of their legal rights with the courts or other legally mandated entities.<sup>31</sup> The amendments remove language suggesting that the *xinfang* system can be an alternative to legal remedies provided in the Administrative Litigation and Administrative Reconsideration Laws. The amendments strengthen the finality of decisions and permit hearings to be held to resolve petitions.<sup>32</sup> The amended regulations also encourage local officials to allow legal aid groups to assist in resolving petitions under the guidance of *xinfang* bureaus.<sup>33</sup>

Despite the positive aspects of the 2005 amendments, however, they also reinforce the *xinfang* institutions and responsibility systems that are at the root of existing problems. The national *xinfang* bureau is charged with creating a nationwide system to track petitions.<sup>34</sup> All local governments must now adopt *xinfang* responsibility systems and make the success of officials in handling petitions an element of official performance reviews.<sup>35</sup> The new regulations also require that all county and township governments and their subordinate administrative bureaus establish a system of “*xinfang* leadership reception days” for petitioners to approach responsible officials of various government bureaus directly.<sup>36</sup> Finally, the regulations grant *xinfang* officials a degree of “soft power” to affect the disposition of particular cases<sup>37</sup> and require

regular reporting of petition statistics to higher government authorities.<sup>38</sup>

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

##### FINDINGS

- The Chinese government has made progress in bringing its laws and regulations into compliance with its WTO commitments. Though significant flaws remain, the new body of commercial laws has improved the business climate for foreign companies in China. With new, more transparent rules, the Chinese trade bureaucracy has reduced regulatory and licensing delays.
- The Chinese government tolerates intellectual property infringement rates that are among the highest in the world. Steps taken by Chinese agencies in the past 12 months to improve the protection of foreign intellectual property have not produced any significant decrease in infringement activity. The Chinese government has not introduced criminal penalties sufficient to deter intellectual property infringement.
- The Chinese government has not fully implemented the key WTO principles of national treatment, non-discrimination, and transparency in such areas as distribution and agriculture. To address these problems, the Chinese government must continue economic reforms, establish a more transparent and consistent regulatory and licensing system, implement and enforce distribution rights for foreign companies, and strengthen enforcement of intellectual property laws.

##### *Developments in Commercial Rule of Law*

The Chinese government has made progress in bringing its laws and regulations into compliance with its WTO commitments. Since joining the WTO in 2001, central, provincial, and local governments have reviewed more than 2,500 trade-related measures<sup>1</sup> and the Supreme People's Court (SPC) has reviewed all of its approximately 2,600 interpretations and related documents,<sup>2</sup> to ensure that they comply with WTO requirements. Despite these positive steps, the rule of law remains weak in China and this, among other factors, has hampered the timely and efficient implementation of China's WTO commitments.

Though significant flaws remain, the new body of commercial laws has improved the business climate for foreign companies in China.<sup>3</sup> With new, more transparent rules, the Chinese trade bureaucracy has made some progress in reducing regulatory and licensing delays.<sup>4</sup> The new laws and regulations have reduced uncertainty about contractual rights and obligations.<sup>5</sup> Foreign companies are increasingly using Chinese courts to resolve business disputes, and the overall professional quality of judges has improved [see Section V(c)—China's Judicial System]. Improvements in the legal regime are the primary reason that more U.S. companies in China planned to expand their operations in 2005.<sup>6</sup>

The WTO principles of non-discrimination and transparency, introduced to government officials at all levels by the new commercial laws, are having a positive effect on some aspects of non-com-

mercial public policy as well. A former Chinese trade negotiator noted that WTO transparency requirements have put pressure on officials to curb the use of internal, non-public rules to regulate corporate and citizen behavior.<sup>7</sup> Chinese citizens, private companies, and government agencies have also used WTO terminology regarding national treatment when criticizing regulatory discrimination.<sup>8</sup> For example, Chinese scholars have criticized the lack of “urban resident treatment,” a term derived from the WTO term for non-discriminatory treatment, for rural residents in regulations that favor urban residents [see Section III(j)—Freedom of Residence and Travel].<sup>9</sup> In their discussions of such discrimination, both the central government and local governments have also used WTO-derived terms, promising expanded “urban resident treatment” to all citizens.<sup>10</sup>

Nonetheless, the Chinese government still maintains measures that undermine implementation of its WTO commitments. For example, although the Chinese government implemented WTO-mandated tariff reductions in a timely manner, Chinese customs officials continue to impose arbitrary tariff classifications on imports at different ports of entry.<sup>11</sup> Likewise, a new, draft Telecommunications Law could clarify the nature of market regulations and the procedures for foreign firms to gain the market access guaranteed in China’s WTO commitments, but has yet to be published for public comment.<sup>12</sup>

The Chinese government has also proposed and implemented new measures that appear to protect and promote domestic industry and disadvantage foreign business, sometimes in contravention of its WTO commitments. A senior official at the Ministry of Commerce (MOFCOM) affiliated Beijing WTO Affairs Research and Consulting Center called on the Chinese government in late 2004 to focus on the “threats of imports and increased competition from foreign goods, services, and enterprises.”<sup>13</sup> Two measures, although now resolved, illuminate policy efforts to protect domestic industry. In 2004, the government sought to implement a new commercially onerous wireless networking standard that mandated technology transfers from foreign to domestic high-technology companies, despite a WTO commitment to use international standards except when ineffective or inappropriate.<sup>14</sup> For over two years following WTO accession, the Chinese government maintained an export tax rebate for domestically produced integrated circuits designed to compel foreign firms to relocate their design and fabrication facilities to China.<sup>15</sup> The U.S. government asserted that the policy violated a WTO prohibition against tax policies favoring domestic production.

The government has adopted a steel industry development policy that will raise barriers to entry for foreign companies by imposing high capital requirements and limitations on joint venture partners.<sup>16</sup> Although this policy may be consistent with WTO requirements, it exploits broad WTO rules to protect or develop Chinese industries at the expense of foreign firms. The United States and China’s other WTO partners will need to remain vigilant to ensure that the government’s implementation of WTO obligations helps create a robust commercial legal system, rather than creating in-

centives to implement development policies consistent with WTO requirements, but acting as subtle barriers to trade.

#### *Infringement of Foreign Intellectual Property*

In the past year, the Chinese government continued to tolerate intellectual property (IP) infringement rates that were among the highest in the world.<sup>17</sup> Copyright piracy rates in China currently exceed 90 percent in some industries,<sup>18</sup> including rates of 95 percent for motion pictures and 90 percent for software.<sup>19</sup> In 2004, U.S. Customs seized more Chinese products for trademark violations than from any other country.<sup>20</sup> In early 2004, Vice Premier Wu Yi committed her government to reducing the level of IP infringement in China immediately, and reiterated and expanded this commitment to senior U.S. officials at the U.S.-China Joint Commission on Commerce and Trade (JCCT) session in July 2005.<sup>21</sup> As of the publication date of this Annual Report, the Chinese central government has intensified its efforts to combat infringement activities, but has not yet met this goal.

The Chinese government reported that the number of raids conducted and the quantity of pirated products destroyed have increased,<sup>22</sup> but U.S. industry sources say that infringement of foreign intellectual property in China has grown worse since 2003.<sup>23</sup> High infringement rates continue, in part because Chinese authorities have not increased penalties against producers of pirated goods.<sup>24</sup> Infringement rates in South Korea and Taiwan that approached or exceeded 90 percent in the 1980s and 1990s were brought under control after the central government instituted new deterrent penalties and specific legal measures.<sup>25</sup> A specific licensing requirement for optical disc production, for example, helped the Hong Kong government curb piracy at its source.<sup>26</sup>

The Chinese government has not introduced criminal penalties sufficient to deter IP infringement. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights requires WTO Members to maintain criminal IP penalties, including monetary fines “sufficient to provide a deterrent.”<sup>27</sup> Current provisions in China’s Criminal Law are inadequate to deter infringement<sup>28</sup> and serious IP cases remain in the administrative enforcement system, which has proven ineffective at deterring violators.<sup>29</sup> In 2004, the Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP) issued an interpretation on transferring IP infringement cases from administrative to criminal enforcement without sharing a draft of its decision with WTO members for comment, despite promising to do so.<sup>30</sup> The U.S. government subsequently determined that the revisions “did not go far enough to be an effective deterrent.”<sup>31</sup>

Steps taken by Chinese agencies in 2004 to improve the protection of foreign IP have not produced a significant decrease in infringement activities. The SPC and SPP interpretation described above reduced the threshold for criminal IP infringement by 40 percent in some cases but still calls for calculating infringement using the retail value of the illegal goods, rather than the value of genuine products.<sup>32</sup> Consequently, the new lower threshold will be limited in its effectiveness. In July 2004, China’s Patent Reexamination Board invalidated a U.S. company’s pharmaceutical patent



after determining that the company did not submit sufficiently detailed laboratory data during the examination process, though the data was not required under Chinese regulations in effect when the examination took place.<sup>33</sup> In addition, government authorities had designated the U.S. drug a “controlled substance” in its marketing authorization despite the wide availability of counterfeit substitutes.<sup>34</sup> Chinese pharmaceutical makers are free to manufacture the U.S. company’s drug without fear of government sanctions.

The Chinese government has ample enforcement resources, but appears to lack the will to prevent infringement of IP from thriving in China. One U.S. expert told a Commission Roundtable that local police generally resist efforts to shut down commercial infringers because large-scale pirating efforts support the local economy and have the financial support of key local officials.<sup>35</sup> The Chinese leadership’s repression of Falun Gong demonstrates that police can stop the production of “illegal publications” when Party and government leaders believe it is in their best interest to do so.<sup>36</sup> Before the state banned Falun Gong in 1999, the spiritual group’s materials were found throughout China.<sup>37</sup> Since the crackdown, the only publicly available materials in China that discuss Falun Gong are anti-Falun Gong materials published by the government.

#### *Market Access for Agricultural Products*

In the past year, the Chinese government took a number of actions that resolved significant bilateral concerns about agricultural trade. These actions included reopening China’s market to U.S. poultry exports,<sup>38</sup> granting market approval for U.S. agricultural biotechnology products,<sup>39</sup> and increasing formal coordination efforts between inspection and quarantine officials in both countries.<sup>40</sup> In addition, the Chinese government’s implementation of WTO agricultural commitments has generated greater institutional capacity among agricultural trade officials and made the administration of trade-related agricultural measures less cumbersome for foreign business. These changes helped China become the fourth largest export market for U.S. agricultural products in 2004, a market that was largely closed to the U.S. before China joined the WTO.<sup>41</sup>

Despite these positive steps, a number of serious problems still exist in the Chinese government’s administration of agricultural trade. The government’s inspection and quarantine system continues to implement discriminatory sanitary and phytosanitary measures with a questionable scientific basis. Officials with the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) have maintained a ban on U.S. beef imports,<sup>42</sup> even though the U.S. cattle surveillance system meets international standards.<sup>43</sup> The Chinese government maintained bans on Florida citrus and U.S. cherries entering the Chinese market through late 2004 despite the lack of a scientific basis for the decision.<sup>44</sup> AQSIQ has also set a limit for selenium in U.S. wheat that is lower than the international standard. The requirement, if enforced, could result in a significant decrease in exports of U.S. wheat to China.<sup>45</sup>

The Chinese government sets preferential shipping rates and provides an export tax rebate on corn exports.<sup>46</sup> Both represent potential export subsidies that could run counter to WTO rules.<sup>47</sup>

When it acceded to the WTO, China promised not to maintain any agricultural export subsidies and agreed to abide by WTO rules proscribing the introduction of such policies.<sup>48</sup> Since then, China has made additional declarations to the WTO Committee on Agriculture certifying that it does not maintain any export subsidies for agricultural products.<sup>49</sup> In the last year, the Chinese government also began to support the rural economy with direct payments to agricultural producers.<sup>50</sup> Although these payments appear to be WTO-consistent, this is the first time since WTO accession that the Chinese government has provided direct support to its agricultural producers and reverses the historical practice of using income generated by agricultural areas to support the urban population.

Legal reform that should liberalize market access for agricultural products is often ineffective because of local differences in implementation and unannounced rule changes that delay agricultural shipments. The Chinese government committed in several WTO agreements to apply its laws in a uniform manner, but central government agencies charged with addressing cases of conflicting application of national and provincial laws have not always been effective.<sup>51</sup> U.S. exporters express concern that inconsistent application of China's inspection and quarantine regime is tied to whether or not the government believes that agricultural imports are necessary to compensate for shortfalls in domestic production.<sup>52</sup> U.S. exporters say that they must pay Value Added Tax (VAT) on corn imports when their products enter China, but domestic producers allegedly "have no VAT directly applied."<sup>53</sup>

#### *Lack of Transparency in Regulatory and Administrative Processes*

The Chinese government does not consistently publish drafts of trade-related measures,<sup>54</sup> and some government agencies do not circulate drafts of commercial laws and regulations to outside groups or individuals, domestic or foreign.<sup>55</sup> Some government agencies will circulate drafts on the condition that the outside party does not share the draft more widely.<sup>56</sup> The government's tendency toward secrecy runs counter to a WTO commitment to provide a meaningful opportunity for appropriate Chinese government authorities to receive comments from outside parties before laws and regulations are implemented.<sup>57</sup> To date, neither the State Council nor the Ministry of Commerce has published a draft of the Anti-Monopoly Law for comment.<sup>58</sup> The SPC and SPP did not release a public draft of their December 2004 "Interpretation Concerning Certain Questions of Using the Criminal Law to Handle Violations of Intellectual Property Rights," despite a central government commitment to do so.<sup>59</sup> Complaints later voiced by the U.S. business community regarding the Interpretation could have been avoided if the Chinese government had solicited comments in advance.<sup>60</sup>

Despite these problems, the Chinese government has taken steps to increase official transparency. The 2004 USTR Report to Congress on China's WTO Compliance noted that the Ministry of Commerce has begun following administrative transparency rules set forth in 2003, and that these rules may serve as a model for other ministries and agencies.<sup>61</sup> The same report found that China's ministries and agencies have a "much better record" in making new or

revised laws and regulations available to the public soon after issuance, an improvement over pre-WTO accession practices.<sup>62</sup> In March 2005, the Party and the State Council issued an opinion directing all levels of government to increase transparency by releasing more information on all their activities.<sup>63</sup> The document did not require decisions to be published, but suggested that disclosure should be the rule, not the exception.<sup>64</sup> Substantive legal changes related to transparency, such as amendments to the Administrative Litigation Law and consideration of the Administrative Procedure Law, have moved slowly [see Section V(b)—Legal Restraints on State Power].

China committed to mandate judicial review of trade-related administrative decisions when it joined the WTO in 2001.<sup>65</sup> The SPC took steps to fulfill this commitment in 2002, but split the court assignment process so that only intermediate or high people's courts may handle WTO-related cases and review anti-dumping decisions.<sup>66</sup> This reassignment and related personnel changes have produced a generally more professional judiciary, but the changes are not always sufficient to ensure independent judicial review in trade-related cases.<sup>67</sup>

#### *Barriers to Entry in Distribution for Foreign Companies*

In 2004, the Chinese government adopted legal measures to comply with its WTO commitment to grant distribution rights to foreign companies, but the procedures and requirements for a distribution license constitute a barrier to market entry.<sup>68</sup> A foreign-invested enterprise (FIE) must form a new company with its own registered capital and legal personality before it can be licensed to distribute products in China.<sup>69</sup> Creating a new company requires both Ministry of Commerce and provincial government approval, and FIEs have found the licensing process slow and non-transparent.<sup>70</sup> In addition, FIEs with distribution licenses sometimes encounter local officials who oppose opening markets that could harm enterprises in their jurisdiction.<sup>71</sup> During the July 2005 JCCT meeting, following significant efforts by the U.S. government and industry, China claimed to have cleared a significant backlog of applications for distribution licenses.<sup>72</sup>

The Chinese government was late in issuing regulations to permit FIEs to sell directly away from a store or other fixed location. Under China's WTO General Agreement on Trade in Services (GATS) commitments, U.S. direct sales companies should have received permission to apply for licenses by the end of 2004. At the July 2005 JCCT meetings, the Chinese government said the State Council would enact a regulation permitting direct selling as soon as it finished its review and approved the measure.<sup>73</sup> In August 2005, the State Council issued both the Regulation on the Administration of Direct Selling and the Regulation Prohibiting Pyramid Selling, the measures governing direct selling.<sup>74</sup> They will come into effect in November and December 2005.

#### *China's Large Procurement Market and Decreasing Foreign Supplier Access*

The Chinese government has not begun the process of acceding to the WTO Agreement on Government Procurement (GPA), as it

promised to do when it joined the WTO. Among other things, the GPA would prevent the Chinese government from discriminating against foreign suppliers in the procurement process. A Government Procurement Law enacted after China's WTO accession requires government agencies to give preference to domestic goods and services.<sup>75</sup> At the July 2005 JCCT meeting, China agreed to accelerate efforts to make an initial offer and to initiate technical consultations with other GPA members.<sup>76</sup>

At the July 2005 JCCT meeting, China also agreed to withdraw a draft regulation that would limit government purchases of software products and services to domestic manufactures.<sup>77</sup> The regulation has caused concern among foreign suppliers of software products and services because it defines domestic software products and services narrowly and does not take into account the investment and work done by foreign software companies in China.<sup>78</sup> It has also raised concerns that the government will use it to limit market access for foreign software companies and that it will lead to increased technology transfer.<sup>79</sup> In contrast to drafts of many other trade-related laws and regulations, the government released the draft government software procurement regulation for public comment, and foreign software producers reviewed the regulation and consulted with the drafters about ways to improve it.

#### *Auto Industry Development*

The development of China's automobile industry in the past year has followed the industrial plan put forward by the Chinese government in 2004.<sup>80</sup> The Auto Industry Development Policy calls for consolidating China's auto industry from the current level of over 100 manufacturers to a smaller number of globally competitive companies.<sup>81</sup> The policy specifically makes the creation of an export auto industry a priority and requires the protection of relevant intellectual property.<sup>82</sup> The implementation of this policy has included the reclassification of imports of complete "knock-down kits" (kits of unassembled auto components requiring only assembly in China) as new automobiles, resulting in a substantially increased duty rate for those imports.<sup>83</sup>

Although the Auto Industry Development Policy proscribes misuse of foreign intellectual property,<sup>84</sup> at least one Chinese automaker has benefited both from the government's policy to promote China's auto industry and from its tolerance of intellectual property violations. In December 2004, GM Daewoo, a subsidiary of General Motors, filed an unfair competition suit in a Shanghai court against Chery Automotive,<sup>85</sup> which received millions of dollars in subsidies from the Ministry of Science and Technology in 2004.<sup>86</sup> The suit alleges that Chery misappropriated GM trade secrets and used them to design its "QQ" model.<sup>87</sup> GM Daewoo also submitted a request to China's Patent Reexamination Board to invalidate the design patent Chery filed on the "QQ" model.<sup>88</sup> Chery subsequently filed a trademark application with the U.S. Patent and Trademark Office seeking to register the Chery name in connection with automobiles, and attorneys for GM have pointed out that similarities between "Chery" and the GM trademark "Chevy" would likely result in consumer confusion.<sup>89</sup>

In August, the Ministry of Commerce issued a new Auto Trade Policy that regulates domestic trade in autos and automotive products as well as applying to the import and export of those goods.<sup>90</sup> The policy confirms that foreign investors may enter the domestic distribution market for autos, part of China's WTO accession commitment to open the distribution sector.<sup>91</sup> It also prohibits the importation of used cars, used car parts, and right-side drive autos.<sup>92</sup> According to an official from the Ministry of Commerce, this policy seeks to create a consolidated and competitive auto distribution industry in China.<sup>93</sup>

## VI. Tibet

### FINDINGS

- The Dalai Lama has said that he does not seek independence and aims for a solution based on Tibetan autonomy within China. But Chinese leaders do not seem to recognize the benefits of moving forward in the dialogue with the Dalai Lama or his envoys. Chinese laws on regional ethnic autonomy contain provisions that could benefit Tibetans and their culture, but poor government implementation of these laws largely negates their potential value.
- Chinese government statistics suggest that Tibetans are not yet prepared to compete in the economic and ethnic environment created by central government policies. The Tibetan rate of illiteracy is five times higher than China's national average. Most Tibetans do not have access to a bilingual education system that can impart skills to help them compete for employment and other economic benefits.
- Chinese laws and official statements lend credibility to Tibetan concerns that programs such as Great Western Development and projects such as the Qinghai-Tibet railroad will lead to large increases in Han migration.
- The rights of Tibetans to their constitutionally guaranteed freedoms of religion, speech, and assembly are subject to strict constraint. Government officials persecute prominent Tibetans, especially religious leaders, believed to have links to the Dalai Lama.

### *Introduction*

The impact of Chinese laws and policies in the Tibetan areas of China shows that the government and Party place economic development ahead of protecting basic human rights, such as the freedoms of religion, speech, and assembly. Chinese officials support their claims of Tibetan progress with statistics that show some economic achievement, but the data also show that the main beneficiaries live in urban areas, where most ethnic Han reside, and not in the rural areas where 87 percent of Tibetans live. Tibetans struggle with poverty, inadequate education, and competition from a growing Han population. The Chinese government can strengthen ethnic and national unity by improving the implementation of the Regional Ethnic Autonomy Law (REAL), and by ensuring that Tibetans can manage their affairs, protect their culture, and become equal competitors with their neighbors.

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

U.S. government policy on Tibet recognizes the Tibet Autonomous Region (TAR) and Tibetan autonomous prefectures and counties<sup>1</sup> in other provinces to be a part of China.<sup>2</sup> The State Department's third annual Report on Tibet Negotiations<sup>3</sup> detailed the U.S. government's steps to encourage Chinese officials to "enter into a dialogue with the Dalai Lama or his representatives leading to a negotiated agreement on Tibet."<sup>4</sup> The report expressed encouragement that Chinese officials invited the Dalai Lama's envoys to visit China for the third time in September 2004 and described the Dalai Lama as someone who "can be a constructive partner as China deals with the difficult challenges of regional and national stability." The report noted the gravity of the issue, saying, "The lack of resolution of these problems leads to greater tensions inside China and will be a stumbling block to fuller political and economic engagement with the United States and other nations."

The Dalai Lama has said that he does not seek independence and aims for a solution based on Tibetan autonomy within China. In March 2005, he told an interviewer, "This is the message I wish to deliver to China. I am not in favor of separation."<sup>5</sup> The State Department's Report on Tibet Negotiations acknowledges the Dalai Lama's position, saying that he "has expressly disclaimed any intention to seek sovereignty or independence for Tibet."<sup>6</sup>

The Dalai Lama's envoys held meetings with Chinese officials twice during the past year. The Dalai Lama's Special Envoy, Lodi Gyari,<sup>7</sup> and Envoy, Kelsang Gyaltzen, traveled to China for the third time in September 2004, meeting with senior Chinese officials and visiting autonomous Tibetan areas of Sichuan province.<sup>8</sup> Gyari characterized the discussions as "the most extensive and serious exchange of views" so far. He cautioned that "major differences" exist on "fundamental" issues, and that "flexibility, far-sightedness and vision" will be necessary to bridge the gap.<sup>9</sup> The envoys met with Chinese officials for the fourth round of talks in late June and early July 2005 at the Chinese Embassy in Bern, Switzerland.<sup>10</sup> The talks were the first to take place outside China. Gyari said afterward that "major differences on a number of issues, including on some fundamental ones, continue to remain," but that "both sides had a positive assessment of the ongoing process."<sup>11</sup> An official of the Tibetan government-in-exile explained that the main issue for the two sides to resolve is the definition of Tibet:<sup>12</sup> "While China sees Tibet as the area included under the Tibet Autonomous Region, Tibetans claim a much larger area where the culture and language are Tibetan."<sup>13</sup>

The Tibetan government-in-exile's remarks following the envoys' meetings are aligned more closely with the Dalai Lama's position than previous statements.<sup>14</sup> The exiled government explained its assessment in an annual statement saying that the "basic principle" to seek "genuine national regional autonomy" within the framework of China's Constitution cannot be changed.<sup>15</sup>

Samdhong Rinpoche, who heads the exiled Tibetan government, pointed to pragmatism as the guiding factor: "We have to accept ground realities of the new world order. We feel that the Dalai Lama's middle way approach to seek genuine autonomy for Tibetans is an achievable objective and are therefore moving ahead for

it.”<sup>16</sup> He played down the idea popular among some Tibetans, but rejected by the Chinese government,<sup>17</sup> that all of the current areas of Tibetan autonomy should be combined into a single unit.<sup>18</sup>

Chinese officials have rejected the Dalai Lama’s approach and maintain that he seeks Tibetan independence and to “split China.”<sup>19</sup> A Chinese government spokesman responded to the State Department Report on Tibet Negotiations by reiterating preconditions: “So long as Dalai truly gives up his advocacy of ‘Tibet independence,’ stops the activities of separating the motherland and publicly declares and recognizes that Tibet and Taiwan are inalienable parts of China, we can contact him for consultation.”<sup>20</sup> In 1998, then-President Jiang Zemin demanded that the Dalai Lama make a statement about Taiwan.<sup>21</sup> An exiled Tibetan government spokesman responded that it is “entirely for the people of Taiwan to speak their voice.”<sup>22</sup>

Contacts so far between the Dalai Lama’s envoys and Chinese officials have not produced concrete results. The dialogue has the potential to lead to strengthened protection of Tibetan culture and to improved regional stability and prosperity. The Dalai Lama is in an unrivaled position to promote a mutually beneficial outcome but, at age 70, his ability to pursue this opportunity could wane with advancing age.

#### *Autonomy*

Although the preamble of the REAL states that China’s government has an obligation to “. . . [respect] and [protect] the right of every minority nationality to manage their own internal affairs,”<sup>23</sup> article 7 of that law voids this commitment to autonomy by allowing local government in autonomous regions to manage their affairs only in a manner that puts the interests of the People’s Republic of China as a whole first.<sup>24</sup>

A 2004 Harvard University study of autonomy in Tibetan areas of China notes that poor implementation negates the value of autonomy legislation and erodes the rule of law.<sup>25</sup> The report found that at least 161 Chinese laws and regulations that directly address issues of Tibetan autonomy apply at the national, provincial, prefectural, or county level.<sup>26</sup> “Now more than ever, the Tibetan issue appears ripe for a settlement that would preserve Tibetan culture and China’s territorial integrity,” the report concludes,<sup>27</sup> and advises Chinese officials and the Dalai Lama’s representatives to conduct jointly “an examination of existing laws and regulations in the context of international norms and standards.” It goes on to say:

Such an examination should address not only actual legislation, but also its implementation at the national, prefectural, and county levels. In some instances, China has adopted appropriate laws but neglected to fully implement them. Many of these laws contain conditions and caveats that impede or undermine progress toward their implementation. When the necessary laws and regulations are found to be absent, steps should be taken to draft and enact appropriate measures. When laws have already been promulgated but not effectively implemented, prompt

measures should be taken to enhance their earliest implementation.<sup>28</sup>

A 2004 East-West Center report is less optimistic and does not predict a breakthrough in the near term. It cautions, "Unless the Tibet issue should erupt as a violent conflict, the factors pushing Beijing to negotiate are likely to be regarded as insufficiently compelling to justify the risks entailed. On the other hand, if the current talks break off, Beijing will be going it alone as it manages the chronic threat of ethnonationalist discontent."<sup>29</sup> But despite citing negative factors, the report says that prospects for engagement have improved, even as the "window of opportunity to negotiate a lasting solution draws to a close."<sup>30</sup>

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

Existing government policy initiatives, especially the Great Western Development (GWD) program implemented in 2000, exert pressure on Tibetan culture and heritage. Tibetans say privately that they believe the programs are attracting a steady flow of ethnic Han migrants into Tibetan areas. The Qinghai-Tibet railway, which will begin trial operations soon, and the construction of passenger terminals in Lhasa contribute to Tibetan concerns. The rights of autonomous Tibetan governments to manage their local affairs are weak in practice, leaving Tibetans with few administrative, legislative, and judicial resources to cope with the changes that confront them.

Long-term prospects for Tibetan culture and self-identity depend on preserving and developing the role of Tibetan language in Tibetan life, and on building a solid educational foundation for a modern and prosperous Tibetan society. This objective requires an education system that will train Tibetans in both Tibetan and Mandarin Chinese languages and teach skills that will enable Tibetans to compete for good jobs and other economic opportunities. The central, provincial, and autonomous Tibetan governments operate schools and universities with bilingual programs designed for Tibetans. Commission staff delegations visited Tibetan educational institutions in Qinghai, Gansu, and Sichuan provinces, the TAR, and Beijing and observed that students, faculty, and administrators seemed committed to their tasks.<sup>31</sup>

Government statistics on educational achievement show that most Tibetans are not prepared to compete for employment and business opportunities in the Han-dominated economic environment developing around them. Chinese government policies did not require Tibetans to live with large numbers of Han until Deng Xiaoping's policy of reform and opening up began to take effect in the late 1970s and early 1980s. Tibetans currently have the highest rate of illiteracy of any ethnic group in China having a population greater than 500,000.<sup>32</sup> The rate of illiteracy of Tibetans (47.55 percent) is more than five times higher than China's national average (9.08 percent), according to 2000 census data.<sup>33</sup> The TAR rate of illiteracy (47.25 percent) is the highest in China and is nearly twice as high as second-ranked Qinghai province (25.44 percent).<sup>34</sup> Primary school is the only level of educational attainment for which data show Tibetans nearly on par with the national average.<sup>35</sup> In the job market, Tibetans compete with Han migrants who graduate



from universities at more than triple the rate of Tibetans, and from senior middle school at five times the Tibetan rate.<sup>36</sup>

The disparity between the level of educational attainment by urban and rural Tibetans adds to the social and economic challenges facing Tibetans. Census data for 2000 show that Tibetans living in TAR cities were 19 times more likely to reach senior middle school than Tibetans living in rural areas. Tibetans living in TAR townships were 7.6 times more likely to do so.<sup>37</sup> Nearly 85 percent of Tibetans living in the TAR,<sup>38</sup> and 87 percent of all the Tibetans in China,<sup>39</sup> live in rural areas. Rural Tibetans are the largest and least prepared category of Tibetans facing competition for the new opportunities created by government economic development programs.

Officials in Tibetan areas stress the upward trend of economic indicators, and downplay other issues that concern Tibetans. Jampa Phuntsog (Xiangba Pingcuo), chairman of the TAR government, said in May 2005, "If you have to say there are some 'Tibet issues,' [they] shall be ones related to the development of Tibet. . . . [W]hat Tibet does need now is only development, no other issues can prevail."<sup>40</sup> Claiming success for development policies, he cited 2004 statistics for the TAR that show steady gains in GDP and personal income.<sup>41</sup> But the data also show a wide gap between the 1,861 yuan per capita income of the rural majority of Tibetans and the 8,200 yuan "disposable income" of those living in the TAR's urban areas. Development programs that reach farmers and herders will benefit the most needy group of Tibetans.

Central government subsidies for infrastructure projects and government staff salaries, rather than local agricultural production, manufacturing, and services, provide most of the TAR economy.<sup>42</sup> TAR government sector employees earn salaries that are the third highest in China, behind Beijing and Shanghai, according to the Tibet Information Network (TIN).<sup>43</sup> Although urban wages fueled by government subsidies are on the rise, the Tibetan share is declining, according to TIN.<sup>44</sup> Central government subsidy of the public sector, driven in part by the GWD program, has been a principal source of economic growth in the TAR. Government spending on local administration and public services has benefited some Tibetans, but now Tibetan employment in the public sector, the fastest-growing and highest-paying part of the economy, is falling.<sup>45</sup>

The Golmud-Lhasa section of the Qinghai-Tibet railroad is scheduled to begin trial operations in July 2006.<sup>46</sup> The project is not only the most expensive infrastructure project in any Tibetan area of China, but also has the greatest potential to affect Tibetans. When Premier Wen Jiabao visited Golmud in May 2005, he hailed the railroad as "a hallmark project of the large-scale development of the western region" and praised "the builders fighting on the front-line of the Qinghai-Tibet Railway."<sup>47</sup> As work moved into its final stages, Lhasa area authorities reportedly refused to compensate at the promised rate some Tibetans whose land was expropriated for the railroad project.<sup>48</sup>

Chinese laws and official statements lend credibility to Tibetan concerns that programs such as GWD and projects such as the Qinghai-Tibet railroad will lead to large increases in Han migration. State Ethnic Affairs Commission Minister Li Dezhu wrote in

2000 that a westward flow of ethnic Han would be “in keeping with the execution of large-scale western development” and referred to the potential population shift as “the peacock flying west.”<sup>49</sup> Implementation regulations for the REAL issued in May 2005 call for “professionals of all levels and types” to move to autonomous areas, and for local governments to provide special treatment for newly arriving Han.<sup>50</sup> So far, Tibetan officials maintain that there has not been any significant change in the population mix.<sup>51</sup>

Official Chinese census data for 1990 and 2000 depicts the Han population in most Tibetan areas as decreasing during the 1990s, a finding at odds with observations by Tibetans and foreign experts.<sup>52</sup> Han population decreased in 10 of the 13 Tibetan autonomous areas, according to census data.<sup>53</sup> The five largest declines in Han population, ranging from 16 to 25 percent, are recorded for Qinghai province. Even in Haixi prefecture, which includes the booming city of Golmud and its rail link to Xining and Beijing, the Han population supposedly dropped 9 percent. The data show increases in Han population in only three Tibetan areas.<sup>54</sup> According to this census data, Han population in Tibetan autonomous areas fell by 3.3 percent during a decade when development policy and economic conditions encouraged Han to work and conduct business in Tibetan areas.<sup>55</sup> The method for conducting the 2000 census called for local enumeration to include temporary residents, recent arrivals, and persons without a household registration.<sup>56</sup> The decline in Han population portrayed by census data contradicts the visible changes evident in many Tibetan towns and cities, and raises questions about its completeness and reliability.<sup>57</sup>

### *Tibetan Culture and Human Rights*

The Chinese government did not begin major new political campaigns across Tibetan areas during the past year. CECC Annual Reports for 2002 through 2004 discussed how government policies that promote a national identity defined in Beijing, and that favor atheism, discourage Tibetan aspirations to foster their distinctive culture and religion. As a result of these policies, Tibetan rights to their constitutionally guaranteed freedoms of religion, speech, and assembly are subject to strict constraint. Expressions and non-violent actions that officials suspect could undermine Party supremacy are sometimes punished as threats to state security. The downward trend in the number of known Tibetan political prisoners suggests that Tibetans are avoiding the risks of direct criticism or protest against Chinese policies and are turning to education, arts, and religion for ways to express and protect their culture and heritage.<sup>58</sup>

As reported incidents of Tibetan political protest decline, Chinese censors and police watch for other signs of Tibetan resentment or nationalism. Writing, publishing, or sharing literature that laments cultural loss, or that advocates ethnic ambitions not sanctioned by the Party, is sometimes repressed or punished. Penalties range from loss of employment or housing to imprisonment. For example, authorities stripped Tibetan writer Oezer (Weise) of her job, residence, insurance and retirement benefits, and barred her from applying for a passport after a collection of her essays was published in Guangzhou, and then banned, in 2003.<sup>59</sup> The volume presented

thoughts “relating to Tibet’s history, personalities, and way of life.” Authorities ruled that positive references to the Dalai Lama were “political errors.”<sup>60</sup> The Tibetan Cultural Association in Lhasa, Oezer’s employer, assembled a group to conduct “thought correction” with her. She left Lhasa to avoid pressure to recant her views and abandon Buddhism.<sup>61</sup>

In Qinghai province, five monks were imprisoned in January 2005 for publishing a poem in a monastery newsletter. Security officials considered the poem to be politically sensitive and ordered the monks to serve terms of two to three years of re-education through labor.<sup>62</sup> The poem allegedly expressed admiration for two monks from the same monastery who were sentenced in 2002 to three years imprisonment for advocating Tibetan independence.

Prominent Tibetans, especially religious leaders, whom officials believe have links to the Dalai Lama, risk persecution or punishment. In some cases, such as those of Tenzin Deleg and Bangri Tsamtrul, prosecutors accuse a Tibetan leader of supporting a violent act allegedly committed by another Tibetan. In these cases, authorities refuse to disclose the details of evidence directly linking the prominent Tibetan and the alleged criminal act.

Three Tibetan political prisoners are serving life sentences for crimes that include “endangering state security.” Two cases involve contact with the Dalai Lama; the third is based on printing pro-independence leaflets.

- Tenzin Deleg (A’an Zhaxi), recognized by the Dalai Lama as a reincarnate lama, was convicted in a closed court in Sichuan province in November 2002 of conspiring to cause explosions and inciting splittism.<sup>63</sup> Chinese authorities claim that his case involves state secrets and refuse to disclose the details of evidence that shows a direct link between him and the alleged criminal acts. Tenzin Deleg professed his innocence in a smuggled tape recording. The provincial high court commuted his reprieved death sentence to life imprisonment in January 2005.
- Bangri Tsamtrul (Jigme Tenzin Nyima), a lama who lived as a householder, was convicted of inciting splittism and sentenced to life imprisonment in a closed court in Lhasa in September 2000.<sup>64</sup> He and his wife Nyima Choedron managed a children’s home in Lhasa. His sentencing document lists evidence against him that includes meeting the Dalai Lama, accepting a donation for the home from a foundation in India, and a business relationship with a Tibetan contractor who lowered a Chinese flag in Lhasa in 1999 and tried to blow himself up. Jigme Tenzin Nyima acknowledged meeting the Dalai Lama, accepting the contribution, and knowing the contractor, but he denied the charges against him and rejected the court’s portrayal of events.<sup>65</sup> Authorities sentenced Nyima Choedron to 10 years imprisonment and subsequently reduced her sentence to seven years and six months.<sup>66</sup>
- Choeying Khedrub, a monk of Tsanden Monastery in the TAR, was sentenced in 2000 to life imprisonment for his role in a group of men who allegedly printed pro-independence leaflets. According to information that the Chinese government provided to the United Nations Working Group on Arbitrary

Detention (UNWGAD), he was found guilty of endangering state security and “supporting splittist activities of the Dalai clique.”<sup>67</sup> The UNWGAD reports that the Chinese response “mentions no evidence in support of the charges, or if they used violence in their activities,” and finds that the government “appears” to have misused the charge of endangering state security.<sup>68</sup>

Ngawang Phuljung and Jigme Gyatso are examples of Tibetans serving long sentences for the obsolete crime of counterrevolution handed down under the 1979 Criminal Law. Both of them visited India and returned to the TAR without official papers. The UNWGAD issued opinions rejecting the legitimacy of both convictions.

- Ngawang Phuljung, a monk of Drepung Monastery, was sentenced in 1989 to 19 years imprisonment for crimes that included “forming a counterrevolutionary organization” and “spreading counterrevolutionary propaganda.”<sup>69</sup> A 1993 UNWGAD decision declared his imprisonment arbitrary, and called on China’s government to “remedy the situation.” Ngawang Phuljung is currently the longest-serving Tibetan convicted of counterrevolution.
- Jigme Gyatso, a former monk who operated a restaurant, was sentenced in 1996 to 15 years imprisonment for counterrevolution. Chinese officials told a UNWGAD delegation in September 2004 that he was guilty of “planning to found an illegal organization and seek to divide the country and damage its unity.”<sup>70</sup> Another UNWGAD opinion on the case found that “there is nothing to indicate that the ‘illegal organization’ . . . ever advocated violence, war, national, racial, or religious hatred.” Jigme Gyatso was “merely exercising the right to freedom of peaceful assembly with others in order to express opinions.”<sup>71</sup>

The CECC Political Prisoner Database (PPD) listed approximately 120 current cases of Tibetan political imprisonment in June 2005, less than one fifth of the number in late 1995.<sup>72</sup> The number of Tibetan political prisoners continues to decline as Tibetans imprisoned for political protests during the late 1980s to mid-1990s complete their sentences and are released. Sentence information is available for two-thirds of the current prisoners. Their average sentence is 10 years and six months.<sup>73</sup> Monks and nuns make up 62 percent of current Tibetan political prisoners, compared to 75 percent in 2002.<sup>74</sup> Lhasa’s TAR Prison (Drapchi) holds 50 known Tibetan political prisoners, though the actual number is likely to be somewhat higher. They are serving an average sentence of 12 years and six months. Chinese authorities did not grant early release from prison to any high-profile Tibetan political prisoner during the past year.

Nearly 70 Tibetan political prisoners are believed to be imprisoned in the TAR, nearly 40 in Sichuan province, and fewer than 15 in Qinghai province, based on PPD data in June 2005. None are documented in Gansu or Yunnan provinces. In Sichuan province, the ratio of Tibetan political prisoners to the provincial Tibetan population is 29.9 prisoners per million Tibetans. The ratio is 27.6

per million in the TAR, and 12 per million in Qinghai province. The lower rates of political detention in Qinghai, Gansu, and Yunnan coincide with a religious and educational environment that experts privately say is not as repressive as in Sichuan province or the TAR. Conversely, government authorities in the areas of the TAR and Sichuan with the highest rates of political detention are known to deal with Tibetans and their culture more harshly.<sup>75</sup>

## VII. North Korean Refugees in China

### FINDINGS

- The Chinese government forcibly repatriates North Koreans seeking refuge in China from starvation and political persecution in North Korea, contravening its obligations under the 1951 Convention Related to the Status of Refugees and its 1967 Protocol. A compelling case exists for recognizing North Koreans in China as refugees: the Democratic People's Republic of Korea government regularly denies food to particular groups for political reasons, and refugees returned to North Korea face long prison terms, torture, or execution.
- The Chinese government classifies all North Koreans in China "illegal economic migrants" and denies the Office of the United Nations High Commissioner for Refugees access to this vulnerable population. Living conditions for North Koreans in China are harsh, with women and children particularly vulnerable to trafficking and prostitution.

Conditions within China remain bleak for North Koreans fleeing starvation and political persecution in their homeland. Women and children are vulnerable to trafficking and prostitution. More than 75 percent of North Korean immigrants are women, and they are often forced into prostitution or other exploitative relationships by professional brokers.<sup>1</sup> Children have no access to schools and often survive by begging on the streets. Some refugees have survived for years living in caves in the harsh northern climate.<sup>2</sup> Others move from one hiding place to another to avoid detection by public security forces or by Chinese citizens who receive government rewards for informing police of refugees' locations.<sup>3</sup> Conditions in detention centers for those awaiting repatriation are cramped, and detainees face mistreatment from guards.<sup>4</sup>

Despite the harsh conditions within China, North Koreans take immense risks to avoid being returned to the DPRK. In April 2004, 80 North Korean detainees in Tumen Detention Center rioted to avoid being sent back to the DPRK. In another prison camp, 110 detainees went on a hunger strike to protest their impending refoulement.<sup>5</sup>

The Chinese government refuses entry to representatives of the UN High Commissioner for Refugees (UNHCR) into northeast China to screen North Koreans seeking protection. This policy contravenes a 1995 UN-Chinese Agreement stating that "UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation."<sup>6</sup> Chinese security forces guard the UNHCR office in Beijing,<sup>7</sup> and a number of foreign consulates, chiefly to repel North Koreans wishing to present refugee petitions or seeking asy-

lum. The Chinese government classifies all North Koreans in China as “illegal economic migrants” and not refugees.<sup>8</sup> The Chinese government claims it must return these “illegal migrants” to North Korea under a 1961 agreement with the DPRK.<sup>9</sup>

A number of Western analysts note that the North Korean government regularly denies food to particular groups or regions for political reasons, a practice which may make those fleeing to China in search of food and other “economic goods” potential refugees under international law.<sup>10</sup> As the High Commissioner for Refugees noted in 2003, “An analysis of currently available information recently carried out by our Department of International Protection concludes that many North Koreans may well be considered refugees.”<sup>11</sup> Moreover, those who flee to China may have a claim to refugee status because they are considered “traitors” for defecting and face persecution upon their return to North Korea.<sup>12</sup> The State Department estimates that between 10,000–30,000 North Korean refugees are currently hiding in northeastern China. Several non-governmental groups estimate the number of refugees to be between 100,000–300,000.<sup>13</sup>

The Chinese government forcibly repatriates North Koreans to the DPRK where they face long prison sentences, torture, and possible execution. The State Department estimates that Chinese security forces detained and forcibly returned several thousand North Koreans to the DPRK in 2004.<sup>14</sup> A South Korean newspaper has reported that North Korean agents regularly enter Chinese territory and kidnap, with the tacit support of Chinese public security officials, South Korean activists assisting North Korean asylum seekers.<sup>15</sup> The North Korean Penal Code criminalizes defection. Article 47 of the Penal Code states that “one who escapes to another country or to the enemy is in betrayal of his motherland and people” and will receive a minimum punishment of seven years labor re-education, while serious violators will be executed.<sup>16</sup> Video tapes smuggled out of North Korea in the winter of 2004–2005 show public executions of repatriated “human smugglers,” a crime that one international NGO notes the DPRK government commonly applies to those who help North Koreans flee the country.<sup>17</sup>

China’s refoulement of North Koreans contravenes its obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The Convention and its Protocol state that “no Contracting States shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>18</sup>

The Chinese government apparently believes that a more relaxed policy might result in more North Koreans fleeing into an area of China with high unemployment rates. “If we grant political asylum to one refugee today,” one official reflected, “there could be thousands or millions of North Koreans who might seize the opportunity and pour into China.”<sup>19</sup> The Chinese government has increased its monitoring of North Koreans, in part because some refugees have turned to crime to survive in China.<sup>20</sup> The government apparently intensified surveillance and detentions of North Korean refugees following high profile asylum cases,<sup>21</sup> such as in

March 2005 when eight North Koreans rushed into a Japanese school in Beijing and were escorted to the Japanese Embassy.<sup>22</sup> In January, Chinese security forces disbanded a press conference on the refugee issue called by four South Korean legislators visiting Beijing.<sup>23</sup>

The Chinese government offers rewards to citizens who turn in “illegal migrants” and imprisons or imposes fines up to RMB 30,000 (USD \$3,600) on those assisting them.<sup>24</sup> In December 2003, South Korean Reverend Choi Bong-il was sentenced to nine years imprisonment for assisting North Koreans transit to a third country. In May 2003, South Korean citizen Choi Yong-hun was sentenced to five years in prison for his role in assisting North Koreans flee through China to South Korea.<sup>25</sup> Chinese authorities detained American citizen Phillip J. Buck on May 9, 2005 for assisting North Korean refugees in China. He is currently detained in the Yanji PSB Detention Center, though no formal charges have been made public.<sup>26</sup>

### **VIII. Developments in Hong Kong During 2005**

The United States supports a stable, autonomous Hong Kong under the “one country, two systems” formula articulated in the Sino-U.K. Joint Declaration and the Basic Law.<sup>1</sup> The Hong Kong people continue to enjoy an open society in which the freedoms of religion, speech, and assembly are respected, but the Commission is troubled by a continuing pattern of central government interference in Hong Kong local governance through interpretations of the Basic Law. The Commission emphasizes its belief in the importance of the central government’s obligation to give Hong Kong the “high degree of autonomy” promised in the Basic Law and strongly supports the provisions of the Basic Law that provide for the chief executive and the entire legislature to be elected through universal suffrage.<sup>2</sup>

#### *Central Government Interference in Hong Kong Local Governance*

In April 2005, the National People’s Congress Standing Committee (NPCSC) issued a Basic Law interpretation to change the length of the next chief executive’s (CE)<sup>3</sup> term of office from five to two years,<sup>4</sup> continuing a pattern of interference by the central government in the local governance of Hong Kong.<sup>5</sup> Following the resignation of Tung Chee-hwa as CE in March 2005,<sup>6</sup> pro-Beijing and pro-democracy Hong Kong legislators debated whether his successor would serve the full five-year term prescribed by the Basic Law or only the remaining two years of Tung’s term.<sup>7</sup> Pro-democracy advocates launched a legal challenge against the two-year term proposal in the Hong Kong courts, but the judicial review process was cut short when the Hong Kong government, under pressure to ensure that the CE election was held on time, requested that the NPCSC resolve the controversy by interpreting the relevant articles in the Basic Law.<sup>8</sup> As expected, the NPCSC ruled in favor of a two-year term, effectively closing the issue for further discussion.<sup>9</sup>

Compared with previous interpretations, however, central authorities and their Hong Kong supporters showed greater responsiveness to the viewpoints of pro-democracy advocates. In addition

to previously established consultative practices, senior Beijing officials met in Shenzhen to discuss the CE term issue with pro-democracy legislators, some of whom had been banned from entering the mainland.<sup>10</sup> Some pro-democracy leaders saw this meeting as a gesture of goodwill and a sign that central government leaders wish to mend ties.<sup>11</sup> The exclusion of other pro-democracy legislators, however, supports the criticism that the meeting was a “public relations exercise” rather than an effort to engage in genuine dialogue.<sup>12</sup>

#### *Independent Judiciary*

The Hong Kong judiciary demonstrated its continued independence when Hong Kong’s commitment to rights and law were tested against Communist Party-led abuses on the mainland. A May 2005 decision by the Hong Kong Court of Final Appeal (CFA) overturned the convictions of eight Falun Gong practitioners and protected citizen rights to demonstrate, despite the central leadership’s ongoing campaign to eliminate the Falun Gong movement. In 2002, Hong Kong police arrested the practitioners for obstructing a public thoroughfare during a peaceful protest outside a government office building.<sup>13</sup> In its decision, the CFA reasoned that the public’s interest in the use of public facilities must be balanced against the constitutionally protected rights of assembly and expression enshrined in the Basic Law.<sup>14</sup> The Commission notes that the May 2005 CFA decision might not have been possible if the Hong Kong people had not soundly rejected the proposed Article 23 national security legislation in 2003. The Article 23 legislation would have permitted the Hong Kong government to ban any Hong Kong-based group, such as Falun Gong, whose parent organization had already been publicly banned by the central government on national security grounds.

A May 2005 news article reported that Hong Kong police officials welcomed the ruling because “they felt the ruling had cleared previously grey areas and would make it easier for them to decide whether a protest had caused an unreasonable obstruction to the public” and “hoped that with more clear-cut guidelines on what kind of protests should be stopped, the police would not be accused of acting under orders from Beijing in stopping events that mainland authorities may not like.”<sup>15</sup> Mainland news media, however, criticized the CFA’s decision; one editorial found it “regrettable that CFA has deviated from the principle that all are equal before the law and has failed to strike a fair and reasonable balance between the public interest and the demonstrators’ rights.”<sup>16</sup> The editorial suggested Chinese government discomfort with the idea that the application of public obstruction laws must be reasonable, and that fundamental constitutional rights must be given substantial weight in considering reasonableness.<sup>17</sup>



## IX. Appendix: Commission Activities in 2004 and 2005

### Hearings

- November 18, 2004 **Religious Freedom in China**  
 Preeta Bansal, Chair, U.S. Commission on International Religious Freedom  
 Ngawang Sangdrol, International Campaign for Tibet  
 Bob Fu, President, China Aid Association  
 Joseph Kung, President, The Cardinal Kung Foundation  
 Pitman Potter, Director, Institute of Asian Research and Professor of Law, University of British Columbia
- July 26, 2005 **Law in Political Transitions: Lessons from East Asia and the Road Ahead for China**  
 Gretchen Birkle, Principal Deputy Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Department of State  
 Jerome A. Cohen, Professor of Law, New York University School of Law; Adjunct Senior Fellow on Asia, Council on Foreign Relations; Of Counsel, Paul, Weiss, Rifkind, Wharton & Garrison  
 John Fuh-sheng Hsieh, Professor, Department of Government and International Studies, University of South Carolina  
 John K. Ohnesorge, Professor of Law, University of Wisconsin School of Law; Professor and Assistant Director of East Asian Legal Studies, University of Wisconsin Law School

### Roundtables

- December 10, 2004 **Coal Mine Safety in China: Can the Accident Rate be Reduced?**  
 Dave Feickert, Consultant, Industrial Relations, Ergonomics and Energy  
 Peter McNestry, Member, Numerous British, European, and International Coal Mine Safety Boards and Committees  
 Leo Carey, Executive Director of Government Services, National Safety Council
- February 7, 2005 **Environmental NGOs in China: Encouraging Action and Addressing Public Grievances**  
 Elizabeth Economy, C.V. Starr Senior Fellow and Director of Asia Studies, Council on Foreign Relations  
 Patricia Adams, Executive Director, Probe International  
 Jiang Ru, Ph.D. in Environmental Management and Planning, Stanford University
- March 10, 2005 **Public Intellectuals in China**  
 Merle Goldman, Professor Emerita of Chinese History, Boston University; Executive Committee Member, Fairbank Center for East Asia Research, Harvard University  
 Hu Ping, Chief Editor, Beijing Spring  
 Perry Link, Professor of Chinese Language and Literature, Princeton University
- March 14, 2005 **China's New Regulation on Religious Affairs: A Paradigm Shift?**  
 Carol Lee Hamrin, Consultant and Research Professor, George Mason University  
 Daniel Bays, Professor of History and Head of the Asian Studies Program, Calvin College  
 Mickey Spiegel, Senior Researcher, Human Rights Watch

- April 11, 2005      **China's Ethnic Regional Autonomy Law: Does it Protect Minority Rights?**  
 David L. Phillips, Senior Fellow, Council on Foreign Relations  
 Gardner Bovingdon, Assistant Professor, Department of Central Eurasian Studies, Indiana University  
 Christopher P. Atwood, Associate Professor, Department of Central Eurasian Studies, Indiana University
- May 16, 2005      **Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?**  
 Daniel C.K. Chow, Robert J. Nordstrom Designated Professor of Law, Ohio State University  
 Michael E. Mortiz College of Law  
 Eric H. Smith, President, International Intellectual Property Alliance  
 James M. Zimmerman, Partner and Chief Representative, Beijing Office, Squire, Sanders & Dempsey LLP
- May 23, 2005      **Unofficial Religions in China: Beyond the Party's Rules**  
 Patricia M. Thornton, Associate Professor of Political Science, Trinity College  
 David Ownby, Director, Center of East Asian Studies, University of Montreal  
 Robert P. Weller, Professor of Anthropology and Research Associate, Institute on Culture, Religion and World Affairs, Boston University
- June 22, 2005      **Forced Labor in China**  
 Harry Wu, Founder and Executive Director, Laogai Research Foundation  
 Jeff Fiedler, President, Food and Allied Service Trades Department, AFL-CIO  
 Gregory Xu, Researcher, Falun Gong Project
- September 2, 2005      **China's Household Registration (*Hukou*) System: Discrimination and Reform**  
 Fei-Ling Wang, Professor, the Sam Nunn School of International Affairs, Georgia Institute of Technology  
 Chloé Froissart, Researcher, Center for International Studies and Research and Center for Research on Contemporary China

### Web Resources

The Commission maintains a Web site at <http://www.cecc.gov>, which features announcements of upcoming events, topical news items on issues within the Commission's mandate, transcripts of hearings and roundtables, and basic source materials on human rights and the rule of law. In addition, the CECC Virtual Academy ([http://www.cecc.gov/virtual\\_Acad/index.phpd](http://www.cecc.gov/virtual_Acad/index.phpd)) provides users with convenient access to a wide array of news, useful Web links, and information about China prepared by Commission staff and other experts. Organized by topic area, the Virtual Academy currently has information on freedom of expression; commercial rule of law; criminal justice; labor rights; freedom of religion; and China's Uighur and Tibetan minorities. The Virtual Academy also provides timely summaries of stories from English and Chinese-language news media on important developments in human rights and rule of law, updated throughout the day. For those interested in learning more about China, the Virtual Academy includes extensive information on China's history, culture, and government.

**Newsletter**

On June 1, 2005, the Commission published the first edition of the China Human Rights and Rule of Law Update, a monthly newsletter that includes news and analysis from the Virtual Academy, as well as announcements of recent and upcoming Commission events. Current and archived editions of the newsletter are available on the Commission Web site at <http://www.cecc.gov/pages/virtualAcad/newsletterListing.phpd>. Those wishing to receive the newsletter may join the Commission's e-mail list by going to <http://www.cecc.gov/pages/general/subscribe.phpd>.

## X. Endnotes

<sup>†</sup> Voted to approve: Senators Hagel, Smith, DeMint, Martinez, Baucus, Levin, Feinstein, Dorgan; Representatives Leach, Dreier, Wolf, Pitts, Aderholt, Levin, Kaptur, and Brown; Deputy Secretary Law, and Under Secretary Dobriansky.

Voted not to approve: Senator Brownback.

Answered "present": Representative Honda.

### Notes to Section III(a)—Special Focus for 2005: China's Minorities and Government Implementation of the Regional Autonomy Ethnic Law

<sup>1</sup> The Chinese government uses a Stalinist formula to determine which groups constitute unique *minzu*, variously translated as "nationalities" or "ethnic groups." Accordingly, to be considered a nationality, a group must have a common language, territory, economic life, and culture. Stalin, J.V. "Marxism and the National Question," in *Works* (Moscow: Foreign Languages University Publishing House, 1953), 302. More than 400 groups registered as separate nationalities in the 1953 census, with more than 240 requesting recognition in Yunnan Province alone. The government was only able to winnow the number to 55 after awkwardly gerrymandering ethnic boundaries by sending work teams of anthropologists and government officials to the countryside to determine which groups "objectively" constituted unique nationalities. Many groups continue to contest the government's classification system. For details on the classification process, see Katherine Palmer Kaup, *Creating the Zhuang: Ethnic Politics in China* (Boulder: Lynne Rienner Press, 2000); Katherine Palmer Kaup "Regionalism and Ethniconationalism in the People's Republic of China," 172 *China Quarterly*, 863–884 (2002); and Fei Xiaotong, *Collected Works of Fei Xiaotong* [Fei Xiaotong xuanji] (Fuzhou: Haixian Wenyi Chubanshe, 1996), 285.

<sup>2</sup> S. Robert Ramsey, *The Languages of China* (Princeton: Princeton University Press, 1987), 157–292. Many of the minority languages are further divided into mutually unintelligible dialects.

<sup>3</sup> The Uighurs, Kyrgyz, Kazahks, Uzbeks, and Tajiks in Xinjiang, for example, all have ethnic counterparts in neighboring countries, as do the Zhuang, Miao, Dai, and Shui in Yunnan and Guangxi.

<sup>4</sup> The Chinese government and the other five members of the Shanghai Cooperation Organization (SCO) signed an agreement on June 2, 2005, to take "specific steps to step up the efficiency of cooperation in ensuring stability and security, including holding joint antiterrorist training exercises, training personnel and exchange of experience in fighting terrorism, separatism, and extremism." "Kazakhstan: SCO Officials Express Concern Over Terrorist Levels in Central Asia," *Almaty Interfax-Kazakhstan*, 2 June 05 (FBIS, 2 June 05).

<sup>5</sup> Chinese President Hu Jintao noted in May 2005 that the per capita GDP in minority areas is only 67.4 percent of the national average and rural per capita income only 71.4 percent of the national average. Hu Jintao, "Opening Speech to the Ethnic Affairs Work National Conference" [Hu Jintao zai zhongyang minzu gongzuo huiyishang de jianghua], State Ethnic Affairs Commission Web site, 27 May 05. This figure, however, does not indicate the severity of economic discrepancies, as Han Chinese within minority areas typically have higher incomes than the minorities. The government tightly controls statistics on Han-minority economic discrepancies, and published statistics report figures based on regional differences rather than providing breakdowns by ethnic groups. Kaup, *Creating the Zhuang*, 149–53. Numerous factors contribute to minority poverty. Minorities are concentrated in harsh geographical terrains on China's periphery and lack the capital needed to extract natural resources in their territories. Poor infrastructure and low educational levels also contribute to their poverty. Government policies have exacerbated discrepancies in wealth between the minorities and Han. See Katherine Palmer, "Nationalities and Nationality Areas," in *China Handbook*, ed. Chris Hudson (Chicago: Fitzroy Dearborn, 1997), 276–85. Several Western analysts report that central development strategies in Xinjiang since the launching of the Great Western Development campaign in 2000 have disproportionately favored Han Chinese. Nicholas Becquelin, "Xinjiang in the Nineties," 44 *The China Journal* 65, 82–3, 85 (2000); Gardner Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent* (Washington: East-West Center Washington, 2004), 39. Uighur human rights advocate Rebiya Kadeer testified that the Great Western Development policies have had a deleterious impact on the Uighurs and resulted in the "bleakest period in Uighur history." Congressional Human Rights Caucus Members Briefing, *The Human Rights Situation of the Uighurs in the People's Republic of China*, 28 April 05.

<sup>6</sup> Hu Jintao, "Opening Speech to the Ethnic Affairs Work National Conference."

<sup>7</sup> Tibetans Lose Ground in Public Sector Employment, Tibet Information Network (Online), 20 January 05; "China's Influence in Central Asia (Part 5): Uighurs Count the Cost of China's Quest for Stability," *Radio Free Asia* (Online), 24 November 04.

<sup>8</sup> A Ningxia government report notes that only 5 percent of the minority populations in Ningxia and the Tibetan Autonomous Region were literate in 1949. By 1998, that figure had risen to 89.5 percent and 48 percent respectively, though these rates remained below the national average. "Implementing the Regional Autonomy System" [Shixing minzu quyu zizhifa zhidu], Ningxia Government Web site.

<sup>9</sup> Wen Jun, "Assessment of the Stability of China's Minority Economic Policy 1949–2002" [Zhongguo shaoshu minzu jingji zhengce wendingxing pinggu], *Development Research*, No. 3, 2004, 40–45. Han-minorities discrepancies in per capita income more than tripled in the first decade of reforms. Yang Zuolin, *A General Discussion of Minority Economics* [Minzu diqu jingji fazhan tongshu jianghua] (Kunming: Yunnan People's Press, 1993), 12. Minorities have had difficulty attracting foreign capital given their poor infrastructure, poorly trained labor force, and low levels of trade and private enterprise. 1994 tax revisions further exacerbated discrepancies in wealth.

<sup>10</sup>The Tibetan illiteracy rate (47.55 percent), for example, is five times the national average (9.08 percent). Tabulation drawn from 2000 Population Census of the People's Republic of China (Beijing: China Statistics Press, August 2002), Table 2–3.

