

# CHINA'S CITIZEN COMPLAINT SYSTEM: PROSPECTS FOR ACCOUNTABILITY

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## ROUNDTABLE

BEFORE THE

### CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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## CHINA'S CITIZEN COMPLAINT SYSTEM: PROSPECTS FOR ACCOUNTABILITY

FRIDAY, DECEMBER 4, 2009

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
Washington, DC.

The roundtable was convened, pursuant to notice, at 2:02 p.m., in room 628, Dirksen Senate Office Building, Douglas Grob, Co-chairman's Senior Staff Member, presiding.

Also present: Charlotte Oldham-Moore, Staff Director; Anna Brettell, Senior Advisor; and Andrea Worden, Senior Advisor.

### OPENING STATEMENT OF DOUGLAS GROB, COCHAIRMAN'S SENIOR STAFF MEMBER, CONGRESSIONAL-EXECUTIVE COM- MISSION ON CHINA

Mr. GROB. Well, good afternoon, everybody. Thank you very much for attending our CECC roundtable on "China's Citizen Complaint System: Prospects for Accountability."

My name is Douglas Grob. I am Cochairman Sandy Levin's Senior Staff Member on the Commission staff, and on behalf of Congressman Levin, I would like to welcome you here and thank you very much for your attendance.

I am very pleased to appear here with this very distinguished panel. We will be discussing today China's citizen complaint system, sometimes called the petitioning system, or in Chinese, the *xinfang* system—*xinfang* meaning letters and visits. This system has imperial roots. It has long been an avenue outside the judicial system for citizens in China to present their grievances to authorities.

China has an extensive system of *xinfang* offices and personnel at all levels of government. Citizens petition on a wide range of issues—everything from minor disputes to the most egregious alleged abuses of power.

The *xinfang* system is one of the most widely misunderstood systems in China. Even a casual reading of Western reporting will reveal a wide range of portrayals of exactly what this system is. It is very easy to come away with a range of perceptions—or misperceptions—including that it's part of the formal legal system, that it exists side-by-side with the legal system, that it is independent of the legal system, that it is highly relevant to the legal system, or, that it is irrelevant to the legal system.

So today we hope to lend some clarity to these issues and to increase our understanding of whether *xinfang* is, in fact, an avenue for appeal, whether it is a mechanism for resolving disputes,

whether *xinfang* offices function with any formal investigatory power, or whether they are simply an agency referring disputes along the appropriate institutional path, performing some sort of a sorting function. To that end, we are extremely fortunate today to have one of the foremost scholars who has contributed perhaps more than anybody else in recent years to the enhancement of the clarity with which we understand the *xinfang* system in China, and we will be introducing Professor Minzner in just a moment.

Petitioners in China report widespread official disregard of complaints. They report human rights abuses. Authorities reportedly have harassed petitioners. There have been cases where petitioners have been sentenced to reeducation through labor and detention in “black jails”—extralegal detention centers—or detained in psychiatric institutions. And so we are also very fortunate to have another foremost expert, Meg Davis, on the panel to help us put a human face on some of these petitioner cases.

Finally, the reason why it is so critically important that we hold this roundtable today is that the *xinfang* system has come to the fore in recent years in part because authorities have reported increasing numbers of citizen complaints related to a wave of local department-level rules issued by authorities in many locales in China regarding so-called “abnormal petitioning.” It is believed that the new rules may be part of an effort to curb the number of petitioners generally, or part of an effort to curb the number of petitioners traveling to Beijing to seek redress that they may not have been able to find at the local level. We are very fortunate then to have also with us Professor Li Xiaorong, who can help us understand the contours of the petitioning population in China, why citizens continue to petition in the face of a very challenging environment for bringing grievances before the government, and who will outline the forms of official retaliation that have been documented against petitioners, including forms of extralegal detention.

So now, in order to get started, it is my very high privilege to introduce to you Dr. Anna Brettell, sitting to my right, Senior Advisor on the Commission staff and our staff specialist in this area, to present our witnesses to you.

**STATEMENT OF ANNA BRETTELL, SENIOR ADVISOR,  
CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Ms. BRETTELL. Thank you very much, Doug.

First, I'll introduce Carl Minzner, who is an Associate Professor of Law at Washington University in St. Louis in the School of Law. He specializes in Chinese law and politics. Before joining the law faculty, he served as Senior Counsel for the Congressional-Executive Commission on China and was an International Affairs Fellow at the Council on Foreign Relations.

He also served as a Euro-China Legal Education Fellow at Xibei Institute of Politics and Law in Xi'an. He previously practiced intellectual property law in the San Francisco Bay area, and clerked for Judge Raymond Clevenger, U.S. Court of Appeals for the Federal Circuit. He received a joint J.D./MIA degree from Columbia Law and the School of International and Public Affairs, and a BA in International Relations from Stanford University.

His published works include “Riots and Cover-Ups: Counter-productive Control of Local Agents in China,” and “*Xinfang*: An Alternative to Formal Chinese Legal Institutions.”

Next, we have Li Xiaorong. Professor Li has been a research scholar at the Institute for Philosophy and Public Policy of the University of Maryland since 1993, where she specializes in political and moral philosophy, ethics with a focus on human rights, cultural diversity, pluralism, and ethics of globalization. She has taught a graduate seminar on Philosophy, Politics, and Public Policy at the university.

She has published materials on numerous subjects, including human rights and cultural relativism, international justice, reproductive rights, and gender issues in developing countries. She’s the author of “Ethics, Human Rights and Culture,” a book published by Palgrave Macmillan, and many other academic articles.

Her research projects have won support from the National Endowment for Humanities, the McArthur Foundation, the U.S. Institute of Peace, and the Institute for Advanced Studies at Princeton.

Dr. Sara (Meg) Davis is the founder and executive director of Asia Catalyst, a nonprofit organization with an office in New York that partners with activists in Asia to launch innovative and self-sustaining programs and organizations that advance human rights, social justice, and environmental protection.

Dr. Davis is a writer and a human rights advocate who has conducted research and advocacy on HIV/AIDS and human rights, police abuse, housing rights, environmental rights, and the rule of law in China, Thailand, Burma, Cambodia, and Indonesia.

She earned her Ph.D. at the University of Pennsylvania and held post-doctoral fellowships at Yale and UCLA. As a China researcher for Human Rights Watch, she published reports and conducted global advocacy. Her book, “Song and Silence: Ethic Revival on China’s Southwest Borders,” which was published by Columbia University Press in 2006, draws on research in both China and Burma.

Her articles have appeared in the Wall Street Journal-Asia, the National Herald Tribune, the South China Morning Post, and Modern China.

So without further ado, I will turn the floor over to Professor Minzner.

**STATEMENT OF CARL MINZNER, ASSISTANT PROFESSOR OF LAW, WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW**

Mr. MINZNER. Thanks to Anna for organizing, and thanks to the CECC for holding, today’s roundtable on citizen petitioning in China and the state institutions that respond to these petitions, particularly the *xinfang*, or letters and visits, system.

As Anna mentioned, my written and oral statements today are highly abbreviated versions of two articles that I wrote in 2006 and 2009.

I’m going to try to accomplish four things in the brief time allotted to me today.

First, I’m going to describe the nature of *xinfang* institutions and citizen petitioning in China. Second, I’m going to argue that Chinese citizens resort to these institutions and practices because the existing political and legal systems leave them no better option,

and because incentives within the system make it a rational choice for some petitioners. Third, I'm going to point out that the interplay between existing *xinfang* institutions and citizen petitioning practices generates a wide range of negative consequences for Chinese citizens and society at large. These include disuse or atrophy of formal legal institutions, an escalating cycle of social destabilization, and a wide range of abuses against petitioners. Fourth, I'm going to argue that political liberalization may be necessary to resolve the underlying problems I just mentioned and to support the development of the rule of law in China.

So let's start with the first issue. What are *xinfang* institutions, and what is citizen petitioning? Well, since the 1950s, letters and visits offices, or *xinfang* offices, have served as a channel for citizens in the People's Republic of China [PRC] to seek assistance in resolving specific grievances, to appeal government decisions, and to engage in a limited form of political participation. *Xinfang* institutions are found throughout the Chinese bureaucracy, including the Communist Party, local people's congresses, courts, government, police, and so on.

However, the focus of *xinfang* institutions is not on resolving all grievances equally, according to law. Rather, its primary focus is on triggering the intervention of higher level Party and government officials in handling and resolving precisely those disputes that pose an imminent threat to social order—say, 200 laid-off workers showing up in front of the local township government offices and staging a sit-down protest.

The actual institutional authority of *xinfang* institutions themselves to resolve specific grievances is actually quite weak. Most commonly, *xinfang* bureaus simply refer individual petitions to other government agencies for action. Occasionally they may send out some of their own personnel to conduct additional investigations of particular problems. In a very few rare cases, *xinfang* offices may be successful in prompting intervention of a core Party or government official in resolving a particular dispute.

Now, what is citizen petitioning? Well, petitioning consists of efforts by citizens to try to prompt the discretionary intervention of these higher level Party authorities in resolving their disputes. Chinese citizens employ a wide range of strategies to do this. Individual petitioning can be as simple as one disgruntled individual going from bureau door to bureau door, day after day, week after week, month after month, decade after decade, in an effort to locate a Party or government official who might be able to weigh in on their particular dispute.

These types of individual petitioning efforts are rarely successful. In one study, Yu Jianrong, a scholar in the Chinese Academy of Social Sciences found that less than 0.2 percent of such individual petitions are actually addressed. Many such petitioners spend years or decades in a futile search for justice.

In contrast, collective or mass petitions have a much stronger political cast to them. These can involve organized demonstrations, speeches, and marches of hundreds or thousands of individuals seeking to present their grievances to officials.

*Xinfang* institutions remain a popular channel for injured citizens to try to prompt elite involvement in the resolution of their particular grievances.

In 2003 alone, petitions to Party and government *xinfang* bureaus at the county level and higher totaled about 11.5 million, about twice the number of cases handled by the Chinese courts. You see a similar situation within Chinese legal institutions themselves—huge numbers of petitions within courts and procuratorates.

Now, that is a brief introduction to the *xinfang* system and to citizen petitioning. Let's move to the second question: why might citizens resort to petitioning rather than formal legal channels or alternative political channels for the resolution of their grievances?

One answer: it is not clear that other alternatives are any better. Particularly at the local level in China, political power is highly concentrated in the hands of a few officials, namely the township and county Party secretary. If you are a petitioner seeking redress for a local government action, such as the seizure of your land, it's not necessarily clear that going through the regular machinery of government, including the local courts that are subject to their networks of influence, necessarily generates a better outcome for you as opposed to, say, trying to show up on the doorstep of the individual township or county Party secretary, or perhaps better yet, somebody who outranks him or her in the Party chain of command.

But in addition to a lack of other alternatives, there are actually incentives within the system that effectively encourage, sometimes perversely, citizens to resort to the petitioning of higher level officials as a means to resolve their grievances.

Local Chinese officials don't face a range of meaningful bottom-up electoral or independent judicial checks on their behavior. They do face a range of top-down checks. Specifically, they face a round of top-down targets that govern their career performance. These are called cadre responsibility systems (*mubiao guanli zeren zhuijiu zhi*), and other names in Chinese.

Higher level Party authorities use cadre responsibility systems to set specific targets for local officials. These include targets in fields such as birth control, economic development, and social order. Success in meeting these targets results in a range of positive career awards: bonuses, your career being fast-tracked, et cetera. Failure results in a range of negative outcomes: fines, adverse notations in your personnel file, et cetera. Naturally, this means that local Party officials are highly motivated to meet these targets. Social order targets are commonly phrased in terms of petitions, particularly mass petitions.

For example, in Anhui Province, local officials receive a warning for mass petitions of 50 or more petitioners who go to the provincial capital, or 20 or more who go to Beijing. They receive a suspension for mass petitions over 100 or more petitioners who go to the provincial capital, or 30 or more who go to Beijing. Other responsibility systems resemble these: applying increasingly severe punishments for larger or more frequent petitions directed at higher levels of government.

Naturally, one effect of this is that it encourages local Party officials to be extremely attentive to controlling expressions of social

discontent. As Meg will discuss, local Party officials use thugs and kidnapping to intimidate or forestall petitioners who seek to make their way to higher levels of government, precisely because they fear the adverse consequences of such petitioning for their own careers.