<sup>11</sup>"Implementing 'China's Minority Education Regulations' Placed on Agenda," ["Zhongguo shaoshu minzu jiaoyu tiaoli" de zhiding lie rule yishi richeng], State Ethnic Affairs Commission Web site, 16 June 05.

<sup>12</sup>Regional Ethnic Autonomy Law [hereinafter REAL], enacted 31 May 84, amended 28 February 01.

<sup>13</sup>The relationship between minority areas and the central government is reflected in an official news report, "The Central Party Puts Forth A Strategy for Xinjiang's Development and Stability" [Zhonggong zhongyang zuochu Xinjiang fazhan yu wending zhongda zhanlue bushu], Xinhua (Online), 18 May 04. The report describes a meeting of the top-ranking government officials in Xinjiang called "to transmit the Central Party's Comprehensive Work Plan Regarding Xinjiang's Economic Development and Social Stability, and to develop plans for implementing it." At the meeting, Wang Lequan, Politburo member and Party General Secretary of Xinjiang, urged "all party and government officials from all levels within the autonomous region to earnestly study and adopt the spirit of the Center's comprehensive plan. We must focus all of our thinking on the spirit of the Center's directive, and, with a strong sense of enthusiasm and duty, quickly develop concrete implementation measures that blend each localities' and departments' concrete circumstances in order to rigorously promote all of these Xinjiang projects." Xinjiang's autonomy rests in how best to implement central directives according to local circumstances. In many cases, this results in policies more restrictive of individual liberties than those promoted by the central government. The report cited here, for example, advocates strengthening the role of the predominately Han, paramilitary Xinjiang Production and Construction Corps in order to promote regional stability.

<sup>14</sup>REAL, art. 7.

<sup>15</sup>Ibid., arts. 4–7, 19.

<sup>16</sup>Ibid., arts. 4–7, 20.

<sup>17</sup>The Chinese government has imposed the fewest controls on minorities that accept central authority, which in turn have made these groups more willing to cooperate with Han Chinese. Mutual distrust between Han authorities and several minority groups has led to tighter government controls in some areas, however, exacerbating ethnic tensions according to both Chinese and Western analysts. See, for example, Ma Mingliang, "Muslims and Non-Muslims Can Coexist in Harmony in China, as They Do in Malaysia, If They Understand Each Other's Culture Better," *Islam in China*, 31 Jul 05 (FBIS, 6 September 05); Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent*.

<sup>18</sup>REAL, art. 9. Authorities sentenced four Uighur boys to three and a half years in prison after a schoolhouse brawl in April 2005, on the charge of "undermining the friendship of the nationalities." "Uighur Youths, Teacher Detained After School Brawl, Residents Say," *Radio Free Asia* (Online), 21 June 05.

<sup>19</sup>Minorities in southwestern China live in closer proximity to Han Chinese than do Tibetans and Uighurs, who are separated from predominately Han-populated regions in central China by mountain ranges and deserts. Although many of the minorities in southwestern China live in single-ethnicity villages, often these villages will be interspersed in close proximity to those of other minority groups. Southwestern minorities tend to be segregated by villages rather than by larger administrative areas, whereas distances between communities of different ethnic groups tend to be greater in the Northwest. Many of the southwestern minority groups are also internally divided and have little interest in mobilizing against Han Chinese authority. For further detail see Kaup, *Creating the Zhuang*, 171–81; and Thomas Heberer, "Nationalities Conflict and Ethnicity in the People's Republic of China, With Special Reference to the Yi in the Liangshan Yi Autonomous Prefecture," in *Perspectives on the Yi of Southwest China*, ed. Steven Harrel (Berkeley: University of California, 2001), 232–7.

<sup>20</sup>State Council Regulations on the Implementation of the REAL, issued 11 May 05, art. 8.

<sup>21</sup>Ibid., arts. 30 and 34.

<sup>22</sup>Ibid., arts. 31 and 32.

<sup>23</sup>Ibid., art. 2.

<sup>24</sup>"South-Central Nationalities University Opens Legal Aid Clinic" [Zhongnan minzu daxue chengli falü huanzhu zhongxin], *Tianshan Net* (Online), 21 March 05; "Suzhou Wujiang City Establishes New Social Services System for Migrant Minority Workers" [Suzhou Wujiang shi chuang xin wailai liudong shaoshu minzu fuwu tizhi], State Ethnic Affairs Commission Web site, 18 August 05; "Jiangsu's Qiansu City Aggressively Expands New Approaches to Help Minority Migrants" [Jiangsu Qiansu shi jiji shensu xinshi xia fuwu "wailai" yu "waichu" shaoshu minzu de youxiao tujin], State Ethnic Affairs Commission Web site, 18 August 05.

<sup>25</sup>"Open Letter from the Darhad Mongols," *Southern Mongolia Human Rights Watch* (Online), March 2005.

<sup>26</sup>For example, Articles 15, 17, 18, and 22 of the State Council Regulations for the Implementation of the REAL require autonomous regions to give priority to border regions and minorities with small populations when making investment decisions. Bilingual education must be promoted, and autonomous governments are required to "guide and organize" local populations to seek jobs outside of their localities. Although the central government often encroaches on the autonomous governments' authority to determine their development strategies independently, the REAL in theory gave the autonomous regions the authority to control these policy decisions which are now determined by the central government.

<sup>27</sup>The Party monitors and imposes strict controls on how minority cultures are represented in popular, official, and scholarly discourse. Controls over minority representation have been imposed on all minority groups, not simply on those who have strained relations with Han Chinese and the predominately Han government. For example, though authorities regularly arrest

Uighurs who display overt signs of ethnic pride, government authorities in Guangxi have criticized Zhuang authors who display too little ethnic pride. Kaup, *Creating the Zhuang*, 118–9.

<sup>28</sup> Article 7 of the REAL requires autonomous governments to “place the interests of the state as a whole above anything else.”

<sup>29</sup> The Constitution provides for the establishment of provincial-level autonomous regions, autonomous prefectures, and autonomous counties. The government began creating autonomous townships and villages in 1993 with the State Council’s passage of the Regulation on the Administrative Work on Ethnic Villages [Minzu xiang xingzheng gongzuo tiaoli], issued 29 August 93. By 2003 the government had established five provincial-level autonomous regions, 30 autonomous prefectures, 120 autonomous counties, and 1,173 autonomous villages. The government decided which areas would be granted autonomous status “through consultation between the government of the next higher level and the representatives of the minority or minorities concerned.” General Program for the Implementation of Regional Autonomy for Minorities [Zhonghua renmin gongheguo minzu quyue zizhi shishi gangyao], issued 8 August 52, art. 9. Some members of the larger minority groups express concerns privately that the regional autonomy policy disproportionately favors smaller groups. Commission Staff Interviews. Many Uighurs and Zhuang note that within the provincial-level Xinjiang Uighur Autonomous Region and the Guangxi Zhuang Autonomous Region, several minority groups have their own autonomous prefectures or counties. Once established, these smaller autonomous areas are eligible for special development assistance funds that the central and provincial governments earmark for county-level autonomous governments. The Bayinguleng Mongol Autonomous Prefecture in Xinjiang contains one-quarter of Xinjiang’s total land. Although only 4.46 percent of the Bayinguleng population is Mongol and 34.25 percent is Uighur, the Chinese Constitution and the REAL require that the head of the prefectural government be Mongol. In another example, a portion of Guangxi’s poverty alleviation funds is earmarked for minority counties, which means that Bama Yao Autonomous County (17.24 percent Yao and 69.46 percent Zhuang) is eligible for certain development assistance programs not available to nearby Jingxi County, which does not have autonomous standing despite the fact that over 99 percent of its population is ethnically Zhuang. Article 16 of the Election Law also allows minorities with small populations a greater number of People’s Congress delegates. PRC Election Law for the National People’s Congress and Local People’s Congresses, enacted 1 July 79, amended 10 December 82, 2 December 86, 28 February 95, 27 October 04. Some Western experts believe the government consciously pitted minorities against one another when establishing regional autonomous areas in order to weaken their ability to confront the state. Gardner Bovingdon, “Heteronomy and Its Discontents ‘Minzu Regional Autonomy’ in Xinjiang,” in *Governing China’s Multiethnic Frontiers*, ed. Morris Rossabi (Seattle: University of Washington, 2004), 117–154; Becquelin, “Xinjiang in the Nineties,” 86. Since 2000, the central government has explicitly stated that nationality development work will place a priority on the 22 smallest minority populations. Tang Ren, “Ethnic Minorities Need Help: Government Pledges Another Round of Poverty Alleviation Reforms to Save the Country’s 22 Small Ethnic Groups,” *Beijing Review* (Online), 26 July 05. The May 2005 REAL Implementing Regulations require provincial-level governments to give priority to smaller minorities in their economic development and investment plans.

<sup>30</sup> Non-autonomous governments may also pass local legislation on issues not addressed by national law, but the autonomous areas have the power to pass local legislation expounding upon, or altering, national laws to suit minority customs.

<sup>31</sup> PRC Legislation Law, enacted 15 March 00, art. 66.

<sup>32</sup> Xinjiang has gone through eight drafts of its self-governing regulation since 1981. The Xinjiang People’s Congress announced in January 2005 that it would restart the drafting process after the passage of the REAL Implementing Regulations, noting that “many issues [in the self-governing regulation] require reaching a compromise between national and local interests so the process has been slow.” “Ten Issues Handled” [Shi jian yanjian jian de dao chuli], *Xinjiang Capital Daily* (Online), 20 January 05.

<sup>33</sup> Article 19 of the REAL states that the self-governing regulations of autonomous regions must be submitted to the Standing Committee of the National People’s Congress for approval before they go into effect. Self-governing regulations of autonomous prefectures and counties must receive the approval of the Standing Committees of the People’s Congresses at the provincial or directly administered municipal level before becoming effective and then be reported to the Standing Committee of the National People’s Congress.

<sup>34</sup> Governments in many autonomous areas have been revising their self-governing regulations over the last few years. Yunnan Province announced in October 2004 that all 29 of its autonomous counties and 8 autonomous prefectures would revise their self-governing regulations. “Yunnan Province Comprehensively Pushes Revisions of Autonomous Prefectures and Counties Self-Governing Regulations,” *State Ethnic Affairs Commission Web site*, 12 April 05.

<sup>35</sup> These alterations predominately deal with marriage, inheritance, elections, and grasslands legislation according to the State Council Information Office White Paper. “Regional Autonomy for Ethnic Minorities,” *State Council Information Office Web Site*, 28 February 05; Cheng Jian, “Autonomous Statutes and Thoughts on Their Legislation in the Inner Mongolia Autonomous Region” [Lun danxing tiaoli: Neimonggu zizhi qu danxing tiaolifa xiancun wenti tanqi], *Journal of Inner Mongolia University Humanities and Social Sciences*, Vol. 34, No. 6, November 2002, 49–52; Chao Li, “Thoughts on Autonomous Areas’ Autonomous Legislative Powers” [Dui minzu zizhi difang zizhi jiguan lifa quan de sikao], *Journal of Southwest University for Nationalities*, Vol. 23, No. 7, July 2002, 137–141; Ma Linlin, “Construction of Our Nation’s Minority Economics Law” [Woguo shaoshu minzu diqu minzu jingji de fazhi jianshe], *Academic Forum*, No. 7, 2004, 57–9.

<sup>36</sup> Chen Wenxing, *Legislation Must Appropriately Reflect Changing Circumstances: On the Promotion of Yunnan’s Autonomous Areas’ Legislation* [Lifa gongzuo bixu shishi huiying qingshi bianqian: lun yunnan minzu sizhidifang lifa de tuijin], *Academic Exploration*, No. 12, December 2004, 60–3; Li Baoqi, “On the Theory and Practice of the Financial Transfer Payment

System in National Autonomous Areas" [Caizheng zhuan yi zhifu zhidu zai minzu zizhi difang de lilun yu shixian], Journal of Yanbian University, Vol. 37, No. 1, March 2004, 51.

<sup>37</sup>Zeng Xianyi, "The Legislative Base of the Autonomous Government Regulations" [Lun zizhi tiaoli de lifa jichu], Journal of South-Central University for Nationalities—Humanities and Social Sciences, Vol. 24, No. 4, July 2004, 7. Chinese scholars regularly call for autonomous governments to exercise their right to formulate meaningful self-governing regulations, though these discussions do not appear in the popular press.

<sup>38</sup>Zhou Li, et al, "Autonomous Legislation in the Course of Modernization" [Xiandaihua jinchengzhong de zizhi lifa], Yunnan University Journal- Legal Studies Edition, Vol. 17, No. 2, 2004, 88; Li Zhanrong, "On the Application of Minority Economic Law" [Lun minzu jingjifa shiyong], Journal of the Guangxi Cadre Institute of Politics and Law, Vol. 20, No. 1, January 2005, 18; Li Chaokai, "Brief Analysis of Yunnan's Legal Personnel Training and Law School Reforms" [Yunnan falürencaipeiyang yu faxue jiaoyu gaige qianxi], Seeking Truth, Vol. 6, 2003, 58.

<sup>39</sup>Li Chaokai, "Brief Analysis of Yunnan's Legal Personnel Training and Law School Reforms," 57; Chen Wenxing, "Legislation Must Appropriately Reflect Changing Circumstances," 60-3; Li Zhanrong, "On the Application of Minority Economic Law," 15-20.

<sup>40</sup>Li Zhanrong, "On the Application of Minority Economic Law," 15-20.

<sup>41</sup>Article 32 of the Inheritance Law mandates that the property of a deceased person with no survivors reverts to the state. PRC Inheritance Law, enacted 10 April 85. The customary practice of many Islamic groups, however, requires that such property be donated to the local mosque. No alterations or supplements to the National Inheritance Law have yet been passed. Li Zhanrong, "On the Application of Minority Economic Law," 19.

<sup>42</sup>6.9 percent of government workers are minorities though minorities account for almost 9 percent of China's total population. Ling Yun, "Analysis of Major Issues and Theories in Our Nation's Minority Nationality Cadre Education" [Woguo minzu ganbu jiaoyu cunzai de zhuyao wenti ji lilun fenxi], Journal of South-Central University for Nationalities, Vol. 24, No. 2, 2004, 17; Wang Xiubo, "Research and Thoughts Regarding The Current Situation Of Minority Nationality Cadres Corps Talent" [Guanyu shaoshu minzu diqu ganbu rencai duiwu xianzhuang de diaocha yu sikao], Progressive Forum, March 2004, 24-5; Yang Guocai, "Building a Minority Nationality Cadres Corps Is the Crux to Developing Minority Nationality Areas" [Shaoshu minzu ganbu duiwu jianshe shi minzu diqu fazhan de guanjian], Yunnan Nationalities University Journal, Vol. 21, No. 4, July 2004, 84-6. The proportion of technically trained minorities placed in high- or mid-level positions is 19 and 45 percentage points below the Han average according to Na Canhui, "In- Depth Analysis of Our Nation's Minority Nationality Cadres' Training" [Woguo shaoshu minzu ganbu peiyu jizhi shenxi], South-Central Nationalities University Journal, Vol. 24, April 2004, 183-4. The absolute number of technically trained minorities has increased substantially. One Chinese scholar reports that the number rose from 238,000 in 1979 to over 1.7 million in 2002. Zhang Linchun, "Policy Decisions and Successful Experience Regarding Minority Cadre Training and Use" [Woguo shaoshu minzu ganbu peiyang he xuanbo shiyong de zhengce guiding he chenggong jingyan], Tianshui Government Administration Academy, Vol. 2, 2002, 18.

<sup>43</sup>Zhang Linchun, "Policy Decisions and Successful Experience Regarding Minority Cadre Training and Use," 15-8. In July 2002, the State Council approved the joint appointment of State Ethnic Affairs Commission officials to 20 government ministries and bureaus. Though these officials are not necessarily ethnic minorities, the majority of SEAC cadres are. The decision also helps assure that minority issues will be raised in each of these government offices. "State Ethnic Affairs Commissioners Joint Appointment to Other Commissions and Their Responsibilities" [Guojia minzu shiwu weiyuanhui bingzhi weiyuan danwei ji zhize], State Ethnic Affairs Commission Web site, 8 February 05.

<sup>44</sup>Ling Yun, "Analysis of Major Issues and Theories in Our Nation's Minority Nationality Cadre Education," 171-3. Government investment in education in Xinjiang in 2000 was only 45.45 percent of the national average, according to Gu Huayang, "Research on the Current Situation and Policy of Xinjiang's Educational Development" [Xinjiang jiaoyu fazhan de xianzhuang ji duice yanjiu], Seeking Truth, No. 2, 2004, 74-7. The same article notes that although a higher percentage of people in Xinjiang have college degrees than the national average, the percentage of people receiving high school and middle school degrees is only 58.43 and 38.15 percent of the national average respectively.

<sup>45</sup>Wang Xiubo, "Research and Thoughts Regarding the Current Situation of Minority Nationality Cadres Corps Talent," 24-5. Wang Xiubo also notes that many autonomous governments are having difficulty recruiting government employees under the age of 35. The State Council Implementation Decision calls for "vigorous training" of younger minority cadres to ensure that a corps of minorities is being trained to assume mid- and upper-level positions in the years ahead.

<sup>46</sup>In the 10th People's Congress, for example, 13.91 percent of the deputies were minorities, well above the 8.9 percent they represent of the total population. State Council White Paper on Regional Autonomy, issued 28 February 05. The Election Law also allows ethnic groups not residing in autonomous areas to hold separate elections for congressional delegates "based on the local circumstances," though how these should be carried out remains unclear. Article 9 of the Election Law says that the State Council may allow autonomous people's congresses 5 percent more seats than they would normally be allowed on the basis of their population size. PRC Election Law for the National People's Congress and Local People's Congresses.

<sup>47</sup>"Number of CPC Members Reaches 69.6 Million," China Daily, 24 May 05 (FBIS, 24 May 05). Because the party represents the interests of the entire nation without bias, it would be "unscientific" to require specific minority representation within the party ranks, according to the official party position. Guo Zhengli, The Theory and Practice of Regional Ethnic Autonomy with Chinese Characteristics [Zhongguo tese de minzu quyu sishi lilun yu shijian] (Urumqi: Xinjiang University Press, 1992), 92.

<sup>48</sup>Nicholas Becquelin, "Staged Development in Xinjiang," 178 *China Quarterly* 358, 363 (2004).

<sup>49</sup>In a widely studied speech in May 2005, Hu Jintao stressed the need to increase party control over nationality work. He highlighted the need to "increase the contingent of nationality work cadres" while avoiding any mention of increasing the number of ethnic minority Party members. Hu Jintao, "Opening Speech to the Ethnic Affairs Work National Conference."

<sup>50</sup>Central Personnel Office Notice on the Correct Handling of Party Members' Believing in Religion [Guanyu tuoshan jieue gongchan dangyuan xinyang zongjiao wenti de tongzhi], issued 20 March 93; Chinese Communist Party Notice on "Our Nation's Basic Understanding and Policies Toward Religion in the Current Stage of Socialism" [Zhonggong zhongyang yinfu "guanyu woguo shehuizhuyi shiqi he jiben zhengce de tongzhi"], issued March 1982. Religion is a central marker of ethnic identity for many in China, including the Tibetans and the country's ten Muslim minorities.

<sup>51</sup>The Chinese government distinguishes between those from "the interior, advanced regions" and those from the "borderland, autonomous areas."

<sup>52</sup>"Assist Tibet, Xinjiang, and Border Areas Cadre Policy" [Yuan zang, yuanjiang zhibian ganbul, State Ethnic Affairs Web site].

<sup>53</sup>Louisa Lim, "Uighurs Lost Out in Development," BBC (Online), 19 December 03.

<sup>54</sup>The Xinjiang Propaganda Department praised a local technical college for placing 60 minority graduates in the coastal city of Shenzhen. The school plans to send another 180 by year's end. "60 Xinjiang Minority Technical School Graduates Take Jobs in Shenzhen" [Xinjiang 60 ming shaoshu minzu zhongzhuansheng Shenzhen jiuye], Tianshan Net (Online), 14 April 05.

<sup>55</sup>State Council Regulation on the Implementation of the REAL, art. 18.

<sup>56</sup>"Assist Tibet, Xinjiang, and Border Areas Cadre Policy," State Ethnic Affairs Web site.

<sup>57</sup>Wen Jun, "Assessment of the Stability of China's Minority Economic Policy 1949–2002" [Zhongguo shaoshu minzu jingji zhengce wendingxing pinggu], *Development Research*, No. 3, 2004, 40–45.

<sup>58</sup>Calla Weimer, "The Economy of Xinjiang," in *Xinjiang: China's Muslim Borderland*, ed. S. Frederick Starr (Washington, DC: Central Asia-Caucasus Institute, 2004), 163–189; Nicholas Becquelin, "Staged Development in Xinjiang," 362; David Bachman, "Making Xinjiang Safe for the Han? Contradictions and Ironies of Chinese Governance in China's Northwest," in *Governing China's Multiethnic Frontiers*, ed. Morris Rossabi (Seattle: University of Washington Press, 2004), 165–168.

<sup>59</sup>Uighurs also regularly report that they are discriminated against in the broader job market, with offices publicly posting help wanted signs stipulating "Uighurs need not apply." "China's Influence in Central Asia (Part 5)," Radio Free Asia. Graham E. Fuller and Jonathan N. Lipman state that "members of the Han majority appear to advance more rapidly than similarly qualified Uighurs, while even in Kashgar many specialized occupations are reserved for the Xinjiang Production and Construction Corps and other Han-dominated work units." Graham E. Fuller and Jonathan N. Lipman, "Islam in Xinjiang," in *Xinjiang: China's Muslim Borderland*, ed. S. Frederick Starr (Washington, DC: Central Asia-Caucasus Institute, 2004), 325. Economist Calla Weimer demonstrates statistically that Uighurs have less earning power than Han living in the same area. Calla Weimer, "The Economy of Xinjiang," 188.

<sup>60</sup>REAL, art. 20.

<sup>61</sup>*Ibid.*, arts. 27 and 65; PRC Constitution, art. 9.

<sup>62</sup>"Complaint Against the Chinese Government's Forced Eviction of Ethnic Mongolian Herders," Southern Mongolian Human Rights Information Center (Online); Hong Jiang, Fences, Ecologies, and Changes in Pastoral Life: Society and Reclamation in Uxin Ju, Inner Mongolia, China, paper presented at the Association for Asian Studies Annual Conference in Chicago, IL, 3 April 05; Enhebatu Togocho, Ecological Immigration and Human Rights in Inner Mongolia, paper presented at the Association for Asian Studies Annual Conference, Chicago, IL, 3 April 05.

<sup>63</sup>Stanley Toops, "The Ecology of Xinjiang: A Focus on Water," in *Xinjiang: China's Muslim Borderland*, ed. S. Frederick Starr (Washington, DC: Central Asia-Caucasus Institute, 2004), 271; Becquelin, "Xinjiang in the Nineties," 84.

<sup>64</sup>State Council Regulation on Implementation of the REAL, arts. 30 and 32. Article 8 requires the central government to compensate autonomous governments who have suffered financially after implementing ecological development projects. Many of the central government's largest ecological protection programs are in minority regions, which must share the financial burden of implementing the center's plans. The "three returns" plan of 2000 (returning farmland to forest, farmland to grasslands, and pasturelands to fallow) cost each of the affected banners in Inner Mongolia an average of 200,000 yuan annually, for example. Zhuang Wanlū, "Discussion of Minority Areas' Various Types of Poverty: The Problem of Local Government Financial Resources Poverty" [Lun minzu diqu de linglei pinkun—difang zhengfu caizheng pinkun wenti], *Journal of Southwest University for Nationalities*, Vol. 24 No. 6, June 2003, 23.

<sup>65</sup>REAL, art. 36. Minority governments have established a number of special schools to increase literacy among adult minorities. In these short courses, local education departments within the autonomous areas tailor textbooks to student needs. Some courses use local minority scripts to teach farming techniques and personal hygiene, for example. The government carefully monitors the depiction of minority history in all fields of publication, however, including textbooks. All textbooks must reflect official historiography showing "family ties and deep affection among the nationalities" and "common struggle towards prosperity of all the minorities within a multinational unitary state." Teachers are not allowed to include course segments on a particular minority group's distinct history. Commission Staff Interview.

<sup>66</sup>"Education for Ethnic Minorities," China's Education and Research Network Web site.

<sup>67</sup>Minorities Statistical Yearbook 2000 [Minzu tongji nianjian 2000], Ethnic Publishing House Web site. The percentage of minorities in the total student population in secondary technical schools rose for that same period from 0.4 percent to 6.6 percent, in teaching institutes from



2.1 percent to 10.7 percent, in middle schools from 2.6 percent to 6.8 percent, and primary schools from 2.2 percent to 9 percent.

<sup>68</sup>More than 10,000 attended similar classes in preparation for secondary school. "Education for Ethnic Minorities II," China's Education and Research Network Web site.

<sup>69</sup>Wang Lequan, "Maintain the Dominant Position of Marxism in Ideological Work and Adhere to the Four Cardinal Principles," Seeking Truth, 16 January 05, No. 2, (FBIS, 1 February 05).

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

<sup>71</sup>Steven Harrell and Ma Erzi (Mgebbu Lunze), "Folk Theories of Success Where Han Aren't Always Best," in China's National Minority Education: Culture, Schooling, and Development, ed. Gerard A. Postiglione (New York: Falmer Press, 1999), 220–1.

<sup>72</sup>These are terms the government uses to deride those it believes promote the interests of their own ethnic group over the interests of the state as a whole or who favor the creation of a separate state for their minority group.

<sup>73</sup>Chinese Communist Party Notice on "Our Nation's Basic Understanding and Policies Toward Religion in the Current Stage of Socialism."

<sup>74</sup>Central Personnel Office Notice on the Correct Handling of Party Members' Believing in Religion.

<sup>74</sup>Hu Jintao stressed the importance of "conducting nationality solidarity propaganda and education campaigns on an extensive scale" in his May address to the National Conference on Ethnic Minority Work, while Xinjiang's Party secretary announced that the region would "vigorously step up propaganda to reveal that the fallacies spread by national separatists are outrageous lies." Wang Lequan, "Maintain the Dominant Position of Marxism in Ideological

<sup>75</sup>Work and Adhere to the Four Cardinal Principles." On June 29, 2005, the central State Ethnic Affairs Commission met with more than 20 media organizations, including the Party's main theoretical journal and the national People's Daily, to discuss increasing propaganda work. "State Ethnic Affairs Commission Holds Meeting with Media Representatives" [Guojia minwei juban xinwen meiti zuotanhui], State Ethnic Affairs Commission Web site, 28 June 05.

<sup>76</sup>"The Teahorse Road" [Chama gudao], State Ethnic Affairs Commission Web site, May 2005.

<sup>77</sup>One scholar argues that the Party in essence "created" certain ethnic groups through careful manipulation of ethnic cultural markers, widespread Party propaganda about the groups' histories and cultures, and banning of unofficial critiques of minorities' cultures. Kaup, *Creating the Zhuang*.

<sup>78</sup>Michael Dillon, "Uyghur Language and Culture Under Threat in Xinjiang," *Diplomatic Observer* (Online), 14 August 02.

<sup>79</sup>Members of some minority groups report that they are pleased to highlight their ethnic heritage in these and other state-sponsored forums. Numerous Zhuang scholars, peasants, and government workers, for example, participated with enthusiasm in the construction of a "Zhuang Village" display near the capital of Yunnan in 2001. Commission Staff Interviews.

<sup>80</sup>The White Paper notes that over 50 million copies of 4,800 separate book titles have been published in minority languages, and more than 200 magazines and 88 newspapers.

<sup>81</sup>The Paper notes, for example, that it was the central authorities who "organized" 3,000 experts and scholars to compile a five-part series of books on each of China's ethnic minorities. The White Paper also reports that "the state has set up institutions to collect, assort, translate and study in an organized and programmed manner the three major heroic epics of China's ethnic minorities."

<sup>82</sup>REAL, art.10.

<sup>83</sup>Minglang Zhou, *Multilingualism in China: The Politics of Writing Reforms for Minority Languages 1949–2002* (New York: Mouton de Gruyter, 2003). Not all of the minorities had unified written scripts when the Communist Party came to power in 1949. Practical challenges, such as determining which dialect should form the foundation for new phonetic scripts, limited many minorities' ability to utilize their own scripts rather than any concerted efforts by the central government to limit their use.

<sup>84</sup>Select universities in the TAR, Inner Mongolia, and the Yanbian Korean Autonomous Prefecture offer coursework in minority languages, though generally minority language use is limited to primary and middle schools. In many areas, minority languages are used only in the lower levels of primary school until students master Chinese and are able to take all of their classes in Mandarin.

<sup>85</sup>The REAL Implementing Regulations instruct autonomous areas to promote "bilingual teaching." Whereas Article 37 of the REAL previously only stipulated that "Han language and literature courses" should be offered in the senior grades of primary school or secondary school, the new Regulations encourage the use of Mandarin with minority languages in all courses. Uighur activist Rebiya Kadeer reports that the Uighur language has been banned in schools throughout Xinjiang. Commission Staff Interview, 22 August 05.

<sup>86</sup>Mette Halskov Hansen, "The Challenge of Sipsong Panna in the Southwest," in *Governing China's Multiethnic Frontiers*, ed. Morris Rossabi (Seattle: University of Washington Press, 2004), 69.

<sup>87</sup>Regulation on Spoken and Written Language Work in the Inner Mongolian Autonomous Region [Neimenggu zizhiqu menggu yuyan wenzi gongzuo tiaoli], enacted 26 November 04.

<sup>88</sup>Ibid. Article 18, for example, increases the number of translators in each government office and assures that they receive the same rank and compensation as others in their office. Article 14 states that offices and businesses should give priority in hiring to students who received their education in Mongol technical schools.

<sup>89</sup>Mette Halskov Hansen, "The Challenge of Sipsong Panna in the Southwest," 62.

<sup>90</sup>A survey conducted in Xinjiang in 2003 revealed that over 67 percent of those interviewed felt strong Mandarin language skills were the most important qualification for hiring minorities. Wang Jianjun, "Develop Social Surveys, Train Qualified Talent" [Kaizhan shehui diaocha peiyang shiyingxing hege rencai], *Advanced Scientific Education*, No. 6, 2003, 64–7. "China's In-

fluence in Central Asia (Part 5): Uighurs Count the Cost of China's Quest for Stability," Radio Free Asia.

<sup>91</sup>Tibetans Lose Ground in Public Sector Employment in the TAR, Tibet Information Network. For detailed analysis, see Section VI—Tibet.

<sup>92</sup>Moreover, these new cadres would not be allowed to serve in their own hometowns, despite a 1993 central government decision specifically exempting minorities from a national ban on local officials being placed in their home locales. "Xinjiang Will Hold Open Civil Service Exams for 700 Civil Servants to Enrich Southern Xinjiang" [Xinjiang jiang mianxiang shehui zhaokao 700 ming gongwuyuan chongshi nanjiang ganbu duiwu], Xinjiang Daily, reprinted on Tianshan Net (Online), 7 April 05; Temporary Regulations on Public Officials [Guojia gongwuyuan zhanxing tiaoli], issued 19 August 93; Wang Lequan, "Those Who Master Minority Language Will Be Exempted From Civil Service Examination," [Wang Lequan: zhangwo minyu baokao gongwuyuan ke mianshi], Urumqi Evening News, reprinted on Tianshan Net (Online), 25 July 05.

<sup>93</sup>"To Establish Scientific Development Views: Xinjiang Urgently Needs to Address the Challenge of Its Talent Loss" [Luoshi kexue fazhanguan Xinjiang jidei huajie rencai liushi kunju], Workers' Daily, reprinted on Tianshan Net, 1 May 05. The government has created some special programs to encourage minorities with doctoral degrees to conduct their research in autonomous areas. The government has set aside a million yuan each year since 2000, for example, to fund research projects by minority scholars. The applicant pool for these funds is a group of 516 minority scholars sent for one to two years of advanced scientific training outside of Xinjiang between 1992 and 2001. "The Clear Success Over the Last Five Years of The Scientific Research Program for Those in Xinjiang's Special Training Plan for Minority Technical Talent" [Xinjiang shaoshu minzu keji rencai teshu peiyang jihua keyan xiangmu shishi 5 nianlai chengxiao xianzhul], Hami Information Outlet Web site, 12 June 05.

<sup>94</sup>Official press coverage stressed that the flow of new workers would lead to "mutual prosperity" for both Xinjiang and Gansu. "Jointly Prosper: 4,000 Gansu Households Begin Work in Xinjiang's Construction and Production Corps," Gansu Daily, 21 April 05, reprinted on Tianshan Net, 22 April 05.

<sup>95</sup>Xinjiang is home to 8.2 million Uighurs, who are largely Sunni Muslims of Turkic descent. Several other minorities live in the region, including Tajiks, Kazahks, Uzbeks, Kyrgyz, and Mongols. Xinjiang supplies over 35 percent of China's oil and gas, and borders eight countries.

<sup>96</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, April 2005; Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uighur Discontent*.

<sup>97</sup>He Ruixia, "Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism" [Jiaqiang he gajin fandui minzu fenliezhuyi douzhengzhong de sixiang zhengshi gongzuo], *Seeking Truth*, No. 2, 2004, 22–4.

<sup>98</sup>Commission Staff Interview. "Press Conference on the 50th Anniversary of the Founding of the Xinjiang Uighur Autonomous Region" [Zizhiqiu chengli 50 zhounian xinwen fabuhui zhaokai], Tianshan Net (Online), 25 August 05.

<sup>99</sup>"In the Midst of Glory and Hope: Key Points in Propaganda for Xinjiang 50th Anniversary" [Xinjiang zai huihuan yu xiwang zhong fengyongqianjin: qingzhu Xinjiang weiwu'er zizhiqiu chengli 50 nianzhou xuanchuan jiaoyu yaodian], Xinjiang Daily, reprinted on Tianshan Net (Online), 19 May 05; "AFP: Xinjiang Ribao Carries 'Editorial' Against Separatism as Uzbek President To Visit," *Agence France-Presse*, 25 May 05 (FBIS, 25 May 05).

<sup>100</sup>"Xinjiang Has Become the Main Battlefield For China's Antiterrorism Struggle," *China Youth Daily*, 6 September 05 (FBIS, 7 September 05).

<sup>101</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*; Arianne M. Dwyer, *The Xinjiang Conflict: Uighur Identity, Language Policy, and Political Discourse* (Washington: East-West Center Washington, 2005); Bovingdon, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uighur Discontent*.

<sup>102</sup>"Police Patrolmen in China's Xinjiang Capital Get Sub-Machine-Guns," *Urumqi News*, 1 March 05 (FBIS, 1 March 05).

<sup>103</sup>Gardner Bovingdon, "The Not-so-Silent Majority: Uighur Resistance to Han Rule in Xinjiang," 28 *Modern China* 39, 39–78 (2002). For similar findings, see Jay Todd Dautcher, "Reading Out-of-Print: Popular Culture and Protest on China's Western Frontier," in *China Beyond the Headlines*, eds. T.B. Weston and L.M. Jensen (Lanham: Rowman and Littlefield, 2000), 273–295; Justin Rudelson, *Oasis Identities: Uighur Nationalism Along China's Silk Road* (New York: Columbia University Press, 1997); Joanne Smith, "Four Generations of Uighurs: The Shift towards Ethno-Political Ideologies Among Xinjiang's Youth," Vol. 2, No. 2 *Inner Asia* 195, 195–224 (2000).

<sup>104</sup>Michael Dillon, "Uighur Language and Culture Under Threat in Xinjiang."

<sup>105</sup>China's Regional Ethnic Autonomy Law: Does It Protect Minority Rights?, Staff Roundtable of the Congressional-Executive Commission on China, 11 April 05, Testimony of Gardner Bovingdon, Assistant Professor, Department of Central Eurasian Studies, Indiana University, Bloomington, Indiana.

<sup>106</sup>Wang Lequan, "Maintain the Dominant Position of Marxism in Ideological Work and Adhere to the Four Cardinal Principles."

<sup>107</sup>He Ruixia, "Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism," 23.

<sup>108</sup>Linguist Arianne Dwyer dates the beginning of a policy of forced linguistic assimilation to the mid-1980s. Dwyer, *The Xinjiang Conflict: Uighur Identity, Language Policy, and Political Discourse*.

<sup>109</sup>"China Imposes Chinese Language on Uyghur Schools," *Radio Free Asia* (Online), 16 March 04. Xinjiang residents previously had the choice of attending minority schools, in which classes were conducted in minority languages, or Chinese schools, where Mandarin was used. Graduates with Mandarin Chinese language skills are more competitive in the job market, and

some Uighurs may welcome the opportunity to study the language. The government is demanding a rapid transition to bilingual schools, however, and is placing higher emphasis on Mandarin language use than on local minority language use. Uighurs in exile report that the government has banned Uighur language use in schools and that Uighurs fear “cultural annihilation” through the weakening of their language. Commission Staff Interview with Rebiya Kadeer, 22 August 05.

<sup>110</sup>Teacher-student ratios in Xinjiang’s colleges are 1:333 compared to the national average of 1:144, according to an article in the party’s main theoretical journal. While more than 800 new teachers are needed to bring Xinjiang’s teacher-student ratio in line with the national average, Xinjiang actually lost more than 530 higher education teachers between 2001–2004. Gu Huayang, “Research on the Current Situation and Policy of Xinjiang’s Educational Development” [Xinjiang jiaoyu fazhan de xianzhuang ji duice yanjiu], Seeking Truth, No.2, 2004, 74–7.

<sup>111</sup>Dwyer, *The Xinjiang Conflict: Uighur Identity, Language Policy, and Political Discourse*, 40.

<sup>112</sup>“Wang Lequan Stresses: Firmly Implement the Principle of Politicians Managing Education” [Wang Lequan qiangdiao: jian ding lushi zhengzhijia ban jiaoyu yuanze], Xinjiang Economic News, reprinted on Xinhua (Online), 26 April 05.

<sup>113</sup>“Xinjiang Will Hold Open Civil Service Exams for 700 Civil Servants to Enrich Southern Xinjiang,” Xinjiang Daily.

<sup>114</sup>“Wang Lequan Stresses: Firmly Implement the Principle of Politicians Managing Education,” Xinjiang Economic News.

<sup>115</sup>“How to Handle the Issue of Religion Interfering in Education in Minority Areas with a Majority of Religious Believers” [Zai yixie duoshuren xinjiao de minzu diqu, re he chuli zongjiao ganyu xuexiao jiaoyu wenti], State Minorities Bookstore Web site.

<sup>116</sup>Wang Lequan, “Maintain the Dominant Position of Marxism in Ideological Work and Adhere to the Four Cardinal Principles.”

<sup>117</sup>Zhang Jian, “Speech at the All-County 20th Teachers’ Day Award Ceremony” [Zai quanxian qingzhu di ershi ge jiaoshijie ji biao zhang dahuishang de jianghua], Buerjin County (Xinjiang) Communist Party Office Web site, 10 September 04.

<sup>118</sup>He Ruixia, “Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism,” 22–4.

<sup>119</sup>“Wang Lequan Stresses: Firmly Implement the Principle of Politicians Managing Education,” Xinjiang Economic News.

<sup>120</sup>He Ruixia, “Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism,” 22–4.

<sup>121</sup>Ibid.

<sup>122</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, Appendix III.

<sup>123</sup>The story tells of a wild pigeon who commits suicide rather than submit to being caged by humans who feed him well, but deny him his freedom. “RFA Publishes First English Translation of Noted Uighur Story,” Radio Free Asia (Online), 29 June 05.

<sup>124</sup>Tohti Tunyaz’s doctoral advisor in Japan denies any such publications exist. Tunyaz was arrested for obtaining state secrets, which according to the sentencing record were publicly available library materials he obtained from a state-employed librarian at Xinjiang University. “Honorary Members: Tohti Tunyaz,” Pen American Center Web site.

<sup>125</sup>The charges included “inciting to split China, organizing meetings, taking oaths, accepting membership and possessing illegal publications and counterrevolutionary videos for propaganda purposes.” “Bingtuan Supreme Court Affirms Jail Terms for Uighur Youths,” Radio Free Asia (Online), 23 December 03.

<sup>126</sup>The names of the other defendants have not been disclosed. Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 49.

<sup>127</sup>Ibid., 6.

<sup>128</sup>“Police Raid Forces Uyghur Dissident’s Son Into Hiding,” Radio Free Asia (Online), 16 May 05.

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

<sup>1</sup>“Xiao Yang: People’s Courts Must Maintain the Strike-Hard Principle Over the Long Term,” [Xiao Yang: Renmin fayuan bixu changqi jianchi yanda fangzhen], Xinhua (Online), 16 December 04; “Senior Party Official: China to Regularize Crackdown Campaign Against Crimes,” Xinhua, 6 March 05 (FBIS, 6 March 05).

<sup>2</sup>Wang Lin, “The Right Time for Replacing ‘Yanda’ with ‘Prevent and Control,’ ‘Policing Revolution’ Requires Lasting Effort” [‘Fangkong’ tidai ‘yanda’ zhengdangshi, ‘jingwu geming’ xu chijiu nuli], Southern Weekend (Online), 23 June 05; “Public Order Can’t Rely Merely on Campaigns” [Zhi an bu neng guangkao gao yundong], Southern Metropolitan Daily (Online), 1 February 05; Du Yonghao, “Strike Hard Should Embody the Spirit of Rule of Law” [Yanda geng ying tixian fazhi jingshen], People’s Daily (Online), 25 August 03.

<sup>3</sup>“Crime Crackdown Must Observe Justice Principles,” China Daily (Online), 18 December 04. See, e.g., “Liaoning Strikes Hard at Six Kinds of Corruption in the Political-Legal Team” [Liaoning yanda zhengfa duiwu liu da fubai], Legal Daily (Online), 12 May 05; “50,000 Cases Broken in Guangdong’s Hundred Days of Strike Hard” [Guangdong bairi yanda po wuwan xingan], Southern Metropolitan Daily (Online), 10 November 04; “Ministry of Public Security Requires Strike Hard Against Three Types of Criminal Activity—Criminal Organizations, Etc.” [Gonganbu yaoqiu yanda hei e shili deng san lei fanzui huodong], Ministry of Public Security (Online), 5 November 04; “China to Launch ‘People’s War’ on Drugs,” People’s Daily (Online), 5 April 05.

<sup>5</sup>“Ministry of Public Security Publicizes the Situation of the Nation’s Public Security Organs Striking at Crime and Preserving Social Order in 2004” [Gonganbu tongbao 2004 nian quanguo gongan jiguan daji xingshi fanzui weihu shehui zhian qingkuang], Ministry of Public Security

Web site, 5 February 05; Supreme People's Procuratorate Work Report [Zuigao renmin jianchayuan gongzuo baogao], 9 March 05.

<sup>6</sup>Supreme People's Court Work Report [Zuigao renmin fayuan gongzuo baogao], 8 March 05.  
<sup>7</sup>"Juvenile Crime Up 19.1 Percent Nationally in 2004, China Prepares to Establish Juvenile Courts" [2004 nian quanguo wei chengnian ren fanzui shangsheng 19.1 percent, wo guo yunnian jianli shaonian fayuan], Southern Metropolitan Daily (Online), 14 March 05. A separate article indicates that juvenile crime as a percentage of total crime increased each year between 2000 and 2003: 2000 (11.8 percent of all crimes), 2001 (12 percent), 2002 (13.9 percent), and 2003 (18.9 percent). Zhou Kai, "Prevent Juvenile Crime Without Delay" [Yufang weichengnianren fanzui liburonghuan], China Youth (Online), 11 March 05.

<sup>8</sup>For selected positive statistics, see "Ministry of Public Security Publicizes the Situation of the Nation's Public Security Organs Striking at Crime and Preserving Social Order in 2004" [Gongan bu tongbao 2004 nian quanguo gongan jiguan daji xingshi fanzui weihu shehui zhian qingkuang], Ministry of Public Security Web site; "Ministry of Public Security Publicizes National Public Order Situation" [Gonganbu tongbao quanguo zhian qingkuang], Xinhua (Online), 27 April 05. For sources suggesting a growing crime problem, see, e.g., SPP Work Report, 9 March 05; Yuan Zhengbing, Cui Zuojun, Liu Jinlin, "To Prevent Unjust Cases, Firmly Grasp the Relationship With Arresting Personnel—This Paper's Reporter Conducts a Special Interview with Supreme People's Procuratorate Vice President Zhu Xiaoping" [Fangzhi yuan cuoan yao ba buren guan—benbao jizhe zhuanfang zuigao renmin jianchayuan fu jianchazhang Zhu Xiaoping], Procuratorate Daily (Online), 16 May 05; "Ministry of Public Security Publicizes the Situation of the Nation's Public Security Organs Striking at Crime and Preserving Social Order in 2004," Ministry of Public Security Web site; "National Statistics Bureau: Crime in China Clearly Has the Largest Effect on Public Sense of Security" [Guojia tongjiju: wo guo xingshi fanzui yiran zui yingxiang qunzhong anquangan], China Youth, reprinted in Xinhua (Online), 7 February 05.

<sup>9</sup>For two of the many detailed Chinese accounts of the Nie and She cases, see "Nie Shubin Murder Case Still Unresolved" [Nie Shubin yuan sha an' xuaner weijue], Southern Weekend (Online), 24 March 05; and Gu Yunyong, "The Unjust Case of She Xianglin Murdering His Wife: the Price of Efforts to Seek Redress and Innocence on a Common Chinese Peasant Household" [She Xianglin sha qi yuanan: yige putong zhongguo nongmin jiating de shenyuan zhilu yu qingbai daijia], Southern Metropolitan Daily (Online), 5 April 05. In April 2005, a Hubei court formally exonerated Mr. She.

<sup>10</sup>For two of the numerous examples of such stories, see "14 Years of an Unjust Case of Wife Murder, 'Liaoning's She Xianglin' Li Huawei Obtains State Compensation" [14 nian sha qi yuanan 'Liaoning She Xianglin' Li Huawei huo guojia peichang], People's Daily (Online), 15 April 05; Lei Dao, "Why No Compensation After Eight Years of Unjust Imprisonment" [Ba nian yuanyu weihe bu peichang], Legal Daily (Online), 17 April 05.

<sup>11</sup>Li Na, "Unjust Case of Wife Murder Causes China's Judicial Realm to Rethink Protection of Human Rights" ["Sha qi" yuanan yinfa zhongguo sifa lingyu renquan baohu fansi], Xinhua, reprinted in People's Daily (Online), 6 April 05. For an English-language version of the article, see "Return of 'Murdered Wife' Calls China's Justice System Into Question," People's Daily (Online), 5 April 05.

<sup>12</sup>See, e.g., "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved" [Lüshi yanzhong de "Nie," "She" liangan: fansi cai neng dailai sifa tizhi de gaishan], Criminal Defense Net (Online), 13 April 05; "Legal Redemption for Erroneous Death Sentences" [Sixing wupan de falü jushu], Modern Bulletin (Online), 16 March 05; Tang Weibin, Li Changzheng, "How Do Unjust Cases Come About? Following the Trail of Hubei's She Xianglin 'Wife Murder' Case" [Yuanan shi zenme zaocheng de? Hubei She Xianglin "sha qi" an zhuizong], Procuratorate Daily (Online), 8 April 05; "Analyzing the Xu Jingxiang Unjust Case" [Xu Jingxiang yuanan pouxi], China Youth Online, 10 May 05; "Don't Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture, [Bie rang zhengyi zheduan le chibang: cong mianan kan xingxun bigong], Legal Daily (Online), 22 April 05; "Return of 'Murdered Wife' Calls China's Judicial System in Question," People's Daily (Online); "Behave Prosecutors to Protect Innocent," China Daily, 28 May 05 (FBIS, 28 May 05); Lin Wei, "Can Audio and Videotaping Really Keep Torture Under Control?" [Luyin luxiang zhen neng guanzhu xingxun bigong?], Legal Daily (Online), 7 June 05; Ge Lin, "Why a Not Guilty Verdict Is a Rarity of Rarities" [Wuzui panjue weihe fengmaolinjiao], Southern Weekend (Online), 16 June 05; Jiang Hong, "Commentary: Use Vigorous Legal Supervision to Prevent Unjust Cases" [Shelun: yong qiang you li de falü jiandu fangzhi cuoan], Justice Net (Online), 26 April 05; Yuan Zhengbing, Cui Zuojun, Liu Jinlin, "To Prevent Unjust Cases, Firmly Grasp the Relation with Arresting Personnel," Procuratorate Daily (Online). For an useful collection of translations and English-language briefings on some of the topics addressed in these articles, see Human Rights in China, China Rights Forum: Law and Justice, No. 2, 2005.

<sup>13</sup>"Legal Redemption for Erroneous Death Sentences," Modern Bulletin.

<sup>14</sup>"Return of 'Murdered Wife' Calls China's Justice System Into Question," People's Daily (Online).

<sup>15</sup>Shi Ting, "Police Reforms Put More Officers on the Beat," South China Morning Post, 26 March 05 (FBIS, 26 March 05).

<sup>16</sup>Ibid. See also "Beijing to Hire 6,500 More Policemen To Save On-the-Job From Overwork," Xinhua, 5 June 05 (FBIS, 5 June 05); Zuo Guobin, "Ministry of Public Security to Raise an Army for Police Substations, 70,000 Police to Be Added at Basic Levels" [Gonganbu wei paichusuo zhaobingmama, jiang chongshi qiwan jingli dao jiceng], CRI Online, 22 June 05.

<sup>17</sup>Dwight Daniels, "Beijing Demands Better Policing," China Daily (Online), 9 May 05.

<sup>18</sup>For crackdowns on abuses, see, e.g., SPP Work Report, 9 March 05; "Supreme People's Procuratorate Confirms Emphasis of Investigative Supervision This Year" [Zuigaojian queding jinnian zhencha jiandu zhongdian], Legal Daily (Online), 17 May 05; Cao Desheng, "Rights Infringements in Focus," China Daily, 27 July 05. For statements on balancing crime-fighting and

human rights protection, see, e.g., Tian Yu, "Xiao Yang: Ensure in Practice That The Innocent Are Not Criminally Prosecuted" [Xiao Yang: qieshi baozhang wuzui de ren bushou xingshi zhuijiu], Xinhua (Online), 16 December 04; Yuan Zhengbing, et. al., "To Prevent Unjust Cases, Firmly Grasp the Relationship with Arresting Personnel."

<sup>19</sup>UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Mission to China, Advance Edited Version, 29 December 04 [hereinafter UNWGAD Report], para. 68(a). UNWGAD officials interviewed more than 70 detainees according to UNWGAD's terms of reference.

<sup>20</sup>The Commission's Political Prisoner Database includes profiles on more than 500 current and 3,000 past political prisoners. Thousands of political prisoners are detained in China's re-education through labor system. See *infra*, "Administrative Punishment," and accompanying notes.

<sup>21</sup>"China Rebuffs Call for Tiananmen Account," Associated Press, 6 June 05.

<sup>22</sup>Over the past year, Chinese authorities detained, questioned, and then released numerous "public intellectuals" who had been critical of the government or working on sensitive issues, including Liu Xiaobo, Yu Jie, Zhang Zuhua, Jiao Guobiao, Wang Guangze, Li Boguang, Chen Min, Yang Tianshui, Li Guozhu, Guo Guoting, and others. For more details, see Section III(d)—Freedom of Expression. For a detailed discussion of the challenges faced by China's public intellectuals, see Public Intellectuals in China, Staff Roundtable of the Congressional-Executive Commission on China, Testimony and Written Statements submitted by Perry Link, Professor of Chinese Language and Literature, Princeton University; Merle Goldman, Professor Emerita of Chinese History, Boston University and Executive Committee Member, Fairbank Center for East Asia Research, Harvard University; and Hu Ping, Chief Editor, Beijing Spring.

<sup>23</sup>"Petitioner Round-up as NPC Meets," Human Rights in China (Online), 11 March 03; "China Detains Dissidents Who Mourned Deposed Leader Zhao: Rights Group," Agence France-Presse, 30 January 05 (FBIS, 30 January 05); "Activists Under Tight Security Ahead of Tiananmen," Radio Free Asia (Online), 3 June 05; Chan Siu-sin, "Rights Activists Call Confinement 'Ridiculous,'" South China Morning Post, 8 September 05 (FBIS, 8 September 05).

<sup>24</sup>Law in Political Transitions: Lessons From East Asia and the Road Ahead for China, Hearing of the Congressional-Executive Commission on China, 26 July 05, Written Statement submitted by Jerome A. Cohen, Professor of Law, New York University. Individuals charged with or convicted of such crimes since October 2004 include Jamal Abdulla, Nurmemet Yasin, Sonom Phuntsog, Jampel Gyatso, Jigme Dazang, Lobsang Dargyal, Tashi Gyaltzen, Tsesum Samten, Tsultrim Phelgyal, Zhang Lin, Xu Wanping, and Zheng Yichun.

<sup>25</sup>Human Rights in China Press Release, "Shanghai Resident Under Administrative Detention For Petitioning Over Destruction of His Home," 2 February 03; "Visitors to Memorial Ceremony Re-educated Through Labor and Arrested One by One" [Jidian de fangmin fenfen bei laojiao he jubu], Boxun (Online), 3 February 05; Forced Labor in China, Roundtable of the Congressional-Executive Commission on China, 22 June 05, Written Statement of Harry Wu, Executive Director, Laogai Research Foundation.

<sup>26</sup>UNWGAD Report, para. 73.

<sup>27</sup>"Foreign Ministry Spokesperson Zhang Qiyue's Press Conference," Ministry of Foreign Affairs (Online), 7 December 04.

<sup>28</sup>Chris Buckley, "U.S. Cautious as China Offers Details on Political Prisoners," New York Times (Online), 9 February 05.

<sup>29</sup>A Global Review of Human Rights: Examining the State Department's 2004 Annual Report, Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations, House Committee on International Relations, 17 March 05, Oral Statement of Michael Kozak, Assistant Secretary of State for Democracy, Human Rights, and Labor, US Department of State.

<sup>30</sup>The UNWGAD defines a detention as arbitrary (1) when there is clearly no legal basis for the deprivation of liberty (for example when individuals are kept in detention after the completion of their prison sentences or despite an amnesty law applicable to them, or in violation of domestic law or relevant international instruments); (2) when individuals are deprived of their liberty because they have exercised the rights and freedoms guaranteed in certain provisions of the United Nations Declaration on Human Rights (UNDHR) or the International Covenant on Civil and Political Rights; and (3) when noncompliance with the standards for a fair trial set out in the UNDHR and other relevant international instruments is sufficiently grave as to make a detention arbitrary. United Nations Commissioner for Human Rights, Fact Sheet #26, the Working Group on Arbitrary Detention.

<sup>31</sup>Xue Yongxiu, "Extended Detention Cases in Courts at Each Level Have Been Completely Cleared" [Geji fayuan chaoqi jiya anjian quanbu qingli wanbi], China Court Net (Online), 9 March 05; State Council Information Office, "China's Progress in Human Rights in 2004," April 2005 (FBIS, 13 April 05).

<sup>32</sup>Andrea Worden, "Legal Theatre in China: The Detention and Trial of Pro-Democracy Activist Yang Jianli," draft manuscript on file with the Commission.

<sup>33</sup>Benjamin Kang Lim, "New York Times Chinese Researcher Accused of Fraud," Reuters (Online), 1 June 05.

<sup>34</sup>PRC Criminal Procedure Law, enacted 1 Jan 97, art. 128. Under a variety of legal exceptions and detention extension provisions such as Articles 69, 124, 126, 127, and 140 of the PRC Criminal Procedure Law, a suspect's pre-trial detention could be extended for more than seven months even without evidence of new crimes. Worden, "Legal Theatre in China."

<sup>35</sup>Worden, "Legal Theatre in China" (citing Chinese criminal law experts). Even SPC officials acknowledge that police and judicial officials hold suspects for periods much longer than allowed by law. Liu Yu, "Reforms for More Rights—Protecting the Rights of the Accused and Building a More Just Legal System Are the Goals of Change," Beijing Review (Online), 25 November 04.

<sup>36</sup>International Covenant on Civil and Political Rights, arts. 9(3) and 9(4). China has signed, but has not yet ratified, the ICCPR. However, treaty signatories have an obligation to refrain

from acts that would defeat the purpose of a treaty while ratification is pending. Vienna Convention on the Law of Treaties, art. 18.

<sup>37</sup> UNWGAD Report, para. 32.

<sup>38</sup> "Ministry of Public Security Publicizes the Situation of the Nation's Public Security Organs Striking at Crime and Preserving Social Order in 2004," Ministry of Public Security (Online).

<sup>39</sup> See, e.g., the broad-ranging and vaguely worded lists of offenses in the State Council Notice on Re-Issuing the Ministry of Public Security's Trial Methods for Implementation of Re-education Through Labor [Guowuyuan guanyu zhuanfa gonganbu zhiding de laodong jiaoyang shixing banfa de tongzhi], issued 21 January 82, art. 9; Regulations on the Handling of Re-education Through Labor Cases By Public Security [Gongan jiguan banli laojiao anjian guiding], issued 1 June 02, art. 9; PRC Public Order Administration Punishment Law, adopted 28 August 05. According to Chinese officials, 80 percent of RETL detainees are drug addicts. Chiang Hsun, "NPC To Replace 'Re-education Through Labor System,' Which Has Come Under Mounting Criticisms, with 'Illegal Conduct Correction System' In Order to Protect Human Rights," Asia Weekly, 8 May 05 (FBIS, 4 May 05).

<sup>40</sup> Wu Yihuo, Hong Jun, "Too Few Administrative Law Enforcement Cases Transferred to Judicial Organs—Relevant Anhui Research Reveals Information: Three Major Factors Influence Effective Links Between Administrative Law Enforcement and Criminal Law Enforcement" [Xingzheng zhifa anjian yisong sifa jiguan taishao, anhui youguan yanjiuban touchu xinxi: san da yinsu yingxiang xingzheng zhifa yu xingshi zhifa youxiao xianjie], Procuratorate Daily (Online), 31 January 05.

<sup>41</sup> Various analysts estimate that between 2 percent and 10 percent of RETL subjects are political detainees. Randall Peerenboom, "Out of the Frying Pan and Into the Fire," 98 Northwestern University Law Review 991, 1000–01 and accompanying notes (2004); Jim Yardley, "Issue in China: Many in Jails Without Trial," New York Times (Online), 9 May 05.

<sup>42</sup> State Council Notice on Re-Issuing the Ministry of Public Security's Trial Methods for Implementation of Re-education Through Labor, art. 9; Regulations on the Handling of Re-education Through Labor Cases By Public Security, art. 9; PRC Public Order Administration Punishment Regulations [Zhonghua renmin gongheguo zhian guanli chufa tiaoli], issued 5 September 86, amended 12 May 94.

<sup>43</sup> UNWGAD Report, 29 December 04, paras. 40, 41. Note that in August 2005, the NPC Standing Committee passed a "Public Order Administration Punishment Law" to replace the "Public Order Administration Punishment Regulations" mentioned in the UNWGAD Report. The new law is effective as of March 1, 2006, at which time the old regulations will be canceled. Public Order Administration Punishment Law, adopted 28 August 05.

<sup>44</sup> Most sources place the number of RETL camps at around 300 and the number of detainees between 250,000 and 300,000. See, e.g., Peerenboom, "Out of the Frying Pan and Into the Fire," 1000–01 and accompanying notes (2004); Yardley, "Issue in China: Many in Jails Without Trial"; Can Siu-sin, "Critics Take Shine of Bootcamp Reforms," South China Morning Post, 21 March 05. However, a May 2005 article in Asia Weekly cites Beijing researchers as confirming that there are at least 1 million people in RETL camps. Chiang Hsun, "NPC To Replace Re-education Through Labor System."

<sup>45</sup> Regulations on the Handling of Re-education Through Labor Cases By Public Security, art. 3; Chan Siu-sin, "Critics Take Shine of Bootcamp Reforms." In its December 2004 report, the UNWGAD found, "The operation of the laws governing decisionmaking on placement in a re-education through labour camp is, however, highly problematic. From reliable sources, including interviews with persons affected, it is clear that in the overwhelming majority of cases, a decision on placement in a re-education center is not taken within a formal procedure provided by law. The commission vested with power to take this decision in practice never or seldom meets, the person affected does not appear before it and is not heard, no public and adversarial procedure is conducted, no formal and reasoned decision on placement is taken (or issued for the person affected). Thus, the decisionmaking process completely lacks transparency. In addition, recourse against decisions are [sic] often considered after the term in a center has been served." UNWGAD Report, para. 58.

<sup>46</sup> Ibid., para. 56.

<sup>47</sup> Ibid., para. 75.

<sup>48</sup> Ibid., para. 51. Under Chinese law, penalties involving restrictions on personal freedom may only be established by law. PRC Legislation Law, adopted 15 March 00, art. 8.

<sup>49</sup> Wu Kun, "A Powerful Weapon for Public Order Administration" [Shehui zhian guanli de yu li falu wuqi], Legal Daily (Online), 1 September 05.

<sup>50</sup> PRC Public Order Administration Law, arts. 5, 16, 79. See also, "Passage of the Public Order Administration Punishment Law, Focuses on Citizen Rights" [Zhian guanli chufafa tongguo, guanzhu gongmin quanli], Legal Daily, 29 August 05, available on People's Daily (Online), 29 August 05.

<sup>51</sup> At the 2004 NPC session, more than 420 deputies reportedly signed a motion on reform of the RETL system. Chiang Hsun, "NPC To Replace Re-education Through Labor System."

<sup>52</sup> Wang Yu, "China's Re-education Through Labor Management Will Enlarge Reform Efforts in Four Areas" [Wo guo laojiao guanli jiang zai si fangmian jiada gaige lidu], Legal Daily (Online), 1 December 04; Zhang Qingshui, "National Re-education Through Labor Work Conference Closes" [Quanguo laojiao gongzuo zuotanhui bimul], China Legal Publicity (Online), 2 December 04.

<sup>53</sup> Chan Siu-sin, "Critics Take Shine of Bootcamp Reforms"; Liao Weihua, "Re-education Through Labor System Faces Reforms, Law on Correcting Unlawful Acts To Be Formulated" [Laojiaozhi mianlin gaige jiang zhiding weifa xingwei jiaozhifa], Beijing News, reprinted in Defense Lawyer Net, 2 March 05.

<sup>54</sup> Liao Weihua, "Re-education Through Labor System Faces Reforms."

<sup>55</sup> Chan Siu-sin, "Critics Take Shine of Bootcamp Reforms"; Yardley, "Issue in China: Many in Jails Without Trial"; Chiang Hsun, "NPC To Replace Re-education Through Labor System"; Tim Luard, "China's 'Reforming' Work Programme," BBC News (Online), 13 May 05.

<sup>56</sup> Robin Munro, *A Question of Criminal Madness: Judicial Psychiatry and Political Dissent in the People's Republic of China*, September 2004 (doctoral thesis on file with the Commission).

<sup>57</sup> *Ibid.*, 13, 322–343; Commission Staff Interview.

<sup>58</sup> UNWGAD Report, paras. 64, 66.

<sup>59</sup> or a description of sometimes arbitrary and brutal treatment in these institutions, see Robin Munro, *A Question of Criminal Madness*.

<sup>60</sup> Forced Drug Detoxification Measures [Qiangzhi jiedu banfa], issued 1 January 95, art. 5.

<sup>61</sup> Regulations on the Handling of Re-education Through Labor Cases By Public Security, art. 9.

<sup>62</sup> "Treatment Requires Psychological Support," China Daily, 25 June 05 (FBIS, 25 June 05).

<sup>63</sup> Jiang Zhuqing, Jiao Xiaoyang, "Battles Won on Drugs, But War Rages On," China Daily, 27 May 05 (FBIS, 27 May 05). According to a Chinese source, 580,000 individuals had been "accepted" into RETL drug detention centers through the end of 2004. "A Total of 580,000 Accepted for Drug Detoxification, China's RETL Drug Detoxification Model Basically Complete" [Leiji shourong jieduzhe 58 wan, zhongguo laojiao jiedu moshi jiben chengxing], China News (Online), 24 June 05.

<sup>64</sup> Leu Siew Ying, "Addict Dies in Rehabilitation Center," South China Morning Post, 4 August 05 (FBIS, 4 August 05); Leu Siew Ying, "Drug Rehabilitation Centre Inmates Sometimes Faced with Deadly Abuse," South China Morning Post (Online), 5 August 05.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.* Key footage from a surveillance camera that had been installed to prevent abuses apparently is missing without explanation.

<sup>67</sup> CECC, 2004 Annual Report, 5 October 04, 18.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Tu Chaohua, "For Urban Beautification, 7 Indigents Are Abandoned in the Wilderness" [Wei zhengdun shirong, 7 ming liulangren bei paosong huangye], China Youth Online, 7 June 05. According to the article, a January sweep of vagrants and mentally ill persons in Ganzhou city, Jiangxi province, left five people missing and presumed dead. Local officials have admitted that the roundup, which they referred to as custody and repatriation, was an "administrative mistake," but claim that they have disciplined the officials involved and closed the matter. According to a later report, one of the individuals was later found. Li Qing, Chen Xiuqi, "News Comes Out in the Chongyi Vagrant Abandonment, Secret Rule To Send Back and Forth Between Counties" [Chongyi paosong liulang qitao renyuan baolu neirong xian yu xian hu qian jingcheng qianguize], Legal Daily (Online), 15 June 05.

<sup>71</sup> *Ibid.* In a subsequent commentary, a China Youth Online writer expressed concern about whether the aid system has been implemented and strongly criticized local Jiangxi officials over the incident. Yang Tao, "Civil Affairs Ministry Can't Abandon the Weak" [Minzhengbu bu neng paoqi ruozhe], China Youth Online, 9 June 05.

<sup>72</sup> For just a few of the many Western reports on torture in China, see "Three Tibetans Jailed for Suspected Separatism," Radio Free Asia (Online), 23 October 04; "Falun Gong Practitioner Reunites with Husband After 3 years in China Labor Camp," Newsday (Online), reprinted in Lexis/Nexis, 30 September 04; Kate McGeown, "China's Christians Suffer for Their Faith," BBC News (Online), 9 November 04; "Tiananmen Protester Reports on Tortured Mao Portrait Protester," Agence France-Presse, 22 November 04 (FBIS, 22 November 04); Human Rights in China Press Release, "New Account Sheds Light on Degrading Conditions at Inner Mongolia's Chifeng Prison," 20 December 04; Human Rights Watch, "Country Summary—China," January 2005; and Nora Boustany, "Rebiya Kadeer: After Horrors of Prison, Constant Kisses and Hugs," Washington Post (Online), 30 March 05.

<sup>73</sup> See, e.g., "Suggestions for Enhancing the Rights of Lawyers" [Wei zhengjin lüshi quanli jianyan xiance], China Legal Publicity (Online), November 2004; "Return of 'Murdered Wife' Calls China's Judicial System in Question," People's Daily (Online); Lin Wei, "Can Audio and Videotaping Really Keep Torture Under Control?" Legal Daily (Online); Guo Hengzhong, "Coercing Confessions Through Torture Seriously Violates Human Rights, Perfecting the System Should Be a Matter of Vital Urgency" [Xingxun bigong yanzhong qinfan renquan, wanshan zhidu ying shi dangwuzhijil], Legal Daily (Online), 24 June 05.

<sup>74</sup> See, e.g., "Sichuan Investigates and Prosecutes a Case Where Torture Led to Person's Death" [Sichuan chachu yiqi xingxun bigong zhiren siwangan], China Youth Online, 18 November 04; Zhou Wenying, Zou Shilai, "Jiangxi Fuzhou: Make Inquiries a Required Procedure in Examining Arrests" [Jiangxi Fuzhou: ba xunwen zuowei shencha daibu bijing chengxu], Procuratorate Daily (Online), 4 January 05; Liu Li, "Sixty Officials Charged with Dereliction of Duty, Abuse of Power," China Daily (Online), 26 January 05; "Detention Discipline Incites Detainees to Whip Convict for Six Hours, Leading to His Death" [Kanshousuo guanjiao zhizhi zai ya renyuan bianfa fanren 6 xiaoshi zhi qi siwang], Boxun (Online), 8 February 05 (citing a Heilongjiang Daily story on the case); Wan Xingya, "Civil Servants Violating Human Rights" [Gongzhi renyuan qinfan renquan fanzui], China Youth Online, 27 July 05 (noting that between July 2004 and July 2005, procuratorates prosecuted 1,751 officials for human rights violations, including illegal detentions, torture, and other violations); "'Nie Shubin Murder Case' Still Unresolved," Southern Weekend; "Murdered Wife Lives, Proves Husband's Innocence," China Daily (Online), 4 April 05; "14 Years of an Unjust Case of Wife Murder, 'Liaoning's She Xianglin' Li Huawei Obtains State Compensation," People's Daily; Lei Dao, "Why No Compensation After Eight Years of Unjust Imprisonment," Legal Daily; Fei Zhiyong, "Supreme People's Procuratorate Publishes Three Criminal Cases of Serious Infringements on Human Rights Involving Confessions Coerced Through Torture, etc." [Zuigaojian gongbu xingxun bigong deng 3 qi yanzhong qinfan renquan fanzui], Procuratorate Daily (Online), 27 July 05.

<sup>75</sup> See notes for the following paragraph for examples of these discussions.

<sup>76</sup> See, e.g., Fu Kuanzhi, “Three Essential Elements That Must Be Put Forth to Put a Stop to Torture” [Dujue xingshi bigong xu jubei sange yaosu], Procuratorate Daily (Online), 11 August 04; Li Jinlin, “China Law Society Opens Research Forum on the Torture Problem” [Zhongguo faxuehui zhaokai xingxun bigong wenti yanjiu zuotanhui], Procuratorate Daily (Online), 30 January 05; “Return of ‘Murdered Wife’ Calls China’s Judicial System in Question,” People’s Daily; Cheng Jishan, “Radical Policies to Eliminate the Extortion of Confessions Through Torture” [Xiaochu xingxun bigong de zhiben zhice], Legal Daily (Online), 13 April 05; “Don’t Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture,” Legal Daily; Guo Hengzhong, “Coercing Confessions Through Torture Seriously Violates Human Rights, Perfecting the System Should Be a Matter of Vital Urgency”; “The ‘Nie,’ ‘She’ Cases in Lawyers’ Eyes: Rethinking Necessary Before Judicial System Can Be Improved,” Criminal Defense Net.

<sup>77</sup> Ibid. Under current Chinese law and judicial interpretations, judges have the discretion to exclude illegally obtained evidence, and such evidence may not form the basis for a judgment. However, they are not required to exclude such evidence. SPC Interpretation on Several Issues Regarding Implementation of the PRC Criminal Procedure Law [Zuigao renmin fayuan guanyu zhixing zhonghua renmin gongheguo xingshi susongfa ruogan wenti de jieshi], issued 29 June 98. One Procuratorate Daily article argues that illegally obtained evidence should not be excluded, provided the evidence can be verified. Fu Kuanzhi, “Three Essential Elements That Must Be Put Forth to Put a Stop to Torture.”

<sup>78</sup> For law enforcement emphasis on supervision, see e.g., “Return of ‘Murdered Wife’ Calls China’s Judicial System in Question,” People’s Daily; “China Exclusive: All 3,000 Police Chiefs to Hold Face-to-Face Meetings With Petitioners,” Xinhua, 18 May 05 (FBIS, 18 May 05); Jiang Hong, “Commentary: Use Vigorous Legal Supervision to Prevent Incorrect Cases”; and SPP rectification campaigns noted earlier in this section.

<sup>79</sup> Cao Desheng, “Rights Infringements in Focus.”

<sup>80</sup> “Jiangxi Fuzhou: Make Inquiries a Required Procedure in Examining Arrests,” Procuratorate Daily (Online). Prosecutors typically only review a paper file of cases when approving the formal arrest of criminal suspects.

<sup>81</sup> “Supreme People’s Procuratorate Confirms Emphasis of Investigative Supervision This Year” [Zuigaojian queding jinnian zhencha jiandu zhongdian], Legal Daily (Online), 17 May 05.

<sup>82</sup> “China Exclusive: All 3,000 Police Chiefs to Hold Face-to-Face Meetings With Petitioners in 3 Months,” Xinhua.

<sup>83</sup> Bradley S. Klapper, “UN: China Allows First Probe on Torture,” Associated Press, 23 August 05, reprinted in Washington Post (Online), 23 August 05.

<sup>84</sup> “Confessions Extracted Through Torture May Not Be Used as Evidence: On May 1, Sichuan Province Experiments With ‘Several Opinions Regarding the Standardization of Criminal Evidence Work’” [Bichulai de kougong bu neng zuowei zhengju, Sichuan sheng 5 yue 1 hao qi shixing “Guanyu xingshi zhengju gongzuo de ruogan yijian”], Procuratorate Daily (Online), 13 April 05. Several Chinese legal scholars have expressed concern that the rule does not go far enough, and that external checks on abuse and better evidentiary standards are necessary. Qin Ping, “How Local Criminal Evidence Standards Guarantee Implementation of the Criminal Procedure Law” [Difang de xingshi zhengju guifan ruhe baozhang xingshi susongfa de zhixing], Legal Daily (Online), 22 April 05. In the first case under the new rules, a Chengdu court reportedly held a hearing on a defendant’s complaint that police coerced his confession through torture and found that the allegation was unsubstantiated. Gu Ping, Li Zhen, “Is It Torture or Not? Police Go To Court to Present Evidence” [Shifou xingxun bigong, jingcha chuting zhizheng], Procuratorate Daily (Online), 6 June 05.

<sup>85</sup> Scholars from the Procedural Research Center at the Chinese University of Politics and Law in Beijing designed the project and chose Haidian district, Beijing; Baiyin district, Gansu; and Jiaozhu city, Henan, as the three pilot districts. “When Suspects Are Interrogated, They May Request Audio or Videotaping” [Xianyiren shoushen ke shenqing luyin luxiang], Legal Daily (Online), 8 May 05. Under the program, suspects are reportedly informed of their rights and given the choice of having a lawyer present free of charge, having the interrogation audiotaped or videotaped, or proceeding without any of the above. “Beijing Haidian Police Experiment With Having Lawyers Present During Interrogation, Take Strict Precautions Against Torture” [Beijing haidian jingfang shixing lushi pangting shenxun zhi, yanfang xingxun bigong], China East Day (Online), 20 May 05.

<sup>86</sup> Liao Weihua, “Many Sides Promote the Ten-year Major Amendment of the Criminal Procedure Law, Consensus on Guarding Against Confessions Coerced Through Torture” [Duofang tuidong xingsufa shinian daxiu, fangfan xingxun bigong cheng gongshi], Beijing News (Online), 13 July 05.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> For a discussion of corresponding amendments to the PRC Criminal Procedure Law that are under consideration, see Liao Weihua, “Many Sides Promote the Ten-year Major Amendment of the Criminal Procedure Law”; “China’s ‘Criminal Procedure Law’ Will Again Undergo Large-Scale Amendment [Zhongguo “xingshi susongfa” jiang zaici jinxing daguimo xiuding], Procuratorate Daily (Online), 12 October 04; Li Yu, “Reforms for More Rights,” Beijing Review (Online), 25 November 04. Several Chinese sources suggest that the Sichuan evidence experiment will accelerate the implementation of a similar rule at the national level. Qin Ping, “How Local Criminal Evidence Standards Guarantee Implementation of the Criminal Procedure Law”; “Lawyers at Interrogations Can Protect Suspect’s Rights and Interests, Represents Rule of Law Progress” [“Lushi zai chang” ke baohu xianyiren quanyi, biao zhi fazhi jinbu], Beijing Times, available on ACLA Defense Lawyer Net, 23 May 05.

<sup>90</sup> See, e.g., “Suggestions for Enhancing the Rights of Lawyers,” China Legal Publicity (Online); Li Yu, “Reforms for More Rights”; Cheng Jishan, “Radical Measures to Policies Eliminate



The Extortion of Confessions Through Torture”; Qin Ping, “How Local Criminal Evidence Standards Guarantee Implementation of the Criminal Procedure Law”; “China Needs Better Enforcement of Ban on Torture—Lawyers,” Wall Street Journal (Online), 14 April 05; Guo Hengzhong, “Coercing Confessions Through Torture Seriously Violates Human Rights, Perfecting the System Should Be a Matter of Vital Urgency”; Wang Changfeng, “Assistance of Lawyers From the First Moment” [Di yi shijian hou de lushi bangzhu], Legal Daily (Online), 2 June 05.

<sup>91</sup> Liao Weihua, “Many Sides Promote the Ten-year Major Amendment of the Criminal Procedure Law.”

<sup>92</sup> PRC Criminal Procedure Law, arts. 33, 34; Regulations on Legal Aid, issued 16 July 03, art. 12.

<sup>93</sup> PRC Criminal Procedure Law, art. 34; Regulations on Legal Aid, chapter 2.

<sup>94</sup> State Council Information Office, “China’s Human Rights Progress in 2004,” April 2005 (FBIS, 13 April 05).

<sup>95</sup> Chinese sources generally cite a figure of 30 percent for defense representation. See, e.g., “Don’t Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture,” Legal Daily; Guo Xiaoyu, “Lawyers Appeal: Abolish ‘The Crime of Lawyer Evidence Fabrication,’” [Lüshi huyu: quxiao “lushi weizhengzui”], Legal Daily (Online), 1 June 05; Wang Changfeng, “Assistance of Lawyers From the First Moment”; Wang Yu, Yu Nayang, “Lawyers: We Are Fighting For Our Own Rights” [Lüshi: Women bu shi zai wei ziji zheng quanli], Legal Daily (Online), 16 June 05. However, one source cites figures as low as a 20 percent. Liao Weihua, “Lawyers Right to Be Present Should Be Guaranteed in Amendments” [Lüshi zaichangquan ying xiufa quebao], Beijing News (Online), 17 May 05. According to one Western researcher, Chinese counterparts privately suggest that the official 30 percent figure for defense representation is too high. Commission Staff Interview.

<sup>96</sup> Ibid.

<sup>97</sup> PRC Criminal Procedure Law, art. 96.

<sup>98</sup> Commission Staff Interview; UNWGAD Report, para. 36; “Lawyers Law Prepared for Changes” [Lüshifa yunnian bianlian], Beijing News (Online), 16 May 05; Wang Changfeng, “Assistance of Lawyers From the First Moment”; Hu Cong, “Tighter Rein on Law Enforcement Demanded.”

<sup>99</sup> Commission Staff Interview. The public security authorities reportedly argued that such meetings were “inappropriate” or “inconsistent with Chinese law.”

<sup>100</sup> Tan Weiping, “Beijing: More Than 80 percent of Criminal Defendants Don’t See a Lawyer Within 48 Hours” [Beijing: guo 8 cheng xianfan 48 xiaoshi nei jianbudao lushi], Beijing Youth Daily, reprinted in ACLA Defense Lawyer Web site, 31 May 05. Another survey reportedly revealed that only 4.6 percent of suspects were able to meet with their lawyers within the first three days of detention. Wang Changfeng, “Assistance of Lawyers From the First Moment.”

<sup>101</sup> Tan Weiping, “Beijing: More Than 80 percent of Criminal Defendants Don’t See a Lawyer Within 48 Hours.”

<sup>102</sup> Commission Staff Interview.

<sup>103</sup> Law in Political Transitions, Written Statement submitted by Jerome A. Cohen. Under Article 36 of the CPL, the defense may not examine and duplicate official materials related to the case until after the case is transferred to the procuratorate for prosecution.

<sup>104</sup> Commission Staff Interview. See also, e.g., UNWGAD Report, para. 35; “Lawyers Law Prepared for Changes,” Beijing News; “Suggestions for Enhancing the Rights of Lawyers,” China Legal Publicity; Wu Nanlan, “Groups Call for Lawyers’ Right to Investigate,” China.org, 23 May 05 (FBIS, 24 May 05).

<sup>105</sup> PRC Criminal Procedure Law, art. 37.

<sup>106</sup> Li Weihua, “Deep Analysis of ‘Today’s Court Hearings Have No Witnesses’” [“Jinri tingshen wu zhengren” de shenceng pouxil], Democracy and Law, No. 4 (2005), reprinted in Guangming Net (Online), 3 April 05; Qin Ping, “How Local Criminal Evidence Standards Guarantee Implementation of the Criminal Procedure Law”; Ji Xiangde, “Commentary: Let Witnesses Come to Court and Testify, Most Needed Are Systemic Guarantees,” Procuratorate Daily (Online), 7 December 04 (noting that only 5 percent of witnesses appear at criminal trials, and citing the shocking example of Nanning, Guangxi province, where the rates of witness attendance at criminal trials were 0.33 percent, 0.7 percent, and 1.27 percent for the years 2000, 2001, and 2002, respectively).

<sup>107</sup> According to the report, police have even tortured witnesses in some cases. Li Weihua, “Deep Analysis of ‘Today’s Court Hearings Have No Witnesses.’”

<sup>108</sup> Under the CPL, “the testimony of a witness may be used as the basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides.” PRC Criminal Procedure Law, art. 47.

<sup>109</sup> Wan Xingya, “Requirement That Witnesses Appear in Court to Testify Will Be Written into the New Criminal Procedure Law” [Zhengren yao chuting zuozheng jiang xiejin xin xingshi susongfa], China Youth Daily, reprinted in Defense Lawyer Net, 8 August 05.

<sup>110</sup> Guo had represented journalists, Falun Gong practitioners, and imprisoned attorney Zheng Enchong. The Shanghai Justice Bureau reportedly accused Guo of “on several occasions adopting positions and making statements contrary to the law and the Constitution” and “defiling and slandering” the Communist Party and government. Reporters Without Borders Press Release, “Lawyer for Several Journalists and Cyberdissidents Banned From Practising for One Year,” 4 March 05; Bill Savadove, “‘Accidental Activist’ Under House Arrest,” South China Morning Post, 16 March 05 (FBIS, 16 March 05).

<sup>111</sup> Jian Fa, “Independence Called for Lawyers,” Beijing Review, October 2004; UNWGAD Report, para. 37; Guo Xiaoyu, “Lawyers Appeal: Abolish ‘The Crime of Lawyer Evidence Fabrication.’”

<sup>112</sup> Wang Ying, “The Irregular Publication of a Criminal Defense Lawyer Work Environment Survey Report” [Xingbian lüshi zhiye zhuangkuang diaocha baogao de fei zhengchang gongbu], 21st Century Business Herald (Online), 11 August 04. According to the Legal Daily, of 23 cases

of lawyer evidence fabrication that have actually gone to trial, the lawyer was found innocent or the case was withdrawn in 11 cases; the lawyer was found guilty in 6 cases; the lawyer avoided criminal punishment in 1 case; and 5 cases have not yet been concluded. Guo Xiaoyu, "Lawyers Appeal: Abolish 'The Crime of Lawyer Evidence Fabrication.'" <sup>113</sup>

<sup>113</sup>Jian Fa, "Independence Called for Lawyers."

<sup>114</sup>Although there was domestic discussion of removing Article 306 from the Criminal Code last year, there has been no news of further steps to repeal the controversial provision. During a recent NPCSC inquiry, lawyers renewed their calls for repeal of Article 306. Guo Xiaoyu, "Lawyers Appeal: Abolish 'The Crime of Lawyer Evidence Fabrication.'" For a compilation of more than 27 cases involving lawyer detentions, see Stacy Mosher, "In Custody, Lawyers in Detention," China Rights Forum, No. 2, 2005, 100–5.

<sup>115</sup>Wang Ying, "The Irregular Publication of a Criminal Defense Lawyers Work Environment Survey Report." According to the article, the initial results are said to have "shocked people," with one observer noting that the problems were worse than they thought possible. In response, the Beijing Justice Bureau reportedly blocked publication of the initial survey results and refused applications to continue the research program in 2003 and 2004.

<sup>116</sup>"Lawyers Law Prepared for Changes," Beijing News; "Nie Shubin Murder Case' Still Unresolved," Southern Weekend; "What It Means to Be a Lawyer: A Special Interview With Zhang Sizhi" [Zuo yige lüshi gai zuo de shiqing: zhuanfang Zhang Sizhi], Southern Window, reprinted in Sina.com, 15 October 04.

<sup>117</sup>Yan Yongwei, "Liaoning Establishes Provisions Requiring Case Handling Organs to Guarantee Arrangements for Lawyer Meetings Within 48 Hours" [Liaoning chutai guiding yaoqiu banan jiguan baozhang lüshi huijian 48 xiaoshi nei anpail], Legal Daily (Online) 16 November 04; "When Suspects Are Interrogated, They May Request Audio or Videotaping," Legal Daily.

<sup>118</sup>Prosecutors approved the arrest of 811,102 suspects and refused to approve the arrest of 67,904 suspects in 2004. Suspects thus had a 7.7 percent chance that prosecutors would reject public security applications for a formal arrest in 2004. Prosecutors decided to indict 867,186 suspects and refused to indict 21,554 suspects in 2004. Once prosecutors approved an arrest, therefore, suspects had only a 2.4 percent chance that prosecutors would decide not to proceed to trial. SPP Work Report, 9 March 05. By contrast, criminal courts of first instance convicted defendants in 99 percent of cases. See *infra*, Fairness of Criminal Trials and Appeals.

<sup>119</sup>"Suggestions for Enhancing the Rights of Lawyers" China Legal Publicity. See also Wang Yu, Yu Nayang, "Lawyers: We Are Fighting For Our Own Rights"; Guo Xiaoyu, "Lawyers Appeal: Abolish 'The Crime of Lawyer Evidence Fabrication.'" <sup>120</sup>

<sup>120</sup>"Lawyers Law Prepared for Changes," Beijing News; "China's 'Criminal Procedure Law' Will Again Undergo Large-Scale Amendment," Procuratorate Daily.

<sup>121</sup>Criminal courts of first instance completed the trials of 770,947 defendants in 2004 and found only 2,996 defendants (0.4 percent) not guilty. An additional 12,345, or 1.6 percent, of defendants "avoided criminal punishment." SPC Work Report, 8 March 05. Some Chinese commentators questioned whether high convictions rates should be viewed as a sign of law enforcement effectiveness. Wang Songmiao, "Commentary: Looking at 100 percent Conviction Rates Discriminately" [Pinglun: bianzheng kandai 100 percent de youzui juelü], Procuratorate Daily (Online), 25 May 05.

<sup>122</sup>Criminal courts heard 644,248 first instance criminal cases in 2004 and completed appeals in 96,204 criminal cases. SPC Work Report, 8 March 05. "2004 Situation of the Adjudication of Second Instance Cases in the Nation's Courts" [2004 quanguo shenli gelei ershen anjian qingkuang], China Court Web site, 4 October 05.

<sup>123</sup>Appeals courts changed the original judgment in 12,730, or 13.2 percent, of all cases heard on appeal. In addition, courts changed judgments in 1,371 criminal cases that were given an additional rehearing under court adjudication supervision procedures. In total, appeals courts canceled 2.1 percent of the first instance verdicts in the 644,248 total criminal cases adjudicated in 2004. SPC Work Report, 8 March 05. In China, prosecutors may appeal a "not guilty" verdict, but given the conviction rate of more than 99 percent in first instance cases, it is assumed that almost all of the 96,204 cases heard on appeal involved guilty verdicts at the trial level. In addition to changing the verdict in 12,730 cases, appeals courts sent 6,198 cases back to trial courts for retrial.

<sup>124</sup>In at least one prior year in which a similar number of cases were "changed" or sent back for retrial, court statistics indicate that the total conviction rate in all cases, including appeals and rehearings, was over 99 percent. 2002 China Law Yearbook [2002 Zhongguo falü nianjian], (Beijing: Legal Press, 2003), 144, 1240. This suggests that few verdicts are "changed" to not guilty and that few defendants are exonerated after retrials. As discussed later in this section, recent Chinese media accounts also suggest that trial courts commonly reconvict defendants on retrial.

<sup>125</sup>PRC Criminal Procedure Law, arts. 182, 203–7.

<sup>126</sup>Under Chinese law, procuratorates may be required to pay criminal compensation for wrongful arrest and prosecution if defendants are found not guilty. PRC State Compensation Law, enacted 12 May 1994, art. 15.

<sup>127</sup>PRC Criminal Procedure Law, arts. 203–4. A court has the discretion to decide whether an adjudication supervision petition from a defendant meets the legal requirements for a retrial. In contrast, Article 205 requires a retrial when a people's procuratorate requests adjudication supervision.

<sup>128</sup>Ge Lin, "Why a Not Guilty Verdict is a Rarity of Rarities."

<sup>129</sup>See, e.g., Liu Binglu, "Misuse of Retrials Is a Major Reason for Unjust Cases" [Lanyong fahui chongshen shi zhi yuanan zhuyin], Beijing News (Online), 4 April 05; Che Hao, "Looking at 'Repeat Prosecutions' in the Criminal Process as 'Judicial Marathons'" [Cong 'sifa malasong' kan xingsuzhong de 'chongfu zhuisu'], 21st Century Business Herald (Online), 6 December 04; "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved," Criminal Defense Net; Ge Lin, "Why a Not Guilty Verdict is a Rarity of Rarities."

<sup>130</sup>Liu Binglu, "Misuse of Retrials Is a Major Reason for Unjust Cases"; "Don't Allow the Wings of Justice To Break: Using Unjust Cases to Look at Confessions Extorted Through Torture," Legal Daily; Veron Mei-Ying Hung, "Judicial Reform in China: Lessons from Shanghai," Carnegie Endowment for International Peace, No. 58 (April 2005), 17.

<sup>131</sup>For examples of such cases, see Tang Weibin, "Hebei She Xianglin 'Wife Murder' Case: One Unjust Case, Three Points to Rethink" [Hebei She Xianglin "shaqi" an: yi qi yuanan, san dian fansi], People's Daily (Online), 8 April 05. For other examples, see "Don't Allow the Wings of Justice to Break: Using Unjust Cases to Look at Confessions Extorted Through Torture" Legal Daily; "Why Aren't Eight Years of Unjust Imprisonment Being Compensated?" Legal Daily; Wang Ying, "The Irregular Publication of a Criminal Defense Lawyer Work Environment Survey Report"; "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved," Criminal Defense Net; "Analyzing the Xu Jingxiang Unjust Case," China Youth Online.

<sup>132</sup>See, e.g., Liu Binglu, "Misuse of Retrials Is a Major Reason for Unjust Cases"; "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved," Criminal Defense Net.

<sup>133</sup>Tian Yu, "Court Reforms in 2005: People's Assessors Begin Work May 5" [2005 nian fayuan gaige: renmin peishenyan 'wuyi' shanggang], People's Court Net (Online), 14 February 05.

<sup>134</sup>"'Nie Shubin Murder Case' Still Unresolved," Southern Weekend (quoting the judge in the original case as stating, "Now, I can't say whether this case was correct or not. It's determined by what the leaders say. Whatever the leaders say is what I decide."); Commission Staff Interview.

<sup>135</sup>Tang Weibin, Li Changzheng, "How Do Unjust Cases Come About? Following the Trail of Hubei's She Xianglin 'Wife Murder' Case"; Wang Yijun, Yang Siyuan, "Xu Jingxiang, From A Sentence of 16 Years to Innocence and Liberation," [Xu Jingxiang: cong panxing 16 nian dao wuzui jiefang], China Youth Online, 10 May 05; "14 Years of An Unjust Case of Wife Murder, Liaoning's She Xianglin Li Huawei Obtains State Compensation," People's Daily; "The 'Nie,' 'She' Cases in Lawyers' Eyes: Rethinking Necessary Before Judicial System Can Be Improved," Criminal Defense Net. For a recent discussion of Party interference based on a detailed study of courts in Shanghai, see Hung, "Judicial Reform in China: Lessons from Shanghai," 17.

<sup>136</sup>"China Hints at Death Penalty Reform," China Daily, 10 March 05 (FBIS, 10 March 05).

<sup>137</sup>For an explicit reference to the "execute fewer, execute cautiously" policy by a public security official, see Yang Zhongmin, "Substitute Death Sentences That Are Immediately Executed With Suspended Sentences" [Yi 'sihuan' tidai 'sixing lij zhixing'], Southern Weekend (Online), 17 March 05. According to one Chinese source, the number of death sentences in China has dropped every year since 1997 except in 2001, the year China launched a new "strike hard" campaign, and the number of death sentences in 2004 was a little more than half the highest yearly total recorded previously. "SPC Draws Up Draft to Take Back Death Penalty Review Power, Cautiously Using the Death Penalty is in Accord With the Spirit of the Law" [Gaofa si shouhui sixing fuhequan, shenyong sixing fuhe lifa jingshen], People's Daily (Online), 18 November 04.

<sup>138</sup>"PRC Foreign Ministry Spokesman Defends Keeping PRC Execution Statistics Secret," Agence France-Presse, 5 February 04 (FBIS, 5 February 04).

<sup>139</sup>Domestic sources that hint at the annual number of executions conflict. In March 2004, an NPC delegate suggested that Chinese courts issue death sentences for immediate execution in "nearly 10,000 cases per year." "41 Representatives Jointly Sign Proposal for the Supreme People's Court to Take Back the Power of Death Penalty Approval" [41 daibiao lianming jianyi, zuigao renmin fayuan shouhui sixing hezhun quan], People's Daily (Online), 10 March 04. A recent Chinese report indicated that provincial high people's courts review nearly 90 percent of all death sentences, which means that about 10 percent of such reviews are conducted by the SPC. "Conference on Ways for the Supreme People's Court to Take Back the Power of Death Penalty Review Opens" ["Zuigao renmin fayuan shouhui sixing fuhequan zhi duici"] yantaohui zhao kai], Defense Lawyer Net, 1 June 05. According to the 2004 Supreme People's Court Work Report, the SPC reviewed 300 death sentences in 2003. SPC Work Report, 9 March 04. Taken together, these figures suggest that China issues about 3,000 death sentences annually.

<sup>140</sup>For the debate over the death penalty, see, e.g., "Special Program: Should the Death Penalty Continue or Be Abolished? Experts, Netizen Views Collide" [Tebie cehua: sixing shi cun shi fei? Zhuanjia, wangyou guandian pengzhuang], People's Daily (Online), 20 January 05; "Opinions Differ: Debate Over Death Penalty Reform Followed With Interest" [Yijian buyi, sixing gaige lunzhen ling ren guanzhu], China News Weekly, reprinted in Southern Weekend (Online), 31 January 05; Hu Cong, "Court Gets Back Power of Death Reviews," China Daily, 14 March 05 (FBIS, 14 March 05); "Legal Redemption for Erroneous Death Sentences" [Sixing wupan de falu jiu shu], Modern Bulletin (Online), 16 March 05; "Experts Recommend That Death Penalty Reviews Establish Hearing Phase to Avoid Judicial Corruption" [Zhuanjia jianyi sixing fuhe she tingzheng huanjie bimian sifa fubai], Beijing Youth Daily, reprinted in People's Daily (Online), 28 March 04.

<sup>141</sup>Ibid.

<sup>142</sup>Yang Tao, "In Abolishing or Retaining the Death Penalty, We Can't Ignore Public Opinion" [Sixing cunfei buke hushi minyi], China Youth Online, 26 January 05; "Eliminating the Death Penalty Means Weakening the Cost of Retribution for Wrongdoing" [Feichu sixing yiwei zhe xuero zuifan wei zuinie suo fuchu de daijia], Beijing News, reprinted in Peoples Net (Online), 6 February 05; "Who Will Benefit From Reducing Capital Punishment," Beijing Review (Online), 16 February 05.

<sup>143</sup>"Eliminating the Death Penalty Means Weakening the Cost of Retribution for Wrongdoing," Beijing News; "China Hints at Death Penalty Reform," China Daily; "Backgrounder: Death Penalty in China," Xinhua, 14 March 05 (FBIS, 14 March 05); "China Not to Abolish Death Penalty: Premier," Xinhua, 14 March 05 (FBIS, 14 March 05); "Supreme People's Court Demands Strict Grasp of 'Death Penalty'" [Zuigaofa yaoqiu yange bahao "sixing" guan], People's Daily (Online), 20 July 05.

<sup>144</sup>“Who Will Benefit From Reducing Capital Punishment?” Beijing Review; Hu Cong, “Court Gets Back Power of Death Reviews”; Yang Zhongmin, “Substitute Death Sentences That Are Immediately Executed With Suspended Sentences” [Yi “sihuan” tidai “sixing” liji zhixing], Southern Weekend (Online), 17 March 05.

<sup>145</sup>See e.g., “Central Government To Take Back Power to Review Death Sentences Next Year,” Chengdu Daily (Online), 13 August 05. While the CPL requires the SPC to review all death sentences, the SPC has delegated this power in cases involving rape, murder, and certain other crimes to provincial high courts. Chinese experts have long argued that this system is both unlawful and problematic, since high courts serve as both courts of second instance and reviewing courts. For a more detailed discussion of expert objections to high court review of death sentences, see CECC, 2004 Annual Report, 24 and accompanying notes.

<sup>146</sup>“Change of Review on Death Penalty Vital,” China Daily, 4 March 05 (FBIS, 4 March 05); “Next Year, Hopefully a Special Death Penalty Review Tribunal Will be Established” [Mingnian youwang zhuanshe sixing fuheting], Beijing News (Online), 3 March 05; “SPC May Establish Review Division in Beijing to Take Back the Power of Death Penalty Review” [Zuigaofa keneng zai Beijing shi fuchating shouhui sixing fuhequan], Beijing News (Online), 14 April 05.

<sup>147</sup>“Central Government To Take Back Power to Review Death Sentences Next Year,” Chengdu Daily; Supreme People’s Court Will Add Three Criminal Tribunals to Cope With Reclaiming the Death Penalty Review Power” [Zuigao renmin fayuan jiang zengshe 3 ge xingting yingdui sixing fuhequan shouhui], China Youth Daily (Online), 27 September 05.

<sup>148</sup>Guo Guangdong, “‘Provincial Level’ Rights to Review Death Sentences Should Be Given an ‘Abrupt Death’” [“Shengji” sixing hezhuquan ying yu “turang siwang”], Southern Weekend (Online), 14 October 04; Zhao Ling, “Nie Shubin Wrongful Murder Case ‘Unresolved.’” For open hearings, see, e.g., Zhou Baofeng, “Is Returning the Power of Death Penalty Review to the Supreme Court Enough?” [Sixing hezhunquan huigui zuigao fayuan jiu gou le ma?], Southern Weekend (Online), 28 October 04; “Experts Recommend That Death Penalty Review Establish Hearings Phase to Avoid Judicial Corruption,” Beijing Youth Daily. Under the current system, the court reviewing the death sentence typically only reviews a paper file of the case.

<sup>149</sup>“Opinions Differ: Debate Over Death Penalty Reform Followed With Interest,” China News Weekly.

<sup>150</sup>“Guangzhou Hospital Expands the Use of Prisoners’ Organs for Transplant Operations,” Laogai Research Foundation (Online), 31 March 05; “The Harvesting of Executed Prisoners’ Organs: Behind the First Mafia Case in Central China,” Laogai Research Foundation Web site, 17 May 05.

<sup>151</sup>Guo Hengzhong, “Experts Appeal for Quick Legislation on Human Organ Transplants” [Zhuanjia huyu jinkuai jiu renti qiguan yizhi lifa], Legal Daily (Online), 3 June 05; Li Qing, Huang Hui, “Why It Is Difficult For Condemned Prisoners to Donate Organs If They Wish” [Sixingfan juan qiguan wehe nanruiyuan], Legal Daily (Online), 31 May 05; “Two Condemned Prisoners Vie With Each Other to Donate Their Kidneys to a Poor Student” [Liangming sixingfan zhengxiang wei yi pinkun xuezi juanxian shenzang], China Youth Online, 20 April 05.

<sup>152</sup>Guo Hengzhong, “Experts Appeal for Quick Legislation on Human Organ Transplants.”

<sup>153</sup>“Trading of Human Organs Prohibited,” Xinhua (Online), 5 June 05.

<sup>154</sup>See, e.g., Xu Lai, “My Country Has Already Established 2,400 Juvenile Tribunals, Is Presently Looking at Establishing Juvenile Courts” [Wo guo yi jianli shaonian fating 2400 yu ge, zhengzai yunniang chengli shaonian fayuan], China Legal Publicity (Online), 2 November 04; “Strengthen Juvenile Crime Research, Protect the Healthy Maturation of Juveniles” [Jiaqiang qingshaonian fanzui yanjiu, baohu qingshaonian jiankang chengzhang], Legal Daily (Online), 18 October 04.

<sup>155</sup>“Prisoner Escape Rate Down 96.7 Percent in Decade in China,” Xinhua, 9 December 04 (FBIS, 9 December 04); “Ministry of Justices Opens Second Work Conference on the Expansion of Prison System Reforms” [Sifabu zhaokai di er ci jianyu tizhi gaige kuoda shidian gongzuo huiyi], China Legal Publicity (Online), 24 January 05.

<sup>156</sup>“Urgent: Chinese Top Legislature Passes Decision on Expert Witness Management,” Xinhua, 28 February 05 (FBIS, 28 February 05).

<sup>157</sup>“Procuratorial Organs Ferret Out Illegal Sentence Reductions, Parole, and Medical Releases Involving More Than 17,000,” CCTV International, reprinted in People’s Daily (Online), 29 October 04.

<sup>158</sup>Qin Ping, “‘Major Amendment’ or ‘Minor Adjustment’ to the State Compensation Law” [Guojian peichangfa shi “daxiu” haishi “xiaobu”], Legal Daily (Online), 29 July 05; Cui Li, “Lawyer’s Law Amendments Near Completion” [Lushifa xiugai jin weisheng], China Youth Daily, reprinted in Defense Lawyer Net, 18 May 05; Liao Weihua, “Court Set Up Hopefully to Be Separated From Administrative Regions” [Fayuan shezhi youwang yu xingzhengqu huafenli], Beijing News (Online), 29 November 04.

<sup>159</sup>Regulations on the Implementation of People’s Supervisor System (Trial Implementation) [Guanyu shixing renmin jianduyuan zhidu de guiding (shixing)], issued 2 September 03, amended 7 July 04.

<sup>160</sup>SPP Work Report, 9 March 05.

<sup>161</sup>Directive on the Perfection of the People’s Assessor System [Guanyu wanshan renmin peishenyuan zhidu de jue ding], issued 28 August 04.

<sup>162</sup>Ibid. According to the Directive, judges must form a panel with people’s assessors for all criminal, civil, and administrative cases with considerable social repercussions or cases where litigants request the presence of the people’s assessors. In other cases, parties may apply for people’s assessors to serve. It is unclear whether courts have the discretion to deny such applications.

<sup>163</sup>Li Xiao, “27,000 People’s Assessors to Begin Work ‘May 1’” [Zhunbei gongcui jiuxu 2.7 wan ming peishenyuan “wuyi” shanggang], Fuzhou Daily, 3 March 05.

<sup>164</sup>For Chinese attention to the need for international cooperation generally, see e.g., “Chinese Top Legislator Calls for Int’l Efforts to Curb Organized Crime,” Xinhua, 13 September 04 (FBIS,

13 September 04); Li Weiwei, "Four Major Trends in the Trafficking in Women and Children, Public Security Organs Face Three Challenges" [Guaimai funü ertong chengxian 4 da dongxiang, gongan jiguan mianlin 3 ge tiaozhan], Xinhua, reprinted in Procuratorate Daily (Online), 15 February 05. For expanded cooperation with US law enforcement agencies, see Matt Pottinger, "US and China Bridge Divisions to Fight Crime," Wall Street Journal, 3 March 05, A11.

<sup>165</sup> Commission Staff Interviews. For news reports on some of these programs, see, e.g., Jiang Anjie, Zhao Yang, "17th International Penal Law Conference Opens in Beijing" [Di shiqi jie guoji xingfaxue dahui zai jing zhaokai], Legal Daily (Online), 13 September 04; "US-China 'Criminal Defense Lawyer Training' Opens in Guangzhou" [Zhongmei "xingshi bianhu lüshi peixun guanmohui" zai Guangzhou zhaokai], People's Daily (Online), 1 November 04; Liu Li, "All Rise: China Beijing Gets Taste of US Courtroom," China Daily (Online) 13 May 05; "World Legal Professionals Gather for Beijing Conference," Xinhua (Online), 5 September 05. Some Western NGOs reported obstacles with implementing criminal justice and other legal programs beginning in early 2005, Commission Staff Interviews and Correspondence.

<sup>166</sup> Commission Staff Interviews and Correspondence.

<sup>167</sup> Bradley S. Klapper, "UN: China Allows First Probe on Torture."

<sup>168</sup> "The ICRC in China," International Committee for the Red Cross Web site, 20 July 05.

<sup>169</sup> "China and UN Rights Office Agree on Cooperation To Help Country Implement, Ratify Rights Covenants," United Nations Press Release, 31 August 05.

<sup>170</sup> The cooperation program outlined in the Memorandum reportedly includes the projects to assist China find alternative measures to imprisonment; help the country revise its Criminal Procedure Law, its Lawyers Law, and any other related laws and regulations, facilitate capacity building of civil society, and incorporate human rights education into school and public service curricula. Ibid.

<sup>171</sup> As the UN High Commissioner arrived in China, authorities detained writer Liu Xiaobo, Internet dissident Liu Di, and political theorist Zhang Zuhua, and raided the office of the Empowerment and Rights Institute, a human rights advisory group. "HRIC Statement on UN High Commissioner for Human Rights Visit to China," Human Rights in China Press Release, 31 August 05. According to other reports, police also detained and beat AIDS activist Hu Jia. "Chinese Police Beat Up AIDS Activist During UN Rights Visit," Radio Free Asia (Online), 31 August 05.

<sup>172</sup> China made these commitments in negotiations with the United States. A Global Review of Human Rights: Examining the State Department's 2004 Annual Report, Hearing of the Subcommittee on Africa, Global Human Rights, and International Operations of the House Committee on International Relations, 17 March 05, Oral Statement of Michael Kozak.

#### Notes to Section III(c)—Protection of Internationally Recognized Labor Rights

<sup>1</sup> The last figure for labor protests that the Chinese state released was 100,000 for the year 1999. Despite the government's efforts to limit reporting on labor protests since 2001, "it has nonetheless been possible to collect information on nearly 200 separate incidents between 1994 and 2004 from the many thousands of unreported events that actually took place. . . . Indeed, the few episodes that made it into the media beyond the Chinese mainland usually involve such protests as railway lay-ins or blockages of major urban thoroughfares, assaults on and clashes with authorities, detentions and arrests." Dorothy Solinger, "China is No Workers' Paradise," Bangkok Post, reprinted in Asian Labour News (Online), 12 February 05. As Tim Johnson points out, one of the reasons for worker discontent is the "disregard for labor law." Tim Johnson, "Labor Unrest: Migrant Workers Shun Factory Region in China," Detroit Free Press (Online), 13 September 04.

<sup>2</sup> The closure of state-owned enterprises (SOEs) often produces corruption when factory officials embezzle the assets of the closed SOE and leave workers without pay or jobs. For example, in December 2004, thousands of workers in Luzhou, Sichuan blocked traffic and surrounded factory officials after a chemical plant was closed. Embezzlement by factory officials had reportedly bankrupted the factory, which had not paid its workers for months. After three days of clashes with 1,000 anti-riot police, a number of workers were arrested. "Ming Pao Reports Large Scale Worker Protest Against SOE Corruption in Sichuan," Ming Pao, 20 December 04 (FBIS, 20 December 04).

<sup>3</sup> Lawyers who represent labor protest leaders are often subject to harassment by authorities. "People's Republic of China: Labor Unrest and the Suppression of the Rights to Freedom of Association and Expression," Amnesty International (Online), 30 April 02. Two workers were arrested after a non-violent strike at a garment factory and sentenced to five and two years in prison. The workers planned to appeal their sentences but could not find a lawyer who would agree to take their case. "Two Chinese Labor Activists Get Jail Terms For Demanding Wages and Insurance," Associated Press (Online), 17 May 05. Even when an attorney is available, the chance of a successful outcome is low. In Shanghai, some 8,000 workers turned to a legal aid center established by East China University of Politics and Law. One of the volunteer attorneys said that, "We do not have very good enforcement channels for labor law in China." Advocates complain that fines are too low to compel employers to obey the law. Tomio Geron, "Rights for China's Workers," San Francisco Chronicle (Online), 15 June 05.

<sup>4</sup> New national legislation targets the problem of wage arrears. According to recently enacted labor regulations, employers who withhold workers' wages without good cause and fail to pay the workers within a set period shall pay an additional fee of not more than the owed wages. Regulations on Labor Security Supervision [Laodong baozhang jiancha tiaoli], issued 26 October 04, art. 16. In addition, provincial-level legislatures have enacted rules to implement the above Regulations. For example, see Zhejiang Provincial Regulations on Labor Security Supervision [Zhejiang sheng laodong baozhang jiancha tiaoli], issued 14 April 05. Similarly, a number of provinces and municipalities have enacted new legislation to improve workplace safety. For ex-

ample, see Jiangsu Provincial Regulations on Production Safety [Jiangsu sheng anquan shengchan tiaoli], issued 31 March 05.

<sup>5</sup>Chinese experts attribute the difficulties in the implementation of the Labor Law to changes in socio-economic conditions since the enactment of the Labor Law in 1993, in particular, the growing diversity and complexity of ownership and employment forms. "One Hundred Experts Discuss 'Labor Law,' Accompanying Rules and Regulations Already Being Drafted" [Bai ming zhuanjia yantao "laodong fa," peitao falu fagui yi zai qicao], Ministry of Justice Web site, 8 November 04.

<sup>6</sup>Zhao Heng, "Labor Law in Effect for Ten Years: Laborers Still at a Loss" [Laodong fa shixing shi nian: laodongzhe yiran mangran], Procuratorate Daily (Online), 7 December 04.

<sup>7</sup>"What Makes Workers Turn Against Their 'Union,'" Southern Metropolitan Daily, translated in China Labour Bulletin (Online), 21 January 05.

<sup>8</sup>"One Hundred Experts Discuss Labor Law," Ministry of Justice Web site, 8 November 2004.

<sup>9</sup>Huang Yong, "Professor Huang He, NPC Delegate: Labor Law Urgently Needs Reform" [Quanguo renda daibiao huang he jiaoshou: laodongfa jidai xiugai], People's Daily (Online), 7 March 05.

<sup>10</sup>Zhi Ming, "China Daily 'Opinion': Revamp Rules to Protect Interest of Ordinary Workers," China Daily (Online), 7 January 05 (FBIS, 7 January 05).

<sup>11</sup>China's top officials renewed calls for stricter supervision of coal mine safety after a series of large coal mine accidents in the beginning of 2005, including a gas explosion at Sunjiawan coal mine that left 216 coal miners dead. Hu Manyun, "State Safety Supervision Bureau Emphasizes: Strictly Investigate the Corruption Behind Coal Mine Accidents" [Guojia anjian zongju qiangdiao: yancha meikuang shigu beihou de fubai xianxiang], Southern Metropolitan Daily (Online), 27 March 05.

<sup>12</sup>"Safety Agency: Tougher Penalties Needed to Curb China's Fatal Coal Mine Accidents," Xinhua, 5 April 05 (FBIS, 5 April 05).

<sup>13</sup>Jonathan Watts, "Blood and Coal: The Human Cost of Cheap Chinese Goods," The Guardian (Online), 14 March 05.

<sup>14</sup>"China and the ILO," China Labour Bulletin (Online), Issue No. 58, January–February 2001.

<sup>15</sup>The United States has ratified only two of the eight ILO Core Conventions. U.S. State Department officials point out that even without ratification the Conventions are essentially already incorporated into U.S. law. For an overview of the United States' ratification of ILO core conventions, see "Final Internationally Recognized Core Labour Standards in the U.S.," Union Network International (Online), 4 September 01.

<sup>16</sup>For an overview of the relationship between China and the ILO, see John Chen, "China and ILO: Formal Cooperation Masks Rejection of Key Labour Rights," Asian Labour Update (Online), Issue No. 44, July–September 2002.

<sup>17</sup>"The ACFTU Wins a Seat in the Workers' Group of the ILO's Governing Body in June 2002," China Labour Bulletin (Online), Vol. 8, 2 July 02; "A Major Defeat for Workers Struggling for Freedom of Association in China: HKCTU Statement Concerning the ACFTU's Election as a Worker Deputy Member in the ILO Governing Body," China Labour Bulletin (Online), 12 June 02.

<sup>18</sup>PRC Trade Union Law, enacted 3 April 92, amended 27 October 01, art. 11. Thomas Lum, "Workplace Codes of Conduct in China and Related Labor Conditions," Congressional Research Service, April 2003.

<sup>19</sup>Stephen Frost, "China: Facing Reality," International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) Web site, 10 December 04.

<sup>20</sup>PRC Trade Union Law.

<sup>21</sup>"Wang Zhaoguo, ACFTU Chairman" [Wang zhaoguo, quanguo zong gonghui zhuxi], All-China Federation of Trade Unions Web site.

<sup>22</sup>According to China's Trade Union Law, the ACFTU shall "uphold the socialist path, uphold the people's democratic dictatorship; uphold the leadership of the Chinese Communist Party; uphold Marxist Leninism, Mao Zedong thought, and Deng Xiaoping theory . . ." PRC Trade Union Law, art. 4.

<sup>23</sup>Han Dongfang, "It's Our Union—and We Want It Back," International Union Rights, reprinted in China Labour Bulletin (Online), 4 January 05.

<sup>24</sup>Tim Pringle, "Industrial Unrest in China: A Labor Movement in the Making?" China Labour Bulletin, reprinted in Foreign Policy in Focus (Online), 20 February 02.

<sup>25</sup>Yao Fuxin and Xiao Yunliang remain in prison after being identified as leaders of demonstrations in Liaoyang in March 2002. "Imprisoned Labor Activist Threatened with End to Family Visits if Abuse is Revealed," Human Rights in China (Online), 1 December 04.

<sup>26</sup>For example, see "Inner Mongolian Workers' Six-year Fight for Unpaid Wages Meets with Police Violence—15 Workers Detained, Several Others Injured," China Labour Bulletin (Online), 7 July 05; Dorothy Solinger, "Worker Protests in China—Plentiful, but Preempted?" Taipei Times (Online), 18 February 05. For a list of current labor prisoners in China, see "A List of Imprisoned Labour Rights Activists in China," China Labour Bulletin (Online), 4 June 05.

<sup>26</sup>The workers submitted their case for arbitration, but the arbitration board charged an arbitration fee of 2,540 yuan per person. The application to waive these fees had to be filed by the Chongqing Federation of Trade Unions, which refused to file the application. The workers then sued the union for blocking their efforts to take their case before the arbitration committee. "Eighty-Three Migrant Workers Sue Chongqing Trade Union For Not Acting Responsibly," Chongqing Morning News, translated in Asian Labour News (Online), 15 January 05; "What Makes Workers Turn Against Their 'Union,'" Southern Metropolitan Daily.

<sup>28</sup>Trini Leung, "ACFTU and Union Organizing," China Labour Bulletin (Online), 26 April 02.

<sup>29</sup>Lan Xinzhen, "Multinationals in China are Having to Come to Terms With Unions," Beijing Review, translated in Asian Labour News (Online), 10 December 04.

<sup>30</sup>“ACFTU Ready to Help Wal-Mart Establish Trade Union,” Xinhua (Online), 25 November 04.

<sup>31</sup>“Thirty-Two McDonald’s Restaurant in Tianjin Set Up ACFTU Trade Union Branches,” Workers’ Daily, reprinted in Asian Labour News (Online), 15 January 05.

<sup>32</sup>Commission Staff Interview.

<sup>33</sup>“Three Parties Negotiate Minimum Wage Standard For Guangzhou,” Workers’ Daily, translated in Asian Labour News (Online), 2 December 04. The three parties in this case were the provincial government, the Guangzhou Enterprise Association, and the Guangzhou Foreign Enterprise Association. Both associations argued that raising wages for labor-intensive enterprises would place an additional burden on these industries in comparison to high-tech companies.

<sup>34</sup>“Guangdong Province Raises Minimum Wage Level,” China Labor Watch (Online), 4 December 04.

<sup>35</sup>Tim Johnson, “Chinese Factory Workers Begin Protesting Low Wages, Poor Conditions,” Monterey Herald, reprinted in Asian Labour News (Online), 10 September 04.

<sup>36</sup>Chow Chung-Yan, “Shenzhen Plans to Raise Minimum Wage to Solve Labor Shortage,” South China Morning Post, 5 March 05 (FBIS, 5 March 05).

<sup>37</sup>One factory manager disclosed that he assigned a team of six employees to create a fake paper trail. Most foreign companies only see the fake records, he commented. “This is the way of surviving,” he said. “This is the way of Chinese factories.” Lauren Foster and Alexandra Harney, “Why Ethical Sourcing Means Show and Tell,” Financial Times (Online), 22 April 05.

<sup>38</sup>PRC Labor Law, enacted 5 July 94, arts. 41, 44.

<sup>39</sup>“Working Overtime Prevails in China Amid Swelling Wallets, Complaints,” Xinhua, 15 May 05 (FBIS, 15 May 05).

<sup>40</sup>The Chinese now have a name for death from overwork: “guolaosi,” similar to the Japanese, “karoshi.” There have been several cases of death in the workplace. A female garment worker in Guizhou died from what the doctors think was overwork. Her factory had recently raised working hours from eight to 12 hours per day. Another female worker died after 12 hour shifts, and a male worker died in a toy factory because of overwork in the high temperatures. Two other female workers died from overwork in Shenzhen and Guangzhou. Stephen Frost, “Guolaosi: Death by Overwork in China,” Corporate Social Responsibility in Asia (Online), 12 November 04; “12 Hours Per Day Kills Female Factory Worker in Nanjing,” Apple Daily, reprinted in Asian Labour News (Online), 12 November 04.

<sup>41</sup>“Steps Requested for Unpaid Salaries and Rights Violations of Migrant Workers,” China Daily, 22 October 04 (FBIS, 22 October 04).

<sup>42</sup>Jane Cai, “State Council Issues Regulation to Make Employers Pay Workers a Premium on Delayed Wages,” South China Morning Post (Online), 16 November 04.

<sup>43</sup>“1,000 Shenzhen Workers Block Road to Protest Against Unfair Severance Pay,” Wen Wei Po, 9 January 05 (FBIS, 10 January 05).

<sup>44</sup>“Workers in Shenzhen Factory Hold Owners Hostage Over Back Pay,” Yahoo! News Asia, reprinted in Asian Labour News (Online), 16 November 04.

<sup>45</sup>“Shenyang Migrant Workers Threaten to Jump from Building,” South China Morning Post (Online), 26 January 05.

<sup>46</sup>“Yantai Worker Li Xintao Was Sentenced to Five Years’ Imprisonment,” China Labor Watch (Online), 15 May 05; and Li Qiang, “Two Female Workers in Yancheng, Jiangsu Arrested for Opposing ‘Buy and Cut’ Severance Pay,” China Labor Watch (Online), 26 October 04. Ten workers were arrested during a strike at Stella’s electronic factory and were given sentences of up to three and a half years. Stella’s managers and some overseas NGOs petitioned the judges however, and sentences were reduced to several months. Neil Gough, “Trouble on the Line,” Time Asia Magazine (Online), 31 January 05.

<sup>47</sup>Guo Yali, “Premier’s Intervention Should Not Be Necessary,” China Daily (Online), 23 July 04.

<sup>48</sup>“Zeng Peiyan on Clearing Back Pay, Arrears in Construction at Forum in Tianjin,” Xinhua, 6 January 05 (FBIS, 6 January 05); “Steps Requested for Unpaid Salaries and Rights Violations of Migrant Workers,” China Daily, 22 October 04 (FBIS, 22 October 04).

<sup>49</sup>“JJRB on Back Pay, Wage Arrears in China’s Construction Sector,” Economic Daily, 24 September 04 (FBIS, 16 December 04).

<sup>50</sup>Fu Jing, “Zeng: Pay All Owed Wages to Migrant Workers,” China Daily (Online), 24 August 04.

<sup>51</sup>Wang Yuqi, “Government Owes 64.28 Billion Yuan in Construction Project Payment,” Farmers’ Daily, 28 August 04 (FBIS, 1 November 04).

<sup>52</sup>Ibid.

<sup>53</sup>“Trade Unions Help Migrant Workers Get Their Back Pay,” Xinhua, reprinted in Asian Labour News (Online), 7 January 05.

<sup>54</sup>“China Helps Migrant Rural Workers Retrieve 99 Percent of Defaulted Payments,” Xinhua, 21 April 05 (FBIS, 21 April 05).

<sup>55</sup>Shirley Wu, “PRC Trade Union Says Migrant Workers Owed 100 Billion Yuan in Back-Pay,” South China Morning Post, 10 June 05 (FBIS, 10 June 05); see also, “Migrant Laborers Suspect ‘High Rate of Repayment’” [Nongmingong zhiyi “gao qingqian lǜ”], Beijing News (Online), 26 May 05.

<sup>56</sup>Commission Staff Interview.

<sup>57</sup>Wu Yixie, “PRC Officials: Poor Safety Awareness, Equipment Major Factors in Construction Accidents,” China Daily, 29 April 04 (FBIS, 29 April 04).

<sup>58</sup>Xing Zhigang, “Officials, Experts Criticize ‘Rampant Negligence’ of Work Safety,” China Daily, 3 December 04 (FBIS, 3 December 04); “Workplace Tragedies Continue to Make Headlines,” China Labour Bulletin (Online), 22 June 05.

<sup>59</sup>Liang Zhi, “China’s Third Evil Force: The News Media,” New Century Net, translated in Asian Labor News (Online), 12 November 04.

<sup>60</sup>Robert Marquand, "New Openness in China Disaster," Christian Science Monitor (Online), 29 November 04; "China: Media Highlight Problem in Coal Industry," Foreign Broadcast Information Service, 9 May 05 (FBIS, 9 May 05).

<sup>61</sup>One observer noted that the "news media coverage in China of the Sunjiawen mine disaster was excellent." Stephen Frost, "A Sketch of China's Coal Industry," CSR Asia News Weekly (Online), 23 February 05; Xing Zhigang, "Officials, Experts Criticize 'Rampant Negligence' of Work Safety," China Daily, 3 December 04 (FBIS, 3 December 04).

<sup>62</sup>Fu Jing, "China to Name Senior Coal Miners as Safety Inspectors," China Daily, 1 June 05 (FBIS, 1 June 05).

<sup>63</sup>Coal Mine Safety in China: Can the Accident Rate Be Reduced?, Staff Roundtable of the Congressional-Executive Commission on China, 10 December 04, Oral Testimony of Dave Feickert, consultant in industrial relations, ergonomics and energy.

<sup>64</sup>Following the Sunjiawen mine disaster, the vice governor of Liaoning province received "a serious demerit" and the board chairman and general manager of the mine was stripped of his titles. "Safety Agency: Tougher Penalties Needed to Curb China's Fatal Coal Mine Accidents," Xinhua, 5 April 05 (FBIS, 5 April 05). See also, Nailene Chou Wiest, "PRC Safety Officials Release Coal Miner Death Figures, Say Safety Priority," South China Morning Post, 6 April 05 (FBIS, 6 April 05).

<sup>65</sup>"The Value of Miners' Life-Interviews with an Insurance Company Manager, Chongqing," China Labour Bulletin (Online), 24 July 04.

<sup>66</sup>U.S. Department of Labor, The U.S. Department of Labor and The People's Republic of China Sign Four Joint Letters of Understanding, 21 June 04.

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

<sup>68</sup>International Labour Office, A Global Alliance Against Forced Labour, International Labor Conference, 93rd Session 2005.

<sup>69</sup>Most sources place the number of RETL camps at around 300 and the number of detainees between 250,000 and 300,000. See, e.g., Randall Peerenboom, "Out of the Frying Pan and Into the Fire," 98 Northwestern University Law Review 991, 1000-01 and accompanying notes (2004); Jim Yardley, "Issue in China: Many in Jails Without Trial," New York Times (Online), 9 May 05; Can Siu-sin, "Critics Take Shine of Bootcamp Reforms," South China Morning Post, 21 March 05. However, a May 2005 article in Asia Weekly cites Beijing researchers as confirming that there are at least 1 million people in RETL camps. Chiang Hsun, "NPC To Replace 'Re-education Through Labor System,' Which Has Come Under Mounting Criticisms, with 'Illegal Conduct Correction System' In Order To Protect Human Rights," Asia Weekly, 8 May 05 (FBIS, 4 May 05).