However, the existence of responsibility systems also gives citizens a tool to try to pressure the intervention of local Party secretaries in resolving their disputes. If you're a disgruntled petitioner, the threat of organizing or actually carrying out a mass petition can be a direct tool to try to apply pressure on local Party officials to take, or not take, some kind of action. After all, unlike, say, a court decision, this touches on something that's directly linked to his official performance and career.

Okay. So that's what petitioning is, and that's why Chinese citizens might resort to it.

Now let's move to the third question, which is: what are the effects of the incentives created by the *xinfang* system? Well, one thing it does is to incentivize individuals, in some cases, to recast legally cognizable grievances in larger, more politically mobilized terms. Let me give one example.

In 2006, 70 migrant workers in Yingzhou City in Anhui Province were upset, dissatisfied with a provincial High People's Court decision that had denied them back wages. What did they do? They went to the local provincial Party headquarters and surrounded it. The next day, the very next day, provincial Party leaders met and arranged compensation on terms that technically violated the decision of the provincial High People's Court decision, rendering an outcome, favorable to the petitioners.

That, of course, only happens in sort of a very small number of cases. But that is exactly the kind of dynamic that fuels the growth in mass incidents, precisely because you've got a lack of other legal and political avenues for redress, and you've got this avenue—the threat of a mass petition or protest, that has a large potential payoff—it might get some group of petitioners what they're seeking.

This drives the growth of mass incidents. In fact, statistics suggest that that's exactly what you're seeing. Many of the mass incidents that are growing in China are linked toward this dynamic—citizens trying to find some way to apply pressure to local officials because they don't have any other institutional options.

Of course, at the same time, this same dynamic also gives local officials a vested interest in suppressing petitioning activity, sometimes through violence, rather than in addressing underlying causes of the problems. What is the result of this? First, this is breeding extremism and desperation on the part of most petitioners. Second, it also appears to be leading to the disuse or atrophy of formal legal institutions. You're seeing a declining use in administrative legal channels as petitioners are choosing alternative routes, such as street protests, to resolve their grievances.

Last, you're seeing a loss of authority in courts and legal institutions. Frank He, out of Hong Kong, has a great article noting cases in which courts in southern China are simply paying off petitioners out of their own budgets, trying to get petitioners off the streets through any means necessary rather than deciding their cases, pre-



cisely because they face such direct pressure to do absolutely anything to resolve petitions in the short term.

Now, the question is: where does this lead you? To me, it doesn't appear to be laying groundwork for gradual institutional change in China. Rather, it seems to me to be creating a breeding ground for increased social instability.

So, let's move on to the last question: how to address these problems. At base, the *xinfang* problem is an institutional problem—a problem of legal and political institutions. It reflects a lack of alternative, functional outlets for the political demands of Chinese citizens to participate in the decisions that affect their lives. And it reflects a lack of alternative, independent channels for Chinese citizens' efforts to get redress for their grievances.

This is exactly the conclusion of Chinese experts themselves—including institutions as varied as the Chinese Academy of Social Sciences [CASS]—China's top academic think tank, and Gongmeng—an independent-minded, non-governmental organization that was just shut down by the Chinese authorities last summer. As Chinese organizations such as these have pointed out, responding to these problems requires effective and meaningful legislative and judicial reform. This is not just my personal opinion—this is what Chinese organizations such as Gongmeng and CASS are themselves saying.

Local Chinese legislatures—that is to say, local People's Congresses [LPCs]—need to be given a greater role in supervising government action. LPCs need to be made more representative—via meaningful electoral reforms. And the Chinese judiciary needs to be given greater independence and authority in checking government action.

Only then can the demands of Chinese citizens for increased participation in the official decisions that affect their lives and citizen efforts to obtain redress for their grievances be channeled out of the *xinfang* system and into the gradual creation of other, better institutions.

Ms. OLDHAM-MOORE. Thank you, Mr. Minzner.

So now we'll move to Professor Li Xiaorong.

[The prepared statement of Mr. Minzner appears in the appendix.]

**STATEMENT OF LI XIAORONG, RESEARCH SCHOLAR, THE INSTITUTE FOR PHILOSOPHY AND PUBLIC POLICY, UNIVERSITY OF MARYLAND-COLLEGE PARK**

Ms. LI. Thank you, CECC directors and staff, particularly Anna, for arranging this talk.

This day, December 4, is a Chinese observation day for *pufa* [popularize laws] and propaganda for the law day. Petitioners have turned this day into a day for redressing grievances. Today in Beijing, large groups of petitioners from Shanghai and all other places are being rounded up and sent to *Majialou*, the processing station for petitioners. So, it is all fitting.

In 2007, I devised the group China Human Rights Defenders [CHRD] to do an investigation for petitioning and black jails, so my talk today is largely based on this report, which is documented in "Silencing Complaints." Copies are available. Also, I put some cop-

ies of the CHR book outside. Some of the questions I want to talk about have been covered by Professor Minzner, so that makes it easy. I just want to go in the fashion of questions and answers to make it more digestible for you.

So, how big a population are we talking about here? It is difficult to estimate the number of petitioners in China due to a shortage of accurate official statistics. A 2004 article in the Southern Weekend reported that, "According to official statistics, there were over 10 million petitioning cases in China last year." So, that is six years ago, and the number has grown, precisely due to the fact that there are more grievances. But the number is likely to be bigger, also because there are many petitioners who are not registered. For example, those who were intercepted before they reached the letters and visits offices.

Why do petitioners petition? Professor Minzner has covered that, so I will skip.

What are petitioners? Petitioners are mostly women and some children, and a lot of elderly people, and disabled. In recent years, because more rights violations are related to official corruption and the negative impact of economic development, more young and educated people have joined.

Petitioners who reach Beijing are often veteran petitioners who have been petitioning for many years. They first reached the local-level governments where their grievances were not redressed and they were persecuted, so they go further to Beijing.

Why do petitioners persist? Professor Minzner also covered this. I just want to make a small correction. It is a slow-building phenomenon, because when the petitioners first go to the local office, they're persecuted. They go to Beijing, and they are persecuted further. They become organized. When they get organized, this scares the government. Then the organizers get very harsh punishments.

When did interceptions become so intensified and perverse? Large-scale and systematic interception of petitioners is relatively new, partly because of abolishing of repatriation centers, custody and repatriation centers. Interception also does not exist legally and publicly in China, but evidence points to a rapidly expanding operation, extensive in scope.

Since 2004–2005, because the number of petitioners has kept growing, interception has become a major area of responsibility for various local governments and many departments at different levels are involved. Local CCP organs and the government agencies mobilize substantial resources to intercept petitioners.

What are frequently used means of interception? There are many, but here are the main ones: harassment of petitioners' families who stayed home, civilians; kidnapping, assault, murder, and arbitrary detention. I want to say a few words about murder, because it's a serious charge and I'd better be able to back myself up.

At the start of 2005, six bodies were found when the moat near the state council and National People's Congress was cleaned. Petitioning materials, well-preserved in plastic bags, were found on the bodies. There were documented cases of petitioners who died as a result of torture. Shanghai petitioners Duan Huimin and Chen Xiaoming were allegedly tortured to death at a detention center after they'd been caught for petitioning in 2007.

Three months ago, Hebei petitioner Liu Fengqin died in a local reeducation through labor camp after she was sent there for repeatedly petitioning in Beijing. Then in October, Shandong petitioner Li Shulian died in a local black jail after she was intercepted in Beijing and sent back to detention. Police claimed that she committed suicide, but so far both families have been silenced and threatened after the investigations.

There are various forms of detention. I'll just go very quickly through the list: reeducation through labor camps, psychiatric facilities, black jails, and law education classes, *xuefaban* or *xuexiban*, and finally, imprisonment.

Why do authorities abuse petitioners to such an extent? Professor Minzner has covered that ground. I just want to quickly mention a few: evading accountability. Local governments don't want their scandals to be exposed at the national level.

Second, priority of maintaining a measure of harmony by the central government. They do not have the ability to handle the growing number of petitioners, so they issue ordinances, including the recent one calling petitioning illegal.

Third, profit-driven motives. As Professor Minzner has explained, there's a point deduction system. When the petitioner is caught in Beijing, the local government has to pay by reducing their budgets or by a fine. Then they also use petitioners to do an exchange of bribes. At the national level, *xinfang zhan*, when they register a petitioner, they will call the local government's offices in Beijing, saying, come to pay and get your petitioner and I will erase the registration. So this creates a lot of incentives for local governments to get the petitioners back and put them in black jails to punish them so they don't petition again.

Number four, there's a political phobia against any organized mass mobilization. When the petitioners become organized and they form associations, this really scares the government.

Finally, the vagueness of language in the regulation, the *xinfang tiaoli*, creates a lot of space for police and officials to abuse petitioners. I just want to mention one. It's called the self-review system. Under this system, when the petitioner who is complaining about local officials' misconduct is caught in Beijing, they are sent back to exactly the same officials to be handled, and you can imagine the consequences.

What to do? I have two minutes. I'll just run down the list: reform the incentive systems that encourage interception; abolish the reform through labor camp system and all other extra-judicial detention facilities, including black jails; hold officials criminally accountable; make complaint procedures partial, amending discriminatory regulations in the *xinfang tiaoli*; strengthen judicial independence and other alternative channels to lodge complaints.

For the international community, the United Nations, the E.U., the U.S. Government, and the bank systems that support rule of law programs in China, they should continue to raise their concerns about the petitioners and the persecution of petitioners, and the press should continue to cover stories. The French Channel 24, BBC did documentaries about the black jails. They should all demand the closing of black jails.

Thank you.

Ms. OLDHAM-MOORE. Thank you very much, Ms. Li.  
Dr. Davis?

[The prepared statement of Ms. Li appears in the appendix.]

**STATEMENT OF SARA (MEG) DAVIS, FOUNDER AND  
EXECUTIVE DIRECTOR, ASIA CATALYST**

Ms. DAVIS. Thank you very much.

So, following on Professor Minzner and Professor Li's very eloquent explanations of the petitioning system, I'd like to share some case studies to give you a sense of the human face behind what you've heard, as well as some of the challenges that impede reform.

My organization, Asia Catalyst, works with civil society in China and Southeast Asia, especially with AIDS activists. But before founding Asia Catalyst a few years ago, I worked for three years as the China researcher for Human Rights Watch, where I conducted field research and wrote book-length reports, including one on petitioners titled, "We Could Disappear At Any Time."

I no longer represent Human Rights Watch, which recently published a new report on petitioners and the black jails, which Xiaorong has just mentioned. For reasons I'll get into, though, I expect that many of the people I interviewed in 2005 are still in Beijing or in their hometowns petitioning.

On a personal level, I remain haunted by the voices that I heard back then and by the vision they shared of a vicious cycle with no easy way out, and I'm grateful to Anna and the CECC for the opportunity to reflect on what they said, once again.

So we've heard a little about the petitioning laws and the system that they manage, but who are the petitioners? One of the things that makes them so compelling to talk to is that, as a rule, they're not political activists. They're not dissidents. They are, for the most part, ordinary people, many of them staunch believers in Socialist ideals and in the achievements of the Chinese Communist Party, but who have suffered terrible injustices.

Many of them have little idea of what the term "human rights" might even mean, except that it might mean, in the words of one Beijing man I spoke to, that "an official's son should be given the same treatment as my son." Though they don't have a clear sense of what human rights might mean, I would still consider them to be the cutting edge of the human rights movement in China, these rural and urban poor who are lining the streets in front of petitioning offices around the country.

So in 2005, I went to Beijing for a month with two interns to gather testimony from petitioners about police abuse for this report from Human Rights Watch. As I know that my visibility as a representative of that organization made me a risky person to talk to in China, we took a number of precautions in the field and in the end we were able to interview 34 people.

Most of the petitioners we met were living on the streets of Beijing or in very rudimentary boarding houses. They were selling newspapers, gathering cans for recycling to survive. Quite a few were living off of scraps that they dug out of the garbage. We would order a few dishes of food as compensation for their time and talk to them in the back room of a restaurant. Mostly—that encouragement would wave off our warnings about the risks of talk-

ing to us and they'd pull out sheaves of paper, piles of forms and judgments, and stamped receipts as evidence of their cases.

The range of individuals was quite great, from a middle-class shopowner with a stiff perm and an embroidered sweater who represented 1,500 investors who'd been bilked by a fraudulent investment scam, to an unwashed farmer woman who arrived at the restaurant toting a cloth backpack that had all her worldly belongings in it.

The petitioners who spoke to us had often begun their epic journeys with a harrowing incident in their hometowns. Several people had lost sons or brothers to police abuse; a few describe challenging local officials on corruption and being nearly killed in retaliation.

One mild-mannered man I met with his young son described an attack by thugs who he believed were hired by a local official. He said, "At 7 p.m. on January 31, 2002, five or six people went to my house. They brought an iron hammer. They came in and said nothing. They weren't from our village; I'd never seen them before. They were thugs. First, they hit my wife and my younger brother's wife in the head with an iron hammer. They were coming for me, but they didn't know what they were dealing with. My brother hit one attacker over the head with a chair, and then when the chair broke, he beat him to death with the chair leg. The kids were crying; they were terrified."

There were several of these allegations about attempted assassinations by officials. Ma, a Henan man, was actually a second-generation petitioner. His father began petitioning in the Mao era over a land claim and persisted with his case for 19 years. Ma said that officials had assassinated his father in retaliation. "They killed him with a hoe. They hit him in the back of the head. They also hit my mother and my sister. My sister fought back and killed the attacker, so she was sentenced to five years in prison. This was all arranged by the village deputy Party secretary. I thought this was not fair treatment for my sister, so I've been petitioning for many years."

Other people I spoke with about forced evictions from their homes and cities, or forced land expropriation in the countryside. At Asia Catalyst, we also monitor cases in which petitioners from Henan and Hebei are demanding compensation for their infection with HIV through unsafe blood transfusions in hospitals. There have been quite a few of those.

In many cases, people who began petitioning about one local abuse then became a victim to retaliation for their petitioning. As they moved up the system, appealing from the township, to the county, to the provincial level, and then on to Beijing, becoming the veterans that Xiaorong referred to, abuse would pile on abuse. So a petite and shy woman of 39 told us, "I was married by force to a man I had known for one week in 2000. I tried to leave my husband and he wouldn't let me. The day after, two people came home with him. They ripped my clothes off and raped me. It was my husband and two of our neighbors. I complained and the police detained him for a few days, then they let him go. I think he paid a bribe."

The gang rape, in her case, was the original abuse. As she petitioned higher up the system, the retaliation began. "For making

false accusations against my husband, I was sentenced to one year in prison,” she said. The court concluded that the rape in the context of marriage, even gang rape, was consensual. In the local prison, conditions were brutal; 10 women shared a cell. The authorities shackled her hands and feet for days at a time for minor infractions, and at one point she was shackled day and night for seven days.

But as soon as she was released, she came back to Beijing to petition. Like many petitioners, she clung to her faith in senior leaders and that they would intercede in her case. One of the persistent fears of petitioners like this woman was of being detained by retrievers, some of whom were out-of-uniform police, others just thugs hired by provincial authorities.

The job of retrievers is to find any petitioners from their province, kidnap the petitioners, and bring them back to the petitioners’ hometown. In some cases, the petitioner is then imprisoned in a local detention facility, in other cases they’re released, in which case they often just come right back to Beijing on the next bus.

One petitioner gave us a photograph he had taken of the retrievers lined up across the street from one of the petitions offices in Beijing, perched on small folding stools or leaning on trees like hawks ready to pounce. Abuses by these retrievers are common. One elderly couple I interviewed described being ambushed by retrievers who heard her and her husband’s accent on the street, guessed which province they were from, and attacked them.

She said, “Thirty to forty people surrounded us and asked us where we were from. Before we even opened our mouths, they started to hit us. Over 20 people began hitting my husband. They stomped his body here,” indicating the left ribs, “they knocked me down too. Every time I tried to get up, they kicked me back down. This happened three or four times. It was raining and my poncho was soaked with water.”

When we did these interviews in 2005, petitioners spoke with fear about the building known as the Majialou, where they are interrogated, threatened, and sometimes beaten by retrievers. I noted, in preparing for this roundtable, that the recent report by Human Rights Watch also refers to the Majialou, except that it’s shifted. In 2005, the Majialou was a detention facility, according to people I interviewed.

In 2009, it has now become a kind of sorting facility in which people are sent off to black jails. The black jails are often rooms that are appended to hotels that represent the provincial governments in Beijing. So this shift in the function of the Majialou facility may be one indicator of the rise in the number of petitioners in Beijing, that they had to expand their detention system.

While China Human Rights Defenders and Human Rights Watch both report that some petitioners are kept in these black jails for extended periods, for the most part the facilities seem to be way stations that are used to collect and threaten petitioners before sending them back to their home province.

Out of the 34 people we interviewed, I only met 1 man who had successfully obtained a letter from the Supreme Court in response to his petition, the holy grail sought by all petitioners. When we expressed amazement of this, he shouted at us in frustration: “I

have over 20 of these letters. They all say the same thing. I asked the head of the court Petitions Office, ‘What use are your letters?’ And he said to me directly, ‘They’re no use.’”

Under the circumstances, it’s remarkable that most of the petitioners I interviewed in 2005 continue to petition and most likely are still petitioning today even as we speak. All the petitioners we interviewed had come to Beijing numerous times, despite surviving beatings, torture, and detention. “I can’t not petition,” said one woman who had suffered weeks of torture in a detention center that left her permanently on crutches. “I don’t fear anything,” said others. “What else can they do to me that they haven’t done already?”

It’s this reckless disregard for personal safety, this obsessive desperation in pushing their long, handwritten letters on anyone who seems remotely able to help, and the fact that they live in filth and poverty on the streets, that leads many mainstream Chinese people, including many in the government who have to listen to their complaints, to conclude that the majority of petitioners are mentally unbalanced. Having spent some time with them, I can’t completely disagree. Many are unbalanced. Whether they began that way, though, is another question.

If we examine the choices that are available to them, the choice to seek redress is a turning point in their lives that gradually shuts down over life paths. Over time, petitioners are driven deeper and deeper into a maze from which there is no exit. If an official steals your land, or worse, actually attempts to kill you and you decide to fight back, how do you go home? Retaliation would be a constant threat.

In another country, having tried and failed to find redress, a victim could give up, choose to move to a new town, start a new life. But China’s restrictive household registration, or *hukou* system, makes that close to impossible. Without a local household registration card, a new resident cannot get a job, go to a hospital, or send their children to school.

So once having started to petition, petitioners increasingly become focused on this receding goal that some senior official is going to take pity on them and intercede in their case. They become locked in a tragic cycle of petitioning, suffering more abuses and petitioning about those as well, that ultimately destroys the individuals, and often their families, and almost never results in justice.

But the petitioners may not be the only ones locked in a maze with no exit. As Carl’s work on the incentive system, this cadre responsibility system, shows, the Communist Party is also now in a parallel and potentially equally dangerous cycle that pivots on the absence of accountability at every level of the system. A system that governs through absolute allegiance must be able to protect its own or risk disloyalty and disintegration in the ranks.

This logic leads to a system that requires local officials not to investigate abuses against colleagues, but to cover them up with new abuses. The end result has become an ever-widening pool of dislocated victims with nothing to lose, who in turn require ever more brutal measures to suppress.

There is only one way out of this maze: China needs senior officials with the courage to institute sweeping reform of the legal and petitioning systems, reforms that result in equal access to justice for all Chinese citizens. Without it, the current system and its supplicants will continue on their parallel cycles and the state that appears so strong from the outside will face increasingly destabilizing pressure from within.

Thank you.

[The prepared statement of Ms. Davis appears in the appendix.]

Mr. GROB. Well, thank you very much to all three of you for your very clear and informative presentations.

We're going to turn in a minute to the Q&A portion of our program, where we'll turn to members of the audience to ask questions of our panelists and engage in a discussion of the questions raised.

Before we do that, however, I just wanted to recognize in the audience Ms. Shen Ting, who is the director of the Chinese League of Victims, which is an NGO of some 80,000 mainland petitioners that registered in Hong Kong in December 2008. A former petitioner herself, Ms. Shen is a Shanghai native, living in Hong Kong, and she is not permitted to return to mainland China because of her petitioning and organizing activities.

She and the League of Victims have been publicizing petitioner grievances related to land confiscation and other issues in Shanghai in relation to the upcoming Shanghai World Expo that will take place from May to October 2010 in Shanghai. I wonder if you would like to take a minute or two to explain to the audience some of your activities. I don't think we have a roving microphone, so please just come up here.

Ms. SHEN [through translator, Mr. Hongfuan Li]. Thank you to the commission for giving me this chance to speak a few words. I speak here to represent the Chinese victims, especially the Shanghai Expo refugees, to speak to the world. The authorities in the Shanghai government have relocated thousands of citizens from their homes for the construction of the expo buildings, with the claim that a new civilized China is on the rise again. However, behind this cover, there are the cries and the tragedies. My organization has compiled and published a new book. It's called "The Shanghai Expo World Shame: The Victims of Shanghai World Expo Cry for SOS." I tried to expose the monumental scandals behind the Shanghai Expo. I am asking the U.S. Congress and human rights organizations to please, pay some attention to the stories of the Shanghai Expo refugees. Please pay special attention to these refugees and help them.

Thank you.

Mr. GROB. Thank you very much for your remarks. We're honored to have you here.

We'd like to begin now with the question and answer part of our program. I'd like to open up the floor to questions from the audience. If you have a question, please raise your hand and speak loudly and clearly. I'd like to begin, first, with Andrea Worden, who is Senior Advisor on the staff of the Congressional-Executive Commission on China, to pose the first question.



Ms. WORDEN. Thank you all. I would love to hear your thoughts about the extent to which individual petitioners and groups of petitioners are organizing across localities and across issue areas to share strategies, to support each other, and also the extent to which petitioners as a group are perhaps starting to recognize the rights that they have as petitioners? Are they starting to form a kind of collective identity?

Mr. GROB. So the question is asking the panelists to please comment on the extent to which individual petitioners and groups of petitioners in China are organizing, either across locales or across issues, or both, and whether or not, as a group, they are recognizing the rights that they have as petitioners in forming some sort of collective identity.

Would any of our panelists like to kick off that answer? Xiaorong?

Ms. LI. Well, Shanghai is a good example. That's another good example for cross-locales. They're very organized. That explains why the persecution of the first eviction victims—they petitioned, they turned into petitioners—is so harsh in Shanghai. Several deaths occurred, and also recently there were quite a few detentions and imprisonments. Duan Chinfau was recently imprisoned in an RTL center. Jerjing Di was briefly detained and then the lawyer who helped them, Zheng Enchong, has been under house arrest after he served prison time. And Feng Zhenghu now is at the Tokyo Airport, not allowed to return, and he's a legal advisor and organizer of the Shanghai petitioners. Then we have Shen Ting here.

But the cross-locale organizations occur mostly in Beijing. The best-known organizer is Liu Jie, who is a woman in her mid-50s. She just came out of a reform through labor [RTL] camp, where she was sent for a year and a half, seriously tortured. There are a few others, like Wang Guilan, Liu Xueli, and Zheng Dajing, all people who are from different provinces. Wang Guilan from Hubei, Zheng Dajing from Hebei, and I believe, Liu Xueli, is from Henan. So they were organizing in Beijing to help themselves to support, to find legal devices to file their cases, and to get the news on the Internet, to talk to reporters.

Before the 2007 People's Congress session in Beijing—collected more than 10,000 signatures to support overall political reform, with law reform and a call for human rights protections of the petitioners. It was a very strong statement for that. She went to the RTL prison, and a few people who helped her were also sent back to their provinces and put in black jails or RTL.

That effort was crushed. Since then, it has been very difficult for organizing. This is what I meant when I said that the regulations are so discriminatory. They discriminate against organizers and discriminate against the people who are vocal, outspoken, charismatic, and who have turned from petitioners petitioning and defending their own personal rights into human rights defenders, defending the rights of others, and came to recognize the universality of human rights and started to work beyond the narrow interests of their own. This is what I meant.

There are several articles in the regulations, some visits and letters, that discriminate against such people. For example, Article

18, binding people from petitioning in groups. Any one single case can only be filed by one person. It cannot be two people. Any case that involves more than two people has to find a representative. In cases that involve hundreds and thousands of people, you cannot have more than five representatives. So, this is all very well planned against any kind of organizing.

In Article 20, we have all these crimes that are designed to punish people who try to exercise their right to expression, free expression and association and assembly. For example, the crime of illegally assembling in front of government offices. When you petition, you have to line up in front of the visits and letters office. How else can you do it? So when you line up, you're assembling and that can be a crime and gives the police authority to arrest you.