<sup>70</sup>"UN Committee Urges Ban On Forced Labour and Allow Independent Trade Unions," China Labour Bulletin (Online), 18 May 05.

<sup>71</sup>Forced Labor in China, Staff Roundtable of the Congressional-Executive Commission on China, 22 June 05, Testimony of Harry Wu, Executive Director of the Laogai Research Foundation.

<sup>72</sup>Jamil Anderlini "Banks Buy Into Jail-Labour Firm," South China Morning Post (Online), 17 August 05.

<sup>73</sup>Forced Labor in China, Testimony of Gregory Xu, Falun Gong practitioner, and researcher on the treatment of Falun Gong practitioners in China.

<sup>74</sup>Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 2004 Country Report on Human Rights Practices: China, 28 February 05.

<sup>75</sup>"Zhang Fulin Points Out Need to Maintain Correct Direction of Prison Reform" [Zhang fulin zhichu: jianyu tizhi gaige yao baochi zhengque de fangxiang], Ministry of Justice Web site, 27 August 04.

<sup>76</sup>"As China's Economy Grows, So Does China's Child Labor Problem," China Labor Bulletin (Online), 10 June 05.

<sup>77</sup>Yan Liang and Lu Zheng, "Secret Investigation Into Child Labor" [Anfang tonggong], Beijing News (Online), 14 November 04.

<sup>78</sup>Ching-Ching Ni, "China's Use of Child Labor Emerges from the Shadows," Los Angeles Times (Online), 13 May 05.

<sup>79</sup>Regulations on the Specific Scope of State Secrets and the Level of Secrecy in Labor and Social Security Work [Laodong he shehui baozhang gongzuo zhong guojia jimi ji qi miji juti fanwei de guiding], issued 17 January 00, art. 3. For a general discussion on the issue of state secrets and labor issues, see Human Rights in China and the China Labor Bulletin (Online), Labor and State Secrets, No. 3, 2004.

<sup>80</sup>"Inspection of Labor Guarantee and Rights Protection of Rural Workers Concludes: 103 Child Laborers Discovered and Returned" [Mingong laodong baozhang quanyi baohu jiancha jieshu: tonggong qingtui 103 ge], Longhoo Net (Online), 1 July 04; "2004 Statistical Report on Jiangsu Province Labor and Social Security Project Development: Legal Construction and Inspection" [2004 nian jiangsu sheng laodong he shehui baozhang shiye fazhan tongji gongbao: fazhi jianshe he jiancha], China Labor Market (Online), 16 June 05; Wang Li, "Over One Hundred Child Laborers Discovered and Returned in Whole Province Last Year" [Qu nian quan sheng qingtui tonggong bai yu ren], Hebei Daily (Online), 25 May 05.

<sup>81</sup>Yan Liang and Lu Zheng, "Secret Investigation into Child Labor."

<sup>82</sup>Huang Runliu, "Youngsters Sneak Out of Factory to Expose Child Labour Scandal," South China Morning Post (Online), 15 July 05.

<sup>83</sup>"Official Survey Finds Around Half of China's Fireworks Are Sub-Standard and Unsafe," China Labor Bulletin (Online), 6 June 05.

<sup>84</sup>As Robin Munro, research director of China Labor Bulletin, points out, children who drop out of school tend to enter the workforce as illegal child workers. Ching-Ching Ni, "China's Use of Child Labor Emerges from the Shadows."

<sup>85</sup>Chinese anti-child labor law and regulations permit educational and professional training institutions to organize minors under the age of 16 to participate in labor for educational or



skills-training purposes as long as such labor does not harm the physical and mental well-being of the minor. Regulations Banning the Use of Child Labor [Jinzhishi yong tonggong guiding], issued 1 December 02, art. 13.

<sup>86</sup>“Middle School Sends a Thousand Students to Construct Road: Punishment For Failing to Complete Assignment Is to Do Clean Up” [Zhongxue rang qian ming xuesheng bei tu xiu lu, wan bu cheng renwu jiu fa zuo qingjie], Huaxi Metropolitan Daily, reprinted in Sohu (Online), 25 October 04.

<sup>87</sup>Wang Ming, “The Current Developmental Status and Analysis of Private Schools in the Period of Compulsory Education,” [Yiwu jiaoyu jieduan minban xuexiao de fazhan xianzhuang yu fenxi], Research on Educational Development (Online), September 2003.

<sup>88</sup>“Private Schools Organize New Students to Collectively Engage in Child Labor” [Minban xuexiao zuzhi xinsheng jiti zuo tonggong], Beijing News (Online), 15 September 04.

#### Notes to Section III(d)—Freedom of Religion

<sup>1</sup>Regulation on Religious Affairs [Zongjiao shiwu tiaoli] [hereinafter RRA], issued 7 July 04. The RRA is available on the Xinhua Web site. An English translation is available online on the Web site of China Elections and Governance, and in Kim-Kwong Chan and Eric R. Carlson, *Religious Freedom in China* (Hong Kong: Hong Kong Institute for Culture, Commerce, and Religion, 2005), 78–89.

<sup>2</sup>For example, in one county in Anhui province, the local Religious Affairs Bureau interpreted its duty to manage religious affairs according to law as a mandate to “resolve hot issues, . . . boost the force of management according to law, [and] effectively protect political and social stability.” “Managing Religious Affairs According to Law in Lingbi County” [Lingbixian yifa guanli zongjiao shiwu], Suzhou Municipal Government Web site, 14 June 05. The Bureau reported that it used a “heavy inspection” process to follow up on problems discovered in annual inspection forms submitted by religious venues. Then it “strictly carried out the law” to address those problems. First, it handled 30 cases in which the rights and interests of religious people and entities had been violated. Second, it worked with the county police to break up illegal activities, including 119 unauthorized meetings (most likely house church meetings). Of these, the Bureau caused 38 to merge with “legal” religious venues, and banned the other 81. It also seized 21 evangelical preachers, “educating and reforming” 16 of them, and putting the other five into administrative detention. It found 23 centers of “cult activity.” Of the 38 people seized in these centers, the Bureau detained four for criminal prosecution, put 22 into administrative detention, and detained four for criminal prosecution.

<sup>3</sup>Nailene Chou Wiest, “Religious Groups Get More Room to Move,” *South China Morning Post* (Online), 20 October 04.(2283).

<sup>4</sup>*Ibid.* (2283)

<sup>5</sup>Wang Zuoran, “Establish the Idea of Managing Religious Affairs According to Law,” *Chinese Religions*, 26 February 05 (FBIS, 26 February 05). For existing Chinese laws that can be used to hold officials accountable for their actions, see, e.g., PRC Administrative Litigation Law, enacted 4 April 89; PRC State Compensation Law, enacted 12 May 94; PRC Administrative Licensing Law, enacted 12 August 03; PRC Administrative Punishment Law, enacted 17 March 96; and PRC Law on Administrative Reconsideration, enacted 29 April 99. All of these laws except the Administrative Reconsideration Law can be found on the CECC Web site. The text of the Law on Administrative Reconsideration can be found on the Ministry of Finance Web site.

<sup>6</sup>“Highlights: Report on Ethnic Stability Issues in PRC 31 Dec 2004–17 Mar 2005,” Foreign Broadcast Information Service, 23 March 05 (FBIS, 23 March 05) (citing the Tibet Daily, 18 January 05). The threat of hostile infiltration into religious circles from outside China has long been a preoccupation of Chinese authorities, particularly in areas with large populations of ethnic minorities. The CCP Central Committee emphasized this danger in Document No. 6, a 1991 internal document setting out religious policy. Circular of the Central Committee of the Chinese Communist Party and the State Council Concerning Several Issues in Which Religious Work Has Not Been Successful [Zhonggong zhongyang, Guowuyuan, guanyu jin yi bu zuohao zongjiao gongzuo ruogan wenti de tongzhi], issued 5 February 91, available at Chinese Religious Materials Net (Online). An English translation appears in *Chinese Law and Government*, Vol. 33, No. 2, 56–63 (March/April 2000).

<sup>7</sup>“Highlights: Report on Ethnic Stability Issues in PRC 31 Dec 2004–17 Mar 2005,” Foreign Broadcast Information Service (citing the Tibet Daily, 18 January 05). Tibetan authorities also held some follow-up activities to publicize the contents of the RRA when the regulation became effective in early March. *Ibid.*

<sup>8</sup>“Highlights: Report on Ethnic Stability Issues in PRC 31 Dec 2004–17 Mar 2005,” Foreign Broadcast Information Service (citing the Yunnan Daily, 7 February 05, and the Xinhua Daily, 18 February 05).

<sup>9</sup>Xiong Fei, “Henan Party School President Points out Importance of Religious Affairs,” *Henan Daily*, 27 April 05 (FBIS, 12 May 05).

<sup>10</sup>*Ibid.* In Jiangsu, Ren Yanshen, Deputy Party Secretary and Director of the Leading Group on Ethnic and Religious Work, focused even more sharply on the need to use the RRA to resist foreign infiltration under the guise of religion. Ren reiterated that Jiangsu faced a “new situation” of this kind of threat from outside. “Highlights: Report on Ethnic Stability Issues in PRC 31 Dec 2004–17 Mar 2005,” Foreign Broadcast Information Service (citing Xinhua Daily, 18 February 05). This level of fear in Henan and Jiangsu, possibly related to local increases in the numbers of Protestant believers in the two provinces, raises the danger of official and police abuse of believers.

<sup>11</sup>See, e.g., the Web sites of the Cardinal Kung Foundation, Agape Press, Compass Direct, and Voice of the Martyrs.

<sup>12</sup>RRA, art. 3. Outside observers have pointed out that the vague nature of the category “normal religious activities” makes the RRA promise of protection meaningless for a believer hoping to get redress against official abuse. Nicolas Becquelin, “Reins Tight on Religious Affairs,” *The*

Standard (Online), 18 February 05. (7419) Ambiguous language in the regulations gives officials and police too much discretion in cracking down on religious believers, whom the Party has long portrayed as people of questionable loyalty.

<sup>13</sup>RRA, chap. 5. For a discussion of the implications of the property provisions of Chapter 5 for the Catholic Church, see Anthony Lam, "A Commentary on the Regulations on Religious Affairs" (as translated by Michael J. Sloboda), 25 Tripod, No. 136 (Spring, 2005). Chapter 7 of the 1995 Shanghai Municipal Regulation on Religious Affairs offered protection for the properties owned or legally used by religious organizations and venues similar to that provide by the RRA. Shanghai Municipal Regulation on Religious Affairs [Shanghai shi zongjiao shiwu tiaoli], issued 30 November 95, amended 21 April 05. The 1995 version of the Shanghai regulation is posted on the Web site of the United Front Work Department.

<sup>14</sup>RRA, art. 17.

<sup>15</sup>Human Rights Watch, "Asia: State Control of Religion," 1997, 17–38. Magda Hornemann of Forum 18 argues that the RRA ensures yet more intrusive government regulation of religion than provided for under preexisting law and predicts that believers will continue to peacefully resist unreasonable interference in their religious activities. Magda Hornemann, "How Believers Resist State Religious Policy," Forum 18 News Service (Online), 18 January 05, 5687.

<sup>16</sup>China's New Regulation on Religious Affairs: A Paradigm Shift? Staff Roundtable of the Congressional-Executive Commission on China, 14 March 05, Testimony of Mickey Spiegel, Senior Researcher, Human Rights Watch, New York.

<sup>17</sup>China's New Regulation on Religious Affairs: A Paradigm Shift? Testimony of Daniel H. Bays, Professor of History, Calvin College.

<sup>18</sup>China's New Regulation on Religious Affairs: A Paradigm Shift? Testimony of Carol Lee Hamrin, Consultant and Research Professor, George Mason University, Fairfax, VA.

<sup>19</sup>Bernardo Cervellera, "Not Much New in the New Regulations on Religion: Interview with Anthony Lam, an Expert on the Church in China at the Holy Spirit Study Centre," AsiaNews (Online), 1 March 05. (7680)

<sup>20</sup>Xu Mei, "China's New Religious Law Promises Little Change," Christian News Service (Online), 17 January 05.

<sup>21</sup>See, e.g., "Varying Views on the Regulation that Became Effective on the First of March" [Points de vue nuances sur le règlement entré en vigueur le 1er Mars], Zenit (Online), 9 March 05. (83)

<sup>22</sup>Xu Mei, "Christians React to New Religious Regulations," Compass Direct (Online), 9 March 05; 8924. "PRC Expert Comments on China's First National Law on Religious Affairs," Wen Wei Po, 1 March 05 (FBIS, 1 March 05);10539. PRC Promotion of Privately Run Schools Law, enacted 28 December 02 (requiring a strict separation of religion and education in such privately run schools). Another issue is whether the absence of a requirement for prior approval by the local branch of the Patriotic Religious Association (PRA) or the local religious affairs bureau before registering a religious organization with the Ministry of Civil Affairs under Article 6 of the RRA is meaningful. According to Madga Hornemann of Forum 18, many religious organizations, particularly Protestant Christian ones, have claimed that the approval of the local branch of the national Patriotic Religious Association, while not specified in prior regulations, was required before even approaching the state religious affairs office for registration. Magda Hornemann, "Religious Freedom and the Legal System: Continuing Struggle," Forum 18 News Service (Online), 28 April 04. 5474.

<sup>23</sup>Commission Staff Interview.

<sup>24</sup>RRA, art. 34. Previous regulations, like the 1995 Shanghai Municipal Regulation on Religious Affairs, already permitted religious organizations and venues to undertake commercial activities for self-support, and also to run activities in the public interest. See, e.g., the Shanghai Municipal Regulation on Religious Affairs, art. 11. <<http://www.zyztb.org.cn/>> and as amended is available at <<http://www.law-lib.com/law/l/>>. Article 34 of the RRA adds language providing for the management and use of the proceeds from such activities. Lauren Homer, "Organizing and Funding Non-Worship Activities of Religious Organizations," paper presented at Religion and the Rule of Law: Comparative Approaches to Regulating Religion and Belief, Conference of the Chinese Academy of Social Sciences and Institute of World Religions, Beijing, China, 18–19 October 04.

<sup>25</sup>RRA, art. 6. The RRA incorporates the Ministry of Civil Affairs' Regulation on Registration and Management of Social Organizations to govern the registration of religious organizations in the same way as some older regulations on religion. See the 1995 version of the Shanghai Municipal Regulation on Religious Affairs, art. 10, <<http://www.zyztb.org.cn/>>. However, unlike the old Shanghai rule, the RRA does not specify that religious organizations must first get approval from the local religious Affairs Bureau, and so could lead to a less burdensome scheme of regulation. However, Article 7 of the 2005 amendments to the Shanghai Regulation, issued after the promulgation of the RRA, specifically requires organizations to get such approval before applying to the local civil affairs bureau. Lauren B. Homer, "The New Regulation of Religious Affairs in China: A Legal Analysis," paper delivered at Fuller Seminars Program, Fuller Seminary, 2 March 05, 15 (manuscript on file with the CECC).

<sup>26</sup>"China to Ease Policies on Religion, NGOs," United Press International, reprinted in Washington Times (Online), 20 October 04. (2300)

<sup>27</sup>Article 12 of the RRA merely says: "Collective religious activities of religious citizens shall generally be conducted on the premises of registered venues for religious activities (Buddhist temples, Taoist temples, mosques, churches, and other fixed places of religious activities)" (emphasis added).

<sup>28</sup>Becquelin, "Reins Tight on Religious Affairs";(7419) Homer, "The New Regulation on Religious Affairs in China: A Legal Analysis," 2; "Chinese Underground Churches Face Legalization," Voice of Germany Chinese Service, reprinted on Boxun (Online), 20 May 05<<http://boxun.com/>>; "Varying View on the Regulation that Became Effective on the First of March," Zeni (8344).

<sup>29</sup> Wiest, "Religious Groups Get More Room to Move"; (2283). see generally, Unofficial Religion in China: Beyond the Party's Rules, Staff Roundtable of the Congressional Executive Commission on China, 23 May 05.

<sup>30</sup> See "Religious Freedom for China's Orthodox Christians," *infra* this Section.

<sup>31</sup> On May 23, 2005, the Commission held a roundtable to discuss the situation of unofficial religions in China entitled "Unofficial Religion in China: Beyond the Party's Rules." Professor Robert Weller drew on the recent experience of Taiwan to show how the state's efforts to control and repress popular religions failed to eradicate them and ultimately gave way, after political liberalization in the 1980s, to a rich combination of religious societies and beliefs. Temple-based activity, now legal, has fostered community solidarity and the growth of local civil society. Pietistic groups, no longer repressed, offer individuals a place to meet and discuss moral and religious issues based on a variety of spiritual texts. The end of religious control in Taiwan has allowed the growth of new humanitarian Buddhist societies, with millions of members worldwide, which have an explicit social mission of building hospitals, founding universities, bringing aid to the poor, and providing emergency relief. At this event, a witness confirmed that there had been rumors that SARA might soon add a category of "Popular Religion" to the authorized list of religions.

<sup>32</sup> CECC, 2004 Annual Report, 5 October 04, 36-7. See also stories collected in "Highlights: China's Religious Affairs, Falungong, Anti-cult Documents," Foreign Broadcast Information Service, 27 September 04 (FBIS, 27 September 04.)

<sup>33</sup> "Special Characteristics of Religion and Cults in Contemporary China," Popular Science News (Online), 25 May 05; "Entire City Finals Held in Speaking Competition on the Topic 'Respect Science; Fight Cults,'" Baoji Daily (Online), 2 June 05.

<sup>34</sup> His defection was soon followed by that of Hao Fengjun, a "610" officer posted to Australia, who brought with him a computer disk containing hundreds of reports sent by agents in Australia to a "610" security office in China. According to a document inspected by Commission staff that was purported to be a copy of a 610 security office form, local officials have a number of specific "610" duties involving Falun Gong members. Officials have to fill out periodic reports on their performance of duties like forming "610 small groups" and entering 610 activities into the work schedule. Officials who fail to perform such tasks receive a fixed number of demerits on their annual work evaluation.

<sup>35</sup> Unofficial Religion in China: Beyond the Party's Rules, Testimony of Patricia M. Thornton, Associate Professor of Political Science, Trinity College, Hartford, CT.

<sup>36</sup> In comparison, the 1994 Regulation Governing Venues for Religious Activities [Zongjiao huodong changsuo guanli tiaoli], issued 31 January 94, and abrogated on the effective date of the RRA, did not explicitly refer to social and public interests: "No person shall be permitted to make use of any such venue to undertake activities which harm national unity, ethnic unity, or the social order, harm citizens' health or obstruct the national educational system."

<sup>37</sup> RRA, art. 17: "Venues for religious activities shall set up management organizations and practice democratic management. Members of the management organizations of venues for religious activities shall be selected through democratic consultations and reported as a matter of record to the registration management organs for the venues." (In a Tibetan monastery or nunnery, a DMC is generally made up of monks or nuns elected from among themselves. Candidates are sometimes screened by local officials, according to some reports.)

<sup>38</sup> Commission Staff Interviews.

<sup>39</sup> "The Sixth Training Class for Temple Administrative Committee Directors in Tibet Concludes," China's Tibet, 31 May 05 (FBIS, 1 June 05).

<sup>40</sup> Commission Staff Interviews.

<sup>41</sup> Commission Staff Interviews.

<sup>42</sup> The Gelug is the largest of several traditions of Tibetan Buddhism that are currently practiced. The Dalai Lama and Panchen Lama are the most revered spiritual teachers of the Gelug. Tibetan Buddhist followers of other traditions, such as the Kargyu, Sakya, Kadam, Jonang, and Nyingma, also revere the Dalai Lama. The Dalai Lama served as the head of the Lhasa-based Tibetan government until 1959, when he fled into exile along with most of the Tibetan government. The Chinese government continues to subject Gelug monasteries to heightened levels of suspicion and control because of the Dalai Lama's close association with the Tibetan government-in-exile.

<sup>43</sup> Commission Staff Interviews.

<sup>44</sup> Commission Staff Interviews.

<sup>45</sup> Based on data available in the PPD in June 2005, there were 121 Tibetan political prisoners known or believed to be currently imprisoned. Sixty-seven were held in the TAR, 38 in Sichuan province, 13 in Qinghai province, and three in an unknown location. As of June 2005, of the 42 Tibetan political prisoners known to have been detained from 2002 onward, and known or believed to remain imprisoned, 27 were held in Sichuan province, eight in Qinghai province, and seven in the TAR.

<sup>46</sup> Commission Staff Interviews. Official permission to travel to India is almost never granted, according to experts.

<sup>47</sup> Liu Yuxiang and Wu Kun, "Analysis on Threats of Violent Acts of Terror Presently Facing Sichuan Province," Policing Studies, No. 2, 10 February 04 (FBIS, 17 May 04).

<sup>48</sup> "The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," Topic Paper of the Congressional-Executive Commission on China, February 2003. In December 2002, the Ganzi Intermediate People's Court sentenced Tenzin Deleg, a popular religious leader in Ganzi, TAP, to death with a two-year reprieve for endangering state security by writing separatist leaflets and causing explosions. No details about the evidence have ever been made public and NGOs allege that he was framed because of his popularity. Officials accused his co-defendant, Lobsang Dondrub, of setting off the explosions and scattering the leaflets, and Tenzin Deleg of being a conspirator. Lobsang Dondrub was

sentenced to death in December 2002 and executed on January 26, 2003. Media and NGO reports allege that he was tortured into confessing.

<sup>49</sup>The phrase, "dismissed after the reorganization of monasteries," refers mainly to monks who were expelled from monasteries, or fled them, during an intense campaign of Patriotic Education conducted throughout Tibetan areas from 1996–2000. Authorities traveled to every Tibetan monastery and nunnery and led mandatory classes on Party-sanctioned positions on religion, the Dalai Lama, and Tibetan history. Upon completion of the course, monks and nuns had to pass examinations and then sign or fingerprint a statement denouncing the Dalai Lama, accepting the legitimacy of the Panchen Lama enthroned by China, and endorsing China's account of Tibetan history. According to unofficial estimates, several thousand monks and nuns gave up their seats rather than accept the Party's demands.

<sup>50</sup>Criminal Verdict of the Sichuan Province Ganzi Tibetan Minority Autonomous Prefecture Intermediate People's Court, 2000, Ganzi Intermediate Court Verdict No. 11, reprinted in *Selection of Cases from the Criminal Law*, The Dui Hua Foundation, August 2003, 42–55. The translation of the official sentencing document shows that the court agreed that Sonam Phuntsog had not explicitly called for "Tibetan independence," but nonetheless sentenced him for inciting splittism because he "incited the masses to believe in the Dalai Lama."

<sup>51</sup>State Council Information Office, "White Paper on Freedom of Religious Belief in China," Xinhua, 16 Oct 97 (FBIS, 16 Oct 97). "[T]he approval of the reincarnation of the Grand Living Buddhas by the central government is a religious ritual and historical convention of Tibetan Buddhism, and is the key to safeguarding the normal order of Tibetan Buddhism."

<sup>52</sup>"President Hu Meets 11th Panchen Lama," Xinhua (Online), 3 February 05.

<sup>53</sup>Commission Staff Interviews.

<sup>54</sup>In the late 1950s, the Chinese government organized the Catholic Patriotic Association (CPA), gave it control of all Church property, and convinced a small group of bishops and priests to proclaim their independence from the Holy See and subordinate themselves to the CPA. Since that time, the government has worked to persuade and coerce Catholic clergy and laity to do the same. The majority have refused to do so and have gone "underground," where, persisting in their fidelity to the Holy See, they have refused to attend Masses offered by priests who accept the authority of the CPA. Today there are more than 8 million unregistered and 4 million registered Catholics in China. On the situation of the Catholic Church in China today, see, Betty Ann Maheu, MM, "The Catholic Church in China: Journey of Faith. An Update on the Catholic Church in China: 2005," paper delivered at the 21st National Catholic China Conference, 24 June 05, Seattle, WA, U.S. Catholic China Bureau (Online); Han Fengxia, "Growth of Christianity in China: Perspective of a Woman Religious of the Liaoning Diocese," address delivered at the 21st National Catholic China Conference in Seattle, WA, 26 June 05 (available at the Web site of the U.S. Catholic China Bureau).

<sup>55</sup>Commission Staff Interview. Igor Rotar, "Xinjiang: Controls Tighten on Muslims and Catholics," Forum 18 News Service (Online) 29 September 05; Xing Guofang, "A New Wave of Persecution Against Hebei Catholics," AsiaNews (Online), 27 September 05.

<sup>56</sup>Commission Staff Interviews. "Classes Begin at New Sichuan Seminary Campus Amid Concerns Over Standard of Teaching," Union of Catholic Asian News (Online), 30 September 05.

<sup>57</sup>"Prisoners of Religious Conscience for the Underground Roman Catholic Church in China," Cardinal Kung Foundation (Online), 31 July 05.

<sup>58</sup>Commission Staff Interviews. For the detentions reported in the past 12 months, see, "Underground Roman Catholic Bishop Arrested in China," Cardinal Kung Foundation (Online), 6 January 05; "Arrest of an Underground Roman Catholic Priest," Cardinal Kung Foundation (Online), 30 January 05; Arrest of an Underground Roman Catholic Bishop and a Priest; Reflection on the Pope's Passing From the Underground Roman Catholic Church," Cardinal Kung Foundation (Online), 3 April 05; "Arrest of Seven Underground Roman Catholic Priests in China," Cardinal Kung Foundation (Online), 27 April 05; "Police Disperse 'Underground' Catholic Retreat, Send Priests Home," Union of Catholic Asian News [hereinafter UCAN] (Online), 9 June 05 (undetermined number of priests detained for a short period); "Underground Roman Catholic Bishop Arrested Again in China," Cardinal Kung Foundation (Online), 4 July 05; "Underground Roman Catholic Priest and His Parishioners Beaten and Arrested in China," Cardinal Kung Foundation (Online), 28 July 05. Bishop Jia Zhiguo was detained in September (twice) and December of 2004, and in January and July of 2005. "Bishop Julius Jia Zhiguo Arrested," AsiaNews (Online), 5 July 05. For the release of Catholic prisoners of religious conscience, see "Release of an Underground Roman Catholic Priest," Cardinal Kung Foundation (Online), 5 June 05 (release of Zhao Kexun after two months of detention); "China: Libération d'un prêtre clandestin emprisonné en 1999. Une nouvelle saluée par Radio Vatican," Zenit (Online), 4 July 05 (release of Kong Guocun after nearly six years of detention); "Bishop Julius Jia Zhiguo Released in Hebei," AsiaNews (Online), 22 July 05. Regarding a letter sent by unregistered Catholics to a Catholic news agency abroad to protest a "wave of violence" unleashed in Gao Cheng county, Hebei province, see, Wang Hui, "Persecution in Hebei, a Liability for Hu Jintao's Plans," AsiaNews (Online), 8 June 05; Magda Hornemann, "Is Central or Local Government Responsible for Religious Freedom Violations?" Forum 18 News Service (Online), 2 August 05; "Underground Roman Catholic Priest and a Recently Graduated Seminarian Arrested in China," Cardinal Kung Foundation (Online), 4 September 05. Regarding a foreign Web site blocked in China after it published an article critical of China's human rights record vis-à-vis Catholics, see, Sandro Magister, "Riconoscimenti. In Cina, www.chiesa entra nel club degli oscurati," L'espresso (Online), 25 July 05.

<sup>59</sup>Commission Staff Interview; "Underground Bishop of Roman Catholic Church in China 'Lost' for More Than 6 Years Found Very Ill in Government Detention," Cardinal Kung Foundation (Online), 19 November 03.

<sup>60</sup>Commission Staff Interviews; "China to Defy Rome With New Bishops?" Catholic World News (Online), 14 March 05; "China: State Attempts to Control Religious Leaderships," Forum 18 News Service (Online), 15 June 05.

<sup>61</sup>“Vatican Confirms Informal Dealings With China,” Catholic World News (Online), 30 June 05.

<sup>62</sup>Regarding the ordination of Xing Wenzhi in Shanghai, see “New Shanghai Bishop: ‘Serving the Community Against the Spread of Secularization,’” AsiaNews (Online), 29 June 05; “Choice of Bishop Positive Step Toward Vatican Ties,” South China Morning Post, 30 June 05 (FBIS, 30 June 05) (Bishop Xing announced during a ceremony that he had been nominated by the Holy See); “Further On China Says Vatican Did Not Approve Appointment of Shanghai Bishop,” Agence France-Presse, 29 June 05 (FBIS, 29 June 05) (denial issued by Shanghai Religious Affairs Bureau); “Vatican Confirms Informal Dealings with China,” Catholic World News (Online), 30 June 05; “Ordination of a Patriotic Association Bishop in Shanghai,” Online Newsletter, Cardinal Kung Foundation (Online), 1 July 05 (points out that the Holy See has not issued an official statement); Gianni Valente, “Anche a Shanghai c’è qualcosa di nuovo,” Trenta Giorni (Online), 1 August 05. Regarding the ordination of Dang Mingyan in Xi’an, see “The Vatican Recognizes New Appointment in the Xi’an Diocese,” Wen Wei Po, 29 July 05 (FBIS, 30 July 05) (CPA official claims that bishop was appointed in accordance with procedures of “Chinese Catholic Church,” that the Vatican had recognized a bishop “elected in China,” which is “an improvement and is favorable to moving Sino-Vatican relations forward”); “China und Heiliger Stuhl einigen sich erneut auf Bischof,” Kath.net (Online), 1 August 05.

<sup>63</sup>“Shanghai Bishop Seeks to Heal Division,” Washington Post (Online), 23 June 05 (registered Bishop Jin: “Rome said that after the death of the underground church bishop, no more division.”); “China: The Government and the Holy See Ordain a Bishop Jointly for the First Time,” AsiaNews (Online), 28 June 05.

<sup>64</sup>Betty Ann Maheu, MM, “The Catholic Church in China: Journey of Faith. An Update on the Catholic Church in China: 2005”; Sandro Magister, “Nuovi vescovi per la Cina di domani,” *L’espresso* (Online), 16 August 05; Sandro Magister, “La Cina ha un nuovo record: i più giovani vescovi del mondo,” *Settimo Cielo* (Online), 17 August 05.

<sup>65</sup>Commission Staff Interviews; “Vocation-rich Zhouzhi Diocese Faces Uncertainty After Bishop Dies,” UCAN (Online), 28 September 04; “Mgr Paul Su Yongda, New Bishop of Zhanjiang,” AsiaNews (Online), 15 November 04; “Bishop of Datong Dies at 87, Leaving Management of Diocese to Young Priests,” UCAN (Online), 12 January 05; Wang Xixian “Octogenarian Bishop Dies in Eastern China, Leaves Anhui Province ‘Vacant,’” UCAN (Online), 18 March 05; “Bishop of Tianjin Dies Without Reconciling With ‘Underground’ Prelates,” UCAN (Online), 18 March 05; “Bishop Giuseppe Zhu Huayu the Only Bishop in Anhui Province Dies at the Age of 88,” Agenzia Fides (Online), 19 April 05; “Body of Chinese Catholic Leader Cremated,” Xinhua (Online), 28 April 05 (FBIS, 28 April 05); “China: The Government and Holy See Ordain a Bishop Jointly for the First Time,” AsiaNews; “Franciscan Doctor-Bishop of Yichang Dies at Age 88,” AsiaNews/ UCAN (Online), 26 July 05; “Open Church Bishop of Mindong Dies, Underground Bishop Seriously Ill,” UCAN (Online), 11 August 05; “Death of Two Bishops: Bishop Thomas Zhao Fengwu, A Life of Poverty and Penance, and Bishop James Xie Shiguang, Who Spent 30 Years in Prison,” Agenzia Fides (Online), 30 August 05.

<sup>66</sup>Commission Staff Interviews.

<sup>67</sup>Adam Minter, “The Sisters of Shanghai: A Congregation of Nuns Flourishes in China,” *Commonweal* (Online), 12 August 05; “Xi’an Seminary Offers Educational Program for Women Religious,” UCAN (Online), 23 September 04; “Shaanxi Sisters Pursue Studies in Social Work,” UCAN (Online), 2 November 04; “More Than ‘Half the Sky,’” *Hong Kong Sunday Examiner* (Online), 17 July 05; Betty Ann Maheu, MM, “The Catholic Church in China: Journey of Faith. An Update on the Catholic Church in China: 2005”; “Seminary College’s First Symposium With Mainland Scholars Inspires Priests,” *Union of Catholic Asian News* (Online), 26 August 05; “Chine: les religieuses améliorent leur formation,” *Zenit* (Online), 7 October 04; “Precious Contribution Offered by the Prado Institute for the Formation of Priests and Religious in China Underlined During a Recent Visit by Superior General Rev. Robert Daviaud,” Agenzia Fides (Online), 12 July 05; “Formation, Evangelization, Self-Support, Pastoral Care to Meet Needs of Today: Commitments of Bishop Anthony Li Du An of the Diocese of Xi’an,” Agenzia Fides (Online), 27 July 05; Bernardo Cervellera, “Chinese Priest: We Need Help to Form Priests in the Official Church,” AsiaNews (Online), 8 August 05. For a rare report on the formation of clergy for the unregistered Catholic community in China, see “Meeting With Underground Religious in Rome,” *Online Newsletter*, Cardinal Kung Foundation (Online), 1 July 05.

<sup>68</sup>“Nuns Serving Mentally Challenged Children Help Change Social Attitudes,” UCAN (Online), 2 September 04; “Liaoning Diocese Goes Full Throttle With Its New HIV/AIDS Ministry,” UCAN (Online), 9 September 04; “Nuns Care for Mentally Challenged Children in Xi’an,” UCAN/AsiaNews (Online), 11 February 05; “Interreligious Conference Affirms Religions’ Contribution To Ethics, Morality,” UCAN (Online), 9 March 05.

<sup>69</sup>Commission Staff Interview.

<sup>70</sup>“Guidelines on China from the Vatican,” Cardinal Kung Foundation (Online).

<sup>71</sup>“Breakthrough in Vatican-China Ties?” *Reuters* (Online), 19 August 05 (senior European Catholic prelate speculates on coming “breakthrough” in diplomatic relations); Ramón Pedrosa, “Beijing and the Vatican Edge Closer,” *International Herald Tribune* (Online), 18 August 05; Sandro Magister, “Nuovi vescovi per la Cina di domani”; “Pope Benedict Reaches Out to China,” *Associated Press* (Online), 12 May 05; John L. Allen, “The Word From Rome,” *National Catholic Reporter* (Online), 13 May 05; Lucia Pozzi, “‘Pechino dice sì al dialogo con il Papa’; Intervista a Dong Jinyi, ambasciatore cinese a Roma. ‘Così cambia il mio Paese,’” *Il Messaggero* (Online), 14 May 05; “Pope Reaches Out to Non-Catholics and China During First Month,” *Associated Press* (Online), 18 May 05; Elisabeth Rosenthal, “Hints of Thaw Between China and Vatican,” *International Herald Tribune* (Online), 22 May 05; Joe McDonald, “Beijing, Vatican Express Enthusiasm for Ties, But Church’s Role Remains a Stumbling Block,” *Associated Press* (Online), 29 May 05; “Hong Kong Bishop: Vatican ‘Anxious’ for Diplomatic Ties with Beijing,” *Catholic World News* (Online), 14 June 05; Nailene Chou Wiest, “Beijing Paving Way to Renew Vatican Links,” *South China Morning Post* (Online), 15 June 05 (FBIS, 15 June 05); “Vatican Expresses

Desire for Ties With China, but Stresses Religious Freedom," Associated Press (Online), 17 June 05; "Religious Freedom the Key, Says Vatican as It Seeks Ties," South China Morning Post (Online), 18 June 05; "Vatican Official Optimistic About Relations With China, Archbishop Lajolo Upbeat After Asian Trip," Zenit (Online), 23 June 05; "Bishop Calls for China, Vatican Compromise," Associated Press (Online), 23 June 05 (referring to Bishop Jin); "China and Vatican Make No Secret of Thaw," Los Angeles Times (Online), 25 June 05; "Report: Chinese Catholic Official Says Vatican and China Will Establish Ties," Associated Press (Online), 27 June 05 (referring to Anthony Liu Bainian); Minnie Chan, "Vatican Ties Closer With New Bishop," South China Morning Post, 30 June 05 (FBIS, 30 June 05) (referring to bishop Xing and reporting that the Chinese government sets up an intergovernmental working group on religious affairs to discuss potential relations with the Holy See); Wei Wu, "China's Religious Official on Pre-requisite to Better China-Vatican Ties," Xinhua (Online), 1 July 05 (referring to spokeswoman for SARA); Gerard O'Connell, "China Reportedly Wants 'to Change its Relations' With the Holy See," UCAN (Online), 22 July 05; Vatican Information Service Press Release, 25 July 05; Bernardo Cervellera, "Chinese Priests Visit the Pope: an 'Unexpected Gift'; a Sign of 'Union With the Holy See,'" AsiaNews (Online), 4 August 05; Wu Yung-chiang, "The Pope Meets With Chinese Priests; Foreign Ministry Makes No Comment on This," Ta Kung Pao, 4 August 05 (FBIS, 5 August 05); "Chinese Youths Visit the Pope Before Heading for World Youth Day," AsiaNews (Online), 10 August 05; "Catholics Regret Over Vatican Decision," China Daily (Online), 12 September 05; "China Rebuffs New Vatican Call to Send Bishops," South China Morning Post (Online), 13 September 05; "Negotiations Still on for Chinese Bishops' Rome Visit," AsiaNews (Online), 16 September 05; Gerard O'Connell, "Four Mainland China Prelates Absent as Pope Opens Synod of Bishops," Union of Catholic Asian News (Online), 3 October 05; Bernardo Cervellera, "Beijing's No to Bishops Shatters Illusion That Things Have Changed for the Better," AsiaNews (Online), 1 October 05. On the fundamental factors influencing Sino-Holy See relations in recent years, see, Beatrice Leung, "Sino-Vatican Relations at the Century's Turn," *Journal of Contemporary China*, Vol. 14, No. 43 (May 2005), 353-370.

<sup>72</sup>"Committee to Spread True Koran," China Daily (Online), 24 April 02; "PRC: Qinghai Enhances Religious Work to Guard Against Separatist Infiltration," Qinghai Daily, 8 September 04 (FBIS, 11 January 05).

<sup>73</sup>Provinces have launched separate campaigns at various times since 2000. For discussion of Qinghai's campaign, launched in April 2004, see "PRC: Qinghai Enhances Religious Work to Guard Against Separatist Infiltration," Qinghai Daily.

<sup>74</sup>Ma Pinyan, "The Implementation of the Party's Religious Policy in Xinjiang" [Dang de zongjiao zhengce zai xinjiang de shixian], *Xinjiang Social Sciences*, No. 1, 2005, 49-55.

<sup>75</sup>"PRC: Qinghai Enhances Religious Work to Guard Against Separatist Infiltration," Qinghai Daily.

<sup>76</sup>"Sichuan Guangyuan Sacred Mosque Becomes A Bar!" Bulletin Board Post, Crescent Review (Online), 21 June 04. A mosque in Gansu province opened a slaughterhouse to "ease the burden on its believers." "Linxia Hui Autonomous Prefecture's Ethnic Unity and Advancement Campaign Activities," Gansu Daily, 15 June 05 (Online).

<sup>77</sup>RRA, arts. 35 and 36.

<sup>78</sup>Hui girls in Shujinwan village in northern Yunnan, for example, take Chinese, Arabic, and religious classes in a school run by a local ahong. Elisabeth Alles, "Muslim Religious Education in China," 45 *Perspectives Chinoises* (January-February 2003) (Online).

<sup>79</sup>"Top Ten Islamic News Stories of 2003" [2003 zhongguo yisilin shida xinwen], Islamic Crescent Web site, 15 January 05. Nankai University, located in the coastal city of Tianjin, sent "patriotic education" volunteers to the school less than a year after its establishment. "Nankai University Students Set Up A Base in Gansu" [Nankai zai Gansu shili daxuesheng shixian jidi], *Current Trends* (Online), 7 September 04.

<sup>80</sup>"PRC: Qinghai Enhances Religious Work to Guard Against Separatist Infiltration," Qinghai Daily.

<sup>81</sup>Though estimates vary widely, there are an estimated 40,000 mosques in China. Elisabeth Alles, "Muslim Religious Education in China."

<sup>82</sup>Ibid.

<sup>83</sup>Human Rights Watch, "China: Human Rights Concerns in Xinjiang," October 2001. An article in the Party's main theoretical journal warned the leadership not to "underestimate the threat to society that splittism and illegal religious activities pose." The author of the article proposed attacking the "root of the problem" by refusing to "loosen controls over religion." He Ruixia, "Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism" [Jiaqiang he gaijin fandui minzu fenliezhuyi douzhengzhong de sixiang zhengshi gongzuo], *Seeking Truth*, No. 2, 2004, 23. A 2002 report by the Hetian Party Committee found that "religion, illegal religious activities and extremist religious thought have severely influenced, disturbed and infiltrated society and villages." "Separatists Alleged to Have Infiltrated Xinjiang Schools," *Agence France-Presse*, 31 January 02 (FBIS, 31 January 02).

<sup>84</sup>Practicing Islam in Today's China: Differing Realities for the Uighurs and the Hui, Staff Roundtable of the Congressional-Executive Commission on China, 17 May 04, Testimony of Kahar Barat, Lecturer in Near Eastern Languages and Civilizations, Yale University; Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, April 2005.

<sup>85</sup>Ma Pinyan, "The Implementation of the Party's Religious Policy in Xinjiang" [Dang de zongjiao zhengce zai xinjiang de shixian], *Xinjiang Social Sciences*, No. 1, 2005, 52.

<sup>86</sup>Wang Lequan, "Maintain the Dominant Position of Marxism in Ideological Work and Adhere to the Four Cardinal Principles," *Seeking Truth*, No. 2, 2005.

<sup>87</sup>He Ruixia, "Political Thought Work In the Course of Strengthening and Improving the Struggle Against Nationality Splittism"; Ma Pinyan, "The Implementation of the Party's Religious Policy in Xinjiang."

<sup>88</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 14–20; Gardner Bovington, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent* (Washington: East-West Center Washington, 2004).

<sup>89</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 31.

<sup>90</sup>"Record of the Meeting of the Standing Committee of the Political Bureau of the Chinese Communist Party Concerning the Maintenance of Stability in Xinjiang (Document 7)," reproduced in Human Rights Watch, *China: State Control of Religion*, Update #1 (Online), 13 March 98.

<sup>91</sup>The Chinese government carefully guards the precise number of arrests made during the campaign, but one Uighur émigré group with detailed records on the arrests reports that 2,200 were arrested in the single prefecture of Khotan from April to July alone. World Uighur Network News, 16 July 96, in Michael Dillon, *Xinjiang—China's Muslim Far Northwest* (London: Routledge, 2004), 86. Xinjiang's chair of the United National Revolutionary Front reportedly claimed that 10,000 were arrested in Aksu and 8,000 in Urumqi, though the Chinese government later denied those figures. Urumqi radio announced on July 8th that 400 had been arrested and 3,700 families had been required to sign written pledges not to participate in any further anti-party activities. Michael Dillon, *Xinjiang—China's Muslim Far Northwest*, 87–88.

<sup>92</sup>The restrictions on religious practice led to widespread resentment among the Uighurs that culminated in protests at Yining (Ghulja) in February 1997. Although reports differ on exactly what sparked the clash between Uighurs and Chinese security forces, eyewitnesses and official reports confirm that People's Armed Police shot a number of unarmed demonstrators and security forces arrested hundreds of Uighurs for their participation in the protests demanding religious freedom and rights enshrined in the 1984 Regional Ethnic Autonomy Law. Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 15; Michael Dillon, *Xinjiang—China's Muslim Far Northwest*, 92–99; Amnesty International, "People's Republic of China: China's Anti-terrorism Legislation and Repression in the Xinjiang Uighur Autonomous Region," 2002.

<sup>93</sup>These courses entail study of state-approved religious interpretations, review of "the correct relationship between religion and socialist society," and sessions in which imams publicly criticize their own political views as well as those of fellow imams.

<sup>94</sup>Draft Amendments to the Xinjiang Uighur Autonomous Region Regulations on the Management of Religious Affairs Adopted by the 23rd Session of the Standing Committee of the 9th People's Congress of Xinjiang Uighur Autonomous Region [Xinjiang weiwuer zizhiqu dongjiao shiwu guanli tiaoli xiugai zheng an (caoan)], submitted 16 July 01, art. 9.

<sup>95</sup>"China Bans Islamic Group in Xinjiang, Arrests 179," Agence France-Presse, 19 August 05 (FBIS, 19 August 05); "Teacher and 37 Students Detained for Reading Koran in China," Agence France-Presse, 15 August 05 (FBIS 16 August 05).

<sup>96</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, April 2005, 46, note 91.

<sup>97</sup>"Ministry of Foreign Affairs Spokesman Liu Jianchao Answers Reporters Questions," Ministry of Foreign Affairs Web site, 3 March 05.

<sup>98</sup>Xinjiang Implementation Measures on the Law on the Protection of Minors [Xinjiang weiwuer zizhiqu shishi 'wei chengnianren baohu fa' banfa], issued 25 September 93; Ma Pinyan, "The Implementation of the Party's Religious Policy in Xinjiang" [Dang de zongjiao zhengce zai xinjiang de shixian], *Xinjiang Social Sciences*, No. 1, 2005, 53.

<sup>99</sup>"China Cracks Down on Its Muslims," Agence France-Presse, 23 November 01 (FBIS, 23 November 01).

<sup>100</sup>The 2000 Urumqi Yearbook [Wulumuqi nianjian] (Urumqi: Xinjiang People's Press, 2001), 250–1. This volume notes that Yili prefectural officials had closed 70 "illegal constructions or renovations of religious sites" between 1995 and 1999 in their prefecture alone.

<sup>101</sup>A specific requirement that any publication "related to the research and appraisal of Islamic religion" be submitted to national-level authorities before publication also contravenes the 1984 Regional Ethnic Autonomy Law. This requirement is listed in a 2000 "Manual for Municipality Ethnic Religious Work" edited by the Ethnic Religious Work Committee of the Urumqi Nationality Religious Affairs Bureau Work Committee. Cited in Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 48.

<sup>102</sup>Including the Universal Declaration of Human Rights, International Covenant for Civil and Political Rights, The Convention on the Rights of the Child, and The Convention Against Discrimination in Education.

<sup>103</sup>Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 8.

<sup>104</sup>The Russian Orthodox Church claims that there are about 12 to 15 thousand Chinese Orthodox, most of them Chinese citizens of Russian or mixed-Russian descent. Most of them are located in northern China, Beijing, or Shanghai. Though there has never been an autocephalous Chinese Orthodox Church, in the 1950s an autonomous Chinese Orthodox Church was formed under the Moscow Patriarchate. Both of its Chinese bishops died during the Cultural Revolution. "Keeping the Faith," *South China Morning Post* (Online), 28 March 05; "About Orthodoxy in China: Interview with Archpriest Nikolai Balashov," *RIA Novosti* (Online), 13 October 04; "Toward a Rebirth of the Orthodox Church in China. Interview with Mitrophan Chin," *Religioscope* (Online), 23 October 04.

<sup>105</sup>Commission Staff Interview; Li Fangchao, "Harbin Talks of Rebuilding Church," *China Daily* (Online), 5 September 05; "Orthodox Church Asks China for Official Recognition to Enhance Activities," *UCAN* (Online), 24 June 04; "Tiny Chinese Orthodox Church Seeks Recognition," *Telegraph* (Online), 3 January 04; "Beijing Is Sending Positive Signals to Orthodox Church," *Taipei Times* (Online), 21 October 04; Igor Rotar, "Xinjiang: No Children in Church, Catholics Told," *Forum 18 News Service* (Online); Igor Rotar, "Xinjiang: Linked Religious Practice and State Control Levels?" *Forum 18 News Service* (Online). Though local authorities have registered Orthodox communities in some areas, in others they have refused. In December 2003, Chinese officials briefly detained a Russian Orthodox priest from Kazakhstan who was providing

pastoral care to Orthodox Christian believers in Yining (Ghulja), Xinjiang. Igor Rotar, "Security Service Investigation Followed Orthodox Priest's Deportation," Forum 18 News Service (Online).

<sup>106</sup> Commission Staff Interview; "Something New But Mostly the Same Old Rules on Religion," AsiaNews (Online), 12 January 05; "Priest Dionisy Pozdnyaev Comments on the 'Regulation on Religious Affairs' Adopted in the PRC," Orthodoxy in China (Online), 24 December 04.

<sup>107</sup> Commission Staff Interview; "Beijing's Orthodox Community Has First Paschal Liturgy Since 1957," Orthodoxy in China (Online), 3 May 05; "Eye on Eurasia: Russia's Church in China," United Press International (Online), 27 October 04; Geraldine Fagan, "Will Orthodox Christians Soon Be Allowed Priests?" Forum 18 News Service (Online), 22 September 04; "Shanghai News Spokesperson Explains Closure of Dining Hall Managed by Taiwan Businessman," Orthodoxy in China (Online), 13 January 05; "A Verbatim Record of Vladimir Putin's Meeting With Participants in the Bishops' Council of the Russian Orthodox Church," Orthodoxy in China (Online), 8 October 04; "Report of the Chairman of the Department of External Church Relations of the Moscow Patriarchate, Metropolitan Kirill of Smolensk, to the Bishops' Council of the Russian Orthodox Church (October 3–8, 2004), on External Church Activity, Care of the Diaspora of the Russian Orthodox Church," Orthodoxy in China (Online), 4 October 04; "China Visit of Russian Orthodox Church Delegation Comes to an End," Orthodoxy in China (Online), 26 October 04; "Entertainment Institutions to Be Ejected From Former Orthodox Churches in Shanghai," Orthodoxy in China (Online), 20 July 04; "China's Ambassador Gave Dinner Honoring Chairman of Department of External Church Relations Moscow Patriarchate," Orthodoxy in China (Online), 13 July 04; Igor Rotar, "Xinjiang: Controls Tighten on Muslims and Catholics," Forum 18 News Service (Online), 29 September 05; ("One Orthodox source told Forum 18 that four Chinese citizens have now completed training at Orthodox seminaries in Russia and are ready for ordination, but so far the Chinese authorities had not given them permission to work in China as priests.")

<sup>108</sup> Sandro Magister, "Lo strano ritiro spirituale di Jiang Zemin e compagni," L'espresso (Online), 14 January 04.

<sup>109</sup> Bernardo Cervellera, "New Regulations for Controlling Religions," AsiaNews (Online), 20 December 04; Lauren B. Homer, "The New Regulation on Religious Affairs in China: A Legal Analysis," 12.

<sup>110</sup> Commission Staff Interview.

<sup>111</sup> Commission Staff Interview; "Five American Church Leaders Arrested in Henan; Female House Church Evangelists Tortured and Abused in Xinjiang and Hubei; Secret Documents Show Chinese Government's Campaign Against Religious Cults," China Aid Association (Online), 17 August 05; "American Tourists Mistreated; Arrested House Church Pastors Tortured in Prison; Shanghai House Church Faces Forced Closure," China Aid Association (Online), 8 August 05; "Wave of Arrests Submerges Hope in New Regulations," Compass Direct (Online), 20 July 05 (reporting several detentions of small groups that went unreported elsewhere); "Nationwide Crackdown on House Churches in China; Numerous Leaders Arrested; Renown Beijing Church Leader Trial Delayed Again," China Aid Association (Online), 29 June 05; "Massive, Coordinated Crackdown on House Church Christians in China's Jilin Province," China Aid Association (Online), 9 June 05; "American Church Leaders Deported; Beijing House Church Pastor Tortured in Prison," China Aid Association (Online), 2 March 05. Regarding the mass arrests of recent months, see "One Hundred House Churches Raided in China," Voice of the Martyrs Canada (Online), 15 June 05 (Voice of the Martyrs has "received a copy of an official Chinese government document outlining a new offensive on underground house churches"). Most analysts believe that rural Christians are more persecuted than their urban counterparts. Allie Martin and Jenni Parker, "Rural Chinese Christians Suffer Behind State's Religious Freedom Façade," Agape Press (Online), 10 June 05.

<sup>112</sup> "Prominent Beijing House Church Leader Faces Harsh Sentence," China Aid Association (Online), 11 November 04; Jason Lee Steorts, "With the Chinese Christians," National Review (Online), 31 January 05; "American Church Leaders Deported; Beijing House Church Pastor Tortured in Prison," China Aid Association; "Nationwide Crackdown on House Churches in China; Numerous Leaders Arrested; Renowned Beijing Church Leader Trial Delayed Again," China Aid Association (Online); "Beijing Church Leader Put on Trial; Relatives and US Embassy Official Blocked," China Aid Association (Online), 7 July 05; "Chinese Pastor Put on Trial," Voice of the Martyrs (Online), 7 July 05; Wang Te-chun, "Pastor Prosecuted for Illegally Publishing and Distributing the Bible," Ta Kung Pao, 8 July 05 (FBIS, 8 July 05); Hans Peterson, "China: Why Can't All Christian Bookshops Sell Bibles?" Forum 18 News Service (Online), 24 August 05.

<sup>113</sup> "Senior Chinese House Church Leader Arrested; More Churches Raided Before Christmas," China Aid Association (Online), 10 December 05; "China: Christian Church Leader Arrested and at Risk of Torture For Possession of Religious DVDs," Amnesty International UK (Online), 23 December 04; "House-Church Leader Arrested; Zhang Rongliang Has a High Profile in China and Internationally," Christianity Today (Online), 5 January 05. On Zhang and the Fangcheng Fellowship and the Confession of Faith, see also David Aikman, *Jesus in Beijing: How Christianity Is Transforming China and Changing the Global Balance of Power* (Washington, D.C.: Regnery, 2003), 74–80, 92–95. In addition, approximately ten foreign Protestant leaders were expelled and 130 Chinese Protestant lay leaders were briefly detained when security officials raided a house church leadership training session in Harbin in February 2005. "American Church Leaders Deported; Beijing House Church Pastor Tortured in Prison," China Aid Association. Members of the South China Church claim that over 300 members of their church were detained between May and November 2004. "The Hard Truth Concerning the Case of the South China Church," Chinese Law and Religion Monitor, April–June 2005, 118–128.

<sup>114</sup> "Christian Businessman in Xinjiang Tortured and Hospitalized," China Aid Association (Online), 30 September 05; "Hospitalized Christian Businessman Threatened by State Security Agents," China Aid Association (Online), 3 October 05. For the worsening situation of all believ-



ers in Xinjiang, including Protestants, see Rotar, "Xinjiang: Controls Tighten on Muslims and Catholics."

<sup>115</sup> "Mr. Zhang Yinan's Case and the UN Verdict," Chinese Law and Religion Monitor, April–June 2005, 79–117; "Chinese Church Historian Released from Labor Camp," China Aid Association (Online), 27 September 05 (officials released Zhang on September 25, 2005, at the end of his two year term).

<sup>116</sup> For the witnesses who now say their testimony was extracted under torture, see "Chinese House Church Leaders First Time Testify at UN, Video Testimony From Tortured Women Believers Released," China Aid Association (Online), 2 April 2004; "Released South China Church Prisoners Re-arrested by Chinese Police," Voice of the Martyrs (Online), 14 October 2002 (report that Xiang Fengping and Li Yingping were sexually molested and tortured to extract testimony against Gong Shengliang); Roundtable on Religious Freedom, Staff Roundtable of the Congressional-Executive Commission on China, 25 March 02, Letter from Yulan (Jin Tongyen) and Testimony of Cui Guilian; Press Release, Committee for Investigation on Persecution of Religion in China, available at Free Church for China Web site, 29 January 02 (written testimonies of Zhang Hongjuan and Li Tongjin).

<sup>117</sup> "A Member of the Communist Party Absolutely Cannot Believe in Any Religion" [Gongchan dangyuan jue bu neng xinyang renhe zongjiao], Bureau of Religious Affairs of Yunnan Province (Online), 15 August 04; "Reflections on the Condition of Religion Faith Among University Students in the Province," Gansu Ribao, 14 November 04 (FBIS, 16 November 04); "Secret Communist Party Document Orders New Initiative Promoting Atheism," China Aid Association (Online), 17 November 04 (contains text of the Notice on Further Strengthening Marxist Atheism Research, Propaganda, and Education).

<sup>118</sup> Ding Guangxun [K.H. Ting], "A Call for Adjustment of Religious Ideas," Chinese People's Political Consultative News, 4 September 98, reprinted in Li Xihyuan, *Theological Construction—or Destruction, An Analysis of the Theology of Bishop K.H. Ting (Ding Guangxun)* (Streamwood, Illinois: Christian Life Press, 2003), 109–111. For further evidence of the pressure to make Protestant theology conform to state ideology, see K.H. Ting, "Some Thoughts on the Subject of Theological Reconstruction," Chinese Theological Review, Vol. 17 (2003); K.H. Ting, "Adjustments in Theology are Necessary and Unavoidable," Chinese Theological Review, Vol. 17 (2003); Zhang Xiaofa, "The Popularization of Theological Reconstruction," Chinese Theological Review, Vol. 18 (2004); Li Weizhen, "On Justification by Faith," Chinese Theological Review, Vol. 18 (2004); Wang Guanghui, "De-Emphasis on Justification by Faith: An Instance of Theological Adaptation," Chinese Theological Review, Vol. 18 (2004). For a critical discussion of theological construction, see Li Xinyuan, "Theological Construction—or Destruction?" The TSPM has also announced that it plans to consecrate bishops in the future, though the implementation of this plan has not yet been worked out, so that it remains to be seen what effect this will have on the religious freedom of registered Protestants who do not believe in episcopal authority. "Church Leadership Discusses Consecrating Bishops," Amity News Service (Online), 1 January 05; Wang Aiming, "Growth of Christianity in China: A Protestant Perspective of Ecumenical Challenges and Opportunities," address delivered at the 21st National Catholic China Conference in Seattle, WA, 26 June 05 (available at the Web site of the U.S. Catholic China Bureau).

<sup>119</sup> Magda Hornemann, "'Religious Distortion' and 'Religious Freedom,'" Forum 18 News Service, 25 November 04.

<sup>120</sup> Aikman, *Jesus in Beijing*, 263–284; God and Caesar in China: Policy Implications of Church-State Tensions, eds. Jason Kindopp and Carol Lee Hamrin (Washington, D.C.: Brookings Institution, 2004), 137–139.

<sup>121</sup> See, e.g., the press releases of the China Aid Association.

<sup>122</sup> Aikman, *Jesus in Beijing*; Kindopp, Hamrin, *God and Caesar in China*.

<sup>123</sup> "Chinese Churches Face Challenges of Growth," Ekklesia (Online), 11 May 05.

<sup>124</sup> Paul Hattaway, Brother Yun, Peter Xu Yongze, and Enoch Wang, *Back to Jerusalem: Three Chinese House Church Leaders Share Their Vision to Complete the Great Commission* (Carlisle, UK: Piquant, 2003), 13 (80–100 million); Aikman, *Jesus in Beijing*, 9 (up to 80 million); Kindopp, Hamrin, *God and Caesar in China*, 2 (at least 30 million, "with estimated figures as high as 45 million to 60 million"); Gianni Criveller, "Pechino nuova Antiochia?" *Mondo e Missione* (Online), July–August 2005 (less than 30 million); "Millions All Over China Convert to Christianity," Telegraph (Online), 3 August 05; "Just How Many Christians and Communists Are There in China?" *Ecumenical News International* (Online), 14 September 05; Caroline Fielder, "The Growth of the Protestant Church in China," address delivered at the 21st National Catholic China Conference in Seattle, WA, 27 June 05 (available at the Web site of the U.S. Catholic China Bureau).

<sup>125</sup> Aikman, *Jesus in Beijing*, 97–114. On Protestantism at Chinese universities, see Jen Lin-liu, "At Chinese Universities, Whispers of Jesus," *Chronicle of Higher Education* (Online), 10 June 05.

<sup>126</sup> Commission Staff Interviews; Richard R. Cook, "Behind China's Closed Doors Newly Confident House Churches Open Themselves Up to the World," *Christianity Today* (Online), February 2005.

<sup>127</sup> There are early signs of an emerging denominational sectarianism developing over disagreements as to Pentecostal and charismatic practices and the growing theological sophistication of the unregistered house churches, probably due to their increasing contact with Protestants outside China. Commission Staff Interview; "Threat of Denominationalism Requires Vigilance," Amity News Service (Online), August 2004. The government's concern with Protestant evangelicalism can be seen in many of the articles published in the Chinese Theological Review or on the Web site of the Amity News Service. On evangelicalism in China, see Aikman, *Jesus in Beijing*. For important criticisms of Aikman, particularly regarding the Pentecostal character of many of the Protestant house churches, see Samuel Pearson, "Jesus in Beijing: A Review

Essay," Encounter LXV (Autumn 04), 393–402, and Gianni Criveller, "Pechino nuova Antiochia?" Mondo e Missione (Online), July–August 2005.

<sup>128</sup> "Bringing the Church Into Society," Amity Newsletter (Online), March 2005, no. 7.

<sup>129</sup> Commission Staff Interview. See also the Web site of St. Paul University of China.

<sup>130</sup> Magda Hornemann, "Is Central or Local Government Responsible for Religious Freedom Violations?"

### Notes to Section III(e)—Freedom of Expression

<sup>1</sup> See, e.g., Public Intellectuals in China, Staff Roundtable of the Congressional-Executive Commission on China, 10 March 05, Written Statement submitted by Merle Goldman, Professor Emerita of Chinese History, Boston University and Executive Committee Member, Fairbank Center for East Asia Research, Harvard University: In fact, there has been a contraction of public space for political discourse since Jiang Zemin announced he would step down from his last position as head of the state military commission in the fall 2004 and Hu gained full power over the government. The Hu leadership has cracked down on a number of people who use the Internet or publish their own websites to discuss political issues. A number of cyber-dissidents have been imprisoned as a warning to others as to how far they can go in discussing political reforms on the Internet. Independent intellectuals who speak out on controversial issues have been briefly detained as well.

<sup>2</sup> Cheng Yizhong, "Acceptance Speech by Laureate of UNESCO/Guillermo Cano, Cheng Yizhong: Hold on to Common Sense Amid Terror and Lies" [Cheng Yizhong huo shijie xinwen ziyou jiang daxieci: zai kongbu he huangyan zhong jianchi changshi], 28 April 05, reprinted in Boxun (Online), 29 April 05.

<sup>3</sup> "How to Tightly Control Public Opinion, Increase Abilities to Guide Public Opinion" [Zenyang laolao bawo yulun daoxiang, zengqiang yindao yulun de benling], Xinhua (Online), 14 December 04. Much of the Party and government rhetoric and policymaking in this regard in the last year can be traced to a speech given by Liu Yunshan, member of the Chinese Communist Party Central Committee, secretary of the Secretariat, and director of the Central Propaganda Department, on September 22, 2004, at the National Propaganda Directors Seminar, and subsequently published in the October 16 edition of Seeking Truth under the title "Earnestly Study and Implement the Spirit of the Fourth Plenary Session of the 16th Chinese Communist Party Central Committee; Strive to Increase the Party's Ability to Lead Ideological Work" [Renzen xuexi guanche shiliu jie si zhong quanhuai jingshen; nuli tigao dang lingdao yishi xingtai gongzuo de nengli]: In order to consolidate the guiding position of Marxism, it is necessary to ensure the leadership of the Party in ideological work. . . . No matter what changes occur in the situation or the environment, there can be no change in the Party's control over ideology. It is necessary to insist on the principle that the Party controls the cadres, to strengthen the building of the leadership ranks in ideological agencies and work units, and to grasp the work and leadership of news publishing, radio and television, and the cultural arts and philosophical and social sciences firmly within the hands of those loyal to Marxism. It is necessary to establish an awareness that this is a battlefield, and that people have a responsibility for defending this territory. The thought and culture battlefield is the primary vehicle and dissemination channel of ideology, and if Marxist thought does not occupy it, then all kinds of non-Marxist, and even anti-Marxist, thought will occupy it. See also "Liu Yunshan: Deepen Education of 'Three Kinds of Study,' Enhance Skills to Guide Public Opinion" [Liu yunshan: shenhua sanxiang xuexi jiaoyu huodong, zengqiang yindao yulun benling], Xinhua, 26 December 04, reprinted in People's Daily (Online), 26 December 04: "Liu Yunshan stressed: Party committees at all levels, especially the propaganda departments, should conscientiously strengthen and improve the Party's leadership over journalistic and propaganda work. . . ."

<sup>4</sup> Ji Weimin, "Public Opinion Supervision: A Right? A Tool? A Duty?" [Yulun jiandu: Quanli? Gongju? Zeren?], Study Times, reprinted in People's Daily (Online), 25 March 05.

<sup>5</sup> "How to Tightly Control Public Opinion, Increase Abilities to Guide Public Opinion," Xinhua: In China, journalism constitutes one of the major parts of the Party's enterprises, the news media is the mouthpiece of the Party and the people, and must be under the leadership of the Party. In its thought, the news must take Marxism as its guide, must maintain a high degree of unanimity with the central Party with Comrade Hu Jintao as the Secretary; . . . in its organization it must insist on the Party's leadership of news work, ensure that leaders of news organizations at all levels firmly grasp in their hands loyalty to Marxism, and loyalty to the Party and the people.

<sup>6</sup> See, e.g., Zhao Shi, "Establish Systematic Protections for the Good Image of the Media" [Shuli xinwen meiti lianghao xingxiang de zhidu baozheng], People's Daily, 8 April 05, 11.

<sup>7</sup> Ling Yan, "The Essence of Western Freedom of Expression and the Mission of Our Country's Journalism" [Xifang xinwen ziyou de benzhi yu woguo xinwen shiye de shiming], Red Flag Manuscript, reprinted in People's Daily, 6 April 05, 9.

For a long time, some comrades have had some incorrect areas in their ideology, owing to the fact that they either do not have a concept of the true meaning of press freedom, or they do not fully understand the way the news business operates in the world today. These incorrect areas manifest themselves in two main ways. The first way is to blindly worship Western press freedom, and always believe that the West is a press freedom paradise. The second way is to think that press freedom means you get to report whatever you want, and report any way you want, and to have a complete lack of restrictions on press freedom.

See also Hou Jianmei, "Shedding Light on the Inside Story of the U.S. Government News Making" [Meiguo zhengfu paozhi xinwen neimu baoguang], Beijing Daily, reprinted in Xinhua (Online), 18 March 05; Qi Zijian, "The New York Times Reveals the Inside Story: U.S. Media Enjoys Freedom of Speech Like This" ["Niuyue shibao" jie neimu: mei meiti ruci xiangshou "xinwen ziyou"], Xinhua (Online), 22 March 05.

<sup>8</sup> "Journalist Accreditation Cards: Legal Rights to Be Protected, Illegal and Unethical Behavior to Be Sanctioned" [Jizhezhang: hefa quanyi shoudao baohu, weigui weiji jiang bei zhongfa],

Xinhua (Online), 16 February 05: “[N]ews reporters are a new force in the work of propagandizing public opinion, and all of their news gathering and editing activities relate to insisting on correct guidance of public opinion . . . and will always be the subject of high-level attention from the government and the Communist Party.” See also Interim Rules for the Administration of Those Employed as News Reporting and Editing Personnel [Xinwen caibian ren yuan guan li de guiding], issued 22 March 05, art. 2, requiring that journalists and editors “carry out China’s foreign policies.”

<sup>9</sup>Commission Staff Interview.

<sup>10</sup>[“Newspapers” shall not select articles that contradict the guiding policies of the Party and the nation.” Notice Regarding Further Strengthening the Administration of Selection of Articles for Newspapers and Periodicals [Guanyu jiyibu jiaqiang baokan zhaizhuan gaojian guanli de tongzhi], issued 25 February 05, art. 1. Authorities describe this policy as public opinion “guidance,” “steering,” and “supervision.” These are, however, different names for the same policy. Ji Weimin, “Public Opinion Supervision: A Right? A Tool? A Duty?,”

In fact, currently public opinion supervision and media supervision are considered to be one and the same. . . . While it is the media that acts as the critic in exercising the public opinion supervision function, the media’s major critical reports must usually receive instructions or permission from their managing government agency, and public opinion supervision texts are generally perceived as being the opinion of a government or Party organization at one level or another. . . . [P]ublic opinion supervision is an extension of, or supplement to, the authority of the Party and the government. See also “Right to Protect and Right to Benefit of Public Opinion Supervision” [Yulun jiandu zhuti de weiquan yu yongquan], China Journalist, reprinted in Xinhua (Online), 16 September 04: “The implementation of proper supervision of public opinion must be carried out in a manner that benefits the Party’s line, direction, and policies . . . and encourages the strengthening of the people’s faith in the Party and the government.”

<sup>11</sup>Wang Xiaojie, “Confirming the Position of Party Papers, Expanding the Function of Party Papers” [Mingque dangbao dingwei, tuozhan dangbao gongneng], Journalistic Front, reprinted in People’s Daily (Online), 1 December 04:

Regarding providing policy reference material to the Party and the government, the primary means is [for reporters] to go through media investigation and research in order to provide Party and government agencies with information they do not possess or are neglecting (and for that portion [of the information] that it is not convenient to make public, it can be provided in the form of internal reference). See also: Interim Rules on Chinese Communist Party Internal Supervision [Zhongguo gongchandang dangnei jiandu tiaoli (shixing)], promulgated 17 February 04: “Under the leadership of the Party, the news media shall, in accordance with relevant regulations and procedures, utilize internal notices or public reports, and give free rein to functions of public opinion supervision.”

<sup>12</sup>For example, in June 2005, officials in a Zhejiang province township had banned the sale of the May edition of Rural Youth magazine because of an article criticizing local officials. The Sun newspaper of Hong Kong reported that Rural Youth’s May edition included an article entitled “Treasuring the Land that We Rely Upon for our Existence” that revealed how officials in Shangyu municipality’s Lihai township abused their authority to give away and sell state-owned land at low prices to commercial developers. Following the magazine’s publication, no copies were available from magazine vendors, and a Shangyu government official said that subscribers did not receive their copies. “‘Rural Youth’ Silenced for Exposing the Inside Story of Illegal Land Sales” [“Nongcun qingnian” yin jielu feifa shoudi neimu zao fengsha], Radio Free Asia (Online), 22 July 05. Also in June, someone removed pages from its sister publication, the Southern Metropolitan Daily, that were distributed in the Da Gang township. The removed pages included an article that reported about people from Long Gu village in Da Gang petitioning for the return of land requisitioned by the township’s real estate development company. “‘Southern Metropolitan Daily’ Suspected of Being Maliciously Bought Up in Panyu Dagang, Two Sections Removed That Reported on Illegal Property Confiscations” [“Nanfang dushibao” zai panyu dagang yi zao eyi shougou; baodao weigui zhengdi de liang ban be chouzou], Southern Daily (Online), 22 June 05.

<sup>13</sup>“List of ‘50 Public Intellectuals Who Influence China’” [“Yingxiang zhongguo gonggong zhishi fenzi wushi ren” mingdan], Southern People Weekly, reprinted in Sohu (Online), 9 September 04; “Who Are the ‘Public Intellectuals’?” [Shei shi gonggong zhishi fenzi?], Southern People Weekly, reprinted in Sohu (Online), 7 September 04.

<sup>14</sup>Ji Fangping, “Seeing Through the Appearance To Perceive the Essence—An Analysis of the theory of ‘Public Intellectuals’” [Touguo biao xiang kan shizhi—xi “gonggong zhishi fenzi” lun], Liberation Daily, 15 November 04, reprinted in People’s Daily (Online), 25 November 04, 9.

<sup>15</sup>For more information on this campaign, see Public Intellectuals in China, Testimony and Written Statements of Perry Link, Professor of Chinese Language and Literature, Princeton University; Merle Goldman, Professor Emerita of Chinese History, Boston University and Executive Committee Member, Fairbank Center for East Asia Research, Harvard University; and Hu Ping, Chief Editor, Beijing Spring.

<sup>16</sup>Joseph Kahn, “China Calls Off Rights Conference,” New York Times (Online), 18 May 05.

<sup>17</sup>Commission Staff Correspondence.

<sup>18</sup>Jin Qiang, “Firmly Grasp the Initiative on Ideology Work” [Laolao zhangwo yishi xingtai gongzuo de zhudao quan], People’s Daily, 23 November 04, 9.

<sup>19</sup>Liu Yixing, “Zhu Hong of the State Administration of Radio Film and Television Interpreting the New Regulations on the Introduction of Foreign Television Programs” [Guojia guangdian zongju zhuhong jiedu dianshi yinjin yu hezuo xin guiding], China Radio Film & Television, reprinted in People’s Daily (Online), 4 November 04. Zhu Hong, the head of China’s State Administration of Radio, Film, and Television, discussing the “Broadcast Administration Regulations on the Introduction of Foreign Television Programs.”

Foreign current event news programs cannot be introduced . . . news propaganda programs are the mouthpiece of the Communist Party and the government, and shoulder the responsi-

bility of spreading the Party's voice to every household, and China's voice around the world. Therefore we must keep news and other programs that embody ideology firmly within our grasps. . . . Following [government] approval, foreign television programs may only be used as source materials, and cannot be broadcast in their entire, original condition. . . . [Broadcasters] should pay attention to the orientation of programs' general values, as well as their particulars, and filter out words and scenes that are not suited to China's situation . . . .

<sup>20</sup>Yu Xiao, "Creating Strong Press on the Internet: There Is Politics on the Internet, There Is Competition on the Internet" [Yingzao wangshang yulun qiangshi: wangshang you zhengzhi, wangshang you jiaoliang], People's Daily, 8 December 04, 4: However, the Internet is not tranquil. . . . Both at home and abroad there are hostile influences and people with ulterior motives who are using the Internet to make us "divided" and "westernized." They disseminate fake information, spread reactionary speech, and even employ Internet writers to write about socially hot topics and sensitive news to fool Internet users and misguide public opinion. . . . If we do not move to capture the ideological battlefield, others will occupy it.

See also Chen Kexiang, Xiang Keyuan, "Inhibiting the Negative Influences of 'Internet Emotional Public Opinions'" [Ezhi "wangluo qingxuxing yulun" fuman yingxiang], Guangming Net, 19 April 05:

[The Internet] has already become a means employed by enemy forces to carry out psychological warfare. Relevant information demonstrates that some enemy forces surreptitiously employ Internet experts and writers as "hired guns," inflame the emotions on the Internet, seduce some people who do not understand the situation into wrongdoing, spread negative emotions, all in order to give rise to social chaos and create social instability.

See also Liu Yuzhu, "Actively Responding to the Challenge of the Internet Era" [Jiji yingdui wangluo shidai de tiaozhan], Seeking Truth (Online), 1 January 05: Western countries, headed by the United States, have occupied an advantageous position with respect to the spread of the Internet, and they dump on China massive amounts of information of all kinds, including their political models, value systems, and lifestyles, in order to oppose and edge out socialist values. In particular, the so-called religious culture and the culture which spreads pornography and violence are stealthfully influencing the audience's sentiment and value judgments. . . . [T]his kind of "cultural invasion" conducted via the Internet is extremely dangerous, as it threatens the independence and existence of the national culture, and even shakes the foundation of the nation and the state. In order to safeguard our cultural security, we must have a full understanding of, and actively prepare against, this.

<sup>21</sup>Zhao Jie, "Do Not Vilify the Internet, It Is Necessary to Emphasize Forming Online Positive Public Opinion" [Bu yao yaomohua hulianwang, yao xingcheng wangshang zhengmian yulunde qiangshi], Wen Hui Bo, 12 November 04, reprinted in People's Daily, 6 December 04, 9.

<sup>22</sup>"GAPP Book Office Responsible Person Work Report for Previous Year on National Book Publishing Administration Work" [Zongshu tushusi fuzeren tongbao qunian quanguo tushu chubang guanli gongzuo], Press and Publication (Bureau) of Guangdong Web site, 24 February 05; see also Yu Xiao, "Creating Strong Press on the Internet: There Is Politics on the Internet, There Is Competition on the Internet": "Just as we have taken the initiative to emphasize that the work of newspapers, television, and radio must have a firm grasp on propaganda ideology work, we must also build up the emphasis on Internet public opinion propaganda. . . ."

<sup>23</sup>See, e.g., Cao Junwu, "Suqian: Leading Internet Public Opinion in Practice" [Suqian: yingdao wangluo yulun shijian], Southern Weekend, 19 May 05, 5; Chen Ming, Yang Guowei, and Chen Qiaoge, "Outlook Magazine: China's Internet Expression's Current Situation and Press Guidance" [Zhongguo wangluo yulun xianzhuang ji yulun yindaol], Outlook, reprinted in People's Daily (Online), 2 September 04; Zheng Baowei, "Grasp the Art of Mastering and Guiding Public Opinion: Raise the Quality of Responding to and Resolving Public Opinion Crises" [Zhangwo jiayu he yindao yulun de yishu, tigao yingdui he huajie yulun weiji de shuiping], Journalist Monthly (Online), 1 February 05.

<sup>24</sup>Josephine Ma, "University Chat Room Shut Ahead of Meeting," South China Morning Post (Online) 16 September 04.

<sup>25</sup>"News Black-Out on Death of Former Top Leader Zhao Ziyang," Radio Free Asia (Online), 28 January 05.

<sup>26</sup>"China Tightens Internet Security During Imminent Plenary NPC Meeting," Xinhua (Online), 1 March 05.

<sup>27</sup>"Responding to Recent Protest Marches Regarding Japan in Some Places, Ministry of Public Security: Using Internet to Stir Up Protest Marches Forbidden" [Jiu jinqi yixie difang fasheng she ri youxing shiwei huodong, gonganbu: budei liyong wangluo gudong youxing shiwei], Xinhua, 21 April 05, reprinted in People's Daily, 22 April 05, 1. "Activists' Claim China Blocking Anti-Japan Websites for May Day Holidays" Agence France-Presse, 2 May 05 (FBIS, 2 May 05); Zheng Qian, "Professors and Mentors Participate in Discussions Online: Shanghai University BBSs Stop Illegal Rumors" [Jiaoshou, daoshi shangwang canyu taolun: Shanghai gaoxiao BBS dujie feifa chuanyan], Shanghai Evening Post (Online), 25 April 05; "Beijing Warns Off Protestors With SMS, Braces for May 4," Associated Press, 2 May 05, reprinted in Taipei Times (Online), 2 May 05.

<sup>28</sup>"BBS Contents Illegal, Investigate Operator's Responsibility: Online Postings Need to be Examined Before Distributing" [BBS neirong weigui zhujui banzhu zeren: tiwen shangwang xu xianshen houfa], Southern Metropolitan Daily (Online), 2 May 05.

<sup>29</sup>In February 2005, SARFT issued a policy statement listing as one of its top 10 priorities for China's non-print media outlets for 2005: "Strengthen the capability and influence of radio, television, and film with respect to propagandizing abroad, and establish a positive perception of China abroad." "Radio and Television Propaganda Work Priorities for 2005," [2005 nian guangbo yingshi xuanchuan gongzuo yaodian], SARFT Web site, 22 February 05; Interim Implementation Rules for Administration of Those Employed as Radio and Television News Reporters and Editors [Guangbo yingshi xinwen caibian ren yuan congye guanli de shishi fangan (shixing)], issued 1 April 05, art. 4 (requiring that journalists and editors "observe discipline with respect

to propagandizing to foreigners, maintain a high degree of unanimity with the central government's line of action with respect to foreigners, and do not create any static or noise"); see also Lan Tianwei, "The Internet Has Become Our Country's Best Medium for Propagandizing Abroad" [Wanglu yijing chengwei woguo duiwai xuanchuan de zuijia meiti], Xinhua, reprinted in People's Daily (Online), 10 November 04.

<sup>30</sup> Liu Binjie, "Using Reform as the Motivator to Speed Up Development of Press and Publishing" [Yi gaige we dongli jiakuai xinwenchubanye fazhan], China Youth Daily, reprinted in People's Daily (Online) 26 January 05.

[T]here only remains the cultural arena where our influence is insufficient. . . . We only need to develop and strengthen our cultural products, increase our cultural competitiveness, and only then can we gain a foothold in the world's cultural market, only then will we be able to allow the world to understand China's culture, and bring into play our culture's influence on international society.

<sup>31</sup> Declan McCullagh, "The UN Thinks About Tomorrow's Cyberspace," CNET Networks (Online), 29 March 05.

<sup>32</sup> Han Yongjun, "Huang Chengqing: Registration Promotes the Administration of Internet Regulation" [Huang chengqing: beian cujin hulianwang guifan guanli], People's Post and Telecommunication Daily (Online), 1 June 05; see also Elliot Noss, "A Battle for the Soul of the Internet," CNET Networks (Online), 8 June 05.

<sup>33</sup> Regulations on the Administration of Publishing [Chuban guanli tiaoli], issued 25 December 01, art. 11. For example, Chinese authorities confiscated 906 books that Wang Yi had privately printed to give to friends. Wang, an author in China and member of the Independent Chinese PEN Center, filed an administrative appeal with the GAPP to have his right to self-publish respected, but the appeal was rejected.

<sup>34</sup> "Vice Director of GAPP Liu Binjie: Firmly Ban Illegal Newspapers and Magazines" [Xinwen chuban zongshu fu shuzhang Liu Binjie: jianjue qudi feifa baokan], China Journalist Net, reprinted in People's Daily (Online), 10 May 05.

<sup>35</sup> For example, in August 2005, a court in Beijing sentenced the head of the Beijing representative office of a Hong Kong media group to three years imprisonment under Article 225 of the PRC Criminal Law for publishing a magazine without a government issued serial number. Li Kui, "Printing and Publishing an Illegal Magazine; Media Group Chief Representative Sentenced to Three Years" [Yinshua chuban feifa qikan; chuanmei jituan shouxi daibiao huoxing 3 nian], Legal Evening News, reprinted in Xinhua (Online), 11 August 05. Article 225 makes it a crime for anyone to commit "illegal acts in business operation and thus disrupt market order."

<sup>36</sup> See, e.g., "Vice Director of GAPP Liu Binjie: Firmly Ban Illegal Newspapers and Magazines," China Journalist Net (calling on GAPP officials to "unceasingly improve our ability to use the law as a means to restrain illegal periodical publishing activities."); Liu Binjie, "Motivated by the Goal of Reform, Speed Up Development in the News Publishing Industry" [Yi gaige wei dongli jiakuai xinwen chubanye fazhan], Youth Journalist, reprinted in People's Daily (Online), 26 January 05 ("With regards to marketized media, we must strengthen administrative legislating, and use the law to ensure that the guidance of public opinion and publishing direction are correct.").

<sup>37</sup> Zhao Jie, "Do Not Vilify the Internet, It is Necessary to Emphasize Forming Online Positive Public Opinion," 9.

<sup>38</sup> Li Liang and Yu Li, "14 Government and Party Agencies Unite to Purify the Internet" [14 buwei lianhe "jinghua" hulianwang], Southern Weekend (Online), 18 August 05.

<sup>39</sup> "Realistically Improve Administration; Promote Administration in Accordance with the Law" [Qieshi gaijin guanli; tuijin yifa xingzheng], People's Daily, 21 June 05, 4.

<sup>40</sup> Tim Johnson, "China Sees New Breed of Civil Activists Emerge," Knight Ridder, 4 October 04; Fu Qiang, "Nation's First Private Crime Reporting Web Site Existed Only 38 Days: Experts Discuss Three Big Questions" [Quanguo shouge minjian jubaowang jin cun 38 tian: zhuanjia tan san da zhiyi], China Economic Net (Online), 8 September 04.

<sup>41</sup> Han Yongjun, "Hurry to Get an 'ID Card' for Your Web Site" [Kuai gei nide wangzhan ling "shenfenzheng"], People's Posts and Telecommunications News, reprinted in China Information Industry (Online), 1 June 05; Registration Administration Measures for Non-Commercial Internet Information Services [Feijingyingxing hulianwang xinxi fuwu beian guanli banfa], issued 8 February 05.

<sup>42</sup> "Beijing Public Security Office Demands Virus Web Sites and Medium and Small Web Sites Register With Their Local Offices" [Beijing gonganju yaoqiu bingdu wangzhan ji zhongxiaowangzhan dao shudi beian], Xinhua (Online), 2 June 05.

<sup>43</sup> Li Liang and Yu Li, "14 Government and Party Agencies Unite to Purify the Internet."

<sup>44</sup> "Major Deadline Arrives for Unregistered Domestic Web Sites; One Quarter Temporarily Shut Down" [Wei beian jingnei wangzhan daxian yizhi; 1/4 wangzhan zhanshi guanbi], Beijing Youth Daily (Online), 1 July 05; see also, "Operators Refuse to Implement Registration; Shandong Shuts Down 404 Internet Web Sites" [Ju bu fuxing beian yeian; shandong guanbi 404 jia hulianwangzhan], Qilu Evening News, reprinted in Xinhua (Online), 18 July 05.

<sup>45</sup> "Xinhua Editorial: The Important Regulation Which Regulates the Behavior of Those Engaged in News Reporting and Editing" [Xinhua shiping: guifan xinwen caibian ren yuan xingwei de zhongyao zhidu], Xinhua (Online), 22 March 05.

<sup>46</sup> "Professional Ethical Standards for China Radio and Television Announcers and Hosts" [Zhongguo guangbo dianshi boyinyuan zhuchiren zhiye daode zhunze], issued 2 December 04; "Professional Ethical Standards for China Radio and Television Editors and Reporters" [Zhongguo guangbo dianshi bianji jizhe zhiye daode zhunze], issued 2 December 04.

<sup>47</sup> Notice Regarding Strengthening the Supervision of Radio and Television Discussion Programs [Guanyu jiaqiang guangbo dianshi tanhualie jiemu guanli de tongzhi], issued 10 December 04.

<sup>48</sup>Measures for the Administration of Journalist Accreditation Cards [Xinwen jizhezheng guanli banfa], issued 10 January 05; Measures for the Administration of News Bureaus [Baoshe jizhezheng guanli banfa], issued 10 January 05.

<sup>49</sup>Interim Rules Regarding the Administration of Those Engaged in News Reporting and Editing [Guanyu xinwen caibian ren yuan congye guanli guiding], issued 22 March 05. According to one provincial Propaganda Department official, “the promulgation of the Rules makes public the Party’s demands regarding news work and those engaged in news work, what news reporters and editors should do and should not do, and what methods and behaviors are incorrect. . . .” “Published Extracts of Speeches at the Forum of the Province’s Primary News Work Units to Study the Implementation of the ‘Regulations’” [Shengnei zhuyuan xinwen danwei xuexi guanche “guiding” zuotanhui shangde fa yan zhaideng], Gansu Daily (Online), 9 May 05.

<sup>50</sup>Interim Implementation Rules for Administration of Those Employed as Radio and Television News Reporters and Editors, art. 4. These rules also state: “With respect to reports on breaking events relating to minorities and minority areas, it is necessary to have a cautious grasp, and ask for instructions from the relevant government agency in a timely manner.” See also State Administration of Radio Film and Television Printed and Distributed Notice Regarding Resolutely Strengthening and Improving Radio and Television Public Opinion Supervision Work [Guojia guangdian zongju yingfa guanyu qieshi jiaqiang he gaijin guangbo dianshi yulun jian du gongzuo de yaoqiu de tongzhi], SARFT (Online), 10 May 05.

<sup>51</sup>“General Office of the Communist Party Prohibits Inter-Regional Supervision by Domestic Mass Media” [Zhongban jin neidi chuanmei yidi jian du], Ming Pao (Online), 13 June 05.

<sup>52</sup>Nailene Chou Wiest, “Closing of Loopholes to Further Gag Media,” South China Morning Post (Online), 11 June 05.

<sup>53</sup>“Cleaning up and Reorganizing Newspaper Magazine Agencies and Reporter Stations Nationwide: 642 Shut Down and Had Licenses Removed” [Quanguo baokanshe jizhezheng qingli zhengdun: tingban zhuxiao 642 jia], Xinhua, 28 September 04, reprinted in People’s Daily, 29 September 04, 10.

<sup>54</sup>Yuan Xi, “2004 ‘Anti-Pornography and Anti-Illegal Publications’: 200 Million Illegal Publications Confiscated” [2004 Nian “saohuang dafei”: 2 yi jian feifa chubanwu bei shoujiao], People’s Daily, reprinted in Xinhua (Online), 24 January 05.

<sup>55</sup>See, e.g., “Make the Important Points Stand Out, Place Stress on Implementation, Earnestly Protect the Order of the Publication Market (Sichuan)” [Tuchu zhongdian, henzhua luoshi, qieshi weihu chubanwu shichang zhixu (Sichuan)], Sichuan Office on “Sweep Away Pornography, Strike Down Illegal Publications,” 29 December 04, reprinted on National Working Group Office on “Sweep Away Pornography, Strike Down Illegal Publications” Web site, 29 December 04.

<sup>56</sup>“2004 News Publishing Industry Development Report: Further Developing and Flourishing” [2004 nian xinwen chuban ye fazhan baogao: jin yibu fazhan fanrong], Xinhua, 30 January 05, reprinted in People’s Daily, 1 February 05, 11.

<sup>57</sup>“Eight Departments and Agencies: Maintain the Dignity of the Nation’s Territory, Strengthen the Supervision of the Map Market” [Ba bumen: weihu guojia bantu zunyan, jiaqiang ditu shichang jianguan], Xinhua (Online), 27 April 05.

<sup>58</sup>Qu Zhihong, “GAPP and Others Publicly Announced 60 Kinds of Illegal Periodicals” [Guojia xinwen chuban zongshu deng gongbu qudi 60 zhong feifa qikan], Xinhua, 28 April 05, reprinted in People’s Daily (Online), 28 April 05.

<sup>59</sup>“Central Authorities Govern Newspapers and Magazines, the Leading Group Dispatched Supervision and Inspection Groups to Investigate 10 Jurisdictions’ Newspaper and Magazines Control” [Zhongyang zhili baokan lingdao xiaozu pai jianchazu jiancha shi shengqu baokan zhili], China Journalism Review, reprinted in Xinhua (Online), 29 March 04.

<sup>60</sup>“China Banning Illegal Publications For Overhauling Publications Market, Official Says,” Xinhua (Online), 14 May 05.

<sup>61</sup>Qu Zhihong, “Various Illegal Foreign Newspapers and Magazines Will be Banned According to Law” [Duo zhong weifa waiwen baokan jiang bei yifa chachu qudi], Xinhua (Online), 28 April 05. In July 2005, several Chinese government agencies issued a joint notice announcing the commencement of a campaign to “investigate, prosecute, and ban” unauthorized foreign language publications. “GAPP and Five Agencies Unite to Investigate, Sanction, and Shut Down Illegal Foreign Language Periodicals” [Xinwen chuban zongshu deng 5 bumen jiang lianhe chachu qudi feifa waiwen baokan], Xinhua (Online), 19 July 05.

<sup>62</sup>For detailed information on the regulations governing book publishing, see China’s Book Publishing Flowchart on the Commission’s Web site.

<sup>63</sup>“A New Basis for Book Recalls: Those with an Error Rate Greater Than 0.05 Percent Should Be Recalled Within 30 Days” [Tushu shouhui xin yiju: chacuoli da wanfen zhi wu 30 tian nei shouhui], Beijing Star Daily, reprinted in People’s Daily (Online), 2 March 05.

<sup>64</sup>See, e.g., Zhang Yonghua, Pan Hua, and Liu Jia, “Current Situation and Challenges for Foreign Media’s Entry into Shanghai” [Jingwai meiti jinru: shanghai de xianzhuang yu tiaozhan], News Journalist, reprinted in People’s Daily (Online), 7 June 05.

[Administrative rules regulate the entry and journalistic activities of foreign news agencies residing in China: an approval system is imposed on journalists assigned by foreign news agencies and their resident news bureaus; and when any resident news bureau or its personnel interviews a government bureau or other work unit, it must first apply for permission from the relevant foreign affairs agency.

<sup>65</sup>“Hong Kong Reporters Detained in Beijing” [Xianggang jizhe zai Beijing bei koucha], Boxun (Online), 29 January 05; “Chinese Government Bans Two Canadian Journalists with Chinese-Language TV Station,” Radio Free Asia (Online), 18 January 05; Didi Kirsten Tatlow, “Give Us All Your Notes and Pictures,” South China Morning Post (Online), 17 April 05; Serena Fang, “Silenced,” Frontline (Online), 17 January 05; Edward Lanfranco, “Hebei Incident Shows China’s Dark Side,” United Press International, reprinted in Washington Times (Online), 19 July 05.

<sup>66</sup>"GAPP Book Office Responsible Person Work Report for Previous Year on National Book Publishing Administration Work" [Zongshu tushusi fuzeren tongbao qunian quanguo tushu chubuan guanli gongzuo], Press and Publication (Bureau) of Guangdong Web site, 24 February 05.

<sup>67</sup>Erik Eckholm, "Aide for Times Revealed Secrets, China Charges," New York Times (Online), 22 October 04; Human Rights in China Press Release, "Update on Zhao Yan Case," September 04.

<sup>68</sup>Broadcast Administration Regulations on the Introduction of Foreign Television Programs [Jingwai dianshi yewu yinjin, bochu guanli banfa], issued 23 September 04, art. 15.

<sup>69</sup>"Journalist Gets 10 Years in Jail for Leaking Top State Secrets," Xinhua (Online), 30 April 05.

<sup>70</sup>Notice of Certain Decisions Regarding Non-Public Investment in Cultural Industries [Guanyu feigongyou ziben jinru wenhua chanyede ruogan jue ding], issued 13 April 05; Rules on the Administration of Radio, Film, and Television System's Local Foreign Affairs Work [Guangbo yingshi xitong difang waishi gongzuo guanli guiding], issued 6 July 05; Regulations on the Administration of Commercial Performances [Yingyexing yanchu guanli tiaoli], issued 7 July 05; Measures Regarding Strengthening the Administration of the Importation of Cultural Products [Guanyu jiaqiang wenhua chanpin jinkou guanli de banfa] issued 3 August 05; Certain Opinions Regarding the Introduction of Foreign Investment into the Cultural Domain [Guanyu wenhua lingyu yinjin waizi de ruogan yijian], issued 4 August 05; Notice Regarding Further Strengthening the Administration of Radio and Television Channels [Guanyu jinyibu jiaqiang guangbo dianshi pindao guanli de tongzhi], issued 4 August 05.

<sup>71</sup>"China's Progress in Human Rights in 2004," State Council Information Office White Paper, 13 April 05.

<sup>72</sup>"45 Sino-Foreign Cooperative Projects on Periodicals Approved by the General Administration of Press and Publication" [45 ge zhongwai qikan hezuo xiangmu yi huo zongshu pizhun], Media Undo, reprinted in People's Daily (Online), 8 September 04.

<sup>73</sup>Liu Binjie, "Motivated by the Goal of Reform, Speed Up Development in the News Publishing Industry" [Yi gaige wei dongli jiakuai xinwen chubanye fazhan], Youth Journalist, reprinted in People's Daily (Online), 26 January 05.

<sup>74</sup>Geraldine Fabrikant, Keith Bradsher, "Media Executives Court China, But Still Run Into Obstacles," New York Times, 29 August 05, C1; Pietro Ventani, "Sex and the City (and China's Media Crackdown)," Asia Times (Online), 27 August 05; "Aiming at Virgin Investment Territory: A Roadmap of the Creative Ways that Foreign Companies Get Into China's Cultural Industry" [Miaoxiang ziben chunudi; waizi qiaoru zhongguo wenhua chanye luxiantu], International Finance News, reprinted in Xinhua (Online), 2 September 05.

<sup>75</sup>"[I]t is necessary to clarify the goal of the reforms, and that is to establish within newspaper and periodical enterprises leadership by Communist Party committees, government administration, industry self discipline, and administrative management systems. . . ." Yang Chiyuan and Cha Guowei, "2005 Observation of Media Reform and Development: Meeting on Direction of Media Reform and Development Was Held, Experts Analyzed Reform Policies and Speculated Media Direction" [2005 chuanmaiye gaige yu fazhan gaoduan guancha: chuanmeiye gaige yu fazhan zoushi yantaohui zhao kai, zhuanjia xuezhe jiexi gaige zhengce bamai chuanmei zoushi], Media, reprinted in People's Daily (Online), 18 April 05. For example, in April 2005, the People's Daily reported that the GAPP had approved the establishment of China's first media organization using a shareholding system. The report stated the company would be "co-led" by a board of directors and a Communist Party committee. "Our Country's First News Organization With a Complete Stockholding System Established Today in Beijing" [Woguo shoujia zhengti shixing gufanzhi de xinwen jigou zai jing jiepai], People's Daily (Online), 19 April 05.

<sup>76</sup>"GAPP: Private Book Companies Cannot Form Private Publishing Houses" [Chuban zongshu: minying shuye buke chengli minying chubanshe], China News Net, reprinted in People's Daily (Online), 10 September 04.

<sup>77</sup>Liu Binjie, "Motivated by the Goal of Reform, Speed Up Development in the News Publishing Industry" Regardless of how we go about reforming or what organization system we implement, we cannot allow any change in the correct guidance of public opinion. This relates to the problem of strengthening Marxist ideology, it relates to the problem of ensuring the dominant position of Marxist ideology, it relates to the problem of disseminating the Party's primary ideology. What we must first allow for is that we must insist that the Party's primary media remain state owned.

<sup>78</sup>Antoaneta Bezlova, "Big Brother's Book Ban Blues," The Hong Kong Standard (Online), 31 May 05.

<sup>79</sup>David Barboza, "Pushing (and Toeing) the Line in China," New York Times (Online), 18 April 05.

<sup>80</sup>"China: Foreign Affairs Magazine Shuttered after Criticism of North Korea," Committee to Protect Journalists, 22 September 04.

<sup>81</sup>"Editor Fired for Advocating China's Reform," United Press International, reprinted in Washington Times (Online), 26 October 04. Authorities later stripped Xiao of his seat on the Guangdong Political People's Consultative Conference. Leu Siew Ying, "Former Editor of 'Tong Zhou Gong Jin' Stripped of Political Post," South China Morning Post (Online), 16 March 05.

<sup>82</sup>"Central Propaganda Department Criticized by Name, Beijing University Stopped Jiao Guobiao from Teaching" [Zhongxuanbu dianming piping, beida zanting Jiao Guobiao shouke], Sound of Hope Radio Network, reprinted in Daiyuan (Online), 9 October 04; "China Fires Media Professor Who Called For Press Freedom," Radio Free Asia (Online), 29 March 05.

<sup>83</sup>Philip P. Pan, "China Frees Pioneering Journalist," Washington Post, 28 August 04, A19.

<sup>84</sup>"Lawyer for Several Journalists and Cyberdissidents Harassed and Facing a Professional Ban," Reporters Without Borders (Online), 4 March 05.

<sup>85</sup>Joseph Kahn, "China Detains 3 Who Criticized Government," New York Times (Online), 14 December 04.

<sup>86</sup> Hao Keyuan, "Twelve Big Changes in the Principles of Running a Newspaper" [Banbao linian de shier da bianhua], People's Daily (Online), 25 October 04.

<sup>87</sup> Ibid.; see also Edward Cody, "Party Censors Leave Harbin to Speculate on Corruption Scandal," Washington Post, 1 November 04, A13.

One stratagem, they said, is to turn off cell phones and tell their secretaries to inform callers the boss is out. Another is to keep a story quiet until 5 p.m., when most censorship bureaucrats leave for home, and then push it into the paper so the news is out by the time censors' advice notices are faxed over the next day.

<sup>88</sup> Liu Yuzhu, "Positively Facing the Challenge of the Internet Age" [Jiji yingdui wangluo shidai de tiaozhan], Seeking Truth (Online), 1 January 05: "[W]e should strengthen supervision over telecommunications operators and Internet service providers, and request that they assume the responsibility of inspectors and supervisors. Relevant domestic Web sites should practice strict self-discipline, should not provide obscene and other illegal content, and regularly and timely remove harmful information posted by Internet users."

<sup>89</sup> Zheng Qian, "Professors and Mentors Participate in Discussions Online: Shanghai University BBS Stop Illegal Rumors.

<sup>90</sup> Charles Hutzler, "China Finds New Ways To Restrict Access To the Internet," Wall Street Journal, 1 September 04.

<sup>91</sup> Zhang Song, "Underground Market Full of Chaos and Dishonesty, Why Is It Hard to Administer Private Satellite Installation Despite Existing Laws?" [Dixia shichang youluan youhei, sizhuang weixing dianshi weihe youfa nanzhi?], Economic Information Daily, reprinted in Xinhua (Online), 6 December 04.

<sup>92</sup> "Foreign Newspapers Will Be Allowed to be Printed in China, Currently No One Has Formally Applied" [Waiguo baozhi jiang huozhun zai hua yinshua, muqian hai meiyou yijia tichu zhengshi shenqing], Beijing News, reprinted in People's Daily (Online), 26 November 04.

<sup>93</sup> Interim Regulations on the Administration of Sino-Foreign Joint and Cooperative Ventures in Radio and Television Program Production Operating Enterprises [Zhongwai hezi, hezuo guangbo dianshi jiemu zhizuo jingying qiye guanlin zhanxing guiding], issued 28 October 05, art. 12.

<sup>94</sup> "New Regulations Surfaced: Foreign Invested Movie, Television, and Media Corporations Can Only Participate in Joint-Ventures" [Xin guiding chutai: waizi yingshi chuanmei zhineng kai yijia hezi gongsi], Shanghai Morning Post, reprinted in People's Daily (Online), 7 March 05; Measures on the Administration of Foreign Satellite Television Channel Reception, issued 1 August 04, art. 12.

<sup>95</sup> Liu Yuzhu, "Positively Facing the Challenge of the Internet Age" [Jiji yingdui wangluo shidai de tiaozhan], Seeking Truth (Online), 1 January 05.

<sup>96</sup> "Internet Filtering in China in 2004-2005: A Country Study," OpenNet Initiative (Online), 14 April 05.

<sup>97</sup> Xuan Zhaoqiang, "Monitoring and Controlling Internet Cafe Information at Anytime: Thousand-Mile-Eyes' System is Available for Jinan Internet Cafe Monitoring" [Suishi jiankong wangba xinx: Jinan wangba jianguan youle "qianliyan"], Hua Dong News, reprinted in People's Daily (Online), 24 January 05.

<sup>98</sup> "Shuimu BBS Makes Adjustments to Become an Internal School BBS, Beijing University and Other Higher Education BBS Sites Have Also Already Made Adjustments" [Shuimu BBS tiaozheng wei xiaonei xing, beida deng gaoxiao BBS zhan ye yi tiaozheng], Beijing Times, reprinted in the People's Daily (Online), 19 March 05.

<sup>99</sup> "Internet Cafes to Implement Fingerprint Recognition System: Effectively Prevent Underage Children From Entering Internet Cafes" [Wangba jiang tui zhiwen shibie: youxiao fangfan weichengnianren jin wangba], Xinhua (Online), 15 March 05.

<sup>100</sup> Zhou Wei, Hu Jinwu, "How Can the Regulation of Internet Cafes Only Involve the Regulation of Cafes and Not the Internet?" [Wangba zhengzhi qineng zhibu zhiwang?], Xinhua (Online), 11 October 04.

<sup>101</sup> "Information Supplied by Yahoo! Helped Journalist Shi Tao Get 10 Years in Prison," Reporters Without Borders (Online), 6 September 05.

<sup>102</sup> Ching-Ching Ni, "Yahoo Accused of Aiding China in Arrest," Los Angeles Times (Online), 8 September 05.232 Shi Tao Written Judgment, Hunan Province Changsha Municipality Intermediate People's Court, Criminal Written Judgment, Changsha Intermediate Criminal Division One, Trial in First Instance Document Number 29 (2005), 27 April 05.

<sup>103</sup> "In Imprisoning Journalists, Four Nations Stand Out," Committee to Protect Journalists (Online), 3 February 05.

<sup>104</sup> Louise Arbour, the United Nations High Commissioner for Human Rights, arrived in Beijing on August 29, 2005 for an official visit. On that day, Chinese police raided the office of the Empowerment and Rights Institute, a legal and human rights advisory group in Beijing. The group's director, Hou Wenzhuo, said that the police came to her home as well, but did not arrest her. Kahn, "Beijing Police Raid Rights Group Office." Also on that day, Liu Xiaobo, president of the Independent Chinese PEN Center, wrote an article saying that since the United Nations High Commissioner for Human Rights arrived in Beijing, police had been deployed near his house, as well as near the houses of political theorist Zhang Zuhua and author Liu Di (also known as the "Stainless Steel Mouse"). "A High Level Human Rights Official Arrives, and the Police Once Again Take Up Their Posts" [Renquan gaoji guanyuan laile, jingcha you shanggangle], China Information Center Web site, 29 August 05.

<sup>105</sup> Benjamin Kang Lim, "China Frees SARS Hero," Reuters, 23 March 05; "Jiang Yanyong Still Under House Arrest After Being Released from Prison" [Jiang yanyong huoshi hou chuyi bei ruanjin zhuangtai], Radio Free Asia (Online), 14 October 04.

#### Notes to Section III(f)—Status of Women

<sup>1</sup> "Chinese Police Beat Up AIDS Activist During UN Rights Visit," Radio Free Asia (Online), 31 August 05.



<sup>2</sup>Joseph Kahn, "Beijing Police Raid Rights Group Office," New York Times, 30 August 05, A9.

<sup>3</sup>Margaret Woo, "When Gender Differences Become a Trap: The Impact of China's Labor Law on Women," 14 Yale J.L. & Feminism 69, 71 (2002).

<sup>4</sup>"Bias or Protection? Can Women Retire at the Same Age as Men?" Xinhua (Online), 29 January 03.

<sup>5</sup>Law of the People's Republic of China on the Protection of the Rights and Interests of Women [hereinafter Women's Rights and Interests Protection Law], enacted 3 April 92, amended 28 August 05.

<sup>6</sup>Jonathan Hecht, "The Legal Protection of Women's Rights in China," in Human Rights in China, China Rights Forum (Fall 1995). Since passage of the Women's Rights and Interests Law, a number of institutions have been established in China to enable and encourage women to assert their rights. One example is the Center for Women's Law and Legal Services of Peking University, founded in December 1995 as the first center specializing in women's law in China. The Center has led to the development of a number of other institutions to promote women's rights, such as the recently founded Web site "Women's Watch—China."

<sup>7</sup>Women's Rights and Interests Protection Law. See also Chen Liping, "Thoroughly Implementing the Women's Law is the Common Responsibility of the Entire Society" [Guanche shishi funüfa shi quan shehui gongtong zeren], Legal Daily (Online), 30 August 05; Chen Liping, "Interpretation of the Law on the Protection of the Rights and Interests of Women" [Jiedu funüqianyi baozhangfa xiugai zhengan], Legal Daily (Online), 29 August 05; "China Daily 'Opinion' on Draft Amendments of Women's Rights Laws," China Daily (Online), 5 July 05. The drafting committee said the ten goals of the draft are: to write the basic national principle of equality between the sexes into law; to specify which government officials have the duty to enforce the law; to specify the duties of the All-China Women's Federation (ACWF) at each level; to increase the number of women in positions of authority in the government and the Party; to prohibit bias against women in school admissions; to prevent gender bias in the job market and the workplace, loss of labor benefits because of special protective labor regulations, and unequal access to rights and benefits like social security, welfare, and health insurance; to protect the right of rural women, regardless of their marital status, to receive land use contracts and get an equal share of any compensation for expropriated land; to prohibit sexual harassment, to rescue and rehabilitate trafficking victims, and to forbid use of ultrasound to determine fetal sex for purposes of non-medical abortion; to clarify the responsibility of the police, the government, and the judiciary to eliminate domestic violence and provide for the rescue and rehabilitation of victims; and to clarify the administrative, civil, and criminal responsibility of those who break the Women's Rights and Interests Protection Law, as well as to provide legal assistance for women seeking redress under it. See also Rong Jiaojiao, "Law to Catapult Women's Rights into the New Century," China Daily (Online), 12 August 05.

<sup>8</sup>Women's Rights and Interests Protection Law, art. 40. See also, "Sexual Harassment Law Gives Hope to Women Suffering in Silence," South China Morning Post (Online), 8 August 05; "China Outlaws Sexual Harassment," Xinhua (Online), 29 August 05; "Women who Encounter Sexual Harassment Have the Right to Complain to their Work Unit and Relevant Departments" [Zao xingsaorao nüxing youquan xiang danwei he youguan jiguan tousu], People's Daily (Online), 23 August 05. However, some commentators have noted that the term "sexual harassment" is not defined in the law. "Those Who Sexually Harass to Be Legally Liable; But Outlines of Offense Still Unclear" [Xingsaoraozhe jiang bei zhuijiu falü zeren; jieding chidu reng wu biaoqun], Xinhua (Online), 29 August 05.

<sup>9</sup>"China Issues White Paper on Gender Equality and Women's Development" [Zhongguo xingbie pingdeng yu funü fazhan zhuangkuang' baipishu zhichu], China Legal Information (Online), 24 August 05. The white paper cites many facts and figures to show improvements achieved in the status of women, although other research shows continued inequality in access to political power, education, healthcare, employment opportunity, and property. Wang Ying, "Gender Inequality Serious in Rural Areas," China Daily (Online), 8 September 05 (describing research by Professor Li Xiaoyun in ten poor villages in 2005).

<sup>10</sup>"PRC Official Discusses Improvements in Women's Status at World Conference," Xinhua (Online), 30 August 05.

<sup>11</sup>"Hu Jintao Addresses Beijing Meeting on Anniversary of World Conference on Women," Xinhua (Online), 29 August 05.

<sup>12</sup>Guowuyuan funüertong gongzuo weiyuanhui, currently chaired by Vice Premier Wu Yi. The Committee's Web site is at <<http://www.nwccw.gov.cn/>>.

<sup>13</sup>Zhonghua chuanguo funülianhehui, currently led by Huang Qingyi. The Federation's Web site is at <<http://www.women.org.cn/>>.

<sup>14</sup>See, for example, the manual entitled All-China Women's Federation Compilation of Laws Relating to Women and Children (April 2002). Recent progress on establishing hotlines and local legal assistance centers for women facing domestic violence is touched on in "One Fifth of Women Convicts in Yunnan Jailed Because of Retaliation Against Abusive Spouses" [Yunnan sheng nüfan liangcheng yin jiating baoli fanzui], Chuncheng Evening News, reprinted in Xinhua (Online), 19 August 05.< <http://www.yn.xinhuanet.com/newscenter/>>. See also "Ten Years of Work on Gender Equality in Yunnan: More than 600 Projects" [Yunnan sheng nannü pingdeng gongzuo 10 nian chunhua qiushi: 600 duo xiangmu], Chuncheng Evening News, reprinted in Xinhua (Online), 3 August 05.

<sup>15</sup>"Program for the Development of Chinese Women" [Zhongguo funüfazhan gangyao], Xinhua (Online), 3 September 03. The Program and some discussion of its contents are posted on the China Women's Net.

<sup>16</sup>See Section III(i)—Population Planning. As a mass line organization, the ACWF is dominated by Party members and functions to convey and implement Party policies among the people. The "One Child Policy," although now expressed in a national law, was originally promulgated as Party policy and remains a key element of Party policy. It should be noted that article

7 of the amended Women's Rights and Interests Protection Law specifies that all levels of the ACWF have the affirmative duty to protect women's rights and interests.

<sup>17</sup>Successful projects to protect women's rights have also been run by the Guangdong Women's Federation Legal Services Center and the Shaanxi Province Research Association for Women and the Family, founded in 1988.

<sup>18</sup>Ma Jianxiong, "Sex Ratio, Marriage Squeeze, and Ethnic Females Marriage Migration in China" [Xingbiebi, hunyin jizhuang yu funüqianyi], *Journal of Guangxi Universities for Nationalities*, Vol. 26, No. 4, July 2004. International trafficking particularly harms women and girls, as evident in the estimates cited in the State Department's 2005 Report on trafficking that of the 600,000 to 800,000 victims trafficked each year, 80 percent are women and up to 50 percent minors. Trafficking in Persons Report, June 2005, available on the Department of State Web site, 6. The United States Trafficking Victims Protection Act of 2000, as amended in 2003 [hereinafter TVPA] requires the State Department to cover "countries of origin, destination, or transit for a significant number of victims of severe forms of trafficking." *Ibid.*, 26. The Trafficking in Persons reports assign the countries covered to one of three tiers based on their compliance with the TVPA's minimum standards for combating trafficking. *Ibid.*, 29. In order to indicate trends in trafficking and efforts to fight it, the TVPA was amended in 2003 to add a fourth category, the "Tier 2 Special Watch List," which focuses special attention on countries that are making efforts to cope with trafficking but need to do more. The 2005 Trafficking in Persons Report puts China in the Tier 2 Special Watch List because of its failure to provide evidence of increased efforts to cope with trafficking, especially of victims trafficked to Taiwan and North Koreans trafficked into China and forcibly repatriated. *Ibid.*, 83–84.

<sup>19</sup>Cindy Sui, "Baby Trafficking in PRC's Rural Areas 'Widespread,'" *Agence France-Presse* (Online), 5 February 05.

<sup>20</sup>Yunnan Provincial Women's Federation, in collaboration with Yunnan Provincial Bureau of Statistics, the Bureau of Statistics, Education Commission, and Justice Bureau of Jiangcheng and Menghai Counties, Yunnan Province, "China Situation of Trafficking in Children and Women: A Rapid Assessment" (August, 2003) (sponsored by ILO Mekong Sub-Regional Project to Combat Trafficking in Children and Women (IPEC-TICW)).

<sup>21</sup>Yulin: 28 Baby Girls Drugged and Stuffed Into Plastic Bags for Shipping," *Xinhua* (Online), 31 May 04; "Baby Business," *China Daily* (Online), 28 October 03. Several of the traffickers in this case were sentenced to death. "Infant Trading Gang Given Death Sentence, Jail Terms," *Xinhua* (Online), 30 November 03. Police have recently broken up similar gangs trafficking dozens of young babies and children in Henan province, "Woman Sentenced to Death in China for Trafficking Babies," *Agence France-Presse* (Online), 19 June 04, and "Baby Traffickers in China Shift Focus to Girls," *South China Morning Post* (Online), 4 August 05; Hohot in Inner Mongolia, "China Halts Baby Trafficking Ring," *BBC News* (Online), 13 July 04<http://news.bbc.co.uk>; Putian city in Fujian, "Police Make Arrests in China-Burma Baby Trafficking Case," *Agence France-Presse* (Online), 3 February 05; and Kunming city in Yunnan, "Yunnan Baby Trafficking Gang Jailed," *Xinhua* (Online), 14 August 2003; "Police Smash Women, Children Trafficking Gang in SW China," *Xinhua* (Online), 15 November 2003.

<sup>22</sup>Relevant criminal provisions are included in Chapter IV of the PRC Criminal Law, Crimes of Infringing Upon Citizens' Right of the Person and Democratic Rights, especially arts. 240, 241, and 242. PRC Criminal Law, enacted 1 July 79, amended 1 October 97, 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02.

<sup>23</sup>Yunnan Province Women's Federation, in collaboration with Yunnan Provincial Bureau of Statistics, Bureau of Statistics, Education Commission, and Justice Bureau of Jiangcheng and Menghai Counties, Yunnan Province, *China Situation of Trafficking in Children and Women: A Rapid Assessment*, (August, 2003) (sponsored by ILO Mekong Sub-Regional Project to Combat Trafficking in Children and Women (IPEC-TICW)).

<sup>24</sup>PRC Criminal Law, art. 240. One commentator, Zhu Jianmei, seeks further revision because, as a result of these changes, the trafficking of boys over 14 and other similarly powerless victims is relegated to the much milder crime of "Unlawful Detention." PRC Criminal Law, art. 238. Zhu also argues that coercive trafficking of women into the sex trade and raping trafficked women should be separate crimes rather than just aggravating circumstances to a basic trafficking offense. "Several Issues Concerning the Crime of Trafficking in Women and Children" [Guaimai funüertong zui de jige wenti], *Journal of Jiangsu Public Security College*, March 2004, 57–61. The relevant provisions of the PRC Criminal Code are Articles 238, 239 and 240. See also Tao Ziqiang and Yang Jionghong, "How Should We Handle the Crime of Trafficking a Boy Over 14?" [Guaimai shisi sui yishang nanxing ruhe dingzui?], *Procuratorial Daily* (Online), 16 February 04.

<sup>25</sup>UNICEF, "Abuse, Exploitation and Trafficking of Children in East Asia," in UNICEF East Asia and the Pacific Regional Office Presentation, cited in UNICEF, *End Child Exploitation*, July 2003, 10–11, 35.

<sup>26</sup>"Over 50,000 Trafficked Women and Children Rescued by Police Over Four Years," [Shinianjian chuanguo gonganjiguan jiejiu bei guaimai funüertong 5 wan duo ren], *Shanxi Evening News* (Online), 18 August 05. The author of this article seems to have acquired the statistics from the Fourth National Meeting on Women's and Children's Work, held on August 15–16, 2005. For comparison, a police report covering the years from 2001 to 2003 said 42,215 victims had been rescued during that period. Tian Yu, "Chinese Police Rescue 42,215 Women and Children over Three Years" [Woguo gong'an jiguan sannian jiejiu bei guaimai funü ertong 42,215 ren], *Xinhua* (Online), 2 March 04. It is difficult to ascertain the degree of overlap between the two reports. Statistics announced at a conference held in Guangxi in August 2005 to commemorate the 1995 Conference on Women in Beijing claim that a crackdown on trafficking across the border with Vietnam resulted in the rescue of 1800 victims over the course of five years. "Guangxi Strikes Hard at Cross-Border Crime of Trafficking in Women and Children," [Guangxi yanda kuaguo guaimai funü ertong fanzui], *China Radio International* (Online), 25 August 05.

<sup>27</sup> Yan Wei, "Countries Strike Back—Stamping Out the Trafficking of Women in South and Southeast Asia Needs a Tougher, More Strategic Approach," Beijing Review (Online), 1 July 05.

<sup>28</sup> Ibid.

<sup>29</sup> Alice Yan, "Beijing Women's Federation: Women Still Lag, Despite Jiang's Promise of Job Equity," South China Morning Post (Online), 5 August 05; "Report on the Rights of Women Workers in the Workplace" [Guanzhu nǚgong quanyi chuanguang], Workers' Daily (Online), 5 April 05.

<sup>30</sup> State Council Women's Development Program, 2001–2010 [Zhongguo funǚfazhan gangyao, 2001–2010], May 2001; see also "Plan for Implementation of the Women's Development Program, 2001–2010" [Guanche luoshi funǚfazhan gangyao, 2001–2010], China Education Online, 11 September 03.

<sup>31</sup> State Council Women's Development Program, 2001–2010.

<sup>32</sup> Ibid.; see also recent research led by professor Li Xiaoyun of the China Agricultural University, "Gender Inequality Serious in Rural Areas," China Daily (Online), 8 September 05; "Inequality in Town and Countryside: Still Obstacles for Girls' Education" [Chengxiang bu pingdeng: nǚtong shou jiaoyu reng cun fang'ai], China Education News (Online), 15 August 05.

<sup>33</sup> Country Team China, United Nations, Common Country Assessment 2004, 59.

<sup>34</sup> "Becoming the Ideal Support in the Wing—On Women's Right to Education" [Wei lixiang chashang chibang—guanyu funǚ jiaoyu quanli], Ningbo Government Net (Online), 6 December 04. Premier Wen Jiabao has recently reaffirmed the need to address gender inequalities in health and education in China. "Chinese Premier Wen Jiabao Emphasizes Protecting Rights of Women, Children," Xinhua (Online), 16 August 05.

<sup>35</sup> Amy Phariss and Drew Thompson, "Women and HIV/AIDS in China," conference hosted by the CSIS Freeman Chair in China Studies, 1 December 04.

<sup>36</sup> "Sex Ratio of HIV Carriers Reaches 2:1," Xinhua (Online), 7 July 05.

<sup>37</sup> Phariss, Thompson, "Women and HIV/AIDS in China."

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<sup>1</sup> "Pollution, Urbanization Threaten Health of East Asian People: World Bank," Xinhua (Online), 22 April 05. "Polluted Fog Leaves a City Gasping," South China Morning Post, 8 April 05 (FBIS, 8 April 05). "Those Hazy Days of Spring in Beijing," South China Morning Post, 7 April 05 (FBIS 7 April 05). "China's Environmental Suicide," New Delhi Swadeshi Patrika, 1 May 05 (FBIS 6 July 05).

<sup>2</sup> "China To Build Wind Farms Offshore," China Daily (Online) 16 May 05.

<sup>3</sup> "Reckless Human Activity Blamed for Frequent Mountain Torrents," Xinhua (Online), 23 June 05. "World Research Group on Erosion Founded in China," People's Daily (Online), 20 October 04.

<sup>4</sup> "Growth Leaves Country High and Dry," China Daily (Online), 28 December 04; "Thirsty Countryside Demands Safe Water," Ministry of Water Resources Web site, 23 March 05.

<sup>5</sup> "Clean Energy Crunch Time," Beijing Review (Online), 31 March 05; "China Drafts Vision 2010 for Cyclical Economy," People's Daily (Online), 26 May 05.

<sup>6</sup> "China, U.S. Launch Program to Reduce Vehicle Emissions," Agence France-Presse, 17 November 04 (FBIS, 17 November 04); "Deputy Secretary Zoellick Unveils Asia-Pacific Energy Initiative," U.S. Department of State (Online), 28 July 05; "EU and China Partnership on Climate Change," EUROPA (Online), 2 September 05.

<sup>7</sup> "Delays Hit Treatment Facilities on Water Line," South China Morning Post (Online), 23 March 05; National Development and Reform Commission, Full Text: Report on China's Economic and Social Development Plan, People's Daily (Online), 15 March 05.

<sup>8</sup> "Those Who Violate Environmental Law Will Increasingly Be Criticized by Name" [Weifan huanjing fagui yihou dianming piping hui yuelaiyue duo], People's Daily (Online), 1 June 05.

<sup>9</sup> Ibid.

<sup>10</sup> "All 30 Law-Breaking Projects Building Stopped," China Daily (Online), 3 February 05; "Environmental Bureau Issues Notice of Fine and Demand for Corrective Measures to Three Gorges Corporation" [Guojia huanbao zongju xiang san xia zonggongsi fachu xianqi zhenggai he xingzheng chufa tongzhishu], Beijing News (Online), 1 February 05; "Recast: China Blacklists 46 Thermal Power Plants for Threatening Environment," Xinhua (Online), 27 January 05.

<sup>11</sup> "China Halts Construction of Six Large Aluminum Projects," Xinhua (Online), 28 April 05; "Old Summer Palace Must Complete an Environmental Impact Assessment in 40 Days" [Yuanmingyuan jiao huanping xianqi 40 tian], Beijing News (Online), 9 May 05.

<sup>12</sup> "The 'Environmental Assessment Storm' Is Normal Enforcement of the Law" ["Huan ping fengbao" shi zhengchang zhifa jiandu], Beijing News (Online), 14 March 05. SEPA's focus appears to be on increasing sanctions and fines for government officials and industry leaders when they fail to comply with environmental laws.

<sup>13</sup> "Those Who Violate Environmental Law Will Increasingly be Criticized by Name," People's Daily; "Public Interest Litigation: Environmental Suits—The Tool To Resolving Problems, But Which Hasn't Taken Off Yet" [Gongyi susong: huanbao guansi jiekun zhi men jiang qi wei qi], 21st Century Business Herald (Online), 5 February 05; "An Example of a Difficult Environmental Lawsuit: The People on the Outskirts of the Yellow Phosphorous Factory" [Yi ge huanjing susong kunjing yangben: huanglin chang zhoubian de naxie renmin], 21st Century Business Herald (Online), 5 February 05. Senior SEPA officials have expressed support for a system allowing environmental NGOs, not merely state prosecutors, to bring lawsuits on behalf of the public.