So there are things like that that really should be taken out of that regulation. Did I answer all your questions? The bottom line is, right now, any kind of organizing efforts among the petitioners are harshly punished.

Mr. GROB. Thank you very much.

Meg, did you have something to add?

Ms. DAVIS. Briefly, on HIV/AIDS, I've seen mobilizing by petitioners across localities, but within one issue. Those are cases of people who are infected with HIV through hospital blood transfusions. In Henan Province, and sometimes in other localities, they're not able, or are not allowed, to file suit in the courts and have no other form of recourse except to petition. So in some cases they have worked together to mobilize in order to get compensation and that's been effective for some people.

Mr. GROB. Thank you very much.

Mr. MINZNER. And I'd just reiterate what Xiaorong said. First, Chinese authorities come down like a ton of bricks on anybody who's actually organizing petitioners. Second, particularly in rural areas, Chinese petitioners are pretty smart. In response to Chinese authorities' efforts to decapitate petitioning movements by targeting clear leaders, petitioners go underground. That's to say, if people are trying to put together some sort of petitioning movement, people will sometimes organize and try keep their identities vague—make it less clear who the real organizer is. So it's just sort of an arms race, between government repression on the one hand, and petitioners who are trying to find alternative strategies to mobilize.

Mr. GROB. Thank you very much.

Questions?

AUDIENCE PARTICIPANT. [Off microphone.]

Mr. GROB. Thank you. So the question is, is there, at the end of the day, a way to reform the *xinfang* system so that it operates in accordance with international human rights standards?

Mr. MINZNER. That's the \$10 million question. The reason why this is so hard is that it is tied to the core of the entire Chinese system, which is to say, it is wrapped up with all of the authoritarian controls over the political system and the problems that exist in the legal system. I would like to think that there's some easy way to go about reform, but I just don't see it.

You have to have somebody in China at the top who is willing to take the step of moving down the road of opening up alternative

legal and political institutions to give ordinary people more voice in the system, giving people more opportunity to participate in the decisions that affect their lives. If you don't take these reforms, I don't know how you'd change the problematic dynamics at work. But this requires real fundamental pressure for institutional change—somebody at the top in China willing to go in that direction. And at the moment I don't see anyone who's got the ability or the will to push for that kind of sweeping reform.

Then the second question is: what can people on the outside do? One, I agree with one thing Xiaorong pointed out—the value of people on the outside highlighting the problems. Two, I also think there's a different tone that I sometimes find helpful when I try to talk to Chinese interlocutors on this issue. I find, particularly in the United States, when we address Chinese human rights or domestic political issues in China, we veer between either ignoring them entirely or moralizing and saying, China bad, China bad, China bad.

Perhaps adopting a slightly different tone and trying to concretely lay out the extent to which Chinese authorities' own authoritarian political controls are undermining their own efforts to obtain social stability—that might be productive. That might be the right tone for foreign governments to adopt—trying to reason with Chinese authorities about why reforms in these areas are in their own interests. Because, at the end of the day, it has to be somebody in China who is willing to undertake the necessary reform, and outsiders need to find a way to emphasize that it is actually in China's own interests to do so.

Three, there are a range of opportunities for Sino-U.S. collaboration on these issues. Even if there is resistance among some Chinese officials to institutional reform, there are others who are interested in working on these issues. Many of the key issues that many foreign NGOs and some Chinese authorities are interested in—legal reform, civil society—are all wrapped up in addressing the problems that are associated with the *xinfang* system. So, there should be a lot of range for collaborative work, even if there's still a lot of resistance in China on the issue of fundamental reform.

Mr. GROB. Thank you.

Did you want to add something?

Ms. LI. Well, I just wanted to say, the fundamental solution is to reform China's judicial system. But before that happens, the *xinfang zhidu* may not be a totally bad thing to have. The thing is, when they have the *xinfang* system, why do they have to torture people and arbitrarily detain people and do all these things in violation of basic human rights? So there is room for improvement in the international institutions to step in.

This year, in February, the U.N. Universal Periodic Review recommendations asked questions about arbitrary detention of petitioners and torture questioning, and also black jails. Also, last November the U.N. Committee Against Torture reviewed China's report and also raised the question of the black jails and the persecution of petitioners. In a way, the international human rights organizations put a spotlight on it. So unfortunately there is no one solution to the petition problem.

The problem—the same old problem—is China’s political system, repression against the freedom of expression, freedom of association, and torture. They’re the same old issues that the International Human Rights Committee has been working on. So, the pressure just has to be kept on.

Ms. DAVIS. I really agree with everything that Carl and Xiaorong have said, so I would only add one other thing that I think could help a little bit, which is building up civil society and building up the capacity of local NGOs, which can provide another avenue and another venue for people to resolve or seek redress at a local level. But I think, like all of us, when you look at this question it kind of creates a sense of despair, because the only way forward is for very senior officials to decide that they’re going to cede some control, and why would they do that?

Mr. GROB. Thank you very much.

A question in the back here. I should just also add, this session—I should have mentioned this earlier—we’re creating a transcript from this session, so if you would like to identify yourself when you ask your question, please do. If you prefer not to identify yourself, that’s fine as well.

Please.

Ms. SIMON. My name is Karla Simon and I teach law at Catholic University of America. I wanted to ask a question and I wanted to make a comment about what they just said.

What is the significance of the—actually—publishing this new work? I mean, to me, that’s very striking. I just wondered what our panelists think about that.

With regard to what Meg said—what she said about local NGOs being organized and actually expressing themselves a little bit more—two things on that point. Just so you all know, I’m a scholar of civil society in China and I have testified before this commission before. But the point is, local NGOs are, in fact, now facing a registration system that’s a little bit different. It’s called the “documentation system,” which is a new way NGOs will register. The new system may be a very good and—for local NGOs to get more involved in this and provide avenues for citizen participation.

Ms. BRETTELL. Just to explain a little bit about the question. Chinese Foreign Affairs Ministry spokespeople have denied the existence of black jails during the Universal Periodic Review, when they spoke in front of the United Nations. Also, I think even recently, in April 2009, a spokesman from the Ministry denied that there were black jails in China.

But a couple of weeks ago there was an article in a magazine called Outlook, which is a magazine that’s associated with the government. This article was actually quite astonishing in describing the phenomena of black jails, and giving quite a few details about them. This was the first time that a government-associated newspaper—maybe even any mainland newspaper—had acknowledged the existence of black jails. So, that’s what your question is addressing, right?

Ms. SIMON. Correct.

Mr. MINZNER. I can take a stab at that. Yes, it’s definitely a positive development when you see Chinese domestic media and domestic interest groups interested in these issues. These are the

folks who should be talking about what the future of China should be and how these issues should be addressed. So, it's definitely positive.

China itself is not a monolith—there are different groups and people within and outside the government who are aware of these issues and bring them to light from time to time. Think back, for example, to the Sun Zhigang incident in 2003, where a crusading media outlet exposed problems associated with the custody and repatriation system. You definitely see the spotlight brought on particular problems, such as petitioning, by different groups in China.

However, the important question is: does it translate into sustained pressure within the system for serious institutional change to address the underlying problem? I hope that that will be the case. But this is a very tough problem, tied up with deep institutional problems in the Chinese political system. So while it's a positive development, I'll wait to see what the actual results are.

Ms. LI. What's interesting, is the article never mentioned *hei jianyu*, the black jail. It only says "*heise chanye lian*" [grey enterprise chain]. It is the same, this phenomenon, for interception of petitioners. It's turned into a profit-driven chain of enterprising officials. It is significant in that Liaowang is tightly controlled by Xinhua, so why do they allow it to go forward? Maybe, like Carl said, it's one of those spotlights where there's a small opening, so it's hopeful.

Mr. GROB. Great. Other questions? Yes. Charlotte?

Ms. OLDHAM-MOORE. This is for Professor Minzner—millions of people continue to petition. Do you have any examples where, recently, the petitioning system worked as we all agree it should?

Mr. MINZNER. If your definition of what "works" is petitioners getting something that they want, here are two concrete examples. The first is the one I described from Yingzhou, where you actually have citizens staging a mass petition that forces a concession from local officials. It's a dangerous gamble. The petitioners are potentially subject to repression, but in some situations the threat of social disruptive behavior might end up getting the officials to concede and back off. That may not necessarily be a good outcome from the standpoint of institution building or judicial authority, but at least for the petitioners, they're getting some of what they want.

Let me give you another example of where the petition system works for one particular individual. In 2003, Premier Wen Jiabao was visiting Sichuan on an inspection tour. Xiong Deming, a rural woman, managed to complain personally to him about her husband's unpaid back wages.

The very next day, the husband received his wages and the event was plastered all over the state media outlets. Now that gives Xiong Deming what she wants, but the particular effect that it creates, the impression that it gives among citizens at large, is that if I just manage to make it to Beijing and if I can meet with Wen Jiabao personally, I'm going to get what I want. Again, I'm not sure this is really a positive thing from the standpoint of building stable institutions in China.

So those are the two types of examples that I can give where the petitioning process generates positive results for particular people.

But I'm very hesitant to say that these indicate that the system is working institutionally, in terms of the big picture.

Ms. OLDHAM-MOORE. Please give me examples.

Mr. MINZNER. The low utility of the *xinfang* system from the perspective of petitioners may make more sense if you step back and think of the roles that the system is playing for Chinese officials. From the standpoint of Chinese authorities, they do not regard this as a system where we think that we should be resolving every single petition that's coming through.

Rather, from the standpoint of Chinese authorities, the *xinfang* system serves as a general information source about what's going on in their own country. They use it as a way to generally note that, for example, there have been 400 petitioners coming from Sichuan Province over the last six months, maybe the local officials there are less competent than those in Gansu Province.

This means that the *xinfang* system serves as a channel for information to higher level authorities. But that's totally divorced from the idea that they need to take action on any individual citizen grievance, much less resolve all grievances equally according to law. The *xinfang* system is primarily a tool for higher level leaders to understand better what's going on, and to help them generally monitor their subordinates. It is not primarily a system to prompt higher level officials to take action in all cases that come into the system.

Sure, there are cases out there where one official, such as Wen Jiabao, takes a personal interest in a particular problem and resolves it through his personal political power. But I'm hesitant to suggest that is a positive example of the system working the way it should.

Ms. DAVIS. I think also we should distinguish between different kinds of cases and what we define as working. So, for instance, with the people who are petitioning for compensation from hospitals for HIV transfusion and blood supply, it can work for people in that, if you get a bunch of people together, you go to the hospital, you have your evidence, you stand there and you don't get beaten up or taken away, you might get some compensation and it might be more than you would have gotten as an individual going and talking to the hospital.

But in cases—which are some of the worst cases that we were looking at in 2005—where you have someone who has lost a family member to police abuse, or some local official tried to kill them because they were complaining about corruption, ultimately the person doesn't really have any other avenues and so they wind up petitioning, and petitioning, and petitioning in the hope that someone will see how horrible their case is and will do something about the local official, and no one ever does.

I mean, the most they ever get that I've heard of is a letter from the Supreme Court saying, "Please look into this case," which the official laughs at and tosses out the window. So in those kinds of cases I think there's very rarely an instance of something working in the sense of the case being resolved to the petitioner's satisfaction. So, it depends on the topic, I think.

Mr. GROB. Any other questions? Yes?

AUDIENCE PARTICIPANT. I have a question for the experts. What are the attitudes or positions of the general public in China toward petitioners?

It seems to me that people in China cannot organize to express their grievances, so what are the positions of the public toward petitioners?

Mr. GROB. So the question was, what is the attitude of the general public toward both petitioners and the petitioning system, given the suggestion that, unless a particular petitioner's grievance is echoed to some extent by the general population, there will be less likelihood of effective redress of grievances. So what is the attitude of the general public toward petitioners and the petitioning system? Xiaorong, would you like to—

Ms. LI. Hard questions come to me. I wish there were some studies of the popular attitudes. I haven't seen any good studies. My feeling is, there is a measure of support of the government repression against petitioners from the city residents, because before the Olympics, before other important national events, the residents in the cities regarded these people who came from far away, they're poorly fed, shabbily dressed, look all tired and dusty and sleep in street corners as homeless people and beggars, so they wanted to kick these people out. They also contributed to increasing crimes through the gatherings of such groups of people.

But then increasingly in China, as the middle class, educated people come into contact with real social miseries, people can be moved to try to help them. For example, right now there are several drives in Beijing, when the winter comes, to collect warm blankets and coats, and to send it to the petitioners. There are at least three that I know of. So it's a mixed picture, but I would like to see such a study.

Mr. GROB. Thank you.

Any additional questions? I think there is one way in the back there. Yes, please go ahead.

Mr. SHEN. My name is Shen Wei and I will talk a little about Shanghai and how many people are affected and what it means, because it's very serious, especially the actions by police. It means that these people are being kicked out of their houses by the government without receiving any compensation. Their houses are confiscated so we'd like to thank you for your attention. Can you maybe briefly speak in Chinese so that I don't have to translate for her? [Translation in Chinese].

Ms. SHEN [through translator, Mr. Hongfuan Li]. Sometimes there wasn't compensation. Other times there was compensation, but I believe it to be extremely unfair, so there's no agreement that had been reached. To my knowledge, there are thousands of households and people who have been affected. They have nowhere to live. They have already been kicked out of their homes. They're living in rentals, but the landlords are constantly under harassment for renting to petitioners. Since this occurred, that is—one of the particular reasons to try to bring these events in China to your attention before the World Expo happens.

Thank you.

Mr. GROB. Thank you very much.

Additional questions? We have a few minutes left. Yes. Please go ahead.

Mr. HONGFUAN LI. Can I ask a question about historical perspectives. I'll share my own observations. About 20 years ago actually, I was a young teacher in Beijing. Twenty years ago, it was the students and young people like myself who went on the street, and some people took extreme measures trying to bring people's attention to the demands. The students were not happy with the political system. Specifically, that's why we gathered in Tiananmen Square.

That's a very small signal—but over the past 20 years, those kinds of struggles have faded away. Personally, myself, I graduated from a famous university in China. If I had stayed in China, I would be a professor. I would make \$10,000 and live a very good life. The majority of people like myself in China are not really willing to risk anything that will call for a political change. So that's what I observed. Gradually, the workers are being kicked out.

All the factories are being merged and these people are living a very hard life. They are all by themselves, so there is little unity in trying to change things so these people are just living, that's it. Then in the second step beyond that is—the houses they live in, this is like Beijing and Shanghai, they're 10 times bigger. But the land, in Chinese law, the state holds ownership. No individual is—very few people—very few, less than 1 percent, so the majority of people—family all stay living in Shanghai. Somehow a big project is going on, so they—

Mr. GROB. Let me ask our panelists to comment on the historical perspective. Thank you very much for sharing.

Mr. HONGFUAN LI. Thank you.

Mr. GROB. Thank you.

Do you have anything to add on the historical perspective? No. Okay. Well, perhaps we can come back to that.

Any other questions right now? Please.

AUDIENCE PARTICIPANT. I just had a quick question. If you could clarify, in your written remarks it talks about the *xinfang* which needs to be reviewed—of *xinfang*, and maybe you could touch on the relationship between the *xinfang* and legal systems; is there a difference between the two systems and how this gets resolved, and what would be the outcomes?

Mr. MINZNER. That's a really good question. Yes. *Xinfang* is a broad umbrella term that refers to all of these offices. Let me try to break it down. Almost every single government agency is going to actually have its own *xinfang* bureau.

In addition, at every level within the Chinese bureaucracy, such as county-level governments or provincial-level governments, you'll find that there's a *xinfang* bureau attached to the particular government and Party committee at that level. It's a shared bureau. That is to say, if you're trying to go to the Hebei provincial government or the Hebei Party committee, you'll actually find it's the same *xinfang* institution that's receiving your grievances.

These *xinfang* offices are channels by which you can attempt to submit a wide range of political suggestions, appeals for redress of grievances, allegations of corruption on the part of local officials, and so on. Within the judiciary itself, you'll also find that there are



also a range of—and it’s going to vary based on the time period—institutions which are set up to receive less-than-formal submission of complaints. So you’ll have channels within individual courts where you can submit complaints that don’t rise to the level of formally filing a case.

There’s a parallel between these systems in the sense that, at the end of the day, what’s really pushing higher level officials to decide whether or not to take a particular issue seriously is less the legal merit of the underlying dispute and the extent to which it’s perceived by higher level officials that this could blow up into a mass petition or protest.

Within courts, that can end up in yanking or pulling of a court opinion that has already been issued. True, if you’re looking at the paper requirements, you will find statements that say, no, petitions should not be brought for cases which have already been decided—but in practice you’ll find that the social stability concerns can trump whatever the technical requirements are.

Mr. GROB. Go ahead.

Ms. BRETTELL. I have a question for the panelists. Recently there have been several local level rules passed in Shenzhen, in Inner Mongolia, in Jiangsu Province, and other places that prohibit certain behaviors of petitioners. I think there are a total of 14 behaviors that they prohibit petitioners from engaging in. This exceeds the number that are prohibited by the national *xinfang* regulation.

So I’m wondering, do you think that these rules will be implemented? Are these rules actually justifying activities that authorities are already doing? What’s behind some of these rules, and will they be implemented? What has been the reaction from petitioners, academics, or legal scholars regarding the new rules?

Ms. LI. It’s a reaction to the fact that the crackdown hasn’t worked, so they need other legal tools. Remember, *jiefang* [intercepting petitioners] has no legal basis because *xinfang* is allowed. So now they have to come up with a legal foundation for doing so. So a way is to respond, they need stronger legal tools, and a way is to sort of get ready for harsher crackdown when the petitioners go to higher levels. It’s a reflection of the desperation felt at the local levels by the authorities that they cannot stop the petitioners from going.

So it is to justify what they’re about to do. It’s also a way of getting public support by saying, “Look, here are the legal regulations, we’re doing it according to the books.” So they first have the books ready, and then they can justify what they are about to do, or they have been doing. The reactions—I think it’s too short of a time to have scholarly reactions. I know the local human rights groups, the civil society groups have reacted very negatively and angrily to the regulations.

Mr. GROB. Okay. And with that, we have reached 3:30. Unfortunately, I have to conclude the proceedings. We would like to thank you all for your participation, and thanks especially to our panelists, Carl Minzner, Li Xiaorong, and Meg Davis. We would also like to thank Dr. Anna Brettell, Senior Advisor on the Commission staff, for organizing this panel.

Please look for the transcript, which will be posted on our Web site, and keep your eyes on [www.cecc.gov](http://www.cecc.gov) for our Annual Report,

our periodic reporting, and other events and special topic reports that we post there.

With that, we'll conclude our proceedings. Thank you very much.  
[Whereupon, at 3:30 p.m., the roundtable was concluded.]

## **A P P E N D I X**

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## PREPARED STATEMENTS

**China's Citizen Complaint System:  
Prospects for Accountability**

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**Statement Prepared for the Congressional-Executive Commission on China  
December 4, 2009<sup>1</sup>****Introduction**

Since the 1950s, "letters and visits" (*xinfang*) offices have served as a channel for citizens in the People's Republic of China to seek assistance in resolving specific grievances, to appeal government decisions, and to engage in a limited form of political participation. *Xinfang* institutions are found throughout the Chinese bureaucracy, including offices of the Communist Party, police, government, procuracy, courts, and people's congresses.

Chinese citizens employ a range of petitioning strategies in their efforts to access *xinfang* bureaus. Individual petitioning may be as simple as one dissatisfied individual visiting multiple government *xinfang* offices. Collective (or mass) petitioning may involve organized demonstrations, speeches, and marches of hundreds or thousands of people seeking to present their grievances to officials.

The actual authority of *xinfang* institutions to resolve specific grievances is quite weak. Most commonly, *xinfang* bureaus simply refer individual petitions to other government agencies for action. In a small number of cases, *xinfang* bureaus may send their own personnel out to investigate a particular dispute, or may recommend that Party or government authorities take action. In extreme circumstances (such as disputes that may generate social disorder), *xinfang* offices may prompt the personal intervention of core Party or government officials in resolving particular disputes.

Given the lack of legal resources in China, the institutional weaknesses of the Chinese judiciary, and government restrictions on citizen political participation, *xinfang* institutions remain a popular channel for injured citizens seeking to prompt elite involvement in the resolution of their particular grievances. Petitions to Party and government *xinfang* bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year. Even within the judiciary, use of *xinfang* channels appears to outweigh more formal procedures. The entire Chinese judiciary, for example, handled forty-two million letters and visits from 1998 to 2003, compared with approximately thirty million formal legal cases.

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<sup>1</sup> This content of this statement is adapted from two articles by the author, "[Xinfang: Alternative to Formal Chinese Legal Institutions](#)," 42 *Stanford Journal of International Law* 103 (2006), and "[Riots and Cover-Ups: Counterproductive Control of Local Agents in China](#)," *University of Pennsylvania J. of Int. Law* (forthcoming 2009). Full references are available in those two articles.

### **Functional Roles of the *Xinfang* System**

*Xinfang* institutions serve multiple roles for petitioners. They provide an arena for limited citizen political participation in an otherwise closed system. They also serve as channels for petitioners to seek recourse for violations of their rights. In the absence of open political and legal channels, petitioning is one of the main methods by which Chinese citizens attempt to affect or challenge the official decisions that affect their lives.

*Xinfang* institutions also serve several important functional roles for Chinese authorities.

First, *xinfang* bureaus are an information collection resource for government and Party officials. In a nondemocratic system with severe restrictions on the freedom of the press, central Chinese leaders themselves often lack information about local developments. *Xinfang* bureaus partially fill this void by providing Chinese leaders with a regular stream of information based on petitioner complaints.

Second, *xinfang* organs help higher-level Chinese authorities check the principal-agent problem inherent in Chinese governance. Lacking direct citizen input into the political system, Chinese central authorities must rely on local officials to implement government directives and also report on their efforts in doing so. This conflict of interest offers lower-level officials opportunities for abuse. Many simply falsify information. *Xinfang* channels provide central authorities a means of employing popular opinion to monitor the actions of local officials. Individual petitions may reveal instances of illegal conduct by officials. Statistical comparisons regarding the numbers, types, and locations of petitions may also assist higher-level officials in determining systematic malfeasance in particular regions or administrative bureaus.

Third, *xinfang* bureaus serve an important “tripwire” function in alerting central authorities to issues likely to produce social destabilization. *Xinfang* bureaus, for example, can alert leaders as to the arrival of two hundred aggrieved laid-off workers and prompt higher-level officials to intervene in a particular court case or municipal government decision, thereby preempting a mass protest of a group ten times larger.

Finally, *xinfang* bureaus help Chinese authorities address violations of citizens’ rights. On paper, the system is aimed in part at protecting the individual legal rights of each petitioner. In reality, *xinfang* bureaus primarily operate to attract leadership interest to—and prompt intervention in—selected cases, including those higher officials have already designated for resolution.

### **Effects**

Despite these important roles, *xinfang* institutions have very negative practical effects.

First, from the standpoint of citizens seeking to redress their individual grievances, *xinfang* institutions are extremely ineffective. Many petitioners who approach higher-level agencies with complaints about local officials merely have their grievances sent

back to the same officials whose conduct is the source of the complaint. Even when higher-level *xinfang* bureaus give instructions in their referrals on how to resolve the citizen grievances, they are often easily ignored by local officials. 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.

This result is precisely because (as mentioned above) the main function of *xinfang* institutions is not to resolve all grievances equally, according to law. Rather, *xinfang* institutions are an information channel for higher authorities and a means to prompt the intervention of key Party or government officials in the resolution of particular disputes that might result in social instability. They represent the rule of man (or Party), not the rule of law. There is consequently a gaping disconnect between the institutional purposes of the *xinfang* system itself and those of many Chinese petitioners who seek to use it.

Second, incentives associated with *xinfang* system encourage local authorities to suppress petitioners and petitioning activity, sometimes violently. Higher-level Chinese authorities evaluate local officials through cadre responsibility systems that link career and salary rewards (or sanctions) of local officials to their success or failure in attaining specific targets. One of the most important targets: the number of petitioners leaving a particular jurisdiction to present grievances to higher-level authorities. Local Party and government leaders, in no uncertain terms, risk their job security when they fail to adequately check mass petitions or prevent petitioners from reaching Beijing.<sup>2</sup> As the other panel members will testify, this induces many local authorities to engage in harsh and repressive measures, such as illegally detaining petitioners in “black jails,” to prevent citizens from reaching higher-level authorities with their grievances.