<sup>14</sup> "Those Who Violate Environmental Law Will Increasingly be Criticized by Name," People's Daily. SEPA officials are currently coordinating revisions of the Water Pollution Prevention Law. "The National People's Congress is Going to Use Legislation to Endow People With Environmental Rights" [Quanguo ren da jiang lifa fuyu gongmin huanjing quan], Xinhua (Online), 1 June 05.

<sup>15</sup>“Environmental Protection Fund Worthy,” China Daily (Online), 3 February 05. The effectiveness of the proposal will depend on management of funds and assessment of taxes and adjusted prices that is free from favoritism or unfair bias.

<sup>16</sup>“Foreign Investment Welcomed in Environmental Protection,” Xinhua (Online), 18 May 05. “Let Investors Help With Environment Protection,” China Daily (Online), 29 April 05.

<sup>17</sup>“Beijing Will Begin Experimenting With Green GDP This Year” [Luse GDP Beijing shidian jinnian qidong], Beijing News (Online), 1 March 05; “The ‘Environmental Assessment Storm’ is Normal Enforcement of the Law,” Beijing News.

<sup>18</sup>“China Dedicated to Realizing ‘Green Growth.’ Official,” Xinhua (Online), 28 March 05; “SEPA Vice Director Pan Yue: The Summer Palace Incident Is Only the Beginning” [Guojia huanbao zongju fu juzhang Pan Yue: Yuanmingyuan shijian zhi shi yi ge kaishil], Southern Daily (Online), 18 April 05; “Growing From Grassroots: Environmental NGOs Are Having a Growing Impact on Development,” Beijing Review (Online), 25 November 04; “Chinese College Students Work in NGOs For Environmental Protection,” Xinhua (Online), 27 March 04.

<sup>19</sup>“SEPA Vice Director Pan Yue: The Summer Palace Incident Is Only the Beginning,” Nanfang Daily; “Chinese Public Want Greater Say on Environmental Issues,” Xinhua (Online), 12 April 05.

<sup>20</sup>“73 People Obtain Permission to Participate in the Old Summer Palace Public Hearing” [73 ren huozhun canjia Yuanmingyuan tingzhenghui], Beijing News (Online), 13 April 05.

<sup>21</sup>SEPA officials used the controversy to highlight problems with enforcement of the Environmental Impact Assessment (EIA) Law and work to address weaknesses in the EIA industry. “Those Who Violate Environmental Law will Increasingly Be Criticized by Name,” People’s Daily; “SEPA to Re-Organize 800 Environmental Impact Assessment Bodies” [Huanbao zongju zhengsu 800 jia huanping jigou], 21st Century Business Herald (Online), 23 May 05; “Since the Environmental Impact Assessment (EIA) Body Did Not Accept the Old Summer Palace Assessment Project, the Statutes of the Environmental Impact Assessment Law Will Be Examined for Deficiencies” [Cong huanping jigou bu jie Yuanmingyuan de hua kan huanping fa falu qieshi], Chinalaw.Net (Online), 13 May 05.

<sup>22</sup>“The National People’s Congress is Going to Entrust Citizens With Environmental Rights,” Xinhua.

<sup>23</sup>“Renewable Resources Law Released—China Is Undertaking Resource Reform” [Ke zai sheng nengyuan fa chutai—zhongguo jinxing nengyuan geming], 21st Century Business Herald (Online), 2 March 05.

<sup>24</sup>“Growing From Grassroots: Environmental NGOs Are Having a Growing Impact on Development,” Beijing Review.

<sup>25</sup>Environmental NGOs in China: Encouraging Action and Addressing Public Grievances, Staff Roundtable of the Congressional-Executive Commission on China, 7 February 05, Written Statement and Testimony of Elizabeth Economy, C.V. Starr Senior Fellow and Director of Asia Studies, Council on Foreign Relations.

<sup>26</sup>“Government Turns Up NGO Volume,” China Daily (Online), 26 April 05; “New NGO Founded To Rally All Chinese People Against Worsening Pollution,” Xinhua (Online), 23 April 05.

#### Notes to Section III(h)—Public Health

<sup>1</sup>Cao Haidong and Fu Jianfeng, “20 Years of Health Care Reform in China” [Zhongguo yigai 20 nian], Southern Daily (Online), 5 August 05; 19562 “Chinese Red Cross Sets Up Charity Fund To Help Rural Poor With Medical Bills,” China Daily (Online), 11 August 05; Ofra Anson and Shifang Sun, Health Care in Rural China (Ashgate, Aldershot, Hants, 2005), 15–17.

<sup>2</sup>“Cooperative Medicare System Helps Prevent Farmers Becoming Poorer,” China’s Human Rights (Online), 7 January 04. <http://www.humanrights-china.org/>.

<sup>3</sup>See, e.g., “Nearly 2 Million Farmers in Heilongjiang Benefit From New Rural Cooperative Medical Scheme,” Heilongjiang Daily, 15 April 05 (FBIS, 16 April 05).

<sup>4</sup>Yu Tianü and Jin Rongsheng, “New Rural Cooperative Medical Scheme Warmly Received by Farmers in Liaoning’s Youyan Autonomous County,” Liaoning Daily, 18 April 05 (FBIS, 14 May 05).

<sup>5</sup>A pilot program of rural medical cooperatives instituted in Qinghai in 2004 was expanded in 2005, and the number of rural citizens covered rose from 2 to 3 million. In Qinghai, the effort to establish basic-level health care through these cooperatives was led by the Provincial Leading Group for Rural Health Work. “Qinghai Province Plans to Expand Coverage of New Rural Cooperative Medical Scheme by End of 2005,” Qinghai Daily, 16 April 05 (FBIS, 14 May 05). On May 20, 2005, the governor and Party of Hainan announced a project to expand the rural cop scheme to all residents by 2010, as well as to build a few high-standard general and special hospitals on the island. “Hainan Governor Wei Liucheng Chairs Meeting on Construction of Township, Town Medical Centers,” Hainan Daily, 21 May 05 (FBIS, 30 May 05).

<sup>6</sup>“With the Help of Rural Medical Coops, Farmers in Jiangjin, Chongqing Speed Towards Prosperity” [Nongcun hezuo yiliao bangzhu Chongqing Jiangjin nongmin ben qianmian xiaokang], Chongqing City Statistics Bureau Web site, <<http://www.stats.gov.cn/>>, 3 June 05.

<sup>7</sup>“Farmers in Sichuan Province Speak Highly of New Rural Medical Cooperative System,” Sichuan Daily, 22 April 05 (FBIS, 14 May 05); see also “China to Promote Rural Cooperative Medical System,” Xinhua (Online), 10 August 05.

<sup>8</sup>“Expert Says China’s Medical Reform ‘Basically Not Successful,’” Xinhua (Online), 29 July 05; Josephine Ma, “Think-tank Lashes the Mainland’s Health Care,” South China Morning Post (Online), 30 July 05; “Health Ministry Says Rural Medical System Still Facing Several Major Problems,” China Daily (Online), 4 July 05; “A Half-Baked Reform Leaves Patients Unsatisfied, Hospitals Unsatisfied, Government Unsatisfied” [Huanzhe, yiyuan, zhengfu wuren manyi; yigai zhaishengfan; yuan zi liang dian mixin], Xinhua (Online), 4 August 05; “State Must Lead Medical Reforms,” China Daily (Online), 4 August 05 (citing Yanzhao Metropolis Daily); “Gao Qiang, Minister of Health, Urges More Investment in Health Care” [Wesiheng buzhang Gao Qiang:

Zhengfu ying jiada yiliao touru], Number One Economic Daily (Online), 5 August 05; Wang Zhenghua, "Hospitals Overcharge Patients for Profits," China Daily (Online), 5 August 05; "PRC Health Ministry Report Details 'Serious Problems' Facing Sector," Agence France-Presse (Online), 5 August 05; "Gaps Within Troubled China's Health Sector," Xinhua (Online), 8 August 05; "Heated Disputes Over Privatization: Rethinking China's Healthcare Reform" [Jibian "shichanghua" Zhongguo yigai fanse yu chulu], 21st Century Economic Journal, 8 August 05; "Health Reform Plan to be Launched By End of the Year" [Yigai xin fang'an huo niandi qidong], Beijing News (Online), 8 August 05; "China Premier Under Fire Over Rising Medical Costs," Reuters (Online), 11 August 05; "Half of all Children Who Die of Illness in the Countryside Had Not Received Medical Treatment" [Wo guo yin bing siwang de nongcun ertong reng you yiban wei dedao yiliao], People's Daily (Online), 17 August 05; "What are the Root Problems of Healthcare Reform?" [Yigai de sixue zai nar?], Southern Weekend (Online), 18 August 05; "China's Health Care System is Sick: Patients' Complaints Mount up, Many Turn to Violence" [Zhongguo yiliao xitong bingle; huanzhe tousu jizeng; shiyong baolizhe zhong], Asia Times (Online), 18 August 05; "Fujian Suicide Bombing: A Wake-up Call for Health-care Reform?" South China Morning Post (Online), 18 August 05; Zhang Feng, "Rural Kids 'Need Better Healthcare,'" China Daily (Online), 18 August 05; "China's Exorbitant Healthcare Fees Spark Suicides," Reuters (Online), 18 August 05. See also David Blumenthal and William Hsiao, "Privatization and it Discontents—The Evolving Chinese Health Care System," 353 New England Journal of Medicine 1165 (15 September 05).

<sup>9</sup>"Health Ministry Says Rural Medical System Still Facing Several Major Problems," China Daily.

<sup>10</sup>"Half of All Farmers Do Not Seek Care for Illness" [Zhongguo nongmin yiban kanbuqi bing], Beijing News (Online), 6 November 04; "Half of All Children Who Die of Illness in the Countryside Had Not Received Medical Treatment," People's Daily.

<sup>11</sup>"Half of All Children Who Die of Illness in the Countryside Had Not Received Medical Treatment," People's Daily.

<sup>12</sup>"China's Children Severely Malnourished," China Youth Daily (Online), 7 July 05.

<sup>13</sup>"China Ranks Second in World in Terms of TB Patients; Nearly 10,000 People in Guangxi Die of Tuberculosis Every Year," Wen Wei Po, 24 Mar 05 (FBIS, 27 March 05).

<sup>14</sup>"Zhejiang's TB Incidence Noticeably Rises," Zhejiang Daily, 24 Mar 05 (FBIS, 27 March 05).

<sup>15</sup>"Jiangxi To Fulfill Tuberculosis Control Task in 2005," Jiangxi Daily, 25 March 05 (FBIS, 27 March 05).

<sup>16</sup>"Experts Say Infectious Diseases Biggest Biological Threat to Modern China," China Daily (Online), 6 April 05.

<sup>17</sup>UNICEF, "At a Glance—China," available on the UNICEF Web site. The report indicates that over 90 percent of all one-year-olds were fully immunized against TB, DPT3, and polio and 84 percent were fully immunized against measles in 2003. On March 16, 2005, the State Council issued the Regulation on the Management of the Circulation of Vaccines and Preventive Inoculations [Yimiao liutong he yufang guanli tiaoli], issued 24 March 05, providing for free provision to citizens of the vaccines specified under the State Immunization Plan.

<sup>18</sup>"China's Immunization Scheme Makes Progress Amid Problems," Xinhua (Online), 8 June 05.

<sup>19</sup>A total of 30,017 measles cases resulting in 20 deaths were reported in the first quarter nationwide. The number of cases and mortality rate are significantly higher than those reported for the same period in 2004. Most victims are pre-school age children. "Infectious Disease Data, 1st Quarter, 2005," Ministry of Health, 4 April 05 (FBIS, 1 June 05).

<sup>20</sup>Ibid.; see also "Migrant Workers Get Vaccines," China Daily (Online), 25 December 03. This article reports on the administration of free vaccinations to migrant workers in Beijing. It cites Li Guoying, an official with the Municipal Disease Control and Prevention Centre, as saying that most of the 800,000 rural migrants in Beijing at the time had never been vaccinated before due to weak rural health care.

<sup>21</sup>"Anhui Province Issues Report on Epidemic Situation in First Quarter of 2005," Anhui Daily, 21 April 05 (FBIS, 14 May 05). 13618.

<sup>22</sup>"Experts Urge Government To Improve Vaccination Program Against Hepatitis B," China Daily (Online), 18 July 05.

<sup>23</sup>"PRC Public Opinion Defeats Hepatitis B Virus Discrimination," China Net (Online), 23 September 04.

<sup>24</sup>PRC Law on the Prevention and Control of Infectious Diseases, enacted 29 February 89, amended 28 August 04. See also CECC, 2004 Annual Report, 61. China's first hepatitis B health discrimination case was filed by Zhang Xianzhu in 2003 when his application to work for the city of Wuhu in Anhui province was rejected because of the illness. Although the court in that case held for Zhang, it did not invalidate the underlying regulation that prohibited the hiring of hepatitis carriers. The amended national law should prevent such discrimination in the future.

<sup>25</sup>"China Pushes for AIDS Legislation," China News Agency, 3 July 05 (FBIS, 5 July 05)19889; Jasper Becker, "AIDS in Asia: China Becomes Proactive," San Francisco Chronicle (Online), 9 February 04.

<sup>26</sup>"PRC State Council Sets Steps for Fighting AIDS at Meeting With Wen Jiabao Presiding," Xinhua (Online), 15 June 05. See also UNICEF—China, "For Every Child: Progress Report for UNICEF-China, 2003/2004" (2005), 5.

<sup>27</sup>"PRC State Council Sets Steps for Fighting AIDS at Meeting With Wen Jiabao Presiding," Xinhua (Online), 15 June 05. The same meeting added "it is necessary to strengthen the building of the legal system for the prevention and control of AIDS and standardize and give guidance to the prevention and control of AIDS according to law and in an orderly manner."

<sup>28</sup>"AIDS Prevention Classes Included in University," Agence France-Presse (Online), 10 September 04; but see "Students Find Sex Education Inadequate," China Daily (Online), 26 July 04; Bao Xinyan, "Jiangsu Intensifies AIDS Prevention," China Daily (Online), 2 August 04.

<sup>29</sup>“Hubei Province Issues Preemptive Plan for Prevention and Control of Occupational Exposure to AIDS Virus,” Hebei Daily, 18 May 05 (FBIS, 30 May 05).

<sup>30</sup>“HIV/AIDS Controversy at the Central Party School” [Zhongyang dangxiao de aizhi guannian jiaofeng], Southern Weekend (Online), 23 June 05.

<sup>31</sup>“Yunnan Province Holds Seminar for Provincial Leading Cadres on Drug Control and AIDS Prevention,” Yunnan Daily, 2 May 05 (FBIS, 30 May 05).

<sup>32</sup>“Jiangxi Province Draws up Plan for Province-Wide Propaganda and Education Campaign on AIDS Prevention and Control,” Jiangxi Daily, 21 May 05 (FBIS, 30 May 05).

<sup>33</sup>“Free Education for HIV Children in Guangdong,” Shenzhen Daily (Online), 19 January 05; “HIV Rate Soars in Southern China City,” United Press International (Online), 30 March 05.

<sup>34</sup>“China to Fight AIDS With Free Condoms, Needle Exchanges,” Associated Press (Online), 8 June 05; “New Ministry of Health Prostitute, Addict AIDS Plan ‘Controversial,’” China Daily (Online), 13 June 05; Edward Cody, “In China, an About-Face on AIDS Prevention: Once-Reluctant Government Increasingly Promoting Efforts to Battle Spread of Disease,” Washington Post (Online), 8 December 04.

<sup>35</sup>Fu Jing, “‘Hospital on Wheels’ to Offer Farmers Health Care,” China Daily (Online), 2 August 04; “Taking Affordable Medical Service to Farmers,” China Daily (Online), 11 June 05.

<sup>36</sup>Zhang Feng, “HIV/AIDS Proposals Announced for 2005,” China Daily (Online), 19 March 05.

<sup>37</sup>Zeng Liming, “Yunnan Plans To Give HIV Tests to Targeted Groups of 300,000 in 2005,” Xinhua (Online), 14 June 05 (FBIS, 14 June 05). Similar rules are in effect in Henan province. “Health Checks for Sex Workers—Boon or Bane?” Beijing Review (Online), 7 April 05.

<sup>38</sup>“Chinese Province Wants Its Hospitality HIV-Tested,” Associated Press, reprinted in Lexis-Nexis, 23 March 05.

<sup>39</sup>Human Rights Watch, *Restrictions on AIDS Activists in China*, June 2005, 19; International Federation for Human Rights, *Alternative Report to the Committee on Economic, Social and Cultural Rights: China: ‘At a Critical Stage,’ Violations of the Right to Health in the Context of the Fight Against AIDS*, April 2005.

<sup>40</sup>Pierre Haski, “A Report from the Ground Zero of China’s AIDS Crisis,” Yale Global (Online), 30 June 05.

<sup>41</sup>“NGOs Active in China’s Fight Against AIDS,” China Daily (Online), 20 June 04.

<sup>42</sup>See, e.g., Ministry of Health and Bureau of State Secrets Explanation on the Regulation on the Specific Scope of the National State Secrets Law and Classification of State Secrets in Health Work, issued 1 March 91.

<sup>43</sup>“Highlights: PRC Domestic Public Health Topics 2 — 30 May 05,” Foreign Broadcast Information Service, 30 May 05 (FBIS, 19 May, 2005) (citing the Jiangxi Daily, 19 May 05).

<sup>44</sup>Many news stories refer to the Chinese authorities’ tendency to hide or downplay disease outbreaks. “China Defends Failure to Report Hoof and Mouth Disease Outbreak,” Xinhua (Online), 30 May 05; “China Denies Foot and Mouth Disease in Beijing Suburbs,” Wen Wei Po, 24 May 05; Zhao Huanxin, “Bird Flu Outbreak in Qinghai An ‘Isolated’ Case,” China Daily (Online), 25 May 05; “Report: Local PRC Media Reveal Meningitis Outbreak in December,” Foreign Broadcast Information Service, 7 February 05 (FBIS, 7 February 05); “Let’s Talk About Pork—and All Food Safety,” South China Morning Post (Online) 18 August 05. A quick-moving and virulent strain of pig-borne streptococcus sickened 215 humans and caused 39 fatalities in Sichuan province in July 2005. Only after the Chinese health authorities had completed their own investigations were they willing to share their results with the World Health Organization (WHO). “Outbreak Associated With Streptococcus Suis in Pigs in China: Update,” World Health Organization Newswire, 16 August 05; “Media Blackout as Pig-Borne Disease Spreads,” Radio Free Asia (Online), 2 August 05.

<sup>45</sup>Alan Sipress, “Bird Flu Drug Rendered Useless,” Washington Post (Online), 18 June 05.

<sup>46</sup>Deborah MacKenzie, “China to Stop Using Human Drug on Poultry,” The New Scientist (Online), 22 June 05.

<sup>47</sup>Alan Sipress, “China Denies Promoting Use of Drug on Chickens,” Washington Post (Online), 22 June 05.

<sup>48</sup>Shi Ting and Vivien Cui, “PRC Teams To Ensure Anti-Viral Drugs Not Used on Poultry,” South China Morning Post (Online), 22 June 05.

<sup>49</sup>“Recombinomics Commentary,” Recombinomics Web site, 9 July 05.

<sup>50</sup>Alan Sipress, “China Has Not Shared Crucial Data On Bird Flu Outbreaks, Officials Say,” Washington Post (Online), 19 July 05.

#### **Notes to Section III(i)—Population Planning**

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<sup>2</sup>PRC Population and Family Planning Law, enacted 29 December 01, art. 41.

<sup>3</sup>“Rights Defender Chen Guangcheng Released, But Remains Under Police Surveillance,” Chinese Rights Defenders’ Information Bulletin (Online), 8 September 05; Philip P. Pan, “Rural Activist Seized in Beijing,” Washington Post (Online), 7 September 05 (reporting violent seizure of Chinese activist against abuses in enforcement of one child policy); Philip P. Pan, “Who Controls the Family?” Washington Post (Online), 27 August 05 (discussing Chinese activist collecting testimony of abuses in one child policy enforcement in preparation for class-action lawsuit against population control officials); “The One-Child Policy: Stripping Away Human Rights in the Name of the State,” Laogai Research Foundation (Online), 16 June 05; Better Ten Graves Than One Extra Birth: China’s Systemic Use of Coercion to Meet Population Needs (Washington, D.C.: Laogai Research Foundation, 2004); Thomas Scharping, *Birth Control in China, 1949–2000: Population Policy and Demographic Development* (New York: Routledge, 2002); John S. Aird, *Slaughter of the Innocents: Coercive Birth Control in China* (Washington, D.C.: AEI

Press, 1990). In July 2005, a Hong Kong woman, pregnant with her third child, was visiting relatives in Shanghai. When local population control officials saw her with her two other children, they immediately attempted to take her—by force—to a local government-run abortion clinic. She protested that she was not from China to no avail. Only the physical intervention of her relatives prevented a forced abortion. “PRC Tries to Force HK Woman to Abort Six-Month Pregnancy,” *Agence France-Presse*, 12 July 05 (FBIS, 12 July 05).

<sup>4</sup>54 China: Human Rights Violations and Coercion in One Child Policy Enforcement, Hearing of the Committee on International Relations, U.S. House of Representatives, 14 December 04; “Man Whose Wife Was Sterilized in China Wins Asylum,” *Los Angeles Times* (Online), 9 March 05.

<sup>5</sup>Steven W. Mosher, “The Passion and Mrs. Wong,” *Global Family Life News*, March–May 2005, 3, 9f.

<sup>6</sup>China: Human Rights Violations and Coercion in One Child Policy Enforcement, Hearing of the Committee on International Relations, U.S. House of Representatives, Testimony of John S. Aird, Former Senior Research Specialist on China, U.S. Bureau of the Census; “Violence in Enforcing Family Planning in a Chinese City,” *Chinese Rights Defenders Information Bulletin* (Online), 23 June 05; “Chinese Jails for Violators of One-Child Policy,” *Kyodo World Service* (Online), 11 July 05; “At a Meeting of Part-Time Members of the State Population and Family Planning Commission, Hua Jianmin Stresses the Need to Implement the Basic National Policy on Family Planning Unswervingly and Strive to Stabilize the Low Birth Rate,” *Xinhua*, 9 July 05 (FBIS, 9 July 05); “China Adheres to Family Planning to Keep Low Birth Rate: Official,” *Xinhua* (Online), 10 July 05; “Unreasonable Hunan Officials Arbitrarily Apply ‘One-Child Policy’ by Forcing Hong Kong Woman To Have Abortion; Hong Kong Immigration Department Successfully Rescues Victim Within 24 Hours,” *Apple Daily* (Online), 11 July 05 (FBIS, 12 July 05); “PRC Tries to Force HK Woman to Abort Six-Month Pregnancy,” *Agence France-Presse*, 12 July 05 (FBIS, 12 July 05); “Gaocheng City Abuses Illustrates Flaws of China’s Family Planning Policy,” *Laogai Research Foundation* (Online), 15 July 05; “Henan Family Planning Official Brutalizes Local Residents,” *China Information Center* (Online), 15 July 05; “Family Planning Cadres in Sichuan Cities Line Their Pockets With ‘Violator’s’ Fines,” *China Information Center* (Online), 21 July 05; “Henan Woman Seized on the Street and Coerced to Have an Abortion,” *China Information Center* (Online), 18 July 05.

<sup>7</sup>“Comments of Yu Xuejun, spokesperson for NPFPC and Director General of the NPFPC Department of Policy and Legislation on the Preliminary Results of Investigating Family Planning Practices in Linyi City of Shandong Province,” *National Population and Family Planning Commission of China* (Online), 19 September 05. Regarding the violence in Linyi, see, Philip P. Pan, “Who Controls the Family?” *Washington Post* (Online), 27 August 05; Hannah Beech, “Enemies of the State?” *Time* (Online), 12 September 05; Michael Sheridan, “China Shamed by Forced Abortions,” *Times* (London) (Online), 18 September 05; Philip P. Pan, “China Terse About Action on Abuses of One-Child Policy,” *Washington Post* (Online), 20 September 05.

<sup>8</sup>Philip P. Pan, “Rural Activist Seized in Beijing,” *Washington Post* (Online), 7 September 05; “Blind Social Activist, Lawyers Beaten in China,” *Radio Free Asia* (Online), 4 October 05. The case of Chen Guangcheng is also discussed extensively in Pan, “Who Controls the Family?”; Beech, “Enemies of the State?”; Pan, “China Terse About Action on Abuses of One-Child Policy.”

<sup>9</sup>“One-Child Policy Opponent Tortured,” *Human Rights in China* (Online), 5 October 04; “Violence Against Women,” in *Report 2005, Amnesty International* (Online) (covering events from January–December 2004). See also, “China Denies Detaining Woman Who Protested 1-Child Policy,” *Associated Press*, 10 January 05 (FBIS, 10 January 05); “Chinese Woman Tortured After Coerced Abortion Faces More Jail Time,” *LifeNews* (Online), 5 January 05; PRC Anti-Abortion Protestor Released, Continues to Face Police Harassment,” *Agence France-Presse* (Online), 30 September 05; China: Human Rights Violations and Coercion in One Child Policy Enforcement, Hearing of the Committee on International Relations, U.S. House of Representatives, Testimony of Michael G. Kozak, Acting Assistant Secretary, U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

<sup>10</sup>The Chinese government also does long-term population planning. It has set population targets through the mid-21st century. State Council Information Office, “White Paper on China’s Population and Development in the 21st Century,” December 2000.

<sup>11</sup>But there are other exceptions to the one-child rule: in some rural areas at some times two children were allowed in all cases; couples in which both spouses were only children were usually allowed two children; in some places, couples in which one spouse is an only child and the other a farmer were allowed two children; and members of minority communities have also been allowed more children—though it is unclear how often the government respected this latter exception. “China’s Family Planning Policy ‘Misinterpreted,’” *Xinhua*, 16 May 05 (FBIS, 16 May 05); Charles Hutzler and Leslie T. Chang, “China Weighs Easing Its Harsh ‘One Child’ Rule,” *Wall Street Journal* (Online), 4 October 04; “More Shanghai Couples Have Second Child,” *Xinhua*, 15 April 05.

<sup>12</sup>“China to Continue Its Population Control Policy,” *Xinhua*, 5 January 05 (FBIS, 5 January 05); “China Remains Firm in Carrying Out Family Planning: Official,” *Xinhua*, 9 June 05 (FBIS, 9 June 05); Charles Hutzler and Leslie T. Chang, “China Weighs Easing Its Harsh ‘One Child’ Rule,” *Wall Street Journal* (Online), 4 October 04; “Is China’s High-Level Leadership Taking the Lead on Research for a Reevaluation of the Family Planning Policy?” [*Zhongguo sangaoquan qiantou yanjiu jihuashengyu zhengce mianlin tiaozheng?*], *Xinhua* (Online), 19 October 04; Low Birth Rate Unstable: Official,” *Xinhua* (Online), 16 September 05. Indications that the population control policy aims not only to reduce population growth but also to improve population “quality” can be found in “Family Planning Policy Saves China 300 mln Births,” *People’s Daily*, 8 September 05 (FBIS, 8 September 05); “China To Focus on Improving Population Qualities: Official,” *Xinhua* (Online), 27 June 05 (FBIS, 27 June 05); “At a Meeting of Part-Time Members of the State Population and Family Planning Commission, Hua Jianmin Stresses the Need to Implement the Basic National Policy on Family Planning Unswervingly and Strive to Stabilize

the Low Birth Rate,” Xinhua (Online), 9 July 05 (FBIS, 9 July 05); China: Human Rights Violations and Coercion in One Child Policy Enforcement, Hearing of the Committee on International Relations, U.S. House of Representatives.

<sup>13</sup>“Tougher Line Sought on Aborting Girl Fetuses,” South China Morning Post, 28 February 05 (FBIS, 28 February 05); “Building a Girl-Caring Society,” Xinhua (Online), 21 June 05; Vanessa L. Fong, *Only Hope: Coming of Age Under China’s One-Child Policy* (Palo Alto, California: Stanford University Press, 2004); “Sex Imbalance Could Threaten Progress: Experts Say Excess of Single Men May Lead to Instability,” Agence France-Presse (Online), 21 July 05.

<sup>14</sup>Life tables for China published by the World Health Organization document a mortality pattern in which female infants have a much higher mortality rate than male infants. For background on this topic, see, Judith Banister, “Shortage of Girls in China Today,” *Journal of Population Research*, No. 1, 2004, 19–34.

<sup>15</sup>“China to Outlaw Aborting Female Fetuses,” Canadian Broadcasting Corporation News (Online), 7 January 05. There were also many provincial regulations on this. “PRC to Amend Criminal Law to Curb Unbalanced Sex Ratio: Population Official,” *People’s Daily*, 10 January 05 (FBIS, 10 January 05); “Abuse of Fetus Identification Could Result in More Men than Women,” Xinhua, 7 March 05 (FBIS, 7 March 05).

<sup>16</sup>“China Moves to Tighten Up Laws Against Selective Abortion,” Agence France-Presse, 7 January 05 (FBIS, 7 January 05).

<sup>17</sup>Howard W. French, “As Girls Vanish, Chinese City Battles Tide of Abortions,” *New York Times* (Online), 17 February 05; “New Chongqing Regulation—RMB 50,000 Fine for Termination of Pregnancy Based on Gender After Midway Point” [Chongqing xuanze xingbie zhongzhi zhongqi yishang renshen zuigao kefa wuwan yuan], Xinhua (Online), 29 September 05.

<sup>18</sup>“China Remains Firm in Carrying Out Family Policy: Official,” Xinhua, 9 June 05 (FBIS, 9 June 05).

<sup>19</sup>The government rewards couples with monetary payments, remission of children’s tuition fees, and the addition of points onto children’s university entrance examination scores. “Cash Rewards for Family Planners,” *China Daily*, 26 October 04 (FBIS, 26 October 04); “Rewards Give Impetus to China’s One-Child Policy,” Xinhua, 27 February 05 (FBIS, 27 February 05); “China Rewards Old Rural Couples Observing National Family Planning Policy,” Xinhua, 8 April 05 (FBIS, 8 April 05); “China Rewards Rural Couples Practicing Family Planning With Special Allowances,” Xinhua, 3 June 05 (FBIS, 3 June 05); “Building a Girl-Caring Society,” Xinhua.

<sup>20</sup>“A Bitter Task Becomes A Sweet Task: The Hui Autonomous Region in Ningxia Implements the ‘Fewer Births Means Faster Fortune’ Poverty Reduction Project” [Kuse de shiye biancheng le tianmi de shiye: Ningxia Huizu zizhiqi shishi ‘shao sheng kuai fu’ fupin gongcheng de shijian], *Seeking Truth* (Online), No. 1, 2005.

<sup>21</sup>“China Faces Up to Aging Population,” Xinhua (Online), 7 January 05.

<sup>22</sup>Li Weiwei, “At the General Meeting of the National Committee on Aging, Hui Liangyu Stresses the Need to Do the Work on Aging in a Solid Way and Promote the Building of a Harmonious Society,” Xinhua, 22 February 05 (FBIS, 22 February 05); Vivien Ci, “Mainland Struggles to Care for the Aged,” *South China Morning Post*, 2 February 05 (FBIS, 2 February 05).

<sup>23</sup>“Our Country Already Delegates Second Child Powers to Every Provincial and Municipal People’s Congresses for Self-Regulation” [Wo guo yijing ba sheng ertong quanli xiafang geshengshi renda zixing guiding], *Beijing News* (Online), 15 March 05.

<sup>24</sup>“China Ranks Among Developed Countries With a Low Fertility Level,” Xinhua (Online), 7 September 04 (total fertility rate remains below replacement level); “Shanghai Eases of Family Planning Policy,” Xinhua, 8 September 04 (FBIS, 8 September 04); “More Couples Have a Second Child,” Xinhua, 15 April 05 (FBIS, 15 April 05); “Home Alone,” *The Guardian* (Online), 9 November 04; “Sichuan Officials Sell ‘Right of Birth’ for Money,” *China Information Center* (Online), 21 July 05; “Nanjing: the ‘Red Document’ Expressly States the Conditions in Which a Second Child May Be Approved” [Nanjing ‘hongtou wenjian’ mingque ke pizhun sheng ertai de qingkuang], *People’s Daily* (Online), 3 February 05.

<sup>25</sup>“Beijing Sticks Tough To One-Child Policy,” *China Daily*, 21 October 04 (FBIS, 21 October 04) (Beijing couples who want a second child must prove that their first child has some kind of disability and both mother and father must be only children).

<sup>26</sup>Zhu Zhe, “For Students, Degree Weighs More Than Wedding Ring,” Xinhua, 1 September 05 (FBIS, 1 September 05); “China Lifts Ban on Student Marriage,” *United Press International* (Online), 11 August 05; “China to Lift Ban on Marriage, Childbearing for University Students,” Xinhua (Online), 21 January 05. “More Chinese Graduate Students Marry in Secret,” Xinhua (Online), 12 July 05; Paul Mooney, “China Withdraws Ban on Marriage and Childbearing by Students,” *Chronicle of Higher Education*, 11 February 05.

#### Notes to Section III(j)—Freedom of Residence and Travel

<sup>1</sup>For a more detailed discussion of the Chinese *hukou* system and recent reforms, see “China’s Household Registration System: Sustained Reform Needed to Protect China’s Rural Migrants,” Topic Paper of the Congressional-Executive Commission on China, 7 October 05; China’s Household Registration System, Staff Roundtable of the Congressional-Executive Commission on China, 2 September 05; Fei-Ling Wang, *Organizing Through Division and Exclusion* (Stanford: Stanford University Press, 2005).

<sup>2</sup>*Ibid.*, 177–203. Reports in the Chinese media on such reforms tapered off almost completely in the first half of 2005, despite statements by public security and NPC officials that authorities were in the process of considering the passage of a comprehensive national *hukou* law. He Chunzhong, “China’s *Hukou* Management System Contains Three Major Flaws, New *Hukou* Law To Be Passed Soon” [Woguo huji guanli zhidu cun san da biduan jiang zhiding xin huji fa], *China Youth Daily*, reprinted in Sina.com (Online), 24 February 05.

<sup>3</sup>State Council Office Notice Regarding Improving Employment Prospects for Migrants in Urban Areas [Guowuyuan bangongting guanyu jinyibu zuo hao wanshan nongmin jincheng jiyue



huanjing gongzuo de tongzhi], issued 27 December 04. A chart surveying various local, provincial, and national *hukou* reforms through the end of 2004 is available on the Freedom of Residence resources page of the Commission's Web site.

<sup>4</sup>See, e.g., State Council Notice on Approving the Public Security Bureau's Opinions on Promoting Reform of the Management System for Residence Permits in Small Towns and Cities [Guowuyuan pizhuan gong'an bu guanyu tuijin xiaochengzhen huji guanli zhidu gaige yijian de tongzhi], issued 30 March 01.

<sup>5</sup>See, e.g., Nanjing City Government Notice Approving the Public Security Bureau's "Nanjing City Temporary Residence Permit Registration System" [Shi zhengfu pizhuan shi gong'anju guanyu "Nanjing shi huji zhunru dengji zaxing banfa"], issued 19 June 04 [hereinafter Nanjing City Government Notice], art. 3; Gansu Provincial Public Security Bureau, Opinions on Further Deepening of *Hukou* System Reform [Guanyu jinyibu shenhua huji guanli zhidu gaige de yijian], issued 30 September 03, art. 1.

<sup>6</sup>Nanjing City Government Notice, art. 9.

<sup>7</sup>Li Zhanyong, "Hebei Releases Implementation Details on Residence Status Reform" [Hebei chutai huji gaige shishi xize], People's Daily (Online), 26 September 03.

<sup>8</sup>The limit often set is the locally determined minimum standard of living (zui di shenghuo baozhang xian). Ibid.; Danyang Municipality Basic Requirements for Obtaining Local *Hukou* [Danyang shi hukou zhunru jiben tiaojian], Danyang Municipal Web site, 29 June 05, art. 1(4).

<sup>9</sup>Notice of the Zhejiang Provincial People's Government's Office Regarding the Issuance of the Provincial Public Security Bureau's Opinions Regarding the Deepening of Reform of the Residence Permit System [Zhejiang sheng renmin zhengfu bangongting zhuanfa sheng gong'an ting guanyu shenhua huji guanli zhidu gaige yijian de tongzhi], issued 29 March 02, art. 2.

<sup>10</sup>Chongqing City Government Notice of Issuance of the City Public Security Bureau "Opinions Related to the Speeding Up of Municipal Urbanization and Steps Regarding the Reform of the *Hukou* System" [Chongqing shi renmin zhengfu bangongting zhuanfa shi gongan ju "Guanyu jiakuai woshi chengzhenhua jincheng jin yibu shenhua huji zhidu gaige de yijian" de tongzhi], issued 29 July 03, art. 1.

<sup>11</sup>Open Content of Official Affairs of the Jinhua City Public Security Documentation Center [Jinhua shiqu gong'an banzheng zhongxin zhengwu gongkai neirong], issued 16 August 01, arts. 5, 6(4), 8(2).

<sup>12</sup>Even China's state-run media has discussed these problems in depth. Fu Jing, "Rights of Migrants Must Be Protected," China Daily (Online), 24 June 05 (noting that "[i]n some places, discriminatory policies against migrants have prevented them from integrating into cities where they are treated like second-class citizens in terms of employment, social welfare, medical care and education provision for their children.") Migrants face other exploitative and abusive practices by both public and private actors. These are surveyed in Human Rights in China, Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities, 6 November 02.

<sup>13</sup>United Nations Committee on Economic, Social, and Cultural Rights, Concluding Observations of the Committee on the Initial Report of the People's Republic of China (including Hong Kong and Macao), 13 May 05, 3.

<sup>14</sup>State Council Notice on the Opinion of the Education and Other Ministries Relating to Further Work on Migrant Children's Compulsory Education [Guowuyuan ban'gongting zhuanfa jiaoyubu deng bumen guanyu jin yibu zuohao jincheng wugong jiuye nongmin zinu yiwu jiaoyu gongzuo yijian de tongzhi], issued 17 September 03, art. 6.

<sup>15</sup>At least one province has announced ambitious plans to expand local educational opportunities to migrant children of long-term residents, even those who lack local *hukou*, over the next two decades. Liao Yanyan, "Long-Term Residents With Non-Local *Hukou* Will Receive Mandatory Education, Guangdong Will Take Preliminary Steps to Promote Free Mandatory Education" [Fei huji changzhu renkou jiang xiang yiwu jiaoyu guangdong quansheng jiang chubu tuixing mianfei yiwu jiaoyu], Southern Metropolitan Daily (Online), 19 October 04.

<sup>16</sup>The most recent State Council circular on migrant education directs local authorities to "take steps towards" providing equal treatment to migrant and local children. State Council Notice on the Opinion of the Education and Other Ministries Relating to Further Work on Migrant Children's Compulsory Education [Guowuyuan bangongting zhuanfa jiaoyubu deng bumen guanyu jin yibu zuohao jincheng wugong jiuye nongmin zinu yiwu jiaoyu gongzuo yijian de tongzhi], issued 17 September 03, art. 6. Provincial authorities have interpreted this to allow schools to charge migrant families "temporary schooling fees" (jiedufei). Notice of the Zhejiang Education, Pricing, and Finance Bureaus Regarding the Issuance of the "Opinion of the Ministry of Education, National Development and Reform Commission, and the Ministry of Finance Regarding Implementing the 'One Fee System' in Compulsory Education" [Zhejiang sheng jiaoyuting zhejiang sheng wujiaju zhejiang sheng caizhengting zhuanfa "Jiaoyubu guojia fazhan he gaige weiyuanhui caizhengbu guanyu zai quanguo yiwu jiaoyu jieduan xuexiao tuixing 'yifeizhi' shoufei banfa de yijian" de tongzhi], issued 12 August 04, art. 1(2); Zhejiang Provincial Measures on Compulsory Education Fees [Zhejiang sheng yiwu jiaoyu shoufei guanli banfa], issued 19 June 03, art. 8.

<sup>17</sup>See also Human Rights in China, Shutting Out the Poorest: Discrimination Against the Most Disadvantaged Migrant Children in City Schools, 8 May 02, 14–5.

<sup>18</sup>Chloé Froissart, "Restrictions on the Right to Education in China: An Investigation Into the Education of Migrant Children in Chengdu" [Les Aléas du Droit à l'Éducation en Chine, Enquête sur la Scolarisation des Enfants de Travailleurs Migrants à Chengdu], 77 Chinese Perspectives (Online) (2003); Human Rights in China, Shutting Out the Poorest, 25–27.

<sup>19</sup>For the chart of allowable educational fees in Beijing, see "'One Fee System' Implemented in Compulsory Education," [Yiwu jiaoyu shoufei shixing "yifeizhi"], Beijing Municipal Government Web site.

<sup>20</sup>These practices depress the numbers of migrant children who actually enroll in school. Statistics vary wildly on this point. Official Chinese media sources suggest that roughly 10 percent

of migrant children are not in school. "Nearly 10 Percent of Migrant Workers' Children Not in School," Xinhua, 6 November 04 (FBIS, 6 November 04). U.S.-based NGOs cite sources suggesting the number could be substantially higher. Human Rights in China, Shutting Out the Poorest, 8–10.

<sup>21</sup> Fei-Ling Wang, Organizing Through Division and Exclusion, 192.

<sup>22</sup> Ibid., 192–93.

<sup>23</sup> Ibid., 189.

<sup>24</sup> See, e.g., "Xinjiang Jimusaer County *Hukou* Reform Completely Wipes Out Rural-Urban Division" [Xinjiang jimusa'er xian huji gaige chedi quxiao chengxiang chabie], Xinhua, reprinted on People's Daily (Online), 12 April 03; "Chongqing Smashes The Dual Urban-Rural *Hukou* System, Carries Out *Hukou* Unification" [Chongqing dapao chengxiang eryuanzhi huji jegou, shixing *hukou* yiyihua], People's Daily (Online), 8 August 03.

<sup>25</sup> Yu Jindong, "Important Reforms in the Jiangsu Residence Permit System" [Jiangsu huji zhidu zhongda gaige], China News Net (Online), 28 March 03.

<sup>26</sup> See, e.g., the relevant regulations for Gansu and Shandong. Gansu Provincial Public Security Bureau, Opinions on Further Deepening of *Hukou* System Reform; Shandong Provincial Public Security Bureau, Opinions on Further Deepening of *Hukou* System Reform [Guanyu jin yibu shenhua huji guanli zhidu gaige de yijian], issued 26 June 04.

<sup>27</sup> Public security officials have also undertaken reforms aimed at centralizing and computerizing *hukou* records in order to strengthen police monitoring. Fei-Ling Wang, Organizing Through Division and Exclusion, 107–12, 228 n.95.

<sup>28</sup> Congressional-Executive Commission on China, 2004 Annual Report, 5 October 04, 18.

<sup>29</sup> "Hangzhou Eliminates Migrant Sweeps" [Hangzhou quxiao wailai renkou qingcha xingdong], Southern Metropolitan Daily (Online), 31 October 03.

<sup>30</sup> Zhang Jing, "Shenyang Eliminates Temporary Residence Permits, Leads Nation in Proposing Reporting Mechanism for Temporary Residence" [Shenyang quxiao zanzhuzheng, zai quanguo shuaxian tuichu shenbao zanzhuzheng jizhi], Xinhua (Online), 22 July 03.

<sup>31</sup> State Council Office Notice Regarding Improving Employment Prospects for Migrants in Urban Areas. The directive also instructs local governments to work on improving employment assistance programs, resolving outstanding violations of migrants' rights (such as back wage complaints); and regulating labor markets more tightly (by, for example, increasing government supervision of labor contracts).

<sup>32</sup> "Beijing Eliminates Regulations on the Management of Migrants" [Beijing feizhi wailai renyuan guanli tiaoli], Beijing News (Online), 26 March 03. For an English analysis of the abolished regulations, see Human Rights in China, Shutting Out the Poorest, 99.

<sup>33</sup> Zhong Angang, "Legislative Focus: Migrant Rights Await Legal Protection" [Lifa guanzhu: nongmin quanyi qidai falu baohu], Legal Daily (Online), 31 March 05; "Hot Topic: Understanding Legal Protections for Migrants" [Redian huati: Jiedu nongmingong de falu baohu], Legal Daily, reprinted in People's Daily (Online), 31 March 05; Zhao Jin, "Jiang Deming: Pass a 'Law on the Protection of Migrant Rights' As Quickly as Possible" [Jiang Deming: jinzhao zhiding 'nongmin quanyi baohu fa'], China Economic Times, reprinted in People's Daily (Online), 11 March 03.

#### Notes to Section V(a)—The Development of Civil Society

<sup>1</sup> According to Ministry of Civil Affairs (MOCA) statistics, the number of registered social organizations have risen from 130,000 in 2002 (3.1 percent growth from the prior year), to 142,000 in 2003 (6.8 percent), to 153,000 in 2004 (7.7 percent). Registered non-governmental, non-commercial enterprises (NGNCEs) have increased from 111,000 in 2002, to 124,000 in 2003, to 135,000 in 2004. "Ministry of Civil Affairs Releases 2004 Statistical Report on the Development of Civil Affairs Work" [Minzheng bu gongbu 2004 nian minzheng shiye fazhan tongji baogao], Xinhua (Online), 11 May 05. These statistics understate the actual numbers of Chinese civil society organizations, as many operate without official registration. Regarding the work of environmental NGOs, see Elizabeth Economy, *The River Runs Black* (Cornell: Cornell University Press, 2004), 130–9.

<sup>2</sup> Environmental NGOs in China: Encouraging Action and Addressing Public Grievances, Staff Roundtable of the Congressional-Executive Commission on China, 7 February 05, Written Statement submitted by Elizabeth Economy, C.V. Starr Senior Fellow and Director of Asia Studies, Council on Foreign Relations. Rural Chinese organizations range from formally registered rural cooperative organizations that seek to protect the economic rights of local farmers or provide social services to independent (and often underground) "burden reduction committees" that vigorously challenge local tax policies. Wang Ximing, "The Current State of Organizational Construction Among Chinese Farmers: Analytic Report of House-to-House Survey Regarding the Organizational Construction of Chinese Farmers" [Zhongguo nongmin zuzhi jianshe de xianzhuang: zhongguo nongmin zuzhi jianshe ruo diaocha wenjuan fenxi baogao], 519 China (Hainan) Research Institute of Reform and Development Bulletin (Online), 22 October 04; Yu Jianrong, "Organized Resistance of Farmers and Its Political Risks: An Investigation of H County in Hunan Province" [Nongmin you zuzhi kangzheng ji qi zhengzhi fengxian: hunan sheng H xian diaocha], Strategy and Management, No. 3, 2003.

<sup>3</sup> Human Rights Watch, Restrictions on AIDS Activists in China, June 2005, 1.

<sup>4</sup> Ibid., 1, 3, 31–6, 40; Roundtable on HIV/AIDS, Staff Roundtable of the Congressional-Executive Commission on China, 9 September 02, Written Statement submitted by Dr. Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies.

<sup>5</sup> National regulations allow for ordinary citizens to organize and apply to MOCA for registration of foundations (jijinhui), social organizations (shehui tuanti) (SOs), and NGNCEs. SOs are voluntary associations such as academic or professional groups, while NGNCEs are nongovernmental service providers such as schools, hospitals, sports organizations, or employment service organizations. To Serve the People, NGOs and the Development of Civil Society in China, Staff Roundtable of the Congressional-Executive Commission on China, 23 March 03, Written State-

ment submitted by Qiusha Ma, Assistant Professor, East Asian Studies, Oberlin College, Research Associate, the Mandel Center for Nonprofit Organizations, Case Western Reserve University. Existing SO and NGNCE regulations were issued in 1998, while regulations governing foundations were issued in 2004. All require approval of a sponsor organization in order to register. Sponsors provide "guidance" for the civil society organizations they supervise and participate in their annual review. See, e.g., Regulations on the Registration and Management of Social Organizations [Shehui tuanti dengji guanli tiaoli], issued 25 September 98, arts. 9 and 28.

<sup>6</sup>The 2004 annual MOCA review of approved national social organizations lists their corresponding sponsor organizations and illustrates the Party/government links with Chinese civil society organizations. "Report on the 2004 Annual Review of National Social Organizations" [2004 niandu quanguoxing shehui tuanti nianjian jieguo gonggao], MOCA Web site, 16 May 04.

<sup>7</sup>Yu Nan, "Three Big Research Centers Propose Legislation on Social Organization Management, The Spring of Grassroots NGOs Is Approaching" [San da zhiku jianyan shetuan guanli lifa, caogen NGO de chuntian lailin], 21st Century Business Herald (Online), 29 November 04; Katrin Fiedler, "New Regulations for the Management of Foundations," Amity Foundation Newsletter (Online), January–March 2005.

<sup>8</sup>Zhao Ling and Dong Shuhua, "New Regulations on Social Organizations to be Issued This Year: Civil Society Organizations to Receive Appropriate Encouragement" [Xin shetuan tiaoli nian nei chutai: minjian zuzhi jiang huo shidu guli], Southern Weekend (Online), 18 May 05.

<sup>9</sup>Wang Ximing, "The Current State of Organizational Construction Among Chinese Farmers."

<sup>10</sup>One survey of 22 Chinese NGOs revealed five unregistered ones which "conducted their activities openly without experiencing any explicit control exerted by any government agencies." In contrast, the same study found that "supervisory organizations of GONGOs [quasi NGO-organizations directly organized by state actors] . . . not only supervised the operations of these [GONGOs], but indeed exerted financial and/or personnel control over those [GONGOs]." Environmental NGOs in China: Encouraging Action and Addressing Public Grievances, Written Statement submitted by Jiang Ru, Ph.D. in Environmental Management and Planning, Stanford University.

<sup>11</sup>Shi Jiangtao, "Tough Rules for NGOs May Impede Volunteer Scheme," South China Morning Post (Online), 7 June 05.

<sup>12</sup>Environmental NGOs in China: Encouraging Action and Addressing Public Grievances, Written Statement submitted by Elizabeth Economy; Ma Li, "Hearing on Yuanming Garden to Convene This Morning, 73 People Approved to Attend" [Yuanmingyuan tingzhenghui jinri shangwu zhao kai 73 ren huozhun canjia], People's Daily (Online), 13 April 05.

<sup>13</sup>Guo Xiaojun, "Possibility that NGO Registration Will Not Need Sponsoring Unit" [NGO zhuce youwang wuxu zhuguan danwei], Beijing News (Online), 18 October 2004; "Who is Stopping China's Wealthy From Becoming Philanthropists?" [Shei zuailie zhongguo furen chengwei cishan jia?], 21st Century Business Herald (Online), 1 March 04.

<sup>14</sup>According to Chinese news reports, specific changes in the MOCA drafts under consideration by the State Council include: (1) reducing the amount of registered capital required; (2) eliminating examination procedures; and (3) removing the restriction on having more than one NGO of the same type (e.g., bird watching association) in the same administrative region. The new regulations would apply to foreign NGOs as well. They also require local governments to give unspecified policy "assistance" to NGOs. Zhao Ling and Dong Shuhua, "New Regulations on Social Organizations to Come Out Within the Year: Civil Society Organizations to Receive Appropriate Encouragement." Many of these elements broadly resemble those found in the national foundation regulations passed in 2004. CECC, 2004 Annual Report, 73–4; Carl Minzner, "New Chinese Regulations on Foundations," 2 International Journal of Civil Society Law 110 (April 2004). The fact that the 2004 foundation regulations explicitly apply the sponsor organization requirement to representative offices of foreign foundations that seek to register in China suggests that future revisions to the national SO and NGNCE regulations may do so also.

<sup>15</sup>Guan Zhehui and Li Xiaopeng, "Zhejiang Provincial Regulations on Professional Farmers' Cooperatives Issued" ["Zhejiang sheng nongmin zhuan ye hezuoshe tiaoli" chutai], China Court Web site, 12 November 04; "Farmers' Cooperatives Receive Legal Person Status For the First Time" [Nongmin hezuozuzhi shou huo faren shenfen], Beijing News (Online), 10 May 05. The Zhejiang regulations require agricultural officials at the county level and higher to guide (zhidao), coordinate (xietiao), and provide services (fuwu gongzuo) to the farmers' associations, but do not vest them with supervisory authority and do not require them to serve as a sponsor organization. Zhejiang Provincial Regulations on Professional Farmers' Cooperatives [Zhejiang sheng nongmin zhuan ye hezuoshe tiaoli], issued 11 November 04, art. 5. The regulations charge the State Administration of Industry and Commerce with reviewing and approving applications to establish farmers associations. Ibid., art. 10. However, ongoing organizational supervision is vested in a board selected and run by association members. Ibid., arts. 14–17.

<sup>16</sup>MOCA Notice Regarding the Issuance of "Guiding Opinion Regarding Strengthening the Cultivation and Development and Managing the Registration Work of Rural Professional Economic Associations" [Guanyu yifa "guanyu jiaqiang nongcun zhuan ye jingji xiehui peiyu fazhan he dengji guanli gongzuo de zhidao yijian" de tongzhi], issued 29 October 03, art. 2.

<sup>17</sup>Fan Lixiang, "Zhejiang Raises the Question: Correcting the Misunderstanding about Agricultural Cooperatives" [Zhejiang poti: wei nongye hezuoshe zhengshen], 21st Century Business Herald (Online), 21 October 04.

<sup>18</sup>Vivien Cui, "AIDS Group Told To Change Name or Close," South China Morning Post, 24 March 05 (FBIS, 24 March 05); "Beijing AIDS Institute of Health Education Receives Permission to Change Name to 'Beijing Zhiaixing Information and Counseling Center'" [Beijing aizhixing jiankang jiaoyu yanjiusuo mingcheng huozhun biangeng wei "Beijing zhiaixing xinxi zixun zhongxin"], Open Letter from Wan Yanhai, 28 March 05 (on file with Commission).

<sup>19</sup>Human Rights Watch, Restrictions on AIDS Activists in China, 17–22.

<sup>20</sup>Environmental NGOs in China: Encouraging Action and Addressing Public Grievances, Written Statement submitted by Elizabeth Economy; for comments by Liao Xiaoyi, director of

Global Village Beijing, see Yu Nan, “‘Beijing Global Village’: Growing Pains of Grassroots NGOs” [“Beijing diqiu cun”: caogen NGO shengzhang zhi kun], 21st Century Business Herald (Online), 26 January 05.

<sup>21</sup> Yu Nan, “‘Beijing Global Village’: Growing Pains of Grassroots NGOs.”

<sup>22</sup> Yu Renwang, “When the ‘Branch’ Meets the ‘Association’: The Story of a Civil Society Trade Organization” [Dang “fenhui” yushang “xiehui”: yi ge minjian hangye zuzhi de gushi], 21st Century Business Herald (Online), 6 April 05.

<sup>23</sup> Yu Nan, “‘Beijing Global Village’: Growing Pains of Grassroots NGOs.”

<sup>24</sup> Chen Xiangyang, “PRC: Journal Views NGO Challenges to China, Warns of Western Infiltration Through NGOs,” China Economic Daily, 26 May 05 (FBIS, 27 May 05).

<sup>25</sup> Xu Xinghan, “People’s Daily Commentator: Putting Civil Organizations to Good Use” [Renmin ribao pinglun: fahui hao minjian zuzhi de zuoyong], People’s Daily (Online), 11 December 04.

<sup>26</sup> Qiu Xin, “China Curbs Civil Society Groups,” Asia Times (Online), 19 April 05; “Enterprise Supervision Bureau Carries Out Annual Review of Social Science Research Organizations” [Qijianke zuohao minban sheke jigou nianjian gongzuo], Beijing Municipal Bureau of Industry and Commerce (Online), 11 April 05.

<sup>27</sup> “New NGO Founded to Rally All Chinese People Against Worsening Pollution,” Xinhua, reprinted in People’s Daily (Online), 24 April 05; Bao Rong and Wang Shiling, “China Environmental Protection Federation: The Birth of a Special NGO” [Zhonghua huanbao lianhehui: yi ge teshu NGO de dansheng], 21st Century Business Herald (Online), 25 April 05.

<sup>28</sup> Commission Staff Interview.

#### Notes to Section V(b)—Legal Restraints on State Power

<sup>1</sup> National People’s Congress Standing Committee Work Report, 9 March 05.

<sup>2</sup> Li Weiwei, “Theme of Legal System Publicity Day Determined: Developing Constitutional Spirit and Strengthening Legal Concepts” [Fazhi xuanchuanri zhuti quding: hongyang xianfa jingsheng zengqiang fazhi guannian], Xinhua, reprinted in People’s Daily (Online), 16 November 04.

<sup>3</sup> For statements on the significance of the amendments and implementation measures, see, e.g. “China’s Progress on Human Rights in 2004,” State Council Information Office, April 2005 (FBIS, 13 April 05); Supreme People’s Procuratorate Work Report, 9 March 05; “Including Human Rights in The Constitution Is a Milestone in China’s Human Rights Cause” [Renquan ruxian shi zhongguo renquan shiye fazhan de lichengpail], Xinhua, reprinted in Legal Daily (Online), 22 February 05.

<sup>4</sup> PRC Constitution, arts. 62, 67.

<sup>5</sup> A recent example of such complaints can be found in Liao Weihua, “Experts Suggest Establishing a Special Constitutional Committee” [Zhuanjia jianyi she xianfa zhuanmen weiyuanhui], Beijing News (Online), 21 September 04.

<sup>6</sup> For the creation of the NPCSC office to review unconstitutional laws and regulations, see CECC, 2004 Annual Report, 66–70 (discussing constitutional reform).

<sup>7</sup> “NPC Explains Constitutional Review System, Any Citizen Can Petition for Constitutional Review” [Renda jie weixian shenchazhi, renhe gongmin ke tiqing weixian shencha], Beijing News, reprinted in Xinhua (Online), 2 December 04.

<sup>8</sup> “Two Citizens Petition the NPC to Resolve Legislative Conflict” [Liang renmin shangsu quanguo renda qingqiu jieque falu chongtu], Procuratorate Daily (Online), 3 August 05. In May 2005, the China Daily published several commentaries attacking local regulations that prohibit panhandling. One concluded that “there has not been an effective examination of such local regulations” and that “the only way to challenge such a local regulation is to have citizens or institutions apply to the NPC Standing Committee.” “Legitimacy of Local Rules,” China Daily (Online), 18 May 05. For the second commentary, see “Begging Bans Reveal Intolerant Society,” China Daily (Online), 23 May 05.

<sup>9</sup> Commission Staff Interview.

<sup>10</sup> Li Shuming, “Commentary: The Rule of Law Significance of ‘Any Citizen May Petition for Constitutional Examination’” [Pinglun: “Renhe gongmin dou keyi tiqing weixian shencha” de fazhi yiyi], Procuratorate Daily (Online), 8 December 04.

<sup>11</sup> Commission Staff Interview.

<sup>12</sup> Commission Staff Interviews. In 2001, the SPC authorized a court in Shandong province to rely on constitutional provisions on the right to education in deciding a case. However, the case involved a tort claim between two private parties and not a claim against the government or an effort to overturn a law or regulation. Shen Kui, “Is it the Beginning or the End of the Era of the Run of the Constitution? Re-Interpreting China’s First Constitutional Case,” 12 Pacific Rim Law & Policy Journal 200, 209–10 (January 2003).

<sup>13</sup> Commission Staff Interview. See also, Liao Weihua, “Experts Propose Establishment of a Constitutional Litigation System” [Zhuanjia changyi jianli xianfa susong zhidu], Beijing News (Online), 15 January 05.

<sup>14</sup> Law in Political Transition: Lessons From East Asia and The Road Ahead for China, Hearing of the Congressional-Executive Commission on China, 26 July 05, Written Statement submitted by Jerome A. Cohen, Professor, New York University School of Law.

<sup>15</sup> Chen Jiren, “Chinese Lawyers Wave the Flag of the Constitution and Human Rights,” Law and Life, Vol. 275, December 2004 (translation on file with Commission). This article ties the creation of the ACLA committee to a series of rule of law developments that encouraged ACLA to push more aggressively for the protection of constitutional rights:

The years 2002, 2003, and 2004 have had great significance in China’s rule of law process. The SARS epidemic triggered a nationwide discussion on government transparency and citizens’ right to information; the Sun Zhigang case brought out attention to citizens’ rights to petition and government review of unconstitutional action; the case of a couple being prosecuted for watching pornography ignited a fight over where we should draw the line between private rights

and public rights; and the Hepatitis-B virus carriers' labor rights case made a huge national impact. Those different types of cases gave Chinese lawyers opportunities to get involved in constitutional and human rights issues, and they managed to get some significant work done. The time was ripe for the establishment of the Constitution and Human Rights Committee of ACLA.

<sup>16</sup>"Henan Natives Battle Against Hometown Notoriety," *China Daily* (Online), 25 May 05 (FBIS, 25 May 05); Raymond Zhou, "Henan Stigma Highlights Regional Bias," *China Daily* (Online), 16 June 05 (FBIS, 16 June 05).

<sup>17</sup>In June 2005, the writer Zhang Lin pleaded innocent to criminal subversion charges stemming from Internet essays he had posted, arguing that the charges violated his constitutionally protected freedom of speech. "An Interview With Zhang Lin's Wife Fang Cao and Defense Lawyer Mo Shaoping" [Caifang zhanglin qi fang cao yu bianhu lüshi Mo Shaoping], *Dajiyuan* (Online), 5 April 05; "Airing Views Not a Crime, Says Lawyer for Activist," *Agence France-Presse*, reprinted in *South China Morning Post* (Online), 22 June 05. Also in June 2005, constitutional provisions on gender equality were reportedly raised in a discrimination lawsuit in Chengdu. Huang Zhiling, "Women Win Sexual Discrimination Case," *China Daily*, 20 June 05 (FBIS, 20 June 05).