Third, Chinese *xinfang* institutions support a perverse, destabilizing, and dangerous cycle of citizen petitioning. Because cadre responsibility systems apply harsher disciplinary sanctions to officials who experience larger and more frequent mass petitions, disgruntled petitioners have incentives to take their grievances to the streets to force officials to act. The threat of, or the actual carrying out of, a mass petition, can be a much more effective tool than any court decision for petitioners who are trying to prompt a local Party secretary to take or rescind a particular government action. After all, unlike a court decision, the threat of sanctions through cadre responsibility systems is directly linked to his official performance and career. As a result, disruptive, large-scale mass petitions directed at higher level officials can be an entirely rational alternative to formal legal channels for citizens seeking to prompt elite intervention in resolving their grievances.

Fourth, *xinfang* institutions and the citizen petitioning they engender undermine the authority of judicial institutions and the rule of law. Official resolution of petitions often depends on the discretionary willingness of high officials to intervene in particular cases rather than on the legal merits of the dispute in question. And the political ability of core

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<sup>2</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.” Mass petition movements of over 100 people to the provincial capital (or over 30 to Beijing) result in suspension of the responsible official.

Party or government officials to intervene in particular disputes encourages citizens dissatisfied with judicial decisions to resort to petitioning *xinfang* institutions as a means to reverse unfavorable outcomes in court, even if the decision in question was entirely legally correct. 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>3</sup>

#### Recent Developments

In recent years, Chinese authorities have attempted to reform the *xinfang* system, including revising the national *Xinfang* (Letters and Visits) Regulations in 2005. But recent developments suggest that these efforts may risk exacerbating existing problems.

Recent reforms actually strengthen the problematic incentives associated with the *xinfang* system. For example, the amended 2005 *Xinfang* Regulations require each level of the Chinese bureaucracy to implement *xinfang* responsibility systems, and make officials' success in handling petitions (or lack thereof) a component in their performance reviews of civil servants. Joint opinions issued by the general offices of the Central Committee and State Council in 2009 require local-level Party and government officials, particularly those in political-legal organs, to devote a fixed amount of time each month (or week) to personally receiving individual citizen petitions, and to personally assume liability (*bao'an*) for resolving particular citizen petitions.<sup>4</sup>

This emphasis also risks undermining legal and judicial reforms that Chinese authorities have pursued over the past three decades. As Xin He has noted, confronted with the pressure to resolve citizen complaints at all costs, some courts in southern China are resorting to paying off disgruntled workers out of their own pockets.<sup>5</sup> Naturally, this has real costs for the authority of Chinese judicial institutions.

Pressure to get citizen petitioners off the streets is also linked to an increasing emphasis in Chinese courts to rely on mediation, rather than trial. Party political-legal authorities have instructed Chinese courts and public security authorities to rely on mediation as the

<sup>3</sup> Lang Pingping, Reform of the Xinfang System Must Be Coordinated with Judicial Reform, [信访制度的改革必须同司法制度的改革协调], China Youth Daily, Nov. 30, 2004.

<sup>4</sup> See, e.g. Central Party Political-Legal Committee Interpretation of the Opinion on Strengthening Xinfang Work Involving Legal Issues or Cases, [中央政法委解读加强和改进涉法涉诉信访工作意见], at [http://www.gov.cn/jrzq/2009-08/18/content\\_1395716.htm](http://www.gov.cn/jrzq/2009-08/18/content_1395716.htm), and General Offices of the Central Committee and State Council Reissuance of Opinion Regarding Leading Cadres Regularly Receiving Petitioners [中办国办转发领导干部定期接待来访意见等三文件], [http://www.gov.cn/jrzq/2009-04/14/content\\_1285430.htm](http://www.gov.cn/jrzq/2009-04/14/content_1285430.htm).

<sup>5</sup> See US-Asia Law Institute and Columbia Law School's webcast program on "China's Changing Courts," at <http://www.usasialaw.org/?p=69>.

preferred solution for a wide range of cases.<sup>6</sup> Naturally, increased use of alternative dispute resolution can be a very good thing in many cases. But if administrative and civil cases that pose direct challenges to government interests, or that have the potential to erupt into mass incidents, are diverted to closed-door mediation as a way to keep them out of litigation (and possibly out of the public eye), this can negatively impact both legal interests of parties and citizen perceptions of judicial fairness.<sup>7</sup>

#### Avenues for Reform – The Domestic Perspective

Resolving the problems associated with the *xinfang* system requires confronting hard questions of institutional reform. This is the conclusion not only of observers outside China, but also a spectrum of domestic experts inside China. The latter range from liberal-leaning non-governmental domestic activist groups such as the Open Constitution Initiative (Gongmeng)<sup>8</sup> to Chinese government research institutions such as the Chinese Academy of Social Sciences (CASS).<sup>9</sup>

One key change: altering the concrete incentives facing local officials. Cadre responsibility systems that evaluate local officials on the number of petitioners who bring grievances to higher authorities place extreme pressure on local officials to block or “retrieve” (*jiefang*) petitioners. This is the direct cause of many of the abuses associated with the *xinfang* system. Revising evaluation systems for local officials to remove this pressure would be one concrete step toward reform.

But addressing the core of the problems associated with the *xinfang* system requires much deeper reforms. Heavy citizen reliance on *xinfang* channels reflects a pervasive lack of alternative channels for bottom-up supervision of government action. Legally-cognizable grievances and citizen demands for political participation are being funneled toward *xinfang* channels that are not capable of institutionally responding to them, simply for lack of anything better.

As both CASS and Gongmeng have pointed out, responding to these problems requires meaningful legislative and judicial reform. Local Chinese legislatures – local people’s congresses (LPCs) – need to be given a greater role in supervising government action. LPCs need to be made more representative in nature, via meaningful electoral reforms. Similarly, the Chinese judiciary needs to be given greater independence and authority in checking government action. Only then can the demands of Chinese citizens for

<sup>6</sup> Central Party Political-Legal Committee Interpretation of the Opinion on Strengthening Xinfang Work Involving Legal Issues or Cases, [中央政法委解读加强和改进涉法涉诉信访工作意见], at [http://www.gov.cn/jrzq/2009-08/18/content\\_1395716.htm](http://www.gov.cn/jrzq/2009-08/18/content_1395716.htm).

<sup>7</sup> Carl Minzner, Chinese Judiciary Seeks to Divert Administrative Cases Out of Litigation, April 9, 2007, at [http://sinolaw.typepad.com/chinese\\_law\\_and\\_politics\\_/2007/04/chinese\\_judicia.html](http://sinolaw.typepad.com/chinese_law_and_politics_/2007/04/chinese_judicia.html).

<sup>8</sup> See Gongmeng, *Report on the Xinfang System in China 2004-2007* [中国信访报告 2004-2007], Gongmeng (Open Constitution Initiative).

<sup>9</sup> See Yu Jianrong, *A Survey of the Xinfang System and Thoughts on Reform* [信访制度调查及改革思路], in 2005 Analysis and Forecast on China’s Social Development [2005年：社会形势分析与预测], 212.



increased participation in the decisions that affect their lives and the efforts of Chinese citizens to obtain legal redress for their grievances be channeled out of the *xinfang* system and into the gradual creation of other, better, institutions.

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### **Human Rights Abuses Involved in Official Interception of Petitioners in China**

CECC Roundtable, Dec. 4, 2009  
Xiaorong Li

#### **Introduction**

In the past few years, Chinese authorities have engaged in systematic and extensive illegal interception, detention, and torture against petitioners. "Petitioners" are those individuals who brought grievances to higher-level government offices in Beijing and provincial capital cities. This has made petitioners currently one of the social groups most vulnerable to human rights abuses in China.

Officially, the Chinese government encourages petitions. It has promulgated several versions of the "Regulations on Letters & Visits" (1995, 2005), and it has set up an extensive bureaucracy, known as the Letters & Visits Offices, to handle petitions. In practice, the government also developed a complex extra-legal system of interception and detention of petitioners in order to control and silence them. The system of intercepting petitioners (*jie fang*) has become almost as extensive as the Letters and Visits system (*xin fang*) itself.

This interception system was maximally activated prior to and during important political events, such as the Beijing Olympics, the celebrations of the 60<sup>th</sup> anniversary of the founding of PRC, to prevent "security" threats and maintain "public disorder".

In 2007, I advised the group CHRD in its investigation of the abuses of petitioners and the detention facilities known as "black jails". My talk today is based mainly on the findings of the investigations, which is documented in the report *Silencing Complaints* ([http://crd-net.org/Article/Class9/Class11/200803/20080314221750\\_8056.html](http://crd-net.org/Article/Class9/Class11/200803/20080314221750_8056.html)). I will proceed by answering some basic questions about the phenomenon of intercepting petitioners and the problems involved.

#### **How big a population are we talking about?**

It is difficult to estimate the number of petitioners in China due to a shortage of accurate official statistics. According to *Law Yearbook of China*, between 2002 and 2006, 3.54 to 4.22 million petitions were received at various levels of the People's Courts every year, but the courts are only one of many government departments where petitioners went to lodge their complaints. Thus, the number of petitioning cases is undoubtedly far higher than 4.22 million. On November 4, 2004, *Southern Weekend* reported, "According to official statistics, there were over 10 million petitioning cases in China last year." But the number is likely to be far greater because many petitions go unregistered, for example, those who were intercepted before they reach the Letters & Visits offices.

#### **Why do petitioners petition?**

Individuals become petitioners when they take action to deliver complaints to government authorities at higher levels about injustices they have experienced at the hands of local government after they judge they have no reasonable prospect of seeking redress at the local level. The most common reasons for petitioning are:

1. Promised benefits or entitlements are not delivered, or legal and/or human rights are violated due to official corruption, government decisions or actions. Common examples include:
  - Loss of farmland through appropriation by officials and commercial developers, often in the name of development
  - Loss of employment and corresponding benefits
  - Forced eviction and demolition of home or property without proper compensation, often to make way for development
  - Failure of government to make arrangements for the resettlement and livelihood of discharged soldiers
  - Political persecution over the past half century
2. Judicial decisions that are perceived as unfair.
3. Official abuse of power or misconduct, such as corruption, go on unpunished.

#### **Who are the petitioners?**

Petitioners are more likely to be women, old people and the disabled. In recent years, more rights violations are related to official corruption and the negative impact of economic development, and more young and educated petitioners joined.<sup>1</sup>

Petitioners who go to Beijing are often veteran petitioners. First they petitioned the local government. Then, failing to gain redress and often suffering more abuses for petitioning, they took their grievances to higher authorities, eventually reaching Beijing.

#### **Why do petitioners persist?**

In a *Southern Weekend* article of November 4, 2004, a scholar at the Chinese Academy of Social Sciences, Yu Jianrong (于建嵘), says, "according to a survey...only 0.2% of petitioners solve their problems through petitioning." So why petitioners keep going? A reason is their belief that their rights have been violated, that they have no other affordable or effective venues of seeking justice. The Letters and Visits system has survived as a result of the fact that for much of the modern era, the Chinese political system of government has provided virtually no fair, effective remedies for official malfeasance. An aspect of this is the weakness and lack of independence of the judiciary. Even where limited legal avenues for redress do exist, these may be difficult for people to use or judicial corruption may render them ineffective. Returning home also expose petitioners to retaliation by local officials whom they have complained for misconduct.

Many petitioners soon find their rights further violated because they often become targets of official repression. As they continued to complain about these further abuses, their original complaints snowballing to include a wide range of new grievances. Petitioners began organize to protest rights abuses against them and the political system that sustained such abuses, and they

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<sup>1</sup> This information is based on the observations of the authors, who are long time petitioners and activists who have assisted petitioners for many years.

formed associations to support each other. These groupings and the organizers suffered harsh retaliation.

**When did interceptions become so intensified and perverse?**

Large-scale and systematic interception of petitioners is relatively new. In 2003, fearing protests at times of sensitive political events in Beijing, such as the annual session of the National People's Congress and CCP Congresses, Central government officials began ordering local Letters and Visits Offices to prevent petitioners from going to Beijing. Then the Custody and Repatriation System was abolished in 2004. It had previously been one of the main mechanisms used to detain people who were away from their places of registered residence and return them to their hometowns, and in its absence, other means had to be found to remove people from cities where they were unwanted or considered undesirable. Thus local Letters and Visits Offices took on the additional responsibility of intercepting petitioners who intended to go to Beijing. They often employed violence to do so and were assisted by local branches of the Public Security Bureau (PSB).