<sup>18</sup>Commission Staff Interview. Chen Jiren, "Chinese Lawyers Wave the Flag of the Constitution and Human Rights." According to these sources, there are efforts underway to research or draft legislation on freedom of residence, anti-discrimination, the freedom to strike, freedom of the press, and other issues. A lawyer in the Henan discrimination case expressed "hope the case would give rise to the promulgation of an anti-discrimination law . . ." Kristine Kwok, "Shenzhen Police Sued for Prejudice," *South China Morning Post*, 3 May 05 (FBIS, 3 May 05).

<sup>19</sup>Various sources emphasize that the subject of constitutional enforcement is a sensitive one in China. See, e.g., Li Shuming, "Commentary: The Rule of Law Significance of 'Any Citizen May Petition for Constitutional Examination'"; Chen Jiren, "Chinese Lawyers Wave the Flag of the Constitution and Human Rights"; Philip P. Pan, "Hu Tightens Party's Grip on Power; Chinese Leader Seen as Limiting Freedoms," *Washington Post* (Online), 25 April 05.

<sup>20</sup>"NPC Explains Constitutional Review System, Any Citizen Can Petition for Constitutional Review," *Beijing News*; "My Country Implements the Constitution by NPC Supervision, Constitution Still Cannot Be The Basis of Litigation" [Wo guo you renda jian du xian fa shishi, xian fa reng buneng chengwei susong genju], *People's Daily* (Online), 1 December 04.

<sup>21</sup>For reports on conferences that took place over the past year, see Liao Weihua, "Expert Suggests Establishing a Special Constitutional Committee"; Liu Hui, "Constitutional Research Association 2004 Annual Meeting Calls for Raising the Status of Constitutional Study" [Xianfaxue yanjiuhui 2004 nian nianhui hui yu tigao xianfaxue diwei], *Procuratorate Daily* (Online) 25 October 04; "China Law Center Holds Conference in China on Constitutional Review," *Yale Law School Web site*, 17 March 05; Liao Weihua, "Experts Propose Establishment of a Constitutional Litigation System"; Joseph Kahn, "China Calls Off Rights Conference," *New York Times* (Online), 18 May 04.

<sup>22</sup>Human Rights in China Press Release, "Dissidents Thwarted in Opening Human Rights Consultancy in Beijing," 22 April 05.

<sup>23</sup>Commission Staff Interview; see also Liao Weihua, "Experts Suggest Establishing a Special Constitutional Committee."

<sup>24</sup>PRC Administrative Litigation Law, enacted 4 April 89, arts. 2, 11.

<sup>25</sup>PRC State Compensation Law, enacted 12 May 94, art. 2. The law provides citizens and entities with the right to obtain compensation in a limited number of situations in which they are harmed by the illegal acts of government officials. Under certain provisions, citizens have the right to seek compensation from public security, procuratorial, judicial, and prison management agencies for a range of illegal acts that take place in the course of criminal investigations, prosecutions, and sentencing.

<sup>26</sup>Number of first instance administrative litigation cases completed by Chinese courts, by year: 1999 (98,759); 2000 (86,674); 2001 (95,984); 2002 (84,942); 2003 (88,050); 2004 (92,192). "Situation of Adjudication Work and Building of Cadre of the People's Courts, 1998-2002" [1998-2002 nian renmin fayuan shenpan gongzuo he duiwu jianshe qingkuang], *China Court Net* (Online), 12 March 03; "Statistical Table on the Situation of First Instance Administrative Cases Tried By Courts Nationwide in 2003" [2003 nian quanguo fayuan shenli xingzheng yishen anjian qingkuang tongjibiao], *China Court Net* (Online), 20 April 05; Supreme People's Court 2004 Work Report, 9 March 05. The SPC reported that courts completed 114,896 administrative litigation cases in 2003. However, the SPC reported that courts completed 92,192 first instance cases in 2004, and that this was a 4.7 percent increase over the prior year. The only logical explanation for the discrepancy is that the SPC combined first and second instance cases to arrive at the 114,896 number reported for 2003.

<sup>27</sup>Number of state compensation cases completed by Chinese courts, by year: 1999 (2,113); 2000 (2,400); 2001 (2,705); 2002 (2,642); 2003 (3,124); 2004 (3,134). "Situation of Adjudication Work and Building of Cadre of the People's Courts, 1998-2002," *China Court Net*; Supreme People's Court 2003 Work Report, 10 March 04; SPC 2004 Work Report, 9 March 05. These court statistics do not include all state compensation cases, as some cases are handled directly by the "defendant" agency and not appealed to people's courts.

<sup>28</sup>See Section II—Introduction and Section V(e)—Access to Justice, for the growing number of public protests and citizen petitions.

<sup>29</sup>Ling Hu, "Gov't Administration Should Be in Line With Law," *China Daily* (Online), 16 November 04; Li Fei, "Official Documents Must Come Under Scrutiny," *China Daily*, 4 June 05 (FBIS, 4 June 05); Wang Songmiao, "Commentary: State Compensation: Why Is it 'Pleasant to the Ear But Not Use' [Pinglun: Guojia peichang: weishenme 'zhongting bu zhongyong']", *Procuratorate Daily* (Online), 5 January 05. The law applies only to a range of "specific administrative acts" that target a specific person or entity, and not to government regulations and policies that are generally binding. However, the scope of the law has gradually been expanded under SPC Interpretations.

<sup>30</sup> See, e.g., Zheng Lifei, "Officials Forced to Appear in Court," China Daily, 18 July 03 (FBIS, 18 July 03); "Lack of Confidence Is the Main Reason for the Decline in Administrative Lawsuits" [Quefa xinxin shi xingzheng susongan shao zhuyin], China Youth Daily, reprinted in Xinhua (Online), 17 October 03; Irene Wang, "Beijing Citizens Turn to Law," South China Morning Post, 6 January 04 (FBIS, 6 January 04); Fan Fu, "20 Years of Administrative Adjudication: Not Suing on Pain of Death A Thing of the Past" [Xingzheng shenpan 20 nian: chusi bu gao guan cheng wangshi], China Court Net, 23 February 04; "Citizens Suing Officials, Defendants Seat Is Empty" [Min gao guan, bei gao xi shan 'kong dang dang'], Shenyang Evening News, reprinted in People's Daily (Online), 26 February 04; Xiao Yang, "Placing Parameters on Administrative Justice," China Daily, 1 April 04 (FBIS, 1 April 04); Guo Zhichun, "What the Large Contrast in Success Rates of Citizens Suing Officials Explains" [Min gao guan shengsulü de juda fancha shuoming le shenme], China Youth Online, 18 November 04; Wang Songmiao, "Commentary: State Compensation: Why Is it 'Pleasant to the Ear But Not Use'."

<sup>31</sup> Guo Zhichun, "What the Large Contrast in Success Rates of Citizens Suing Officials Explains." SPC officials cite a 30 percent overall plaintiff success rate from 1989 to 2003. "Thirty Percent of Citizen Plaintiffs Win Lawsuits Against Government Departments," Xinhua, 1 April 04 (FBIS, 1 April 04).

<sup>32</sup> "Including Human Rights in The Constitution Is a Milestone in China's Human Rights Cause," Xinhua.

<sup>33</sup> Xu Lai, "SPC Demands: Resolutely Enforce Effective State Compensation Judgments," China Lawyer Net, 14 November 03 (citing SPC Vice President as acknowledging that the enforcement rate dips as low as 10 percent in some locales); Wang Songmiao, "Commentary: State Compensation: Why Is it 'Pleasant to the Ear But No Use'"; see also "SPC: Administrative Trials Must Vigorously Grasp the Execution of Effective Judgments and Decisions" [Zuigaofa: xingzhen shenpan yao henzhua shengxiao caipan yu panjue de zhixing], Xinhua (Online), 24 January 04.

<sup>34</sup> For discussion of possible amendments, see Yang Yuxin, "Bright Points and Blind Areas in the Major Amendment Draft of the Administration Litigation Law" [Xingzheng susongfa 'da xiugao' jingdian yu mangqu], Legal Daily (Online), 26 May 05; Qin Ping, "Major Amendment' or 'Minor Adjustment' to the State Compensation Law" [Guojian peichangfa shi 'daxiu' haishi 'xiaobu'], Legal Daily (Online), 29 July 05.

<sup>35</sup> PRC Administrative Licensing Law, adopted 1 August 03. For statements in China's official media on the purpose of the law, see, e.g., Xiao Jiao, "Law Defines G'vt Licensing Role," China Daily, 28 August 03 (FBIS, 28 August 03); "Licensing Law—Driving Force of China's Administrative Reform," Xinhua, 6 February 04 (FBIS, 6 February 04); "Concept of Human Rights Went Deep in Legislation and Government Power Was Controlled in 2004," People's Daily, 23 December 04 (FBIS, 23 December 04); Shen Lutao, Zou Shengwen, and Zhao Ruizhen, "2004: Witness Steps in China's Democratic Legal System" [2004: jianzheng zhongguo minzhu fazhi de jiaobu], Xinhua, reprinted in People's Daily (Online), 28 February 05.

<sup>36</sup> "Concept of Human Rights Went Deep in Legislation and Government Power Was Controlled in 2004," People's Daily.

<sup>37</sup> "Five Major Flashpoints in Government Work," People's Daily, 31 March 05 (FBIS, 31 March 05).

<sup>38</sup> PRC Administrative Licensing Law, enacted 1 August 03, arts. 70–81. Almost all enforcement provisions focus on top-down supervision and rectification, not on bottom-up citizen enforcement. The emphasis on top-down enforcement is evident in the Circular of the State Council on implementation of the Licensing Law. State Council Notice on Implementing the Administrative Licensing Law [Guowuyuan guanyu guanche shishi xingzheng xukefa de tongzhi], issued 9 September 03. The one provision that facilitates direct citizen enforcement is Article 71 of the Licensing Law. In a recent survey of 1,166 enterprises in Beijing municipality, 85 percent expressed dissatisfaction with their ability to obtain compensation for violations of the Licensing Law. Li Li, "How Far We Have Gone Towards Rule of Law Government" [Women xiang fazhi zhengfu maijin le duoshao], Legal Daily (Online), 22 March 05.

<sup>39</sup> The APA, or xingzheng chengxufa is sometimes confused with the Administrative Litigation Law because some sources also translate the Administrative Litigation Law (xingzheng susongfa) as "Administrative Procedure Law."

<sup>40</sup> Cui Li, Yuan Chunlin, "Procedural Blind Spots Lead to 'Citizens Suing Officials'—NPCSC Proposes Formulating an Administrative Procedure Act" [Chengxu mangdian dao zhi 'min gao guan'—daibiao weiyuan jianyi zhiding xingzheng xukefa], China Youth Online, 14 March 05.

<sup>41</sup> Commission Staff Correspondence; "Final Decision on 05 Legislative Plan" [05 nian lifa jihua gaoding], China Youth Online, 3 March 05.

<sup>42</sup> For example, in April 2004, the State Council issued a plan, entitled "Implementation Program for Comprehensively Promoting Administration According to Law," to build the rule of law over a ten-year period. "Wen Jiabao Emphasizes Comprehensively Promoting Administration According to Law and Striving to Build a Government With the Rule of Law at a National Teleconference on Administration According to Law," Xinhua, 29 June 04 (FBIS, 29 June 04).

#### Notes to Section V(c)—China's Judicial System

<sup>1</sup> See Section III(e)—Freedom of Expression; Section V(a)—The Development of Civil Society; Section V(e)—Access to Justice. Similar use of top-down management techniques is evident in the judiciary as well. Cheng Jie, "Supreme People's Court Launches Roving Work System: Ten Inspection Teams Set Out to Monitor Five Issues" [Zuigaofa qidong xunshi gongzuozhi: shi xunshi zu chudong jiandu wu fangmian], Beijing Youth Daily, reprinted in Xinhua (Online), 11 October 04.

<sup>2</sup> Other reform goals include the strengthening of basic level people's tribunals, construction of a juvenile justice system, and improved enforcement of court decisions. Supreme People's Court Work Report, 9 March 05.

<sup>3</sup>According to Chinese media reports, reforms under consideration include: (1) requiring adjudication committees to use experienced judges, rather than court administrators lacking legal expertise; (2) requiring adjudication committees to base their review of trial decisions on written case materials or oral hearings attended by the parties, rather than oral reports of the trial judge; (3) requiring adjudication committees to issue their case decisions publicly, providing the names of the members making the decision and their reasons for doing so; and (4) limiting the scope of review of adjudication committees to legal issues alone, leaving questions of fact to trial judges. Dai Dunfeng, "The Debate Over Whether to Keep or Abolish Adjudication Committees" [Shenweihui cunfei zhi bian], Southern Weekend (Online), 3 February 05; Chen Huan, "The Supreme People's Court Sets the Tone for Adjudication Committee Reforms" [Zuigaofa ding diao shenweihui gaige], 21st Century Business Herald (Online), 16 March 05.

<sup>4</sup>Under Chinese law, retrials may be initiated either by the parties to the case or a court of a higher level than the court in which the case was last tried. For example, according to Article 179 of the Civil Procedure Law, a court should grant a retrial requested by a party to the case if: (1) new evidence becomes available which requires the original decision or ruling to be overturned; (2) the main evidence used to determine the facts in the original decision or ruling is insufficient; (3) there is an error in the legal usage of the original decision or ruling; (4) the court violated procedure, influencing the correctness of the decision or ruling; or (5) lower court judges received bribes or otherwise broke the law. The first, second, and third requirements offer parties and courts significant leeway to reopen closed cases.

<sup>5</sup>Chinese judges themselves note these problems. For the extensive critical analysis by one Jiangxi county judge, see Zhou Taoyu, "A Brief Discussion on Perfecting the Civil Retrial System" [Qianyi minshi zaishen zhidu de wanshan], China Commercial Law Net, reprinted in Legal Daily (Online), 20 October 04.

<sup>6</sup>Tian Yu, "2005 Court Reform: People's Assessors Begin Work on 'May First'" [2005 nian fayuan gaige: renmin peishen yuan 'wuyi' shanggang], Xinhua (Online), 14 February 05.

<sup>7</sup>Ibid.; Decision of the Standing Committee of the National People's Congress Regarding the Improvement of the System of People's Assessors [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu wanshan renmin peishen yuan zhidu de jue ding], issued 1 May 05, art. 1.

<sup>8</sup>Decision of the Standing Committee of the National People's Congress Regarding the Administration of Expert Testimony [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu sifa jiangding guanli wenti de jue ding], issued 1 October 05, art. 7.

<sup>9</sup>Tan Lin, "Courts and Judicial Departments May Not Establish Forensic Centers: An Interpretation of the Decision on the Administration of Expert Testimony" [Fayuan he sifa bumen bu de she jiangding jigou: jiedu sifa jiangding guanli jue ding], Southern Metropolitan Daily (Online), 9 March 05.

<sup>10</sup>Wang Ying, "Reforming the System of Guarantees for Judicial Fees: Establishing the Foundation for Judicial Fairness" [Gaige sifa jingfei baozhang jizhi: dianding sifa gongzheng jichu], 21st Century Business Herald (Online), 16 March 05.

<sup>11</sup>In 2004 and 2005, the Ministry of Justice launched a campaign aimed at strengthening local justice bureaus (sifasuo). Zhang Qingshui, "The Construction of 45 Thousand Basic Level Judicial Bureaus to be Completed Nationwide Before the End of Next Year" [Quanguo jiang zai mingnian di qian wancheng 4.5 wan ge jiceng sifasuo jianshe], Legal Daily (Online), 16 May 05. These efforts parallel Party-led propaganda campaigns to study the example of Cao Fagui, a people's mediator who was killed while mediating a civil dispute, that stress the importance of judicial bureaus as the "first line of defense" in protecting social stability. Zhang Qingshui, "Meeting to Report on the Advanced Accomplishments of Cao Fagui, Model People's Mediator, to Convene in Beijing" [Mofang renmin tiaojieyuan Cao Fagui xianjin shiji baogao hui zai jing juxing], Ministry of Justice Web site, 3 September 04.

<sup>12</sup>Liao Weihua, "Possibility that the Design of the Courts will be Separate from Administrative Districts" [Fayuan shezhi youwang yu xingzheng qu hua fenli], Beijing News (Online), 29 November 04.

<sup>13</sup>Tian Yu, "Supreme People's Court: Court Reform Cannot Be Separated From China's Reality" [Zuigao fayuan: renmin fayuan gaige buneng tuoli zhongguo xianshi], Xinhua, reprinted in People's Daily (Online), 7 December 04; Zong Bian, "Head of SPC Research Department Discusses Court Reform" [Zuigao renmin fayuan yanjiushi fuzeren tan renmin fayuan gaige wenti], China Court Net (Online), 8 December 04.

<sup>14</sup>"Patience for Judicial Reform," China Daily (Online), 13 December 04.

<sup>15</sup>Both the SPC's response to the academic proposal and accompanying media commentary heavily criticized the proposal to remove the word "people's" from the official title of Chinese courts, i.e. to shift the title from "Supreme People's Court" (zuigao renmin fayuan) to "Supreme Court" (zuigao fayuan), suggesting that judicial authorities remain concerned with creating impressions that they seek to challenge traditional political norms.

<sup>16</sup>Tian Yu, "Higher Educational Level Does not Equal Increased Ability: Diploma Cannot Be the Only Goal of Training of Judges" [Wenping shangqu bu deng yu shuiping tigao: faguan peixun buneng zhi benzhe wenping qu], Xinhua (Online), 11 March 04. Tian Yu and Zhang Xiaojing, "Supreme People's Court: Training the Nearly 150 Thousand Basic Level Judges in Three Years" [Zuigao fayuan: 3 nian nei ba jin 15 wan jiceng faguan peixun yibian], Xinhua (Online), 1 July 04.

<sup>17</sup>Supreme People's Court Notice Regarding the Promulgation of "Forms for Criminal Judgments by People's Courts" [Zuigao renmin fayuan yinfa "fayuan xingshi susong wenjian yangshi"], issued 30 April 1999; Supreme People's Court Measures on the Management of Publication of Judgment Documents [Zuigao renmin fayuan panjue wenshu gongbu guanli banfa], issued 15 June 2000. For example, the Kunming Intermediate People's Court has published certain civil case decisions online since February 4, 2005. Yu Jingmeng, "Kunming Intermediate Court: Publishing Decisions on the Internet" [Kunming zhongyuan: wangshang gongbu panjueshu], China Youth Daily (Online), 4 February 05. The Zhengzhou Intermediate People's Court began to require legal reasoning for criminal sentences in November 2004. Liu Hongjian,

Zhao Yongchun, and An Shiyong, "No Longer Formulaic but Clear Legal Language—Zhengzhou Intermediate Court Experiments with Publishing Reasoning for Criminal Sentences" [Buzai yong geshi yuyuan yibi daiguo ershi yong fayuan qingxi daolai—Zhengzhou zhongyuan shixing liangxing liyou zhanshi zhidu], Fuzhou Daily (Online), 9 November 04.

<sup>18</sup>In Shaanxi province, rural basic level court judges earn between 500 to 800 yuan per month. Urban judges in Xi'an or Guangdong earn several thousand yuan per month. Experienced judges and recent law graduates are commonly "raided" by courts in more developed coastal areas. Over 65 percent of basic-level Shaanxi courts had no new personnel pass the national judicial exam from 1999 to 2003. As one vice president of a Yan'an court noted, 61 percent of the judges on his court were 40 years or older, and within 5 to 10 years, approximately 60 percent of the judges on his court would retire or leave. However, since 1999, his court has had no new judges join. These trends have increased the workload of rural basic people's courts. Rural court authorities strongly advocate reducing the required criteria for judges in rural areas, perhaps allowing graduates with only a vocational school (dazhuan) degree to serve or allowing individuals with lower scores on the national judicial exam to serve. Du Meng, "Difficult to Enter, Difficult to Stay, Poor Treatment, Old Age: The Crisis of the Gap Among Shaanxi Judges Becomes Prominent" [Jin ren nan liu ren nan daiyu di nianling da: shanxi faguan duanceng weiji aoxian], Legal Daily (Online), 26 April 05.

<sup>19</sup>CECC, 2003 Annual Report, 65–6.

<sup>20</sup>Ibid. Local courts often report to Party authorities seeking their assistance in resolving outstanding financial and personnel issues, reducing judicial independence by making court officials dependent on Party leaders for career and institutional development. Ren Hongqi and Wang Yuxin, "Xixia County Party Committee Solves Three Large Problems for the Courts in Three Years" [Xixia xian wei san nian wei fayuan jie jue san jian da shi], Beijing News (Online), 3 September 04.

<sup>21</sup>CECC, 2004 Annual Report, 81 and nn.781–82.

<sup>22</sup>See generally Benjamin Liebman, "Watchdog or Demagogue? The Media in the Chinese Legal System," 105 Colum. L. Rev. 1 (2005).

<sup>23</sup>CECC, 2004 Annual Report, 79.

<sup>24</sup>The SPC has attempted to address some of these problems through limiting judicial actions which may be disciplined under responsibility systems. Ibid., 78 and n.744; Ni Shouming, "Based On 'No Mistakes and Rapid Development': Xintai Courts Implement Diligent and Honest Self-Discipline Foundation" [Lizu yu "bu chu shi kuai fazhan": Xintai fayuan shixing qin jian zilü jijin zhidu], China Court Network (Online), 5 October 04.

<sup>25</sup>CECC, 2004 Annual Report, 79–82.

<sup>26</sup>Wei Wenbiao, "Request for Advice from 'Higher Authorities' Same as Changing Case Decision" [Pan an qingshi "shangji" dang gai], Yanzhao Metropolis Daily reprinted in Guangming Daily (Online), 24 January 05. Chinese judicial authorities at both the central and local level have attempted to limit the use of internal advisory requests (*qingshi*), but reforms often prove difficult to enforce in light of the incentives created by responsibility systems. For further discussion, see CECC, 2004 Annual Report, 78–81.

#### Notes to Section V(d)—Democratic Governance and Legislative Reform

<sup>1</sup>Kevin O'Brien and Lianjiang Li, "Accommodating 'Democracy' in a One-Party State: Introducing Village Elections in China" in *Elections and Democracy in Greater China*, eds. Larry Diamond and Ramon H. Myers (New York: Oxford University Press, 2001), 104–6, 109–10, 119–20, 124–5.

<sup>2</sup>Shi Weimin, "Open and Direct Elections—Research on the System of Township LPC Elections" [Gongxuan yu zhixuan—xiangzhen renda xuanju zhidu yanjiu], (Beijing: China Social Science Publishing Press, 2000), 301–2.

<sup>3</sup>John Pomfret, "Taking on the Party in Rural China: Reformer Risks Livelihood for Direct Elections," Washington Post (Online), 27 September 03.

<sup>4</sup>Directly elected village committees, for example, remain heavily controlled by Party organizations. One Fujian survey revealed that 66 percent of village committee heads are party members, while 55 percent of village committee members are. Wu Miao, "A Quantitative Analysis of the Quality of Village Committee Elections" [Cunweihui xuanju zhiliang de lianghua fenxi], in *Silent Revolution* [Wusheng de geming], ed. Yawei Liu (Xi'an: Northwest University Press, 2002), 114–5.

<sup>5</sup>Shi Yonghong, "Some Jiangsu Bureaus Heavily Engage in 'Advertising Their Accomplishments'" [Jiangsu bufen danwei da da "zhengji guanggao"], Beijing News (Online), 15 December 04.

<sup>6</sup>CCP Central Committee Decision Regarding Strengthening the Party's Construction and Ability to Rule [Zhonggong zhongyang guanyu jiaqiang dang de zhizheng nengli jianshe de jue ding], issued 19 September 04.

<sup>7</sup>For a different translation of the above quote which makes the point in a slightly different fashion, see China's State Control Mechanisms and Methods, Hearing of the U.S.-China Economic and Security Review Commission, 14 April 05, Written Statement submitted by Richard Baum, Director of the UCLA Center for Chinese Studies.

<sup>8</sup>Village Elections in China, Staff Roundtable of the Congressional-Executive Commission on China, 8 July 02, Written Statement submitted by Yawei Liu, Associate Director, The Carter Center's China Village Elections Project; International Republican Institute, Village Elections in China: Progress, Problems and Prospects, January 2001.

<sup>9</sup>Li Lianjiang, "The Empowering Effect of Village Elections in China," 43 Asian Survey 648 (2003); "Elections and Popular Resistance in Rural China," 16 China Information 89 (2002).

<sup>10</sup>Xiang Jiquan, "The Practical Basis and Effects of China's Village Autonomy" [Zhongguo cunmin zizhi de shijian jichu he chengxiao], in *Silent Revolution*, 312–3.

<sup>11</sup>In addition to the examples discussed in the text, continued reliance of village officials on higher-level discretionary funding, mixed with heightened village autonomy, often leads to



greater financial mismanagement. Lily Tsai, "The Dangers of Decentralization: Fiscal Mismanagement and Informal Institutions in Rural China," 3 April 05, 1 (draft manuscript on file with the Commission).

<sup>12</sup>Edward Cody, "An Unusual Sort of Democracy: Allegations of Party Vote-Buying Surround Village Election in China," Washington Post (Online), 20 June 05; John Ruwitch, "People Clash With Party in China Village Poll," Reuters (Online), 7 June 05.

<sup>13</sup>Chairman of the Taishi Village Impeachment Committee Has Resigned," [Taishi cun bamiyan weiyuanhui zhuren cizhi], Radio Free Asia, 20 September 05.

<sup>14</sup>See, e.g., Wang Haiyan, "Her Election and His Defeat" [Ta de dangxuan yu ta de luoxuan], Southern Metropolitan Daily (Online), 17 December 03; Robert L. Moore, "Don't Count Out China's Communists, Despite Village Elections, Party Maintains Power," Orlando Sentinel (Online), 27 June 05.

<sup>15</sup>Village and residents committees (VCs and RCs) are the lowest level of governance in Chinese rural and urban areas, underneath township (xiang/zhen) or street committees (jiedaochu). VCs and RCs serve as tools of top-down social control. They keep tabs on local residents, provide information to local police, and monitor compliance with government policies such as birth control and taxation requirements. However, VCs and RCs also operate as community institutions addressing local needs. They provide basic social services, mediate civil disputes, and offer a forum for residents to address local problems. Anne Thurston, United State Institute for Peace, "Muddling Toward Democracy, Political Change in Grassroots China," August 98, 18; Allan Choate, The Asia Foundation, "Local Governance in China, Part II, An Assessment of Urban Residents Committees and Municipal Community Development," November 1998, 8–9, 16–25. Chinese authorities began to experiment with VC and RC elections as a means to address governance challenges posed by social and economic changes in the 1980s and 1990s. See O'Brien and Li, "Accommodating 'Democracy' in a One-Party State," 104–6, 109–10; Li Fan, "The Launch of Reforms for Direct Elections of Chinese Urban Community Residents' Committees" [Zhongguo chengshi shequ juweihui zhijie xuanju gaige de qidong: 1998–2003] in Electoral Reform of Urban Community in China [Zhongguo chengshi shequ zhijie xuanju], ed. Li Fan, Xi'an: Northwest University Press, 2003), 7–8.

<sup>16</sup>PRC Organic Law on Village Committees (Trial), enacted 24 November 87, art. 9.

<sup>17</sup>O'Brien and Li, "Accommodating 'Democracy' in a One-Party State," 111–20.

<sup>18</sup>PRC Organic Law on Village Committees, enacted 4 November 98, art. 11; Village Democracy in China, Staff Roundtable of Congressional-Executive Commission on China, Written Statement of Anne Thurston, Associate Professor of China Studies, School of Advanced International Studies; O'Brien and Li, "Accommodating 'Democracy' in a One-Party State," 120–2.

<sup>19</sup>Li Fan, "The Launch of Reforms for Direct Elections of Chinese Urban Community Residents' Committees," 10–1.

<sup>20</sup>Ibid., 12, 16–21; Fu Jianfeng, "Direct Elections for Urban Residents Committees: Ningbo Style" [Chengshi shequ zhixuan de ningbo moshi], Southern Metropolitan Daily (Online), 5 December 03.

<sup>21</sup>Li Fan, "The Launch of Reforms for Direct Elections of Chinese Urban Community Residents' Committees," 13.

<sup>22</sup>County election leadership groups supervise village election work. They are comprised of county-level party, LPC, and government officials. MOCA officials are participants, but not heads, of these groups. Shanxi Provincial Civil Affairs Bureau Notice Regarding the Issuance of the "Shanxi Provincial Village Committee Election Rules" (Trial) [Shanxi sheng minzhengting guanyu yinfa "shanxisheng cunmin weiyuanhui xuanju guicheng (shixing)" de tongzhi], issued 10 October 99, chapter 1, art. 2(2). 2005 Shanxi provincial regulations state that MOCA officials should "guide" (*zhidao*) the election process, but that local Party organizations should play the "core leadership role" (*lingdao hexin zuoyong*). Shanxi Provincial Village Election Rules (Shanxi zheng cunmin weiyuanhui xuanju banfa), issued 29 July 05, arts. 6, 8.

<sup>23</sup>Shanxi rules provide that outgoing village committee heads are generally responsible for nominating the heads of village election committees. If the former head is unable to serve, the township government is responsible for selecting the person who will head the nomination process for village election committee heads. The rules also provide that the head of the village election committee should be the village party secretary or other party member with a high degree of local respect. Ibid., chap. 1, art. 2(3).

<sup>24</sup>Sun Long and Tong Zhihui, "Procedural Guidance and the Regularization of Village Committee Elections" [Chengxu yindao yu cunweihui xuanju de guifanhua], in Silent Revolution, 75. Another Chinese scholar notes, "[T]here is almost an unwritten rule that not only is the head of the election committee the village party secretary, but village party members serve as a matter of course as members of the election commission. . . ." Wu Miao, "A Quantitative Analysis of the Quality of Village Committee Elections," 121.

<sup>25</sup>Wu Miao, "A Quantitative Analysis of the Quality of Village Committee Elections," 121. As one Chinese academic noted, "Experience reveals that pursuing democratic supervision . . . without democratic [VC and RC] elections results in a number of problems. Under this system, the "democracy" experienced by residents is an incomplete, passive democracy . . . . While it may appear on the surface that there are reforms, the active participation of residents can't be achieved. . . ." largely because residents can sense the uselessness of elections. Li Fan, "The Launch of Reforms for Direct Elections of Chinese Urban Community Residents' Committees," 37.

<sup>26</sup>Some local municipal regulations permit migrants lacking local *hukou* to register to vote in RC elections. Beijing Municipal Residence Committee Election Measures [Beijing shi jumin weiyuanhui xuanju banfa], issued 26 April 00, art. 12. Some draft amendments to national laws governing RC elections would extend voting rights to individuals lacking a local *hukou*, but possessing a fixed place of abode in municipal areas. Others would limit the franchise based on *hukou* identification alone. Lai Haoning, "Outsiders Should Receive The Right to Participate in Residents Committees Elections" [Wailai ren ying huo juweihui canxuan zige], Beijing News

(Online), 18 December 04. Foreign observers have noted resistance of local residents to enfranchising migrants and allowing them to participate in decisions regarding the allocation of revenues generated by collectively owned land. International Republican Institute, Election Observation Report—Fujian Province, May 2003, 14–5.

<sup>27</sup> See, e.g., Zhejiang Provincial Village Committee Election Measures [Zhejiang sheng cunmin weiyuanhui xuanju banfa], issued 22 October 99, amended 17 September 04, art. 22 (charging the village electoral commission with organizing campaign speeches, and requiring candidates wishing to make public speeches to request permission of the electoral commission). Observers have recommended allowing more campaigning for VC and RC elections. International Republican Institute, Election Observation Report—Fujian Province, 3.

<sup>28</sup> MOCA Notice Regarding Carrying Out the Work of 2005 Village Committee Elections [Minzheng bu guanyu zuohao 2005 nian cunweihui huanjie xuanju gongzou de tongzhi], issued 18 January 05, art. 3; Zhejiang Provincial Village Committee Election Measures, art. 23–4.

<sup>29</sup> Liu Weitao, “China’s Village Committees Will Generally Hold Direct Elections This Year, MOCA Officials Explain” [Woguo cunweihui jinnian pupian shixing zhixuan minzhengbu jiedu], People’s Daily (Online), reprinted on the Ministry of Justice Web site (Online), 31 January 05.

<sup>30</sup> See, e.g., Wang Yijun, “Overloaded With Responsibilities, Unclear Powers, Organic Law of Residents Committees Will Be Amended” [Zhineng chaozai zhiquan youxian, chengshi juweihui zuzhifa xiuding], Ministry of Justice Web site (Online), 28 January 05.

<sup>31</sup> Linda Jakobsen, “Local Governance: Village and Township Direct Elections,” in Governance in China, ed. Jude Howell (Lanham: Rowman and Littlefield, 2004), 108–10. Other localities have experimented with forms of electoral participation in the selection of township officials, although the extent of citizen participation in these has been carefully controlled. *Ibid.*, 110–3.

<sup>32</sup> “Transcript of MOCA Basic-Level Governance and Community Development Bureau Chief Zhang Chengfu Online Discussion With Citizens” [Minzheng bu jiceng zhengquan he shequ jianshe si sizhang Zhang Chengfu yu wangyou zai xian jiaoliu shilu], Ministry of Civil Affairs (Online), 14 January 2005.

<sup>33</sup> Notice of the Shenzhen Municipal Party Committee and Shenzhen Municipal People’s Government Regarding the Issuance of “2005–2010 Plan for Shenzhen Municipal Community Construction” [Zhonggong shenzhen shiwei, shenzhen renmin zhengfu guanyu yinfa “Shenzhen shi shequ jianshe faguihua gangyao 2005–2010 nian” de tongzhi], Shenzhen Municipal Government (Online), issued 18 February 05, art. 4(3)(1).

<sup>34</sup> Wu Miao, “A Quantitative Analysis of the Quality of Village Committee Elections,” 103–4.

<sup>35</sup> Liu Weitao, “MOCA: Election Activities Which Have Not Been Expressly Prohibited By Law Do Not Necessarily Constitute Electoral Corruption” [Minzheng bu: falü wei mingque jinzhì de xingwei bushu huixuan], People’s Daily (Online) 26 January 05.

<sup>36</sup> Young Nam Cho, “Symbiotic Neighbor or Extra-Court Judge?” 176 China Quarterly 1068, 1070–73 (2003). This expanded activism is sometimes a mixed blessing. LPCs often use their power of review to interfere in the decisions of the institutionally weaker courts (via the process of individual case supervision), rather than challenge those of politically more powerful local governments. *Ibid.*; see also CECC, 2004 Annual Report, 81.

<sup>37</sup> Young Nam Cho, “From ‘Rubber Stamps’ to ‘Iron Stamps’: The Emergence of Chinese Local People’s Congresses as Supervisory Powerhouses,” 171 China Quarterly 724, 731–37 (2002).

<sup>38</sup> Hearings are expressly authorized under article 34 of the PRC Legislation Law, enacted 15 March 00. According to statistics provided by one Chinese scholar, from 2000 to 2004, 24 provincial LPCs held 38 hearings regarding legislation. Cai Dingjian, “The Current State of Legislative Hearings and Proposals For Improvement” [Lifa tingzheng de xianzhuang ji gaijin yijian], Legal Daily (Online), 4 May 05. On September 27, 2005, the National People’s Congress (NPC) held its first public legislative hearing on a draft amendment to raise the minimum taxable income. Authorities chose 20 participants (including both academics and migrant workers) from nearly 5,000 applicants. Cary Huang, “A Small Step Toward Transparent Lawmaking,” South China Morning Post (Online), 28 September 05.

<sup>39</sup> Young Nam Cho, “From ‘Rubber Stamps’ to ‘Iron Stamps,’” 735–9.

<sup>40</sup> *Ibid.* Prior to 2004, township elections were on a three-year cycle, while county elections operated on a five-year cycle. Zhao Lei and Meng Nuo, “NPC Standing Committee Passes Amendments to Election and Organic Laws” [Quanguo renda changweihui tongguo xuanjufa he defang zuzhifa xiuzheng’an], Xinhua, reprinted in Red Net (Online), 27 October 04.

<sup>41</sup> Standing committees conduct LPC work when the LPC is not in plenary session. Presidium control the operating of the LPC when it is in plenary session. Shi Weimin, “Open and Direct Elections,” 303. LPC standing committees also meet relatively infrequently, in bimonthly sessions of only one or two days each. Young Nam Cho, “From ‘Rubber Stamps’ to ‘Iron Stamps,’” 735–9.

<sup>42</sup> Shi Weimin, “Open and Direct Elections,” 303.

<sup>43</sup> PRC Election Law for the National People’s Congress and Local People’s Congresses, enacted 1 July 79, amended 10 December 82, amended 2 December 86, amended 28 February 95, amended 27 October 04, art. 12.

<sup>44</sup> As one Chinese scholar has pointed out, local requirements that migrants must return to their place of *hukou* registration to obtain voter registration authorization often deters migrants from voting in local elections. Shi Weimin, “Open and Direct Elections,” 154. This is exacerbated by relatively short deadlines for voter registration. For one recent local initiative to protect migrant voting rights, see Amendment to the Implementing Regulations for Beijing City District, County, Township, National Minority Township, and Town LPC Elections [Beijing shi qu, xian, xiang, minzuxiang, zhen renmin daibiao dahui daibiao xuanju shishi xize de xiuzheng’an], issued 5 September 03. Note that at least one recent set of provincial regulations has taken a particularly liberal stance, allowing migrant voters to register to vote in their place of residence upon merely presenting their identity card. Decision of the Anhui Provincial LPC Standing Committee on amending the “Anhui Provincial LPC Election Implementing Regulations” [Anhui

sheng renmin daibiao dahui changwu weiyuanhui guanyu xiugai "Anhui sheng geji renmin daibiao dahui xuanju xize" de jueding], issued 21 April 05, art. 25.

<sup>45</sup>Specific changes included: (1) charging LPC standing committees with the responsibility for supervising LPC elections at the county level and higher (previous law had made local governments responsible for supervising such LPC elections, and this change made LPCs somewhat more independent of local government influence); (2) allowing more open nominations, from groups of individuals rather than simply parties and mass organizations; (3) expressly permitting the use of primary elections (yuxuan) as a means to narrow the candidate list; and (4) allowing a degree of freedom for "parties, organizations, and voters" to engage in campaigning. PRC Election Law for the National People's Congress and Local People's Congresses, arts. 7, 26, 28, 30.

<sup>46</sup>See generally Andrew Nathan, *Chinese Democracy* (Berkeley: University of California Press, 1985), 193–223. Specific legal changes made in the 1980s to reduce the competitive nature of LPC elections included (1) removing language permitting the use of primaries (yuxuan) to narrow the candidate list, and (2) removing language allowing independent campaign activities. PRC Election Law for the National People's Congress and Local People's Congresses, as amended 2 December 86, arts. 28 and 30; see also Shi Weimin, "Open and Direct Elections," 42–9.

<sup>47</sup>PRC Election Law for the National People's Congress and Local People's Congresses, art. 29.

<sup>48</sup>Shi Weimin, "Open and Direct Elections," 311–7. Election laws restrict the number of total candidates who may appear on the ballot, frequently leading to the elimination of independent candidates. Chinese observers have noted numerous methods by which independent LPC candidates are effectively blocked from competing in LPC elections. These include: 1) limiting the number of independent candidates; 2) imposing short time limitations for nominations (such as a single day); and 3) simply disallowing independently nominated candidates from being placed on the ballot. *Ibid.*, 316.

<sup>49</sup>PRC Election Law for the National People's Congress and Local People's Congresses, art. 31. Even preliminary candidate lists need be released only 15 days prior to elections.

<sup>50</sup>Shi Weimin, "Open and Direct Elections," 460–1.

<sup>51</sup>Relevant Decisions of the NPC Standing Committee Regarding Direct LPC Elections at the County Level and Lower [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xianji yixia renmin daibiao dahui daibiao zhijie xuanju de ruogan guiding], issued 5 March 83, art. 2.

<sup>52</sup>*Ibid.*, art. 1. Chinese authorities have strengthened county control over township elections since the original 1983 regulations. The original regulations merely charged county election committees with the responsibility of "supervising" (zhidao) the work of township-level election committees. *Ibid.*, art. 2. 1986 amendments to the NPC and LPC electoral law changed this relationship, charging county election committees with the responsibility of formally directing the work (lingdao) of local LPC elections, and provincial LPC standing committees with that of supervising (zhidao) township and county LPC elections. PRC Election Law for the National People's Congress and Local People's Congresses, as amended 2 December 86, art. 7. County-level election leadership groups are the instrument by which county governments carry out this direction, as well as the tool by which county Party organizations organize and monitor lower-level LPC elections. Shi Weimin, *Open and Direct Elections*, 108–12.

<sup>53</sup>One late 1990s study of rural LPC elections found that in nearly every single county surveyed, the local election committee was headed by the corresponding party head. Over half of the members of the election committees were elected to LPC seats. *Ibid.*, 112–7.

<sup>54</sup>Certain Regulations of the NPC Standing Committee on Direct Election of Representative to County and Lesser Level People's Congresses [Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xianji yixia renmin daibiao dahui daibiao zhijie xuanju de ruogan guiding], issued 5 March 83, sect. 2(4).

<sup>55</sup>Shi Weimin, "Open and Direct Elections," 108–123, 311–7.

<sup>56</sup>[NPC] Statement Regarding the Draft Amendment to the PRC NPC and LPC Election Law, [Guanyu zhonghua renmin gongheguo quanguo renmin daibiao dahui he difang geji renmin daibiao dahui xuanju fa xiuzheng an 'caotan' de shuoming], issued 23 August 04, reprinted on People's Daily (Online), 23 August 04.

<sup>57</sup>"... [T]hese 'elections' are better viewed as 'designations' [by higher level officials]. Carrying out 'dictatorship' under the cover of 'democracy' is easy to be uncovered by delegates, and is what LPC delegates are most dissatisfied with." Shi Weimin, *Open and Direct Elections*, 317.

<sup>58</sup>Qin Wen, "Xu Zhiyong: 'Please Believe That Our Electoral Rights Are Real'" [Xu Zhiyong: "Qing xiangxin women de xuanju quan shi zhenshi de"], Southern Metropolitan Daily (Online), 16 December 03. This followed the appearance of articles in the official press encouraging the participation of independent candidates in LPC elections, as well as similar experiments in Shenzhen. Zhao Ling, Wu Chen, and Guang Xunan, "December 19, Beijing Elections" [12 yue 19 ri, Beijing xuanju], Southern Weekend (Online), 11 December 03.

<sup>59</sup>*Ibid.* One candidate received significant media attention as a result of his creation of a "campaign headquarters," staffed in part by students, to assist his election efforts. Lin Chufang, "Quiet Appearance of Individual Campaign Headquarters" [Geren xuanju shi wu bangongshi qiaoran xianshen], Southern Weekend (Online), 30 October 03.

<sup>60</sup>Qin Wen, "Xu Zhiyong: 'Please Believe That Our Electoral Rights Are Real.'"

<sup>61</sup>In the case of one independent candidate, these included formal official approvals for the placement of posters, a bar on campaign contributions, and limits on the ability of campaign volunteers and staff to assist the candidates. Lin Chufang, "Quiet Appearance of Individual Campaign Headquarters." Election authorities also refused to allow him to independently organize events to meet voters. Local election officials required him to submit written requests in advance regarding such meetings, and barred the media from attending. For an insider's look at his campaign, see the summary written by one of his student staff participants, Zhu Sihao,

“An Initial Exploration in the System of Voter Small Groups” [Xuanmin xiaozu zhidu chutan], Heavenly Teahouse, reprinted in China Elections (Online), 5 May 04.

<sup>62</sup>Numerous tactics are detailed in Zhu Sihao, “An Initial Exploration in the System of Voter Small Groups.” For example, the LPC election law requires that independent candidates receive the nomination of 10 voters to be placed on the final ballot. The local election commission interpreted this to mean that 10 voters in a particular voter “small group” (out of the 153 in his district) select independent candidates through filling out a form on the spot. Combined with the tight restrictions on campaigning and the control of the voter “small groups” by their heads, this limited the ability of one such candidate to mobilize support in different areas of the district to meet the nomination requirement.

<sup>63</sup>PRC Electoral Law for the National People’s Congress and Local People’s Congresses.

<sup>64</sup>Ibid., art. 31.

<sup>65</sup>Ibid., art. 33. In contrast, prior law had only instructed an electoral commission to determine a final candidate list and introduce candidates to the voters, leaving it unclear as to whether electoral commissions could organize primary elections or general meet-the-candidate events. Ibid., arts. 31 and 33. Although many local authorities commonly rely on “selection” and “discussion” by Party or township officials to determine LPC candidates, Chinese scholars noted that some localities increasingly used open primaries during the 1990s to determine final candidate lists. Shi Weimin, “Open and Direct Elections,” 454–5.

<sup>66</sup>Commission Staff Interview.

<sup>67</sup>Shi Weimin, “Open and Direct Elections,” 69–70.

<sup>68</sup>PRC Electoral Law for the National People’s Congress and Local People’s Congresses, art. 29. More meaningful reform might involve eliminating the discretionary power of electoral commissions entirely, by making the use of primaries mandatory, rather than permissive, in determining the final slate of candidates. This step would appear to be a logical extension of the NPC legal affairs bureau’s own suggestion that the introduction of primaries (yuxuan) in the 2004 amendments is a necessary step towards controlling the problems of “behind-the-scenes manipulation of elections” (*anxiang congzuo*) raised by existing electoral procedures. “NPC to Take Up Election Law Amendment Draft” [Quanguo renda shenyi xuanjufa xiuzhengan], Chinanews (Online), 23 August 04.

<sup>69</sup>Beijing Party Organization Bureau Notice Regarding Opinions on the Implementation of Electoral Work Procedure and Related Items in Beijing Basic-Level Party Committees [Guanyu jingqu jiceng danwei dangwei huanjie xuanju gongzuo chengxu ji youguan shixiang de shishi yijian de tongzhi], issued 9 April 04, arts. 2–7; “Township (Town) Party Committee Electoral Work Procedure” [Xiang (zhen) dangwei huanjie xuanju gongzuo chengxu], Yuanjiang County Party Organization Bureau (Online), art. 8; Shi Weimin, “Open and Direct Elections,” 22.

<sup>70</sup>Li Lianjiang, “The Two-Ballot System in Shanxi Province: Subjecting Village Party Secretaries to a Popular Vote,” 42 China Journal 103 (1999).

<sup>71</sup>Ibid. This system allows ordinary villagers to weed out candidates they particularly dislike or distrust, but allows Party members to decide the ultimate winner.

<sup>72</sup>He Zhongping, “The Case of Huazhuang, Sichuan: Directly Elected Village Party Secretaries Must ‘Pass Three Tests’” [Sichuan huazhuang ge’an: zhixuan cunzhishu “guo san guan”], 21st Century Business Daily (Online), 1 September 04.

<sup>73</sup>Guo Xiaojun, “Open Competition for the Director Position, Organizational Nominations are the Majority” [Gongkai jingzheng zhengju zuzhi tuijian zui duo], Beijing News (Online), 31 May 05; Wang Ying, “Lanzhou Experiment of ‘Citizens Evaluating Officials’” [Lanzhou “minping guan” shiyan], 21st Century Business Herald (Online), 26 January 05.

<sup>74</sup>Fan Lixiang, “Jiangsu’s Direct Broadcast of Official Selections: The Latent Pressure of Public Nomination/Public Selection” [Jiangsu zhibo xuanguan: gongtui gongxuan zhengfaqian guize], 21st Century Business Herald (Online), 29 September 04. The selection process for the deputy chief position relied on progressive elimination of candidates in multiple stages process, including open nominations, graded public speeches, Party background evaluations, and internal voting on candidates. Public speeches of the candidates were broadcast live and evaluated by selected graders, as well as a designated audience of 150 officials and citizens. Audience evaluation of the candidates comprised 20 percent of the candidate’s grade for that event. Ibid.

<sup>75</sup>Zhang Tao, “Public Nomination/Public Election: A Technical Adjustment Within the System” [Gongtui gongxuan: tizhi nei de jishu xing tiaozheng], Southern Metropolitan Daily (Online), 10 December 03.

#### Notes to Section V(e)—Access to Justice

<sup>1</sup>For more comprehensive treatment of the *xinfang* system, see Laura Luehrmann, “Facing Citizen Complaints in China 1951–1996,” 43 Asian Survey, 845, 847 (2003); Carl Minzner, “*Xinfang*: An Alternative to the Formal Chinese Legal System,” 42 Stanford Journal of International Law (forthcoming publication 2006); Wang Bixue, “114,000 Lawyers, But Distributed Unevenly, 206 Counties Have Not a Single Lawyer” [11.4 Wan lüshi dan fenbu bu junheng woguo 206 xian wu lüshi], People’s Daily (Online), 8 June 05.

<sup>2</sup>Yasheng Huang, “Administrative Monitoring in China,” 143 China Quarterly 828, 848 (1995); Kevin O’Brien, “Neither Transgressive Nor Contained: Boundary-Spanning Contention in China,” 8 Mobilization: An International Journal 51, 60 (2003).

<sup>3</sup>For an example of petitioning activity, see “Retired Hangzhou Teacher Wears White Coat, Promotes the Constitution, and Is Detained 10 Days” [Hangzhou tuiyi jiaoshi shenchuan baidapao xuanchuan xianfa bei juliu 10 tian], Boxun (Online), 25 January 04.

<sup>4</sup>Kevin J. O’Brien and Lianjiang Li, “The Politics of Lodging Complaints in Rural China,” 143 China Quarterly 756, 758 (1995).

<sup>5</sup>See Section V(a)—The Development of Civil Society.

<sup>6</sup>See Section V(d)—Democratic Governance and Legislative Reform.

<sup>7</sup>See Section V(c)—China’s Judicial System; CECC, 2004 Annual Report, 81.

<sup>8</sup>“National *Xinfang* Bureau Chief: 80 Percent of Petitioners Are Correct” [Guojia *xinfang* juzhang: 80% de shangfang you daoli], Bimonthly Discussion, reprinted in China.org.cn (Online), 20 November 03.

<sup>9</sup>“Petitions” here is used as a shorthand for all *xinfang* items, both letters and visits. Chinese statistics on court cases vary depending on what is counted as a “case.” The 2005 Supreme People’s Court Work Report lists the Chinese court system as handling 7,873,745 total cases, including roughly two million “executed” (zhixing) cases. 2005 Supreme People’s Court Work Report, 9 March 05. In contrast, the 2004 SPC Work Report lists only 5,687,905 cases, apparently excluding the two million executed cases. 2004 SPC Work Report, 10 March 04. The text uses the six million figure to keep consistency with the Commission’s prior annual report, as well as with the SPC’s own prior statistics.

<sup>10</sup>2005 SPC Work Report, 9 March 05.

<sup>11</sup>See Carl Minzner, “*Xinfang*: An Alternative to the Formal Legal System.” For information on the interplay of citizen petitioning efforts with the administrative legal structure, see generally Kevin O’Brien, “Suing the Administrative State: Administrative Litigation in Rural China,” 51 *China Journal* 76 (2004).

<sup>12</sup>According to one Chinese academic survey of 632 petitioners in Beijing, approximately two-thirds, or 401 had previously attempted to file suit in local courts. 42.9 percent of these were rejected and 54.9 percent indicated that they disagreed with the legal decision of the court. Zhao Ling, “China’s First Report on *Xinfang* Work Receives High-Level Attention” [Guonei shoufen *xinfang* baogao huo gaoceng zhongshi], Southern Weekend (Online), 4 November 04.

<sup>13</sup>Lang Pingping, “Reform of the *Xinfang* System Must Be Coordinated With Judicial Reform” [*Xinfang* zhidu de gaige bixu gen sifa zhidu de gaige xiang xietiao], China Youth Daily (Online), 30 November 04. As scholars have noted, under 2 percent of rural Chinese grievances “involve a lawyer, a court, or any office of the judicial system.” CECC, 2004 Annual Report, 72 (citing Ethan Michelson, “Causes and Consequences of Grievances in Rural China,” (draft manuscript on file with the Commission)). U.S. studies have found that approximately 10 percent of American grievances involve lawyers. Survey data suggest that 10 percent of Beijing “disputes” end up in court. Ibid.

<sup>14</sup>Zhao Ling, “China’s First Report on *Xinfang* Work Receives High-Level Attention”; Li Hui, “The Dispute Regarding Yu Jianrong’s Proposal For the Elimination of *Xinfang* Bureaus: Does It Assist *Xinfang* Reform?” [Yu Jianrong *xinfang* ban chexiao shifou you li *xinfang* zhidu gaige yin zhengyi], People of the Times Weekly, reprinted in Sina.com (Online), 17 November 04.

<sup>15</sup>Zhao Ling, “China’s First Report on *Xinfang* Work Receives High-Level Attention.”

<sup>16</sup>Hannah Beech, “Nothing Left to Lose,” Time Asia (Online), 23 February 04; Carl Minzner, “*Xinfang*: An Alternative to the Formal Legal System.”

<sup>17</sup>For more comprehensive discussion, see Carl Minzner, “*Xinfang*: An Alternative to the Formal Legal System.”

<sup>18</sup>These systems also punish officials for a wide range of administrative behavior, including falsification of *xinfang* reports to higher officials, failure to execute directives, or abuse of petitioners. See, e.g., Qingdao Notice on Implementing Leadership Responsibility System in *Xinfang* Work [Guanyu shixing *xinfang* gongzuo lingdao zeren zhuijiu zhi de jue ding], issued May 19, 2003, art. 8(5, 6).

<sup>19</sup>For a more comprehensive discussion, see Carl Minzner, “*Xinfang*: An Alternative to the Formal Legal System.”

<sup>20</sup>Anhui Provincial Party Office and Provincial Government Notice Regarding the Implementation Details of the *Xinfang* Responsibility System for Leaders [Zhonggong anhui sheng bangongting, anhui sheng renmin zhengfu bangongting guanyu yinfa Anhui sheng *xinfang* gongzuo lingdao zeren zhuijiu zhi shishi xize de tongzhi], issued September 2, 2003, art. 4(3).

<sup>21</sup>Ibid., art. 6(2).

<sup>22</sup>Sara Davis, “China’s Angry Petitioners,” Asian Wall Street Journal (Online), 25 August 05; Massive Crackdown on Petitioners in Beijing, Human Rights in China (Online), 8 September 04; CECC, 2004 Annual Report, 75.

<sup>23</sup>Thomas Bernstein, Center for the Study of Democracy, Unrest in Rural China: A 2003 Assessment (2004), 11–2 (noting one example of a countywide petitioning organization with leadership skilled in covert operational tactics); Access to Justice, Staff Roundtable of the Congressional-Executive Commission on China, 12 July 04, Written Statement submitted by Professor Kevin O’Brien, Professor at the University of California, Berkeley.

<sup>24</sup>“National *Xinfang* Bureau Chief: 80 Percent of Petitioners Are Correct,” Bimonthly Discussion.

<sup>25</sup>2005 SPC Work Report, 9 March 05. In contrast, previous SPC Work Reports indicate that the number of formal appeals handled by the SPC appears to have decreased, from 3,567 in 2003 to 2923 in 2004. Ibid; 2004 SPC Work Report.

<sup>26</sup>Zhao Ling, “China’s First Report on *Xinfang* Work Receives High-Level Attention.”

<sup>27</sup>Xiao Tangbiao, “The Situation of Political Stability in 20 Mainland Villages—A Look at Peasant Movements” [Ershi yu lai dalu nongcun de zhengzhi wending zhuangkuang—yi nongmin xingdong de bianhua wei shijiao], 21st Century, 51–60 (2003).

<sup>28</sup>Zhao Ling, “China’s First Report on *Xinfang* Work Receives High-level Attention.” Mass petitions to county level and higher Party and government organs increased by a multiple of 2.8 and 2.6 respectively from 1995–2000, with a further 7.2 and 11.7 percent increase from 2000 to 2001. Xiao Tangbiao, “The Situation of Political Stability in 20 Mainland Villages—A Look at Peasant Movements.” Provincial authorities have noted steep increases in petitioning activity as well. Henan provincial *xinfang* authorities noted a 28.3 percent increase in *xinfang* cases in 2004 over 2003, and a 35 percent increase in the number of collective petitioners traveling to Beijing. Liu Binglu, “3,000 PSB Heads ‘Seize’ Pending Petitions” [San qian gong’an buzhang jina *xinfang* chen’an], Beijing News (Online), 25 May 05.

<sup>29</sup>Chinese government authorities rejected divergent calls to either strengthen or weaken *xinfang* institutions, choosing instead to follow a “third path” of attempting to regularize the

system. Zhao Ling, "Amendments to *Xinfang* Regulations Seek to Take a 'Third Path'" [*Xinfang tiaoli xiugai yu zou "di san tiao lu"*], Southern Weekend (Online), 13 January 05.

<sup>30</sup> *Xinfang* Regulations [*Xinfang Tiaoli*], issued 17 January 05 [hereinafter 2005 *Xinfang* Regulations], art. 32.

<sup>31</sup> *Ibid.*, art. 14.

<sup>32</sup> *Ibid.*, arts. 31, 34–5. The amended 2005 regulations eliminate reference to the (now abolished) administrative system of custody and repatriation as a punitive measure for petitioner infractions. Compare *ibid.*, art. 47, with *Xinfang* Regulations [*Xinfang Tiaoli*], issued October 28, 1995 [hereinafter 1995 *Xinfang* Regulations], art. 22.

<sup>33</sup> 2005 *Xinfang* Regulations, art. 13.

<sup>34</sup> *Ibid.*, art. 11–2.

<sup>35</sup> The 1995 regulations merely required governments at the county level and higher to either establish *xinfang* bureaus (*jigou*) or designate personnel to handle *xinfang* issues. 1995 *Xinfang* Regulations, art. 6. In contrast, the 2005 regulations mandate the establishment of formal *xinfang* bureaus for county level and higher governments. Additionally, the amended regulations require that township governments either establish formal *xinfang* bureaus or designate personnel to handle *xinfang* issues. 2005 *Xinfang* Regulations, art. 6. While *xinfang* responsibility systems are commonly used in various levels of Chinese government, the 2005 national amendments mark the first time they have been formally included in any of the comprehensive provincial or national *xinfang* regulations. The 2005 regulations also charge *xinfang* bureaus with reporting (along with other statistics) the rate at which various bureaus adopt the proposals submitted by *xinfang* bureaus for corrective action and policy, this also likely represents an effort to add more teeth to the oversight function of *xinfang* bureaus. *Ibid.*, art. 39 (2), (3).

<sup>36</sup> *Ibid.*, art. 10.

<sup>37</sup> In contrast with prior regulations, the 2005 regulations charge government *xinfang* bureaus with the responsibility for raising proposals of corrective action, policy changes, and administrative punishments with the appropriate bureaus. *Ibid.*, art. 36–8.

<sup>38</sup> *Ibid.*, art. 39.

#### Notes to Section V(f)—Commercial Rule of Law and the Impact of the WTO

<sup>1</sup> Suan Yuanzhong, "The Research Committee on WTO Organizational Law has a Significant Role to Play" [Shimao zuzhifa yanjiuhui renzhong daoyuan], Legal Daily (Online), 8 January 04.

<sup>2</sup> 2002 Supreme People's Court Work Report, 11 March 02, sect. 2(4).

<sup>3</sup> American Chambers of Commerce, PRC and Shanghai, 2004 White Paper, September 2004, 4 ("From the perspective of the American business community on the ground, China's performance on WTO remains a cornerstone in laying the foundation for business success.").

<sup>4</sup> Foreign-invested enterprises have enjoyed more and faster access to the Chinese market. "By the end of 2003, China had approved almost 400,000 foreign-invested enterprises (FIEs) with a contractual value of over \$750 billion from 180 countries, including FIEs from 400 of the world's 500 largest multinational enterprises." James M. Zimmerman, China Law Deskbook, A Legal Guide for Foreign-Invested Enterprises (Chicago: American Bar Association, 2004), 1–2. In August, the Ministry of Commerce also reduced the time within which approvals for foreign-invested enterprises to one month for provincial level authorities and three months for national authorities. MOFCOM Time Limits for Approving FIE Projects [Waishang touzi shangye lingyu xiangmu shenpi shixian], issued 16 August 05.

<sup>5</sup> American Chambers of Commerce, PRC and Shanghai, 2004 White Paper, 10.

<sup>6</sup> *Ibid.*, 10 (noting that WTO-compliant legal changes and a more open investment structure are the primary reasons for additional optimism by U.S. companies operating in China).

<sup>7</sup> Yang Ruichun, "The Three Year Anniversary of China's WTO Accession: An Interview with Long Yongtu" [Zhongguo jiaru WTO sanzounian zhichu Long Yongtu yu jizhe jiqing duihua], Southern Weekend (Online), 11 November 04.

<sup>8</sup> *Ibid.*; Wan Xuezhong and Chen Jingjing, "WTO Entry Advances Formation of Rule of Law Concept" [Rushi cunjinle fazhi liniande xingcheng], Legal Daily (Online), 4 January 05.

<sup>9</sup> "City Resident Treatment Late to Arrive" [Chidao de "shimin daiyu"], Red Net (Online) 17 February 04; "Experts Propose Registered Migrants Should Enjoy Same Benefits as Local *Hukou* Holders" [Zhuanjia jianyi Beijing liudong renkou beian dengji xiangshou shimin daiyu], Beijing News (Online), 29 May 05.

<sup>10</sup> "Urban resident treatment" is a term taken from the WTO context that is used for rhetorical force to push local governments to change their policies with regard to migrants. Ge Yanfeng, Wang Xu, Tian Kai, "The Impact of WTO Accession on China's Society and Government Policy Choices—Completely Strengthens the Protection of Disadvantaged Communities" [Rushi dui zhongguo shehuide yinxiang ji zhengfu zhengce xuanze-quanmian jiaqiang dui ruoshi quntide baohu], State Council Development Research Center (Online), 16 May 02; "Xiamen's People's Congress Twelfth Session First Government Work Report" [Xiamenshi dishier jie remin daibiao dahui diyi ci huiyi zhengfu gongzuo baogao], Xiamen People's Government (Online), 3 December 02.

<sup>11</sup> Office of the U.S. Trade Representative, 2005 National Trade Estimate Report on Foreign Trade Barriers, 30 March 05, 79.