Interception does not exist legally or publicly, but evidence points to a rapidly expanding operation, extensive in scope. Since 2004-2005, because the number of petitions has kept rising, interception has become a major area of responsibility for various local governments, and many departments at different levels are involved. Local CCP organs and government agencies mobilize substantial resources to intercept petitioners.

**What are the frequently used means of interception?**

The frequently used methods of interception include:

Harassment of petitioners' families -- Interceptors contact petitioners' families and relatives and threaten them that if they do not stop the petitioning, they will lose their jobs (at state agencies or private or state-controlled companies).

Surveillance -- Officials wishing to intercept petitioners enlist neighbors, thugs and local government officials to monitor petitioners 24 hours a day. Technology is also employed: monitoring and wire-tapping devices and surveillance video cameras are used to monitor petitioners.

Kidnapping -- Interceptors are dispatched to forcibly kidnap and return petitioners to their home areas. Research shows that most petitioners returned home were kidnapped by interceptors.

Assault -- Interceptors often violently beat petitioners, sometimes until they are unconscious.

Murder -- There is evidence to suggest that in some cases, interceptors have beaten or tortured petitioners to death. At the start of 2005, six bodies were found when the moat near the State Council and National People's Congress was cleaned. Petitioning materials, well-preserved in plastic bags, were found on the bodies.<sup>2</sup> There are well-documented cases of petitioners who died as a result of torture. Shanghai petitioners Duan Huimin and Chen Xiaoming were allegedly tortured to death while in detention in 2007. Three months ago, Hebei petitioner Liu Fengqin

<sup>2</sup> According to a petitioner who witnessed the incident and who told this story to one of the authors of this report.

died in a local RTL after she was sent there for repeatedly petitioning in Beijing. In October, Shandong petitioner Li Shulian died in a local black jail after she was intercepted in Beijing and sent back to detention. Police claimed that she committed suicide, but the circumstances are suspicious. Family members of Liu and Li have been detained or otherwise silenced from demanding investigations.

□ Arbitrary detention -- the various forms of arbitrary detention include:

- Re-education through Labor (RTL).

RTL is an administrative measure, meaning that it occurs outside of any judicial process and is “administered” directly and arbitrarily by law enforcement officials. Without access to legal counsel or judicial trial, individuals can be detained for a maximum of four years. Sending petitioners to RTL is one of the most common means of preventing them from petitioning. Of the 3, 328 petitioners who participated in a 2007 survey, 35.2% had been formally detained or sent to RTL. There is evidence that local governments actively encourage sending petitioners to RTL. A leaked document from Jiangyong County government in Hunan Province, dated May 16, 2007, says that the county government gives a RMB 6,000 (US\$844) reward to the county PSB for every petitioner sent to RTL camp.<sup>3</sup>

- Psychiatric facilities.

The 2007 survey found 3.1% of petitioners had been imprisoned in psychiatric institutions. Many had suffered this fate more than once. The mental health of the petitioners is generally not evaluated. In the psychiatric institutions, they are often forced to take unknown medication, which they reported to have caused confusion, nausea, headache and other symptoms.

- “Black jails”.

“Black jails” are illegal and secret detention facilities set up by local governments in Beijing and in local areas to detain petitioners for an undefined period of time without charge or trial.

A number of “black jails” in Beijing were established by local governments; for example, the Henan Province government Beijing Liaison Office in the back of a hotel. Black jails have also been set in local cities and small towns to incarcerate petitioners intercepted in Beijing or on their way to the Capital.

The UN monitoring bodies (such as CAT), the press, and HRW (Nov. 09) have drawn attention to “black jails”. Last week, *Liaowang*, a subsidiary publication of Xinhua, did a long expose of black jails and the “chain of grey profit-making enterprises” of intercepting petitioners – a very rare official admission of the existence of such illegal activities!

- “Law education classes” (xuefaban or xuexiban).

<sup>3</sup> The document is entitled “Regulations Regarding the Investigation of Responsibilities of the Implementation of the Work of Letters and Visits” (关于实行信访工作责任追究的若干规定).

Petitioners are held incommunicado in these “classes” where they were forced to study official regulations and law until they promise in writing that they will never petition again. Detainees are often required to pay fees for the “classes”. Such classes also served to keep petitioners out of the spotlight.

- ***Imprisonment***

The government routinely uses the judiciary to put petitioners in prison.

**Why do authorities abuse the petitioners to such an extent?**

There are many explanations. I will identify five main ones:

- 1) Evading accountability. Local officials fear that their local “scandals” being disclosed to higher officials and national media. It has to do with the ways in which the political careers of individual officials are linked to their ability to guarantee “stability” in the areas under their control, with petitioning being seen by higher authorities as indicative of disorder;
- 2) Priority of maintaining image of “harmony”. The Central government officials’ inability to handle exponential cases brought by petitioners and they are determined to maintain façade of “social harmony” and an “un-tarnished image” in the nation’s capital, which receives many more foreign reporters and visitors.
- 3) Profit-driving motives. The use of petitioners between Central and local officials as a means of exchange for bribes. This has to do with the “point deduction system.” When a petitioner from a certain local area lodges a complaint at a Letters and Visits Office managed by a higher authority, that authority deducts points from or fines the relevant authorities at the lower level, and the punishment is passed down through the layers of government, getting heavier each time, until it reaches the location of origin of the complaint or petitioner. When a petitioner registers with higher “Letters & Visits Office”, lower level governments may get a call. They can go pay a bribe to cancel the registered petition. In the words of a Henan county official, “For cancellation, you only pay an economic price; without cancellation, you pay a price in your career....” As a result, those at lower levels have a strong incentive to try their best to prevent petitioners from lodging complaints. The incentive to intercept petitioners gets stronger as petitioners lodge complaints with higher levels of government. This system also leads to the establishment of rewards for agencies that engage in persecution of petitioners. A set of regulations concerning petitioners from Jiangyong County government, Hunan Province, states:

“If the county PSB detains one petitioner, the reward is RMB 2,000 (US\$282); for sending one petitioner to RTL camp, the reward is RMB 6,000 (US\$844); for investigating a petitioner’s criminal responsibility, the PSB receives RMB 6,000, the county Procuratorate receives RMB 2,000 and the county court RMB 2,000.”<sup>4</sup>

Other officials have found “creative” ways of capitalizing on the desire of local authorities to block petitioners. For example, Youanmen police station under Beijing Municipal PSB has frequently “sold” petitioners they caught at RMB 500-1,000 (US\$71-142) apiece to the relevant

<sup>4</sup> “Regulations Regarding the Investigation of Responsibilities of the Implementation of the Work of Letters and Visits” (关于实行信访工作责任追究的若干规定). It was issued on May 16, 2007.

interceptors. If the interceptors from the relevant local governments refuse to pay, the petitioners are then sent to Majia Building, a government facility, where petitions are processed. As a result, many local governments are willing to “buy back” their petitioners and punish them for the expenses.

4). Political phobia against any organized mass mobilizations. The “Letters & Visits Regulations” (Article 18) banning “collective petitioning” by 2 or more people from filing the same complaint. (“Where two or more letter-writers or visitors intend to present the same letter-or-visit matter through visit, they shall choose representatives, and the number of representatives shall not exceed five.”) Petition organizers met harsh punishment. In the “point reduction system,” the incentives to intercept petitioners get stronger as petitioners organize themselves into larger groups. For example, in Shimen County, Hunan Province, a local government unit gets 0.5 points deducted if a group of 6 to 20 petitioners lodges a complaint against it at the county level, but 5 points deducted if the group is larger than 100 people.<sup>5</sup>

5). Vagueness of language in the Regulations allows abuses. The system of “self-review” outlined by Article 4, the restriction on collective petitioning stipulated by Article 18 and the list of vaguely-defined “crimes” described in Article 20 encourage officials to retaliate against petitioners, whether petitioning individually or in groups, and provide ready legal basis to do so. Let’s take a look at the system of “self-review.”

Under this system, a complaint about a particular agency will be handed back to it to deal with, even if it has failed to do so in the past. A direct result of the “territorial jurisdiction,” the officials responsible for the alleged wrongdoing described in the petitions are also the ones responsible for dealing with the petitioners and their complaints. No impartial third party to adjudicate the dispute. Not surprisingly, very few petitions are successful. And naturally, petitioners tend to be punished harshly by angry officials. Interestingly, Article 23 of the Regulations prohibits Letters and Visits staff from divulging “the materials of accusation...or the relevant information provided by a letter-writer or visitor to the individual or department accused or exposed.” Articles 4 and 23 thus directly contradict each other. Article 23 is routinely violated.

There is a lack of clarity on what constitutes a “crime” in the Regulation (Article 20), which outlines a host of actions as prohibited, including: “illegally assembling around offices of state organs or public places,” “inciting, colluding with, coercing or enticing with money or things of value others to write letters or make visits,” or “committing other acts that disrupt public order or impair national or public security.” The vague language leaves room for police to interpret what constitutes “undesirable” or “unlawful” behavior. Many petitioners have been sent to RTL or sentenced for “disrupting public order and impairing national or public security.”

#### **What to do?**

It is clear what the government should do to end the horrendous abuses involved in jie fang. The question is whether there is any incentive for doing anything. Here is a list of the obvious things to do:

<sup>5</sup> “2007 Measures of Shimen County to Assess the Work of Maintaining Stability” (石门县 2007 年度维护稳定工作考评办法), Notice Major Item 2 Article 16

**Reform the incentives system that encourages interception**

The current “point deduction system” punishes officials and government units for the number of petitions lodged against them. If petitioning is to be kept, higher level officials must take charge to investigate the accusations and find resolutions.

**Abolish the RTL system**

The RTL provide authorities a very convenient tool to handle petitioners. It’s not subsumed under the Criminal Law system where some procedural guarantees exist, which slows down and encumbers officials seeking to punish or tuck away stubborn petitioners quickly and quietly.

**Hold officials criminally accountable**

Government officials suspected of ordering or carrying out the abuses of petitioners’ rights and participating in bribery must be held accountable according to the Regulations on Letters and Visits and relevant Chinese laws. China’s laws already contain appropriate punishments for those who violate human rights. For example, Article 238 of the Criminal Law stipulates that,

“Whoever unlawfully detains another or deprives him of his freedom of person by any other means is to be sentenced to not more than three years of fixed- term imprisonment, criminal detention, control, or deprivation of political rights. In circumstances where beating or humiliation is involved, a heavier punishment is to be given.”

**Make complaints procedures impartial, amending discriminatory regulations**

Abolish the “territorial jurisdiction” principle and ensure that the departments or officers in-charge of processing petitions are impartial and independent from those the petition concerns. In addition, the confidentiality of the petitioner’s identity must be ensured, in accordance with Article 23 of the Regulations. For example, petitioners reporting on local corruption or abuse of power should not be identified and be known to the local department or officials involved.

Article 18 of the Regulations on Letters and Visits, which restricts the number of representatives to no more than five for any collective petition, must be amended so that it explicitly states that the article cannot be used as a basis for punishing petitioners who exercise their rights to association and peaceful assembly.

Article 20 also needs to be amended to clarify and precisely define the meaning of the terms “illegally assembling” “disrupt public order” and “impair national or public security,” as well as the specific conditions under which a peaceful act of expression may constitute these acts. Such conditions must explicitly exclude any non-violent activity in the exercise of the right to freedom of expression, fundamental in the act of petitioning.

**Strengthen judicial independence and other alternative channels to lodge complaints**

Reform other dispute resolution mechanisms, such as the judiciary, making them impartial, effective, and independent of political interferences. Other alternative channels for citizens to lodge complaints should also be considered, such as direct communication with their local representatives of the People’s Congress.




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**China's Petitioning System: A Maze with No Exit**

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**Statement to the Congressional Executive Commission on China**  
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Following on Prof. Minzner and Prof. Li's eloquent explanations of the petitioning system, I'd like to share some case studies in order to give a sense of the human face behind the system – as well as some of the challenges that impede reform.

My organization, Asia Catalyst, works with civil society in China and Southeast Asia, especially with AIDS activists. We assist grassroots, independent NGOs with capacity-building (strategic planning, budgeting and management skills) as well as conducting our own research and advocacy for the rights of NGOs to do their work.<sup>1</sup> Before founding Asia Catalyst, though, I spent three years as the China researcher at Human Rights Watch, where I conducted field research and wrote (among others) a book-length report on petitioners, "We Could Disappear At Any Time": Retaliation and Abuses Against Chinese Petitioners" (HRW, 2005).

I no longer speak on behalf of Human Rights Watch, which recently published a second report on petitioners and the "black jails" in which they are often detained. Nonetheless, for reasons I will get into, I expect that many of the people I interviewed in 2005 are still in Beijing petitioning, if they're not dead or in jail, and so the research I did in 2005 may still be current. On a personal level, I remain haunted by the voices I heard back then, and by the vision they shared of a vicious cycle with no easy way out; I am grateful to CECC for the opportunity to reflect on what they said again.

We have heard about the petitioning laws and the system they manage; so who are the petitioners? One of the things that make them compelling and empathetic is that as a rule, petitioners are not activists in a political sense. They're just ordinary people, many of them staunch believers in socialist ideals and in the achievements of the Chinese Communist Party, who have suffered terrible injustices. The U.S. view of human rights advocacy in China in some ways remains colored by June 4, 1989, and the students and scholars who fled to the U.S. in the wake of that tragedy. But the cutting edge of the human rights movement in China today is not in the universities; it's in the streets in front of the petitioning offices, in the hands of these farmers and urban poor, people unlikely to ever become known internationally, or to get flown out to Harvard or Princeton for fellowships, or to receive prestigious human rights awards. Many of them have little idea of what the term "human rights" even means except that it might

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<sup>1</sup> For more information, please see [www.asiacatalyst.org](http://www.asiacatalyst.org).



mean, in the words of one Beijing man I spoke to, “that an official’s son should be given the same treatment as my son.”

In 2005, I went to Beijing for a month to gather testimony from 34 petitioners about police abuse, in order to write a report for Human Rights Watch. As I knew that my visibility as a representative of HRW made me a risky person to talk to in China, I took a number of precautions in the field, including frequent changes of housing and cell phone numbers. I and a couple of interns who were assisting with the project met with petitioners who had agreed to be interviewed, usually in the back room of one or another restaurant, where we would buy them lunch, explain who we were and the potential risks of talking to us, and hear whatever they had to say.

Most of the petitioners we met with were living on the streets of Beijing, or in very rudimentary boarding houses where they would rent a cot in a crowded dorm. They were selling newspapers or gathering up cans for recycling to survive, and quite a few were living off of scraps they dug out of the garbage. We would order a few dishes of food as compensation for their time. When they walked into the restaurant room, and saw the food spread out on the table, their eyes would open wide, and they would usually be shy and hesitant to eat anything. We’d have to press them to take food away with them after the meal. Then, needing very little encouragement and waving off our warnings about the risk of retaliation, they would pull out their sheaves of paper, the documentation of one lawsuit after another, statement upon letter, piles of forms and judgments and stamped receipts.

The range of individuals was great – from a middle-class shop-owner with a stiff perm and an embroidered sweater who represented a large group of investors bilked by a fraudulent investment scheme, to an unwashed farmer woman who arrived at the restaurant toting a cloth backpack with all her worldly belongings.

The petitioners who spoke to us had often begun their epic journeys with a harrowing incident in their home towns. Several people had lost sons or brothers to police abuse. A few described challenging local officials on corruption allegations, and being nearly murdered in retaliation, or witnessing retaliatory attacks on a loved one. One mild-mannered man I met with his young son described an attack by thugs whom he believed were hired by a local official:

At 7:00 p.m. on January 31, 2002, five or six people went to my house. They brought an iron hammer. They came in and said nothing. They weren’t from our village, I’d never seen them before, they were thugs. First they hit my wife and my younger brother’s wife in the head with an iron hammer. They were coming for me, but they didn’t know who they were dealing with. My brother hit [one attacker] over the head with a chair, and then when the chair broke he beat him to death with the chair leg....The kids were crying, they were terrified.<sup>2</sup>

There were several of these allegations about attempted assassinations by local officials. Ma, a Henan man, was actually a second-generation petitioner. His father began petitioning in

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<sup>2</sup> *“We Could Disappear At Any Time”: Retaliation and Abuses Against Chinese Petitioners.* Human Rights Watch Report, 2005; p. 32.

the Mao era over a land claim, and persisted with his case for nineteen years. Ma said that officials had assassinated his father in retaliation:

They killed him with a hoe, they hit him in the back of the head. They also hit my mother and my sister. My sister fought back, and killed the attacker. So she was sentenced to five years in prison. This was all arranged by the village deputy Party secretary. I thought this was not fair treatment for my sister, so I've been petitioning for many years.<sup>3</sup>

Some cases were less violent, but were notable in that a single individual was pursuing a case on behalf of a large group. We spoke with one woman who said she represented 1,500 investors, many of them senior citizens, all of whom had signed letters (she showed them to us) saying that they had bought plots in a Beijing cemetery that was never constructed. The company collapsed in 1998. Investors alleged that the government official who had backed the scheme had absconded with the funds.<sup>4</sup>

Others we spoke with were petitioning over forced evictions from their homes in a city, or over forced land expropriation by local officials in the countryside. At Asia Catalyst, we have also monitored and written to the UN on cases in which petitioners from Henan province are demanding compensation for infection with HIV through unsafe blood transmissions, a problem that was widespread in the early 1990s and that persists today.

In many cases, people who began petitioning about one local abuse then became victim to retaliation for their petitioning, and as they moved up the system, petitioning from the township to the county to the provincial level and then on to Beijing, abuse began to pile on abuse. A petite and shy woman of 39 told about the epic journey she went on after her arranged marriage to an abusive man. She said,

I was married by force [to a man I had known for one week] in 2000. I tried to leave my husband and he wouldn't let me. The day after, two people came home with him. They ripped my clothes off and raped me. It was my husband and two of our neighbors. I complained, and the police detained him for a few days. Then they let him go....I think he paid a bribe.<sup>5</sup>

The gang rape was the original abuse; then she petitioned higher up the system, and the retaliation began. "For making 'false accusations' against my husband, I was sentenced to one year in prison," she said.<sup>6</sup> The court concluded that rape in the context of marriage was not legally rape. In the local prison, conditions were brutal. Ten women shared a cell. The authorities shackled her hands and feet for days at a time for such minor infractions as putting on socks when she went outside to work in the winter, or for joining in with a group of Falungong detainees who began singing a protest song.<sup>7</sup> At one point she was shackled

<sup>3</sup> *"We Could Disappear At Any Time,"* p. 33.

<sup>4</sup> *"We Could Disappear At Any Time,"* p. 34.

<sup>5</sup> *"We Could Disappear,"* p. 64.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, p. 65.

day and night for seven days. But as soon as she was released, she came back to Beijing to petition. She said defiantly, "I'm going to tell the national leaders what happened to me."<sup>8</sup> Like many petitioners, she clung to her faith in senior leaders.

One of the persistent fears of petitioners like this woman was of being detained by "retrievers", 解放人, some of whom were out-of-uniform police, others just thugs hired by provincial authorities. The job of retrievers is to find any petitioners from their province, kidnap the petitioners, and bring them back to the petitioner's hometown. In some cases, the petitioner is then imprisoned in a local detention facility (usually a reeducation-through-labor camp or something similar). Sometimes they are beaten and threatened with retaliation against both the petitioner and her or his family. A petitioner gave us a photograph he had taken of the retrievers lined up across the street from one of the petitions offices in Beijing, perched on small folding stools or leaning on trees like hawks ready to pounce.

Abuses by retrievers are common. One elderly couple I interviewed described being ambushed by retrievers who heard her and her husband's accent on the street near the petitions office, guessed which province they were from, and beat them in the street in an attempt to drag the couple off, while Beijing police ignored them. She said,

Thirty to forty people surrounded us and asked us where we were from. Before we even opened our mouths, they started to hit us. Over twenty people began hitting my husband. They stomped his body here [indicating left ribs]....They knocked me down, too. Every time I'd try to get up, they'd kick me back down. This happened three or four times. It was raining, and my poncho was soaked with water.<sup>9</sup>

When we did the interviews in 2005, petitioners spoke with fear about the building known as the Majialou, where they were interrogated and threatened, sometimes brutally beaten by retrievers. I noted in preparing for this roundtable that HRW's recent report on black jails also refers to the Majialou. However the 2009 HRW report describes the Majialou as a kind of sorting facility where petitioners are organized into groups and then sent to black jails. The black jails are rooms or structures appended to the provincial hotels where retrievers stay in Beijing; they function as something like embassies for the provinces in the capital. Detention in the black jails is done without any kind of legal procedure, and some people have been detained for extended periods.<sup>10</sup> The shift in the function of the Majialou from detention facility to sorting facility could suggest a growth in the number of petitioners coming to Beijing.

While Chinese Rights Defenders and Human Rights Watch report that some petitioners are kept in black jails for extended periods, for the most part the facilities seem to be used as way stations to collect and threaten petitioners before sending them back to the home province. This was the case with, for instance, an AIDS activist who recently told Asia Catalyst he had participated in a protest in front of the Ministry of Health the week before December 1 (World AIDS Day) with two other Henan petitioners, and had then been sent back to his home town in Henan.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., p. 48.

<sup>10</sup> "An Alleyway in Hell": *China's Abusive Black Jails*. Human Rights Watch report, 2009.

For most petitioners, these detentions in the hometown are a matter of course. The man whose father had been killed for petitioning over the Mao-era land seizure said that authorities had sent him back home multiple times. On one occasion, lacking room in the local jail, they had kept him in solitary confinement in an old abandoned and unheated school building in winter. After a major snowstorm, his jailers abandoned him, and he escaped by walking through snow drifts for miles. He told us he was now living in hiding with his siblings in Beijing, and that he was afraid to go outside because he believed this time local officials would kill him. "I don't dare to meet with the local government anymore," he said.

Ironically, this man was one of the few petitioners I met who had successfully obtained a letter from the Supreme Court in response to his petition – the holy grail sought by all petitioners. But when we expressed amazement at his accomplishment he shouted at us in frustration, "I have over twenty of those letters! They all say the same thing....I asked the head of the Court petitions office, 'What use are your letters?... He said to me directly, 'They're no use.' So now they have stopped giving me letters."<sup>11</sup>

Under the circumstances, it's remarkable that most of the petitioners I interviewed in 2005 continued to petition, and most likely are still petitioning today, even as we speak. All the petitioners we interviewed had come to Beijing numerous times, at risk of beating and torture and detention, to continue to press their cases. "I can't not petition," said one woman who had suffered weeks of torture in a detention center, leaving her permanently walking with crutches. "I don't fear anything," said others. "What else can they do to me that they haven't done already?"

It's this reckless disregard for personal safety, this obsessive desperation in pushing their long, hand-written missives on anyone who seems remotely able to help, and the fact that they live in filth and poverty on the streets, that leads many mainstream Chinese people (including many in the government who have to deal with petitioners) to conclude that the majority of petitioners are mentally unbalanced. And, having spent some time with them, I can't disagree – many are unbalanced. Whether they began that way is another question.

If we examine the lives of petitioners from their perspective, for many petitioners, the choice to seek redress is a turning point that gradually shuts out other life paths. Over time, the petitioners are driven deeper and deeper into a maze from which there is no exit. If an official steals your land – or worse, actually attempts to kill you, and you decide to fight back – how do you go home after that? Retaliation would be a constant threat.

In another country, having tried and failed to find redress through petitioning, a victim could perhaps give up, choose to move to a new town, and start a new life. China's restrictive household registration or *hukou* system makes that close to impossible, too. Without a local household registration card, the new resident would be unable to go to a hospital, or send children to school.

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<sup>11</sup> "We Could Disappear," p. 22.

Once having started petitioning, petitioners can quickly become locked in a tragic cycle of petitioning, suffering new abuses, and petitioning about those as well, that ultimately destroys both the individuals and their families, and almost never results in justice.

But the petitioners may not be the only ones locked in a maze with no exit. As Carl's work on the incentive system shows, the Communist Party is now in a parallel and potentially equally dangerous cycle that pivots around the absence of accountability at every level of the system. A system that governs through absolute allegiance must be able to protect its own, or risk disloyalty and disintegration among the members. This logic leads to an incentive system that requires local officials not to investigate abuses against colleagues, but to cover them up. The end result is an ever-widening pool of dislocated victims with nothing to lose, who in turn require ever more brutal measures to suppress.

China needs senior officials with the courage to institute sweeping reform of the legal and petitioning systems, reforms that result in equal access to justice for all Chinese citizens. Without it, the current system and its supplicants will continue on their parallel cycles, and China's economic miracle will face increasingly destabilizing pressures.