<sup>12</sup> *Ibid.*, 112.

<sup>13</sup> Cheng Dawei, "Post-Transition Period Will Test Our Wisdom," Economic Daily, 8 December 04 (FBIS, 10 December 04). The author repeatedly describes interaction with foreign competition as a threat to Chinese enterprises.

<sup>14</sup> See Discussion of Wireless Local Area Network Architecture and Privacy Infrastructure (WAPI) in CECC, 2004 Annual Report, 87.

<sup>15</sup> Office of the U.S. Trade Representative, USTR 2003 Report to Congress on China's WTO Compliance, 11 December 03, 32; Office of the U.S. Trade Representative, USTR 2004 Report to Congress on China's WTO Compliance, 11 December 04, 37.

<sup>16</sup>PRC Steel Industry Development Policy [Gangtie chanye fazhan zhengce], issued 20 July 05. The steel policy seeks to increase the domestic steel industry's capacity to compete globally. Ibid., art. 1. To accomplish this goal, the policy encourages domestic enterprises to "use domestic facilities and technology" while importing only "equipment and technology that cannot be made domestically or for which domestic supply is unable to satisfy the requirements." Ibid., art. 18. The policy prohibits foreign control over domestic steel enterprises and restricts foreign investment in the steel industry. Ibid., art. 23. Foreign companies wishing to invest in the domestic steel industry must have produced either 10 million tons of steel or 1 million tons of high-alloy specialty steel during the previous year. Ibid. If the foreign company can fulfill these requirements it may invest in existing Chinese steel facilities, but may not create new ones. "Steel Industry's New Plan Released—Steel Factories Access Closed Down" [Gangtie chanye xinzheng chutai—gangchang zhunru damen guanbi], *Caijing* (Online), 16 July 05.

<sup>17</sup>Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 63.

<sup>18</sup>E.g., Office of the U.S. Trade Representative, Results of Special 301 Out-of-Cycle Review on China, 29 April 05.

<sup>19</sup>Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?, Staff Roundtable of the Congressional-Executive on China, 16 May 05, Written Statement submitted by Eric H. Smith, President, International Intellectual Property Alliance.

<sup>20</sup>Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?, Written Statements submitted by Eric H. Smith and Daniel C.K. Chow, Robert J. Nordstrom Designated Professor of Law, Ohio State University Michael E. Mortiz College of Law.

<sup>21</sup>At the April 2004 meeting Wu Yi committed to specific actions and generally to "[s]ignificantly reduce IPR infringement levels" through methods including increasing penalties, conducting a nationwide enforcement campaign against IPR violations, and extending the ban on government use of illegal software to the local government level. "The U.S.-China JCCT: Outcomes," Department of Commerce Office of the China Economic Area (Online), April 2004. At the July 2005 meetings she made additional specific commitments including cracking down on the export of pirated products, increasing police cooperation on IP between China and the United States, and ensuring that the state-owned sector uses only legal software. "The U.S.-China Joint Commission on Commerce and Trade (JCCT) Outcomes on Major U.S. Trade Concerns," U.S. Department of Commerce and Office of the U.S. Trade Representative (Online), 11 July 05.

<sup>22</sup>"Recent Developments in China's IPR Protection" [Zhongguo zhishi chanquan baohude xinjinzhan], White Paper of China's State Council Information Office, 21 April 05 (citing statistics on the levels of enforcement activity and results in the form of money spent, activities conducted, and materials seized or destroyed).

<sup>23</sup>Both the American Chambers of Commerce in China and USTR reported in fall 2004 that the overall situation of IPR infringement is worsening. American Chambers of Commerce, PRC and Shanghai, 2004 White Paper, 28; Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 63.

<sup>24</sup>One witness testified that the way to stop infringement is to use criminal enforcement mechanisms to go after pirates themselves, while another witness pointed out that one city, Yiwu, Zhejiang Province, contains vast markets for counterfeit product and that the production of counterfeit products there supported the local economy. Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?, Testimony of Eric H. Smith and Daniel C.K. Chow. China's State Council released a White Paper trumpeting the efforts China has made to protect intellectual property filled with statistics on the amount of enforcement that has occurred in recent years. There is no discussion in the document, however, of the effectiveness of these enforcement measures. "Recent Developments in China's IPR Protection," White Paper of China's State Council Information Office. TRIPs provides that criminal penalties "available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity." WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 61 [hereinafter TRIPs Agreement].

<sup>25</sup>"We have the examples of Korea, Taiwan, and other countries in the Asian region that have driven down piracy rates from, in the mid-1980s, 100 percent piracy in Taiwan and Korea, to—believe me—piracy rates at the latter part of the 1990s that were down to 15 percent. How did they do it? Very simple. They put pirates in jail. If it was not a jailable offense, they fined them at levels that were deterrent. Until China makes the political commitment to do that, it is not going to be able to deal with this problem." Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?, Testimony of Eric H. Smith.

<sup>26</sup>"The HKSAR effectively deployed a new legal weapon that its neighbors should emulate: tough licensing regulations on optical media production and equipment import and export chased many pirate plants elsewhere, and scores of pirate facilities were taken down." International Intellectual Property Alliance, 1999 Special 301 Recommendations (Online), 15 February 1999.

<sup>27</sup>TRIPs Agreement, art. 61.

<sup>28</sup>PRC Criminal Law, enacted 1 July 79, amended 1 October 97, 14 March 97, 25 December 99, 31 August 01, 29 December 01, 28 December 02, arts. 213–20. The American Chambers of Commerce in China discuss the deficiencies in the criminal law. American Chambers of Commerce, PRC and Shanghai, 2005 White Paper, September 2005, 48 n.1 ("The most glaring deficiency in the current IPR regime is the one key law not revised when China joined the WTO—its criminal code. This should be revised to provide stronger protection, enhanced penalties and further clarification of standards.")

<sup>29</sup>Office of the USTR, Results of Special 301 Out-of-Cycle Review on China, 4. Another aspect of this is evidentiary: in cases where the amount of goods seized does not exceed the threshold measured by the value of the infringing goods, records of additional sales may be used. Unfortunately, these records usually do not exist or are not seized with the infringing materials.

<sup>30</sup>At the WTO, China specifically stated that it would share a draft of any measure that would revise or replace the previous SPC interpretation on transfers of IP cases from administrative to criminal enforcement with other WTO members. Minutes of the Meeting of 18 November 2003, WTO TRIPS Council, 4 February 04, para. 30 (the Representative of China stated that “[a]s a major arm in IP enforcement, the judiciary departments in China were also subjected to the principle of transparency, which was evidenced by the public soliciting of comments for judicial interpretations. The Supreme People’s Court would further broaden the scope of commenting in the course of interpretation.”); Minutes of Meeting of 1–2 December 2004, WTO TRIPS Council, 11 January 05, para. 276 (“Last year at the TRIPS Council, China had pledged to increase transparency by making judicial interpretations on IPR matters available for public comment.”). In addition, it would have been helpful to publish a draft because issuing a new interpretation with lowered thresholds was a commitment China made at the 2004 plenary session of the JCCT, “The U.S.-China JCCT: Outcomes,” Department of Commerce Office of the China Economic Area (Online), and the reception by U.S. trade officials might have been less negative if they had provided comments on a draft interpretation and had those comments favorably considered. Office of the USTR, Results of Special 301 Out-of-Cycle Review on China, 4.

<sup>31</sup>Office of the USTR, Results of Special 301 Out-of-Cycle Review on China, 4.

<sup>32</sup>Supreme People’s Court and Supreme People’s Procuratorate Interpretation Concerning Certain Questions of Using the Criminal Law to Handle Violations of Intellectual Property Rights [Zuigao renmin fayuan, zuigao renmin jianchayuan guanyu banli qinfan zhishichangqian xingshi anjian juti yingyong falu ruogan wentide jieshi], issued 8 December 04. Most enforcement in China occurs within an administrative system operated by the local administrations of industry and commerce. Analysts generally believe that the weak nature of such administrative enforcement has resulted in China’s currently high levels of piracy and counterfeiting. The Interpretation also broadened the circumstances that precipitate a transfer to criminal enforcement such as mandating criminal liability for accomplices, a situation that did not precipitate a transfer under the previous interpretation. On the negative side, however, the interpretation eliminated automatic transfer to criminal enforcement for repeat offenders and in cases involving well-known trademarks. Office of the USTR, Results of Special 301 Out-of-Cycle Review on China, 4.

<sup>33</sup>American Chambers of Commerce, PRC and Shanghai, 2005 White Paper, 46 (“SIPO relied on new guidelines issued after the patent had been granted, and then did not allow the patentee the opportunity to meet the revised data provision standard of those guidelines.”); “Viagra Patent Case Opens, Pfizer’s Market Domination the Main Issue” [Weige zhuanliqian an kaishen hurui duba shichang dalue] Xinhua (Online), 31 March 05.

<sup>34</sup>“Pfizer Appeals China’s Revocation of Viagra Patent,” Bloomberg (Online), 28 September 04. China’s State Food and Drug Administration also loosened the designation of the pharmaceutical product as a controlled substance, allowing it to be dispensed in pharmacies, following the Board’s finding invalidating the patent. This loosening of control benefits the U.S. company as long as the appeal is active but is limited in effect by the rampant piracy in the market. Elaine Kurtenbach, “Pfizer Appeals Chinese Government Decision Against Patent for Viagra,” Associated Press (Online), 28 September 04.

<sup>35</sup>“The role of counterfeiting in Yiwu, it is no exaggeration to say, supports the entire local economy and legitimate businesses, such as restaurants, nightclubs, warehouses, transportation companies, and hotels. All of them have grown up and they support the trade in counterfeit goods. If you shut down the trade in counterfeit goods in Yiwu, you will probably shut down the local economy. Because the government has invested in these wholesale markets, they are heavily defended at the local level.” Intellectual Property Protection as Economic Policy: Will China Ever Enforce its IP Laws?, Testimony of Daniel C.K. Chow.

<sup>36</sup>“Government Enforces Ban on Falun Gong Publications,” Xinhua, 23 July 99 (FBIS 23 July 1999).

<sup>37</sup>“Truth of ‘Folk Cult’ Falun Gong,” Southern Weekend, 13 March 98 (FBIS, 13 March 98).

<sup>38</sup>Chinese officials had barred the importation of U.S. poultry products following the discovery of one case of low-pathogenic avian flu in a bird in Delaware in February 2004. U.S. Department of Agriculture Foreign Agricultural Service, China Poultry and Products Semi-Annual 2005 Global Agricultural Information Network Report, 1 February 05, 3.

<sup>39</sup>“Measured Progress” at JCCT Meeting,” Washington Trade Daily (Online), 12 July 05 (“The agriculture secretary also announced the approval by China of NK603, a variety of Round Up Ready corn—bringing the total Chinese biotech approvals to eight varieties of corn, two of cotton, seven of canola and one variety of soybeans.”).

<sup>40</sup>“U.S., China Agree to Food Safety Understanding at JCCT Meetings,” Inside U.S.-China Trade (Online), 13 July 05.

<sup>41</sup>U.S. Department of Agriculture Economic Research Service, China’s Agricultural Imports Boomed During 2003–04, May 05, 2.

<sup>42</sup>In late 2004, U.S. and Chinese officials reached an agreement in principle to restart imports of certain low-risk bovine products from the U.S. but these primarily constitute non-edible products that either contain no bovine products (cattle feed), reproductive materials (bull semen and embryos), and bovine products that have no proteins (non-protein beef tallow). “U.S., China Reach Deals to Resume Trade in Beef Products, Feed,” Inside U.S.-China Trade (Online), 2 December 04. Importation of some of those products resumed in July 2005. General Administration of Quality Supervision, Inspection, and Quarantine Announcement No. 97 [2005 nian di 97 hao], issued 11 July 05.

<sup>43</sup>China banned imports of U.S. beef following the discovery in December 2003 of a single cow in the U.S. herd with Bovine Spongiform Encephalopathy (BSE), commonly known as mad cow. “USDA BSE Update,” U.S. Department of Agriculture (Online), 25 December 03. The U.S. Department of Agriculture has implemented a system, in place since June 2004, that has dramatically increased the number of U.S. cows tested for BSE and the current surveillance program



complies with international standards maintained by the World Organisation for Animal Health (commonly known as OIE) for certification that beef is safe. "Statement by Agriculture Secretary Mike Johanns Regarding the OIE's Adoption of Changes to the International Animal Health Code Chapter on BSE," U.S. Department of Agriculture (Online), 26 May 05.

<sup>44</sup>These two bans ended in late 2004, except for cherries from California. Office of the USTR, 2005 National Trade Estimate Report on Foreign Trade Barriers, 90–1.

<sup>45</sup>The maximum residual level has not been enforced yet. *Ibid.*, 91. WTO Members may avoid a claim that their phytosanitary measure lacks a scientific basis if they rely on an international standard. WTO Agreement on the Application of Sanitary and Phytosanitary Measures, arts. 3.1, 3.3.

<sup>46</sup>Rebates of VAT paid upon export exist for many products but this year the rebate appears to provide a subtle means to effect a specific transfer payment to corn producers. By calculating the rebate from a fixed base price instead of the contract price for corn, Chinese authorities can raise the rebate in spite of market conditions. For 2005, even though the market price has dropped following a large 2004 harvest, the fixed base price has increased from 860 RMB/ton to 1100 RMB/ton. This artificially raises the value of the VAT export rebate from 112 RMB/ton to 143 RMB/ton, regardless of contract price. U.S. Department of Agriculture Global Agricultural Information Network (GAIN) Report, People's Republic of China Grain and Feed Corn Trade Update 2005, 21 March 05, 3. This is while corn exports from China have been increasing. In early 2005, the U.S. Foreign Agricultural Service raised by one-third its estimate of the value of corn exports from China, all regulated by the Chinese government. In February 2005, the Chinese government issued a 3 million metric ton (mmt) corn export quota, compared to a 1.4 mmt export quota issued for the first half of 2004. China's trade in corn is primarily with countries in the Asia-Pacific region and, except for some small quantities in border areas, is all out-bound. These subsidies could affect U.S. corn exports by undercutting the price for corn in existing U.S. overseas markets, but since China's corn exports are still small compared to those of the United States, this effect is probably not occurring yet. China does not import corn from the United States. U.S. Department of Agriculture Global Agricultural Information Network (GAIN) Report, People's Republic of China Grain and Feed Corn Trade Update 2005, 21 March 05, 2–3.

<sup>47</sup>Office of the USTR, 2005 National Trade Estimate of Foreign Trade Barriers, 94; Working Party Report on the Accession of the People's Republic of China to the WTO, 10 November 01, para. 234. The WTO Agreement on Agriculture allowed its original exporting members to eliminate impermissible export subsidies over a period of years. "Agriculture: Fairer Markets for Farmers," World Trade Organization (Online). Because finding a subsidy requires an investigation and interpretation of the relevant rules, discussions on these issues are always ongoing, often with no resolution for years. Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 58.

<sup>48</sup>Working Party Report on the Accession of the People's Republic of China to the WTO, 10 November 01, para. 234. Once eliminated, China may not introduce any new export subsidies. WTO Agreement on Agriculture, art. 9.

<sup>49</sup>Notification of the People's Republic of China, WTO Committee on Agriculture, 7 September 04; and Notification of the People's Republic of China, WTO Committee on Agriculture, 5 April 05.

<sup>50</sup>The U.S. government has reported on the Chinese government's changing approach to the agricultural sector, from a source of tax revenue in both food and cash terms to an eventual participant in export-led growth. Recent changes have seen ineffective attempts to provide structural support. In 2004, the Chinese government began to attempt to make transfers that would directly benefit farmers. United States Department of Agriculture Economic Research Service Electronic Outlook Report, China's New Farm Subsidies, 28 February 05, 2.

<sup>51</sup>The Ministry of Commerce announced the creation of a mechanism to address inconsistent application of law in 2002 but it is not clear whether agricultural agencies have instituted similar mechanisms nor the current status of the MOFCOM office. Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 83.

<sup>52</sup>China and the WTO: Assessing and Enforcing Compliance, Hearing of the U.S.-China Economic and Security Review Commission, Statement submitted by Gary C. Martin, President and Chief Executive Officer, North American Export Grain Association, 3–4 February 05, 353 (asserting that the requirements of AQSIQ's document No. 73 have given inspection and quarantine officials the ability to cause these problems for U.S. grain shipments).

<sup>43</sup>*Ibid.*, 358.

<sup>54</sup>Protocol of Accession of the People's Republic of China to the WTO, Part I.2(C)2.

<sup>55</sup>U.S. Chamber of Commerce, China's WTO Implementation: A Three-Year Assessment, September 04, 10; Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 82; American Chambers of Commerce, PRC and Shanghai, 2004 White Paper, 28.

<sup>56</sup>For example, drafts of the Anti-Monopoly Law, under consideration for almost a decade, have been widely circulated among foreign and domestic experts.

<sup>57</sup>Protocol on the Accession of the People's Republic of China to the WTO, I.2(C)2.

<sup>58</sup>The Law has been through over twenty drafts. The drafting group, which was at the State Economic and Trade Commission (SETC) and moved to the Ministry of Commerce in 2003 when some of SETC's functions were absorbed by the Ministry of Commerce, submitted a final draft to the State Council's Legal Affairs Office for consideration. Two sections of the American Bar Association provided comments to the drafting group in 2003 while the draft was still at the Ministry of Commerce. American Bar Association (Online), Joint Submission of the American Bar Association's Sections of Antitrust Law and International Law and Practice on the Proposed Anti-Monopoly Law of the People's Republic of China, 15 July 03. Three Sections of the ABA provided additional comments to a subsequent draft this year after the State Council returned the draft to MOFCOM for further redrafting. American Bar Association (Online), Joint Submission of the American Bar Association's Sections of Antitrust Law, Intellectual Property Law and

International Law on the Proposed Anti-Monopoly Law of the People's Republic of China, 19 May 05. While the comments are publicly available, as indicated in these citations, the State Council provides the drafts themselves on the condition that they not be shared outside the group responsible for drafting the comments.

<sup>59</sup>Office of the USTR, Results of Special 301 Out-of-Cycle Review on China, 4.

<sup>60</sup>The first publication of the Interpretation was on December 22, 2004, the day it became effective, even though the document itself is dated December 8, 2004. If the Chinese authorities had sought comments on the draft before promulgating the final Interpretation, they could have answered certain complaints about the infringement valuation methodology and the high threshold of infringement required to transfer cases from administrative to criminal enforcement.

<sup>61</sup>Office of the USTR, 2004 Report to Congress on China's WTO Compliance, 81.

<sup>62</sup>*Ibid.*, 82.

<sup>63</sup>State Council, CPC Central Committee Opinion on Advancing the Improvement of Government Openness [Guanyu jinyibu tuixing zhengwu gongkai de yijian], issued 24 March 05.

<sup>64</sup>*Ibid.* sect. 2 ("It is required that all individual items regarding administrative management and public service should be accurately published, except for those related to state secrets and commercial secrets or personally identifiable information received lawfully, strictly in accordance with laws, regulations, and related policy rules.")

<sup>65</sup>Protocol of Accession of the People's Republic of China to the WTO, Part I.2(D) ("Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.")

<sup>66</sup>Veron, Mei-Ying Hung, "China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform," 52 Am. J. Comp. L. 77, 79–80.

<sup>67</sup>*Ibid.*, 81–2.

<sup>68</sup>Ministry of Commerce Measures for the Administration of Foreign Investment in the Commercial Sector [Waishang touzi shangye qiye guanli banfa], issued 16 April 04.

<sup>69</sup>American Chambers of Commerce, PRC and Shanghai, 2004 White Paper, 164.

<sup>70</sup>*Ibid.*, 162.

<sup>71</sup>*Ibid.*, 166 (noting that trade and distribution rights face many barriers protecting local and regional markets); World Bank, China and the WTO: Accession, Policy Reform, and Poverty Reduction Strategies, 7 September 04, 147–8 (This local protectionism is "evident at the departmental and district levels . . ." through ". . . policies and regulations [that] are often designed according to the self-interest of the department or district involved. . . . Local governments do not have identical rules and regulations, and they always want to protect their local companies.")

<sup>72</sup>"The U.S.-China Joint Commission on Commerce and Trade (JCCT) Outcomes on Major U.S. Trade Concerns," U.S. Department of Commerce and Office of the USTR.

<sup>73</sup>*Ibid.*

<sup>74</sup>Regulations on the Administration of Direct Selling [Zhixiao guanli tiaoli], issued 23 August 05; Regulations Prohibiting Pyramid Selling [Jinzhi chuanxiao tiaoli], issued 23 August 05. Neither of these measures were published until September 3, 2005.

<sup>75</sup>PRC Government Procurement Law, enacted 29 June 02, art. 10.

<sup>76</sup>"The U.S.-China Joint Commission on Commerce and Trade (JCCT) Outcomes on Major U.S. Trade Concerns," U.S. Department of Commerce and Office of the USTR.

<sup>77</sup>*Ibid.*

<sup>78</sup>Those measures define domestic software and then require government agencies to purchase domestic software and software-related services. Measures for the Implementation of Software Government Procurement (Version Seeking Comments) [Ruanjian zhengfu caigou shishi banfa (zhengqiu yijiangao)], issued 18 April 05, art. 2 ("These measures refer to domestic software including domestic software products and domestic software services. Domestic software products take final form in the PRC, their copyright belongs to a PRC natural or legal person or other organization, and domestic development cost are not less than 50 percent of the total development cost of the software product. Domestic software services are computer information systems integration, information systems engineering inspection as well as other related specialized technology services furnished by a PRC natural or legal person or other organization, and of which the part of the software services that are foreign-supplied services do not exceed 30 percent of the service program's cost.")

<sup>79</sup>"Industry Says China Software Rule Threatens \$100 Million in Exports," Inside U.S.-China Trade (Online), 20 January 05; U.S.-China Economic Relations, Hearing of the Committee on Finance, United States Senate, 23 June 05, Opening Statement of Chairman Grassley, 2. Chinese press reports on software procurement stress the importance of using such rules to take markets away from foreign suppliers. "Chinese Domestic Software Breaks Microsoft Monopoly, Gets the Upper Hand in Government Procurement" [Guochan ruanjian dapao weiruan longduan, zhengfu caigou shuliang zhan youshe], Xinhua (Online), 28 March 05.

<sup>80</sup>PRC Auto Industry Development Policy [Qiche chanye fazhan zhengce], issued 21 May 04.

<sup>81</sup>*Ibid.*, art. 13.

<sup>82</sup>*Ibid.*, art. 4.

<sup>83</sup>Management Measures for Imports of Auto Parts Having the Characteristics of a Complete Automobile [Guocheng zhengche tezhengde qiche lingbujian jinkou guanli banfa], issued 28 February 05, art. 21.

<sup>84</sup>The Auto Industry Development Policy seeks the development of a strong export industry but also specifically proscribes misuse of foreign intellectual property. PRC Auto Industry Development Policy, arts. 4 and 20.

<sup>85</sup>"GM Charges Chery for Alleged Mini Car Piracy," China Daily (Online), 18 December 04. The SPC transferred the case to the Beijing No. 1 People's Court in 2005. "GM Daewoo Files Suit Against Chery," China Daily (Online), 9 May 05.

<sup>86</sup>Although Chery was converted into a privately-owned enterprise after it ended its affiliation with the Shanghai Automotive Industry Corporation Group in 2003, it nevertheless received

tens of millions of dollars for research and development from Ministry of Science and Technology in 2004. Su Yang, "Give Advice to Chery" ["Zhizhao" Qirui], *Business Financial Global* (Online), 1 May 05.

<sup>87</sup>GM Daewoo Files Suit Against Chery," *China Daily* (Online), 9 May 05.

<sup>88</sup>GM Sues Chery's QQ for Unfair Competition: Plagiarizing the Spark" [Tongyong dayu qisu qirui QQ buzheng jingzheng: chaoxi xuefolan], *China Youth Daily* (Online), 17 December 04.

<sup>89</sup>Jim Mateja, "Why is GM Chery-picking a fight with Bricklin?," *Chicago Tribune* (Online), 18 May 05; "PRC Car Maker Vows To Go Ahead With Overseas Expansion Despite Piracy Allegations," *China Daily*, 23 May 05 (FBIS 23 May 05) (noting that GM has not confirmed that it will take this action).

<sup>90</sup>Ministry of Commerce Auto Trade Policy [Shangwubu qiche maoyi zhengce], issued 10 August 05.

<sup>91</sup>*Ibid.*, art. 45.

<sup>92</sup>*Ibid.*, art. 37.

<sup>93</sup>"MOFCOM Market Development Department Officials Decipher the 'Auto Trade Policy'" [Shangwubu shichang jianshesi fuzeren jiedu "qiche maoyi zhengce"], *Xinhua* (Online), 23 August 05.

#### Notes to Section VI—Tibet

<sup>1</sup>Steven Marshall and Susette Cooke, *Tibet Outside the TAR: Control, Exploitation and Assimilation: Development with Chinese Characteristics* (Washington D.C.: self-published CD-ROM, 1997), Table 7. The 13 autonomous areas include the provincial-level Tibet Autonomous Region (TAR) as well as 10 Tibetan autonomous prefectures and two Tibetan autonomous counties located in Qinghai, Gansu, Sichuan, and Yunnan Provinces. The 13 areas are contiguous and total 2.24 million square kilometers (865,000 square miles).

<sup>2</sup>Bureau of East Asian and Pacific Affairs, U.S. Department of State, *Report on Tibet Negotiations*, April 2005. The Report is mandated by Section 611 of the Foreign Relations Authorization Act, 2003, and was sent to the Congress in April 2005.

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.* "Encouraging substantive dialogue between Beijing and the Dalai Lama is an important objective of this Administration. The United States encourages China and the Dalai Lama to hold direct and substantive discussions aimed at resolution of differences at an early date, without preconditions. The Administration believes that dialogue between China and the Dalai Lama or his representatives will alleviate tensions in Tibetan areas and contribute to the overall stability of China."

<sup>5</sup>Laurence Brahm, "Conciliatory Dalai Lama Expounds on Winds of Change," *South China Morning Post* (Online), 14 March 05.

<sup>6</sup>U.S. State Department, *Report on Tibet Negotiations*.

<sup>7</sup>In addition to serving as the Dalai Lama's Special Envoy, Lodi Gyari is the Executive Chairman of the International Campaign for Tibet (ICT). According to the ICT mission statement, ICT "promotes self-determination for the Tibetan people through negotiations between the Chinese government and the Dalai Lama." The ICT Web site describes Tibet as an "occupied country" of 2.5 million square kilometers (965,000 square miles) with Lhasa as its capital.

<sup>8</sup>"Statement by Special Envoy Kasur Lodi Gyari, Head of the Delegation to China," *Tibetan Government-in-Exile* (Online), 13 October 04. The envoys met Liu Yandong, Vice Chairperson of the Chinese People's Political Consultative Committee and head of the United Front Work Department of the Chinese Communist Party (UFW); Zhu Weiqun, the deputy head of the UFW; Chang Rongjung, UFW Secretary General; and other officials in Beijing. The delegation visited Lhasa, Tashi Lhunpo Monastery, and Samye Monastery in the TAR, and several counties in Ganzi Tibetan Autonomous Prefecture (TAP), including Xinlong, Lodi Gyari's birthplace.

<sup>9</sup>*Ibid.*

<sup>10</sup>"Dalai Lama's Envoys Meet Chinese Officials in Switzerland for Fourth Round of Talks," *Tibetan Government-in-Exile* (Online), 1 July 05. The envoys met with Zhu Weiqun and Sithar of the UFW. (Zhu is also a "senior official" of the State Council Information Office according to "Economy Grows in Minority Regions," *China Daily* (Online), 31 May 05.)

<sup>11</sup>"Statement by Special Envoy of His Holiness the Dalai Lama Kasur Lodi Gyari, Head of the Tibetan Delegation for the Fourth Round of Meetings with the Chinese Leadership," *Tibetan Government-in-Exile* (Online), 7 July 05.

<sup>12</sup>The Tibetan government-in-exile's representation of Tibet exceeds the total area of Chinese-designated Tibetan autonomy by about 100,000 square miles. Aside from pockets of long-term Tibetan settlement in Qinghai province, most of that area is made up of autonomous prefectures or counties allocated to other ethnic groups in Qinghai, Gansu, Sichuan, and Yunnan provinces. The area includes substantial Han Chinese populations, some established for centuries.

<sup>13</sup>"Spokesman: Differences on Tibet's Definition Persist Between China, Dalai Lama," *Associated Press* (Online), 8 July 05.

<sup>14</sup>Surojit Mahalanobis, "Options in Exile," *Times of India* (Online), 6 June 03. For example, during this interview in June 2003, Samdhong Rinpoche said, "In Hong Kong, the Chinese have agreed to a one-country-two-systems policy. The Dalai Lama is negotiating such a status for Tibet." He said that "genuine autonomy" means, "A little more than what Hong Kong enjoys."

<sup>15</sup>"The Statement of the Kashag on the 46th Anniversary of the Tibetan People's Uprising Day," *Tibetan Government-in-Exile* (Online), 10 March 05. "After the return of the third visit of His Holiness's envoys last year, and carefully studying the minutes of their discussions, we have decided to put more efforts towards negotiations. . . . [T]he entirety of the Tibetan population having legitimate rights within the constitutional framework of the People's Republic of China to enjoy genuine national regional autonomy is the legitimate requirement of the Tibetan people. Therefore, the need of such an autonomy, equally and uniformly practiced amidst all the

Tibetan people, has already been emphasized; not just once but many times. We would like to once again state that this basic principle can not be changed at all.”

<sup>16</sup>“We Have To Accept Ground Realities,” Outlook India (Online), 19 March 05.

<sup>17</sup>“Dalai Lama More and More Unpopular Among Tibetans, Says Chairman,” Xinhua, 31 May 05 (FBIS, 31 May 05). Chairman of the TAR government Jampa Phuntsog (Xiangba Pingcuo) said, “Dalai Lama had before put forward a series of ideas puffing [as received] high degree autonomy in Tibet or establishing a ‘big Tibetan area’ that involves four more Chinese provinces of Sichuan, Yunnan, Qinghai and Gansu. However, according to the Chinese history, there was only one ‘big Tibetan area’ about one thousand years ago in southwest China but no more reappeared thereafter. As far as today’s Tibet is concerned, such an area is absolutely nothing but impossible.”

<sup>18</sup>Aloke Tikku, “Dalai Envoys Plan China Talks,” The Telegraph, Calcutta (Online), 9 March 05. Samdhong Rinpoche referred to the “non-negotiable” demand for autonomy for all Tibetans and said, “The Chinese thought we were seeking consolidation of Tibetan areas and eventually independence. Whether the Tibetans then wanted to be governed as one administrative entity or separately is something that can be looked at later.”

<sup>19</sup>“Dalai Lama More and More Unpopular Among Tibetans, Says Chairman,” Xinhua. Chairman of the TAR government Jampa Phuntsog said, “What Dalai and some Western forces really want is nothing but splitting Tibet from China. Whatever the names he invents for Tibetan independence, his nature will remain the same.”

<sup>20</sup>“PRC FM Spokesman: US Must Not Use Tibet To Interfere in China’s Internal Affairs,” Xinhua, 24 April 05 (FBIS, 24 April 05).

<sup>21</sup>“Transcript: Presidents Clinton, Jiang Debate Rights, Tiananmen,” U.S. Department of State (Online), 27 June 98. During the televised debate President Clinton said, “I reaffirmed our longstanding one-China policy to President Jiang and urged the pursuit of cross-strait discussions recently resumed as the best path to a peaceful resolution. In a similar vein, I urged President Jiang to assume a dialogue with the Dalai Lama in return for the recognition that Tibet is a part of China and in recognition of the unique cultural and religious heritage of that region.” President Jiang responded, saying, “Just now President Clinton also mentioned the Tibetan issue and the dialogue with the Dalai Lama. Actually, as long as the Dalai Lama can publicly make the statement and a commitment that Tibet is an inalienable part of China and he must also recognize Taiwan as a province of China, then the door to dialogue and negotiation is open.”

<sup>22</sup>“TSGs and the Struggle of the Tibetan People,” Department of Information and International Relations, Tibetan Government-in-Exile (Online), May 2000; Speech by Secretary Kesang Y. Takla to the Third International Conference of Tibet Support Groups, Berlin, 11–14 May 00. “First of all I believe that it is the responsibility of His Holiness to speak for the Tibetan people, for the status of Tibet, which he has always consistently done, and it is entirely for the people of Taiwan to speak their voice.”

<sup>23</sup>PRC Law on Regional Ethnic Autonomy, adopted 31 May 84, amended 28 February 01, preamble: “The implementation of regional autonomy of minority nationalities embodies the spirit of the state fully respecting and protecting the right of every minority nationality to manage their own internal affairs as well as the principle of the state adhering to the principle of equality, unity, and common prosperity for all nationalities.”

<sup>24</sup>Ibid., art. 7: “Organs of national autonomous areas should place the overall interests of the state in the first place and actively fulfill all tasks handed down by higher-level state organs.”

<sup>25</sup>Theodore C. Sorenson and David L. Phillips, *Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case* (Cambridge, Mass.: Harvard University, Belfer Center for Science and International Affairs, 2004), 45.

<sup>26</sup>China’s Regional Ethnic Autonomy Law: Does it Protect Minority Rights?, Staff Roundtable of the Congressional-Executive Commission on China, 11 April 05, Written Statement submitted by David L. Phillips, Senior Fellow, Council on Foreign Relations.

<sup>27</sup>Theodore C. Sorenson and David L. Phillips, *Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case*, 78.

<sup>28</sup>Ibid., 78.

<sup>29</sup>Tashi Rabgey and Tseten Wangchuk Sharlho, *Sino-Tibetan Dialogue in the Post-Mao Era: Lessons and Prospects* (Washington: East-West Center, 2004), ix.

<sup>30</sup>Ibid.

<sup>31</sup>In May 2002, a Commission staff delegation visited the Central Nationalities University and the Chinese Center for Tibetan Studies in Beijing, the Southwest Minority Nationalities University and the Sichuan University Center for Tibetan Studies (Chengdu, Sichuan province), and the Tibet Academy of Social Sciences (Lhasa, TAR). In September 2003, a Commission staff delegation met with staff of the Qinghai Province Ethnic Minority Institute (Xining, Qinghai province), and visited the Huangnan TAP Teacher Training College and the Tongren Tibetan Language Middle School (Tongren, Qinghai province). In April 2004, a Commission staff delegation visited the Chinese Center for Tibetan Studies in Beijing, the Northwest Nationalities University (Lanzhou, Gansu province), and the Gannan TAP Teacher Training School (Hezuo, Gansu province). Commission staff impressions were based on meetings with administrators, faculty, and students, visits to campus facilities, statistics on graduation, and private meetings with experts that corroborated Commission impressions.

<sup>32</sup>Tabulation on Nationalities of 2000 Population Census of China, Department of Population, Social, Science and Technology Statistics, National Bureau of Statistics, and Department of Economic Development, State Ethnic Affairs Commission (Beijing: Ethnic Publishing House, September 2003). Table 2–3, based on persons aged 15 and over, shows that the Dongxiang, Salar, Baoan, Monba, and Lhoba nationalities have higher rates of illiteracy than Tibetans. Table 2–3 provides rates of illiteracy for Mongols and Uighurs of 8.40 and 9.22 percent, respectively.

<sup>33</sup>Tabulation on Nationalities of 2000 Population Census of China. Data provided in Table 2–3 show that 9.08 percent of China’s population aged 15 and over is illiterate; 47.55 percent of

Tibetans aged 15 and over are illiterate. Tabulation on the 2000 Population Census of the People's Republic of China (Beijing: China Statistics Press, August 2002). Data provided in Table 1-8 show that 89,629,436 of 1,156,700,293 persons aged six and over in China have had no schooling.

<sup>34</sup> Tabulation on the 2000 Population Census of the People's Republic of China. Table 1-9 provides provincial rates of illiteracy based on the illiterate population aged 15 and over.

<sup>35</sup> Ibid. Data provided in Table 2-2 show that the highest level of education attained by 35.2 percent of Tibetans aged 6 and over is primary school. Ibid. Data provided in Table 1-8 show that the highest level of education attained by 38.2 percent of China's population aged 6 and over is primary school.

<sup>36</sup> Ibid. Table 2-2 shows that of 1,061,196,336 Han aged six and over, 93,677,240 (8.83 percent) reached senior middle school and 13,323,659 (1.26 percent) reached university. Of 4,791,241 Tibetans aged six and over, 81,366 (1.70 percent) reached senior middle school and 18,315 (0.38 percent) reached university.

<sup>37</sup> Tabulation on Nationalities of 2000 Population Census of China. Table 2-1a shows that 8,845 of 137,545 TAR Tibetans aged six and over, and classified as "city" residents, reached senior middle school as their highest level of educational attainment; Table 2-1b shows that 5,400 of 211,990 TAR Tibetans aged six and over, and classified as "town" residents, reached senior middle school; Table 2-1c shows that 5,999 of 1,808,859 TAR Tibetans aged six and over, and classified as "rural" residents, reached senior middle school.

<sup>38</sup> Ibid. Table 1-2 shows 2,427,168 Tibetans in the TAR. Table 1-2c shows that 2,058,011 of them are classified as "rural."

<sup>39</sup> Ibid. Table 1-2 shows the total Tibetan population as 5,416,021. Table 1-2a shows the "city" population of Tibetans as 221,355. Table 1-2b shows the "town" population of Tibetans as 473,467. Table 1-2c shows the "rural" population of Tibetans as 4,721,199.

<sup>40</sup> "Dalai Lama More and More Unpopular Among Tibetans, Says Chairman," Xinhua.

<sup>41</sup> Wei Wu, "Tibet at Best Period of Development, Stability," Xinhua (Online), 2 June 05. Chairman of the TAR Jampa Phuntsog said that TAR GDP grew by more than 10 percent for 10 consecutive years and reached 12.2 percent in 2004 (21.154 billion yuan). Per capita GDP was 7,772 yuan, ranking 23rd among 31 provinces, autonomous regions, and municipalities. The annual per-capita net income of Tibetan farmers and herdsman was 1,861 yuan. The disposable income of the urban Tibetans was 8,200 yuan.

<sup>42</sup> Wei Wu, "Tibet at Best Period of Development, Stability." Chairman of the TAR Jampa Phuntsog said in an interview, "The central government has poured an annual average of more than 10 billion yuan [U.S. \$1.2 billion] into Tibet in the past years to start big projects and update local infrastructure. Together with investment from other channels including civil investment, there is more than 16 billion yuan [U.S. \$1.93 billion] of investment poured into Tibet annually." These figures compare to a 21.154 billion yuan GDP in the TAR in 2004.

<sup>43</sup> Tibet Information Network (Online), "High TAR Wages Benefit the Privileged," 10 February 05. "Given the predominance of the state sector in 'staff and worker' employment in the TAR, it is worthwhile to look at the specific state-sector wages more closely. Again, average money wages of state-sector staff and workers in the TAR were the highest in the PRC in 2002, but fell to third place in 2003, just behind Beijing and Shanghai. Average state-sector wages in 2003 were 27,611 yuan in the TAR, compared to 28,406 for Shanghai, and 28,464 yuan for Beijing."

<sup>44</sup> "Tibetans Lose Ground in Public Sector Employment in the TAR," Tibet Information Network (Online), 20 January 05. "These reductions in employment have come at a time when the state-sector has been one of the most important and most dynamic sources of growth in the TAR. GDP growth rates have been the highest in Western China in 2002 and 2003, largely fuelled by expansions in state-subsidized investment and administrative spending on the state-sector itself. A stronger involvement in state-sector employment therefore bears a high potential for increasing Tibetan employment. Instead, Tibetan employment in the state-sector has been falling, along with state-sector employment in general. Paradoxically, employment, especially Tibetan employment, has been shrinking in precisely the parts of the economy that have been growing fastest."

<sup>45</sup> Ibid.

<sup>46</sup> "Qinghai-Tibet Railway to Start Trial Operation in 15 Months," People's Daily (Online), 12 April 05. The 2001 estimated budget for construction of the 1,142 kilometer section (710 miles) was 26.2 billion yuan. Expenditure for 2004 was 6.8 billion yuan, according to Vice Minister of Railways Sun Yongfu, and the 2005 allocation is 5.5 billion yuan. With two-thirds of the work on "key projects" completed, the cost has been 19.8 billion yuan. (In an interview with Commission staff, a Chinese official stated that the cost of the railroad is estimated at 30 billion yuan.)

<sup>47</sup> "While Inspecting Qinghai, Wen Jiabao Points Out That It Is Necessary To Give Play to the Pioneering Spirit of Hard Struggle in Pushing Forward the Grand Strategy of Large-Scale Development of China's Western Region," Xinhua, 2 May 05 (FBIS, 3 May 05).

<sup>48</sup> "Tibetans Appeal Compensation Over Loss of Homes, Land," Radio Free Asia (Online), 9 May 05. Tibetans petitioned authorities at township, county, and regional level about the reduced compensation, but received no help. A local Party official who "tried to speak out on behalf of his community" was removed from his post. (In interviews with Commission staff, private sources reported incidents similar to the RFA account. In some cases, authorities warned dissatisfied Tibetans to keep silent or face further losses.)

<sup>49</sup> Li Dezhu, Minister of State Ethnic Affairs Commission, "Large-Scale Development of Western China and China's Nationality Problem," Seeking Truth, 1 June 00 (FBIS, 15 June 00). "It is conceivable that a phenomenon of 'the peacock flying west' will appear in keeping with the execution of large-scale western development. Two way population flow is an inevitable trend of economic development, will promote cultural exchange, and will help to raise the cultural level of the western regions."

<sup>50</sup> Provisions of the State Council for Implementing the Law on Regional Ethnic Autonomy of the People's Republic of China, issued 26 May 05, art. 29. "The state shall encourage and sup-

port professionals of all levels and types to work or start their businesses in national autonomous areas. Local people's governments shall provide them with preferential and convenient working and living conditions. Appropriate consideration in terms of employment and schooling shall be given to the families and children of the professionals of Han nationality and other nationalities who go to work in national autonomous areas in remote areas and frigid zones where conditions are relatively harsh."

<sup>51</sup>"No Immigration of Other Ethnic Groups: Tibetan Official," Xinhua (Online), 26 September 03. Jampa Phuntsog, TAR Deputy Party Secretary, said "there has been no immigration of other ethnic groups into Tibet." "Ethnic Tibetans Remain Majority in Tibet: Tibetan Chairman," People's Daily (Online), 5 September 02. Legchog, then TAR Deputy Party Secretary, said that it was an "absurdity" to suggest that Chinese population could overtake Tibetans. Yixi Jiacao, "Raidi Meets Hong Kong Journalists, Gives Interview," Tibet Daily, 7 August 01 (FBIS, 7 August 01). Ragdi (Raidi), then TAR Executive Deputy Party Secretary, said "[S]ome people say that with immigration, the Tibetan population is greatly reduced and Tibetan culture will be extinguished. There is absolutely no basis for such talk."

<sup>52</sup>One of the most common concerns expressed by Tibetans speaking privately is that the Han population has increased steadily and significantly since the 1980s, especially in towns and cities. Commission staff have heard similar comments from foreign experts who have visited Tibetan areas over a period of years.

<sup>53</sup>Tabulation on China's Nationality: Data of 1990 Population Census (Beijing: China Statistical Press, 1993); Tabulation on Nationalities of 2000 Population Census of China. According to census data, Han population decreased in 10 areas of Tibetan autonomy (listed in order of size of decrease): Guoluo prefecture (Qinghai), -25.0 percent; Hainan prefecture (Qinghai), -22.7 percent; Haibei prefecture (Qinghai), -20.2 percent; Huangnan prefecture (Qinghai), -19.2 percent; Yushu prefecture (Qinghai), -16.9 percent; Muli county (Sichuan), -16.1 percent; Aba prefecture (Sichuan), -14.3 percent; Haixi prefecture (Qinghai), -9.0 percent; Ganzi prefecture (Sichuan), -7.9 percent; Tianzhu county (Gansu), -0.9 percent.

<sup>54</sup>Compare Tabulation on China's Nationality: Data of 1990 Population Census with Tabulation on Nationalities of 2000 Population Census of China. Han population increased in three areas of Tibetan autonomy (listed in order of size of increase): TAR, +96.2 percent; Diqing prefecture (Yunnan), +13.9 percent; Gannan prefecture (Gansu), +2.0 percent.

<sup>55</sup>Tabulation on Nationalities of 2000 Population Census of China. The total Han population in the 13 Tibetan autonomous areas fell from 1.52 million in 1990 to 1.47 million in 2000.

<sup>56</sup>"Measures for Fifth National Population Census," National Bureau of Statistics of China (Online), 23 April 02. Chapter 2, Article 7, provides the following instructions:

The following persons should be enumerated in their own townships, towns and street communities:

(1) those who reside in the townships, towns and street communities and have had their permanent household registered there.

(2) those who have resided in the townships, towns and street communities for more than half a year but the places of their permanent household registration are elsewhere.

(3) those who have resided in the townships, towns and street communities for less than half a year but have been away from the place of their permanent household registration for more than half a year.

(4) those who live in the townships, towns and street communities during the population census but the places of their household registration have not yet settled.

<sup>57</sup>Census day was July 1 in 1990, and November 1 in 2000. The population of transient Han workers and vendors in Tibetan areas peaks during summer and is declining by November, undermining the reliability of direct comparison of 1990 and 2000 data. The shift of census day from July to November, however, may not be an adequate explanation for significant declines in Han population.

<sup>58</sup>Tibet Information Network, TIN Testimonies—Writing in Today's Tibet, 19 April 05. (TIN interview with a young Tibetan writer from Qinghai province.) "[I]n my own case, restrictions on what one can write about actually enthruses me to write even more. I was able to write political things. I was able to conceal political matter in my writing. They were not written openly. Generally I write the things that I know and that I feel. The things one is not allowed to write about, one has to write in a hidden way. For example, 'cuckoo' and 'elder brother' is written to represent the Dalai Lama and this could be explained or interpreted as having a different meaning if one is asked." TIN summarized: "While open criticism of the system, expressions of faith in the Dalai Lama and aspirations to greater freedom are off limits, demanding extensive self-censorship, descriptions of the Tibetan landscape, the celebration of Tibetan cultural icons, and even the use of the Tibetan language itself, are perceived as expressions of allegiance to one's 'nationality'."

<sup>59</sup>Human Rights in China (Online), "Tibetan Writer Persecuted for Praising Dalai Lama," 27 October 04.

<sup>60</sup>Ibid. HRIC sources reported that Tibet Journal was banned by the UFWD and the Guangdong Provincial Publishing Bureau.

<sup>61</sup>Ibid.

<sup>62</sup>"Five Tibetan Monks Jailed in Western China," Radio Free Asia (Online), 13 February 05. The monks are Abbot Tashi Gyaltzen, Tsultrim Phelgyal, Tsesum Samten, Jamphel Gyatso, and Lobsang Dargyal, of Dragkar Traldzong Monastery in Xinghai county. They are reportedly serving their sentences at a brick factory near Xining.

<sup>63</sup>"The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality," Topic Paper of the Congressional-Executive Commission on China, February 2003.

<sup>64</sup>Official sentencing document: Lhasa Municipal Intermediate People's Court, Criminal Court Judgment, No. 52 (2000). "Defendant Jinmei Danzeng Nima is guilty of the crime of attempting to split the country. He is sentenced to life in prison and shall be deprived of political rights

for his lifetime (prison term starting on the day this judgment goes into effect).” (Jigme Tenzin Nyima’s Buddhist name is Bangri Tsamtrul Rinpoche.)

<sup>65</sup>Ibid. Jigme Tenzin Nyima said in his own defense, “Without any evidence, I will absolutely deny having committed any crime adjudicated.” His defense counsel told the court, “Therefore, the facts do not clearly show that defendant Jigme Tenzin Nyima committed the crime of trying to split up the country as charged and the evidence is not sufficient.”

<sup>66</sup>“New Details on Cases of Tibetan Political Imprisonment,” Tibet Information Network (Online), 9 July 04. According to information based on official Chinese sources, Nyima Choedron received a sentence reduction of one year six months in 2002, and one year in 2003.

<sup>67</sup>United Nations Commission on Human Rights, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention, Opinion No. 13/2003, 26 November 03, 71.

<sup>68</sup>Ibid., 74.

“The Working Group emphasized, in the report on its visit to China (E/CN.4/1998/44/Add.2, para. 43) that ‘unless the application of these crimes is restricted to clearly defined areas and in clearly defined circumstances, there is a serious risk of misuse’. That appears to be the case in the present instance, inasmuch as the Government, in its reply, does not specify the nature of the activities of which the men were accused other than founding a peaceful association and distributing leaflets and mentions no evidence in support of the charges, or if they used violence in their activities.”

<sup>69</sup>United Nations Commission on Human Rights, Working Group on Arbitrary Detention, Decisions adopted by the Working Group on Arbitrary Detention, Decision No. 65/1993, 5 October 94.

<sup>70</sup>United Nations Commission on Human Rights, Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention: Addendum, Mission to China, 29 December 04, 22.

<sup>71</sup>United Nations Commission on Human Rights, Working Group on Arbitrary Detention, Opinions Adopted by the Working Group on Arbitrary Detention, Opinion No. 8/2000, 9 November 00, 70.

<sup>72</sup>Steven D. Marshall, *In the Interests of the State: Hostile Elements III—Political Imprisonment in Tibet 1987–2001* (London: Tibet Information Network, 2002), 3. There were nearly 700 known or likely Tibetan political prisoners by the end of 1995.

<sup>73</sup>Based on data available in the CECC Political Prisoner Database for 121 records in June 2005, 85 Tibetan political prisoners were known or believed to be serving prison terms, nine were serving sentences of re-education through labor, and 27 were awaiting sentencing or release, or were of uncertain status.

<sup>74</sup>The CECC issued its first Annual Report in 2002.

<sup>75</sup>Based on CECC Political Prisoner Database residence data current in June 2005 for Tibetan political prisoners, and official Chinese data on Tibetan population from the 2000 census:

(1) Lhasa prefecture had a rate of 80 Tibetan political prisoners per million Tibetans (31 political prisoners resided in Lhasa prefecture before detention; Lhasa prefecture had a Tibetan population of 387,124 in 2000);

(2) Ganzi prefecture, in Sichuan province, had a rate of 37 Tibetan political prisoners per million Tibetans (26 political prisoners resided in Ganzi prefecture before detention; Ganzi prefecture had a Tibetan population of 703,168 Tibetans in 2000);

(3) Changdu prefecture, in the eastern TAR, had a rate of 28.4 Tibetan political prisoners per million Tibetans (16 political prisoners resided in Changdu prefecture before detention; Changdu prefecture had a Tibetan population of 563,831 Tibetans in 2000);

(4) Aba prefecture, in Sichuan Province, had a rate of 26.4 Tibetan political prisoners per million Tibetans (12 political prisoners resided in Aba prefecture before detention; Aba prefecture had a Tibetan population of 455,238 Tibetans in 2000).

#### **Notes to Section VII—North Korean Refugees in China**

<sup>1</sup>James Seymour, “China: Background Paper on the Situation of North Koreans in China,” commissioned by United Nations High Commissioner for Refugees, Protection Information Section, January 2005, 17; Edward Cody, “N. Koreans Fleeing Hard Lives Discover New Misery in China,” *Washington Post* (Online), 7 March 05.

<sup>2</sup>Shin Joo Hyun, “Underground Burrow, a Refuge of North Korean Defectors—7 Years of Living Like Moles,” *The Daily NK*, 3 June 05 (FBIS, 3 June 05); “North Koreans Spent Years in Chinese Mountain Dugouts,” *Radio Free Asia* (Online), 14 July 05.

<sup>3</sup>Incite Productions, “Seoul Train,” documentary produced by Jim Butterworth and Lisa Sleeth, November 2004; *The Plight of North Korean Migrants in China: A Current Assessment*, Staff Roundtable of the Congressional-Executive Commission on China, 18 April 04, Testimony of Joel Charny, Vice President for Policy, Refugees International.

<sup>4</sup>James Seymour, “China: Background Paper on the Situation of North Koreans in China,” 18.

<sup>5</sup>“Hunger Strike Spreading Among Detained North Korean Refugees: Reports Indicate New Spirit of Protest,” *Life Funds for North Korean Refugees* Web site, 25 March 04.

<sup>6</sup>Article III(5) United Nations (United Nations High Commissioner for Refugees) and China, Agreement on the Upgrading of the UNHCR Mission in the People’s Republic of China to UNHCR Office in the People’s Republic of China, UNTS Vol. 1898/1899, 1–3237, 11 December 95, 61–71.

<sup>7</sup>Bureau of Population, Refugees, and Migration, U.S. Department of State, “The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them,” 11 March 05.

<sup>8</sup>Reiterated by a Foreign Ministry spokesman in June: “Illegal DPRK immigrants not refugees: Chinese FM Spokesman,” *Xinhua* (Online), 29 June 05.

<sup>9</sup>Democratic People's Republic of Korea Ministry of State Security and the People's Republic of China Ministry of Public Security, *Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas*, 1961.

<sup>10</sup>James Seymour, "China: Background Paper on the Situation of North Koreans in China," 10; Joel R. Charny, "Acts of Betrayal: The Challenge of Protecting North Koreans in China," *Refugees International*, April 2005.

<sup>11</sup>Interview with High Commissioner Ruud Lubbers," *Asahi Shimbun*, 4 August 03.

<sup>12</sup>James Seymour, "China: Background Paper on the Situation of North Koreans in China," 10.

<sup>13</sup>Figure cited in Joel R. Charny, "Acts of Betrayal: The Challenge of Protecting North Koreans in China," 5. *International Refugees* notes these figures are "problematic" given the lack of publicly available data and the fact that many North Koreans in China move back and forth across the border seeking temporary employment rather than political asylum.

<sup>14</sup>Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, *Country Report on Human Rights Practices—2004, China, including Tibet, Hong Kong, and Macau*, 28 February 05.

<sup>15</sup>"Beijing Turns Blind Eye to N. Korean Kidnappings," *Chosun* (Online), 19 January 05.

<sup>16</sup>U.S. Department of State, "The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them." North Korea has recently begun to distinguish between returned migrants who sought political refugee status in China and those who simply crossed the border in search of food or jobs. Treatment of the latter has reportedly improved in recent years, though anyone illegally crossing the border is still subject to two years of "labor correction."

<sup>17</sup>Joel Charny, remarks at *Refugees International* and the Center for Strategic and International Studies Briefing, 12 May 05.

<sup>18</sup>Convention Relating to the Status of Refugees, 28 July 51 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 50, art. 33.

<sup>19</sup>K. Platt, "N Korea Gets China's Cooperation on Refugee Returns," *Christian Science Monitor* (Online), 9 June 00.

<sup>20</sup>Joel R. Charny, "Acts of Betrayal: The Challenge of Protecting North Koreans in China."

<sup>21</sup>Joel Charny, remarks at *Refugees International* and the Center for Strategic and International Studies Briefing.

<sup>22</sup>"8 Suspected N. Korean Asylum Seekers Enter Japanese School in Beijing," *Voice of America* (Online), 9 March 05. These incidents occur on a regular basis. On October 15, 2004, 20 North Koreans entered the South Korean consulate, just days after 44 people disguised as Chinese construction workers climbed homemade ladders and vaulted into the Canadian Embassy in Beijing. North Koreans rushed into a South Korean International School in Beijing on October 22 and again on December 15, leading Chinese authorities to temporarily close the school on December 17. James Seymour, "China: Background Paper on the Situation of North Koreans in China," 22; "ROK Daily: School Interruption at Korean School in Beijing, China," *Tong-a Ilbo*, 17 December 04 (FBIS, 17 December 04).

<sup>23</sup>"8 Suspected N. Korean Asylum Seekers Enter Japanese School in Beijing," *Voice of America* (Online).

<sup>24</sup>James Seymour, "China: Background Paper on the Situation of North Koreans in China," 14. Appendix F, "Parliamentary Delegation to North Korea (DPRK)" Co-funded by Jubilee Campaign and CSW, 13–18 September 2003.

<sup>25</sup>The United Nations Working Group on Arbitrary Detention ruled Choi's deprivation of liberty as arbitrary. UNWGAD, Opinion No. 20/2005 (People's Republic of China), 11 June 2004.

<sup>26</sup>"Minister Held in Chinese Prison," *North Korean Refugees Web site*.

#### Notes to Section VIII—Developments in Hong Kong During 2005

<sup>1</sup>United States-Hong Kong Policy Act of 1992, Public Law No. 102–383, as enacted 4 April 90. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, enacted 4 April 90; Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, adopted 19 December 84.

<sup>2</sup>The Basic Law of the Hong Kong Special Administrative Region of the PRC, arts. 45 and 68.

<sup>3</sup>The chief executive (CE) is the head of the Hong Kong Special Administrative Region (HKSAR) and is accountable to both the Central People's Government of the PRC and the HKSAR. Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, enacted 4 April 90, art. 43.

<sup>4</sup>Article 46 of the Basic Law states that the term of office of the CE shall be five years.

<sup>5</sup>In 1999, the NCPSC issued an interpretation overturning a decision by the Hong Kong courts that would have allowed mainlanders with a Hong Kong parent to claim residency. In April 2004, the NCPSC interpreted the Basic Law to strike down a proposal allowing universal suffrage in the elections for the CE in 2007 and Legislative Council in 2008, despite widespread public approval in Hong Kong. See CECC, 2004 Annual Report, 104–6.

<sup>6</sup>Tung stepped down from office amidst growing public discontent with his governance. In December, Hu Jintao urged Tung in a videotaped meeting to "summarize [his] experience and identify inadequacies," which was widely interpreted as a public expression of Beijing's dissatisfaction with Tung's performance. In February, Tung was appointed a vice chairman of the Chinese People's Political Consultative Conference, setting the stage for his formal resignation as CE on March 10. For a detailed account of Tung's resignation process, see Frank Ching, "From Tung to Tsang: Hong Kong's Leadership Shuffle," *Jamestown Foundation China Brief*, 21 June 05, 4.

<sup>7</sup>A majority of the Hong Kong legal community, including the Hong Kong Bar Association and Legal Society, supports the viewpoint that the Basic Law only permits a five-year CE term



length. Bureau of East Asian and Pacific Affairs, U.S. Department of State, U.S.-Hong Kong Policy Act Report (Online), 1 April 05. According to Hong Kong political analysts, Beijing favored a two-year term because it still did not fully trust Donald Tsang, the front-runner in the July CE election who served as a civil servant under British rule, and therefore wanted a shorter term length as a probationary period. Helen Luk, "Next Hong Kong Leader to Serve Five Years," Associated Press, 27 April 05.

<sup>8</sup>On April 4, Carl Ching, president of the Grassroots Democratic Society, applied for the Hong Kong High Court to review the legality of a two-year CE term under the Basic Law. Albert Wong, "Grassroots Leader Files Judicial Challenge to Chief Executive Tenure," The Standard, 5 April 05 (FBIS, 5 April 05). In a joint letter to the Hong Kong government, a coalition of pro-democracy legislators called on the government to refrain from seeking an interpretation from the NPCSC. They pointed out that the Basic Law contains no provision that allows the government to make such a request. Dennis Eng, et al., "Hong Kong 'Activist' Seeks Judicial Review of Chief Executive Tenure," South China Morning Post, 5 April 05 (FBIS, 5 April 05). Despite the objections of the pro-democracy camp, Donald Tsang, the acting CE at the time, submitted a report on April 6 to the State Council, proposing that the State Council request that the NPCSC issue an interpretation to resolve the issue. Chris Hogg, "China to Settle New Hong Kong Chief Executive Row," BBC News (Online), 6 April 05.

<sup>9</sup>A draft interpretation was examined at the 15th session of the 10th NPCSC (April 24–27). "NPC Standing Committee Starts to Examine Draft Interpretation of HKSAR Basic Law," Xinhua, 25 April 05 (FBIS, 25 April 05). On April 27, the NPCSC formally endorsed the draft interpretation. "Hong Kong Chief Secretary Welcomes Basic Law Interpretation," RTHK Radio 3, 17 April 05 (FBIS, 27 April 05). For the full text of the interpretation, see "Comparisons-Explanations on NPC Draft Interpretation of Hong Kong Basic Law," Xinhua, 27 April 05 (FBIS, 27 April 05). For a detailed analysis of the legal and political dimensions of the interpretation, see National Democratic Institute for International Affairs, "The Promise of Democratization in Hong Kong: The 2005 Chief Executive Election," NDI Hong Kong Report #10, 21 June 05.

<sup>10</sup>Central authorities repeated the consultative exercises it adopted during its 2003 interpretation regarding universal suffrage. These consultative exercises included meetings with Hong Kong's legal sector and local deputies to the NPC, Chinese People's Political Consultative Conference and Election Committee. "Beijing Ruling Likely to Trigger 'Massive Street Protests' in Hong Kong," The Standard, 8 April 05 (FBIS, 8 April 05).

<sup>11</sup>"Beijing Invites Pro-Democracy Legislators to Air Views on Basic Law," South China Morning Post, 15 April 05 (FBIS, 15 April 05).

<sup>12</sup>Cannix Yau, "Martin Lee, 'Longhair' Not Included in Invite to Discuss Basic Law," The Standard (Online), 15 April 05 (FBIS, 15 April 05).

<sup>13</sup>A Hong Kong trial court convicted the demonstrators of obstructing a public place, willful obstruction of police, and (in the case of one demonstrator) assault. In 2003, a lower appeals court overturned the public obstruction convictions but upheld the willful obstruction and assault convictions. The CFA case upheld the appeals court's overturning of the public obstruction conviction and overturned the remaining convictions.

<sup>14</sup>In the Court of Final Appeal of the Hong Kong Special Administrative Region, Final Appeal No. 19 of 2004 (Criminal) (On Appeal from HCMA No. 949 of 2002) FACC No. 19 of 2004.

<sup>15</sup>Benjamin Wong, "Police Welcome Falun Gong Ruling," South China Morning Post (Online), 7 May 05.

<sup>16</sup>"A Balance Between Protesters' Rights and Public Interest Needed," China Daily (Online), 7 May 05.

<sup>17</sup>Ibid.

